

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

In Re:	§	CASE NO. 16-51583
	§	
FRANZEN INTERNATIONAL, LLC,	§	
	§	CHAPTER 11
Debtor.	§	

**OBJECTION OF HORIZON BANK, SSB. TO DISCLOSURE STATEMENT  
FILED BY DEBTOR ON MARCH 6, 2017**

TO THE HONORABLE U. S. BANKRUPTCY JUDGE:

COMES NOW Horizon Bank, SSB ("Horizon Bank") to file this Objection of Horizon Bank, SSB to Disclosure Statement filed by Debtor on March 6, 2017, and would respectfully show the Court as follows:

**I.  
Jurisdiction**

1. This Court has jurisdiction to consider approval of the Disclosure Statement pursuant to 28 U.S.C. § 1334, and this is a core proceeding as defined in 28 U.S.C. § 157(b).

**II.  
Background**

2. Debtor filed a voluntary petition under chapter 11 of the Bankruptcy Code on July 13, 2016.

3. On June 17, 2013, Debtor and All American Excavation, Inc. ("All American") executed a note payable to Horizon Bank in the original principal sum of \$150,993.78 (Loan #42879"), secured by a commercial security agreement of even date therewith, executed by Debtor and All American, covering certain equipment therein

described. In addition, Horizon Bank was listed as lienholder on certain Texas certificates of title for equipment showing Debtor as owner.

4. On June 19, 2013, Debtor and All American executed a note payable to Horizon Bank in the original principal sum of \$44,415.30 (Loan #42881”), secured by a commercial security agreement of even date therewith, executed by Debtor and All American, covering certain equipment therein described. In addition, Horizon Bank was listed as lienholder on certain Texas certificates of title for equipment showing Debtor as owner.

5. On June 28, 2013, Debtor and All American executed a note payable to Horizon Bank in the original principal sum of \$115,863.15 (Loan #42898”), secured by a commercial security agreement of even date therewith, executed by Debtor and All American, covering certain equipment therein described. In addition, Horizon Bank was listed as lienholder on certain Texas certificates of title for equipment showing Debtor as owner.

6. On July 3, 2013, Debtor and All American executed a note payable to Horizon Bank in the original principal sum of \$77,242.10 (Loan #42902”), secured by a commercial security agreement of even date therewith, executed by Debtor and All American, covering certain equipment therein described. In addition, Horizon Bank was listed as lienholder on certain Texas certificates of title for equipment showing Debtor as owner.

7. On February 5, 2014, Debtor and All American executed a note payable to Horizon Bank in the original principal sum of \$57,134.25 (Loan #43298”), secured by a commercial security agreement of even date therewith, executed by Debtor and All

American, covering certain equipment therein described. In addition, Horizon Bank was listed as lienholder on certain Texas certificates of title for equipment showing Debtor as owner.

8. On February 27, 2014, Debtor and All American executed a note payable to Horizon Bank in the original principal sum of \$27,259.40 (Loan #43336”), secured by a commercial security agreement of even date therewith, executed by Debtor and All American, covering certain equipment therein described. In addition, Horizon Bank was listed as lienholder on certain Texas certificates of title for equipment showing Debtor as owner.

9. On March 31, 2015, Debtor and All American executed a note payable to Horizon Bank in the original principal sum of \$27,259.40 (Loan #43336”), secured by a commercial security agreement of even date therewith, executed by Debtor and All American, covering certain equipment therein described. In addition, Horizon Bank was listed as lienholder on certain Texas certificates of title for equipment showing Debtor as owner.

10. In addition to the above referenced commercial security agreements, Debtor executed two commercial security agreements, both dated December 18, 2013, by which it agreed to secure all debt, present and future, owed by All American to Horizon Bank, with specifically described equipment together with all of Debtor’s other equipment, now or in the future, wherever located, and with all proceeds and products of the equipment. These commercial security agreements were executed by Debtor in connection with a note of even date therewith, payable to Horizon Bank, executed by All

American, in the original principal amount of \$400,000.00 (“Loan #42793), which was renewed by note dated March 31, 2015 (“Loan #42793”).

11. On March 15, 2016, All American executed a note payable to Horizon Bank in the original principal amount of \$659,108.15 (“Loan #44381”) which was in renewal and extension of Loan #s 42879, 42881, 42898, 42902, 43298, 43336, and 42793, along with certain other debt owed by All American to Horizon Bank. This renewal note was executed pursuant to a settlement agreement (“Settlement Agreement”) between All American and Horizon, but not Debtor. Nothing in the Settlement Agreement purported to release Debtor from its obligations to Horizon Bank, including but not limited to its obligations under the various above referenced notes and security agreements covering all of Debtor’s equipment.

11. Horizon asserts that Debtor has guaranteed the debt of All American and that the debt owed by All American to Horizon Bank is secured by equipment owned by Debtor.

12. Horizon Bank timely filed its proof of claim (“Proof of Claim”) in the Bankruptcy Case for the amount of \$573,791.29 on November 7, 2016. Debtor has not objected to the Proof of Claim.

12. Debtor filed its Disclosure Statement for Debtor’s Plan of Reorganization (“Disclosure Statement”) and Debtor’s Plan of Reorganization (“Plan”) on March 6, 2017.

### **III.** **Objection To Disclosure Statement**

13. The Disclosure Statement does not disclose the debt of All American to Horizon Bank which Horizon Bank claims the Debtor has guaranteed and does not

disclose the security interest that Horizon Bank claims in the Debtor's equipment. Whether or not Debtor agrees with the claims asserted by Horizon Bank, the existence of the asserted claims by Horizon, the fact that Debtor will have to litigate these claims, the possibility that Horizon Bank may prevail on these claims, and Debtor's treatment of these claims in the Plan if Horizon Bank does prevail should all be disclosed.

14. The Disclosure Statement does not contain adequate information, as contemplated by U.S.C. § 1125(a)(1), because of the failure to disclose the claims of Horizon Bank and to address how such claims would be treated under the Plan should Horizon prevail on its claims. The omission of Horizon Bank's claims in the Disclosure Statement and Plan is material and could severely impact the viability of Debtor's Plan, and without the inclusion of these claims, Horizon Bank and other creditors will not be able to determine the feasibility of the Plan.

#### **IV.** **Conclusion**

15. Section 1125 of the Bankruptcy Code requires that a disclosure statement contain "adequate information" of sufficient detail as would enable a "hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan". As detailed above, the Disclosure Statement fails to meet this test and approval of the Disclosure Statement is simply not appropriate.

WHEREFORE, PREMISES CONSIDERED, Horizon Bank respectfully requests that the Court deny approval of the Disclosure Statement and for such other and further relief, both general and special, legal and equitable, to which Horizon Bank may show itself entitled

Respectfully submitted,

**C. DANIEL ROBERTS & ASSOCIATES, P.C.**

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ATTORNEYS FOR HORIZON BANK, SSB

**CERTIFICATE OF SERVICE**

By my signature above, I hereby certify that on April 24, 2017, a true and correct copy of the foregoing document was served upon the following parties and the parties on the attached service list via electronic means as listed on the Court's ECF noticing system or by regular first class mail, postage prepaid.

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