

Rosen, Kantrow & Dillon, PLLC
Counsel to Debtor In Possession
38 New Street
Huntington, New York 11743
631 423 8527
Avrum J. Rosen
Scott T. Dillon

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

JVJ PHARMACY INC.,
d/b/a UNIVERSITY CHEMISTS,

Case No.: 16-10508-smb

Debtor.
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**DISCLOSURE STATEMENT FOR PLAN OF
REORGANIZATION PROPOSED BY DEBTOR**

THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A CONDITIONAL DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE COURT.

This Disclosure Statement (“Disclosure Statement”) is being provided by JVJ Pharmacy, Inc., d/b/a University Chemists, debtor and debtor in possession (“Debtor”), pursuant to the requirements of Section 1125(b) of Title 11, United States Code (“Bankruptcy Code”), to those known holders of a claim or interest who are entitled to vote on the confirmation of the Plan of Reorganization (“Plan”) proposed by the Debtor in order to disclose adequate information, deemed to be material, important and necessary for Debtor’s creditors (“Creditors”) to make an informed judgment and an informed decision in exercising their right to vote on the Plan.

Along with this Disclosure Statement, you will receive a copy of the proposed Plan, a Ballot and a Notice fixing a date and time for a hearing on the confirmation of the Plan. Annexed to this Disclosure Statement, or available ~~on-line~~online at the Court’s electronic website (www.nysb.uscourts.gov), are the following exhibits:

Exhibit “A”: Debtor’s Plan of Reorganization;

Exhibit “B”: Debtor’s Petition ~~and~~, Schedules and Amendments thereto;

Exhibit "C": Debtor's Most Recent Monthly Operating Report;
Exhibit "D": Debtor's Claims Register;
Exhibit "E": Executed Term Sheet; ~~and~~
Exhibit "F": Auctioneer's Report from the auction of Debtor's assets; and
Exhibit "G" August 2016 CBIZ Memorandum

The Bankruptcy Court has scheduled a hearing on confirmation of the Plan. The date, time and place of the hearing will be found in the "Notice Fixing a Date for a Hearing on Confirmation," which accompanies this Disclosure Statement. The Creditors may vote on the Plan by timely completing and mailing the enclosed ballot to the attorneys for the Debtor, Rosen, Kantrow & Dillon, PLLC, 38 New Street, Huntington, New York 11743. In order for the Plan to be accepted and thereafter confirmed, ("Confirmation"), at least two-thirds (2/3) in amount and more than one-half (1/2) in number of allowed claims of a class of Creditors who vote and who are impaired under the Plan must cast their votes for the acceptance of the Plan.

A CREDITOR THAT DOES NOT VOTE FOR THE ACCEPTANCE OR REJECTION OF THE PLAN WILL NOT COUNT IN THE OUTCOME OF THE PLAN'S ACCEPTANCE.

Classes 2, 3, 4, 5, 6 and 7 are impaired under the Plan.

THIS DISCLOSURE STATEMENT IS AND RELATED EXHIBITS ABOVE ARE THE ONLY AUTHORIZED STATEMENT WITH RESPECT TO THE PLAN. NO OTHER REPRESENTATIONS CONCERNING THE DEBTOR, ITS OPERATIONS OR THE VALUE OF ITS PROPERTY HAVE BEEN AUTHORIZED BY THE DEBTOR. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO OBTAIN YOUR ACCEPTANCE WHICH ARE OTHER THAN OR INCONSISTENT WITH THE INFORMATION CONTAINED HEREIN SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION. THIS DISCLOSURE STATEMENT HAS BEEN APPROVED BY ORDER OF THE BANKRUPTCY COURT. SUCH APPROVAL BY THE BANKRUPTCY COURT DOES NOT CONSTITUTE A RECOMMENDATION BY THE COURT AS TO THE PLAN'S MERITS.

The Debtor and its counsel have prepared the Chapter 11 Plan and submit that the Plan is in the best interest of Creditors generally and recommend acceptance of the Plan by those Creditors who vote. The Debtor continues to operate as a Debtor-in-Possession. It is the belief of the Debtor that if the Plan is denied confirmation, unsecured Creditors will receive less than they will receive under the Plan. This Disclosure Statement has been approved by the Court as containing information of a kind and in sufficient detail that will enable Creditors to make an informed judgment about the Plan, and the Debtor has been authorized to use this Disclosure Statement in connection with the solicitation of Ballots on the Plan. At a hearing on Confirmation, the Court will consider whether the Plan is feasible, and whether it is in the best interests of the Creditors.

PART I **DEFINITIONS**

For the purposes of this Disclosure Statement, the terms used herein shall be defined as they are defined in the Debtor's Plan of Reorganization.

PART II **PRELIMINARY STATEMENT**

On March 3, 2016, Debtor filed a voluntary petition pursuant to Chapter 11 of the Bankruptcy Code. Since the filing date, the Debtor has remained in possession of its assets, and continues to operate as a Debtor-in-Possession.

No official committee of unsecured creditors ("Committee") has been appointed in Debtor's case.

PART III **RETENTION OF PROFESSIONALS**

On or about February 15, 2016, Debtor retained Law Offices of Avrum J. Rosen, PLLC ("Firm") as counsel to the Debtor. An application for authority to retain ~~firm~~the Firm as counsel to the Debtor was submitted on or about March 24, 2016, ~~which~~and was granted by Order of the Court, ~~by Order~~ dated April 8, 2016, with the consent of the Office of the United States Trustee. On November 1, 2016, ~~that firm~~the Firm changed its name to Rosen, Kantrow & Dillon, PLLC.

On or about April 15, 2016, Debtor filed an application seeking to retain CBIZ Accounting, Tax & Advisory of New York, LLC, an accounting leader in the industry, to maintain its records and prepare the Flash Reports and Monthly Operating Reports, which application the Court ~~subsequently~~ approved by entry of Order dated April 19, 2016.

On or about July 11, 2016, Debtor filed an application seeking to retain CBIZ KA Consulting, LLC, to evaluate the Debtor's health care ~~receivables~~accounts receivable, which application the Court ~~subsequently~~ approved by entry of an Order dated July 12, 2016.

~~The~~Pre-petition, the Debtor retained ~~pre-petition,~~ Lewin & Baglio, LLP ("Lewin") as special counsel to prosecute and/or settle Workers' Compensation ~~Claims~~claims. Accordingly, on or about April 15, 2016, Debtor filed an application with the Court requesting entry of an order authorizing it to employ and retain Lewin as special counsel, under ~~the~~a written Retainer ~~Agreements~~Agreement, pursuant to Bankruptcy Code Section 327(e), which the Court ~~subsequently~~ approved by entry of an Order dated April 20, 2016.

Pre-petition, Warsaw Burnstein, LLP ("Warsaw") was retained by Debtor as special counsel to prosecute the "State Court Litigation", which is described and defined below, and which

~~is~~ pending in the New York Supreme Court, ~~which is described and defined below.~~ Accordingly, Debtor filed an application with the Court on or about April 15, 2016, requesting entry of an order authorizing it to employ and retain Warshaw as special counsel, under ~~the Retainer Agreement~~ written retainer agreement, pursuant to Bankruptcy Code Section 327(e), which the Court subsequently approved by entry of Order dated May 20, 2016.

On or about July 8, 2016, the Debtor filed an application seeking to retain Paragon Ventures, LLC (“Broker”) as its business broker to solicit bidders for an auction of the Debtor’s assets. That retention was approved by the Court by ~~order~~ an Order entered on July 11, 2016.

PART IV **REPRESENTATIONS AND SCOPE OF STATEMENT**

The information contained herein has not been subjected to a certified audit, and accordingly, Debtor is unable to warrant or represent that the information contained herein is without any inaccuracies. The Debtor believes that the information contained herein is accurate and has verified its accuracy to the greatest extent possible.

PART V **DESCRIPTION OF THE DEBTOR’S BUSINESS**

The Debtor is a New York Corporation, with its corporate office located at 74 University Place, New York, New York ~~10003-engaged~~ 10003engaged in the business of being an URAC accredited and Joint Commission accredited specialty pharmacy. Prior to the present Chapter 11 filing, the Debtor filed a voluntary chapter 11 petition with this Court on November 3, 2011 and confirmed a plan of reorganization on August 6, 2013 (the “Confirmed Prior Plan”) (Chapter 11, Case No. 11-15126-reg).

Pursuant to the Debtor’s prior chapter 11 plan, the Debtor was required to make ~~certain~~ balloon payments to creditor PNC Bank, National Association (“PNC”) in the amount of approximately \$2,600,000.00. Pursuant to the terms of the ~~confirmed prior plan~~ Confirmed Prior Plan, the Debtor was required to make that payment by not later than the end of March 2016. In addition, Lakeland West Capital XXIII, LLC (“Lakeland”) the successor in interest to a previous creditor (Bank of America), ~~had~~ advised the Debtor of ~~an alleged monetary~~ default under the Confirmed Prior Plan. By letter dated February 5, 2016, Lakeland had advised that the Debtor was required to remit the sum of \$19,550.00 to it by ~~not~~ no later than January 20, 2016. Lakeland ~~had~~ advised that an uncured default ~~would result in~~ existed and Lakeland would be asserting whatever rights ~~would~~ were be available to it.

The ~~Debtor’s~~ Debtor maintains that its financial difficulties and the inability to meet its obligations ~~as provided for in~~ under the prior confirmed plan, Confirmed Prior Plan are integrally related to a pending commercial tort action pending in the Supreme Court of the State of New York. Debtor, through the State Court Litigation, seeks to recover approximately \$5,000,000.00

in damages, against various defendants identified in the Complaint. The basis of ~~that litigation the State Court Litigation~~ is that the Debtor in 2014 - 2015, experienced an alleged unforeseen ~~attack from several~~ conversion of valuable assets, including confidential and proprietary information by several of its former employees and business partners, which ~~resulting litigation commenced resulted in substantial damages, injury and loss, as well as commencement of litigation~~ by Debtor. The State Court Litigation was ~~unfortunately the primary~~ a substantial focus of Debtor's resources pre-petition. Specifically, on April 7, 2015, Debtor commenced an action styled *JVJ Pharmacy Inc., d/b/a University Chemists v. Charles Demarco, et al* ("State Court Litigation"), pending in the Supreme Court ~~of~~ the State of New York, County of New York, identified under Index No. 651111/15. In the complaint, the Debtor ~~alleges~~ alleged that it formed a business relationship with Charles Demarco ("Demarco") and Demarco's company Healthnow Solutions, Inc., to sell Debtor's products through Demarco's pharmaceutical sales representatives. In November 2014, the Debtor and Demarco began to have disagreements over business practices. In March 2015, the Debtor's prescription orders for specialty compounds precipitously decreased, the Debtor confronted Demarco on this issue, ~~who~~ and was immediately advised that Demarco would no longer be using Debtor for compound prescriptions. Immediately thereafter, certain of Debtor's former employees, all of whom are subject to confidentiality agreements: (i) ~~Charles~~ Demarco; (ii) Alexandra Marie Bello; (iii) Yessica Figueroa; (iv) Angelo Manniello; and (v) Rinda Cogna, terminated their relationship with Debtor and began working for Demarco controlled entities.

Debtor, in the complaint, alleges, among other things, a conspiracy between Demarco and its former employees, to steal Debtor's confidential and proprietary information, including patient information protected under HIPAA, and to use it to compete unfairly with Debtor. The Debtor calculates that it lost ~~annual~~ significant revenue from the acts described above and ~~seek~~ sought, among other things, not less than \$5,000,000.00 in damages and the recovery of its customer/patient lists from the defendants. The defendants have raised counterclaims and ~~have~~ filed large unliquidated claims in this case in the collective amount of \$3,166,910.00. The State Court Litigation has been stayed during the entire pendency of this Chapter 11 case.

PART VI **EVENTS DURING THE CHAPTER 11 CASE**

All of the "first day" motions necessary for Debtor to be able to operate were prepared. This included motions: ~~(i)~~ (i) to authorize (i) Debtor to pay pre-petition wage claims; (ii) ~~authorize~~ the use of pre-petition forms; (iii) ~~to authorize~~ Debtor's use of pre-petition bank accounts for an interim period; and (iv) ~~an emergency motion for~~ the use of cash collateral on an emergency basis. The hearing date for the "first day" motions of March 8, 2016, was obtained and notice of all those motions was given to parties in interest. A limited objection, and supplement thereto, were filed by PNC to ~~prohibit and/or restrict~~ the Debtor's motion to use of cash collateral ~~and granting adequate protection payments~~. The Court held extensive "first day" hearings on the motions, which included, what was in effect, an emergency motion. Ultimately, an interim order approving the Debtor's use of cash collateral and awarding adequate protection was granted, on consent.

~~_____ All of these motions were addressed and responded to by Debtor, through Firm. _____~~ As counsel ~~began to appear~~ for ~~the~~ multiple alleged secured parties ~~in this case~~ appeared, negotiations took place with all of the various constituencies in an attempt to work out the continued consensual conditional use of cash collateral. There were several more hearings in which there were consensual extensions of the conditional use of cash collateral, along with substantial negotiations with PNC and ~~other~~ alleged secured parties. To date, the continued conditional use of cash collateral has been accomplished on a consensual basis.

A serious concern of the Debtor, its professionals, PNC, and ~~other~~ allegedly secured creditors, was having the significant accounts receivable of the Debtor evaluated and quantified. To that end, the Debtor retained CBIZ KA, which has extensive experience in this industry to act as its financial advisor and to review the Debtor's ~~receivables~~ accounts receivable. The Debtor also gave ~~complete~~ court-approved access to PNC's professionals (attorneys and accountants) for the same purposes ~~and those professionals have cooperated throughout this case.~~

~~_____ On or about August, 2016, CBIZ undertook a forensic analysis of Debtor's books and records to determine the actual monetary value of Debtor's accounts receivable. The result of that investigation was memorialized in the memorandum ("CBIZ Memorandum") which is annexed hereto as Exhibit "G", which is incorporated by reference and should be reviewed independently. The Most recent Monthly Operating Report is also annexed hereto as Exhibit "C". Page 21 of that report shows estimated accounts receivable as of February 28, 2017 of \$2,528,672.00. That figure presumes that approximately 60% of the gross accounts receivable, which total \$6,313,290 as of the end of February 2017, are not collectible. Lakeland questions whether that percentage figure is overstated.~~

~~_____ Included in the estimated recoverable accounts receivable of \$2,528,672 are litigated no-fault and Workers' Compensation claims with an estimated value, as stated in the February 2017 Operating Report, of \$1,894,446.00. However, the collectability of that amount is subject to great uncertainty. Prepetition, the Debtor retained Lewin to pursue these claims. Typically, workers compensation claims are subject to mandatory arbitration before they are paid to the claimant. However, that is not the statutory requirement for a pharmacy. Thus, Debtor was compelled to bring an action in the New York Supreme Court, County of Bronx, to compel payment of the no-fault and Workers' Compensation receivables. This suit is a case of first impression for the Bronx Supreme Court. The matter has been *sub judice* for more than nine (9) months, as the parties await a decision on certain insurance company defendants' motion to dismiss the case for lack of subject matter jurisdiction. If the Court holds that it lacks jurisdiction, the Debtor would be unable to recover very much on these claims. Lewin, however, believes that the court will conclude that it does, in fact, have subject matter jurisdiction, and it expects that the Court will render its decision within the next one to two months. (If the Court rules that it lacks subject matter jurisdiction, Lewin intends to appeal that ruling; Debtor believes the fees and costs of such appeal would be included in Lewin's contingency fee, but it is not certain.) A decision in the Debtor's favor would mean that the Debtor can go forward, through the litigation, on the collection of its no-fault and Workers' Compensation claims. Lewin estimates the collectability rate on those claims to be 70-~~

80%. Using a 75% rate, the net recovery on the claims – the gross amount of which, as stated in JVJ’s February 2017 Operating Report, is \$2,706,351 – would be approximately \$1,522,322 net of Lewin’s 25% contingency fee. . The Debtor, and its professionals simply cannot opine on the collectability of these receivables given the current status of the case.

Part of ~~these~~the Debtor’s strategy and negotiations with active creditors in the case involved reaching an agreement with ~~thesesaid~~ creditors that were active in the case on a sales process for the ~~sale of the~~ Debtor’s business operations and/or assets. To that end, the Debtor, PNC and other parties negotiated the terms and conditions of an auction sale of the Debtor’s business and/or assets. Those terms and conditions were included ~~in the Interim~~certain Cash Collateral Orders. Subsequently, the Debtor filed a motion pursuant Bankruptcy Code Sections 363 & 365 to sell the Debtor’s assets and that motion was granted by Order (“Sale Order”) dated November 17, 2016 [ECF Doc. No. 112]. The Debtor maintains that it complied with all ~~of those~~approved terms and conditions of those Orders. On December 9, 2016, the auction took place. The Broker’s report of that sale is annexed hereto as Exhibit “F”. The Debtor’s assets were offered first in bulk. The highest bid was \$3,000,000.00, with ~~certain~~ contingencies as to due diligence and obtaining a new lease from the Debtor’s landlord (which lease expired on its terms on December 31, 2016) and the proposed purchaser has not reached an agreement with the landlord. The Debtor’s assets, exclusive of its accounts receivable were then auctioned and the highest non-contingent bid was \$1,600,000.00 (plus inventory). The Debtor’s accounts ~~receivables~~receivable were then auctioned as a separate asset. The highest bid for the accounts receivable was \$1,200,000.00. All of ~~thesethose~~ bids were made by the same party, EZ RX CLUB, INC. (“EZ RX” or “Buyer”). ~~Based on the foregoing, it~~ was clear to the Debtor’s professionals the EZ RX wanted to purchase the Debtor as a going concern.

In evaluating these bids, the Debtor and its professionals determined that the bid of \$3,000,000.00 would not yield anything for ~~any other creditor~~creditors other than PNC and the Chapter 11 administrative creditors, pursuant to the carve-out provisions in the Interim Cash Collateral Orders. The same was true of the offer of \$1,200,000.00 for the accounts receivable. As is set forth above, Debtor believes a portion of those receivables The may be problematic and without the Debtor to collect those receivables there would have to be a third party retained to do so, at an additional cost to the estate. Debtor and its professionals maintain that the only structure that might result in a distribution to other creditors would be ~~the~~ acceptance of the \$1,600,000.00 offer for ~~the Debtor’s other~~certain assets of the Debtor and for the Debtor to attempt to collect ~~out the Debtor’s~~sits accounts receivable. With this in mind, the Debtor’s professionals, with the consent of all parties, adjourned the hearing to approve the sale on several occasions to engage in negotiations with all parties.

The result of ~~these~~further negotiations with various parties is the Term Sheet, annexed hereto as Exhibit “E”. While the entire Term Sheet should be read for all of its express terms and conditions which control, what it accomplishes in summary is as follows:

- a) Pursuant to the Term Sheet with the Debtor, under certain terms and

conditions, PNC has agreed to accept the amount of \$2,500,000.00 under the Plan in full satisfaction of its claim against the Debtor, with a full reservation of rights against the Debtor's principal, James F. Zambri ("Mr. Zambri") on his guarantee and pursuant to a certain consent judgment that has been entered by the Supreme United States District Court of the State Southern District of New York, Richmond County. This amount shall be reduced by the \$100,000.00 additional adequate protection payment made by Debtor on or about January 12, 2017, and payments to be made by EZ RX to PNC as set forth in Class 2 below.

- b) The ~~Debtor~~ Debtor's Professionals, excluding the Broker, are limiting their payment of their Administrative Claims to another \$375,000.00 (to be funded by EZ RX) and are taking a pay out of up to six (6) months after Confirmation of the Plan. as set forth in the Term Sheet. The actual fees are presently in excess of \$450,000.00
- c) All Allowed Priority Claims will be paid out pursuant to statute and will be funded by EZ RX.
- d) The sum of \$150,000.00 will be placed in escrow five (5) days prior to the Confirmation Hearing and will be used to fund payments to Allowed Unsecured Claims upon the Effective Date.
- e) EZ RX will obtain the equity interest in the Debtor free and clear of all claims of any creditors or interest holders and will also own all Chapter 5 causes of action. (aside from any which may exist against PNC, which are released under the Plan).
- f) EZ RX will provide DIP financing for inventory purchases for the Debtor which shall be presented to the Court by separate motion, in the form of: (i) revolving credit of \$250,000.00 for inventory purchases; and (ii) a fixed line of credit of \$300,000.00 for inventory purchases and costs of operations

Debtor and its professionals believe that this transaction with EZ RX and PNC results in a distribution to unsecured creditors that would only have been accomplished by a sales price at auction of ~~\$3,500,555,000.00~~ - ~~\$3,600,660,000.00~~. The calculation is as follows: PNC's claim (\$2,800,000.00 plus) + Administrative Expenses (~~\$375,450,000~~ + \$135,000 (Broker)) + Priority Claims (at least \$25,000-\$125,000-), plus the \$150,000.00 distribution to creditors.

This must be compared to the option of selling the assets of the Debtor, excluding the accounts receivable, for the auction price of \$1,600,000.00 and collecting out the accounts receivable. The Debtor and Lakeland analyze that comparison differently. The Debtor's position is that its accounts receivable, including "in-house" receivables and the litigated no-fault and

Workers' Compensation receivables, have an estimated value of \$2,528,672.00, for a total estate of \$4,128,672.00. What is likely the best commission rate, for which no party has as yet given the Debtor a firm commitment, for servicing the liquidation of the receivables is 15%. As a result, in a best case scenario, these receivables would be reduced by \$379,300.80, resulting in a gross estate of \$3,749,371.20. Under such a scenario, which PNC does not support, its post-petition interest and expenses would continue to accrue (instead of being capped at a \$300,000.00 discount under the Term Sheet) thus offsetting much or all of any advantage from the increased amount recovered. Add to this the time/value of money from an immediate distribution to unsecured creditors and the uncertainty of 100% collection of the remaining receivables, and the Debtor and its professionals believes that this Plan provides the best recovery for unsecured and secured creditors.

Lakeland, on the other hand, believes that the Debtor's computation of the estimated value of the Debtor's accounts receivable is erroneous. Lakeland contends that that calculation must be broken up into two categories – "in-house" and "litigated," as broken out in the February 2017 Operating Report – since Lewin is handling the litigated claims, and a different firm would be separately handling the collection of the in-house claims. The correct calculation, Lakeland believes, is accordingly as follows:

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1. \$2,706,351 (gross amount of in-house receivables) x 70-80% (the recovery rate estimated by Lewin), less a 25% contingency fee; plus

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2. \$3,606,939 (gross amount of in-house receivables) x an estimated recovery rate, less a commission of 25-30%.

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As noted above, using a 75% rate, the net recovery on the litigated accounts receivable, assuming the Bronx County Court has subject matter jurisdiction, would be \$1,522,322 net of Lewin's fees. As to the in-house accounts receivable, which are in the gross amount of \$3,606,939, the Debtor's February 2017 Operating Report discounts the value of those receivables by 82.4%, to \$634,227. Lakeland believes that that discount rate is excessive and based solely on the ages of the in-house accounts receivable, without taking into account the extent to which there is documentation supporting the receivables regardless of age. Even using a valuation of \$634,227, the net recovery of that amount would be about \$475,670, making a total alternative recovery of approximately \$3,597,992 (i.e., \$475,670 + \$1,522,322 + \$1.6 million), roughly the same as is contemplated under the proposed Plan. Yet Lakeland believes that there is no basis for assuming a mere 17.6% collectability rate. If, for example, the rate were realistically estimated to be twice that amount, or 35%, the net recovery (at a 25% commission) would be \$946,821, which would make available to unsecured creditors an additional \$471,151 to the estate less any interest that would accrue on PNC's loan during the two parallel collection processes. (It if took a year to complete the collection efforts, the accrued interest would be approximately \$88,000.)

As of the time of this amended Disclosure Statement, the law firm The Schutzer Group, PLLC ("Schutzer") has expressed an interest in servicing the collection of the Debtor's in-house receivables and is prepared to make, within a matter of days, a firm proposal for that work upon

receiving certain information from the Debtor. (Although Lakeland gave Schutzer's name to the Debtor's counsel on December 5, 2016, counsel never spoke with Schutzer, focusing instead on the offer for the Debtor's accounts receivable made by EZ RX on December 9, 2016.) Schutzer's commission rate is 25% for recoveries without litigation (and 30% if litigation is required), and Schutzer believes that a collectability rate of 35% or higher is feasible. That estimate of the recovery of the in-house accounts receivable, coupled with Lewin's estimate of the recovery of the litigated accounts receivable and EZ RX's acquisition of the Debtor's business (without the accounts receivable) for \$1,600,000, has the potential to yield a significantly higher recovery for unsecured creditors – and for PNC, which would no longer discount its claim by \$300,000 – even after taking into account the elimination of PNC's discount, the elimination of the discount on administrative claims, and the continued accrual of interest on PNC's claim.

PART VIII **DESCRIPTION OF THE PLAN**

THIS PART PRESENTS ONLY A SUMMARY OF THE PLAN OF REORGANIZATION PROPOSED BY THE DEBTOR. CREDITORS ARE URGED TO READ THE PLAN IN FULL AND TO CONSULT WITH COUNSEL AS TO ITS CONTENTS. THE PLAN REPRESENTS A PROPOSED LEGALLY BINDING AGREEMENT BETWEEN THE DEBTOR AND ITS CREDITORS.

The Plan classifies the claims of Creditors of the Debtor into seven (7) categories.

CLASSIFICATION OF CLAIMS AND INTERESTS

The Allowed Claims against the Debtor are divided into the following classes:

Statutory Claims;

Allowed Administration Claims;

Class 1 - Allowed Unsecured Priority Claims;

Class 2 - Allowed Secured Claim of PNC;

Class 3 – Allowed Secured Claim of AmerisourceBergen;

Class 4 –Allowed Secured Claim of Lakeland;

Class 5 - Allowed Unsecured Claims;

Class 6 - Insider Claims; and

Class 7 - Equity Claim of the Shareholder of Debtor.

TREATMENT OF CLAIMS

STATUTORY CLAIMS

The claim of the Office of the United States Trustee, pursuant to statute, 28 U.S.C. § 1930(a)(6), together with interest, if any, pursuant to 31 U.S.C. § 3717, is included as a Statutory Claim. All outstanding quarterly fees and any applicable interest owed to the Office of the United States Trustee shall be paid in full on the Effective Date of the Plan. In addition, the Debtor shall continue to incur and pay quarterly fees and any applicable interest until the entry of the “Final Decree” or dismissal or conversion whichever occurs first. Unpaid United States Trustee’s fees accrue interest that is an expense of the Estate. The Debtor shall comply with the reporting requirements of the office of the United States Trustee until the entry of a Final Decree and shall file quarterly reports on January 15, April 15, July, 15 and October 15 of each year until entry of a Final Decree.

ADMINISTRATIVE CLAIMS

Administration claims, including any unpaid post-petition obligations of the Debtor and fees due professionals for services rendered in connection with this case. The Debtor has paid a portion of Court ~~approve~~approved administrative expenses as they have accrued. Upon the Distribution Date (or upon a determination by the Court that the claims for professional fees are ~~reasonable~~allowed, whichever is later) each claimant has agreed it will be paid *pro rata* on their entire claim (with adjustment for interim allowances) from ~~an~~a capped amount of \$375,000.00, to be paid by EZ RX as follows:

- 25% 30 days after entry of non-appealable order confirming Plan;
- 25% 60 days after entry of non-appealable order confirming Plan; and
- 50% 180 days after entry of non-appealable order confirming Plan.

<u>Claimant</u>	<u>Estimated Claim</u>
Rosen, Kantrow & Dillon, PLLC Attorneys for Debtor	\$350,000.00 (less \$124,012.56 <u>already received</u>)
CBIZ and CBIZ KA Financial Advisors to Debtor	\$200,000.00 (less \$51,932.80 <u>already received</u>)

With respect to the administrative fees of Warshaw, special counsel to Debtor in the pending State Court Litigation, due to the fact the Judge Ramos has stayed the action in its entirety, such firm has not incurred any significant fee during the administration of Debtor's bankruptcy estate. As such, Warshaw shall be receiving its fees and expenses post confirmation from EZ RX if ~~they are~~ it is retained by EZ RX.

EZ RX shall negotiate with Paragon Ventures, LLC, Debtor's retained business broker, as to the amount of its receipt of commissions for the sale, and, subject to this Court's approval, that Broker shall accept payment directly from EZ RX as payment in full for its administrative claim. Any payment to Paragon Ventures, LLC. Shall not come from the \$375,000.00 fund established by EZ RX.

The amounts set forth above are only approximations. The claims of professionals are subject to the approval of the Court, upon application and notice to Creditors.

The Administrative Class Creditors are impaired, ~~but~~ by agreement, and thus are not entitled to vote on the Plan.

CLASS 1 - UNSECURED PRIORITY TAX CLAIMS

Class 1 consists of the unsecured priority tax claims. There are three (3) claims in this class. The Debtor reserves the right to dispute these claims and may object to them. Any Allowed Claims shall be paid in full amount over period of sixty (60) months from the Filing Date in equal monthly payments plus statutory interest ~~and~~ (which in the case of the NYSDTP is presently 8%). The unsecured priority tax claims are set forth below:

1.1 Internal Revenue Service: The Internal Revenue Service filed a proof of claim in the amount of \$3,097.50 as a priority claim. This claim will not be objected to.

1.2 New York State Department of Taxation and Finance: New York State Department of Taxation and Finance filed a proof of claim in the amount of \$~~15,539.35~~ 25,763.46 as a ~~priority~~ secured claim. That creditor has also filed a ~~secured~~ priority claim of \$~~25,763.46~~ 750.00 as a ~~secured~~ priority claim. The Debtor will object to this secured claim in its entirety and any

allowed claim of the NYSDTP shall be reclassified as an Allowed Priority Claim and paid in accordance with the terms of Debtor's Plan.

1.3 City of New York Department of Finance: New York City Department of Finance has filed a priority claim in the amount of \$105,321.99. The majority of this claim is for NYC rent tax and the Debtor does not meet the threshold for the imposition of this tax. This claim will be objected to.

This class is not impaired.

CLASS 2 - ALLOWED SECURED OF PNC

Class 2 consists of the allowed secured claim of PNC. The Debtor entered into a secured loan with PNC on or about November 22, 2010, in the principal amount of \$2,500,000.00 under a line of credit ("Line of Credit") and \$500,000.00 under a term loan ("Term Loan"). In June of 2011, the Line of Credit was increased to \$3,000,000.00.

Pursuant to the Debtor's Second Amended Plan of Reorganization that was confirmed on August 16, 2013, ~~PNC's Claim in the Debtor's prior Chapter 11 case, PNC~~ received payments until December 2015, ~~and it~~ after which the Debtor failed to make a final balloon payment required by the Plan in an amount exceeding \$2.6MM. PNC filed a claim in this case for \$2,777,835.40. At present, PNC asserts that its Secured Claim exceeds \$2,800,000.00. ~~PNC shall be paid as follows:~~

PNC's aggregate claims against the Debtor now exceed \$2,800,000.00 (which claims will increase over time, the "Total Allowed PNC Claim"), shall be allowed in the amount of \$2,800,000.00¹ and (a) if the Plan is approved via an order confirming the Plan under the terms set forth herein (a "Confirmation Order"), shall be paid the total sum of, \$2,500,000.00 (the "Allowed PNC Plan Payment"), or (b) if the Asset Sale is approved via an order granting the 363 Sale Motion under the terms set forth herein (a "Sale Order"), Debtor and Buyer will support a provision in the Sale Order that provides that PNC shall be paid the total sum of, \$2,650,000.00 (the "Allowed PNC Sale Payment"), vis-a-vis funds from the Debtor and Buyer (including any amounts already received by PNC pursuant to (i)-(iv) below). The Allowed PNC Plan Payment or the Allowed PNC Sale Payment shall be paid to PNC, in addition to other consideration set forth below that will be provided to PNC, as follows:

PNC's claim shall be allowed and paid as follows:

¹ By way of example only, the Total Allowed PNC Claim will increase over time due to interest, attorneys' fees, other professional fees, et cetera.

- a) Debtor paid PNC \$100,000.00 in January 2017 in satisfaction of certain of Debtor's outstanding adequate protection obligations to PNC through November 2016 under the cash collateral Orders entered by the Court. Except as otherwise permitted hereunder or under the Fourth Interim Cash Collateral Order, no additional adequate protection payments shall be paid by the Debtor. PNC will credit the \$100,000.00 payment against the Total Allowed PNC Claim, Allowed PNC Plan Payment or the Allowed PNC Sale Payment, as the case may be.
- b) Debtor's counsel ~~shall take~~has taken the \$150,000.00 auction deposit ("Auction Deposit") it ~~is was~~ holding from Buyer and ~~deliver~~delivered the Auction Deposit to PNC ~~upon after~~ entry of ~~an the~~ interim order approving the DIP Financing (defined below). ~~Upon~~Since receipt of \$150,000.00 in cleared funds from the Debtor in accordance with this paragraph, PNC ~~will~~has been deemed to credit the \$150,000.00 payment against the Total Allowed PNC Claim, Allowed PNC Plan Payment or the Allowed PNC Sale Payment, as the case may be.
- c) Buyer ~~shall pay~~has paid an additional \$150,000.00 ("Additional Deposit") directly to PNC ~~upon after~~ entry of ~~an the~~ interim order approving the DIP Financing (defined below). ~~Upon~~Since receipt of \$150,000.00 in cleared funds from the Buyer in accordance with this paragraph, PNC ~~will~~has been deemed to credit the \$150,000.00 payment against the Total Allowed PNC Claim, Allowed PNC Plan Payment or the Allowed PNC Sale Payment, as the case may be. ~~If As~~ PNC ~~receives~~has received all of the payments referenced in ~~above~~ paragraphs (i), ~~(ii a)~~, (b) and ~~(iii c)~~ ("Term Sheet Payments"), the remaining balance of the Allowed PNC Plan Payment ~~will be is~~ \$2,100,000.00, the remaining balance of the Allowed PNC Sale Payment ~~will be is~~ \$2,250,000.00, and the remaining balance of the Total Allowed PNC Claim ~~will be is~~ not less than \$2,400,000.00.
- d) Buyer shall deposit \$2,100,000.00 in Debtor's counsel's escrow account at least five (5) business days prior to the first scheduled hearing on confirmation of the Plan ("Final Plan/Sale Deposit"). Escrow instructions acceptable to the Debtor and PNC will be provided by Debtor to Buyer and approved and executed by Buyer.
- e) Debtor shall pay to PNC the Final Plan/Sale Deposit within five (5) business days following entry of a: (i) Confirmation Order, or (ii) a Sale Order. The parties hereto intend that unless an order staying the Confirmation Order or Sale Order, as the case maybe, is entered within fourteen (14) days of entry of such Confirmation Order or Sale Order, the doctrine of equitable mootness shall prevent reversal of effectiveness and consummation of the Plan or the Sale Order, as the case may be. For the sake of clarity, all payments set forth herein

shall be made upon order(s) of the Bankruptcy Court. Upon timely receipt of \$2,100,000.00 in cleared funds from the Debtor in accordance with this paragraph, the remaining balance of the Allowed PNC Plan Payment will be \$0.00, the remaining balance of the Allowed PNC Sale Payment will be at least \$150,000.00, and the remaining balance of the Total Allowed PNC Claim will be at least \$300,000.00. After the Allowed PNC Plan Payment amount or the Allowed PNC Sale Payment amounts, as the case may be, is \$0.00, there will still be a balance remaining on the Total Allowed PNC Claim. That balance due is payable from other sources including without limitation, the Former Employee Litigation, the Staten Island Property and the assets of James Zambri.

- f) Immediately upon the entry of a Sale Order, Debtor shall also pay to PNC an additional \$150,000.00 provided that the Sale Order specifically approves of such payment. Upon receipt of \$150,000.00 in cleared funds from the Debtor in accordance with this paragraph, the remaining balance of the Allowed PNC Sale Payment will be \$0.00, and the remaining balance of the Total Allowed PNC Claim will be \$150,000.00. The Total Allowed PNC Claim is an estimate and will increase over time due to, among other things, interest, attorneys' fees, and other professional claims of PNC against the Debtor and/or James Zambri. For the purposes of facilitating approval of the Asset Sale, whether via Confirmation Order of Sale Order, PNC is agreeing to cap the Allowed PNC Plan Payment and the Allowed PNC Sale Payment in the manner and amounts set forth in this Term Sheet.

The Allowed PNC Plan Payments and the Allowed PNC Sale Payments received by PNC shall be free and clear of, among other things, any and all rights, claims, actions, causes of action, demands, credits, disputes, set offs, pursuits, recoveries, claw backs, of any and every kind by any person, entity, authority, government, government agency and/or otherwise under the Bankruptcy Code, state law, federal law, regulation, contract, agreement or otherwise. These expressly include, but are not limited to, those for recovery under Chapter 5 of the Bankruptcy Code and also include, by way of example only, claims and recoveries for professional fees, costs and expenses, attorneys' fees, costs and expenses, auctioneer fees, commissions and expenses, accountants' fees and expenses, any alleged competing creditor claim(s), etc.

Debtor and Buyer concede and agree that PNC, as well any and all of the Allowed PNC Plan Payments, Allowed PNC Sale Payments, payments on the Total Allowed PNC Claim, and any other payments received or to be received in this case by PNC, are and shall remain without any risk of any reductions, claims, actions, causes of action, claw backs, credits, offsets, recoupment, Chapter 5 claims or recoveries, any other recoveries, or the like, and the Plan, the proposed Confirmation Order, and any proposed Sale Order shall so state and reflect same.

PNC, as well any and all of the Allowed PNC Plan Payments, Allowed PNC Sale Payments, payments on the Total Allowed PNC Claim, and any other payments received in this

case by PNC, are and shall remain without any risk of any reductions, claims, actions, causes of action, claw backs, credits, offsets, recoupment, Chapter 5 claims or recoveries, any other recoveries, or the like, and the Plan, the proposed Confirmation Order, shall so state and reflect same.

PNC shall retain the Total Allowed PNC Claim (less payments received hereunder, including under the Plan or Sale Order), as well as, among other things, all claims, actions, causes of action, rights, pursuits, demands, defenses, liens, interests, security interests, levies, proceeds, lien priorities, judgments, and remedies it possesses and holds against (a) Debtor's principal Mr. Zambri, (b) any personal and/or real property that Mr. Zambri may own, including, without limitation, the Staten Island Property, (c) right to participate in any recovery or distribution from the Former Employee Litigation, et cetera, until the Total Allowed PNC Claim is paid in full.

PNC has reserved to itself and retains, among other things, all of PNC's rights, liens, claims, interests, security interests, levies, proceeds, lien priorities, remedies, defenses, demands, other rights, pursuits and exercise thereof under all applicable loan documents regarding, without limitation, the Total Allowed PNC Claim, other PNC's claims, the Bankruptcy Code, court orders, et cetera, except as modified by the final, fully executed Term Sheet, contemplated orders to implement same, and payment in full of all amounts due and owing and to become due and owing to PNC, including, but not limited to, the Total Allowed PNC Claim.

Anything to the contrary herein notwithstanding, PNC shall retain, among other things, all of its rights, liens, claims, interests, security interests, levies, proceeds, lien priorities, judgments, injunctions, remedies, defenses, demands, other rights, pursuits and exercise thereof under all applicable loan documents regarding PNC's claims, the Bankruptcy Code, court orders, et cetera until it receives payment in full of its Total Allowed PNC Claim.

Should there be any recovery by Debtor (in excess of legal fees and costs) on the pending State Court Litigation against former officers and/or employees of Debtor (the "Former Employee Litigation"), PNC shall receive proceeds therefrom unless it has already received payment in full of the Total Allowed PNC Claim. If the Plan is confirmed, PNC shall participate on a dollar for dollar basis with the owner of the Former Employee Litigation (e.g., if \$100 is available to be paid to the owner of the Former Employee Litigation (net of legal fees and costs), then \$50 of that \$100 shall be paid to PNC). PNC's receipt of funds from the Former Employee Litigation shall cease once PNC has received payment in full on the Total Allowed PNC Claim. The Plan and the Confirmation Order shall provide PNC with a fully and properly perfected lien against the Former Employee Litigation and the proceeds thereof.

PNC's judgment, debt, guaranty, claims, liens, rights, etc. against the Debtor in this matter and related federal case against Zambri shall continue and follow Zambri and his property, including without limitation, the Staten Island Property, until the Total Allowed PNC Claim is paid in full.

The Plan and the Sale Order shall provide PNC with a general release in favor PNC from the Debtor. Buyer shall provide PNC with a general release in PNC's favor upon entry of a Confirmation Order or Sale Order. Such releases shall be in favor of PNC and its current and former parent companies, subsidiaries and affiliates and all of their current and former partners, limited partners, managers, predecessors, successors, stockholders, members, employees, agents, officers, directors, attorneys and other professionals, and shall be binding on and survive any change, supplement or modification of the proposed Plan/confirmed Plan, Sale Order, conversion of the case to chapter 7 case, appointment of a trustee, appointment of an examiner, or any other fiduciary, post plan confirmation (whether pre- or post- Confirmation Order or Sale Order, as the case may be), bankruptcy court order, or other order. In the event that any payment(s) referenced herein are made to PNC and then are rescinded, avoided, or recovered from PNC for any reason whatsoever ("Avoided Payment(s)"), including, but not limited to, proceedings in connection with the insolvency or bankruptcy of the party that makes the Avoided Payment(s) (or the party for whose benefit the Avoided Payment(s) were made), the Debtor shall remain liable to PNC for the amount of the Avoided Payment(s) in with PNC having the same secured claim status and priority as before the first Avoided Payment(s) were made.

Any recovery on behalf of PNC shall be paid before any further distribution pursuant to the treatment accorded to Class 6, above and beyond the \$150,000.00 distribution to general unsecured creditors from the Unsecured Creditors' Reserve Account described in Class 5 below.

~~———— PNC shall retain all security interests until all payments have been received.~~

This Class is impaired and is entitled to vote under the Plan.

CLASS 3 - SECURED CLAIM OF AMERISOURCE

Class 3 consists of the Secured Claim of AmerisourceBergen Drug Corp. ("Amerisource"). In the prior Chapter 11 case, Amerisource filed a secured claim in the amount of \$564,065.10 pursuant to a Prime Vendor Agreement ("PVA") that was entered into on or about December 2010 for a term of two (2) years. That Agreement was called in default and terminated pre-petition. Since the commencement of this case, the Debtor and Amerisource have been conducting business pursuant to most of the terms of that agreement (the exclusions being that Amerisource has not provided any credit to the Debtor) ~~Amerisource~~ _____. It ~~is~~ was the Debtor's position that Amerisource is in a third position on all of the Debtor's assets and is in a second position on the Debtor's fixtures and equipment. Based upon the Debtor's liquidation analysis the Debtor believes that Amerisource was secured up to the amount of \$431,000.00 (less any further adequate protection payments made during that case and under the confirmed Plan in that case).

The Amerisource allowed secured claim (as defined above) was paid under ~~the prior confirmed plan~~ the Prior Confirmed Plan, according to the following schedule, together with interest at the rate of 6% per annum:

- a. \$6,000.00 per month for the first 12 months following the Effective Date;
- b. \$7,000.00 per month for the second 12 months following the Effective Date;
- c. \$8,000.00 per month for the third 12 months following the Effective Date; and
- d. a balloon payment equal to the then-existing balance on the third anniversary of the Effective Date.

Under ~~that~~ the Prior Confirmed Plan, Amerisource's lien on the Debtor's assets, subordinate to the lien of PNC pursuant to a Lien Priority Agreement dated November 23, 2010, would continue in full force and effect pending the payment in full of the claim, except that Amerisource would have a Purchase Money Security Interest in all Amerisource PMSI Inventory.

As of the filing date of this case, the unpaid balance on the Prior Confirmed Plan payments was approximately \$200,000.00. It is Debtor's position that due to Amerisource having required the Debtor to pre-pay or pay COD for all product for a significant period of time prior to the filing of this case, there was no inventory to which the PMSI attached. Amerisource received \$60,000.00 in adequate protection payments during this case from Debtor.

~~As a result of~~ Based on the results of the Auction, it is Debtor's position that Amerisource's claims are ~~now~~ wholly unsecured and that the secured claim is \$0.00. The Debtor reserves its rights as to recovery of any adequate protection payments and/or overpayments that were paid.

Amerisource shall retain (less payments received hereunder, including under the Plan or Sale Order), as well as, among other things, all claims, actions, causes of action, rights, pursuits, demands, defenses, liens, interests, security interests, levies, proceeds, lien priorities, judgments, and remedies it possesses and holds against: (a) Debtor's principal Mr. Zambri, (b) any personal and/or real property that Mr. Zambri may own, including, without limitation, the Staten Island Property.

This Class is impaired and is entitled to vote under the Plan.

CLASS 4 - SECURED CLAIM OF LAKELAND

Class 4 consists of the claim of Lakeland, which is the assignee of the Bank of America's Allowed Secured and Allowed Unsecured Claims in the first Chapter 11 case. At the time of the filing, Lakeland had an Allowed Secured Claim of \$19,500.00, which had a first position on some of the Debtor's equipment. Pursuant to a Stipulation and Order entered on October 26, 2016 [Dkt. No, 103] the Court approved a settlement under which Lakeland's Claim was paid in full and that lien was released. That Settlement Agreement also granted Lakeland a new Secured Claim that was subordinate to all other Allowed Secured claims, in the amount of \$94,372.90.

~~As a result of~~ Based on the results of the Auction, it is the Debtor's position that Lakeland's claim is now wholly unsecured and that the secured claim is \$0.00

Lakeland shall retain (less payments received hereunder, including under the Plan or Sale Order), as well as, among other things, all claims, actions, causes of action, rights, pursuits, demands, defenses, liens, interests, security interests, levies, proceeds, lien priorities, judgments, and remedies it possesses and holds against: (a) Debtor's principal Mr. Zambri, (b) any personal and/or real property that Mr. Zambri may own, including, without limitation, the Staten Island Property.

This Class is impaired and is entitled to vote under the Plan.

CLASS 5 - ALLOWED UNSECURED CLAIMS

Class 5 consists of the Allowed Unsecured Non-Priority Pre-Petition Claims. The unsecured creditors shall receive a *pro rata* distribution from the Unsecured Creditors' Reserve Account of their allowed claims, without interest.

The Unsecured Creditors' Reserve Account shall be funded fully by EZ RX in the amount of \$150,000.00 at least five (5) business days prior to the Confirmation Hearing in this case.

The Chart below sets forth the scheduled and filed unsecured claims and the Debtor's position as to each claim:

CREDITOR	AMOUNT	SCHEDULED OR PROOF OF CLAIM	TREATMENT
Accredo	10,764.68	Scheduled	Allowed
Ally Financial	1,936.03	Claim No. 3	Allowed
American Express	12.93	Scheduled	Allowed
AmeriSource	1,404,316.15	Claim No. 10	Reclassified from Secured Claim to Class 5 and Disputed
BioRidge	143,803.71	Claim No. 5	Allowed
Boiron	603.51	Scheduled	Allowed
Charles Solana & Sons	765.76	Scheduled	Allowed

City of New York	20,038.70	Claim No. 6	Disputed
Creative Product Source, Inc.	897.08	Scheduled	Allowed
Deluxe Delivery	4,184.39	Scheduled	Allowed
Destination Print	939.92	Scheduled	Allowed
Dr. Comfort	313.97	Scheduled	Allowed
Faragon	58,071.19	Scheduled	Allowed
FedEx	5,487.33	Claim No. 7	Allowed
Freedom Data Services	2,298.84	Scheduled	Allowed
Germfree	123.72	Scheduled	Allowed
HealthNow	3,166,910.00	Claim No. 11	Treated in Class 6
HD Smith	73,704.78	Claim No. 12	Reclassified
Internal Revenue Service	8,280.77	Claim No. 4	Allowed
Lagniappe Pharmacy Services	7,269.57	Scheduled	Allowed
Lakeland Capital	901,904.93	Claim No. 8	Reclassified from Secured Claim to Class 5 and Disputed
Matulane Direct	11,032.79	Scheduled	Allowed
Medisca Inc	13,968.00	Scheduled	Allowed
New York State Department of Taxation and Finance	1,929,17750.00	Claim No. 1-3	Disputed Allowed
New York State Workers Compensation Board	112,000.00	Claim No. 14	Disputed
NMG Realty Co.	49,606.27	Scheduled	Allowed
NuCare	25,079.96	Scheduled	Allowed

Parata Inc.	10,308.28	Scheduled	Allowed
RBS Solutions	4,000.00	Scheduled	Allowed
Smith Medical Partners	40,967.32	Claim No. 13	Allowed
Warshaw Bernstein	29,938.99	Scheduled	Allowed
Windstream	4,188.79	Scheduled	Allowed

TOTAL ~~6,115,647.53~~
\$2,947,558.36

For full disclosure, those creditors above that are have a treatment of “Reclassified and Disputed” have filed proofs of claim that assert a secured claim, which Debtor disputes based upon the auction value of its property and thus, such claims shall be treated as general unsecured claims herein.

This class is impaired and is entitled to vote under the Plan.

CLASS 6 - INSIDER CLAIMS

Class 6 consists of the claim of Mr. Zambri. For sake of clarity, Debtor included the claim of Mr. Zambri on its Amended Schedule F [ECF Doc. No. 46] on account of his shareholder loan in the amount of \$371,109.31 [Scheduled Claim No. 3.15]. Mr. Zambri shall not be entitled to a distribution on such scheduled claim as an allowed general unsecured creditor ~~as contemplated~~ in Class 5 above, nor shall Mr. Zambri be entitled to convert such claim into equity in the reorganized Debtor.

Class 6 also consists of the claim of Healthnow Solutions, Inc., (“Healthnow”), a prior insider of Debtor, which claim was filed in the amount of \$3,166,910.00, (identified as Claim No. 11-). Healthnow shall not be entitled to a distribution on such scheduled claim as an allowed general unsecured creditor ~~as contemplated~~ in Class 5 above, nor shall Healthnow be entitled to convert such claim into equity in the reorganized Debtor.

This class is not entitled to vote under the Plan.

CLASS 7 - EQUITY CLAIM OF THE MEMBER OF THE DEBTOR

Class 7 consists of the allowed claim of Mr. Zambri, the sole shareholder of the Debtor. Mr. Zambri shall not retain his interest in the reorganized Debtor and his equity interest shall be

transferred to EZ RX, free and clear of all claims, interests and encumbrances in exchange for the payment of all amounts required to be paid by EZ RX pursuant to the Plan. The Equity interest of the Debtor shall be conveyed to EZ RX upon the Effective Date. Both Debtor and EZ RX shall be liable for the payment of Chapter 11 administrative expenses.

This class is not entitled to vote under the Plan.

PART IX
MEANS OF EFFECTUATING THE PLAN

The Plan shall be effectuated by having all of the motions listed in the Term Sheet granted and orders being entered granting those motions.

In addition, EZ RX shall make all of the payments required under the Plan, the Term Sheet, and the DIP Financing Order, and all of the required accounts shall be set up and funded, and all Administrative and Priority Payments required under the Plan to be funded by EZ RX shall be so funded.

PART X
TREATMENT OF EXECUTORY CONTRACTS

Except as provided herein, any and all executory contracts or leases of the Debtor have already been rejected and any that are not expressly assumed herein or previously rejected, or in the Order confirming the Plan, or by Order of the Bankruptcy Court prior to the Effective Date or pursuant to a proceeding or motion commenced prior to the Consummation Date, are hereby assumed pursuant to Section 365 of the Bankruptcy Code.

Any entity whose claim arises from rejection of an executory contract or lease shall, to the extent that such claim becomes an allowed claim, have the rights of an unsecured creditor with respect thereto. All lease rejection claims shall be filed by such claimant with the Clerk of the Bankruptcy Court by no later than ~~fifteen~~ thirty (30) days prior to the Confirmation Hearing in this case.

PART XI
FULL AND FINAL SATISFACTION

As provided in the Plan, all payments, distributions and transfers of cash or property under the Plan are in full and final satisfaction, settlement and release of all claims against the Debtor and the estate of any nature whatsoever existing at the Confirmation Date.

Except as otherwise provided in the Plan, the Confirmation Order or such other order of the Bankruptcy Court that may be applicable, on the latest to occur of: (a) the Effective Date, (b) the entry of a Final Order resolving all Claims in the Chapter 11 Case, and (c) the final distribution made to holders of Allowed Claims in accordance with the Plan, all Claims against the Debtor and Debtor in Possession, shall be discharged and released in full; provided, however, that, the Bankruptcy Court may, upon request by the Reorganized Debtor, and notice and a hearing, enter an order setting forth that such Claims shall be deemed discharged and released on such earlier date as determined by the Bankruptcy Court. All Persons and Entities shall be precluded from asserting against the Debtor, the Debtor in Possession, their successors or assigns, including, without limitation, the Reorganized Debtor, or its respective assets, properties or interests in property, any other or further Claims based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Confirmation Date, whether or not the facts or legal bases therefor were known or existed prior to the Confirmation Date regardless of whether a proof of Claim was filed, whether the holder thereof voted to accept or reject the Plan or whether the Claim is an Allowed Claim. Nothing in the Disclosure Statement, Plan or the order confirming the Plan, shall operate to release, discharge or modify any of PNC's existing or potential claims, rights, remedies, demands, contracts, promises, suits, actions, causes of action, and right of appeal, both known and unknown, against Mr. Zambri, including without limitation, those claims and causes of action asserted by PNC and Lakeland against Mr. Zambri.

Except as otherwise expressly provided in the Plan, the Confirmation Order or such other order of the Bankruptcy Court that may be applicable, all Persons or Entities who have held, hold or may hold Claims or any other debt or liability that is discharged, terminated or cancelled pursuant to the Plan are permanently enjoined, from and after the Effective Date, from: (a) commencing or continuing in any manner any action or other proceeding of any kind on any such Claim or other debt or liability that is terminated or cancelled pursuant to the Plan against the Debtor, the Debtor in Possession or the Reorganized Debtor, the Debtor's estate, or their respective properties or interests in properties, (b) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against the Debtor, the Debtor in Possession or the Reorganized Debtor, the Debtor's estate, or their respective properties or interests in properties, (c) creating, perfecting, or enforcing any encumbrance of any kind against the Debtor, the Debtor in Possession or the Reorganized Debtor, or against their respective property or interests in property, and (d) except to the extent provided, permitted or preserved by sections 553, 555, 556, 559 or 560 of the Bankruptcy Code or pursuant to the common law right of recoupment, asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from the Debtor, the Debtor in Possession or the Reorganized Debtor, or against

their respective property or interests in property, with respect to any such Claim or other debt or liability that is discharged that is terminated or cancelled pursuant to the Plan.

PART XII

METHOD FOR DETERMINATION OF ALLOWED CLAIMS

The Plan provides for payment to be made only to holders of “allowed” claims, in the various classes.² As to the claims incurred prior to the Filing Date, there are ~~two~~three avenues by which such claims may become “allowed” claims entitled to payment under the Plan. First, if a claim is listed in Debtor’s Chapter 11 schedules (as previously filed with the Court and annexed hereto as Exhibit “B” for reference) it is automatically allowed unless those schedules denominate that particular claim as “contingent,” “unliquidated,” or “disputed,” or unless an objection thereto is filed with the Court and served upon the claimant. If an objection is interposed, the validity and amount of the claim will be determined by the Bankruptcy Court, following a hearing.

The second method by which a claim may be allowed is by the filing of a “proof of claim” with the Bankruptcy Court. If the claim is not disputed or objected to, it is deemed allowed. Such

² The term “allowed claims” is defined in the Plan as follows:

1.4 “Allowed Claim” means, (1) any Claim listed on debtor’s schedules as filed in connection with its reorganization case which is liquidated in amount and is not designated as contingent or disputed and/or, (2) any Claim against debtor, proof of which was filed on or before the bar date for filing claims against debtor’s estate, against which filed claim no objection to the allowance thereof has been or is interposed, or as to any such objection there has been a final Order entered and/or (3) any claim against debtor which is reduced to writing, consented to by debtor and liquidated in amount, which writing has been approved by a final Order.”

“Impairment of claims” is defined in the Plan as follows:

1.31 “Impairment of Claims or Interest” - The classes of claims set forth hereafter are described as “impaired” or not “impaired”. Impairment is defined in Section 1124 of the Code as follows:

Section 1124. Impairment of claims or interests

Except as provided in Section 1123(a)(4) of this title, a class of claims or interests is impaired under a plan unless, with respect to each claim or interest of such class, the plan - -

- (1) leaves unaltered the legal, equitable and contractual rights to which such claim or interest entitles the holder of such claim or interest;
- (2) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default - -
 - (A) cures any such default that occurred before or after the commencement of the case under this title, other than a default of a kind specified in section 365(b)(2) of this title;
 - (B) reinstates the maturity of such claim or interest as such maturity existed before such default;
 - (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; and
 - (D) does not otherwise alter the legal, equitable or contractual rights to which such claim or interest entitles the holder of such claim or interest; or
- (3) provides that, on the effective date of the plan, the holder of such claim or interest receives, on account of such claim or interest, cash equal to - -
 - (A) with respect to a claim, the allowed amount of such claim; or
 - (B) with respect to an interest, if applicable, the greater of - -
 - (i) any fixed liquidation preference to which the terms of any security representing such interest entitle the holder of such interest; or
 - (ii) any fixed price at which the debtor, under the terms of such security, may redeem such security from such holder.”

filing is required in order to assert any claim not included in the schedules, and for any claim denominated therein as "contingent," "unliquidated," or "disputed."

The third method by which a claim may be allowed is by the Plan stating that the claim is allowed.

PART XIII
VOTING IMPAIRMENT, CONFIRMATION AND CRAMDOWN

A. Voting:

Claimants with allowed claims in impaired classes are entitled to vote to accept or reject the Plan. A claimant who fails to vote to either accept or reject the Plan will not be included in the calculations regarding the acceptance or rejection of the Plan. Debtor, as the Plan proponent, believes that the Creditors in Classes 2, 3, 4, 5, 6, and 7 are impaired.

Those impaired classes which are entitled to vote will receive ballots. Instructions for completing and returning the ballots are set forth thereon and should be reviewed at length. The Plan will be confirmed by the Bankruptcy Court and made binding upon all claimants if, with respect to all classes of claimants, the Plan is accepted by the holders of two-thirds (2/3) in amount and more than one half (1/2) in number of allowed claims in each such classes voting upon the ~~plan~~Plan.

B. Confirmation Without Acceptance by All Impaired Classes, Cramdown.

Generally, if a Plan is not accepted by all impaired classes, it may nevertheless be confirmed by the Bankruptcy Court if: (i) the Plan is accepted by at least one impaired class and it meets all of the other requirements of Section 1129(a) of the Bankruptcy Code; (ii) the Plan does not discriminate unfairly; and (iii) the Plan is fair and equitable to the rejecting classes. Such a finding would require a determination by the Bankruptcy Court that the Plan meets the requirements of Section 1129(b) of the Bankruptcy Code, including that no holder of any claim or interest junior to the claims of the rejecting class is receiving or retaining any property or payment under the Plan solely on account of such claim or interests. This requirement is generally referred to as the "absolute priority rule".

The "cramdown" provisions for confirmation of a Plan despite the non-acceptance of one or more impaired classes of the claims or interest are set forth in Section 1129(b) of the Bankruptcy Code. Section 1129(b)(1) of the Bankruptcy Code states:

Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to the Plan, the Court, on request of the proponent of the Plan, shall confirm the Plan notwithstanding the requirements of such

paragraph if the Plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the Plan.

The proponent does not represent that the "cramdown" provisions ~~would~~will allow ~~the~~ confirmation of the Debtor's Plan-, although it believes that they will. That determination ~~should~~can only be made by the Court after a ~~review of the information contained herein~~hearing on Plan confirmation.

C. The Confirmation Hearing

The Bankruptcy Court will schedule a Confirmation Hearing. The Confirmation Hearing will be held before United States Bankruptcy Judge Stuart M. Bernstein, or another Judge of that Court sitting in his absence, at the United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York. 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 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.

PART XIV **POTENTIAL AVOIDANCE AND OTHER SIMILAR CASES**

Avoidance actions are defined as follows:

(a) fraudulent conveyances pursuant to Bankruptcy Code Section 548 (fraudulent transfers and obligations) and Section 550 (transferee liability), or claims or actions under the Uniform Fraudulent Conveyance Law of New York State, and the other fraudulent conveyance laws extent in the State of New York;

(b) preferential payments, pursuant to Section 547 of the Bankruptcy Code, which includes a payment made: (i) within ninety (90) days prior to the filing of the original petition for relief under the Bankruptcy Code (or one year in the case of an insider); (ii) that was for prior obligations of the Debtor, not paid within the time prescribed in the terms usually employed between the Debtor and the Creditor receiving the payment; (iii) made while the Debtor was insolvent; (iv) which allowed the Creditor to receive more than it would have in a liquidation of the Debtor's estate;

(c) insider preferential payments, pursuant to Section 547 of the Bankruptcy Code, which includes a preferential payment made by an "insider" within one (1) year prior to the filing of the Petition, instead of ninety (90) days as in the case of all others.³

Under the Plan, EZ RX is purchasing any and all Bankruptcy Code Chapter 5 causes of action except those that may exist against PNC, if any, which are waived, extinguished and released under the Plan. While the Debtor might have causes of action against Mr. Zambri, he is also a guarantor of approximately \$2,000,000.00, for which there are already more than \$1,000,000 in judgments. Furthermore, Mr. Zambri has already contributed his largest asset to Debtor's estate, to wit the net proceeds from the sale of the real property commonly known as 22 Jackson Avenue, Staten Island, New York, which Mr. Zambri previously personally owned. Thus, the expenditure of legal fees by Debtor to attempt to recoup these amounts is not in the estate's best interest, as such fees would likely exceed any recovery.

PART XV

DISCUSSION OF COMPARATIVE RECOVERIES

To determine what might be recovered by an unsecured creditor, in a hypothetical Chapter 7 liquidation case, the following steps should be taken:

- (1) determine the dollar amount that would be generated from the liquidation by forced sale of the Debtor's assets by a Chapter 7 trustee; and
- (2) subtract the balance due the secured creditors, the estimated costs of the liquidation (including the Chapter 7 trustee's fees and the fees of professionals employed by the Chapter 7 trustee), the unpaid expenses of the reorganization proceeding and other bankruptcy priority obligations (such as priority wages, union and tax obligations).

The amounts described as the unpaid expenses of the reorganization (as more fully described above) must be fully paid before any funds would be made available to allowed general unsecured creditors. The value of the distribution resulting from a liquidation (after subtracting the amounts described above) may then be compared with a recovery estimated to be forthcoming under the proposed Plan.

³ The term "insider" is defined in Section 101(31) of the Bankruptcy Code as follows:

- "(31) 'insider' includes - -
- (B) if the debtor is a corporation - -
 - (I) director of the debtor
 - (ii) officer of the debtor
 - (iii) person in control of the debtor, ..."

In this case, property available for liquidation consists of the Debtor's accounts receivable and other assets listed on the Petition. During the course of the case, an auction sale of these assets took place. As set forth above in Part IV, the Debtor's assets were offered first in bulk. The highest bid was \$3,000,000.00, with certain contingencies as to due diligence and obtaining a new lease from the Debtor's landlord (which lease was expiring on December 31, 2016). The Debtor's assets, exclusive of its accounts receivable were then auctioned and the highest bid was \$1,600,000.00, plus inventory. The Debtor's accounts receivables were then auctioned as a separate asset. The highest bid was \$1,200,000.00. All of these bids were made by the same party, EZ RX.

In evaluating these bids, the Debtor and its professionals determined that the bid of \$3,000,000.00 would not yield anything for any other creditor other than PNC and the Chapter 11 administrative creditors, pursuant to the carve-out provisions in the Interim Cash collateral orders. The same was true of the offer of \$1,200,000.00 for the accounts receivables. The only structure that might result in a distribution to other creditors would be the acceptance of the \$1,600,000.00 offer for the Debtor's other assets and to attempt to collect ~~out~~ the Debtor's accounts receivable. With this in mind, the Debtor's professionals, with the consent of all parties, adjourned the hearing to approve the sale on several occasions to engage in negotiations with all parties.

The estimated liabilities would be as follows:

Chapter 7 expenses and commissions	\$ 10,000.00
Chapter 11 professional fee expenses	375 <u>450</u> ,000.00
Broker's Commissions	\$ 133,000.00
Priority Tax Claims	\$ 125,000.00
PNC Secured Claim	\$ 2,800,000.00
Total	\$ 3,443 <u>518</u> ,000.00
Available for Unsecured Creditors	\$ 0.00

As a result of this analysis, the Debtor believes that unsecured creditors will obtain ~~much more under the Plan than they would in a liquidation of the Debtor~~ \$150,000 more under the Plan than they would in a liquidation of the Debtor. Lakeland, for the reasons discussed in Part VII above, believes that the sale of the Debtor for \$1,600,000, and the collection of the Debtor's accounts receivable, has the potential to yield a significantly higher recovery for unsecured creditors (and PNC), even after taking into account the elimination of the discounts of PNC's claim and administrative claims and the continued accrual of interest on PNC's claim.

PART XVI
TAX CONSEQUENCES

The Debtor is not aware of any tax consequences that may result from the confirmation of this Plan. Creditors are instructed to consult their own tax advisors.

The following discussion summary is based upon the IRC, Treasury Regulations promulgated thereunder, judicial decisions, and published administrative rules and pronouncements of the IRS, all in effect on the date hereof. Changes in such rules or new interpretations thereof may have retroactive effect and could significantly affect the U.S. federal income tax consequences described below.

The U.S. federal income tax consequences of the Plan are complex and are subject to significant uncertainties. The Debtor has not requested a ruling from the IRS or an opinion of counsel with respect to any of the tax aspects of the Plan. Thus, no assurance can be given as to the interpretation that the IRS may adopt. In addition, this summary generally does not address foreign, state or local tax consequences of the Plan, nor does it address the U.S. federal income tax consequences of the Plan to special classes of taxpayers (such as foreign taxpayers, broker-dealers, banks, mutual funds, insurance companies, other financial institutions, small business investment companies, regulated investment companies, tax-exempt organizations, persons holding an equity interest as part of an integrated constructive sale or straddle, and investors in pass-through entities).

Accordingly, the following summary of certain U.S. federal income tax consequences is for information purposes only and is not a substitute for careful tax planning and advice based upon the individual circumstances pertaining to a holder of a Claim.

IRS Circular 230 Notice: To ensure compliance with the IRS Circular 230, holders of Claims are hereby notified that: (A) any discussion of U.S. federal tax issues contained or referred to in this Disclosure Statement is not intended or written to be used, and cannot be used, by holders of Claims for the purpose of avoiding penalties that may be imposed on them under the Tax Code; (B) such discussion is written in connection with the promotion or marketing by the Debtor of the transactions or matters addressed herein; and (C) holders of Claims should seek advice based on their particular circumstances from an independent tax advisor.

PART XVII
UNCLAIMED DIVIDENDS

Except as otherwise provided herein, in the event any claimant fails to claim any cash within six (6) months from the date such cash is distributed, such claimant shall forfeit all rights thereof, and to any and all future payments, and thereafter the claim for which such cash was distributed shall be treated as a Disallowed Claim. In this regard, distributions to claimants entitled

thereto shall be sent to their last known address set forth on a proof of claim filed with the Court or, if no proof of claim is filed, on the schedules filed by the Debtor, or to such other address as may be designated by a claimant in a writing delivered to the Debtor, with a copy to the Debtor's counsel at least one week prior to the distribution. All unclaimed cash shall be redistributed with the next distribution.

PART XVIII
RETENTION OF JURISDICTION

The Bankruptcy Court shall retain jurisdiction of Debtor's case pursuant to and for the purposes set forth in Section 1127(b) of the Bankruptcy Code and, *inter alia*, for the following purposes:

- (a) to hear and determine all controversies concerning allowance of Claims;
- (b) to determine any and all applications for compensation for Professional Persons and similar fees;
- (c) to hear and determine any and all pending applications for the rejection or assumption or for the assumption and assignment, as the case may be, of executory contracts to which the Debtor is a party or with respect to which Debtor may be liable, and to hear and determine, and if need be to liquidate, any and all Claims arising therefrom;
- (d) to determine any and all applications, adversary proceedings, and contested or litigated matters properly before the Court;
- (e) to modify the Plan pursuant to Section 1127 of the Bankruptcy Code or to remedy any defect or omission or reconcile and inconsistency in the Confirmation Order to the extent authorized by the Bankruptcy Code;
- (f) to hear and determine all controversies, suits and disputes, if any, as may arise in connection with the interpretation or enforcement of the Plan;
- (g) to hear and determine all controversies, suits and disputes, if any, as may arise with regard to orders of this Court in the Chapter 11 case entered on or before the Confirmation Date;
- (h) to hear and determine any and all controversies and disputes arising under, or in connection with, the Plan;
- (i) to adjudicate all controversies concerning the classification of any Claim or Stock Interest;

- (j) to liquidate damages in connection with any disputed, contingent or unliquidated Claims;
- (k) to adjudicate all Claims to a security or ownership interest in any property of the Debtor or in any proceeds thereof;
- (l) to adjudicate all claims or controversies arising out of any purchases, sales or contracts made or undertaken by the Debtor during the pendency of the Chapter 11 case;
- (m) to recover all assets and properties of the Debtor wherever located, including the prosecution and adjudication of all causes of action available to the Debtor as at the Confirmation Date;
- (n) to enter any order, including injunctions necessary to enforce the title, rights and powers of the Debtor and to impose such limitations, restrictions, terms and conditions on such title, rights and powers that the Court may deem necessary or appropriate;
- (o) to enter an order of ~~Consummation~~consummation concluding and terminating the Chapter 11 case; and
- (p) to hear and determine adversary proceedings seeking the recovery of fraudulent conveyances, preferences or property or assets of the estate; and
- (q) to make such orders as are necessary or appropriate to carry out the provisions of the Plan, including but not limited to orders interpreting, clarifying or enforcing the provisions thereof;

PART XIX
FINANCIAL INFORMATION

The Debtor has filed with the Bankruptcy Court monthly operating reports. A copy of the Debtor's most recent report filed with the Court is annexed hereto as Exhibit "C." In addition, this financial information may be examined in the office of the Clerk of the Bankruptcy Court, One Bowling Green, New York, New York, during normal business hours, or ~~are~~is available on line at the Court's Web Site through PACER.

PART XX
EFFECT OF CONFIRMATION
PURSUANT TO SECTION 1141 OF BANKRUPTCY CODE

Section 1141 of the Bankruptcy Code provides that the provisions of a confirmed chapter 11 plan bind the Debtor, equity security holders of the Debtor, creditors and certain other parties in interest, to the terms of the confirmed plan regardless of whether or not the claim or interest of such party is impaired under the plan and whether or not such party accepted the plan.

PART XXII
STATE COURT ACTIONS

Notwithstanding anything else contained herein or otherwise written, implied or suggested in any other documents, Confirmation of this Plan of Reorganization shall in no way limit the rights of the Debtor to prosecute and defend any other actions still pending in the state court and seek all relief available to it therein including, but not limited to, counterclaims asserted.

No representations concerning the Debtor or the Plan are authorized other than as set forth in this Disclosure Statement. Any representation or inducements made to secure acceptances, other than those contained in this Disclosure Statement, should not be relied upon by any claimants in arriving at their decision as to whether to accept or reject the Plan. The information contained in this Disclosure Statement has not been subject to a certified audit. Debtor is unable to warrant that the information contained herein is without any inaccuracy, although great effort has been made to insure that the information set forth in this Disclosure Statement is true and accurate.

Dated: Huntington, New York
~~February 17~~ March 23, 2017

JVJ Pharmacy Inc.

By: s/ James Zambri
James Zambri, President

Rosen, Kantrow & Dillon, PLLC
Attorneys for Debtor In Possession

By: S/ Avrum J. Rosen
Avrum J. Rosen
38 New Street
Huntington, NY 11743
(631) 423-8527
arosen@rkdllawfirm.com