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E-filed July 22, 2016

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF NEVADA

In re:	)
	) Case No.: 12-22097-mkn (Lead Case) Jointly Administered with
SUBMARINA, INC.;	) Case No: 11-24352-MKN
	) Chapter 11
Debtor.	)
	) Date of Hearing:
___________________________________	) Time of Hearing:

SUBMARINA, INC.
FIRST AMENDED DISCLOSURE STATEMENT
TO DEBTOR'S PLAN OF REORGANIZATION

I. INTRODUCTION

SUBMARINA, INC. (the "Debtor," or "Submarina") is Debtor is food franchisor. It owns trademarks, copyrights, artwork, technical knowhow, processes (including operations manual, and unique design and feel (including menu graphics, and names) and flavor profile all and associated with a Submarina® casual quick service restaurant. It also owns 31 franchise agreements of currently operating units and several which have yet to open (collectively the "Property"). Units utilizing the Debtor's assets have been advertising and selling authorized product to the general public for approximately 40 years. Currently the principal source of revenues for the Debtor consist of weekly and monthly contractually obligated franchisee payments of royalties and contributions to the marketing and promotional fund pursuant to the

Franchise Agreement signed for each store. As more fully discussed herein, the Debtor is currently receiving regular payments from 15 franchisees. On April 15, 2016 the United States Bankruptcy Court, District of Nevada (the "Court") entered a judgement in favor of the Debtor confirming that those franchisees who have been continuously operating but not making any of their contractually obligated payments were (and are) in breach of contract. The Court also entered a monetary judgement (the "Initial Judgment" or "Initial Judgments") against these parties and affirmed the Debtor's right to assume these contracts. Due to the large number of franchisees who are currently in breach of their contracts and uncertainty as to how this will ultimately be resolved the Debtor is unable to establish with any meaningful precision or accuracy what the current value of the Debtor is.

This is the disclosure statement (the "Disclosure Statement") in the Chapter 11 case of **SUBMARINA.** This Disclosure Statement contains information about the Debtor and describes the **SUBMARINA'S PLAN OF REORGANIZATION** (the "Plan") filed by the Debtor. A full copy of the Plan is attached to this Disclosure Statement as **Exhibit "1".** ***Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)***

The proposed distributions under the Plan are discussed in this Disclosure Statement. This Plan provides for three classes of priority claims; administrative post-petition professional fees ("Priority One Claims"); other administrative post-petition fees and expenses ("Priority Two Claims"); and the Court approve Debtor In Possession ("DIP") Lender's claims ("DIP Lender's Claims"). It also provides for one class of unsecured claims ("Unsecured Claims")[1].

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[1] Originally there were three secured creditors whose claims have since been resolved.

Since all secured claims have been satisfied during the pendency of the bankruptcy case there are no Pre-Petition secured claims outstanding.

While the proponent of this Plan believes that the Creditors holding allowed unsecured claims might receive a significant recovery, this class is impaired. The Pre-Petition equity holder's ownership of the Debtor will be extinguished on Plan Confirmation. The DIP Lender will convert its priority DIP Lender Claims, which constitute the entire principal outstanding balance on the DIP loan, to equity in the Debtor. The DIP Lender will hold 100% of the equity in the reorganized debtor on confirmation of the Plan. While on the effective date of the Plan the Debtor will have positive operating cash flow, based on the myriad of unresolved issues discussed herein, the DIP Lender may or may not recover its investment capital and earn a return on this investment. Under the Plan, a segregated pool of funds (the "Creditor Payment Pool") will be created from the collection of the Initial Judgments the Debtor has been awarded against the non-paying franchisees. Additionally, the Debtor has or will have an additional adversary proceeding pending before the Court that should result in the Debtor obtaining significant additional judgements against all franchisees currently in breach of their Franchise Agreements ("Supplemental Judgements"). The monies received from the collection of these Supplemental Judgments will also go to the Creditor Payment Pool for distribution under the Plan.

All Funds from the Creditor Payment Pool will be dedicated to first pay in full Priority One Claims, which will be followed by payment to holders of Priority Two Claims. After the satisfaction of Priority One Claims and Priority Two Claims, the balance of the Creditor Payment Pool will be distributed to the holders of allowed Unsecured Claims. Payments to

satisfy these claims will be made monthly until all classes are satisfied in full, or for a period of 120 months, whichever is sooner. This Plan also provides for the 100% payment of all other administrative expenses, including fees payable to the Office of the United States Trustee (which are current at the date of filing of this Plan).

A. Purpose of This Document

This Disclosure Statement describes:

- The Debtor's history and events which led to the Chapter 11 filing by the Debtor;
- The Debtor and significant events during the bankruptcy case;
- Issues impacting the Debtor's assets, liabilities, operations and segregated Creditor Payment Pool pool designated to pay claims;
- How the Plan proposes to treat claims or equity interests of the type you hold (*i.e.,* what you will receive on your claim or equity interest if the Plan is confirmed, and what may happen if the Plan is rejected);
- Who can vote on or object to the Plan;
- What factors the Court will consider when deciding whether to confirm the Plan;
- Why the Proponent believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest if the company were to liquidate; and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as this Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

1. *Time and Place of the Hearing to Confirm the Plan*

The confirmation hearing will take place on 17th day of August, 2016, at 9:30 a.m. at the United States Bankruptcy Court, Foley Federal Building, 300 Las Vegas Boulevard South, Courtroom number 2, Las Vegas, Nevada, 89101.

2. *Deadline for Voting to Accept or Reject the Plan*

If you are entitled to vote to accept or reject the plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to Johnson & Gubler, P.C., 8831 West Sahara Avenue, Las Vegas, Nevada 89117. *See* section IV (A) below for a discussion of voting eligibility requirements.

Your ballot must be received by the 16th day of August, 2016 or it will not be counted.

3. *Deadline for Objecting to the Confirmation of the Plan*

Objections to the confirmation of the Plan must be filed with the Court and served upon Johnson & Gubler, P.C., 8831 West Sahara Avenue, Las Vegas, Nevada 89117 no later than the 8th day of August, 2016.

C. DISCLAIMER

The Court has approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted.

II. BACKGROUND

A. Description and History of the Debtor's Business

1. *The Company and Assets*

The Debtor is a food franchisor. In January 2009 Kerensa Investment Fund 1 LLC ("KIF1") loaned $200,000 for working capital to Submarina. From February 2009 through August 2009 KIF1 loaned additional monies such that by August 2009 the total outstanding indebtedness to KIF1 was $1,260,000. On September 1, 2009 by an asset purchase agreement, KIF1 for $2,250,000 acquired Submarina. At of the date of acquisition a third party, Charles River International, valued the Property to be of value greater than the acquisition price.

The business of the Debtor is a franchisor for the establishment and operation of sandwich shops that offer, what the Debtor's management believes to be great-tasting food made from the finest ingredients available and operating under the "Submarina® A Better Built Sub®" name. As the franchisor the Debtor is responsible for determining suppliers and negotiating and overseeing supplier and distribution matrix. The Debtor also strives to ensure that all franchisees maintain consistency and quality in product offering and uphold the highest standards of operations and customer service. The Debtor's franchisees operate in a highly competitive environment and the Debtor is responsible for strategic planning, brand positioning

and marketing so that the Debtor's franchisees maintain relevancy to their customers and can expand their customer base. With superior quality sandwiches sold under the Submarina® brand name for approximately forty years, the Debtor benefits from a long history of Submarina in the greater San Diego area and other areas.

The principal source of revenue for the Debtor is from the regular and timely payment of contractually obligated royalties by the Debtor's franchisees pursuant to the Franchise Agreement signed by each franchisee. Additionally the Debtor collects from franchisees payment of marketing & promotional fund contributions ("M&P"). Both of these payments are accessed as a percentage of retail sales pursuant to the terms of each Franchise Agreement. The royalty revenues are used to support general operations and overhead of the Debtor. The M&P payments are used to cover internal marketing related expenses as well as third party advertising and marketing expenses. The value of the Debtor is determined by its current and prospective net cash flow from operations. The Debtor's revenues will increase if there are increased retail sales from existing franchise stores and/or new revenue streams are created as a result of the sale of new franchise stores being added to the network.

Since 2008 the Debtor's source of revenues has been shrinking. Several franchisees have closed and the last sale of a new franchise was in 2011. Additionally, as discussed in more detail elsewhere in this Disclosure Statement, a significant number of the Debtor's franchisees have illegally, without adequate justification, breached their franchise agreements and refused to make their contractually obligated payments for an extended period of time. Irrespective, **the Debtor, by virtue of its still being in business and operating, has proven that it is capable of adjusting and managing its cash flow so as to maintain its operations and most importantly as detailed in this Disclosure Statement and the Plan if this plan is**

confirmed the Debtor is positioned to emerge from Ch. 11 with positive operating cash flow and positioned to expand its revenue base.[2]

2. *Events Leading to Chapter 11 filing: The Non-Landlord Litigation, Zeller Litigation, and Warfield Group of Non-paying Franchisees*

From date of acquisition through June of 2010 Debtor had negative operating cash flow and Equity owners of Debtor, principally KIF1, invested additional capital of approximately $2,000,000 in Debtor. On June 22, 2010 the principal equity owner of KIF1, Bruce Rosenthal, took over direct management and control of Debtor. Under Bruce Rosenthal's management the Debtor dramatically reduced monthly operating costs. The Debtor terminated senior management personnel and streamlined the organization dramatically reducing labor costs so that they were in line with both industry standards and the underlying business, and US economic reality that with an absence of available financing Submarina could not continue to improperly finance current overhead expense with one time revenues from the sale of new franchises and area developer rights.

As of June 2010 the Debtor was occupying the space rented to Vicwar, Inc. ("Vicwar"), the company from whom it previously bought the rights to Submarina®. The Debtor was incurring monthly costs relating to this space of approximately $9,000. In spite of the remainder of the office space in the building being over 50% vacant the landlord refused to renegotiate Vicwar's lease to reduce the cost of the office space to then current market rates. Accordingly, the Debtor abandoned this office space and executed its own lease for space better suited to its needs at a rent of $1,500 a month. While the Debtor never assumed the

[2] Under the Plan, KIF1 will lose its equity position in the reorganized Submarina. Any accounts receivable, if any, and any other assets of KIF1, if any, will be assigned to the unsecured creditors of KIF1 on a pro rata basis andKIF1 will cease operations. KIF1 has only unsecured creditors.

Vicwar lease, the landlord, San Marcos Gateway, LLC ("Gateway") improperly claimed that they were somehow entitled to be treated as if the lease was assumed by the Debtor. Pre-Petition Submarina spent considerable resources attempting to resolve this dispute. Given the significant and unreasonable exposure, and projected further litigations costs, Submarina stopped expending funds to defend its position in California state court. When the Debtor filed its petition for Reorganization under Chapter 11, Gateway was listed as a creditor holding a Contingent, Unliquidated, Disputed Claim of $350,000. **On October 16, 2014 Gateway filed a proof of claim stating it held an unsecured claim in the amount of $109,951.62. This filing was made over a year and a half past the bar date of March 3, 2013 and accordingly, upon Plan confirmation, this liability will be extinguished as all late-filed claims under the Plan will be disallowed.**

On December 31, 2009 Kerensa Investment Fund 1, LLC ("KIF1") entered into a promissory note with Marie Zeller in the amount of $250,000 with a maturity of March 1, 2010. KIF1 defaulted on this note. Additionally on May 19, 2010 Submarina entered into a promissory note with Marie Zeller in the amount of $29,000 with a maturity date of December 31, 2010. On September 24, 2010 Marie Zeller filed suit against both KIF1 and Submarina relating to default on these notes. Ultimately she was awarded a Judgement against both KIF1 and Submarina. On March 3, 2013 Marie Zeller filed a proof of claim in the amount of $431,115.67. Zeller improperly filed her claims as a secured claim.

Beginning in the first quarter of 2012 a group of franchisees led by Jeffrey Warfield began refusing to make their required timely contractually obligated payments of royalties and M&P. This, too, put a significant strain on the operating cash flow of Submarina.

3. *Submarina's Bankruptcy Action*

As a result of these issues, the Debtor sought protection under Chapter 11 of the Bankruptcy code in an effort to allow the Debtor to reorganize. The Debtor filed its voluntary bankruptcy petition on October 25, 2012.

B. Insiders of the Debtor

In a corporation, shareholders own equity in the corporation through stock. Debtor's insiders as defined in §101(31)(B) of the United States Bankruptcy Code include directors, officers, persons in control, partnerships, general partners or relatives of a general partner, director, officer or person in control of the debtor. The Debtor's insiders are as follows:

Bruce N. Rosenthal	Director, President, Secretary, Treasurer
Victoria A. Wofford	Administrative Staff

C. Management of the Debtor Before and During the Bankruptcy

The person in control of the Debtor is Bruce N. Rosenthal. Mr. Rosenthal was the CEO of the Debtor beginning in September of 2009. Mr. Rosenthal also was the CEO during the bankruptcy case, though for a brief period during the pendency of the case he hired Lawrence Austin to manage the company. Mr. Austin did not contribute any funds to the Debtor, and no agreement was made as to the amount of compensation Mr. Austin would be paid. While with Submarina, the Debtor paid travel expenses and reimbursement for expenses, and paid Mr. Austin approximately $9,000 for the approximate 9-month period that he was working with Submarina. Mr. Austin left the company in April 2016.

D. Professionals Employed During the Bankruptcy Case

Since the filing of the Debtor's bankruptcy case, with court approval, the Debtor has employed: Matthew L. Johnson & Associates, P.C., dba Johnson & Gubler, P.C., as its bankruptcy counsel; Lounsbery Ferguson Altona & Peak LLP as its special counsel; and Harold L. Kestenbaum PC as its franchise sales counsel. Generally the legal fees are based on the time spent by counsel and are billed on an hourly basis as set forth in the Court orders approving the employment of each of these professional persons.

E. Projected Recovery of Avoidable Transfers

The Debtor does not intend to pursue preference, fraudulent conveyance, or other avoidance actions. It is unaware of any acts or conduct giving rise to such actions pre-petition.

F. Claims Objections

Except to the extent that a claim is already allowed pursuant to a final non-appealable Order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. Any late filed claims will be deemed disallowed under the Plan unless specifically otherwise ordered by the Court. The procedures for resolving disputed claims are set forth in Article V of the Plan.

G. Significant Events During the Pendency of the Debtor's Bankruptcy Case

1. Court Approved DIP financing

On May 5, 2014 the Debtor filed a motion (Case 12-22097-mkn Doc 145) seeking approval of Post-Petition financing pursuant to 11 U.S. Code §105, §363 and §365 et seq. and granting liens and super priority administrative expense status per 11 U.S. Code §364(c) over any or all administrative expenses of the kind specified in 11 USC §503(b) or 11 USC §507(b)

in favor of Kerensa Investment Fund 2, LLC (the "DIP Lender) as specifically set forth in the DI P Loan Documents. The Debtor specifically sought authority to borrow up to $450,000 from the DIP Lender at an interest rate of 20%. The Court approved the Debtor's motion (Case 12-22097-mkn Doc 192 Entered 07/23/13). **As of June 22, 2016 the outstanding principal owed Post Petition Lender is $310,000**

3. *Adversary Proceeding Against Group of Franchisees Led By Jeffrey Warfield*

In 2013 the Debtor commenced an Adversary Proceeding (Adv. No 13-01051) against the members of the group of franchisees who were continuing to withhold their contractually obligated payments of royalties and M&P monies. Additionally this group objected to the Debtor assuming their Franchise Agreements. This case was tried January 13-17, 2014. On April 15, 2016 Judge Nakagawa issued a decision confirming that the Debtor acted appropriately and that these objecting franchisees were in breach of their Franchise Agreements as a result of improperly withholding their contractually obligated payments to the Debtor as required under their Franchise Agreements. The Court affirmed the Debtor's motion to assume these Franchise Agreements and entered a monetary judgment(s) ("Underlying Judgment(s)") against these franchisees. This monetary award was for amounts owed from the original date of non-payment(s) by each franchisee through the date of trial. **The amount of these Underlying Judgements total $329,364.14**

4. Denial of Motions to Convert Case to Ch. 7

In both 2013 and again in 2016 a group of franchisees filed motions to have the Debtor's Voluntary Petition to Reorganize under Ch. 11 of the US Bankruptcy Code converted to an Involuntary Liquidation under Ch. 7 of the US Bankruptcy Code. Both of these motions were denied by the Court.

5. *Breach of Franchise Agreement by Group of Franchisees Negotiating Independent Supplier and Distribution Agreements and Ceasing to Accept Deliveries of Approved Products From Approved Suppliers and Distributors*

Earlier this year a group of franchisees led by Jeffrey Warfield, Brian Kennedy and Matthew Kennedy ceased accepting deliveries of Debtor's approved products from Debtor's approved supplier. This action by this group of franchisees is a clear effort to undermine the ability of Debtor to control the supply chain and to destroy the ability of Debtor to operate. **There is currently pending or will be filed an Adversarial Action in the Court seeking an injunction to order these franchisees to comply with their Franchise Agreements and cease and desist from this egregious breach of their franchise agreement(s), as well as seeking reimburse to the Debtor for the approximate $100,000 in spoilage costs the Debtor has or will incur directly related to these actions.**

6. Adversary Proceeding to True Up Monetary Judgments to Account for Non-Payment from Date of Trial to June 23, 2016

The Underlying Judgment(s) awarded by the Court in the Adversary Proceeding (Adv. No 13-01051) did not address the monies owed by the franchisees in breach from the date of trial forward. Since the Court confirmed the Debtor's assumption of these Franchise Agreements as of the date of Trial, these franchisees are obligated under law to abide by the terms of their Franchise Agreements. The Debtor has filed a motion with the Court for the amounts of non-payment from the date of trial to the present to be added to the Underlying Judgement(s). **The amount sought in these supplemental judgment(s) ("Base Supplemental Judgment(s)" is $1,215,019.18**

7. *Adversary Proceeding to Issue Monetary Judgments against Franchisees Named in Adversarial Proceeding who Offered No Defense*

There were several franchisees that were named in the Adversarial Proceeding (Adv. No 13-01051) who offered no defense, but were not included in the Court's award of monetary damages. **The Debtor has obtained a default and is in the process of obtaining a default judgment ("2nd Supplemental Judgment(s)") against these Defendants in the amount of $195,367**.

8. *Adversary Proceeding Seeking Payment of Royalties & M&P from Franchisees who During the Pendency of this Case Did Not Object to the Debtor Assuming Their Franchise Agreements and Received $299,514.88 in Payments from Debtor*

Two franchisees, SD Subbros, Inc. and Subbros, Inc., did not object to the Debtor assuming their Franchise Agreements (See Doc 100 Entered 04/15/13) and consequently Debtor paid off the balance of the purchase price owed to these franchisees Post-Petition for the re-acquisition of the greater San Diego county area developer rights. The Debtor used $224,000.88 of royalties from SD Subbros, Inc. and Subbros, Inc. as well as $75.000 from DIP Lender to extinguish the remaining balance of $299,514.88 in principal and interest owed to on the note related Submarina's re-acquisition from them of the San Diego County Area Developer rights. Over two year after Debtor's Ch. 11 filing, in December 2014, which also happened to coincide with the period when Debtor and the original group of franchisees involved in the Adversarial Proceeding No: 13-01051 were waiting for the Court's decision in said Adversarial Proceeding, SD Subbros, Inc. and Subbros, Inc. unilaterally stopped paying their contractually obligated royalties pursuant to their Franchise Agreements. Despite the fact that two franchisees had withheld payment of their contractually obligated M&P payments

since early 2012, in December 2014 the two franchisees suddenly improperly asserted that the Debtor had breached their Franchise Agreements by not properly spending the M&P funds received by the Debtor. This assertion was made even though the two franchisees had not paid M&P payments during the period. The Debtor has commenced or will promptly commence an Adversary Proceeding with the Court seeking an order that SD Subbros, Inc and Subbros, Inc fully comply with their Franchise Agreements and that **they be ordered to pay the $238,186.94 they owe in contractually obligated royalty and M&P payments ("3rd Supplemental Judgment").**

9.Ongoing Adversary Proceeding to recover additional monies owed by a franchisee who, in addition to being a member of the Warfield Group, unilaterally terminated his Franchise Agreement.

Included in the Underlying Judgments awarded by the Court is a judgment against Scott Freeland in the amount of $46,752.62. In November 2013 Scott Freeland, in direct violation of his Franchise Agreement, engaged in a transaction whereby he illegally and unilaterally changed the name of his physical store. Pursuant to the Freeland Franchise Agreement, and in common with all of Debtor's Franchise Agreements, when a franchise unit is terminated in advance of expiration of the Franchise Agreement, the Debtor is entitled to recover the lost profits they would have received if the franchise had operated for the full term of the Franchise Agreement. On December 18, 2013 Debtor filed an action seeking an award of the monies Debtor is entitled to due to this breach of contract. (Case 13-01223-mkn Doc 1). Scott Freeland and the other defendants have failed to respond to this action, and on June 15, 2016 Debtor filed notice of entry of default. **Pursuant thereto Debtor anticipates being awarded $232,425.88 ("4th Supplemental Judgment")**

H. Current and Historical Financial Conditions

The Debtor has filed Monthly Operating Reports post-petition; however, due to the large number of franchisees operating in breach of contract and the uncertainty as to how their non-compliance and significant monies owed will ultimately be resolved, the Monthly Operating Reports ("MOR)" or ("MORs") which are filed, in accordance with Federal Bankruptcy Reporting Guidelines and Generally Accepted Accounting Principles (as best Debtor can comply) results in Balance Sheet and Income Statement Presentations which, while accurate to the best of the Debtor's knowledge, are not significantly meaningful as it is impossible for them to reflect the unknown resolution of these significant legal and business matters. Specifically, the MORs includes in revenues the amounts due the Debtor under contract from both paying and non-paying franchisees. Additionally, the current liabilities section of the balance sheet includes a significant contingent liability for spending on M&P monies which have not been received. This ignores the fact that, the Debtor has no contractual obligation to incur marketing and advertising expenses exceeding the M&P monies collected. Since these matters are both the subject of ongoing litigation, collections activities and potential renewed settlement negotiation it is impossible to with any accuracy or precision to integrate these myriad scenarios into a single static balance sheet.

Below is a table summarizing the Judgments awarded and those pending:

Debtor's Judgment Summary
(As of June 22, 2016)

Awarded	4/15/2016	**$ 329,364.14**
Pending		
	Base Supplemental Judgment	$ 1,215,019.18
	2nd Supplemental Judgment	195,367.00
	3rd Supplemental Judgment	238,186.94
	4th Supplemental judgment	232,425.88
	Sub-total	**$ 1,880,999.00**
TOTAL		**$ 2,210,363.14**

*Table does not include the approximate $100,000 judgment being sought to cover the costs of spoilage referenced in G(5) above.

Since generally the Debtor has required personal guarantees of performance to be executed as a condition of granting a franchise most of the awarded and pending judgments are against both individual and their franchise. While the Debtor has made settlement offers to those subject to Awarded Judgment and Supplemental Judgments 1 through 4 these discussions have been nonproductive to date. There is no assurance as to the collectability of any of these judgements. The Debtor's best estimate is that:

- Some will be collected in full
- Some will be settled with extended payment terms, and the franchisee coming into full compliance with their franchise agreement
- In some cases the Debtor may end up with title to an operating Submarina®
- Some may be wholly uncollectable

The total value of the awarded and projected judgments significantly exceeds the creditor claims. Under the Plan all monies collected will go into the Creditor Payment Pool dedicated to

pay the creditor claims until those claims are paid in full, or for a period of 120 months, whichever occurs first.

Below is a balance sheet of the Debtor assuming the Plan is confirmed.

Submarina, Inc.
Projected Balance Sheet
Upon Plan Confirmation

		Jun 23, 2016
ASSETS		
Current Assets		
Checking/Savings	$	6,500.00
Accounts Receivable		8,000.00
Other Current Assets		2,500.00
Total Current Assets		17,000.00
Fixed Assets		65,000.00
Intangible Assets		298,168.74
Non-Current Assets - Investments		5,000.00
TOTAL ASSETS	**$**	**380,168.74**
LIABILITIES & EQUITY		
Liabilities		
Current Liabilities		
Accounts Payable	$	6,000.00
CA State Accrued PTO	$	20,900.50
Other Current Liabilities		1,500.00
Total Current Liabilities		28,400.50
Long Term Liabilities		
Gift Certificates		41,768.24
Total Liabilities		70,168.74
Equity		310,000.00
TOTAL LIABILITIES & EQUITY	**$**	**380,168.74**

Notes:
Current Assets comprise bank account balances, franchise and supplier receivables & food and cash on hand at Melrose Submarina. All numbers based on average balances during month.
Fixed Assets include the value of the physical store assets in at the Melrose store and additional physical assets including computers office equipment and the like.
Intangible assets are valued in accordance with GAAP.
Accounts payable and other current liabilities are based on average operating balance.
There are no long-term liabilities except the pre-petition allowed claims being satisfied from the dedicated Creditor Payment Pool and gift certificates outstanding (perpetual).
Pre-petition Equity has been extinguished and upon Plan confirmation DIP Lender converts the $310,000 owed to equity.

Below is a table of the segregated Creditor Payment Pool and the Plan proposed repayment of confirmed claims excluding secured claims that have been satisfied post-petition, and the claim of the DIP Lender that will be converted to new equity on Plan Confirmation.

Segregated Pool for Payment of Ch. 11 Claims

Awarded Judgment	**$**	**329,364.14**
Pending		
Base Supplemental Judgment	$	1,215,019.18
2nd Supplemental Judgment		195,367.00
3rd Supplemental Judgment		238,186.94
4th Supplemental judgment		232,425.88
Sub-total	**$**	**1,880,999.00**
TOTAL	**$**	**2,210,363.14**

Payment Obligations

			Collection % Required to Satisfy in Full
Class 1			
Tier 1 Priority	**Allowed 11 USC § 507 Claims**	(190,000.00)	8.60%
Tier 2 Priority	**Allowed 11 USC § 507 Claims**	(556,250.00)	33.76%
		(746,250.00)	
Class 3			
Allowed	**Allowed 11 USC §502 Claims**	(908,021.00)	74.84%
Total Claims		(1,654,271.00)	

* **In addition to the above the Debtor is in negotiation with a franchise who owes the $45,658.97. The outcome of these negations will be either the franchisee will agree to a payment plan to payoff the past due amounts with all such payments going to the Creditor Pool or the Debtor will seek a judgment against this party. In which case any award granted would go to the payment pool.**

While at this time it is unknown whether any of the parties whom the Debtor either has, or anticipates being awarded, judgments against will decide that it is in their best interest to accept an extended payment plan of the amount awarded and resume operating their business in

compliance with their respective franchise agreement, irrespective, if the Plan is confirmed the Debtor will be able to operate its business effectively with a positive cash flow and aggressively prosecute its Judgments for the benefit of the Creditor Payment Pool. Net of legal fees and related costs 100% of monies collected will go to satisfy confirmed claims in priority order. On any agreement reached with judgment debtor providing for payment(s) of Judgment amounts owed 100% of all such payments received minus any direct expenses related to the collection effort will go to the Creditor Pool. If the Debtor reaches an agreement with any party subject to a judgment or by other means takes title to any operating franchise location the revenues net of all business expenses, minus Debtor outlays and a 20% management fee, will also be contributed to the Creditor Payment Pool. Additionally if that franchise is resold 100% of the net sales proceeds minus any unreimbursed costs of operating the franchise will also be contributed to the Creditor Payment Pool.

I. Operation, Business and Cash Flow of Debtor Upon Plan Confirmation

While there are significant unknowns as to what any of the franchisees whom the Debtor has and anticipates obtaining judgments against will do going forward, the Debtor over the past several years has managed to pay its employees, and support its franchises. This includes introducing a new state of the art Point of Sale (“POS”) system with an integrated customer loyalty functionality, increase franchise product offerings, renegotiate our supply chain to enhance the quality of our offerings, make significant additions to our trademark portfolio and recently the Debtor resumed radio advertising in the greater San Diego area on the largest sports radio station in the market. Additionally, with Court approval, the Debtor engaged the services of an attorney whose principal expertise is facilitating franchisors selling new franchisees to expand their footprint. Following his advice and general industry practice

the Debtor formed a subsidiary, which should be commencing franchise sales within 30 days. Since the DIP Lender has agreed to convert its $310,000 debt to equity in the Debtor upon confirmation of the Plan, the Debtor will, on day 1 of the Effective Date of the Plan, eliminate $5,000 of monthly interest expense. Accordingly just projecting the revenues received from currently paying franchisees and reduced overhead the Debtor will have positive operating cash flow on the Effective Date of the Plan (see chart below).

Submarina, Inc.
Projected Cash Flow 07/2016 through 06/2017

	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17
Income												
Royalties	$ 25,547	$ 25,547	$ 25,064	$ 25,547	$ 25,064	$ 25,547	$ 25,547	$ 24,100	$ 25,547	$ 25,064	$ 25,547	$ 25,064
Advertising Contributions	6,381	6,381	6,254	6,381	6,254	6,381	6,381	6,000	6,381	6,254	6,381	6,254
Rebates (Est)	10,000	800	800	10,000	800	800	10,000	800	800	10,000	800	800
Total Income	**$ 41,928**	**$ 32,728**	**$ 32,119**	**$ 41,928**	**$ 32,119**	**$ 32,728**	**$ 41,928**	**$ 30,900**	**$ 32,728**	**$ 41,319**	**$ 32,728**	**$ 32,119**
Expense												
Payroll	$ 12,332	$ 12,332	$ 11,934	$ 12,332	$ 11,934	$ 12,332	$ 12,332	$ 11,138	$ 12,332	$ 11,934	$ 12,332	$ 11,934
Payroll Taxes	3,448	3,448	3,448	3,448	3,448	3,448	3,448	3,448	3,448	3,448	3,448	3,448
Employee Benefits	946	946	946	946	946	946	946	946	946	946	946	946
Outside Services - Accountant	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Management Fee	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500
Management Co Expenses (Est)	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500
Marketing Expenses - Cordero	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500
Marketing Other (Est)	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000
Postage & Delivery	125	125	125	125	125	125	125	125	125	125	125	125
Telephone	650	650	650	650	650	650	650	650	650	650	650	650
Web Services	130	130	130	130	130	130	130	130	130	130	130	130
POS Technology	49	49	49	49	49	49	49	49	49	49	49	49
Rent	594	594	594	594	594	594	594	594	594	594	594	594
Travel Expenses	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500
Legal Fees	3,000			3,000			3,000			3,000		
Reserve Store Relocation	5,000			5,000			5,000					
Total Expenses	$ 39,274	$ 31,274	$ 30,876	$ 39,274	$ 30,876	$ 31,274	$ 39,274	$ 30,080	$ 31,274	$ 33,876	$ 31,274	$ 30,876
Net Cash Flow	**$ 2,654**	**$ 1,454**	**$ 1,243**	**$ 2,654**	**$ 1,243**	**$ 1,454**	**$ 2,654**	**$ 820**	**$ 1,454**	**$ 7,443**	**$ 1,454**	**$ 1,243**

J. Value of Debtor

As of the date of filing this Plan, June 23, 2016 the Debtor has:

- 31 open franchise units, 15 of which are currently making their contractually obligated payments to the Debtor on a timely basis
- been awarded specific monetary Judgments against most of the non-compliant franchisees, but these awards represent approximately 15% of the total owed

- Adversary Proceedings will be commenced or are pending in the Court which should result in over a 6 times increase in Judgments against non-compliant franchisees
- The Debtor has no knowledge as to whether any, some, or all of the non-compliant franchisees will chose to become compliant and accept a payment plan, voluntarily turn over their franchise to the debtor, or leave the Debtor no choice but to aggressively seek recovery.
- The Debtor has no knowledge as to what percentage of anticipated total judgements will ultimately be awarded by the Court, and what percentage of that award will prove to be collectable.

In addition to the all the material uncertainties listed above the overall business environment of the Debtor faces unprecedented unknowns. The NLRB has recently made rulings and undertaken actions to deem that a franchisor is a joint employer of the individually owned and operated franchise units. Additionally several cities and states, with California leading the way have implemented dramatic increases in the minimum wage. These actions constitute a direct assault on casual quick serve industry and its franchisor/franchise model. They may cause franchisees to fail and serve as an impediment to sales of new franchisees.

The business of the Debtor is faced with unprecedented uncertainty, which makes it impossible to place any meaningful value on the business. The principal assets of the Debtor are intangible. Their value is directly linked to the free cash flow the business generates. The Debtor does not know if next year it will have 14 or 31 franchise units operating in compliance with their Franchise Agreement and making timely payments. Also troubling is that the Debtor has no insight as to how severely the government assault on the QSR franchise industry will impact the industry.

Fortunately, as illustrated in the projected balance sheet and income statement, the proposed Plan is viable and in the best interest of the unsecured creditors. **The Debtor is a viable operating business post plan confirmation without the need to sell assets or borrow additional money.**

III. SUMMARY OF THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. What is the Purpose of the Plan of Reorganization?

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment that each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

B. Claims

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan Proponent has placed these claims in Class 1.

1. Class 1. *Administrative Expenses and Priority Claims*

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under §507(a)(2) of the Code. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

The Debtor is current in its tax payments and does not believe that there are any holders of a §507(a)(8) priority tax claim.

The following chart lists the Debtor's estimated administrative expenses, and their proposed treatment under the Plan:

TYPE	ESTIMATED AMOUNT OWED	PROPOSED TREATMENT
Professional Fee Johnson & Gubler, PC (most previously approved by Court - approx. $30,000 will require court approval)	$145,000.00 (estimated)	Tier 1 Administrative Claim Paid first from Creditor Payment Pool according to terms of obligations if later. 11 USC §507
Professional Fees, Lounsbery Ferguson Altona & Peak LLP (Will require approval by the Court)	$45,000.00 (estimated)	Tier 1 Administrative Claim Paid first from Creditor Payment Pool according to terms of obligations if later. 11 USC §507
Post-Petition Expense, Past Due Fees for Management Services Provided Under Contract Kerensa & Co., Inc.	$516,250 (mgt fee) 40,000 (exp remb est) $556,250 Total	Tier 2 Administrative Claim Paid 2nd from Creditor Payment Pool according to terms of obligations if later. 11 USC §507
Office of the U.S. Trustee Fees	$1,325.00	Estimated due June 30, 2016 Will be paid when due.
TOTAL	$747,575.00	

The Debtor is unaware of any Priority Tax Claims.

2. Class 2. *Great American Leasing – computers and server*

DESCRIPTION	**IMPAIRMENT**	**TREATMENT**
Secured claim of Great American Leasing Collateral description: computers and server – the collateral was returned to the creditor post-petition. On 4/18/2016, Great American Leasing withdrew its claim Allowed Secured Amount:$0	Unimpaired	Class 2 is unimpaired. All collateral was returned to the Creditor and on 4/18/2016, the Creditor withdrew its claims. To the extent that Class 2 has any deficiency claims, such claims have been withdrawn, but may be treated as a general unsecured creditor at the election of the holder of the claim.

3. Class 3. *Great American Leasing – phone system*

DESCRIPTION	**IMPAIRMENT**	**TREATMENT**
Secured claim of Great American Leasing Collateral description: phone system – the collateral was returned to the creditor post-petition. On 4/18/2016, Great American Leasing withdrew its claim Allowed Secured Amount:$0	Unimpaired	Class 3 is unimpaired. All collateral was returned to the Creditor and on 4/18/2016, the Creditor withdrew its claims. To the extent that Class 3 has any deficiency claims, such claims have been withdrawn, but may be treated as a general unsecured creditor at the election of the holder of the claim.

4. Class 4. *Secured Claims of Subbros, Inc.*

SD Subbros, Inc. claimed that it held a secured claim of $250,614.74. (District of Nevada Claims Register Case No: 12-22097-mkn Claim No: 6 dated 02/27/2013). Post-Petition the Debtor paid this party $299,514.88 as part of the DIP financing and from royalties paid on the Franchisees owned by SD Subbros, Inc. and Subbros, Inc. Therefore, this claim has been

fully satisfied. The creditor is no longer secured, has no further claim, and is unimpaired under the Plan.

5. Class 5 *Priority Claims*

Other than administrative claims and claims of the DIP Lender, there are no known priority claims. To the extent there are any allowed priority claims, those claims will be paid in full in equal monthly installments for a five-year period, with the first payment to start on the 1st of the month following the effective date. As there are no known priority creditors in this class, these claims are deemed to be unimpaired.

6. Class 6. *General Unsecured Claims*

General unsecured claims are not secured by property of the estate and are not entitled to priority under §507(a) of the Code. Some Proofs of Claim were filed by franchisees whose claims were disallowed by the Court pursuant to the Court's decision in Case 13-01051. The following chart identifies the Plan's proposed treatment of Class 6 which contains general unsecured claims against the Debtor.

DESCRIPTION	IMPAIRMENT	TREATMENT
Class 6 - General Unsecured Creditors (approximately $1,594,483 scheduled, several of which were disputed or no proof of claim filed before the bar date of 03/06/2013) and thus not allowed). Estimated allowed amount is $908,021[3]	Impaired	Class 6 is impaired by this Plan. Non-insider General Unsecured Creditors will be paid in full, without interest from the judgments collected from the Franchisees, or shall receive equal monthly installments of all amounts collected from the Judgments for a period of 120 months, whatever occurs first. Beginning on 1st day of the 1st month following the Effective Date, Class 6 will be paid monthly on a pro rata basis for 120 months or until the allowed claims are paid in full, whichever occurs sooner.

4. Class 7. *Class of Equity Security Interest Holders*

Equity security interest holders are parties who hold an ownership interest (*i.e.*, stock) in the Debtor. In a corporation, the equity interest holders are the stockholders. The following chart sets forth the Plan's proposed treatment of the one class of equity interest holders.

[3] The single largest unsecured claim is Marie Zeller. On schedules filed by Debtor (Doc 11 Case 12-2209-mkn) the amount listed is $412,351.88. This claim is listed as a disputed unsecured claim; however, the Debtor is prepared to treat this as an allowed claim. Marie Zeller on 3/04/2013 filed a proof of claim (Claim 19. District of Nevada Claims Register Case 12-22097-mkn) listing this same underlying (unsecured claim) as a secured claim in the amount of $431,151.67. The Debtor wholly rejects this incorrect filing relating to the same underlying claim as the claim is not a properly perfected secured claim but an unsecured claim.

DESCRIPTION	IMPAIRMENT	TREATMENT
Class 7 - Equity Interest Holders	Impaired	Class 7 is unimpaired by this Plan. The equity interest of the equity interest holders will be cancelled and 100% of the new shares will be issued to the DIP Lender. The Equity Security Holder, Kerensa Fund 1, LLC, shall be liquidated and any assets held by Kerensa Fund 1, LLC shall be distributed to its creditors on a pro-rata basis.

C. Means of Implementing the Plan

1. *Source of Payments*

Payments and distributions under the Plan will be funded by operating income and by the collections paid by the collection of judgments or settlements at or before the end of 10 years.

2. *Post-confirmation Management*

The post-confirmation manager of the Debtor shall be Bruce Rosenthal, the current manager ("Post-Confirmation Manager"). The Post-Confirmation Manager will be compensated from funds separate and apart from the Creditor Payment Pool.

The proposed Plan has the following risks:

1. Business Risk- While the Debtor Post-Confirmation will be aggressive in collection efforts on behalf of the Creditor Payment Pool there is no certainty as to amounts which will ultimately be collected. Amounts collected under payment plans could be impacted by a downturn in business. To the extent the Debtor Post-Confirmation seizes a franchise as

partial or full satisfaction of a Judgment the funds available to the Creditor Payment Pool will be impacted by business and operations of the franchise.

E. Executory Contracts and Unexpired Leases

The Plan lists all executory contracts and unexpired leases that the Debtor will assume under the Plan, which includes all Franchise Agreements with the Franchisees. Other executory contracts and unexpired leases related to the operation of the Property may be assumed. Assumption means that the Debtor has elected to continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of the type that must be cured under the Code, if any. Other than Franchise Agreements, which are all to be accepted, unless an executory contract is explicitly assumed, it shall be deemed rejected.

F. Tax Consequences of Plan

Creditors and Equity Interest Holders Concerned with How the Plan May Affect Their Tax Liability Should Consult with Their Own Accountants, Attorneys, And/or Advisors.

The following are the anticipated tax consequences of the Plan:

1. Tax consequences to the Debtor of the Plan:

a. Since the Pre-Petition equity security holders interest in the Debtor will be extinguished and upon Plan Confirmation the DIP Lender will convert the entire outstanding loan principal balance to equity in the Debtor Post-Petition this transaction should comply with the IRC §382 exemption to change in control NOL loss limitation rules.

2. Tax consequences to Creditors of the Plan:

a. Neither the Debtor or the Proponent of the Plan have any knowledge how any individual creditor has previously treated their receivable from the Debtor.

Additionally there is no certainty as to ultimate amount or timing of recovery under the Plan. Accordingly, each creditor is advised to contact their respective advisor to determine their individual treatment of any amounts they receive under this Plan.

3. Tax Consequences to Pre-Petition Equity Holders.

a. Upon Plan confirmation any claims to the ownership or economic interest in the Debtor of this class will be eliminated. Accordingly, to the extent that any parties holding Pre-Petition common stock in the Debtor had basis in such securities they should be recognizing a loss. As to the characterization and timing of that recognition they should consult their advisor.

IV. CONFIRMATION REQUIREMENTS AND PROCEDURES

To be confirmable, the Plan must meet the requirements listed in §§1129(a) or (b) of the Code. These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the Plan, without counting votes of insiders; the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a Chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in §1129, and they are not the only requirements for confirmation.

A. Who May Vote or Object

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor

or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Plan Proponent believes that Class 6 and Class 7 are impaired. Class 7 is an insider and is not entitled to vote. Therefore, the holders of claims and interests in Class 6 are the only creditors entitled to vote to accept or reject the Plan.

1. *What is an Allowed Claim or an Allowed Equity Interest?*

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest. When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

The deadline for filing a proof of claim in this case was March 6, 2013 (for non-governmental creditors) and June 6, 2013 (for government units). Any claims that were not scheduled, that were scheduled as "disputed," or for which a proof of claim was not timely filed shall be deemed to be disallowed.

2. *What is an Impaired Claim or Impaired Equity Interest?*

As noted above, the holder of an allowed claim or equity interest has the right to Vote only if it is in a class that is *impaired* under the Plan. As provided in §1124 of the Code, a

class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

3. *Who is **Not** Entitled to Vote*

The holders of the following five types of claims and equity interests are *not* entitled to vote:

- holders of claims and equity interests that have been disallowed by an order of the Court;
- holders of other claims or equity interests that are not "allowed claims" or "allowed equity interests" (as discussed above), unless they have been "allowed" for voting purposes.
- holders of claims or equity interests in unimpaired classes;
- holders of claims entitled to priority pursuant to §§507(a)(2), (a)(3), and (a)(8) of the Code; and
- administrative expenses.

Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation of the Plan.

B. Votes Necessary to Confirm the Plan

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by "cram down" on non-accepting classes, as discussed later in Section [B.2].

1. *Votes Necessary for a Class to Accept the Plan*

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half (½) of the allowed claims in the class who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the class who vote, cast their votes to accept the Plan.

2. *Treatment of Non-accepting Classes*

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the non-accepting classes are treated in the manner prescribed by §1129(b) of the Code. A plan that binds no accepting classes is commonly referred to as a "cram down" plan. The Code allows the Plan to bind no accepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of §1129(a)(8) of the Code, does not "discriminate unfairly," and is "fair and equitable" toward each impaired class that has not voted to accept the Plan.

You should consult your own attorney if a "cramdown" confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.

C. Liquidation Analysis

To confirm the Plan, the Court must find that all creditors and equity interests who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a Chapter 7 liquidation. In a liquidation, a Trustee would be required to liquidate the Debtor's assets. Those assets consist primarily of judgments against the non compliant franchisees. There is very little personal property other than accounts receivable from which creditors could be paid. Liquidation is believed to be significantly less favorable to creditors as continued operation of the business will significantly increase the

creditors' chances of being paid in full and increase the chance that creditors will be paid more quickly than through a liquidation.

Under the Plan if the Debtor collects 75% of the Awarded and Supplemental Judgments 2 through 4 the unsecured creditors will be paid in full. Most importantly, given the current operation of the underlying business, the ongoing litigation and the years of internal strife it is highly unlikely that any third party will make an all cash offer greater than the amounts owed holders of claims entitled to priority under 11 USC §§507(a)(2), (a)(3) and the Super Priority of DIP Lender under 11 USC §364(c). These amounts total $1,056,250. Under a Court liquidation these claims plus administrative fees of the US Trustee will be paid in full before any payments are made to the unsecured creditor class. **Thus under a liquidation it is almost a virtual certainty that the unsecured creditor class will receive nothing.**

D. Feasibility

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan.

1. *Ability to Initially Fund Plan*

The Plan Proponent believes that the Debtor will have enough cash on hand on the effective date of the Plan to pay all the claims and expenses that are entitled to be paid on that date, or the Debtor will make arrangements with the holders of Administrative Claims on how their claims will be paid. If necessary, the members of the Debtor will contribute the funds necessary to pay Administrative Claims and Priority Claims.

2. *Ability to Make Future Plan Payments And Operate Without Further Reorganization*

The Plan Proponent must also show that it will have enough cash over the life of

the Plan to make the required Plan payments. In the case of this Plan, by establishing a segregated Creditor Payment Pool this is not an issue. As discussed elsewhere in this document upon Plan confirmation the Debtor will have no interest expense and sufficient cash flow to support operations. A schedule of the Debtor's projected Balance Sheet and Projected Cash is included in this Disclosure Statement (see Pages 18 and 22).

3. *Confirmation Requirements*

The Plan is Fair and Equitable to the DIP Lender.

The Plan satisfies the first test in §1129(b)(2)(A).

The Lender Will Receive the Indubitable Equivalent of Its Claim

The DIP Lender is entitled to the indubitable equivalent of its claim. 11 U.S.C. §361(3). That can be provided by the DIP Lender converting its DIP Loan to equity of the Debtor The Plan provides the Lender with equity in the Debtor as opposed to a stream of monthly payments as required by subsection II of §1129(b)(2)(A)(ii).

V. EFFECT OF CONFIRMATION OF PLAN

A. Discharge

On the effective date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the effective date, to the extent specified §1141(d)(1)(A) of the Code, except that the Debtor shall not be discharged of any debt (i) imposed by the Plan; (ii) of a kind specified in §1141(d)(6)(A)if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of bankruptcy Procedure, or (iii) of a kind specified in §1141(d)(6)(B). After the effective date of the Plan, your claims against the Debtor will be limited to the debts described in clauses (i) through (iii) of the preceding sentence.

B. Modification of Plan

The Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or re-voting on the Plan.

C. Final Decree

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Plan Proponent, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. The Debtor intends to file a motion for a final decree as soon as it begins making the payments to the secured and unsecured creditors under the Plan. Alternatively, the Court may enter such a final decree on its own motion.

Respectfully submitted,

Submarina, Inc.

By: /s/ Bruce Rosenthal
Bruce Rosenthal, President
The Plan Proponent

Prepared by:

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