
United States Bankruptcy Court
Eastern District of Pennsylvania

In re: **Irene's Bakery & Gourmet Kitchen, Inc.**

Case No. **16-17425**
Chapter **11**

Debtor

DEBTOR'S SECOND AMENDED DISCLOSURE STATEMENT

This Second Amended Disclosure Statement has been prepared by Irene's Bakery & Gourmet, Kitchen, Inc. as proponent of the Second Amended Plan of Reorganization. The Debtor provides this Second Amended Disclosure Statement to the scheduled creditors of the Debtors in order to disclose that information which the Debtor believes to be necessary for the creditors of the Debtor to arrive at a reasonably informed decision in exercising the right to vote on the Second Amended Plan of Reorganization filed by the Debtor in this Chapter 11 case (the "Second Amended Plan"). A copy of the Second Amended Plan is being provided with this Second Amended Disclosure Statement.

The Court has conditionally approved this Second Amended Disclosure Statement as containing adequate information to enable parties affected by the Second Amended Plan to make an informed judgment about its terms. The Court has not yet determined whether the Second Amended Plan meets the legal requirements for Confirmation, and the fact that the Court has approved this Second Amended Disclosure Statement does not constitute an endorsement of the Second Amended Plan by the Court, or a recommendation that it be accepted. The Court's approval of this Second Amended Disclosure Statement is subject to final approval at the hearing on Confirmation of the Second Amended Plan.

***- THE DEBTOR RECOMMENDS THAT YOU VOTE TO APPROVE THE SECOND
AMENDED PLAN -***

In addition to this Second Amended Disclosure Statement and a copy of the Second Amended Plan, you will find enclosed a ballot by which you can reflect your acceptance or rejection of the Second Amended Plan. The ballot should be completed and returned to the Debtor's counsel prior to the hearing for Confirmation of the Second Amended Plan by the deadline fixed by the Court Order. The time and date of hearing on the Confirmation of the Second Amended Plan is also set forth in the Order enclosed herewith.

Any representations or inducements made to secure your vote, which are other than as contained in this statement should not be relied upon by you in arriving at your decision, and such additional representations and inducements should be reported to the Bankruptcy Court for such action as may be deemed appropriate.

Background

Irene's Bakery & Gourmet Kitchen, Inc. is a wholesaler of baked goods. It began operations in 1989. The current owner, Daniel Zelekovich (who is the sole officer, shareholder and insider as defined in Section 101(31) of the Bankruptcy Code and has, and will continue, to manage the operations of the reorganized Debtor), acquired the business in 2003. When one of the company's largest customers, Wegmans, changed its structure as well as the placement of the Debtor's product, sales slumped. This resulted in the Debtor falling behind on its payments to vendors, among which were the produce suppliers under the Perishable Agricultural & Commodities Act, 7 U.S.C. Section 499(e)(c) ("PACA creditors"), who forced the Debtor to accelerate payments to those creditors to the exclusion of others under the applicable statutory provisions. The company sought the protection of the Bankruptcy Laws in order to get some breathing room to reorganize.

Since the filing of the Chapter 11, the Debtor has been on C.O.D. with all of its suppliers and has generally been meeting its obligations. The Debtor rents its facility from DIJAS Enterprises, LLC, a company owned by the Debtor's principal. The Debtor timely filed a Notice of Officer Compensation requesting authority to pay salary to Mr. Zelikovich at the rate of \$1,500.00 per week. No objections were filed to that Notice. Mr. Zelikovich has a loan outstanding to the Debtor in the amount of

\$5,000.00. The Debtor had no lender financing which required approval of the use of cash collateral.

The Debtor does not intend to pursue any avoidance actions.

The Debtor has instituted a series of cost savings measures, including reducing salaries, and staffing, as well as its dependence upon Wegman's.

Assets

As of the commencement of the case, the Debtor's assets consisted of office and warehouse equipment valued at \$158,000.00, raw and finished goods valued at \$89,205.00, bank accounts in the amount of \$2,600.00 and accounts receivable of \$88,814.00. In addition, there was \$5,000.00 in a safe deposit box.

Creditors

As of the filing of the case, the Debtor listed \$38,487.60 in secured claims, \$402.00 in priority tax claims and \$102,259.53 in unsecured claims. The Claims Docket, which is attached hereto as Exhibit "A," lists secured claims in the amount of \$28,334.62, Priority Claims in the amount of \$6,054.53 and Unsecured Claims in the amount of \$36,036.40. The PACA creditor Snow Fresh, Inc. filed a Secured Proof of Claim in the amount of \$11,195.60 and BakeMark filed a Priority Proof of Claim in the amount of \$6,054.53. Those claims receive similar treatment under the Second Amended Plan. There were no priority tax Proofs of Claims filed by the governmental claims deadline. As the Debtor did not list any claims as disputed, the claims will be paid as scheduled or filed, whichever is greater.

Summary of the Second Amended Plan of Reorganization and Treatment of Claims and Equity

Interests

A. What is the Purpose of the Second Amended Plan of Reorganization?

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

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B. Unclassified Claims

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

1. Administrative Expenses

Class 1: Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that all administrative expenses be paid on the effective date of the Second Amended Plan, unless a particular claimant agrees to a different treatment.

The following lists the Debtor's estimated administrative expenses, and their proposed treatment under the Second Amended Plan: Adelstein & Kaliner, LLC, Counsel for Debtor, \$5,000.00 (which will accept periodic payments); Office of U.S. Trustee for ongoing quarterly fees.

C. Classes of Claims and Equity Interests

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

1. Classes of Secured Claims

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

Classes 2 and 3: The following lists all classes containing Debtor's secured prepetition claims and the proposed treatment under the Second Amended Plan: Wells Fargo Equipment Finance will be paid in accordance with the lease agreement; Snow Fresh, Inc. through its attorneys Kreinces & Rosenberg, P.C. - \$11,195.60 will be paid in quarterly payments over thirty-six (36) months together with interest at nine (9%) percent commencing March 31, 2018.

2. *Classes of Priority Unsecured Claims*

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

Class 4: The following lists all classes containing claims under §§ 507(a)(1), (4), (5), (6), and (a) 7 of the Code and their proposed treatment under the Second Amended Plan: Bake/Make - \$6,054.53 will be paid in quarterly payments over thirty-six (36) months together with interest at nine (9%) percent commencing March 31, 2018.

3. *Classes of General Unsecured Claims*

Class 5: General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code will be paid in full in quarterly payments over thirty-six (36) months commencing March 31, 2018.

4. *Classes of Equity Interest Holders*

Class 6: Equity interest holders are parties who hold an ownership interest (*i.e.*, equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest holders.

The following sets forth the Second Amended Plan's proposed treatment of the class of equity interest holders: Daniel Zelikovich will receive no payment under the Plan.

D. Means of Implementing the Second Amended Plan

1. *Source of Payments*

Payments and distributions under the Second Amended Plan will be funded by the revenues generated from the ongoing operations of the Debtor's business.

2. *Post-confirmation Management*

The Post-Confirmation Managers of the Debtor, and their compensation, shall be as follows: The current management by Daniel Zelikovich.

E. Risk Factors

The proposed Second Amended Plan has the following risks: If the revenues decline which will erode the cost savings measures put in place by management.

F. Executory Contracts and Unexpired Leases

Article VII of Second Amended Plan, lists all executory contracts and unexpired leases that the Debtor will assume under the Second Amended Plan. Assumption means that the Debtor has elected to continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of the type that must be cured under the Code, if any. There are currently no defaults needed to be cured.

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

G. Tax Consequences of Plan

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

IV. Confirmation Requirements and Procedures

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

A. Who May Vote or Object

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

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

In this case, the Second Amended Plan Proponent believes that classes 3 through 5 are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Second Amended Plan. The Second Amended Plan Proponent believes that classes 1 and 2 are unimpaired and that holders of claims in each of these classes, therefore, do not have the right to vote to accept or reject the Second Amended Plan.

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

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

The deadline for filing a proof of claim in this case was 9/15/17.

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

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

3. *Who is Not Entitled to Vote*

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

- holders of claims and equity interests that have been disallowed by an order of the Court;
- holders of other claims or equity interests that are not "allowed claims" or "allowed equity interests" (as discussed above), unless they have been "allowed" for voting purposes.
- holders of claims or equity interests in unimpaired classes;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code; and
- holders of claims or equity interests in classes that do not receive or retain any value under the Second Amended Plan;
- administrative expenses.

Even If You Are Not Entitled to Vote on the Second Amended Plan, You Have a Right to Object to the Confirmation of the Second Amended Plan [and to the Adequacy of the Disclosure Statement].

4. *Who Can Vote in More Than One Class*

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise holds claims in multiple classes, is entitled to accept or reject a Second Amended Plan in each capacity, and should cast one ballot for each claim.

B. Votes Necessary to Confirm the Second Amended Plan

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

1. *Votes Necessary for a Class to Accept the Second Amended Plan*

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

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

2. *Treatment of Nonaccepting Classes*

Even if one or more impaired classes reject the Second Amended Plan, the Court may nonetheless confirm the Second Amended Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the Code. An Second Amended Plan that binds nonaccepting classes is commonly referred to as a “cram down” Second Amended Plan. The Code allows the Second Amended Plan to bind nonaccepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not “discriminate unfairly,” and is “fair and equitable” toward each impaired class that has not voted to accept the Second Amended Plan.

You should consult your own attorney if a “cramdown” confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.

C. Liquidation Analysis

To confirm the Second Amended Plan, the Court must find that all creditors and equity interest holders who do not accept the Second Amended Plan will receive at least as much under the Second Amended Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. The Debtor believes that the liquidation value of the equipment would not bring enough to pay creditors in full as proposed in the Second Amended Plan. Moreover, there would be extra costs of Administration by a Chapter 7 Trustee and his professionals. Finally, there would be zero value to the perishables.

D. Feasibility

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

1. *Ability to Initially Fund Second Amended Plan*

The Second Amended Plan Proponent believes that the Debtor will have enough cash on hand on the effective date of the Second Amended Plan to pay all the claims and expenses that are entitled to be paid on that date. As set forth in the Monthly Operating Reports filed with the Court, the Debtor regularly had positive cash on hand at the end of the month. Although it did not turn a profit every month, the Debtor's most recent Operating Reports show profits of \$16,245.64 for July 2017 and \$17,681.81 for August 2017.

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

The Second Amended Plan Proponent must also show that it will have enough cash over the life of the Second Amended Plan to make the required Second Amended Plan payments.

The Second Amended Plan Proponent has provided projected financial information. Those projections are listed in Exhibit B. The quarterly payments amount to \$11,843.15. It is anticipated that by the second quarter of 2018, the Debtor would be in a position to make the payments.

V. **Effect of Confirmation of Second Amended Plan**

A. **Discharge of Debtor**

Discharge. Confirmation of the Second Amended Plan does not discharge any debt provided for in the Second Amended Plan until the court grants a discharge on completion of all payments under the Second Amended Plan, or as otherwise provided in § 1141(d)(5) of the Code. Debtor will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.

Discharge. On the Effective Date of the Second Amended Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Second Amended Plan, subject to the occurrence of the Effective Date, to the extent specified in § 1141(d)(1)(A) of the Code. However, the Debtor shall not be discharged from any debt imposed by the Second Amended Plan. After the Effective Date of the Second Amended Plan your claims against the Debtor will be limited to debts imposed by the Second Amended Plan.

Discharge. On the Effective Date of the Amended Pan, the Debtor shall be discharged from any debt that arose before confirmation of the Second Amended Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor shall be discharged of any debt (i) imposed by the Second Amended Plan, (ii) of kind specified in § 1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure, or (iii) of a kind specified in § 1141(d)(6)(B). After the effective date of the Second Amended Plan your claims against the Debtor will be limited to the debts described in clauses (i) through (iii) of the preceding sentence.

B. Modification of Second Amended Plan

The Second Amended Plan Proponent may modify the Second Amended Plan at any time before Confirmation of the Second Amended Plan. However, the Court may require a new disclosure statement and/or revoting on the Second Amended Plan.

The Second Amended Plan Proponent may also seek to modify the Second Amended Plan at any time after confirmation only if (1) the Second Amended Plan has not been substantially consummated *and* (2) extend or reduce the time period for such payments under the Second Amended Plan on claims of a particular class, (2) extend or reduce the time period for such payments, or (3) alter the amount of distribution to a creditor whose claim is provided for by the Second Amended Plan to the extent necessary to take account of any payment of the claim made other than under the Second Amended Plan.

C. Final Decree

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

Irene's Bakery & Gourmet Kitchen, Inc.

BY:

/s/ Daniel Zelikovich
Daniel Zelikovich, President