

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

YOSI SAMRA, INC.

Chapter 11

Case No. 17-12493 (SCC)

Debtor and
Debtor-in-Possession.

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SECOND AMENDED DISCLOSURE STATEMENT FOR
SECOND AMENDED CHAPTER 11 PLAN OF REORGANIZATION

**THIS IS NOT A SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE
DEBTOR'S 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 APPROVAL BUT IT HAS NOT BEEN APPROVED BY THE COURT.**

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THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE CHAPTER 11 PLAN OF REORGANIZATION FOR YOSI SAMRA, INC. (“YSI” OR THE “DEBTOR”), AND MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN. NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS, OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT, REGARDING THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN.

ALL CREDITORS ARE ADVISED AND ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN AND THE EXHIBITS AND SCHEDULES ANNEXED TO THE PLAN AND THIS DISCLOSURE STATEMENT. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF, AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER THE DATE HEREOF.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE UNITED STATES BANKRUPTCY CODE AND RULE 3016(c) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-BANKRUPTCY LAW. THIS DISCLOSURE STATEMENT HAS BEEN NEITHER APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE “SEC”), NOR HAS THE SEC PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN. PERSONS OR ENTITIES TRADING IN OR OTHERWISE PURCHASING, SELLING OR TRANSFERRING SECURITIES OR CLAIMS OF THE DEBTOR IN THIS CASE SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSE FOR WHICH THEY WERE PREPARED.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS PURSUANT TO RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND OTHER APPLICABLE EVIDENTIARY RULES. THE DEBTOR RESERVES ITS RIGHTS TO ASSERT IN ANY SUCH CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER ACTIONS OR THREATENED ACTIONS THAT THIS DISCLOSURE STATEMENT IS NOT ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY.

THIS DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE

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ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST, OR EQUITY INTERESTS IN, THE DEBTOR IN THIS CASE. FOR A DESCRIPTION OF THE PLAN AND VARIOUS RISKS AND OTHER FACTORS PERTAINING TO THE PLAN AS IT RELATES TO CLAIMS AGAINST AND INTERESTS IN THE DEBTOR, PLEASE SEE ARTICLES IV, V, VII AND VIII.

THE DEBTOR BELIEVES THAT THE PLAN WILL ENABLE THE DEBTOR TO ACCOMPLISH THE OBJECTIVES OF CHAPTER 11 AND THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTERESTS OF THE DEBTOR AND THE HOLDERS OF ALL CLAIMS. ACCORDINGLY, THE DEBTOR URGES HOLDERS OF CLAIMS TO VOTE TO ACCEPT THE PLAN. FOR FURTHER INFORMATION AND INSTRUCTION ON VOTING TO ACCEPT OR REJECT THE PLAN, SEE ARTICLE III(C) OF THE DISCLOSURE STATEMENT, ENTITLED "VOTING INSTRUCTIONS AND DEADLINE."

IF YOU HAVE QUESTIONS ABOUT THE PACKET OF MATERIALS THAT YOU RECEIVED, PLEASE CONTACT VINCENT ROLDAN, ESQ., BALLON STOLL BADER & NADLER P.C., 729 SEVENTH AVENUE 17TH FLOOR, NEW YORK 10019, TELEPHONE NUMBER (212) 575-7900, OR VROLDAN@BALLONSTOLL.COM.

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EXHIBITS

Exhibit A – Plan of Reorganization

Exhibit B – Financial Projections

Exhibit C – Liquidation Analysis

Exhibit D – Form of ~~Exit Financing Loans: an Exit Factoring Agreement (with blackline against debtor in possession factoring agreement) and an~~ Inventory Facility Line of Credit

Exhibit E – ~~Contract Assumption Schedule~~[Reserved]

Exhibit F – ~~Liquidating Trust Agreement~~[Reserved]

Exhibit G – Committee Support Letter

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**SECOND AMENDED DISCLOSURE STATEMENT WITH RESPECT TO
AMENDED PLAN OF REORGANIZATION OF
YOSI SAMRA, INC.**

The Debtor submits this second amended disclosure statement (the “Disclosure Statement”) for the Second Amended Plan of Reorganization (the “Plan”) of the Debtor pursuant to Bankruptcy Code section 1125, for use in the solicitation of votes on the Plan. A copy of the Plan is annexed hereto as Exhibit A of this Disclosure Statement. This Disclosure Statement and the other documents described herein are being furnished by the Debtor to its creditors and the holders of equity interests.

This Disclosure Statement sets forth certain information regarding the Debtor’s prepetition operating and financial history and the need to seek chapter 11 protection. This Disclosure Statement also describes terms and provisions of the Plan, certain effects of confirmation of the Plan, and the manner in which distributions will be made under the Plan. In addition, this Disclosure Statement discusses the confirmation process and the voting procedures that holders of Claims entitled to vote under the Plan must follow for their votes to be counted.

Except as otherwise provided herein, capitalized terms not otherwise defined in this Disclosure Statement have the meanings ascribed to them in the Plan. Unless otherwise noted herein, all dollar amounts provided in this Disclosure Statement and in the Plan are given in United States Dollars.

The following introduction is qualified by the Plan and the more detailed information and financial statements contained elsewhere in this document.

I. INTRODUCTION

Under the Plan, Jacob Samra, the father of the Debtor’s principal Yosi Samra, and junior Debtor-in-Possession lender, shall provide on the Effective Date, (i) a New Value Contribution in the form of (i) securing a cash payment of \$700,000 for the benefit of unsecured creditors (the first \$100,000 is paid by him in Cash), with allowed claims and (ii) ~~shall invest~~ additional Cash funds sufficient to pay allowed administrative expense claims on the Effective Date. The Reorganized Debtor shall continue the Debtor’s business operations, servicing all of the Debtor’s customers and using all of the Debtor’s suppliers.

~~Creditors~~ Other creditors of the Debtor receive the following treatment under the Plan:

- The holders of allowed Secured Claims other than Jacob Samra shall be paid in accordance with orders entered by the Bankruptcy Court during the case, or be provided other treatment as may be agreed to by the holders.
- ~~A trust, the YSI Creditors’ Trust, shall be established for the benefit of holders of Class 5 Claims who are to receive a distribution. These claims, if allowed, will receive a Pro Rata Share of the New Value Contribution of \$700,000 for the benefit of unsecured creditors who are to receive a Class 5 distribution as follows: (i) a Pro Rata Share of \$100,000 on the Effective Date less amounts necessary to pay Class 6 (convenience class) claimants, and less a reserve of \$20,000 set aside to pay administrative expenses of the YSI Creditors’~~

~~Trust, and (ii) a Pro Rata Share of \$120,000 on each of the next five (5) Annual Distribution Dates following the Effective Date.~~

- ~~• The \$700,000 New Value Contribution shall be secured by a mortgage on a non-debtor asset, 1509 E. 17th Street, Brooklyn, NY 11230. Should this property be sold, then at Jacob Samra's option, he will either (i) pay the unpaid balance of the New Value Contribution out of the proceeds of the sale upon closing, or (ii) provide the YSI Creditors' Trust a mortgage on 1530 East Captain Dreyfus Avenue, Phoenix, AZ 85022 as replacement collateral. Neither property has any liens or mortgages at this time. Any future mortgages or encumbrances on the properties will be subordinate to the YSI Creditors' Trust's mortgage.~~

- ~~• **OPTION FOR CLASS 5 CREDITORS TO RELEASE NON-DEBTOR:** Class 5 creditors are given the option to consensually release Released Parties from any causes of action, defenses, debts, demands, damages, obligations, and liabilities of any kind or nature whether under contract or tort, at law or in equity or otherwise, known or unknown, contingent or matured, liquidated or unliquidated, and all rights and remedies with respect thereto, including any personal liability pursuant to a Guaranty (the "Non-Debtor Release").~~

- ~~○ **Class 5 creditors who (i) vote to accept the Plan or (ii) abstain from voting without opting out of the release, are deemed to consent to the Non-Debtor Release of the Released Parties. These creditors receive their Pro Rata Share of the New Value Contribution described below.**~~

- ~~○ **Class 5 creditors who (i) vote to reject the Plan or (ii) abstain from voting and opt out of the release, are deemed to not consent to the Non-Debtor Release. These creditors receive no distribution under the Plan and are deemed to consent to this less favorable treatment pursuant to section 1123(a)(4) of the Bankruptcy Code.**~~

- Jacob Samra will receive 100% of the equity interests of the Reorganized Debtor in exchange for providing the New Value Contribution and in satisfaction of his claims.
- Equity interests in the Debtor are extinguished under the Plan.

The Debtor encourages you to vote to "accept" the Plan because it believes the Plan provides the best chance to allow the Debtor to continue as a going concern, which in turn will maximize the recovery for all creditor constituents. The Plan is the result of significant negotiations with the Official Statutory Committee of Unsecured Creditors, ~~who (the "Committee")~~, and the Committee supports the Plan. A copy of a letter from the Committee in support of the Plan is attached as Exhibit G.

The Debtor, in consultation with the Committee, believes that the Plan represents the best opportunity for unsecured creditors to have a meaningful recovery. Therefore, the Debtor urges that creditors vote in favor of the Plan.

Your vote on the Plan is important. ~~Absent acceptance of the Plan, the Debtor's business operations would likely dramatically change, leading to unknown results. Worse, if~~ If the Plan is not confirmed, it is possible that the Debtor's business operations would cease, and its Chapter 11 Case would ~~likely~~ be converted to a chapter 7 liquidation. The liquidation analysis, attached hereto as Exhibit C, shows that the Plan is far more beneficial to general creditors than a liquidation.

A. Overview

~~Beginning~~ Yosi Samra is the CEO and founder of the Debtor. He is a second-generation shoe designer and launched the Yosi Samra footwear line in 2009. The Debtor was a pioneer designer of what would become the popular fold-up ballet flat movement, elevating the style into one that was just as superior in structure and design as it was comfortable and convenient. The Debtor's runway-inspired styles have been featured in Vogue, InStyle and Glamour Magazines and spotted on some of fashion's most trend-setting celebrities, including Sarah Jessica Parker, Anne Hathaway, and Halle Berry. The Yosi Samra brand is available in over 1000 boutiques across the US and in 85 other countries, including 15 brand shops in Asia and The Middle East.

At its height in 2014, the Debtor generated over \$9.5 million per year in revenue. As of September 5, 2017 (the "Petition Date"), the Debtor had approximately \$1.5 million in assets, and \$6.28 million in liabilities. As of the Petition Date, of these liabilities, approximately \$661,000 is secured by a lien on the Debtor's personal assets in favor of Sallyport Commercial Finance. Yosi Samra's father, father Jacob Samra, has pre-petition purchase money liens of about \$616,000.

Events leading to bankruptcy

The Debtor created the foldable ballet flat and launched the brand in October 2009. Within the first week, the Debtor received 300+ emails from domestic and global retailers as well as distributors to carry the brand. At the time, Yosi Samra was the sole employee of the Debtor and the intent was to ship directly to consumers. As the business grew, the business shifted to wholesale. Mr. Samra hired a sales team, a design team, and back office accounting. The Debtor also leased warehouse and office space to service e-commerce customers.

The Debtor's footwear was initially made by Rong Xhin Factory, in Guangzhou, China. This factory, however, produced low-quality goods and the Debtor began to lose distributors. As sales declined from Fall 2014 to Fall 2016, the Debtor's cash flow suffered because overhead expenses remained fixed. The Debtor also switched factories in 2016, which led to about four to five months of shipping delays.

In late 2016, the Debtor determined to reduce overhead expenses by switching warehouses, reducing employees, streamlining its e-commerce business and moving to smaller office space. In addition, the Debtor re-focused its business away from wholesale, and towards e-commerce to ship directly to consumers.

The Debtor has successfully reduced overhead and can be profitable even at \$5 million in revenue per year. The Debtor, however, was still addressing past due debts and was being sued in various jurisdictions. This bankruptcy filing was a last resort to centralize litigation and negotiate with pre-petition creditors so that it may enjoy the "fresh start" afforded by the Bankruptcy Code.

B. Management

The Debtor's President is Larry Reines, and its CEO is Yosi Samra.

C. Summary Of First Day Motions

On the date of its bankruptcy filing, the Debtor filed numerous "first day" motions which were heard on short notice on September 12, 2017. These motions were intended to facilitate the transition between the Debtor's prepetition and postpetition business operations by approving certain regular business practices that may not be specifically authorized under the Bankruptcy Code or as to which the Bankruptcy Code requires prior approval by the Bankruptcy Court. Many of these motions are typical for a commercial chapter 11 case. The first day motions were as follows:

1. Motion for entry of interim and final orders authorizing the Debtor to obtain junior DIP financing (Docket No. 6);
2. Motion for entry of interim and final orders authorizing the Debtor to pay prepetition common carrier, warehouseman, and related obligations (Docket No. 8);
3. Motion for an order authorizing Debtor to: (A) maintain active bank accounts, (B) continue use of its existing business forms and (C) utilize its prepetition cash management system (Docket No. 9);
4. Motion pursuant to Bankruptcy Rule 1007 for an order granting extension of time to file statement of financial affairs (Docket No. 14).

D. Other Matters

1. Motion To Compel Warehouseman to Release Goods

On September 15, 2017, the Debtor filed a motion for an Order (i) compelling the Debtor's warehouseman, SEKO Worldwide, LLC ("SEKO Worldwide") and SEKO OMNI-Channel Logistics ("SEKO OMNI") (collectively, "SEKO"), to release the Debtor's goods, and (ii) for an award of sanctions (the "Motion to Compel") [Docket No. 20]. Seko filed its own motion that date, for adequate protection (the "Adequate Protection Motion") [Docket No. 21]. After several weeks of negotiation, the Debtor and Seko resolved the Motion to Compel and Adequate Protection Motion. The parties agreed upon an order (the "Seko Order") resolving the two motions, which was approved by the Court on October 24, 2017. This Seko Order provided terms through which Seko would release the Debtor's goods, and receive adequate protection with respect thereto.

The Seko Order provides, inter alia,

The Debtor will cause Sallyport to pay SEKO directly 5% of the SEKO Cash Collateral each time Sallyport makes an advance of funds relating to SEKO Cash Collateral for the Goods sold by the Debtor. The portion of SEKO Cash Collateral to be paid by Sallyport to SEKO shall only be paid by Sallyport to the extent such sums are otherwise available and advanced pursuant to the DIP ASPA provided by Sallyport to or for the benefit of the Debtor in accordance with the Sallyport DIP Order (defined below) after application of amounts necessary to repay Sallyport for the pre-petition advances on such specific Goods is first repaid to Sallyport.

Seko Order ¶ 5 (capitalized terms defined therein). Further, in accordance with the Seko Order, Seko's prepetition claim was set at \$254,314.54. This claim has been paid down by at least \$37,180 from the date of the Seko Order through May 1, 2018.

2. Motion to Obtain DIP Financing from its prepetition lender

On September 20, 2017, the Debtor filed a motion to obtain post-petition financing from Sallyport Commercial Finance LLC [Docket No. 31]. This motion was approved on an interim basis several times, and ultimately the Court entered a final order approving this Motion on December 7, 2017 [Docket No. 98].

3. Motion to Obtain Junior DIP Financing from Jacob Samra

On September 8, 2017, the Debtor filed a motion to obtain \$350,000 in junior post-petition financing from Jacob Samra, the father of Yosi Samra [Docket No. 6]. This motion was approved on an interim basis, and ultimately the Court entered a final order approving this Motion on November 9, 2017 [Docket No. 84].

4. Appointment of Committee

On September 27, 2017, the U.S. Trustee appointed the ~~Official Committee of Unsecured Creditors (the "Committee")~~. The members of the Committee are Dara Partners LP, US Software Group Inc. (a/k/a USSG), and WFC Fund LLC (a/k/a C2FO).

5. Objection to Claim

On or about June 18, 2017, the Debtor filed an objection to the claim filed by Rong Xing, a former factory of the Debtor with a significant (\$1.9 million) claim [Docket No. 158]. This matter has been adjourned to ~~Sept. 20, 2018~~ December 3, 2018. The parties have settled this contested matter such that Rong Xing will have an allowed claim of \$950,000. The parties will be submitting a stipulation to approve this settlement by notice of presentment.

The Debtor is still reviewing other claims and reserves all rights to raise additional objections. For instance, National Funding Inc. has filed a proof of claim (Claim 5) asserting a secured claim of about \$360,000. This claim however appears to be unperfected as of the Petition Date. The Debtor has been in contact with this creditor because it is treating this creditor as a Class 5 claimant, rather than as a secured creditor.

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In addition, Harel Waldman, a former independent contractor with the Debtor, is asserting wage claims of about \$11,971 and breach of contract damages of about \$178,175. The Debtor intends to object to both these claims as unsupported by any consideration.

6. Claims Bar Date

On November 16, 2017, the Debtor filed a motion for an order establishing bar dates for filing proofs of claim [Docket No. 87]. On November 20, 2017, the Court entered an order granting this motion, and setting January 9, 2018 as the deadline to file proofs of claim, and March 12, 2018 as the deadline for governmental entities to file proofs of claim [Docket No. 88].

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The Debtor has not analyzed objections to the filed claims, other than ~~Rong Xing as set forth above~~. Based upon the amount of filed claims and the claims listed in the Debtor's Schedule F, there are approximately \$4.672 million in unsecured claims against the Debtor. The Debtor believes that this amount will be reduced after claims are objected to and resolved by the Bankruptcy Court or settled. If the order allowing Rong Xing's claim at \$950,000 is entered, then the claims pool based on Schedule F will be approximately \$3,722,000.

E. Pending Litigation

1. Prepetition litigation

As of the bankruptcy filing, the Debtor was involved in certain litigation, as disclosed on the Debtor's Statement of Financial Affairs [Docket No. 73]. These litigations were stayed in accordance with section 362(a) of the Bankruptcy Code.

2. Avoidance Actions

The Debtor has not conducted a complete analysis of possible causes of action under sections 547, 548, 549 and 550 of the Bankruptcy Code but will be conducting this analysis as it attempts to obtain confirmation of the Plan. The Debtor is retaining all Avoidance Actions.

For purposes of disclosure, the Debtor's records reflect that it disbursed \$853,000 to its creditors in the ninety days prior to the Petition Date. The Debtor cannot opine on the strength or weakness of possible causes of action under section 547(b).

3. Other

The Debtor reserves rights vis-à-vis other Causes of Action. In particular, the Debtor is investigating ~~whether causes of action against~~ one creditor, SGI, and whether SGI has tortuously interfered with its business relations and ~~whether such/ or taken any other~~ actions that have damaged the Debtor.

II. SUMMARY OF PLAN

Under the Plan, Jacob Samra, the father of the Debtor's principal Yosi Samra, and junior Debtor-in-Possession lender, shall provide on the Effective Date (i) a New Value Contribution in the form of ~~(i) securing a cash~~ payment of ~~\$700,500,000~~ for the benefit of unsecured creditors

~~with allowed claims~~ and (ii) ~~investing~~ additional Cash funds sufficient to pay allowed administrative expense claims ~~in full on the Effective Date~~. The Reorganized Debtor shall continue the Debtor’s business operations, servicing all of the Debtor’s customers and using all of the Debtor’s suppliers.

Creditors receive the treatment outlined below.

III. PLAN OVERVIEW

A. Classification and Treatment of Claims and Interests Under the Plan

Under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”), only holders of claims and interests that are “impaired” are entitled to vote to accept or reject the Plan. The Bankruptcy Code further provides that a Class that is left unimpaired under the Plan is deemed to have accepted the Plan. The Bankruptcy Code also provides that a class that receives no distribution under the Plan is deemed to have rejected the Plan. To become effective, the Plan must be accepted by certain classes of claims and confirmed by the Bankruptcy Court. For a discussion of these matters, see Article V - Statutory Requirements for Confirmation of the Plan of Reorganization.

Certain Classes of Claims are impaired under the Plan and, accordingly, are entitled to vote on the Plan. The Debtor is seeking votes to accept the Plan from holders of Claims in these Classes. Certain Classes of Interests will receive a full recovery under the Plan and, therefore, are deemed to have approved the Plan. Similarly, certain classes obtain no recovery under the Plan, and are deemed to reject the Plan. For a description of the Classes of Claims and Interests and their treatment under the Plan, see Article IV – The Plan of Reorganization.

Estimated Claim amounts for certain Classes are based upon a preliminary analysis by the Debtor and its professionals of the corporate records and capital structure of the Debtor. There can be no assurance that these estimated amounts are correct. ~~The following treatments are possible only if the Plan is approved and the Debtor’s estimate of the Claims is determined to be valid by the Bankruptcy Court.~~ The timing of distributions under the Plan, ~~if any~~, is subject to conditions and determinations described in later sections of this Disclosure Statement.

Each Class of Claims and Interests, except Administrative Claims, Fee Claims, and Priority Tax Claims are placed in the following Classes and will receive the following treatment under the Plan:

**Summary of Classification
and Treatment of Claims and
Interests Under the Plan**

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<u>Class</u>	<u>Treatment</u>
Administrative <u>Claims</u>	These claims will be paid in full on the Effective Date or as agreed upon with the claimant ¹ <i>provided, however</i> , that an Administrative Claim representing a liability incurred in the ordinary course of

¹ The Effective Date is projected to be in late November, 2018.

	<p>business of the Debtor shall be paid in full in the ordinary course of business by the Debtor or the Reorganized Debtor, in accordance with the terms and subject to the conditions of any agreements governing such ordinary course liabilities.</p> <p>These claims would include (i) allowed cure payments and (ii) allowed 503(b)(9) claims. The Debtor does not believe any such claims exist.</p> <p>These claims also include Allowed Fee Claims. Fee claims are estimated to be \$135,194,000 as of August <u>September 30, 2018</u>, based on fee statements that have been served by professionals in this case, <u>not including \$66,000 in fees "held back" pursuant to interim compensation procedures approved by the Court. Savvy Fare, the Debtor's financial advisor, is agreeing to be paid after the Debtor's other professionals are paid. Fee claims for professionals other than Savvy Fare (the Debtor's financial advisor) are estimated to be about \$153,000 as of September 30, 2018 not including \$54,000 in fees "held back."</u> The Debtor reserves the right to object to professional fee applications that have been or shall be filed.</p>
<p>Class 1 Secured Priority Tax Claims of Sallyport</p> <p>Claim amount: \$120 <u>Approximately \$12,000 filed against the Debtor. The Debtor is investigating these claims.</u></p> <p>Dividend: <u>100%</u></p>	<p>This class consists of the Allowed Secured Sallyport Claims pursuant to the Prepetition Loan Documents in the amount of approximately \$104,000 and estimated to be \$70,000 on the Effective Date. These claims shall be paid through Exit Financing Loans in the form of an Inventory Facility Line of Credit, pursuant to which Sallyport may make advances from time to time for purposes of payment of the Allowed Secured Sallyport Claims and providing working capital. The terms of the Inventory Facility shall be as follows:</p> <p>Advance rate: 25% of Eligible Inventory</p> <p>Advance limit: \$200,000</p> <p>Inventory Funding Fee: 8% above Prime rate</p> <p>The holder of the Class 1 Claim is impaired and is entitled to vote. Each holder of an Allowed Priority Tax Claim shall, pursuant to Bankruptcy Code section 1129(a)(9)(C), in full and complete settlement, satisfaction, and discharge of such Claim, receive, at the option of the Reorganized Debtor, (i) the amount of such holder's Allowed Priority Tax Claim, plus interest on the unpaid amount of such Claim from the Effective Date at the rate applicable under non-bankruptcy law, in quarterly Cash installment payments over a period ending not later than five years after the Commencement Date (provided that the Reorganized Debtor may prepay the balance of any such Allowed Priority Tax Claim at any time without premium or penalty); (ii) Cash on the Distribution Date in the amount equal to the Allowed Priority Tax Claim; or (iii) such other treatment as may be</p>

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	<u>agreed upon in writing by such holder and the Debtor or Reorganized Debtor.</u>
<p><u>Class 1- Secured Claims of Sallyport</u></p> <p><u>Claim amount: \$5-10,000</u> <u>Dividend: 100%</u></p>	<p><u>This class consists of the Allowed Secured Sallyport Claim pursuant to the Prepetition Loan Documents estimated to be about \$5-10,000 by December 31, 2018. This claim shall be paid through the Exit Financing Loans provided by Sallyport and in the form of a new Exit Factoring Agreement and an Inventory Facility Line of Credit as described below.</u></p> <p><u>The holder of the Class 1 Claim is impaired and is entitled to vote on the Plan.</u></p>
<p>Class 2- Secured Claims of Jacob Samra</p> <p>Claim amount: \$616,000 Dividend: None except equity in Reorganized Debtor</p>	<p>This class consists of the Allowed Secured Jacob Samra Claims pursuant to prepetition purchase money loans in the amount of approximately \$616,000. The Holder of Claims in this Class will receive 100% of the equity interests in the Reorganized Debtor in full satisfaction of these Claims.</p> <p>The holder of <u>the</u> Class 2 Claims is impaired and is entitled to vote on the Plan.</p>
<p>Class 3- Secured Claims<u>Claim</u> of Seko</p> <p>Claim amount: estimated \$247,150,000 Dividend: 100% Unsecured portion treated as Class 5 claim</p>	<p>This class consists of the Allowed Secured Claims of Seko. These claims will be Claim. Post-petition, in accordance with the Seko Order, Seko's claim were <u>Claim</u>. Under the Plan, this arrangement shall continue such that Seko shall receive 5% of the Advance Rate (defined in the Exit Factoring Agreement) funded by Sallyport to the Debtor/Reorganized Debtor pursuant to the DIP Loan Documents to the extent the Debtor's rights to receive payment from Sallyport constitute Seko Cash Collateral (as defined in the Seko Order). <u>Under the Plan, this arrangement shall continue such that Seko shall receive 5% of the Advance Rate (defined in the Exit Factoring Agreement) funded by Sallyport to the Debtor/Reorganized Debtor pursuant to the DIP Loan Documents to the extent the Debtor's rights to receive payment from Sallyport constitute Seko Cash Collateral (as defined in the Seko Order).</u></p> <p>If there is no Seko Cash Collateral, then the Allowed Secured Seko Claims are deemed paid in full, and the balance of Seko's prepetition claims will be treated as Class 5 Claims.</p> <p>The holder of the Class 3 <u>ClaimsClaim</u> is impaired and is entitled to vote on the Plan.</p>
<p>Class 3a- Secured Claims<u>Claim</u> of OnDeck</p> <p>Claim amount: estimated \$44,019.22 Dividend: 100% Unsecured portion treated as Class 5 claim</p>	<p>This class consists of the Allowed Secured Claims<u>Claim</u> of OnDeck in the amount of \$44,019.22. These claims<u>This claim</u> will be paid at 0% interest over 60 months with monthly payments of \$733.65 beginning <u>on</u> the Effective Date.</p> <p>The Debtor is currently investigating the validity and extent of OnDeck's liens. If these liens are invalid, then OnDeck's <u>ClaimsClaim</u> will be treated as <u>a</u> Class 5 <u>ClaimsClaim</u>.</p> <p>The holder of the Class 3a <u>ClaimsClaim</u> is impaired and is entitled to vote on the Plan.</p>

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<p><u>Class 4- Priority non-tax claims</u></p>	<p><u>These claims will be paid in full on Effective Date, to the extent any exist.</u></p> <p><u>Upon information and belief, these claims are \$0. Harel Waldman, a former independent contractor with the Debtor, is asserting wage claims of about \$11,971 and breach of contract damages of about \$178,175. The Debtor intends to object to both these claims as unsupported by any consideration. In any event, the priority portion of Mr. Waldman's claims would be at most \$12,850 under 11 U.S.C. Sec. 507(a)(4).</u></p> <p><u>Holders of Claims in this class are unimpaired, and, pursuant to Bankruptcy Code section 1126(f), are conclusively presumed to accept the Plan and will not be entitled to vote on the Plan .</u></p>
<p><u>Class 5- General Unsecured Claims</u></p> <p><u>Aggregate claims: Approximately \$3,722,000 based on Schedule F.</u></p> <p><u>Dividend: Approximately 13.4% if (i) the Order allowing Rong Xing's claim in the amount of \$950,000 is entered, (ii) all other General Unsecured Claims are determined to be valid, and (iii) there are no deficiency claims of secured creditors.</u></p>	<p><u>This class consists of holders of General Unsecured Claims.</u></p> <p><u>Creditors with Class 5 Allowed Claims will receive a Pro Rata Share of the New Value Contribution of \$500,000. The New Value Contribution will be held in escrow with counsel to the Debtor from three business days prior to the confirmation of the Plan through the Effective Date. After the Effective Date and in accordance with Article 6 of the Plan, the New Value Contribution will be distributed.</u></p> <p><u>The holders of the Class 5 Claims are impaired and are entitled to vote on the Plan.</u></p>
<p><u>Class 6- Subordinated Claims</u></p> <p><u>Dividend: none</u></p>	<p><u>These claims do not receive any distribution until Claims in Class 5 are paid in full.</u></p> <p><u>The Debtor does not believe there will be any distribution to creditors in this class.</u></p> <p><u>Holders of Class 6 Claims are impaired, and pursuant to Bankruptcy Code section 1126(g), are deemed to reject the Plan and are not entitled to vote on the Plan.</u></p>
<p><u>Class 7- Old equity interests</u></p> <p><u>Dividend: none</u></p>	<p><u>These are Yosi Samra's equity interests in the Debtor. These interests are extinguished.</u></p>

	<p><u>The holder of Class 7 Equity Interests is impaired and pursuant to Bankruptcy Code section 1126(g), is deemed to reject the Plan and is not entitled to vote on the Plan.</u></p>
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<p>Class 4 Priority non-tax claims</p>	<p>These claims will be paid in full on Effective Date, to the extent any exist.</p> <p>Upon information and belief these claims are \$0.</p> <p>This class is unimpaired.</p>
<p>Class 5 General Unsecured Claims</p> <p>Aggregate claims: Approximately \$4.672 million based on Schedule F</p> <p>Dividend: Approximately 15% if all claims are valid, and if there are no deficiency claims of secured creditors</p>	<p>This class consists of holders of General Unsecured Claims.</p> <p><u>OPTION FOR CLASS 5 CREDITORS TO RELEASE NON-DEBTOR:</u> Class 5 creditors are given the option to consensually release Released Parties from any causes of action, defenses, debts, demands, damages, obligations, and liabilities of any kind or nature whether under contract or tort, at law or in equity or otherwise, known or unknown, contingent or matured, liquidated or unliquidated, and all rights and remedies with respect thereto, including any personal liability pursuant to a Guaranty (the "<u>Non Debtor Release</u>").</p> <p>Class 5 creditors who (i) vote to accept the Plan or (ii) abstain from voting without opting out of the release, are deemed to consent to the Non Debtor Release of the Released Parties. These creditors will receive their Pro Rata Share of the New Value Contribution described below.</p> <p>Class 5 creditors who (i) vote to reject the Plan or (ii) abstain from voting and opt out of the release, are deemed to not consent to the Non Debtor Release. These creditors will receive no distribution under the Plan and are deemed to consent to this less favorable treatment pursuant to section 1124(a)(4) of the Bankruptcy Code.</p> <p><u>New Value Contribution.</u> A trust, the YSI Creditors' Trust, shall be established for the benefit of holders of Class 5 Allowed Claims who are to receive a distribution. These claims, if allowed, will receive a Pro Rata Share of the New Value Contribution of \$700,000 for the benefit of unsecured creditors who are to receive a Class 5 distribution as follows: (i) a Pro Rata Share of \$100,000 on the Effective Date less amounts necessary to pay Class 6 (convenience class) claimants, and less a reserve of \$20,000 set aside to pay administrative expenses of the YSI Creditors' Trust, and (ii) a Pro Rata Share of \$120,000 on each of the next five (5) Annual Distribution Dates following the Effective Date.</p> <p>These funds will be administered by a YSI Creditors' Trust through a trustee, Robert Castro, in his business judgment.</p> <p><u>Security.</u> The first \$100,000 of the New Value Contribution is paid in Cash by Jacob Samra to the YSI Creditors' Trust. The remaining \$600,000 of the New Value Contribution shall be secured by a</p>

	<p>mortgage, that shall be held by the YSI Creditors' Trust, on a non-debtor asset, 1509 E. 17th Street, Brooklyn, NY 11230 (believed to be worth \$4.2 million). This property is owned by a limited liability company, 1509 East 17th Street LLC, of which Jacob Samra is 83% member and Eran Shemesh is 17% member. Both members consent to the imposition of the mortgage. Should this property be sold, then at Jacob Samra's option, he will either (i) pay to the Class 5 Creditors the unpaid balance of the New Value Contribution out of the proceeds of the sale upon closing, or (ii) provide to the YSI Creditors' Trust a mortgage on 1530 East Captain Dreyfus Avenue, Phoenix, AZ 85022 (believed to be worth between \$600,000-\$650,000) as replacement collateral. Neither property has any liens or mortgages at this time. Any future mortgages or encumbrances on the properties will be subordinate to the YSI Creditors' Trust's mortgage.</p> <p>The holders of the Class 5 Claims are impaired and are entitled to vote on the Plan.</p>
<p>Class 6 Convenience Class</p> <p>Aggregate claims: \$17,000 based on Schedule F</p> <p>Dividend: 20%</p>	<p>This class is for general unsecured creditors that have allowed claims of \$2,500 or under, or who voluntarily elect to reduce such claim to \$2,500 and receive treatment in this class.</p> <p>Holders of allowed claims in this class shall be entitled to receive Cash equal to 20% of such holder's allowed claim on the Effective Date from Cash obtained from the New Value Contribution.</p> <p>Based upon Schedule F, claims that fall into this class aggregate \$17,000. Thus, if there are no additional allowed claims, then these creditors receive an aggregate of \$3,400 from the New Value Contribution.</p> <p>This class is impaired.</p>
<p>Class 7 Subordinated Claims</p> <p>Dividend: none</p>	<p>These claims do not receive any distribution until Claims in Class 5 and 6 are paid in full.</p> <p>The Debtor does not believe there will be any distribution to creditors in this class.</p> <p>This class is impaired.</p>
<p>Class 8 Old equity interests</p> <p>Dividend: none</p>	<p>These are Yosi Samra's equity interests in the Debtor. These interests are extinguished.</p> <p>This class is impaired.</p>

B. Summary of Confirmation Requirements

Under the Bankruptcy Code, only classes of claims or equity interests that are “impaired” are entitled to vote to accept or reject the Plan. The Bankruptcy Code requires, as a condition to confirmation of a consensual plan of reorganization, that each impaired class of claims or equity interests accepts the plan. A class of creditors is deemed to accept a plan if the holders of at least two-thirds in dollar amount, and more than one-half in number, of those creditors that actually cast ballots, vote to accept such plan. A class of equity interest holders is deemed to accept a plan if the holders of at least two-thirds in amount of the allowed equity interests that actually cast ballots vote to accept such plan of reorganization.

Any Claims arising from the rejection of executory contracts and unexpired leases are treated under the Bankruptcy Code as if they arose before the filing of the chapter 11 petition.

C. Voting Instructions and Deadline

The Debtor has prepared this Disclosure Statement as required by Bankruptcy Code section 1125 and Bankruptcy Rule 3016(c). It is being distributed to holders of Claims against the Debtor to assist such holders in evaluating the feasibility of the Plan, the manner in which their Claims are treated and in determining that the Plan satisfies the requirements for confirmation set forth in Bankruptcy Code section 1129. A copy of the Plan is attached to this Disclosure Statement as Exhibit A. The purpose of this Disclosure Statement is to assist those entitled to vote on the Plan to make an informed judgment in voting to accept or reject the Plan.

This Disclosure Statement describes the background of the Debtor and the significant events leading up to and following the filing of the Chapter 11 case on the Petition Date. It summarizes the major events that have taken place during the Debtor’s Chapter 11 Case and describes the Plan, which divides creditor Claims and equity Interests into Classes and provides for the treatment of Allowed Claims and Interests.

1. Solicitation Process

Holders of Solicited Claims – Classes 1, 2, 3, 3a, ~~5~~ and ~~6~~ will be solicited for their acceptance or rejection of the Plan (the “Solicitation Period”). In the event that any class of Solicited Claims fails to accept the Plan, the Debtor reserves the right to seek confirmation of the Plan pursuant to section 1129(b)(1) of the Bankruptcy Code, commonly known as the “cramdown” provision.

2. General Information

Under the Bankruptcy Code, certain Classes of Creditors are deemed to accept or reject the Plan and the vote of these Classes will not be solicited.

- (a) Unimpaired Classes Are Deemed to Accept the Plan and Do Not Vote

If a Creditor holds Claims included within a Class that is not impaired under the Plan, under Bankruptcy Code section 1126(f), the Creditor is deemed to have accepted the Plan with respect to such Claims and its vote of such Claims will not be solicited. Here, Holders of Class 4 are presumed to have accepted the plan.

(b) Certain Classes Are Deemed to Reject the Plan and Will Not Vote

Under Bankruptcy Code section 1126(g), Class ~~76~~ and ~~87~~ are deemed to have not accepted the Plan and the vote of holders of such Claims and Interests in either Class will not be solicited. Any holder of a Class ~~76~~ or ~~87~~ Claim or Interest may, however, object to the Plan provided that such holder has not otherwise waived such right.

3. Claims Subject To A Pending Objection

The Bankruptcy Code provides that only the holders of Allowed Claims are entitled to vote on the Plan. A Claim to which an objection has been filed (if such objection is filed at least thirty (30) days in advance of the Confirmation Hearing (defined below)) (a "Pending Objection") is not an Allowed Claim unless and until the Bankruptcy Court rules on the Pending Objection and allows the Claim. If an objection to a claim is not filed at least thirty (30) days in advance of the Confirmation Hearing, the Claim shall be allowed for voting purposes unless otherwise ordered by the Court.

If the Bankruptcy Court has not ruled on the Pending Objection, but the holder of a Claim wishes to vote, the holder of the Claim may petition the Bankruptcy Court to estimate its claim for voting purposes under Bankruptcy Rule 3018(a). Consequently, although holders of Claims subject to a Pending Objection will receive ballots, their votes will not be counted unless the Bankruptcy Court, prior to the hearing on Confirmation, rules on the Pending Objection and allows the Claim or, on proper request under Bankruptcy Rule 3018(a) prior to the hearing on Confirmation, temporarily allows the Claim in an amount which the Bankruptcy Court deems proper for the purpose of voting on the Plan.

This provision only impacts voting, and does not impact allowance or distribution on account of Claims. No provision of this Disclosure Statement shall impair the right of the Debtor or any party in interest to object to a Claim for any reason, either before or after the Confirmation Hearing.

4. ~~Voting and Record Date and Voting Deadline~~

If a Creditor holds a Claim classified in a voting Class of Claims under the Plan, the Creditor's acceptance or rejection of the Plan is important and must be in writing and filed on time. The record date for determining which creditors may vote on the Plan is the Confirmation Date.

1. How to Vote. IN ORDER FOR A VOTE TO BE COUNTED, THE BALLOT MUST BE PROPERLY COMPLETED AS SET FORTH ABOVE AND IN ACCORDANCE WITH THE VOTING INSTRUCTIONS ON THE BALLOT, AND RECEIVED NOT LATER THAN _____, 2018 (THE "VOTING DEADLINE") BY THE BALLOTING AGENT AS SET FORTH ON THE BALLOT.

2. Ballots. Creditors must use only the ballot or ballots sent to them with this Disclosure Statement. If a Creditor has Claims in more than one Class, it should receive multiple ballots. IF A CREDITOR RECEIVES MORE THAN ONE BALLOT THE CREDITOR SHOULD ASSUME THAT EACH BALLOT IS FOR A SEPARATE CLAIM AND SHOULD COMPLETE AND RETURN ALL OF THEM.

IF A CREDITOR IS A MEMBER OF A VOTING CLASS AND DID NOT RECEIVE A BALLOT FOR SUCH CLASS, OR IF SUCH BALLOT IS DAMAGED OR LOST, OR IF A CREDITOR HAS ANY QUESTIONS CONCERNING VOTING PROCEDURES, CALL VINCENT J. ROLDAN, ESQ. AT (212) 575-7900 DURING PREVAILING EASTERN TIME BUSINESS HOURS.

~~If a Creditor or Interest holder has any questions about the procedure for voting its Claim or the packet of materials that it received, please contact counsel to the Debtor, using the contact information on the first page of this Disclosure Statement.~~

D. The Confirmation Hearing

The Bankruptcy Court has set ~~October~~December __, 2018 as date for a hearing on confirmation of the Plan (the "Confirmation Hearing"). All holders of Claims and Interests will have an opportunity to object to the Plan, if such holder has not waived such right. If the Plan is confirmed by the Bankruptcy Court, it will be binding on all Claim and Interest holders regardless of whether an individual Claim or Interest holder has supported or opposed the Plan.

E. Definitions

Defined Terms As used in this Disclosure Statement, terms defined in the Plan annexed hereto and not otherwise specifically defined herein will have the meanings attributed to them in the Plan.

Interpretation of Terms Each definition in the Disclosure Statement and in the Plan includes both the singular and the plural, and references in the Disclosure Statement include the masculine and feminine where appropriate. Headings are for convenience or reference and shall not affect the meaning or interpretation of the Disclosure Statement.

IV. THE PLAN OF REORGANIZATION

THIS SECTION PROVIDES A SUMMARY OF THE STRUCTURE, CLASSIFICATION, TREATMENT AND IMPLEMENTATION OF THE PLAN, AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN, WHICH IS ATTACHED TO THIS DISCLOSURE STATEMENT AS EXHIBIT A. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE DISCLOSURE STATEMENT AND THE PLAN, THE PLAN SHALL GOVERN.

A. Classification and Treatment of Claims and Interests Under the Plan

The Claims against the Debtor are divided into Classes, in accordance with Bankruptcy Code section 1123(a)(1), according to their seniority and other criteria. The Classes of Claims and Interests in the Debtor, and the funds and other property to be distributed under the Plan, are described below.

THE DEBTOR BELIEVES THAT THE PLAN AFFORDS CREDITORS THE POTENTIAL FOR THE GREATEST REALIZATION OF THE VALUE OF THE ASSETS OF THE DEBTOR.

B. Treatment of Administrative Claims and Priority Tax Claims

Certain Claims need not be classified under a plan pursuant to the Bankruptcy Code, including Administrative, DIP Lender, Fee, and Priority Tax Claims.

1. Administrative Claims

The Plan defines Administrative Claims as (i) arising on or after the Commencement Date and prior to the Effective Date for a cost or expense of administration of the Chapter 11 Case, that is entitled to priority or superpriority pursuant to sections 364(c)(1), 503(b), or 507(a)(2) of the Bankruptcy Code, including DIP Financing Claims, Fee Claims and actual and necessary costs and expenses incurred after the Commencement Date of preserving the Estates and operating the businesses of the Debtor or (ii) entitled to priority under section 503(b)(9) of the Bankruptcy Code.

The Plan provides that holders of Administrative Claims shall receive Cash in an amount equal to such Allowed Administrative Claim, *provided, however*, that an Administrative Claim representing a liability incurred in the ordinary course of business of the Debtor shall be paid in full in the ordinary course of business by the Debtor or the Reorganized Debtor, in accordance with the terms and subject to the conditions of any agreements governing such ordinary course liabilities. Post-petition trade claims against the Debtor, as of ~~September 14~~December 31, 2018, are expected to be minimal because the Debtor has been paying suppliers COD.

The Texas Comptroller of Public Accounts (the "Texas Comptroller") is asserting post-petition sales taxes in the amount of \$6,577.18 and post-petition franchise tax in the amount of \$3,662.19. The Debtor is disputing these amounts and is currently negotiating with the Texas Comptroller for a reduction in these claims.

2. Fee Claims

With respect to Fee Claims for professionals, all entities seeking allowance by the Bankruptcy Court of a Fee Claim shall prepare final applications for allowances of compensation for services rendered and reimbursement of expenses incurred through the Effective Date, and shall file and serve such applications no later than the date that is sixty (60) days after the Effective Date. The failure to timely file such application shall result in the Fee Claim being forever barred and discharged. Objections to a Fee Claim must be filed and served no later than seven (7) days prior to the return date of the application seeking allowance of such Fee Claim. ~~Within ten (10)~~

~~days after a Final Order is entered by the Bankruptcy Court allowing a Fee Claim, the Disbursing Agent shall pay the holder thereof Cash in the unpaid Allowed amount of such claim.~~

The Debtor is generally paying all of ~~their~~ its post-petition trade creditors in the ordinary course, and the only other administrative claims will be Fee Claims. Allowed Fee Claims will be funded through the operation of the Debtor's business. One of the conditions to the Effective Date is that the Debtor must escrow \$75,000 dedicated to payment of Allowed Fee Claims. This amount shall be contributed by Jacob Samra. To the extent the Allowed Fee Claims exceed \$75,000, the amount of fees exceeding \$75,000 shall be paid by the Disbursing Agent ~~by the end of 2018~~ within sixty (60) days after entry of a final order approving the Allowed Fee Claims, unless otherwise agreed to by the professional.

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Fee claims are estimated to be \$194,000 as of September 30, 2018, based on fee statements that have been served by professionals in this case, not including \$66,000 in fees "held back" pursuant to interim compensation procedures approved by the Court. Savvy Fare, the Debtor's financial advisor, is agreeing to be paid after the Debtor's other professionals are paid. Fee claims for professionals other than Savvy Fare (the Debtor's financial advisor) are estimated to be about \$153,000 as of September 30, 2018 not including \$54,000 in fees "held back."

3. Priority Tax Claims -

Each holder of an Allowed Priority Tax Claim shall, pursuant to Bankruptcy Code section 1129(a)(9)(C), in full and complete settlement, satisfaction, and discharge of such Claim, receive, at the option of the Reorganized Debtor, (i) the amount of such holder's Allowed Priority Tax Claim, plus interest on the unpaid amount of such Claim from the Effective Date at the rate applicable under non-bankruptcy law, in quarterly Cash installment payments over a period ending not later than five years after the Commencement Date (provided that the Reorganized Debtor may prepay the balance of any such Allowed Priority Tax Claim at any time without premium or penalty); (ii) Cash on the Distribution Date in the amount equal to the Allowed Priority Tax Claim; or (iii) such other treatment as may be agreed upon in writing by such holder and the Debtor or Reorganized Debtor. Notwithstanding the foregoing, the holder of an Allowed Priority Tax Claim will not be entitled to receive any payment on account of any penalty arising with respect to or in connection with the Allowed Priority Tax Claim. Any such Claim or demand for any such penalty (a) will be discharged under the Plan and (b) the holder of an Allowed Priority Tax Claim shall be barred from collecting or attempting to collect such penalty from the Reorganized Debtor or their property.

For purposes of disclosure, the following Priority Tax Claims have been filed against the Debtor:

<u>Creditor</u>	<u>Amount</u>
<u>Internal Revenue Service</u>	<u>\$400.61</u>
<u>CA Dept of Taxes and Fee Admin.</u>	<u>\$1036.63</u>
<u>TX Comptroller of Public Accounts</u>	<u>\$6577.18</u>
<u>NYS Dept of Tax & Finance</u>	<u>\$547.28</u>
<u>TX Comptroller of Public Accounts</u>	<u>\$3662.19</u>

The Debtor is currently in the process of investigating these claims.

4. Sallyport's DIP Factoring Agreement Claims.

(a) Sallyport's DIP Factoring Agreement Claims, to the extent any exist, shall be paid ~~in the ordinary course through Exit Financing Loans in accordance with the form of an Exit Factoring Agreement and an Inventory Facility Line of Credit. Copies of these agreements, including a blackline against the DIP Factoring Agreement, except that the "Advance Rate" as defined therein is modified as follows;~~ that was approved by the Court on December 7, 2017 [Docket 98], are attached hereto as Exhibit D.

~~"Advance Rate: up to 85% of the gross face amount of each Eligible Account purchased under this DIP Factoring Agreement that was funded to Seller in advance of its due date. Of this amount, 5% approved by the Court;~~

<u>Initial Factoring Fee:</u>	<u>.5% for Initial Factoring Fee Period (30 days)</u>
<u>Additional Factoring Fee:</u>	<u>.5% for Additional Fee Period (30 days after Initial Factoring Period). There is an Additional Factoring Fee Period accruing after the next 30 days, up to a maximum of 90 days, when the account must be repurchased.</u>
<u>Default Factoring Fee:</u>	<u>3% plus the Interest Rate</u>
<u>Advance rate:</u>	<u>up to 85% of the gross face amount of each Eligible Account purchased under the agreement that was funded to Debtor in advance of its due date.</u>
<u>Maximum facility amount:</u>	<u>\$2,000,000</u>
<u>Interest rate:</u>	<u>2% plus Base Rate (Base Rate Floor is 5%)</u>

The following provisions of the Exit Factoring Agreement differ from the DIP Factoring Agreement:

- Interest is calculated based upon the "Base Rate", which itself is the highest prime rate publicly announced from time to time by the Wall Street Journal. The "Base Rate Floor" at under the DIP Factoring Agreement was 4.25%. Since that time, the prime rate has increased. Therefore, the "Base Rate Floor" has also increased under the Exit Factoring Agreement, to 5.00
- Sallyport's collateral now expressly includes "Good Will".

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- Section 10.12 provides that the Debtor releases Sallyport from claims relating to the parties' prepetition and postpetition agreements, prior to the date of the Exit Factoring Agreement. Section 10.12 also incorporates the indemnity provisions of the parties prepetition and postpetition agreements, for liabilities and damages prior to the date of the Exit Factoring Agreement. The foregoing releases and indemnity do not apply to claims resulting from the gross negligence, willful misconduct, unauthorized use of confidential information that causes damages, ultra vires acts, fraud or criminal conduct of Sallyport.
- Section 3.1 provides that pre-petition and post-petition collateral previously granted to Sallyport cross-collateralize pre-petition obligations, post-petition obligations, and obligations due post-confirmation under the Exit Factoring Agreement.

Under the proposed Inventory Facility Line of Credit, Sallyport may make advances from time to time for purposes of providing working capital. The terms of the Inventory Facility shall be applied towards payment of Allowed Secured Seko Claims."as follows:

<u>Advance rate:</u>	<u>25% of Eligible Inventory</u>
<u>Advance limit:</u>	<u>\$200,000</u>
<u>Inventory Funding Fee:</u>	<u>8% above Prime rate</u>

C. Treatment of Classified Claims and Interests

The Plan provides for certain Claims and Interests by Class, as provided in Bankruptcy Code sections 1122 and 1123(a)(1). The Classes established by the Plan, and the treatment of each Class, are set forth below. The Plan provides for certain general treatment provisions which, in addition to other generally applicable provisions (including distribution provisions described in a later section of this Disclosure Statement), apply to the treatment of all Claims under the Plan.

The classes are as follows:

1. Class 1- Secured Sallyport Claims - Impaired

This class consists of the Allowed Secured Sallyport Claims pursuant to the Prepetition Loan Documents in the amount of approximately ~~\$104,000~~ and estimated to be ~~\$705-10,000~~ ~~on the Effective Date by December 31, 2018~~. These claims shall be paid through Exit Financing Loans in the form of an Inventory Facility Line of Credit, pursuant to which Sallyport may make advances from time to time for purposes of payment of the Allowed Secured Sallyport Claims and providing working capital. The terms of the Inventory Facility shall be as follows:as described above.

~~Advance rate: 25% of Eligible Inventory~~
~~Advance limit: \$200,000~~
~~Inventory Funding Fee: 8% above Prime rate~~

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The holder of the Class 1 Claim is impaired and is entitled to vote on the Plan.

2. Class 2- Secured Claims of Jacob Samra - Impaired

This class consists of the Allowed Secured Jacob Samra Claims pursuant to prepetition purchase money loans in the amount of approximately \$616,000. ~~Holder~~The Holder of Claims in this Class will receive 100% of the equity interests in the Reorganized Debtor in full satisfaction of these Claims.

The holder of Class 2 Claims is impaired and is entitled to vote on the Plan.

3. Class 3- Secured Claims of Seko - Impaired

This ~~class~~Class consists of the Allowed Secured ~~Claims of Seko. These claims will be Claim, estimated to be \$150,000. Post-petition, in accordance with the Seko Order, Seko's claim was paid through payment by Sallyport of 5% of the Advance Rate funded advances by Sallyport to the Debtor/Reorganized Debtor pursuant to under the DIP Loan Documents to the extent the Debtor's rights to Factoring Agreement. Under the Plan, this arrangement shall continue such that Seko shall receive payment from Sallyport constitute Seko Cash Collateral 5% of the Advance Rate (as defined in the Seko Order).~~

~~If there is no Seko Cash Collateral, then the Allowed Secured Seko Claims are deemed paid in full (Exit Factoring Agreement) funded by Sallyport to the Reorganized Debtor. The Exit Factoring Agreement generally defines "Advance Rate" as 85% of the gross face amount of each eligible account receivable purchased by Sallyport, and balance of Seko's Allowed prepetition claims will be treated as Class 5 Claims funded to the Debtor in advance of its due date.~~

The holder of the Class 3 ~~Claims~~Claim is impaired and is entitled to vote on the Plan.

4. Class 3a- Secured ~~Claims~~Claim of OnDeck - Impaired

This class consists of the ~~Allowed~~-Secured ~~Claims~~Claim of OnDeck in the amount of \$44,019.22. ~~These claims~~This claim will be paid at 0% interest over 60 months with monthly payments of \$733.65 beginning the Effective Date.

The Debtor is currently investigating the validity and extent of OnDeck's liens. If these liens are invalid, then OnDeck's Allowed ~~Claims~~Claim will be treated as a Class 5 Claim.

The holder of the Class 3a Claim is impaired and is entitled to vote on the Plan.

5. Class 4- Priority Non-Tax Claims - Unimpaired

This class consists of Priority Non-Tax Claims against the Debtor. These claims, to the extent any exist, will be paid in full on the Effective Date, ~~to extent any exist~~. Upon information and belief these claims are \$0 because the Debtor is current on all payroll, ~~sales and property taxes~~.

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Harel Waldman, a former independent contractor with the Debtor, is asserting wage claims of about \$11,971 and breach of contract damages of about \$178,175. The Debtor intends to object to both these claims as unsupported by any consideration. In any event, the priority portion of Mr. Waldman's claims would be at most \$12,850 under 11 U.S.C. Sec. 507(a)(4).

The holders of the Class 4 Claims are unimpaired and, pursuant to Bankruptcy Code section 1126(g), are presumed to accept the Plan, and ~~thus~~ are not entitled to vote on the Plan.

6. Class 5- General Unsecured Claims- Impaired.

This class consists of holders of Allowed General Unsecured Claims.

~~OPTION FOR CLASS 5 CREDITORS TO RELEASE NON-DEBTOR: Class 5 creditors are given the option to consensually release Released Parties from any causes of action, defenses, debts, demands, damages, obligations, and liabilities of any kind or nature whether under contract or tort, at law or in equity or otherwise, known or unknown, contingent or matured, liquidated or unliquidated, and all rights and remedies with respect thereto, including any personal liability pursuant to a Guaranty (the "Non-Debtor Release").~~

~~Class 5 creditors who (i) vote to accept the Plan or (ii) abstain from voting without opting out of the release, are deemed to consent to the Non-Debtor Release of the Released Parties. These creditors will receive their~~ Creditors with Class 5 Allowed Claims will receive a Pro Rata Share of the New Value Contribution ~~described below.~~

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~~Class 5 creditors who (i) vote to reject the Plan or (ii) abstain from voting and opt out of the release, are deemed to not consent to the Non-Debtor Release. These creditors will receive no distribution under the Plan and are deemed to consent to this less favorable treatment pursuant to section 1123(a)(4) of the Bankruptcy Code.~~

~~For avoidance of doubt, creditors who do not consent to the Non-Debtor Release, regardless of whether they accept treatment as a Class 5 creditor or voluntarily reduce their claim to \$2, of \$500 to accept treatment as a Class 6 creditor, will receive no distribution under the Plan.~~

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~~.000. The New Value Contribution. A trust, the YSI Creditors' Trust, shall be established for the benefit of holders of Class 5 Allowed Claims who are to receive a distribution. These claims, if allowed, will receive a Pro Rata Share of the "New Value Contribution" of \$700,000 for the benefit of unsecured creditors who are to receive a Class 5 distribution as follows: (i) a Pro Rata Share of \$100,000 on will be held in escrow with counsel to the Debtor from three business days prior to the confirmation of the Plan through the Effective Date less amounts necessary to pay Class 6 (convenience class) claimants, and less a reserve of \$20,000 set aside to pay administrative expenses of the YSI Creditors' Trust, and (ii) a Pro Rata Share of \$120,000 on each of the next five (5) Annual Distribution Dates following. After the Effective Date.~~

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~~These funds and in accordance with Article 6 of the Plan, the New Value Contribution will be administered by a YSI Creditors' Trust through a trustee, Robert Castro, in his business judgment distributed.~~

~~Security. The first \$100,000 of the New Value Contribution is paid on the Effective Date in Cash by Jacob Samra to the YSI Creditors' Trust. The remaining \$600,000 of the New Value Contribution shall be secured by a mortgage, that shall be held by the YSI Creditors' Trust, on a non-debtor asset, 1509 E. 17th Street, Brooklyn, NY 11230 (believed to be worth \$4.2 million). This property is owned by a limited liability company, 1509 East 17th Street LLC, of which Jacob Samra is 83% member and Eran Shemesh is 17% member. Both members consent to the imposition of the mortgage. Should this property be sold, then at Jacob Samra's option, he will either (i) pay to the Class 5 Creditors the unpaid balance of the New Value Contribution out of the proceeds of the sale upon closing, or (ii) provide to the YSI Creditors' Trust a mortgage on 1530 East Captain Dreyfus Avenue, Phoenix, AZ 85022 (believed to be worth between \$600,000-\$650,000) as replacement collateral. Neither property has any liens or mortgages at this time. Any future mortgages or encumbrances on the properties will be subordinate to the YSI Creditors' Trust's mortgage.~~

~~The holders of the Class 5 Claims are impaired and are entitled to vote on the Plan.~~

These claims aggregate approximately \$~~4.672 million, 3,722,000~~ based ~~upon~~ Schedule F ~~and filed claims (less Class 7 Claims), if the Order allowing Rong Xing's claim in the amount of \$950,000 is entered.~~ The Debtor therefore estimates that creditors in this class ~~would~~will receive a ~~4513.4%~~ distribution, subject to the results of claim objections ~~and administrative expenses for the YSI Creditors' Trust.~~

~~The holders of the Class 5 Claims are impaired and are entitled to vote on the Plan.~~

~~7. Class 6 - Convenience Class - Impaired~~

~~This class is for general unsecured creditors that have Allowed Claims of \$2,500 or under, or who voluntarily elect to reduce such claim to \$2,500 and receive treatment in this class.~~

~~Holders of allowed Claims in this class shall be entitled to receive Cash equal to 20% of such holder's allowed claim on the Effective Date from Cash obtained from the New Value Contribution.~~

~~Based upon Schedule F, Claims that fall into this class aggregate about \$17,000. Thus if there are no additional Claims, then these creditors receive an aggregate of \$3,400 from the New Value Contribution.~~

~~The holders of Class 6 Claims are impaired and are entitled to vote on the Plan.~~

~~8.7. Class 7- Subordinated Claims - Impaired~~

This class consists of any Claims that are subordinated under section 510 of the Bankruptcy Code.

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The holders of the Class ~~76~~ Claims ~~are, to the extent there are any, are impaired and pursuant to Bankruptcy Code section 1126(g),~~ presumed to have rejected the Plan and are not entitled to vote on the Plan.

~~9-8.~~ Class ~~87~~- Old equity interests - Impaired

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The sole member of this class is Yosi Samra, and his equity interests in the Debtor shall be extinguished. Mr. Samra will not be receiving any monetary distribution from the estate on account of his equity interest in the Debtor. The holder of the Class ~~87~~ Claim is impaired and, pursuant to Bankruptcy Code section 1126(g), presumed to have rejected the Plan and is not entitled to vote on the Plan.

D. Funding of the Plan

The Debtor intends to implement the Plan with funds generated from the operation of its business, the New Value Contribution, and by using proceeds of the Exit Financing Loans as necessary.

E. Implementation of the Plan

1. Corporate Existence. On the Effective Date, the Reorganized Debtor shall continue to exist as a separate legal entity, and shall be a corporation under the laws of the State of New York.

2. Corporate Action To Facilitate Consummation of the Plan. After the Confirmation Order is entered, and subject to the subsequent occurrence of the Effective Date, all matters provided for under the Plan that would otherwise require action by the members or directors of the Debtor or the Reorganized Debtor, including but not limited to the issuance of new equity by the Reorganized Debtor in favor of Jacob Samra in the form of a certificate representing 100% of the shares of common stock of the Reorganized Debtor, the adoption of certificates of formation, ~~operating agreements,~~ the issuance of by-laws, election or appointment of the initial directors and officers of the Reorganized Debtor, the entry into any agreement or the delivery of any document by any of the Debtor, or the Reorganized Debtor (including the Plan Documents) shall occur in accordance with the Plan and the Confirmation Order and without any further action by any of such entities' Old Equity Interest holders or directors.

3. Corporate Governance and Management of the Reorganized Debtor. On the Effective Date, the management, control, and operation of the Reorganized Debtor shall be as follows:

- (i) Board of Directors. Yosi Samra, Jacob Samra, Orly Samra.
- (ii) Officers. Yosi Samra Chief Executive Officer; Larry Reines as President and Treasurer; Jacob Samra as Secretary.

The following insiders of the Debtor shall also be employed by the Reorganized Debtor:

Yosi Samra	CEO	\$120,000 per year
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Larry Reines	President, Treasurer	\$240,000 per year
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4. Transactions on the Effective Date. On the Effective Date, unless otherwise provided by the Confirmation Order, the following shall occur, shall be deemed to occur simultaneously, and shall constitute substantial consummation of the Plan:

(a) The property to be retained by and/or transferred under the Plan to the Reorganized Debtor shall automatically be vested without further action on the part of the Debtor or Reorganized Debtor.

(b) All Retained Assets shall vest in the Reorganized Debtor free of any Claims, liens or equity interests, to be managed and used by the Reorganized Debtor.

(c) The Reorganized Debtor shall have the right to pursue any and all Claims and Causes of Action included within the Retained Assets that the Debtor may have as of the Effective Date against any entity. Unless a Cause of Action against an entity is, in writing, expressly waived, relinquished, released, assigned, compromised, or settled in this Plan, or in a Final Order, all rights with respect to such Cause of Action are reserved to the Reorganized Debtor. The Reorganized Debtor shall determine when and if to pursue, compromise or not pursue any such Cause of Action as may be interest of the Reorganized Debtor.

~~(d) — All Trust Assets shall vest in the YSI Creditors' Trust free of any Claims, liens or equity interests, to be managed and used by the Trustee in accordance with the YSI Creditors' Trust Agreement and the Plan.~~

~~(e)(d)~~ All Plan Documents shall be executed, delivered, and become binding in all respects, on the Reorganized Debtor and each and every counterparty.

~~5. — YSI Creditors' Trust. The Debtor shall have the sole authority to administer its assets prior to the Effective Date. On or before the Effective Date, the Committee, on behalf of Holders of Allowed General Unsecured Claims, shall establish the YSI Creditors' Trust in accordance with the Plan and the YSI Creditors' Trust Agreement, a copy of which will be submitted as part of a Plan Supplement.~~

~~— The Trustee shall be retained pursuant to the YSI Creditors' Trust Agreement. The Trustee shall be deemed to have been appointed as the Estate's representative by the Bankruptcy Code pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.~~

~~For all U.S. federal income tax purposes, all parties (including, without limitation, the Committee, Debtors, the Trustee and the Beneficiaries) shall treat the transfer of the Trust Assets to the YSI Creditors' Trust as a transfer of such assets by the Debtors to the Beneficiaries, and followed by a transfer by such Beneficiaries to the YSI Creditors' Trust.~~

~~The YSI Creditors' Trust shall be established for the primary purpose of liquidating the Trust Assets for and on behalf of Beneficiaries in accordance with Treas. Reg. ~~Sec.~~ 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business. The YSI Creditors' Trust shall not be deemed a successor in interest of the Debtor for any purpose other than as~~

~~specifically set forth herein. The YSI Creditors' Trust is intended to qualify as a "grantor trust" for federal income tax purposes with the Beneficiaries treated as grantors and owners of the Trust.~~

~~The Trustee shall have only the rights, powers and privileges expressly provided in the Plan and the YSI Creditors' Trust Agreement. Upon the Effective Date, the Trustee shall have the power, without any further order of the Bankruptcy Court, to take the actions specified in the subsections below and any powers reasonably incidental thereto, which the Trustee, in the exercise of the Trustee's business judgment, deems necessary or appropriate to fulfill the purpose of the YSI Creditors' Trust:~~

- ~~A. Hold legal title to any and all rights of the settlor and the Beneficiaries in or arising from the Trust Assets;~~
- ~~B. Pursue or not to pursue, or settle, assign, transfer or sell, any Trust Assets as the Trustee determines is in the best interests of the Beneficiaries and consistent with the purposes of the YSI Creditors' Trust;~~
- ~~C. Marshal, liquidate, sell, assign, transfer, abandon and/or distribute the Trust Assets;~~
- ~~D. In reliance upon the official claims register maintained in the Chapter 11 Case, maintain on the Trustee's books and records a register evidencing the beneficial interest herein held by each Beneficiary;~~
- ~~E. Make distributions to holders of Allowed Unsecured Claims as provided for in the Plan;~~
- ~~F. Open and maintain bank accounts on behalf of or in the name of the Trust;~~
- ~~G. Send annually to each Beneficiary, as soon as reasonably practicable after the end of each calendar year, a separate statement stating the Beneficiary's share of income, gain, loss, deduction or credit and instruct all such Beneficiaries to report such items on their federal tax returns;~~
- ~~H. Establish such reserves for Disputed Claims, taxes, assessments, Trustee's fees and professional fees and other expenses of administration of the YSI Creditors' Trust as set forth below, and as may be necessary and appropriate for the proper operation of the YSI Creditors' Trust;~~
- ~~I. Pay all expenses and make all other payments relating to the Trust Assets;~~
- ~~J. Retain and pay third party professionals in accordance with the YSI Creditors' Trust Agreement; and~~
- ~~K. Invest any moneys held as part of the Trust Assets in accordance with the terms of the YSI Creditors' Trust Agreement.~~

~~In addition, the YSI Creditors' Trust is a party in interest who may seek relief in the Bankruptcy Court to effectuate the terms of the Plan.~~

~~The Trustee shall be bonded in an amount of not less than one hundred and ten percent (110%) of the amount held in the YSI Creditors' Trust. Furthermore, the Trustee must (a) maintain all funds in an account at a bank that is an authorized depository institution for the Southern District of New York, and (b) file quarterly disbursement and status reports on the twentieth (20th) day after the conclusion of the relevant quarter (until the case is converted, closed or dismissed by means of a final decree, whichever is earlier).~~

~~The issuance of beneficial interests in the YSI Creditors' Trust to the beneficiaries of such trusts, are exempt from registration under the Securities Act of 1933, as amended, and all applicable state and local laws requiring registration of securities, pursuant to section 1145 of the Bankruptcy Code. Nevertheless, if the Trustee determines, with the advice of counsel, that the YSI Creditors' Trust is required to comply with the registration and reporting requirements of the Securities and Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, the Trustee, at the expense of the trust, shall take any and all actions to comply with such reporting requirements and file necessary periodic reports with the Securities and Exchange Commission.~~

~~6. Monthly Reporting. The Reorganized Debtor shall provide the Trustee with financial reports (in the form of at least an income statement and balance sheet) every thirty (30) days until distributions to Class 5 claimants are complete.~~

F. Risk Factors in Connection with the Plan

The Debtor believes that there are certain risk factors in connection with confirmation of the Plan including: (1) the level of Allowed Claims and Allowed Administrative Claims may exceed the Debtor's estimates; and (2) the Reorganized Debtor may not possess sufficient funding.

The Debtor is generally "breaking even" during this bankruptcy case. Its performance was negatively impacted earlier in this case by: (i) the Debtor's warehouse Seko refusing to turn over goods (90% of the Debtor's inventory), which at the outset of this case caused the Debtor to cancel orders and lose valuable good will, (ii) lack of capital to allow the Debtor to purchase inventory to fill orders, (iii) efforts by one creditor, SGI, to interfere with the Debtor's relations with its suppliers and (iv) tight cash flow stemming from post-petition payments to Sallyport and Seko. The Debtor is currently investigating causes of action against SGI, including claims for tortious interference. The Debtor believes it shall be profitable in 2018 after confirmation 2019 and beyond because (i) the inventory facility to be provided by Sallyport will give the Debtor capital to purchase inventory, (ii) professional fees will be greatly reduced and prepetition secured debt has been significantly paid down, which shall only help cash flow, (iii) with improved cash flow, the Debtor will be able to purchase more inventory and improve margins, (iv) the Debtor has significantly reduced overhead, and (v) once the Debtor is out of bankruptcy, the Debtor will be able to attract new lenders interested in refinancing the company for future growth.

G. Provisions Governing Distributions

1. Distributions Under the Plan

The disbursing agent for distributions on account of Claims in all Classes ~~other than Class 5~~ shall be the Reorganized Debtor or its designee acting in such capacity, ~~and the disbursing agent for distributions on account of Claims in Class 5 shall be the Trustee or its designee acting in such capacity~~ (when the Reorganized Debtor ~~or Trustee~~ is acting in such capacity, the “Disbursing Agent”).

The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise provided herein or ordered by the Bankruptcy Court.

2. Resolution of Disputed Claims

(a) Objections to and Settlement of Claims.

(i) The Debtor (prior to the Effective Date) and the Reorganized Debtor (on and after the Effective Date) shall bear the responsibility and cost of administering and closing the Chapter 11 Case, including the duties typically associated with the Debtor’s claims administration. On and after the Effective Date, the Reorganized Debtor shall have the ~~exclusive~~ right to file and continue the prosecution of any objections to all other Claims against the Debtor’s Estate.

(ii) On and after the Effective Date, for any objections to Claims prosecuted by the Reorganized Debtor under this Plan, the Reorganized Debtor shall be entitled to compromise, settle, otherwise resolve, or withdraw any such objections to Claims, without further order of the Bankruptcy Court.

(iii) Unless otherwise ordered by the Bankruptcy Court, all objections to Claims that are the subject of proofs of claim or requests for payment filed with the Bankruptcy Court (other than applications for allowance of Fee Claims) shall be filed and served upon the holder of the Claim as to which the objection is made on or prior to the Claims Objection Deadline. An objection to Claim is deemed timely filed if it is filed on or prior to the Claims Objection Deadline. All Claims that are not subject to a timely filed objection to Claim shall be deemed allowed pursuant to section 502(a) of the Bankruptcy Code.

(iv) Except as set forth in the Plan, nothing in the Plan, the Disclosure Statement, the Confirmation Order or any order in aid of Confirmation, shall constitute, or be deemed to constitute, a waiver or release of any claim, cause of action, right of setoff, or other legal or equitable defense that the ~~Debtors~~ Debtor had immediately prior to the Effective Date, against or with respect to any Claim or Equity Interest. Unless otherwise provided in the Plan, upon Confirmation, the ~~Debtors and the YSI Creditors’ Trust~~ Debtor shall have, retain, reserve and be entitled to assert all such claims, causes of action, rights of setoff and other legal or equitable defenses that the ~~Debtors~~ Debtor had immediately prior to the Effective Date.

(b) Creation of Disputed Claims Reserves. From and after the Effective Date, the ~~Trustee, on behalf of the YSI Creditors’ Trust,~~ Disbursing Agent will place Cash into segregated accounts (the “Disputed Class 5 Claims Reserve”) equal to, in the case of the Claims in Class 5,

the product of (a) the quotient of (i) the Maximum Allowable Amount of all Disputed Claims in Claims in Class 5 divided by (ii) the amount equal to the sum of (A) the amount of all Allowed Claims in Class 5, plus (B) the Maximum Allowable Amount of all Disputed Claims in Claims in Class 5, multiplied by (b) the Class 5 Cash. The Disputed Claims Reserve will remain in full force and effect until all Disputed Claims in Class 5 have been resolved. Funds in the Disputed Claims Reserve shall be maintained in an account at a bank that is an authorized depository institution for the Southern District of New York.

(c) Distributions from Disputed Claims Reserve. On each ~~annual~~Annual Distribution Date, each holder of an Allowed Class 5 Claim that has been Allowed as of the annual test date shall receive, from the applicable Disputed Claims Reserve, Cash in the amount of the difference between (a) the amount such holder would have received on the Effective Date, and/or any prior Annual Distribution Date if its Claim had been Allowed as of the Effective Date, if all Claims that were disallowed on or prior to the annual test date were disallowed as of the Effective Date, minus (b) the aggregate amount of Cash previously distributed on account of the Claim. Notwithstanding the foregoing, no payment or distribution may be made from the Disputed Claims Reserve that would result in such holder receiving an amount in excess of what the holder would have received if such holder's Claim were Allowed as of the Effective Date in the Maximum Allowable Amount. Once all Claims have been allowed or disallowed, any remaining Cash in the Disputed Claims Reserves shall be distributed ~~to the YSI Creditors' Trust for the benefit of Beneficiaries~~pro rata to Class 5 claimants who are to receive a distribution.

(d) Delivery of Distributions. Subject to Bankruptcy Rule 9010 and except as otherwise set forth in the Plan, all distributions under the Plan shall be made to the holder of each Allowed Claim at the address of such holder as listed on the Schedules as of the Record Date, unless the Debtor or, on and after the Effective Date, the Reorganized Debtor, shall have been notified in writing of a change of address, including by the filing of a timely proof of claim by such holder that provides an address for such holder different from the address reflected on the Schedules. Subject to the provisions in the Plan specifically governing unclaimed distributions, in the event that any distribution to any holder is returned as undeliverable, the Disbursing Agent shall use reasonable efforts to determine the current address of such holder, but no distribution to such holder shall be made unless and until the Disbursing Agent has determined the then current address of such holder, at which time such distribution shall be made to such holder without interest.

(e) Distributions of Cash. Any distribution of Cash under the Plan shall, at the Disbursing Agent's option, be made by check drawn on a domestic bank or wire transfer.

(f) Timing of Distributions. Any payment or distribution required to be made under the Plan on a day other than a Business Day shall be made on the next succeeding Business Day.

~~(g) Minimum Distributions. No payment of Cash less than \$25 shall be made by the Disbursing Agent to any holder of a Claim unless a request therefor is made in writing to the Disbursing Agent no later than thirty (30) days after the Effective Date.~~

(h) Unclaimed Distributions. All distributions under the Plan that are unclaimed for a period of one (1) year after distribution thereof shall be deemed unclaimed property under

section 347(b) of the Bankruptcy Code and revested in the Reorganized Debtor, ~~or YSI Creditors' Trust as applicable~~, and any entitlement of any holder of any Claim to such distributions shall be extinguished and forever barred.

(j) Time Bar to Cash Payments. Checks issued by a Disbursing Agent in respect of Allowed Claims shall be null and void if not negotiated within one hundred eighty (180) days after the date of issuance thereof. Requests for reissuance of any check shall be made directly to the Disbursing Agent by the holder of the Allowed Claim to whom such check originally was issued. Any Claim with respect to such a voided check shall be made on or before two hundred seventy (270) days after the date of issuance of such check. After such date, all Claims in respect of void checks shall be discharged and forever barred.

(k) Distributions to Holders as of the Record Date. As of the close of business on the Record Date for distributions under the Plan, the claims register shall be closed, and there shall be no further changes in the record holder of any Claim. The Disbursing Agent shall have no obligation to recognize any transfer of any Claim occurring after the Record Date, and shall instead be authorized and entitled to recognize and deal for all purposes under the Plan with only those record holders stated on the claims register as of the close of business on the Record Date for distributions under the Plan.

(l) Allocation Between Principal and Accrued Interest. To the extent applicable, all distributions to a holder of an Allowed Claim will apply first to the principal amount of such Claim until such principal amount is paid in full and then to any interest accrued on such Claim. ~~All distributions for Claims under the Prepetition Secured Note and the DIP Agreement shall be applied pursuant to the applicable terms of the respective credit agreements.~~

~~(m) Distribution Efficiency. Notwithstanding anything to the contrary in the preceding paragraph, the Disbursing Agent shall not be required to make any distribution on any annual Distribution Date if the Disbursing Agent determines, in its sole and absolute discretion, that making such distribution would not be cost efficient. Any distribution to a holder of a Claim that has not been made shall be retained for distribution on the next annual Distribution Date for which such distribution is cost efficient, or such time as all Claims have been allowed or disallowed.~~

(m) [Reserved].

(n) Estimation of Claims. The Reorganized Debtor may at any time request that the Bankruptcy Court estimate any contingent, unliquidated, or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether any party previously objected to such Claim or whether the Bankruptcy Court has ruled on such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to such Claim, including during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation, and resolution procedures are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

(o) Special Rules for Distributions to Holders of Disputed Claims. Notwithstanding any provision otherwise in the Plan and except as otherwise agreed by the Reorganized Debtor or

Trustee, ~~neither~~ the Reorganized Debtor ~~nor~~ ~~Trustee~~ shall not be required to (a) make any partial payments or partial distributions to a person, estate or trust with respect to a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved by settlement or Final Order or (b) make any distributions on account of an Allowed Claim of any person, estate or trust that holds both an Allowed Claim and a Disputed Claim, unless and until all objections to the Disputed Claim have been resolved by settlement or Final Order and the Claims have been Allowed.

(q) Nonpayment of Claims of Parties Holding Recoverable Property; Setoff.

(i) Notwithstanding any other provisions of the Plan, no payments or distributions will be made on account of any Claims of holders from which property is recoverable or alleged to be recoverable pursuant to section 542, 543, 550, or 553 of the Bankruptcy Code or from entities that are or are alleged to be a transferee of a transfer avoidable under section 544, 545, 547, 548, or 549 of the Bankruptcy Code until (A) the holder has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 542, 543, 550 or 553 of the Bankruptcy Code or (B) the Bankruptcy Court determines by Final Order that the holder need not pay the amount, or turn over such property.

(ii) Subject to the provisions of section 553 of the Bankruptcy Code, in the event that the Debtor has a Cause of Action of any nature whatsoever against the holder of a Claim, such Debtor may, but is not required to, setoff against the Claim (and any payments or other distributions to be made in respect of such Claim in the Plan) the Debtor's Cause of Action against the holder. Parties that are to be affected by setoffs by the Debtor are to receive notice of the setoff and have an opportunity to object. Neither the failure to setoff nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtor of any Cause of Action that the Debtor has against the holder of a Claim.

H. Miscellaneous Matters

1. U.S. Trustee Fees

All fees payable pursuant to section 1930 of title 28 of the United States Code and any applicable interest thereon shall be paid on the Effective Date. ~~After the Effective Date and until this Chapter 11 Case is closed, dismissed, or converted (whichever happens earlier), the Reorganized Debtor shall pay fees pursuant to section 1930 of title 28 of the United States Code and any applicable interest thereon as such obligations become due.~~

The Debtor shall pay all United States Trustee quarterly fees under 28 U.S.C. § 1930(a)(6), plus interest due and payable under 31 U.S.C. § 3717 on all disbursements, including Plan payments and disbursements in and outside the ordinary course of the Debtor's business, until the entry of a Final Decree, dismissal of the case, or conversion of the case to Chapter 7, whichever is earlier.

The Reorganized Debtor shall file quarterly disbursement reports on the ~~twentieth~~ ~~(20th)~~ fifteenth (15th) day after the conclusion of the relevant quarter (until the case is converted, closed or dismissed by means of a final decree, whichever is earlier).

2. Exemption from Transfer Taxes

The Plan provides that, pursuant to section 1146(a) of the Bankruptcy Code, the creation of any mortgage, deed of trust, lien or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including any merger agreements or agreements of consolidation, restructuring, disposition, liquidation or dissolution, deeds, bills of sale or assignments executed in connection with any of the forgoing or pursuant to the Plan, shall not be subject to any stamp Tax, real estate transfer Tax, mortgage recording Tax, sales or use Tax, or other similar Tax. All sale transactions consummated by the Debtor and approved by the Bankruptcy Court on and after the Confirmation Date through and including the Effective Date, including the sale by the Debtor of owned property pursuant to section 363(b) of the Bankruptcy Code and the assumption, assignment and sale by the Debtor of unexpired leases of non-residential real property pursuant to section 365(a) of the Bankruptcy Code, shall be deemed to have been made under, in furtherance of, or in connection with the Plan and, thus, shall not be subject to any stamp Tax, real estate transfer Tax, mortgage recording Tax, sales or use Tax, or other similar Tax.

3. Bar Date for Fee Claims

All entities seeking allowance by the Bankruptcy Court of a Fee Claim shall prepare final applications for allowances of compensation for services rendered and reimbursement of expenses incurred through the Effective Date, and shall file and serve such applications no later than the date that is sixty (60) days after the Effective Date. The failure to timely file such application shall result in the Fee Claim being forever barred and discharged. Objections to a Fee Claim must be filed and served seven (7) days prior to the return date. As soon as practicable after a Final Order by the Bankruptcy Court allowing a Fee Claim, the Disbursing Agent shall pay the holder thereof Cash in the unpaid Allowed amount of such claim.

4. Effectuating Documentation

Each of the Debtor and the Reorganized Debtor is authorized to execute, deliver, file or record such contracts, instruments, releases, indentures, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and any securities issued pursuant to the Plan.

5. Discharge

The rights afforded in the Plan and the payments and distributions to be made in the Plan shall discharge all Claims. Causes of Action against the Debtor or its Estate arising prior to the Effective Date, and all Old Equity Interests shall be cancelled, to the extent permitted by section 1141 of the Bankruptcy Code. The Confirmation Order, except as provided in the Plan or therein, shall be a judicial determination of discharge of all such Causes of Action against the Debtor and the termination of all Old Equity Interests, such discharge shall void any judgment

against the Debtor at any time obtained to the extent it relates to a discharged Cause of Action or the terminated Old Equity Interests, and all entities shall be precluded from asserting against the Debtor, the Reorganized Debtor, or any of their respective property, any Cause of Action based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such holder filed a proof of Claim. As provided in section 524 of the Bankruptcy Code, entry of the Confirmation Order shall operate as an injunction against the prosecution of any action against the Debtor, the Reorganized Debtor, or any of their property to the extent such prosecution relates to a discharged Cause of Action or the terminated Old Equity Interests. Notwithstanding the foregoing paragraph, nothing in the Plan shall be deemed to prevent any party in interest from pursuing an action to enforce the terms of the Plan or the Confirmation Order.

6. Exculpation

From and after the Effective Date, to the extent permitted by section 1125(e) of the Bankruptcy Code, none of the Debtor, the Reorganized Debtor, the Committee, each acting in such capacities, or any of their respective members, officers, directors, employees, advisors, professionals, attorneys or agents, acting in such capacity, shall have or incur any liability to any entity for any act or omission in connection with, related to, or arising out of, the Chapter 11 Case, the preparation therefor, the formulation, preparation, dissemination, implementation, confirmation, or approval of the Plan, the property to be distributed under the Plan, or any contract, instrument, release, or other agreement or document provided for or contemplated in connection with the consummation of the transactions set forth in the Plan, *provided, however*, that the foregoing provisions shall not affect the liability of any entity that would result from any (i) act or omission to the extent that such act or omission is determined by a Final Order of the Bankruptcy Court to have constituted gross negligence or willful misconduct, or (ii) unauthorized use of confidential information that causes damages, or ultra vires acts, fraud or criminal conduct. Nothing in the Plan shall limit the liability of the professionals of the Debtor or the Committee to their respective clients for malpractice pursuant to Rule 1.8(h) of the New York Rules of Professional Conduct.

The Debtor's agreement to the customary and circumscribed exculpation provisions described herein does not, in its judgment, constitute a waiver or release of claims that have any realizable value for the benefit of its estate. The Debtor is unaware of any claims that have any validity or value that are being released pursuant to the exculpation provision of the Plan.

7. Release by the Debtor

As of the Effective Date, the Debtor, on behalf of itself and all of its successors and assigns, and the Debtor's Estate (collectively, including the Debtor and its Estate, the "Releasing Parties") shall be deemed to have forever released, waived, and discharged the Released Parties² from all Causes of Action against them held by the Debtor or its Estate, that are based in whole or in part on any act, omission, transaction, or other occurrence taking place on, or prior to, the Effective Date in any way relating to the Chapter 11 Case, the preparation therefor, the formulation,

² "Released Party" means each of the Debtor's officers, directors, principals, employees, agents, advisors, and attorneys, acting in such capacities, and all of the successors and assigns of the foregoing. For avoidance of doubt, Yosi Samra, Jacob Samra, and Eric Samra are Released Parties.

preparation, dissemination, implementation, confirmation, or approval of the Plan, the property to be distributed under the Plan, or any contract, instrument, release, or other agreement or document provided for or contemplated in connection with the consummation of the transactions set forth in the Plan, any of such Released Party's relationship with the Debtor, which any Releasing Party has, had, or may have against any Released Party, *provided, however*, that such release shall not apply to any obligations of the Released Parties under the Plan or any Plan Document. Such release shall be effective notwithstanding that any Releasing Party or other entity may thereafter discover facts in addition to, or different from, those which that entity previously knew or believed to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and the Releasing Parties and any successors or assigns are hereby expressly deemed to have waived any and all rights that they may have under any statute or common law principle which would limit the effect of the foregoing release, waiver, and discharge to those claims actually known or suspected to exist on the Effective Date. Notwithstanding the foregoing, no Released Party shall be released from any Cause of Action resulting from the gross negligence, willful misconduct, unauthorized use of confidential information that causes damages, ultra vires acts, fraud or criminal conduct of such Released Party.

For avoidance of doubt, this Plan does not affect the rights of one non-debtor vis-à-vis another non-debtor, ~~other than those creditors who consent to the Non Debtor Release in section 2.2 of the Plan.~~

8. Releases by Released Parties

As of the Effective Date, each of the Released Parties shall release and forever discharge each of the Releasing Parties from any and all claims (including, but not limited to, secured claims, general unsecured claims allowed under the Plan and claims as defined in section 101(5) of the Bankruptcy Code), demands, causes of action, obligations, damages and liabilities of any nature whatsoever, arising at any time from the beginning of the world through the Effective Date, whether in law or equity, whether known or unknown, whether disclosed or undisclosed, whether anticipated or unanticipated, whether asserted or unasserted, whether direct or indirect, whether contingent or liquidated, that a Released Party or any of its successors or assigns ever had or now has, or may claim to have, except all rights arising under the Plan and any Plan Document are preserved. Such release shall be effective notwithstanding that any Released Party or other entity may thereafter discover facts in addition to, or different from, those which that entity previously knew or believed to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and the Released Parties and any successors or assigns are hereby expressly deemed to have waived any and all rights that they may have under any statute or common law principle which would limit the effect of the foregoing release, waiver, and discharge to those claims actually known or suspected to exist on the Effective Date. Notwithstanding the foregoing, no Releasing Party shall be released from any Cause of Action resulting from the gross negligence, willful misconduct, unauthorized use of confidential information that causes damages, ultra vires acts, fraud or criminal conduct of such Releasing Party.

~~9. Non Debtor Release~~

~~As of the Effective Date, the Non Debtor Release (referenced above, section 2.2(e) of the Plan) is triggered vis à vis Class 5 creditors. Notwithstanding the foregoing, no released party~~

~~with respect to this Non Debtor Release shall be released from any Cause of Action resulting from the gross negligence, willful misconduct, unauthorized use of confidential information that causes damages, ultra vires acts, fraud or criminal conduct of such Released Party.~~

~~Nothing in the Confirmation Order or the Plan of Reorganization shall effect a release of any claim by the United States Government or any of its agencies or any state and local authority whatsoever including, without limitation, any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority, nor shall anything in the Confirmation Order or the Plan of Reorganization enjoin the United States or any state or local authority from bringing any claim, suit, action or other proceedings for any liability whatever, including without limitation any claim, suit or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state or local authority, nor shall anything in the Confirmation Order or the Plan of Reorganization exculpate any party from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority.~~

~~A. Support for Non Debtor Release~~

~~_____ Prior to the Petition Date, Yosi Samra, in his individual capacity, guaranteed the debts of certain creditors:~~

Creditor	Amount of Prepetition Claim (appx.)
Dara Partners	\$25,940.64
Brandswami	\$176,000.00
Great American Financial Services	\$7,879.94
MYN Showroom	\$4,022.70
Chase Ink	\$101,075.00
SGI	\$700,000.00
National Funding	\$350,000.00
American Express	\$31,000.00

~~_____ Most if not all of these creditors has sued or has threatened to sue Mr. Samra individually. Collectively, Mr. Samra is subject to possible personal liability of over \$1 million.~~

~~_____ Under the Plan, Mr. Samra's father, Jacob Samra, has agreed to provide the New Value Contribution in the form of (i) securing payment of \$700,000 to unsecured creditors (the first \$100,000 is paid by him in Cash), and (ii) shall invest additional Cash funds sufficient to pay allowed administrative expense claims. Jacob's willingness to provide the New Value Contribution is conditioned on the existence of the Non Debtor Releases contained in the Plan, which specifically includes personal liability pursuant to a guaranty.~~

~~Section 2.2(e) of the Plan contains Non Debtor Releases pursuant to which holders of Class 5 claims (general unsecured creditors) release Released Parties (which include Yosi Samra individually and Jacob Samra) from various claims and causes of action, including personal liability pursuant to a guaranty. The Debtor submits that these Non Debtor Releases are consensual due to the “opt out” provisions of the Plan and on their ballots. Under the Plan,~~

- ~~o Class 5 creditors who (i) vote to accept the Plan or (ii) abstain from voting without opting out of the release, are deemed to consent to the Non Debtor Release of the Released Parties.~~
- ~~o Class 5 creditors who (i) vote to reject the Plan or (ii) abstain from voting and opt out of the release, are deemed to not consent to the Non Debtor Release. These creditors receive no distribution under the Plan.~~

~~Courts in this Circuit have analyzed several factors in reviewing third party releases, including:~~

- ~~(1) whether the estate received substantial consideration; (2) whether the enjoined claims were “channeled” to a settlement fund rather than extinguished; (3) whether the enjoined claims would indirectly impact the debtor’s reorganization by way of indemnity or contribution; (4) whether the plan otherwise provided for the full payment of the enjoined claims; or (5) whether the releases are consensual.~~

~~*Deutsche Bank AG v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136, 142 (2d Cir. 2005). However, analyzing non debtor releases is not a “matter of factors and prongs.” *Id.* Rather, the Court must look to the full set of circumstances when making its determination. Courts have approved third party releases where (1) the releases were essential to the plan and (2) the released parties substantially contributed to the debtors’ reorganization. See *Rosenberg v. XO Comme’ns, Inc. (In re XO Comme’ns, Inc.)*, 330 B.R. 394, 437-38 (Bankr. S.D.N.Y. 2005). Third party releases are also regularly approved in this Circuit on a purely consensual basis, unless the releases are truly offensive. See *In re MPM Silicones, LLC*, No. 14-22503, 2014 WL 4436335, at *32 (Bankr. S.D.N.Y. 2014). As set forth below, the Non Debtor Releases satisfy the *Metromedia* requirements and should be approved.~~

~~(i) The releases are consensual and should be approved~~

~~First, and most importantly, the Non Debtor Releases are precisely that—consensual. Courts in this District regularly approve third party releases such as those contained in the Plan on the grounds that such releases are consensual. See *MPM Silicones*, 2014 WL 4436335, at *32 (citing *Metromedia*, 416 F.3d at 141); see also *In re Genco Shipping & Trading Ltd.*, 513 B.R. 233, 271 (Bankr. S.D.N.Y. 2014) (granting releases with respect to any party that consented or was deemed to consent through its ability to “check the box” on the plan ballots to opt out of the release); *In re Chemtura Corp.*, 439 B.R. 561, 611 (Bankr. S.D.N.Y. 2010) (finding releases~~

permissible based on creditor consent); *In re Calpine Corp.*, 2007 WL 4565223, at *10 (Bankr. S.D.N.Y. Dec. 19, 2007) (same).

For instance, the court in *In re DBSD North America, Inc.*, 419 B.R. 179, 218 (Bankr. S.D.N.Y. 2009), pointed out with approval how in *Calpine*, the release “explicitly stated that a vote to accept the Plan or abstention from voting without opting out of the releases” constitutes an assent to the releases set forth in the Plan. Furthermore, the *DBSD* court found that “[e]xcept for those who voted against the Plan, or who abstained and then opted out”, the third party release was consensual and within the scope of releases permitted in the Second Circuit. Here, the provisions governing opting out of the Non Debtor Release are virtually identical and are therefore also within the scope permitted in the Second Circuit.

Court in this District have also approved third party releases as consensual when, as here, adequate notice of the release has been provided to creditors. *MPM Silicones*, 2014 WL 4436335, at *32. Notice is “adequate” when, for example, the third party release is bolded in the plan and disclosure statement or language on the ballot explains that by voting to accept the plan or abstaining without opting out of the release the creditor consents to the release. *In re DBSD*, 419 B.R. at 218-19; *MPM Silicones*, 2014 WL 4436335, at *32 (citing *In re Genco Shipping & Trading Ltd.*, 513 B.R. 233). Here, the Non Debtor Releases are adequately disclosed to creditors: the Non Debtor Release paragraph headings in the Plan and Disclosure Statement are both capitalized. The ballots explicitly describe the opt out mechanism, and in capitalized letters explain the consequences of not checking a box:

~~IF NEITHER BOX IN THIS ITEM 2 IS CHECKED, THEN YOU MAY BE
DEEMED TO CONSENT TO THE NON DEBTOR RELEASE, AS SET FORTH
ABOVE~~

The Debtor submits that this language and disclosure provides “clear notice” to creditors of a third party release. *See, e.g., MPM Silicones*, 2014 WL 4436335, at *32.

(ii) The Debtor received substantial consideration to support the releases

In addition to being consensual, the Debtor received substantial consideration from the Released Parties justifying approval of the Non Debtor Release. While substantial consideration by the released party is a factor in the *Metromedia* analysis, consideration can come in many forms, including, but not limited to, consideration in the form of payment. *See Metromedia*, 416 F.3d at 143 (citing *In re Drexel Burnham Lambert Grp., Inc.*, 960 F.2d 285, 289 (2d Cir. 1992)). Where a released party provides “money’s worth” to accommodate the debtor’s business objectives and permits successful reorganization of the estate, such a release is consistent with applicable law. *In re Metro. 885 Third Ave Leasehold, LLC*, No. 10-16103, 2010 WL 6982778 (Bankr. S.D.N.Y. Dec. 22, 2010). Foregoing or giving up certain rights has also been found by this Court to constitute substantial consideration. *See, e.g., In re Residential Capital, LLC*, No. 12-12020 (MG), at *28 (Bankr. S.D.N.Y. Dec. 11, 2013), ECF No. 6065 (finding that the giving up of shared rights by the released parties constituted a substantial contribution).

Here, Jacob Samra has provided substantial contributions to the Debtor’s case by agreeing to make the New Value Contribution. He is also agreeing to convert about \$615,000 in prepetition

~~secured debt and \$350,000 in post-petition DIP loan debt into equity of the Reorganized Debtor. A DIP loan alone may be sufficient to satisfy the substantial contribution factor. See *In re Residential Capital, LLC*, No. 12-12020 (MG), at *28, ECF No. 6065 (finding that the released parties' DIP loan was an important contribution to the debtors' estates).~~

~~(iii) The releases are an essential component of the Plan~~

~~As set forth above, courts have approved third party releases where they are essential to the debtor's plan. See *In re Genco Shipping & Trading Ltd.*, 513 B.R. at 268 (nondebtor releases are permissible when the provisions are important to a debtor's plan); see also *Drexel Burnham*, 960 F.2d at 293 ("In bankruptcy cases, a court may enjoin a creditor from suing a third party, provided the injunction plays an important part in the debtor's reorganization plan."). While it is unclear exactly when such non-debtor releases are "important" to a plan, courts have approved such releases when the debtors could not confirm a plan absent such releases. See *Cartalemi v. Karta Corp. (In re Karta Corp.)*, 342 B.R. 45, 54-55 (Bankr. S.D.N.Y. 2006) (finding that the third party releases were essential to confirmation of the plan and that without such releases, the plan would unravel). Additionally, third party releases have been approved when the releases were key components of plan settlement agreements. In *Drexel Burnham*, the court approved such a release because it was "unquestionably an essential element of [the Debtor's] ultimate reorganization." *Drexel Burnham*, 960 F.2d at 293; see also *In re Residential Capital, LLC*, No. 12-12020 (MG), at *28-*29, ECF No. 6065 (approving third party releases as a "lynchpin" of debtors' global settlement, without which, "the Plan would not be confirmable or feasible, and the recoveries currently contemplated by the Plan would not exist").~~

~~— Here, the Non Debtor Release is a key condition to the Jacob Samra's agreement to make the New Value Contribution. Without it, the Debtor would have no way of funding a distribution to unsecured creditors. As a result of this New Value Contribution, the Debtor will also be able to continue as a going concern, using all of its suppliers. Furthermore, the New Value Contribution enables the Debtor to obtain a consensual Plan, which will prevent costly litigation.~~

~~— Based on the foregoing, the Debtor submits that the Non Debtor Release is wholly appropriate.~~

~~10.9. Injunction~~

The Plan also provides that, on the Effective Date, except as otherwise provided in the Plan or in the Confirmation Order, all entities who have been, are, or may be holders of Causes of Action against or Old Equity Interests in the Debtor shall be enjoined from taking any of the following actions against or affecting the Debtor, the Reorganized Debtor, or their property with respect to such Causes of Action or Old Equity Interest (other than actions brought to enforce any rights or obligations under the Plan and appeals, if any, from the Confirmation Order):

(a) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind against the Debtor, the Reorganized Debtor, or their property, or any direct or indirect successor in interest to the Debtor or any assets or property of such transferee or successor (including all suits, actions, and proceedings that are pending as of the Effective Date, which must be withdrawn or dismissed with prejudice);

(b) enforcing, levying, attaching, collecting, or otherwise recovering by any manner or means whether directly or indirectly any judgment, award, decree or order against the Debtor, the Reorganized Debtor, or their property, or any direct or indirect successor in interest to the Debtor or any assets or property of such transferee or successor;

(c) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any lien against the Debtor, the Reorganized Debtor, or their property, or any direct or indirect successor in interest to the Debtor or any assets or property of such transferee or successors, or other than as contemplated by the Plan;

(d) except as otherwise provided in the Plan and Plan Documents, asserting any setoff, right of subrogation, or recoupment of any kind, directly or indirectly against any obligation due the Debtor, the Reorganized Debtor, or their property, or any direct or indirect successor in interest to the Debtor or any assets or property of such transferee or successor; and

(e) proceeding in any manner in any place whatsoever that does not conform to or comply with the provisions of the Plan.

~~11~~.10. Post-Confirmation Employment and Payment of Professionals

From and after the Effective Date, the Reorganized Debtor shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay the reasonable fees and expenses of professional persons thereafter incurred by the Reorganized Debtor, including those fees and expenses incurred in connection with the implementation and consummation of the Plan.

~~12~~.11. Retention of Jurisdiction

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain such jurisdiction over the Chapter 11 Case and the Plan to the fullest extent legally permissible, including but not limited to jurisdiction to:

(a) Hear and determine pending applications (including pursuant to the Plan) for the assumption or rejection of executory contracts or unexpired leases, if any are pending, and the allowance of Cure Amounts and Claims resulting therefrom.

(b) Hear and determine any and all adversary proceedings, applications, and contested matters in the Chapter 11 Case, whether pending on the Confirmation Date or commenced thereafter.

(c) Hear and determine any objection to, or estimation of, Claims.

(d) Enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated.

(e) Consider any amendments to or modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency in the Plan or in any order of the Bankruptcy Court entered in the Chapter 11 Case, including the Confirmation Order.

(f) Hear and determine all applications with respect to Fee Claims.

(g) Hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan and Confirmation Order including any and all disputes arising in connection with the interpretation, implementation or enforcement of the discharge, release and injunction provisions contained in the Plan, and issue such orders as are necessary to aid in the implementation of the Plan.

(h) Issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation or enforcement of the Plan or Confirmation Order.

(i) Recover all assets of the Debtor and property of the Debtor's Estates, wherever located.

(j) Hear and determine matters concerning Taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code.

(k) Hear any other matter not inconsistent with the Bankruptcy Court's jurisdiction.

(l) Enter a final decree closing the Chapter 11 Case as contemplated by Bankruptcy Rule 3022, and re-open the case after notice and a hearing. _

(m) Enforce the Plan.

13.12. Modification of Plan

(a) Any alterations, amendments, or modifications of or to the Plan may be made in writing by the Debtor, upon consultation with the Committee, at any time prior to the Confirmation Date provided that the Plan, as altered, amended, or modified, satisfies the conditions of sections 1122 and 1123 of the Bankruptcy Code, and the Debtor shall have complied with section 1125 of the Bankruptcy Code.

(b) Any alterations, amendments, or modifications of or to the Plan may be made in writing by the Debtor, upon consultation with the Committee, at any time after the Confirmation Date and before substantial consummation of the Plan provided that (i) the Plan, as altered, amended, or modified, satisfies the requirements of sections 1122 and 1123 of the Bankruptcy Code, and (ii) the Bankruptcy Court, after notice and a hearing, confirms the Plan, as altered, amended or modified, under section 1129 of the Bankruptcy Code. No material modifications of the Plan shall be made after the Effective Date of the Plan without notice and a hearing.

(c) A holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such holder.

~~14.13.~~ Severability

If the Bankruptcy Court determines that any provision of the Plan would be unenforceable or would prevent the Plan from being confirmed, either on its face or as applied to any Claim or Old Equity Interest or transaction, the Debtor may modify the Plan so that such provision shall not be applicable to the holder of any Claim or Old Equity Interest or in such manner as will allow the Plan to be confirmed. Such a determination by the Bankruptcy Court and modification by the Debtor shall not (a) limit or affect the enforceability and operative effect of any other provision of the Plan, or (b) require the re-solicitation of any acceptance or rejection of the Plan.

~~15.14.~~ Binding Effect

The Plan shall be binding upon and inure to the benefit of the Reorganized Debtor, the holders of all Claims and Old Equity Interests, and their respective successors and assigns, including the Reorganized Debtor.

~~16.15.~~ Final Decree

Within fourteen (14) days following the full administration of the estate, the Reorganized Debtor shall file, on notice to the United States Trustee, an application and a proposed order for a final decree pursuant to Bankruptcy Rule 3022. Any party in interest, ~~including the YSI Creditors' Trust~~, may move to reopen the case in order to effectuate the terms of the Plan, to convert the case, or for any other relief provided under the Bankruptcy Code, Bankruptcy Rules, or applicable law.

I. Conditions for Confirmation of the Plan

1. Conditions Precedent to Confirmation The following are conditions to the confirmation of the Plan:

(i) The Confirmation Order shall be in form and substance satisfactory to the Debtor, in consultation with the Committee.

(ii) All schedules and other attachments to the Plan, ~~including, without limitation, the mortgage to be held by the YSI Creditors' Trust as security for the New Value Contribution, and a Trust Agreement establishing and governing the YSI Trust~~, shall be in form and substance acceptable to the Debtor, in consultation with the Committee.

(iii) The Debtor has escrowed \$575,000 earmarked as follows: \$500,000 for Allowed Class 5 Claims, and \$75,000 for Allowed Fee Claims.

2. Conditions Precedent to Effective Date The following are conditions to the occurrence of the Effective Date:

(i) The Confirmation Order, in form and substance acceptable to the Debtor, in consultation with the Committee, shall have become a Final Order.

(ii) The Debtor shall have received all authorizations, consents, regulatory approvals, rulings, letters, no action letters, opinions or documents that are determined by the Debtor, in consultation with the Committee, to be necessary to implement the Plan.

(iii) No stay of the Confirmation Order shall then be in effect.

(iv) The Plan shall not have been materially amended, altered or modified from the Plan confirmed by the Confirmation Order.

~~(v) The Debtor has escrowed \$175,000 earmarked as follows: \$100,000 for Allowed Class 5 Claims, and \$75,000 for Allowed Fee Claims.~~

3. Waiver of Conditions

The conditions to confirmation and the conditions to effectiveness may be waived by the Debtor, in consultation with the Committee ~~except that conditions with respect to the trust agreement relating to the YSI Creditors' Trust, the escrow, and the mortgage to be given thereto may be only waived by the Debtor with the consent of the Committee.~~

J. Treatment Of Executory Contracts And Unexpired Leases

1. Rejection of Executory Contracts and Unexpired Leases

(a) Upon the occurrence of the Effective Date, each and every executory contract and unexpired lease to which the Debtor is a party ~~that is not listed on the Contract Assumption Schedule~~ (including all such agreements listed in the ~~Contract Rejection Schedule~~) the Debtor's Schedule F, if not already subject to an order under section 365 of the Bankruptcy Code, shall be rejected pursuant to section 365 of the Bankruptcy Code. The Confirmation Order shall constitute the Bankruptcy Court's approval of such rejections pursuant to sections 365 and 1123 of the Bankruptcy Code and findings by the Bankruptcy Court that the requirements of section 365 of the Bankruptcy Code have been satisfied with respect to each rejected executory contract or lease.

(b) If the rejection of an executory contract or unexpired lease pursuant to the Plan gives rise to a Claim against the Debtor or its Estate, such Claim will be forever barred and will not be enforceable against the Debtor, the Reorganized Debtor, their respective successors, or their respective properties unless a proof of such claim is filed with the Bankruptcy Court no later than thirty (30) days after notice of the Confirmation Date.

(c) To the extent that any rejected executory contract or unexpired lease by its terms provides any entity other than the Debtor or Reorganized Debtor with any options upon "termination," such options shall not be enforceable as a result of the rejection of such executory contract or unexpired lease. In addition rejection of any executory contract or unexpired lease shall not affect any rights of the Debtor or Reorganized Debtor that arise upon termination pursuant to the terms of such executory contract or unexpired lease.

~~2. Assumption of Executory Contracts and Unexpired Leases If Not Rejected~~

~~(a) Upon the occurrence of the Effective Date, each and every executory contract and unexpired lease listed on the Contract Assumption Schedule (Exhibit E) shall be assumed pursuant to section 365 of the Bankruptcy. The Debtor shall be entitled at any time prior to the tenth (10th) day before the Confirmation Hearing to add or delete executory contracts and unexpired leases on the Contract Assumption Schedule and/or the Contract Rejection Schedule, and provided, further, that the Debtor and Reorganized Debtor shall be entitled to file a motion after the Confirmation Date to reject any executory contract or unexpired lease for which an objection to a Cure Amount proposed by the Debtor has been timely filed, if the Debtor or Reorganized Debtor determine in their discretion, that in light of the Cure Amount asserted by the non-debtor party or in light of the Bankruptcy Court fixing a Cure Amount that is materially higher than the Cure Amount anticipated by the Debtor, assumption of such executory contract or unexpired lease is not in the best interests of the Debtor or Reorganized Debtor. The Confirmation Order shall constitute the Bankruptcy Court's approval of such assumptions pursuant to sections 365 and 1123 of the Bankruptcy Code and findings by the Bankruptcy Court that the requirements of section 365 of the Bankruptcy Code have been satisfied with respect to each assumed executory contract or lease and that such assumed executory contracts or leases shall inure to the benefit of the Reorganized Debtor.~~

~~(b) Notice of Assumption and Proposed Cure. Service of the Disclosure Statement and the Contract Assumption Schedule upon the parties listed thereon shall constitute notice of the assumption and assignment of contracts and the proposed Cure Amount. Any party listed on the Contract Assumption Schedule may object to the proposed assumption and/or the proposed cure by _____, 2018. In the event a party objects to the proposed cure amount (a "Cure Objection"), and is a party to a contract to be assumed, such Cure Objection shall not prevent or delay confirmation of the Plan. Instead, the cure amount asserted by the objecting party shall be placed into escrow by the Debtor, pending ruling by the Court on the Cure Objection or by agreement of the parties.~~

~~(c) Any objection to the assumption of an executory contract or unexpired lease by the Debtor shall be forever barred and will not be enforceable against the Debtor, the Reorganized Debtor, their respective successors, or their respective properties unless such objection is filed and served on the Debtor, and any other party required to be served pursuant to an order of the Bankruptcy Court, no later than the Confirmation Date.~~

~~(d) Unless compromised, settled, or otherwise resolved pursuant to a Final Order of the Bankruptcy Court or the authority granted to the Debtor or Reorganized Debtor under the Plan, the Cure Amount to be paid in connection with the assumption of an executory~~

~~contract or unexpired lease that is identified on the Contract Assumption Schedule shall be the proposed Cure Amount listed on such schedule.~~

~~3. Contract Assumption Schedule~~

~~Unless otherwise provided, each executory contract or unexpired lease listed or to be listed on the Contract Assumption Schedule shall include (a) any modifications, amendments, supplements, restatements or other agreements made directly or indirectly by any agreement, instrument or other documents that in any manner affects such contract or lease, irrespective of whether such agreement, instrument or other document is listed on the Contract Assumption Schedule; and (b) with respect to such executory contracts and unexpired leases that relate to the use or occupancy of real property, all executory contracts or unexpired leases appurtenant to the premises listed on the Contract Assumption Schedule including, all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, usufructs, reciprocal easement agreements, vault, tunnel or bridge agreements or franchises, and any other interests in real estate or rights in rem relating to such premises to the extent any of the foregoing are executory contracts or unexpired leases that have not been previously assumed by the Debtor. Listing a contract or lease on the Contract Assumption Schedule does not constitute an admission by the Debtor or Reorganized Debtor that the Debtor or Reorganized Debtor has any liability thereunder, or that such contract or lease is executory.~~

~~2. [Reserved]~~

~~3. [Reserved]~~

4. Contracts and Leases Entered into or Assumed After the Commencement Date

Contracts and leases entered into after the Commencement Date by any Debtor, and any executory contracts and unexpired leases assumed by any Debtor prior to confirmation of the Plan, will be performed by the Debtor or Reorganized Debtor liable thereunder in the ordinary course of its business and will survive and remain unaffected by entry of the Confirmation Order.

5. Obligations to Indemnify Directors, Officers and Employees

The obligations of the Debtor or Reorganized Debtor to indemnify any director, officer or employee on or after the Commencement Date (by reason of such person's prior or future service in such capacity or as a director, officer, or employee on behalf of the Debtor, to the extent provided in the applicable certificates of incorporation, bylaws or similar constituent documents, by statutory law or by written agreement, policies or procedures of or with such Debtor or Reorganized Debtor) will (i) be deemed and treated as arising pursuant to executory contracts that are assumed by the Debtor or Reorganized Debtor pursuant to the Plan and section 365 of the Bankruptcy Code as of the Effective Date and (ii) survive and be unaffected by entry of the Confirmation Order, irrespective of whether such indemnification is owed for an act or event occurring before or after the Commencement Date. Notwithstanding anything else in the Plan to the contrary, the obligations of the Debtor to indemnify any Person who immediately prior to the Effective Date no longer was a director, officer, or employee of the Debtor, shall terminate and be

discharged pursuant to section 502(e) of the Bankruptcy Code or otherwise, as of the Effective Date.

V. **STATUTORY REQUIREMENTS FOR CONFIRMATION OF THE PLAN OF REORGANIZATION**

The Plan must be approved by the Bankruptcy Court after a confirmation hearing.

A. **Elements of Confirmation**

In order for the Plan to be confirmed, the Bankruptcy Code requires that the Bankruptcy Court determine that the Plan complies with the technical requirements of Chapter 11 of the Bankruptcy Code and that the disclosures concerning the Plan have been adequate and have included information concerning all payments made or promised in connection with the Plan and the case. The Bankruptcy Code also requires that: (1) the Plan be accepted by the requisite votes of Creditors, except to the extent that confirmation despite dissent is available under Bankruptcy Code section 1129(b); (2) the Plan is feasible (that is, there is a reasonable probability that the Debtor will be able to perform their obligations under the Plan without needing further financial reorganization not contemplated by the Plan); and (3) the Plan is in the “best interests” of all Creditors and equity security holders (that is, Creditors and equity security holders will receive at least as much under the Plan as they would receive in a hypothetical liquidation case under chapter 7 of the Bankruptcy Code). To confirm the Plan, the Bankruptcy Court must find that all of the above conditions are met, unless the applicable provisions of Bankruptcy Code section 1129(b) are employed to confirm the Plan, subject to satisfying certain conditions, over the dissent or deemed rejections of Classes of Claims or Interests.

B. **Best Interests of Creditors**

Pursuant to section 1129 of the Bankruptcy

Code, a plan must provide a class of unsecured creditors more than such class would receive in a hypothetical liquidation under chapter 7 of the Bankruptcy Code. This requirement is known as the “Best Interest of Creditors Test.” Attached hereto as Exhibit C is a liquidation analysis for the Debtor’s assets (the “Liquidation Analysis”).

The Debtor believes the Plan satisfies the Best Interests of Creditors Test. As set forth in the Liquidation Analysis, under either an orderly liquidation or a forced liquidation, there would be no recovery for holders of General Unsecured Claims.

In contrast, the Plan contemplates that all allowed unsecured creditors of the Debtor will receive a significant dividend and will benefit from a continuation of the Debtor’s business.

C. **Feasibility of the Plan**

In connection with confirmation of the Plan, the Bankruptcy Court must determine that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor or any successors to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan. The Debtor believes that it will be able to

perform its obligations under the Plan without the need for further financial reorganization and is providing financial projections, attached hereto as Exhibit B.

D. Severability of Plan

If the Bankruptcy Court determines that any provision of the Plan would be unenforceable or would prevent the Plan from being confirmed, either on its face or as applied to any Claim or Old Equity Interest or transaction, the Debtor may modify the Plan so that such provision shall not be applicable to the holder of any Claim or Old Equity Interest or in such manner as will allow the Plan to be confirmed. Such a determination by the Bankruptcy Court and modification by the Debtor shall not (a) limit or affect the enforceability and operative effect of any other provision of the Plan, or (b) require the re-solicitation of any acceptance or rejection of the Plan.

E. Confirmation of the Plan if One or More Classes Do Not Accept

Certain provisions of the Bankruptcy Code permit confirmation of a plan of reorganization even if a class or classes do not accept the plan so long as one impaired Class votes to accept the plan. These provisions, set forth in Bankruptcy Code section 1129(b), allow for the confirmation of the plan even though some classes vote to or are deemed to reject the plan, provided that the plan “does not discriminate unfairly” and is “fair and equitable” as to each impaired class that has not accepted it.

A plan is fair and equitable as to a class of secured claims that rejects a plan if the plan provides either: (1) that the holders of claims included in the rejecting class retain the liens securing those claims, whether the property subject to those liens is retained by the Debtor or transferred to another entity, to the extent of the allowed amount of such claims; and (2) receive, on account of such claims, deferred Cash payments totaling at least the allowed amount of such claims, possessing a value, as of the effective date of the plan, of at least the value of the holder’s interest in the estate’s interest in such property; (3) for the sale, subject to the Bankruptcy Code section 363(b), of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of the sale, and that such liens on proceeds will be treated in accordance with clause (a) of this subparagraph; or (4) for the realization by such holders of the indubitable equivalent of their claims.

A plan is fair and equitable to a class of unsecured claims that rejects or is deemed to reject the plan, if the plan provides: (1) for each holder of a claim included in the rejecting class to receive or retain on account of that claim property that has a value, as of the effective date of the plan, equal to the allowed amount of such claim, or (2) that the holder of any claim or interest that is junior to the claims of such class will not receive or retain on account of such junior claim or interest any property at all.

IF THE OTHER CONFIRMATION REQUIREMENTS ARE SATISFIED AT THE CONFIRMATION HEARING, THE DEBTOR WILL ASK THE BANKRUPTCY COURT TO RULE THAT THE PLAN MAY BE CONFIRMED NOTWITHSTANDING ANY VOTE OF SECURED OR UNSECURED CREDITORS TO REJECT THE PLAN ON THE GROUND THAT THE REQUIREMENTS OF SECTION 1129(B) HAVE BEEN SATISFIED.

CONFIRMATION INVOKING SECTION 1129(B) IS NOT CERTAIN, SIMPLE, OR INEXPENSIVE.

F. Hearing on Confirmation of the Plan

The Bankruptcy Court will hold a hearing on ~~October 1, 2018~~ January 1, 2019 at _____AM (EST) to determine if the Plan has been accepted by a requisite number of Claims and Interests and whether the other requirements for Confirmation of the Plan have been satisfied. Notice of the confirmation hearing date and location will be sent to all creditors and parties entitled to vote.

CREDITORS AND EQUITY INTEREST HOLDERS ARE NOT REQUIRED TO ATTEND THE HEARING ON CONFIRMATION UNLESS THEY HAVE EVIDENCE OR ARGUMENT TO PRESENT TO THE BANKRUPTCY COURT CONCERNING THE MATTERS TO BE ADDRESSED AT THE HEARING ON CONFIRMATION.

VI. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

Creditors Concerned with How the Plan May Affect Their Tax Liability Should Consult with Their Own Accountants, Attorneys, and/or Advisors.

Confirmation may have federal income tax consequences for the Debtor and creditors. The Debtor has not obtained, and does not intend to request, a ruling from the Internal Revenue Service (the “IRS”), nor has the Debtor obtained an opinion of counsel with respect to any tax matters. Any federal income tax matters raised by confirmation of the Plan are governed by the Internal Revenue Code and the regulations promulgated thereunder. Creditors are urged to consult their own counsel and tax advisors as to the consequences to them, under federal and applicable state, local and foreign tax laws, of the Plan. The following is intended to be a summary only and not a substitute for careful tax planning with a tax professional. The federal, state and local tax consequences of the Plan may be complex in some circumstances and, in some cases, uncertain. Accordingly, each holder of a Claim is strongly urged to consult with his or her own tax advisor regarding the federal, state and local tax consequences of the Plan, including but not limited to the receipt of Cash and/or stock under this Plan.

1. Tax Consequences to the Debtor. The Debtor may not recognize income as a result of the discharge of debt pursuant to the Plan because Section 108 of the Internal Revenue Code provides that taxpayers in bankruptcy proceedings do not recognize income from discharge of indebtedness. However, a taxpayer is required to reduce its “tax attributes” by the amount of the debt discharged. Tax attributes are reduced in the following order: (i) net operating losses; (ii) general business credits; (iii) capital loss carryovers; (iv) basis in assets; (v) passive activity loss and credit carryovers; and (vi) foreign tax credit carryovers.

2. Tax Consequences to Unsecured Creditors. An unsecured creditor that receives Cash in satisfaction of its Claim may recognize gain or loss, with respect to the principal amount

of its Claim, equal to the difference between (i) the creditor's basis in the Claim (other than the portion of the Claim, if any, attributable to accrued interest), and (ii) the balance of the Cash received after any allocation to accrued interest. The character of the gain or loss as capital gain or loss, or ordinary income or loss, will generally be determined by whether the Claim is a capital asset in the creditor's hands. A creditor may also recognize income or loss in respect of consideration received for accrued interest on the Claim. The income or loss will generally be ordinary, regardless of whether the creditor's Claim is a capital asset in its hands.

VII. EFFECTS OF PLAN CONFIRMATION

A confirmed plan leaves the holders of claims with new rights as set forth in the confirmed plan. Therefore, in the event of a default after Confirmation, a holder of a Claim may pursue its remedies under the Plan. Some rights may remain with holders of Claims after the provisions of the confirmed Plan have been carried out. The automatic stay of Bankruptcy Code section 362(a) as to actions against the Debtor will remain in effect until the Effective Date of the Plan. Thereafter, all parties in interest will be enjoined from taking any action inconsistent with the Plan.

1. Term of Bankruptcy Injunctions or Stays; Continued Jurisdiction. Until the Effective Date, unless otherwise provided, all injunctions or stays provided for in the Chapter 11 Case in existence on the Confirmation Date, including those under section 105 or 362 of the Bankruptcy Code, shall remain in effect, and the Bankruptcy Court shall retain custody and jurisdiction of the Debtor and its Estate.

2. Debtor's Authority. On and after the Effective Date, the Reorganized Debtor shall be released from the custody and jurisdiction of the Bankruptcy Court and may operate its business and may use, acquire, and dispose of property without supervision or approval by the Bankruptcy Court, except for those matters as to which the Bankruptcy Court specifically retains jurisdiction under the Plan or the Confirmation Order. On and after the Effective Date, except as otherwise provided in the Plan, the Debtor will, as the Reorganized Debtor, continue to exist as a separate legal entity, with all the powers of a limited liability company under applicable law and without prejudice to any right to alter or terminate such existence (whether by merger, dissolution or otherwise) under applicable law.

3. Continued Corporate Existence and Revesting of Assets and Causes of Action. On the Effective Date, except as otherwise provided for in the Plan or the Confirmation Order, (i) the property of the Debtor's Estate shall vest in the Reorganized Debtor, free and clear of all liens, Claims, Old Equity Interests, and Causes of Action against or in the Debtor or Reorganized Debtor or its property, (ii) any and all Causes of Action belonging to the Debtor or its Estate shall be preserved and shall vest in the Reorganized Debtor.

VIII. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

A. Liquidation Under Chapter 7

If no chapter 11 plan can be confirmed, the Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code, in which a trustee would be elected or appointed to liquidate the assets of the Debtor. The Debtor believes that liquidation under chapter 7 would result in smaller distributions being made to Creditors than those provided for in the Plan because

of the additional administrative expenses involved in the appointment of a trustee and attorneys and other professionals during such liquidation.

The Debtor, with the assistance of its professionals, has prepared a Liquidation Analysis, attached hereto as Exhibit C. The Liquidation Analysis is based upon a hypothetical liquidation in a chapter 7 case. The Debtor has taken into account the nature, status and underlying value of its assets, the ultimate realizable value of its assets, and the extent to which such assets are subject to the Lenders' liens and security interests.

The likely form of any liquidation would be the sale of the Debtor's individual assets. Based on this analysis, it is likely that a chapter 7 liquidation of these assets would produce less value for distribution to creditors than that recoverable under the Plan. In the opinion of the Debtor, the recoveries projected to be available in a chapter 7 liquidation are not likely to afford the holders of Claims and equity Interests as great a realization potential as does the Plan.

IX. CONCLUSION AND RECOMMENDATION

The Debtor urges all Creditors entitled to vote on the Plan to vote to accept the Plan and to evidence such acceptance by immediately returning their properly completed ballots to the appropriate voting agent as set forth on the ballots within the time stated in the notice served with this Disclosure Statement.

Dated: New York, New York
~~September 14~~ November 28, 2018

Respectfully submitted,

BALLON STOLL BADER & NADLER, P.C.

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