

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

Joyce Leslie, Inc.,

Debtor.

Chapter 11

Case No. 16- 22035 (RDD)

**DEBTOR'S AMENDED DISCLOSURE STATEMENT PURSUANT TO
SECTION 1125 OF THE BANKRUPTCY CODE**

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

I. INTRODUCTION.

A. Focus of the Disclosure Statement.

This amended disclosure statement (the "Disclosure Statement") has been filed by Joyce Leslie Inc. (the "Debtor") pursuant to section 1125(b) of Title 11 of the United States Code (the "Bankruptcy Code") for the purpose of soliciting acceptances of the Debtor's Amended Plan of Liquidation (the "Plan"). The Plan has been filed with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") with the support of the Official Committee of Unsecured Creditors appointed in this case (the "Creditors' Committee").

This Disclosure Statement has been prepared in accordance with section 1125 of the Bankruptcy Code and Bankruptcy Rule 3016(c), and contains, *inter alia*, relevant information regarding the prior disposition of the Debtor's assets in bankruptcy, projected distributions to creditors, and the nature of intended and pending objections to certain claims. The Disclosure

Statement also contains a history of the pre-petition events leading to the Chapter 11 filing, and a review of the significant events during the bankruptcy case.

The Debtor's goal from the inception of the Chapter 11 case has been to maximize the value of assets and minimize Administrative and Priority Claims so the Debtor can hopefully be in a position to make a distribution to holders of Allowed General Unsecured Claims despite a limited initial pool of assets. When the Chapter 11 case was filed, the Debtor retained total store inventory at the 47 locations of approximately \$3.9 million as per the Debtor's bankruptcy schedules. Conversely, the cost of maintaining normal store operations amounted to approximately \$3.1 million per month, including total employee payroll of approximately \$1.2 million per month and total lease obligations of approximately \$1.1 million per month.

For this reason, the Debtor promptly pursued store closing sales and lease auctions within the first 45 days of bankruptcy to liquidate assets in an expeditious fashion. Many of the leases were sold and the liquidation sales ultimately generated net proceeds of approximately \$3,389,000.

Based upon current estimates, holders of allowed Class II general unsecured claims stand to receive a projected distribution of between 3% and 6%, net of payment of Administration Claims and Priority Claims and net of reserves for post-confirmation expenses and disputed claims. Class II general unsecured creditors, however, should be aware that the Debtor's projections are predicated upon various key assumptions with respect to the final allowance of priority and unsecured claims after completion of the objection process. Accordingly, the final distribution will not be known until after all claims have been fully reconciled and all objections have been determined by the Bankruptcy Court. Nevertheless, the Debtor has spent considerable

effort to develop reasonable projections for this Disclosure Statement which will be updated and supplemented as events unfold.

The Debtor and the Creditors' Committee urge all Class II general unsecured creditors to vote to accept the Plan, since a relatively rapid conclusion of the Chapter 11 case presents the best avenue for recovery for unsecured creditors and will minimize administrative expenses and avoid protracted delays. Indeed, the Creditors' Committee expressly supports confirmation of the Plan.

B. Reliance on the Disclosure Statement.

NO REPRESENTATION CONCERNING THE DEBTOR OR THE VALUE OF THE DEBTOR'S ASSETS HAS BEEN AUTHORIZED BY THE BANKRUPTCY COURT OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT OR ANY OTHER DISCLOSURE STATEMENT APPROVED BY THE BANKRUPTCY COURT. THE DEBTOR IS NOT RESPONSIBLE FOR ANY INFORMATION, REPRESENTATION OR INDUCEMENT MADE TO OBTAIN YOUR ACCEPTANCE, WHICH IS OTHER THAN, OR INCONSISTENT WITH, INFORMATION CONTAINED HEREIN AND IN THE PLAN.

THIS DISCLOSURE STATEMENT IS INTENDED, AMONG OTHER THINGS, TO SUMMARIZE THE PLAN AND MUST BE READ IN CONJUNCTION WITH THE PLAN. IF ANY CONFLICTS EXIST BETWEEN THE PLAN AND DISCLOSURE STATEMENT, THE TERMS OF THE PLAN SHALL CONTROL.

II. TREATMENT AND CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

The following chart classifies the Claims against, and Equity Interests in, the Debtor into separate Classes and summarizes the treatment of each Class and unclassified Claims under the Plan. The chart also identifies which Classes are entitled to vote on the Plan, listing projected

recoveries for each Class predicated upon several assumptions pertaining to Allowed Claims and the sustainability of objections. The actual recoveries will be less if the Debtor's assumptions regarding the success of the claims objections do not materialize as projected.

For ease of administration, the Plan also includes as part of Class I Priority Non-Tax Claims, any creditor who has filed a claim for vacation pay within the statutory limits for priority under Section 507(a)(4) of the Bankruptcy Code, but who inadvertently mischaracterized himself or herself as the holder of a general unsecured claim on his or her proof of claim. Such creditors will be treated for purposes of the Plan to be deemed to have filed priority claims for vacation pay without the necessity of a formal motion re-characterizing the claim. Additionally, the Priority Non-Tax Claim Inclusions also include actual and timely filed claims for gift cards and layaways whether or not they were characterized as priority claims on their respective proofs of claim. Please note however, that the Plan does not provide distributions to any creditors including employees or gift card holders who did not file an actual proof of claim prior to the Bar Date.

Class & Description	Treatment	Entitled to Vote	Estimated Recovery to Holders of Allowed Claims
Administrative Claims (Unclassified)	Unimpaired; payment in full, in Cash, of the allowed amount of such Claim (or as otherwise agreed).	No	100%
Priority Tax Claims (Unclassified)	Unimpaired; payment in full, in Cash to the extent allowed and qualified as of a Priority Tax Claim	No	100%
Class I: Priority Non-Tax Claims and Priority Non-Tax Inclusions	Unimpaired; payment in full, in Cash, to all allowed Priority Non-Tax Claim	No	100%
Class II: General Unsecured Claims	Impaired; shall receive the balance of remaining funds after payment of Administrative Claims, Priority Tax Claims and Class I Priority Non-Tax Claims.	Yes	3%-6% based on current projections
Class III: Equity Interests	Impaired; shall receive no Distribution.	No	0%

III. DISCLOSURE STATEMENT ENCLOSURES AND RELATED INFORMATION.

A. Disclosure Statement Approval Order.

A copy of the Order of the Bankruptcy Court, dated December ____, 2016 approving this Disclosure Statement, establishing procedures for voting on the Plan, and scheduling the Confirmation Hearing is enclosed.

B. Notice of Confirmation Hearing.

A copy of the notice of deadline (the "Notice") for submitting ballots to accept or reject the Plan (each, a "Ballot") and, filing objections to confirmation of the Plan is also enclosed.

IV. BASIC ELEMENTS TO CONFIRMATION OF THE PLAN.

A. Requirements.

The requirements for Confirmation of the Plan are set forth in section 1129 of the Bankruptcy Code and require the following main elements:

- Demonstrate that the Plan was filed in good faith and complies with the Bankruptcy Code.
- Demonstrate that the Plan was accepted by at least one impaired Class of Claims.
- Demonstrate that the Plan provides for full payment of all administrative expenses and priority claims.
- Demonstrate that the Plan is feasible.
- Demonstrate that unsecured creditors will receive more under the Plan than they could reasonably expect to receive in Chapter 7.

B. Approval of the Plan.

To confirm the Plan, the Bankruptcy Court must hold a hearing to determine whether the Plan meets the requirements of section 1129 of the Bankruptcy Code.

C. Effect of Confirmation.

Confirmation of the Plan authorizes the distribution of the Debtor's projected remaining cash funds as of December 31, 2016 (defined as "Net Distributable Cash") as itemized on the attached Cash Summary, annexed hereto as Exhibit A. Thus, confirmation is an important event because it serves to conclude the bankruptcy case and make the Plan binding upon the Debtor, all Creditors, Equity Holders and other parties-in-interest, regardless of whether they cast a Ballot to accept or reject the Plan.

D. Impaired Claims or Interests Dictate Voting.

Pursuant to section 1126 of the Bankruptcy Code, only "impaired" classes of claims are eligible to vote on the Plan. Pursuant to section 1124 of the Bankruptcy Code, a class of claims is "impaired" if the Plan alters the legal, equitable or contractual rights of the Holders of such Claims. In this case, Class 2 General Unsecured Claims are impaired by the Plan and have the right to vote. Class 3 Equity Interests are impaired by the Plan, but such Class is presumed to reject the Plan and, accordingly, is not entitled to vote on the Plan.

E. Voting Procedure and Ballot Deadline.

To ensure your vote is counted you must complete and return the Ballot so that it is actually received no later than 5:00 p.m. (Prevailing Eastern Time) on January _____, 2017.

BALLOTS MAY BE SENT BY REGULAR MAIL, FACSIMILE TRANSMISSION OR ELECTRONIC MAIL SO BE RECEIVED ON OR BEFORE JANUARY _____, 2017 AT 5:00 P.M. TO GOLDBERG WEPRIN FINKEL GOLDSTEIN LLP, ATTN: KEVIN J. NASH, ESQ., 1501 Broadway - 22nd Floor, New York, New York 10036, Fax No.: 212-221-6531, E-mail: KNash@gwfglaw.com.

F. Acceptance of the Plan.

As a holder of a Class 2 General Unsecured Claim, your acceptance of the Plan is important. In order for the Plan to be accepted, a majority in number and two-thirds in dollar amount of the Class 2 unsecured creditors actually voting must vote to accept the Plan. Because Class 2 unsecured claims are the only impaired voting class, the Plan cannot be confirmed without requisite acceptances from holders of Class 2 General Unsecured Claims in this case.

G. Confirmation Hearing.

The Bankruptcy Court has scheduled the Confirmation Hearing on January ____, 2017 at 10:00 a.m. before the Honorable Robert D. Drain, United States Bankruptcy Judge, in the United States Bankruptcy Court, 300 Quarropas Street, White Plains, New York 10601. The Confirmation Hearing may be adjourned from time to time without further notice other than by announcement in the Bankruptcy Court or by the filing of a notice of adjournment on the ECF docket.

V. THE DEBTOR.

A. Debtor's History and Business.

Joyce Leslie operated a chain of women's retail clothing stores located throughout New York, New Jersey, Pennsylvania and Connecticut, for close to seventy years, selling a variety of junior women's apparel. The business was originally founded by Julius Gewirtz and his wife, Hermine, in 1947. Joyce Leslie went through a bankruptcy restructuring in the mid 1970s, and subsequently evolved into a profitable small chain, with a niche among young women in urban areas. Indeed, until three or four years ago, Joyce Leslie's sales were more than \$100 million per year. The last several years, however, witnessed a steady decline in volume that made the company unprofitable.

The Debtor's stock is currently held by the Gewirtz's adult daughters, Joyce Gewirtz Segal and Nancy Shapiro, as equal 50% equity holders. Joyce Gewirtz Segal and Nancy Shapiro worked for Joyce Leslie for their adult life, spanning four decades, and served as co-presidents for the last 12 years of their tenure. They were succeeded by M. Celia Clancy, the former chief executive officer of Ashley Stewart, who was appointed chief executive officer on October 6, 2015. This was done in a final effort to internally restructure the business and improve sales. Once it became clear that the decline in sales was irreversible, Lee Diercks became the Debtor's chief restructuring officer and supervised the bankruptcy proceedings.

B. Debtor's Pre-Petition Debt Structure.

The Debtor maintained a revolving secured bank facility which was paid-off in full, just before the start of bankruptcy. Accordingly, this case is relatively unique in that the Debtor owed no secured debt entering Chapter 11.

Specifically, in 2014, the Debtor obtained a revolving Pre-Petition Credit Facility with HVB Capital Credit LLC (HVB), which loan was later assigned by HVB to Everbank Financial Corp. (Everbank). Joyce Leslie maintained an average balance of \$3.0 million under the Pre-Petition Credit Facility from August 2015 to December 2015, secured by substantially all of the Debtor's assets.

During the week of January 4, 2016, Joyce Leslie fully satisfied the secured creditor facility by paying Everbank the balance of \$662,000 from store collections and the liquidation of a Cash Collateral Bond Account of approximately \$1,000,000. Without any secured debt to pay, the Chapter 11 case has been pursued for the benefit of unsecured creditors.

The only residual obligations owed to Everbank consisted of a reserve for a \$105,000 letter of credit standing as security for the Debtor's central office and warehouse lease in

Moonachie, New Jersey and a \$250,000 cash reserve. Both of these obligations were resolved in bankruptcy pursuant to separate stipulations. The letter of credit was paid to the Moonachie Landlord, and Everbank has released the balance of \$240,440.82 (net of its attorneys' fees) back to the Debtor to be used as part of the distribution following the Creditors' Committee review of the Debtor's pre-petition banking relationship with Everbank, which found no discrepancies. Accordingly, the Debtor and Everbank exchanged releases pursuant to a So-Ordered Stipulation dated July 8, 2016 (Dkt. No. 306).

VI. EVENTS LEADING TO CHAPTER 11.

While Joyce Leslie enjoyed a niche in the local apparel industry, the women's retail business remains highly competitive. The root causes of Joyce Leslie's sales decline were systemic and attributable to, *inter alia*, a pronounced shift in consumer spending patterns among Joyce Leslie's core customers, increased competition by more nimble competitors, combined with Joyce Leslie's inability to compete in today's technology-driven environment due to the lack of a sophisticated e-commerce platform.

Towards the end of the fiscal year ending in January 2013, Joyce Leslie began to experience a drop in sales. This decline intensified during the following years as sales fell from \$104 million in the fiscal year ending January 2012 to only \$63 million in the fiscal year ending January 2016.

In fiscal year 2014, Joyce Leslie negotiated a forbearance agreement with its lead creditors to obtain cash flow relief while it sought out a new Asset Based Lender, which ultimately became HVB (later Everbank). In connection with the forbearance agreement, Joyce Leslie also retained Clear Thinking Group (Clear Thinking) as its financial consultants with the aim of attempting to streamline certain expenses.

Clear Thinking continued to provide consulting services to Joyce Leslie even after completion of the forbearance agreement in 2014. While Clear Thinking implemented many important reductions in operating expenses (including reductions in payroll, changes in hours, and the hiring of a new CEO), the decline in sales could not be reversed. This situation prompted the Debtor to search for a going concern buyer for the entire chain in the hope that many employees could retain their jobs. Over the course of more than one year's time in 2014 to 2015, the Debtor met with various potential suitors but a buyer never emerged. Accordingly, the decision to begin liquidating the stores started on November 14, 2016 when five stores [(i) Store #6 in Morris Plains, NJ; (ii) Store #7 in Carle Place, NY; (iii) Store #12 in Jersey City, NJ; (iv) Store #56 in Bricktown, NJ; and (v) Store #87 in Ridgewood, NY] were liquidated pursuant to an Agency Agreement with SB Capital Group LLC (SB Capital).

These initial liquidations were completed shortly after Chapter 11 and SB Capital became the stalking horse bidder in the ensuing auction to conduct store closure sales.

VII. MAJOR ACTIVITIES DURING THE CASE.

A. Filing Date.

The bankruptcy was filed on January 9, 2016, with the clear strategy of liquidating the stores no later than February 28, 2016.

B. Advisors to the Debtor.

The Debtor retained Goldberg Weprin Finkel Goldstein LLP as bankruptcy counsel. Clear Thinking continued in its role as financial consultant, with Lee Diercks serving as Joyce Leslie's Chief Restructuring Officer. The Debtor also retained Oberon Securities LLC (Oberon) to continue its search for a going concern buyer, which proved unsuccessful, although Oberon assisted in procuring a stalking horse buyer for twelve of the Debtor's leases.

C. The Creditors' Committee and Its Advisors.

On January 22, 2016, the United States Trustee appointed a Creditors' Committee consisting of the following members: The CIT Group/Commercial Services, Inc., International Intimates, Inc., GGP Limited Partnership, National Retirement Fund, and Brixmor Property Group, Inc.

The Creditors' Committee retained Cooley LLP as its counsel and CBIZ Accountant Tax and Advisory of New York LLC as its financial advisors.

All professionals have been active in the case and have worked in a collaborative fashion sharing the same goal of marshalling assets so as to be in a position to make a distribution to unsecured creditors.

D. First Day Orders.

On January 12, 2016, the Bankruptcy Court entered a number of so-called "First Day Orders" to enable the Debtor to conduct normal business operations during the close-out period, as highlighted below.

- Order Authorizing Payment of Prepetition Employee Wages, Compensation and Employee Benefits.
- Order Authorizing the Payment of Prepetition Sales Taxes.
- Order Authorizing the Continuation of Customer Practices.
- Order Authorizing Continued Use of Existing Cash Management System and Bank Accounts.
- Order Prohibiting Utility Providers from Altering, Refusing or Discontinuing Utility Services.

E. The Store Closing Sales and Assignment of Leases.

Contemporaneously with the Chapter 11 filing, the Debtor negotiated with SB Capital on the terms of an Agency Agreement to conduct so-called "GOB sales" at the Debtor's remaining

42 retail locations. The right to conduct GOB sales was subject to competitive bidding among various liquidation firms. Pursuant to Order dated January 27, 2016, SB Capital was designated as the stalking horse bidder, offering to pay the Debtor's estate a guaranteed minimum payment of 62% of the cost value of its remaining inventory at the start of liquidation, plus certain adjustments, as well as assuming all expenses of operations as of February 5, 2016.

The Auction relating to the "GOB sales" was conducted by the Debtor's counsel on February 2, 2016 and involved the participation of several liquidating firms. Ultimately, Gordon Brothers Retail Partners LLC ("Gordon Brothers") emerged as the high bidder and signed a revised agency agreement providing for an enhanced recovery to the Debtor's estate of 68% of the cost value of remaining inventory. The Bankruptcy Court approved the Revised Agency Agreement on February 4, 2016, after a hearing on February 3, 2016. Gordon Brothers completed the GOB sales by mid to late February and remitted the net sum of \$1.52mm to the Debtor's estate after all adjustments and reconciliations.

While the GOB sales were going on, the Debtor entertained offers for the sale of certain leases. Madrags was designated as the stalking horse with respect to the second auction relating to the sale of the Debtor's leases and intellectual property pursuant to Order dated February 9, 2016. Even before the Order was entered, Rainbow Northeast Leasing Inc. ("Rainbow") emerged as a better prospect, and ultimately made the high bid of \$1.4 million for 19 leases at the Auction held on February 16, 2016.

In connection with the sale of leases, numerous landlords filed objections regarding cure amounts and adequate protection information. The Debtor resolved all of the objections without Court intervention and established reserves of approximately \$90,000 for the disputed cure

amounts. Rainbow purchased store numbers 9, 18, 19, 24, 25, 27, 35, 36, 37, 38, 51, 58, 59, 61, 79, 82, 84, 93 and 95.

Additionally, several other purchasers emerged for specific stores, with the purchaser oftentimes being the landlord, thereby eliminating potential rejection claims. In this connection, a Madrags affiliate, 618 Main Street Corp, purchased two leases (33 and 78) for \$100,000, store number 30 was sold for \$39,158.74, store number 8 was sold for \$63,000, Store 41 sold for \$165,000, store 45 sold for \$41,000 and store 46 sold for \$80,000. The Debtor formally assumed and assigned these leases pursuant to a series of Orders [Dkt. Nos. 158, 172, 182, 183, 190, 209 and 211].

The balance of the leases were rejected in accordance the Debtor's Motion for Order Pursuant to 11 U.S.C. §§ 105(a), 365(a) and 554 Authorizing and Approving Procedures for Rejection of Executory Contracts and Unexpired Leases [Dkt. No. 46]. Pursuant to the Lease Rejection Procedures Order, the Debtor filed seven omnibus rejection notices [Dkt. Nos. 46, 96, 170, 188, 191, 242 and 247] providing for the rejection of 22 leases and 3 executory contracts.

The Debtor has since settled substantially all of the disputed cure objections within the scope of the projected reserves of \$90,000, save for two locations where the amounts in dispute aggregate approximately \$20,000. These final two cure objections are expected to be resolved well prior to confirmation and will not materially impact the projected *pro rata* distribution to unsecured creditors.

On March 25, 2016, the Bankruptcy Court also entered an Order authorizing the Debtor to sell Company-owned vehicles by private sales, which generated additional net proceeds of \$142,045 [Dkt. No. 246].

VIII. Claims Process and Bar Date.

A. Schedules and Statements.

On February 3, 2016, the Debtor timely filed a comprehensive set of schedules of assets and liabilities in accordance with a prior extension [Dkt. Nos. 109 and 110].

B. Bar Dates.

On April 20, 2016, the Bankruptcy Court entered an order fixing May 31, 2016 as the last date by which holders of all post-petition and pre-petition claims (other than claims of governmental units) against the Debtor were required to file proofs of claim with the Court appointed Claims and Noticing Agent, Rust Consulting/Omni Bankruptcy. The Bankruptcy Court set July 7, 2016 as the deadline for governmental units to file claims against the Debtor.

C. Claims Reconciliation and Objections.

Approximately 487 proofs of claims have been filed against the Debtor. The significant disputed claims that potentially impact the projected distributions to unsecured creditors are summarized below together with a brief narrative of the matters in dispute.

1. Pension Plans and Claims of Pension Benefit Guaranty Corporation and National Retirement Fund. The Debtor, sponsor of the Joyce Leslie, Inc. Defined Benefit Plan (the "Pension Plan"), as defined in 29 U.S.C. § 1301(a)(13), has initiated and hopes to complete a standard termination of the Pension Plan in accordance with 29 U.S.C. §§ 1341(a) and (b), and the regulations thereunder, ("Standard Termination") including compliance with any Pension Benefit Guaranty Corporation ("PBGC") audit under 29 U.S.C. § 1303(a).

PBGC has filed three contingent claims (the "PBGC Claims") against the Debtor in the total amount of \$3,189, 254. The PBGC Claims are based on the contingency that the Pension Plan will terminate under 29 U.S.C. §§ 1341(c) or 1342. The Debtor has initiated and intends to

complete the Standard Termination in satisfaction of all Pension Plan liabilities as part of the Plan process. In conjunction with the Pension Plan's standard termination, PBGC has reserved its rights as to any outstanding premiums owed to PBGC. Additionally, if, for any reason, the Debtor is unable to complete the Standard Termination, the PBGC Claims shall be treated as General Unsecured Claims pursuant to Section 2.2.2 of the Plan without prejudice to the Debtor's right to object to the specific amount of the PBGC Claims if any.

In addition, the National Retirement Fund (NRF) filed a claim in the amount of \$3,167,721, asserting withdrawal liability under ERISA. NRF is the union pension plan for Local 340A NY-NJ Joint Board covering many of the Debtor's warehouse and store employees. NRF filed a claim for withdrawal liability after the Debtor closed its stores and terminated the majority of its employees.

The Debtor anticipates that the claim of the NRF will be subject to a significant reduction since Joyce Leslie was insolvent when it closed, making its withdrawal liability subject to the 50% reduction rule under ERISA. Moreover, the Debtor also intends to challenge NRF's actuarial assumptions imbedded in the withdrawal liability claim. This claim is now subject to ongoing negotiations with the NRF. For purposes of the Debtor's projections, the final claim of NRF is being calculated in the total sum of \$1.6 million. This reduction also represents an important assumption to the projected dividend to unsecured creditors.

2. No Release of ERISA Obligations. Notwithstanding any provision of the Plan or the Confirmation Order to the contrary, neither the Plan nor the Confirmation Order shall release any Person from their duties and obligations under the Employee Retirement Security Act (ERISA) of 1974, as amended; or release any Person with respect to controlled group liability owed to the Pension Plan, the PBGC, or the NRF; or release any Person from fiduciary

breach related to the Pension Plan or the NRF; or enjoin or prevent the PBGC, the Pension Plan or the NRF from collecting such liability from a liable party.

3. Negligence Claims – Various personal injury claimants asserted total unliquidated claims in the sum of \$15,168,867. These personal injury claims were covered by existing insurance, and the Debtor was successful in obtaining stipulations from each of the personal injury claimants, limiting their claims to available insurance coverage (Dkt. Nos. 285, 307, 326, 328, 329, 330, 331 and 337). In doing so, the Debtor eliminated the prospect of a multi-million dollar contingent liability from eroding dividends to Class II unsecured creditors.

4. Lease Rejection Claims – Various landlords for the unsold store locations filed lease rejection claims in the aggregate sum of approximately \$7.62 million. On their face, these rejection claims appear overstated and beyond the limits of Section 502(b)(6) of the Bankruptcy Code. This Code section imposes a duty on a landlord to mitigate damages, plus a statutory cap on the extent of damages recoverable in bankruptcy limited to actual stated rents, generally accruing, in most instances, over a one year period. The Debtor is completing its final reconciliation of Lease rejection claims and intends to file an omnibus objection to obtain reductions. The Debtor projects that the total lease rejection claims will be reduced to approximately \$5 million.

5. Severance Claims – An omnibus claim for severance obligations has been filed by the Union on behalf of numerous employees totaling \$261,602.40. This severance claim raises interesting legal issues since severance is generally accorded administrative priority in bankruptcy. However, in the Debtor's case, the payment of severance only first arose within one year of the Chapter 11 filing following an amendment to the Collective Bargaining Agreement (CBA) in February, 2015. Prior to that time, the Debtor's CBA did not provide for severance

payments to employees at all. Moreover, the CBA amendment treats severance in the same manner as union vacation pay, meaning that severance accrued pre-petition and is payable on a *pro rata* basis based on longevity. Additionally, the severance claim covers many workers who left the Debtor's employ well before the Chapter 11 filing, and therefore do not qualify for severance under any circumstance. Accordingly, the Debtor intends to seek to reduce the total severance claim to approximately \$68,000. The Debtor's ability to obtain a reduction in the severance claim likewise presents a key assumption to the projected dividend to unsecured creditors. In the context of the intended objection the Debtor will seek the Union's voluntary agreement to the proposed reductions in recognition of the Debtor's favorable proposed treatment of vacation pay. If an agreement cannot be reached voluntarily, the Debtor also reserves the right to modify the treatment of vacation pay claims.

IX. SUMMARY OF THE PLAN.

A. Purpose of the Plan.

The Plan provides for the resolution, treatment and payment of the allowed Claims against the Debtor from Net Distributable Cash following the liquidation sales of the Debtor's stores and collection of other assets.

B. Classification of Claims and Interests under the Plan.

All Allowed Claims and Interests are placed in the Classes set forth in Article II of the Plan. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified.

C. Administrative Claims.

Each holder of an Allowed Administrative Claim (other than Professional Fee Claims and U.S. Trustee Fees) shall receive, in full satisfaction, settlement and release of such Allowed

Administrative Claim, a cash payment equal to such Allowed Administrative Claim, (i) as soon as reasonably practicable after the Effective Date or (ii) if the Administrative Claim is not Allowed as of the Effective Date, within thirty (30) days after the date on which such Administrative Claim becomes an Allowed Administrative Claim or as soon thereafter as reasonably practicable. All Administrative Claims shall be paid from the Net Distributable Cash. Administrative Claims primarily include Professional Fees projected to be as follows:

Professional	Projected Total Fees	Estimated Balance Of Professional Fees to be paid from Net Distributable Cash on the Effective Date
Goldberg Weprin Finkel Goldstein LLP	\$350,000.00	\$50,000.00
Clear Thinking Group	\$454,000.00	\$50,000.00
Cooley LLP	\$300,000.00	\$79,000.00
CBIZ Accountant Tax and Advisory of New York LLC	\$250,000.00	\$50,000.00
Total	1,354,000.00	\$230,000.00

Pursuant to Interim Compensation Order, most of the accrued Professional Fees have been paid subject to final approval by the Bankruptcy Court in accordance with sections 330 and 331 of Bankruptcy Code following a notice and separate hearing to be conducted contemporaneously with Confirmation of the Plan.

D. Priority Tax Claims. Each holder of an Allowed Priority Tax Claim, shall receive, in full satisfaction, settlement and release of such Allowed Priority Tax Claim, a cash payment equal to such Allowed Priority Tax Claim, (i) as soon as reasonably practicable after the Effective Date; or (ii) if the Priority Tax Claim is not Allowed as of the Effective Date, within thirty (30) days after the date on which such Priority Tax Claim becomes an Allowed Priority

Tax Claim or as soon thereafter as reasonably practicable. All Priority Tax Claims shall be paid from Net Distributable Cash.

E. U.S. Trustee Fees. The Debtor shall pay all outstanding U.S. Trustee Fees on an ongoing basis until the date a Final Decree is entered closing the bankruptcy case, or the bankruptcy case is converted or dismissed, or the Bankruptcy Court orders otherwise.

F. Class I (Priority Non-Tax Claims and Non-Tax Inclusion Claims). Except to the extent that a holder of an Allowed Priority Non-Tax Claim or non-Tax Inclusion Claim has been paid prior to the Effective Date or has previously agreed or agrees to a different treatment by stipulation or order, each holder shall receive a cash payment equal to such Allowed amount of such claim from the Net Distributable Cash (i) as soon as reasonably practicable after the Effective Date or (ii) to the extent such Priority Non-Tax Claim is not an Allowed Claim on the Effective Date, within ten (10) days following allowance of such Claim pursuant to Final Order, or as soon thereafter as reasonably practicable.

The majority of claims comprising Class I Non-Tax Priority Claims are employee-related obligation for accrued but unpaid 2016 vacation pay owed to full-time and part-time employees, who actually filed claims before the Bar Date. Class I also includes the projected reduced severance claim filed by the Union in the approximate sum of \$68,000. Finally, Class I also includes the deemed allowed vacation and claims for gift cards and layaways, as set forth in the schedules annexed hereto as Exhibits B and C. According to the Debtor's analysis, the filed vacation pay claims should be allowed in the total sum of approximately \$208,000 after adjusting for all prior payments and the filing of objections. The projected amount of \$208,000 includes those vacation claims which were erroneously filed as general unsecured but which are being included as priority claims under Section 1.1.35 of the Plan.

G. Class II (Allowed General Unsecured Claims). Each holder of an Allowed General Unsecured Claim shall receive, in full and complete satisfaction, settlement and release of such holder's Allowed General Unsecured Claim, a *pro rata* payment computed and calculated from the remaining Net Distributable Cash (after payment of Administrative Claims and Priority Claims). The *pro rata* payment to Class II Allowed General Unsecured Claims shall be made as soon as reasonably practical after the Effective Date following resolution of objections to various Disputed Claims and the establishment of appropriate reserves for Disputed Claims. The *pro rata* payment is measured by the remaining Net Distributable Cash (after payment and satisfaction of Administrative and Priority Claims) divided by the total amount of Allowed General Unsecured Claims. Based upon current projections, the *pro rata* distribution is estimated to be approximately 3% to 6% based upon the following analysis:

Projected Residual Cash as of December 31, 2016	\$1,450,000
Payment of projected Residual Administration Expense Claims for Professionals net of the payments under the Interim Compensation Order	\$230,000
Payment of projected Allowed §503(b)(9) and reclamation claims	\$40,000
Payment of projected Allowed Priority Claims:	
A. Taxes	\$50,000
B. Vacation	\$208,000
C. Severance	\$68,000
D. Gift and Layaway Claims	\$24,000
Reserve for Disputed Claims	\$125,000
Reserve for post-confirmation expenses	\$100,000
Balance of Residual Cash	\$605,000

Projected Net Cash Available for Claim II Unsecured Creditors divided by Residual Balance of Class II Claims of approximately \$10 million (subject to final reconciliation) including Vendor, Lease Rejection and Reduced Withdrawal Liability: \$605,000 / \$10,000,000	6.05%
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H. Class III (Equity Interests). The shareholders of the Debtor will retain no ownership interests in the Debtor under the Plan. Their Equity Interests shall be cancelled and extinguished without distribution.

I. Other Key Provisions of the Plan

a. The Plan Administrator.

(1) Transfers of Assets. On the Effective Date, the Debtor shall transfer, or cause to be transferred, all remaining Net Distributable Cash to the Plan Administrator. Such transfers shall be free and clear of all liens, claims, interests, rights of offset and encumbrances, other than a Creditor's right to receive a distribution pursuant to the Plan.

(2) Authority and Role of the Plan Administrator. In furtherance of and consistent with the purposes of the Plan, the Plan Administrator shall be deemed the representative of the Debtor's estate. The powers and duties of the Plan Administrator consist of the following:

- i. To take control of, preserve and convert to cash property of the estate, including any Additional Recoveries, subject to the terms of the Plan;
- ii. To investigate and prosecute or abandon all Causes of Action belonging to or which could be asserted by the Debtor, except as otherwise provided in Section 3.3 of the Plan;
- iii. To review and object to Claims;
- iv. To abandon, discontinue, dismiss, amend, settle, compromise, negotiate or otherwise resolve all disputes and Claims, including all Causes of Action, except as otherwise provided in the Plan;
- v. To retain persons and professionals to assist in carrying out the powers and duties enumerated in the Plan;

- vi. To enter into contracts as necessary to assist in carrying out the powers and duties enumerated in the Plan;
- vii. To hire employees and/or terminate current employees of the Debtor;
- viii. To the extent the Plan Administrator deems necessary, to take all necessary actions to assure that the corporate existence of the Debtor remains in good standing until entry of a final decree closing the bankruptcy case;
- ix. To open and maintain bank accounts and deposit funds and draw checks;
- x. To effectuate any of the provisions of the Plan;
- xi. At the appropriate time, to ask the Bankruptcy Court to enter a final decree; and
- xii. To execute all documents appropriate to convey assets of the Debtor's estate consistent with the terms of the Plan.

(3) Compensation of the Plan Administrator. The Plan Administrator shall be entitled to reasonable compensation in an amount consistent with that of similar professionals in similar types of bankruptcy proceedings, to be determined in consultation with the Creditors' Committee. The costs and expenses of the Plan Administrator shall be paid from Net Distributable Cash. The Plan Administrator (in consultation with the Creditors' Committee) shall maintain appropriate reserves to fund post-confirmation administrative expenses in connection with the implementation of the Plan.

(b) Avoidance Claims. The Debtor does not intend to bring or commence any Avoidance Actions, either prior to or after the Effective Date. In consultation with the Creditors' Committee, the Debtor's review of the pre-petition transactions has not revealed any meaningful Avoidance Actions to be pursued which would increase the Debtor's estate on a net basis after factoring in the costs and expenses of litigation.

(c) Disputed Claims. No payments or distributions will be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by a Final Order, and the Disputed Claim has become an allowed Claim. The Disbursing Agent shall establish a Reserve (the "Disputed Claim Reserve") of \$125,000 as noted above. The Disputed Claim Reserve shall be a separate fund established to pay Disputed Claims that may be allowed in amounts exceeding the Debtor's

projections. The Disbursing Agent may request estimation for any Disputed Claim that is contingent or unliquidated as part of the process of establishing a Distribution Reserve. Any unused portion of the Disputed Claim Reserve shall become part of the Net Distributable Cash for distribution to other Creditors.

(d) **Executory Contracts and Unexpired Leases.** The Debtor believes that all executory contracts and unexpired leases were assumed or assigned, or rejected, during the pendency of the bankruptcy case. However, out of an abundance of caution, the Plan provides that any pre-petition executory contracts and unexpired which have not been assumed and assigned, or rejected, prior to the Confirmation Date shall be deemed rejected as of the Effective Date.

Any Creditor asserting a claim for monetary damages as a result of the rejection of an executory contract pursuant to the Confirmation Order shall file a Proof of Claim substantially in the form of Official Form 410 with the Claims Agent and serve it upon Debtor's counsel by overnight mail within thirty (30) days following the Effective Date.

(e) **Objections to Claims.** Any objection to the allowance of a Claim not filed by the Claim Objection Deadline shall be deemed waived, and the Claim shall be an Allowed Claim in the amount set forth on the Proof of Claim filed by the holder of such Claim. Subject to the provisions above, the Plan Administrator, in its discretion, may make distributions to the holders of Allowed Claims within any particular Class of Creditors before all Disputed Claims within that particular Class become Allowed or disallowed in full or in part.

(f) **Creditors' Committee.** From and after the Effective Date, the Creditors' Committee shall exist for the sole purposes of (a) participating in the Claims reconciliation, objection, negotiation and settlement process conducted by the Plan Administrator, (b) enforcing

the terms of the Plan and payments on account of Allowed General Unsecured Claims, (c) addressing matters related to Professional Fee Claims, including filing such claims and, if appropriate, objecting to claims filed by Professionals, and (d) appearing before and being heard by the Bankruptcy Court and other courts of competent jurisdiction in connection with the above duties. The Professionals employed by the Creditors' Committee shall be entitled to reasonable compensation, which shall be paid from Net Distributable Cash; provided, however, the Debtor shall no longer be responsible for paying any expenses incurred by members of the Creditors' Committee after the Effective Date.

X. FEASIBILITY.

A. Bankruptcy Code Standard. The Bankruptcy Code requires that the Bankruptcy Court must find that confirmation of the Plan is feasible, and not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor. Because the Plan provides for the distribution of the remaining liquidation proceeds, the Debtor believes that feasibility is easily established.

B. Best Interests Of Creditors And Alternatives To Plan.

The Bankruptcy Court must also determine that the Plan is in the best interests of unsecured creditors, in that unsecured creditors stand to receive a distribution as of the Effective Date, at least equal to the value of any recovery that they would receive if the Debtor is liquidated under chapter 7.

The Debtor believes that the Plan also satisfies the best interests test, because, among other things, all assets have already been liquidated and are inherently greater than the recoveries expected to be available in a Chapter 7 liquidation. This is for the simple reason that a conversion to Chapter 7 would add another layer of administrative debt for trustee fees and

commissions that would likely leave the Debtor administratively insolvent, or close to it. In any event, the costs of a Chapter 7 administration dilute the residual proceeds available for unsecured creditors, making compliance with the Best Interests Test virtually self-evident. A Chapter 7 liquidation analysis is attached hereto as Exhibit 5D.

XI. TAX CONSEQUENCES OF THE PLAN.

THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN MAY BE COMPLEX. ALL HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTOR SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE PLAN AND THE OWNERSHIP AND DISPOSITION OF PROCEEDS FROM CLAIMS INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR FOREIGN (NON-US) TAX LAWS AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTOR ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT IS NOT INTENDED TO OR WRITTEN TO BE USED, AND CANNOT BE USED, BY SUCH HOLDERS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE PLAN; AND (C) SUCH HOLDERS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

XII. CONCLUSION.

It is important that holders of Class 2 General Unsecured Claims exercise your right to vote on the Plan. It is the Debtors' belief and recommendation that the Plan fairly and equitably provides for the best treatment to holders of Allowed General Unsecured Claims. The Creditors' Committee also supports confirmation of the Plan.

Dated: New York, New York
December 21, 2016

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