

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS

	)	
In re:	)	
	)	Chapter 11
QVL PHARMACY HOLDINGS, INC.,	)	Case No. 15-14983-FJB
	)	
Debtor	)	
	)	

**THIRD AMENDED DISCLOSURE STATEMENT FOR  
QVL PHARMACY HOLDINGS, INC. THIRD AMENDED CHAPTER 11  
PLAN OF REORGANIZATION**

QVL Pharmacy Holdings, Inc., the Debtor and the Debtor-in-Possession herein (the “Debtor” or “QVL”), hereby provides this Third Amended Disclosure Statement pursuant to 11 U.S.C. §1125(b) in order to disclose information deemed by the Debtor to be material, important and necessary for its Creditors and holders of Equity Interests to make a reasonable and informed decision in evaluating the Debtor’s Third Amended Chapter 11 Plan of Reorganization dated November 7, 2016 (the “Plan”). A copy of the Plan is attached hereto as Exhibit A.

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTOR BASED UPON ITS KNOWLEDGE OF ITS FINANCIAL AFFAIRS. EXCEPT AS OTHERWISE EXPRESSLY INDICATED, SUCH INFORMATION HAS NOT BEEN SUBJECT TO AUDIT OR INDEPENDENT REVIEW. ALTHOUGH GREAT EFFORT HAS BEEN MADE TO BE ACCURATE, THE DEBTOR DOES NOT WARRANT THE ACCURACY OF THE INFORMATION CONTAINED HEREIN.

PLEASE READ THIS DISCLOSURE STATEMENT CAREFULLY. IT CONTAINS INFORMATION THAT MAY BEAR UPON YOUR DECISION TO ACCEPT OR REJECT THE THIRD AMENDED CHAPTER 11 PLAN OF REORGANIZATION DATED NOVEMBER 7, 2016. THE DEBTOR BELIEVES THAT THIS PLAN IS IN THE BEST INTEREST OF THE CREDITORS AND HOLDERS OF EQUITY INTERESTS AND IS FAIR AND EQUITABLE. THE DEBTOR URGES THE VOTER TO VOTE TO ACCEPT THE PLAN. THE DEBTOR BELIEVES THAT THE PLAN WILL MAXIMIZE THE RETURN TO CREDITORS AND HOLDERS OF EQUITY INTERESTS ON THEIR CLAIMS.

*This Disclosure Statement summarizes the Plan and also provides information concerning the events leading up to the Debtor’s submission of the Plan which the Debtor believes is relevant in making a determination concerning the merits of the Plan, but does not purport to be a complete description of each provision of the Plan. Creditors and parties-in-*

*interest are urged, therefore, to read the Plan in its entirety. If any inconsistency exists between the Plan and this Disclosure Statement, the terms of the Plan shall control.*

Certain capitalized terms used throughout this Disclosure Statement are defined in Article II of the Plan. Unless defined elsewhere herein or in the Plan, other capitalized terms shall have the meaning ascribed to such terms in the Bankruptcy Code or the Bankruptcy Rules and shall be construed in accordance with the rules of construction thereunder.

## ARTICLE I

### INTRODUCTION

This Disclosure Statement relates to the Plan filed by the Debtor on November 7, 2016.

The Debtor believes that the contents of this Disclosure Statement are complete and accurate and it has made a careful effort to be accurate in all material aspects; however, except where expressly indicated, the information contained in this Disclosure Statement has neither been subject to, nor is the result of, a certified audit. Accordingly, the Debtor is not able to warrant or represent that the information is certifiably accurate.

The Debtor reserves the right to amend, modify, or supplement the Plan at any time before the confirmation of the Plan, provided that such amendment or modifications do not materially alter the treatment of, or distributions to, holders of Claims and Equity Interests under the Plan.

Approval of the legal adequacy of this Disclosure Statement by the Bankruptcy Court is not a certification by the Bankruptcy Court as to the truth or accuracy of the factual matters that are contained in this Disclosure Statement.

The Confirmation and effectiveness of the Plan are subject to material conditions precedent, some of which may not be satisfied. There can be no assurance that those conditions will be satisfied. The Debtor presently intends to seek to consummate the Plan and to cause the Confirmation Date to occur. There can be no assurance, however, as to whether or when the Confirmation Date actually will occur. Procedures for the distribution of Cash pursuant to the Plan, including matters that are expected to affect the timing of the receipt of distributions by holders of Claims and Equity Interests in certain classes, could affect the amount of distributions ultimately received by such holders.

## ARTICLE II

### CIRCUMSTANCES GIVING RISE TO THE FILING OF THE CHAPTER 11 PETITION AND DEVELOPMENTS DURING THE CASE

**A. The Debtor's Business.** Prior to the Petition Date, the Debtor operated a chain of retail pharmacies in Texas and Louisiana specializing in hard-to-find medications (including controlled medications) and dispensing written prescriptions. By December 31, 2014, the Debtor had closed or sold all of its operating pharmacies and now has a plan to develop its intellectual property and

knowhow into a software product for sale or license to retail pharmacies. The Debtor seeks to reorganize in order to seek relief from certain of its unpaid liabilities and thus, a clean-up of its Balance Sheet from the liabilities that had been incurred.

**B. Pre-Petition Secured Debt Obligations.** As of the Petition Date, QVL and its assets were subject to four secured debt facilities.

- (1) 2011 Notes. The earliest facility was a series of Senior Secured Convertible Promissory Notes issued by the Debtor to certain lenders who were also QVL shareholders on April 29, 2011, as subsequently amended (the “2011 Notes”). The 2011 Notes are secured by a blanket UCC-1 lien on all of QVL’s assets.
- (2) 2013 Notes. On February 1, 2013, another series of Senior Secured Convertible Promissory Notes Agreement were issued by the Debtor to certain lenders who were also QVL shareholders pursuant to the terms of a Master Credit Facility and Loan Modification Agreement, as subsequently amended (the “2013 Notes”). The 2013 Notes are also secured by a blanket UCC-1 lien on all of QVL’s assets.
- (3) Line of Credit. Under the terms of the Master Credit Facility and Loan Modification Agreement, White Winston, through a newly-formed, single purpose entity (QVL Pharmacy Subsidiaries Funding Group, LLC) (the “Line of Credit Lender”) funded a line of credit dated December 24, 2013 to fund QVL’s working capital needs (the “Line”). White Winston is the Manager of the Line of Credit Lender. The Line is also secured by a blanket UCC-1 lien on all of QVL’s assets.
- (4) Under the terms of that certain Agency, Intercreditor, Subordination and Standby Agreement dated March 25, 2013, the holders of the 2011 Notes and the 2013 Notes agreed as follows:
  - (a) to appoint White Winston as their collateral agent for and as representative of each of them; and
  - (b) to subordinate their interests in the QVL assets to the security interest in those assets pledged to secure the Line. Additionally, the holders of the 2011 Notes further agreed to subordinate their interests to the secured interest held by the 2013 Noteholders.
- (5) ABC Notes. QVL also issued notes to its wholesale drug supplier, Amerisource Bergen Drug Corporation, on July 28, 2014 to secure its then unpaid accounts payable obligations to that vendor. These notes are secured by a lien on the QVL assets subordinated to the secured interests pledged to secure the Line (1<sup>st</sup> secured interest), the 2013 Notes (2<sup>nd</sup> secured interest), and the 2011 Notes (3<sup>rd</sup> secured interest).
- (6) White Winston had filed Proof of Claims as follows:
  - (a) Claim No. 20 related to the Line (\$1,459,925.88);

- (b) Claim No. 21 related to the 2011 Notes (\$1,862,047.17); and
- (c) Claim No. 22 related to the 2013 Notes (\$3,340,251.11).

Amerisource Bergen Drug Corporation did not file a Proof of Claim.

### **C. Events leading to the Debtor's Bankruptcy.**

- (1) Beginning on or about year-end 2012, there was substantial doubt that the Debtor could continue as a going concern, and thus, a substantial likelihood that the Debtor could be liquidated by its creditors. At that time, the Debtor was sustaining operating losses of about \$200,000 per month with no ability to mitigate such losses without new cash investment into the company. The Debtor's senior debt was due to mature by mid-2013 and the Debtor had no prospect of repaying the debt from its working capital or refinancing the debt with a third party lender. In February 2013, the Debtor was recapitalized and the following actions were taken: (i) all senior debt that the Debtor had issued in 2011 was restructured in a series of amended notes (the "2011 Notes"); and (ii) new senior secured debt was funded by certain of the holders of the 2011 Notes (the "2013 Notes").
- (2) Over the course of 2013, the Debtor's business continued to suffer significant losses in its cash flow as a result of delays in payment by insurance companies and governmental agencies along with the significant paperwork processing problems associated with its market niche in controlled drugs. As a result, the decision was made in 2013 to downsize the Debtor's operations by closing or selling its operating pharmacies. By December 31, 2014, the Debtor had closed or sold all of its operating pharmacies. The purchaser of two of the pharmacies (which were sold in 2013) brought a lawsuit against the Debtor (and others) in late 2014 in state court in Texas (the "Texas Lawsuit"). The Texas Lawsuit is discussed in further detail in section E below. The costs of defending the Texas Lawsuit have dramatically increased the Debtor's obligations, and four of the plaintiffs in the Texas Lawsuit, have each filed proofs of claim in this Chapter 11 case (Claim Nos. 29-32). The Debtor has filed an Adversary Complaint and Objection to Claim #s 29-32 as more fully described below in section E(9). The Debtor seeks relief of some of its liabilities under the Plan.
- (3) In early 2014, QVL had attempted to develop its intellectual property into a software program planned to be marketed for sale to or licensed by operating pharmacies to discover prescription drug abuse. In that development attempt, QVL had contracted with a business applications developer to create a software program/application using QVL's in-house developed procedures, data sources, algorithms and know-how to aid pharmacists in detecting potential abuse of controlled substances in a time-pressured environment. The project was called "QuickScan." Unfortunately, the project couldn't be completed given QVL's diminished working capital/cash flow. The Plan contemplates restarting that software development and completing the application. In the Plan, QVL will utilize, again, a third-party software developer to pick-up QuickScan and move

the development program forward to completion. It is believed that this software development should not require more than \$125,000-150,000. Only Chad Collins, QVL's current CEO, will remain retained as QVL personnel, at a monthly fee of \$2,500.

The business plan for this software development is attached as Exhibit D.

**D. Developments in the Chapter 11 Case.**

- (1) On December 29, 2015, the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code.
- (2) The Debtor retained The Gordon Law Firm LLP as its counsel to assist in the administration and prosecution of this Chapter 11 Case.
- (3) No Official Committee of Unsecured Creditors was appointed in this case.
- (4) On January 12, 2016, the Debtor filed its Statement of Financial Affairs and Schedules, and filed amendments to such on August 9, 2016.
- (5) The Debtor has reviewed potential avoidance actions, including preferential transfers, and identified assets available for creditors.
- (6) The Debtor has negotiated with White Winston Select Asset Funds LLC, the Debtor's senior secured creditor ("White Winston"), and has obtained its agreement as to the following:
  - (a) all liens held by White Winston will be released on the Confirmation Date on all of the Debtor's pre-Petition Date Accounts Receivable to allow the Debtor to use the proceeds from these Accounts Receivable to fund the payments to be made under the Plan;
  - (b) the transfer of all such Accounts Receivable on the Confirmation Date to a Trust to be created for the benefit of all Unsecured Creditors under the Plan (the "Liquidating Trust"), and White Winston also agreed to permit the Debtor to include those unpaid amounts due from the customers of the Debtor's former Dallas, Texas pharmacy which had been sold to a third party in 2014 under a transaction financed by White Winston and which obligations have been foreclosed by White Winston. The specific terms of the Liquidating Trust are shown in Article V herein and Section 6.2 of the Plan.
  - (c) a payment of up to \$100,000 will be made to the Liquidating Trust by White Winston on or about the date of the first anniversary of the Confirmation Date equal to the difference between (i) fifteen percent (15%) of the Accounts Receivable, and (ii) the amount of Accounts Receivable collected by the Liquidating Trust by that date (the "Floor Payment"); and
  - (d) on the Confirmation Date, exit funding of \$250,000 will be extended by the holder of the Allowed Class 1B Interests to the Debtor under the terms of either an existing or a new Credit Facility on the Confirmation Date with terms similar to the current Line of Credit to fund the payment of the Debtor's post-petition obligations, the Administrative Expenses, the Allowed Priority

Claims of the Case, the Reorganized Debtor's operations going forward, and the Debtor's development of a software product based upon the Debtor's intellectual property (the "Exit Funding").

- (e) White Winston also agrees to provide additional capital to the Debtor on an as-needed basis, after the Confirmation Date.
- (7) By an order from this Court, March 15, 2016 had been fixed as the deadline by which all Creditors (governmental units included) must have filed Proofs of Claim or be barred from asserting claims against the Debtor and its Estate. The March 15, 2016 bar date has passed.
- (8) The Debtor has reviewed its intellectual property and developed its business plan to utilize the intellectual property to develop and then bring a software product to market.
- (9) On June 6, 2016 the Debtor filed an Adversary Complaint and Objection to Claim #s 29-32 against Asclepius Panacea, LLC, Asclepius Panacea GP, LLC, Daily Pharmacy, LLC, Daily Pharmacy GP, LLC and Toth Enterprises II, P.A. d/b/a/ Victory Medical Center (the "Texas Plaintiffs"). This is an action for breach of contract and indemnification by the Debtor arising out of the Texas Plaintiffs' contractual agreements to indemnify the Debtor and its affiliates and representatives and a breached contractual total limitation of liability.

**E. The Texas Lawsuit.** The Debtor filed an Adversary Complaint against the Texas Plaintiffs, which included objections to Proofs of Claim Nos. 29-32 and a claim for damages in the amount of \$348,135. The Debtor's claims against the Texas Plaintiffs in the adversary proceeding are based on indemnification clauses (the "Indemnification Clauses") contained in that certain Partnership Interests Purchase Agreement and that certain Transition Services Agreement, both dated December 31, 2014. The Debtor asserts that, pursuant to the Indemnification Clauses, the Texas Plaintiffs are responsible for any legal fees borne by the Debtor in both defending the Texas Lawsuit and in addressing any issues that arise in the Debtor's bankruptcy as a result of the Texas Lawsuit. Furthermore, the Debtor asserts that if the Debtor is ordered to pay damages to the Texas Plaintiffs in the Texas Lawsuit, the Texas Plaintiffs are in fact responsible for those damages. The Texas Plaintiffs' Proofs of Claim are based on the claims set forth in the Texas Lawsuit. After a hearing held on August 16, 2016, the Court dismissed the adversary proceeding without prejudice to the Debtor asserting its claims for damages as counterclaims in the Texas Lawsuit and renewing its claim objections in the main bankruptcy proceeding, which the Court will hold in abeyance pending a decision in the Texas Lawsuit. The Court's dismissal of the adversary proceeding was conditioned on the Texas Plaintiffs not objecting to the Debtor filing an Amended Answer which would include the Counterclaim for Indemnity.

**F. The Available Assets.**

- (1) As of the Petition Date, the Debtor's assets consisted of (1) Accounts Receivable; (2) reimbursement receivable for legal fees and other costs incurred in the Texas Lawsuit; (3) equipment; (4) intellectual property; (5) cash and deposits; (6) equity

interests in subsidiaries; (7) real property leases; and (8) net operating loss carryforwards, all of which are disclosed on Schedule A/B filed on January 12, 2016 and as disclosed on the amendment of that Schedule A/B filed on August 9, 2016.

- (2) After review by the Debtor and its attorneys, it was determined that there are no viable preferential transfer claims.
- (3) After review by the Debtor and its attorneys, it was determined that there are no fraudulent conveyances, or other avoidance claims.
- (4) The Accounts Receivable had a face value of \$754,324 on the Petition Date. According to records provided to White Winston by QVL, the Accounts Receivable represent unpaid billings for delivered drugs to its retail customers through the QVL pharmacies up to the Petition Date. According to the QVL provided report, these Accounts Receivable were aged as follows:

Dated within 2012	\$5,061
Dated within 2013	\$54,296
Dated within 2014	\$227,033
Dated within 2015	\$467,933

Since the Petition Date, only about \$1,800 of these Accounts Receivable has been collected since (a) no one is aggressively attempting to collect from the retail customers or their insurance payors; and (b) correspondence may have been interrupted when QVL's business office or pharmacy locations were closed or leases terminated, or its Post Office Box for mail receiving was closed due to non-payment. Mailing forwarding has not been effective.

It is expected that with the Plan implemented, the Liquidating Trust's Trustee will engage a collection agency or other experienced professional(s) to pursue such Accounts Receivable collection much more rigorously.

Under the Plan, as was stated in Section D(6)(c) above, White Winston as the senior secured creditor funding the Plan has agreed that it will fund on the first anniversary of the Confirmation Date, an amount equal to the difference between (i) fifteen percent (15%) of the Accounts Receivable, and (ii) the actual amount of Accounts Receivable collected by the Liquidating Trust by that date, up to a maximum of \$100,000.

- (5) At the time of the Petition Date, the Debtor also had its breach of contract and indemnification claims against the Texas Plaintiffs in the amount of \$348,135. The Debtor has amended its Schedules to state the proper amount of the Accounts Receivable as of the Petition Date, and to add its claims against the Texas Plaintiffs.
- (6) The Debtor recently learned of possible claims against its former Chief Financial Officer, Stephen Cox, and his company, Equitable Balance Accounting, LLC, for the conversion of an unknown amount of the Debtor's Accounts Receivable. The

Debtor will file a Motion to Amend its Schedules to add these claims. To the extent that the Debtor recovers any money from Stephen Cox and/or his company, Equitable Balance Accounting, LLC, as a result of its claims against them, all of the money so recovered will be held by the Liquidating Trust for the benefit of the Unsecured Creditors along with the other cash collected on the Accounts Receivable.

- (7) The equipment consists of office equipment, primarily computer equipment and associated software, which has an accounting cost (net of depreciation) of \$19,045. The Debtor believes that the equipment has negligible current value due to its age and condition.
- (8) The intellectual property consists of business methods relating to the processing of prescriptions and screening patients and the prescribing physicians for abuses. The Debtor has no estimate of the current value of its intellectual property, but believes it to be of sufficient enough value that a marketable software could be developed based on the Debtor's business methods that would have marketability to operating pharmacies. The Debtor had begun its development of this software product in early 2014, but could not complete the development given QVL's cash flow constraints.

The Business Plan for this intellectual property/software product development is attached as Exhibit D.

- (9) The cash is collections on Accounts Receivable. The deposits are retainers with professionals. The cash and deposits were less than \$19,500 as of the Petition Date.
- (10) The equity interests are in the Debtor's wholly-owned subsidiaries, each of which had been associated with a pharmacy location, but none of which presently has any operations or assets. The Debtor attributes no value to the equity interests in its subsidiaries.
- (11) The real property leases relate to the former locations of the Debtor's retail pharmacies, its former corporate office and its current corporate office. The Debtor does not believe that any of the leases are below market so there is no value to them.
- (12) The Debtor's net operating loss carryforwards total \$13,836,687. The Debtor is updating such figure with its preparation and filing of its tax returns for 2014 and 2015. In this case, QVL's net operating loss carryforwards ("NOLs") may be a valuable asset. The NOLs from its prior loss years may be used to offset future income if QVL successfully emerges from bankruptcy (though there is no guarantee), with minimal structural change to its financial foundation. The NOLs are further discussed in Article III, Section D.

#### **G. The Liabilities.**

- (1) The bar date for filing of Proofs of Claims passed on March 15, 2016. A total of thirty-two (32) Claims were filed by twenty-eight (28) Creditors. One Creditor



(Courier Depot, Ltd.) filed a Proof of Claim after the bar date (Proof of Claim No. 33). The Debtor filed a Motion to Amend its Schedules and Creditor Matrix, which was allowed on August 25, 2016. The Court set a new Proof of Claim deadline for the added creditors only of November 23, 2016.

- (2) Priority Tax Claims: The Debtor has one (1) Priority Tax Claim totaling \$100 held by the Internal Revenue Service (Claim No. 11). Carrollton–Farmers Branch Independent School District has also filed a Proof of Claim for Priority Taxes in the amount of \$4,117.40 for Ad Valorem taxes (Claim No. 13) based on personal property not owned by the Debtor. The Debtor intends to object to this Proof of Claim on the following bases: (1) the taxes are in fact owed by a subsidiary of the Debtor, not the Debtor itself; and (2) the value of the Estate’s interest in the property against which this Claim was assessed was, on the Petition Date, zero. Therefore under Section 502(b)(3) of the Bankruptcy Code, this Claim should be Disallowed.
- (3) Secured Claims: The Debtor has four (4) Creditors holding Secured Claims totaling \$6,663,099.00. The Debtor’s Secured Claims are held by White Winston (as agent for the noteholders or lenders) (Claim Nos. 20-22) and Iron Mountain Information Management, LLC (holding an \$875 Secured Claim) (Claim No. 28). The Debtor intends to object to the Proofs of Claim for Secured Claims for Ad Valorem taxes (based on personal property not owned by the Debtor) filed by the following Creditors: Richardson Independent School District (\$3,143.57) (Claim No. 6); Richardson Independent School District (\$2,857.79) (Claim No. 7); Collin County Tax Assessor/Collector (\$6,800.03) (Claim No. 15); and Collin County Tax Assessor/Collector (\$6,800.03) (Claim No. 16). The bases for the Debtor’s objections to these Claims are: (1) the taxes are in fact owed by a subsidiary of the Debtor, not the Debtor itself; and (2) the value of the Estate’s interest in the property against which these Claims were assessed was, on the Petition Date, zero. Therefore under Section 502(b)(3) of the Bankruptcy Code, these Claims should be Disallowed and are not accounted for in this Plan.
- (4) Priority Claims: 3501 Severn Avenue LLC filed a Proof of Claim for a Priority Claim for pre-petition lease payments under 11 U.S.C. s. 507(a)(3) in the amount of \$18,289.65. The Debtor plans to object to this Claim on the basis that it is not a Priority Claim under 11 U.S.C. s. 507(a)(3) because this is not an involuntary Chapter 11 case, and should be treated as a Class 3 Unsecured Claim.
- (5) Unsecured Claims: The Debtor has eighteen (18) Creditors holding Unsecured Claims totaling \$915,948.34. The Debtor intends to object to Claim No. 27. If its objection is successful, the total of Unsecured Claims would be reduced to \$401,585.37. The Debtor’s Unsecured Claims are primarily trade Creditors who supplied goods and services to the Debtor’s now closed retail pharmacies, and amounts due to various professionals and others.
- (6) Subordinated Claims: Claim Nos. 29-32, filed by Asclepius Panacea GP, LLC, Asclepius Panacea, LLC, Daily Pharmacy GP, LLC and Daily Pharmacy LLC, respectively, constitute subordinated claims pursuant to 11 U.S.C. § 510(b). Claim Nos. 29 and 30, each in the amount of \$509,144.79, are duplicative of one

another. Claim Nos. 31 and 32, each in the amount of \$207,706.57, are likewise duplicative of one another. These Claims are based on the Texas Plaintiffs' claims against the Debtor (among others) in the Texas Lawsuit. As the Texas Plaintiffs make clear in their First Amended Petition filed in the Texas Lawsuit, their claims against the Debtor are for damages arising from the purchase and sale of a security of the Debtor namely, the limited and general partnerships in QVL Pharmacy #181, LLC and QVL Pharmacy #162, LLC (subsidiaries of the Debtor). The First Amended Petition is in fact attached to each of the foregoing Proofs of Claim each of which assigns "Purchase of Stock" as the basis for the claim. As such, Claim Nos. 29-32 (totaling \$716,851.36) are subordinated to all claims or interests that are senior to or equal to the claim or interest represented by that security.

- (7) The amounts shown in points 2-6 above exclude any Claims listed in the Debtor's Schedules as contingent, disputed or unliquidated (if the Creditor holding that Claim did not file a Proof of Claim).
- (8) The Debtor is current on all post-Petition Date operating costs including United States Trustee Fees, and expects to retire any post-Petition Date accounts payable or unpaid advances from White Winston on the Confirmation Date, either paid in cash or by an advance under a new Credit Facility. Thus, no administrative expenses are expected other than (a) the costs, fees and expenses of the Debtor's attorneys in an estimated amount of \$110,000; and (b) any fees to the Office of the United States Trustee.

### **ARTICLE III**

#### **THE CHAPTER 11 PLAN OF REORGANIZATION**

The following section summarizes certain key aspects of the Plan; however, this summary is not intended to comprehensively describe every aspect or component of the Plan. The Plan is attached hereto as Exhibit A. All creditors and parties-in-interest are strongly urged to read the Plan in its entirety, in addition to this Disclosure Statement. The Plan is the governing document; if any inconsistency exists between the Plan and this Disclosure Statement, the terms of the Plan will control.

#### **A. Use of Assets.**

- (1) The Plan proposes the use of the Debtor's intellectual property assets plus proceeds of the Exit Funding to develop a software product to be brought to market to be licensed or sold to retail pharmacy operators.
- (2) The Plan proposes to create a liquidating trust (the "Liquidating Trust") to hold and collect the Accounts Receivable described in Article II, Section E(6)(b) for the benefit of the Unsecured Creditors. The Liquidating Trust is further described and the essential points of the agreement regarding the Liquidating Trust (the "Liquidating Trust Agreement") are set forth in Article V. The terms of Liquidating Trust Agreement are set forth in in detail in Section 6.2 of the Plan.

- (3) The Plan provides for the Debtor to manage and administer the Assets. The Debtor shall have the following powers and duties after confirmation of the Plan:
- (a) the Debtor shall have all power and authority to manage and administer the Assets and make distributions pursuant to this Plan and orders of the Court;
  - (b) the Debtor shall have all power and authority to engage attorneys, accountants, and other professionals, as the Debtor determines to be necessary for the administration of the Plan;
  - (c) the Debtor shall have the power and authority to receive, collect, deposit, and distribute any funds of or due the Estate, in accordance with this Plan;
  - (d) the Debtor shall have all power and authority to seek a tax opinion or ruling from any local, state, or federal tax authority, or from the Court pursuant to Section 1146(e) of the Code;
  - (e) the Debtor shall have all power and authority to (i) object to any Claim (ii) seek estimation or disallowance of any Claim, or (iii) compromise or settle any Claim;
  - (f) the Debtor shall have all power and authority to abandon any property or assets that the Debtor determines to be burdensome;
  - (g) the Debtor shall have the power and authority to defend, litigate, and settle any Causes of Action; and
  - (h) the Debtor shall have the power and right to appear in, defend, or otherwise be heard as a party in interest in (i) appeals from the Confirmation Order and any proceedings related thereto; (ii) proceedings related to the enforcement or interpretation of the Plan; (iii) proceedings related to modifications or amendments to the Plan; and (iv) proceedings relating to the allowance of claims for compensation or expenses to Professionals.
- (4) Distributions shall be made to the following persons in the following order of priority, with no payment being made unless and until all prior items have been fully satisfied:
- (a) First, to the payment of Administrative Expense Claims, if any, Priority Tax Claims, and Plan Administrative Expenses;
  - (b) Second, to Class 1 Allowed Secured Claims; and
  - (c) Third, to Class 2 Allowed Priority Claims.

Every six (6) months after the Confirmation Date until a Final Decree is entered, or until otherwise ordered by the Bankruptcy Court, the Debtor shall file a written status report with the Court regarding the status of the administration of the Assets and distributions under the Plan.

The availability of distributions to holders of Allowed Unsecured Claims under the Plan is uncertain. The amount of distributions available to such holders on account of the Accounts Receivable collection is speculative.

**B. Classification of Claims.** Under the Plan, claims against the Debtor are divided into Classes. A “Class” is a category of holders of claims or interests. A claim or interest is placed in a particular Class only to the extent that any portion of the claim or interest falls within that Class and is classified in other Classes to the extent that any portion of the claim or interest falls within the description of such other classes. There are four (5) Classes of claims and interests under the Plan:

<u>CLASS</u>	<u>STATUS</u>
<u>Class 1: Secured Claims</u>	
Class 1A General Secured Claims .....	Unimpaired
Class 1B White Winston Select Asset Funds LLC As Agent for QVL Pharmacy Subsidiaries Funding Group, LLC .....	Impaired
Class 1C White Winston Select Asset Funds LLC As Agent for 2013 Noteholders .....	Impaired
Class 1D White Winston Select Asset Funds LLC As Agent for 2011 Noteholders .....	Impaired
<u>Class 2: Priority Claims</u> .....	Unimpaired
<u>Class 3: Unsecured Claims</u> .....	Impaired
<u>Class 4: Subordinated Claims</u> .....	Impaired
<u>Class 5: Equity Interests</u> .....	Impaired

**C. Treatment of Claims.** Set forth below is the treatment of Claims proposed by the Debtor in the Plan:

- (1) Unclassified Allowed Administrative Expense Claims
  - (a) Non-Classification. Allowed Administrative Expense Claims against the Debtor are not classified for the purposes of voting on or receiving distributions under the Plan.
  - (b) Treatment. Under the Plan, all Administrative Expense Claims shall be paid in full, in Cash, in such amounts as (a) are incurred in the ordinary course of business by the Debtor pursuant to the normal business terms between the parties; (b) are Allowed by the Bankruptcy Court upon the later of the Confirmation Date, the date upon which there is a Final Order allowing such Administrative Expense Claim or any other date specified

in such order; or (c) may be agreed upon between the holder of such Administrative Expense Claim and the Debtor. Such Administrative Expense Claims shall include undisputed costs incurred in the operation of the Debtor's businesses after the Petition Date and fees due to the United States Trustee pursuant to 28 U.S.C. § 1930.

- (c) Professional Fees. Under the Plan, all Professionals seeking an award by the Bankruptcy Court of professional fees, or of compensation for services rendered, or reimbursement of expenses incurred through and including the Confirmation Date under Sections 503(b)(2), 503(b)(3), 503(b)(4) or 503(b)(5) of the Bankruptcy Code, (a) shall file their respective final applications for allowances of compensation for services rendered and reimbursement of expenses incurred through the Confirmation Date within ten (10) days after the Confirmation Date; and (b) if granted such an award by the Bankruptcy Court, shall be paid in full in such amounts as are allowed by the Bankruptcy Court (i) on the later of the Confirmation Date or the date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or as soon thereafter as is practicable; or (ii) upon such other terms as may be mutually agreed upon between such holder of an Allowed Administrative Expense Claim and the Debtor. The Debtor may pay Plan Administrative Expenses upon receipt of an invoice, therefore, without the need for further Bankruptcy Court authorization or entry of a Final Order. If the Debtor and any Person cannot agree on the amount or timing of payment of Plan Administrative Expenses to be paid to such Person, such amount or timing shall be determined by the Bankruptcy Court.

(2) Priority Tax Claims.

- (a) Non-Classification. Allowed Priority Tax Claims against the Debtor are not classified for the purposes of voting on or receiving distributions under the Plan..
- (b) Creditors: There is one (1) Priority Tax Claim totaling \$100 held by the Internal Revenue Service. Carrollton–Farmers Branch Independent School District has also filed a Proof of Claim for a Priority Taxes in the amount of \$4,117.40 for Ad Valorem taxes (Claim No. 13). The Debtor intends to object to this Proof of Claim on the following bases: (1) the taxes are in fact owed by a subsidiary of the Debtor, not the Debtor itself; and (2) the value of the Estate's interest in the property against which this Claim was assessed was, on the Petition Date, zero. Therefore under Section 502(b)(3) of the Bankruptcy Code, this Claim should be Disallowed.
- (c) Treatment: Under the Plan, all Allowed Priority Tax Claims shall be paid in full, in Cash in the amounts approved by the Court on the Confirmation Date.

(3) Class 1A: Allowed Secured Claims - Unknown Secured Creditor

- (a) Impairment and Voting. Class 1A is Unimpaired by the Plan. Consequently, each holder of an Allowed Class 1A Secured Claim shall not be entitled to vote to accept or reject the Plan.
  - (b) Class 1A Creditors: Iron Mountain Information Management, LLC holds a \$875 Secured Claim (Claim No. 28). The Debtor intends to object to the Proofs of Claim for Secured Claims for Ad Valorem taxes filed by the following Creditors: Richardson Independent School District (\$3,143.57) (Claim No. 6); Richardson Independent School District (\$2,857.79) (Claim No. 7); Collin County Tax Assessor/Collector (\$6,800.03) (Claim No. 15); and Collin County Tax Assessor/Collector (\$6,800.03) (Claim No. 16). The bases for the Debtor's objections to these Claims are: (1) the taxes are in fact owed by a subsidiary of the Debtor, not the Debtor itself; and (2) the value of the Estate's interest in the property against which these Claims were assessed was, on the Petition Date, zero. Therefore under Section 502(b)(3) of the Bankruptcy Code, these Claims should be Disallowed.
  - (c) Treatment. A holder of an Allowed Class 1A Secured Claim shall receive either a cash payment equal to the amount of the Allowed Class 1A Secured Claim, or the property securing such Allowed Secured Claim, at the Debtor's option, to be made not later than ten (10) days after the Confirmation Date.
- (4) Class 1B: Allowed Secured Claims - White Winston, as Agent for QVL Pharmacy Subsidiaries Funding Group, LLC
- (a) Impairment and Voting Class 1B is Impaired by the Plan. Consequently, each holder of an Allowed Class 1B Secured Claim shall be entitled to vote to accept or reject the Plan.
  - (b) Class 1B Creditor: White Winston, as Agent for QVL Pharmacy Subsidiaries Funding Group, LLC holding a Secured Claim in the amount of \$1,459,925.88 (Claim No. 20).
  - (c) Treatment A holder of an Allowed Class 1B Secured Claim shall receive its Pro Rata Share of a \$6 million note secured by a lien on all of the Reorganized Debtor's property to be issued by the Debtor on the Confirmation Date under the Credit Facility.
  - (d) Estimated Distribution Allowed Class 1B Secured Claims shall be paid no cash, so the estimated distribution is a thirty percent (30%) senior (1<sup>st</sup> position) participatory interest in the \$6 million note under the Credit Facility.

- (5) Class 1C: Allowed Secured Claims - White Winston, as Agent For 2013 Noteholders
- (a) Impairment and Voting Class 1C is Impaired by the Plan. Consequently, each holder of an Allowed Secured Claim shall be entitled to vote to accept or reject the Plan.
  - (b) Class 1C Creditor: White Winston, as Agent for 2013 Noteholders holding a Secured Claim in the amount of \$3,340,251.11 (Claim No. 22).
  - (c) Treatment A holder of an Allowed Class 1C Secured Claim shall receive its Pro Rata Share of a \$6 million note secured by a lien on all of the Reorganized Debtor's property to be issued by the Debtor on the Confirmation Date under the Credit Facility.
  - (d) Estimated Distribution Allowed Class 1C Secured Claims shall be paid no cash, so the estimated distribution is a seventy percent (70%) junior (2<sup>nd</sup> position) participatory interest in the \$6 million note under the Credit Facility.
- (6) Class 1D: Allowed Secured Claims - White Winston, as Agent for 2011 Noteholders
- (a) Impairment and Voting Class 1D is Impaired by the Plan. Consequently, each holder of an Allowed Secured Claim shall be entitled to vote to accept or reject the Plan.
  - (b) Class 1D Creditor: White Winston, as Agent for 2011 Noteholders, holding a \$1,862,047.17 Secured Claim (Claim No. 21).
  - (c) Treatment A holder of an Allowed Class 1D Secured Claim shall receive the full amount due, calculated as of the Petition Date, under the 2011 Note held by such holder, paid by the Debtor's issuance of that number of shares of Reorganized Debtor's common stock to such holder, with such Reorganized Debtor's common stock issued at \$.10 per share.
  - (d) Estimated Distribution Allowed Class 1D Secured Claims shall be paid no cash, but paid in full in the form of shares of the Reorganized Debtor's common stock.
- (7) Class 2: Allowed Priority Claims
- (a) Impairment and Voting. Class 2 is Unimpaired by the Plan. Consequently, each holder of an Allowed Priority Claim shall not be entitled to vote to accept or reject the Plan.
  - (b) Class 2 Creditors: The Debtor does not believe there will be any Allowed Priority Claims. 3501 Severn Avenue LLC filed a Proof of Claim for a Priority Claim for pre-petition lease payments under 11 U.S.C. s. 507(a)(3) in the amount of \$18,289.65. The Debtor plans to object to this Claim on the basis that it is not a Priority Claim under 11 U.S.C. s. 507(a)(3) because this is not an involuntary Chapter 11 case. This Claim should be treated as a Class 3, Unsecured Claim.

(c) Treatment. A holder of an Allowed Priority Claim (to the extent there are any) shall receive a cash payment equal to the amount of such Allowed Priority Claim.

(8) Class 3: Allowed Unsecured Claims (Trade)

(a) Impairment and Voting Class 3 is Impaired by the Plan. Consequently, each holder of an Allowed Class 3 Unsecured Claim shall be entitled to vote to accept or reject the Plan.

(b) Treatment A holder of an Allowed Class 3 Unsecured Claim shall receive a Pro Rata Share of distributions from the Liquidating Trust.

(c) Class 3 Creditors: The Creditors included in Class 3 (along with the amount of their Claims and Claim numbers) are listed on a table attached hereto as Exhibit C. The Debtor intends to object to Claim No. 27. If the Debtor's objection is successful, the total of Unsecured Claims would be reduced to \$401,585.37.

(d) Estimated Distribution Allowed Class 3 Unsecured Claims will be paid a Pro Rata Share of an estimated \$113,150 distribution. The foregoing estimate is based on a fifteen percent (15%) recovery by the Liquidating Trust on the Accounts Receivable (15% of \$754,324).

(9) Class 4: Subordinated Claims

(a) Impairment and Voting: Class 4 is Impaired under the Plan. The Claims held by the Class 4 creditors are subordinated pursuant to 11 U.S.C. § 510(b). Holders of Subordinated Claims will receive nothing under Plan and are therefore deemed to have rejected the Plan.

(b) Treatment: A holder of an Allowed Class 4 Subordinated Claim shall receive nothing under the Plan.

(c) Class 4 Creditors: The Creditors included in Class 4 (along with the amounts of their claims and claim numbers) are listed in the table below. Note that Claim Nos. 29 and 30 are duplicative of one another, and Claim Nos. 31 and 32 are duplicative of one another).

Claim No.	Creditor	Amount
29	Asclepius Panacea GP, LLC	\$509,144.79
30	Asclepius Panacea, LLC	\$509,144.79
31	Daily Pharmacy GP, LLC	\$207,706.57
32	Daily Pharmacy LLC	\$207,706.57

(10) Class 5: Equity Interests

(a) Impairment and Voting Class 5 is Impaired by the Plan. Holders of a Equity Interests shall receive nothing under the Plan, and are therefore deemed to have rejected the Plan.



- (b) Treatment Each share of an Equity Interest that had been outstanding on the Petition Date shall be cancelled on the Confirmation Date.
- (c) Estimated Distribution Holders of Equity Interests shall not receive any property distribution under the Plan, instead all shares of Equity Interest that had been outstanding on the Petition Date shall be cancelled. Accordingly, the Holders of Equity Interests shall not retain their Equity Interests that had been outstanding on the Petition Date.

**D. The Reorganized Debtor.**

- (1) New Credit Facility. Following the reorganization of the Debtor, effective as of the Confirmation Date, and in place by the Confirmation Date, White Winston would close a new credit facility, the proceeds of which would fund the following:
  - (a) Payoff of the 2013 Notes and the Line at their balances as of the Petition Date;
  - (b) All post-petition obligations of the Debtor;
  - (c) All Administrative Claims, Priority Tax Claims, and Priority Claims (if any);
  - (d) The \$250,000 of Exit Funding; and
  - (e) Additional funds necessary for the Debtor's working capital needs following Confirmation.

As a result, this new Credit Facility would be the only liability of the Reorganized Debtor after the Confirmation Date.

- (2) The Equity Ownership of the Reorganized QVL
  - (a) Following the Effective Date, as a result of the Plan being implemented, including the conversion of the 2011 Notes to equity, the equity control of QVL will not change. Currently, the holders of the 2011 Notes and 2013 Notes collectively own 55.3% of QVL's equity. Following the conversion of the 2011 Notes, these same shareholders will then own 100% of QVL's equity.
  - (b) It should be noted that White Winston, following the Reorganization, as a result of the Plan being implemented, including the conversion of the 2011 Notes to equity, will be only a 5.36% shareholder in QVL.
- (3) Post Confirmation Management of QVL. Following the Confirmation Date, until such time as the new software product is developed and ready for marketing, the only QVL officer and hired employee shall remain as Chad Collins, QVL's current CEO. His compensation will remain unchanged at \$2,500 per month.
- (4) NOLs and the Tax Ramifications of the Plan. In QVL's case, its Net Operating Losses ("NOLs") from its prior loss years may be used to offset future income in compliance with the Internal Revenue Code if QVL successfully emerges from bankruptcy. A successful emergence from bankruptcy is by no means a guarantee

that QVL's NOLs will be preserved. There is a risk that the NOLs may be limited or extinguished completely if Internal Revenue Code Sections 382 or 269 are triggered. If QVL is liquidated, however, its NOLs from prior loss years will be definitively lost.

- (5) Reason for White Winston to Fund Debtor's Plan. The Plan is being funded by White Winston, QVL's senior secured creditor, for the simple reason that they believe that QVL has a much higher likelihood of repaying its senior secured obligations as a Reorganized Entity.

## ARTICLE IV

### CONFIRMATION PROCEDURES

**A. Restrictions on Solicitation of Votes.** No information concerning the Debtor or any of its assets or liabilities has been authorized by the Court to be disseminated in connection with the solicitation of acceptances or rejections of the Plan other than as set forth in this Disclosure Statement. No party has been authorized to solicit acceptances or rejections of the Plan other than the Debtor. Any inducements to secure acceptance or rejection of the Plan other than as contained in this Disclosure Statement should not be relied upon by creditors in voting on the Plan. Any such information or inducement should be reported immediately to the Debtor for further action as may be appropriate before the Court.

**B. Classes Entitled to Vote.** There are five (5) Classes of Claims and Equity Interests under the Plan. Classes 1B through 1D, Class 3, and Class 5 are entitled to vote to accept or reject the Plan.

**C. Voting on the Plan.** In order to vote on the Plan, each holder of a Claim in the Classes of Claims entitled to vote, whose Claim has been allowed under Bankruptcy Code Section 502 or Rule 3018 or by order of Bankruptcy Court, should complete the enclosed Ballot and return the original ink copy of it to the following address so that it is received by 4:30 p.m. on or before \_\_\_\_\_, 2016:

Todd Gordon, Esquire  
The Gordon Law Firm LLP  
River Place  
57 River Street  
Wellesley, MA 02481  
Facsimile: 617-261-0789  
Email: [tgordon@gordonfirm.com](mailto:tgordon@gordonfirm.com)

***Only those Ballots returned in a timely manner and properly completed will be counted in determining whether a particular class of creditors has accepted or rejected the plan.***

**E. Confirmation Hearing.** Pursuant to Section 1128 of the Bankruptcy Code, the Court has scheduled a hearing to consider Confirmation of the Plan (the "Confirmation Hearing") on \_\_\_\_\_, 2016, at \_\_\_\_\_ a.m., and has directed that notice thereof be transmitted to all

parties in interest. The Confirmation Hearing will be held before the Honorable Frank J. Bailey, United States Courthouse, 5 Post Office Square, Boston, Massachusetts. The Court has directed that objections, if any, to Confirmation of Plan shall be filed and served on or before \_\_\_\_\_, 2016.

The Confirmation Hearing may be adjourned from time to time by the Court without further notice other than by announcement of the next adjourned date at the Confirmation Hearing or any adjourned Confirmation Hearing. At the Confirmation Hearing or any adjourned Confirmation Hearing, the Court shall enter an order confirming the Plan if sufficient acceptances thereof have been received by creditors entitled to vote on the Plan and if all other statutory requirements have been satisfied.

#### **F. Acceptances Necessary for Confirmation.**

- (1) Impaired Classes of Claims. With respect to any Class of Claims which is Impaired and entitled to vote, such Class of Claims shall have accepted the Plan if it is accepted by at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the Allowed Claims of such Class that vote on the Plan.
- (2) Cramdown.
  - (a) If any Impaired Class entitled to vote shall not accept the Plan by the requisite statutory majorities provided in Sections 1126(c) or 1126(d) of the Bankruptcy Code, as applicable, or if any impaired Class is deemed to have rejected the Plan (Class 4 is deemed to have rejected the Plan), the Debtor reserves the right (a) to undertake to have the Bankruptcy Court confirm the Plan under Section 1129(b) of the Bankruptcy Code; and (b) to amend the Plan to the extent necessary to obtain entry of the Confirmation Order. If all of the requirements of Section 1129(a) of the Bankruptcy Code are met other than the acceptance of the Plan by each Class of Impaired Claims or Interests, the Court, on the request of the Debtor, shall confirm the Plan pursuant to Section 1129(b) of the Bankruptcy Code if the Plan does not discriminate unfairly and is fair and equitable with respect to each Impaired Class that has not accepted the Plan. This ability of the Court to confirm the Plan notwithstanding the existence of one or more dissenting Impaired Classes has periodically been referred to as the “cram down” power.
  - (b) In addition to a determination that the Plan does not discriminate unfairly and is fair and equitable with respect to each dissenting Impaired Class, exercise of the cram down power requires that at least one Impaired Class accepts the Plan. The determination of whether at least one class has accepted the Plan must be made without including the acceptance of an “insider” of the Debtor as that term is defined under Section 101(31) of the Bankruptcy Code.
  - (c) The requirement that a plan not “discriminate unfairly” means, among other things, that a dissenting class must be treated substantially equally

with respect to other classes of equal rank. The Debtor believes that Plan does not unfairly discriminate against any Impaired Class that may not accept or otherwise consent to the Plan.

- (d) The Debtor believes that under the Plan, (1) all Impaired Classes are treated in a manner which is consistent with the treatment of other similar classes; and (2) no Class will receive payments or property with an aggregate value greater than the sum of the Allowed Claims in such class. The Debtor believes that Plan does not discriminate unfairly as to any Impaired Class.

**G. Rejection of Contracts and Leases.** The Plan constitutes a motion by the Debtor to reject, as of the date immediately preceding the Petition Date, all previously unrejected executory contracts and unexpired leases to which the Debtor is a party. Any executory contracts or unexpired leases (other than Insurance Policies) which (a) have not expired by their own terms on or prior to the Confirmation Date; (b) have not been assumed and assigned or rejected with the approval of the Bankruptcy Court on or prior to the Confirmation Date; or (c) are not the subject of a motion to assume or reject the same which is pending at the time of the Confirmation Date, shall be deemed rejected by the Debtor on the Confirmation Date, and the entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such rejections pursuant to Sections 365(a) and 1123 of the Bankruptcy Code.

**H. Provisions Regarding Injunction.** As of the Confirmation Date of the Plan, all persons who have held, hold or may hold Claims against any of the Debtor, whether arising prior to or subsequent to the Confirmation Date, or who have held, hold or may hold interests acquired on or before the date of this Order, shall be permanently enjoined from taking any of the following action with respect to such Claims or interests by (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind against any of the assets of this Estate being administered under the Plan; (b) enforcing, levying, attaching, collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against any of the assets of this estate being administered under the Plan; (c) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against any asset of this estate being administered under the Plan; (d) asserting any set-off, right of subrogation or recoupment of any kind, directly or indirectly, against any obligation due the Debtor, any of its assets, and (e) proceeding in any manner in any place whatsoever that does not conform to or comply with the provisions of the Plan or this Order; provided however, that nothing in this section will in any way limit the ability of a holder of a Claim or interest to take action to enforce the provisions of the Plan.

## ARTICLE V

### THE LIQUIDATING TRUST

**A. Formation of the Trust; Transfer of Accounts Receivable.** The Liquidating Trust shall be created as an entity under Massachusetts law. Upon entry of the Confirmation Order, the Holders of Claims in Classes 1B through 1D shall transfer all of their rights to the Accounts

Receivable to the Liquidating Trust and White Winston, as agent for such Holders, shall effect such transfer, free of liens.

**B. The Liquidating Trustee.** The sole Trustee of the Liquidating Trust will be Jacen Dinoff of KCP Advisory Group (2400 District Avenue, Suite 215, Burlington, MA 01803. Telephone: (781) 313-8123) (the “Liquidating Trustee”). The Liquidating Trustee shall have authority to retain professionals, including attorneys and accountants, and pay their reasonable fees and costs from the Liquidating Trust’s assets. The Liquidating Trustee shall have authority to compromise any of the Accounts Receivable and sell all or any part of the Accounts Receivable. The Debtor intends to file a Motion to Employ the Liquidating Trustee, Jacen Dinoff as its Chief Restructuring Officer, at which time the current Chief Restructuring Officer (Robert Mahoney) will resign. Aside from the foregoing connection, the proposed Liquidating Trustee has no other connection to the Debtor or the Debtor’s principals, its counsel or its creditors.

**C. Compensation of the Liquidating Trustee.** In addition to the funding White Winston has committed to provide under the Plan, White Winston shall also pay the Liquidating Trustee’s reasonable fees and expenses in an amount consistent with that of similar functionaries in similar roles. The Bankruptcy Court shall retain jurisdiction hear and decide any disputes regarding the Liquidating Trustee’s fees and expenses.

**D. Floor Payment to the Trust.** On the first anniversary of the Confirmation Date, White Winston shall pay the Floor Payment to the Liquidating Trust.

**E. Reports.** The Liquidating Trust shall file an annual report with the Debtor and such other reports as are reasonably required for the Debtor to comply with its reporting obligations with the Court.

**F. Termination of the Trust.** The Liquidating Trust shall terminate upon White Winston’s payment of the Floor Payment. Upon such termination, the remaining assets in the Liquidating Trust, if any, shall be transferred to White Winston as agent for the Holders of Claims in Classes 1B through 1D.

**G. Distribution of the Liquidating Trust Assets:** The Liquidating Trustee shall make distributions to the beneficiaries of the Liquidating Trust within each of ninety (90) days following the Confirmation Order, so long as there is at least \$20,000 available for distribution.

**H. The Liquidating Trust Agreement:** The terms of the Liquidating Trust Agreement are set forth in detail in Section 6.2 of the Plan.

## ARTICLE VI

### DISTRIBUTIONS

#### **A. Distribution of Property under the Plan.**

- (1) Interim and Final Distributions. As soon as practicable on or after the Effective Date, Cash shall be disbursed by the Debtor in the manner and priority set forth in

the Plan. The Debtor has the authority to make such interim distributions as it may determine to be appropriate pending a final distribution. The Debtor shall hold sufficient funds in reserve for distribution to holders of Claims to which an objection has been filed. Upon entry of a Final Order resolving any objection to a Claim, the Debtor may make any required distribution to the holder of such Claim.

- (2) Manner of Payment under the Plan. The Cash distributions made pursuant to the Plan shall be in U.S. dollars by checks drawn on domestic banks selected by the Debtor.
- (3) Delivery of Distributions and Undeliverable or Unclaimed Distributions.
  - (a) Delivery of Distributions in General. Distributions to holders of Allowed Claims made by check shall be distributed by first class mail, postage pre-paid, as follows: (i) at the addresses set forth on the respective proofs of claim filed by such holders; (ii) at the addresses set forth in any written notices of address changes delivered to the Debtor after the date of any related proof of claim; or (iii) at the address reflected on the Debtor's Schedules if no proof of claim is filed and the Debtor has not received a written notice of a change of address.
  - (b) Undeliverable Distributions.
    - (i) Holding and Investment of Undeliverable Property. If the distribution to the holder of any Claim is returned to the Debtor as undeliverable, no further distribution shall be made to such holder unless and until the Debtor is notified in writing of such holder's then current address.
    - (ii) Distribution of Undeliverable Property and Failure to Claim Undeliverable Property. Any holder of an Allowed Claim who does not assert a claim for an undeliverable distribution held by the Debtor within one year after the Confirmation Date shall no longer have any Claim to or in such undeliverable distribution, and shall be forever barred from receiving any distributions under the Plan. In such cases, any property held for distribution on account of such Claims shall be returned to or retained by the Debtor and be deemed paid or tendered to the Debtor for redistribution under the Plan. Nothing contained in the Plan shall require the Debtor to search for the holder of Claim.
    - (iii) Compliance with Tax Requirements. In connection with the Plan, to the extent applicable, the Debtor shall comply with all withholding and reporting requirements imposed on it by any governmental unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements.
    - (iv) Setoffs. The Debtor shall set off against any Allowed Claim claims of any nature that the Debtor may have against the holder of such Allowed Claim; provided, however, that neither the failure to effect

such a setoff nor the allowance of any Claim against the Debtor shall constitute a waiver or release by the Debtor of any claim that the Debtor may possess against such holder.

## ARTICLE VII

### ACCEPTANCE AND CONFIRMATION

#### **A. General Requirements.**

- (1) To confirm the Plan, the Bankruptcy Code requires that the Court make a series of determinations concerning the Plan, including that (a) the Plan has classified Claims in a permissible manner; (b) the contents of the Plan comply with the technical requirements of Chapter 11 of the Bankruptcy Code; (c) the Debtor has proposed the Plan in good faith; and (d) the Debtor's disclosures concerning the Plan have been adequate and have included information concerning all payments made or promised in connection with the Plan and the Case, as well as the identity and affiliation of, and compensation to be paid to all insiders. The Debtor believes that all of these conditions have been met or will be met and will seek rulings of the Court to this effect at the hearing on Confirmation of the Plan.
- (2) The Bankruptcy Code also requires that the Plan be accepted by the requisite votes of holders of Claims, that the Plan be feasible, and that Confirmation be in the "best interest" (absent unanimity) of the holders in each impaired Class of Claims. To confirm the Plan, the Court must make independent findings that all these conditions are met, even if all Classes of creditors accept the Plan by the requisite votes. The classification, "best interests" and feasibility conditions to Confirmation are discussed below.

**B. Classification of Claims.** The Bankruptcy Code requires that the Plan place each Claim or interest in a class with other Claims or interests which are "substantially similar." The Debtor believes that the Plan satisfies the Bankruptcy Code's standards for appropriate classification.

**C. Best Interests of Impaired Classes.** Notwithstanding acceptance of the Plan by each Impaired Class of Claims, in order to confirm the Plan, the Court must determine that the Plan is in the "best interests" of creditors. The "best interests" test requires a finding that the Plan will provide to each member of each Impaired Class of Claims and interests property of a value, as of the Confirmation Date of the Plan, at least equal to the amount such member would receive or retain if the Debtor were to be liquidated under Chapter 7 of the Bankruptcy Code. The Debtor submits that the Plan provides a recovery to Impaired Classes that is equal to or greater than the amount each Class member would receive as a result of liquidation under Chapter 7 of the Bankruptcy Code. In the event that the Case were converted to a Chapter 7 liquidation, the additional costs arising from the appointment of a trustee unfamiliar with the Debtor and the proceedings in this case would impose significant administrative expenses upon the Estate, including the trustee's fees.

**D. Feasibility.** As a condition to the Confirmation, the Bankruptcy Code generally requires that Confirmation is not likely to be followed by Chapter 7 liquidation or the need for further

financial reorganization. This requirement is referred to as the feasibility test of Section 1129(a)(11) of the Bankruptcy Code. As stated above, White Winston has agreed to (1) a limited release of all liens held by White Winston on all of the Debtor's pre-Petition Date Accounts Receivable; and (2) the transfer of all such Accounts Receivable to the Liquidating Trust, created for the benefit of all Unsecured Creditors in the Plan. The Debtor will have access to the Exit Funding to fund the payment of the Debtor's post-petition obligations, the Administrative Expenses and the Allowed Priority Claims of the Case, the Reorganized Debtor's operations going forward, and the Debtor's development of a software product based upon the Debtor's intellectual property. In light of the foregoing, is highly unlikely that that Confirmation of this Plan will be followed by a Chapter 7 liquidation or the need for further financial reorganization.

## ARTICLE VIII

### ALTERNATIVES TO THE PLAN

**A. Liquidation Alternatives.** If the Debtor is unable to confirm the Plan, it will liquidate in Chapter 11 or in a forced conversion to a case under Chapter 7 of the Bankruptcy Code.

**B. Liquidation Value of the Debtor's Assets.** The Debtor estimates the gross value of the Debtor's assets in an orderly liquidation is \$83,300 after payment of the costs of such liquidation. A liquidation analysis is attached to this Disclosure Statement as Exhibit B.

**C. Total Claims.** A reconciliation of the Debtor's Schedules of Liabilities, the Proofs of Claim filed by creditors and estimated administrative claims shows the following Claims against the Debtor (assuming the Debtor is successful in its objections):

Administrative Claims:	\$110,000 (estimated by the Debtor)
Priority Tax Claim:	\$100
Secured Claims:	\$6,663,099.00
Unsecured Claims:	\$401,585.37

**D. Plan Payments Compared to Liquidation Payments.** Under the Plan, all creditors are being paid more than such creditors would receive in a liquidation of the Debtor. With respect to the Allowed Secured Claims, Secured Creditors are being paid the value of their collateral. With respect to Allowed Unsecured Claims, Unsecured Creditors are being paid a distribution which, given that the Secured Claims have a lien on all of the Debtor's assets, is more than Unsecured Creditors would get in a liquidation.

The Confirmation of the Plan is a condition to White Winston making the Floor Payment and the Exit Funding available.

In the event of a forced liquidation, any proceeds realized from the liquidation of the Debtor's assets would first be used to pay the costs of collection, which the Debtor has estimated would consume a significant amount of the gross proceeds realized in that liquidation. Once the costs of collection have been paid, the Administrative and Priority and Secured Claims would then be paid (in that order). Only after making the above disbursements of liquidation proceeds could any distributions be made to Unsecured Creditors.



The Liquidation Analysis indicates that there would be funds sufficient to pay a portion of the Administrative Claims, but no funds would remain for any payment to the Priority Tax Claims, the Priority Claims (if any) or the Secured Claims, and thus, no collection by the Unsecured Class.

**E. Liquidation Conclusion.** Based on the foregoing, the Unsecured Creditors will receive substantially more under the Plan because liquidation gives them nothing. Liquidation increases administrative expenses by adding ordinary operating expenses and Chapter 7 Trustee fees and costs. In Liquidation, there will be no assets available to pay Unsecured Creditors.

## ARTICLE IX

### CONCLUSION AND RECOMMENDATION

The Debtor believes that Confirmation and implementation of the Plan is preferable to any other alternative because it will result in greater recoveries to holders of Claims than any alternative plan or a liquidation and distribution of the Debtor's assets under Chapter 7 of the Bankruptcy Code, which would likely result in no distributions whatsoever. The Debtor, therefore, strongly recommends that Creditors vote to accept the Plan.

Respectfully Submitted,

QVL Pharmacy Holdings, Inc., Debtor

By its attorneys,

/s/ Katherine P. Lubitz

Stephen F. Gordon (BBO No. 203600)

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Dated: November 7, 2016