

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND DIVISION**

IN RE: §
§
KIRKLAND BROS., INC. § **CASE NO. 15-70099-rbk**
§
DEBTOR § **CHAPTER 11**

**OBJECTION TO CONFIRMATION OF DEBTOR’S REVISED FIRST AMENDED
COMBINED DISCLOSURE STATEMENT AND PLAN OF REORGANIZATION
DATED JUNE 8, 2016**

TO THE HONORABLE RONALD B. KING, UNITED STATES BANKRUPTCY JUDGE:

Comes now SECURITY BANK (“Security”), a secured creditor of the estate and a Class 5 Claimant under the Debtor’s Revised First Amended Combined Disclosure Statement and Plan of Reorganization dated June 8, 2016 (the “Plan”) and files this Objection to Confirmation of Plan and in support thereof would show the Court as follows:

1. Security filed five (5) secured Proofs of Claim in this case as follows:

• Proof of Claim #20	\$ 74,425.13
• Proof of Claim #21	\$ 5,311.03
• Proof of Claim #22	\$ 2,691.96
• Proof of Claim #23	\$136,344.27
• Proof of Claim #24	<u>\$345,954.54</u>
TOTAL:	\$564,726.93

Each Proof of Claim represents a separate Note payable to Security Bank and each Note is secured by various titles to trucks and/or trailers, leases and accounts receivable. No objections have been filed to the Proofs of Claim and Security’s claims are not listed as disputed on the Debtor’s Schedules. All of Security’s Notes are cross-collateralized.

2. Objection is made to the lack of payments during the first three (3) months of the plan. There is no justification for not making payments during this time.

3. Objection is made to the proposed payment of \$11,020.67 as this results in an amortization that is far too long and in numerous situations, exceeds the term of the leases serving

as collateral as well as the useful life of the trucks serving as collateral. The plan payments to Security should be increased to more appropriately match the life and value of the collateralized leases and vehicles. The payout is simply too long for the type of collateral and the age of the specific collateral securing it.

4. Security Bank objects to the proposed interest rate of 5%. This rate does not reflect current market rates. According to the Debtor's own Schedules, there is substantial equity to pay a rate of 6.75% which is the same rate of interest the Plan provides to pay other similarly situated creditors for similar type loans to the Debtor.

5. Objection is also made to the Plan's mechanism for release of titles on any vehicles sold. The Plan proposal will require the Lender to obtain a valuation on every piece of its collateral which will necessitate, in order to perform properly, an inspection of each piece of collateral. The collateral is transitory and mobile and may not easily be able to be located. And if located, may not be timely. Furthermore, the Plan does not propose any resolution mechanism for disputes on the valuation of the collateral. The Plan fails to provide any compensation to Security for performing and obtaining inspections and the valuations for every piece of collateral every time a single title is released.

6. Security further objects to the Plan for its failure to address the treatment of the pledged deposit account in the amount of \$50,562.46 which Security contends should be immediately applied to reduce the Debtor's indebtedness to Security.

7. Objection is also made to the Debtor's listing of collateral to the extent there are various misspellings and misidentification of Security's collateral and to the extent Debtor's listing does not comport with Security's proofs of claim, as amended. For clarification, Security objects to the Plan to the extent that it can be construed to be a release of Security's security interest in any collateral that it had as of the Petition Date, unless Security voluntarily released its security interest in any collateral since the Petition Date by agreement.

8. Security would further show the Court that the fair market value of the Collateral at the time of the filing of the Debtor's bankruptcy is excess of the amount owing to Security and such value continues to be in excess of the amount owing on Security's Claim. As the value of the Collateral is in excess of Security's Claim, Security would show that pursuant to Section 506(b) of the United States Bankruptcy Code, Security is entitled to recover interest on such claim, and attorney's fees and expenses incurred in association with the Debtor's

bankruptcy. To the extent that the Debtor's Plan does not provide for such interest, attorney's fees, and expenses, Security further objects to the Debtor's Plan.

9. Security objects to Plan to the extent that it does not require the Debtor to pay to Security the full amount of any sales price received by Debtor for any of the Collateral it sells or the full amount of any payment received by Debtor from one its lessees (related to the Collateral) which is a payment for exercise of a purchase option of part of the Collateral.

10. Security objects to any provision of the Plan that would require or could be interpreted so as to require Security to re-document its debt or lien with regard to the Debtor and/or its collateral. Except, Security proposes the Debtor execute a new note to incorporate not only Security's standard note and security agreement terms, but also incorporates the provisions of the Plan, by reference or otherwise.

11. Security objects to the Plan as it fails to include any mechanism that allows Security Bank to exercise its rights to enforce its liens without requiring further Court intervention. Security Bank proposes that the following default provision would be fair and equitable to all parties.

In the event of the Debtor's default under the terms of the Plan, or otherwise under the terms of the contract between the parties (e.g., failure to make a payment when due, failure to maintain insurance, etc.), and failure to cure such default within 10 days after the date written notice of default is provided by Security to the Debtor, Security shall be entitled to all of its rights and remedies available to it under state law to enforce its claim, without the necessity of seeking further orders or relief from the Bankruptcy Court, with any pending stay being automatically terminated. Such notice shall be provided to the Debtor as follows: Kirkland Bros., Inc., P.O. Box 57, Gardendale, TX 79758; with a copy mailed to the Debtor's counsel as follows: Max R. Tarbox, 2301 Broadway, Lubbock, Texas 79401. Security shall be obligated to provide the notice described in the foregoing paragraph two (2) times only; a default by the Debtor after a second notice has previously been provided shall entitle Security to pursue all of its rights and remedies available to it under state law to enforce its Claim, without the necessity of further notice of any kind or seeking further orders or relief from the Bankruptcy Court, with any pending stay being automatically terminated

12. In addition, Security contends the Plan is not fair and equitable and does not comply with 11 U.S.C. § 1129(a)(7)(A) as Security will receive less the amount that would so receive if Debtor's estate were liquidated under Chapter 7 of the Bankruptcy Code.

13. Security objects to the Plan on the basis under 11 U.S.C. § 1129(a)(11) that the Plan is not feasible and it is likely to be followed by the liquidation or the need for further financial

reorganization of the Debtor.

14. Security objects to the Plan since it is not fair and equitable and does not comply with 11 U.S.C. § 1129(b)(2)(A).

15. Furthermore, Security objects to the Plan to the extent that it can be construed to release any claims that Security may have against any guarantors or other obligors of the debt described above.

16. Security reserves its rights to supplement this Objection.

WHEREFORE, PREMISES CONSIDERED, Security Bank prays that confirmation of the Debtor's Revised First Amended Combined Disclosure Statement and Plan of Reorganization dated June 8, 2016 be denied for failure to comply with 11 U.S.C. § 1129 unless such Plan is modified to cure the objections presented herein, and for such other and further relief to which it may show itself to be justly entitled.

Respectfully submitted,

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By: /s/ WILLIAM B. KINGMAN
State Bar No. 11476200
Attorney for Security Bank

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Objection to Confirmation of Debtor's Revised First Amended Combined Disclosure Statement and Plan of Reorganization dated June 8, 2016 was served by electronic filing or other means on the 6th day July, 2016, to the parties listed below and to the parties receiving electronic notice via CM/ECF:

Debtor's Attorney:
Max R. Tarbox
Tarbox Law, P.C.
2301 Broadway
Lubbock, Texas 79401

U.S. Trustee:
United States Trustee
P.O. Box 1539
San Antonio, Texas 78295-1539

/s/ WILLIAM B. KINGMAN