

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IN RE:

**FPUSA, LLC
10314 WCR 72
Midland, TX 79707
Tax ID / EIN: 46-11822**

Case No. 16-40742

(Chapter 11)

Debtor.

**DEBTOR'S PLAN OF REORGANIZATION DATED
AUGUST 31, 2018 COMBINED WITH DISCLOSURE STATEMENT**

I. Introduction

The Debtor¹ filed a voluntary petition for reorganization under chapter 11 of the Bankruptcy Code on the Petition Date.

This *Debtor's Plan of Reorganization Dated August 31, 2018 Combined with Disclosure Statement* is provided pursuant to Section 1125 of the Bankruptcy Code to all of the Debtor's known creditors and other parties in interest in connection with the solicitation of acceptances of the Debtor's Plan. The details of the Plan itself are set out in Section VI hereof. The purpose of the disclosures contained in Sections I through V hereof is to provide you with such information as will enable a hypothetical, reasonable, investor typical of the holders of claims against the Debtor, to make an informed judgment in exercising its right either to accept or reject the Plan. In addition to this document, you will be provided with a ballot which you may use to vote your acceptance or rejection of the Plan. **That ballot should be completed and returned to the attorneys for the Debtor, so as to be received prior to the deadline stated on the ballot.** The notice of the hearing on Confirmation of the Plan will be provided by the Bankruptcy Court. While you are invited to attend the confirmation hearing, you need not be present in order to have your vote counted.

Your acceptance of the Plan is important. In order for the Plan to be deemed "accepted" by the creditors in any given class, holders of at least two-thirds in amount and more than one-half in number of the allowed Claims voting in that class must vote to accept the Plan. Whether or not you expect to be present at the confirmation hearing, you are urged to complete, date, sign, and transmit the ballot by mail or other deliver method addressed to the Debtor's counsel, John Richer, at 320 S. Boston Avenue, Suite 200, Tulsa, OK 74103, or by e-mail addressed to jricher@hallestill.com. In the event that the requisite acceptances are not obtained, the Plan may

¹ Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in Section III hereof.

nevertheless be confirmed by the Bankruptcy Court pursuant to the provisions of Section 1129 of the Bankruptcy Code. Those provisions may permit Confirmation in spite of a rejecting class or classes, if the Bankruptcy Court finds that the Plan provides fair and equitable treatment to the rejecting class or classes and meets other tests.

II. Voting on the Plan and Objection

A. Who May Vote

You are entitled to vote on the Plan unless: (1) your claim or interest is Contested or Disputed; (2) your class receives no distribution (in which case the Code presumes your class to reject the Plan); (3) your class is “unimpaired” (in which case the Code presumes your class to accept the Plan);² or (4) your claim is unclassified (and thus required by law to be paid in full). If your claim or interest is Contested then you must file a motion pursuant to Bankruptcy Rule 3018(a) to have the Contested Claim allowed for voting purposes.

B. How to Vote

Fill out and return the enclosed ballot (if you are entitled to vote) **by the deadline stated on the ballot** and according to the other instructions in the enclosed order regarding voting and procedures.

C. Effect of Vote

The Plan will be confirmed only if (1) it is accepted by each impaired class, or (2) it is accepted by at least one impaired class (without counting votes of Insiders) and the Bankruptcy Court determines that the Plan is “fair and equitable” as defined in Section 1129(b) of the Bankruptcy Code to all rejecting classes of creditors; and (3) it meets all of the other legal requirements for confirmation. A class of creditors accepts the Plan if holders of at least two-thirds in amount and more than one-half in number of the allowed Claims voting in that class vote to accept the Plan. *See* Section 1126(d) of the Bankruptcy Code.

D. Who May Object

Even if you are not entitled to vote, you can object to confirmation of the Plan if you believe that the requirements for Confirmation are not met (and if you are a party in interest in this bankruptcy case). For the deadlines and procedures to object, see the enclosed order.

III. Definitions

As used throughout this document, the following terms have the following meanings:

1. “‘288 Patent” means Patent No. 9,004,288 issued by the USPTO.

² *See* Section VI (C) to see if your class is impaired or unimpaired.

2. “Administrative Claim” means an administrative expense or claim described in Section 503 of the Bankruptcy Code and entitled to administrative priority pursuant to Section 507(a)(1) of the Bankruptcy Code, including, but not limited to, Fee Claims.

3. “Allowed Amount” means the amount of any Allowed Claim.

4. “Allowed Claim” means a Claim against the Debtor allowable under the Bankruptcy Code to the extent that (i) a proof of Claim or request for payment was timely filed or, with leave of the Bankruptcy Court, late filed, and as to which no objection has been timely filed with the Bankruptcy Court or, if filed, is allowed by a Final Order, unless otherwise provided in this Plan or (ii) the Claim is scheduled and not listed as disputed, contingent, or unliquidated, and to which no objection has been timely filed or, if filed, is allowed by a Final Order.

5. “Allowed Unsecured Claims” means all Allowed Claims other than Allowed Secured Claims and Claims described under Sections 330, 503(b) and 507 of the Code and Allowed Secured Claims.

6. “Assets” means any and all tangible and intangible property owned by the Debtor or the Estate, real, personal, mixed or otherwise, including without limitation all property described in Bankruptcy Code Section 541(a).

7. “Bankruptcy Code” or “Code” means the United States Bankruptcy Code, Title 11 of the United States Code Section 101 *et seq.*, as amended.

8. “Bankruptcy Court” means the United States Bankruptcy Court for the Eastern District of Texas, or such other court that may have jurisdiction with respect to the reorganization of the Debtor pursuant to Chapter 11 of the Bankruptcy Code.

9. “Bankruptcy Rule” means and refers to a specified rule contained within the Federal Rules of Bankruptcy Procedure.

10. “Business Day” means any day that is not a Saturday, Sunday, or one of the legal holidays listed in Bankruptcy Rule 9006(a).

11. “Case” means the Debtor’s pending chapter 11 bankruptcy case pending in the Bankruptcy Court as case no. 16-40742.

12. “Chapter 5 Claims” means all claims and causes of action arising under Chapter 5 of the Bankruptcy Code.

13. “Claim” has the meaning ascribed to it in Bankruptcy Code Section 101(5).

14. “Class” means any class into which Claims are classified pursuant to Section VI (A) of the Plan.

15. “Confirmation” means the entry by the Bankruptcy Court of the Confirmation Order.

16. “Confirmation Date” means the date on which the Order confirming this Plan is entered on the Bankruptcy Court’s docket in this Case.

17. “Confirmation Hearing” means the hearing or hearings held before the Bankruptcy Court in which the Debtor will seek Confirmation of this Plan.

18. “Confirmation Order” means the Order confirming this Plan.

19. “Contested” when used with respect to a Claim or Interest, means a Claim against or Interest in the Debtor (a) that is listed in the Debtor’s Schedules of Assets and Liabilities as disputed, contingent, or unliquidated; (b) that is listed in the Debtor’s Schedules of Assets and Liabilities as undisputed, liquidated, and not contingent and as to which a proof of Claim or Interest has been filed with the Bankruptcy Court, to the extent the proof of Claim or Interest asserts rights in excess of those scheduled by the Debtor; (c) that is the subject of a pending action in a forum other than the Bankruptcy Court unless such Claim or Interest has been determined by Final Order in such other forum and Allowed by Final Order of the Bankruptcy Court; or (d) as to which an objection has been or may be timely filed and has not been denied by Final Order. To the extent an objection relates to the allowance of only a part of a Claim, such Claim shall be a Contested Claim only to the extent of the objection.

20. “Debtor” means FPUSA, LLC and, as the context requires, the Estate.

21. “Disputed” when used with respect to a Claim or Interest, means a Claim against or Interest in the Debtor that is listed on the Debtor’s bankruptcy schedules as “disputed, contingent or unliquidated” and with respect to which such creditor or Interest holder has not filed a proof of claim or interest.

22. “Effective Date” means the fifteenth (15th) day after the Confirmation Date.

23. “Estate” means the Debtor’s estate created as contemplated by Bankruptcy Code Section 541(a).

24. “Fee Claim” means a Claim under Bankruptcy Code Sections 330 or 503 for allowance of compensation and reimbursement of expenses to professionals in the Debtor’s Chapter 11 case.

25. “Final Order” means an Order of judgment, entered by the Bankruptcy Court or other court of competent jurisdiction, that has not been amended, modified or reversed and as to which (i) no stay is in effect, (ii) the time to appeal, petition for certiorari, or mover for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing, shall then be pending or (iii) in the event that an appeal, writ of certiorari, reargument or rehearing thereof has been sought, such order shall have been affirmed by the highest court to which such order may be appealed, or certiorari has been denied, and the time to take further appeal, petition for certiorari or move for reargument or rehearing shall have expired.

26. “FPMI” means FP Marangoni Inc.

27. “Hall Estill” means Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C., the Debtor’s general bankruptcy counsel.

28. “Impaired” means the treatment of an Allowed Claim or interest pursuant to the Plan unless the Plan treats such claim or interest in the manner described in Bankruptcy Code Section 1124.

29. “Insider” has the meaning set forth in Bankruptcy Code Section 101(31). The Debtor’s Insider creditors are FPMI and Western.

30. “Interests” means the Debtor’s membership interests held by FP Marangoni America Inc. and Horizontal Upstream Technologies, LLC.

31. “Lien” means any charge against or interest in Assets to secure payment of debt or performance of an obligation and includes a judicial lien, security interest, and deed of trust, mortgage and property tax lien.

32. “M-I” means M-I L.L.C., the Debtor’s counterparty in the Patent Litigation Case.

33. “M-I Bond” means bond no. 016066516 issued by Liberty Mutual Insurance Company, as surety, in favor of M-I, as principal, in the amount of \$10 million related to the preliminary injunction issued on November 4, 2015 in the *Amended Order Granting Plaintiff’s Motion for Preliminary Injunction on Remand from the United States Court of Appeals for the Federal Circuit* in the Patent Litigation Case (filed in the Patent Litigation Case at docket entry no. 89). The M-I Bond was filed in the Patent Litigation Case at docket entry no. 90-1, as Exhibit “A” to M-I’s *Notice of Filing Bond* filed November 5, 2015, at docket entry no. 90.

34. “Net Liquidation Proceeds” means the net proceeds (after all expenses of sale and liquidation) of all of the Debtor’s Assets and of the Interests.

35. “Net Patent Litigation Proceeds” means the net proceeds, after payment of all costs and attorneys’ fees, received by the Reorganized Debtor arising from a successful recovery against M-I or the M-I Bond, or both.

36. “Offering” means that certain \$1 million private placement offering to allow existing and new shareholders to purchase securities issued by Western.

37. “Order” means an Order of the Bankruptcy Court.

38. “Patent Litigation Case” means the case pending in in the United States District Court for the Western District of Texas, San Antonio Division as case number 15-cv-00406-DAE.

39. “Petition Date” means April 21, 2016, the date on which the Debtor filed its Chapter 11 Petition herein.

40. “Plan” means this *Debtor’s Plan of Reorganization Dated August 31, 2018 Combined with Disclosure Statement*, including any amendments, modifications or corrections made thereto pursuant to the Code.

41. “Post-Confirmation Contributions” means the loan(s) to or capital contributions to, or other means by which one or more of the Debtor’s members or other affiliates provides funds to the Reorganized Debtor to pay all of the Reorganized Debtor’s post-Confirmation operations and obligations, specifically including all expenses related to litigating all issues pending in the Patent Litigation Case to resolution by Final Order.³

42. “Post-Petition Debt” means debt owed to Insiders for cash infusions made by Insiders to and used by the Debtor to pay post-Petition Date operating expenses.

43. “Priority Claim” means a Claim entitled to priority under Section 507(a) of the Bankruptcy Code, other than an Administrative Claim or a Priority Tax Claim.

44. “Priority Tax Claim” means a Claim entitled to priority pursuant to Bankruptcy Code Section 507(a)(8).

45. “Ratable” means the ratio that (a) the amount of a particular Allowed Claim bears to the total amount of Allowed Claims of the same Class.

46. “Related Party Obligations” means Post-Confirmation Contributions, Post-Petition Debt and Allowed Claims in Class 2(c).

47. “Reorganized Debtor” means the Debtor immediately following Confirmation, as reorganized in accordance with the Plan.

48. “Secured” when used with respect to a Claim means a Claim that is (a) secured by a lien on or security interest in Assets, to the extent of the value of the interest of the holder of such Claim in the Debtor’s interest in such Assets, (b) subject to setoff under Section 553 of the Code, to the extent of the amount subject to setoff, which remains unpaid on the Effective Date.

49. “Substantial Consummation” means the Effective Date.

50. “USPTO” means the United States Patent and Trademark Office.

51. “Western” means Western Oilfield Equipment Rentals Ltd., which owns 100% of FPPI, which owns 100% of FP Marangoni America Inc., which in turn owns 90% of the Debtor’s membership Interests.

IV. Disclosure Statement

A. Background of the Debtor

The Debtor is a Texas limited liability company formed in October of 2012, with its principal place of business in Midland, Texas. The Debtor was formed to market in the United States certain assets, including an oilfield drilling fluid recovery system known as the Vac-Screen

³ The source of Post-Confirmation Contributions includes, without limitation, proceeds of the Offering.

system owned and marketed by FPMI. The Vac-Screen system is used as part of the process of recovering previously-used drilling fluids associated with oil and gas drilling operations.

Events Leading to Bankruptcy

Commencing in 2010, FPMI entered into various transactions with M-I pursuant to which M-I used and marketed the Vac-Screen system. In or about the summer of 2013, the Debtor became M-I's counterparty to Vac-Screen system transactions.

In or about November of 2013, M-I offered to purchase FPMI, which offer was rejected by FPMI. M-I thereafter continued to transact business with the Debtor related to the Vac-Screen system. On April 14, 2015, the '288 Patent was issued to M-I. Two days later, M-I terminated its relationship with FPMI. M-I filed the Patent Litigation Case on May 15, 2015, asserting that the Vac-Screen system infringed on various claims of the '288 Patent.

The Debtor filed an answer and asserted affirmative defenses to the claims asserted by M-I, and counterclaimed seeking declaratory relief that the '288 Patent was invalid, or alternatively that the Debtor had not infringed any claim of the '288 Patent.

Thereafter, a preliminary injunction was issued in the Patent Litigation Case enjoining the Debtor from making, using, importing, selling, renting and offering to sell or rent the Vac-Screen system in the United States (among other enjoined actions), effectively causing the Debtor to cease operations.

Following the entry of the preliminary injunction, M-I continued to aggressively litigate its patent infringement case against FPUSA, and FPUSA filed a petition to institute an *inter partes* review ("IPR") with the USPTO seeking a determination from the USPTO that the Debtor had not violated the '288 Patent.

Due to the overwhelming costs of defending the Patent Lawsuit Case and to its inability to generate revenue due to the preliminary injunction, the Debtor commenced this Case on April 21, 2016.

B. Significant Events Since the Petition Date

Since the filing of the Chapter 11 case, the Debtor has operated as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. The Debtor has retained Hall Estill as its general bankruptcy counsel. The significant events since the filing of the Debtor's case include the following:

1. On June 2, 2016, a three-judge panel of the Patent Trial and Appeal Board ("PTAB") unanimously determined that IPR of the '288 Patent should be instituted because FPUSA "demonstrated a reasonable likelihood that it will prevail" with respect to every '288 Patent claim challenged by FPUSA. The PTAB therefore determined that it was "reasonably likely" that each and every one of the challenged claims of the '288 Patent is invalid for one or more reasons.

2. On May 24, 2017, the PTAB issued its *Final Written Decision* holding that 15 of the 20 '288 Patent claims asserted by M-I were in fact unpatentable, thereby substantially reducing the bases upon which M-I can claim infringement.

3. EnerTech Capital Partners IV (Canada), L.P. and EnerTech Capital Partners IV, L.P. (collectively, "EnerTech") have committed to purchase not less than \$350,000.00 of securities under the Offering, and Western has committed to use those proceeds (along with other Offering proceeds) to allow FP Marangoni America Inc. to make Post-Confirmation Contributions to the Reorganized Debtor.

C. Debtor's Assets

The Debtor's Assets are described as follows:

Asset Description	Debtor's Estimated Value (\$)
Cash and Equivalents	8,222
Deposits	9,000
Accounts Receivable	98,798
Finished Goods in Inventory	154,108
Plant, Property and Equipment (net of depreciation)	439,512
Due from FP Marangoni America Inc.	105,000
Goodwill	470,725
Subtotal	1,285,365
Litigation Damage Claims	>10,000,000

D. Debtor's Liabilities.⁴

1. **Administrative Claims:** The Debtor will be liable for certain administrative and priority claims through the Confirmation Date including allowed Fee Claims of Hall Estill. Hall Estill holds a \$50,000 retainer for the purposes of drafting this Plan and seeking Confirmation thereof. The Debtor will continue to accrue under 28 U.S.C. § 1930(a)(6) quarterly fees payable to the U.S. Trustee (at the rate of \$325 per

⁴ As reflected on **Exhibit A** attached hereto, a total of \$4,400,399.14 of secured and unsecured Claims were either scheduled by the Debtor or the subject of proofs of claim filed in the Case.

quarter) and will pay those fees as they come due through the date this case is terminated. Finally, the Debtor has accrued Post-Petition Debt of approximately \$296,000. Aside from Post-Petition Debt, and monthly operating expenses for rent, utilities and insurance incurred and paid in the ordinary course, the Debtor anticipates that it will have no Administrative Claims payable as of the Confirmation Date.

Before the Debtor pays any Fee Claims, the Bankruptcy Court will have determined the reasonableness of such fees and expenses.

2. Secured Debt: Proofs of claim claiming a security interest in the Debtors tangible personal property Assets were filed by (a) Midland Central Appraisal District for unpaid property taxes in the amount of \$7,860.14 and (b) The County of Guadalupe, Texas for unpaid property taxes in the amount of \$34,096.

3. Priority Claims: None.

4. Unsecured Debt: Unsecured claims totaling \$4,333,471.98 have been asserted against the Debtor. Of that total, \$2,116,395.20 was asserted by M-I,⁵ \$1,086,210.98 was asserted by Insiders, and \$1,155,836.71 was asserted by non-Insiders.

V. Liquidation Analysis

As noted above, the book value of the Debtor's Assets is approximately \$1.3 million, exclusive of any Net Litigation Proceeds. Collection of existing accounts receivable in a liquidation proceeding is highly speculative as virtually all of those receivables are over 90 days old. The liquidation value of the Debtor's tangible personal property is likewise speculative given that a substantial portion thereof is useful only if the Debtor succeeds in dissolving the preliminary injunction issued against it in the Patent Litigation Case. Based on the assumption that the Debtor does not prevail in the Patent Litigation Case (and is thus precluded from operating in the United States), the Debtor estimates its Assets to have a liquidation value of between \$305,000 and \$425,000.

As discussed elsewhere herein, M-I has posted the (\$10 million) M-I Bond to assure the Debtor's ability to be paid its costs and damages in the event the Debtor is determined in the Patent Litigation Case to have been wrongfully enjoined. If the Debtor does not prevail in the Patent Litigation Case, its litigation claims against M-I will have no value. If the Debtor does prevail in the Patent Litigation Case, the Debtor believes its litigation claims against M-I will have a value of not less than \$10 million.

⁵ The addendum to M-I's proof of claim (claim no. 6) states "As a result of the Debtor's infringement of the '288 Patent, M-I has been damaged, and is entitled to lost profits or a reasonable royalty for such damage pursuant to 35 U.S.C. § 284 in an amount to be determined, but in no event less than \$2,116,392.50 plus interest and costs. M-I is also entitled to attorney's fees under 35 U.S.C. § 285 as the facts and circumstances surrounding the Debtor's actions make the Western District lawsuit an "exceptional case."

The Plan provides for up to a 100% distribution to holders of Allowed Unsecured Claims from Net Patent Litigation Proceeds in the event the Debtor prevails in the Patent Litigation Case, and a Ratable distribution of Net Liquidation Proceeds to holders of Allowed Unsecured Claims in the event the Debtor does not prevail in the Patent Litigation Case. The Plan also contemplates that all Assets existing on the Effective Date will be segregated and preserved pending resolution of the Patent Litigation Case by Final Order, including Assets that could under applicable law be used to satisfy Secured Claims. Thus, ***Confirmation will result in the Debtor's creditors receiving MORE THAN, and possibly substantially more than, they would in a liquidation under Chapter 7 of the Bankruptcy Code.***

The Debtor believes that the Reorganized Debtor has a significant chance of prevailing in the Patent Litigation Case, and to recover against M-I (and the M-I Bond) as a result of the Debtor having been wrongfully enjoined from conducting business as a result of the preliminary injunction obtained by M-I. The Debtor also believes that if it does prevail, it can establish damages arising from the wrongful injunction of not less than \$10 million. However, all litigation is speculative, and no guarantee can be made that the Reorganized Debtor will prevail in the Patent Litigation Case, or if it does prevail, that it will be able to recover damages for having been wrongfully enjoined in any amount.

VI. Plan of Reorganization

PLAN SUMMARY

1. The Plan provides for (a) payment of Allowed Secured Claims (without interest or attorneys' fees); (b) (i) (if the Reorganized Debtor prevails in the Patent Litigation Case) payment of 100% of Allowed Unsecured Claims (without interest) from Net Patent Litigation Proceeds, or (ii) if the Reorganized Debtor does not prevail in the Patent Litigation Case) a Ratable payment of Allowed Unsecured Claims from Net Liquidation Proceeds.

2. The Plan provides that holders of Allowed Unsecured Claims may elect to sell those claims to FPPI within 90 days after the Effective Date for 35% of the amount of the Allowed Amount thereof.

3. The Plan provides for a convenience class of holders of Allowed Unsecured Claims with an Allowed Amount of \$5,000 or less, with each such holder to receive 70% of the Allowed Amount of its Claim within 30 days after the Effective Date. The Plan further provides (a) that holders of Allowed Unsecured Claims with an Allowed Amount in excess of \$5,000 may ***opt into*** the convenience class (with the effect of reducing their Allowed Unsecured Claim to \$5,000); and (b) that holders of Allowed Unsecured Claims with an Allowed Amount of \$5,000 or less may ***opt out of*** the convenience class and thereby receive the treatment otherwise available to holders of Allowed Unsecured Claims in Allowed Amounts in excess of \$5,000.

4. The Reorganized Debtor's Plan obligations will be funded by the Debtor's member FP Marangoni America Inc. with Post-Confirmation Contributions advanced to it by Western or from FPPI, or both, including proceeds of the Offering (which proceeds shall not be less than \$350,000). Among the uses the Reorganized Debtor will make of the Post-Confirmation

Contributions will be to (a) defend the claims made by M-I in the Patent Litigation Case, (b) to pursue the counterclaims asserted by the Debtor in the Patent Litigation Case, (c) to seek to recover damages against M-I secured by the \$10 million M-I Bond posted in the Patent Litigation Case, and (d) to make the post-Effective Date payments contemplated by the Plan. If the Debtor prevails in the Patent Litigation Case, it anticipates asserting claims against M-I for an amount in excess of \$10 million arising from M-I causing the Debtor to be wrongfully enjoined in the Patent Litigation Case. The Debtor will employ counsel for the Patent Litigation Case on a modified contingency basis, and any net recovery (after payment of such counsel's fees and expenses) will be paid to holders of Allowed Unsecured Claims, as described above.

5. As noted above, all Assets existing on the Effective Date will be segregated and preserved pending resolution of the Patent Litigation Case by Final Order, including Assets that could under applicable law be used to satisfy Secured Claims. Thus, ***Confirmation will result in the Debtor's creditors receiving MORE THAN, and possibly substantially more than, they would in a liquidation under Chapter 7 of the Bankruptcy Code.***

A. Classification of Claims and Interests

As reflected on the attached **Exhibit A**, the claims against the Debtor (excluding Administrative Claims and Priority Claims) are divided into the following classes:

1. Class 1. Class 1 Claim consists of the Secured Claims filed in the aggregate amount of \$41,956.25 by (a) Midland Central Appraisal District for unpaid property taxes in the amount of \$7,860.14 and (b) The County of Guadalupe, Texas for unpaid property taxes in the amount of \$34,096.

2. Class 2. Class 2 consists of unsecured Claims, divided into the following subclasses:

Class 2(a). Class 2(a) consists of Allowed Unsecured Claims of non-Insiders that provided, goods, services or financing to the Debtor to the extent the Allowed Amount of such Claims exceeds \$5,000.

Class 2(b). Class 2(b) consists of the Contested Claim asserted by M-I (Claim no. 6).

Class 2(c). Class 2(c) consists of the Allowed Unsecured Claims of Insiders who provided goods, services or financing to the Debtor.

Class 2(d). Class 2(d) consists of Allowed Unsecured Claims of non-Insiders that provided, goods, services or financing to the Debtor to the extent the Allowed Amount of such Claims is \$5,000 or less.

3. Class 3. Class 3 consists of the Interests of the Debtor's members.

Unless otherwise agreed by the Debtor, or otherwise provided in the Confirmation Order, holders of Claims in Class 1, Class 2(a), Class 2(c) and Class 2(d) will be estopped and prohibited from asserting Claims in amounts greater than reflected on Exhibit A. If no agreement can be reached with the Debtor, such holders must timely object to Confirmation of the Plan.

B. Treatment of Administrative Expense Claims, U.S. Trustee Fees, Priority Claims and Priority Tax Claims.

1. Administrative Expense Claims and Bar Dates. Each holder of an Administrative Claim (other than Fee Claims and Post-Petition Debt) will receive either: (i) with respect to Administrative Claims that are Allowed Claims on the Effective Date, the amount of such holder's Allowed Claim in one cash payment, within 10 days after the Effective Date, from the Debtor; (ii) with respect to Administrative Claims that become Allowed Claims after the Effective Date, the amount of such holder's Allowed Claim, in one cash payment from the Debtor within 10 days after such claim becomes an Allowed Administrative Claim; unless such holder and the Debtor agree to other treatment.

(a) Administrative Claims Bar Date. Any party that claims to hold an Administrative Claim (other than a Fee Claim) not then paid shall be required to file with the Bankruptcy Court an application for payment within sixty (60) days after the Effective Date and to serve notice thereof on all parties entitled to such notice. The failure to timely file the application as required in the preceding sentence (time being of the essence) shall result in the Claim being forever barred and discharged. An Administrative Claim with respect to which an application has been properly filed and to which no timely objection has been filed or an objection has been filed but overruled by the Bankruptcy Court, shall become an Allowed Administrative Claim to the extent such claim is allowed by Final Order, and shall be paid in one cash payment from the Debtor within 10 days after such Claim becomes an Allowed Administrative Claim (unless such holder and the Debtor agree to other treatment).

(b) Fee Claims and Fee Claims Bar Date. Each professional person whose retention with respect to the Debtor's case has been approved by the Bankruptcy Court or who holds, or asserts, an Administrative Claim that is a Fee Claim shall be required to file with the Bankruptcy Court a final fee application within sixty (60) days after the Effective Date and to serve notice thereof on all parties entitled to such notice. The failure to file timely any such application as required in the preceding sentence (time being of the essence) shall result in the Fee Claim being forever barred and discharged. A Fee Claim, with respect to which a Fee Application has been properly filed, shall become an Administrative Claim only to the extent allowed by Final Order. Fee Claims shall be paid either: (i) with respect to Fee Claims which are Allowed Claims on the Effective Date, the amount of such holder's Allowed Claim in one cash payment, within 10 days after the Effective Date, from the Debtor; (ii) with respect to Fee Claims which become Allowed Claims after the Effective Date, the amount of such holder's Allowed Claim, in one cash payment from the Debtor within 10 days after such Claim becomes an Allowed Fee Claim (unless such holder and the Debtor agree to other treatment).

(c) Post-Petition Debt. Post-Petition Debt will not be repaid until after the Patent Litigation Case has been resolved by Final Order.⁶

(d) United States Trustee Fees. All fees required to be paid by 28 U.S.C. § 1930(a)(6) will accrue and be timely paid until the case is closed, dismissed, or converted to another chapter of

⁶ The holders of Post-Petition Debt consent to the payment of Allowed Claims in Class 2(d) as contemplated by this Plan.

the Bankruptcy Code. Any U.S. Trustee Fee owed on or before the Effective Date of the Plan will be paid on the Effective Date.

2. Priority Claims and Priority Tax Claims. The Debtor has no Priority Claims or Priority Tax Claims. If any Claim becomes an Allowed Priority Claim or an Allowed Priority Tax Claim, such Claim will be paid as required by Section 1129 of the Bankruptcy Code.

C. Claims and Interests Impaired Under the Plan

Claims in Class 1 and Class 2 are impaired within the meaning of Section 1124 of the Bankruptcy Code and are entitled to vote on the Plan. Class 3 is not impaired under this Plan, and is deemed to have accepted the Plan.

D. Treatment of Claims and Interests Under the Plan

Claims and Interests classified under the Plan shall be treated and paid as follows:

1. Class 1. Midland Central Appraisal District will receive a payment within 30 days after the Effective Date in the amount of the lesser of (a) \$7,860.14 or (b) the Allowed Amount of its Claim in full satisfaction of its Claim. County of Guadalupe, Texas will receive a payment within 30 days after the Effective Date in the amount of the lesser of (a) \$34,096 or (b) the Allowed Amount of its Claim in full satisfaction of its Claim.

2. Class 2. Holders of Allowed Unsecured Claims in Class 2 will receive a Ratable distribution of (a) Net Patent Litigation Proceeds (if any) or (b) Net Liquidation Proceeds, or both, not to exceed 100% of the amount of each respective holder's Allowed Unsecured Claim.^{7, 8}

3. Class 3 Interests. The Debtor's Members will retain their Interests, subject to the terms of this Plan.

No Claim shall receive anything on account of this Plan unless it is or becomes an Allowed Claim.

E. [Intentionally Blank]

F. Means for Implementation of the Plan

1. Exclusive of Post-Petition Debt, the Debtor's Administrative Claim liability as of Confirmation will be negligible. Payment of Post-Petition Debt is subordinated under this Plan to

⁷ For the avoidance of doubt, the Debtor's Assets will be liquidated, and a Ratable distribution of Net Liquidation Proceeds will be made, *only* in the event Net Litigation Proceeds and Post-Confirmation Contributions are insufficient to pay 100% of Allowed Unsecured Claims in Class 1 and Class 2.

⁸ M-I's Claim is or will be Contested. The Debtor does not anticipate that M-I will have an Allowed Claim, or that any distribution will be made on account of its Contested Claim.

payment of Class 2(a) and 2(d) Claims and will not be paid until the Patent Litigation Case has been resolved by Final Order. Hall Estill holds a \$50,000 retainer for payment of its Fee Claims.

2. Based on its own post-Petition Date operating history, the Debtor estimates that the Reorganized Debtor will incur overhead costs, operating expenses, tax liabilities and other expenses totaling between \$5,000 and \$10,000 per month.

3. The Debtor contemplates that its existing counsel in the Patent Litigation Case, Bracewell LLP, will withdraw from representation of the Reorganized Debtor and that the Reorganized Debtor will engage new counsel on a modified contingency fee basis.⁹ The Debtor estimates that its total out-of-pocket costs to complete a trial in the Patent Litigation Case will range from \$400,000 to \$600,000.

3. The Reorganized Debtor will meet its Plan obligations, including litigation cost funding, as a result of direct or indirect Post-Confirmation Contributions received from Western that include, but are not limited to, Offering proceeds. Within 10 days after the Effective Date, Western, FPMI or FP Marangoni America Inc. will make a Post-Confirmation Contribution in an amount necessary to (a) pay then-existing Allowed Administrative Expenses and Allowed Claims in Class 1 and Class 2(d); (b) fund litigation expenses associated with the Patent Litigation Case, including sums necessary to post a \$75,000 retainer with its counsel to be retained to defend and prosecute the Reorganized Debtor's interests in the Patent Litigation Case; and (c) allow the Reorganized Debtor to meet its other Plan and ordinary operating expenses for 60 days. Thereafter, Post-Confirmation Contributions will be made at such times and in such amounts as are necessary to meet the Reorganized Debtor's Plan and ordinary operating needs.

4. Until the Patent Litigation Case has been resolved by Final Order, cash and proceeds of liquidation of the Debtor's Assets existing on the Confirmation Date will be used solely for the purpose of paying Allowed Administrative Claims. If the Patent Litigation Case is resolved by a Final Order and the Reorganized Debtor fails to obtain Net Litigation Proceeds and Post-Confirmation Contributions in an amount sufficient to pay 100% of all Allowed Class 2 Claims, the Debtor's Assets, and the Debtor's members' Interests, will be liquidated by the Reorganized Debtor and Net Liquidation Proceeds will be used first to pay Post-Confirmation Obligations, next to pay Post-Petition Debt, and finally to pay (on a Ratable basis) all then-unpaid Allowed Class 2 Claims.

(a) The holders of Related Party Claims hereby assign all rights to receive distributions contemplated in this Section VI(F)(4) to holders of then-unpaid Allowed Claims in Class 2(a) up to 100% of the unpaid amount thereof (without interest). After all then-unpaid Allowed Claims in Class 2(a) have been thus fully paid, any remaining distributions shall be made in the priority stated in above. To avoid doubt, the assignment described in this subsection evinces the voluntary agreement of the holders of Related Party Claims to make such assignment as an inducement to the holders of Class 1, 2(a) and 2(d) Claims to accept the Plan. Such voluntary agreement is not an alteration of the statutory priority of distribution to which they otherwise are entitled, or an admission that any such alteration is appropriate.

⁹ The Debtor is contemplating options that provide for lower hourly rates and a higher contingency fee award vs. higher hourly rates and a lower contingency fee award.

5. As noted above, interested parties may object to Claims in Class 1 and Class 2 for a period of 60 days after the Effective Date. FPMI has committed to purchase Allowed Claims in Class 2(a) at 35% of their Allowed Amount during the period beginning on the 61st day after the Effective Date through and including the 90th day after the Effective Date. For Class 2(a) Claims objected to during the objected period, FPMI will extend the purchase commitment above through the date that is 30 days after such an objected-to Claim becomes an Allowed Claim. To avoid doubt, FPMI's commitment does not apply to any Class of Claims other than Class 2(a).

G. Feasibility of the Plan

The Debtor believes that the Plan is feasible in that it provides a mechanism by which the Reorganized Debtor can at the same time satisfy all statutory requirements, provide for substantial if not full payment of all Allowed Secured Claims and all Allowed Unsecured Claims (other than that of M-I), and simultaneously defend M-I's claims against the Debtor, and to prosecute the Debtor's claims against M-I and the M-I Bond in the Patent Litigation Case.

H. Provisions Regarding Distributions and Objections to Claims

1. No Distribution Pending Allowance or Estimation of Claims. No payments or distributions shall be made with respect to all or any portion of a Contested Claim unless and until such Claim becomes an Allowed Claim by Final Order. No holder of a Claim shall be entitled to any payment under the Plan if such holder has retained any Assets.

2. Objections to Claims. Any party authorized by the Bankruptcy Code may object to the allowance of prepetition Claims at any time prior to sixty (60) days after the Effective Date or, as to Claims based upon the Debtor rejection pursuant to this Plan of an executory contract or unexpired lease, at any time prior to thirty (30) days after the filing of any such rejection Claim. All Contested Claims shall be litigated to Final Order; *provided, however*, that the Reorganized Debtor may compromise and settle any Contested Claim, subject to the approval of the Bankruptcy Court. Notwithstanding the foregoing, a person who is found to have received a voidable transfer shall have thirty (30) days following the date upon which the order ruling that such transfer is avoidable becomes a Final Order in which to file a Claim in the amount of such avoided transfer.

3. Suspension of payments on Contested Claims. If any Claim has been timely objected to, the Debtor shall segregate and set aside, from the funds on hand for distribution to the claimant's Class and prior to any distribution to that Class, funds sufficient to satisfy the payment otherwise due on the Claim according to the provisions of the Plan. In the event that the Claim objection is overruled or a dispute is resolved favorably to the party asserting the Claim, then the funds shall be paid to the creditor in accordance with applicable Class provisions. In the event that a Contested Claim is disallowed, the funds segregated in deference to that Claim shall be disbursed to other parties in interest, according to the applicable provisions of the Plan.

4. Disputed Claims and Interests. Disputed Claims and Interests will be deemed to have been disallowed by Final Order and shall receive nothing on account thereof under this Plan.

I. Executory Contracts

Assumption of Executory Contracts and Unexpired Leases. The Debtor is a party to a real property lease with Resource Enterprises Inc. and an intellectual property lease with FPML, both of which will be assumed by the Reorganized Debtor on the Effective Date pursuant to Bankruptcy Code Section 365. To the extent the Debtor is a party to another executory contract or unexpired lease as contemplated by Bankruptcy Code Section 365, the Debtor will be deemed to have rejected such contract or lease unless otherwise provided by the Confirmation Order.

J. Default

No default in the performance of this Plan shall automatically result in the termination of the Plan or constitute a revocation of the Order Confirming the Plan. In the event that any party in interest believes that the Debtor is in default of any requirement of this Plan, such party or its attorney shall provide written notice of such claimed default to the Debtor and his counsel prior to filing a motion with the Bankruptcy Court regarding the alleged noncompliance with the terms of the Plan, or to otherwise seek Bankruptcy Court or other enforcement of the terms of this Plan.

VII. Reservation of Claims

1. Reservation of Claims and Causes of Action. Effective as of the Effective Date, the Reorganized Debtor will be and become the Estate's representative pursuant to Bankruptcy Code Section 1123(b)(3)(B) to carry out the provisions of the Plan. In furtherance of the preceding sentence (but not in limitation thereof), the Reorganized Debtor will receive and be vested with the full right to (a) defend the claims asserted by M-I in the Patent Litigation Case; (b) prosecute any claims and causes of action of any nature against third parties (including M-I) that were maintained or conceivably could have been maintained by the Debtor or the Estate prior to or as of Confirmation, specifically including without limitation the counterclaims asserted by the Debtor in the Patent Litigation Case and claims against M-I and the M-I Bond related to the Debtor having been wrongfully enjoined ; and (c) prosecute all litigation related to Claims and any objections thereto.

The claims and causes of action described in subparagraph (b) above include any and all claims, causes of action, cross claims, or counterclaims held or capable of being asserted by the Debtor prior to or as of Confirmation, including but not limited to: (i) any claim or cause of action under a policy of liability insurance or otherwise; (ii) Chapter 5 Claims; and (iii) any and all claims, causes of action, counterclaims, demands, controversies, debts, sums of money, accounts, reckonings, bonds, bills, damages, obligations, liabilities, objections, and executions of any nature, type, or description which the Debtor has or may come to have, including, but not limited to, negligence, gross negligence, usury, fraud, deceit, misrepresentation, conspiracy, unconscionability, duress, economic duress, defamation, control, interference with contractual and business relationships, conflicts of interest, misuse of insider information, concealment, disclosure, secrecy, misuse of collateral, wrongful release of collateral, failure to inspect, environmental due diligence, negligent loan processing and administration, wrongful setoff, violations of statutes and regulations of governmental entities, instrumentalities and agencies (both civil and criminal), racketeering activities, securities and antitrust violations, tying arrangements, deceptive trade practices, breach or abuse of fiduciary duty, breach of any alleged special relationship, course of conduct or dealing, obligation of fair dealing, obligation of good faith, whether or not in connection with or related to

this Plan, at law or in equity, in contract or in tort, or otherwise, known or unknown, suspected or unsuspected, each of which are hereby preserved and retained for enforcement by the Reorganized Debtor. It is the intent of the Debtor that this reservation of claims shall be as broad as permitted by applicable law and shall include all such rights and claims, whether or not disclosed in the Debtor's schedules.

2. Return of Fraudulent Transfers. Any creditor determined to have received a transfer that is voidable pursuant to Sections 544, 547, 548, 549, and/or 550 of the Bankruptcy Code or any other applicable law shall be required to remit to the Debtor the determined amount of the avoided transfer prior to receiving any distribution under the Plan.

VIII. Effect of Confirmation, Discharge, Releases and Injunction

1. Vesting of Assets. On the Effective Date all Assets shall vest in the Reorganized Debtor pursuant to Sections 1141(b) and (c) of the Bankruptcy Code, free and clear of all claims and interests except as otherwise provided in this Plan. This Plan will evidence the release of any and all Liens or encumbrances against all property dealt with by the Plan (including the Assets), unless such Lien or encumbrance is specifically retained in the Plan.

2. Plan Creates New Obligations. Except as otherwise provided in the Plan, (a) the payment terms promised in the Plan constitute new contractual obligations that replace any payment terms that existed prior to the Effective Date, and (b) all rights obligation other than those new payment terms continue to apply.

3. Legal Binding Effect. The provisions of this Plan shall: (a) bind all holders of Claims and Interests, whether or not they accept this Plan; and (b) except with respect to Allowed Claims, discharge the Debtor from all Claims, claims, debts, and liabilities, including without limitation, any Claims, claims, debts, and liabilities of a kind specified in Sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, that arose, or have been asserted against, the Debtor at any time before the entry of the Confirmation Order or that arise from any pre-Confirmation conduct of the Debtor whether or not the Claims, claims, debts, and liabilities are known or knowable by the Claimant.

4. Satisfaction of Claims and Interests. Except as otherwise provided by the Plan, the consideration distributed under the Plan shall be in complete satisfaction of all Claims, including Claims arising prior to the Effective Date.

5. Injunction. Except as provided in the Plan or Confirmation Order and in the immediately following sentence, as of the Effective Date, all entities that have held, currently hold or may hold a Claim or other debt or liability against the Debtor or an Interest or other right of an equity security holder in the Debtor are permanently enjoined from taking any of the following actions on account of any such Claims, debts, liabilities or Interests: (1) commencing or continuing in any manner any action or other proceedings against the Debtor or the Reorganized Debtor or the Assets transferred to the Reorganized Debtor under the Plan; (2) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtor or the Reorganized Debtor or the Assets transferred to the Reorganized Debtor under the Plan; (3) creating, perfecting or enforcing any lien or encumbrance against the Debtor or the Reorganized Debtor or the

Assets transferred to the Reorganized Debtor under the Plan; (4) asserting against the Debtor or the Reorganized Debtor or the Assets transferred to the Reorganized Debtor under the Plan, a setoff, right or claim of subordination or recoupment of any kind against any debt, liability or obligation due to the Debtor or the Reorganized Debtor; and (5) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan. The foregoing provisions shall not enjoin (a) the perfection of liens to the extent such liens could be validly perfected and enforceable against a trustee for the Estate under Code Section 546(b); (b) the enforcement of liens with consent of the Debtor or Reorganized Debtor upon a finding by the Court that such enforcement will not have an adverse effect upon the implementation of the Plan; (c) the enforcement against Debtor or the Reorganized Debtor of setoff rights that creditors presently have against the Debtor or the Estate; or (d) the enforcement of rights or remedies of the United States Securities and Exchange Commission against any entity or individual arising from the affairs of the Debtor. ***This provision shall in no way apply to the Reorganized Debtor and M-I litigating all issues related to the Patent Litigation Case and the M-I Bond to resolution by Final Order.***

IX. Miscellaneous Provisions

1. Request for Relief Under Section 1129(b) (Cramdown). In the event any Impaired Class of Claims or Interests shall fail to accept this Plan in accordance with Section 1129(a) of the Bankruptcy Code, the Debtor requests that the Bankruptcy Court confirm this Plan in accordance with the provisions of Section 1129(b) of the Bankruptcy Code.

2. Prepayment. Any claim may be prepaid at any time, without penalty.

3. Tax Issues. The federal income tax effects on holders of claims will vary depending on how the holder has treated its claim for tax purposes. For example, if the holder has a basis in its debt claim and is paid an amount less than its basis, the holder may be entitled to a federal income tax deduction for its loss. This will depend on the holder's own tax characteristics and cannot be assured. Conversely, if the holder has no basis in its debt claim, the holder may recognize income for federal income tax purposes based on payments under the plan. Because each holder's federal income tax situation may vary, you are urged to consult your own tax advisors to determine the federal income tax effect of the plan on you.

4. Headings. All headings utilized in this Plan are for convenience and reference only, and shall not constitute a part of this Plan for any other purpose.

5. Due Authorization. Each and every holder of a Claim who elects to participate in the distributions provided for herein warrants that such Claimant is authorized to accept, in consideration of such Claim against the Debtor, the distributions provided for in this Plan and that there are not outstanding commitments, agreements, or understandings, express or implied, that may or can in any way defeat or modify the rights conveyed or obligations undertaken by such holder under this Plan.

6. Further Assurances and Authorizations. The Debtor shall seek such orders, judgments, injunctions, and rulings that may be required to carry out further the intentions and purposes, and to give full effect to the provisions of, this Plan.

7. Applicable Law. Except to the extent that the Bankruptcy Code or other federal law is applicable, the rights, duties, and obligations arising under this Plan shall be governed by and construed and enforced in accordance with the internal laws of the State of Texas without reference to the laws of other jurisdictions.

8. No Interest. Except as expressly stated in this Plan, or allowed by the Bankruptcy Court, no interest, penalty, or late charge is to be allowed on any Claim subsequent to the Petition Date.

9. Post-Confirmation Actions. After Confirmation, the Reorganized Debtor may, with the approval of the Bankruptcy Court, and so long as it does not materially or adversely affect the interests of the Creditors, remedy any defect or omission, or reconcile any inconsistencies in the Plan or in the Confirmation Order, in such manner as may be necessary to carry out the purposes and effect of the Plan.

10. Notices of Default. Notwithstanding anything contained herein to the contrary, no Claimant shall have the right to exercise any rights under the Plan until the Debtor fails to cure any default within 14 days of receipt of written notice of such default to the Debtor and the undersigned counsel.

11. Notices. All notices, requests, elections, or demands in connection with the Plan shall be in writing and shall be deemed to have been given when received or, if mailed, 5 days after the date of mailing provided such writing shall have been sent by registered or certified mail, postage prepaid, return receipt requested.

12. Payment Dates. Whenever any payment or distribution to be made under the Plan shall be due on a day other than a Business Day, such payment or distribution shall instead be made, without interest, on the next Business Day, except as may be provided in negotiable instruments requiring such payments.

13. Time of the Essence. Time is of the essence of the obligations of parties in interest asserting rights or Claims against the Debtor as required in this Plan.

14. DeMinimis Distribution. No single distribution payment of less than \$5.00 shall be required to be made to any holder of an Allowed Claim. Rather, any such de-minimis distribution amount shall be held by the Debtor, added to the amount of the next distribution, and remitted to the holder of the Allowed Claim upon reaching a total greater than \$5.00.

X. Modification of the Plan

1. Prior to Confirmation. The Debtor may modify this Plan at any time prior to Confirmation, provided the modification complies with the requirements of Sections 1122, 1123 and 1127 of the Bankruptcy Code. Upon the filing of any such modifications with the Bankruptcy Court, the Plan, as modified, becomes the Plan.

2. After Confirmation. The Debtor may modify the Plan at any time after Confirmation, upon compliance with Section 1127 of the Bankruptcy Code. The Debtor or its

attorney shall provide notice of any such proposed modification to all creditors and other parties in interest in these Chapter 11 proceedings. If, in the opinion of the Bankruptcy Court, the modification does not materially and adversely affect the interest of the creditors, the Bankruptcy Court may modify the Plan without notice to creditors, or may modify the Plan upon notice only to those creditors that the Bankruptcy Court deems to be materially and adversely affected.

XI. Retention of Jurisdiction

The Bankruptcy Court shall retain jurisdiction over this Chapter 11 case after Confirmation of the Plan to the fullest extent provided for, or allowed, under the Bankruptcy Code and other applicable law. Specifically, but not by way of limitation, the Bankruptcy Court shall retain jurisdiction for the following purposes:

- (a) to consider and effect any modification of this Plan under Section 1127 of the Bankruptcy Code;
- (b) to hear and determine all controversies, suits and disputes that arise in connection with the interpretation, implementation, effectuation, consummation or enforcement of this Plan;
- (c) to hear and determine all requests for compensation and/or reimbursement of expenses for the period commencing on the Petition Date;
- (d) to hear and determine all objections to Claims and Interests, and to determine the appropriate classification of any Claim or Interest, and other controversies, suits and disputes that may be pending at or initiated after the Confirmation Date, except as provided in the Confirmation Order;
- (e) to hear and determine all causes of action;
- (f) to consider and act on such other matters consistent with this Plan as may be provided in the Confirmation Order;
- (g) to make such orders as are necessary and appropriate to carry out and implement the provisions of this Plan; including to effect the further assurances provided in this Plan;
- (h) to approve the reasonableness of any payments made or to be made, within the meaning of Section 1129(a)(4) of the Bankruptcy Code;
- (i) to exercise the jurisdiction granted pursuant to Sections 505(a) and (b) of the Bankruptcy Code to determine any and all federal, state, local and foreign tax liabilities of, and any and all refunds of such taxes paid by the Debtor;
- (j) to hear and determine any issues or matters in connection with any property not timely claimed as provided in this Plan; and

- (k) to determine any and all motions, applications, adversary proceedings and contested matters whether pending in the Case as of the Effective Date or brought subsequently by the Debtor.

Nothing contained herein shall be construed so as to limit the rights of the Debtor to commence or prosecute any right or claim in any court of competent jurisdiction.

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DATED August 31, 2018.

FPUSA, LLC

By: /s/ Cathy Konski
Its Controller

**HALL, ESTILL HARDWICK, GABLE,
GOLDEN & NELSON, P.C.**

By: /s/ Thomas A. Creekmore III
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COUNSEL FOR FPUSA, LLC

	A	B	C	D	E	F	G	H
	EXHIBIT A Holders of Class 1 and Class 2 Claims	Class 2(a) (Non-Insider)	Class 2(b) (M-I)	Class 2(c) (Insiders)	Class 2(d) (Non-Insider Conv.) (\leq \$5,000)	Class 1 (Secured)	Priority	Total Claims
1								
2	CREDITOR							
3								
4	4 Star Hose and Supply				\$ 2,583.62			
5	Axiom Medical Consulting, LLC				\$ 3,444.50			
6	Bracewell & Giuliani, LLP	\$ 1,019,265.88						
7	Cartaste, Inc.				\$ 3,796.96			
8	Gen-Tex Centrifuge rentals	\$ 11,200.00						
9	Dial Lubricants				\$ 1,168.95			
10	Fox Pest Control			\$ 325,036.44	\$ 194.85			
11	FP Maragoni, Inc.					\$ 34,096.11		
12	Guadalupe County TX Treasurer							
13	M-I, LLC		\$ 2,116,395.20					
14	McAlister Printing Co, Inc				\$ 379.66			
15	Performance Fluid Management Corp				\$ 850.00			
16	Progressive Waste Solutions of TX				\$ 120.25			
17	RaSTrac	\$ 11,461.66						
18	RJ Price Heavy, LLC	\$ 32,115.00						
19	Safety Kleen				\$ 409.35			
20	SAIA Corp				\$ 1,125.67			
21	San Juan Hot Shot & Transport				\$ 1,850.00			
22	Screen Logix, LLC	\$ 11,592.90						
23	Screen Tech International	\$ 11,224.36						
24	Secure Drilling Services USA, LLC	\$ 34,006.00						
25	Stuart Hose & Pipe Company				\$ 142.53			
26	TASC				\$ 730.00			
27	Texas Comptroller						0	
28	The Hartford				\$ 1,609.95			
29	Total Administrative Services Corp				\$ 730.00			
30	Unifirst Corp				\$ 352.38			
31	Waggoners Trucking				\$ 1,696.50			
32	Ahlens & Stoll, PC				\$ 555.00			
33	Enterprise Fleet Management*				\$ 10.00			
34	Horizontal Upstream Technologies, LLC				\$ 2,082.40			
35	Western Oilfield Equipment Rentals, LLC **		\$ 761,174.54					
36	United Parcel Service				\$ 57.24			
37	TXU Energy Retail Company, LLC				\$ 1,081.10			
38	Texas Mutual Insurance Company***				0			
39	Midland Central Appraisal District				\$ 7,860.14			
40								
41	TOTAL	\$ 1,130,865.80	\$ 2,116,395.20	\$1,086,210.98	\$24,970.91	\$ 41,956.25	\$ -	\$ 4,400,399.14
42	Total Class 2, 2(a) and 2(b)			\$4,333,471.98				
43								
44	* Scheduled in unknown amount and no proof of claim filed							
45	** Includes claim originally scheduled in the name of Markwater Handling Systems, Ltd. as a result of corporate amalgamation and name change							
46	***Proof of Claim no. 3 filed in this amount							