

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

In re:

**COLD SPY ON THE INSIDE, LLC,
d/b/a Tune Up Plus,**

**Case No. 17-71004-SCS
Chapter 11**

Debtor in Possession.

**SMALL BUSINESS DEBTOR'S DISCLOSURE STATEMENT
October 17, 2017**

Kelly M. Barnhart, VSB No. 65246
Roussos, Glanzer & Barnhart, PLC
580 E. Main St., Ste. 300
Norfolk, VA 23510
(757) 622-9005 – Telephone
(757) 624-9257 – Facsimile
barnhart@rgblawfirm.com
Counsel for the Debtor

THIS STATEMENT IS PRESENTED TO INFORM YOU OF THE PROPOSED PLAN FOR REORGANIZING THE DEBT OF COLD SPY ON THE INSIDE, LLC D/B/A TUNE UP PLUS.

YOU ARE ENCOURAGED TO REVIEW CAREFULLY THE FULL TEXT OF THIS DOCUMENT, INCLUDING ALL EXHIBITS, AND THE PLAN, BEFORE DECIDING HOW TO VOTE. TO ASSIST YOU IN YOUR REVIEW, PLEASE NOTE THAT A LIST OF DEFINITIONS APPEARS AT THE BEGINNING OF THIS DOCUMENT.

IN ADDITION TO CASTING YOUR VOTE TO ACCEPT OR REJECT THE PLAN, YOU MAY OBJECT TO THE ADEQUACY OF THE DISCLOSURES MADE IN THIS DOCUMENT, OR YOU MAY OBJECT TO THE TERMS OF THE PROPOSED PLAN. IF YOU WISH TO OBJECT TO THE ADEQUACY OF THE DISCLOSURES, YOU MUST DO SO BY THE DATE STATED IN THE NOTICE.

TABLE OF CONTENTS

I. INTRODUCTION 4

II. BACKGROUND OF THE DEBTOR..... 5

A. Filing of Case 5

B. Nature of Business 5

C. Legal Structure and Ownership 6

D. Debtor’s Assets 6

E. Debtor’s Liabilities 6

F. Current and Historical Financial Conditions 7

G. Events Leading to the Filing of the Case 8

H. Significant Events During the Case 8

III. SUMMARY OF THE PLAN 9

A. Delivery of Distributions and Returned Distributions 10

B. Means of Cash Payment 11

C. Unclassified Claims 11

D. Classes of Claims and Equity Interests 13

E. Means of Implementing the Plan 15

F. Risk Factors 15

G. Executory Contracts and Unexpired Leases 15

H. Tax Consequences of Plan 16

IV. CONFIRMATION REQUIREMENTS AND PROCESS 17

A. Who May Vote or Object 18

B. Who is Not Entitled to Vote 18

C. Who May Cast a Vote in More than 1 Class 19

D. Effect of Not Voting 19

E. Votes Necessary for Confirmation 19

F. Disbursing Agent 20

G. Feasibility 20

1. Ability to Fund the Plan 20

2. Ability to Make Future Payments 20

H. Liquidation Valuation 20

I. Discharge 20

V. EFFECTS OF CONFIRMATION 21

A. Modification 21

B. Withdrawal or Revocation 21

C. Final Decree 22

VI. ATTACHMENTS 22

VII. CONCLUSION 22

I. INTRODUCTION

The Debtor submits this Disclosure Statement to all of its known creditors, in order to provide them with adequate information about it and its proposed Plan. A copy of the Plan is being provided herewith.

All claims and interests against the Debtor, of whatever nature, whether scheduled, liquidated or unliquidated, absolute or contingent, including all claims arising from the rejection of executory contracts and/or unexpired leases, whether resulting in an Allowed Claim, shall be bound by the provisions of this Plan.

Your rights may be affected. You should read this Statement and Plan carefully and discuss them with an attorney. If you do not have an attorney, you may wish to consult one.

NO REPRESENTATIONS CONCERNING THE DEBTOR, PARTICULARLY AS TO ITS FUTURE INCOME, THE VALUE OF ITS PROPERTY OR THE AMOUNT TO BE DISTRIBUTED UNDER THE PLAN IS AUTHORIZED UNLESS IT IS IN THIS STATEMENT. THIS DISCLOSURE STATEMENT IS THE ONLY AUTHORIZED STATEMENT WITH RESPECT TO THE PLAN. NO OTHER REPRESENTATION REGARDING THE DEBTOR, ITS OPERATIONS, OR THE VALUE OF ITS PROPERTY HAS BEEN AUTHORIZED. YOU SHOULD RELY ONLY ON THE REPRESENTATIONS OR INDUCEMENTS CONTAINED HEREIN. YOU SHOULD REPORT ANY ADDITIONAL REPRESENTATIONS AND INDUCEMENTS TO THE COURT, COUNSEL FOR THE DEBTOR, OR THE UNITED STATES TRUSTEE.

THE COURT'S APPROVAL OF THIS DOCUMENT DOES NOT CONSTITUTE A RECOMMENDATION BY THE COURT AS TO THE MERITS OF THE PLAN, BUT MERELY CONFIRMS THAT IT IS ADEQUATE TO PROVIDE THE INFORMATION NECESSARY FOR YOU TO MAKE AN INFORMED JUDGMENT WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.

THE INFORMATION CONTAINED HEREIN HAS NOT BEEN SUBJECT TO AUDIT. IT IS BASED ON RECORDS KEPT BY THE DEBTOR AND AVAILABLE TO THE DEBTOR. EVERY REASONABLE EFFORT HAS BEEN MADE TO PRESENT ACCURATE FIGURES. HOWEVER, A CERTIFIED AUDIT OF THE DEBTOR'S FINANCIAL RECORDS HAS NOT BEEN PERFORMED AND ALL CREDITORS PROCEED AT THEIR OWN RISK.

UNLESS DEFINED HEREIN, CAPITALIZED TERMS SHALL HAVE THE MEANINGS SET FORTH IN THE PLAN.

The Plan provides for one class of Secured Claims and one class of Unsecured Claims, as well as one class of equity. The proposed distributions under the Plan are discussed at pages 11 - 15. Unsecured creditors will receive a total of \$18,400.00 through the Plan, which payments will be paid annually on a pro-rata basis, unless the Unsecured Creditors accept different treatment. This is more than they would receive in a chapter 7 case. In a chapter 7 they would receive \$0.00, and under the terms of the Plan, they are receiving 5% on their claims. The Debtor may pre-pay this obligation at any time during the life of the Plan. The Debtor will retain its assets in personal property, with new value being contributed by Richard G. Terrell (“**Mr. Terrell**”). He will contribute \$250/month for thirty months (total of \$7,500), the source of which will be from his personal funds.

The propose of this Statement is to do the following:

- Provide information regarding the Debtor and significant events that have occurred in its case;
- Disclose how the Plan proposes to treat Claims of the type you hold (*i.e.*, what you will receive on your claim if the Plan is confirmed);
- To explain who may vote on, or object to, Confirmation of the Plan;
- Identify what factors the Court may consider in determining whether the Plan should be confirmed;
- Explain why the Debtor believes the Plan is feasible and how the treatment of your claim under the Plan compares to what would occur in a chapter 7 liquidation; and
- Disclose the effects that confirmation of the Plan will have.

Be sure to read the Plan as well as this Statement. While the Statement describes the Plan, it is the Plan that will establish your rights, if confirmed.

II. BACKGROUND OF THE DEBTOR

A. Filing of Case

On the Petition Date, the Debtor filed for bankruptcy relief by the filing of its voluntary petition under chapter 11 of the Bankruptcy Code. The case is pending in the United States Bankruptcy Court for the Eastern District of Virginia, Norfolk Division.

B. Nature of Business

The Debtor provides automotive repairs and services to the public located throughout the Hampton Roads/Tidewater area, with four locations (Virginia Beach, Norfolk, Hampton and Chesapeake).

C. Legal Structure and Ownership

The Debtor is a limited liability company formed under the laws of the Commonwealth of Virginia, formed in March of 2013. It is operated by Mr. Terrell, who will continue to manage it following confirmation of the Plan. His salary will be \$5,000/month (gross) for the duration of the Plan term.

D. Debtor's Assets

As set forth in its Schedule A/B, the Debtor's assets as of the Petition Date were:

Asset	Value
Funds in Bank Account	\$20,044.00
Security Deposits	\$5,500.00
Equipment, machinery & Vehicles	\$10,175.00
Judgments	\$3,093.65

As of October 16, 2017, the Debtor's assets are:

Asset	Value
Bank Account	\$15,000.00 (estimate as of 10/16/2017)
Security Deposits	\$5,500.00
Equipment, machinery & Vehicles	\$10,175.00
Judgments (collection doubtful)	\$0.00

E. Debtor's Liabilities

As of the Petition Date, the Debtor had the following secured creditors, as identified in its Schedules:

Creditor	Scheduled Amount	Amount Listed in Proof of Claim	Allowed Amount
Direct Capital	\$34,114.88	N/A	\$29,448.79 (balance as of October 2017)
Bizfi	\$197,096.00 (with no collateral)	\$197,096.00	\$197,096.00 as general unsecured
Commonwealth of Virginia	\$103,773.81 (with no collateral)	\$178,789.20 (filed as priority); \$51,232.42 (filed as general unsecured)	\$178,789.20 as priority and \$51,232.42 and general unsecured

As of the Petition Date, the Debtor had the following unsecured creditors, as identified in the Schedules:

Creditor	Scheduled Amount	Amount Listed in Proof of Claim	Allowed Amount
Commonwealth of	\$131,256.26 (as	\$178,789.20 (filed	\$178,789.20 (filed

Virginia	priority)	as priority); \$51,232.42 (filed as general unsecured)	as priority); \$51,232.42 (filed as general unsecured)
Richard Greg Terrell	\$12,500 (as priority)	N/A	\$0.00
O'Reilly Automotive Stores, Inc. (as disputed)	Unknown (treated as disputed)	\$85,934.12	\$85,934.12
Rechanda R. Mays	\$3,056.00 (treated as disputed)	N/A	\$0.00
Richard Greg Terrell	\$58,412.50 (general unsecured claim)	N/A	\$0.00
Richard Greg Terrell	\$20,150.00 (general unsecured claim)	N/A	\$0.00
Stephanie L. Murphy (as disputed)	\$17,888.82 (treated as disputed)	N/A	\$0.00
Sterling Church Street Furniture (as disputed)	\$4,431.61 (treated as disputed)	N/A	0.00

Although not identified in the Schedules as Creditors, the following parties have filed claims in the Case as described below:

Creditor	Scheduled Amount	Amount Listed in Proof of Claim	Allowed Amount
IRS	N/A	\$1,305.08 (priority); \$6,989.97 (general unsecured)	\$1,305.08 (priority); \$6,989.97 (general unsecured)
American Express	N/A	\$21,611.56 (general unsecured)	\$21,611.56
Employers Assurance Company	N/A	\$1,834.48	\$1,834.48

F. Current and Historical Financial Conditions

In 2015, the Debtor gross \$3,800,864.00 and in 2016, pursuant to the recently filed 2016 tax return, a copy of which is attached hereto as **Exhibit A**, the Debtor had gross income of \$2,528,549.00. The decline in income is largely due to its losing its largest location, following an eminent domain action by the Commissioner of Highways. This is one of the main reasons that the Debtor filed for bankruptcy relief.

As of the Petition, the Debtor had gross income of \$451,728.40. Gross income from January 1 – September 30, 2017 is \$1,502,104.11, which averages to \$166,900.46/month, and if that trend continues, it is anticipated that the Debtor should

have gross income for the balance of 2017 of another approximately \$500,701.41. The decline is attributable to the loss of its largest location, which change has now been addressed through the reduction of expenses.

The Debtor's most recent monthly operating report is attached hereto as **Exhibit B**, for September of 2017, reflects that the Debtor had income of \$170,516.92, expenses of \$156,680.68, no accounts receivable and no outstanding payables. The Debtor is staying current on its Post-Petition Obligations.

G. Events Leaving to the Filing of the Case

In 2016, the Commissioner of Highways initiated an eminent domain claim against one of the leased premises of the Debtor, located in Norfolk, Virginia, which location had been the Debtor's largest and most successful location. In addition, the Debtor had fallen behind on certain of its sales tax obligations owed to the Virginia Department of Taxation, and it began collection of those items. The Debtor realized that it needed bankruptcy protection while it tried to deal with these two matters.

H. Significant Events During the Case

1. Financial Matters

Since filing for chapter 11 relief, the Debtor has been able to maintain its obligations and entered into an agreement with its secured creditor, Direct Capital, whereby the Debtor would pay \$900/month to it as adequate protection for the use of the equipment financed by Direct Capital. This agreement is evidenced by the Stipulation and Order for Authority to Use Collateral, entered by the Bankruptcy Court on August 10, 2017 and entered on the docket on May 18, 2017.

The Debtor also rejected an executory contract it was a party to as of the Petition Date, which contract was with Autoshop Solutions, Inc., which rejection is evidenced by the Order Granting Motion for Authority to Reject Executory Contract as of the Petition Date, which order was entered on June 5, 2017 and entered on the Docket on June 6, 2017.

2. Unsecured Creditors Committee

There has been no unsecured creditors' committee appointed in this case.

3. The Bar Date

The Bankruptcy Code provides that unless otherwise set by the Court, the last date by which creditors may file proofs of claim or interest is 90 days after the first meeting of creditors held pursuant to § 341 of the Bankruptcy Code.

Pursuant to Rule 3003(c)(2), any creditor whose claim is not scheduled by the Debtor or is scheduled as disputed, contingent or unliquidated, and who fails to file a proof of claim on or before the date so established, will not be treated as a creditor with

respect to that claim for purposes of voting or receiving a distribution under the Plan. The deadline to file claims in this Case, for all non-governmental units was July 17, 2017. The deadline for all governmental units was September 18, 2017.

4. Objections to Claims

The Debtor does not anticipate filing any objections to claims other than to the claim filed by BizFi to the extent that it filed the claim as secured. There are no assets available as collateral for the claim and such claim is treated as a general unsecured claim in the Plan. BizFi's claim is considered part of Class 2, made up of general unsecured claims.

5. Hiring of Professionals

The Debtor, by order of this Court, has retained the services of one professional, Roussos, Glanzer & Barnhart, PLC, whose fees pre-confirmation are subject to approval by the Bankruptcy Court.

6. Exclusivity Period

The Bankruptcy Code determines who may file a plan in a chapter 11 case. Section 1121 provides for the exclusive right for an entity to file a plan within the first 180 days of the case. *See* § 1121 (e)(1). Any party in interest is permitted to file a plan after the expiration of the Exclusivity Period, if the Debtor has not filed a plan within the Exclusivity Period. The Exclusivity Period has run in this case.

7. Disputed Claims

The Debtor filed several notices of disputed claims, in compliance with L.B.R. 3003-1(B), all filed on April 5, 2017, with respect to the claims of: Rechanda R. Mays, O'Reilly Automotive Stores, Inc., Stephanie L. Murphy and Sterling Church Street Furniture. To the extent that these parties filed claims, the claims are allowed. Neither Ms. Mays nor Ms. Murphy have filed any claims and thus will not take part in any distributions proposed in the Plan. The remaining disputed claim holders did file claims and the Debtor provides for them as part of Class 2 (General Unsecured Claims).

8. Avoidable Transfers

The Debtor is not aware of any avoidable transfers and does not intend to pursue preference, fraudulent conveyance or other avoidance actions.

III. SUMMARY OF THE PLAN

The Plan places claims in various classes and describes the proposed treatment of each class of claims, as required by the Bankruptcy Code. The Plan also provides whether a class is Impaired, entitling the class members to vote on the Plan. **If the**

Plan is confirmed, you recovery is limited to the amounts set forth in the Plan and the treatment of your claim.

The Plan provides for one class of Secured Claims and one class of Unsecured Claims, as well as one class of equity.

Class 1 is made up of the secured creditor of the Debtor, Direct Capital and it will receive \$900/month for 28 months, which will satisfy its claim in full.

Allowed Unsecured Claims will receive annual distributions, totaling \$18,400.00, through the life of the Plan as set forth below.

The Plan also provides for the payment of any Administrative and Priority Claims which have not been paid in full by the Effective Date.

The Debtor will make the following payments to its creditors, from income earned from operation of its business:

- ❖ VA Dep't of Taxation (Priority Claim): 28 monthly payments of \$3,000 and 32 monthly payments of \$3,855.93
- ❖ IRS (Priority Claim): One payment of \$1,305.08 as of the Effective Date (unless the IRS confirms that this balance is no longer owed);
- ❖ Quarterly U.S. Trustee payments while Case remains open;
- ❖ Payments to Counsel, as more fully identified in Exhibit C, with total payment estimated over the life of the Plan;
- ❖ Payments to unsecured creditors totaling \$18,400.00, to be paid over in four annual payments. In Month 25, the unsecured creditors will receive pro-rata distributions totaling \$3,300.00. In Month 37, they will receive pro-rata distributions totaling \$5,350.00. In Month 49, they will receive pro-rata distributions totaling \$2,550.00 and in Month 60, they will receive pro-rata distributions totaling \$7,200.00. The sources for these payments are two-fold: income generated by the Debtor and new value provided by Mr. Terrell. The Debtor may prepay these payments.

You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.).

A. Delivery of Distributions and Returned Distributions

Distributions, deliveries, and any notice to holders of Allowed Claims will be made at: (1) the addresses set forth in any proof of claim filed by the holder of such Allowed Claims, or if none, at the address set forth in the Notice of Appearance filed

with the Court, or if none, at the address set forth in the Debtor's Schedules; or (ii) at the addresses set forth in any written notice of address changes delivered and received by the Debtor; or (iii) at the option of the Debtor, to counsel of record for the holder of any Allowed Claim. If any distribution is returned as undeliverable, no further Distributions to the holder will be made unless and until the Debtor is notified of the holder's then current address, at which time all returned Distributions will be made to the holder without interest. All claims for undeliverable Distributions must be made to the Debtor on or before the six (6) month anniversary of the Effective Date. After that date, all unclaimed property will be remitted to the Debtor's debtor-in-possession bank account, and the entire Claim of any holder with respect to such property will be forever barred.

B. Means of Cash Payment

Following Confirmation, pro-rata payments to Unsecured Creditors will be made by check from the Debtor's bank account. Administrative Expenses will be paid from funds held in escrow for such purpose prior to Confirmation or from funds on hand by the Debtor, plus any funds on hand on the Debtor's bank account. All payments under the Plan will come from either Post-Petition or post-Confirmation earnings received, assets owned and from new value being provided by Mr. Terrell, the owner of the Debtor. Specifically, he proposes to remit \$250/month, beginning in the first month of the plan for a duration of 36 months, which amounts are deemed new value for the purposes of this Statement and the Plan. In exchange for the new value, he will have 100% equity interest in the reorganized Debtor.

C. Unclassified Claims

Certain types of claims are entitled to specific treatment under the Bankruptcy Code. They are not considered Impaired, and holders of such claims are not entitled to vote on the Plan. They may, however, object if, in their view, the treatment proposed for their claim does not comply with the treatment provided for in the Bankruptcy Code. As such the Debtor has not placed the following claims into any class:

1. Administrative Expenses

Administrative expenses are costs or expenses of administering the Debtor's case which are allowed under § 507(a)(2). These 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 Petition Date. The Bankruptcy Code provides that all administrative expenses are to be paid on the Effective Date, unless a particular claiming agrees to different treatment.

The following chart identifies the estimated administrative expenses, and their proposed treatment under the Plan:

Type	Estimated Amount Owed	Proposed Treatment
Expenses arising in the ordinary course of business	\$0.00	N/A
Professional fees, as approved or to be approved by the Court	\$25,000	To be paid in full on the Effective Date of the Plan, following approval by the Court, or paid pursuant to a separate agreement. The budget anticipates monthly payments over the life of the Plan.
Office of the U.S. Trustee	\$0.00	Any quarterly fees that come due during the course of the Case will be paid in full and nothing herein shall be interpreted to provide any different treatment

2. Priority Tax Claims

Priority claims are claims provided for priority treatment pursuant to § 507 of the Bankruptcy Code. Example of priority claims are claims for certain past due wages up to \$12,475, income taxes, employment taxes or other types of taxes. Unless the holder of such claim agrees otherwise, it must receive present value of such claim, in regular installments paid over a period not exceeding five years from the order of relief.

The Debtor identified two Priority Claims, one in favor of Virginia Department of Taxation and one in favor of Mr. Terrell.

The Debtor identified that the Virginia Department of Taxation had, as of the Petition Date, a Priority Claim of \$131,256.26, in addition to a secured claim of \$103,773.81. The Virginia Department of Taxation filed a claim, indicating that it is owed a \$178,789.20 in priority claims and \$51,232.42 in general unsecured claims. The Debtor proposes to pay the Virginia Department of Taxation \$178,789.00, with interest accruing at a rate of 6%, to be paid over sixty (60) months, which amount includes gap interest. The Debtor proposes to may this obligation in the form of monthly payments to be sent out by the 5th of each month. It will pay \$3,000/month for the first 28 months of the Plan and then pay \$3,855.93 for the last 32 months of the Plan, resulting in total payments of \$207,389.77.

Mr. Terrell is the holder of the other Priority Claim, based on unpaid payroll earned in 2017, totaling more than the statutory allowed amount. Mr. Terrell agrees

and understands that pursuant to this Statement and Plan, he will not recover any amounts owed on his Priority Claim.

The IRS has filed a proof of claim, alleging it is owed a Priority Claim of \$1,305.08. The Debtor believes that this has been taken care of and there is no balance owed. However, to the extent that it has not been paid, the Debtor will pay it within 45 days of the Effective Date.

D. 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

The total assets owned by the Debtor are worth approximately \$31,000.00, and thus, while a number of parties have recorded liens against the Debtor, the Debtor has only one secured creditor, Direct Capital, which obligation was \$34,114.88 as of the Petition Date and is currently \$29,448.79 (as of October 2017) (after factoring in cost of sale/collection).

The remaining parties that have recorded liens, BizFi and the Commonwealth of Virginia, are unsecured creditors and their claims are addressed elsewhere in this Statement and Plan.

Class 1 – Direct Capital (Secured)

In its Schedules, the Debtor identified parties who had recorded liens related to its assets. Given the value of the assets versus the amounts owed, the only creditor that has a secured claim is Direct Capital, which claim had a balance, as of the Petition Date, was \$34,114.88 and the current balance as of October 6, 2017 is \$29,448.79.

The Debtor proposes to pay \$900/month to Direct Capital until its obligation is paid in full, which period is anticipated to be between 28 monthly payments remaining due to be paid during the Plan term, depending on the date of Confirmation.

The claim of Direct Capital is Impaired and it is entitled to vote to accept or reject the Plan.

2. Class(es) of General Unsecured Claims – Class 2

General unsecured claims are not secured by property of the Estate and are not entitled to priority under § 507(a) of the Bankruptcy Code. The following are holders of General Unsecured Claims, either as identified in the Schedules or Claims, or because of the lack of security of the claims held by the parties.

Creditor	Scheduled Amount	Amount Listed in Proof of Claim	Allowed General Unsecured Amount	Pro-Rata Portion
IRS	N/A	\$6,989.97	\$6,989.97	1.91%
Commonwealth of Virginia	\$131,256.26 (as priority)	\$178,789.20 (filed as priority); \$51,232.42 (filed as general unsecured)	\$51,232.42	14.03%
O'Reilly Automotive Stores, Inc. (as disputed)	Unknown (treated as disputed)	\$85,934.12	\$85,934.12	23.53%
Rechanda R. Mays	\$3,056.00 (treated as disputed)	N/A	\$0.00	0.00%
Richard Greg Terrell	\$58,412.50	N/A	\$0.00	0.00%
BizFi	\$197,096.00	\$197,546.00 (but listed as Secured)	\$197,546.00	54.09%
American Express	N/A	\$21,660.56	\$21,660.56	5.93%
Employers Assurance Company	N/A	\$1,834.48	\$1,834.48	.51%
Sterling Church Street Furniture (as disputed)	\$4,431.61 (treated as disputed)	N/A	0.00	0.00%

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

The Debtor proposes to make payments to Class 2 totaling \$18,400.00, to be paid over in four annual payments. In Month 25, the unsecured creditors making up Class 2 will receive pro-rata distributions totaling \$3,300.00. In Month 37, they will receive pro-rata distributions totaling \$5,350.00. In Month 49, they will receive pro-rata distributions totaling \$2,550.00 and in Month 60, they will receive pro-rata distributions totaling \$7,200.00. The sources for these payments are two-fold: income generated by the Debtor and new value provided by Mr. Terrell.

This Class is Impaired and is entitled to vote to accept or reject the Plan.

3. Class of Equity Interest Holders – Class 3

Equity interest holders are parties who hold an ownership interest (*i.e.*, equity

interest) in the Debtor. In a limited liability company, the equity interest holders are the members.

This Class is designated as Class 3 and is comprised of the equity interest in the Debtor held by Mr. Terrell. Upon Confirmation, Mr. Terrell will be the sole member of the reorganized Debtor. Mr. Terrell will be remitting new value to the Company in exchange for the interest in the reorganized debtor (the source of which will be from his personal assets/funds).

This Class is not Impaired and is not entitled to vote on the Plan.

E. Means of Implementing the Plan

1. Source of Payments

Payments and distributions under the Plan will be funded by income generated by the Debtor through its business operations and new value provided by Mr. Terrell.

2. Post-confirmation Management

The Post-Confirmation Manager of the Reorganized Debtor will be Mr. Terrell, who is an insider, and his gross compensation will be \$5,000/month. A portion of this income, Mr. Terrell pledges to provide new value to the Debtor, which will be used to fund the payments proposed herein.

F. Risk Factors

The only risk identifiable to the success of the completion of the Plan is if the Debtor loses all of its clientele, and stops earning income. Given the history of the Debtor on the type of business the Debtor does (automotive repairs and services), this is unlikely.

G. Executory Contracts and Unexpired Leases

The Debtor was a party to four leases as of the Petition Date. The Debtor will assume these leases the terms of the Plan, meaning that the Debtor has chosen to continue to perform the obligations under this lease and to maintain all payments due to be made under this lease.

If any of the landlords wish to object to the assumption of their leases, or the adequacy of assurance of performance, they must file and serve its objection to the Plan within the deadline for objecting to Confirmation.

The Debtor previously rejected an executory contract it was a party to as of the Petition Date, which contract was with Autosshop Solutions, Inc., which rejection is evidenced by the Order Granting Motion for Authority to Reject Executory Contract as of the Petition Date, which order was entered on June 5, 2017 and entered on the Docket on June 6, 2017.

Any executory contract or unexpired lease that is not identified herein is hereby rejected under the Plan, although the Debtor is unaware of any such contract or lease. If you object to the rejection of your contract or lease, you must file and serve your objection to Confirmation within the deadline for objecting to confirmation of the Plan.

H. Tax Consequences of Plan

CREDITORS CONCERNED WITH HOW THE PLAN MAY AFFECT THEIR TAX LIABILITY SHOULD CONSULT WITH THEIR OWN ACCOUNTANTS, ATTORNEYS, AND/OR ADVISORS.

1. General

A description of certain United States federal income tax consequences of the Plan is provided below, based upon, among other things, the Internal Revenue Code and Treasury Regulations issued thereunder as of the date of this Disclosure Statement. Changes in these authorities or their interpretation could alter the United States federal income tax consequences of the Plan in a material way. The Debtor has not independently determined the tax consequences of the Plan to holders of Claims, and has not requested any ruling from the IRS or any other taxing authority with respect to such matters. The income tax consequences of the Plan on any particular holder of a Claim may be affected by matters not discussed in this Statement. In addition, this Statement does not discuss state, local or non-U.S. tax consequences.

The federal income tax consequences of the Plan are complex and are subject to significant uncertainties. Thus, no assurance can be given as to the interpretation that the IRS will adopt. **EACH HOLDER OF A CLAIM IS URGED TO CONSULT ITS OWN TAX ADVISORS FOR FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES UNDER THE PLAN.**

2. United States Federal Tax Consequences of Payment of Allowed Claims

The United States federal income tax consequences to the holders of Allowed Claims under the Plan will depend upon, among other things, the consideration received by the Claimant, whether the Claimant reports income on the accrual or cash method, whether the holder receives Distributions under the Plan in more than one taxable year, and whether the holder has taken a bad debt deduction with respect to its Claim.

Typically, a Claimant should recognize a gain or loss equal to the amount realized under the Plan as to each Claim less the Claimant's basis in the Claim. Any gain or loss may be long-term or short-term capital gain or loss or ordinary income or loss, depending upon the nature of the Claim and Claimant, and the length of time the Claimant held the Claim. If the Claimant realizes a capital loss, its deduction of loss may be limited. A Claimant who receives an amount less than the Claimant's tax basis in the Claim may be entitled to a bad debt deduction in some amount under § 166(a) of the

Internal Revenue Code. The applicability of such deduction is fact-specific. Claimants are urged to consult their tax advisors as to their ability to take such a deduction.

3. Professional Tax Assistance Recommended

The foregoing discussion is intended only as a summary of certain United States federal income tax consequences of the Plan and is for informational purposes only. This Statement does not provide any tax advice and the tax consequences for each Claimant may vary depending upon the Claimant's particular circumstances. Accordingly, Claimants are urged to seek advice from their tax advisors regarding all tax consequences of the Plan.

IV. CONFIRMATION REQUIREMENTS AND PROCESS

To be confirmable, the Plan must meet the requirements listed in § 1129(a) or (b) of the Bankruptcy Code. These include the requirements that: (a) the Plan be proposed in good faith; (b) at least one impaired class of claims accepts the Plan, without counting votes of insiders; (c) the Plan must distribute to each creditor at least as much as the creditor would receive in a chapter 7 liquidation case, unless the creditor votes to accept the Plan; and (d) the Plan is feasible. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for Confirmation.

The Bankruptcy Code requires the Court, after notice, to hold a hearing to determine whether a plan of reorganization should be confirmed. A hearing on Confirmation of the Plan will be scheduled and notice will be circulated in accordance with the Bankruptcy Code and Rules. The hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement made at the hearing.

All objections to Confirmation of the Plan will be heard at the Confirmation Hearing. Any objection to Confirmation of the Plan must be made in writing, filed with the Bankruptcy Court and served on the following parties not later than seven days before the Confirmation Hearing:

Kelly M. Barnhart
Roussos, Glanzer & Barnhart, PLC
580 E. Main St., Ste. 300
Norfolk, VA 23510

Office of the United States Trustee
Federal Building, Room 625
200 Granby Street
Norfolk, VA 23510

Objections to Confirmation of the Plan are governed by Rule 9014.

UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY FILED AND SERVED, IT WILL NOT BE CONSIDERED BY THE BANKRUPTCY COURT.

A. Who May Vote or Object

Any party in interest may object to Confirmation if the party believes that any requirement has not been met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor has a right to vote for or against the Plan only if that creditor has a claim that is both (1) Allowed or Allowed for voting purposes; and (2) Impaired.

In this case, the Debtor believes that Classes 1 and 2 are Impaired and are therefore entitled to vote to accept or reject the Plan.

1. What is an Allowed Claim?

Only a creditor with an Allowed Claim has the right to vote on the Plan. Generally, a claim is Allowed if either: (1) the Debtor has listed the claim in its schedules, unless the claim has been listed as disputed, contingent or unliquidated, or (2) the creditor has filed a proof of claim, unless an objection has been filed to such proof of claim. When a claim is not allowed, the creditor holding the claim cannot vote unless the Court, after notice and a hearing, either overrules the objection or allows the claim for voting purposes under Rule 3018(a).

The deadline for filing a proof of claim in this case, for all creditors, except governmental units was July 17, 2017. The deadline for filing a proof of claim in this case for all governmental units is September 18, 2017.

2. What is an Impaired Claim?

As noted above, the holder of an Allowed Claim has the right to vote only if it is in a class that is impaired under the Plan. As provided in § 1124, a class is considered impaired if the Plan alters the legal, equitable or contractual rights of members of that class.

B. Who is Not Entitled to Vote

The holders of the following types of claims are not entitled to vote:

- Holders of claims that have been disallowed by an order of the Court;
- Holders of other claims that are not “Allowed Claims”, unless they have been “allowed” for voting purposes;
- Holders of claims in unimpaired classes;
- Holders of claims entitled to priority status pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Bankruptcy Code;
- Holders of claims in classes that do not receive or retain any value under the Plan; and
- Administrative expenses.

C. Who May Cast a Vote in More than 1 Class

A creditor with a Claim that is allowed in part as a Secured Claim and in part as an unsecured claim, or who otherwise holds Claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each Claim.

D. Effect of Not Voting

If you are entitled to vote and do not, the Ballots will be tallied as though you do not exist. **IF NO CREDITORS IN A CLASS VOTE, THE CLASS WILL BE DEEMED TO ACCEPT THE PLAN¹.**

E. Votes Necessary for Confirmation

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 below

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.

2. Treatment of Non-accepting Class(es)

Even if one or more Impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the non-accepting classes are treated in the manner prescribed by § 1129(b). A plan that binds non-accepting classes is commonly referred to as a “cram down” plan. The Bankruptcy Code allows the Plan to bind non-accepting classes of claims if it meets the requirements for consensual confirmation except the voting requirements of § 1129(a)(8), 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 attorneys to see if a “cram-down” confirmation will affect your claim, as the variations on this general rule are numerous and complex.

3. Estimated Number and Amount of Claim Objections

The Debtor does not anticipate filing any objections to claims, other than the claim of Bizfi, if necessary. It is the position of the Debtor that the Plan governs

¹ See, e.g., *In re Adelpia Comm. Corp.*, 368 B.R. 140 (Bankr. S.D.N.Y. 2007); *In re Ruti-Sweetwater, Inc.*, 836 F.2d 1263 (10th Cir. 1988); *In re Northeast LA Telephone Co., Inc.*, 2006 Bankr. LEXIS 2589 (Bankr. W.D. LA 2006); *In re Cypresswood Land Partners, I*, 409 B.R. 396 (Bankr. S.D.N.Y. 2009).

treatment of the claim and classification of claim, resulting in Bizfi's claim being treated as unsecured.

F. Disbursing Agent

The Debtor will make all distributions to the Creditors as set forth in the Plan and no other disbursing agent will be hired by the Debtor.

G. 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, unless such liquidation or reorganization is proposed in the Plan. The Debtor contends that the Plan is feasible.

1. Ability to Fund the Plan

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

2. Ability to Make Future Payments

The Debtor must also demonstrate that it will have enough cash over the life of the Plan to make the required Plan payments. Accordingly, the Debtor has provided projected financial information, in **Exhibit C** attached hereto.

You should consult with your accountant or other financial advisor if you have any questions regarding these projections.

H. Liquidation Valuation

In a chapter 7, creditors would not be entitled to receive any distributions or recovery on their claims. Thus, given that the Debtor is proposing to pay \$18,400.00 to its Unsecured Creditors, the Debtor is proposing more than they would receive in a chapter 7 bankruptcy case. In a chapter 7, the creditors would get \$0.00 and are receiving 5% on their claims under the terms of the Plan. A copy of the Liquidation Analysis is attached hereto and incorporated herein as **Exhibit D**.

I. Discharge

On the date of Confirmation of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the Effective Date, to the extent specified in § 1141(d)(1)(A) of the Bankruptcy Code, except that the Debtor will not be discharged of any debt: (1) imposed by the Plan; (2) of a kind specified in § 1141(d)(6)(A) if a timely complaint is filed in accordance with Rule 4007(c); or (c) of a kind specified in § 1141(d)(6)(B).

Upon the granting of a discharge, unless specifically excepted by this Court, the Debtor shall be released and discharged from any and all Pre-Petition Claims, rights,

debts, liabilities, demands, obligations, covenants, liens, security interests, rights of indemnity or contribution, promises, acts, agreements, contracts, costs, expenses, damages, judgments, and causes of action, of any kind or nature, in law, equity, or otherwise, whether known or unknown, direct or indirect, which any creditor, even had, now has or hereafter can, shall or may have, or succeed to, arising from, or related to, or in connection with, whether directly or indirectly, the Case and the provisions of the Plan.

V. EFFECTS OF CONFIRMATION

Confirmation of the Plan, except to the extent expressly stated to the contrary in the Plan, shall generally have the effect described in § 1141. As this is a reorganizing plan, the Debtor will receive a discharge, pursuant to § 1141 other than as to any debt excepted from discharge, including certain obligations owed to the IRS. All creditors and parties in interest will be bound by the Plan, as confirmed, and will not have claims against the Debtor, other than as specifically stated in the Plan. The sole remedy and right of collection of the holders of Claims shall be pursuant to the provisions of this Plan, regardless of whether they have accepted the Plan and whether the claims of such holder are impaired under the Plan.

The discharge granted by § 1141 is modified as to the federal tax debt provided for in the Plan, and the discharge of any federal tax debt under this Plan shall not be effective until all of the federal tax debt provided for in the Plan has been paid in accordance with the Plan.

A. Modification

The Debtor may modify the Plan at any time prior to Confirmation. However, the Court may require a new disclosure statement and/or re-voting on the Plan. The Debtor may also seek to modify the Plan at any time after Confirmation only if (1) the Plan has not been substantially consummated and (2) the Court authorizes the proposed modifications after notice and a hearing.

B. Withdrawal or Revocation

The Debtor may withdraw or revoke this Plan at any time prior to Confirmation. If the Debtor revokes or withdraws this Plan prior to Confirmation, or if Confirmation does not occur, then this Plan shall be deemed null and void. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any Claim by or against the Debtor or any other person or to prejudice in any manner the rights of the Debtor or any other person in any further proceedings involving the Debtor.

C. Final Decree

Once the estate has been fully administered, as provided for in Rule 3022, the Debtor, or such party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court may enter such final decree on its own motion.

VI. ATTACHMENTS

The following documents accompany this Statement:

- (a) Most recently filed tax return for the Debtor (2016);
- (b) Most recently filed monthly operating report of the Debtor (September 2017);
- (c) Financial forecast for the Debtor (Projections for duration of Plan term); and
- (b) Liquidation Analysis.

VII. CONCLUSION

The Debtor urges holders of Impaired Claims to vote to accept the Plan and to return their Ballots with all due speed. The Disclosure Statement and Plan comply with all applicable provisions of the Bankruptcy Code, is proposed in good faith, is not prohibited by law, and is in the best interests of all creditors, as well as the Debtor.

Respectfully submitted,

/s/Richard G. Terrell
Cold Spy on the Inside, LLC
d/b/a Tune Up Plus

/s/ Kelly M. Barnhart