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7 **UNITED STATES BANKRUPTCY COURT**
8 **FOR THE DISTRICT OF NEVADA**

9 In re:
10 CORRECT CLAIM PUBLIC
11 ADJUSTERS, LLC;
12 Debtor.

Case No. 17-16483-leb
Chapter 11

**AMENDED
DISCLOSURE STATEMENT
DESCRIBING CHAPTER 11 PLAN**

Disclosure Statement No.: 3

15
16 Debtor-in-possession CORRECT CLAIM PUBLIC ADJUSTERS, LLC (“*Debtor*” or
17 “*Plan Proponent*”) is the debtor in this chapter 11 bankruptcy case, which was commenced on
18 December 6, 2017 by filing a voluntary Chapter 11 petition under the United States
19 Bankruptcy Code, 11 U.S.C. §101 *et seq.* (the “*Bankruptcy Code*”) in the District of Nevada.

20 Chapter 11 allows a Debtor to propose a plan of reorganization (the “*Plan*”).¹ The
21 Debtor is the party proposing the Plan sent to you in the same envelope as this document.

22 **THE DOCUMENT YOU ARE READING IS THE DISCLOSURE STATEMENT**
23 **FOR THE ENCLOSED PLAN.**

24 In the Plan, the Debtor seeks to accomplish payments under the Plan by which various
25 classes of claimants can have their claims treated. *Your rights may be affected. You should*
26 *read the Plan and this Disclosure Statement carefully and discuss them with your attorney.*
27 *If you do not have an attorney, you may wish to consult one.*

28 ¹ Except as otherwise indicated, capitalized terms used in this document and not defined herein
29 shall have their respective meanings set forth in the Plan or, if not defined in the Plan, as
defined in the Bankruptcy Code.

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1 **Article I. INTRODUCTION**

2
3 **Section 1.01 Overview of Chapter 11**

4 Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. The
5 commencement of a chapter 11 case creates an ‘estate’ comprised of all the legal and
6 equitable interests of a debtor. Unless the bankruptcy court orders otherwise, a chapter 11
7 debtor may continue to operate its business and control the assets of its estate as a ‘debtor
8 in possession.’

9 The filing of a chapter 11 case also triggers the application of Bankruptcy Code § 362,
10 which provides for an automatic stay of all attempts to collect upon claims against a debtor
11 that arose before a bankruptcy filing. Generally speaking, the automatic stay prohibits
12 interference with a debtor’s property or business.

13 A plan of reorganization sets forth the means for satisfying all claims against, and interests
14 in, a debtor. Although usually referred to as a plan of reorganization, a plan may provide
15 for the liquidation of assets. Generally, a claim against a debtor arises from a normal
16 debtor/creditor transaction, such as a promissory note or a trade credit relationship, but may
17 also arise from other contractual agreements or other sources. An interest in a debtor is held
18 by a party that owns the debtor, such as a shareholder.

19 Subject to certain limited exceptions, the bankruptcy court order confirming a plan of
20 reorganization discharges a debtor from any debt that arose before the date of confirmation
21 of the plan, and provides for the treatment of such debt in accordance with the terms of the
22 confirmed plan of reorganization.

23 Before soliciting acceptances of a plan of reorganization, Bankruptcy Code § 1125 requires
24 a plan proponent to prepare a disclosure statement containing information of a kind, and in
25 sufficient detail, to enable a hypothetical investor typical of the holders of claims or
26 interests in the case to make an informed judgment regarding acceptance of the plan of
27 reorganization. This Disclosure Statement is submitted in accordance with Bankruptcy
28 Code § 1125.

29 The Bankruptcy Code provides that most creditors and shareholders are to be grouped into
‘classes’ under a plan. As a general matter, creditors with similar legal rights are placed
together in the same class and equity holders with similar legal rights are placed together in
the same class. For example, creditors entitled to similar priority under the Bankruptcy
Code are commonly grouped together.

Voting for or against a plan occurs by class. In other words, the Bankruptcy Code does not
require that each claimant or equity holder vote in favor of a plan in order for the court to
confirm the plan. Rather, the plan must be accepted by each class of claimants and
shareholders (subject to an exception discussed below). A class of claimants accepts the
plan if, of the claimants in the class who actually vote on the plan, such claimants holding
at least two-thirds in dollar amount and more than one-half in number of allowed claims
vote to accept the plan. For example, if a hypothetical class has ten creditors that vote and

1 the total dollar amount of those ten creditors' claim is \$1,000,000, then for such class to
2 have accepted the plan, six or more of those creditors must have voted to accept the plan (a
3 simple majority) and the claims of the creditors voting to accept the plan must total at least
\$666,667 (a two-thirds majority).

4 However, Section 1126(f) of the Bankruptcy Code states that a class that is not impaired
5 under a plan – along with each holder of a claim or interest of such class – are conclusively
6 presumed to have accepted the plan. In other words, a class of claims that are not impaired
7 under the Plan, are not entitled to vote on the plan. However, even if you are not entitled to
8 vote on the plan, you have a right to object to the confirmation of the plan, and to the
adequacy of this Disclosure Statement.

9 To confirm a plan, the bankruptcy court must determine that the requirements of
10 Bankruptcy Code § 1129(a) have been satisfied. As the plan proponent, the Debtor
believes that the Plan satisfies the confirmation requirements of the Bankruptcy Code.

11 **Section 1.02 Purpose of This Document**

12 The disclosure statement (“Disclosure Statement”) is being furnished to the holders of
13 claims against, and interests in, the Debtor pursuant to Section 1125 of the Bankruptcy
14 Code, in connection with the solicitation of ballots for the acceptance of the enclosed Plan.

15 This Disclosure Statement summarizes what is in the Plan, and tells you certain
16 information relating to the Plan, and the process the Court follows in determining whether
or not to confirm the Plan. Specifically, this Disclosure Statement describes:

- 17 • The history of the Debtor and its business operations;
- 18 • Significant events during the bankruptcy case;
- 19 • How the Plan proposes to treat claims or interests of the type you hold (i.e., what
20 you will receive on your claim or interest if the plan is confirmed), and how this
21 treatment compares to what your claim or interest would receive in liquidation;
- 22 • Who can vote on or object to the Plan;
- 23 • What factors the Bankruptcy Court (the “Court”) will consider when deciding
24 whether to confirm the Plan
- 25 • Why Debtor believes the Plan is feasible;
- 26 • The effect of confirmation of the Plan.

27 Be sure to read the Plan as well as the Disclosure Statement. If there are any
28 inconsistencies between the Plan and the Disclosure Statement, the Plan provisions (as
29 confirmed by the Court) will govern.

1 The Bankruptcy Code requires a disclosure statement to contain ‘adequate information’
2 concerning a plan, to enable parties affected by a plan to make an informed judgment about
3 the proposed plan. Prior to the distribution of this document by the Debtor for vote
4 solicitation on the Plan, the Court will have approved, or conditionally approved, this
5 document as the Disclosure Statement for the Plan.

6 This Disclosure Statement contains summaries of certain plan provisions, statutory
7 provisions, and of the classification and treatment of claims and interests under the plan.
8 These summaries are qualified in their entirety by the Plan, including the definitions
9 therein. **The Plan itself controls the actual treatment of claims against and interests in
10 the Debtor under the Plan.**

11 **Section 1.03 Deadlines for Voting and Objecting; Date of Plan 12 Confirmation Hearing**

13 The Court has not yet confirmed the Plan described in this disclosure statement. In other
14 words, the terms of the Plan are not yet binding on anyone. However, if the court later
15 confirms the plan, then the Plan will be binding on all creditors and interest holders in this
16 case.

17 **(a) Time and Place of the Confirmation Hearing**

18 The hearing at which the Court will consider any objections to the Plan and determine
19 whether to confirm the Plan (the “*Plan Confirmation Hearing*”) will be held in a courtroom
20 in the Foley Federal Building, 300 S. Las Vegas Blvd., Las Vegas, NV 89101 at the date
21 set forth in the notice of Plan Confirmation Hearing. That notice of hearing will be
22 distributed along with the Plan and this Disclosure Statement. **THE DEBTOR WILL
23 REQUEST CONFIRMATION OF THE PLAN AT THE CONFIRMATION HEARING.**
24 The notice of Plan Confirmation Hearing will also contain the objection deadline for filing
25 objections to confirmation of the Plan with the Court.

26 **(b) Deadline to Vote For or Against the Plan**

27 Only holders of allowed claims in impaired classes and interests are entitled to vote on a
28 Plan. Unimpaired classes and interests are deemed to have accepted the Plan, and thus are
29 not entitled to vote. Claims not allowed under Section 502 of the Bankruptcy Code are not
entitled to vote, even if your claim would appear to be in an impaired class.

If you are entitled to vote, it is in your best interest to timely vote on the ballot enclosed
with the Plan, and return the ballot in the provided envelope to the balloting agent, which
is: Atkinson Law Associates Ltd., Attn: Robert Atkinson, Esq., 8965 S. Eastern Avenue
Suite 260, Las Vegas, Nevada, 89101. **IN NO CASE SHOULD A BALLOT BE
DELIVERED TO ANY ENTITY OTHER THAN THIS BALLOTING AGENT.**

Unless a different date is set by the Court in the notice of the Plan Confirmation Hearing
(or any other Court order or notice), your ballot must be **received** by this balloting agent at

1 least five (5) business days prior to the Plan Confirmation Hearing (or any other time that
2 may be set in the notice of Plan Confirmation Hearing), or it will not be counted.

3 **(c) Deadline for Objecting to the Confirmation of the Plan**

4 Objections to the confirmation of the Plan must be filed with the Court and served upon
5 Debtor’s counsel (Robert Atkinson, Esq.) within the time limit specified in the notice of
6 Plan Confirmation Hearing.

7 **(d) Effective Date of the Plan**

8 Unless otherwise set by Court order, the effective date of the Plan (“*Effective Date*”) is the
9 later of: (i) fifteen (15) days after an order confirming this Plan (the “*Confirmation Order*”) is
10 docketed; or (ii) once all “Effective Date Conditions”, as set forth in Section 4.05 below,
11 are met.

12 **(e) Identity of Person to Contact for More Information Regarding the Plan**

13 Any interested party desiring further information about the Plan should contact Debtor’s
14 counsel, Robert Atkinson, Esq., by the means specified at the top left corner on page 1 of
15 this document.

16 **Section 1.04 Disclaimers**

17 THE COURT HAS APPROVED, OR CONDITIONALLY APPROVED, THIS
18 DISCLOSURE STATEMENT AS CONTAINING ADEQUATE INFORMATION TO
19 ENABLE PARTIES AFFECTED BY THE PLAN TO MAKE AN INFORMED
20 JUDGMENT ABOUT ITS TERMS. THE COURT HAS NOT YET DETERMINED
21 WHETHER THE PLAN MEETS THE LEGAL REQUIREMENTS FOR
22 CONFIRMATION, AND THE FACT THAT THE COURT HAS APPROVED THIS
23 DISCLOSURE STATEMENT DOES NOT CONSTITUTE AN ENDORSEMENT OF
24 THE PLAN BY THE COURT, OR A RECOMMENDATION THAT IT BE ACCEPTED.

25 UNLESS OTHERWISE STATED HEREIN, THE STATEMENTS AND INFORMATION
26 CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE
27 HEREOF, AND WILL NOT BE UPDATED TO REFLECT EVENTS THAT OCCUR
28 AFTER THE DATE HEREOF. THIS FINANCIAL INFORMATION HAS NOT BEEN
29 AUDITED.

30 ANY ESTIMATES OF CLAIMS SET FORTH IN THIS DISCLOSURE STATEMENT
31 MAY VARY FROM THE AMOUNTS OF CLAIMS ULTIMATELY ALLOWED BY
32 THE BANKRUPTCY COURT AND/OR BY OPERATION OF LAW, AND AN
33 ESTIMATE SHALL NOT BE CONSTRUED AS AN ADMISSION OF THE AMOUNT
34 OF SUCH CLAIM.

35 IN ARRIVING AT A DECISION AS TO HOW TO VOTE ON THE PLAN, PARTIES
36 SHOULD NOT RELY ON ANY REPRESENTATION OR INDUCEMENT MADE TO
37 SECURE THEIR ACCEPTANCE OR REJECTION THAT IS CONTRARY TO

1 INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AND THE
2 PLAN ITSELF.

3 THE DEBTOR IS PROVIDING THE INFORMATION IN THIS DISCLOSURE
4 STATEMENT SOLELY FOR PURPOSES OF SOLICITING HOLDERS OF CLAIMS
5 AND INTERESTS TO ACCEPT OR REJECT THE PLAN. NOTHING IN THIS
6 DISCLOSURE STATEMENT SHOULD BE USED BY ANY PERSON OR FOR ANY
7 OTHER PURPOSE. THE CONTENTS OF THIS DISCLOSURE STATEMENT SHALL
8 NOT BE DEEMED AS PROVIDING ANY LEGAL, FINANCIAL, SECURITIES, TAX,
9 OR BUSINESS ADVICE. YOU SHOULD RELY ON YOUR OWN ADVISORS FOR
10 SUCH ADVICE.

11 THE FINANCIAL DATA RELIED UPON IN FORMULATING THE PLAN IS BASED
12 ON INFORMATION PROVIDED BY THE DEBTOR, BASED ON ITS BUSINESS
13 RECORDS. DEBTOR DID NOT HAVE ACCESS TO MANY OF ITS BUSINESS
14 RECORDS FROM NOVEMBER 6, 2017 THROUGH JANUARY 15, 2018. HOWEVER,
15 SUCH ACCESS WAS RESTORED ON JANUARY 15, 2018, AS A RESULT OF A
16 BANKRUPTCY COURT ORDER. ACCORDINGLY, THE FINANCIAL
17 PROJECTIONS, WHILE PRESENTED WITH NUMERICAL SPECIFICITY, ARE
18 NECESSARILY BASED ON A VARIETY OF ESTIMATES AND ASSUMPTIONS
19 WHICH, THOUGH CONSIDERED REASONABLE BY THE DEBTOR'S
20 MANAGEMENT AND THEIR ADVISORS, MAY NOT ULTIMATELY BE
21 REALIZED, AND ARE INHERENTLY SUBJECT TO SIGNIFICANT BUSINESS,
22 ECONOMIC, COMPETITIVE, INDUSTRY, REGULATORY, MARKET, AND
23 FINANCIAL UNCERTAINTIES AND CONTINGENCIES, MANY OF WHICH ARE
24 BEYOND THE DEBTOR'S CONTROL.

25 THE DEBTOR CAUTIONS THAT NO REPRESENTATIONS CAN BE MADE AS TO
26 THE ACCURACY OF THE PROJECTIONS, OR THE ABILITY TO ACHIEVE THE
27 PROJECTED RESULTS. CONSEQUENTLY, THE PROJECTED FINANCIAL
28 INFORMATION AND OTHER FORWARD-LOOKING STATEMENTS CONTAINED
29 HEREIN SHOULD NOT BE REGARDED AS REPRESENTATIONS BY THE
DEBTORS OR ANY OTHER PERSON THAT THE PROJECTED FINANCIAL
CONDITION OR RESULTS CAN OR WILL BE ACHIEVED.

Article II. BACKGROUND

Section 2.01 Overview of the Debtor's Business

The Debtor is a Nevada limited liability company, formed on April 16, 2013.

Debtor is a 'public adjuster' in the insurance industry (working for policyholders), with primary operations in Texas. Pre-petition, it maintained leased office space in San Antonio, El Paso, and Victoria, Texas, and also in Denver Colorado.

1 A public adjuster works on behalf of its clients, who may be private individuals or
2 businesses. The role of a public adjuster is to assist their policyholder clients in obtaining a
3 superior result on an insurance claim that otherwise the policyholder cannot obtain on their
own by simply filing a claim with their insurance company.

4 As an example, if a homeowner experiences hail damage to the residence, the homeowner
5 can file a damage claim with their insurance company. However, some homeowners
6 discover that their insurance carrier is reluctant to pay any damages at all, or are only
7 willing to pay a nominal amount on the claim. The complexities of a typical insurance
policy are beyond the ability of many policyholders to counter a nominal payment proposal
of their carrier, or an outright declination of coverage for a damage event.

8 The role of the public adjuster is to be an advocate of the policyholder, with the goal to
9 obtain a higher damage award than is possible without such advocacy. A good public
10 adjuster is skilled in insurance claims management, damage estimates, and related matters.
11 Public adjusters such as Debtor typically concentrate on property damage claims to real
property, arising from events such as hail, fire, or water damage, rather than on vehicular
12 damage claims.

13 The public adjuster industry is authorized in many states, and is typically regulated by the
14 insurance commissioner or regulator of a state. Specific statutes and regulations control the
15 industry in each state. For example, in Nevada, the public adjuster industry is authorized
16 and controlled by NRS § 684A. In Texas, the industry is controlled by Chapter 4102 of the
17 Texas Insurance Code. By statute (in Texas, it is Texas Insurance Code §4102.055(c)),
every licensed public adjuster company, such as Debtor, must have at least one officer or
18 managing individual who themselves are an individual who is a licensed public adjuster.
19 In Debtor's case, Mr. De La Canal is that licensed individual.

20 Adjusters typically get paid a commission based on a percentage of the ultimate damage
21 award obtained by their policyholder client. In Texas, that commission is capped at 10% of
22 the claim.

23 To perform its work, the Debtor contracts with policyholders who have recently
24 experienced damage. Pre-petition, Debtor undertook marketing efforts to attract clients,
25 including having its sales agents walk around hail-damaged areas and knock on doors.
26 Every client has a signed contract with Debtor. Upon signing of the contract, the Debtor
27 would then use a third party to obtain the homeowners' damage claim estimate, and present
28 that and an insurance claim to the policyholder's insurance carrier. After comparing the
29 policyholder's damage estimate to their own damage estimate, the insurance carrier would
make an offer to pay. Many times, that offer to pay is \$0, or nominal amount. Regardless
of the amount of the offer, the Debtor would present the offer to their policyholder client,
and see if they wished to accept it, or to take the next step. If the client declined the offer,
the next step is either litigation (in which the client directly contracts with a lawyer of their
choosing to litigate the insurance claim), or a less-intensive step called 'appraisal', in
which both sides obtain a much more comprehensive calculation of damages through the
use of an appraiser (rather than a damage estimator).

1
2 Claims in litigation proceed as any normal litigation case does. The litigation attorney is
3 provided the relevant documents (such as the policy and the damage estimate), who then
4 prepares and files a lawsuit against the insurance carrier. Via its contract with the
policyholder, Debtor is entitled to its commission on the final litigation award.

5 Claims in appraisal require an appraiser to be hired. The Debtor retains an appraiser on
6 behalf of its clients, and a comprehensive appraisal report is produced by the appraiser to
7 assess the damage and appraise the value required to repair it. The appraiser is paid for by
8 the client from the client's portion of the ultimate award. The insurance carrier would also
9 get an appraisal produced. If the matter still is not resolved after the two appraisals, the
'umpire' process can be invoked, whereby a third-party umpire reviews the two appraisals
and makes an award decision.

10 As a result, the Debtor's operations are fairly easy to understand. Clients are either in
11 litigation status, in appraisal status, have not yet been sorted into litigation or appraisal, or
12 are in the process of being resolved without having to escalate the claim to litigation or
appraisal.

13 Oftentimes, the insurance carrier will remit its award in a three-party check, requiring three
14 endorsements: Debtor, the policyholder, and the mortgage company on the policyholders'
15 damaged building. As a result, resolved claims can still take several weeks or many
16 months to monetize, because the checks have to circulate for endorsement. Some mortgage
companies are particularly slow to endorse.

17 **Section 2.02 Events Leading to Chapter 11 Filing**

18 Debtor is one of the larger public adjusters in the State of Texas. It grew rapidly for several
19 reasons, mostly having to do with superior technology and marketing skills. For example,
20 Debtor had the ability to geo-code a hail storm using commercial weather reporting data
21 sources, identifying down to the block level which houses and commercial buildings might
have hail damage, thereby massively increasing the effectiveness of its marketing efforts.

22 Debtor grew so fast that it required operating capital, because the cost of acquiring new
23 customers, and paying for the damage estimates, was mismatched to the duration of
24 payment, i.e., costs had to be incurred today in order to get a commission in several months
(or longer).

25 To fund its cash flow needs, in April 2016 Debtor entered into a factoring agreement
26 ("Factoring Agreement") with a private company called Buena Vista Finance, LLC
27 ("BVF"), which is located in San Antonio, Texas. BVF's principal is David Komet.
27 Pursuant to the Factoring Agreement, Debtor obtained funding from BVF (\$800 per client,
paid up front) in exchange for providing certain rights to BVF in specific client accounts of
28 Debtor. Each of those payments tied to one specific client, and each of those client
accounts were deemed to be a 'factored account' under the Factoring Agreement.

1 The Factoring Agreement is a complex contract. It contains a grant of a security interest to
2 BVF via an 'all-asset' blanket lien, which BVF subsequently perfected by filing a UCC-1
3 financing statement. The Factoring Agreement worked well for many months; when Debtor
4 was paid large commissions, it would pay down the factoring line, and conversely the
5 factoring line would increase when Debtor needed additional cash flow.

6 On November 3, 2017, BVF declared a default on the Factoring Agreement, and on
7 November 6, 2017, Mr. De La Canal was locked out of the database and systems of the
8 Debtor, and all physical locations of the Debtor's business. This bankruptcy case was filed
9 approximately four weeks later.

10 **Section 2.03 Assets and Liabilities of the Debtor**

11 **(a) Assets of the Debtor**

12 Debtor filed for Chapter 11 bankruptcy on December 6, 2017 (the "*Petition Date*"). The
13 Debtor filed for bankruptcy in order to reestablish control over its assets and property, and,
14 more importantly, to adequately protect its policyholder clients who otherwise would have
15 not been represented on their claim. Debtor has substantial assets, but the monetization of
16 those assets (e.g., working through the client claims) through normal operations takes time.

17 In its bankruptcy schedules (as amended), Debtor identified several types of assets. First, it
18 held some sums in bank accounts, and owned various pieces of office furniture and
19 equipment in various locations. The largest scheduled assets are the receivable expected
20 from the client accounts, which Debtor scheduled to be in the estimated amount of \$5
21 million, arising from its client book of business. These receivables and anticipated
22 receivables were sorted into several categories, depending on whether the clients were in
23 appraisal status, litigation status, etc. After Debtor's operations resumed and stabilized
24 many weeks after the Bankruptcy Case began, the Debtor now calculates that about \$1.5
25 million in receivables are achievable in the post-confirmation period. Post-confirmation,
26 Debtor will work its existing book of business, and will also take on new commercial and
27 residential clients.

28 Debtor also scheduled various litigation claims against various parties that it believes it
29 holds. After investigating the matters after the Petition Date, Debtor has filed several
adversary proceedings in the Bankruptcy Case. The ones filed as of the date of the filing of
this document are:

- 30 - Adversary Case No. 18- 01025, filed against defendant BVF Fund II, LLC,
31 to avoid its unperfected security interest.
- 32 - Adversary Case No. 18-01026, filed against defendant Urban Earth LLC,
33 for breach of contract and negligence claims. The judgment sought in this
34 suit is in the amount of \$2,235,360.60.
- 35 - Adversary Case No. 18-01027, filed against defendant Buena Vista Finance,
36 LLC, for conversion. The judgment sought in this suit is in the amount of
37 \$516,000.00.

- 1 - Adversary Case No. 18-01028, filed against defendant BVF Fund II, LLC,
2 for conversion. The judgment sought in this suit is in the amount of
3 \$860,000.00.
- 4 - Adversary Case No. 18-01029, filed against defendants BVF Fund II, LLC,
5 David Komet, and Jesus 'Jesse' Diaz, for intentional interference with
6 contractual relations, negligence, civil conspiracy, and conversion. The
7 judgment sought in this suit is in the amount of at least \$82,986.52.
- 8 - Adversary Case No. 18-01035, filed against defendants OnPoint Appraisal
9 Services, LLC and BVF Fund II, LLC. The lawsuit seeks at least
10 \$1,501,300 from defendant OnPoint for conversion of Debtor's property,
11 and at least \$4,666,500 from defendant BVF Fund II, LLC for avoidance
12 and recovery of a fraudulent conveyance (11 U.S.C. § 548) and for turnover
13 of property of the bankruptcy estate (11 U.S.C. § 542). This adversary case
14 was filed as an alternative to cases 18-01027 and 18-01028 above, in the
15 event that Fund II argues that it purchased Debtor's property from OnPoint
16 instead of BVF.

17 Recipients of this Disclosure Statement may contact Debtor's counsel at the contact
18 information in the upper-left hand corner of the first page of this document to obtain a copy
19 of the complaints filed in these adversary proceedings.

20 Debtor is continuing to assess its other potential claims, and may file additional lawsuits or
21 adversary proceedings in the future, if in its business judgment it is deemed prudent and
22 appropriate to do so. In particular, the Debtor may file one or more lawsuits against
23 litigation law firms (i.e., law firms retained by clients who chose to litigate their insurance
24 claim) who Debtor believes are in the possession of earned public adjuster fees but, for one
25 reason or another, are refusing to turn over some or all of those earned fees to Debtor,
26 despite demand made upon them to do so. Debtor treats those earned-but-unpaid fees as
27 accounts receivable.

28 **(b) Liabilities of the Debtor**

29 Debtor's original schedules identified several pre-petition creditors, including both secured
claims and unsecured claims. After the Bankruptcy Case was filed, a company called BVF
Fund II, LLC ("Fund II") appeared via counsel, and filed pleadings in this case alleging
that Debtor owed it over \$3 million under a contract entitled a 'Consumer Report
Agreement' ("CRA") whereby Debtor allegedly purchases indeterminate 'consumer
reports' from Fund II, a term that appears to refer to scanned files that are already located
in Debtor's database. Debtor's principal does not recall signing the CRA and Debtor had
never received an invoice from Fund II prior to bankruptcy. In its filed proof of claim,
Fund II alternatively alleges unjust enrichment. Debtor disputes the validity of Fund II's
claim (both as to the contract itself and the amounts allegedly owed to Fund II), and intends
to object to Fund II's claim, on several grounds.

Post-petition, Debtor has accumulated administrative expenses in running the Bankruptcy
Case. As of the date of the filing of this Disclosure Statement, which is before the deadline

to file a proof of claim, the Debtor's best estimate of the claims categories and amounts owed are as follows:

<i>Creditor / class of creditors</i>	<i>Estimated allowed amount of claim(s)</i>
Buena Vista Finance, LLC	\$450,000 (=\$295,000 plus its legal fees)
TD Ameritrade, LLC (vehicle #1)	\$71,380.46
TD Ameritrade, LLC (vehicle #2)	\$19,764.96
Bank of America, N.A.	\$50,182.69
Unpaid wage claims of employees	\$11,145.69
Restitution to policyholder clients	Up to \$2,000,000 ²
BVF Fund II, LLC	\$2,000,000 ³
Other general unsecured claims	\$507,128.37 ⁴
Insiders of Debtor	\$109,800.00
IRS (priority unsecured)	\$45,153.60
State taxes	\$47.07
Atkinson Law Associates (admin)	\$300,000 (approx.)
Angelo Law Firm (admin)	\$50,000 (approx.)
Sergio De La Canal (admin)	\$190,000 (approx.)
Other staff of Debtor (admin)	\$50,264.45
Office of the U.S. Trustee	\$0 (as of confirmation date)
TOTAL	Up to \$5,855,137.29

Section 2.04 Insiders of the Debtor

As the 100% owner and managing member of the Debtor, Sergio De La Canal is the sole insider of the Debtor.

Section 2.05 Management of the Debtor Before and During the Bankruptcy

Pre-petition, Sergio De La Canal and Matthew Bohm were the managers of the Debtor, with Mr. De La Canal as the President of the Debtor and person in control, and Mr. Bohm as a manager who is not a member. Mr. De La Canal remains in that capacity throughout

² The size of this class of claimants (Class 6B – Restitution Fund) is still being determined by TDI. Debtor believes that the final size of this class will be significantly less than \$2,000,000.

³ If the Court does not approve the settlement between the Debtor and the Komet Parties, then the claim of BVF Fund II, LLC is between \$0 and \$3,144,885.61.

⁴ The Court set a claims bar date of December 31, 2018 for current and former clients of Debtor to file a claim. It is unknown how many clients may file such a claim. These policyholder claimholders can include former clients of Debtor whose insurance claim has lapsed because Debtor failed to take any action prior to the statutory bar deadline to do so (per the Texas Insurance Code and/or the Texas Administrative Code).

1 the pre-confirmation phase of the Bankruptcy Case; Mr. Bohm ceased working for the
2 Debtor in mid-2018.

3 **Section 2.06 Significant Events during the Bankruptcy Case**

4 The Bankruptcy was filed on December 6, 2017. The Debtor immediately filed
5 applications to employ general counsel (Atkinson Law Associates, Ltd.) and special
6 counsel (Angelo Law Firm, PLLC). Both firms were subsequently approved for
7 employment.

8 Debtor soon filed an emergency motion for approval of use of cash collateral. That motion
9 was opposed by BVF, Fund II, and David Komet (collectively, the "Komet Parties"). A
10 first interim cash collateral order was docketed on December 21, 2017, and a second
11 interim cash collateral order was docketed on January 17, 2018. A final cash collateral
12 order was docketed on February 6, 2018, and is good through May 31, 2018. All three of
13 those orders grant replacement certain liens to BVF and Fund II. A status hearing on the
14 final cash collateral order is set for May 22, 2018.

15 In December and January 2018, Debtor issued subpoenas on BVF, Fund II, David Komet,
16 and other entities to obtain more information.

17 On January 5, 2018, the Komet Parties filed a motion to transfer venue of this Bankruptcy
18 Case to Texas. That motion was withdrawn without prejudice, via stipulation on March 8,
19 2018.

20 On January 17, 2018, Debtor filed a motion to hold the Komet Parties in civil contempt for
21 violation of the automatic stay of bankruptcy. That motion was withdrawn, with prejudice,
22 via stipulation on March 8, 2018.

23 On January 28, 2018, Debtor filed a motion to estimate the claim of Fund II. That motion
24 was withdrawn without prejudice, via stipulation on March 8, 2018.

25 On April 4, 2018, Debtor filed the first five adversary proceeding cases identified above.

26 On April 4, 2018, Debtor timely filed its initial disclosure statement and plan. The Debtor
27 decided to wait until the proof of claim deadline passed prior to seeking approval of the
28 disclosure statement.

29 On April 11, 2018, Fund II filed its proof of claim, which asserted a secured claim in the
amount of \$3,144,885.

On April 17, 2018, Debtor filed the sixth adversary proceeding case identified above.

On April 19, 2018, Debtor filed a motion to estimate the claim of Fund II, for the purposes
of plan confirmation only, to be either \$242,400 or \$343,400. That motion was
subsequently denied by the Court.

1 On April 20, 2018, Debtor filed a motion to extend extension of the exclusive period for
2 Debtor to gain acceptance of its plan, by 92 days, to September 4, 2018. That motion was
3 approved. By subsequent stipulations with the Komet Parties, which were approved by
4 court orders, that exclusivity deadline has been extended to November 15, 2018.

4 On April 30, 2018, Debtor filed its Amended Disclosure Statement No. 2 and its Amended
5 Plan of Reorganization No. 2.

6 On June 18, 2018, the Debtor and the Komet Parties attended a court-ordered settlement
7 conference, which was successful. On July 10, 2018, the Debtor filed a motion to approve
8 that settlement. The hearing on that motion has been continued several times, and is
9 currently set for October 9, 2018. It is expected that the hearing will be continued again, to
10 be set concurrent with the confirmation hearing on this Plan.

10 On June 11, 2018, the First Interim Application for Compensation was filed by the Angelo
11 Law Firm, PLLC. That application was granted, subject only to the reservation of rights by
12 the Komet Parties to object to ALF's final fee application.

12 On June 17, 2018, the First Interim Application for Compensation was filed by Atkinson
13 Law Associates, Ltd. That application was granted, subject only to the reservation of rights
14 by the Komet Parties to object to ALA's final fee application.

14 On July 27, 2018, Debtor filed a motion to extend the claims bar date for its policyholder
15 clients, and to serve notice on those persons by publication. Debtor subsequently requested
16 that service of notice be by direct mail instead, in order to keep costs reduced. The Court
17 granted both requests, and set November 5, 2018 (90 days after entry of that order) for the
18 claims bar date for those policyholders.

18 In July and August, 2018, the Texas Department of Insurance conducted substantial
19 discovery on Debtor, the Komet Parties, and other persons and entities. On September 13,
20 2018, Debtor attended an informal settlement meeting with TDI, the outcome of which
21 resulted in this Amended Disclosure Statement No. 3 and the Amended Plan No. 3.

21 On August 28, 2018, TDI objected to the proof of claim filed by Buena Vista Finance,
22 LLC. The hearing on that objection has not yet been held.

23 **Section 2.07 Regulatory Affairs**

24 The Debtor's Texas regulator is the Texas Department of Insurance ("TDI"). Over the
25 operating history of the Debtor, some persons and entities have filed complaints against
26 Debtor with the Consumer Protection Section of the Texas Department of Insurance.
27 These complaints are logged as 'problem reports' and assigned a Problem Report ID
27 ("PRI"). As of September 16, 2018, the Debtor has responded to all known PRIs ever filed
28 against it, and TDI has closed or deemed resolved all such complaints. Although TDI's
29 Consumer Protection Section has not referred any PRIs to TDI's Enforcement Section,
such PRIs could potentially be used as evidence of a violation or to show one or more
patterns of practice should TDI bring a formal administrative action against the Debtor.

1 Pre- and post-petition, TDI's Enforcement Section has been investigating the acts of the
2 Debtor. TDI's Enforcement investigation could conclude that the evidence it gathers
3 warrants sanctions as defined in the Texas Insurance Code, which include the assessment
4 of administrative penalties, ordering of restitution, enjoinder from entering into contracts
5 with Texas policyholders, and revocation of the Debtor's public adjuster's license. **The
6 Debtor understands and expects that inclusion of TDI's requirements into the Plan
7 (including but not limited to the Class 6B Restitution Fund and the injunctive relief
8 identified in Article III(B) of the Plan) addresses the concerns of TDI as of the
9 Effective Date, and moreover that the Debtor's public adjuster license is not being
10 revoked at Plan confirmation, and will remain active and in good standing.**

11 NOTWITHSTANDING ANYTHING IN THIS DISCLOSURE STATEMENT OR THE
12 PLAN TO THE CONTRARY, NOTHING IN THE PLAN MODIFIES OR INFRINGES
13 UPON (OR IS INTENDED TO MODIFY OR INFRINGE UPON) EITHER (I) THE
14 TEXAS DEPARTMENT OF INSURANCE'S REGULATORY AUTHORITY, OR (II)
15 ANY APPLICABLE STATUTE OR ADMINISTRATIVE RULE FOUND IN THE
16 TEXAS INSURANCE CODE OR TEXAS ADMINISTRATIVE CODE. Moreover,
17 pursuant to Article VII(E), jurisdiction over the interpretation and enforcement of the
18 injunctive relief shall be concurrent with the United States Bankruptcy Court, District of
19 Nevada.

20 Pre-petition, the Debtor had *de minimus* Colorado operations. The Debtor's Colorado
21 regulator is the Colorado Division of Insurance. No complaints against Debtor have been
22 lodged with CDI. Pre-confirmation, the Debtor has effectively ceased operations in
23 Colorado, and does not intend to re-start them. Accordingly, it will not be regulated by the
24 Colorado Division of Insurance as of the Effective Date.

25 **Section 2.08 Claims Objections**

26 Except to the extent that a claim is already allowed pursuant to a final non-appealable
27 order, or to the extent previously stipulated to by the Debtor, the Debtor reserves the right
28 to object to claims. Therefore, even if your claim is allowed for voting purposes, you may
29 not be entitled to a distribution if an objection to your claim is later upheld.

30 **Section 2.09 Recovery of Preferential, Avoidable, or Fraudulent 31 Transfers**

32 The Bankruptcy Code preserves the Debtor's rights to prosecute claims and causes of
33 action that exist outside of bankruptcy, and also empowers the Debtors to prosecute certain
34 claims that are established by the Bankruptcy Code, including claims to avoid and recover
35 preferential transfers, and fraudulent conveyances.

36 Under Section 547 of the Bankruptcy Code, a debtor's bankruptcy estate may in certain
37 circumstances recover preferential transfers of property during the 90 days immediately
38 before the filing of its bankruptcy petition with respect to pre-existing debts. In the case of
39 insiders who are creditors, the Bankruptcy Code provides for one year preference period.

1 If you received a payment or other transfer within 90 days of the bankruptcy, or other
2 transfer avoidable under the Code, the Debtor may seek to avoid such transfer.

3 Under Section 548 of the Bankruptcy Code and applicable state law, a debtor's bankruptcy
4 estate may in certain circumstances recover fraudulent transfers of property made prior to
5 the filing of its bankruptcy petition. As asserted in the sixth adversary proceeding case
6 above, the Debtor believes that one such avoidance action exists, against Fund II, in the
7 amount of at least \$4,666,500. Debtor continues to investigate matters and may uncover
8 additional such actions against one or more persons or entities.

9 Additionally, avoidance actions may exist under sections 544, 545, 549 and 553(b) of the
10 Bankruptcy Code that allow a debtor to avoid and/or recover certain property. The Debtor
11 is currently aware of one such avoidance action, under Section 544 of the Bankruptcy
12 Code, against entity BVF Fund II, LLC, to avoid its unperfected lien. Debtor has already
13 filed an adversary proceeding on that matter (as identified above).

14 **Article III. SUMMARY OF THE PLAN OF REORGANIZATION**

15 **Section 3.01 How Creditors and Interest Holders are Classified under the** 16 **Plan, and Their Treatment under the Plan**

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

21 **Section 3.02 Unclassified Claims**

22 Certain types of claims are automatically entitled to specific treatment under the
23 Bankruptcy Code. They are not considered impaired, and holders of such claims do not
24 vote on the Plan. They may, however, object if, in such claim holder's view, the treatment
25 under the Plan does not comply with that required by the Code. As such, pursuant to
26 Section 1123(a)(1) of the Bankruptcy Code, the following claims are not placed in any
27 class:

28 **(a) Administrative Expenses**

29 Administrative expenses are costs or expenses of administering the Debtor's Chapter 11
case which are allowed under Section 503(b) of the Bankruptcy Code. Pursuant to Section
1129(a)(9) of the Bankruptcy Code, all administrative expenses be paid in full on the
Effective Date of the Plan, unless a particular claimant agrees to a different treatment. The
Bankruptcy Code also requires that statutory fees owed 28 U.S.C. § 1930 have been paid or
will be paid on the Effective Date of the Plan.

The following chart lists all of the Debtor's anticipated administrative expenses as of the
Effective Date, and their treatment:

UNCLASSIFIED ADMINISTRATIVE EXPENSE CLAIMS

<u>Name</u>	<u>Estimated Amount Owed at Plan Confirmation</u>	<u>Treatment</u>
Atkinson Law Associates Ltd. (professional fees for Debtor's counsel)	\$300,000 ±	Paid in full on the later of: (i) the Effective Date; (ii) upon Court approval of the allowed claim; or (iii) a later date if the claimant agrees to such different treatment.
Angelo Law Firm PLLC (professional fees for special counsel for Debtor)	\$50,000 ±	Paid in full on the later of: (i) the Effective Date; (ii) upon Court approval of the allowed claim; or (iii) a later date if the claimant agrees to such different treatment.
Sergio De La Canal	\$190,000 ±	50% of Sergio De La Canal's allowed administrative expenses claim shall be paid in full on the later of: (i) the Effective Date; (ii) upon Court approval of the allowed claim; or (iii) a later date if the claimant agrees to such different treatment. The remaining 50% shall be paid in full at any time after Class 6B is paid in full.
Other post-petition expenses and unpaid wages of Debtor's staff (e.g., proofs of claims 16-18 filed by Linda Garza, Rolando Garza, and Matthew Bohm)	\$50,264 ±	Paid in full on the later of: (i) the Effective Date; (ii) upon Court approval of the allowed claim; or (iii) a later date if the claimant agrees to such different treatment.
TOTAL	\$565,264 ±	

(b) U.S. Trustee Fees

Under the Plan, past due fees imposed under 28 U.S.C. § 1930(a)(6) (and any other amounts that may be due under chapter 123 of title 28 of the United States Code), if any, shall be paid in full before or on the Effective Date of the Plan. After the Effective Date of the Plan, Debtor shall timely file quarterly reports in the form prescribed by the United States Trustee; such reports shall be filed within 20 days following the end of each calendar quarter (including any fraction thereof) until the case has been converted, dismissed or closed by entry of a final decree. Debtor shall pay in full when due the fees imposed under 28 U.S.C. § 1930(a)(6) for each quarter (including any fraction thereof) until this chapter 11 case is converted, dismissed, or closed by entry of a final decree.

(c) Priority Tax Claims

Priority unsecured tax claims include certain income, employment, property, and other taxes described by Section 507(a)(8) of the Bankruptcy Code. Section 1129(a)(9)(C) of the Bankruptcy Code requires that each holder of such a priority tax claim receive the value of

1 such claim regular installment payments in cash that is: (i) of a total value, as of the
 2 Effective Date of the plan, equal to the allowed amount of such claim; (ii) over a period
 3 ending not later than five years after the Petition Date; and (iii) in a manner not less
 4 favorable than the most favored nonpriority unsecured claim provided for by the Plan.

5 The following chart lists the Debtor's known Section 507(a)(8) priority tax claims and their
 6 treatment under the Plan:

UNCLASSIFIED PRIORITY UNSECURED TAX CLAIMS

<u>Claimant</u>	<u>Estimated Claim Amount</u>	<u>Treatment</u>
Internal Revenue Service	\$45,153.60	<ul style="list-style-type: none"> • Paid in one lump sum payment on or before June 30, 2019. • In addition, interest on the claim shall accrue from the Effective Date to the date of payment, which shall be paid at the IRC 6621 statutory interest rate.
Texas Workforce Commission	\$0.00	<ul style="list-style-type: none"> • Paid in one lump sum payment on the Effective Date, if any claim is filed.
Colorado Department of Labor and Employment	\$41.07	<ul style="list-style-type: none"> • Paid in one lump sum payment on the Effective Date

Section 3.03 Classified Claims

17 The following table summarizes the Plan classes and their impairment:

TABLE 1: CLAIM CLASSIFICATION STRUCTURE

SECURED ALLOWED CLAIMS:

Class	Claimant	Type	Collateral	Impaired?
Class 1	Buena Vista Finance, LLC	Secured	Per UCC-1	Yes*
Class 2	TD Auto Finance	Secured	2015 Nissan	Not impaired
Class 3	TD Auto Finance	Secured	2016 Nissan	Not impaired
Class 4	Bank of America, N.A.	Secured	2015 Ford F250	Not impaired

PRIORITY UNSECURED ALLOWED CLAIMS:

Class	Claimant	Impaired?
Class 5	Various employees, for pre-petition wages	Not impaired

UNSECURED ALLOWED CLAIMS:

Class	Claimant	Impaired?
Class 6A	General unsecured claims	Not impaired
Class 6B	TDI Restitution Fund	Not impaired
Class 7	BVF Fund II, LLC	Yes*

SUBORDINATED UNSECURED ALLOWED CLAIMS:

Class	Claimant	Impaired?
Class 8	Sergio De La Canal	Not impaired

EQUITY INTERESTS:

Class	Claimant	Impaired?
Class 9	Sergio De La Canal	Yes

* Plan treatment for this class is set pursuant to the proposed settlement between Debtor and this party.

Each class and the proposed treatment that they will receive under the Plan are described below.

(a) Classes of Secured Claims

Allowed secured claims are claims secured by property of the Debtor's estate, to the extent allowed as secured claims under Section 506 of the Bankruptcy Code.

Four of the Plan classes are for allowed secured claims: the sole perfected blanket secured creditor (Buena Vista Finance, LLC) has its own class, and the three vehicle lenders (whose security interests were perfected via a title lien against a vehicle) also each have their own class. None of the secured creditors are insiders of the Debtor.

The following chart lists all classes containing Debtor's secured prepetition claims and their proposed treatment under the Plan:

<u>Class #</u>	<u>Description</u>	<u>Impaired?</u>	<u>Treatment</u>
1	<p>Claimant: Buena Vista Finance, LLC</p> <p>Collateral: Blanket lien on all assets, per UCC-1</p> <p>Claim amount: \$295,000.00, plus GTG Fees and Expenses (as that term is defined in Docket Entry #227), plus post-petition fees and expenses of Rosenblatt Law Firm (“RLF”) incurred on behalf of BVF (the “RLF Fees and Expenses”)</p>	Impaired	<ul style="list-style-type: none"> • Paid in full. • No interest is paid on this claim. • Per court order, \$21,995.83 has been paid prior to Plan confirmation • The remaining amount [\$273,004.17, plus GTG Fees and Expenses and the RLF Fees and Expenses] is paid as follows: <ul style="list-style-type: none"> - Entire amount held in Debtor’s dedicated sweep DIP account to be paid to BVF on the Effective Date. - \$25,000 paid by December 31, 2018, with another \$30,000 paid by March 31, 2019. - Remainder to be paid in full on or prior to June 30, 2019. • Factoring Agreement is rejected. BVF prohibited from exercising any default remedies under the UCC except and unless Debtor defaults in its Plan payment obligations and timing, as specified above. Any power of attorney granted to BVF is revoked. Title to any items or interests previously ‘factored’ to BVF shall re-vest to Debtor on the Effective Date.
2	<p>Claimant: TD Auto Finance</p> <p>Collateral: 2015 Nissan GT-R</p> <p>Claim amount: \$71,380.46</p>	Not impaired	<ul style="list-style-type: none"> • No change to loan terms • On the Effective Date, Debtor shall pay \$1,312.91 to cure the default that existed on the Petition Date, along with all other amounts to cure the default and bring the account current.
3	<p>Claimant: TD Auto Finance</p> <p>Collateral: 2016 Nissan NV200</p> <p>Claim amount: \$19,764.96</p>	Not impaired	<ul style="list-style-type: none"> • No change to loan terms • On the Effective Date, Debtor shall pay \$431.37 to cure the default that existed on the Petition Date, along with all other amounts to cure the default and bring the account current.

4	Claimant: Bank of America, N.A. Collateral: 2015 Ford F250 Claim amount: \$50,182.69	Not impaired	<ul style="list-style-type: none"> No change to loan terms On the Effective Date, Debtor shall pay \$3,055.71 to cure the default that existed on the Petition Date, along with all other amounts to cure the default and bring the account current.
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(b) Classes of Priority Unsecured Claims

Certain priority claims that are referred to in Sections 507(a)(1), (4), (5), (6), and (7) of the Bankruptcy Code are required to be placed in classes.

The Debtor has one such class, who have pre-petition wage claims against the Debtor and thus are priority unsecured claim holders pursuant to Section 507(a)(4). The following chart contains their proposed treatment under the Plan:

<u>Class #</u>	<u>Description</u>	<u>Impaired?</u>	<u>Treatment</u>
5	Claimants: The allowed Section 507(a)(4) pre-petition wage claims of Debtor's employees	Not impaired	<ul style="list-style-type: none"> Paid in full on or prior to July 31, 2019, but only after Class 1 is paid in full.

(c) Classes of General Unsecured Claims

General unsecured claims are not secured by property of the estate and are not entitled to priority under Section 507(a) of the Bankruptcy Code. Class 6A is general unsecured claims.

Section 1122(a) of the Bankruptcy Code states that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class. For this reason, Classes 6B and 7 have been placed in their own class, because they are not substantially similar to other general unsecured claims.

Class 6B claims, which are the restitution claims of current and former policyholder clients of Debtor (as determined by the Texas Department of Insurance, with input from Debtor), are not substantially similar to other general unsecured claims because TDI is requiring that payments on these claims must be administered and disbursed by an independent third-party disbursement agent, not the Debtor. Moreover, none or virtually none of the claimholders in this class are even aware that they hold a claim against the Debtor; the identity and amount of restitution owed to each policyholder shall be determined by TDI. The amount of Class 6B claims is up to \$2 million; Debtor believes that the actual final amount of restitution claims ultimately set by TDI will be substantially less than that amount. Class 6B is paid *pari passu* with Class 6A.

Fund II’s claim is not substantially similar to other general unsecured claims for several reasons:

- Section 3.17 of the CRA implies that Debtor is to pay Fund II as a disbursement *from policyholder-client funds* as part of the disbursement of an insurance settlement, *not Debtor’s operating funds*, which in turn implies that the CRA payment obligations are not obligations of the Debtor;
- Payment on Fund II’s claim is subject to offsets, as a result of the multiple adversary proceedings launched by Debtor against Fund II, seeking monetary damages;
- Fund II’s entire claim might be void because: (i) the CRA is unenforceable on public-policy grounds; and/or (ii) there was no meeting of the minds at the time the CRA was allegedly entered into by Debtor;
- Fund II’s claim derived from the CRA has another source of payment, because if the CRA is void or is otherwise unenforceable, then Fund II has a malpractice claim against its Texas counsel who drafted the CRA;
- Fund II’s claim derived from the CRA has another source of payment, because Fund II appears to have produced invoices to all affected policyholders (thereby providing justification as to why \$2,000 of policyholder funds should be disbursed to Fund II instead of the policyholder) and thus can seek payment directly from a policyholder if they feel that those ‘invoices’ are valid;
- Fund II’s claim derived from unjust enrichment has another source of payment, because Debtor’s analysis of Fund II’s money flow shows that the majority of funds disbursed by Fund II went into the bank accounts of an entity called OnPoint Appraisal Services, LLC, not Debtor. Therefore, Fund II could seek recovery from OnPoint and whatever persons and entities OnPoint subsequently distributed those monies to.

In addition, the proposed settlement agreement between Fund II and the Debtor establishes that Fund II shall be a Class 7 claim.

The following chart identifies the Plan’s proposed treatment of Classes 6 and 7, which contain general unsecured claims against the Debtor:

<u>Class #</u>	<u>Description</u>	<u>Impaired?</u>	<u>Treatment</u>
6A	Claimants: All allowed general unsecured claims, except for the claims of the Restitution Fund (Class 6B), BVF Fund II, LLC (Class 7), and the subordinated unsecured Class 8 claims	Not impaired	<ul style="list-style-type: none"> • Paid after Classes 1 and 5 are paid in full, but beginning no later than August 1, 2019. • Paid in <i>pari passu</i> to Class 6B. • Distributions made on a quarterly basis. • Paid 100% on allowed claims.

6B	Claimants: Certain current and former clients/ policyholders of Debtor	Not impaired	<ul style="list-style-type: none"> • Paid after Classes 1 and 5 are paid in full, but beginning no later than August 1, 2019. • Paid in <i>pari passu</i> to Class 6A. • Payments to Class 6B are to be made by Debtor to a third-party independent Restitution Fund Claims Administrator. Payments to the claimholders / payees in this class shall in turn be made by that agent.
7	Claimant: BVF Fund II, LLC	Impaired	<ul style="list-style-type: none"> • Paid after Classes 1, 5, and 6A, and 6B are paid in full. Paid in full no later than December 31, 2023. • Distributions made on a quarterly basis. • Paid 100% on allowed claim • Paid in accordance with the proposed settlement terms between the Debtor and this entity (as may be approved by the Court), including: (i) The claim of BVF Fund II, LLC shall be a \$2,000,000 unsecured claim; and (ii) The Consumer Report Agreement is rejected. Any power of attorney granted to Fund II is revoked.

(d) Class of Subordinated General Unsecured Claims

Subordinated general unsecured claims which have been subordinated to the claims of the general unsecured claims, pursuant to Section 510 of the Bankruptcy Code.

Class 8 consists of the allowed subordinated claims of the insiders and affiliates of Debtor, including but not limited to, the claims of Sergio De La Canal (the equity owner) and Carlos De La Canal (his brother).

The following chart identifies the Plan’s proposed treatment of this Class 8:

<u>Class #</u>	<u>Description</u>	<u>Impaired?</u>	<u>Treatment</u>
8	Claimants: Insiders and affiliates of Debtor	Not impaired	<ul style="list-style-type: none"> • Paid only after Classes 1, 5, 6A, 6B, and 7 are paid in full, but no later than December 31, 2023.

1 **(e) Classes of Equity Interest Holders**

2 Equity interest holders are parties who hold an ownership interest (i.e., equity interest) in
 3 the Debtor. In a corporation, entities holding preferred or common stock are equity interest
 4 holders. In a partnership, equity interest holders include both general and limited partners.
 5 In a limited liability company, such as the Debtor, the equity interest holders are the
 6 members. Finally, with respect to an individual who is a debtor, the Debtor is the equity
 7 interest holder.

8 The Debtor has one such equity interest holder class. The following chart identifies the
 9 Plan’s proposed treatment of this Class 9:

<u>Class #</u>	<u>Description</u>	<u>Impaired?</u>	<u>Treatment</u>
9	Interest Holder: Sergio De La Canal	Impaired	<ul style="list-style-type: none"> • All equity ownership shall be surrendered by Mr. De La Canal. • 100% of equity in the reorganized Debtor shall be acquired on the Effective Date by individual Yully “Julie” Toro, for the price of \$10,000. The \$10,000 shall be deposited into the operating bank account of Debtor. • Ms. Toro’s shares will be restricted, in that she cannot sell or transfer them prior to December 31, 2023. • After the Effective Date, Debtor shall not issue any more equity to any person or entity, until all creditor classes are paid in full.

21 **Section 3.04 Absolute Priority Rule**

22 The absolute priority rule comes into play during the Chapter 11 plan confirmation process.
 23 Under Section 1129(b)(1) of the Bankruptcy Code, a creditor’s plan objection will be
 24 upheld if the plan: (1) discriminates unfairly; or (2) is not fair and equitable with respect to
 25 each non-accepting class of claims or interests that is impaired under the plan.

26 For a dissenting class of impaired unsecured creditors, a plan is ‘fair and equitable’ only if
 27 the allowed value of the claim is to be paid in full, or if the holder of any claim or interest
 28 that is junior to the dissenting creditors will not receive or retain any property under the
 29 plan on account of such junior claim or interest. This condition, which is codified in
 Section § 1129(b)(2)(B)(ii) of the Bankruptcy Code, is generally referred to as the absolute
 priority rule. In layman’s terms, the absolute priority rule describes the basic order of
 payment in a corporate bankruptcy: excluding unclassified claims, secured creditors get
 paid first, and then unsecured creditors get paid next (in order of priority), and only then do

1 shareholders get paid, if at all. Moreover, if all unsecured claims are not paid in full, then
2 equity interest holders generally must surrender their equity, and a new person or entity
3 must acquire reissued equity in the reorganized Debtor.

4 The Plan satisfies the absolute priority rule because (i) each successive class of claims is
5 paid in the correct order and timing, and (ii) all classes above the equity interest Class 9 are
6 paid in full.

7 Moreover, equity holder Sergio De La Canal is surrendering his equity, and Ms. Toro is
8 acquiring 100% of the equity of the Debtor for \$10,000, which shall be paid to Debtor.
9 Ms. Toro, who is not related to Sergio De La Canal, currently works for Debtor and is
10 knowledgeable of its operations and client base. This is a terrific opportunity for her to
11 advance her career and be the proud owner of a woman-owned business.

12 The purchase price of \$10,000 is reasonable because all profits of the company are going to
13 pay to creditors for the next five years. Ms. Toro will be on a fixed salary, with no
14 provision or ability to pay herself a bonus or dividends. As a result, the price paid by Ms.
15 Toro for her equity is a price that is appropriate for her to invest in her future and be the
16 owner and President of her own business for several years.

17 **Section 3.05 Injunctive Relief**

18 **In the Plan, Debtor agrees to restrict all insurance activities to those persons and
19 entities, wherever located, that abide by all the applicable statutes, rules, and
20 regulations governing the business of insurance adjusting (including, but not limited
21 to, Texas Insurance Code Chapter 4102 and 28 Texas Administrative Code sections
22 19.701 through 19.713).**

23 **Furthermore, Debtor shall:**

- 24 • **maintain a license in good standing in the state of Texas, in accordance
25 with Tex. Ins. Code § 4102.051;**
- 26 • **have at least one officer, active partner, or other managing individual who
27 holds a license to do the business of a public insurance adjuster in Texas, in
28 accordance with Tex. Ins. Code § 4102.056(c) and 28 Tex. Admin. Code §
29 19.704(c)(3);**
- **refrain from assigning its license or the duties of its license to an unlicensed
individual or entity, in accordance with Tex. Ins. Code § 4102.068;**
- **refrain from allowing unlicensed employees or agents advertise, solicit or
engage clients, furnish reports or present bills to clients, or in any manner
conduct business for which a license is required, in accordance with Tex.
Ins. Code §§ 4102.001 and 4102.155;**
- **refrain from divulging any information obtained through its business,
except at the direction of the client for whom the information was obtained**

1 or as otherwise required by law, in accordance with Tex. Ins. Code §
2 4102.153;

- 3 • refrain from directly or indirectly soliciting employment for an attorney or
4 enter into a contract with an insured for the primary purpose of referring
5 an insured to an attorney and without the intent to perform the services
6 customarily provided by a licensed public insurance adjuster, in
7 accordance with Tex. Ins. Code §§ 4102.103 and 4102.158;
- 8 • refuse any fees, commissions, or other valuable consideration offered in
9 exchange for a referral to a third-party, in accordance with Tex. Ins. Code
10 §§ 4102.104 and 4102.164;
- 11 • employ adjusters with appropriate knowledge and experience for the work
12 they undertake, in accordance with Tex. Ins. Code §§ 4102.053, 4102.054,
13 and 4102.201(a)(8) and 28 Tex. Admin. Code § 19.713(b)(6);
- 14 • refrain from making any misrepresentations to an insured or to an
15 insurance company, in accordance with Tex. Ins. Code § 4102.159 and 28
16 Tex. Admin. Code § 19.713(b)(3);
- 17 • restrict its commission charge to conform with regulatory requirements,
18 including that it not exceed 10 percent of the amount of the insurance
19 claim, in accordance with Tex. Ins. Code § 4102.104 and 28 Tex. Admin
20 Code § 19.713(b)(4);
- 21 • notify clients of any and all fees charged, in accordance with 28 Tex.
22 Admin. Code § 19.708;
- 23 • maintain active proof of financial responsibility on file with the
24 department, in accordance with Tex. Ins. Code § 4102.105 and 28 Tex.
25 Admin. Code §§ 19.705-19.707;
- 26 • maintain a complete record of each transactions as a public insurance
27 adjuster for at least five years after the termination of a transaction, in
28 accordance with Tex. Ins. Code § 4102.110 and 28 Tex. Admin. Code §
29 19.704(m);
- timely report any change of address to the department, in accordance with
Tex. Ins. Code § 4102.106(c);
- register all office locations with the department, in accordance with 28 Tex.
Admin Code § 19.704(c)(5);
- refrain from engaging in the unauthorized practice of law, including but
not limited to directly or indirectly requiring, soliciting, or accepting any
power of attorney to act as an attorney-in-law on behalf of an insured, in
accordance with Tex. Ins. Code § 4102.156 and 28 Tex. Admin Code §§
19.713(b)(7) and 21.901;
- avoid conflicts of interest and refrain from engaging in activities that may
reasonably be construed as presenting a conflict of interest, in accordance
with Tex. Ins. Code § 4102.158 and 28 Tex. Admin. Code § 19.713(b)(8);

- 1 • refrain from misappropriating, converting to its own use, or withholding
2 money belonging to an insurer, HMO, insured, enrollee, consumer of
3 beneficiary, in accordance with Tex. Ins. Code §§ 4102.111 and
4 4102.201(a)(5);
- 5 • refrain from engaging in fraudulent or dishonest acts or practices, in
6 accordance with Tex. Ins. Code § 4102.201(a)(7);
- 7 • conduct business fairly with its clients, insurance companies, and the
8 public, in accordance with 28 Tex. Admin. Code § 19.713(b)(1); and
- 9 • except for Debtor’s payment obligations under this Plan, refrain from
10 knowingly engaging in any business with David Komet, or any individual
11 or business entity that related to, owned by, associated with, or proposing
12 to do business with David Komet.

13 Section 3.06 Means of Implementing the Plan

14 (a) Funding for the Plan

15 The financial model attached hereto as Exhibit 1 (“*Financial Model*”) outlines the Debtor’s
16 prospective post-confirmation sources and uses of income. This financial model contains
17 estimated results only, using the Debtor’s business judgment as to projections; the actual
18 post-confirmation financial results of the Debtor (including operating revenues and expense
19 line items, and net litigation proceeds) may significantly vary from what is projected.

20 The Debtor will fund the Plan with its cash flow from operations, and from net litigation
21 proceeds (if any). The Debtor is expected to have sufficient projected cash flow to
22 completely fund all Plan disbursements.

23 (b) Post-Confirmation Management

24 After Plan confirmation, the President, person in control, and a managing individual of the
25 reorganized Debtor will be Yully “Julie” Toro, an individual who is purchasing all of the
26 membership equity interests of the Debtor via the confirmed Plan. For the duration of the
27 Plan, Ms. Toro’s salary shall not exceed \$15,000 per calendar month and she shall not
28 receive any bonus, dividend, or other profit distribution.

29 As of the Effective Date, Sergio De La Canal:

- Shall thenceforth not provide any input or advice whatsoever (on either a paid or
free basis, whether as a ‘consultant’ or otherwise) to Ms. Toro or the Debtor for the
management or operations of the Debtor; and
- Shall be a completely disinterested person with respect to the Debtor.

The change in management shall include Ms. Toro hiring a second managing licensed
public adjuster to assist her in the management and operations of the Debtor. The Debtor
shall notify TDI, Buena Vista Finance, and BVF Fund II of the additional officer/director
before February 15, 2019, and not later than the 30th day after the addition of the

1 officer/director, pursuant to 28 TAC 19.704(f)). This person shall not be a relative of Mr.
2 De La Canal. Ms. Toro shall ensure that any such second managing public adjuster: shall
3 also be an officer or director of the Debtor, but that person shall not become an equity
4 holder of the Debtor.

4 **(c) Post-Confirmation Operations**

5 The reorganized Debtor may operate its business in the normal course, and may use,
6 acquire or dispose of property and compromise or settle any claims without supervision or
7 approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or
8 Bankruptcy Rules, other than those restrictions expressly imposed by the Plan and the
9 Confirmation Order.

9 **Section 3.07 Executory Contracts and Unexpired Leases**

10 The term ‘assumption’ means that that the Debtor has elected to continue to perform the
11 obligations under executory contracts and unexpired leases. Upon Plan confirmation, the
12 Debtor shall not assume any leases or executory contracts (except that to any extent that its
13 existing policyholder contracts are executory, then those are assumed at Plan
14 confirmation).

14 All other pre-petition executory contracts and unexpired leases of the Debtor will be
15 rejected under the Plan. If you object to the rejection of your contract or lease, you must
16 file and serve your objection to the Plan within the deadline for objecting to the
17 confirmation of the Plan.

17 The deadline for filing a Proof of Claim based on a claim arising from the rejection of a
18 lease or contract is set by the Plan to be 30 days from the date of entry of the Confirmation
19 Order. Any claim based on the rejection of a contract or lease will be barred if the proof of
20 claim is not timely filed, unless the Court orders otherwise.

21 **Section 3.08 Risk Factors**

22 Although the Debtor believes that the Plan will satisfy all requirements necessary for
23 Confirmation by the Bankruptcy Court, the Debtor gives no assurance that the Bankruptcy
24 Court will reach the same conclusion. Moreover, the Debtor gives no assurance that
25 modifications to the Plan will not be required for Confirmation or that such modifications
26 would not necessitate the re-solicitation of votes. Although the Debtor believes that the
27 Effective Date will occur soon after the Confirmation Date, the Debtor gives no assurance
28 as to such timing.

27 Although the proposed settlement between Debtor and the Komet Parties resolves all
27 adversary proceedings against those persons and companies, if the Court does not approve
28 that settlement then the Debtor will have to proceed with the litigation, and litigation is
29 inherently a risky proposition. Information obtained through the discovery process may
reduce, or even eliminate, certain claims that Debtor currently believes it holds against

1 third parties. Moreover, even if a successful judgment is obtained, it is possible that the
2 Debtor may not be able to collect from that person or entity on such judgment.

3 The disassociation of Mr. De La Canal from the Debtor on the Effective Date (e.g., he will
4 no longer be an owner or manager of the Debtor, and is prohibited from providing advice
5 to Ms. Toro or the Debtor's new management team) is a substantial risk to the ongoing
6 business operations of the Debtor. Ms. Toro is somewhat unexperienced and will need to
7 rely on the experience of the Debtor's staff and a newly-hired second managing public
8 adjuster to achieve the sales goals set forth in the Plan's financial model. Some
9 commercial clients may attempt to cancel their contracts with Debtor if Mr. De La Canal is
10 no longer associated with the Company.

11 In addition, Debtor will have to balance the cash flow needs of the company's operations
12 with the cash flow demands and timing of payments to creditors pursuant to the Plan. To
13 accommodate growth of new residential and commercial clients, the Debtor may need to
14 identify and work with damage estimators and appraisers who are willing to be paid on
15 delayed payment terms, in order to better match the timing of receipt of revenues and the
16 outlay of expenses.

13 **Section 3.09 Tax Consequences of Plan**

14 Debtor is taxed as a Schedule C business on the personal Federal income tax return of its
15 owner, Sergio De La Canal. No tax consequences are expected to arise for Debtor directly
16 as a result of Plan confirmation.

17 With respect to creditors whose claims are not impaired under the Plan, no gain or loss on
18 the claim is expected to be incurred by those claim holders. Thus, no tax consequences are
19 expected to arise for creditors as a result of Plan confirmation. With respect to creditors
20 whose claims are impaired under the Plan but who are to receive a distribution under the
21 Plan, those claim holders would be expected to incur a loss on the claim; however, Debtor
22 cannot provide any advice as to the timing or amount of that loss, because the final payout
23 amounts to these Classes is dependent upon the profitability of the reorganized Debtor.
24 With respect to creditors whose claims are impaired under the Plan and who are not to
25 receive any distribution under the Plan, those claim holders would be expected to incur a
26 loss on the claim, possibly in this tax year. The Debtor cannot provide tax advice to any
27 claim holder. **ALL HOLDERS OF CLAIMS AND INTERESTS ARE URGED TO
28 CONSULT THEIR TAX ADVISORS CONCERNING THE FEDERAL, STATE,
29 LOCAL, AND OTHER TAX CONSEQUENCES APPLICABLE UNDER THE PLAN.**

26 **Article IV. CONFIRMATION REQUIREMENTS AND PROCEDURES**

27 To be confirmable, the Plan must meet the requirements listed in Section 1129 of the
28 Bankruptcy Code. These include the requirements that:

- 28 - the Plan must be proposed in good faith;

- 1 - if a class of claims is impaired under the Plan, then at least one impaired class of
- 2 claims must accept the plan, without counting votes of insiders;
- 3 - the Plan must distribute to each creditor and equity interest holder at least as much
- 4 as the creditor or equity interest holder would receive in a chapter 7 liquidation
- 5 case, unless the creditor or equity interest holder votes to accept the Plan; and
- 6 - the Plan must be feasible.

7 These requirements are not the only requirements listed in § 1129, and they are not the only

8 requirements for confirmation.

9 **Section 4.01 Who May Vote or Object**

10 Any party in interest may object to the confirmation of the Plan, if the party believes that

11 the requirements for confirmation are not met.

12 Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A

13 creditor or equity interest holder has a right to vote for or against the Plan only if that

14 creditor or equity interest holder has a claim or equity interest that is both (1) allowed or

15 allowed for voting purposes, and (2) impaired.

16 As identified above, the Plan has several classes of claims that are impaired, and therefore

17 allowed claims in these four Classes have the right to vote to accept or reject the Plan.

18 **(a) What Is an Allowed Claim or an Allowed Equity Interest?**

19 Only a creditor or equity interest holder with an allowed claim or an allowed equity interest

20 has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1)

21 the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been

22 scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of

23 claim or equity interest, unless an objection has been filed to such proof of claim or equity

24 interest. When a claim or equity interest is not allowed, the creditor or equity interest

25 holder holding the claim or equity interest cannot vote unless the Court, after notice and

26 hearing, either overrules the objection or allows the claim or equity interest for voting

27 purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

28 The deadline to file claims in this case was April 11, 2018 for non-governmental persons

29 and entities, and June 4, 2018 for governmental units. [However, the Court, by separate

order (Docket Entry #419 and #461) set a claims bar date of December 31, 2018 for all

current and former customers of Debtor to file a claim.] ONLY CLAIMS THAT ARE

ALLOWED UNDER SECTION 502 OF THE BANKRUPTCY CODE AND OTHER

APPLICABLE LAW (INCLUDING SECTIONS 506 AND 1111(a) OF THE CODE)

SHALL BE TREATED IN ACCORDANCE WITH THE PLAN. DISALLOWED

CLAIMS SHALL RECEIVE NOTHING UNDER THE PLAN. MOREOVER, ANY

PROOF OF CLAIM THAT IS NOT TIMELY FILED BY THE APPLICABLE

DEADLINE (OR DEEMED FILED UNDER 11 U.S.C. § 1111(a)) SHALL BE

DISALLOWED IN ITS ENTIRETY.

1 **(b) What Is an Impaired Claim or an Impaired Equity Interest?**

2 As noted above, the holder of an allowed claim or equity interest has the right to vote only
3 if it is in a class that is ‘impaired’ under the Plan. As provided in Section 1124 of the
4 Bankruptcy Code, a class is considered impaired if the Plan alters the legal, equitable, or
5 contractual rights of the members of that class.

6 **(c) Who is Not Entitled to Vote?**

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

- 8 • Holders of claims and equity interests that have been disallowed by an order of the
9 Court;
- 10 • Holders of other claims or equity interests that are not ‘allowed claims’ or ‘allowed
11 equity interests’ (as discussed above), unless they have been allowed for voting
12 purposes;
- 13 • Holders of claims or equity interests in unimpaired classes;
- 14 • Holders of claims entitled to priority pursuant to Sections 507(a)(2), (a)(3), and
15 (a)(8) of the Bankruptcy Code;
- 16 • Holders of claims or equity interests in classes that do not receive or retain any
17 value under the Plan; and
- 18 • Administrative expenses.

19 **EVEN IF YOU ARE NOT ENTITLED TO VOTE ON THE PLAN, YOU HAVE A
20 RIGHT TO OBJECT TO THE CONFIRMATION OF THE PLAN.**

21 **Section 4.02 Votes Necessary to Confirm the Plan**

22 If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired
23 class of creditors has accepted the Plan without counting the votes of any insiders within
24 that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is
25 eligible to be confirmed by a “cram down” on non-accepting classes, as discussed below.

26 **(a) Votes Necessary for a Class to Accept the Plan**

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

31 A class of equity interests accepts the Plan if the holders of at least two-thirds (2/3) in
32 amount of the allowed equity interests in the class, who vote, cast their votes to accept the
33 Plan.

1 **(b) Treatment of Non-Accepting Classes**

2 Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm
3 the Plan if the non-accepting classes are treated in the manner prescribed by Section
4 1129(b) of the Bankruptcy Code. A plan that binds non-accepting classes is commonly
5 referred to as a ‘cram down’ plan. The Bankruptcy Code allows the Plan to bind non-
6 accepting classes of claims or equity interests if it meets all the requirements for consensual
7 confirmation except the voting requirements of Section 1129(a)(8), does not ‘discriminate
8 unfairly’, and is ‘fair and equitable’ toward each impaired class that has not voted to accept
9 the Plan.

10 YOU SHOULD CONSULT YOUR OWN ATTORNEY IF A ‘CRAM DOWN’
11 CONFIRMATION WILL AFFECT YOUR CLAIM OR EQUITY INTEREST, AS THE
12 VARIATIONS ON THIS GENERAL RULE ARE NUMEROUS AND COMPLEX.

13 **Section 4.03 Liquidation Analysis**

14 To confirm the Plan, the Court must find that all creditors and equity interest holders who
15 do not accept the Plan will receive at least as much under the Plan as such claim and equity
16 interest holders would receive in a chapter 7 liquidation.

17 The Debtor’s liquidation analysis is shown in Exhibit 2 attached hereto. As shown in
18 Exhibit 2, unsecured creditors would likely not receive any distribution at all if the case
19 were converted to chapter 7. Because the Plan provides for a non-zero distribution to
20 Classes 1 through 8, holders of those claims will receive at least as much under the Plan as
21 they would receive if the case were converted to one under chapter 7.

22 **Section 4.04 Feasibility**

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

26 Debtor, as Plan proponent, asserts that it will have enough cash on hand on the Effective
27 Date of the Plan to pay all the claims and expenses that are to be paid on that date, which
28 are nominal and identified and described in the specific plan treatments found in the Plan.

29 A plan proponent must also show that Debtor will have enough cash over the life of the
30 Plan to make the required Plan payments. As shown in the Financial Model, the Debtor
31 projects that it will have a total operating income / cash flow of over \$6 million between
32 Plan confirmation and December 31, 2023, which is more than sufficient to pay all
33 distributions proposed in the Plan. Because the Plan simply distributes all available cash
34 profits, the projected cash flow of the Debtor by definition meets the Plan’s cash flow
35 requirements. Confirmation of the Plan is not likely to be followed by the liquidation of, or
36 the need for further reorganization of, the reorganized Debtor. Accordingly, the Plan is
37 feasible.

1 YOU SHOULD CONSULT WITH YOUR ACCOUNTANT OR OTHER FINANCIAL
2 ADVISOR IF YOU HAVE ANY QUESTIONS PERTAINING TO THESE
3 PROJECTIONS.

4 **Section 4.05 Effective Date**

5 In order for the Plan to become effective, the following steps must be completed post-
6 confirmation:

- 7 • Within fifteen (15) days of confirmation of the Plan, Sergio De La Canal shall
8 be terminated as an officer and staff of the Debtor, and the Debtor shall file a
9 notice in the Bankruptcy Court indicating that an amended list of officers and
10 managers been filed with the Nevada Secretary of State and, further, such notice
11 shall attach a copy of such amended list;
- 12 • Within fifteen (15) days of confirmation of the Plan, the Debtor shall execute
13 and file with TDI a “Biographical Form and Certification of License
14 Qualification Following a Change of Control” (FIN531) indicating the then-
15 current Debtor’s officers and directors;
- 16 • Within fifteen (15) days of confirmation of the Plan, Sergio De La Canal shall
17 sign a non-compete agreement with Debtor, in a form that is acceptable to TDI.
18 In exchange for executing a non-compete agreement, Mr. De La Canal will be
19 paid a total of \$60,000, payable as \$15,000 per calendar month for four
20 consecutive months beginning on the month after the Effective Date of the Plan.

21 **Article V. EFFECT OF CONFIRMATION OF PLAN**

22 **Section 5.01 Discharge**

23 The Debtor has over 1,000 existing clients and, as shown in the Financial Model, the
24 Debtor will substantially engage in business for several years after consummation of the
25 Plan. In addition, per Section V(C) of the Plan, Debtor shall be permitted to operate in the
26 normal course, including taking on new commercial and residential clients after Plan
27 confirmation, in any volume deemed necessary and appropriate by the Debtor in order to
28 pay all of the Plan distributions. Thus, Section 1141(d)(3)(B) of the Bankruptcy Code is
29 satisfied, and Debtor is entitled to a discharge of its debts pursuant to Section 1141(d) of
the Bankruptcy Code.

On the Effective Date of the Plan, the Debtor shall be discharged from any debt that arose
before confirmation of the Plan, subject to the occurrence of the Effective Date, to the
extent specified in Section 1141(d)(1)(A) of the Bankruptcy Code. However, the Debtor
shall not be discharged from any debt imposed by the Plan. After the Effective Date of the
Plan your claims against the Debtor will be limited to the debts imposed by the Plan.

1 **Section 5.02 Modification of the Plan**

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

4 Upon request of the Debtor, the United States Trustee, or the holder of an allowed
5 unsecured claim, the Plan may be modified at any time after confirmation of the Plan but
6 before the completion of payments under the Plan, to: (1) increase or reduce the amount of
7 payments under the Plan on claims of a particular class; (2) extend or reduce the time
8 period for such payments; or (3) alter the amount of distribution to a creditor whose claim
9 is provided for by the Plan to the extent necessary to take account of any payment of the
10 claim made other than under the Plan. Any such post-confirmation modification requires
11 Court approval, after notice and a hearing.

10 **Section 5.03 Final Decree**

11 When the Debtor’s Chapter 11 estate has been fully administered as referred to in
12 Bankruptcy Rule 3022, the Debtor may file a motion with the Bankruptcy Court to obtain a
13 final decree to close this Chapter 11 bankruptcy case. Pursuant to Local Bankruptcy Rule
14 3022, unless there are pending contested matters or adversary proceedings, a non-
15 individual chapter 11 case is deemed fully administered 180 days after plan confirmation,
16 and the clerk may then enter a final decree without further notice.

15 # # # # #

17 Respectfully Submitted,

18 For DEBTOR / PLAN PROPONENT:

19 By: /s/ Sergio De La Canal
20 SERGIO DE LA CANAL
21 *Managing Member*

22
23 /s/ Robert Atkinson
24 ROBERT E. ATKINSON, ESQ.
25 Nevada Bar No. 9958
Reorganization Counsel for Debtor

EXHIBIT 1

to Disclosure Statement:

Financial Model

FINANCIAL MODEL

		----- Estimated -----					
INCOME:	Dec-18	Annual 2019	Annual 2020	Annual 2021	Annual 2022	Annual 2023	Total
<u>Operating Revenue (all fees from insurance claim awards):</u>							
Commissions (PA fees) from commercial clients		\$2,000,000	\$1,600,000	\$1,400,000	\$1,400,000	\$1,400,000	See Note 1
Commissions (PA fees) from residential clients	\$90,000	\$1,053,200	\$1,422,000	\$922,000	\$922,000	\$922,000	See Note 1
Total Commission Income (10%, per TIC \$4102.104)	\$90,000	\$3,053,200	\$3,022,000	\$2,322,000	\$2,322,000	\$2,322,000	\$13,131,200
Plus reimbursement of advanced client expenses	\$0	\$0	\$288,000	\$480,000	\$480,000	\$720,000	See Note 2
Plus purchase of 100% reissued equity by Yully Toro	\$10,000	\$0	\$0	\$0	\$0	\$0	
TOTAL REVENUES	\$100,000	\$3,053,200	\$3,310,000	\$2,802,000	\$2,802,000	\$3,042,000	\$15,109,200
<u>Corporate Operating Expenses:</u>							
Rent	(\$4,500)	(\$54,000)	(\$54,000)	(\$54,000)	(\$54,000)	(\$27,000)	See Note 3
Vehicles	(\$3,205)	(\$38,458)	(\$38,458)	(\$20,571)	(\$17,240)	(\$5,192)	See Note 4
Damage estimates	\$0	(\$510,000)	(\$590,000)	(\$590,000)	(\$590,000)	(\$295,000)	See Note 5
Corporate Operations - travel, fuel, insurance, misc.	(\$13,000)	(\$156,000)	(\$156,000)	(\$156,000)	(\$156,000)	(\$78,000)	
Management Fee - Yully Toro	(\$15,000)	(\$180,000)	(\$180,000)	(\$180,000)	(\$180,000)	(\$180,000)	
Management Fee - Manager #2	(\$10,000)	(\$120,000)	(\$120,000)	(\$120,000)	(\$120,000)	\$0	
Other staff expenses	(\$12,000)	(\$252,000)	(\$252,000)	(\$252,000)	(\$252,000)	(\$108,000)	
Sales and marketing expenses	\$0	(\$90,000)	(\$150,000)	(\$150,000)	(\$150,000)	\$0	
Outside accounting / payroll	(\$1,000)	(\$12,000)	(\$12,000)	(\$12,000)	(\$12,000)	(\$12,000)	
Legal fees for corporate representative work	\$0	(\$24,000)	(\$24,000)	(\$24,000)	(\$24,000)	(\$12,000)	
Third-party claims agent for Restitution Fund	\$0	(\$3,000)	(\$32,000)	\$0	\$0	\$0	See Note 7
Non-compete agreement	(\$15,000)	(\$45,000)	\$0	\$0	\$0	\$0	See Note 6
UST statutory fees	\$0	(\$9,750)	\$0	\$0	\$0	\$0	
Total Operating Expenses	(\$73,705)	(\$1,494,208)	(\$1,608,458)	(\$1,558,571)	(\$1,555,240)	(\$717,192)	(\$7,007,375)
<u>Advanced Client Expenses</u>							
New appraisals + umpire fees	\$0	(\$288,000)	(\$480,000)	(\$480,000)	(\$480,000)	(\$240,000)	See Note 2
Total Advanced Client Expenses	\$0	(\$288,000)	(\$480,000)	(\$480,000)	(\$480,000)	(\$240,000)	(\$1,968,000)
TOTAL EXPENSES	(\$73,705)	(\$1,782,208)	(\$2,088,458)	(\$2,038,571)	(\$2,035,240)	(\$957,192)	(\$8,975,375)
Net operating income / cash flow	\$26,295	\$1,270,992	\$1,221,542	\$763,429	\$766,760	\$2,084,808	\$6,133,825

NOTES:

1. The amounts for 2019 and 2020 include commissions from the existing book of business, and also new business. Assumes 1000 new clients per year from 2020 onward, at an average revenue of \$922/client.
2. Debtor estimates that approximately 40% of its residential clients will require an appraisal. Debtor will be advancing the costs of the appraisal process (including appraiser, umpire, and, if necessary, an attorney to get an umpire appointed), and reimbursed by the client for those advanced expenses when an award is issued and a settlement is paid. For the purposes of this model, the reimbursement is lagged by 1 year, with 2023 being a half-year.
3. The reorganized debtor expects to maintain three offices, in San Antonio, El Paso, and covering the Valley (e.g., McAllen)
4. Vehicles paid monthly, per Plan. The Plan payments match the loan balances and terms.
5. The projected cost of procuring damage estimates for new residential and commercial clients to support the projected revenue streams.
6. This is the payment on the non-compete agreement to be signed between Sergio De La Canal and Debtor.
7. Assumes \$1000/month during period in which moneys are simply being provided to the claims administrator by Debtor, and \$20,000 for the distribution of checks to restitution claimholders (estimated to occur in 4Q 2020).

Note: All excess profits of the business will be undistributable funds and distributed in accordance with Section V(D)(ii) of the Plan.

EXHIBIT 2
to Disclosure Statement:

Liquidation Analysis

1 **EXHIBIT 2:**
2 **LIQUIDATION ANALYSIS**

3 **A. OVERVIEW**
4

5 A chapter 11 plan cannot be confirmed unless the bankruptcy court determines that
6 the Plan is in the best interests of all holders of claims and interests that are impaired by the
7 Plan and that have not accepted the Plan. The ‘best interests’ test requires a bankruptcy court
8 to find either that (i) each claim holder of an impaired class have accepted the plan, or (ii)
9 each claim holder of an impaired class will receive or retain under the Plan on account of
such claim or interest property of a value, as of the effective date of the Plan, that is not less
than the amount that such holder would so receive or retain if the debtor were liquidated
under chapter 7 of the Bankruptcy Code.

10 In other words, each creditor who has not accepted the plan is supposed to receive
11 more under the Plan than the amount that would be received if the Debtor was liquidated in a
12 chapter 7 bankruptcy. Accordingly, the analysis below calculates the distributions available
if the Debtor were liquidated in a Chapter 7 instead of reorganized under its Chapter 11 Plan.

13 **B. DISCLAIMERS**
14

15 The Debtor has prepared this liquidation analysis (the “*Liquidation Analysis*”) based
16 on a hypothetical liquidation under chapter 7 of the Bankruptcy Code. It is assumed, among
17 other things, that the hypothetical liquidation under chapter 7 would be conducted under the
direction of a court-appointed Chapter 7 trustee.

18 The determination of the costs of, and proceeds from, the hypothetical liquidation of
19 the Debtor’s assets in a chapter 7 case is an uncertain process involving the use of estimates
20 and assumptions that may not materialize in an actual chapter 7 liquidation, and
unanticipated events and circumstances could affect the ultimate results in an actual chapter 7
liquidation.

21 THE LIQUIDATION ANALYSIS IS NOT A VALUATION OF THE DEBTOR’S
22 ASSETS AS A GOING CONCERN. THERE MAY BE A SIGNIFICANT DIFFERENCE
23 BETWEEN THE LIQUIDATION ANALYSIS AND THE VALUES THAT MAY BE
24 REALIZED IN AN ACTUAL LIQUIDATION. THIS ANALYSIS ASSUMES
“LIQUIDATION VALUES” BASED ON THE DEBTOR’S BUSINESS JUDGMENT.

25 THE UNDERLYING FINANCIAL INFORMATION IN THE LIQUIDATION
26 ANALYSIS WAS NOT COMPILED OR EXAMINED BY ANY INDEPENDENT
27 ACCOUNTANTS. NEITHER THE DEBTOR NOR HIS ADVISORS MAKE ANY
28 REPRESENTATION OR WARRANTY THAT THE ACTUAL RESULTS WOULD OR
WOULD NOT APPROXIMATE THE ESTIMATES AND ASSUMPTIONS
REPRESENTED IN THE LIQUIDATION ANALYSIS. ACTUAL RESULTS COULD
VARY MATERIALLY.

1 **C. NON-OPERATION**

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3 A chapter 7 trustee generally does not run a chapter 7 debtor's business, and would
4 have to obtain court approval to do so under Section 721 of the Bankruptcy Code. Even
then, a trustee may only operate the business for a limited period.

5 In this instance, a chapter 7 trustee would almost certainly not be able to operate the
6 Debtor's business at all for any period of time, because the Debtor is a regulated entity. By
7 statute (Texas Insurance Code § 4102.055(c)), every licensed public adjuster company (such
8 as Debtor) must have at least one officer or managing individual who themselves are a
9 person who are a licensed public adjuster. In Debtor's case, Mr. De La Canal is that licensed
individual, and he likely would not be available to perform that role if this bankruptcy case
were converted to chapter 7.

10 In short, a chapter 7 liquidation would be a traditional fire-sale liquidation and
11 distribution of the Debtor's assets.

12 **D. LIQUIDATION**

13
14 The Debtor's value is derived entirely from achieving successful settlements and
15 recoveries for its customers, pursuant to which Debtor is entitled to a 10% commission fee on
16 all amounts that it recovers for its clients. That fee is earned only upon recovery actually
17 being reached for its clients, i.e., through the Debtor's operations. In other words, the
Debtor's business is entirely contingent: its fees are earned only upon a successful outcome
for its customers, from its operations. Moreover, Debtor's fees are payable only at the end of
the process.

18 Because the business cannot be operated in a chapter 7, the value of the Debtor's
19 book of business collapses to virtually nothing, because Debtor's fees are not payable until
20 after all of the work on a client file is completed. Every one of Debtor's clients would have
21 to be notified of the chapter 7 conversion, and that their public adjuster is out of business.
Every customer would be obligated to find another public adjuster to pursue their claim.

22 The only value of Debtor's book of business that could be monetized by a chapter 7
23 trustee would be:

- 24 i. ***Imminent Accounts Receivable.*** These monies are receivables for which the
25 debtor's work is completed, and the settlement checks are already in
26 circulation for endorsement by the insureds, mortgage companies, etc. A
27 chapter 7 bankruptcy estate would have a right to receive the Debtor's 10%
28 commission fee embedded in that settlement check, because it would have
been fully earned at that point. At any point in time, the value of the "checks
in circulation for endorsement" is estimated by Debtor to be \$300,000 to
\$500,000. Applying the 10% fee, the value of this "imminent accounts

1 receivable” income (i.e., earned but not yet paid, but will soon be paid via
2 settlement checks in circulation) is therefore between \$30,000 and \$50,000.
3 For the purpose of this Liquidation Analysis, the mid-point of \$40,000 is
4 chosen.

- 5 ii. ***Earned-But-Deferred-Income.*** In its amended schedules [DE #82], Debtor
6 identified \$876,628.45 in accounts receivable that is “Fully-earned income
7 awaiting payment”. These monies have indeed been fully earned (arising
8 from claims in which the insurer has already paid some amount on the claim),
9 and these receivables are to be paid at the end of a successful claim process.
10 For example, if an insurer has paid \$5,000 on a claim being handled by
11 Debtor, but the insured wants more, Debtor has earned \$500 (and will earn
12 more if the claim ultimately resolves for more than \$5,000). If that claim
13 process is interrupted by a chapter 7 conversion, the customer still owes the
14 \$500 to Debtor, because the insurer has already agreed to pay at least that
15 much. However, a chapter 7 trustee will find it extremely difficult to
16 monetize these receivables because they are claims of just a few hundreds of
17 dollars spread across many hundreds of clients. The chapter 7 trustee would
18 have to send out letters to these clients and hope that they pay; the claim
19 against each customer is so small that litigating the claim would never be cost-
20 effective. Accordingly, the Debtor estimates that, at most, 5% of this amount
21 would be recovered by a chapter 7 trustee’s letter-writing campaign. For the
22 purpose of this Liquidation Analysis, the value of this asset is therefore
23 estimated to be \$43,831.00.

24 In addition, the Debtor does have litigation claims as assets. Specifically, the Debtor
25 asserts that it has the following claims:¹

- 26 • ***Litigation claims in adversary proceeding case 18-01026 against Urban
27 Earth LLC.*** Debtor currently estimates that the value of this claim is
28 \$2,235,360. A chapter 7 trustee would, in all likelihood, settle this claim out
for a fraction of its gross value. For the purpose of this Liquidation Analysis
only, the fraction is estimated at 15%, so the gross value of this asset is
therefore estimated to be \$335,304.00.
- ***Litigation claims in AP case 18-01027 against Buena Vista Finance, LLC.***
Debtor currently estimates that the value of this claim is \$516,000. A chapter
7 trustee would probably settle this claim out for a fraction of its gross value.
For the purpose of this Liquidation Analysis only, the fraction is estimated at
15%, so the gross value of this asset is therefore estimated to be \$77,400.00.

¹ Based on information and discovery obtained post-petition, the other litigation claims
identified in the schedules may not exist, be of any value, or may not be cost-effective to
pursue.

- 1 • **Litigation claims in AP case 18-01028 against BVF Fund II, LLC.** Debtor
2 currently estimates that the value of this claim is \$860,000. A chapter 7
3 trustee would probably settle this claim out for a fraction of its gross value.
4 For the purpose of this Liquidation Analysis only, the fraction is estimated at
5 15%, so the gross value of this asset is therefore estimated to be \$129,000.00

- 6 • **Litigation claims in AP case 18-01035 against OnPoint Appraisal Services
7 and BVF Fund II, LLC.** The lawsuit seeks at least \$1,501,300 from
8 defendant OnPoint for conversion of Debtor’s property, and at least
9 \$4,666,500 from defendant BVF Fund II, LLC for avoidance and recovery of
10 a fraudulent conveyance (11 U.S.C. § 548) and for turnover of property of the
11 bankruptcy estate (11 U.S.C. § 542). This adversary case was filed as an
12 alternative to cases 18-01027 and 18-01028 above, in the event that Fund II
13 argues that it purchased Debtor’s property from OnPoint instead of BVF.
14 Because this is an alternative suit, a chapter 7 trustee would either settle this
15 case or the litigation claims in AP 18-01027 and 18-01028 above, depending
16 on the defenses presented by Fund II. After fees and expenses, the net value of
17 this asset is estimated to be the same as the sum of the litigation claims in AP
18 18-01027 and 18-01028, namely, \$206,400.00.

- 19 • **Litigation claims against BVF, David Komet, and Jesus Diaz (adversary
20 case no. 18-01029).** Debtor currently estimates that the value of this claim is
21 \$82,986.52. A chapter 7 trustee would probably settle this claim out for a
22 fraction of its gross value. For the purpose of this Liquidation Analysis only,
23 the fraction is estimated at 15%, so the gross value of this asset is therefore
24 estimated to be \$12,448.00.

25 The total value of these assets is:

26	\$40,000.00	Imminent Accounts Receivable
27	\$43,831.00	Earned-But-Deferred-Income
28	\$335,304.00	Litigation claims against Urban Earth LLC
	\$206,400.00	Litigation claims in AP 18-01027 and 18-01028, or, in the alternative, in AP 18-01035
	<u>\$12,448.00</u>	<u>Litigation claims against BVF, David Komet, and Jesus Diaz</u>
	\$637,983.00	Total gross amount liquidated in a Chapter 7

29 The income assets are secured by BVF, but the litigation claim proceeds are likely not
30 secured as they are after-acquired commercial tort claims. Hence, the total value of the
31 secured assets is estimated in a liquidation to be \$83,831.00 and the total value of the secured
32 assets is estimated in a liquidation to be \$554,152.00

33 BVF filed a secured claim in the principal amount of \$295,000 in this case, but it can be
34 amended to add in its attorney’s fees. Those attorney’s fees are currently estimated to be
35 about \$155,000, but another \$50,000 would be expected to be added if the case were to be
36 converted to chapter 7. Debtor therefore estimates that BVF’s total claim in this case will be

1 about \$500,000. Because BVF gets paid in full under the Plan, and would not be paid in full
 2 in a chapter 7 liquidation, the best interests test is met for BVF.

3 As for general unsecured claimants, the payments to these creditors in a Chapter 7 case is
 4 only available after the liquidated amounts are paid to creditors of higher priority.
 Summarizing:

5	\$554,152.00	Total gross unsecured amount liquidated in a Chapter 7
6	(\$30,958.00)	Less chapter 7 trustee's commission
7	(\$80,000.00)	Less chapter 7 trustee's est. atty fees and other admin expenses
8	(\$300,000.00)	Less Chapter 11 administrative expenses - ALA
9	(\$50,000.00)	Less Chapter 11 administrative expenses - ALF
10	(50,264.00)	Less Chapter 11 administrative expenses - employees
11	(\$72,391.00)	Less priority unsecured taxes
12	(\$11,146.00)	<u>Less priority unsecured wages</u>
	(\$13,146.00)	Total amount available to be paid to general unsecured claims
	0.0%	Recovery by general unsecured on allowed claims

13 In other words, if this case were to be converted to one under chapter 7 of the Bankruptcy
 14 Code, **general unsecured creditors would receive no distribution on their claims.**
 15 Because unsecured creditors would be paid more under the Plan, the best interests test is met
 16 for unsecured creditors.

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