PRYOR & MANDELUP, L.L.P.
J. Logan Rappaport, Esq.
675 Old Country Road
Westbury, New York 11590
(516) 997-0999
lr@pryormandelup.com

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
----------X

In re Chapter 11

KLM OPTICAL, INC. d/b/a PEARLE VISION, Case No. 8-15-72145-reg

Debtor.
----------X

SECOND AMENDED SMALL BUSINESS DISCLOSURE STATEMENT FOR THE PLAN OF REORGANIZATION PROPOSED BY DEBTOR

This Second Amended Disclosure Statement is filed pursuant to Section 1125 of Title 11, United States Code, on behalf of KLM Optical, Inc. d/b/a Pearle Vision (the "**Debtor**"), the debtor and debtor-in-possession.

THIS DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT.

A. INTRODUCTION/NOTICE OF HEARING AND SOURCE OF INFORMATION

Pursuant to Section 1125 of Title 11 of the United States Code (the **"Bankruptcy Code**"), the Debtor in this Chapter 11 case, provides this Second Amended Disclosure Statement (the "**Second Amended Disclosure Statement**") to all of its known creditors and other parties in interest in order to provide adequate information deemed by the Debtor to be material, important, and necessary to enable such creditors and parties in interest to make a reasonable informed decision in the exercise of their rights to vote on and participate in the Debtor's Second Amended Plan of Reorganization (the "**Second Amended Plan**"). The Second Amended Plan is annexed hereto as **Exhibit "A"**.

Terms utilized in this Second Amended Disclosure Statement, if not defined herein, shall have the same meaning as such terms are used or defined in the Second Amended Plan unless

the context hereof requires a different meaning.

The information contained in this Second Amended Disclosure Statement is based on the representations made by the Debtor in its Petition and Schedules, monthly operating reports and all other documents and information provided by the Debtor. While the information and documentation submitted herewith is believed to be accurate, it has not been subjected to a certified audit or independent review. Therefore, no representation or warranty is made as to its accuracy or completeness. The Debtor has reasonably endeavored to obtain and supply all material information on an accurate basis. The Bankruptcy Court will conduct a hearing on the adequacy of the Second Amended Disclosure Statement.

IN ORDER TO BE CONFIRMED, THE SECOND AMENDED PLAN MUST BE ACCEPTED BY A MAJORITY IN NUMBER AND TWO-THIRDS IN AMOUNT OF THOSE VOTING IN EACH CLASS IMPAIRED UNDER THE SECOND AMENDED PLAN.

ALONG WITH THIS SECOND AMENDED DISCLOSURE STATEMENT, YOU WILL RECEIVE A COPY OF THE PROPOSED SECOND AMENDED PLAN, A BALLOT AND A NOTICE FIXING A DATE FOR A HEARING ON THE CONFIRMATION OF THE PLAN. ANNEXED TO THIS SECOND AMENDED DISCLOSURE STATEMENT ARE THE FOLLOWING EXHIBITS: (I) THE SECOND AMENDED PLAN, (II) A BALLOT, (III) A STATEMENT OF DEBTOR'S POST-PETITION OPERATIONS, (IV) A LIQUIDATION ANALYSIS, AND, (V) 7 YEAR PROJECTIONS.

YOU ARE URGED TO REVIEW THE SECOND AMENDED PLAN AND THIS SECOND AMENDED DISCLOSURE STATEMENT WITH COUNSEL OF YOUR CHOICE.

THE DEBTOR BELIEVES THAT THE TREATMENT OF CREDITORS UNDER THE SECOND AMENDED PLAN CONTEMPLATES A GREATER RECOVERY FOR SUCH CREDITORS THAN WOULD BE AVAILABLE UNDER ANY ALTERNATIVE PLAN OR IN A CHAPTER 7 LIQUIDATION. IN THIS REGARD, THE FOLLOWING IMPORTANT BENEFITS ARE NOTED:

> **THE PLAN OFFERS GENERAL UNSECURED CREDITORS THE OPPORTUNITY TO OBTAIN A DISTRIBUTION OF NOT LESS THAN 45.67% OF THEIR ALLOWED CLAIMS IN MONTHLY INSTALLMENTS FOR A PERIOD OF EIGHTY-FOUR (84) MONTHS. CONVERSELY, AS NOTED IN THE DEBTOR'S LIQUIDATION ANALYSIS, NO DISTRIBUTION WOULD LIKELY BE AVAILABLE TO UNSECURED CREDITORS IN A CHAPTER 7 LIQUIDATION OF THE DEBTOR.**

ACCORDINGLY, THE DEBTOR BELIEVES THAT CONFIRMATION OF THE AMENDED PLAN IS IN THE BEST INTERESTS OF CREDITORS AND RECOMMENDS THAT CREDITORS ACCEPT THE AMENDED PLAN.

Other than the information set forth in this Amended Disclosure Statement, the Debtor has not authorized any person or entity to make representations concerning the Debtor, its business, future income, the value of its assets, or the amounts to be distributed under the Amended Plan. Any representations or inducements made to secure your acceptance of the Amended Plan which are other than as contained in this Amended Disclosure Statement should not be relied upon by you in determining whether to accept or reject the Amended Plan.

B. PRE-PETITION HISTORY OF THE DEBTOR AND EVENTS LEADING UP TO CHAPTER 11

The Debtor is a New York corporation conducting business in the field of optometry and retail optical sales and has been in continuous operation since March 1989. Since November 2013, the Debtor's principal place of business has been located at 1085 Northern Boulevard, Roslyn, New York whereat it conducts its operations and maintains its inventory, equipment, and other tangible assets.

The Debtor's financial problems arose as a result of a series of loans provided by Debtor, through its principal, to an individual named Grace Kay ("**Kay**") in the amounts of $50,000.00 and $780,000.00 that were intended to be short-term loans to be repaid upon her sale of certain commercial real property that she claimed to own in Japan. The latter loan was to be used by Kay to pay certain alleged liens and/or expenses which allegedly prevented the real property in Japan from being sold. This loan to Kay was funded from the proceeds of a secured loan (the "**Summit Loan**") that Debtor obtained in the amount of $780,000.00 from Summit Processing Inc. d/b/a Summit Capital Partners ("**Summit**"), pursuant to a November 4, 2014 loan agreement (the "**Summit Loan Agreement**"), by which Debtor was made the principal obligor despite the fact that all of the loan proceeds flowed to Kay directly or indirectly. Summit took a security interest in KLM's credit card receivables. Subsequently, as expressly referenced in the Summit Loan Agreement, Debtor thereafter entered into a collateral transaction with American Express Bank, FSB ("**AMEX**"), so as to enable Debtor to repay the Summit Loan. Pursuant to a Business Loan and Security Agreement ("**AMEX Loan Agreement**"), dated December 3, 2014, by and between Debtor and AMEX, AMEX agreed to loan Debtor $750,000.00 (the "**AMEX Loan**") to be repaid within two (2) years at a repayment rate of eighteen (18%) percent. The AMEX Loan Agreement provided for repayment by way of daily sweeps of Debtor's credit card processing account. The AMEX Loan Agreement also provided that Debtor pay AMEX a fixed fee equal to 16% of the original principal balance of the loan, which amounted to $120,000.00 (the "**AMEX Fee**"). Debtor, in turn, granted AMEX a blanket security interest in Debtor's assets. On or about December 8, 2014, Debtor received a wire transfer from AMEX in the amount of $750,000.00 in connection with the AMEX Loan Agreement and Debtor immediately transmitted these loan proceeds to Summit in partial repayment of the Summit Loan.

Ultimately, it grew apparent that Debtor would not likely be repaid by Kay so as retire the remainder of the Summit and AMEX debt. It is doubtful that Kay owned any real property in Japan despite her representations to the contrary. As such, it appears likely that Debtor is a victim of a fraud perpetuated by Kay, who is now the debtor in a Chapter 7 case currently pending in this district under Case No. 15-74149. Debtor does not believe it to be likely that it will see any recovery as against Kay. As Debtor was never repaid any amounts on account of the loans to Kay, it did not possess the ability to repay Summit and AMEX in full as originally anticipated. As a result, Debtor was compelled to carry and service these significant obligations on top of Debtor's regular secured debt service and its normal operating expenses. For a variety of reasons, Debtor's business can vary tremendously from month-to-month with strong months historically seen in March through August, as well as in December and January. In the remaining months, Debtor's gross sales can contract dramatically. Moreover, most of Debtor's receipts are from credit card transactions. In the lead-up to the Debtor's bankruptcy filing, AMEX's daily sweeps of Debtor's credit card processing account, which often extracted as much as 100% of a given day's credit card receipts, choked off necessary funds which Debtor needed to operate, *i.e.* purchase new inventory, service its secured debts, meet payroll, etc. As a result, the Debtor was required to file the instant Chapter 11 case on May 15, 2015 (the "**Petition Date**"). Moreover, by virtue of the above transactions, on the Petition Date, Debtor's principal, Wayne Kelly, and his other Pearle Vision franchise, MAK Optical of New York, Inc. ("**MAK**") also filed separate cases under Chapter 11 of the Bankruptcy Code in this district. Mr. Kelly's case remains pending under Case No. 15-72147. MAK's case, under Case No. 15-72146, was converted to a case under Chapter 7 of the Bankruptcy Court by Order, dated February 3, 2016.

C. HISTORY OF THE DEBTOR'S CHAPTER 11 CASE

1. Procedural Background

The Debtor commenced this chapter 11 by filing a voluntary petition, pursuant to Chapter 11 of the Bankruptcy Code, with the Bankruptcy Court for the Eastern District of New York, on the May 15, 2015 Petition Date.

Subsequently, the Debtor moved for an order seeking the retention of Pryor & Mandelup, LLP ("**P&M**") as counsel to the Debtor as well as seeking the retention of Robert A. Klein, CPA, P.C. ("**RAK**") as accountant to the Debtor. The order granting the application authorizing the Debtor to retain P&M was entered on June 30, 2015. The order granting the application authorizing the Debtor to retain RAK was entered on June 26, 2015.

On June 8, 2015, the Court entered an order setting the last date to file proofs of claim in connection with this Chapter 11 case. Pursuant to the terms of the order, all persons and entities, except governmental units, that could assert a claim against the Debtor which arose prior to the Petition Date was required to file a proof of claim in wiring so as to be actually received on or before July 20, 2015. Proof of claims for governmental units was due by November 12, 2015 (the "Bar Date"). As of the Bar Date, there were a total of 10 filed claims.

Additionally, on August 4, 2015, the Debtor filed a motion seeking an order authorizing the Debtor to assume its lease for non-residential real property located at 1085 Northern Boulevard, Roslyn, New York. By order dated September 2, 2015, the Debtor was authorized to assume the lease. The Debtor continues to utilize those premises as its principal place of business.

2. Debtor's Post-Petition Operations

Without the daily sweeps by AMEX of 16% to 100% of Debtor's credit card transactions that had hamstrung Debtor prior to the Petition Date, Debtor has returned to a state of profitability. In the ten (10) full months (June 2015 through and including March 2016) since the

Petition Date for which operating reports have been filed, Debtor has a net profit of approximately $127,419. However, in the last six (6) months for which monthly operating reports have been filed, Debtor has an average monthly profit of $26,188.17 and has not reported a net loss in any month since September 2015.

D. THE REORGANIZED DEBTOR

The Reorganized Debtor shall have the same officers, directors, shareholders and members. Wayne Kelly is the president of the Debtor and currently receives $3,000 per week in compensation ($156,000.00 per annum) and Debtor also pays for his vehicle in the amount of $1,068 per month. Mr. Kelly's salary in the Reorganized Debtor would return to that which he was paid prior to the commencement of this Chapter 11 bankruptcy case.

E. PLAN FUNDING

The Second Amended Plan will be funded from (i) cash on hand in the amount of $122,000.00 to be placed in a confirmation account with Debtor's counsel, (ii) the proceeds of the Debtor's settlement, which is currently in Debtor's counsel's possession, of an avoidance action with AMEX in the amount of $64,812.64, which are also to be placed into a confirmation account with Debtor's counsel, and (iii) the post-petition operations of the Reorganized Debtor. Moreover, to the extent that Debtor recovers any funds on account of its pending adversary proceeding against Summit, such funds will be placed into a segregated account with Debtor's counsel. To the extent any such funds are recovered from the Summit litigation, half of such funds shall be paid to allowed Administrative Claims, to be shared *pro rata among* creditors of such class, with the other half of the funds to be paid toward Class IV Claims, which shall be shared *pro rata among* creditors of such class.

F. CLASSIFICATION, AMOUNT, AND NUMBER OF CLAIMS

The Second Amended Plan divides all Claims and Interests into the following classes, plus Administrative and Priority Claims:

1. Administrative Claims - Administrative Claims consist of the Claims of: (i) the Professionals duly retained by the Debtor, for legal and accounting services performed during the Chapter 11 case anticipated to be approximately $180,000; (ii) the Office of the United States Trustee ("**UST**") under 28 U.S.C. 1930(a)(6); (iii) any other administrative expense allowed or allowable under Section 503 of the Bankruptcy Code. Each holder of an Allowed Administrative Claim shall receive from the Debtor (i) cash in an amount equal to the amount of such Allowed Administrative Claim as soon as practical after the later of (a) the date that is thirty (30) days after the order confirming the Debtor's plan becomes final ("**Effective Date**"), or (b) thirty (30) days after the date such Administrative Claim becomes an Allowed Administrative Claim, or (ii) such other treatment as otherwise agreed by and between the Debtor and such holder.

2. Priority Claims - Consists of the priority claim of the New York State Department of Labor in the amount of $12.78. The Priority Claim will be paid in full on the Effective Date of Debtor's Second Amended Plan. As a result, the Priority Claim is not impaired and pursuant to §1126(f) of is not entitled to vote.

3. Class I - Consists of the Allowed Secured Claim of Citibank, N.A. ("**Citibank**"). Citibank filed a Proof of Claim in Debtor's case on July 17, 2015 on account of its secured claims in the amount of $511,544.17. As of March 6, 2016, the balance due Citibank with respect to its secured claims total $471,927.97. Citibank's Secured Claim arose from two separate secured transactions. The first transaction is evidenced by: (i) the United States Small Business Administration Unconditional Guarantee, dated November 18, 2010, in the amount of $408,800.00

given by Debtor to Citibank in connection with Debtor's guarantee of a certain loan (the "**Citibank-MAK Loan**") on or about November 18, 2010 from Citibank to Debtor's former affiliate, MAK Optical of New York, Inc.; (ii) the General Security Agreement, dated November 18, 2010, by and between Debtor and Citibank in connection with the Citibank-MAK Loan, pursuant to which Debtor granted Citibank a security interest in its personal property, including equipment, inventory, accounts, chattel paper, and general intangibles, including after acquired property; and, (iii) the UCC-1 statement filed on November 19, 2010 in connection with the Citibank-MAK Loan. As of March 6, 2016, there is an outstanding balance on the Citibank-MAK Loan and related guarantee in the amount of $242,760.59. The term of this loan was ten years. The second transaction is evidenced by: (i) the Loan Agreement, dated November 15, 2013, by and between Debtor and Citibank, pursuant to which Citibank loaned Debtor $300,000.00 on a secured basis (the "**Citibank-KLM Loan**") for the purpose of providing working capital and financing certain leasehold improvements that were to be made to the Debtor's place of business; (ii) the United States Small Business Administration Note, dated November 15, 2013, given by Debtor to Citibank in connection with the Citibank-KLM Loan; (iii) the General Security Agreement, dated November 15, 2013, by and between Debtor and Citibank in connection with the Citibank-KLM Loan, pursuant to which Debtor granted Citibank a blanket security interest in all of its personal property, including after acquired property; and, (iv) the UCC-1 statement filed on November 18, 2013 in connection with the Citibank-KLM Loan. As of March 6, 2016, there is an outstanding balance on the Citibank-KLM Loan in the amount of $229,167.38. The term of this loan was seven years and six months. Citibank shall retain its security interest in the Debtor's assets with the same validity, priority, and extent as existed prior to the Petition Date. The Secured Claim of Citibank shall be paid in equal monthly payments of principal and interest in the sum of $8,400.00 based upon a seven (7) year

amortization at 3.75% interest per annum for a period of forty-eight (48) months beginning thirty (30) days after the Effective Date of the Amended Plan (the "**Citi Installments**"). Debtor shall pay Citibank a balloon payment on or before the thirtieth (30^{th}) day after the conclusion of the Citi Installments in the amount of $114,249.67 (the "**Citi Balloon**") in full and final satisfaction of Citibank's Class I Claim. The personal guarantee of Debtor's principal, Wayne Kelly, with respect to Citibank's Class I Claim shall remain in full force and effect. At this time, Citibank has not expressly agreed to the treatment of its claim. As a result, the Class I Claim is impaired and entitled to vote pursuant to § 1126(a) of the Bankruptcy Code.

4. Class II - Consists of the Allowed Secured Claim of Luxottica Retail North America, Inc., the Licensor/Franchisor with respect to the Pearle Vision license/franchise ("**Luxottica**"). Luxottica filed a Proof of Claim in Debtor's case on July 17, 2015 on account of franchise fees and products delivered to Debtor in the amount of $23,740.54. As of the date hereof, the balance due Luxottica on its secured claim totals $21,032.86. Luxottica's secured claim is evidenced by, *inter alia*, (i) the Franchise Agreement by and between Luxottica and Debtor, dated October 2, 2012, (ii) the Renewal Addendum, dated February 1, 2013, (iii) the Security Agreement by which Debtor granted a security interest in its assets to Luxottica, and, (iv) the UCC-1 filed on October 22, 2012 by Luxottica as to Debtor's assets. The Claim of Luxottica will be paid in full upon the Effective Date as part of Debtor's assumption of the parties' license/franchise agreement. As a result, the Class II Claim is not impaired and is entitled to vote pursuant to §1126(f) of the Bankruptcy Code.

5. Class III - Consists of the Allowed Secured Claim of Stearns Bank ("**Stearns**"), the lessor as to a retinal imaging system utilized by Debtor in its operations. Stearns filed a Proof of Claim in Debtor's case on July 20, 2015 in the amount of $107,723.80. However,

the Proof of Claim noted that no arrears were due and owing as of the Petition Date. Debtor remains current as to this Stearns claim as of the date hereof. The Debtor will continue to make its payments to Stearns as required under the Equipment Lease, dated October 15, 2014, entered into between the Debtor and Stearns with respect to the Class III Claim. As a result, the Class III Claim is not impaired and is not entitled to vote pursuant to § 1126(f) of the Bankruptcy Code.

6. Class IV - Consists of all Allowed General Unsecured Claims held by AMEX and Marcolin USA, entities that filed proofs of claim in Debtor's case, in the aggregate amount of approximately $846,110.04, which includes the additional general unsecured claim under § 502(h) of the Bankruptcy Code pursuant to the Court's Order, dated March 29, 2016, approving Debtor's settlement with AMEX, in the amount of $64,812.64. In addition to the § 502(h) claim, AMEX filed a Proof of Claim on June 24, 2015 in the amount of $723,614.30, which asserted a secured claim against Debtor's assets pursuant to (i) Business Loan and Security Agreement, dated December 3, 2014, in the amount of $750,000.00 and (ii) a UCC-1 filed on December 8, 2014. AMEX also filed a Proof of Claim on June 25, 2015 in the amount of $51,823.02, which asserted a general unsecured claim on account of Debtor's AMEX credit card debt. In light of the value of Debtor's assets and prior perfected liens of Citibank against Debtor's assets, Debtor maintains that all of AMEX's claims are unsecured and are therefore treated as such as Class IV Claims.

Moreover, Class IV Claims include the undisputed, scheduled general unsecured claims of ABB Optical Group in the amount of $37,039.00, Alcon in the amount of $715.89, Coopervision in the amount of $368.25, Costa Del Mar in the amount of $1,450.00, EMR Logic in the amount of $650.00, Lafont in the amount of $2,823.36, Legacie/B Robinson Optical in the amount of $1,300.00, Liberty in the amount of $198.00, Scojo in the amount of $49.00, Silhouette in the amount of $1,094.09, Unilens in the amount of $351.60, Vistakon in the amount of $442.95,

and Younger Optics in the amount of $4,425.47 (the "**Trade Claims**"). The total Class IV Claims, including AMEX, Marcolin, and the Trade Claims, amounts to $897,017.65.

Additionally, Class IV Claims may include the Disputed Claim of Summit filed on August 3, 2015, and allowed pursuant to the Order, dated September 23, 2015, without prejudice to Debtor contesting the validity, priority, extent, status, sufficiency, and/or amount, and without prejudice to Debtor's pending adversary proceeding against Summit which, *inter alia*, seeks the avoidance of the debt alleged to be owed to Summit by Debtor. Summit's Proof of Claim No. 9-1 actually alleges amounts due and owing from Debtor for three (3) separate lending facilities. The first loan, pursuant to the Summit Loan Agreement, on which $30,000.00 was alleged to have been due as of the Petition Date, was secured by an interest in Debtor's credit card receivables. The second advance in the amount of $155,000.00, pursuant to a Merchant Agreement and related security agreement, both dated December 8, 2014, on which $213,900.00 was alleged to have been due as of the Petition Date, was secured by an interest in Debtor's accounts receivable. Finally, the third advance, in the amount of $50,000.00, was not secured by any interest in Debtor's property. As the alleged secured loans of Summit to Debtor were all junior to the blanket first priority lien of Citibank as of the Petition Date, and as the Debtor's assets as of the Petition Date were significantly less than the amount due Citibank on its secured claim, Debtor maintains that all of Summit's purported claims, to the extent they are not successfully disputed in the adversary proceeding, waived, or otherwise withdrawn, are unsecured and would therefore be treated as such as Class IV Claims. Debtor has reached a settlement in principle with Summit, however, that would have the effect of waiving and expunging any and all claims held by Summit as against Debtor, including that which was filed in Debtor's case.

On the Effective Date, or promptly thereafter, Class IV Claims will receive

$50,000.000 to be distributed *pro rata*. Beginning thirty (30) days after the Effective Date, Class IV Claims will also receive monthly payments each in the amount of $2,000.00, to be distributed *pro rata*, for a period of forty-nine (49) months. Beginning the month following the forty-ninth (49th) payment of $2,000.00 and continuing for the next thirty-five (35) months Class IV Claims will receive monthly payments each in the amount of $7,500.00. As such, Class IV Claims will recover approximately $410,500.00, which represents approximately 45.67% of their total Claims. Moreover, to the extent that Debtor recovers any funds on account of its pending adversary proceeding against Summit, such funds will be placed into a segregated account with Debtor's counsel. To the extent any such funds are recovered from the Summit litigation, half of such funds shall be paid to allowed Administrative Claims, to be shared *pro rata among* creditors of such class, with the other half of the funds to be paid toward Class IV Claims, which shall be shared *pro rata among* creditors of such class. As a result, Class IV Claims are impaired and are entitled to vote pursuant to § 1126(f) of the Bankruptcy Code.

7. Class V - The Class V Interest Holder shall receive no distribution on account of his Interest, but shall retain his Interest in the Reorganized Debtor.

G. REQUIREMENTS FOR CONFIRMATION OF THE PLAN

1. Requirements for Confirmation - In order to confirm the Second Amended Plan, Section 1129 of the Bankruptcy Code requires the Bankruptcy Court to make a series of determinations concerning the Second Amended Plan, including that:

a. the Second Amended Plan classifies Claims and Interests in a permissible manner;

b. the Second Amended Plan complies with the technical requirements of Chapter 11 of the Bankruptcy Code;

c. the proponents of the Second Amended Plan have proposed it in good faith;

d. the Second Amended Plan proponent's disclosures concerning the Second Amended Plan have been adequate and have included information concerning all payments and distributions to be made in connection with the Second Amended Plan; and

e. Confirmation of the Second Amended Plan will not be followed by the need for liquidation or the need for further financial reorganization of the Debtor.

The Debtor believes that all of these conditions have been met or will be met by the time of the Confirmation Hearing, and the Debtor will seek a determination of the Bankruptcy Court at the Confirmation Hearing that each of these elements has been met.

2. <u>Acceptances Necessary for Confirmation</u>.

The Bankruptcy Code requires that the Second Amended Plan place each creditor's Claim and each Interest in a class with other Claims or Interests which are substantially similar. The Debtor believes that the classification system in the Second Amended Plan meets the Bankruptcy Code's standard. Although the Bankruptcy Court must independently conclude that the Second Amended Plan's classification system is legally authorized, any Creditor or Interest holder who believes that the Second Amended Plan has improperly classified any group of Claims or Interests may object to Confirmation of the Second Amended Plan.

The Bankruptcy Code requires that the Second Amended Plan be accepted by requisite votes of Creditors and Interest Holders in impaired classes. At the Confirmation

Hearing, the Bankruptcy Court must determine, among other things, whether the Second Amended Plan has been accepted by each Class of Creditors and Interest holders whose Claims or Interests are impaired under the Second Amended Plan. Under Section 1126 of the Bankruptcy Code, any impaired Class is deemed to accept the Second Amended Plan if it is accepted by at least two-thirds in amount and more than one-half in number of the Allowed Claims or Interests of Class members who have voted on the Second Amended Plan.

Further, at least one impaired Class must accept the Second Amended Plan, without counting the vote of Insiders of the Debtor.

Finally, unless there is unanimous acceptance of the Second Amended Plan by an impaired Class, the Court must also determine that under the Second Amended Plan, Class members will receive property of value as of the Effective Date of the Plan that is not less than the amount such Class members would receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code on the Effective Date.

3. <u>Absolute Priority Rule</u>.

With certain exceptions, one of the requirements for confirmation is that a Plan not provide for any payments to a junior Class unless all senior Classes are paid in full. Since General Unsecured Claims are superior to Interests, stockholders may not retain their Interests unless one of three situations occur:

(i) The Second Amended Plan provides for full payment to general unsecured creditors; or

(ii) The stockholders seeking to retain their equity interests contribute "money or money's worth" in the form of needed capital to the Reorganized Debtor reasonably equivalent in value to that of the equity interest sought

to be retained; or

(iii) The class of unsecured creditors waive their rights by consenting to the Second Amended Plan as proposed.

4. Persons Entitled to Vote on the Amended Plan.

Only the votes of Classes whose Claims or Interests are impaired by the Second Amended Plan will be counted in connection with confirmation. Generally, this includes any holders of Claims who, under the Second Amended Plan, will have their contractual rights to payment altered under the Second Amended Plan. The following Classes of Creditors are entitled to vote on the Second Amended Plan: Class I and Class IV.

5. Solicitation of Acceptances.

This Second Amended Disclosure Statement must be approved by the Bankruptcy Court in accordance with Section 1125 of the Bankruptcy Code and be provided to creditors which have been scheduled by the Debtor or which have filed a proof of claim and are impaired under the Amended Plan. This Second Amended Disclosure Statement is intended to assist holders of Claims which are impaired in evaluating the Second Amended Plan and in determining whether to accept or reject the Second Amended Plan. Under the Bankruptcy Code, a determination that the Second Amended Disclosure Statement contains "adequate information", as required by the Bankruptcy Code, does not constitute a recommendation by the Bankruptcy Court either for or against the Second Amended Plan.

6. Voting Procedures.

Only Impaired Classes of Claims are entitled to vote for or against the Second Amended Plan. Ballots will be mailed to the holders of Class I and Class IV claims. All persons or entities entitled to vote on the Second Amended Plan may cast their votes for or against the Second Amended Plan by completing, dating, and signing the ballot for accepting or rejecting the Amended

Plan to be sent to them together with a copy of the Second Amended Disclosure Statement and Second Amended Plan, and delivering same to counsel for the Debtor: J. Logan Rappaport, Esq., Pryor & Mandelup, LLP, 675 Old Country Road, Westbury, New York 11590. In order to be counted, all ballots must be received by Pryor & Mandelup, LLP on or before the date set forth in the Order Approving the Second Amended Disclosure Statement, Scheduling the Confirmation Hearing, and Setting Deadlines. A copy of the proposed ballot has been annexed hereto as **Exhibit "B"**.

H. DESCRIPTION OF THE SECOND AMENDED PLAN

The following is a summary of certain provisions of the Second Amended Plan. IT IS NOT A COMPLETE STATEMENT OF THE SECOND AMENDED PLAN AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO PROVISIONS OF THE SECOND AMENDED PLAN. The Second Amended Plan is annexed to this Second Amended Disclosure Statement as **Exhibit "A"**. The Second Amended Plan, which is subject to the provisions of the Bankruptcy Code, provides for treatment of all Creditors of the Debtor. SINCE THE SECOND AMENDED PLAN DEALS WITH SOPHISTICATED LEGAL CONCEPTS, AND INCORPORATES THE DEFINITIONS AND REQUIREMENTS OF THE BANKRUPTCY CODE, YOU MAY WISH TO CONSULT WITH COUNSEL OF YOUR CHOICE IN MAKING ANY DECISIONS REGARDING THE SECOND AMENDED PLAN.

1. Summary of Classifications and Treatment of Claims and Interests Under the Second Amended Plan

The Second Amended Plan divides Claims and Interests of the Debtor into Administrative Claims, Priority Claims, and five (5) classes of Claims and Interests. The classes and payments to be made with respect of, or treatment proposed to be accorded to Allowed Claims and Interests of each Class under the Second Amended Plan are summarized and

described below. The term "Allowed Claim" is defined in the Second Amended Plan. The Second Amended Plan also defines "Disputed Claim(s)" and proposes the treatment to be accorded to Disputed Claims. The proposed treatment of Disputed Claims is also summarized and described below.

a. **Administrative Claims** - In order to confirm the Second Amended Plan, it is necessary for the Debtor to satisfy the Allowed Administrative Claims on the Effective Date, or to have the holders of the Administrative Claims agree to different treatment. Administrative Claims consist of the Claims of: (i) the Professionals duly retained by the Debtor for (i) legal services performed during the Chapter 11 case anticipated to be approximately $150,000 due Pryor & Mandelup, L.L.P. ("**P&M**") as of the date hereof, and (ii) accounting services performed during the Chapter 11 case anticipated to be approximately $30,000.00 due Robert A. Klein, CPA, P.C. ("**RAK**") as of the date hereof; (ii) the Office of the United States Trustee ("UST") under 28 U.S.C. 1930(a)(6); (iii) any other administrative expense allowed or allowable under Section 503 of the Bankruptcy Code. Each holder of an Allowed Administrative Claim shall receive from the Debtor (i) cash in an amount equal to the amount of such Allowed Administrative Claim as soon as practical after the later of (a) the Effective Date, or (b) thirty (30) days after the date such Administrative Claim becomes an Allowed Administrative Claim, or (ii) such other treatment as otherwise agreed by and between the Debtor and such holder.

b. **Priority Claims** - Consists of the priority claim of the New York State Department of Labor in the amount of $12.78. The Priority Claim will be paid in full on or promptly after the Effective Date of Debtor's Amended Plan. As a result, Priority Claims are not impaired and pursuant to §1126(f) of is not entitled to vote.

c. **Class I (Secured Claim)** - Consists of the Allowed Secured Claim of Citibank

in the amount of $511,544.17. As of March 6, 2016, the balance due Citibank on its secured claim is $471,927.97. Citibank shall retain its security interest in the Debtor's assets with the same validity, priority, and extent as existed prior to the Petition Date. The Secured Claim of Citibank shall be paid in equal monthly payments of principal and interest in the sum of $8,400.00 based upon a seven (7) year amortization at 3.75% interest per annum for a period of forty-eight (48) months beginning thirty (30) days after the Effective Date of the Amended Plan. Debtor shall pay Citibank a balloon payment on or before the thirtieth (30^{th}) day after the conclusion of the Citi Installments in the amount of $114,249.67 in full and final satisfaction of Citibank's Class I Claim. As a result, the Class I Claim is impaired and entitled to vote pursuant to § 1126(a) of the Bankruptcy Code. The personal guarantee of Debtor's principal, Wayne Kelly, with respect to Citibank's Class I Claim shall remain in full force and effect. At this time, Citibank has not expressly agreed to the treatment of its claim.

d. **Class II (Secured Claim)** - Consists of the Allowed Secured Claim of Luxottica, the Licensor/Franchisor with respect to the Pearle Vision license/franchise, in the amount of $21,032.86 consisting of unpaid franchise fees and products delivered. The Claim of Luxottica will be paid in full upon the Effective Date as necessary pursuant to § 365(b)(1)(A) of the Bankruptcy Code so as to allow for Debtor's assumption of the parties' license/franchise agreement under the Amended Plan. As a result, the Class II Claim is not impaired and is not entitled to vote pursuant to § 1126(f) of the Bankruptcy Code.

e. **Class III (Secured Claim)** - Consists of the Allowed Secured Claim of Stearns, the lessor as to a retinal imaging system utilized by Debtor in its operations. As of the Petition Date, there were no arrears due from Debtor to Stearns in connection with this Class III Claim. The Debtor will continue to make its payments to Stearns as required under the Equipment Lease

entered into between the Debtor and Stearns with respect to the Class III Claim. As a result, the Class III Claim is not impaired and is not entitled to vote pursuant to § 1126(f) of the Bankruptcy Code.

f. **Class IV (Unsecured Claims)** - Consists of all Allowed General Unsecured Claims held by AMEX and Marcolin USA, entities that filed proofs of claim, in the aggregate amount of approximately $846,110.04, which includes AMEX's § 502(h) of the Bankruptcy Code in the amount of $64,812.64.[1] Moreover, Class IV Claims include the Trade Claims of ABB Optical Group in the amount of $37,039.00, Alcon in the amount of $715.89, Coopervision in the amount of $368.25, Costa Del Mar in the amount of $1,450.00, EMR Logic in the amount of $650.00, Lafont in the amount of $2,823.36, Legacie/B Robinson Optical in the amount of $1,300.00, Liberty in the amount of $198.00, Scojo in the amount of $49.00, Silhouette in the amount of $1,094.09, Unilens in the amount of $351.60, Vistakon in the amount of $442.95, and Younger Optics in the amount of $4,425.47. The total Class IV Claims, including AMEX, Marcolin, and the Trade Claims, amounts to $897,017.65.

On the Effective Date, Class IV Claims will receive $50,000.000 to be distributed *pro rata*. Beginning thirty (30) days after the Effective Date, Class IV Claims will also receive monthly payments each in the amount of $2,000.00, to be distributed *pro rata*, for a period of forty-nine (49) months. Beginning the month following the forty-ninth (49^{th}) payment of $2,000.00 and continuing for the next thirty-five (35) months Class IV Claims will receive monthly payments each in the amount of $7,500.00. As such, Class IV Claims will recover approximately $410,500.00, which represents approximately 45.76% of their total Claims.

[1]To the extent it is not successfully disputed in the pending adversary proceeding, waived, or otherwise withdrawn, the disputed Summit claim in the amount of $323,900 shall also be treated as a Class IV Claim.

Moreover, to the extent that Debtor recovers any funds on account of its pending adversary proceeding against Summit, such funds will be placed into a segregated account with Debtor's counsel. To the extent any such funds are recovered from the Summit litigation, half of such funds shall be paid to allowed Administrative Claims, to be shared *pro rata among* creditors of such class, with the other half of the funds to be paid toward Class IV Claims, which shall be shared *pro rata among* creditors of such class. As a result, Class IV Claims are impaired and are entitled to vote pursuant to § 1126(f) of the Bankruptcy Code.

g. Class V (Debtor's Equity Interests) - Class V Interests consist of the ownership of Wayne Kelly in the Debtor. An interest means any equity security interest any equity security within the meaning of § 101(16) of the Bankruptcy Code or any other instrument evidencing an ownership interest in the Debtor, whether or not transferrable, and any option, warrant, or right, contractual or otherwise, to apply, sell or subscribe for any such interest. The Interest Holder shall receive no distribution on account of his interest, but shall retain his Interest in the Reorganized Debtor. As a result Class V Interests are not impaired and are not entitled to vote pursuant to § 1126(f) of the Bankruptcy Code.

h. Classes Impaired Under The Plan

Under Section 1126 of the Code, Classes of Claims or Interests which are impaired are entitled to vote on a Plan of Reorganization. Under Section 1124 of the Bankruptcy Code, a Class of Claims or Interests is impaired unless the Plan, with respect to such Class:

> (A) leaves unaltered the legal, equitable and contractual rights to which such Claim or Interest entitles the holder of such Claim or Interest; or
>
> (B) reinstates the maturity of such Claim or Interest as such maturity existed before such default; or

(C) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; or

(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any pecuniary loss incurred by such holder as a result of such failure; and

(E) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

Class I Claims and Class IV Claims are impaired under the Amended Plan.

I. CURRENT OF STATEMENT OF OPERATIONS AND BALANCE SHEET, LIQUIDATION ANALYSIS, SEVEN (7) YEAR PROJECTIONS

1. Annexed hereto as Exhibit "C" is the Debtor's statement of post-petition operations.

2. Annexed hereto as Exhibit "D" is a liquidation analysis of the Debtor.

3. Annexed hereto as Exhibit "E" is the Reorganized Debtor's seven (7) year projection of operations.

J. CLAIMS OBJECTIONS, DISPUTED CLAIMS, AND RESERVES

If, as of thirty (30) days after the Effective Date, the Debtor has pending objections to claims, either filed as proofs of claim and/or scheduled in the Debtor's case (the "**Disputed Claims**"), no distributions otherwise due will be made by the Reorganized Debtor to the holders of Disputed Claims. At the time of any distribution under the Amended Plan, the Reorganized Debtor will reserve and will not distribute cash equal to the amount that the holders of Disputed Claims at the time of such distribution would have received had the Disputed Claims

been Allowed Claims. After the Court has determined all Disputed Claims, the reserved amount will be distributed in accordance with the provisions of the Amended Plan or as otherwise agreed to by the parties. At such time as a Disputed Claim becomes an Allowed Claim, the distribution that would have been dispersed had the Disputed Claim been an Allowed Claim on the Effective Date will be distributed by the Reorganized Debtor, without interest, to the holder of such Allowed Claim promptly after the Disputed Claim becomes an Allowed Claim pursuant to final and unappealable order of the Court and shall not include any interest, regardless of when distribution thereon is made. With respect to the disputed claim of Summit, represented by Proof of Claim No. 9-1 in the amount of $323,900.00, Debtor alleges that as of the Petition Date, Summit was not in fact secured in the Debtor's accounts receivables and credit card receivables by virtue of the blanket first priority lien of Citibank. As such, in the event it is not successfully disallowed in the pending adversary proceeding, waived, or otherwise withdrawn, the disputed Summit claim in the amount of $323,900 shall be treated as a Class IV Claim and receive a distribution in accordance with Debtor's proposed treatment of Class IV Claims.

The Debtor and the Reorganized Debtor reserve the right to file objections to claims, to the extent that such objections are deemed necessary and appropriate. Any objections to claims the Debtor intends to bring will be filed no later than thirty (30) days after the Effective Date. At this time the Debtor does not anticipate any objections to claims aside from the pending adversary against Summit which, *inter alia*, seeks the avoidance of the entirety of the debt incurred by Debtor to Summit.

K. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

By Order, dated September 2, 2015, the Debtor was authorized to assume its lease

for non-residential real property located at 1085 Northern Boulevard, Roslyn, New York. Additionally, unless the Confirmation Order shall otherwise provide, or the Debtor shall have filed a motion to reject any executory contracts or unexpired leases on the Effective Date, the Debtor will assume all executory contracts and leases which have not otherwise expired by their own terms. The only executory contract or lease yet to be assumed by the Debtor which requires cure payments for assumption is the franchise agreement/license with Luxottica. Luxottica will be paid in full upon the Effective Date of the Second Amended Plan thus curing the arrears as required for assumption pursuant to § 365(b)(1)(A) of the Bankruptcy Code.

A proof of claim for any claim arising from the rejection of an executory contract shall be filed with the Clerk of the Court no later than thirty (30) days subsequent to the date that an order is entered rejecting the executory contract. The claim arising from the rejection of an executory contract or unexpired lease for which a proof of claim is not filed within such time shall be disallowed in its entirety, and shall be forever barred. The Debtor does not intend to file a motion to reject any executory contracts or unexpired leases. Accordingly, the Debtor does not anticipate that there will be filed any rejection damage claims.

L. FULL AND FINAL SATISFACTION

As provided in the Second Amended Plan, all payments, distributions, and transfers of cash or property, under the Amended Plan are in full and final satisfaction, settlement and release of all claims whatsoever existing as of the Confirmation Date against the Debtor, the Estate and the Reorganized Debtor, of any kind or nature whatsoever. These releases shall be effective upon Substantial Consummation of the Second Amended Plan.

M. VOTING IMPAIRMENT, CONFIRMATION AND CRAMDOWN

a. Voting.

Claimants with allowed impaired claims are entitled to vote to accept or reject the Second Amended Plan. A claimant who fails to vote to either accept or reject the Second Amended Plan will not be included in the calculations regarding the acceptance or rejection of the Second Amended Plan. Classes which are not "impaired" under the Second Amended Plan, pursuant to Section 1126(f) of the Bankruptcy Code, are presumed to have accepted the Second Amended Plan.

If the Court determines that any class is impaired, then a ballot to be completed by the holders of Claims of that class or classes will be enclosed herewith. Instructions for completing and returning the ballots are set forth thereon and should be reviewed at length. The Second Amended Plan will be confirmed by the Bankruptcy Court and made binding upon all claimants if, with respect to all classes of claimants, the Second Amended Plan is accepted by the holders of two-thirds (2/3) in dollar amount and more than one-half (½) in number of allowed claims in each class voting upon the Second Amended Plan.

b. The Confirmation Hearing

The Bankruptcy Court has scheduled the Confirmation Hearing to be held before the United States Bankruptcy Judge Robert E. Grossman, at the United States Bankruptcy Court, Eastern District of New York, 290 Federal Plaza Central Islip, New York 11743, Courtroom 860 on August 15, 2016 at 1:30 p.m.. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for the announcement of such adjournment in open Court. At the Confirmation Hearing, or at any adjourned hearing thereof, the Bankruptcy Court will consider whether the Second Amended Plan satisfies the various

requirements of the Bankruptcy Code, including whether it is feasible and whether it is in the best interests of holders of Claims and Interests. The Bankruptcy Court will also receive and consider a certification of ballots prepared on behalf of the proponent concerning the results of the vote on the Second Amended Plan.

N. POTENTIAL AVOIDANCE AND OTHER SIMILAR CASES

The Debtor, after consultation with its professionals has determined that there was only a single meaningful preference claim. Consequently, Debtor commenced an adversary proceeding (Adv. Pro. No. 15-08216) against AMEX on July 20, 2015 seeking to avoid and recover pre-petition transfers totaling $86,416.85. After significant analysis and negotiation, Debtor and AMEX reached a settlement that will, *inter alia*, provide for the recovery by Debtor of $64,812.64 (the "**AMEX Settlement**"), which will help fund the Amended Plan. The AMEX Settlement was approved by Order of the Bankruptcy Court, dated March 29, 2016.

The Debtor also commenced an adversary proceeding (Adv. Pro. No. 15-08220) on July 24, 2015 against Summit, Ralph DePinto, Kay, and Shine International Properties, Inc. ("**Shine**"), which asserts, *inter alia*, various fraudulent conveyance claims against the parties (the "**Summit Action**"). This adversary proceeding remains pending before the Bankruptcy Court as of the date hereof. Neither Kay nor Shine have appeared in the Summit Action. Kay is currently a debtor in a chapter 7 bankruptcy case pending in this Court. Debtor has secured a default judgment against Shine. Debtor believes any recovery as against either Kay or Shine is remote. Debtor has dismissed its claims and discontinued the Summit Action as against Mr. DePinto. In the Summit Action, Debtor seeks, *inter alia*, the recovery of $752,673.75 from Summit on account of certain alleged fraudulent conveyance as well as an avoidance of the debt incurred by Debtor and owed to Summit, as a fraudulent conveyance, which would include the Disputed Claim of Summit. Debtor and Summit have reached a settlement in principle that will provide

for a small, but not insubstantial recovery, and a waiver of Summit's claim against Debtor. Debtor anticipates filing a motion to approve such settlement in the coming weeks. In the event such settlement is approved so that there is a recovery in the Summit Action, then such funds will be placed into a segregated account with Debtor's counsel and distributed equally between creditors holding allowed administrative claims and creditors holding allowed nonpriority, general unsecured claims.

O. TAX CONSEQUENCES TO ALLOWED CLAIMANTS.

The federal income tax consequences with respect to payments of Cash to Allowed Claimants in partial or full satisfaction of debt, or pursuant to a tax free recapitalization or other restructuring, depend on the allocation of such payments to principal and interest owed on the debt. The allocation of payments between interest and principal may affect:

a. the existence and timing of recognition of interest income by a cash basis Claimant;

b. the existence and timing of interest deductions on a cash basis (and sometimes to an accrual basis) Debtor;

c. the amount (and possibly the character) of worthless debt loss recognized by the Claimants;

d. the amount of cancellation of indebtedness income recognized by the Debtor; and

e. the amount of gain or loss recognized by the Claimant pursuant to a recapitalization under Internal Revenue Code § 368(a)(1)(E).

An Allowed Claimant will recognize ordinary income to the extent that any stock, debt securities, other premises, or cash received is attributable to interest (including original issue discount) ("OID") which has accrued while the Claimant held the debt and which the Claimant previously included in income, exceeds the fair market value of stock, debt and cash received by the Claimant which is attributable to such accrued interest (including OID).

In addition, such Claimants will realize gain on such amount equal to the excess of the fair market value of stock, debt, other premises and cash received (excluding amounts attributable to interest and discussed above) over the cost or other tax basis of the debt claims surrendered (excluding any tax basis allocated to accrued interest). The gain may be a capital gain unless the exchange has the effect of a distribution of a dividend under Internal Revenue Code § 305 (discussed below) in which case gain recognized that is not in excess of earning and profits of the Debtor will be treated as a dividend. A corporate Claimant who receives a dividend may qualify for a dividend received deduction with respect to the dividend.

The rules regarding taxation of payments to Claimants which are attributable to other accrued but unpaid income items (e.g., rents, compensation, royalties, dividends, etc.) are similar to the rules described above for payments allocated to interest.

-Importance of Obtaining Professional Tax Assistance.

THE FOREGOING IS INTENDED TO BE ONLY A SUMMARY OF SELECTED FEDERAL INCOME TAX CONSEQUENCES OF THE SECOND AMENDED PLAN, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH, AND RECEIPT OF ADVICE FROM, A TAX PROFESSIONAL. THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN THAT ARE DESCRIBED HEREIN AND THE STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN THAT ARE NOT ADDRESSED HEREIN, ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. SUCH CONSEQUENCES MAY ALSO VARY BASED ON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM. ACCORDINGLY, EACH CLAIMANT AND EQUITY HOLDER IS STRONGLY

URGED TO CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE SECOND AMENDED PLAN.

P. RETENTION OF JURISDICTION.

The Bankruptcy Court shall retain jurisdiction of the Chapter 11 Cases pursuant to and for the purposes set forth in Section 1127(b) of the Bankruptcy Code and, inter alia, for the following purposes:

(i) To determine additional objections, if any, to the allowance of Claims or Interests;

(ii) To determine any and all applications for compensation and reimbursement of expenses for professional fees and any other fees and expenses authorized to be paid or reimburses under the Bankruptcy Code;

(iii) To amend or modify the Amended Plan to remedy any defect, cure any omission, or reconcile any inconsistency in the Amended Plan or the Confirmation Order as may be necessary or advisable to carry out the purposes and intent of the Amended Plan to the extent authorized by the Bankruptcy Code or the Bankruptcy Rules;

(iv) To determine any and all controversies and disputes arising under or related to the Amended Plan;

(v) To construe and enforce any and all provisions of the Amended Plan;

(vi) To determine any and all applications, motion, adversary proceedings and contested or litigated matters pending before the Bankruptcy Court concerning the administration of the Estates, or its property;

(vii) To determine any and all controversies and disputes arising under or related to any settlement of an adversary proceeding or contested matter approved by the Bankruptcy Court, either before or after the Confirmation Date; and

(viii) To enter a final Order or decree in the Debtor's Chapter 11 Case upon notice to the Office of the United States Trustee.

Q. FINANCIAL INFORMATION.

The Debtor has filed with the Bankruptcy Court monthly operating reports. This financial information has not been included in this Disclosure Statement, but may be examined in the office of the Clerk of the Bankruptcy Court, 290 FEDERAL PLAZA, CENTRAL ISLIP, NY 11743, or, upon reasonable advance notice, at the offices of Pryor & Mandelup, L.L.P., 675 Old Country Road, Westbury, NY 11590, during normal business hours.

R. DISTRIBUTIONS UNDER THE SECOND AMENDED PLAN

General Matters Concerning the Distribution of Consideration

1. The Disbursing Agent

The Reorganized Debtor and such other Person(s) as may be approved by the Reorganized Debtor, or the Bankruptcy Court, shall act as Disbursing Agent(s) under the Second Amended Plan. Any such Disbursing Agent may, with the prior approval of the Reorganized Debtor, employ or contract with other Persons to assist in or to perform the distributions required.

2. Cash Payments

Cash payments made pursuant to the Second Amended Plan will be in U.S. dollars by checks drawn on a domestic bank selected by the Reorganized Debtor, or by wire transfer from a domestic bank, at the option of the Reorganized Debtor.

3. Transmittal of Distributions

A distribution shall be deemed made at the time such distribution is deposited in the United States mail, postage prepaid. Except as otherwise agreed with the holder of an Allowed Claim or Allowed Interest, any distribution on account of an Allowed Claim or Allowed Interest shall be distributed by mail to (1) the latest mailing address filed of record for

the party entitled thereto or to a holder of a power of attorney designated by such holder to receive such distributions or (ii) if no such mailing address has been so filed, the mailing address reflected on the filed Schedules of Assets and Liabilities or in the Debtor's books and records.

4. Undeliverable Distributions

If any distribution is returned to a Disbursing Agent as undeliverable, no further distributions shall be made to the holder of the Allowed Claim or Allowed Interest on which such distribution was made unless and until the Disbursing Agent or the Debtor are notified in writing of such holder's then-current address. Undeliverable distributions shall remain in the possession of the Disbursing Agent until such time as a distribution becomes deliverable or is deemed canceled (as hereinafter provided). Any unclaimed distribution held by a Disbursing Agent shall be accounted for separately, but the Disbursing Agent shall be under no duty to invest any such unclaimed distribution in any manner. Any holder of an Allowed Claim or Allowed Interest that does not present a Claim for an undeliverable distribution within one hundred and twenty (120) days after the date upon which a distribution is first made available to such holder shall have its right to such distribution and all subsequent distributions discharged and shall be forever barred from asserting any such Claim or Interest against the Reorganized Debtor or its property or against any other Person or entity, including the Disbursing Agent. All unclaimed or undistributed distributions shall, pursuant to Bankruptcy Code Section 347(b), be the property of the Debtor and shall be treated as determined by the Debtor in its sole and absolute discretion.

S. LEGAL EFFECTS OF CONFIRMATION AND EFFECTIVENESS OF THE PLAN

1. Discharge and Injunction

Entry of the Confirmation Order shall constitute an order of the

Bankruptcy Court approving the Second Amended Plan and any agreements or Orders entered in connection therewith, on and after the Effective Date and subject to the payments to be made under the Second Amended Plan, and that:

a. the rights afforded in the SecondAmended Plan, and the treatment of all Claims and Interests thereunder, shall be in exchange for, and in complete satisfaction, discharge, and release of all Claims, (including without limitation, all Administrative Claims, Secured Claims, Secured Equipment Lessor Claims, Priority Tax Claims, other Priority Claims, and Unsecured Claims (including any interest accrued on such Claims from and after the Petition Date)), against the Debtor and the Reorganized Debtor, or any of their assets or properties and any liability thereunder;

b. all substantive or obligations of the Debtor shall be terminated, and the Debtor and the Reorganized Debtor shall be deemed discharged and released to the fullest extent permitted by Bankruptcy Code Section 1141 from all Claims that arose prior to the Effective Date against the Debtor and the Reorganized Debtor or their property or assets, (including without limitation, all Administrative Claims, Secured Claims, Secured Equipment Lessor Claims, Priority Tax Claims, other Priority Claims, and Unsecured Claims (including any interest accrued on such Claims from and after the Petition Dates)), and all debts of the kind specified in Bankruptcy Code Sections 502(g), 502(h), or 502(i) of the Bankruptcy Code. This discharge and release shall be effective in each case whether or not: (i) a proof of claim or proof of interest based on such Claim, Administrative Claim, or Interest is Filed or deemed Filed pursuant to Bankruptcy Code Section 501, (ii) a Claim, Administrative Claim, is Allowed pursuant to the Bankruptcy Code, or (iii) the holder of a Claim, Administrative Claim has accepted the Plan;

c. all Persons and Governmental Units shall be permanently enjoined by Bankruptcy Code Section 524 from asserting against the Debtor, its successors, including the Reorganized Debtor, or their assets or properties, any other further Claims, or Administrative Claims, based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date. The discharge shall void any judgment against the Debtor and the Reorganized Debtor at any time obtained to the extent that it relates to a Claim, or Administrative Claim, that has been discharged or terminated;

d. all Persons and Governmental Units who have held, currently hold, or may hold a Claim or Administrative Claim, discharged or terminated pursuant to the terms of the Plan shall be permanently enjoined by Bankruptcy Code Section 524 from taking any of the following actions on account of any such discharged Claim or Administrative Claim: (i) commencing or continuing in any manner any action or other proceeding against the Debtor or the Reorganized Debtor, their successors, assets, or properties; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Debtor or the Reorganized Debtor, their successors, assets, or properties; (iii) creating, perfecting, or enforcing any lien or encumbrance against the Debtor or the Reorganized Debtor, their successors, assets, or properties; (iv) asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due to the Debtor or the Reorganized Debtor, their successors, assets, or properties; and (v) commencing or continuing any action, in any manner or place, that does not comply with or is inconsistent with the provisions of the Amended Plan or the Confirmation Order. Any Person or Governmental Unit violating such injunction may be liable for actual damages, including costs and attorneys' fees and, in appropriate circumstances, punitive damages; and

e. all Persons and Governmental Units who have held, currently hold, or may hold a Claim or Administrative Claim, discharged or terminated pursuant to the terms of

the Amended Plan shall be permanently enjoined by Bankruptcy Code Section 524 from commencing or continuing in any manner any action or other proceeding against any party on account of a Claim or cause of action that was property of the Estate, including, without limitation, any derivative Claims capable of being brought on behalf of the Debtor or the Reorganized Debtor, and all such Claims and causes of action shall remain exclusively vested in the Debtor and the Reorganized Debtor to the maximum extent such Claims and causes of action were vested in the Debtor. The Second Amended Plan shall be binding upon and govern the acts of all Persons including, without limitation, all holders of Claims and Administrative Claims, all filing agents or officers, title agents or companies, recorders, registrars, administrative agencies, Governmental Units and departments, agencies or officials thereof, secretaries of state, and all other Persons who may be required by law, the duties of their office, or contract to accept, file, register, record, or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the assets of the Debtor or the Reorganized Debtor.

f. neither the Debtor, the Reorganized Debtor, nor counsel to the Debtor or any Professional Person employed in the Chapter 11 Cases, nor any of their respective members, shareholders, officers, directors, employees, attorneys, advisors or agents shall have or incur any liability to any holder of a Claim or Interest for any act or omission in connection with, or arising out of, the Chapter 11 Cases, the pursuit of confirmation of the Second Amended Plan, the consummation of the Second Amended Plan or the administration of the Second Amended Plan or the property to be distributed under the Second Amended Plan except for willful misconduct, fraud, breach or fiduciary duty or gross negligence.

2. <u>Revesting of Property of the Estate and Release of Liens</u>

Except as otherwise provided in the Second Amended Plan, any contract, instrument, or other agreement or document created in connection with the Second Amended Plan, or the Confirmation Order, on the Effective Date, all Property of the Estate, wherever

situated, shall be revested in the Reorganized Debtor, and except as set forth herein shall be free and clear of all Claims, mortgages, deeds of trust, liens, security interests, encumbrances, and other interests of any Person, and the Reorganized Debtor may thereafter operate its business and may use, acquire, and dispose of property and compromise or settle any Claims without the supervision or approval of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules of the United States Bankruptcy Court for the Eastern District of New York, and the guidelines and requirements of the Office of the United States Trustee.

3. Continued Corporate Existence

The Debtor, as Reorganized Debtor, will continue to exist after the Effective Date with all powers of a corporation under the laws of the State of New York and without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) under such applicable state law, except as such rights may be limited and conditioned by the Second Amended Plan. In addition, the Reorganized Debtor may operate its business free of any restrictions imposed by the Bankruptcy Code, the Bankruptcy rules or the Bankruptcy Court, subject only to the terms and conditions of the Plan. The Reorganized Debtor will be responsible for filing required post-confirmation reports and paying quarterly fees due to the Office of the Unites States Trustee as is required under applicable bankruptcy law.

4. Votes Solicited in Good Faith

The Debtor has, and upon Confirmation of the Second Amended Plan will be deemed to have, solicited acceptances of the Amended Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code. The Debtor (and each of its affiliates, agents, directors, officers, members, employees, advisors, and attorneys if any) has participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code and therefore has not been, and will not be, liable at any time for the violation of any applicable law, rule, or

regulation governing the solicitation of acceptances or rejections of the Second Amended Plan or the distributions made under the Second Amended Plan.

5. Administrative Claims Incurred After the Effective Date

Administrative Claims incurred by the Debtor after the Effective Date including (without limitation) Claims for Professionals' fees and expenses incurred after such date, may be paid by the Reorganized Debtor in the ordinary course of business and without application for or Bankruptcy Court approval.

6. Post Confirmation Quarterly Reports and Fees

The Reorganized Debtor shall file and serve on the UST quarterly post-confirmation reports until the entry of a final decree, dismissal or conversion of the case to Chapter 7. The Reorganized Debtor shall also pay all statutory fees due and payable, under 28 U.S.C. § 1930(a)(6), plus accrued interest under 31 U.S.C. § 3717, on all disbursements, including plan payments and disbursements inside and outside of the ordinary course of business, until the entry of a final decree, dismissal or conversion of the case to Chapter 7.

T. MODIFICATION OR REVOCATION OF THE PLAN

Subject to the restrictions on modifications set forth in Bankruptcy Code Section 1127, the Debtor and the Reorganized Debtor reserve the right to alter, amend, or modify the Second Amended Plan before or after the Effective Date. No alterations, amendments, or modifications may be made by any party except the Debtor or the Reorganized Debtor. If the Second Amended Plan is modified by the Debtor or the Reorganized Debtor such entity will give notice of the amendment or modification to the U.S. Trustee. A hearing on such issues and any resolicitation of ballots may significantly delay Confirmation and, consequently, significantly delay distributions under the Second Amended Plan.

The provisions of the Second Amended Plan are not severable unless such severance is agreed to by the Debtor or the Reorganized Debtor and such severance would

constitute a permissible modification of the Second Amended Plan pursuant to Bankruptcy Code Section 1127.

U. SUMMARY OF CERTAIN OTHER PROVISIONS OF THE PLAN

1. Setoffs

Except as otherwise provided in the Second Amended Plan, agreements entered into in connection therewith, the Confirmation Order, or in agreements previously approved by Final Order of the Bankruptcy Court, the Debtor or the Reorganized Debtor may, pursuant to Bankruptcy Code Section 553 or applicable non-bankruptcy law, setoff against any Allowed Claim (before any distribution is made on account of such Claim) any and all of the Claims, rights and causes of action of any nature that the Debtor may hold against the holder of such Allowed Claim.

V. MEANS OF IMPLEMENTING THE PLAN

The Second Amended Plan will be funded from (i) cash on hand in the amount of $122,000.00 to be placed in a confirmation account with Debtor's counsel, (ii) the proceeds of the Debtor's settlement of an avoidance action with AMEX in the amount of $64,812.64, which are also to be placed into a confirmation account with Debtor's counsel, (iii) the post-petition operations of the Reorganized Debtor, and, (iv) the recovery, if any, from the Summit Action with half of such funds shall be paid to allowed Administrative Claims, to be shared *pro rata among* creditors of such class, with the other half of the funds to be paid toward Class IV Claims, which shall be shared *pro rata among* creditors of such class. The Debtor needs approximately $186,045.64 on hand as of the Effective Date to make the first payments due under the Plan to Administrative Claims ($115,000.00[2]), Priority Claim ($12.78), Class II Claim ($21,032.86), and Class IV Claims ($50,000.00). Exhibits "C" and "E", and the recovery of

[2] This figure represents an initial lump sum payment towards allowed professional fees and expenses of Debtor's retained professionals, P&M and RAK.

approximately $65,000.00 from the settlement of the AMEX preference action, establish that the Debtor can make the necessary payments under the Second Amended Plan.

W. EVENTS OF DEFAULT

It shall be an event of default if the Reorganized Debtor fails to make any payment as provided in the Second Amended Plan.

Upon written receipt from any creditor of notice of default, the Reorganized Debtor shall have a period of thirty (30) days from receipt of such notice to cure such default and during such thirty (30) day period, the creditors shall take no action to terminate this Amended Plan. If such default is cured by the Reorganized Debtor within said thirty (30) day period, then the Second Amended Plan shall continue in full force and effect. Notices of default shall be sent to the Reorganized Debtor at 1085 Northern Boulevard, Roslyn, New York 11576 Attn: Wayne Kelly, and the Debtor's attorneys, Pryor & Mandelup, LLP, 675 Old Country Road, Westbury New York 11590 Attn: J. Logan Rappaport, Esq. by overnight mail and also by electronic mail to J. Logan Rappaport, Esq., attorney for the Debtor at lr@pryormandelup.com.

X. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THEPLAN

If the Second Amended Plan is not confirmed and consummated, the alternatives to the Second Amended Plan include (i) liquidation of the Debtor under Chapter 7 of the Bankruptcy Code, and (ii) an alternative plan of reorganization or a plan of liquidation.

A. Alternative Plan of Reorganization or Plan of Liquidation

If the Second Amended Plan is not confirmed, the Bankruptcy Court could confirm a different plan. The Second Amended Plan is, in essence, a reorganization of the Debtor's business and a different plan might involve either a reorganization and continuation of the Debtor's business or an orderly liquidation of the Debtor's assets. The Debtor believes that

the Second Amended Plan, as described herein, enables creditors and interest holders to realize the highest and best value under the circumstances. The Debtor believes that any liquidation of the Debtor's assets or alternative form of Chapter 11 plan is a much less attractive alternative to creditors than the Second Amended Plan because of the far greater returns and certainty provided by the Second Amended Plan. Other alternatives could involve diminished recoveries, significant delay, uncertainty, and substantial additional administrative costs. The Debtor believes that its Second Amended Plan provides the best recovery to its creditors which provides for a distribution of Cash, rather than no recovery or diminished recoveries following a liquidation of its assets or distribution of other property.

B. Liquidation Under Chapter 7

If no plan is confirmed, the Chapter 11 Case may be converted to cases under Chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be appointed or elected to liquidate the Debtor's assets for distribution in accordance with the priorities established by Chapter 7 of the Bankruptcy Code. An analysis of the effects that a Chapter 7 liquidation would have on the recoveries of holders of Claims and Equity Interests is set forth in the Liquidation Analysis attached as Exhibit "D" to this Second Amended Disclosure Statement. A review of the Liquidation Analysis reveals that there would be no recovery for holders of Priority and Unsecured Claims. For the reasons above, the Debtor believes that a liquidation under Chapter 7 of the Bankruptcy Code would result in there being no distribution except to Citibank on its secured claim.

CONCLUSION

The Debtor believes that its Second Amended Plan of Reorganization will result in creditors receiving more than they would under a hypothetical Chapter 7 liquidation and believes that Confirmation of the Second Amended Plan of Reorganization is in the best interests

of creditors and interest holders of the Debtor.

Accordingly, the Debtor urges all Creditors to accept the Amended Plan.

Dated: Westbury, New York
June 7, 2016

KLM Optical, Inc. d/b/a Pearle Vision

By: ***/s/Wayne Kelly***
Wayne Kelly

PRYOR & MANDELUP, L.L.P.
Counsel for the Debtor

By: */s/J. Logan Rappaport*
J. Logan Rappaport
(A Member of the Firm)
675 Old Country Road
Westbury, New York 11590
(516) 997-0999