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 8 **UNITED STATES BANKRUPTCY COURT**  
 9 **DISTRICT OF NEVADA**

10 In Re:  
 11 SUBMARINA, INC.:  
 12 KERENSA INVESTMENT FUND 1, LLC.,  
 13 Debtors.

Case No.: 12-22097-mkn (Lead Case) Jointly  
 Administered with Case No.: 11-24352-  
 MKN  
 Chapter 11

**JOINT DISCLOSURE STATEMENT TO  
 PLAN OF REORGANIZATION  
 PROPOSED BY CREDITOR KERENSA  
 INVESTMENT FUND 2, LLC**

**Date:**  
**Time:**

18  
 19 **I. INTRODUCTION**

20 SUBMARINA, INC. ("Submarina") is a Debtor and food franchisor. KERENSA  
 21 INVESTMENT FUND 1, LLC ("Kerensa 1") is a Debtor and investment entity. (Together,  
 22 Submarina and Kerensa 1 are known as "Debtors"). Kerensa 1 is an investment entity whose  
 23 only asset of value is the ownership of 2,198,958 shares of Submarina stock. Submarina is a  
 24 food franchisor. It owns trademarks, copyrights, artwork, technical knowhow, processes  
 25 (including operations manuals, and unique designs which consist of, inter alia: menu items,  
 26 graphics, and names). Submarina restaurants possess a unique flavor profile and all  
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1 restaurants associated with a Submarina® are casual quick service restaurants. Submarina  
2 also owns 30 franchise agreements of currently operating units (collectively the “Property”).  
3 Units utilizing Submarina’s assets have been advertising and selling authorized product to  
4 the general public for approximately 40 years.

5 The principal source of revenues for Submarina consist of weekly and monthly  
6 contractually obligated franchisee payments of royalties and contributions to the marketing  
7 and promotional fund pursuant to the Franchise Agreements signed for each store. As more  
8 fully discussed herein Submarina is currently receiving regular payments from 15  
9 franchisees.  
10

11 This is the joint disclosure statement (the “Disclosure Statement”) in the Chapter 11  
12 case of SUBMARINA and KERENSA 1. This Disclosure Statement contains information  
13 about the Debtor and describes the JOINT PLAN OF REORGANIZATION FOR  
14 SUBMARINA AND KERENSA 1 (the “Plan”) filed by creditor, Kerensa Investment Fund  
15 2, LLC (“Kerensa 2”). A full copy of the Plan is attached to this Disclosure Statement as  
16 Exhibit “1”. Your rights may be affected. You should read these papers carefully and discuss  
17 them with your attorney, if you have one. (If you do not have an attorney, you may wish to  
18 consult one.)  
19

20 The proposed distributions under the Plan are discussed in this Disclosure Statement.  
21 The Plan provides for payment of administrative claims consisting of administrative post-  
22 petition professional fees; other administrative post-petition fees and expenses; the  
23 administrative insider claims of Kerensa & Co., Inc. (“Kerensa & Co.”); and the Court  
24 approved Debtor in Possession (“DIP”) financing super-priority insider claim of Kerensa 2.  
25

26 The Plan provides for three classes of unsecured claims, first, Kerensa 1 and  
27 Submarina have one common claim; Claim No. 2 in the Kerensa 1 Claims Register is the  
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1 claim of Marie Zeller ("Zeller") for \$338,000.00. Zeller also holds Claim 19 in the  
2 Submarina Bankruptcy Case in the amount of \$431,151.67. Though both claims are for  
3 different amounts, the claims are both based upon the same underlying promissory note in  
4 favor of Zeller and the subsequent arbitration on that promissory note which judgment was  
5 entered on May 22, 2012. This award is payable jointly and severally from the Debtors.  
6 (Zeller's claims are known as the "Common Claim").  
7

8 Second, a class of small unsecured claims owing by Submarina (the "Administrative  
9 Convenience Class").

10 Third, a general class of unsecured creditors of Submarina<sup>1</sup> (the "General Unsecured  
11 Class"). While there is potential in this Plan for recovery to creditors, since there is no  
12 current ability to pay claims in full, these classes are impaired.  
13

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

16 The Plan also classifies the pre-petition equity holder's ownership of Kerensa 1,  
17 which will be extinguished on Plan Confirmation. Kerensa 1 will contribute new value to  
18 Submarina that is substantial and essential to Submarina's reorganization. Sub Solutions  
19 Company, LLC ("SSC") will purchase a new 100% member interest in Kerensa 1, in  
20 exchange for \$312,200 and a promissory note, due three years from the Effective Date, in  
21 favor of Zeller for a face value of \$300,000 secured by the assets of Kerensa 1, which will be  
22 considered paid in full if \$100,000 is paid within one year of the Effective Date, or if  
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25 <sup>1</sup> Though some of these claims are scheduled as unsecured claims on Kerensa 1's schedules in addition to the  
26 claim of Zeller, These claims are truly claims of Submarina and not Kerensa. All such creditors are also  
27 scheduled on Submarina's schedules, and as to these creditors, the schedules of Submarina are more accurate  
28 and shall control and supersede Kerensa 1's schedules. The specific creditors who should be removed from  
Kerensa 1's schedules are: Daniel Osborn, David Ostfeld, Joe Hendrix, and Michael Marcus.

1 \$150,000 is paid within two years of the effective date (the “Zeller Promissory Note”).

2 Kerensa 1 will then contribute \$312,200 to Submarina, in exchange for  
3 312,200,000 shares of Submarina stock. Submarina will pay administrative costs according  
4 to the following schedule.

5 First, a cash payment of \$312,200 to Kerensa 2, to satisfy the principal outstanding  
6 balance, \$312,200 as of November 21, 2016, on the DIP loan.

7  
8 Second, Submarina will pay 8% of post Effective Date royalties collected from  
9 Franchisees to pay general administrative claims, until such claims are paid in full.  
10 Assuming the claims have not been paid in full at the end of 5 years, a balloon payment for  
11 the remaining amount will be paid to this class.

12 Third, Submarina will assign the net proceeds of pending litigation to Kerensa & Co.  
13 in satisfaction of its post-petition administrative claim, including Adversary Proceeding No.:  
14 13-01051 (the “First Adversary”) which adjudicated a dispute between Submarina and certain  
15 franchisees and awarded judgments to Submarina totaling \$329,364.14; Adv. Proceeding  
16 No.: 16-01095-MKN) (the “Second Adversary”) seeking that the amount awarded in the  
17 First Adversary be increased based upon the Franchisees’ continued breach of contract  
18 during the time the First Adversary was under submission, and damages for new breaches of  
19 contract against the same and other defendant Franchisees; and Adversary Proceeding No.:  
20 13-01223-MKN (the “Freeland Adversary”), seeking an award of damages from Scott  
21 Freeland and other defendants due to breaches of contract separate from those claimed in  
22 either the First or Second Adversary. (together, the First Adversary, the Second Adversary,  
23 and the Freeland Adversary are known as the “Adversaries”). However, \$35,217.50 already  
24 collected in the First Adversary from Defendant JTJM Inc. on November 7, 2016, will not be  
25 so assigned. The assignment of the net proceeds of the Adversaries will continue until such  
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1 time as Kerensa & Co. has received \$675,000.

2 Submarina will pay unsecured claims according to the following schedule.

3 First, Submarina will guarantee the Zeller Promissory note, which guarantee will be  
4 secured by all assets of Submarina.

5 Second, a cash payment of 50% of the total value of all claims will be made to the  
6 members of the Administrative Convenience Class on the Effective Date.

7 Third, \$35,217.50, minus the amounts paid to the Administrative Convenience Class,  
8 will be made to general unsecured creditors of the Debtors on the Effective Date.

9 Finally, all net proceeds of the Adversaries which remain after payment of \$675,000  
10 to Kerensa & Co. shall be paid to creditors in the following order. First, payment to general  
11 administrative claims until those claims have been paid in full. Second, payment to Zeller  
12 until the Zeller Promissory Note is fully satisfied. Third, payment to general unsecured  
13 creditors until such claims are paid in full.

14 Success and collection in the Adversaries is speculative, as litigation is ongoing.  
15 Though the Plan does contemplate collection on the Adversaries and call for distribution of  
16 funds to creditors should they be collected, the Plan is ultimately designed to operate without  
17 such funds. The Adversaries are discussed in greater detail below.

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20 **A. Purpose of This Document**

21 This Disclosure Statement describes:

- 22
- 23 1. The Debtor's history and events which led to the Chapter 11 filing by the  
24 Debtor;
  - 25 2. The Debtor and significant events during the bankruptcy case;
  - 26 3. Issues impacting the Debtor's assets, liabilities, operations and payment  
27 of claims;
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4. 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);
5. Who can vote on or object to the Plan;
6. What factors the Court will consider when deciding whether to confirm the Plan;
7. 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
8. 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 the \_\_\_\_ day of \_\_\_\_\_ 2017, 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

1 ballot and return the ballot in the enclosed envelope to Morris, Polich & Purdy, 3800 Howard  
2 Hughes Parkway, Suite 500, Las Vegas, NV 89169. See section IV (A) below for a  
3 discussion of voting eligibility requirements.

4 Your ballot must be received by the \_\_\_ day of \_\_\_\_\_, 2016 or it will not  
5 be counted.

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

7 Objections to the confirmation of the Plan must be filed with the Court and  
8 served upon Morris, Polich & Purdy, 3800 Howard Hughes Parkway, Suite 500, Las Vegas,  
9 NV 89169 no later than the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

10 **C. DISCLAIMER**

11 The Court has approved this Disclosure Statement as containing adequate information  
12 to enable parties affected by the Plan to make an informed judgment about its terms. The  
13 Court has not yet determined whether the Plan meets the legal requirements for confirmation,  
14 and the fact that the Court has approved this Disclosure Statement does not constitute an  
15 endorsement of the Plan by the Court, or a recommendation that it be accepted.  
16

17 **II. BACKGROUND**

18 **A. Description and History of the Debtors' Businesses**

19 **1. The Companies and Assets**

20 Submarina is a food franchisor. In January 2009 Kerensa 1 loaned \$200,000 for  
21 working capital to Submarina. From February 2009 through August 2009 Kerensa 1 loaned  
22 additional monies such that by August 2009 the total outstanding indebtedness to Kerensa 1  
23 was \$1,260,000. On September 1, 2009, Kerensa 1 acquired Submarina for a purchase price  
24 of \$2,250,000. Submarina is the only asset of Kerensa 1.  
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1 The business of Submarina is a franchisor for the establishment and operation of  
2 sandwich shops that offer great-tasting food made from the finest ingredients available and  
3 operating under the “Submarina®” name. As a franchisor, Submarina is responsible for  
4 determining suppliers and negotiating and overseeing supplier and distribution matrix.

5 Submarina also strives to ensure that all franchisees maintain consistency and quality  
6 in product offering and uphold the highest standards of operations and customer service.  
7 Submarina’s franchisees operate in a highly competitive environment and Submarina is  
8 responsible for strategic planning, brand positioning and marketing so that Submarina’s  
9 franchisees maintain relevancy to their customers and can expand their customer base. With  
10 superior quality sandwiches sold under the Submarina® brand name for approximately forty  
11 years, Submarina benefits from a long history of Submarina in the greater San Diego area  
12 and other areas.  
13

14 The principal source of revenue for Submarina is from the regular and timely  
15 payment of contractually obligated royalties by Submarina’s franchisees pursuant to the  
16 Franchise Agreement signed by each franchisee. Additionally Submarina collects from  
17 franchisees the payment of marketing & promotional fund contributions (“M&P”). Both of  
18 these payments are calculated as a percentage of retail sales pursuant to the terms of each  
19 Franchise Agreement. The royalty revenues are used to support general operations and  
20 overhead of Submarina. The M&P payments are used to cover internal marketing related  
21 expenses as well as third party advertising and marketing expenses. The value of Submarina  
22 is determined by its current and prospective net cash flow from operations. Submarina’s  
23 revenues will increase if there are increased retail sales from existing franchise stores and/or  
24 new revenue streams are created as a result of the sale of new franchise stores being added to  
25 the network.  
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1 Since 2008 Submarina's sources of revenue have been shrinking. Several franchisees  
2 have closed and the last sale of a new franchise through Submarina was in 2011.  
3 Additionally, as discussed in more detail elsewhere in this Disclosure Statement, a significant  
4 number of the Debtor's franchisees have breached their franchise agreements and refused to  
5 make their contractually obligated payments for an extended period of time. Irrespective,  
6 Submarina, by virtue of its still being in business and operating, has proven that it is capable  
7 of adjusting and managing its cash flow so as to maintain its operations and most  
8 importantly, as detailed in this Disclosure Statement and the Plan, if the Plan is confirmed,  
9 Submarina is positioned to emerge from Ch. 11 with positive operating cash flow and the  
10 ability to expand its revenue base.  
11

12 **2. Events Leading to Chapter 11 filing(s): The Non-Landlord Litigation,**  
13 **Zeller Litigation, and Warfield Group of Non-paying Franchisees**  
14

15 From date of acquisition through June of 2010 Submarina had negative operating  
16 cash flow and equity owners of Submarina, principally Kerensa 1, invested additional capital  
17 of approximately \$2,000,000 in Submarina. On June 22, 2010 the principal equity owner of  
18 Kerensa 1, Bruce Rosenthal, took over direct management and control of Submarina. Under  
19 Bruce Rosenthal's management Submarina dramatically reduced monthly operating costs.  
20 Submarina terminated senior management personnel and streamlined the organization;  
21 dramatically reducing labor costs so that they were in line with industry standards, the  
22 underlying business, and US economic reality. Only then could Submarina operate in the  
23 absence of continued financing as it was no longer improperly financing current overhead  
24 expenses with one time revenues from the sale of new franchises and area developer rights.  
25

26 As of June 2010 Submarina was occupying the space rented to Vicwar, Inc.  
27 ("Vicwar"), the company from whom it previously bought the rights to Submarina®.  
28

1 Submarina was incurring monthly costs relating to this space of approximately \$9,000. In  
2 spite of the remainder of the office space in the building being over 50% vacant, the landlord  
3 refused to renegotiate Vicwar's lease to reduce the cost of the office space to then current  
4 market rates. Accordingly, Submarina abandoned this office space and executed its own  
5 lease for space better suited to its needs at a rent of \$1,500 a month. While Submarina never  
6 assumed the Vicwar lease, the landlord, San Marcos Gateway, LLC ("Gateway") improperly  
7 claimed that they were somehow entitled to be treated as if the lease was assumed by  
8 Submarina.  
9

10 Pre-Petition, Submarina spent considerable resources attempting to resolve this  
11 dispute. Given the significant and unreasonable exposure, and projected further litigation  
12 costs, Submarina stopped expending funds to defend its position in California state court.  
13 When Submarina filed its petition for Reorganization under Chapter 11, Gateway was listed  
14 as a creditor holding a Contingent, Unliquidated, Disputed Claim of \$350,000. On October  
15 16, 2014 Gateway filed a proof of claim stating it held an unsecured claim in the amount of  
16 \$109,951.62. This filing was made over a year and a half past the bar date of March 3, 2013  
17 and accordingly, upon Plan confirmation, this liability will be extinguished as all late-filed  
18 disputed claims under the Plan will be disallowed.  
19

20 On December 31, 2009 Kerensa 1 entered into a promissory note with Marie Zeller in  
21 the amount of \$250,000 with a maturity of March 1, 2010. Kerensa 1 defaulted on this note.  
22 Additionally on May 19, 2010 Submarina entered into a promissory note with Marie Zeller  
23 in the amount of \$29,000 with a maturity date of December 31, 2010. On September 24,  
24 2010 Marie Zeller filed suit against both Kerensa 1 and Submarina relating to default on  
25 these notes. Ultimately she was awarded a Judgement against both Kerensa 1 and Submarina.  
26  
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1 On March 3, 2013 Marie Zeller filed a proof of claim in the amount of \$431,115.67<sup>2</sup>. Though  
2 Zeller lists her claim as secured, no security instrument exists which relates to this debt.

3 Beginning in the first quarter of 2012 certain franchisees refused to make their  
4 required timely contractually obligated payments of royalties and M&P which put a  
5 significant strain on the operating cash flow of Submarina.

6 **3. Submarina's Bankruptcy Action**

7  
8 Primarily as a result of the obligation to Zeller, Kerensa I sought protection under  
9 Chapter 11 of the Bankruptcy code in an effort to allow it to reorganize. Kerensa I filed its  
10 voluntary petition on September 9, 2011. However, after the franchisees stopped making  
11 payments of royalties and M&P funds, Submarina chose to file for Chapter 11 protection as  
12 well. Submarina filed its voluntary bankruptcy petition on October 25, 2012. On September  
13 12, 2013, an order was entered to jointly administer the cases.

14  
15 **B. Insiders of the Debtor**

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

21  
22 Bruce N. Rosenthal Director, President, Secretary, Treasurer

23 Victoria A. Wofford Administrative Staff

24 Additionally, through the Ownership of Bruce N. Rosenthal, the following entities  
25  
26

27 <sup>2</sup> On 10/14/11 Zeller filed a claim for \$338,000 against Kerensa. On 3/4/13 Zeller filed a claim for  
28 \$431,151.67 against Submarina. These claims have the same basis and are, in fact, ultimately the same claim

1 discussed in the Plan and Disclosure Statement are insiders of the Debtors:

2 Kerensa 1

3 Kerensa 2

4 SSC

5 Kerensa & Co.

6 Submarina

7  
8 **C. Management of the Debtor before and During the Bankruptcy**

9 The person in control of the Debtors is Bruce N. Rosenthal. Mr. Rosenthal was the  
10 CEO of Submarina beginning in September of 2009. Mr. Rosenthal also was the CEO during  
11 the bankruptcy case.

12 **D. Professionals Employed During the Bankruptcy Case**

13 Since the filing of the Debtors' bankruptcy cases, with court approval, Submarina and  
14 Kerensa I have employed: Matthew L. Johnson & Associates, P.C., dba Johnson & Gubler,  
15 P.C., as bankruptcy counsel; Lounsbery Ferguson Altona & Peak LLP as special counsel;  
16 and Harold L. Kestenbaum PC as franchise sales counsel. Generally the legal fees incurred  
17 by these professionals are based on the time spent by counsel and are billed on an hourly  
18 basis as set forth in the Court orders approving the employment of each of these professional  
19 persons.  
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21  
22 **E. Projected Recovery of Avoidable Transfers**

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

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26  
27 which are asserted to be owed jointly and severally by both Debtors. As such, the Plan resolves the claim at the  
28 higher amount. The increase is attributable to interest and other costs.

1 petition.

2 **F. Claims Objections**

3 Except to the extent that a claim is already allowed pursuant to a final non-appealable  
4 Order, the Debtor reserves the right to object to claims. Therefore, even if your claim is  
5 allowed for voting purposes, you may not be entitled to a distribution if an objection to your  
6 claim is later upheld. Any late filed claims will be deemed disallowed under the Plan unless  
7 specifically otherwise ordered by the Court. The procedures for resolving disputed claims are  
8 set forth in Article V of the Plan.  
9

10 **G. Significant Events during the Pendency of the Debtors' Bankruptcy**  
11 **Cases**

12 **1. Court Approved DIP Financing**

13 On May 5, 2014 Submarina filed a motion (Case 12-22097-mkn Doc 145) seeking  
14 approval of Post-Petition financing pursuant to 11 U.S. Code §105, §363 and §365 et seq.,  
15 and granting super priority administrative expense status per 11 U.S.C. § 364(c)(1) over any  
16 or all administrative expenses of the kind specified in 11 USC §503(b) or 11 USC §507(b) in  
17 favor of Kerensa 2 as specifically set forth in the DIP Loan Documents. Submarina  
18 specifically sought authority to borrow up to \$450,000 from the DIP Lender at an interest  
19 rate of 20%, with the authority to increase the interest rate to 25% upon certain events. The  
20 Court approved the Debtor's motion (Case 12-22097-mkn Doc 192 Entered 07/23/13). As of  
21 June 22, 2016 the outstanding principal owed to Kerensa 2 is \$312,200. Debtor has made  
22 interest payments due on the DIP Loan.  
23  
24

25 **2. Adversary Proceeding Against Franchisees**

26 In 2013 Submarina commenced an Adversary Proceeding (Adv. No 13-01051, the  
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1 “First Adversary”) against the members of the group of franchisees who were, at that date,  
2 continuing to withhold their contractually obligated payments of royalties and M&P monies.  
3 Additionally this group objected to Submarina assuming their Franchise Agreements. This  
4 case was tried January 13-17, 2014. On April 15, 2016 Judge Nakagawa issued a decision in  
5 favor of Submarina confirming that the objecting franchisees were in breach of their  
6 Franchise Agreements as a result of improperly withholding their contractually obligated  
7 payments to Submarina. The Court granted Submarina’s motion to assume these Franchise  
8 Agreements and entered monetary judgment(s) (“Underlying Judgment(s)”) against these  
9 franchisees. This monetary award was for amounts owed from the original date of non-  
10 payment(s) by each franchisee through the date of trial. The amount of these Underlying  
11 Judgements total \$329,364.14. Of this, \$35,217.50 has been collected.

### 13 **3. Denial of Motions to Convert Case to Ch. 7**

14 In both 2013 and again in 2016 a group of franchisees filed motions to have  
15 Submarina’s Voluntary Petition to Reorganize under Ch. 11 of the US Bankruptcy Code  
16 converted to an Involuntary Liquidation under Ch. 7 of the US Bankruptcy Code. Though the  
17 2013 Motion was denied, the 2016 Motion is currently under submission.  
18

### 19 **4. The Second Adversary**

20 In early 2016, a group of franchisees, some of whom were defendants in the First  
21 Adversary, ceased accepting deliveries of Submarina’s approved products from Submarina’s  
22 approved supplier. This adversely impacts Submarina’s ability to control the supply chain  
23 and to operate according to its best practices. In addition, two franchisees, SD Subbros, Inc.  
24 and Subbros, Inc., did not object to Submarina assuming their Franchise Agreements (See  
25 Doc. 100 Entered 04/15/13) and consequently Submarina paid off the balance of the  
26 purchase price owed to these franchisees Post-Petition for the re-acquisition of the greater  
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1 San Diego county area developer rights.

2 Submarina used \$224,000.88 of royalties from SD Subbros, Inc. and Subbros, Inc. as  
3 well as \$75,000 from the DIP Lender, to extinguish the remaining balance of \$299,514.88 in  
4 principal and interest owed to on the note related Submarina's re-acquisition of the San  
5 Diego County Area Developer rights. Over two years after Submarina's Ch. 11 filing, in  
6 December 2014, which also happened to coincide with the period when Submarina and the  
7 original group of franchisees involved in the First Adversary were waiting for the Court's  
8 decision in the First Adversary, SD Subbros, Inc. and Subbros, Inc. unilaterally stopped  
9 performing under their obligations under their Franchise Agreements by withholding royalty  
10 payments.  
11

12 Despite the fact that two franchisees had withheld payment of their contractually  
13 obligated M&P payments since May 2013; in December 2014 the two franchisees suddenly  
14 asserted that the Debtor had breached their Franchise Agreements by not properly spending  
15 the M&P funds received by the Debtor. This assertion was made even though the two  
16 franchisees had not paid M&P payments during the period.  
17

18 The Debtor has commenced an Adversary Proceeding with the Court (Adv.  
19 Proceeding No.: 16-01095-MKN) (the "Subbros Action") to address these issues.  
20 Submarina is seeking an order that SD Subbros, Inc and Subbros, Inc. fully comply with their  
21 Franchise Agreements and that they be ordered to pay the \$238,186.94 they owe in  
22 contractually obligated royalty and M&P payments as well as seeking to compel the  
23 franchisees to comply with their franchise agreement(s) by ordering product only from  
24 Submarina approved vendors, as well as seeking reimbursement to Submarina for  
25 approximately \$100,000 in spoilage costs the Debtor has incurred or will incur directly  
26 related to the actions of the franchisees involved.  
27  
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1 Finally, this adversary seeks to correct the fact that the Underlying Judgment(s)  
2 awarded by the Court in the First Adversary did not address the monies owed by the  
3 franchisees in breach from the date of trial forward. Since the Court confirmed Submarina's  
4 assumption of these Franchise Agreements as of the date of Trial, these franchisees are  
5 obligated under law to abide by the terms of their Franchise Agreements.

6 The amount sought pursuant to this cause of action is \$1,215,019.18 as of the date of  
7 the filing of the Second Adversary.

8  
9 **5. Default Judgments**

10 There were several franchisees that were named in the First Adversary who offered  
11 no defense, but were not included in the Court's award of monetary damages. Submarina is  
12 in the process of obtaining a default judgment against these Defendants in the amount of  
13 \$195,367.

14  
15 **6. The Freeland Adversary.**

16 Included in the Underlying Judgments awarded by the Court is a judgment against  
17 Scott Freeland in the amount of \$46,752.62. In November 2013 Scott Freeland, in direct  
18 violation of his Franchise Agreement, engaged in a transaction whereby he illegally and  
19 unilaterally changed the name of his physical store. Pursuant to the Freeland Franchise  
20 Agreement, and in common with all of Submarina's Franchise Agreements, when a franchise  
21 unit is terminated in advance of expiration of the Franchise Agreement, Submarina is entitled  
22 to recover the lost profits it would have received if the franchise had operated for the full  
23 term of the Franchise Agreement. As this breach of Scott Freeland's Franchise Agreement  
24 occurred practically on the eve of trial of the First Adversary, it could not be included in the  
25 First Adversary. Therefore, On December 18, 2013 Submarina filed an action seeking an  
26 award of the monies Submarina is entitled to due to this breach of contract. (Case 13-01223-  
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28



1 mkn Doc 1, the "Freeland Adversary").

2 Scott Freeland and the other defendants have failed to respond to this action, and on  
3 June 15, 2016 Submarina filed notice of entry of default. Ultimately, the Court rejected the  
4 entry of default due to insufficient service. Submarina anticipates reserving and refileing a  
5 request for default judgment. Pursuant thereto Submarina anticipates being awarded  
6 \$232,425.88.

#### 8 **H. Current and Historical Financial Conditions**

9 Submarina and Kerensa 1 have both filed Monthly Operating Reports post-petition;  
10 however, due to the large number of franchisees operating in breach of contract and the  
11 uncertainty as to how their non-compliance and significant monies owed will ultimately be  
12 resolved, the Monthly Operating Reports ("MOR" or "MORs") which are filed, in  
13 accordance with Federal Bankruptcy Reporting Guidelines and elements of Generally  
14 Accepted Accounting Principles (as best Debtors can comply) result in Balance Sheets and  
15 Income Statement Presentations which, while accurate to the best of the Debtors' knowledge,  
16 suffer significantly from the inability to reflect the unknown resolution of these significant  
17 legal and business matters. Specifically, the MORs, as per the Federal guidelines for  
18 producing these documents, includes in revenues the amounts due Submarina under contract  
19 from both paying and non-paying franchisees. Additionally, the current liabilities section of  
20 the balance sheet includes a significant contingent liability for spending on M&P monies  
21 which have not been received. The required format of the forms do not provide for the fact  
22 that Submarina has no contractual obligation to incur marketing and advertising expenses  
23 exceeding the M&P monies collected and the fact that M&P fund owes Submarina  
24 significant monies relating to Submarina incurring M&P costs in excess of M&P revenues in  
25 prior years. Since these matters are both the subject of ongoing litigation, collections  
26  
27  
28

1 activities and potential renewed settlement negotiation, it is impossible, with any accuracy or  
 2 precision, to integrate these myriad scenarios into a single static balance sheet.

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

4 Adversary	Judgment Summary
5 First Adversary	\$329,364.14 (Awarded) \$35,217.50 (collected)
6 Second Adversary	\$1,553,206.12
7 Freeland Action	\$232,425.88
8 Default Judgments	\$195,367

10  
 11 Since generally Submarina has required personal guarantees of performance to be  
 12 executed as a condition of granting a franchise, most of the awarded and pending judgments  
 13 are against both individuals and their franchises. While Submarina has made settlement  
 14 offers to those subject to Awarded Judgment and Supplemental Judgments 1 through 4, these  
 15 discussions have been nonproductive to date. Although there is no assurance as to the  
 16 collectability of any of these judgements. Submarina's best estimate is that:  
 17

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

23  
 24 The total face value of the awarded and projected judgments significantly exceeds the  
 25 creditor claims; however, the true value of these claims is uncertain.  
 26  
 27  
 28

1 Below is a balance sheet of Submarina<sup>3</sup> assuming the Plan is confirmed, and excluding  
 2 administrative and unsecured claims which are subject to treatment via the Plan.

3 **Submarina, Inc.**

4 *Projected Balance Sheet*

5 *Upon Plan Confirmation*

6 ASSETS <sup>4</sup>	
7	
8	Current Assets
9	Checking/Savings \$6,500.00
10	Accounts Receivable \$8,000.00
11	Other Current Assets \$2,500.00
12	Total Current Assets \$17,000.00
13	Fixed Assets \$65,000.00
14	Intangible Assets \$300,368.74
15	Non-Current Assets - Investments \$5,000.00
16	
17	TOTAL ASSETS \$404,368.74
18	
19	LIABILITIES
20	Current Liabilities
21	Accounts Payable \$6,000.00
22	CA State Accrued PTO \$20,900.50
23	Other Current Liabilities \$1,500.00
24	

25 <sup>3</sup> No balance sheet for Kerensa I is included because the value of Kerensa I is entirely based upon the value of  
 26 Submarina.

27 <sup>4</sup> This balance sheet does not reflect the numbers listed in Submarina's latest Monthly Operating Report (which  
 28 was filed on 10/20/16 as of this Disclosure Statement) which reflects total assets of \$1,386,826. This  
 discrepancy is due to the assignment of collection rights of Submarina as Judgment Creditor to Kerensa & Co.  
 upon Plan Confirmation.

1 TOTAL CURRENT LIABILITIES \$28,400.50

2

3

LONG TERM LIABILITIES

4

Gift Certificates \$41,768.24

5

TOTAL LIABILITIES \$70,168.74

6

7

EQUITY \$334,200

8

Notes:

9

- Current Assets comprise bank account balances, franchise and supplier receivables.

10

All numbers based on average balances during month.

11

- Fixed Assets include the value of the physical store assets from the Melrose store and additional physical assets including computers office equipment and the like.

12

13

- Intangible assets are valued in accordance with GAAP, and based on estimated fair market value.

14

15

- Accounts payable and other current liabilities are based on average operating balance.

16

17

- There are no long-term liabilities except the Administrative professionals, the proposed Zeller Promissory Note, and gift certificates outstanding (perpetual).

18

19

- Pre-petition member interest in Kerensa 1 will be extinguished upon Plan confirmation with SSC purchasing new member interest of Kerensa 1. Kerensa 1 will acquire 312,200,000 new shares of Submarina stock.

20

21

22

23

Submarina anticipates that income from operations will be sufficient to maintain post-

24

Effective Date operations. In addition, Submarina has an expectation that there will be at

25

least some net recovery from the Adversaries. Such net recoveries will be paid towards

26

27

28

1 amounts owed to Kerensa & Co., except that (1) any excess net recovery over the amount  
2 due to Kerensa & Co. shall be paid to creditors in the following order, first to general  
3 administrative claims, second to Zeller until the Zeller Promissory Note is fully satisfied, and  
4 third to Class 3 Unsecured Creditors.

5 **I. Operation, Business and Cash Flow of Submarina upon Plan**  
6 **Confirmation**

7  
8 While there are significant unknowns as to what any of the franchisees whom  
9 Submarina has and anticipates obtaining judgments against will do going forward,  
10 Submarina over the past several years has managed to pay its employees and support its  
11 franchises. This includes introducing a new state of the art Point of Sale (“POS”) system with  
12 an integrated customer loyalty functionality, increase franchise product offerings, renegotiate  
13 our supply chain to enhance the quality of our offerings, make significant additions to our  
14 trademark portfolio and recently Submarina resumed radio advertising in the greater San  
15 Diego area on the largest sports radio station in the market, as well as newspaper advertising  
16 in the area’s largest newspaper, the San Diego Union Tribune.

17  
18 Additionally, with Court approval, Submarina engaged the services of an attorney  
19 whose principal expertise is facilitating franchisors selling new franchisees to expand their  
20 footprint. Following his advice and general industry practice Submarina formed a subsidiary,  
21 which is currently in negotiations to sell franchises. It is anticipated that any profits from the  
22 sale of new franchises or new franchisee payments pursuant to their franchise contracts will  
23 go towards operation of a reorganized Submarina, with the exception of 8% of royalties  
24 which will go to general administrative creditors pursuant to the Plan. Since SSC has agreed  
25 to make a new valuable and essential contribution to the Plan, Submarina will, on day 1 of  
26  
27  
28

1 the Effective Date of the Plan, eliminate over \$6,500.00<sup>5</sup> of monthly interest expense.  
 2 Accordingly, projecting the revenues received from currently paying franchisees and reduced  
 3 overhead Submarina anticipates that it will have positive operating cash flow on the  
 4 Effective Date of the Plan (see chart below)<sup>6</sup>.

5 **Submarina, Inc.**

6 Projected Cash Flow November 2016 through October 2017

	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17
<b>Income</b>												
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)	8,000	800	800	10,000	800	2,800	8,000	800	2,800	8,000	5,800	800
<b>Total Income</b>	<b>\$ 39,928</b>	<b>\$ 32,728</b>	<b>\$ 32,119</b>	<b>\$ 41,928</b>	<b>\$ 32,119</b>	<b>\$ 34,728</b>	<b>\$ 39,928</b>	<b>\$ 30,900</b>	<b>\$ 34,728</b>	<b>\$ 39,319</b>	<b>\$ 37,728</b>	<b>\$ 32,119</b>
<b>Expense</b>												
Administrative Claims Payments	2,044	2,044	2,005	2,044	2,005	2,044	2,044	1,928	2,044	2,005	2,044	2,005
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										
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 External (Est)	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000
Postage & Delivery	75	75	75	75	75	75	75	75	75	75	75	75
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	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500
Legal Fees			1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500
<b>Total Expenses</b>	<b>\$ 33,267</b>	<b>\$ 34,267</b>	<b>\$ 34,331</b>	<b>\$ 34,767</b>	<b>\$ 34,331</b>	<b>\$ 34,767</b>	<b>\$ 34,767</b>	<b>\$ 33,458</b>	<b>\$ 34,767</b>	<b>\$ 34,331</b>	<b>\$ 34,767</b>	<b>\$ 34,331</b>
<b>Monthly Net Cash Flow</b>	<b>\$ 6,661</b>	<b>\$ (1,539)</b>	<b>\$ (2,212)</b>	<b>\$ 7,161</b>	<b>\$ (2,212)</b>	<b>\$ (39)</b>	<b>\$ 5,161</b>	<b>\$ (2,558)</b>	<b>\$ (39)</b>	<b>\$ 4,988</b>	<b>\$ 2,961</b>	<b>\$ (2,212)</b>
<b>Cumulative Net Cash Flow</b>	<b>\$ 6,661</b>	<b>\$ 5,121</b>	<b>\$ 2,909</b>	<b>\$ 10,069</b>	<b>\$ 7,857</b>	<b>\$ 7,818</b>	<b>\$ 12,978</b>	<b>\$ 10,420</b>	<b>\$ 10,381</b>	<b>\$ 15,368</b>	<b>\$ 18,329</b>	<b>\$ 16,117</b>

Notes: These management projections are intended to be baseline conservative projections. They exclude monies received from judgments and sale of new franchisees.

While Submarina anticipates receiving revenues for both of these events, since we do not know timing or amounts, they are excluded from this analysis.

While for budgeting purposes marketing expense is budgeted as a constant monthly amount, most actual marketing expenses will vary with significantly more spent in some months and less spent in others.

16 **J. Value of the Debtors.**

17 Preliminarily, Kerensa 1's only asset of value is its ownership of Submarina stock;  
 18 therefore, any analysis of the value of Kerensa 1 is tied to a valuation of Submarina. As of  
 19 the date of filing this Plan, November 22, 2016 the Debtor has:

- 20 • 30 open franchise units, 15 of which are currently making their contractually
- 21 obligated payments to the Debtor on a timely basis
- 22 • been awarded specific monetary judgments against most of the non-compliant
- 23
- 24
- 25

26 <sup>5</sup> Pursuant to the terms of the DIP financing, as of November 1, 2016, the interest rate rose from 20% to 25%  
 27 per month. This increased the monthly interest payments from \$5,100 per month to \$6,504.17 per month.

28 <sup>6</sup> The projected cash flow includes a management fee of \$3,500 and management expenses of \$2,500. These  
 categories are the salary and business expenses of the manager of the reorganized Debtors.

- 1 franchisees, but these awards represent approximately 15% of the total owed
- 2 • Adversary Proceedings are pending in the Court which should result in an increase of
  - 3 approximately six times the already awarded Judgments against non-compliant franchisees
  - 4 • Submarina has no knowledge as to whether any, some, or all of the non-compliant
  - 5 franchisees will chose to become compliant and accept a payment plan, voluntarily turn over
  - 6 their franchise to the debtor, or leave Submarina no choice but to aggressively seek recovery.
  - 7
  - 8 • Submarina has no knowledge as to what percentage of anticipated total judgments
  - 9 will ultimately be awarded by the Court, and what percentage of that award will prove to be
  - 10 collectable.

11 In addition to all the material uncertainties listed above, Submarina faces

12 unprecedented unknowns in the business environment. The NLRB has recently made rulings

13 and undertaken actions to deem that a franchisor is a joint employer of the individually

14 owned and operated franchise units. Additionally several cities and states, with California

15 leading the way, have implemented dramatic increases in the minimum wage. These actions

16 make business as a casual quick serve industry and its franchisor/franchise model more

17 difficult. They may cause franchisees to fail and serve as an impediment to sales of new

18 franchises.

19

20 The business of Submarina is faced with unprecedented uncertainty, which makes it

21 impossible to place any meaningful value on the business. The principal assets of Submarina

22 are intangible. Their value is directly linked to the free cash flow the business generates.

23 Submarina does not know if next year it will have 14 or 31 franchise units operating in

24 compliance with their Franchise Agreement and making timely payments. In addition, as

25 each franchise agreement reaches its natural conclusion, franchisees may or may not agree to

26 extend their contracts, however Submarina anticipates the ability to sell at least as many new

27

28

1 franchises as may leave the franchise network, resulting in stability.

2 From 2009 through date of filing Kerensa 1 and Submarina have attempted to raise  
3 outside equity. These efforts failed. Post-petition Submarina attempted to secure a DIP loan  
4 from third parties. This too was met with rejection. Post-Petition Submarina has received no  
5 credible acquisition offers. Additionally, in spite of the exclusive period ending in 2013 no  
6 third party or creditor has come forward to propose any plan of reorganization.  
7

8 Fortunately, as illustrated in the projected balance sheet and income statement, the  
9 proposed Plan is viable and in the best interest of all creditors. Submarina is a viable  
10 operating business post plan confirmation without the need to borrow additional money, file  
11 another petition for bankruptcy relief, or further liquidate.

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

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

15 As required by the Code, the Plan places claims and equity interests in various classes  
16 and describes the treatment that each class will receive. The Plan also states whether each  
17 class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your  
18 recovery will be limited to the amount provided by the Plan.  
19

20 **B. Unclassified Claims**

21 Certain types of claims are automatically entitled to specific treatment under the  
22 Code. They are not considered impaired, and holders of such claims do not vote on the Plan.  
23 They may, however, object if, in their view, their treatment under the Plan does not comply  
24 with that required by the Code.  
25

26 1: Super-Priority Claims.

27

28



1 Each holder of a Super Priority Claim under 11 U.S.C. § 364(c)(1) will be paid in full  
2 on the Effective Date of this Plan. The only claim in this category consists of the claim of  
3 Kerensa 2 in the amount of \$ 312,200.

4 Total Super-Priority Claims: \$312,200.

5 2: General Administrative Claims.

6 Each non-insider holder of an administrative expense claim allowed under § 503 of  
7 the Code will be paid in full on the Effective Date of this Plan or upon such other terms as  
8 may be agreed upon by the holder of the claim and the Debtors. As the Debtors are current  
9 in their tax payments and do not believe that there are any holders of a priority tax claim  
10 under 11 U.S.C. § 507(a)(8), the only such claims consist of administrative costs and  
11 expenses of administering the Debtor's Chapter 11 case which are allowed under 11 U.S.C. §  
12 507(a)(2). Normally, all such expenses must be paid on the effective date of the Plan,  
13 however, the claimants may agree to different treatment. Here, all such claimants have  
14 agreed to be paid, pari passu, from a pledge of 8% of the Royalties collected from Submarina  
15 Franchisees going forward after the Effective Date, until all such claims are paid 100%.  
16 Assuming the claims have not been paid in full at the end of 5 years, a balloon payment for  
17 the remaining amount will be paid to this class. In addition, general administrative claims  
18 may be paid from the net proceeds of the adversaries assuming such proceeds exceed  
19 \$675,000.  
20  
21  
22

23 These expenses are estimated as follows:

- 24 1. Professional Fee of Johnson & Gubler, PC

25 (most previously approved by Court - approx. \$30,000 will require court approval)

26 \$145,000.00 (estimated)

- 27 2. Professional Fee of Lounsbury Ferguson Altona & Peak LLP  
28

1 (Will require approval by the Court)

2 \$55,000 (estimated)

3 3. Office of the U.S. Trustee Fees \$1,325.00 Estimated due January 31, 2017.

4 Will be paid when due.

5 Total General Administrative Claims: \$191,325

6 3: Insider Priority Claims.

7  
8 By agreement of the parties, the Insider Priority Claims will be satisfied by an  
9 assignment of the net proceeds of the Adversaries, as more fully described in Article  
10 II(G)(2), (4), (5), and (6), above. However, \$35,217.50 already collected from JTJM, Inc. in  
11 the First Adversary is excluded from this assignment. In addition, any net proceeds collected  
12 from the Adversaries which exceed \$675,000 shall be paid in the following order, first to  
13 general administrative claims, second to class 1 claimants until such time as the Zeller  
14 Promissory Note is fully satisfied, third, to Class 3 claimants until such time as all Class 3  
15 claims are fully satisfied. The source of this claim is the past due fees for management  
16 services provided from Kerensa & Co., Inc., ("Kerensa & Co.") to Submarina by contract. It  
17 is estimated that \$675,000 is currently due under this contract.

18  
19 Total Insider Priority Claims: \$675,000.

20 **C. Classified Claims**

21 Class 1: Common Unsecured Claims.

22  
23 All creditors in Class 1 shall be paid through a promissory note, secured by all assets  
24 of Kerensa 1 and Submarina, with a face value of \$300,000 due three years after the  
25 Effective Date, which shall be deemed paid in full if \$100,000 is paid within one year of the  
26 Effective date, or \$150,000 within two years of the Effective Date. No interest will accrue  
27 through the maturity date of the note. Class 1 consists of the unsecured claim of Zeller,  
28

1 which claim amounts to \$431,151.67 as of March 4, 2013.

2 Class 1 is impaired by the Plan.

3 Total Common Unsecured Claims \$431,151.67

4 Class 2: Administrative Convenience Claims

5 Unsecured Claims of \$1,000 or less (or claims held by claimants who elect to reduce  
6 their Unsecured Claim to \$1,000) shall be classified as Class 2 Administrative Convenience  
7 Claims. Administrative Convenience Claims shall receive a single payment equal to 50% of  
8 their allowed claims, within 30 days of the Effective Date. Debtor's schedules indicate a  
9 total of 10 claims in this category holding aggregate claims of \$1,988.

11 Class 3: General Unsecured Claims

12 Class 3 consists of all other unsecured creditors of the Debtors. General Unsecured  
13 Claims are not secured by property of the estate and are not entitled to priority under §507(a)  
14 of the Code. All members of Class 3 shall receive a pro rata distribution of \$35,217.50, less  
15 payments made to Class 2, in cash paid within 30 days of the Effective Date. In addition,  
16 Unsecured Creditors have the potential to receive a further distribution of from the proceeds  
17 of the Adversaries.

18  
19 Debtor estimates that the amount of Class 3 Claims is \$700,000.

20 Class 3 is impaired by this Plan.

21  
22 **C. Means of Implementing the Plan**

23 **1. Source of Payments**

24 Payments and distributions under the Plan will be funded by the purchase agreement  
25 between and among SSC, Kerensa 1, Submarina, and Zeller, by which SSC will purchase  
26 100% of the equity of Kerensa 1 in exchange for \$312,200 paid from SSC to Kerensa 1, plus  
27 a promissory note, executed by Kerensa 1 in favor of Zeller; guaranteed by Submarina; and  
28

1 secured by all assets of both Kerensa I and Submarina; with a face value of \$300,000 and a  
2 maturity date three years from the Effective Date of the Plan, which will be deemed satisfied  
3 in full if \$100,000 is collected within one year of the Effective Date of the Plan, or \$150,000  
4 is collected within two years of the Effective Date of the Plan.

5 Additional payments and distributions shall be funded by the assignment of the net  
6 proceeds of the Adversaries to Kerensa & Co., with the exception of \$35,217.50 collected  
7 from defendant JTJM Inc.

8 Payments consisting of 8% of all royalties collected from Submarina Franchisees will  
9 fund the Plan, such payments will be made until all claims of the administrative professionals  
10 of the Debtors are 100% satisfied. Assuming the claims have not been paid in full at the end  
11 of 5 years, a balloon payment for the remaining amount will be paid to this class.  
12

13 The Plan also calls for distribution of net recoveries from the Adversaries in excess  
14 of \$675,000, first to general administrative creditors until such claims are fully satisfied,  
15 then to Class 1 claimants until the Zeller Promissory Note is fully satisfied, then to Class 3  
16 claimants until all such claims are satisfied.  
17

## 18 **2. Post-confirmation Management**

19 The post-confirmation manager of the Kerensa I shall be SSC. The post-  
20 confirmation manager of Submarina shall be Kerensa I. The Post-Confirmation Manager  
21 will be compensated from funds separate and apart from those pledged to creditors under this  
22 Plan.  
23

### 24 **D. Risk Associated With the Plan**

25 While the Debtors expect to have positive post-confirmation cash flow, certain  
26 variables inherent to business will govern the Debtors' ultimate ability to operate at a  
27 positive cash flow. Such risks include economic downturn, unfavorable judgments, or other  
28

1 unforeseeable circumstances. Such risks may ultimately cause Creditors to realize less than  
2 they would otherwise be entitled to under this Plan. In addition, the extent and timing of the  
3 collection of Judgment, and the attendant costs, are uncertain.

4 **E. Executory Contracts and Unexpired Leases**

5 The Plan lists all executory contracts and unexpired leases that the Debtors will  
6 assume under the Plan, which includes all Franchise Agreements with the Franchisees. Other  
7 executory contracts and unexpired leases related to the operation of the Property may be  
8 assumed. Assumption means that the Debtors have elected to continue to perform the  
9 obligations under such contracts and unexpired leases, and to cure defaults of the type that  
10 must be cured under the Code, if any. Other than Franchise Agreements, which are all to be  
11 accepted, unless an executory contract is explicitly assumed, it shall be deemed rejected.  
12

13 **F. Tax Consequences of Plan**

14 Creditors and Equity Interest Holders Concerned with How the Plan May Affect  
15 Their Tax Liability Should Consult with Their Own Accountants, Attorneys, And/or  
16 Advisors.  
17

18 The following are the anticipated tax consequences of the Plan:

19 **1. Tax consequences to the Debtors of the Plan:**

20 Kerensa 1 is an LLC. Accordingly, it is a pass through disregarded entity for tax  
21 purposes. Since both Kerensa 1 and SSC member's interest is held by the same parties, the  
22 members are effectively increasing their ownership of Submarina from 75.95% to 99.5%.  
23 This increase in ownership pursuant to a plan of reorganization falls under 26 I.R.C. §381(a)  
24 2 et seq. §386(g) and as such has no impact on Submarina. Additionally, and related thereto,  
25 Submarina has sufficient accumulated net operating losses such that the settlement of debts  
26 at less than face value should not cause Submarina to incur a tax liability on the  
27  
28

1 confirmation of the Plan; however, it will significantly reduce the net operating loss  
2 carryforward.

3 **2. Tax consequences to Creditors of the Plan:**

4 Neither the Debtors nor the Proponent of the Plan have any knowledge how any  
5 individual creditor has previously treated their receivable from the Debtors. Additionally  
6 there is no certainty as to ultimate amount or timing of recovery under the Plan.  
7 Accordingly, each creditor is advised to contact their respective advisor to determine their  
8 individual treatment of any amounts they receive under this Plan.  
9

10 **3. Tax Consequences to Pre-Petition Equity Holders.**

11 Upon Plan confirmation, any existing claims to the ownership or economic interest in  
12 Kerensa 1 will be eliminated and the value of Pre-Petition Submarina common stock will  
13 become negligible. Accordingly, to the extent that any parties holding Pre-Petition member  
14 interest in Kerensa 1 or equity interests in Submarina had basis in such securities they should  
15 be recognizing a loss. As to the characterization and timing of that recognition they should  
16 consult their advisor.  
17

18 **IV. CONFIRMATION REQUIREMENTS AND PROCEDURES**

19 To be confirmable, the Plan must meet the requirements listed in §§1129(a) or (b) of  
20 the Code. These include the requirements that: the Plan must be proposed in good faith; at  
21 least one impaired class of claims must accept the Plan, without counting votes of insiders;  
22 the Plan must distribute to each creditor and equity interest holder at least as much as the  
23 creditor or equity interest holder would receive in a Chapter 7 liquidation case, unless the  
24 creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible.  
25 These requirements are not the only requirements listed in §1129, and they are not the only  
26 requirements for confirmation.  
27  
28

1           **A. Who May Vote or Object**

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

4           Many parties in interest, however, are not entitled to vote to accept or reject the Plan.  
5 A creditor or equity interest holder has a right to vote for or against the Plan only if that  
6 creditor or equity interest holder has a claim or equity interest that is both (1) allowed or  
7 allowed for voting purposes and (2) impaired.  
8

9           In this case, the Plan Proponent believes that Class 2, Class 3, Class 4, and Class 5  
10 are impaired. Classes 1 and 3 are insiders and are not entitled to vote. Classes 1, 2, and 3 are  
11 administrative/priority claims and are not entitled to vote. Therefore, the holders of claims  
12 and interests in Classes 4, and 5 are the only creditors entitled to vote to accept or reject the  
13 Plan.  
14

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

16           Only a creditor or equity interest holder with an allowed claim or an allowed  
17 equity interest has the right to vote on the Plan. Generally, a claim or equity interest is  
18 allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the  
19 claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has  
20 filed a proof of claim or equity interest, unless an objection has been filed to such proof of  
21 claim or equity interest. When a claim or equity interest is not allowed, the creditor or equity  
22 interest holder holding the claim or equity interest cannot vote unless the Court, after notice  
23 and hearing, either overrules the objection or allows the claim or equity interest for voting  
24 purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.  
25

26           The deadline for filing proofs of claim against Submarina was March 6, 2013 (for  
27 non-governmental creditors) and June 6, 2013 (for government units). The deadline for  
28

1 filing proofs of claim against Kerensa I was January 11, 2012 (for non-governmental  
2 creditors) and April 1, 2012 (for governmental units). Any claims that were not scheduled,  
3 that were scheduled as “disputed,” or for which a proof of claim was not timely filed shall be  
4 deemed to be disallowed.

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

6 As noted above, the holder of an allowed claim or equity interest has the right  
7 to Vote only if it is in a class that is impaired under the Plan. As provided in §1124 of the  
8 Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual  
9 rights of the members of that class.  
10

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

12 The holders of the following five types of claims and equity interests are not  
13 entitled to vote:  
14

- 15 1. Holders of claims and equity interests that have been disallowed by an order of the  
16 Court;
- 17 2. Holders of other claims or equity interests that are not “allowed claims” or “allowed  
18 equity interests” (as discussed above), unless they have been “allowed” for voting  
19 purposes.
- 20 3. Holders of claims or equity interests in unimpaired classes;
- 21 4. Holders of claims entitled to priority pursuant to §§507(a)(2), (a)(3), and (a)(8) of the  
22 Code; and
- 23 5. Administrative expenses.  
24

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

27 **B. Votes Necessary to Confirm the Plan**



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

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

7  
8 A class of claims accepts the Plan if both of the following occur: (1) the  
9 holders of more than one-half ( $\frac{1}{2}$ ) of the allowed claims in the class who vote, cast their  
10 votes to accept the Plan, and (2) the holders of at least two-thirds ( $\frac{2}{3}$ ) in dollar amount of  
11 the allowed claims in the class who vote, cast their votes to accept the Plan.

12 **2. Treatment of Non-accepting Classes**

13  
14 Even if one or more impaired classes reject the Plan, the Court may  
15 nonetheless confirm the Plan if the non-accepting classes are treated in the manner  
16 prescribed by §1129(b) of the Code. A plan that binds no accepting classes is commonly  
17 referred to as a “cram down” plan. The Code allows the Plan to bind no accepting classes of  
18 claims or equity interests if it meets all the requirements for consensual confirmation except  
19 the voting requirements of §1129(a)(8) of the Code, does not “discriminate unfairly,” and is  
20 “fair and equitable” toward each impaired class that has not voted to accept the Plan.  
21

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

24 **C. Liquidation Analysis**

25 To confirm the Plan, the Court must find that all creditors and equity interests who do  
26 not accept the Plan will receive at least as much under the Plan as such claim and equity  
27 interest holders would receive in a Chapter 7 liquidation. In a liquidation, a Trustee would  
28

1 be required to liquidate the Debtor's assets. Those assets consist primarily of judgments  
2 against the non-compliant franchisees. There is very little personal property other than  
3 accounts receivable from which creditors could be paid. Liquidation is believed to be  
4 significantly less favorable to creditors as continued operation of the business will  
5 significantly increase the creditors' chances of being paid in full and increase the chance that  
6 creditors will be paid more quickly than through a liquidation.  
7

8 Under the Plan all administrative claims are paid in full, and unsecured creditors  
9 receive a greater distribution than they would under a Chapter 7 liquidation. Most  
10 importantly, given the current operation of the underlying business, the ongoing litigation  
11 and the years of internal strife it is highly unlikely that any other third party will make an all  
12 cash offer greater than the amount being offered by SSC<sup>7</sup>. Amounts owed to holders of  
13 claims entitled to priority under 11 USC §§507(a)(2), (a)(3) and the Super Priority of DIP  
14 Lender under 11 USC §364(c) amounts to a total of \$962,200. The Plan is able to satisfy all  
15 of these claims to each claimant's satisfaction and is also able to make guaranteed  
16 distributions to unsecured creditors. Under a Chapter 7 liquidation these claims plus  
17 administrative fees of the US Trustee will be paid in full before any payments are made to  
18 the unsecured creditor class. Thus under a liquidation it almost a virtual certainty that the  
19 unsecured creditor class will receive nothing. Please see the below side by side comparison:  
20  
21  
22  
23  
24  
25

26 \_\_\_\_\_  
27 <sup>7</sup> Indeed, though the exclusivity period has passed years ago, no party in interest has yet to propose a plan of  
28 reorganization which includes an offer to purchase the Debtors' assets.

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Chapter 7 Liquidation	Plan of Reorganization
Assets of Submarina/Kerensa estimated at \$1,191,505.26 <sup>8</sup>	\$312,200 received from SSC
(\$312,200) to Kerensa 2 for Priority DIP loan (\$35,745.16) US Trustee Fees	(\$312,200) to Kerensa 2 for Priority DIP loan (\$1,325.00) paid in US Trustee fees, estimated due January 31, 2017. Will be paid when due from current checking/savings of \$6,500 or other available source.
(\$675,000) to Kerensa & Co. administrative priority	(\$675,000) administrative priority claim of Kerensa & Co. satisfied in full via assignment of collection rights of First Adversary (includes potential increase of collection rights based on pending motions to increase award amounts)
(\$200,000) Administrative professionals	(\$200,000) paid to Administrative professionals from royalties of company at a rate of \$2,000 per month with an estimated royalty collection of \$25,000 per month. A balloon payment will be made at the end of 5 years to ensure full payment of any amounts still owing.

<sup>8</sup> This value reflects the value of Submarina as the value of its equity, \$334,200 \* 80% to reflect auction pricing, plus a 40% recovery on all possible litigation to reflect the uncertainty of those actions as well as the legal expenses involved.

1 2 3 4 5	Total remaining to unsecured creditors (\$31,439.9)	\$300,000 face value promissory note to Zeller, \$35,217.50 distributed to General Unsecured creditors.
6 7 8 9 10	Estate is administratively insolvent in a Chapter 7 liquidation, super-priority creditors will receive a full recovery, priority creditors will be paid, pro rata, from remaining funds, unsecured creditors will receive \$0	Estate satisfies all super-priority and administrative priority claims in full. Unsecured creditors receive a total distribution of between \$135,217.50 and \$335,217.50

#### 6 7 **D. Feasibility**

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

##### 11 **1. Ability to Initially Fund Plan**

12 As the Plan seeks to pay in full the \$312,200 Super-Priority DIP loan, fully  
13 satisfies the \$675,000 management fee of Kerensa & Co., and arranges for favorable terms  
14 for payment of the administrative professionals, the Plan Proponent believes that the Debtors  
15 will have enough positive cash flow post-confirmation to pay all the claims and expenses that  
16 are entitled to be paid on the Effective date, or Submarina will make arrangements with the  
17 holders of Administrative Claims on how their claims will be paid.  
18

##### 19 **2. Ability to Make Future Plan Payments and Operate Without Further** 20 **Reorganization**

21 The Plan Proponent must also show that it will have enough cash over the life  
22 of the Plan to make the required Plan payments. In the case of this Plan, by obtaining  
23 favorable terms of repayment with all creditors, and substantially increasing operating cash  
24 flow by eliminating in excess of \$6,500 per month of interest costs on the DIP loan. A  
25 schedule of Submarina's projected Balance Sheet and Projected Cash is included in this  
26  
27  
28

1 Disclosure Statement (see Pages 18 and 22).

2 **3. Confirmation Requirements**

3 The Plan is Fair and Equitable to the DIP Lender.

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

5 The Lender Will Receive the Indubitable Equivalent of Its Claim

6 The DIP Lender is entitled to the indubitable equivalent of its claim. 11 U.S.C.

7 §361(3). This is provided by the payment, in full at the Effective Date.

9

10

11

**V. EFFECT OF CONFIRMATION OF PLAN**

12

**A. Discharge**

13

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

22

23

**B. Modification of Plan**

24

The Plan Proponent may modify the Plan at any time before confirmation of the Plan.

25

However, the Court may require a new disclosure statement and/or re-voting on the Plan.

26

27

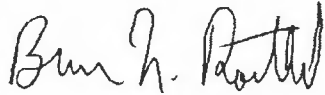
**C. Final Decree**

28

1           Once the initial Effective Date payments have been made the Plan Proponent, or such  
2 other party as the Court shall designate in the Plan Confirmation Order, shall file a motion  
3 with the Court to obtain a final decree to close the case. The Debtors intend to file a motion  
4 for a final decree as soon as payments to the creditors begin under the Plan. Alternatively,  
5 the Court may enter such a final decree on its own motion.  
6

7  
8           Respectfully submitted,

9           Kerensa Investment Fund 2, LLC  
10

11 

12 By: \_\_\_\_\_  
13 Bruce Rosenthal, Managing Member  
14 The Plan Proponent  
15

16 Respectfully submitted this 22<sup>nd</sup> day of September, 2016.  
17

18 MORRIS POLICH & PURDY, LLP

19 

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28

# **EXHIBIT “1”**

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 6 *Attorneys for Kerensa Investment Fund 2, LLC*

7  
 8 **UNITED STATES BANKRUPTCY COURT**  
 9 **DISTRICT OF NEVADA**

<p>10 In Re:          11 SUBMARINA, INC.          12 KERENSA INVESTMENT FUND 1, LLC,          13 Debtors.</p>	<p>Case No.: 12-22097-mkn (Lead Case) Jointly          Administered with Case No.: 11-24352-          MKN          Chapter 11    <b>PLAN OF REORGANIZATION          PROPOSED BY CREDITOR KERENSA          INVESTMENT FUND 2, LLC</b></p>
---	--

16  
 17 **ARTICLE I**  
 18 **SUMMARY**

19 This Joint Plan of Reorganization of Debtors, Submarina, Inc. and Kerensa  
 20 Investment Fund, LLC (the "Plan") under Chapter 11 of the Bankruptcy Code (the "Code")  
 21 proposes to pay creditors of SUBMARINA, INC., ("Submarina") and Kerensa Investment  
 22 Fund 1, LLC., ("Kerensa 1") (together, Submarina and Kerensa 1 are known as the  
 23 "Debtors"). The Plan is proposed by Kerensa Investment Fund 2, LLC ("Kerensa 2").

24  
 25 Submarina is a food franchisor. It owns trademarks, copyrights, artwork, technical  
 26 knowhow, processes (including operations manuals, and unique designs which consist of,  
 27 inter alia: menu items, graphics, and names). Submarina restaurants possess a unique flavor  
 28



1 profile and all restaurants associated with a Submarina® are casual quick service restaurants.  
2 Submarina also owns 30 franchise agreements of currently operating units (collectively the  
3 “Property”). Units utilizing Submarina’s assets have been advertising and selling authorized  
4 product to the general public for approximately 40 years.

5 The principal source of revenues for Submarina consists of weekly and monthly  
6 contractually obligated franchisee payments of royalties and contributions to the marketing  
7 and promotional fund pursuant to the Franchise Agreements signed for each store. As more  
8 fully discussed herein Submarina is currently receiving regular payments from 15  
9 franchisees. On April 15, 2016 the United States Bankruptcy Court, District of Nevada  
10 (the “Court”) entered a judgement in favor of Submarina in Adversary Proceeding No. 13-  
11 01051 (the “First Adversary) which adjudicated a dispute between Submarina and certain  
12 franchisees and awarding judgments to Submarina of \$329,364.14.  
13  
14

15 Kerensa 1 is an investment entity whose only asset of value is the ownership of  
16 approximately 2,198,950 shares of Submarina stock.

17 At this time, no secured claims exist as to either debtor. No secured claims have ever  
18 existed as to Kerensa 1, and the following secured claims have been resolved as to  
19 Submarina:

- 20 • Great American Leasing filed Claim No. 1 in the amount of \$2,788.08 which was  
21 withdrawn after their claim was paid in full from the proceeds of the DIP financing.  
22
- 23 • SD Subbros, Inc. filed Claim No. 6 in the amount of \$250,614.74 which has been  
24 paid in full from both DIP funds and royalties from the Subbros, Inc. and SD Subbros  
25 Franchises.

26 The Plan provides for payment of administrative claims consisting of administrative  
27  
28

1 post-petition professional fees; other administrative post-petition fees and expenses; the  
2 administrative insider claims of Kerensa & Co., Inc. (“Kerensa & Co.”); and the Court  
3 approved Debtor in Possession (“DIP”) financing super-priority insider claim of Kerensa 2.

4 The Plan provides for three classes of unsecured claims, first, Kerensa 1 and  
5 Submarina have one common claim; Claim No. 2 in the Kerensa 1 Claims Register is the  
6 claim of Marie Zeller (“Zeller”) for \$338,000.00. Zeller also holds Claim 19 in the  
7 Submarina Bankruptcy Case in the amount of \$431,151.67. Though both claims are for  
8 different amounts, the claims are both based upon the same underlying promissory note in  
9 favor of Zeller and the subsequent arbitration on that promissory note which judgment was  
10 entered on May 22, 2012. This award is payable jointly and severally from the Debtors.  
11 (Zeller’s claims are known as the “Common Claim”).  
12

13 Second, a class of small unsecured claims owing by Submarina (the “Administrative  
14 Convenience Class”).  
15

16 Third, a general class of unsecured creditors of Submarina<sup>1</sup> (the “General Unsecured  
17 Class”). While there is potential in this Plan for recovery to creditors, since there is no  
18 current ability to pay claims in full, these classes are impaired.

19 Since all secured claims have been satisfied during the pendency of the bankruptcy  
20 case there are no Pre-Petition secured claims outstanding.  
21

22 The Plan also classifies the pre-petition equity holder’s ownership of Kerensa 1,  
23 which will be extinguished on Plan Confirmation. Kerensa 1 will contribute new value to  
24

---

25 <sup>1</sup> Though some of these claims are scheduled as unsecured claims on Kerensa 1’s schedules in addition to the  
26 claim of Zeller, These claims are truly claims of Submarina and not Kerensa. All such creditors are also  
27 scheduled on Submarina’s schedules, and as to these creditors, the schedules of Submarina are more accurate  
28 and shall control and supersede Kerensa 1’s schedules. The specific creditors who should be removed from  
Kerensa 1’s schedules are: Daniel Osborn, David Ostfeld, Joe Hendrix, and Michael Marcus.

1 Submarina that is substantial and essential to Submarina's reorganization. Sub Solutions  
2 Company, LLC ("SSC") will purchase a new 100% member interest in Kerensa 1, in  
3 exchange for \$312,200 and a promissory note, due three years from the Effective Date, in  
4 favor of Zeller for a face value of \$300,000 secured by the assets of Kerensa 1, which will be  
5 considered paid in full if \$100,000 is paid within one year of the Effective Date, or if  
6 \$150,000 is paid within two years of the effective date (the "Zeller Promissory Note").  
7

8 Kerensa 1 will then contribute \$312,200 to Submarina, in exchange for  
9 312,200,000 shares of Submarina stock. Submarina will pay administrative costs according  
10 to the following schedule.

11 First, a cash payment of \$312,200 to Kerensa 2, to satisfy the principal outstanding  
12 balance, \$312,200 as of November 21, 2016, on the DIP loan.  
13

14 Second, Submarina will pay 8% of post Effective Date royalties collected from  
15 Franchisees to pay general administrative claims, until such claims are paid in full.  
16 Assuming the claims have not been paid in full at the end of 5 years, a balloon payment for  
17 the remaining amount will be paid to this class.

18 Third, Submarina will assign the net proceeds of pending litigation to Kerensa & Co.  
19 in satisfaction of its post-petition administrative claim, including Adversary Proceeding No.:  
20 13-01051 (the "First Adversary") which adjudicated a dispute between Submarina and certain  
21 franchisees and awarded judgments to Submarina totaling \$329,364.14; Adv. Proceeding  
22 No.: 16-01095-MKN) (the "Second Adversary") seeking that the amount awarded in the  
23 First Adversary be increased based upon the Franchisees' continued breach of contract  
24 during the time the First Adversary was under submission, and damages for new breaches of  
25 contract against the same and other defendant Franchisees; and Adversary Proceeding No.:  
26 13-01223-MKN (the "Freeland Adversary), seeking an award of damages from Scott  
27  
28

1 Freeland and other defendants due to breaches of contract separate from those claimed in  
2 either the First or Second Adversary. (Together, the First Adversary, the Second Adversary,  
3 and the Freeland Adversary are known as the “Adversaries”). However, \$35,217.50 already  
4 collected in the First Adversary from Defendant JTJM Inc. on November 7, 2016, will not be  
5 so assigned. The assignment of the net proceeds of the Adversaries will continue until such  
6 time as Kerensa & Co. has received \$675,000.

7  
8 Submarina will pay unsecured claims according to the following schedule.

9 First, Submarina will guarantee the Zeller Promissory note, which guarantee will be  
10 secured by all assets of Submarina.

11 Second, a cash payment of 50% of the total value of all claims will be made to the  
12 members of the Administrative Convenience Class on the Effective Date.

13 Third, \$35,217.50, minus the amounts paid to the Administrative Convenience Class,  
14 will be made to general unsecured creditors of the Debtors on the Effective Date.

15  
16 Finally, all net proceeds of the Adversaries which remain after payment of \$675,000  
17 to Kerensa & Co. shall be paid to creditors in the following order. First, payment to general  
18 administrative claims until those claims have been paid in full. Second, payment to Zeller  
19 until the Zeller Promissory Note is fully satisfied. Third, payment to general unsecured  
20 creditors until such claims are paid in full.

21  
22 Success and collection in the Adversaries is speculative, as litigation is ongoing.  
23 Though the Plan does contemplate collection on the Adversaries and call for distribution of  
24 funds to creditors should they be collected, the Plan is ultimately designed to operate without  
25 such funds.

26 All creditors and equity security holders should refer to Articles II through V of this  
27 Plan for information regarding the precise treatment of their claim. A disclosure statement  
28

1 that provides more detailed information regarding this Plan and the rights of the creditors and  
2 equity security holders has been circulated with this Plan. Your rights may be affected. You  
3 should read these papers carefully and discuss them with your attorney, if you have one. (If  
4 you do not have an attorney, you may wish to consult one.)

5 **ARTICLE II**

6 **CLASSIFICATION OF CLAIMS AND INTERESTS**

7  
8 2.01 Unclassified Claims. The following unclassified claims are to be paid through  
9 the Plan

10 A. Super-Priority Claims. The Super-Priority Administrative Claim of Kerensa  
11 2, the DIP Lender.

12 B. General Administrative Claims. All professional fees to be paid under 11  
13 U.S.C. § 330 and all non-insider claims given priority under 11 U.S.C. § 507(a)(1)

14 C. Insider Priority Claims. All administrative fees due to insiders of the Debtors.

15  
16 2.02 Classified Claims.

17 A. Class 1-Common Unsecured Claims. This class consists of all unsecured  
18 claims common to both Debtors<sup>2</sup>.

19 B. Class 2-Administrative Convenience Class. This class consists of all  
20 unsecured claims in the amount of \$1,000 or less, or claims which are voluntarily reduced to  
21 \$1,000.

22 C. Class 3-General Unsecured Claims. This Class consists of all unsecured  
23  
24

25 <sup>2</sup> Though some claims are scheduled as unsecured claims on Kerensa 1's schedules in addition to the claim of  
26 Zeller, These claims are truly claims of Submarina and not Kerensa. All such creditors are also scheduled on  
27 Submarina's schedules, and as to these creditors, the schedules of Submarina are more accurate and shall  
28 control and supersede Kerensa 1's schedules. The specific creditors who should be removed from Kerensa 1's  
schedules are: Daniel Osborn, David Ostfeld, Joe Hendrix, and Michael Marcus.

1 claims against Submarina which are not included in Class 1 or Class 2.

2 **ARTICLE III**

3 **TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS, U.S. TRUSTEES FEES,**  
4 **AND PRIORITY TAX CLAIMS**

5 3.01 **Unclassified Claims.** Under section §1123(a)(1), priority tax claims are not  
6 in  
7 classes.  
8

9 3.02 **Administrative Expense Claims.** Each holder of an administrative expense  
10 claim allowed under §503 of the Code will be paid in full on the Effective Date of this Plan  
11 or upon such other terms as may be agreed upon by the holder of the claim and the Debtor.  
12 Pursuant to Agreement, Non-Insider Professional Claims will be paid over time, via monthly  
13 payments equal to 8% of post-Effective Date Royalty Fees received by the Debtor, with any  
14 unpaid balance to be due and payable in full on the fifth anniversary of the Effective Date.  
15

16 By agreement of the parties, the Insider Priority Claims will be satisfied by an  
17 assignment of all collection rights granted to Submarina in all Adversary Proceedings of the  
18 Debtors (including Adversary Proceeding No.: 13-01051 (the "First Adversary"), Adversary  
19 Proceeding No.: 16-01095-MKN (the "Second Adversary"), and Adversary Proceeding No.:  
20 13-01223-MKN (the "Freeland Adversary"), collectively, the First Adversary, the Second  
21 Adversary, and the Freeland Adversary are referred to as the "Adversaries")), with the  
22 exception of \$35,217.50 already collected from JTJM, Inc. The source of this claim is the  
23 past due fees for management services provided from Kerensa & Co., Inc., ("Kerensa &  
24 Co.") to Submarina by contract. It is estimated that \$675,000 is currently due under this  
25 contract. The assignment of the net proceeds of the Adversaries will continue until such time  
26 as Kerensa & Co. has received \$675,000.  
27  
28



1 within 30 days of the Effective Date. In addition, this Class has the potential to receive net  
2 proceeds of the Adversaries, to the extent there are such after payment of the Insider  
3 Administrative Claim, payments of general administrative fees, and Class 1 payments.  
4 Class 3 is impaired by this Plan.

5 **ARTICLE V**

6 **ALLOWANCE AND DISALLOWANCE OF CLAIMS**

7  
8 5.01 Disputed Claims. A disputed claim is a claim that has not been allowed or  
9 disallowed by a final non-appealable order, and as to which either : (i) a proof of claim has  
10 been filed or deemed filed, and the Debtor or another party in interest has filed an objection;  
11 or (ii) no proof of claim has been filed, and the Debtor has scheduled such claim as disputed,  
12 contingent, or unliquidated.

13  
14 5.02 Delay of Distribution on a Disputed Claim. No distribution will be made on  
15 account of a disputed claim unless such claim is allowed by a final non-appealable order.

16  
17 5.03 Settlement of Disputed Claims. The Debtor will have the power and authority  
18 to settle and compromise a disputed claim with court approval and compliance with Rule  
19 9019 of the Federal Rules of Bankruptcy Procedure.

20  
21 5.04 Objections to Claims. Any objections to claims must be brought within 4  
22 months following the Effective Date.

23 **ARTICLE VI**

24 **PROVISIONS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

25 6.01 Assumed Executory Contracts and Unexpired Leases.

26 (a) The Debtor assumes the following executory contracts on or before the date of  
27 the order confirming this Plan, unless previously ordered by the court:  
28



1 See attached **Exhibit 1**

2 (b) The Debtor will be conclusively deemed to have rejected all executory  
3 contracts and/or unexpired leases not expressly assumed under section 6.01(a) above, or  
4 before the date of the order confirming this Plan, upon the effective date of this Plan. A  
5 proof of claim arising from the rejection of an executory contract or unexpired lease under  
6 this section must be filed no later than thirty (30) days after the date of the order confirming  
7 this Plan.  
8

9  
10 **ARTICLE VII**

11 **MEANS FOR IMPLEMENTATION OF THE PLAN**

12 7.01. Source of Payments

13 Payments and distributions under the Plan will be funded by the purchase agreement  
14 between and among Sub Solutions Company, LLC (“SSC”), Kerensa 1, Submarina, and  
15 Zeller, by which SSC will purchase 100% of the equity of Kerensa 1 in exchange for  
16 \$312,000 paid from SSC to Kerensa 1, plus a promissory note, executed by SSC in favor of  
17 Zeller, which note will be guaranteed by Submarina and secured by all assets of both  
18 Kerensa 1 and Submarina. The note will have a face value of \$300,000 and a maturity date  
19 three years from the Effective Date of the Plan, which will be deemed satisfied in full if  
20 \$100,000 is paid within one year of the Effective Date of the Plan, or \$150,000 is paid within  
21 two years of the Effective Date of the Plan. The note will not accrue interest through the  
22 maturity date.  
23  
24

25 Additional payments and distributions shall be funded by the assignment of the net  
26 proceeds of the Adversaries, as more fully described in Article II(G)(2), (4), (5), and (6),  
27  
28

1 above. However, \$35,217.50 already collected from JTJM, Inc. in the First Adversary is  
2 excluded from this assignment. In addition, any net proceeds collected from the Adversaries  
3 which exceed \$675,000 shall be paid in the following order, first to general administrative  
4 claims, second to class 1 claimants until such time as the Zeller Promissory Note is fully  
5 satisfied, third, to Class 3 claimants until such time as all Class 3 claims are fully satisfied.

6 Finally, payments consisting of 8% of all royalties collected from Submarina  
7 Franchisees will fund the Plan, such payments will be made until all claims of the  
8 administrative professionals of the Debtors are 100% satisfied. Any amount unpaid to  
9 administrative professionals will be due in full on the fifth anniversary of the Effective Date.

11 **ARTICLE VIII**

12 **GENERAL PROVISIONS**

13 8.01 Definitions and Rules of Construction. The definitions and rules of  
14 construction set forth in §§101 and 102 of the Code shall apply when terms defined or  
15 construed in the Code are used in this Plan. Additionally, the following definitions apply:

16 a. The "Effective Date" of this Plan is the fifteenth business day following the  
17 date of the entry of the order of confirmation. But if a stay of the confirmation order is in  
18 effect on that date, the effective date will be the first business day after that date on which no  
19 stay of the confirmation order is in effect, provided that the confirmation order has not been  
20 vacated.

21 8.02 Severability. If any provision in this Plan is determined to be unenforceable,  
22 that determination will in no way limit or affect the enforceability and operative effect of any  
23 other provision of this Plan.

24 8.03 Binding Effect. The rights and obligations of any entity named or  
25 referred to in this Plan will be binding upon, and will inure to the benefit of the successors or  
26

1 assigns of such entity.

2 8.04 Captions. The headings contained in this Plan are for convenience of  
3 reference only and do not affect the meaning or interpretation of this Plan.

4 8.05 Controlling Effect. Unless a rule of law or procedure is supplied by federal  
5 law (including the Code or the Federal Rules of Bankruptcy Procedure), the laws of the State  
6 of Nevada govern this Plan and any agreements, documents, and instruments executed in  
7 connection with this Plan, except as otherwise provided in this Plan.  
8

9 8.06 Governance. The Debtors will maintain their current form of governance  
10 and their current managers until such managers are replaced as provided for in this Plan and  
11 the Debtors existing Operating Agreements.

12 8.07 Revesting of Assets in the Debtor. Upon confirmation of the Plan, all  
13 property of the estate of the Debtors shall be revested in the Debtors, pursuant to 11 U.S.C.  
14 §1141 (c), which shall retain such property as the Reorganized Debtors free and clear of all  
15 claims and interests of the creditors except as set forth in the Plan.  
16

17 8.08 Disbursing Agent. The Debtors will serve as disbursing agents and shall  
18 make all payments required under the Plan. The disbursing agents may employ or contract  
19 with other entities to assist in or to perform the distribution of the property and shall serve  
20 without bond.

21  
22 8.09 Request for Application of 11 U.S.C. §1129(b). Kerensa 2, as Plan  
23 proponents, request the Court to find that the provisions for dissenting classes provide for  
24 fair and equitable treatment of said creditors, and to confirm the Plan notwithstanding the  
25 requirements of §1129(a)(8) as to such classes.

26 8.10 Post-Confirmation Management of the Debtor. Kerensa 1 shall be managed  
27 post-confirmation by SSC; Submarina shall be managed post-confirmation by Kerensa 1.  
28

1           8.11 Post-Confirmation Litigation. The Debtors do not anticipate any post-  
2 confirmation litigation other than ongoing litigation with non-compliant franchisees and any  
3 new litigation that may arise with these non-compliant franchisees. The Debtors reserve the  
4 right to prosecute any objections to claims.

5           8.12 Post-Confirmation Default. In the event that Debtors becomes delinquent in  
6 duty or obligation under the Plan, the affected creditor or creditors may provide written  
7 notice of such default to the Debtors and their counsel at the following addresses:  
8

9           Matthew L. Johnson	Submarina, Inc.
10           Johnson & Gubler, P.C.	4801 Woodway Drive
11           8831 West Sahara Avenue	Suite 300E
12           Las Vegas, Nevada 89117	Houston, TX 77056

13           The Debtors shall thereafter have fifteen (15) business days from receipt of said  
14 notice in which to cure the default. In the event such default remains uncured, the affected  
15 creditor or creditors may bring the matter before the Bankruptcy Court. At any hearing, the  
16 Bankruptcy Court may consider the reason for the default and the ability of the Debtors to  
17 bring the payment(s) current in a reasonable period of time. The Bankruptcy Court may also  
18 consider conversion of the case to a Chapter 7 of the Code or dismissal if the same is in the  
19 best interest of the creditors.  
20

21           8.13 Federal Income Tax Consequences of the Plan.

22           The following are the anticipated tax consequences of the Plan:

23           Creditors and Equity Interest Holders Concerned with How the Plan May Affect  
24 Their Tax Liability Should Consult with Their Own Accountants, Attorneys, And/or  
25 Advisors.  
26

27           The following are the anticipated tax consequences of the Plan:  
28

1                   **1. Tax consequences to the Debtors of the Plan:**

2                   Kerensa 1 is an LLC. Accordingly, it is a pass through disregarded entity for tax  
3 purposes. Since both Kerensa 1 and SSC member's interest is held by the same parties, the  
4 members are effectively increasing their ownership of Submarina from 75.95% to 99.5%.  
5 This increase in ownership pursuant to a plan of reorganization falls under 26 I.R.C. §381(a)  
6 2 et seq. §386(g) and as such has no impact on Submarina. Additionally, and related thereto,  
7 Submarina has sufficient accumulated net operating losses such that the settlement of debts  
8 at less than face value should not cause Submarina to incur a tax liability on the  
9 confirmation of the Plan; however, it will significantly reduce the net operating loss  
10 carryforward.  
11

12                   **2. Tax consequences to Creditors of the Plan:**

13                   Neither the Debtors nor the Proponent of the Plan have any knowledge how any  
14 individual creditor has previously treated their receivable from the Debtors. Additionally  
15 there is no certainty as to ultimate amount or timing of recovery under the Plan.  
16 Accordingly, each creditor is advised to contact their respective advisor to determine their  
17 individual treatment of any amounts they receive under this Plan.  
18

19                   **3. Tax Consequences to Pre-Petition Equity Holders.**

20                   Upon Plan confirmation, any existing claims to the ownership or economic interest in  
21 Kerensa 1 will be eliminated and the value of Pre-Petition Submarina common stock will  
22 become negligible. Accordingly, to the extent that any parties holding Pre-Petition member  
23 interest in Kerensa 1 or equity interests in Submarina had basis in such securities they should  
24 be recognizing a loss. As to the characterization and timing of that recognition they should  
25 consult their advisor.  
26

27                   8.14 Injunction. From and after the Effective Date, and except as provided in  
28

1 the Plan and the Confirmation Order, all entities that have held, currently hold, or may hold a  
2 Claim, are permanently enjoined from taking any of the following actions on account of any  
3 such Claims: (I) commencing or continuing in any manner any action or other proceeding  
4 against the Debtors, or their Property; (ii) enforcing, attaching, collecting, or recovering in  
5 any manner any judgment, award, decree or order against the Debtors or the Reorganized  
6 Debtors, or their respective property; (iii) creating, perfecting or enforcing any lien or  
7 encumbrance against the Debtors or the Reorganized Debtors, or their respective property;  
8 (iv) asserting a setoff, right of subrogation or recoupment of any kind against any debt,  
9 liability, or obligation due to the Debtors or the Reorganized Debtors, or their respective  
10 property; or (v) commencing or continuing any action, in any manner or any place, that does  
11 not comply with or is inconsistent with the provisions of the Plan or the Bankruptcy Code.  
12

13           8.15 Exculpation. From the Petition Date through the Effective Date, the Debtors  
14 and their managers, attorneys, agents and employees shall not have any liability to the  
15 Debtors or any other claimants or creditors, or other parties in interest in the Bankruptcy  
16 Case for any act or omission in connection with or arising out of the Bankruptcy Case,  
17 including, without limitation, prosecuting confirmation of the Plan, confirmation of the Plan,  
18 and the administration of the estate, the Plan or the property to be distributed under the Plan,  
19 except for gross negligence or willful misconduct, and in all respects, such persons will be  
20 entitled to rely on the advice of counsel with respect to their duties and responsibilities with  
21 respect to the Chapter 11 Case and the Plan.  
22

23           8.16 Post-petition Employment of Counsel. Following the Effective Date, the  
24 Debtors may continue to employ counsel for necessary legal services. Counsel may be paid  
25 from the Debtors without further order of the Court.  
26

27           8.17 Closing Case. The estates shall be deemed to be fully administered upon the  
28

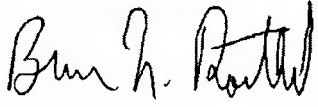
1 commencing of distributions to the Class 1 creditor and the case may be closed.


2 **ARTICLE IX**

3 **DISCHARGE**

4 Discharge. The Debtors shall be discharged from any debt that arose before  
5 confirmation of the Plan, subject to the occurrence of the effective date. However such  
6 discharge has no effect on the debt created through this plan, including the obligations  
7 pursuant to the Zeller Promissory Note, payment of the administrative professionals, or the  
8 obligation to distribute the net proceeds of the Adversaries.  
9

10 Respectfully submitted,  
11 Kerensa Investment Fund 2, LLC.

12   
13 \_\_\_\_\_  
14 Bruce Rosenthal, Managing Member  
15 The Plan Proponent

16 Prepared by:  
17 MATTHEW R. CARLYON, ESQ.  
18   
19 \_\_\_\_\_  
20 Matthew R. Carlyon, Esq.  
21 Counsel for creditor, Kerensa Investment Fund 2  
22 Plan Proponent  
23  
24  
25  
26  
27  
28

# **EXHIBIT “1”**



**SUBMARINA ACTIVE CONTRACTS & AGREEMENTS**

<b><u>Company</u></b>	<b><u>Address</u></b>
Matthew L Johnson & Assoc. PC	8831 W Sahara Avenue, Las Vegas, NV 89117
Lounsberry, Ferguson Altona & Peak LLP	960 Canterbury Place, Escondido, CA 92025
Regus USA	4801 Woodway Drive, Houston, TX 77056
Kerensa & Company	1805 N Carson St., Carson City, NV 89701
U.S. Foodservice, Inc.	1201 Park Center Drive, Vista, CA 92081
Pepsico/Fritolay	Pepsico Foodservice, Attn: Mike LeStarge, 7701 Legacy Dr., Plano, TX 75024
Dr. Pepper	5301 Legacy Drive, Plano, TX 75024
Dr. Smoothie	1730 Raymer Ave., Fullerton CA 92833
Revel Systems, Inc.	170 Columbus Ave, San Francisco, CA 94133
Digital Menus USA	5379 Lyons Rd., #217, Coconut Creek, FL 33073
Bagcraft/Novolex	Novolex, 101 E Carolina Ave, Hartsville, SC 29550
Letica	52585 Dequindre, Rochester Hills, MI 48307
Command Packaging	3840 East 26th Street, Vernon, CA 90058
Franchise Print Shop	1919 Grand Avenue, San Diego, CA 92109
Cordero & Davenport Advertising	800 West Ivy Street, San Diego, CA 92101
Big Fish	4611 4th Street N, St Petersburg, FL
State Farm Insurance	One State Farm Plaza, Bloomington, IL 61710
Mercury Casualty Company	4484 Wilshire Blvd, Los Angeles, CA 90010
AFLAC	1932 Wynnton Road, Columbus, GA 31999
Mercury/Vantiv	150 Mercury Village Dr., Durango, CO 81301
Butterball	One Butterball Lane, Garner, NC 27529
Jennie O Food Group	1 Hormel Place, Austin, MN 55912
John Soules	10150 FM 14, Tyler, TX 75056
Campofrio Food Group/Fiorucci	1800 Ruffin Mill Road, South Chesterfield, VA 23834
Capitol Wholesale/Fontanini	8751 West 50th Street McCook, IL 60525
Daileys	2900 Mullan Road, Missoula, MT 59808
Chicken of the Sea	2341 Wilshire Ave., La Habra, CA 90613
Hormel	1 Hormel Place, Austin, MN 55912
Original Philly Food	520 East Huntington Park Ave, Philadelphia, PA 19124
Pacific Cheese	P.O. Box 56598/21090 Cabot Blvd., Hayward, CA 94545
Ken's (Sauces/Dressings)	1 D'Angelo Drive, POB 849, Marlborough, MA 01752
Mrs Ressler's	5501 Tabor Avenue, Philadelphia, PA 19120
Vienna Beef/Chipco	2501 N. Damen Avenue, Chicago, IL 60647
Giulianos' Specialty Foods	12132 Knott Street, Garden Grove, CA 92841
Kraft/Heinz Foods Group	One PPG Place, Pittsburgh, PA 15222
The Core Group/ARYZTA	15963 Strathern St., LaBrea, CA 91406
Cross Valley/Reser's	15570 SW Jenkins Road, Beaverton, OR 97075

**OPERATING FRANCHISE STORES PURSUANT TO FRANCHISE AGREEMENTS**

<b><u>Store #</u></b>	<b><u>Store Name</u></b>	<b><u>Owner's Name</u></b>	<b><u>Address</u></b>
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CA0002	Escondido East	Bridget Collins	1511 E. Valley Pkwy., Ste. A3
CA0007	Mira Mesa	Marshawn, Inc.	8250 Mira Mesa Blvd. Ste. A
CA0012	Santee	SD Subbros Inc.	9713 Mission Gorge Rd.
CA0018	La Mesa	Subbros Inc.	5454 Grossmont Center Dr. St
CA0024	Oceanside West	Victor Camerena / Felicia Camerena	2183 Vista Way Suite B-7
CA0026	Carlsbad	Josh Murch	300 Carlsbad Village Dr. Ste. 2
CA0035	Rancho San Diego	Bob Kennedy	2963 Jamacha Rd. Suite 18 – E
CA0040	Vista South	Josh Murch	3231 Business Park Dr. Ste. 4
CA0048	Murrieta Cal Oaks	Joseph Mason	40970 California Oaks Rd.
CA0053	Lake Elsinore	EDRC, LLC	29261 Central Ave
CA0054	Red Hawk	J&J Subs, Inc.	32065 Highway 79 South
CA0060	Menifee	Eric Dannenberg	26045 Newport Rd. Suite C
CA0061	Vista Sycamore	LBW Foods, LLC	320 Sycamore Ave. Suite. 40
CA0063	Genesee Health Center	Silewa Georges	2777 Health Center Drive
CA0064	Murrieta Hot Springs	Vonnie Audibert	40444 Murrieta Hot Springs R #104
CA0068	Sky Canyon	Paul Simmons	39040 Sky Canyon Drive, Suite
CA0078	Wildomar Clinton Keith	Joseph Mason	32100 Clinton Keith Road
CA0098	Santa Clarita	JTJM, LLC	26517 Carl Boyer Dr. Unit #10
CA0102	Cypress	Masquerade Sub Corporation	5373 Katella Avenue Ste. C
CA0109	Laguna Nigel	Munoz Enterprise Inc.	28051 Greenfield Drive, Suite
CA0120	Lancaster	JTJM, LLC	830 West Ave “L” Unit 131
CA0155	Anaheim Hilton	YBH Restaurants	777 W. Convention Way
CA0168	Murrieta Antelope	JTJM, LLC	33040 Antelope Rd.
OK0164	Oklahoma Edmond	Jon Picotte	2015 W. Danforth Rd
TN0160	Clarksville Ft Campbell	JK Ventures, LLC	3095 Fort Campbell Blvd., Suit
IL0157	Tinley Park, IL	Arti C. Patel / Chirag R. Patel	7101 183rd Street, Unit 103
GU0173	Guam Dededo	IT&E Overseas, Inc.	186 W. Marine Corps Drive
GU0166	Guam Micronesia Mall	IT&E Overseas, Inc.	1088 W. Marine Corps Drive
GU0163	Guam Haganta	IT&E Overseas, Inc.	138 W Seaton Blvd.
GU0153	Guam Barrigada	IT&E Overseas, Inc.	1069 Army Drive

#### **ACTIVE FRANCHISE & AREA DEVELOPER AGREEMENTS**

<b><u>Store #</u></b>	<b><u>Store Name</u></b>	<b><u>Owner's Name</u></b>	<b><u>Address</u></b>
CA0005	Rancho Bernardo	Jim and Jay Doubrava and Wives Brett Willis	17090 Bernardo Center Dr. St
CA0016	Murphy Canyon		3755 Murphy Canyon Rd. Ste
CA0065	Corona	Scott D. Freedland	175 E. Ontario Avenue
CA0165	Riverside	Larry Dockstader	

California	Not Open	Timothy A. Grigsby
California	Not Open	Colin D. Smith
California	Not Open	Kevin J. Hourigan
Michigan	Not Open	John Tarolli
Texas	Not Open	Tom D. Nguyen
Hawaii	Area Developer Agreement	IT&E Overseas, Inc.
GU0175	Not Open	IT&E Overseas, Inc.
Texas	Area Developer Agreement	Robert Pina