

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

**In re:**

**DIRECT FOODS, LLC,**

**Case No. 17-72036-SCS  
Chapter 11**

**Debtor-in-Possession.**

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

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## **I. Introduction and Purpose of this Statement**

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 included herewith.

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

**UNLESS OTHERWISE DEFINED HEREIN, TERMS USED IN THIS STATEMENT HAVE THE MEANINGS DEFINED IN THE PLAN. YOU NEED TO READ THE PLAN AND THIS STATEMENT. THE PLAN IS THE DOCUMENT THAT ESTABLISHES YOUR RIGHTS.**

The proposed distributions under the Plan are discussed herein at pages 8 – 11. Unsecured Creditors are to be paid \$42,400 through the Plan. These payments are to be distributed to Unsecured Creditors on a pro-rata basis, paid twice a year, beginning in Year 4 of the Plan, with payments being made in Months 43, 49, 54 and 60, and will result in a payout of 21 %, unless the Unsecured Creditors accept different treatment. The Debtor will retain its assets in personal property identified in the Schedules, with new value being contributed by the sole member Debtor, Jimmy L. Jackson, III (“**Mr. Jackson**”). Specifically, he will contribute \$500/month for twenty-four (24) months, beginning in Month 37 of the Plan.

The purpose 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.

### **A. Deadlines for Voting and Objecting; Date of Confirmation Hearing**

The Court has not yet determined whether the Plan described in this Statement should be confirmed. This section describes the process by which the Plan will or will not be confirmed.

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

Notice of the hearing on whether the Plan should be confirmed is being provided with this Statement. The hearing will be conducted by Chief Judge St. John in Chief Judge St. John's Courtroom, 600 Granby Street, 4th Floor, Courtroom 1, Norfolk, Virginia 23510. Please refer to the Notice for the date of the hearing and all deadlines for filing pleadings regarding this Statement and the Plan.

### **2. Deadline for Voting to Accept or Reject the Plan**

If you are entitled to vote on whether the Plan should be approved or rejected, and wish to cast your ballot regarding same, please fill out the enclosed ballot by the deadline provided in the attached Notice, and return the ballot to Kelly M. Barnhart, either by regular mail, electronic mail or facsimile. The ballot should be returned to:

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](mailto:barnhart@rgblawfirm.com)

If the ballot is not returned in a timely fashion, it will not be considered, unless allowed by the Court.

### **3. Deadline for Objecting to Confirmation of the Plan**

The deadline for objecting to Confirmation of the Plan is seven (7) days before the Confirmation Hearing. The Notice included herewith sets forth the deadline for any objections, as well as the date and time for the Confirmation Hearing.

### **4. Identity of Person to Contact for Additional/More Information**

If you want additional/more information, please contact Kelly M. Barnhart, whose contact information is set forth in Section I.A.2. above.

### **B. Disclaimer**

**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 DISCLOSURE STATEMENT DOES NOT CONSTITUTE A RECOMMENDATION BY THE COURT AS TO THE MERITS OF THE PLAN, BUT MERELY CONFIRMS THAT THIS STATEMENT 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 IN THIS STATEMENT 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.**

**THIS DISCLOSURE STATEMENT PROVIDES INFORMATION ABOUT THE PLAN. ALTHOUGH THE DEBTOR BELIEVES THAT THE INFORMATION CONTAINED HEREIN IS ACCURATE, THE PROVISIONS OF THE PLAN CONTROL IF THERE IS ANY INCONSISTENCY BETWEEN THE PLAN AND THE INFORMATION CONTAINED HEREIN.**

## **II. Background**

### **A. Description and History of Debtor's Business**

The Debtor is a limited liability company formed under the laws of the Commonwealth of Virginia. There is only one member, Mr. Jackson. The Debtor sells food to its clientele through various independent contractors. Its market is the Tidewater/Hampton Roads area.

### **B. Insiders of the Debtor**

The only insider of the Debtor is Mr. Jackson, as that term is used in the Bankruptcy Code, at § 101(31). He receives a salary of \$5,000 a month, which he has been receiving throughout this case. His salary will remain at \$5,000 over the term of the Plan.

### **C. Management of the Debtor Pre-Petition and During the Case**

Mr. Jackson has managed the Debtor Pre-Petition, during the course of the Case and will also manage it post-Confirmation.

### **D. Events Leading to Seeking Chapter 11 Relief**

Pre-Petition, the Debtor had two obligations which, because of a down-turn in income, it could not continue to maintain pursuant to the applicable terms. First, the Debtor had entered into a factor arrangement with BFS, which resulted in withdrawals from the Debtor's account of \$657/every business day. This resulted in a cash-flow crisis for the Debtor that it believed could best be addressed through a chapter 11 case. Second, the Debtor had a significant past due balance owed to AmEx, which because of a default, was due in full in the approximate amount of approximately \$183,790.00. The Debtor did not have the resources to address this obligation as demanded, and believed that the obligation could be best addressed in a chapter 11 bankruptcy case.

### **E. 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 BFS, its secured creditor, whereby the Debtor pays \$2,147.34 on a monthly basis in exchange for the use of the cash collateral and as adequate protection payments to BFS. This agreement is evidenced by the Stipulation and Order for Authority to Use Cash Collateral of Small Business Loans, Inc. d/b/a Business Financial Services, Inc. and Provide Adequate Protection (the "AP and Cash Collateral Order"), entered by the Bankruptcy Court on August 10, 2017 and entered on the docket on August 14, 2017, as well as the Second Stipulation and Order for Authority to Use Cash Collateral of Small Business Loans, Inc. d/b/a Business Financial Services, Inc. and Provide Adequate Protection (the "Second AP and Cash Collateral Order, which was entered on the docket in the Case on October 17, 2017. Pursuant to the AP and Cash Collateral Order, the agreement between the Debtor and BFS continues through the Confirmation Hearing Date, unless a further order or agreement is entered.

#### **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 is September 26, 2017. The deadline for all governmental units is November 28, 2017.

#### **4. Hiring of Professionals**

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

#### **5. 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 not run in this case as of the date of this Statement.

#### **6. Disputed Claims**

The Debtor filed a Notice of Disputed Claim in its case, on June 6, 2017, in compliance with L.B.R. 3003-1(B), to which no response has been filed by the holder of the disputed claim, Hyundai. Hyundai has filed a claim in the case. Although the Debtor does dispute the claim, it believes it will cost more for the estate to challenge such claim than to provide for it in its Plan, so it is proposing to treat the claim of Hyundai as an Allowed Unsecured Claim, affording it with the opportunity to receive distributions at the same time and amount as other holders of Allowed Unsecured Claims.

#### **F. Projected Recovery of Avoidable Transfers**

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

#### **G. Claim Objections**

The Debtor reserves the right to object to any of the claims filed in this Case. Even if your claim may be allowed for purposes of voting on whether to approve or reject the Plan, you may not be entitled to a distribution if an objection is filed to your claim and such objection is sustained.

## H. Current and Historical Financial Conditions

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

<b>Asset</b>	<b>Value</b>
Cash on hand	\$2,605.56
Bank Account	\$500.00
Accounts Receivable	\$86,700.00
Equipment	\$6,350.00
Electronics	\$3,200.00

As of October 23, 2017, the Debtor's assets are (the Debtor is relying upon its bank statement for the bank account information):

<b>Asset</b>	<b>Value</b>
Bank Account	\$1,378.73
Accounts Receivable	\$33,391.00
Equipment <sup>1</sup>	\$6,350.00
Electronics <sup>2</sup>	\$3,200.00

The Debtor's most recent monthly operating report, regarding September of 2017, reflects that the Debtor had income of \$45,356.86, expenses of \$41,137.34, and accounts receivable of \$33,391.00 (to which BFS's lien would attach), with no outstanding payables. The Debtor is staying current on its Post-Petition Obligations.

The Debtor has had a total of \$209,527.72 (June – September 2017) income and a total of \$203,732.31 in paid expenses, as set forth in the monthly operating reports filed by the Debtor in the Case.

## III. Summary of Plan and Treatment of Claims and Equity Interests

### A. Purpose of the Plan

The Plan places claims and equity interests into classes and explains the treatment of each class. The Plan makes clear the treatment each class will receive. The Plan also states which classes are Impaired. If the Plan is confirmed, your recovery is limited to the amount set forth in the Plan.

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<sup>1</sup> Although there may have been some depreciation of the value of the Equipment since the Petition Date, the Debtor is not adjusting the value of the Equipment and is using the value as identified in its Schedule A/B.

<sup>2</sup> Although there may have been some depreciation of the value of the Electronics since the Petition Date, the Debtor is not adjusting the value of the Electronics and is using the value as identified in its Schedule A/B.



## B. 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 heir proposed treatment under the Plan:

<b>Type</b>	<b>Estimated Amount Owed</b>	<b>Proposed Treatment</b>
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 (estimated)	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 did not identify any Priority Claims on its Schedule E/F.

The City of Virginia Beach filed an amended proof of claim on November 15, 2017, claiming that it is the holder of Priority Claim for \$5,175.44 and a general unsecured claim of \$3,949.24.

The Debtor proposes to remit \$152.74 a month for thirty-six (36) months, beginning in Month 13 of the Plan. These payments include interest at a rate of 3%, including interest that will accrue over the Plan term when no payments are being made.

### **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**

There is one class of secured creditors, made up of BFS. As of the Petition Date, the Debtor owed BFS \$113,789.00. As previously indicated, the Debtor and BFS agreed, from the Petition Date through the date to be set for the hearing on Confirmation, the Debtor is to remit payments of \$2,147.34/month. Upon information and belief, the balance owed to BFS, as of November 2017, is \$105,352.90.

In the Plan, the Debtor proposes to continue with such payments until satisfaction of the obligation in full. This figure was calculated by taking the principal balance owed as of the Petition Date, \$113,789, amortizing it over sixty (60) months at a five percent (5%) interest rate. The Debtor anticipates that as of the Effective Date, there will be 52 months left of payments to be made to BFS in order to satisfy its debt. The Debtor further estimates that the final payment to BFS will be made in June of 2022.

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

#### **2.Class(es) 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 Bankruptcy Code.

The following chart identifies the Plan's proposed treatment of Class 2, which contain general unsecured claims against the Debtor.

<b>Creditor</b>	<b>Scheduled Amount</b>	<b>Amount Listed in Proof of Claim</b>	<b>Allowed Amount</b>
<b>American Express</b>	<b>\$183,786.01</b>	<b>\$183,786.01</b>	<b>\$183,786.01</b>
<b>City of Virginia Beach</b>	<b>\$6,774.92 (general unsecured)</b>	<b>\$5,175.44 (priority) and \$3,949.24 general unsecured</b>	<b>\$3,949.24 as general unsecured and priority of \$5,175.44 (discussed elsewhere in Plan)</b>
<b>Capital One Bank</b>	<b>\$0.00</b>	<b>\$277.13</b>	<b>\$277.13</b>
<b>Hyundai Motor Finance (Disputed)</b>	<b>Disputed \$0.00</b>	<b>\$1,054.74</b>	<b>\$1,054.74</b>
<b>Jimmy L. Jackson, III</b>	<b>\$54,237.36</b>	<b>N/A</b>	<b>\$0.00</b>
<b>Stephen Siskay</b>	<b>\$10,000.00</b>	<b>N/A</b>	<b>\$10,000.00</b>

General unsecured creditors total \$199,067.12. Holders of Allowed Unsecured Claims will receive a total of \$42,400 to be paid as follows:

- Month 43: \$7,700, to be shared on a pro-rata basis;
- Month 49: \$6,500, to be shared on a pro-rata basis;
- Month 55: \$12,450 to be shared on a pro-rata basis; and
- Month 60: \$15,750, to be shared on a pro-rata basis

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

### **3.Class of Equity Interest Holders**

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. Jackson. Upon Confirmation, Mr. Jackson will be the sole member of the reorganized Debtor. Mr. Jackson is proposing to remit a total of \$12,000 for the membership interest in the Debtor/Reorganized Debtor. This new value is set forth in the budget attached in support of this Statement and Plan, and demonstrates that he proposes to provide \$500/month for twenty-four (24) months, beginning in Month 37 of the Plan.

## **D. Means of Implementing the Plan**

### **1. Source of Payments**

Payments and distributions under the Plan will be funded by income generated by the sale of product to the clientele, as well as new value paid by Mr. Jackson.

### **2. Post-confirmation Management**

The Post-Confirmation Managers of the Reorganized Debtor will be Mr. Jackson, who is an insider, and his compensation will be \$5,000/month.

## **E. 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, this is unlikely. Almost immediately after the Petition Date, one of the primary parties that purchases product from the Debtor, the Government through its EBT program, had issues with remitting payments to millions of people/entities. As a result, the Debtor's regular average income of approximately \$84,000 dropped to an average of \$52,000 (based on the average of the income received in June, July, August and September 2017), and its regular average cost of goods expenses of approximately \$82,000, were reduced to an average of \$51,000. Given that anticipated change, the Debtor's projected income for the first year of the Plan is based on the reduced income and expenses, including a reduction in costs of goods sold (which average typically 80% of income received). Beginning in Year 2 of the Plan, the Debtor has raised the income and expenses back into the figures experienced historically, with the anticipation that the government will resume making its payments on time.

## **F. Executory Contracts and Unexpired Leases**

The Debtor was a party to one lease as of the Petition Date, for its office location, with Salty Dogs, LLC. The Debtor will assume this Lease under 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 Salty Dogs, LLC wishes to object to the assumption of its lease, or the adequacy of assurance of performance, it must file and serve its objection to the Plan within the deadline for objecting to Confirmation.

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.

## **G. 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 (e) 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 believe that all 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 his 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 September 26, 2017. The deadline for filing a proof of claim in this case for all governmental units is November 28, 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.

### **3.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.

#### **4. 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.

#### **5. 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 PLAN<sup>3</sup>.**

### **B. 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 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.

#### **2. Treatment of Nonaccepting 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.**

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<sup>3</sup> 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).



### C. Liquidation Analysis

To confirm a Plan, the Court must find that all creditors and equity security holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity security holders would receive in a chapter 7 liquidation. A liquidation analysis is below.

<b>Assets</b>	<b>Estimated Value</b>
Personalty	\$44,319.73
Less:	
Secured Creditors' Recovery (remaining balance goes to unsecured balances owed)	\$105,352.90 (balance as of Petition Date was \$113,789.00)
Chapter 7 Trustee's Commission	\$5,181.97 (in actuality, there is nothing available for unsecured creditors following payment to Secured Creditor, BFS)
Less:	
Chapter 11 administrative expenses – including any quarterly fees owed (estimate to be paid from the personal property and compensation to designated representative, taxes)	\$25,000.00
Less:	
Priority claims, excluding administrative expense claims	N/A
(1) Balance for unsecured claims	\$0.00
(2) Total dollar amount of unsecured claims per Schedule F/Claims Filed	\$199,067.12
Percentage of Claims Which General Unsecured Creditors Would Receive or Retain in a Chapter 7 Liquidation:	0%
Percentage of Claims General Unsecured Creditors Will Receive or Retain under terms of Plan:	21%

As evidenced by the Liquidation Analysis, holders of General Unsecured Claims are receiving more than they would in a chapter 7 case. In a chapter 7, the General Unsecured Creditors with Allowed Claims would not recover from the estate, but under the terms of the Plan, they will receive approximately 21% of the amounts owed to them.

### D. Feasibility

The Court must find that confirmation of the Plan is not likely to be followed by 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 Fund Plan**

The Debtor believes that it will have sufficient cash flow to pay all claims and expenses that are entitled to be paid on the Effective Date.

### **2.Ability to Make Future Plan Payments and Operate without Need for Further Reorganization**

The Debtor must also show that it will have sufficient cash over the life of the Plan to make the required Plan payments. The Debtor is providing projected financial information, which projections are identified in **Exhibit A** to this Statement, which show that the Debtor will have aggregate annual average cash flow, after paying the operating expenses and post-confirmation taxes, to support the payments provided for in the Plan. The final Plan payment is expected to be paid in the sixtieth (60<sup>th</sup>) month following the Effective Date.

You should consult with an accountant or other financial advisor if you have any questions regarding the projections set forth in **Exhibit A**.

## **V. Effect of Confirmation**

### **A. Discharge of Debtor**

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

### **B. Modification of Plan**

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.

The Debtor may revoke or withdraw the Plan before the Confirmation Date. If the Plan is revoked or withdrawn prior to Confirmation, the Plan shall be of no force or effect, and shall be deemed null and void. If the Plan is revoked or withdrawn prior to Confirmation, nothing contained herein shall in any way effect or prejudice the rights of the Debtor with regard to the Claims, or any other rights or interests

### **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. Conclusion**

The Debtor believes that the Plan is in the best interest of all creditors and urges holders of Impaired Claims to vote to accept the Plan and to return their Ballots with all due speed.

Respectfully submitted,

/s/ Jimmy L. Jackson for  
Direct Foods, LLC

/s/ Kelly M. Barnhart  
Kelly M. Barnhart