

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:	Chapter 11
FALCO MOBILE FOOD LLC,	Case No: 1-17-40860-cec
Debtor.	
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**FALCO MOBILE FOOD LLC’S  
DISCLOSURE STATEMENT DATED SEPTEMBER 26, 2017  
INTRODUCTION**

This is the disclosure statement (the “Disclosure Statement”) in the chapter 11 case of Falco Mobile Food LLC (the “Debtor”). This Disclosure Statement contains information about the Debtor and describes Falco Mobile Food LLC’s Plan of Reorganization Dated September 28, 2017 (the “Plan”) filed by the Debtor on September 28, 2017. A full copy of the Plan is attached to this Disclosure Statement as Exhibit A. ***Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.***

The proposed distributions under the Plan are discussed at pages 7 – 9 of this Disclosure Statement. General unsecured creditors are classified in Class 4, and will receive a distribution of 100% of their allowed claims plus interest in quarterly payments over the life of the Plan, with the first quarterly payment being made on the fifteenth day of the month immediately following the month in which the Court enters an order confirming the Plan (the “Effective Date”).<sup>1</sup>

**A. Purpose of This Document**

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case,
- How the Plan proposes to treat claims of the type you hold (*i.e.*, what you will receive on your claim or equity interest if the plan is confirmed),
- Who can vote on or object to the Plan,
- What factors the Bankruptcy Court (the “Court”) will consider when deciding whether to confirm the Plan,
- Why the Debtor believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure

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<sup>1</sup> If the Effective Date, as defined herein, falls on a Saturday, then the Effective Date shall be the fourteenth day of that month, and if the Effective Date, as defined herein, falls on a Sunday, then the Effective Date shall be the sixteenth day of that month.

Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

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

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

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

The hearing at which the Court will determine whether to confirm the Plan will take place on a date determined by the United States Bankruptcy Court at the Disclosure Hearing.

### *2. Deadline For Voting to Accept or Reject the Plan*

As this is a plan that pays all creditors in full, there will be no voting on this plan.

### *3. Deadline For Objecting to the Confirmation of the Plan*

Objections to the confirmation of the Plan must be filed with the Court and served upon the Debtor, the United States Trustee, and all parties that have entered their appearance on the docket for this case by November 1, 2017.

### *4. Identity of Person to Contact for More Information*

If you want additional information about the Plan, you should contact Rachel Blumenfeld, at the Law Office of Rachel S. Blumenfeld PLLC, 26 Court Street Suite 2220, Brooklyn, New York 11242, (718) 858-9600.

## **C. Disclaimer**

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

## **II. BACKGROUND**

### **A. Description and History of the Debtor's Financial Transactions**

The Debtor was current with all of its pre-petition obligations until it entered into an agreement with Global Snacks Inc. The Debtor was not advised by an attorney during the negotiating and signing of this agreement, and did not think of the agreement as a loan, but more of a partnership. When Global Snacks Inc., called the entire loan due at once, the Debtor tried to negotiate with them, but the terms were not something the Debtor was able to

enter into. Aside from this one incident, the Debtor was historically always current with its payment obligations to creditors.

**B. Insiders of the Debtor**

The only insider of the Debtor is Michael Falco, who is the managing member of the Debtor.

**C. Events Leading to Chapter 11 Filing**

Debtor's filing of Chapter 11 was precipitated by the lawsuit entitled GlobalSnacks Inc. v. Falco Mobile Food in the Supreme Court New York.

**D. Significant Events During the Bankruptcy Case**

A Motion to Set Last Day to File Proofs of Claims was filed on March 21, 2017, with the deadline for filing claims being set on June 23, 2017. The Law Office of Rachel S. Blumenfeld was authorized to represent the Debtor on March 30, 2017. The Debtor had requested that its exclusive period to file a plan be extended so that the Debtor can formulate a plan of organization and that Motion was granted by Order dated August 17, 2017

**III. Projected Recovery of Avoidable Transfers**

After a reasonable investigation, the Debtor does not believe it can pursue any preference, fraudulent conveyance, or other avoidance actions.

**IV. Claims Objections**

The Debtor and all parties may bring claims objections but in no event later than 60 days after the Confirmation Date.

**V. Current and Historical Financial Conditions**

The Debtor's Schedule A/B, providing the identity and value of the Debtor's assets as of the petition date, is attached to this Disclosure Statement as Exhibit B.

The six most recent post-petition operating reports filed since the commencement of the Debtor's bankruptcy case are contained in Exhibit C.

**VI. SUMMARY OF THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS**

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

As required by the Code, the Plan places claims and equity interests in various

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

## B. Unclassified Claims

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

### 1. *Administrative Expenses*

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

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

Type	Estimated	Proposed Treatment
Expenses Arising in the Ordinary Course of Business After the Petition Date	\$0	Paid in full on the effective date of the Plan, or according to terms of obligation if later
The Value of Goods Received in the Ordinary Course of Business Within 20 Days Before the Petition Date	\$0	Paid in full on the effective date of the Plan, or according to terms of obligation if later
Professional Fees for Accountant, as approved by the Court.	\$0	Paid in full according to court order once such fees have been approved by the Court
Professional Fees for Debtor's counsel, as approved by the Court.	\$25,000	Paid in full according to court order once such fees have been approved by the Court
Clerk's Office Fees	\$0	Paid in full on the effective date of the Plan

Other administrative expenses		Paid in full on the effective date of the Plan
Office of the U.S. Trustee Fees	\$1,300	U.S. Trustee Fees will be paid in full as they accrue until the case is
<b>TOTAL</b>	<b>\$26,300.</b>	

## 2. *Priority Tax Claims*

Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding 5 years from the order of relief.

The following chart lists the Debtor's estimated § 507(a)(8) priority tax claims and their proposed treatment under the Plan:

<b>Government Entity</b>	<b>Estimated Amount</b>	<b>Proposed Treatment</b>
New York State Department of Labor	\$3,226.61	Paid in full in equal payments each quarter on the fifteenth of March, June, September, and December, with the final payment being made on February 25, 2022.
Internal Revenue Service	\$195,444.00	Paid in full in equal payments each quarter on the fifteenth of March, June, September, and December, with the final payment being made on February 25, 2022.
NYC Department of Finance	\$18,000.00	Paid in full in equal payments each quarter on the fifteenth of March, June, September, and December, with the final payment being made on February 25, 2022
NYS Department of Labor	\$71.25	Paid in full in equal payments each quarter on the fifteenth of March, June, September, and December, with the final payment being made on February 25, 2022

### C. Classes of Claims and Equity Interests

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

#### 1. *Classes of Secured Claims*

Allowed Secured Claims are claims secured by property of the Debtor's bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under § 506 of the Code. If the value of the collateral or setoffs securing the creditor's claim is less than the amount of the creditor's allowed claim, the deficiency will be classified as a general unsecured claim.

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

**Class 1 – Time Payment Corp.** – A claim with a principal balance of \$40,880.03 as of the petition date. The claim is cooking equipment including deep fryers, freezers, refrigerators, etc. in both cars. **This class is not impaired by the plan and is deemed to have accepted the plan.** The Debtor will pay the claim in full with this creditor through the life of the plan.

**Class 2 – Accion East.** – A claim with a principal balance of \$30,000.00 as of the petition date. The claim is a commercial loan for 2 mobile carts. **This class is not impaired by the plan and is deemed to have accepted the plan.** The Debtor will pay the claim in full with this creditor through the life of the plan.

#### 2. *Class of Priority Unsecured Claims*

Certain priority claims that are referred to in §§ 507(a)(1), (4), (5), (6), and (7) of the Code are required to be placed in classes. The Code requires that each holder of such a claim receive cash on the effective date of the Plan equal to the allowed amount of such claim. However, a class of holders of such claims may vote to accept different treatment.

The following chart lists all classes containing claims under §§ 507(a)(1), (4), (5), (6), and (a)(7) of the Code and their proposed treatment under the Plan:

There are no claims entitled to priority under 11 U.S.C. § 507(d).

#### 3. *Classes of General Unsecured Claims*

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code.

The following chart identifies the Plan's proposed treatment of Class 4, which contain general unsecured claims against the Debtor:

**Class 3– General Unsecured Claims.** This class consists of all unsecured claims. **This**

**class is not impaired by the plan, and is not entitled to vote on the plan.** Members of this class will receive a pro-rata share of \$7,011.81 on each of twenty quarterly payments to be made on the fifteenth of March, June, September, and December.

4. *Class of Equity Interest Holders*

Equity interest holders are parties who hold an ownership interest (*i.e.*, equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest holders. In a partnership, equity interest holders include both general and limited partners. In a limited liability company (“LLC”), the equity interest holders are the members. Finally, with respect to an individual who is a debtor, the Debtor is the equity interest holder.

The following chart sets forth the Plan’s proposed treatment of the class of equity interest holders:

**Class 4** – Equity Interest Holders. The Debtor’s owner will retain ownership and control of the reorganized Debtor.

**VII. Means of Implementing the Plan**

1. *Source of Payments*

Payments under the Plan will be paid from the Debtor’s future revenues, from the Debtor’s current cash on hand.

**VIII. Risk Factors**

The proposed Plan has the following risks:

**A. The Debtors May Not Be Able to Obtain Confirmation of the Plan**

Even though there is no voting in this plan, as there is no impaired party, the Bankruptcy Court might not confirm the Plan as proposed if the Bankruptcy Court finds that any of the statutory requirements for confirmation under section 1129 of the Bankruptcy Code has not been met. If the Plan is not confirmed by the Bankruptcy Court, there can be no assurance that any alternative plan would be on terms as favorable to Holders of Claims as the terms of the Plan. In addition, there can be no assurance that the Plan Proponents will be able to successfully develop, prosecute, confirm and consummate an alternative plan that is acceptable to the Bankruptcy Court and the Debtors’ creditors.

**B. The Allowed Amount of Claims May Differ From Current Estimates**

There can be no assurance that the estimated Claim amounts set forth in the Plan are correct, and the actual amount of Allowed Claims may differ from the estimates. The estimated amounts are subject to certain risks, uncertainties, and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, the actual amount of Allowed Claims may vary from those estimated in the Disclosure Statement. Furthermore, a number of additional claims may be filed, including on account of rejection damages for rejected Contracts and Leases. Any such claims may result in a greater amount of General Unsecured Claims than estimated in the Disclosure Statement.

## **IX. Executory Contracts and Unexpired Leases**

The Plan, in Article VI, lists all executory contracts and unexpired leases that the Debtor will assume under the Plan. Assumption means that the Debtor has elected to continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of the type that must be cured under the Code, if any. Article VI also lists how the Debtor will cure and compensate the other party to such contract or lease for any such defaults.

If you object to the assumption of your unexpired lease or executory contract, the proposed cure of any defaults, or the adequacy of assurance of performance, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set an earlier time.

All executory contracts and unexpired leases that are not listed in Article VI will be rejected under the Plan. Consult your adviser or attorney for more specific information about particular contracts or leases.

If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan.

## **X. Tax Consequences of Plan**

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

The following are the anticipated tax consequences of the Plan:

- (1) Because any discharge of the Debtor's debts is occurring within the context of a title 11 case, the Debtor does not anticipate any tax liability for cancellation of debt; the Debtor will continue to accrue obligations for property tax payments;
- (2) Notwithstanding the Debtor's avoidance of "cancellation of debt" income from the discharge, creditors whose obligations are discharged may still receive a "bad debt" deduction as a result of the discharge; payments made by the Debtor under the Plan may result in ordinary income for the recipients.

## **XI. CONFIRMATION REQUIREMENTS AND PROCEDURES**

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

## **XII. Who May Vote or Object**

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

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

In this case, the Plan Proponent believes that all classes are unimpaired and that holders of the claims in those classes are therefore entitled to vote to accept or reject the Plan. The Plan Proponent believes that all of the classes are unimpaired and that holders of claims in those classes, therefore, are deemed to have accepted the plan.

### 1. *What Is an Allowed Claim or an Allowed Equity Interest?*

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

**The deadline for filing a proof of claim in this case has already passed.**

### 2. *What Is an Impaired Claim or Impaired Equity Interest?*

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

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

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

- holders of claims and equity interests that have been disallowed by an order of the Court;
- holders of other claims or equity interests that are not “allowed claims” or “allowed equity interests” (as discussed above), unless they have been “allowed” for voting purposes.
- holders of claims or equity interests in unimpaired classes;

- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code; and
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan;
- administrative expenses.

**XIII. Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation of the Plan and to the Adequacy of the Disclosure Statement.**

**XIV. Votes Necessary to Confirm the Plan**

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

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

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

**XV. Liquidation Analysis**

To confirm the Plan, the Court must find that all impaired creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. As this plan is a 100% plus payment of interest plan, it therefore meets the chapter 7 liquidation analysis.

**XVI. Feasibility**

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

1. *Ability to Initially Fund Plan*

The Plan Proponent believes that the Debtor will have enough cash on hand on the

effective date of the Plan to pay all the claims and expenses that are entitled to be paid on that date.

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

The Debtor believes his operating reports and schedules are sufficient proof of same.

You Should Consult with Your Accountant or other Financial Advisor If You Have Any Questions Pertaining to These Projections.

## **XVII. EFFECT OF CONFIRMATION OF PLAN**

### **A. DISCHARGE OF DEBTOR.**

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

## **XVIII. Modification of Plan**

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

The Plan Proponent may also seek to modify the Plan at any time after confirmation only if (1) the Plan has not been substantially consummated *and* (2) the Court authorizes the proposed modifications after notice and a hearing.

## **XIX. Final Decree**

Within 14 days following the full administration of the estate, the plan proponent shall file, on notice to the United States trustee, an application and a proposed order for a final decree pursuant to Bankruptcy Rule 3022 See EDNY LBR 3022-1

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Plan Proponent, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion.

The Debtor will (a) file quarterly post-confirmation reports by the 20th day after the conclusion of the relevant calendar quarter until the case is converted, dismissed, or closed by means of a final decree (whichever happens earlier) and (b) schedule quarterly post-confirmation status conferences with the Court.

/s/ Michael Falco for Falco Mobile Food LLC

[Signature of the Plan Propo-  
nent]

/s/ Rachel S. Blumenfeld

[Signature of the Attorney for the Plan Propo-  
nent]

