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9 **UNITED STATES BANKRUPTCY COURT**
FOR THE DISTRICT OF NEVADA

<p>10 In re:</p> <p>11 U.S.A. DAWGS, INC.</p> <p>12 Debtor.</p>	<p>Case No.: BK-S-18-10453-LEB</p> <p>Chapter: 11</p> <p><u>Confirmation Hearing:</u> Date: July 6, 2018 Time: 9:30 a.m.</p>
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 15 **DISCLOSURE STATEMENT TO ACCOMPANY DEBTOR'S PLAN OF**
 16 **REORGANIZATION**
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- EXHIBIT “1”: DEBTOR’S PLAN OF REORGANIZATION
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- EXHIBIT “3”: COLORADO LITIGATION COMPLAINT AND ANSWER AND COUNTERCLAIM
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I.
INTRODUCTION

On January 31, 2018 (the “Petition Date”), U.S.A. Dawgs (“Debtor”) filed its voluntary petition under Title 11, Chapter 11 of the United States Code (the “Bankruptcy Code”)¹ with the United States Bankruptcy Court for the District of Nevada (the “Bankruptcy Court”) to commence the above-captioned case (the “Chapter 11 Case”).

Debtor has prepared this Disclosure Statement, which it has requested the Bankruptcy Court to conditionally approve, in connection with the solicitation of votes on *Debtor’s Plan of Reorganization* (the “Plan”) filed May 31, 2018, proposed by Debtor to treat the Claims of Creditors and Equity Securities in the Chapter 11 Case. The Plan and final approval of the Disclosure Statement are scheduled for hearing on July 6, 2018 at 9:30 a.m. (the “Confirmation Hearing”). Creditors and parties-in-interest may objection to either confirmation of the Plan or final approval of the Disclosure Statement at the Confirmation Hearing.

CAPITALIZED TERMS USED BUT NOT DEFINED IN THIS DISCLOSURE STATEMENT HAVE THE MEANINGS ASCRIBED TO SUCH TERMS IN THE PLAN. IN THE EVENT OF A CONFLICT OR DIFFERENCE BETWEEN THE DEFINITIONS USED IN THIS DISCLOSURE STATEMENT AND IN THE PLAN, THE DEFINITIONS CONTAINED IN THE PLAN SHALL CONTROL.

The Exhibits to this Disclosure Statement included in the Appendix are incorporated into, and are a part of, this Disclosure Statement. The Plan is attached hereto as **Exhibit 1**. Any interested party desiring further information should contact:

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¹ All references to “Chapter” and “Section” hereinafter shall be to the Bankruptcy Code and all references to a “Bankruptcy Rule” shall refer to the Federal Rules of Bankruptcy Procedure.

1 Interested parties may also obtain further information from the Bankruptcy Court at the
2 following website: <http://www.nvb.uscourts.gov>. Each Holder of a Claim or Equity Security
3 entitled to vote on the Plan should read this Disclosure Statement, the Exhibits hereto including
4 the Plan, and the instructions accompanying the Ballots in their entirety before voting on the
5 Plan. These documents contain important information concerning the classification of Claims
6 and Equity Securities for voting purposes and the tabulation of votes.

7 **II.**
8 **INFORMATION REGARDING THE PLAN AND THIS DISCLOSURE STATEMENT**

9 The following are answers to common questions about a Chapter 11 reorganization:

10 **1. What is Chapter 11?**

11 Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code.
12 Under Chapter 11, a debtor is authorized to reorganize its business for the benefit of itself, its
13 creditors, and equity interest holders. The commencement of a Chapter 11 case creates an estate
14 that is comprised of all the legal and equitable interests of the debtor as of the filing date. The
15 Bankruptcy Code provides that the debtor may continue to operate its business and remain in
16 possession of its property as a “debtor-in-possession.”

17 **2. What is the objective of a Chapter 11 bankruptcy case?**

18 The objective of a Chapter 11 bankruptcy case is the confirmation (*i.e.* approval by the
19 bankruptcy court) of a plan of reorganization. Here, Debtor commenced its Chapter 11 Case to
20 address the Allowed Claims of Creditors and pending litigation in an orderly manner, to confirm
21 a plan of reorganization, and to tender a Distribution to the Holders of Allowed Claims.

22 **3. What is a plan of reorganization?**

23 A plan describes in detail (and in language appropriate for a legal contract) the means for
24 satisfying claims against, and equity interests in, a debtor.

25 **4. What happens after a plan is filed?**

26 After a plan has been filed, the holders of claims and equity interests that are impaired (as
27 defined in Section 1124 of the Bankruptcy Code) and receiving some cash and/or property on
28 account of such claims or equity interests are permitted to vote to accept or reject the plan.

1 **5. What is a disclosure statement and its purpose?**

2 Before a debtor or other plan proponent can solicit acceptances of a plan, Section 1125 of
3 the Bankruptcy Code requires the debtor or other plan proponent to prepare a disclosure
4 statement containing adequate information of a kind, and in sufficient detail, to enable those
5 parties entitled to vote on the plan to make an informed voting decision about whether to accept
6 or reject the plan.

7 The purpose of this Disclosure Statement is to provide sufficient information about
8 Debtor and the Plan to enable Holders of Impaired Claims and Equity Securities to make an
9 informed voting decision about whether to accept or reject the Plan.

10 **6. What will happen after the Bankruptcy Court conditionally approves this**
11 **Disclosure Statement?**

12 This Disclosure Statement will be used to solicit acceptances of the Plan only after the
13 Bankruptcy Court has preliminarily found that this Disclosure Statement provides adequate
14 information in accordance with Section 1125 of the Bankruptcy Code and has entered an order
15 conditionally approving this Disclosure Statement. Approval by the Bankruptcy Court is not an
16 opinion or ruling on the merits of the Plan and it does not mean that the Plan has been or will be
17 approved by the Bankruptcy Court.

18 **7. Who may vote to accept or reject a plan?**

19 A claim is defined by the Bankruptcy Code to include a right to payment from a debtor.
20 In order to vote on the Plan, a Creditor must have an Allowed Claim and an Equity Security must
21 be Allowed. The solicitation of votes on the Plan will be sought only from Holders of Allowed
22 Claims whose Claims are Impaired and who will receive property or rights under the Plan, as
23 well as from Holders of Allowed Equity Securities that are Impaired. As explained further
24 below, to be entitled to vote, a Person must be a Holder of a Claim or Equity Security that is both
25 an “Allowed Claim” and “Impaired.”

26 **8. Do I have an Allowed Claim?**

27 You have an Allowed Claim if: (i) you or your representative timely files a Proof of
28 Claim and no objection has been filed to your Claim within the time period set for the filing of

1 such objections; (ii) you or your representative timely files a Proof of Claim and an objection is
2 filed to your Claim upon which the Bankruptcy Court has ruled and allowed your Claim; (iii)
3 your Claim is listed by a Debtor in its Schedules or any amendments thereto (which are on file
4 with the Bankruptcy Court as a public record) as liquidated in amount and undisputed and no
5 objection has been filed to your Claim; or (iv) your Claim is listed by a Debtor in its Schedules
6 as liquidated in amount and undisputed and an objection was filed to your Claim upon which the
7 Bankruptcy Court has ruled to allow your Claim. Under the Plan, the deadline for filing
8 objections to Claims is ninety (90) calendar days following the Effective Date. If your Claim is
9 not an Allowed Claim, it is a Disputed Claim and you will *not* be entitled to vote on the Plan
10 unless the Bankruptcy Court temporarily or provisionally allows your Claim for voting purposes
11 pursuant to Bankruptcy Rule 3018. If you are uncertain as to the status of your Claim or if you
12 have a dispute with Debtor, you should check the Bankruptcy Court record carefully, including
13 Debtor's Schedules, and seek appropriate legal advice. Neither Debtor nor its professionals can
14 advise you about such matters.

15 **9. Is my Claim or Equity Security Impaired?**

16 Impaired Claims or Equity Securities include those whose legal, equitable, or contractual
17 rights are altered by the Plan, even if the alteration is beneficial to the Creditor or Equity Security
18 Holder, or if the full amount of the Allowed Claim will not be paid under the Plan. Holders of
19 Claims that are not Impaired under the Plan will be deemed to have accepted the Plan pursuant to
20 Section 1126(f) of the Bankruptcy Code, and Debtor need not solicit acceptance of the Plan by
21 Holders of such Unimpaired Claims.

22 Class 1, Class 4, Class 5, Class 6, and Class 7 are each Impaired, and therefore, will vote
23 on the Plan unless an objection has been filed to their Claim and in such case, only if their Claim
24 has been Allowed for voting purposes. Class 2 and Class 3 are Unimpaired and deemed to
25 accept the Plan and therefore, will not vote on the Plan.

26 **10. How generally is a plan approved?**

27 For a plan to be confirmed, it must be accepted by at least one impaired class of claims,
28 excluding the affirmative votes of any insiders within that class. A class of claims is deemed to

1 have accepted the plan when allowed votes representing at least two-thirds in amount and a
2 majority in number of the claims of the class actually voting cast votes in favor of the plan.

3 **11. What is the general construct of Debtor's Plan?**

4 The primary objective of the Plan is to maximize returns to those Creditors entitled to
5 recoveries from the Estate. Debtor desires to achieve this objective through its reorganization, as
6 well as the sale of Debtor's Assets and Litigation Claims to newly formed entities, NewOpCo
7 and NewLitCo respectively, that will be jointly owned in various percentages by Reorganized
8 Debtor and Optimal Investment Group or its designee ("OIG"). NewOpCo, which will own
9 Debtor's operating Assets, will be owned 90% by OIG and 10% by Reorganized Debtor.
10 NewLitCo, which will own Debtor's Litigation Claims, including the Crocs Litigation Claims,
11 will be owned 70% by OIG and 30% by Reorganized Debtor.

12 For its majority share of the ownership interest in these entities, OIG will contribute
13 \$4,950,000 (the "Payment"), which will be used to fund Distributions to the Holders of Allowed
14 Secured Claims, Allowed Administrative Claims, Allowed Priority Tax Claims, and Allowed
15 Priority Unsecured Claims. On the Effective Date, Debtor will use the \$4,950,000 Payment
16 contributed by OIG, as well as Debtor's operating cash on hand immediately prior to the
17 Effective Date to pay these Allowed Claims. Additional Distributions may be made to Holders
18 of Allowed Claims not otherwise paid in full on the Effective Date from Reorganized Debtor's
19 equity interests in NewOpCo (i.e., operating distributions) and NewLitCo (i.e., Crocs Litigation
20 Proceeds).

21 **12. Will Reorganized Debtor be able to meet the financial terms of the Plan?**

22 The \$4,950,000 Payment will allow Reorganized Debtor to satisfy its Allowed Class 1,
23 Class 2, and Class 3 Claims, as well as its Allowed Administrative Claims in accordance with the
24 terms of the Plan. Additionally, to the extent that the Priority Tax Claims are allowed in all or
25 part, approximately \$100,000 or less of the Payment will be used to make the initial Effective
26 Date Distribution to the Holders of the Allowed Priority Tax Claims. The next four annual
27 Distributions to the Holders of the Allowed Priority Tax Claims will be made from the
28 Reorganized Debtor based on anticipated distributions from NewOpCo and NewLitCo.

1 Additionally, nothing in the Plan alters the ability of any Holder of an Allowed Priority Tax
2 Claim from seeking payment from any other co-obligors. Distributions to Holders of Allowed
3 Class 4 (Crocs Claims), Class 5 (General Unsecured Claims), and Class 6 Claims (Mann/DD
4 Claims) under the Plan will be funded from equity distributions made by NewOpCo and
5 NewLitCo to Reorganized Debtor, which equity distributions are contingent upon future
6 performance and receipt of Crocs Litigation Proceeds, neither of which are certain. Holders of
7 Equity Securities shall not receive any Distributions until all Allowed Claims have been paid in
8 full with interest in accordance with the terms of the Plan.

9 **13. What happens at the Confirmation Hearing?**

10 At the Confirmation Hearing, the Bankruptcy Court will consider whether the Plan
11 satisfies the requirements of the Bankruptcy Code.

12 **14. What is the effect of Plan Confirmation?**

13 Confirmation of the Plan by the Bankruptcy Court makes the Plan binding upon Debtor,
14 any Holder of Equity Securities in Debtor or Reorganized Debtor, any person acquiring property
15 under the Plan, and *every Creditor of Debtor*, regardless of whether such Creditor receives or
16 retains any property under the Plan. Subject to certain limited exceptions, and other than as
17 provided in the Plan itself or the Confirmation Order, the Confirmation Order discharges Debtor
18 from any debt that arose prior to the date of Confirmation of the Plan and substitutes the
19 obligations specified under the Plan.

20 **15. Has the Securities Exchange Commission reviewed and approved this Disclosure
21 Statement?**

22 This Disclosure Statement has been prepared in accordance with Section 1125 of the
23 Bankruptcy Code and Bankruptcy Rule 3016(b) and not necessarily in accordance with federal
24 or state securities laws or other non-bankruptcy laws. This Disclosure Statement has not been
25 approved or disapproved by the United States Securities and Exchange Commission (the
26 “SEC”), nor has the SEC passed upon the accuracy or adequacy of the statements contained
27 herein.

28 . . .

1 **16. Can I rely upon the statements and financial information contained in this**
2 **Disclosure Statement?**

3 DEBTOR MAKES THE STATEMENTS AND PROVIDES THE FINANCIAL
4 INFORMATION CONTAINED HEREIN AS OF THE DATE HEREOF. UNLESS
5 OTHERWISE SPECIFIED, PERSONS REVIEWING THIS DISCLOSURE
6 STATEMENT SHOULD NOT INFER THAT THE FACTS SET FORTH HEREIN HAVE
7 NOT CHANGED SINCE THE DATE THIS DISCLOSURE STATEMENT WAS
8 INITIALLY PREPARED.

9 DEBTOR'S MANAGEMENT HAS REVIEWED THE FINANCIAL
10 INFORMATION PROVIDED IN THIS DISCLOSURE STATEMENT. ALTHOUGH
11 DEBTOR HAS ENDEAVORED TO ENSURE THE ACCURACY OF THIS FINANCIAL
12 INFORMATION, THE FINANCIAL INFORMATION CONTAINED IN, OR
13 INCORPORATED BY REFERENCE INTO, THIS DISCLOSURE STATEMENT HAS
14 NOT BEEN AUDITED, UNLESS OTHERWISE STATED HEREIN.

15 **17. Can I rely upon the Disclosure Statement for other purposes?**

16 THE INFORMATION IN THIS DISCLOSURE STATEMENT IS INCLUDED
17 HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE PLAN AND
18 MAY *NOT* BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE
19 HOW TO VOTE ON THE PLAN. THIS DISCLOSURE STATEMENT THEREFORE
20 DOES NOT CONSTITUTE, AND MAY NOT BE CONSTRUED AS, AN ADMISSION OF
21 FACT OR LIABILITY, A STIPULATION, OR A WAIVER IN ANY PROCEEDING
22 OTHER THAN THE SOLICITATION OF ACCEPTANCES OF THE PLAN AND
23 CONFIRMATION OF THE PLAN. FOR ALL PURPOSES OTHER THAN THE
24 SOLICITATION OF ACCEPTANCES OF THE PLAN, THIS DISCLOSURE
25 STATEMENT SHOULD BE CONSTRUED AS A STATEMENT MADE IN
26 SETTLEMENT NEGOTIATIONS RELATED TO CONTESTED MATTERS,
27 ADVERSARY PROCEEDINGS, AND OTHER PENDING OR THREATENED
28 LITIGATION OR ACTIONS.

1 **18. Who provided the information contained in this Disclosure Statement?**

2 This Disclosure Statement was prepared by Debtor’s management in conjunction with
3 Debtor’s bankruptcy counsel, the law firm of Garman Turner Gordon LLP.

4 **19. Should I consult with my own financial and legal advisors?**

5 This Disclosure Statement does not constitute legal, business, financial, or tax advice. All
6 Persons desiring such advice or any other advice should consult with their own advisors. As
7 discussed above, the Plan binding upon Debtor, any Holder of Equity Securities in Debtor or
8 Reorganized Debtor, any person acquiring property under the Plan, and every Creditor of Debtor,
9 regardless of whether such Creditor receives or retains any property under the Plan. Any
10 objections to such binding treatment must be made in connection with the Plan’s Confirmation.

11 **20. I have heard statements from outside sources regarding the Plan. Can I rely on
12 these statements?**

13 Debtor has not authorized any representations about the Plan, itself, or the value of its
14 Assets other than those set forth in this Disclosure Statement. Holders of Claims and Equity
15 Securities proceed at their own risk to the extent that they rely on any information,
16 representations, or inducements made or given about the Plan that differ from, or are inconsistent
17 with, the information contained herein and in the Plan.

18 **21. What if there is an inconsistency between this Disclosure Statement and the Plan?**

19 This Disclosure Statement summarizes certain provisions of the Plan and certain other
20 documents and financial information that are incorporated by reference herein (collectively, the
21 “Incorporated Documents”). The summaries contained herein are qualified in their entirety by
22 reference to the Incorporated Documents. In the event of any inconsistency or discrepancy
23 between a description in this Disclosure Statement and the actual content of any of the
24 Incorporated Documents, the Incorporated Documents shall govern for all purposes.

25 **III.
GENERAL OVERVIEW OF THE PLAN**

26 The Plan generally provides for a sale of Debtor’s Assets: Debtor will effectively sell its
27 non-Litigation Claim Assets to the newly-created NewOpCo and its Litigation Claims to the
28 newly-created NewLitCo. OIG will pay Reorganized Debtor the \$4,950,000.00 Payment for a

1 90% equity interest in NewOpCo and a 70% equity interest in NewLitCo, with the remaining
2 equity interests held by Reorganized Debtor. As more fully set forth herein and in Sections 2.2,
3 2.3, 4.1, 4.2, and 4.3 of the Plan, the Payment will be used to fund Distributions under the Plan to
4 the Allowed Class 1 GemCap Claim, Allowed Class 2 Other Secured Claims, Allowed Class 3
5 Priority Unsecured Claims, and Allowed Administrative Claims, which Distributions will
6 generally occur on the latter of the Effective Date or as soon thereafter as practicable, a date set
7 by the Bankruptcy Court, or the date such Claim is Allowed or as soon thereafter as practicable.

8 Debtor anticipates that Reorganized Debtor will continue to receive income through (1)
9 distributions made on account of its 10% interest in NewOpCo, which will operate Debtor's
10 business after the Effective Date, and (2) distributions made on account of its 30% interest in
11 NewLitCo, which will be funded from the resolution, whether by settlement or judgment, of the
12 Crocs Litigation.² Through Reorganized Debtor's continued ownership interests in NewOpCo
13 and NewLitCo, Debtor anticipates making distributions to its remaining creditors as follows:

- 14 1. The IRS has filed amended Proof of Claim No. 2 in the amount of \$594,608.01,
15 of which \$405,617.29 is an asserted Priority Tax Claim, which Claim is disputed.
16 If the Priority Tax Claim is Allowed in whole or in part, approximately \$100,000
17 or less of the Payment will be used to make the initial Effective Date Distribution
18 to the Holders of the Allowed Priority Tax Claims. The next four annual
19 Distributions to the Holders of the Allowed Priority Tax Claims will be made
20 from the Reorganized Debtor based on anticipated distributions from NewOpCo
21 and NewLitCo. Additionally, nothing in the Plan alters the ability of any Holder
22 of a Priority Tax Claim from seeking payment from any other co-obligors.
- 23 2. Distributions will be made to Allowed Claims in Class 5 (General Unsecured
24 Claims) from both (1) a Pro Rata distribution of the Crocs Litigation Proceeds,
25 and (2) an annual payment, starting with the first anniversary of the Effective

26 _____
27 ² "Crocs Litigation Proceeds" is defined in the Plan as "[t]he Cash distributed to Reorganized Debtor on account of
28 its 30% ownership interest in NewLitCo, which distribution will be funded upon NewLitCo's receipt of either
settlement proceeds from the Crocs Litigation or payment on a judgment entered in favor of NewLitCo in the Crocs
Litigation."

1 Date, of 90% of Reorganized Debtor's net income for the preceding year after
2 payments of Allowed Priority Tax Claims and Allowed Administrative Claims
3 (the "90% Distribution").

4 **3.** If the Crocs Claim in Class 4 becomes an Allowed Claim (by entry of a Final
5 Order in the Crocs Litigation awarding damages against Debtor and in favor of
6 Crocs), Distributions will be made to Allowed Claims in Class 4 first from the
7 Crocs Litigation Proceeds, and if such proceeds are insufficient, from a Pro Rata
8 Distribution from the 90% Distribution.

9 **4.** Only after Allowed Claims in Classes 1-5 are paid in full, Class 6 will be paid
10 from the Crocs Litigation Proceeds or Reorganized Debtor's operations.

11 **5.** Class 7 Equity Securities will retain their interest in Reorganized Debtor
12 provided, however, that no Equity Security Holder will receive any Distributions
13 on account of such Equity Security until Holders of Allowed Claims have been
14 paid in full. Such retention is also in consideration of the contribution of the DD
15 US Crocs Claims to NewLitCo. For the avoidance of doubt, the remaining 10%
16 of net operating income each year after the 90% Distribution to Classes 4 and 5
17 (as set forth in Sections 4.4 and 4.5 of the Plan) will be retained by Reorganized
18 Debtor for payment of any operating expenses and, unless Classes 1-6 are paid in
19 full, will not be distributed to Holders of Equity Securities in Reorganized Debtor.

20 The following is a general overview of the provisions of the Plan, which Plan treatment is
21 discussed more fully herein and is qualified in its entirety by reference to the provisions of the
22 Plan itself.

23 **A. Classification of Claims.**

24 Section 1123 of the Bankruptcy Code provides that a plan of reorganization shall classify
25 the claims of a debtor's creditors and equity interest holders. In compliance therewith, the Plan
26 divides Claims into various Classes and sets forth the treatment for each Class. Additionally,
27 under Section 1122 of the Bankruptcy Code, Debtor may only place a Claim into a particular
28 Class if such Claim is substantially similar to the other Claims in such Class. Debtor believes

1 that the Plan has classified all Claims in compliance with the provisions of Section 1122 of the
 2 Bankruptcy Code, but it is possible that a Holder of a Claim will challenge the Plan's
 3 classifications and that the Bankruptcy Court will find that different classifications are required
 4 in order for the Plan to be confirmed. In such event, Debtor reserves the right, to the extent
 5 permitted by the Bankruptcy Code, to make reasonable modifications of the classifications under
 6 the Plan to permit Confirmation of the Plan and to use the Plan acceptances received in this
 7 solicitation for the purpose of obtaining the approval of the reconstituted Class or Classes of
 8 which the accepting Holders are ultimately deemed members.

9 The Plan's treatment of each classified Class of Claims is summarized in the following
 10 table:

<u>Class</u>	<u>Description</u>	<u>Summary of Treatment</u>	<u>Estimated Claim³</u>
Class 1	GemCap Claim	The Holder of the GemCap Claim shall receive \$4,300,000 in full satisfaction of its Allowed Claim on the Effective Date. <i>Impaired – may vote on the Plan.</i>	\$4,300,000
Class 2	Other Secured Claims	Each Holder of an Allowed Other Secured Claim shall retain its Lien in its Collateral, may apply any deposit in satisfaction of its Allowed Claim, and will be paid the balance of its Allowed Claim in accordance with its terms or in Cash by Reorganized Debtor on the Effective Date. <i>Unimpaired - Deemed to accept the Plan.</i>	\$36,554

25 ³ The *estimated* Claim amounts were compiled by combining the undisputed, liquidated, and non-contingent Claims
 26 included in Debtor's Schedules, as amended, and the Proofs of Claim on file on or about May 31, 2018. Debtor or
 27 Reorganized Debtor may file objections to certain of the filed Proofs of Claim or scheduled Claims, as may other
 28 parties-in-interest prior to the Effective Date. The allowance or disallowance of such Claims will alter the aggregate
 amount of Allowed Claims. *Nothing herein shall be deemed an acknowledgment of the amount or allowance of
 any asserted Claim; rather, Debtor hereby expressly reserves its right to object to any and all asserted or
 scheduled Claims.*

1	Class 3	Priority Unsecured Claims	Each Holder of a Priority Unsecured Claim shall be paid in full in Cash on the Effective Date. <i>Unimpaired - Deemed to accept the Plan.</i>	>\$30,000
2				
3				
4	Class 4	Crocs Claims	If this Disputed Claim subject to the Crocs Litigation becomes an Allowed Claim, the Allowed Crocs Claim shall be paid in full with interest at the Plan Rate from the Crocs Litigation Proceeds or, if insufficient, 90% of Reorganized Debtor's net income after payment of senior classes under the Plan. <i>Impaired and disputed⁴ - may only vote if its Claim is Allowed for voting purposes.</i>	Debtor asserts the Allowed Claim is \$0.00; Crocs asserts its Allowed Claim exceeds \$77,000,000
5				
6				
7				
8				
9				
10	Class 5	General Unsecured Claims	Each Holder of an Allowed General Unsecured Claim shall be paid in full with interest at the Plan Rate from the Crocs Litigation Proceeds and, until such claims have been paid in full, its Pro Rata share of 90% of Reorganized Debtor's net income for the preceding year after payment of senior classes under the Plan. <i>Impaired – may vote on the Plan.</i>	+/- \$1,800,000
11				
12				
13				
14				
15				
16				
17	Class 6	Mann/DD Claims	Only after all Allowed Class 1-5 Claims have been paid in full in accordance with the treatments provided in the Plan, each Holder of an Allowed Mann/DD Claim shall be paid in full with interest at the Plan Rate from the Crocs Litigation Proceeds and Reorganized Debtor's operations until such Allowed Claims have been paid in full. <i>Impaired – may vote on the Plan.</i>	\$2,008,676
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				

⁴ Debtor will file an objection to the Crocs Claims on or before June 12, 2018.

1 2 3 4 5	Class 7 Equity Security	<p>1 Holders of Equity Securities will retain their legal interests, but shall not receive any Distribution until all Allowed Claims in Classes 1-6 have been paid in full.</p> <p>2</p> <p>3</p> <p>4 <i>Impaired – may vote on the Plan.</i></p>	N/A
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6 **B. Non-Classified Claims.**

7 **1. Allowed Administrative Claims.**

8 Pursuant to Section 1123(a)(1), Allowed Administrative Claims are not designated as a
9 Class. Unless otherwise agreed by the Holders of Allowed Administrative Claims, Holders of
10 such Claims shall be paid in full under the Plan consistent with the requirements of Section
11 1129(a)(9)(A) and are not entitled to vote on the Plan.

12 Section 2.2 of the Plan provides that each Allowed Administrative Claim shall be paid by
13 Reorganized Debtor upon the latest of: (i) the Effective Date or as soon thereafter as is
14 practicable; (ii) such date as may be fixed by the Bankruptcy Court, or as soon thereafter as
15 practicable; (iii) the fourteenth (14th) Business Day after such Claim is Allowed, or as soon
16 thereafter as practicable; and (iv) such later date as the Holder of such Claim and Reorganized
17 Debtor shall agree upon; provided, however, that this provision shall not alter the requirement
18 that the Payment be utilized solely to pay Allowed Administrative Claims, the Allowed GemCap
19 Claim, Allowed Priority Tax Claims, and Allowed Priority Unsecured Claims.

20 Pursuant to Section 331 of the Bankruptcy Code, Debtor's duly-retained professionals
21 can seek the allowance and payment of their incurred fees and costs and may do so prior to the
22 Confirmation Hearing. Debtor anticipates that Garman Turner Gordon LLP's ("GTG"),
23 Debtor's bankruptcy counsel, fees will be \$350,000 as of the Effective Date; however, they may
24 be significantly higher if substantial litigation is undertaken in connection with Plan
25 Confirmation or other contested matters.

26 Three Twenty-One Capital Partners ("3-21"), Debtor's investment banker, is entitled to a
27 success fee based on the following formula:

- 28 1. 3-21 FEE. 3-21 will be paid a fee at the closing of any

1 TRANSACTION (the “FEE”) based upon TRANSACTION VALUE
2 received by CLIENT and computed using the applicable following
3 formula:

4 A. In the event of a §363 Sale of CLIENT’s assets, 3-21’s FEE (the
5 “363 FEE”) will be the sum of:

6 (i) SIX PERCENT (6%) of the TRANSACTION VALUE of
7 the filed and approved stalking horse bid; plus

8 (ii) TEN PERCENT (10%) of any value above the stalking
9 horse bid

10 B. In the event of an equity investment or debt recapitalization
11 leading to a plan of reorganization, 3-21’s FEE (the “PLAN FEE”) will be
12 the sum of:

13 (i) TWO AND ONE-HALF PERCENT (2.5%) of any debt
14 raised; plus

15 (ii) SIX PERCENT (6%) of any equity raised as part of the
16 plan of reorganization; plus

17 (iii) a flat fee of \$150,000 for a confirmed plan of
18 reorganization

19 The FEE on the closing of any TRANSACTION shall be the greater of:
20 (a) the aggregate of the result of the calculation(s) above or (b) a minimum
21 fee of \$200,000 (“MINIMUM FEE”). The FEE shall be paid in cash at
22 closing with respect to any portion of the TRANSACTION VALUE. The
23 RETAINER is credited against the FEE.

24 Based on this formula, 3-21’s success fee and expense reimbursement may exceed
25 \$450,000.

26 *The foregoing are only estimates and may increase depending on the timing of the*
27 *Plan’s Effective Date and the number and extent of the contested matters arising in the*
28 *Chapter 11 Case. Additionally, it is possible that there are Administrative Claims that will be*
filed for goods or services rendered post-petition, which may increase the amount of the
Allowed Administrative Claims.

GTG and 3-21 have agreed with Debtor to accept an initial Distribution that is less than
their full Allowed Administrative Claims in order to ensure that all other Allowed
Administrative Claims, Allowed Class 1, Class 2, and Class 3 Claims are paid in full on the
Effective Date, and the initial Distribution is made to the Holders of Allowed Priority Tax

1 Claims and may seek payment of the balance from Reorganized Debtor when it receives
2 distributions on account of its interests in NewOpCo and NewLitCo.

3 All requests for payment of Administrative Claims against Debtor and all final
4 applications for allowance and disbursement of Professional Fees must be filed by the
5 Administrative Claims Bar Date or the Holders thereof shall be forever barred from asserting
6 such Administrative Claims against Debtor and the Reorganized Debtor. The Administrative
7 Claims Bar Date is the end of the first Business Day occurring on or after the thirtieth (30th)
8 calendar day after the Effective Date. All Professional Fees applications must be in compliance
9 with all of the terms and provisions of any applicable order of the Bankruptcy Court, including
10 the Confirmation Order, and all other orders governing payment of Professional Fees. Unless
11 otherwise ordered by the Bankruptcy Court, from and after the Effective Date, no professional
12 shall be required to file fee applications with the Bankruptcy Court and Reorganized Debtor may
13 pay all professionals in the ordinary course for fees and expenses incurred after the Effective
14 Date.

15 **2. Allowed Priority Tax Claims.**

16 Priority Tax Claims include any unsecured Claim against Debtor entitled to priority in
17 right of payment under Section 507(a)(8) of the Bankruptcy Code. To date, less than \$550,000
18 in asserted Priority Tax Claims have been asserted against Debtor. As stated above, Debtor
19 intends to object to the IRS's asserted Priority Tax Claim, which, if successful, will reduce the
20 total Allowed Priority Tax Claims.

21 Section 2.3 of the Plan provides that each Allowed Priority Tax Claim shall be paid in
22 full in Cash by the Reorganized Debtor as follows: (i) in equal annual installments beginning the
23 latest of: (i) the Effective Date or as soon thereafter as is practicable; (ii) such date as may be
24 fixed by the Bankruptcy Court, or as soon thereafter as practicable; (iii) the fourteenth (14th)
25 Business Day after such Priority Tax Claim is Allowed, or as soon thereafter as practicable; and
26 (iv) such date as the Holder of such Priority Tax Claim and Reorganized Debtor shall agree upon
27 and on the same day of each successive year or as soon thereafter as practicable for a period
28 ending not later than five (5) years after the Petition Date; provided however, that each Allowed

1 Priority Tax Claim shall be paid in full together with all accrued statutory interest on or before
2 the Allowed Class 5 Claims are paid in full. Until each Allowed Priority Tax Claim is paid in
3 full, the unpaid balance shall accrue statutory interest from the Effective Date taxed at the
4 applicable federal or state statutory rate in effect with respect to such Priority Tax Claim on the
5 Petition Date.

6 **C. Treatment of Classified Claims.**

7 **1. Class 1 – Secured Claims.** As set forth in Section 4.1 of the Plan, in full and
8 final satisfaction of the GemCap Claim, on the Effective Date or as soon thereafter as
9 practicable, Reorganized Debtor shall pay GemCap the sum of \$4,300,000.00. The Holder of the
10 GemCap Claim is Impaired under the Plan and entitled to vote on the Plan.

11 **2. Class 2 – Other Secured Claims.** As set forth in Section 4.2 of the Plan, each
12 Allowed Other Secured Claim, if any, shall, in full and final satisfaction of such Claim: (i) retain
13 its Lien in its Collateral; (ii) if the Holder of an Allowed Other Secured Claim, such as the
14 Landlord, is holding a deposit, such Holder may apply the deposit to the Allowed Secured Claim
15 on the Effective Date; and (iii) the balance of the Allowed Other Secured Claim shall be paid in
16 accordance with its terms, or if none, then in full in Cash by Reorganized Debtor upon the latest
17 of: (a) the Effective Date or as soon thereafter as practicable; (b) such date as may be fixed by
18 the Bankruptcy Court; and (c) the first Business Day following the fourteenth (14th) day after
19 such Claim is Allowed. Creditors in Class 2 are Unimpaired under the Plan and not entitled to
20 vote on the Plan.

21 **3. Class 3 – Priority Unsecured Claims.** As set forth in Section 4.3 of the Plan,
22 each Allowed Priority Unsecured Claim shall, in full and final satisfaction of such Claims, be
23 paid in full in Cash on the latest of: (i) on the Effective Date or as soon thereafter as practicable;
24 (ii) such date as may be fixed by the Bankruptcy Court, or as soon thereafter as is practicable;
25 and (iii) the fourteenth (14th) Business Day after such Claim is Allowed, or as soon thereafter as
26 is practicable, plus pre-Petition Date interest due under applicable bankruptcy or non-bankruptcy
27 law and claimed in a Proof of Claim by such Holder to the extent approved by the Bankruptcy
28 Court or as included in the Schedules by the Debtor.

1 **4. Class 4 – Crocs Claims.** As set forth in Section 4.4 of the Plan, the Crocs Claim
2 is a Disputed Claim that is subject to the Crocs Litigation and will only become an Allowed
3 Claim upon entry of a Final Order awarding damages against Debtor and in favor of Crocs. To
4 the extent that the Disputed Crocs Claim becomes an Allowed Claim by entry of the requisite
5 Final Order, the Allowed Crocs Claim shall be paid in full, together with interest at the Plan Rate
6 from the Crocs Litigation Proceeds. If the Crocs Litigation Proceeds are insufficient to satisfy
7 the Allowed Crocs Claim, on each anniversary of the Effective Date after the Crocs Claim
8 becomes an Allowed Claim, Reorganized Debtor shall pay 90% of Reorganized Debtor's net
9 income for the preceding year after payment of Allowed Priority Tax Claims, Allowed
10 Administrative Claims, and Allowed Claims in Classes 2 and 3 pursuant to Sections 2.2, 2.3, 4.2,
11 and 4.3 of the Plan Pro Rata to Crocs and the Holders of Allowed Class 5 General Unsecured
12 Claims. Creditors in Class 4 are Impaired under the Plan. To the extent that the asserted Crocs
13 Claim is allowed for voting purposes, Crocs is entitled to vote on the Plan.

14 **5. Class 5 – General Unsecured Claims.** As set forth in Section 4.5 of the Plan,
15 except to the extent that a Holder of an Allowed General Unsecured Claim agrees to less
16 favorable treatment, each Holder of an Allowed General Unsecured Claim, shall, in full and final
17 satisfaction of such Claim, be paid in full, together with interest at the Plan Rate, from the Crocs
18 Litigation Proceeds. Additionally, until the Allowed General Unsecured Claims have been paid
19 in full, together with interest at the Plan Rate, commencing on the first (1st) anniversary of the
20 Effective Date and on each anniversary thereafter, Reorganized Debtor shall pay in Cash to each
21 Holder of an Allowed General Unsecured Claim, its Pro Rata share of 90% of Reorganized
22 Debtor's net income for the preceding year after payment of Allowed Priority Tax Claims,
23 Allowed Administrative Claims, and Allowed Claims in Classes 2 and 3 pursuant to Sections
24 2.2, 2.3, 4.2, and 4.3 of the Plan; provided, however, that if the Crocs Claim becomes an
25 Allowed Claim, thereafter, the Allowed Crocs Claim will be included in the total calculation of
26 Claims entitled to a Pro Rata Distribution of 90% of Reorganized Debtor's net income.
27 Creditors in Class 5 are Impaired under the Plan and entitled to vote on the Plan.

28 **6. Class 6 – Mann/DD Claims.** As set forth in Section 4.6 of the Plan, except to the

1 extent that a Holder of an Allowed Mann/DD Claim, agrees to less favorable treatment, each
2 Holder of a Mann/DD Claim shall, in full and final satisfaction of such Claim, be paid in full,
3 together with interest at the Plan Rate, from the Crocs Litigation Proceeds or Reorganized
4 Debtor's operations, which Distribution shall only occur after all Allowed Class 1, Class 2, Class
5 3, Class 4, and Class 5 Claims have been paid in full in accordance with the treatments provided
6 in Sections 4.1 through 4.5 of the Plan. Creditors in Class 6 are Impaired under the Plan and
7 entitled to vote on the Plan.

8 **7. Class 7 – Equity Securities.** On the Effective Date, and in consideration of the
9 contribution of the DD US Crocs Claims to NewLitCo, the Holders of the Equity Securities in
10 Debtor shall retain their legal interests such that 101086339 Saskatchewan Ltd. shall hold 52.3%
11 of the shares of Reorganized Debtor, BAM Marketing Ltd. shall hold 28.6% of the shares of
12 Reorganized Debtor, 101086342 Saskatchewan Ltd. shall hold 14.3% of the shares of
13 Reorganized Debtor, and 101117188 Saskatchewan Ltd. shall hold 4.8% of the shares of
14 Reorganized Debtor; provided, however, that Reorganized Debtor shall not make any
15 distribution to its Equity Security Holders until all Allowed Claims in Classes 1 through 6 have
16 been paid in full in accordance with Sections 4.1 through 4.6 of the Plan. Class 7 is Impaired
17 under the Plan and entitled to vote on the Plan.

18 **IV.**
19 **DISCLAIMER**

20 In formulating the Plan, Debtor relied on financial data derived from its books and
21 records. Debtor represents that as of the date of this Disclosure Statement, everything stated in
22 this Disclosure Statement is true to the best of Debtor's knowledge and belief. However, Debtor
23 cannot and does not confirm the current accuracy of the statements appearing in this Disclosure
24 Statement.

25 The discussion in this Disclosure Statement regarding Debtor may contain "forward-
26 looking statements," as that term is used in the Private Securities Litigation Reform Act of 1995.
27 Such statements consist of any statement other than one of historical fact, and can be identified
28 by the use of forward-looking terminology such as "may," "expect," "believe," "anticipate,"

1 “estimate,” “likely,” “probable,” or “continue” or the negative thereof or other variations thereof
2 or comparable terminology. All such forward-looking statements are speculative, and there are
3 risks and uncertainties that could cause actual events or results to differ materially from those
4 referred to in such forward-looking statements. The liquidation analysis and distribution
5 projections are estimates only, and the timing and amounts of actual distributions may be
6 affected by many factors that cannot be predicted. Therefore, any analysis, estimates, or
7 recovery projections may not turn out to be accurate.

8 **NOTHING IN THIS DISCLOSURE STATEMENT IS, OR SHALL BE DEEMED,**
9 **AN ADMISSION OR STATEMENT AGAINST INTEREST BY DEBTOR FOR**
10 **PURPOSES OF ANY PENDING OR FUTURE LITIGATION MATTER OR**
11 **PROCEEDING.**

12 **ALTHOUGH THE ATTORNEYS AND OTHER PROFESSIONALS EMPLOYED**
13 **BY DEBTOR HAVE ASSISTED IN PREPARING THIS DISCLOSURE STATEMENT**
14 **BASED UPON FACTUAL INFORMATION AND ASSUMPTIONS RESPECTING**
15 **FINANCIAL, BUSINESS, AND ACCOUNTING DATA FOUND IN THE BOOKS AND**
16 **RECORDS OF DEBTOR, THEY HAVE NOT INDEPENDENTLY VERIFIED SUCH**
17 **INFORMATION AND MAKE NO REPRESENTATIONS AS TO THE ACCURACY**
18 **THEREOF. THE ATTORNEYS AND OTHER PROFESSIONALS EMPLOYED BY**
19 **DEBTOR SHALL HAVE NO LIABILITY FOR INFORMATION CONTAINED IN, OR**
20 **OMITTED FROM, THIS DISCLOSURE STATEMENT.**

21 **DEBTOR AND ITS PROFESSIONALS HAVE MADE A DILIGENT EFFORT TO**
22 **IDENTIFY IN THIS DISCLOSURE STATEMENT AND IN THE PLAN PENDING**
23 **LITIGATION CLAIMS, PROJECTED CAUSES OF ACTION, AND OBJECTIONS TO**
24 **CLAIMS. HOWEVER, NO RELIANCE SHOULD BE PLACED ON THE FACT THAT**
25 **A PARTICULAR LITIGATION CLAIM, PROJECTED CAUSE OF ACTION, OR**
26 **OBJECTION TO A CLAIM IS OR IS NOT IDENTIFIED IN THIS DISCLOSURE**
27 **STATEMENT OR THE PLAN. DEBTOR AND/OR REORGANIZED DEBTOR MAY**
28 **SEEK TO INVESTIGATE, FILE, AND PROSECUTE LITIGATION CLAIMS,**

1 **PROJECTED CAUSES OF ACTION, AND OBJECTIONS TO CLAIMS AFTER THE**
2 **CONFIRMATION DATE, EFFECTIVE DATE, OR SUBSTANTIAL CONSUMMATION**
3 **DATE, IRRESPECTIVE OF WHETHER THIS DISCLOSURE STATEMENT OR THE**
4 **PLAN IDENTIFIES SUCH CLAIMS, CAUSES OF ACTION, OR OBJECTIONS TO**
5 **CLAIMS.**

6 **V.**
7 **SUMMARY OF DEBTOR’S BUSINESS, KEY EVENTS LEADING TO THE CHAPTER**
8 **11 CASE, AND SIGNIFICANT EVENTS IN THE CHAPTER 11 CASE**

9 **A. Debtor’s Formation, Shareholders, and Assets.**

10 Debtor is a Nevada corporation formed in 2006 that sells DAWGS Brand footwear out of
11 a 44,0000 square-foot warehouse (the “Property”) in southwest Las Vegas. As of the Petition
12 Date, Debtor employed a workforce of twenty-one people and in recent years has had sales
13 ranging between \$9 million and \$17 million per year in gross-revenue.

14 Debtor is owned by the following entities in the following amounts: 101086339
15 Saskatchewan Ltd, 52.3% of the shares; BAM Marketing Ltd., 28.6% of the shares; 101086342
16 Saskatchewan Ltd., 14.3% of the shares. and 101117188 Saskatchewan Ltd., 4.8% of the shares.
17 101086339 Saskatchewan Ltd, is owned by Steven Mann; BAM Marketing Ltd. is owned by
18 Barrie Mann; 101086342 Saskatchewan Ltd., is owned by Angela Friesen, and 101117188
19 Saskatchewan Ltd. is owned by Jody Veer. Debtor is managed by Steven Mann and Barrie
20 Mann.

21 Debtor’s Assets are listed in its Schedules and Amended Schedules [ECF Nos. 77 and
22 143]. The Assets, as of the Petition Date, consisted primarily of: (1) cash and cash equivalents
23 totaling approximately \$37,000; (2) inventory at a landed costs of goods (the total price of a
24 product including any transportation fees, customs, duties taxes, insurance, handling, etc.) of
25 \$5,600,000; (3) certain intellectual property consisting of, among other things, a customer list
26 that Debtor valued at over \$3,000,000 based on costs of acquisition; (4) various machinery and
27 equipment (office equipment, computer equipment, product molds, warehouse equipment and
28 fixtures) valued at approximately \$90,000 using fair market value; (5) receivables valued at

1 approximately \$380,000; and (6) various Litigation Claims, including principally the Crocs
2 Litigation Claims, valued at in excess of \$10,000,000.

3 The Crocs Litigation Claims consist primarily of Lanham Act claims under Section 15
4 U.S.C. §§ 1051, *et seq.* based on Crocs, Inc. ("Crocs") alleged misrepresentations regarding its
5 purported patents. Debtor believes that these claims will result in substantial recovery for
6 NewLitCo, of which Reorganized Debtor will be a 30% owner. The Crocs Litigation Proceeds
7 will be one of the sources of funding for the Distributions to Allowed Priority Tax Claims and
8 Allowed Claims in Classes 4-6. Crocs adamantly disputes that Debtor (and after the Effective
9 Date, NewLitCo) holds meritorious claims against Crocs. As such, Crocs contends that Debtor
10 will not recover anything from Crocs and, instead, based on claims asserted by Crocs against
11 Debtor, will result in amounts owing by Debtor to Crocs (the "Crocs Claims"). The Crocs
12 Claims against Debtor are primarily based on alleged patent infringement.

13 Debtor's other Litigation Claims include claims asserted against the Spilotro Law Group
14 for legal malpractice in connection with a collection action and claims against Lola Style, Inc.
15 for patent infringement. Related to the Spilotro Claim, Debtor has sought \$312,679 for an
16 uncollected judgment that Spilotro failed to collect, attorneys' fees paid to a second attorney to
17 perform some collection services, and attorneys fees in connection to the lawsuit. Related to the
18 Lola Style Claim, Debtor has sought \$25,000 for infringement, treble damages under the
19 applicable statute, pre-judgment interest and attorney's fees. Debtor recognizes that the counter-
20 parties dispute the amounts that may be recovered with respect to these Litigation Claims.
21 Ultimately, all of Debtor's Assets are being transferred to NewLitCo and NewOpCo through the
22 Plan.

23 As of the Petition Date, Debtor's accounts receivable totaled \$465,112.83 less an
24 adjustment of \$78,232.22 for doubtful or uncollectible accounts (the "Pre-Petition Receivables").
25 Debtor has collected approximately \$200,000 of the Pre-Petition Receivables and anticipates that
26 80% of the Pre-Petition Receivables are likely collectible. In its course of operations, Debtor
27 routinely sells inventory in exchange for a receivable. As of the date of this Disclosure
28 Statement, Debtor has approximately \$537,000 in outstanding post-Petition Date receivables

1 (“Post-Petition Receivables”), which are being transferred to NewOpCo along with Debtor’s
2 other non-Litigation Claims Assets. Debtor anticipates that these Post-Petition Receivables are
3 mostly collectible.

4 Post-Effective Date, Reorganized Debtor will own 10% of NewOpCo and will use its
5 distributions from NewOpCo to tender Distributions to Holders of Allowed Administrative
6 Claims, Allowed Priority Tax Claims, and Allowed Claims in Classes 4-6.

7 **B. Debtor’s Pre-Petition Operations.**

8 In the early 2000s, Steven Mann, Debtor’s President, suffered from excruciating back
9 pain and required chiropractic visits at least multiple times per month to find relief. Mr. Mann
10 was subsequently able to find relief from his back pain by wearing special footwear made of
11 light-weight, ultra-soft, and easy to clean conforming material. This footwear concept was the
12 basis for the founding of Double Diamond Distribution Ltd. (“Double Diamond”), a Canadian
13 entity with substantially similar ownership as Debtor. Double Diamond began by developing
14 and selling DAWGS Brand footwear. Finding initial success in Canada and realizing a greater
15 ability to conduct business in the United States, Steven Mann and Barrie Mann formed Debtor,
16 which began substantive operations in 2007 and began shipping footwear in 2008.

17 Soon after its launch, the DAWGS brand footwear label quickly became a significant
18 competitor in the shoe industry’s evolution towards new comfort, leading to substantial sales of
19 merchandise. Debtor sells DAWGS branded products and other private labels including
20 “Doggers” and “Hounds,” which are owned by Double Diamond not only on its website,
21 www.usadawgs.com, but also through third-party online sites, retailers, wholesalers, and catalog
22 companies throughout the United States. In addition to its DAWGS brand and other private label
23 brands of footwear, Debtor also sells Agiato and Steven Craig brands of apparel.

24 Debtor’s 2016 financial statement, which is the latest pre-petition financial statements
25 that has been prepared, is attached hereto as **Exhibit 9**.

26 **C. The Crocs Litigation.**

27 Within months of formation, by April 2006, Double Diamond had become involved in a
28 dispute with Crocs, which claimed that certain of Double Diamond’s DAWGS branded footwear

1 infringed two patents, U.S. Patent No. 6,993,858 (the “’858 patent”) and U.S. Patent No.
2 D517,789 (the “’789 patent”). On March 31, 2006, Crocs filed a Complaint with the
3 International Trade Commission (“ITC”) against Double Diamond and other respondents. Three
4 days later, on April 3, 2006, Crocs filed a lawsuit, *Crocs, Inc. v. Effervescent, Inc. et al.*, No.
5 1:06-cv-00605 (D. Colo.) (the “2006 Lawsuit”), against Double Diamond and other defendants,
6 asserting the same two patents. A copy of the most recent version of Crocs’ Complaint in the
7 2006 Lawsuit and the Answer and Counterclaim are attached hereto as **Exhibit 3**. The 2006
8 Lawsuit was subsequently stayed during the pendency of the ITC investigation, after which
9 remedial orders were entered preventing the importation of certain footwear into the United
10 States. The 2006 Lawsuit was stayed while the ITC investigation proceeded.

11 On April 11, 2008, the presiding Administrative Law Judge (“ALJ”) found no violation
12 by Double Diamond. On July 25, 2008, the ITC affirmed the ALJ’s determination. However, on
13 February 24, 2010, the U.S. Court of Appeals for the Federal Circuit issued a limited-scope
14 decision reversing the ITC’s determination. As a result, in 2011, the ITC issued remedial orders
15 that prevented the importation of certain DAWGS branded footwear into the U.S.

16 In 2012, the 2006 Lawsuit was reopened, and Crocs amended its complaint to add Debtor
17 as a defendant. After Double Diamond, filed a request for reexamination of the ’858 patent with
18 the U.S. Patent Office on August 3, 2012, Crocs initiated a separate lawsuit, *Crocs, Inc. v. CVS*
19 *Caremark Corp.*, No. 1:12-cv-02096 (D. Colo.) (the “Colorado CVS Lawsuit”) against CVS in
20 Colorado asserting the ’789 patent against the same Dawgs footwear products already at issue in
21 the 2006 Lawsuit. The 2006 Lawsuit was then again stayed to allow the U.S. Patent Office to
22 conduct the reexamination proceedings. The Colorado CVS Lawsuit, which was consolidated
23 with the 2006 Lawsuit, was stayed as well.

24 In August 2016, Debtor and Double Diamond commenced *U.S.A. Dawgs, Inc. et al. v.*
25 *Snyder et al.*, No. 1:16-cv-02004 (the “Snyder Lawsuit” and, as consolidated with the 2006
26 Lawsuit, the “Colorado Litigation”), against 18 current and former Crocs officers and directors,
27 which was consolidated with the 2006 Lawsuit. A copy of the most recent version of Debtor’s
28 complaint to commence the Snyder Lawsuit is attached hereto as **Exhibit 4**.

1 On February 24, 2017, Crocs filed its second amended complaint in the 2006 Lawsuit
2 (attached hereto as Exhibit 3). This necessitated a new scheduling order for claim construction
3 proceedings for an additional patent (the “’465 patent”). Pursuant to that scheduling order, claim
4 construction briefing took place in the following months and was completed on July 7, 2017.

5 Claim construction briefing took place in the following months and was completed on
6 July 7, 2017. Under that scheduling order, “a further scheduling conference will be set
7 subsequent to the District Court’s ruling on Claim Construction for all patents now involved in
8 the case to address remaining discovery, experts and deadlines.”

9 As a result of the filing of the Chapter 11 Case, pending actions against the Debtor were
10 stayed in accordance with Section 362 of the Bankruptcy Code. Two cases, however, remain
11 pending between Debtor and Double Diamond, on the one hand, and Crocs and its current and
12 former officers, on the other hand: the 2006 Lawsuit and the Snyder Lawsuit, which were
13 consolidated and referred to herein as the Crocs Litigation.

14 Debtor and Double Diamond have also sought to have the ITC modify or rescind the
15 exclusion order that prevents the importation of certain DAWGS brand footwear into the U.S.
16 The ITC’s denial of the petition of Debtor and Double Diamond is now in front of the U.S. Court
17 of Appeals for the Federal Circuit, in Case No. 18-1219.

18 As well, in 2013, 2016, and finally in 2017, the U.S. Patent and Trademark Office
19 rejected the ’789 patent as unpatentable. In the 2017 action, which was mailed on August 9,
20 2017, the U.S. Patent Office issued a Right of Appeal Notice rejecting the ’789 patent as
21 unpatentable for the third time. Crocs is currently appealing the rejection of the ’789 patent.
22 Unless Crocs is successful in its efforts to overturn the decision of the U.S. Patent Office on
23 appeal, the ’789 Design Patent will be cancelled by the U.S. Patent Office.

24 Crocs adamantly disputes the forgoing assertions and claims made by Dawgs and Double
25 Diamond, and instead, contends that based on its claims (the Crocs Claims) against Debtor for,
26 among other things, infringement and litigation filed by Debtor in the United States District
27 Court for the District of Nevada, it is entitled to recovery for two different claims. First, as set
28 forth in its Proof of Claim No. 23, Crocs asserts damages in excess of \$77,000,000 based on the

1 2006 Lawsuit for, among other things: deliberate patent infringement (asserting treble damages
2 under 35 U.S.C. § 284), royalty damages, lost profit, and related interest and attorneys' fees.
3 Second, as set forth in its Proof of Claim No. 22, Crocs asserts damages in excess of \$300,000
4 based on its request for sanctions in connection with *U.S.A. Dawgs, Inc. v. Crocs, Inc.*, No. 2:16-
5 cv-1694 (D. Nev.) (the "2016 Nevada Litigation") and *U.S.A. Dawgs, Inc. v. Crocs, Inc. et al.*,
6 No. 2:17-cv-02054 (D. Nev.) (the "2017 Nevada Litigation"). Crocs sought sanctions in the
7 2016 Nevada Litigation asserting that the commencement of that suit was anticipatory and
8 intended to deprive Crocs of its choice of forum. Crocs also sought sanctions in the 2017
9 Nevada Litigation asserting that Debtor's complaint in that lawsuit was frivolous and asserting
10 that Debtor should have known statements therein were false or lacked evidentiary support.

11 **D. Debtor's Pre-Petition Financing and Disputes with GemCap.**

12 From its inception until approximately 2012, Debtor operated without any traditional
13 corporate financing in place, instead funding its operations primarily through revenue. As a
14 result of challenges arising from the Crocs Litigation, Debtor was required to seek outside
15 financing. As ongoing litigation reduced the pool of potential lenders, and as Steven Mann is a
16 Canadian citizen, traditional funding for Debtor's operations were not readily available.
17 Therefore, Debtor was forced to seek funding outside of traditional financial institutions.

18 On or about October 24, 2012, Debtor and GemCap entered into the *Loan and Security*
19 *Agreement by and between GemCap Lending I, LLC as Lender and U.S.A. Dawgs Inc.as*
20 *Borrower* (the "Loan Agreement" and, the loan extended, the "Loan") which provided for
21 lending (the "Revolving Loan Commitment") up to the lesser of: (1) \$2,000,000 (the "Maximum
22 Credit") or, the Borrowing Base, calculated as set forth in 1.15 of the Loan Agreement (the
23 "Borrowing Base Calculation").

24 Concurrently with the Loan Agreement, GemCap and Debtor executed the *Loan*
25 *Agreement Schedule* dated as of October 24, 2014 (the "Loan Agreement Schedule"), (ii)
26 *Secured Promissory Note (Revolving Loans)* dated as of October 24, 2012 (the "Promissory
27 Note"); and (iii) other Loan Documents (collectively, the "Loan Documents"). The original
28 maturity date (the "Maturity Date") under the Promissory Note was October 2014. The

1 revolving loan works as follows: GemCap initially provides funding secured by Debtor's
2 inventory and accounts receivables and is repaid in part as the accounts receivables are paid.
3 Then, based on a formula involving the value of the inventory and receivables, GemCap
4 advances additional funds that Debtor uses for business expenses and operations, which loan is
5 repaid in part through the accounts receivable. The revolving loan payments are called
6 Advances.

7 A series of seven amendments to the Loan Agreement were executed from December 9,
8 2013, through April 1, 2017, with the *Amendment No. 7 to Loan and Security Agreement and to*
9 *the Loan Agreement Schedule* pegging the Maximum Credit at \$5,500,000, (2) extending the
10 Maturity Date to March 31, 2018, and (3) increasing the interest rate to the greater of (I) fifteen
11 percent and (II) sum of (i) the "Prime Rate" as reported in the "Money Rates" column of The
12 Wall Street Journal, adjusted as and when such prime rates changes plus (ii) eleven percent
13 (11%). Debtor not only paid significant interest on the Loan, but Debtor has also repaid
14 significant principal. For example, on December 31, 2015, the loan balance was approximately
15 \$5,900,000, and in January 2018, the outstanding loan balance had been reduced to at least
16 approximately \$3,800,000. Thus, the loan balance was reduced by \$2,100,000 in a short period
17 of twenty-five months.

18 By mid-2017, GemCap had decreased the Revolving Loan Commitment and began
19 reducing the Borrower Base as GemCap asserted the Borrowing Base had become insufficient.
20 As a result, GemCap refused to provide the funds typically used by Debtor to meet its normal
21 business operations, including its payroll liabilities. Also, in mid-2017, GemCap presented the
22 *Amendment Number 8 to the Loan and Security Agreement and the Loan Agreement Schedule*
23 (the "Eighth Loan Amendment") providing for an Overadvance of \$240,000 and increasing
24 GemCap's collateral to include a security interest in the Crocs Litigation.

25 Following disputes between Debtor and GemCap over, among other things, the
26 appropriate Borrowing Base and application of payments, on January 23, 2018, GemCap
27 delivered a *Notice of Default* (the "Notice of Default") to Debtor contending that Debtor was in
28 breach of the Loan Agreement for assorted defaults. The following day, on January 24, 2018,

1 Debtor sent a letter to GemCap refuting GemCap's assertions that Debtor had breached the Loan
2 Agreement and asserting that GemCap breached the Loan Agreement.

3 GemCap has filed Proof of Claim No. 11, which contends that GemCap is owed
4 \$4,523,014.30, broken down as follows: \$3,810,993.89 of total outstanding principal,
5 \$237,422.68 for accrued interest, \$2,349.10 for accrued unused line fee, \$2,000 for accrued asset
6 monitoring, \$2,000.00 for expenses, and \$365,223.21 for attorneys' fees and costs, less a
7 \$50,311.77 payment from Debtor on March 30, 2018, plus accruing default interest and
8 attorneys' fees and costs.

9 Ultimately, as a result of the dispute with GemCap, which was exacerbated by Debtor's
10 dispute with Crocs, and to preclude foreclosure on Debtor's Assets, which would have precluded
11 any distribution to any creditor other than GemCap, Debtor was forced to commence this
12 Chapter 11 Case to seek to maximize the Assets for the benefit of *all* of its Creditors and the
13 Estate. Consistent therewith, the Plan provides for full payment of all Allowed Claims.

14 **E. The Chapter 11 Case.**

15 **1. The First Day Motions and Employment Applications.**

16 On February 1, 2018, Debtor filed assorted first day motions requesting relief necessary
17 to continue its operations, including authorization to use cash collateral, a determination that
18 adequate assurance was provided to utility companies, and authorization to pay employee wages
19 as follows:

- 20 • *Debtor's Emergency Motion for Entry of Interim Approval Order Pursuant to*
21 *Bankruptcy Rule 4001(b) and LR 4001(b); (1) Preliminarily Determining Extent of*
22 *Cash Collateral and Authorizing Use of Cash Collateral by Debtor; and (2)*
23 *Scheduling a Final Hearing to Determine Extent of Cash Collateral and*
Authorizing Use of Cash Collateral by Debtor (the "Cash Collateral Motion")
[ECF No. 6];
- 24 • *Debtor's Emergency Motion Pursuant to 11 U.S.C. §§ 105(a) and 366 for an*
25 *Order Determining that Adequate Assurance Has Been Provided to the Utility*
Companies (the "Utility Motion") [ECF No. 8]; and
- 26 • *Debtor's Emergency Motion for Order: (I) Authorizing Debtor to Pay Wages,*
27 *Salaries, Benefits, and Other Employee Obligations; and (II) Authorizing and*
28 *Directing Financial Institutions to Honor and Process Checks and Transfers*
Related to Such Obligations (the "Employee Wage Motion") [ECF No. 9].

1 Additionally, on that same date, Debtor filed its *Application to Employ Garman Turner*
2 *Gordon LLP as Debtor's Counsel* [ECF No. 16], and on February 26, 2018, Debtor filed its
3 application [ECF No. 122] to employ 3-21 as Debtor's investment banker. These motions and
4 applications were subsequently approved by the Court. See ECF Nos. 71, 72, 73, 122, 161, 178,
5 232, and 233.

6 **2. The Chapter 11 Disputes with GemCap and the GemCap Resolution.**

7 GemCap has aggressively opposed nearly every motion and application Debtor filed
8 during the course of the Chapter 11 Case and sought the dismissal of the case, or alternatively,
9 the appointment of a trustee, stay relief, conversion, and abstention. Specifically, GemCap
10 opposed [ECF Nos. 28, 85, 104] the Cash Collateral Motion and joined [ECF No. 38] the United
11 States Trustee's objection to the First Day Motions generally. Ultimately, the Cash Collateral
12 Motion was approved after an evidentiary hearing. The Court determined that with Debtor's
13 proposed adequate protection payment of approximately \$50,000 per month to GemCap (the
14 "Adequate Protection Payment"), GemCap was adequately protected and Debtor was permitted
15 to use cash collateral. GemCap likewise opposed Debtor's employment of 3-21 [ECF No. 167],
16 which was approved over GemCap's objection.

17 On February 8, 2018, GemCap filed its *Motion to Dismiss or Appoint a Trustee for Bad*
18 *Faith or, in the Alternative, Motion for Relief from the Automatic Stay or for Abstention* (the
19 "Dismissal Motion") [ECF No. 45], whereby GemCap sought dismissal of the Chapter 11 Case,
20 or, alternatively, conversion, appointment of a trustee, abstention, or stay relief. After significant
21 briefing [see, e.g. ECF Nos. 177, 184, 220, 238, 251] and multiple hearings, Debtor and GemCap
22 reached a consensual resolution discussed below, which includes continuing the evidentiary
23 hearing on the Dismissal Motion to July 6, 2018. See ECF No. 294

24 Debtor and GemCap are also involved in a discovery dispute relating to communications
25 between GemCap and Crocs (the "Crocs Communications Dispute"). See ECF Nos. 262 and
26 326. That dispute, as of the date of this Disclosure Statement, remains ongoing.

27 On February 20, 2018, Debtor filed its *Complaint* (the "Adversary Complaint") against
28 GemCap to commence Adv. No. BK-S-18-10453-LEB, which alleged claims for breach of

1 contract, breach of the implied covenant of good faith and fair dealing, intentional interference
2 with contractual relations, promissory estoppel, declaratory judgment regarding a violation of the
3 automatic stay, declaratory judgment regarding lender licensing in Nevada, claim objection, and
4 accounting. On March 30, 2018, GemCap filed a motion [ECF No. 12] seeking to dismiss the
5 Adversary Complaint (the "Motion to Dismiss Adversary Complaint") for failure to state a claim
6 upon which relief can be granted, which Debtor opposed [ECF No. 15]. While originally set for
7 hearing in connection with the Motion to Dismiss, subject to the GemCap resolution, the Motion
8 to Dismiss Adversary Complaint has been continued to July 6, 2018.

9 Ultimately, on May 15, 2018, Debtor and GemCap reached a resolution (the "GemCap
10 Resolution") that resolved the pending disputes between Debtor and GemCap, other than the
11 Cross Communications Dispute. Generally, the GemCap Resolution provides that GemCap will
12 accept a \$4.3 Million payment in full satisfaction of its asserted Secured Claim. The GemCap
13 Resolution permits Debtor to proceed with its Plan, with GemCap's support, on the terms
14 reflected in the LOI between Debtor and OIG⁵ while providing an auction in the event that either
15 (1) OIG fails to fund \$4,950,000 into a refundable escrow on or before June 15, 2018 (the "June
16 15 Deadline"), or (2) Debtor fails to confirm its Plan on or before July 31, 2018 (the "July 31
17 Deadline"), upon which an auction for the sale of all of Debtor's Assets will be held on June 29,
18 2018, or August 1, 2018, respectively.

19 In connection with the GemCap Resolution, on May 22, 2018, GemCap filed its *Notice of*
20 *Credit Bid of GemCap Lending I, LLC*, providing the following credit bid in the event of an
21 auction (the "Credit Bid"):

22 1. Thirty percent (30%) of the Debtor's Eligible Inventory, as defined in
23 Section 1.36 of the Loan and Security Agreement by and between
24 GemCap Lending I, LLC and U.S.A Dawgs, Inc. dated October 24, 2012
25 (the "Loan and Security Agreement") based upon the actual cost of said
26 Eligible Inventory, which actual cost of Debtor's Eligible Inventory and
27 Eligible Inventory count is to be verified by GemCap within 48 hours after
28 GemCap provides Debtor with notice of GemCap's request to verify actual
cost of Eligible Inventory;

2. Eighty percent (80%) of Debtor's Eligible Accounts, as defined in

⁵ A copy of the LOI is attached as **Exhibit 10** hereto.

1 Section 1.34 of the Loan and Security Agreement;

2 3. \$150,000.00 from GemCap for all of Debtor's remaining assets
3 including all books and records whether physical or electronic;

4 4. \$100,000.00 cash payment from GemCap designated for payment to
5 Debtor's unsecured creditors, to be escrowed by GemCap within 24 hours
6 of the June 29, 2018, Auction, or, alternatively, within 24 hours of the
7 August 1, 2018 Auction;⁶ and

8 5. GemCap's credit bid must be considered in its entirety and shall not be
9 valid without all asset components.

10 See ECF No. 303. GemCap's Credit Bid provides significantly less than \$4,950,000 in value
11 and does not allow for any future distributions to be made to Holders of Allowed Claims.

12 Also in connection with the GemCap Resolution, on May 25, 2018, Debtor filed its
13 *Motion For Entry of Order Approving Bid Procedures Relating to Sale of Debtor's Assets for*
14 *Auction Scheduled for June 29, 2018, or alternatively August 1, 2018; Approving the Form and*
15 *Manner of Notice of Sale By Auction, and Establishing Procedures For Noticing; and For Entry*
16 *of An Order Authorizing Sale of Debtor's Assets Outside of the Ordinary Course of Business*
17 *Free and Clear of All Liens, Claims, Encumbrances, and Interests* (the "Sale Motion") [ECF No.
18 314]. The Sale Motion seeks approval, only to the extent necessary in the event the June 15
19 Deadline or July 31 Deadline is missed, of bidding procedures for the proposed auction and sale
20 of all of Debtor's Assets.

21 **3. The Chapter 11 Disputes with Crocs.**

22 On February 16, 2016, Crocs filed its *Motion of Crocs for (i) a Determination that the*
23 *Automatic Stay Does Not Apply to Adjudication of Pending Sanctions Motions in the United*
24 *States District Court for the District of Nevada or, in the Alternative, (ii) Relief from the*
25 *Automatic Stay to Permit the District Court to Resolve Motions for Sanctions* [ECF No. 80]
26 related to the 2016 Nevada Litigation and the 2017 Nevada Litigation, which Debtor opposed
27 [ECF No. 141] on March 6, 2018. Subsequently, Crocs filed a reply [ECF No. 154] and, at the
28 request of the Court, both Crocs [ECF Nos. 187 and 209] and Debtor [ECF No. 190] filed

⁶ Debtor disputes that it is proper in a credit bid to provide for payment to a specific class of creditors outside of a plan and maintains that any amounts paid can only be distributed in accordance with Section 507 of the Bankruptcy Code.

1 supplemental briefing. After the initial hearing, the Court continued the matter for oral ruling on
2 June 5, 2018.

3 On February 22, 2018, Crocs filed its *Motion of Crocs, Inc. for Relief from the Automatic*
4 *Stay to Permit Continuation of Pending Litigation in the United States District Court for the*
5 *District of Colorado* [ECF No. 99], which Debtor opposed [ECF No. 150] on March 13, 2018.
6 Subsequently, Crocs filed a reply [ECF No. 158]. After the initial hearing, the Court continued
7 the matter for oral ruling on June 5, 2018.

8 On May 16, 2018, Crocs filed its application seeking authority to prosecute alleged
9 avoidance actions against certain insiders and affiliates on behalf of Debtor's estate (the
10 "Avoidance Prosecution Application") [ECF No. 279], which application was amended [ECF
11 No. 287] on May 17, 2018. The Motion asserts and alleges that transfers made to insiders listed
12 on Debtor's SOFA for the year prior to the Petition Date are avoidable, that additional transfers
13 were made to insiders during the four-year period before the Petition Date that may be avoidable
14 pursuant to Section 544(b) of the Bankruptcy Code and NRS 112.140 *et seq.*, that additional
15 transfer during the ten year period before the Petition Date may be avoidable pursuant to the Fair
16 Debt Collection Procedures Act, and that Debtor has not taken steps to recover avoidance
17 transfers from insiders and affiliates. The Motion requests that Crocs be granted authority to
18 investigate, prosecute, and settle such alleged voidance actions, or to appoint an examiner to
19 investigate such transfers. The deadline to file an opposition is June 5, 2018, and Debtor will
20 oppose the Motion on the basis that based on Debtor's investigation, the transfers do not appear
21 to be avoidable, but, in any event, Debtor has been and continues to investigate the claims such
22 that it is improper to grant authority to Crocs to pursue them only four months into the Chapter
23 11 Case. The hearing on the Avoidance Prosecution Application is scheduled for June 19, 2018.

24 On May 17, 2018, Debtor filed a motion [ECF No. 283] to quash a subpoena issued to
25 Debtor by Crocs regarding a discovery request under Bankruptcy Rule 2004, which dispute was
26 resolved prior to the hearing, with Debtor agreeing to produce responsive documents by June 6,
27 2018 and sitting for a combined deposition on June 13 and 14, 2018. See ECF No. 310.

28 ...

1 **4. Debtor's Marketing Efforts and the Letter of Intent from OIG.**

2 After being engaged as Debtor's investment banker, 3-21 undertook wide-ranging efforts
3 to market Debtor and its Assets in various forms to maximize its value and the recovery for
4 Debtor's creditors. Among other things, 3-21 created a non-confidential one-page summary and
5 confidential information presentation, established a confidential data room for prospective
6 purchasers, sent communications to at least 3,851 potential purchasers, and signed confidentiality
7 agreements with more than 29 interested purchasers and investors, thereby providing them access
8 to the data room. 3-21 thoroughly canvassed the market and made contact with all likely
9 acquirers or partners for Debtor and/or its Assets. 3-21 secured four site visits/management
10 presentations during the process. As a result of these efforts, Debtor entered into negotiations
11 with a number of potential investors and purchasers who evaluated Debtor's Assets and its
12 financial positions. The highest and best offer was made by OIG and is reflected in the letter of
13 intent, which was initially filed on May 8, 2018. See ECF Nos. 265 and 266. Following another
14 round of negotiations, on May 15, 2018, Debtor filed its *Notice of Revised Letter of Intent*, which
15 provided notice of Debtor's improved letter of intent with OIG (the "LOI") which, among other
16 things, increased the Payment by \$195,000. See ECF No. 277. The LOI provides, in general, for
17 OIG to tender the \$4,950,000 Payment that will be used to pay Allowed Claims in exchange for
18 equity interests in NewOpCo and NewLitCo. The sum of \$4,950,000.00 will be placed by OIG
19 in a fully refundable escrow on or before June 15, 2018 subject to the terms of an escrow
20 agreement acceptable to OIG in its sole discretion (the "Escrowed Amount"). The Escrowed
21 Amount will become the Payment as documented under the Purchase and Sale Agreement
22 (acceptable to OIG in its sole discretion) to be filed with the Bankruptcy Court as part of the Plan
23 Supplement. The Escrowed Amount will be refunded, in full, to OIG if the Purchase and Sale
24 Agreement is not executed. The LOI is attached here to as **Exhibit 10**.

25 The LOI provides the framework for the Plan. No other potential purchaser or investor
26 has emerged with a better offer despite 3-21's significant efforts throughout this Chapter 11
27 Case.

28

1 OIG is a private equity firm with a 10-year track record of acquiring and operating
2 companies in multiple industries. OIG brings operations and financial expertise along with the
3 capital required to successfully operate and grow portfolio companies.

4 **F. Claim Objections.**

5 Debtor will file objections to Proofs of Claim Nos. 22 and 23 filed by Crocs in the
6 amounts of “at least \$314,074.50,” and “at least \$76,790,152.62,” respectively before June 12,
7 2018 Debtor also anticipates filing objections to following Proofs of Claim prior to the
8 Confirmation Hearing: Proof of Claim No. 2 filed by the Internal Revenue Service asserting a
9 total claim of \$594,608 (\$405,617 priority and \$188,990 unsecured); Proof of Claim No. 7 filed
10 by the Spilotro Law Group in the amount of \$65,707.12; Proof of Claim No. 9 filed by FedEx
11 Corporate Services in the amount of \$330,797.50. Debtor or Reorganized Debtor, as applicable
12 may file additional Claim Objections before or after the Effective Date.

13 **G. Debtor’s Financial Condition and Operations While in Chapter 11.**

14 Debtor continues to operate as a debtor-in-possession in its Chapter 11 Case. During the
15 Chapter 11 Case, Debtor’s sales and recovery have been slower than Debtor’s historical
16 performance as a result of the negative impact on customer relations as a result of GemCap’s
17 issuance of demand letters to Debtor’s customers immediately before the Petition Date and as a
18 result of the significant time management is required to spend on the contested bankruptcy
19 matters instead of operations, as well as the general negative impact of the bankruptcy filing
20 itself. Debtor’s annual net sales, if extrapolated out annually based on Debtor’s first four months
21 in the Chapter 11 Case, would total approximately \$4,700,00 this year. Notwithstanding its slow
22 performance during the Chapter 11 Case, Debtor has continued to maintain its operations and
23 pay its bills as they become due, in addition to the monthly Adequate Protection Payment.
24 Debtor’s monthly operating reports filed during the case for the months of February, March and
25 April 2018 (excluding the voluminous bank statements) are attached hereto as **Exhibits 5, 6, and**
26 **7.** Additionally, Debtor’s budget to actual report filed in connection with the use of cash
27 collateral is attached hereto as **Exhibit 9.**

28 ...

1 **H. Anticipated Future of the Reorganized Debtor.**

2 After the Effective Date, Reorganized Debtor will own 10% of NewOpCo and 30% of
3 NewLitCo.

4 **1. NewOpCo's Projected Performance and Distributions.**

5 NewOpCo will continue to operate Debtor's current business through the acquisition of
6 the non-Litigation Claims Assets. Debtor believes that, with an infusion of new capital,
7 experience, and knowledge through OIG's ownership, the emergence from bankruptcy, and
8 without the financial pressure and cash crunch experienced pre-Petition Date as a result of the
9 disputes with GemCap, NewOpCo will see operations return to historic levels.

10 Reorganized Debtor will obtain a 10% equity interest in NewOpCo. As set forth in the
11 Plan, Reorganized Debtor's income from its 10% interest in NewOpCo will be used to pay the
12 remaining Claims, including that 90% of Reorganized Debtor's net income from its 10% interest
13 in NewOpCo will be distributed to Holders of Allowed General Unsecured Claims (and the
14 Crocs Claims if they are ultimately Allowed and not satisfied from the Crocs Litigation
15 Proceeds). With sustained and increasing sales and recovery, Debtor anticipates that
16 Reorganized Debtor will be able to pay all Allowed Claims in full. To be clear, under no
17 circumstance will any Distribution be made to Reorganized Debtor's equity holders until all
18 Allowed Claims are paid in full. However, should NewOpCo not be successful, there may be no
19 distributions to NewOpCo's equity holders and thus, no additional recovery to Holders of
20 Allowed Claims from the continued operations of NewOpCo.

21 **2. NewLitCo Projected Performance and Distributions.**

22 NewLitCo will be formed to acquire the Litigation Claims and, most critically, the Crocs
23 Litigation. Double Diamond is contributing the DD US Crocs Claims to NewLitCo. NewLitCo
24 will vigorously pursue the Crocs Litigation, which may include obtaining litigation financing
25 and/or retaining new litigation counsel on a contingency basis. As set forth in the Plan,
26 Reorganized Debtor's income from its 30% interest in NewLitCo will be used to pay the
27 remaining Claims, including that 90% of Reorganized Debtor's net income from its 30% interest
28 in NewOpCo will be distributed to Holders of Allowed General Unsecured Claims (and the

1 Crocs Claims if they are ultimately Allowed and not satisfied from the Crocs Litigation
2 Proceeds). Again, Debtor believes the Crocs Litigation Claims will result in tens and possibly
3 hundreds of millions of dollars in damages being awarded to NewLitCo, thereby allowing
4 Reorganized Debtor to pay all Allowed Claims in full.⁷ While Debtor anticipates a significant
5 recovery, there is always inherent risk associated with litigation that could result in NewLitCo
6 obtaining a smaller than anticipated recovery or possibly no recovery, which would then
7 materially decrease the funds Reorganized Debtor would have available to pay Allowed Claims.

8
9 **VI.**
ADDITIONAL PLAN PROVISIONS

10 **A. Plan Implementation Occurring on the Effective Date.** On the Effective Date,
11 except as otherwise provided, without any further action by Debtor or Reorganized Debtor, the
12 following events shall occur:

13 **1.** The NewLitCo Organizational Documents shall be executed, and to the
14 extent required, filed with the applicable Secretary of State, thereby forming NewLitCo.
15 The NewLitCo Organization Documents shall authorize the issuance of the applicable
16 equity securities to OIG and Reorganized Debtor and include such provisions as may be
17 needed to effectuate and consummate the Plan and the transactions contemplated therein.

18 **2.** The NewOpCo Organizational Documents shall be executed, and to the
19 extent required, filed with the applicable Secretary of State, thereby forming NewOpCo.
20 The NewOpCo Organization Documents shall authorize the issuance of the applicable
21 equity securities to OIG and Reorganized Debtor and include such provisions as may be
22 needed to effectuate and consummate this Plan and the transactions contemplated herein.

23 **3.** The Purchase and Sale Agreement shall be executed by Debtor,
24 NewOpCo, and NewLitCo, thereby selling, transferring, and assigning all of Debtor's
25 right, title, and interest in the: (i) Litigation Claims, including without limitation the
26 Crocs Litigation Claims, free and clear of all liens, claims, and interests to NewLitCo;
27 and (ii) Debtor's Assets other than the Litigation Claims to NewOpCo free and clear of
28 all lien, claims, and interests.

4. The Payment shall be made to Reorganized Debtor.

5. Double Diamond shall transfer the DD US Crocs Claims to NewLitCo.

⁷ Again, under no circumstance will any Distribution be made to Reorganized Debtor's equity holders until all Allowed Claims are paid in full.

1 6. NewOpCo, Debtor, Steve Mann, and Double Diamond shall enter into
2 new global licensing agreement for all IP. Any future brands or businesses related to or
3 derivative of any IP shall be the exclusive property of NewOpCo.

4 7. From and after the Effective Date, Reorganized Debtor shall continue to
5 exist as a separate entity in accordance with applicable law. Debtor's existing articles of
6 incorporation and bylaws will continue in effect following the Effective Date except as
7 set forth in Section 5.2 of the Plan.

8 8. Reorganized Debtor shall cause \$4,300,000.00 of the Payment to be
9 transferred to GemCap in full satisfaction of its Allowed GemCap Claim.

10 9. After reduction for any closing costs (which shall be determine at the
11 mutual satisfaction of the parties to the Purchase and Sale Agreement), if any, the balance
12 of the Payment shall be transferred to Reorganized Debtor to satisfy Allowed Secured
13 Claims, Allowed Administrative Claims, Allowed Priority Tax Claims, and Allowed
14 Priority Unsecured Claims.

15 10. Any additional Distributions required to be made by Reorganized Debtor
16 pursuant to this Plan the Holders of Allowed Claims on the Effective Date shall be made.

17 **B. Governing Documents and Post-Effective Date Management.** Debtor's
18 existing articles of organization and by-laws (as amended, supplemented, or modified) will
19 continue in effect for Reorganized Debtor following the Effective Date, except to the extent that
20 such documents are amended in conformance with this Plan or by proper governance action after
21 the Effective Date, including that such operating documents shall be amended as necessary to: (i)
22 provide that until all Allowed Claims in Classes 1 through 6 have been paid in full in accordance
23 with the terms of this Plan, no Distribution shall be made on account of Debtor's Equity
24 Securities; and (ii) satisfy the provisions of this Plan and the Bankruptcy Code and shall include,
25 among other things, pursuant to Section 1123(a)(6) of the Bankruptcy Code, a provision
26 prohibiting the issuance of non-voting equity securities, but only to the extent required by
27 Section 1123(a)(6) of the Bankruptcy Code.

28 From and after the Effective Date, Reorganized Debtor will continue to be managed by
Debtor's pre-petition managers, which management may subsequently be modified to the extent
provided by Reorganized Debtor's articles of organization, by-laws, and operating agreement (as
amended, supplemented, or modified).

The equity interests in NewOpCo will be held 10% by Reorganized Debtor and 90% by

1 OIG, or a newly formed entity owned by or affiliated with OIG. While NewOpCo may retain
2 Steven Mann to assist with operations, NewOpCo will be managed by OIG.

3 The equity interests in NewLitCo will be held 30% by Reorganized Debtor and 70% by
4 OIG, or a newly formed entity owned by or affiliated with OIG. While NewLitCo may retain
5 Steven Mann to assist with the Litigation Claims, NewLitCo will be managed by OIG.

6 **C. Executory Contracts and Unexpired Leases.**

7 Debtor's existing Executory Contracts and Unexpired Leases are:

- 8 1. Receivables Insurance Policy with Atradius Trade Crit Insurance, Inc. Cure amount - \$0.
- 9 2. Commercial Insurance Policy with Capri Insurance Services, Ltd. Cure amount - \$0.
- 10 3. Equipment lease with De Lage Laden. Cure amount - \$3,926.78.
- 11 4. Cloud business management software agreement with Oracle America, Inc., successor to
12 NetSuite Subscription Services. Cure amount - \$51,112.46.
- 13 5. Software subscription with Nextpoint, Inc. Cure amount - \$3,763.50.
- 14 6. Insurance contract with Anthem Blue Cross and Blue Shield. Cure amount - \$0.00
- 15 7. Real Property Lease with Landlord. Cure amount - \$206,604.97

16
17 Debtor has obtained an extension to June 7, 2018 to assume or reject its Real Property
18 Lease. As of the date of this Disclosure Statement, Debtor has not yet made a final
19 determination as to what executory contracts and unexpired leases, if any, will be assumed.

20
21 Additionally, Debtor and OIG have not yet determined which, if any, of the foregoing
22 Executory Contracts and Unexpired Leases will be assumed. Debtor anticipates that Schedule
23 6.1 to the Plan will be amended in advance of the Confirmation Hearing.

24 **1. Executory Contracts.**

25 Except for Executory Contracts and Unexpired Leases specifically addressed in the Plan,
26 assumed pursuant to prior order of the Bankruptcy Court, including but not limited to the Sale
27 Order, or set forth on the schedule of Assumed Executed Contracts and Unexpired Leases
28 attached to the Plan as Schedule 6.1 (which may be supplemented and amended up to the date

1 the Bankruptcy Court enters the Confirmation Order), all Executory Contracts and Unexpired
2 Leases that exist on the Confirmation Date shall be deemed rejected by Debtor on the Effective
3 Date.

4 **2. Approval of Assumption or Rejection.**

5 Entry of the Confirmation Order shall constitute as of the Effective Date: (i) approval,
6 pursuant to Section 365 of the Bankruptcy Code, of the assumption by Debtor and assignment to
7 NewOpCo of each Executory Contract and Unexpired Lease to which Debtor is a party that is
8 listed on Schedule 6.1; and (ii) rejection by Debtor of each Executory Contract and Unexpired
9 Lease to which Debtor is a party that is not listed on Schedule 6.1, not otherwise provided for in
10 the Plan, and neither assigned, assumed and assigned, or rejected by separate order of the
11 Bankruptcy Court. Upon the Effective Date, each counter party to an assumed Executory
12 Contract or Unexpired Lease listed shall be deemed to have consented to an assumption
13 contemplated by Section 365(c)(1)(B) of the Bankruptcy Code, to the extent such consent is
14 necessary for such assumption. To the extent applicable, all Executory Contracts or Unexpired
15 Leases of Debtor assumed and assigned pursuant to this Article 6 shall be deemed modified such
16 that the transactions contemplated by this Plan shall not be a “change of control,” regardless of
17 how such term may be defined in the relevant Executory Contract or Unexpired Lease and any
18 required consent under any such Executory Contract or Unexpired Lease shall be deemed
19 satisfied by confirmation of the Plan.

20 **3. Cure of Defaults.**

21 Reorganized Debtor shall Cure any defaults respecting each Executory Contract or
22 Unexpired Lease assumed pursuant to Section 6.1 of this Plan upon the latest of: (i) the Effective
23 Date or as soon thereafter as practicable; (ii) such dates as may be fixed by the Bankruptcy Court
24 or agreed upon by Debtor, and after the Effective Date, Reorganized Debtor; or (iii) the
25 fourteenth (14th) Business Day after the entry of a Final Order resolving any dispute regarding:
26 (a) a Cure amount; (b) the ability of Debtor or NewOpCo to provide “adequate assurance of
27 future performance” under the Executory Contract or Unexpired Lease assumed and assigned
28 pursuant to this Plan in accordance with Section 365(b)(1) of the Bankruptcy Code; or (c) any

1 matter pertaining to assumption, assignment, or the Cure of a particular Executory Contract or an
2 Unexpired Lease.

3 **4. Objection to Cure Amounts.**

4 Any party to an Executory Contract or Unexpired Lease who objects to the Cure amount
5 determined by Debtor to be due and owing must file and serve an objection on Debtor’s counsel
6 on or before the later of: (i) ten (10) days after the receipt of this Plan identifying the Cure
7 amount; or (ii) ten (10) days after notice of any modification of the Cure amounts set forth on
8 Schedule 6.1 of the Plan. Failure to file and serve a timely objection shall be deemed consent to
9 the Cure amounts paid by Debtor in accordance with Section 6.3 of the Plan. If there is a dispute
10 regarding: (i) the amount of any Cure payment; (ii) the ability of NewOpCo to provide “adequate
11 assurance of future performance” under the Executory Contract or Unexpired Lease to be
12 assumed or assigned; or (iii) any other matter pertaining to assumption, the Cure payments
13 required by Section 365(b)(1) of the Bankruptcy Code will be made following the entry of a
14 Final Order resolving the dispute and approving the assumption.

15 **5. Confirmation Order.**

16 The Confirmation Order will constitute an order of the Bankruptcy Court approving the
17 assumptions and assignments described in Article 6 of the Plan pursuant to Section 365 of the
18 Bankruptcy Code as of the Effective Date. Notwithstanding the forgoing, if, as of the date the
19 Bankruptcy Court enters the Confirmation Order, there is pending before the Bankruptcy Court a
20 dispute concerning the Cure amount or adequate assurance for any Executory Contract or
21 Unexpired Lease, the assumption of such Executory Contract or Unexpired Lease shall be
22 effective as of the date the Bankruptcy Court enters an order resolving any such dispute and
23 authorizing assumption by Debtor.

24 **6. Bar Date.**

25 All proofs of Claims with respect to Claims arising from the rejection of any Executory
26 Contract or Unexpired Lease shall be filed no later than thirty (30) calendar days after the
27 Effective Date. Any Claim not filed within such time shall be forever barred.

28 ...

1 **D. Manner of Distribution of Property Under the Plan.**

2 **1. Distribution**

3 Reorganized Debtor shall be responsible for making the Distributions described in this
4 Plan. Except as otherwise provided in this Plan or the Confirmation Order, the Cash necessary
5 for Reorganized Debtor to make Distributions pursuant to this Plan may be obtained from the
6 Payment and equity distributions from NewLitCo and NewOpCo.

7 **2. Statements**

8 Reorganized Debtor shall maintain a record of the names and addresses of all Holders of
9 Allowed Claims and Equity Securities Holders as of the Effective Date for purposes of mailing
10 Distributions to them. Reorganized Debtor may rely on the name and address set forth in the
11 Schedules and/or Proofs of Claim and the ledger and records regarding Holders of Equity
12 Securities as of the Record Date as being true and correct unless and until notified in writing.
13 Reorganized Debtor shall file all tax returns and other filings with governmental authorities on
14 behalf of Reorganized Debtor.

15 **3. No Recourse**

16 No recourse shall ever be had, directly or indirectly, against Debtor, Reorganized Debtor,
17 NewLitCo, NewOpCo, or against any agent, attorney, accountant, or other professional for
18 Debtor, Reorganized Debtor, NewLitCo, NewOpCo, by legal or equitable proceedings or by
19 virtue of any statute or otherwise, nor upon any promise, contract, instrument, undertaking,
20 obligation, covenant, or agreement whatsoever executed by Debtor, Reorganized Debtor,
21 NewLitCo, NewOpCo under this Plan, or by reason of the creation of any indebtedness by
22 Debtor, Reorganized Debtor, NewLitCo, NewOpCo under this Plan for any purpose authorized
23 in this Plan, it being expressly understood and agreed that all such liabilities, covenants, and
24 agreements of Debtor, Reorganized Debtor, NewLitCo, NewOpCo, whether in writing or
25 otherwise, shall be enforceable only against and be satisfied by the assets of Reorganized Debtor
26 acquired pursuant to the terms of this Plan and only in accordance with the terms of this Plan.

27 **4. Further Authorization**

28 Debtor and Reorganized Debtor shall be entitled to seek such orders, judgments,
injunctions, and rulings as it deems necessary to carry out the intentions and purposes, and to
give full effect to the provisions of the Plan.

...

1 **E. Conditions Precedent to Confirmation and the Effective Date.**

2 1. **Condition Precedent to Confirmation.** The Confirmation Order shall have been
3 entered and be in form and substance reasonable acceptable to Debtor and OIG.

4 2. **Conditions Precedent to Effectiveness.** The following are conditions precedent
5 to the occurrence of the Effective Date:

6 2.1 The Confirmation Order shall be a Final Order, except that Debtor reserves the right
7 to cause the Effective Date to occur notwithstanding the pendency of an appeal of the
8 Confirmation Order, and the Confirmation Order shall not be modified or
9 supplemented without OIG's prior written consent;

10 2.2 All documents necessary to implement the transactions contemplated by this Plan,
11 including without limitation, the Purchase and Sale Agreement, the NewLitCo
12 Organizational Documents, and NewOpCo Organizational Documents, shall be in
13 form and substance acceptable to Debtor and OIG;

14 2.3 Double Diamond shall have obtained a subordination agreement from its Canadian
15 credit union subordinating such credit union's secured claim to any litigation
16 financing obtained by NewLitCo to prosecute the Crocs Claims, which agreement
17 shall be in form and substance acceptable to Debtor and OIG;

18 2.4 NewOpCo, Debtor, Steve Mann, and Double Diamond shall have entered into new
19 global licensing agreement for all IP; and

20 2.5 The Payment shall have been funded into escrow by OIG.

21 3. **Waiver of Conditions.** The conditions set forth in Section 8.1 and 8.2 of the Plan
22 may be waived by written waiver provided by each Debtor and OIG, in their respective sole and
23 absolute discretion, and upon such effective waiver, Debtor may proceed to consummate the
24 Plan without notice, leave, or order of the Bankruptcy Court or formal action other than a
25 proceeding to confirm the Plan.

26 **F. Objections to Claims or Equity Securities.**

27 1. **Filing of Objections to Claims.** After the Effective Date, objections to Claims
28 shall be made and objections to Claims made previous thereto shall be pursued by Reorganized
Debtor. Any objections to Claims made after the Effective Date shall be filed and served not
later than the first (1st) Business Day that is ninety (90) calendar days after the Effective Date;

1 provided, however, that such period may be extended by entry of an ex parte order of the
2 Bankruptcy Court.

3 **2. Resolution of Objections After the Effective Date.** From and after the
4 Effective Date, Reorganized Debtor may litigate to judgment, propose settlements of, or
5 withdraw objections to, all pending or filed Disputed Claims and may settle or compromise any
6 Disputed Claim without notice and a hearing and without approval of the Bankruptcy Court.

7 **3. Distributions and Disputed Claims Reserve.** Upon Final Order with respect to
8 a Disputed Claim, the Holder of such Disputed Claim, to the extent it has been determined to be
9 an Allowed Claim, shall receive as soon as reasonably practical that payment or Distribution to
10 which it would have been entitled if the portion of the Claim so allowed had been allowed as of
11 the Effective Date.

12 **4. Late Filed Claims** No Claim filed after the Bar Date or, as applicable, the
13 Administrative Claim Bar Date, shall be allowed, and all such Claims are hereby disallowed in
14 full. After the Bar Date or the Administrative Bar Date, as applicable, no Creditor shall be
15 permitted to amend any claim to increase the claimed amount and any such amendment shall be
16 disallowed to the extent of the late-filed increase in the claimed amount.

17 **G. Miscellaneous Plan Provisions.**

18 **1. Effectuating Documents; Further Transactions; Timing.** Debtor and Reorganized
19 Debtor are each authorized to execute, deliver, file, or record such contracts, instruments,
20 releases, and other agreements or documents and to take such actions as may be necessary or
21 appropriate to effectuate and further evidence the terms and conditions of the Plan and any
22 securities issued, transferred, or canceled pursuant to the Plan. All transactions that are required
23 to occur on the Effective Date under the terms of the Plan shall be deemed to have occurred
24 simultaneously. Debtor and Reorganized Debtor are authorized and directed to do such acts and
execute such documents as are necessary to implement the Plan.

25 **2. Exemption From Transfer Taxes.** Pursuant to Section 1146 of the Bankruptcy Code:
26 (i) the issuance, distribution, transfer, or exchange of Estate property; (ii) the creation,
27 modification, consolidation, or recording of any deed of trust or other security interest, the
28 securing of additional indebtedness by such means or by other means in furtherance of, or

1 connection with the Plan or the Confirmation Order; (iii) the making, assignment, modification,
2 or recording of any lease or sublease; or (iv) the making, delivery, or recording of a deed or other
3 instrument of transfer under, in furtherance of, or in connection with, the Plan, Confirmation
4 Order, or any transaction contemplated above, or any transactions arising out of, contemplated
5 by, or in any way related to the foregoing shall not be subject to any document recording tax,
6 stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act or real estate
7 transfer tax, mortgage recording tax, or other similar tax or governmental assessment and the
8 appropriate state of local government officials or agents shall be, and hereby are, directed to
9 forego the collection of any such tax or assessment and to accept for filing or recordation any of
10 the foregoing instruments or other documents without the payment of any such tax or
11 assessment.

12 **3. Revocation or Withdrawal of the Plan.** Debtor reserves the right to revoke or
13 withdraw the Plan at any time prior to its substantial consummation. If the Plan is withdrawn or
14 revoked, then the Plan shall be deemed null and void and nothing contained herein shall be
15 deemed to constitute a waiver or release of any Claims by or against Debtor or any other Person
16 nor shall the withdrawal or revocation of the Plan prejudice in any manner the rights of Debtor or
17 any Person in any further proceedings involving Debtor. In the event the Plan is withdrawn or
18 revoked, nothing set forth herein shall be deemed an admission of any sort and the Plan and any
19 transaction contemplated thereby shall be inadmissible into evidence in any proceeding.

20 **4. Binding Effect.** The Plan shall be binding upon, and shall inure to the benefit of Debtor,
21 Reorganized Debtor, and the Holders of all Claims and Equity Securities and their respective
22 successors and assigns.

23 **5. Governing Law.** Except to the extent that the Bankruptcy Code or other federal law is
24 applicable or as provided in any contract, instrument, release, or other agreement entered into in
25 connection with this Plan or in any document which remains unaltered by this Plan, the rights,
26 duties, and obligations of Debtor, Reorganized Debtor, and any other Person arising under this
27 Plan shall be governed by, and construed and enforced in accordance with, the internal laws of
28 the State of Nevada without giving effect to Nevada's choice of law provisions.

6. Modification of Payment Terms. Reorganized Debtor reserves the right to modify the
treatment of any Allowed Claim in any manner adverse only to the Holder of such Allowed
Claim at any time after the Effective Date upon the prior written consent of the Holder whose
Allowed Claim treatment is being adversely affected.

1 **7. Allocation of Distributions Between Principal and Interest.** To the extent that any
2 Allowed Claim entitled to a Distribution under this Plan is comprised of indebtedness and
3 accrued but unpaid interest thereof, such Distribution shall, to the extent permitted by applicable
4 law, be allocated for income tax purposes to the principal amount of the Claim first and then, to
5 the extent that the consideration exceeds the principal amount of the Claim, to the portion of
6 such Claim representing accrued but unpaid interest.

7 **8. Providing for Claims Payments.** Distributions to Holders of Allowed Claims shall be
8 made by Reorganized Debtor: (i) at the addresses set forth on the Proofs of Claim filed by such
9 Holders (or at the last known addresses of such Holders if no Proof of Claim is filed or if Debtor
10 has been notified of a change of address); (ii) at the addresses set forth in any written notices of
11 address changes delivered to Reorganized Debtor after the date of any related Proof of Claim; or
12 (iii) at the addresses reflected in the Schedules if no Proof of Claim has been filed and
13 Reorganized Debtor has not received a written notice of a change of address. If any Holder's
14 Distribution is returned as undeliverable, no further Distributions to such Holder shall be made
15 unless and until Reorganized Debtor is notified of such Holder's then-current address, at which
16 time all missed Distributions shall be made to such Holder without interest. Amounts in respect
17 of undeliverable Distributions made through Reorganized Debtor shall be returned to
18 Reorganized Debtor until such Distributions are claimed. All claims for undeliverable
19 Distributions shall be made on or before the second (2nd) anniversary of the Effective Date.
20 After such date, all unclaimed Distributions shall revert to Reorganized Debtor and the Holder or
21 successor to such Holder with respect to such unclaimed Distribution shall be discharged and
22 forever barred notwithstanding any federal or state escheat laws to the contrary. Nothing
23 contained in this Plan shall require Debtor or Reorganized Debtor to attempt to locate any Holder
24 of an Allowed Claim or Allowed Equity Security.

25 **9. Set Offs.** Debtor and Reorganized Debtor may, but shall not be required to, set off or
26 recoup against any Claim and the payments or other distributions to be made pursuant to the Plan
27 in respect of such Claim (before any distribution is made on account of such Claim or Equity
28 Security), claims of any nature whatsoever that the applicable Debtor or Reorganized Debtor
may have against the Holder of such Claim to the extent such Claims may be set off or recouped
under applicable law, but neither the failure to do so nor the allowance of any Claim hereunder
shall constitute a waiver or release by Debtor or Reorganized Debtor of any such Claim that it
may have against such Holder.

1 **10. Notices.** Any notice required or permitted to be provided under the Plan shall be in
2 writing and served by either: (i) certified mail, return receipt requested, postage prepaid; (ii) hand
3 delivery; or (iii) reputable overnight courier service, freight prepaid, to be addressed as:

4 If to Debtor:

U.S.A. Dawgs, Inc.
Attn: Steven Mann
4120 Windmill Lane, Unit 106
Las Vegas, NV 89139
Email: steve@usadawgs.com

8 With a copy to:

Garman Turner Gordon
Attn: Talitha Gray Kozlowski, Esq.
Attn: Teresa M. Pilatowicz, Esq.
650 White Drive, Suite 100
Las Vegas, NV 89119
Tel: (725) 777-3000
Email: Tgray@gtg.legal
Email: Tpilatowicz@gtg.legal

14 **11. Severability.** If any provision of the Plan is determined by the Bankruptcy Court to be
15 invalid, illegal, or unenforceable or the Plan is determined to be not confirmable pursuant to
16 Section 1129 of the Bankruptcy Code, the Bankruptcy Court, at the request of Debtor shall have
17 the power to alter and interpret such term to make it valid or enforceable to the maximum extent
18 practicable, consistent with the original purpose of the term or provision held to be invalid, void,
19 or unenforceable, and such term or provision shall then be applicable as altered or interpreted.
20 Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and
21 provisions of the Plan shall remain in full force and effect and will in no way be affected,
22 impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order
23 shall constitute a judicial determination and shall provide that each term and provision of the
24 Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and
enforceable pursuant to its terms.

25 **12. Withholding and Reporting Requirements.** In connection with the Plan and all
26 instruments and securities issued in connection therewith and Distributions thereon, Reorganized
27 Debtor shall comply with all withholding and reporting requirements imposed by any federal,
28 state, local, or foreign taxing authority and all Distributions hereunder shall be subject to any

1 such withholding and reporting requirements. Reorganized Debtor shall be authorized to take
2 any and all action that may be necessary to comply with such withholding and recording
3 requirements. Notwithstanding any other provision of the Plan, each Holder of an Allowed
4 Claim that has received a distribution pursuant to the Plan shall have sole and exclusive
5 responsibility for the satisfaction or payment of any tax obligation imposed by any governmental
unit, including income, withholding, and other tax obligation on account of such distribution.

6 **13. Modification and Amendment.** Prior to Confirmation, Debtor may alter, amend, or
7 modify the Plan under Section 1127(a) of the Bankruptcy Code at any time. After the
8 Confirmation Date and prior to substantial consummation of the Plan as defined in Section
9 1101(2) of the Bankruptcy Code, Debtor may, under Section 1127(b), (c), and (d) of the
10 Bankruptcy Code, alter, amend, or modify the Plan or institute proceedings in the Bankruptcy
11 Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the
12 Disclosure Statement, or the Confirmation Order, to make appropriate adjustments and
13 modifications to the Plan or the Confirmation Order as may be necessary to carry out the
14 purposes and effects of the Plan so long as such proceedings do not materially adversely affect
the treatment of Holders of Claims under the Plan.

15 **VII.**
POST-EFFECTIVE DATE OPERATIONS

16 **A. Vesting of Assets.** Subject to the provisions of the Plan and as permitted by Section
17 1123(a)(5)(B) of the Bankruptcy Code, the Assets, including the Litigation Claims and right,
18 title, and interest being assumed by Reorganized Debtor in the assumed Executory Contracts,
19 shall be transferred to Reorganized Debtor on the Effective Date. As of the Effective Date, all
20 such property shall be free and clear of all Liens, Claims, and Equity Securities except as
21 otherwise provided herein. On and after the Effective Date, Reorganized Debtor may operate its
22 business and may use, acquire, and dispose of property and compromise or settle any Claim
23 without the supervision of or approval of the Bankruptcy Court and free and clear of any
24 restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than restrictions expressly
25 imposed by the Plan or the Confirmation Order.

26 **B. Preservation and Settlement of Litigation Claims.** In accordance with Section
27 1123(b)(3) of the Bankruptcy Code, and except as otherwise expressly provided herein, all
28

1 Litigation Claims shall be assigned and transferred to NewLitCo pursuant to Section 5.1 of this
2 Plan. NewLitCo, as the successor in interest to Debtor and the Estate, may and shall have the
3 exclusive right to sue on, settle, or compromise all Litigation Claims, including derivative
4 actions existing against Debtor on the Effective Date.

5 **C. Discharge.** On the Effective Date, except as otherwise provided in this Plan, the
6 Debtor shall be discharged and released from any and all Claims, regardless of whether a
7 Proof of Claim was filed and whether any Proof of Claim was withdrawn, including any
8 Claim that could have been classified in Classes 1 through 6 to the fullest extent provided
9 in Sections 524 and 1141 of the Bankruptcy Code. The Discharge shall be to the fullest
10 extent provided under Section 1141(d)(1)(A) and (B) and other applicable provisions of the
11 Bankruptcy Code. Except as otherwise expressly provided by this Plan or the
12 Confirmation Order, all consideration distributed under this Plan shall be in exchange for,
13 and in complete satisfaction, settlement, discharge, and release of, all Claims of any kind or
14 nature whatsoever against Debtor or any of its Assets, and regardless of whether any
15 property shall have been distributed or retained pursuant to this Plan on account of such
16 Claims. Except as otherwise expressly provided by this Plan or the Confirmation Order,
17 upon the Effective Date as to unclassified Claims and Claims in Classes 1, 2, 3, 4, 5, and 6,
18 the Debtor shall be deemed discharged and released under and to the fullest extent
19 provided under Section 1141(d)(1)(A) of the Bankruptcy Code from any and all Claims of
20 any kind or nature whatsoever, including, but not limited to, demands and liabilities that
21 arose before the Confirmation Date, and all debts of the kind specified in Section 502(g),
22 502(h), or 502(i) of the Bankruptcy Code. Nothing in this Plan or Confirmation Order shall
23 operate to expand the Debtor's discharge as provided for in this Section 9.3 beyond those
24 allowed by the Bankruptcy Code.

25 **D. Injunction.** From and after the Effective Date, and except as provided in this Plan
26 and the Confirmation Order, all Persons that have held, currently hold, or may hold a
27 Claim or an Equity Security or other right of an Equity Security Holder that is terminated
28 pursuant to the terms of this Plan are permanently enjoined from taking any of the

1 following actions on account of any such Claims or terminated Equity Securities or rights:
2 (i) commencing or continuing in any manner any action or other proceeding against
3 Reorganized Debtor or their respective property; (ii) enforcing, attaching, collecting, or
4 recovering in any manner any judgment, award, decree, or order against Reorganized
5 Debtor, NewLitCo, NewOpCo, or their respective property; (iii) creating, perfecting, or
6 enforcing any Lien or encumbrance against Reorganized Debtor, NewLitCo, NewOpCo, or
7 their respective property; (iv) asserting a right of subrogation of any kind against any debt,
8 liability, or obligation due to Reorganized Debtor, NewLitCo, NewOpCo, or their
9 respective property; and (v) commencing or continuing any action, in any manner or any
10 place, that does not comply with or is inconsistent with the provisions of this Plan or the
11 Bankruptcy Code.

12 E. **Exculpation.** Except as provided for in this Plan, from and after the Effective Date,
13 neither the Debtor, Reorganized Debtor, OIG, NewLitCo, NewOpCo, the professionals
14 employed on behalf of the Estate, nor any of their respective present or former members,
15 directors, officers, managers, employees, advisors, attorneys, or agents, shall have or incur
16 any liability, including derivative claims, but excluding direct claims, to any Holder of a
17 Claim or Equity Security or any other party-in-interest, or any of their respective agents,
18 employees, representatives, financial advisors, attorneys, or Affiliates, or any of their
19 successors or assigns, for any act or omission in connection with, relating to, or arising out
20 of (from the Petition Date through the Effective Date), the Chapter 11 Case, the pursuit of
21 confirmation of this Plan, or the consummation of this Plan, except for gross negligence
22 and willful misconduct, and in all respects shall be entitled to reasonably rely upon the
23 advice of counsel with respect to their duties and responsibilities under this Plan or in the
24 context of the Chapter 11 Case.

25 F. **Indemnification.** All indemnification provisions currently in place (whether in articles
26 of organization, bylaws, resolutions, or other corporate documents or agreements) for Debtor's
27 current and former directors, officers, employees, attorneys, and other professionals and agents
28 of Debtor and such current and former director and officer's respective Affiliates shall be

1 assumed by Reorganized Debtor and shall survive effectiveness of this Plan.

2 **G. Post-Confirmation Reporting and Quarterly Fees to the UST.** Prior to the Effective
3 Date, Debtor, and after the Effective Date, Reorganized Debtor, shall pay all quarterly fees
4 payable to the Office of the Bankruptcy Administrator consistent with the sliding scale set forth
5 in 28 U.S.C. § 1930(a)(6), and the applicable provisions of the Bankruptcy Code and Bankruptcy
6 Rules.

7 **VIII.**
8 **RETENTION OF JURISDICTION**

9 **A. Jurisdiction.** Notwithstanding the entry of the Confirmation Order and the occurrence of
10 the Effective Date, the Bankruptcy Court shall retain such jurisdiction over the Chapter 11 Case
11 and Reorganized Debtor after the Effective Date as is legally permissible, including jurisdiction
12 to:

13 1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority
14 or secured or unsecured status of any Claim or Disputed Claim, including the resolution of any
15 request for payment of any Administrative Claim and the resolution of any and all objections to
16 the allowance or priority of Claims or Disputed Claims;

17 2. Grant or deny any applications for allowance of compensation or reimbursement
18 of expenses authorized pursuant to the Bankruptcy Code or the Plan for periods ending on or
19 before the Effective Date;

20 3. Resolve any matters related to the assumption, assignment, or rejection of any
21 Executory Contract or Unexpired Lease to which Debtor or Reorganized Debtor are party and to
22 hear, determine, and, if necessary, liquidate any Claims arising there from or Cure amounts
23 related thereto;

24 4. Insure that distributions to Holders of Allowed Claims and Equities Securities are
25 accomplished pursuant to the provisions of the Plan;

26 5. Decide or resolve any motions, adversary proceedings, contested or litigated
27 matters, and any other matters and grant or deny any applications or motions involving Debtor or
28 Reorganized Debtor that may be pending on the Effective Date or commenced thereafter as
provided for by the Plan;

6. Enter such orders as may be necessary or appropriate to implement or
consummate the provisions of the Plan and all contracts, instruments, releases, and other

1 agreements or documents created in connection with the Plan or the Disclosure Statement or the
2 Confirmation Order, except as otherwise provided herein;

3 7. Decide or resolve any cases, controversies, suits, or disputes that may arise in
4 connection with the consummation, interpretation, or enforcement of any Final Order, the Plan,
5 the Confirmation Order, or any Person's obligations incurred in connection with the Plan or the
6 Confirmation Order;

7 8. Modify the Plan before or after the Effective Date pursuant to Section 1127 of the
8 Bankruptcy Code and Section 11.1 of the Plan or modify any contract, instrument, release or
9 other agreement or document created in connection with the Plan, the Disclosure Statement, or
10 the Confirmation Order or the Reorganized Debtor; or remedy any defect or omission or
11 reconcile any inconsistency in any Final Order, the Plan, the Confirmation Order, or any
12 contract, instrument, release or other agreement or document created in connection with the Plan,
13 the Disclosure Statement, or the Confirmation Order, in such manner as may be necessary or
14 appropriate to consummate the Plan, to the extent authorized by the Bankruptcy Code;

15 9. Issue injunctions, enter and implement other orders, or take such other actions as
16 may be necessary or appropriate to restrain interference by any person with consummation,
17 implementation, or enforcement of any Final Order, the Plan, or the Confirmation Order, except
18 as otherwise provided herein;

19 10. Enter and implement such orders as are necessary or appropriate if a Final Order
20 or the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

21 11. Determine any other matters that may arise in connection with or relate to the
22 Plan, any Final Order, the Disclosure Statement, the Confirmation Order, or any contract,
23 instrument, release, or other agreement or document created in connection with the Plan
24 (including the Woolley Agreement), the Disclosure Statement, any Final Order, or Confirmation
25 Order, except as otherwise provided herein;

26 12. Enter an order closing the Chapter 11 Case;

27 13. Hear and decide Litigation Claims and continue to hear and decide pending
28 Litigation Claims and any other claim or cause of action of Debtor and Reorganized Debtor; and

14. Decide or resolve any matter over which the Bankruptcy Court has jurisdiction
pursuant to Section 505 of the Bankruptcy Code.

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IX.
LIMITATIONS AND RISK FACTORS

In addition to risks discussed elsewhere in this Disclosure Statement, the Plan and the transactions contemplated by the Plan involve the following limitations and risks, which should be taken into consideration.

A. Debtor Has No Duty to Update. The statements in this Disclosure Statement are made by Debtor as of the date hereof, unless otherwise specified herein. The delivery of this Disclosure Statement after that date does not imply that there has been no change in the information set forth herein since that date. Debtor has no duty to update this Disclosure Statement unless ordered to do so by the Bankruptcy Court.

B. Information Presented Is Based on Debtor's Books and Records and Is Unaudited. While Debtor has endeavored to present information fairly in this Disclosure Statement, there is no assurance that Debtor's books and records upon which this Disclosure Statement is based are complete and accurate. Certain of the financial information contained herein has not been audited.

C. Risk that Debtor will Have Insufficient Cash for the Plan to Become Effective. The Plan cannot be confirmed by the Bankruptcy Court unless Debtor has sufficient funds by the Effective Date to pay or reserve for all Allowed Administrative Claims, Allowed Priority Claims, and Allowed Secured Claims unless particular Holders of such Claims agree to a deferred payment of their Claims or applicable law permits deferred payment.

D. Projections and Other Forward-Looking Statements Are Not Assured and Actual Results Will Vary. Certain information in this Disclosure Statement is forward-looking and contains estimates and assumptions that might ultimately prove to be incorrect, and projections that may differ materially from actual future results. Debtor believes that the projections of future performance upon which the treatments under the Plan are based are reasonable and fairly represent the future performance of Debtor's business operations. However, there are uncertainties associated with all assumptions, projections, and estimates, and they should not be considered assurances or guarantees of the amount of funds that will be distributed, the amount

1 of Claims in the various Classes that will be allowed, or the success or results of Reorganized
2 Debtor's business operations.

3 **E. Payment to Classes 4 Through 7 Are Contingent on the Success of NewOpCo and**
4 **NewLitCo.** As detailed above, while Classes 1 through 3 are paid in funds from the Payment,
5 Classes 4 through 7's Distributions are contingent on the success of NewOpCo and NewLitCo.
6 These Classes may receive no payment, as it is possible that NewLitCo will be unsuccessful in
7 the Crocs Litigation, and that NewOpCo is unable to operate or generate sufficient funds to make
8 distributions from operating income. As a result, recovery for Holders of Allowed Claims in
9 Classes 4 through 7 is entirely dependent upon the success of NewOpCo and NewLitCo.

10 **F. No Legal or Tax Advice Is Provided to You by this Disclosure Statement.** The
11 contents of this Disclosure Statement should not be construed as legal, business, or tax advice.
12 Each Creditor or Holder of an Equity Interest should consult his, her, or its own legal counsel
13 and accountant as to legal, tax, and other matters concerning his, her or its Claim or Equity
14 Securities.

15 **G. No Admissions Made.** Nothing contained herein shall constitute an admission of any
16 fact or liability by Debtor or any other party nor shall it be deemed evidence of the tax or other
17 legal effects of the Plan on Debtor or on Holders of Claims.

18 **H. No Waiver of Right to Object or Right to Recover Transfers and Estate Assets.**
19 Unless specifically provided in the Plan, a Creditor's vote for or against the Plan does not
20 constitute a waiver or release of any claims or rights of Debtor (or any other party-in-interest) to
21 object to that Creditor's Claim, or recover any preferential, fraudulent, or other voidable transfer
22 of Estate assets, regardless of whether any claims or cause of action of Debtor or the Estate are
23 specifically or generally identified herein.

24 **I. Confirmation of the Plan Is Not Assured.** Although Debtor believes the Plan will
25 satisfy all requirements for Confirmation, the Bankruptcy Court might not reach that conclusion.
26 It is also possible that modifications to the Plan will be required for Confirmation and that such
27 modifications would necessitate a resolicitation of votes. Confirmation requires, among other
28

1 things, a finding by the Bankruptcy Court that it is not likely that there will be a need for further
2 financial reorganization and that the value of distributions to dissenting members of Impaired
3 Classes of Creditors and Holders of Equity Securities would not be less than the value of
4 distributions such Creditors and Holders of Equity Securities would receive if Debtor was
5 liquidated under Chapter 7 of the Bankruptcy Code (“Chapter 7”). Although Debtor believes
6 that the Plan will not be followed by a need for further financial reorganization and that
7 dissenting members of Impaired Classes of Creditors and Holders of Equity Securities will
8 receive Distributions at least as great as they would receive in a liquidation under Chapter 7,
9 there can be no assurance that the Bankruptcy Court will conclude that these tests have been met.
10 Additionally, should the Plan fail to be approved, confirmed, or consummated, non-Debtor
11 parties-in-interest may be in a position to file alternative plans pursuant to section 1121 of the
12 Bankruptcy Code. As such, non-confirmation of the Plan would likely entail significantly greater
13 risk of delay, expense, and uncertainty to the Debtor and the Estate.

14 **J. Conversion to Chapter 7 Case.** If no plan can be confirmed, or if the Bankruptcy
15 Court otherwise finds that it would be in the best interests of creditors and/or the Debtor, the
16 Chapter 11 Case may be converted to a case under Chapter 7 of the Bankruptcy Code. In a
17 Chapter 7 case, a trustee would be appointed or elected to liquidate the Debtor’s assets for
18 distribution in accordance with the priorities established by the Bankruptcy Code. The Debtor
19 believes that liquidation under Chapter 7 would result in smaller distributions being made to the
20 Debtor’s creditors than those provided for in the Plan

21 **K. The Effective Date or Substantial Consummation Date Might Be Delayed or Never**
22 **Occur.** There is no assurance as to the timing of the Effective Date, Substantial Confirmation
23 Date, or that it will occur. If the respective conditions precedent to the Effective Date and
24 Substantial Consummation Date do not occur, the Confirmation Order will be vacated. In that
25 event, the Holders of Claims and Equity Securities would be restored to their respective positions
26 as of the day immediately preceding the Confirmation Date, and Debtor’s obligations for Claims
27 and Equity Securities would remain unchanged as of such day (except to the extent of any post-
28 Effective Date payments).

1 The U.S. federal income tax consequences of the Plan are complex and are subject to
2 substantial uncertainties due to the lack of definitive judicial and administrative authority in a
3 number of areas. No assurance can be given that legislative or administrative changes or court
4 decisions will not be forthcoming which would require significant modification of the statements
5 in this section. Debtor has not requested a ruling from the IRS or an opinion of counsel with
6 respect to any tax aspects of the Plan. Therefore, no assurance can be given as to the position the
7 IRS will take on the tax consequences of the transactions that are to occur in connection with the
8 Plan.

9 This summary does not address foreign, state, or local tax consequences of the Plan, nor
10 does it address the U.S. federal income tax consequences of the Plan to the particular
11 circumstances of any Holder or to Holders subject to special income tax rules (such as regulated
12 investment companies, insurance companies, financial institutions, small business investment
13 companies, broker-dealers, tax-exempt organizations (including pension funds), persons holding
14 a Claim as part of an integrated constructive sale or straddle or part of a conversion transaction,
15 and investors in pass-through entities). In addition, the summary does not include a summary of
16 the consequences to Holders of Claims who are not "U.S. Persons" (as defined in the IRC) or
17 who are tax-exempt Holders. However, there may be some potentially significant consequences
18 to non-U.S. Persons which are not discussed below, and such non-U.S. Persons are encouraged
19 to carefully consider their particular tax consequences with their own tax advisers.

20 This discussion assumes that the various debt and other arrangements to which each
21 Debtor is a party will be respected for federal income tax purposes in accordance with their form.
22 The following discussion is a general summary of certain U.S. federal income tax aspects of the
23 Plan and should not be relied upon for purposes of determining the specific tax consequences of
24 the Plan with respect to a particular Holder of a Claim.

25 EACH HOLDER OF A CLAIM OR EQUITY SECURITY AFFECTED BY THE PLAN
26 SHOULD CONSULT ITS OWN TAX ADVISOR REGARDING THE SPECIFIC TAX
27 CONSEQUENCES OF THE PLAN WITH RESPECT TO THAT HOLDER'S CLAIM OR
28

1 EQUITY SECURITY, INCLUDING UNDER ANY APPLICABLE STATE, LOCAL, OR
2 FOREIGN LAW.

3 ***IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH IRS CIRCULAR***
4 ***230, HOLDERS OF CLAIMS AND EQUITY SECURITIES ARE HEREBY NOTIFIED***
5 ***THAT: (i) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES CONTAINED OR***
6 ***REFERRED TO IN THIS NOTEHOLDER DISCLOSURE STATEMENT IS NOT***
7 ***INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY HOLDERS OF***
8 ***CLAIMS AND EQUITY SECURITIES FOR THE PURPOSE OF AVOIDING PENALTIES***
9 ***THAT MAY BE IMPOSED ON THEM UNDER THE TAX CODE; (ii) SUCH DISCUSSION***
10 ***IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING BY THE***
11 ***PROponents OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND***
12 ***(C) HOLDERS OF CLAIMS AND EQUITY SECURITIES SHOULD SEEK ADVICE***
13 ***BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX***
14 ***ADVISOR.***

15 **XI.**
16 **CONFIRMATION OF THE PLAN**

17 **A. Confirmation of the Plan and Final Approval of the Disclosure Statement.**

18 Pursuant to Section 1128(a) of the Bankruptcy Code and Federal Rule of Bankruptcy
19 Procedure 3017, the Bankruptcy Court will hold a hearing regarding confirmation of the Plan
20 and a final hearing regarding approval of the Disclosure Statement at the United States
21 Bankruptcy Court for the District of Nevada, 300 S. Las Vegas Blvd., Las Vegas, Nevada,
22 commencing on July 6, 2018, at 9:30 a.m. (prevailing Pacific Time).

23 **B. Objections to Confirmation of the Plan or Final Approval of the Disclosure**
24 **Statement.**

25 Section 1128(b) provides that any party-in-interest may object to confirmation of a plan
26 and Federal Rules of Bankruptcy Procedure 3017 provides that any party in interest may object
27 to final approval of the Disclosure Statement. Any objections to confirmation of the Plan or final
28 approval of the Disclosure Statement must be in writing, must state with specificity the grounds
for any such objections, and must be timely filed with the Bankruptcy Court and served upon

1 counsel for Debtor at the following address:

2 Garman Turner Gordon LLP
3 Talitha Gray Kozlowski, Esq.
4 Teresa M. Pilatowicz, Esq.
5 650 White Drive, Ste. 100
6 Las Vegas, Nevada 89119
7 Telephone: (725) 777-3000
8 Email: tgray@gtg.legal
9 Email: tpilatowicz@gtg.legal

10 For the Plan to be confirmed, the Plan must satisfy the requirements stated in Section
11 1129. In this regard, the Plan must satisfy, among other things, the following requirements.

12 **C. The Best Interest Test and Feasibility of the Plan.**

13 For the Plan to be confirmed, it must satisfy the requirements discussed below:

14 **1. Best Interest Test.**

15 Pursuant to Section 1129(a)(7) of the Bankruptcy Code, for the Plan to be confirmed, it
16 must provide Holders of Allowed Claims or Allowed Equity Securities with at least as much
17 under the Plan as they would receive in a liquidation of Debtor under Chapter 7 of the
18 Bankruptcy Code (the “Best Interest Test”). The Best Interest Test with respect to each Impaired
19 Class requires that each Holder of an Allowed Claim or Allowed Equity Interest in such Class
20 either: (i) accepts the Plan; or (ii) receives or retains under the Plan property of a value, as of the
21 Effective Date, that is not less than the value such Holder would receive or retain if Debtor were
22 liquidated under Chapter 7. The Bankruptcy Court will determine whether the value to be
23 received under the Plan by the Holders of Allowed Claims in each Class of Creditors or Holders
24 of Allowed Equity Securities equals or exceeds the value that would be allocated to such Holders
25 in a liquidation under Chapter 7. Debtor believes that, as further set forth in the Liquidation
26 Analysis, the Plan meets the Best Interest Test and provides value which is not less than what
27 would be recovered by each Holder of an Impaired Claim or Impaired Equity Interest in a
28 Chapter 7 proceeding for Debtor.

...

...

1 **2. Liquidation Analysis.**

2 The Liquidation Analysis attached as **Exhibit 2** hereto summarizes Debtor's best
3 estimate of recoveries by Creditors and Holders of Allowed Equity Securities in the event of
4 liquidation of Debtor in Chapter 7 as of May 30, 2018. Generally, to determine what Holders of
5 Allowed Claims and Allowed Equity Securities in each Impaired Class would receive if Debtor
6 was liquidated, the Bankruptcy Court must determine what funds would be generated from the
7 liquidation of Debtor's Assets and Litigation Claims in a Chapter 7 liquidation case for Debtor,
8 which for unsecured Creditors would consist of the proceeds from the disposition of the Assets
9 and Liquidation Claims of Debtor, augmented by the unencumbered Cash held by Debtor upon
10 the completion of the liquidation. Such Cash amounts would be reduced by the costs and
11 expenses of the liquidation and by such additional Administrative Claims and Other Priority
12 Unsecured Claims as may result from the Chapter 7 case and the use of Chapter 7 for the purpose
13 of liquidation.

14 In a Chapter 7 liquidation, holders of allowed claims receive distributions based on the
15 liquidation of the unencumbered assets of a debtor. However, importantly, here, the only
16 unencumbered assets are the claims against the Spilotro Law Group for legal malpractice in
17 connection with a collection action and claims against Lola Style, Inc. and any remaining claims
18 against Lola Style, Inc.

19 GemCap has indicated, as represented in its Notice of Credit Bid, that it intends to credit
20 bid its Secured Claim at less than the total asserted amount owed; however, in the event of a sale,
21 GemCap could credit bid up to the full amount of its allowed claim, which GemCap will asset
22 exceeds \$5,600,000 as of the time of the sale. Therefore, in a liquidation event, the likely
23 outcome would be GemCap foreclosing on all of the assets (or credit bidding its claim) leaving
24 less than a few thousand dollars to pay Administrative Claims, resulting in an administratively
25 insolvent estate and no recovery for any Allowed Claims other than the GemCap Secured Claim.

26 Conversely, under Debtor's Plan, all of Debtor's Assets are being transferred to
27 NewOpCo and NewLitCo in exchange of the Payment, which provides, in addition to repayment
28 of the Allowed GemCap Secured Claim, for payment of Allowed Class 2 Other Secured Claims,

1 Allowed Class 3 Priority Unsecured Claims, Allowed Administrative Claims, and a partial
2 payment for Allowed Priority Tax Claims. Furthermore, as Reorganized Debtor is receiving a
3 10% equity interest in NewOpCo and a 30% equity interest in NewLitCo, operations will
4 continue and the Crocs Litigation will be pursued providing a reasonable likelihood that
5 sufficient distributions will be made to Reorganized Debtor to allow Debtor to satisfy its
6 Allowed Claims in full in accordance with the terms of its Plan.

7 Critically, while Debtor places significant value of the Crocs Litigation, it is unlikely that,
8 in a liquidation scenario, even if GemCap did not foreclose of the Crocs Litigation, that a
9 Chapter 7 Trustee would pursue the Litigation Claims given the highly specialized nature of the
10 claims, and the significant time and expense necessary to do so, particularly when the Chapter 7
11 estate would have no liquid assets with which to pay such litigation expenses.

12 Furthermore, again, even if GemCap did not foreclose on the entirety of the Assets, the
13 proceeds from the collection and sale of property of the Estate available for distribution to
14 Creditors would be first reduced by the satisfaction of any liens and security interests in the
15 Assets, costs of sale, any commission payable to the Chapter 7 trustee, the trustee's attorneys'
16 and accounting fees, as well as the administrative costs of the Chapter 7 estate. In a Chapter 7
17 case, the Chapter 7 trustee would be entitled to seek a sliding-scale commission based upon the
18 funds distributed by such trustee to creditors (the "Chapter 7 Administration Fees).

19 Only after the payment of the GemCap Secured Claim, all Chapter 7 Administrative
20 Fees, and fees associated with the administration of the Chapter 11 Case, would the distributions
21 from the liquidation proceeds be paid to Creditors Pro Rata according to the amount of the
22 aggregate Claims held by each Creditor in each Chapter 7 case in accordance with the
23 distribution scheme of the Bankruptcy Code. Debtor believes that the most likely outcome under
24 Chapter 7 would be the application of the "absolute priority rule." Under that rule, no junior
25 Creditor in a Chapter 7 case may receive any distribution until all senior Creditors are paid in
26 full, with interest, and no Holder of an Equity Security may receive any distribution until all
27 Creditors are paid in full. Debtor does not anticipate there would be any meaningful recovery for
28

1 Administrative Claims, and no recovery for Allowed Priority Tax Claims, Allowed Priority
2 Unsecured Claims, or General Unsecured Claims in a Chapter 7 liquidation.

3 **3. Feasibility.**

4 The Bankruptcy Code requires that in order to confirm the Plan, the Bankruptcy Court
5 must find that Confirmation is not likely to be followed by liquidation or the need for further
6 financial reorganization of Debtor (the "Feasibility Test"). For the Plan to meet the Feasibility
7 Test, the Bankruptcy Court must find that Reorganized Debtor will possess the resources and
8 working capital necessary to meet their obligations under the Plan. In this case, the Plan
9 provides for the sale of Debtor's Assets in exchange for the Payment, which Payment will fund a
10 Distribution to Holders of Allowed Claims in Classes 1-3, as well as the Allowed Administrative
11 Claims and a partial payment to the Allowed Priority Tax Claims. As the Payment will be
12 deposited into an escrow account in accordance with the LOI on or before June 15, 2018, Debtor
13 will be able to establish that the Payment will be funded upon the Effective Date if the Plan is
14 confirmed. Thereafter, Holders of Allowed Claims will be paid from distributions the
15 Reorganized Debtor receives on account of its 30% interest in NewLitCo and its 10% interest in
16 NewOpCo and Equity Security Holders will not receive any Distribution until all Allowed
17 Claims are paid in full. As such, Debtor submits that its Plan is feasible and no further
18 reorganization will be necessary.

19 **4. Confirmation of the Plan Without Acceptance by All Impaired Classes: the**
20 **"Cramdown" Alternative.**

21 Section 1129(b) of the Bankruptcy Code provides that a plan of reorganization may be
22 confirmed even if it has not been accepted by all impaired classes, as long as at least one
23 impaired class of claims has accepted it. Consequently, the Bankruptcy Court may confirm the
24 Plan at Debtor's request notwithstanding the Plan's rejection by Impaired Classes, as long as at
25 least one Impaired Class has accepted the Plan and the Plan "does not discriminate unfairly" and
26 is "fair and equitable" as to each Impaired Class that has not accepted it.

27 A plan will be deemed fair and equitable as to a class of secured claims that rejects the
28 plan if the plan provides: (i)(a) that the holders of claims in the rejecting class retain the lien

1 securing those claims, whether the property subject to those liens is retained by the debtor or
2 transferred to another entity, to the extent of the allowed amount of such claims, and (b) that
3 each holder of a claim in such class receives on account of that claim deferred cash payments
4 totaling at least the allowed amount of that claim of a value, as of the effective date of the plan,
5 at least equal to the value of the holder's interest in the estate's interest in such property; (ii) for
6 the sale, subject to Section 363(k) of the Bankruptcy Code, of any property that is subject to the
7 liens securing the claims included in the rejecting class, free and clear of the liens, with the liens
8 to attach to the proceeds of the sale, and the treatment of the liens on such proceeds as described
9 under clause (i) or (ii) of this paragraph; or (iii) for the realization by such holders of the
10 indubitable equivalent of such claims.

11 A plan is fair and equitable as to a class of unsecured claims that rejects the plan if the
12 plan provides: (i) for each holder of a claim included in the rejecting class to receive or retain on
13 account of such claim property that has a value, as of the effective date of the plan, equal to the
14 allowed amount of such claim; or (ii) that the holder of any claim or interest that is junior to the
15 claims of such rejecting class will not receive or retain on account of such junior claim or interest
16 any property at all.

17 **5. Accepting Impaired Class.**

18 Since at least one Class of Claims is Impaired under the Plan, in order for the Plan to be
19 confirmed, the Plan must be accepted by at least one Impaired Class of Claims (not including the
20 acceptance votes of Insiders of Debtor). For an Impaired Class of Claims to accept the Plan,
21 those representing at least two-thirds in amount and a majority in number of the Allowed Claims
22 voted in that Class must be cast for acceptance of the Plan.

23 **XII.**
24 **ALTERNATIVES TO THE PLAN**

25 As a result of, among other things, Debtor and 3-21's extensive marketing efforts, in
26 formulating and developing the Plan, Debtor explored numerous alternatives. Debtor believes
27 that the Plan provides Creditors the best and most complete form of recovery available. As a
28 result, Debtor believes that the Plan serves the best interests of all Creditors and parties-in-

1 interest in the Chapter 11 Case and provides a better outcome to the only viable alternative, an
2 auction or liquidation of Debtor's Assets.

3 Debtor believes that the terms of the Plan are preferable to and will result in a greater
4 potential return to creditors than a Chapter 7 liquidation or an auction. This is especially true
5 given the substantial marketing efforts undertaken by 3-21 and Debtor to solicit buyers and
6 investors for Debtor and its Assets and the fact that GemCap's Credit Bid is substantially lower
7 than the Payment. To the contrary, the Plan provides a higher purchase price for Debtor's Assets
8 as it has allowed OIG to perform substantial due diligence on the Assets and to structure
9 operations such that NewOpCo and NewLitCo can continue to operate and return further future
10 income thereby allowing for the full satisfaction of Debtor's Allowed Claims. As such, the Plan
11 is preferable to an auction, liquidation, or any other alternative.

12 Debtor believes not only that the Plan fairly adjusts the rights of various Classes of
13 Creditors and enables the Creditors to realize the greatest sum possible under the circumstances.

14 Under the Bankruptcy Code, a debtor has an exclusive period of one hundred twenty
15 (120) days and an additional vote solicitation period of sixty (60) days from the entry of the
16 order for relief during which time, assuming that no trustee has been appointed by the
17 Bankruptcy Court, only a debtor may propose a plan of reorganization. After the expiration of
18 the initial 180-day period and any extensions thereof, the debtor or any other party-in-interest
19 may propose a different plan, unless the Bankruptcy Court has extended the exclusivity periods.
20 Here, through the GemCap Resolution, the Court has imposed a deadline of July 31, 2018 for
21 Debtor to confirm its Plan.

22 If a plan of reorganization cannot be confirmed, a Chapter 11 case may be converted to a
23 Chapter 7 case, in which a trustee would be elected or appointed to liquidate the assets of the
24 debtor for distribution to creditors in accordance with the priorities established by the
25 Bankruptcy Code. For a discussion of the effect that a Chapter 7 liquidation in the Chapter 11
26 Case would have on recovery by Creditors, see Section XI.C. and **Exhibit 2.**

27 As previously stated, Debtor believes that liquidation under Chapter 7 would result in a
28 substantially reduced recovery of funds by the Creditors of the Estate because of: (i) additional

1 administrative expenses involved in the appointment of a trustee for Debtor and attorneys and
2 other professionals to assist such trustee; and (ii) additional expenses and Claims, some of which
3 would be entitled to priority, which would be generated during the liquidation. Perhaps most
4 importantly, there is no guarantee that, even if not foreclosed by GemCap, a Chapter 7 trustee
5 would pursue the Litigation Claims, nor is there any certainty that such claims could otherwise
6 be liquidated. Accordingly, Debtor believes that Holders of all Classes of Claims will receive
7 substantially smaller distributions in Chapter 7 liquidation than under the Plan and therefore
8 encourage all Holders of Impaired Claims that are entitled to vote on the Plan to cast ballots
9 accepting the Plan.

10 **XIII.**
PREFERENCE AND OTHER AVOIDANCE ACTIONS

11 A bankruptcy trustee (or the debtor as a debtor-in-possession) may avoid as a preference
12 a transfer of property made by a debtor to a creditor on account of an antecedent debt while a
13 debtor was insolvent, where that creditor receives more than it would have received in a
14 liquidation of the entity under Chapter 7 had the payment not been made, if: (i) the payment was
15 made within ninety (90) days before the date the bankruptcy case was commenced; or (ii) the
16 creditor is found to have been an “insider,” as defined in the Bankruptcy Code, within one year
17 before the commencement of the bankruptcy case. A debtor is presumed to have been insolvent
18 during the ninety (90) days preceding the commencement of the case.

19 A bankruptcy trustee (or the debtor as a debtor-in-possession) may avoid as a fraudulent
20 transfer a transfer of property made by a debtor within two years (and under applicable Nevada
21 law, four years) before the date the bankruptcy case was commenced if the debtor: (i) received
22 less than reasonably equivalent value in exchange for such transfer; and (ii) was insolvent on the
23 date of such transfer or became insolvent as a result of such transfer, such transfer left the debtor
24 with an unreasonably small capital, or the debtor intended to incur debts that would be beyond
25 the debtor’s ability to pay as such debts matured.

26 Here, in its Avoidance Prosecution Application, Crocs has asserted that there are
27 avoidable preference transfers made in the year prior to the Petition Date arising out of transfers
28

1 to insiders and affiliates that Debtor listed on its SOFA. Crocs has also asserted that there may
2 also have been transfers to or for the benefit of insiders in the four years prior to the Petition
3 Date that are avoidable under Section 544(b) of the Bankruptcy Code and NRS 112.140 *et seq.*,
4 and transfers within the ten years prior to the Petition Date that are avoidable pursuant to the Fair
5 Debt Collection Procedures Act. Crocs has requested authority to investigate and prosecute any
6 such actions, or to appoint an examiner to do so. The transfers do not appear to be avoidable
7 based on Debtor's initial investigation but, in any event, Debtor has been and continues to
8 investigate the claims such that there is no need to grant authority to Crocs to pursue them only
9 four months into the Chapter 11 Case. To the extent necessary, NewLitCo can pursue any
10 avoidance actions but, at this time, Debtor does not believe there are any meritorious claims or
11 that there will be any meaningful recovery.

12 **XIV.**
RECOMMENDATION AND CONCLUSION

13 The Plan provides the best possible recovery for all parties-in-interest. Accordingly,
14 Debtor recommends that all Creditors who are entitled to vote on the Plan timely submit their
15 votes to accept the Plan.

16 DATED this 5th day of June, 2018

17 U.S.A. DAWGS, INC.,
18 a Nevada Corporation

19
20 /s/ Steven Mann
21 By: Steven Mann
Its: Chief Executive Officer

22 **Prepared and Submitted:**

23 GARMAN TURNER GORDON

24
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28 4842-1722-7366, v. 7