

**IN THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF PENNSYLVANIA**

**In Re:**

**III TOMATO, INC.,**

**Bankruptcy No. 15-22714-GLT**

**Debtor.**

**DISCLOSURE STATEMENT  
TO ACCOMPANY PLAN DATED NOVEMBER 21, 2016**

Chapter 11 Small Business (Check box only if debtor has elected to be considered a small business under 11 U.S.C. §1121(e))

Debtor furnishes this disclosure statement to creditors in the above-captioned matter pursuant to Bankruptcy Code §1125 to assist them in evaluating debtor's proposed Chapter 11 plan, a copy of which is attached hereto. Creditors may vote for or against the plan of reorganization. Creditors who wish to vote must complete their ballots and return them to the following address before the deadline noted in the order approving the disclosure statement and fixing time. The Court will schedule a hearing on the plan pursuant to 11 U.S.C. §1129.)

Address for return of ballots: **ROBERT O LAMPL  
960 PENN AVENUE, SUITE 1200  
PITTSBURGH, PA 15222**

**I. Background**

1. Name of Debtor

**III TOMATO, INC.**

2. Type of Debtor (individual, partnership, corporation)

**CORPORATION**

3. Debtor's Business or Employment

**DEBTOR IS NO LONGER OPERATING. DEBTOR OPERATED A RESTAURANT AND BAR.**

4. Date of Chapter 11 Petition

**JULY 29, 2015**

5. Events that Caused the Filing:

**DEBTOR WAS A DEFENDANT IN LITIGATION**

6. Anticipated Future of the Company & Source of this Information and Opinion

**DEBTOR WILL SELL ITS ASSETS IN A BULK SALE.**

7. Summarize all Significant Features of the Plan Including When and How Each Class of Creditor Will Be Paid and What, If Any, Liens Will Be Retained By Secured Creditors or Granted to Any Creditor Under the Plan

**THE DEBTOR WILL CONTINUE TO PURSUE A RESOLUTION WITH ITS PRIMARY CREDITORS, TRACY AND CHERLY KIMMEL (“THE KIMMELS”). IN THE MEANTIME, THE DEBTOR WILL OBJECT TO THE KIMMELS’ CLAIM. THE DEBTOR WILL ALSO OBJECT TO THE CLAIM OF THE PA DEPARTMENT OF REVENUE. FOLLOWING A RESOLUTION OF THE AFOREMENTIONED CLAIM OBJECTIONS, THE DEBTOR WILL MARKET AND SELL ITS ASSETS WHICH INCLUDE A LAWRENCE COUNTY LIQUOR LICENSE. THE PROCEEDS OF SAID SALE WILL BE DISTRIBUTED IN ACCORDANCE WITH THE PRIORITY SCHEME SET FORTH IN THE BANKRUPTCY CODE.**

8. Are All Monthly Operating Statements Current and on File with the Clerk of Court?

Yes \_\_\_\_ No X

If Not, Explain:

**The Debtor will file all outstanding reports within the next 10 days.**

9. Does the plan provided for releases of nondebtor parties? Specify which parties and terms of release.

**PLAN DOES NOT INCLUDE RELEASE OF NONDEBTOR PARTIES.**

10. Identify all executory contracts that are to be assumed or assumed and assigned.

**NONE**

11. Has a bar date been set? Yes X No \_\_\_\_\_  
(If not, a motion to set the bar date has been filed simultaneously with the filing of this disclosure statement.)

12. Has an election under 11 U.S.C. §1121(e) has been filed with the Court to be treated as a small business?

Yes X No \_\_\_\_\_

13. Specify property that will be transferred subject to 11 U.S.C. §1146(c).

**N/A**



B. Priority Claims

**PRIORITY CLAIMS**

<b>Creditor</b>	<b>Total Amount Owed</b>	<b>Type of Collateral</b>	<b>(D) (L) (U) *</b>
<b>PENNSYLVANIA DEPARTMENT OF REVENUE</b>	<b>\$5,842.28</b>	<b>none</b>	<b>D</b>

C. Unsecured Claims

1.	<b>Amount Debtor Scheduled (Disputed and Undisputed)</b>	<b>\$ 207,247.35</b>
2.	<b>Amount of Unscheduled Unsecured Claims<sup>1</sup></b>	<b>\$ 46,246.53</b>
3.	<b>Total Claims Scheduled or Filed</b>	<b>\$ 253,493.88</b>
4.	<b>Amount Debtor Disputes</b>	<b>\$ 98,593.88</b>
5.	<b>Estimated Allowable Unsecured Claims</b>	<b>\$ 154,900.00</b>

D. Other Classes of Creditors

1.	<b>Amount Debtor Scheduled (Disputed and Undisputed)</b>	<b>\$</b>	
2.	<b>Amount of Unscheduled Claims<sup>1</sup></b>	<b>\$</b>	
3.	<b>Total Claims Scheduled or Filed</b>	<b>\$</b>	<b>N/A</b>
4.	<b>Amount Debtor Disputes</b>	<b>\$</b>	
5.	<b>Estimated Allowable Claims</b>	<b>\$</b>	

E. Other Classes of Interest Holders

1.	<b>Amount Debtor Scheduled (Disputed and Undisputed)</b>	<b>\$</b>	
2.	<b>Amount of Unscheduled Claims<sup>1</sup></b>	<b>\$</b>	
3.	<b>Total Claims Scheduled or Filed</b>	<b>\$</b>	<b>N/A</b>
4.	<b>Amount Debtor Disputes</b>	<b>\$</b>	
5.	<b>Estimated Allowable Claims</b>	<b>\$</b>	

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<sup>1</sup> Includes (a.) unsecured claims filed by unsecured creditors; (b.) that portion of any unsecured claim filed by a scheduled creditor that exceeds the amount debtor scheduled; and (c.) any unsecured portion of any secured debt not previously scheduled.

III. Assets

ASSETS

<b>Assets</b>	<b>Value</b>	<b>Basis for Value Priority of Lien</b>	<b>Name of Lien Holder (if any) (Fair Market Value/ Book Value)</b>	<b>Amount of Debtor's Equity (Value Minus Liens)</b>
<b>LIQUOR LICENSE</b>	<b>\$50,000.00</b>	<b>OWNER ESTIMATE/NO LIEN</b>	<b>N/A</b>	<b>\$50,000.00</b>
<b>OFFICE EQUIPMENT</b>	<b>\$1,000.00</b>	<b>OWNER ESTIMATE/NO LIEN</b>	<b>N/A</b>	<b>\$1,000.00</b>
<b>BUSINESS EQUIPMENT</b>	<b>\$10,450.00</b>	<b>OWNER ESTIMATE/NO LIEN</b>	<b>N/A</b>	<b>\$10,450.00</b>
<b>INVENTORY</b>	<b>\$3,000.00</b>	<b>OWNER ESTIMATE/NO LIEN</b>	<b>N/A</b>	<b>\$3,000.00</b>
<b>LAWSUIT AGAINST TRACY AND CHERYL KIMMEL</b>	<b>Unknown</b>	<b>NONE</b>	<b>N/A</b>	
<b>TOTAL</b>				<b>\$64,450.00</b>

1. Are any assets which appear on Schedule A or B of the bankruptcy petition not listed above?

**NO**

If so, identify asset and explain why asset is not in estate: **N/A**

2. Are any assets listed above claimed as exempt? If so attach a copy of Schedule C and any amendments.

**N/A**



5. Treatment of Administrative **Non-Tax** Claims<sup>2</sup>

## ADMINISTRATIVE NON-TAX CLAIMS

Name of Creditor*	Amount Owed	Type of Debt**	Summary of Proposed Treatment and Date of First Payment
ROBERT O LAMPL	\$20,000.00 (estimated)	LEGAL FEES	TO BE PAID FROM THE PROCEEDS OF A SALE IN ACCORDANCE WITH THE PRIORITY SCHEME SET FORTH IN THE BANKRUPTCY CODE
OFFICE OF THE U.S. TRUSTEE	\$ 325.00	QUARTERLY U.S. TRUSTEE FEES	TO BE PAID PRIOR TO THE EFFECTIVE DATE OF THE PLAN

## 6. Treatment of Administrative Tax Claims

## ADMINISTRATIVE TAX CLAIMS

Name of Creditor*	Amount Owed	Type of Debt**	Summary of Proposed Treatment and Date of First Payment

\* Identify and Use Separate Line for Each Professional and Estimated Amount of Payment

\*\* Type of Debt (P=Professional, TD=Trade, TX=Taxes)

<sup>2</sup>Include all §503(b) administrative claims.



7. Treatment of Priority Non-Tax

PRIORITY NON-TAX CLAIMS

Name of Creditor	Class	Amount Owed	Date of Assessment	Summary of Proposed Treatment
N/A				

8. Treatment of Priority Tax Claims<sup>3</sup>

PRIORITY TAX CLAIMS

Name of Creditor	Class	Amount Owed	Date of Assessment	Summary of Proposed Treatment
<b>PENNSYLVANIA DEPARTMENT OF REVENUE</b>	<b>3</b>	<b>\$5,842.28</b>	<b>04Q14, 02Q15, 01Q15</b>	<b>To the extent this claim is allowed following a claim objection to be filed by the Debtor, it be paid from the proceeds of the sale in accordance with the Bankruptcy Code</b>

<sup>3</sup>Include dates when any §507(a)(7) taxes were assessed.

9. Treatment of General Unsecured Non-Tax Claims

GENERAL UNSECURED NON-TAX CLAIMS

Creditor	Class	Total Amount Owed	Percent of Dividend
Tri-State Equipment Co.	5	\$ 65,000.00	TBD
Tracy and Cheryl Kimmel	4	\$ 52,347.35	TBD
Paul Lynch	5	\$ 15,000.00	TBD
Antonio N. Riccio	6	\$ 49,900.00	TBD
Vince Riccio	6	\$ 25,000.00	TBD
		\$	
<b>TOTAL</b>		<b>\$ 207,247.35</b>	

10. Treatment of General Unsecured Tax Claims

GENERAL UNSECURED TAX CLAIMS

Creditor	Class	Total Amount Owed	Percent of Dividend
<b>PENNSYLVANIA DEPARTMENT OF REVENUE</b>	<b>7</b>	<b>\$1,092.05</b>	<b>TBD</b>
<b>TOTAL</b>		<b>\$1,092.05</b>	

11. Will periodic payments be made to unsecured creditors?

Yes \_\_\_\_\_ No  X

If so:

Amount of each payment (aggregate to all unsecured claimants)

Estimated date of first payment:

Time period between payments:

Estimated date of last payment:

Contingencies, if any:

State source of funds for planned payments, including funds necessary for capital replacement, repairs, or improvements:

Other significant features of the plan:

**NONE**

Include any other information necessary to explain this plan:

**NONE**

V. Comparison of Plan with Chapter 7 Liquidation

If debtor's proposed plan is not confirmed, the potential alternatives would include proposal of a different plan, dismissal of the case or conversion of the case to Chapter 7. If this case is converted to Chapter 7, a trustee will be appointed to liquidate the debtor's non-exempt assets. In this event, all secured claims and priority claims, including all expenses of administration, must be paid in full before any distribution is made to unsecured claimants.

Total value of Chapter 7 estate (See Section III)	\$ 64,450.00
1. Less secured claims (See Section IV-2)	\$ 0
2. Less administrative expenses (See Section IV-3 and include approximate Chapter 7 expenses)	\$ 20,325.00
3. Less other priority claims (See Section IV-4)	\$ 5,842.28
Total Amount Available for Distribution to Unsecured Creditors	\$ 38,282.75
Divided by total allowable unsecured claims of (See Section II C)	\$ 154,900.00
Percentage of Dividend to Unsecured Creditors:	24.7%

Will the creditors fare better under the plan than they would in a Chapter 7 liquidation?

Yes \_\_\_\_\_ No \_\_\_\_\_ **N/A**

Explain:

**CONSISTENT WITH A CHAPTER 7 LIQUIDATION, THE DEBTOR IS SELLING SUBSTANTIALLY ALL OF ITS ASSETS AND WILL DISTRIBUTE THE PROCEEDS IN ACCORDANCE WITH THE BANKRUPTCY CODE.**

VI. Feasibility

- A. Attach Income Statement for Prior 12 Months. \*(N/A)
- B. Attach Cash Flow Statement for Prior 12 Months. \*(N/A)
- C. Attach Cash Flow Projections for Next 12 Months. \*(N/A)

**\*IT IS NOT CONTEMPLATED THAT ANY PLAN FUNDING WILL BE DERIVED FROM DEBTOR'S INCOME. ALL SUCH FUNDING WILL BE DERIVED FROM A SALE OF THE DEBTOR'S ASSETS. AS SUCH, DEBTOR'S INCOME IS NOT RELEVANT TO PLAN FEASIBILITY.**

Estimated amount to be paid on effective date of plan, including administrative expenses.

**\$325.00**

Show how this amount was calculated.

\$	<b>Administrative Class</b>	
\$	<b>Taxes</b>	
\$	<b>Unsecured Creditors</b>	
\$	<b><u>325.00</u></b>	<b>UST Fees</b>
<b>\$</b>	<b><u>325.00</u></b>	<b>TOTAL</b>

What assumptions are made to justify the increase in cash available for the funding of the plan?

**NONE**

Will funds be available in the full amount for administrative expenses on the effective date of the plan? From what source? If not available, why not and when will payments be made?

**UNLIKELY IN TERMS OF DEBTOR’S COUNSEL. THE U.S. TRUSTEE FEE CAN BE PAID IN ORDINARY COURSE. PAYMENT OF DEBTOR’S COUNSEL WILL MOST LIKELY NEED TO BE PAID FROM SALE PROCEEDS.**

Cash on hand \$ 100 (Current). Attach current bank statement.

If this amount is less than the amount necessary at confirmation, how will debtor make up the shortfall?  
**THROUGH THE PROCEEDS OF THE SALE**

VII. Management Salaries

MANAGEMENT SALARIES

Position/Name of Person Holding Position	Salary at Time of Filing	Proposed Salary (Post-Confirmation)
N/A		

VIII. Identify the Effect on Plan Payments and Specify Each of the Following:

1. What, if any, litigation is pending?

**III Tomato, Inc. vs. Kimmel; Court of Common Pleas of Lawrence County; 10120 of 2015 C.A.**

**No effect as the litigation is stayed pursuant to a Consent order filed on November 4, 2016.**

2. What, if any, litigation is proposed or contemplated?

**N/A**

IX. Additional Information and Comments

**N/A**

X. Certification

The undersigned hereby certifies that the information herein is true and correct to the best of my knowledge and belief formed after reasonable inquiry.

If Debtor is a corporation, attach a copy of corporate resolution authorizing the filing of this Disclosure Statement and Plan.

If Debtor is a general partnership, attach a copy of the consent agreement of all general partners to the filing of the bankruptcy.

/s/ Antonio Riccio  
Signature of Debtor  
or Authorized Representative

November 21, 2016  
Date

/s/ Robert O Lampl  
Debtor's Counsel

November 21, 2016  
Date

**IN THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF PENNSYLVANIA**

**In Re:**

**III TOMATO, INC.,**

**Bankruptcy No. 15-22714-GLT**

**Debtor.**

**CERTIFICATE OF SERVICE**

Robert O Lampl, John P. Lacher, David L. Fuchs and Ryan J. Cooney, hereby certify, that on this 21<sup>st</sup> day of November, 2016, a true and correct copy of the foregoing **DISCLOSURE STATEMENT TO ACCOMPANY PLAN DATED NOVEMBER 21, 2016** was served upon the following (*via electronic service*):

Office of the U.S. Trustee  
Liberty Center, Suite 970  
1001 Liberty Avenue  
Pittsburgh, PA 15222

Date: November 21, 2016

/s/ Robert O Lampl  
ROBERT O LAMPL  
PA I.D. #19809  
JOHN P. LACHER  
PA I.D. #62297  
DAVID L. FUCHS  
PA I.D. #205694  
RYAN J. COONEY  
PA I.D. #319213  
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