

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

MIKE FARRELL'S DETROIT
WRECKER SALES, LLC,

Chapter 11
Case No. 17-53308-mar
Hon. Mark A. Randon

Debtor.

**SECOND AMENDED DISCLOSURE STATEMENT FOR
DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION**

PREPARED BY:

MICHAEL E. BAUM (P29446)
KIM K. HILLARY (P67534)
SCHAFFER AND WEINER, PLLC
40950 Woodward Avenue, Suite 100
Bloomfield Hills, MI 48304
(248) 540-3340
Counsel for Debtor

DISCLOSURE STATEMENT

I. INTRODUCTION AND OVERVIEW

A. PURPOSE OF DISCLOSURE STATEMENT

All capitalized terms not defined in this Disclosure Statement shall have the meaning ascribed to them in the Debtor's attached Plan of Reorganization (the "Plan"), unless the context indicates a different meaning.

Debtor submits this Disclosure Statement pursuant to § 1125 of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq., to all known holders of a Claim(s) against it. Debtor has filed the Plan with the United States Bankruptcy Court for the Eastern District of Michigan, Southern Division, a copy of which accompanies this Disclosure Statement.

Debtor provides this Disclosure Statement to its Creditors to disclose information deemed by it to be material and necessary for Creditors to make a reasonably informed decision in exercising their right to vote for the acceptance of the Plan.

B. SOURCE OF INFORMATION

The Disclosure Statement and the Plan have been prepared from information furnished primarily by the Debtor. Debtor's counsel has not conducted an independent investigation to verify such information. Creditors are encouraged to recognize that the information contained herein has been provided by the Debtor

{00709699.1}

who is the proponent of the Plan for all purposes pursuant to the Code including §§1127 and 1129. The information has not been verified by counsel or any other retained independent professional. The plan proponent, in this Case the Debtor, has filed the Plan consistent with §§1121 and 1123 of the Code and this Disclosure Statement has been filed as required by §1125 of the Code.

The statements contained in this Disclosure Statement are made as of the date hereof, unless another time is specified. Neither the delivery of this Disclosure Statement nor any exchange of rights made in connection with it shall, under any circumstances, create an implication that there has been no change of the facts set forth herein since the date of this Disclosure Statement.

NO PERSON OR ENTITY HAS BEEN AUTHORIZED BY DEBTOR OR THE COURT TO GIVE ANY INSTRUCTIONS OR MAKE ANY REPRESENTATIONS CONCERNING DEBTOR OR ITS FINANCIAL AFFAIRS, OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS, PROMISES OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE OR REJECTION OF THE PLAN, WHICH ARE OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT, SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION. SUCH REPRESENTATION, INDUCEMENTS AND/OR PROMISES, IF ANY, SHOULD BE REPORTED TO COUNSEL FOR DEBTOR WHO, IN TURN, SHALL DELIVER SUCH INFORMATION FOR SUCH ACTION AS THE COURT MAY DEEM APPROPRIATE.

C. OVERVIEW OF CHAPTER 11

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under Chapter 11, a debtor is authorized to reorganize or
{00709699.1}

liquidate its business for the benefit of itself, its creditors and equity interest holders. In addition to permitting the rehabilitation or liquidation of a debtor, another goal of Chapter 11 is to promote equality of treatment for similarly situated creditors and similarly situated equity interest holders with respect to the distribution of a debtor's assets.

The commencement of a Chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the filing date. The Bankruptcy Code provides that a debtor may continue to operate its business and remain in possession of its property as a debtor-in-possession.

The consummation of a plan of reorganization is the principal objective in a Chapter 11 reorganization case. A plan of reorganization sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a Chapter 11 plan of reorganization by the Bankruptcy Court makes the plan binding upon a debtor, any issuer of securities under the plan, any person acquiring property under the plan and any creditor or equity interest holder of a debtor.

After a Chapter 11 plan of reorganization has been filed, the holders of claims against or interests in a debtor are permitted to vote to accept or reject the plan. Before soliciting acceptances of the proposed plan, however, § 1125 of the Bankruptcy Code requires a debtor to prepare a disclosure statement containing

adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment about the plan.

The Debtor is submitting this Disclosure Statement to holders of Claims against, and equity Interests in, the Debtor to satisfy requirements of § 1125 of the Bankruptcy Code.

II. DESCRIPTION OF DEBTOR

A. THE DEBTOR-IN-POSSESSION

On September 22, 2017, (the “Petition Date”), Mike Farrell’s Detroit Wrecker Sales, LLC (the “Debtor”) filed a Voluntary Petition under Chapter 11 of Title 11 of the United States Code, §§101 et. seq. in the United States Bankruptcy Court for the Eastern District of Michigan, Case No. 14-41985. This Case was assigned to the honorable Mark A. Randon. Upon filing the Chapter 11 petition, the Debtor became a “Debtor-in-Possession”, as that term is understood in the Bankruptcy Code.

The Debtor operates out of a 38,000 square foot facility located at 19303 W. Davison Street, Detroit, MI 48223 (the “Facility”). Debtor’s primary business is the manufacture and sale of high quality, customized wrecker equipment, including flatbeds and wheel lifts, and forklift attachments. The four primary pieces of equipment that the Debtor manufactures and sells are its Low Loader, Devastator, Gladiator, and Lil Hercules.

{00709699.1}

- Low Loader - The Low Loader is Debtor's top of the line car carrier. It is the lowest load angle rollback carrier on the market. Its innovative design uses a forklift platform that transforms the load capacity and angle capability of the bed.
- Devastator - The Devastator is another flatbed offering most of the Low Loader's attributes at a lower price.
- Gladiator - The Gladiator is Debtor's top of the line wheel lift. Its unique design allows for implementation in pickup trucks. The Gladiator is the strongest and most capable self-loader on the market.
- Lil Hercules – The Lil Hercules is another extraordinary wheel lift designed for pickup trucks touted as “the strongest light-duty wheel lift on the planet.”

In addition to equipment sales, Debtor also maintains an online store for the purchase and sale of parts and wrecker attachments. Debtor does not maintain a significant inventory of the parts offered for sale, but instead purchases and drop ships the parts to the customer after receipt of an order. Finally, the Debtor services and repairs towing equipment for various customers.

Debtor employs a total of twelve individuals (“Employees”). The Debtor has ten employees that are compensated on an hourly basis, and two salaried employees (i) Mike Farrell – as president, (ii) Laura Farrell – as Vice President of Customer Service & Finance.

B. DEBTOR'S PRINCIPALS AND MANAGEMENT

1. Background.

Since the Petition Date, Michael Farrell and Laura Farrell (the "Farrells") have been the primary individuals responsible for the Debtor's operations. Michael Farrell is the Debtor's President and Laura Farrell is the Debtor's Vice President of Customer Service & Finance. A summary of the backgrounds of Michael and Laura Farrell are set forth below.

Michael Farrell

Michael Farrell is the Debtor's President. He grew up in the towing industry and has a lifetime of experience with towing equipment. He started the Debtor in 2006, and grew the business into a company with annual gross revenues of over \$3 million in 2016. See **Exhibit 5**, Debtor's 2016 tax returns showing its 2016 gross revenue as reported to the IRS. The Debtor has not attached individual customer information. Mr. Farrell has an incredible passion for the uniqueness of the products and services provided by the Debtor and is dedicated to producing a quality and long-lasting product for its customers. Michael Farrell has experience in welding, truck sales and parts and service management. Prior to joining the Debtor, Michael Farrell owned and operated his own flooring company for four years, where he handled all sales, billing, material purchases, and managed the work crews.

{00709699.1}

Gregory Errigo believes that the following accurately characterizes Michael Farrell's relationship to the Debtor:

The Debtor joined his father's business, Detroit Wrecker Sales, Inc., which was an operational business at 19630 Fitzpatrick, Detroit. The property located at 19630 was owned by Michael Farrell and Gregory Errigo jointly.

The Debtor supplanted Detroit Wrecker Sales, Inc. at that location prior to the time the Debtor relocated to its current location.

The Debtor disputes Gregory Errigo's characterization of the Debtor's origins, its relationship to Detroit Wrecker Sales, Inc., and of Michael's Farrell's relationship to the Debtor.

Laura Farrell

Laura Farrell attended Baker College with a Board of Regents scholarship for 2 years and majored in accounting. Laura Farrell opened her own dance studio, L.A. Dance, Inc. in 1998, and has operated this studio for twenty years. Laura Farrell is currently employed full time with the Debtor where she handles all of the Debtor's accounts receivable/payable, orchestrates the customer jobs, handles employee payroll and organizes the Debtor's day to day activities. She is proficient in Quickbooks, Quickbooks Point of Sale, Microsoft Word, Excel, WordPerfect.

2. **Compensation.**

As a result of the employee restructuring that took place in the two months prior to the Debtor's bankruptcy filing, Michael Farrell's compensation has been in flux – with compensation ranging during the 2017 calendar year from \$0 to \$1,500 per week. In addition to his wages, the Debtor has historically paid for Michael Farrell's health, dental and disability insurance, and has provided him with a cellular telephone and vehicle which are necessary to his position as the Debtor's only outside sales person.

As a result of the employee restructuring that took place in the two months prior to the Debtor's bankruptcy filing, Laura Farrell's compensation has been in flux – with compensation ranging during the 2017 calendar year from \$0 to \$1,200 per week. Laura Farrell has not received any other compensation or benefits.

3. **Legal Relationship Between Principals and Debtor.**

Michael Farrell owns all of the outstanding membership interest in the Debtor. Laura Farrell is married to Michael Farrell, but does not have an ownership interest in the Debtor.

4. **Future Principals of the Debtor and Compensation.**

The Debtor expects that Michael Farrell and Laura Farrell will continue in their current positions for the foreseeable future. Upon confirmation of the Debtor's Plan, the Debtor anticipates that Michael Farrell's compensation package

{00709699.1}

will include a gross annual salary of \$78,000, plus health, dental and disability insurance. The Debtor anticipates that it will continue to provide Michael Farrell with a cellular telephone and vehicle which are necessary to his ability to serve as the Debtor's only salesman. Upon confirmation of the Debtor's Plan, the Debtor anticipates that Laura Farrell's will receive an annual salary in the amount of \$56,000 with no other benefits.

C. DESCRIPTION OF DEBTOR'S BUSINESS AND CAUSES FOR CHAPTER 11 FILING

1. Debtor's Primary Assets.

The Debtor's primary asset is its going concern value - and its ability to complete its works in process and generate additional sales. The Debtor's raw materials and unfinished products are worth substantially less in their current form than they are upon completion and sale. Furthermore, the Debtor's ongoing operations have the potential to generate profits which are far more valuable than the Debtor's equipment and personal property.

In addition to its going concern value the Debtor owns approximately \$11,500 in raw materials, \$21,520 in metal fabrication and other equipment, and \$14,200 in specialty tables and cabinets, tools and accessories. An itemized list of the Debtor's equipment is attached hereto as **Exhibit 6**. The Debtor's Liquidation Analysis (Exhibit 1) shows a range of value of between approximately \$92,000 and

{00709699.1}

\$139,000 (depending on the value analysis applied). This is because the Liquidation Analysis also included the following property that the Debtor owned on the Petition Date, (i) work in progress materials valued at \$7,562, (ii) office furniture and equipment valued at \$1,625, (iii) goodwill valued at approximately \$15,000, (iv) drawings and blueprints valued at \$15,000, (v) cash in the amount of \$33,022, and (vi) accounts receivables in the amount of \$20,000. These are the values ascribed to such items by the Debtor and not by any independent professional retained by the Debtor.

2. **Causes of Bankruptcy Filing.**

A. **Operational Mismanagement**

In January of 2014, the Debtor hired Lee Dunn to serve as its General Manager and industrial engineer. As Debtor's General Manager and process engineer, Mr. Dunn was responsible for providing the Debtor with engineered drawings, managing the Debtor's manufacturing processes, inventory and product deadlines, pricing Debtor's manufactured products, handling Debtor's finances and hiring and firing employees.

The Debtor paid Mr. Dunn \$1,850 per week for his services. In addition, and at Mr. Dunn's direction, the Debtor employed the following individuals to assist Mr. Dunn in carrying out his duties:

{00709699.1}

1. Zack Whatcott was employed as an assistant to Lee Dunn. The Debtor paid Mr. Whatcott \$800 a week for his services;
2. Tyler Fiore was employed part time as an assistant to Lee Dunn. The Debtor paid Mr. Fiore approximately \$300 a week for his services;
3. Cody Laframboise was employed as an assistant to Lee Dunn. The Debtor paid Mr. Laframboise roughly \$800 per week for his services;
4. Heidi Smith was employed to assist Lee Dunn with bookkeeping. The Debtor paid Ms. Smith \$600 per week for her services.

Accordingly, prior to its bankruptcy filing, the Debtor was paying a total of approximately \$4,350 in *weekly* payroll to Mr. Dunn and his team of assistants.

On July 6, 2017, without any warning, Lee Dunn failed to report to work and refused all further contact with the Debtor or its principals. Immediately after Mr. Dunn's unexpected departure, the Farrells began to quickly realize that the Debtor was in a financial crisis. The Debtor's bank account had a dismal balance and the Debtor did not have sufficient funds available to pay payroll on the July 7.¹

Mr. Dunn is a defendant in the Farrell Litigation and Mr. Errigo claims that Mr. Dunn may have some liability in that case.

After addressing the Debtor's immediate payroll crisis, the Farrells took a closer look at the Debtor's finances and came to realize that the Debtor was

¹ The Debtor was ultimately able to pay its payroll several days late to all of its employees except the Farrells who did not receive compensation from the Debtor for several weeks in July and August.

drowning in payroll expenses, paying an average of \$20,000 per *week* for employee payroll. The Debtor was overstaffed and employees were allowed – if not encouraged - to work unlimited overtime. The Farrells immediately took steps to cut the Debtor’s payroll by (i) instituting a policy that drastically reduced the incidence of employee overtime, (ii) terminating Mr. Dunn’s hired bookkeeper, (iii) terminating two of Mr. Dunn’s three assistants, (iv) terminating three individuals that were employed to provide general labor, and (v) terminating a welder that was making an elevated rate of \$32.50 per hour. As a result of these adjustment, the Farrells cut the Debtor’s weekly payroll expense almost in half by reducing it from roughly \$20,000 per week to \$11,500 per week.

Furthermore, the Farrells learned that the Debtor’s manufactured equipment was not being properly priced. The Debtor’s overhead, including payroll, was not being factored into the price of its products. As a result, the Farrells learned that the Debtor had actually lost money on many of its previous equipment sales. To remedy this problem, the Farrells began implementing more accurate methods to track profit margins which has allowed it to more appropriately price its equipment and has eliminated employee overtime.

B. Ongoing Litigation

Since 2015, the Debtor has been a party to expensive and time-consuming litigation with Richard Farrell, the father of Debtor’s owner, Michael Farrell

{00709699.1}

(“Farrell Litigation”). To date, the Debtor has paid \$35,125.00 to Cohen, Lerner & Rabinovitz, P.C., in conjunction with the Farrell Litigation and owes an additional \$130,000 for services rendered prior to the Petition Date.

In addition to the Farrell Litigation, the Debtor has been sued by various other creditors and is also involved in the defense of a product liability lawsuit for a tow hook that the Debtor sold, but did not manufacture, service or install.

The Farrell Litigation and various other lawsuits have caused the Debtor to amass significant legal fees which the Debtor is unable to pay, and have added to the Debtor’s inability to continue its operations without bankruptcy protection.

III. POST-PETITION EVENTS OF SIGNIFICANCE

A. POST-PETITION TRANSFERS OUTSIDE THE ORDINARY COURSE OF BUSINESS

The Debtor has operated in the ordinary course of business. Any transactions that are outside of the ordinary course of business require approval from the Bankruptcy Court. Debtor has made no post-petition transfers outside the ordinary course of business other than as disclosed herein.

B. CHAPTER 11 EVENTS AND ORDERS

1. Employment of Professionals.

On September 22, 2017, the Debtor filed its Application for Authority to Hire Schafer and Weiner, PLLC, as counsel to the Debtor and Debtor-in-Possession [DN. 7].

2. Meeting of Creditors.

The Debtor's section 341 Meeting of Creditors is currently scheduled to occur on October 23, 2017.

3. Order Establishing Deadlines and Procedures.

The Court has entered an Order for Initial Chapter 11 Status Conference [DN. 31], scheduling the Debtor's initial status conference for October 23, 2017. The Debtor anticipates that the Court will issue a scheduling order after the initial status conference.

4. Cash Collateral.

On the Petition Date, the Debtor filed *its First Day Motion for Entry of an Interim and Final Order Authorizing Debtor to (A) Use Cash Collateral, (B) Grant Security Interests and other Adequate Protection under 11 U.S.C. §§105, 361 and 363(e), and (iii) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001* [DN. 12]. The Court entered an order granting Debtor's Interim Use of Cash

Collateral on September 28, 2017 [DN. 34], and a final order granting Debtor's use of cash collateral on October 18, 2017.

5. Post-Petition Secured Financing.

The Debtor has not sought authority for post-petition secured financing.

6. Litigation Involving the Debtor.

a. *Richard J. Farrell d/b/a Detroit Wrecker Sales, Inc. et al. v. Mike Farrell's Detroit Wrecker Sales, LLC et al.*, Case No. 15-005368-CZ, Wayne County Circuit Court. Removed to United States Bankruptcy Court for the Eastern District of Michigan on September 22, 2017, Adv. Pro. Case No. 17-04678. In conjunction with this litigation, Gregory Errigo has alleged that he was damaged by an intentional tort committed by the Debtor when it abandoned 19630 Fitzpatrick which constituted waste. Gregory Errigo believes that the Debtor was occupying 1630 Fitzpatrick Street, Detroit, Michigan and left the building in bad shape, with an unpaid water bill, and owing \$15,000 in property taxes, which Mr. Errigo characterizes as deliberate or reckless waste. The Debtor disputes Gregory Errigo's claims.

b. *Markel Insurance Company et al. v. Western Sling Company, Mike Farrell's Detroit Wrecker Sales, LLC et al.*, Case No. 16-153169-NP, Oakland County Circuit Court.

{00709699.1}

c. *Michigan Sandblasting, Inc. v. Mike Farrell's Detroit Wrecker Sales, LLC et al.*, Case No. 16-004575-CB, Wayne County Circuit Court.

d. *Prime Insurance Company v. Mike Farrell's Detroit Wrecker Sales, LLC*, Case No. 170903723, Third Judicial District Court of Salt Lake County, State of Utah.

IV. ASSETS AND LIABILITIES

A. LIQUIDATION ANALYSIS

The Debtor's Liquidation Analysis is attached as Exhibit 1.

In the event that the Plan is not accepted by the Creditors or is not otherwise confirmed by the Bankruptcy Court, the Debtor believes that GSC and Cooper Lane (each defined below) (the "Secured Lenders") will foreclose their liens and foreclose their interest in the Debtor's facility and personal property. In that event, Cooper Lane would receive payment of \$115,909.33 from a sale of the real estate, and GSC would receive the value of the Debtor's personal property on liquidation – which the Debtor anticipates would be significantly less than the amount owed to GSC. Unless the real estate is sold at foreclosure sale for more than the Cooper Lane debt, then all other creditors, including administrative claims, priority creditors, trade vendors and unsecured creditors would receive nothing. If the real estate were sold at auction for more than the Cooper Lane debt, then the amount in excess of the Cooper Lane debt would be used first to pay allowed Administrative

{00709699.1}

Claims (estimated to be \$106,500) and then to pay Priority Creditors (owed \$87,725.72). The Debtor does not believe that unsecured creditors would receive a distribution if the Debtor's assets are liquidated.

B. RISKS, CONDITIONS AND ASSUMPTIONS IN LIQUIDATION ANALYSIS

The Debtor has estimated the fair market value and the forced sale value to determine the value of its assets. The risks, conditions and assumptions are estimations by the Debtor and its management based upon their collective experience in the market. Additional risks, conditions and assumptions are described in the Liquidation Analysis.

C. CAUSES OF ACTION

Debtor reserves the right to collect all accounts receivable and all other amounts due Debtor for any reason whatsoever (whether owed to Debtor pursuant to contract rights, quasi contract, tort law, refund rights, deposits, or for any other reason). The Debtor reserves all setoff and recoupment rights of all kinds. The Debtor reserves the right to commence Avoidance Actions. Accordingly, the Debtor may have potential causes of action and reserves its right to bring a lawsuit against any entity listed on Debtor's Schedules (as filed with the Bankruptcy Court) as owing a debt to the Debtor, and any entity listed on their Statement of Financial Affairs (as filed with the Bankruptcy Court) as having received a transfer from the Debtor. More specifically, and without waiving any other claim, the

{00709699.1}

Debtor may seek to avoid from any direct or indirect transferee, (i) under § 547 of the Code, any transfer of an interest of the Debtor in property which occurred within 90 days of the Petition Date, or, for insiders of the Debtor, within one year of the Petition Date; (ii) under § 544(a) and § 545, any liens asserted against the Debtor, (iii) under §§ 544(b) and § 548, any actual or constructive fraudulent transfers or obligations, and (iv) under § 549, any unauthorized post-petition transactions.

The Debtor generally reserves any and all potential causes of action to recover accounts receivable, to enforce contractual obligations, or to otherwise enforce and protect their rights. The Debtor has not investigated all potential causes of action and cannot make any representation concerning their value.

D. SECURED CLAIMS

GSC Industries, LLC (“GSC”) is claiming a first priority security interest in Debtor’s personal property pursuant to a Promissory Note and Security Agreement providing the Debtor with a revolving line of credit in exchange for an all asset lien on the Debtor’s property (“Credit Line”). The Promissory Note, Security Agreement and UCC Form 1 are attached hereto as **Exhibit 7**. On the Petition Date, the balance owing on the Credit Line was approximately \$158,708.27.

Cooper Lane Mortgages, LLC (“Cooper Lane”) is claiming a first priority mortgage lien on the Debtor’s facility pursuant to a Promissory Note and recorded

{00709699.1}

Mortgage and Security Agreement, pursuant to which Debtor granted Cooper Lane a mortgage on the Facility to secure amounts owed under the promissory note (“Mortgage Loan”). The Promissory Note and Mortgage and Assignment of Leases and Rents are attached hereto as **Exhibit 8**. On the Petition Date, the balance owing on the Mortgage Loan was approximately \$115,909.

E. PRIORITY CLAIMS AND ADMINISTRATIVE EXPENSE CLAIMS

The Debtor anticipates that all Allowed Priority Claims will be paid in accordance with the Plan. The Debtor estimates that the total of all Allowed Priority Claims is approximately \$82,725.72. A list of the Debtor’s Priority Creditors is on file with the Bankruptcy Court.

The Debtor anticipates that all of its other Administrative Claims will be paid in the ordinary course. The Debtor estimates its total amount of Administrative Claims at approximately \$106,750.

F. NON-PRIORITY UNSECURED CLAIMS

The Debtor estimates that Unsecured Creditors are owed approximately \$694,756.76. A listing of the Debtor’s Unsecured Creditors is on file with the Bankruptcy Court. In addition, the value of Gregory Errigo and Richard Farrell d/b/a Detroit Wrecker Sales, Inc.’s claims against the Debtor as described in the Farrell Litigation will be determined by the Oakland County Circuit Court after the date of the Confirmation Hearing.

{00709699.1}

G. GUARANTEED DEBT

None of the Debtor's obligations to its creditors are guaranteed by any other person or entity.

Richard Farrell and Detroit Wrecker Sales, Inc., have alleged in the Farrell Litigation that Michael Farrell, Laura Farrell and Lee Dunn are jointly and severally liable for some or all the damages alleged in the Farrell Litigation.

Gregory Errigo has alleged in the Farrell Litigation that Michael Farrell, Laura Farrell and Lee Dunn are jointly and severally liable for some or all of the damages alleged in the Farrell Litigation.

Richard Farrell, Detroit Wrecker Sales, Inc. and Mr. Errigo have alleged that these claims may be nondischargeable as to some or all of the defendants.

V. IMPLEMENTATION OF PLAN

A. FINANCIAL INFORMATION

1. **Pre-Petition Financial Summaries.** The Debtor has attached as **Exhibit 2**, financial summaries relating to the three fiscal years prior to the Petition Date (2014, 2015 and 2016). These documents summarize the Debtor's financial history prior to the commencement of Debtor's Chapter 11 Case.

2. **Post-Petition Financial Summaries.** The Debtor has attached as **Exhibit 3**, summaries of its financial performance during this Chapter 11 Case.

These documents summarize the financial condition relating to the Debtor's post-

{00709699.1}

petition operations. The source of this summary is the Debtor's books and records. Furthermore, the Debtor has attached as Exhibit 4, its summary of post-confirmation financial projections for the life of the Plan.

B. TAX RAMIFICATIONS

1. **To Debtor.** The Debtor believes that the forgiveness of indebtedness which may result from a discharge granted by the confirmation of the Plan will not result in a significant tax consequence to the Debtor. The forgiveness of indebtedness, pursuant to the Internal Revenue Code, can be applied either to the Debtor's basis in its assets or to its net operating loss carry forward. The Debtor cannot accurately determine the amount and extent of any forgiveness of indebtedness. First, the Debtor must determine if all of the Claims that have been filed, or deemed filed within this Case, are accurate. Also, depending on whether the Debtor achieves or exceeds the projection in its current fiscal year, the Debtor may elect to apply any forgiveness of a debt in this directly to its basis. Despite the fact that the Debtor believes that it can either (a) apply such forgiveness of indebtedness to its net operating loss carry forward or (b) to its basis, it is not expected that the amount of forgiveness of debt will be totally offset by the foregoing. However, once these net operating losses are used by the Debtor to offset forgiveness of indebtedness, they cannot be used again. Taxes paid by the

Debtor in the future years would, therefore, be impacted as a result of confirmation of the Plan.

2. **To Creditors.** The tax consequences to each Creditor resulting from confirmation of the Plan may vary depending upon each Creditor's particular circumstances. Debtor recommends that Creditors or Holders of Claims obtain independent tax counsel to advise them as to the tax consequences of the Plan.

VI. **LEGAL REQUIREMENTS**

A. **VOTING PROCEDURES**

Under the Bankruptcy Code, the only classes that are entitled to vote to accept or reject a plan are classes of claims, or equity interest, that are impaired under the plan. Accordingly, classes of claims or interests that are not impaired are not entitled to vote on the plan.

Creditors that hold claims in more than one impaired class are entitled to vote separately in each class. Such a creditor will receive a separate ballot for all of its claims in each class (in accordance with the records of the Clerk of the Court) and should complete and sign each ballot separately. A creditor who asserts a claim in more than one class and who has not been provided with sufficient ballots may photocopy the ballot received and file multiple ballots.

Votes on the Plan will be counted only with respect to claims: (a) that are listed on the Debtor's Schedules of Assets and Liabilities other than as disputed, contingent or unliquidated; or (b) for which a proof of claim was filed on or before the Bar Date set by the Court for the filing of proofs of claim (except for certain claims expressly excluded from that bar date or which are allowed by Court order). However, any vote by a Holder of a Claim will not be counted if such Claim has been disallowed or is the subject of an unresolved objection, absent an order of the Court allowing such Claim for voting purposes pursuant to 11 U.S.C. §502 and Bankruptcy Rule 3018.

Voting on the Plan by each Holder of a Claim or Interest in an impaired class is important. After carefully reviewing the Plan and Disclosure Statement, each Holder of such a Claim or Interest should vote on the enclosed ballot either to accept or to reject the Plan, and then return the ballot by mail to the Debtor's attorney by the deadline previously established by the Court.

Any ballot that does not appropriately indicate acceptance or rejection of the Plan will not be counted.

A ballot that is not received by the deadline will not be counted.

If a ballot is damaged, lost, or missing, a replacement ballot may be obtained by sending a written request to the Debtor's attorney.

To the extent any provision of Article VI.A. conflicts with the Bankruptcy Code, Local Bankruptcy Rules, or this Court's standard disclosure statement language, if any, then the provisions of the Bankruptcy Code, Local Bankruptcy Rules, or this Court's standard disclosure statement language, if any, shall control.

B. ACCEPTANCE

The Bankruptcy Code defines acceptance of a plan by an impaired class of claims as acceptance by the holders of at least two-thirds in dollar amount, and more than one-half in number, of the claims of that class which actually cast ballots. The Bankruptcy Code defines acceptance of a plan by an impaired class of equity interests as acceptance by holders of at least two-thirds in number of the equity interests of that class that actually cast ballots. If no creditor or interest holder in an impaired class votes, then that class has not accepted the plan.

C. CONFIRMATION

11 U.S.C. §1129(a) establishes conditions for the confirmation of a plan. These conditions are too numerous and detailed to be fully explained here. Parties are encouraged to seek independent legal counsel to answer any questions concerning the Chapter 11 process.

Among the several conditions for confirmation of a plan under 11 U.S.C. §1129(a) are these:

1. Each class of impaired creditors and interest must accept the Plan, as described in paragraph VI.B, above.

{00709699.1}

2. Either each holder of a claim or interest in a class must accept the Plan, or the Plan must provide at least as much value as would be received upon liquidation under Chapter 7 of the Bankruptcy Code.

D. MODIFICATION

The Debtor reserves the right to modify or withdraw the Plan at any time before confirmation.

E. EFFECT OF CONFIRMATION

If the Plan is confirmed by the Court:

1. Its terms are binding on the Debtor, all creditors, shareholders and other parties in interest, regardless of whether they have accepted the Plan.
2. Except as provided in the Plan and in 11 U.S.C. §1141(d):
 - a. In the case of a corporation that is reorganizing and continuing business:
 - i. All Claims and Interests will be discharged.
 - ii. Creditors and shareholders will be prohibited from asserting their Claims against or Interest in the Debtor or its assets.
 - b. In the case of a corporation that is liquidating and not continuing in business:
 - i. Claims and Interests will not be discharged.
 - ii. Creditors and shareholders will not be prohibited from asserting their Claims against or Interests in the Debtor or its assets.

(signatures on next page)

**MIKE FARRELL'S DETROIT
WRECKER SALES, LLC**

By: /s/ Michael B. Farrell

Michael B. Farrell

Its: President

PREPARED BY:

SCHAFFER AND WEINER, PLLC

By: /s / Kim K. Hillary

MICHAEL E. BAUM (P29446)

KIM K. HILLARY (P67534)

Counsel for Debtor

40950 Woodward Avenue, Suite 100

Bloomfield Hills, MI 48304

Khillary@schaferandweiner.com

248-540-3340

Dated: November 28, 2017