

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

In re

Case No. 16-51205G

Javan Paul Smith

Case under Chapter 11

Debtor

**JAVAN PAUL SMITH'S DISCLOSURE STATEMENT, DATED 9/14/2016**

I. INTRODUCTION

This is the disclosure statement (the "Disclosure Statement") in the chapter 11 case of Javan Paul Smith (the "Debtor"). This Disclosure Statement contains information about the Debtor and describes the Plan or Reorganization dated 9/14/16 (the "Plan") filed by the Debtor. A full copy of the Plan is attached to this Disclosure Statement as Exhibit A. ***Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.***

The proposed distributions under the Plan are discussed at pages 4-9 of this Disclosure Statement. General unsecured creditors are classified in Class 12, and will receive a distribution of 100% of their allowed claims, to be distributed as follows: in equal monthly installments over 60 months.

A. Purpose of This Document

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case,
- How the Plan proposes to treat claims or equity interests of the type you hold (i.e., what you will receive on your claim or equity interest if the plan is confirmed),
- Who can vote on or object to the Plan,
- What factors the Bankruptcy Court (the "Court") will consider when deciding whether to confirm the Plan,
- Why Javan Paul Smith believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

1. Time and Place of the Hearing to Confirm the Plan

The hearing at which the Court will determine whether to confirm the Plan will take place on [@@insert date], at [@@insert time], in Courtroom [@@insert courtroom], at the [@@insert Courthouse]

Name, and Full Court Address, City, State, Zip Code].

2. *Deadline For Voting to Accept or Reject the Plan*

If you are entitled to vote to accept or reject the plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to Steven G. Cennamo

Malaise Law Firm

909 N.E. Loop 410, Suite 300

San Antonio, TX 78209. See section IV.A. below for a discussion of voting eligibility requirements.

Your ballot must be received by [@@insert date] or it will not be counted.

3. *Deadline For Objecting to the Confirmation of the Plan*

Objections to the confirmation of the Plan must be filed with the Court and served upon [@@insert entities] by [@@insert date].

4. *Identity of Person to Contact for More Information*

If you want additional information about the Plan, you should contact

Steven G. Cennamo

Malaise Law Firm

909 N.E. Loop 410, Suite 300

San Antonio, TX 78209.

C. **Disclaimer**

***The Court has conditionally approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted.***

II. **BACKGROUND**

A. **Description and History of the Debtor**

The Debtor is an individual who is 100% service connected totally permanently disabled veteran. He receives VA benefits and Social Security Benefits. Debtor is able to work part time and in the past has driven a car for Uber, Lyft and Getme. Since 2006 Debtor has been searching for his now 17 year old autistic son who was kidnapped by persons on behalf of his mother and has incurred considerable debt trying to locate his son. In approximately January 2015 Debtor had attempted to start a business/partnership with others called Aurora Phoenix Enterprises to enter into government contracting for procurement of audio equipment. Many of the assets were intended to be used by the partnership in lieu of a bond. One of the planned partners became injured and the partnership has not yet generated any income and is not expected and the inventory will be liquidated and proceeds distributed to the partners.

B. **Insiders of the Debtor**

Dorothy A. Montgomery

C. **Management of the Debtor Before and During the Bankruptcy**

During the two years prior to the date on which the bankruptcy petition was filed, the officers, directors, managers or other persons in control of the Debtor (collectively the "Managers") were: Javan Smith

The Managers of the Debtor during the Debtor's chapter 11 case have been: Javan Smith

After the effective date of the order confirming the Plan, the directors, officers, and voting trustees of the Debtor, any affiliate of the Debtor participating in a joint Plan with the Debtor, or successor of the Debtor under the Plan (collectively the "Post Confirmation Managers"), will be: Javan Smith

**D. Events Leading to Chapter 11 Filing**

In 2011 Debtor purchased a house at 8806 Shoshoni Trail from Mirelez Enterprises where in Debtor put down \$13,000 paid over 4 months and made payments of \$2,750 of which \$499 was tax and insurance escrow. The seller was obligated to use part of the funds to bring the property up to VA standards so that Debtor could refinance with a VA loan. It was not until February 2012 that Debtor was told by Raymond Mirelez that there was a mortgage on the house and that it was in arrears and he needed \$9,500, which Debtor paid. In June 2012 Raymond Mirelez died and Debtor found out that Mirelez Enterprises is owned by John Mirelez and Lillian Mirelez. The Mirelezes cut off the utilities and do not respond to phone calls nor do they provide any way to make payments on the house. Debtor with much difficulty is finally able to reestablish utilities after an extended period of time of not having them. Unbeknownst to Debtor John Mirelez filed Chapter 13 bankruptcy in August 2005 and did not notify Debtor. Debtor does not find out about the bankruptcy until June 3, 2015 after he files a DTPA suit against Mirelez Enterprises in February 2013. Debtor in February 2013 attempts to pay the alleged lien holder on the property which is refused. Wells Fargo despite the bankruptcy being filed, attempts on numerous occasions to foreclose its alleged line. In June 2014 Wells Fargo in violation of the automatic stay, forecloses their alleged lien on the house and allegedly sells it to DC Civil Construction which is aware of the filed lis pendes. DC Civil Construction attempts to evict Debtor in August 2014. They attempt to evict Debtor in February 2015 and file suit in JP Court. The judgment of possession is appealed to County Court and then appealed to the 4th Court of Appeals. That appeal is stayed by this Chapter 11 filing.

Since 2006 Debtor has been searching for his now 17 year old autistic son who was kidnapped by persons on behalf of his mother and has incurred considerable debt trying to locate his son. Debtor is entitled to an order for Cost, Fees and Expenses relating to searching for his son from Sarah Smith, David Atkinson, and Carteret County, North Carolina. Debtor expects the order to be at least \$3,800,000.00

**E. Significant Events During the Bankruptcy Case**

Motion to Lift Stay by DC Civil Construction was granted to allow the appeal in the 4<sup>th</sup> Court of Appeals to proceed

**F. Projected Recovery of Avoidable Transfers**

The Debtor has not yet completed its investigation with regard to prepetition transactions. If you received a payment or other transfer within 90 days of the bankruptcy, or other transfer avoidable under the Code, the Debtor may seek to avoid such transfer.

**G. Claims Objections**

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The

procedures for resolving disputed claims are set forth in Article V of the Plan.

**H. Current and Historical Financial Conditions**

The identity and fair market value of the estate's assets are listed in Exhibit B

The Debtor's most recent financial statements if any issued before bankruptcy, each of which was filed with the Court, are set forth in Exhibit C.

The most recent post-petition operating report filed since the commencement of the Debtor's bankruptcy case is set forth in Exhibit D.

**III. SUMMARY OF THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS**

**A. What is the Purpose of the Plan of Reorganization?**

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

**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 Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan Proponent has *not* placed the following claims in any class:

1. *Administrative Expenses*

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 all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

The following chart lists the Debtor's estimated administrative expenses, and their proposed treatment under the Plan:

<b>Type</b>	<b>Estimated Amount Owed</b>	<b>Proposed Treatment</b>
Malaise Law Firm	\$15,000.00	Paid upon confirmation

2. *Priority Tax Claims*

Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding 5 years from the order of relief.

The following chart lists the Debtor's estimated § 507(a)(8) priority tax claims and their proposed treatment under the Plan:

Description (name and type of tax)	Estimated Amount Owed	Date of Assessment	Treatment
None			

**C. Classes of Claims and Equity Interests**

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the 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].

The following chart lists all classes containing Debtor's secured prepetition claims and their proposed treatment under the Plan:

<b>Class #</b>	<b>Description</b>	<b>Insider? (Yes or No)</b>	<b>Impairment</b>	<b>Treatment</b>
1	<p><i>Secured claim of.</i> Name = Amos Financial LLC</p> <p>Collateral Description = 8806 Shoshoni Trail, San Antonio, TX 78255</p> <p>Alleged Secured Amount = \$287,027.65</p> <p>Priority of Lien = 2</p> <p>Total claim = \$287,027.65</p>	No	Impaired	<p>Creditor will be paid \$70,500</p> <p>Monthly Pmt = \$483.48</p> <p>Pmts Begin = 30 days after confirmation</p> <p>Pmts End = 15 years</p> <p>Interest rate % = 2.9%</p> <p>Treatment of Lien = Retained</p> <p>Conditioned upon Debtor having title to the property and creditor having a valid lien.</p>
2	<p><i>Secured claim of.</i> Name = Diener Law Office</p> <p>Collateral Description = Claim against costs, fees and expenses against Car</p> <p>Allowed Secured Amount = \$12,000.00</p> <p>Priority of Lien = 1</p> <p>Total claim = \$12,000.00</p>	No	Impaired	<p>The creditor will be paid in full upon the receipt of funds from the Cost, Fees and Expenses order without interest</p>
3	<i>Secured claim of.</i>	No	Impaired	<p>Monthly Pmt = \$272.95</p>

	<p>Name = Go Financial</p> <p>Collateral Description = 2014 VW Golf (approx. 16000 miles)</p> <p>Allowed Secured Amount = \$13,850.00</p> <p>Priority of Lien = 1</p> <p>Total claim = \$19,142.00</p>			<p>Pmts Begin = 30 days after confirmation</p> <p>Pmts End = 60 months</p> <p>Interest rate % = 6.5%</p> <p>Treatment of Lien = Retained</p>
4	<p><i>Secured claim of.</i> Name = LBI Investigations</p> <p>Collateral Description = Claim against costs, fees and expenses against Car</p> <p>Allowed Secured Amount = \$479,000.00</p> <p>Priority of Lien = 2</p> <p>Total claim = \$479,000.00</p>	No	Impaired	The creditor will be paid in full upon the receipt of funds from the Cost, Fees and Expenses order without interest
5	<p><i>Secured claim of.</i> Name = Patty Cherry</p> <p>Collateral Description = Claim against costs, fees and expenses against Car</p> <p>Allowed Secured Amount = \$200,000.00</p> <p>Priority of Lien = 3</p> <p>Total claim = \$200,000.00</p>	No	Impaired	The creditor will be paid in full upon the receipt of funds from the Cost, Fees and Expenses order without interest
6	<p><i>Secured claim of.</i> Name = PJIS Group Ltd</p> <p>Collateral Description = Claim against costs, fees and expenses against Car</p> <p>Allowed Secured Amount = \$379,000.00</p> <p>Priority of Lien = 4</p>	No	Impaired	The creditor will be paid in full upon the receipt of funds from the Cost, Fees and Expenses order without interest

	Total claim = \$379,000.00			
7	<p>Secured claim of: Name = Security Service FCU</p> <p>Collateral Description = 2015 VW Eos (approx. 4000 miles)</p> <p>Allowed Secured Amount = \$22,000.00</p> <p>Priority of Lien = 1</p> <p>Total claim = \$41,933.00</p>	No	Impaired	<p>Monthly Pmt = \$430.85</p> <p>Pmts Begin = 30 days after confirmation</p> <p>Pmts End = 60 months</p> <p>Interest rate % = 6.5%</p> <p>Treatment of Lien = Retained</p>
8	<p>Secured claim of: Name = Security Service FCU</p> <p>Collateral Description = 2015 VW Golf (approx. 14000 miles)</p> <p>Allowed Secured Amount = \$28,000.00</p> <p>Priority of Lien = 1</p> <p>Total claim = \$37,251.00</p>	No	Impaired	<p>Monthly] Pmt = \$547.91</p> <p>Pmts Begin = 30 days after confirmation</p> <p>Pmts End = 60 months</p> <p>Interest rate % = 6.5%</p> <p>Treatment of Lien = Retained</p>
9	<p>Secured claim of: Name = Stephen Fuchs</p> <p>Collateral Description = Claim against costs, fees and expenses against Car</p> <p>Allowed Secured Amount = \$500,000.00</p> <p>Priority of Lien = 5</p> <p>Total claim = \$500,000.00</p>	No	Impaired	The creditor will be paid in full upon the receipt of funds from the Cost, Fees and Expenses order without interest
10	<p>Secured claim of: Name = Volkswagen Credit, Inc</p> <p>Collateral Description = 2015 Volkswagen Touareg</p> <p>Allowed Secured Amount = \$36,800.00</p> <p>Priority of Lien = 1</p>	No	Impaired	<p>Monthly Pmt = \$720.03</p> <p>Pmts Begin = 30 days after confirmation</p> <p>Pmts End = 60 month</p> <p>Interest rate % = 6.5%</p> <p>Treatment of Lien = Retained</p>

	Total claim = \$61,152.00			
11	<p><i>Secured claim of:</i> Name = Wells Fargo Home Mortgage, Inc</p> <p>Collateral Description = 8806 Shoshoni Trail, San Antonio, TX 78255</p> <p>Allowed Secured Amount = \$70,500</p> <p>Priority of Lien = 2</p> <p>Total claim = \$80,000.00</p>	No	Impaired	<p>Creditor will be paid \$70,500</p> <p>Monthly Pmt = \$483.48</p> <p>Pmts Begin = 30 days after confirmation</p> <p>Pmts End = 15 years</p> <p>Interest rate % = 2.9%</p> <p>Treatment of Lien = Retained</p> <p>Conditioned upon Debtor having title to the property and creditor having a valid lien.</p>

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 Plan equal to the allowed amount of such claim. However, a class of holders of such claims may vote to accept a different treatment.

The following chart lists all classes containing claims under §§ 507(a)(1), (4), (5), (6), and (a)(7) of the Code and their proposed treatment under the Plan:

Class #	Description	Impairment	Treatment
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3. Class of General Unsecured Claims

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code.

The following chart identifies the Plan's proposed treatment of Class 12 which contains general unsecured claims against the Debtor:

Class #	Description	Impairment	Treatment
12	General Unsecured Class	Impaired	The class will be paid in full over 60 months with no interest in equal monthly installments beginning 30 days after confirmation of the plan

4. Class of Equity Interest Holders

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. In a partnership, equity interest holders include both general and limited partners. In a limited liability company ("LLC"), the equity interest holders are the members. Finally, with respect to an individual who is a debtor, the Debtor is the equity interest holder.

The following chart sets forth the Plan's proposed treatment of the class of equity interest holders:



Class #	Description	Impairment	Treatment
13	Equity Interest Holders	Unimpaired	Will retain interest

**D. Means of Implementing the Plan**

1. *Source of Payments*

Payments and distributions under the Plan will be funded by the following:

VA and Social Security Income and working UBER and Lyft and GetMe. Debtor will also liquidating the assets in Aurora Phoenix Enterprises which could result in about \$50,000 to \$80,000. Debtor also expects to recover under an Order of Cost, Fees and Expenses of \$2.8 - \$3.5 million relating to the disappearance of his son, JWS.

2. *Post-confirmation Management*

The Post-Confirmation Managers of the Debtor, and their compensation, shall be as follows:

Name	Affiliations	Insider (yes or no)?	Position	Compensation
Javan Smith	Debtor	Yes	Debtor	\$2,000/month

**E. Risk Factors**

The proposed Plan has the following risks:

1. Social Security could reduce the monthly benefit
2. The assets of Aurora Phoenix Enterprises could be less than expected
3. The ability to collect the Order for Cost, Fees and Expenses.

**F. Executory Contracts and Unexpired Leases**

The Plan, in Article VI, lists all executory contracts and unexpired leases that the Debtor will assume under the 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. Article VI also lists how the Debtor will cure and compensate the other party to such contract or lease for any such defaults.

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 Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set an earlier time.

All executory contracts and unexpired leases that are not listed in Article VI will be rejected under the Plan. Consult your advisor or attorney for more specific information about particular contracts or leases.

If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan.

***The Deadline for Filing a Proof of Claim Based on a Claim Arising from the Rejection of a Lease or Contract is February 1, 2017.*** Any claim based on the rejection of a contract or lease will be

barred if the proof of claim is not timely filed, unless the Court orders otherwise.

**G. Tax Consequences of Plan**

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

The following are the anticipated tax consequences of the Plan: None

**IV. CONFIRMATION REQUIREMENTS AND PROCEDURES**

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Code. These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the 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 Plan; and the 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 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 Plan. A creditor or equity interest holder has a right to vote for or against the 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 Plan Proponent believes that classes 1-12 are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan. The Plan Proponent believes that classes 13 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 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 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 [@@insert date].***

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 Plan. As provided in § 1124 of the Code, a class is considered impaired if the 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 interest in classes that do not receive or retain any value under the Plan;
- administrative expenses.

***Even if You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation of the Plan.***

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 hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

B. **Votes Necessary to Confirm the Plan**

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the 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 Plan*

A class of claims accepts the 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 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 Plan.

A class of equity interests accepts the 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 Plan.

2. *Treatment of Nonaccepting Classes*

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds nonaccepting classes is commonly referred to as a "cram down" plan. The Code allows the 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 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 Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. A liquidation analysis is attached to this Disclosure Statement as Exhibit E.

**D. Feasibility**

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

1. *Ability to Initially Fund Plan*

The Plan Proponent believes that the Debtor will have enough cash on hand on the effective date of the Plan to pay all the claims and expenses that are entitled to be paid on that date.

2. *Ability to Make Future Plan Payments and Operate Without Further Reorganization*

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

**V. EFFECT OF CONFIRMATION OF PLAN**

**A. DISCHARGE OF DEBTOR**

Discharge. Confirmation of the Plan does not discharge any debt provided for in the Plan until the court grants a discharge on completion of all payments under the 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.

**B. Modification of Plan**

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

Upon request of the Debtor, the United States trustee, or the holder of an allowed unsecured claim, the Plan may be modified at any time after confirmation of the Plan but before completion of payments under the Plan, to (1) increase or reduce the amount of payments under the 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 Plan to the extent necessary to take account of any payment of the claim made other than under the Plan.

**C. Final Decree**

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

VI. **OTHER PLAN PROVISIONS**

**PRESERVED LITIGATION CLAIMS**

In accordance with Fifth Circuit case law, the Debtor is required to preserve all litigation claims by specifically and unequivocally identifying all claims and causes of action. The Debtor preserves the following claims:

(a) Claims against those entities listed in response to Statement of Financial Affairs question (3b) under 11 U.S.C. §§ 547 and 548 shall be preserved. Pursuant to section 547 of the Bankruptcy Code, a debtor may recover certain preferential transfers of property, including cash, made while insolvent during the ninety days immediately prior to the filing of its bankruptcy petition with respect to preexisting debts a debtor owes a transferee to the extent the transferee received more than it would have if the transfer had not been made and the debtor been liquidated under chapter 7 of the Bankruptcy Code. In the case of "insiders," the Bankruptcy Code provides for a one-year preference period. Transfers made in the ordinary course of the debtor's and the transferee's business and transfers made according to ordinary business terms are generally not recoverable. Furthermore, if the transferee extended credit subsequent to the transfer (and prior to the commencement of the bankruptcy case), such extension may constitute a defense to a preference lawsuit. If a preferential transfer were recovered by the debtor, the transferee would have a general unsecured claim against the debtor to the extent of the debtor's recovery. Further, the Debtor has not analyzed whether the recipients of such payments would have a defense to a preference action. **Under the Plan, all Avoidance Actions of the Debtor against any potential preference defendant shall be preserved and Debtor will have the authority as a representative of the Estate to investigate and prosecute all such Avoidance Actions in accordance with section 1123(b)(3) of the Bankruptcy Code.**

Under section 548 of the Bankruptcy Code and various state laws, a debtor may recover certain prepetition transfers of property, including the grant of a security interest in property, made while insolvent to the extent the debtor receives less than fair value for such property. In addition, Avoidance Actions exist under sections 544, 545, 549 and 553(b) of the Bankruptcy Code that allow a debtor to avoid and/or recover certain property. As of the date hereof, the Debtor has not yet estimated the potential recovery from the prosecution of Avoidance Actions. Under the Plan, all such Avoidance Actions shall be preserved the Debtor will have the authority as a representative of the Estate to investigate and prosecute all such Avoidance Actions in accordance with section 1123(b)(3) of the Bankruptcy Code. The Debtor will pursue<sup>1</sup> all Avoidance Actions, to the extent they do not constitute Released Estate Causes of Action.

**HOLDERS OF UNSECURED CLAIMS SHOULD REALIZE THAT, PURSUANT TO SECTION 502(D) OF THE BANKRUPTCY CODE, THE DEBTOR MAY WITHHOLD DISTRIBUTION ON THEIR CLAIMS TO THE EXTENT THE HOLDERS OF SUCH CLAIMS RECEIVED PAYMENTS FROM THE DEBTOR DURING THE 90 DAY PERIOD (OR 1 YEAR IN THE CASE OF INSIDERS) PRIOR TO MAY 31, 2016, THE PETITION DATE.**

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<sup>1</sup>Pursuit of an Avoidance Action may include, but not be limited to, service of a demand letter, settlement negotiation, pursuit of litigation, and any other means available to the Liquidating Trustee to obtain a resolution of such Avoidance Action.

(c) The claims, causes of action and litigation that are listed in response to Statement of Financial Affairs question 4.

(d) Any lawsuits for, or in any way involving, the collection of accounts receivable or any matter related to the Plan.

(e) Any and all Causes of Action against any customer or vendor who has improperly asserted or taken action through setoff or recoupment.

(f) Any and all actions, whether legal, equitable, or statutory in nature, arising out of, or in connection with, the Debtor's business operations.

(g) Any lien avoidance actions relating to any lien on 8806 Shoshoni Trail, San Antonio, Texas.

(h) Any action concerning the validity and extent of any alleged lien on 8806 Shoshoni Trail, San Antonio, Texas.

(i) Any action concerning title to or possession of 8806 Shoshoni Trail, San Antonio, Texas.

(j) Any claim or cause action related to the Forcible Entry and Detainer Action and any appeals relating to that action, including, but not limited to the appeal pending in the 4<sup>th</sup> Court of Appeals relating to 8806 Shoshoni Trail, San Antonio, Texas.

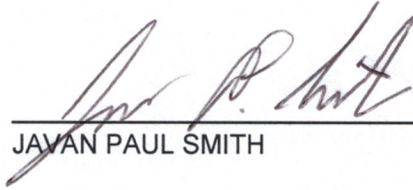
In addition, there may be numerous other causes of action which currently exist or may subsequently arise that are not set forth in the Plan or Disclosure Statement because the facts upon which such causes of action are based are not fully or currently known by the Debtor and, as a result, cannot be raised during the pendency of the Case (collectively, "Unknown Causes of Action"). The failure to list any such Unknown Cause of Action in the Plan or the Disclosure Statement is not intended to limit the rights of the Liquidating Trust to pursue any Unknown Cause of Action to the extent the facts underlying such Unknown Cause of Action become fully known to the Debtor. The Debtor will pursue<sup>2</sup> Unknown Causes of Action to the extent they become known.

The Debtor has attempted to disclose herein certain material causes of action to include Avoidance Actions and other actions that it may hold against third parties. However, the Debtor has not concluded the investigation and analysis of all potential claims and causes of action against third parties. Under the Plan, such investigation and analysis will continue post-Confirmation by the Debtor.

YOU SHOULD NOT RELY ON THE OMISSION OF THE DISCLOSURE OF A CLAIM OR CAUSE OF ACTION TO ASSUME THAT THE DEBTOR HOLDS NO CLAIM OR CAUSE OF ACTION AGAINST ANY THIRD-PARTY, INCLUDING ANY CREDITOR THAT MAY BE READING THIS DISCLOSURE STATEMENT AND/OR CASTING A BALLOT.

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<sup>2</sup>Pursuit of such claim or cause of action may include, but not be limited to, service of a demand letter, settlement negotiation, pursuit of litigation, and any other means available to obtain a resolution of such claim or cause of action.



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JAVAN PAUL SMITH