

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In Re:)	
KEN'S FISH, INC.)	Chapter 11
Debtor)	Case No. 16-14014-JNF
)	
)	

FIRST AMENDED DISCLOSURE STATEMENT

On October 20, 2016, the Debtor filed a voluntary petition for reorganization under Chapter 11 of the United States Bankruptcy Code, said petition being filed in the United States Bankruptcy Court for the Eastern District of Massachusetts (hereinafter the "Court"). On June 22, 2017, the Debtor filed a Plan of Reorganization and a Disclosure Statement. On October 6, 2017, the Debtor filed a First Amended Plan of Reorganization (the "Plan") and a First Amended Disclosure Statement (the "Disclosure Statement").

Pursuant to 11 U.S.C. 1125, the Debtor must provide all known creditors with a Disclosure Statement, which has been approved by the Court, after notice and a hearing. The within Disclosure Statement should be reviewed carefully by each and every party in rendering a determination whether to accept or reject the Plan.

NO REPRESENTATIONS CONCERNING THE DEBTOR PARTICULARLY CONCERNING THE VALUE OF ITS PROPERTY, ARE AUTHORIZED BY THE DEBTOR OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATION MADE TO SECURE ACCEPTANCE OF THE PLAN WHICH IS OTHER THAN AS CONTAINED IN THE DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON BY ANY CREDITOR. INFORMATION CONTAINED HEREIN AND THE

EXHIBITS ANNEXED HERETO HAVE NOT BEEN SUBJECT TO A CERTIFIED AUDIT. THE RECORDS KEPT BY THE DEBTOR ARE NOT WARRANTED OR REPRESENTED TO BE WITHOUT ANY INACCURACY OR OMISSION. HOWEVER, EVERY EFFORT HAS BEEN MADE TO BE ACCURATE AND COMPLETE.

ARTICLE I: PLAN DEFINITIONS

ADMINISTRATIVE CLAIM means a claim for a cost or expense of administration of the Debtor under Sections 503(b) and 507(a)(1) of the United States Bankruptcy Code that is allowed by a final order of the Bankruptcy Court.

ALLOWED means with reference to a Claim that is not an Administrative Claim, a Claim against the Debtor, proof of which was filed on or before the date designated by the Bankruptcy Court as the last date for filing proofs of Claim.

BANKRUPTCY CODE means Title 11 of the United States Code, (Bankruptcy Abuse Prevention and Consumer Protection Act – BAPCPA) as is now in effect or hereafter amended.

BANKRUPTCY RULES means the Rules of Bankruptcy Procedure, as amended, and such local rules of the United States Bankruptcy Court for the District of Massachusetts, as are applicable.

CLAIM means any right to payment from the Debtor whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or any right to an equitable remedy for breach of performance if such breach gives rise to a payment from the Debtor, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

CONFIRMATION means the signing of the Confirmation Order of this Plan or any

amended plan by the Bankruptcy Court.

CONFIRMATION DATE means the date on which the Clerk of the Bankruptcy Court enters the order of Confirmation on the docket.

COURT is defined as the United States Bankruptcy Court for the Eastern District of Massachusetts.

DISPUTED UNSECURED CLAIM means respectively, an Unsecured Claim against the Debtor as to which an objection has been or may be timely filed by any party in interest and which objection, if timely filed, has not been withdrawn on or before any date fixed for filing such objection by the Plan or Order of the Bankruptcy Court, and has not been denied by a Final Order. To the extent an objection relates to the allowance of only a part of a Claim, such Claim shall be a Disputed Claim only to the extent of the objection. Prior to the time that an objection has been or may be timely filed, for the purposes of this Plan, a Claim shall be considered a disputed claim to the extent that the amount of the Claim specified in the proof of claim exceeds the amount of the Claim scheduled by the Debtor as other than disputed, contingent or unliquidated.

EFFECTIVE DATE means the first business day that is fifteen (15) days after the Confirmation Date and on which date no stay of the Confirmation Order is in effect.

FILING DATE is defined herein as October 20, 2016.

FINAL ORDER means an order or judgment of the Bankruptcy Court as entered on the docket that has not been reversed, stayed, modified or amended and as to which the time to appeal, petition for certiorari, or seek reargument or rehearing has expired and as to which no appeal, reargument, petition for certiorari, or rehearing is pending or as to which any right to appeal, reargue, petition for certiorari or seek rehearing has been waived in writing in a manner

satisfactory to the Debtor, and if an appeal, reargument, petition for certiorari, or rehearing thereof has been sought, the order or judgment of the Bankruptcy Court has been affirmed by the highest court to which the order was appealed or from which the reargument or rehearing was sought, or certiorari has been denied, and the time to take any further appeal or to seek certiorari, or further reargument or rehearing has expired.

PLAN means the within Plan of Reorganization or any amended plan of reorganization which is filed by the Debtor and then confirmed by the Court.

SECURED CLAIM means a Claim that is secured within the meaning of Section 506(a) of the Bankruptcy Code.

UNSECURED CLAIM means a Claim that is not secured by a valid and enforceable lien against property of the Debtor.

ARTICLE II: CLASSIFICATION OF CLAIMS

CLASS I: consists of the secured claim asserted by National Funding, Inc., which creditor holds a security interest in various shelving and an automatic scale.

CLASS II: consists of the unsecured non-priority claims asserted in this case.

CLASS III: consists of the stock ownership interest owned by Kenneth Menard in the Debtor.

ARTICLE III: TREATMENT OF CLASSES OF CLAIMS

CLASS I: The Claim in Class I will not be impaired. The Debtor will continue to make the regular monthly payment to the Class I creditor until said claim is paid in full. The final payment to the Class I creditor will be made in December of 2017.

CLASS II: The Claims in Class II will be impaired. The Class II creditors will be paid a distribution of 10% of their allowed claim in twelve (12) equal monthly installments, the first payment being due on the Effective Date.

CLASS III: Kenneth Menard will retain his 100% stock interest in the Debtor and his claim will not be impaired.

ARTICLE IV: TREATMENT OF UNCLASSIFIED CLAIMS

All claims for administrative expenses, as that term is defined in 11 U.S.C. 503(b) and 507(a)(1), which are approved by the Debtor or allowed by the Court, including such petitions for fee as may be allowed by the Court, shall be paid in full in cash on the Effective Date or such other time as may be agreed upon by the Debtor and the individual administrative claimant. The administrative expenses to be paid will be fees and expenses awarded to Counsel to the Debtor and the Accountant to the Debtor. Any unpaid post-petition taxes will be paid upon the Effective Date.

ARTICLE V: MEANS FOR IMPLEMENTATION OF THE PLAN

The Debtor will continue to operate its business from the present location of 360 Broadway, Taunton, Massachusetts.

ARTICLE VI: TREATMENT OF EXECUTORY CONTRACTS

The lease by and between the Debtor and Indursky Realty Trust will be assumed upon Confirmation

ARTICLE VII: TREATMENT OF ADMINISTRATIVE CLAIMS

1. Unclassified claims consist of unpaid expenses of administration entitled to priority pursuant to 11 U.S.C. 507(a)(1). Unpaid administrative expenses consist of the unpaid fees and expenses of Gary W. Cruickshank, Counsel to the Debtor. It is estimated that Counsel to the Debtor will be seeking total fees of approximately \$15,000.00, plus reimbursement of expenses including the filing fee of \$1,717.00 and the Accountant to the Debtor who it is estimated will be seeking approximately \$3,000.00

No payment has been made or promised by the Debtor for services or for costs or expenses in connection with the case or in connection with the Plan and incident to the case except:

- A) Such fees and expenses to be awarded by the Court to Counsel to the Debtor;
- B) The sum of \$10,000.00 was paid to Gary W. Cruickshank, Counsel to the Debtor, plus \$1,717.00 for the filing fee. All fees are subject to final approval of the Court;

2. All claims for administrative expenses, as that term is defined in 11 U.S.C. 503(b) and 507(a)(1), which are approved by the Debtor and allowed by the Court, including such petitions for fee as may be allowed by the Court, shall be paid in full in cash on the Effective Date or such other time as may be agreed upon by the Debtor and the individual administrative claimant.

ARTICLE VIII: ORGANIZATION AND HISTORY OF DEBTOR AND CAUSES OF CHAPTER 11

On March 22, 2002, Kenneth Menard began the business known as Ken's Fish as a sole proprietorship. The business started selling a few types of fish food and as time progressed, the business began to sell a greater variety of fish food. The business then expanded to add the retail sale of aquarium supplies to be able to provide its customers with greater purchasing options.

On March 29, 2010, the business was incorporated as a Massachusetts corporation. The business continued to add more aquarium as well as reptile products to the line of inventory. On October 25, 2013, the Debtor decided to lease warehouse space to provide additional space to add products.

In 2014, the Debtor began to add dog and cat supplies to its inventory. The initial sales of dog and cat supplies was promising so the Debtor added more such products and invested in a significant amount of inventory. Unfortunately the profit margin in dog and cat supplies was not as anticipated.

The dog and cat supply portion of the business has been discontinued and the business has been functioning profitably with the aquarium and reptile supply business

The immediate cause of the filing of this case was the attachment of the Debtor's bank account by a creditor. The Debtor was subject to a lending arrangement which resulted in a monthly payment which had a seriously deleterious effect on the cash flow of the Debtor.

ARTICLE IX: PROCEEDINGS DURING CHAPTER 11

During the course of the case, the Debtor has been paying all ongoing business expenses.

The Debtor has filed the requisite monthly operating reports with the office of the United States Trustee and all requisite quarterly fees have been paid to the United States Trustee. The Debtor has currently filed all federal and state tax returns through 2016. There are no unpaid tax claims.

ARTICLE X - FEASIBILITY

Annexed hereto as Exhibit A are two year projections prepared by the President of the Debtor, which projections indicate the ability of the Debtor to make the deferred payments under the Plan. The total unsecured claims in this case, both filed proof of claims and scheduled are \$320,000.00, 10% of which is \$32,000.00. Equal monthly payments of \$2,666.67 will be required to fund the proposed distribution to the Class 2 creditors.

Attached hereto as Exhibit B is a Monthly Cash Flow Analysis prepared by Counsel to the Debtor.

ARTICLE XI: VOTING

11 U.S.C. 1129 provides that the Plan may be confirmed if at least one impaired class of creditors with allowed claims holding two-thirds of the amount and more than one-half in number of the allowed voting claims in said class have voted to accept the Plan. If the Plan is

not so accepted, the Plan may nonetheless be confirmed under the “cram-down” provisions of the Bankruptcy Code as set forth in 11 U.S.C. 1129(a).

The Debtor asserts that there will be no violation of the absolute priority rule unless there is a negative vote of creditors. If there is a negative vote, the Debtor will file the appropriate pleadings to implement the request for a cramdown, as explained below. Solicitation of votes cannot be accomplished until such time as there is an approved disclosure statement.

11 U.S.C. 1129(a)(8) provides that with respect to each class of claims or interests:

- A) such class has accepted the plan, or
- B) such class is not impaired under the plan.

11 U.S.C. 1129(b)(1) provides that if all applicable requirements of subsection (a) of Section 1129 other than paragraph 8 are met with respect to the plan, the Court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. 1129(b)(2) provides that for a plan to be fair and equitable with respect to a class, the following requirements, inter alia, must be met.

11 U.S.C. 1129(b)(2)(A) with respect to a class of secured (emphasis added) claims, the Plan provides:

(i) I. That the holders of such claims retain the lien securing such claims, whether the property subject to such liens is retained by the Debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

II. That each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the Effective Date of the Plan, of at least the value of such holder's interest in the estate's interest in the property;

(ii) For the sale, subject to Section 363(k) of this title, of any property that is

subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under Clause (i) or (iii) of this subparagraph; or

(iii) For the realization by such holders of the indubitable equivalent of claims.

11 U.S.C. 1129(b)(2)(B) with respect to a class of unsecured (emphasis added) claims

(i) The plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) Provides that the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior interest any property.

Please forward any inquiries regarding the absolute priority rule to Counsel to the Debtor.

ARTICLE XII: MISCELLANEOUS PROVISIONS

The Debtor will pay quarterly U.S. Trustee fees. The Debtor is obligated to pay United States Trustees post confirmation quarterly fees until the case is closed by the filing and allowance of a Motion for Final Decree.

The Debtor will be responsible for timely payment of quarterly fees incurred pursuant to 28 U.S.C. §1930(a)(6) until the case is closed. After confirmation, the Debtor will serve the United States Trustee with a monthly financial report for each month (or portion thereof) that the case remains open. The monthly report shall be due fifteen days after the end of the calendar month. The monthly financial report shall include the following:

- (1) a statement of all disbursements made during the course of the month, whether or not pursuant to the plan;
- (2) a summary, by class, of amounts distributed or property transferred to each recipient under the plan, and an explanation of the failure to make any distributions or transfers of property under the plan, if any;

- (3) Debtor's projections as to its continuing ability to comply with terms of the Plan;
- (4) a description of any other factors which may materially affect the ability of the Debtor to complete its obligations under the plan; and
- (5) an estimated date when an application for final decree will be filed with the Court (in the case of the final quarterly report, the date the decree was filed).

The post-confirmation salary of Kenneth Menard, the President and Sole Stockholder of the Debtor will remain at \$62,160.84 per annum, which is his present salary.

ARTICLE XIV: ALTERNATIVE TO THE PLAN

If the Plan is not confirmed, conversion to a Chapter 7 liquidation would likely occur. The significant period of time involved in the appointment of a Chapter 7 Trustee and the liquidation of assets would delay any distribution to creditors. There would also be Chapter 7 liquidation expenses estimated to be approximately \$10,000.00, which would be paid prior to the payment to unsecured creditors.

A liquidation analysis prepared by Counsel to the Debtor is annexed hereto as Exhibit C.

The Debtor requests that the creditors accept the Plan and avoid the expense and delay of a Chapter 7 liquidation.

Ken's Fish, Inc.
By its Counsel,

Dated: October 6, 2017

/s/Gary W. Cruickshank, Esq.
21 Custom House Street
Suite 920
Boston, MA 02110
(617) 330-1960
(BBO107600)
gwc@cruickshank-law.com

CERTIFICATE OF SERVICE

I, Gary W. Cruickshank, hereby certify that a copy of the foregoing Disclosure Statement has been served, unless otherwise noted, via regular United States mail, postage prepaid, upon the following parties:

- **John Fitzgerald** USTPRegion01.BO.ECF@USDOJ.GOV
- **Paula R.C. Bachtell** paula.bachtell@usdoj.gov

And to

The Indursky Realty Company, LLC
82 Stevens Street
East Taunton, MA 02718

And to all creditors on the annexed list via regular United States mail, postage prepaid.

Dated: October 6, 2017

/s/Gary W. Cruickshank, Esq.

Acme Dry Ice Co./Acme Ice Co.
100 Kirkland Street
Cambridge, MA 02138

Acquarium Technology Inc.
c/o Paul S. Kaufman, Esq.
482 Broadway
Somerville, MA 02145

Agcore Technologies
15 Jennifer Circle
Cranston, RI 02921

American Express Buisness Card
PO Box 1270
Newark, NJ 07101

Bank of America
P.O. Box 15796
Wilmington, DE 19886

Central Garden & Pet
110 Cranbury South River Road
Monroe Township, NJ 08831

Forward Financing LLC
36 Bromfield Street
Boston, MA 02108

Forward Financing LLC
c/o Andrew Glaab, Esq.
Cohn & Dussi LLC
500 W. Cummings Park, Suite 2350
Woburn, MA 01801

Kenneth Menard
32 Fourth Avenue
Taunton, MA 02780

National Funding, Inc.
9820 Town Centre Drive
Suite 200
San Diego, CA 92121

Pen Plax
35 Marcus Blvd.
Hauppauge, NY 11788

Phillips Pet Supply
220 O'Connell Way
Suite 100
East Taunton, MA 02718

Refund Retriever, LLC
P.O. Box 31020
Houston, TX 77231

Rolf Hagen
305 Forbes Boulevard
Mansfield, MA 02048

Uline
Attn: Accounts Recievable
P.O. Box 88741
Chicago, IL 60680

EXHIBIT A

<u>MONTH</u>	<u>2017</u>	<u>EXPENSE</u>	<u>PROFIT</u>	<u>2018</u>	<u>EXPENSE</u>	<u>PROFIT</u>	<u>2019</u>	<u>EXPENSE</u>	<u>PROFIT</u>
Jan				112,000.00	107,520.00	4,480.00	117,000.00	112,320.00	4,680.00
Feb				99,000.00	95,040.00	3,960.00	104,000.00	99,840.00	4,160.00
March				111,000.00	106,560.00	4,440.00	116,000.00	111,360.00	4,640.00
April				96,000.00	92,160.00	3,840.00	101,000.00	105,600.00	4,400.00
May				91,000.00	87,360.00	3,640.00	96,000.00	92,160.00	3,840.00
June				88,000.00	84,480.00	3,520.00	92,000.00	88,320.00	3,680.00
July				90,000.00	86,400.00	3,600.00	94,000.00	90,240.00	3,760.00
August				90,000.00	86,400.00	3,600.00	94,000.00	90,240.00	3,760.00
Sept.				93,000.00	89,280.00	3,720.00	98,000.00	94,080.00	3,920.00
Oct.	87,000.00	83,520.00	3,480.00	91,000.00	87,360.00	3,640.00	96,000.00	92,160.00	3,840.00
Nov.	89,000.00	85,440.00	3,560.00	92,000.00	88,320.00	3,680.00			
Dec.	94,000.00	90,240.00	3,760.00	97,000.00	93,120.00	3,880.00			

EXHIBIT B

MONTHLY CASH FLOW ANALYSIS

MONTH	INCOME	EXPENSE	CASH ON HAND AT END OF MONTH	PROFIT/LOSS FOR MONTH
October 2016	\$ 29,291.17	\$ 12,092.22	\$15,225.43	\$17,168.95
November 2016	\$ 96,884.74	\$105,182.53	\$12,061.08	-\$ 8,297.76
December 2016	\$ 85,2893.86	\$ 87,053.14	\$11,316.72	-\$ 1,763.28
January 2017	\$111,238.40	\$109,902.69	\$10,528.55	\$ 1,335.71
February 2017	\$ 94,853.24	\$ 91,166.06	\$14,030.65	\$ 3,687.18
March 2017	\$108,255.65	\$108,813.75	\$13,213.61	-\$ 558.10
April 2017	\$ 83,143.93	\$ 86,843.33	\$ 8,396.65	-\$ 3,699.40
May 2017	\$ 89,357.70	\$ 80,194.81	\$17,889.21	-\$ 9,162.89
June 2017	\$ 77,740.07	\$ 84,223.02	\$11,946.83	-\$ 6,482.95
July 2017	\$ 96,514.68	\$ 94,282.35	\$13,080.95	\$ 2,232.33
August 2017	\$ 98,418.70	\$ 98,586.99	\$11,086.57	-\$ 168.29

August 2017

EXHIBIT C

LIQUIDATION ANALYSIS

Liquidation Value of Inventory and Physical Assets per liquidation appraisal dated May 26, 2017	\$ 10,000.00
less sale expenses of approximately	<u>4,500.00</u>
Net estimated sale proceeds	\$ 5,500.00
Cash on hand as of August 31, 2017	\$ 11,086.57
Total Assets	\$ 16,586.57
 <u>Liabilities:</u>	
Chapter 7 administrative expenses estimated	\$ 15,000.00
Chapter 11 expenses of Administration	<u>7,500.00</u>
Total priority liabilities	\$ 22,500.00

The Debtor projects no dividend liquidation.

This Plan proposes a dividend of 10%.