

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

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In re:	Chapter 11
ENZYME FORMULATIONS, INC., <i>et al.</i> <sup>1</sup>	Case No. 17-10315
Debtors.	Hon. Catherine J. Furay
	Jointly Administered

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**DISCLOSURE STATEMENT IN SUPPORT OF DEBTORS'  
JOINT CHAPTER 11 PLAN OF REORGANIZATION**

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Dated: March 8, 2017

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<sup>1</sup> The Debtors and the last four digits of their federal tax identification number or social security number are: Enzyme Formulations, Inc. (9388); Howard F. Loomis, Jr. (0308). The corporate headquarters for Enzyme Formulations, Inc. is located at 6421 Enterprise Lane, Madison, WI 53719. The usual mailing address of Howard F. Loomis, Jr. is 6421 Enterprise Lane, Madison, WI 53719.

## TABLE OF CONTENTS

I.	OVERVIEW OF CHAPTER 11 .....	3
II.	SUMMARY OF THE PLAN .....	3
A.	Unclassified Allowed Administrative Claims and Priority Tax Claims .....	4
(i)	Administrative Claims .....	4
(ii)	Professional Compensation .....	5
(iii)	Priority Tax Claims .....	5
(iv)	Administrative Expense Claims Bar Date .....	6
B.	Classification of Claims and Interests .....	6
(i)	Debtors' Reservation of Rights Regarding Unimpaired Claims .....	9
(ii)	Cram Down .....	9
(iii)	Subordinated Claims .....	9
III.	Description of the Debtors and the Debtors' Business .....	10
A.	Description of Debtor EFI .....	10
B.	Description of Debtor Loomis .....	10
C.	Description of Events Leading to These Chapter 11 Cases .....	10
IV.	Significant Events During the Bankruptcy Cases .....	11
A.	Petition Date .....	11
B.	First Day Filings and Motions .....	11
C.	The Exit Facility .....	12
D.	Retention of Professionals .....	12
E.	The Appointment of an Official Committee of Unsecured Creditors .....	13
V.	Assets and Liabilities .....	13
A.	Assets of Debtor EFI .....	13
B.	Liabilities of Debtor EFI .....	14
C.	Assets of Debtor Loomis .....	14
D.	Liabilities of Debtor Loomis .....	14
VI.	Details regarding implementation of plan .....	15
A.	Settlement with Fisher .....	15
B.	Corporate Existence of EFI .....	16
C.	Vesting of Assets in the Reorganized Debtors .....	16
D.	Existing Securities .....	16
E.	Corporate Action .....	16
F.	Directors and Officers of Reorganized Debtor EFI .....	17
G.	Effectuating Documents; Further Transactions .....	17
H.	Exemption From Certain Taxes and Fees .....	17
I.	Preservation of Causes of Action .....	17
J.	Treatment of Executory Contracts and Unexpired Leases .....	18
(i)	Assumption and Rejection of Executory Contracts and Unexpired Leases .....	18

(ii)	Claims Based on Rejection of Executory Contracts or Unexpired Leases.....	18
(iii)	Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.....	19
K.	Modifications, Amendments, Supplements, Restatements, or Other Agreements .....	19
L.	Reservation of Rights.....	20
M.	Contracts and Leases Entered Into After the Petition Date .....	20
N.	Nonoccurrence of Effective Date.....	20
VII.	Voting Procedures.....	20
A.	Voting Procedures.....	20
B.	Acceptance.....	21
C.	Confirmation.....	21
D.	Modification.....	21
E.	Effect of Confirmation.....	21
VIII.	Cramdown and the Absolute Priority Rule.....	22
A.	The Plan Does Not Discriminate Unfairly.....	22
B.	The Plan is Fair and Equitable.....	22
(i)	Secured Claims .....	22
(ii)	Unsecured Claims.....	23
(iii)	Interests.....	23
IX.	Best Interests Test.....	23
X.	Feasibility.....	24
XI.	SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS.....	25
A.	Compromise and Settlement of Claims, Interests, and Controversies.....	25
B.	Discharge of Claims and Termination of Interests .....	25
C.	Injunction .....	25
D.	Subordination Rights .....	27
E.	Exculpation .....	27
XII.	Alternatives to Confirmation and Consummation of the Plan.....	27
A.	Alternative Plan .....	27
B.	Liquidation under Chapter 7 .....	28
XIII.	Federal Income Tax Consequences of the Plan .....	28
A.	Introduction.....	28
B.	Certain Federal Income Tax Consequences of the Plan to the Debtors.....	29
(i)	Cancellation of Debt Income and Reduction of Tax Attributes.....	29
(ii)	Limitation of Tax Attributes .....	29
(iii)	Alternative Minimum Tax .....	30

C. Certain Federal Income Tax Consequences of the Plan to Holders of Allowed Impaired Claims ..... 30

    (i) Tax Treatment of Claims in Classes 5 and 6 ..... 30

    (ii) Accrued Interest ..... 30

    (iii) Market Discount..... 31

    (iv) Withholding and Reporting..... 31

XIV. Voting Instructions..... 32

    A. How to Vote..... 32

    B. Confirmation Hearing ..... 33

XV. Summary, Recommendation, and Conclusion..... 33

**DISCLOSURE STATEMENT WITH RESPECT TO THE  
DEBTORS' JOINT CHAPTER 11 PLAN OF REORGANIZATION**

Pursuant to title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), debtors and debtors-in-possession Enzyme Formulations, Inc. (“EFI”) and Howard F. Loomis, Jr. (“Loomis,” and collectively with EFI, the “Debtors”) propose the following disclosure statement (the “Disclosure Statement”) pursuant to Section 1125(b) of the Bankruptcy Code for use in the solicitation of votes on the Joint Chapter 11 Plan of Reorganization (the “Plan”). A copy of the Plan accompanies this Disclosure Statement, as Exhibit A.

This Disclosure Statement has been prepared in accordance with Section 1125 of the Bankruptcy Code and not in accordance with federal or state securities laws or other applicable nonbankruptcy laws. Entities holding or trading in or otherwise purchasing, selling or transferring Claims against, Interests in or securities of, the Debtors should evaluate this Disclosure Statement only in light of the purpose for which it was prepared.

This Disclosure Statement has not been approved or disapproved by the Securities and Exchange Commission or by any state securities commission or similar public, governmental or regulatory authority, and neither such commission nor any such authority has passed upon the accuracy or adequacy of the statements contained herein.

The Plan is a plan of reorganization. The Plan provides payment of all unsecured claims in full, in cash, with the exception of the claims of Jerome M. Fisher against both Debtors, who has agreed to a reduced payment on all of his claims as part of a negotiated settlement. All secured creditors will receive reinstatement of their claims under 11 U.S.C. §1124. The Plan further provides that all of EFI’s current equity holders will retain their interests in EFI’s after the Plan is confirmed.

The Debtors are seeking final approval of this Disclosure Statement under Section 1125 of the Bankruptcy Code at a hearing (the “Disclosure Hearing”), scheduled to be heard on April 7, 2017 at 10:00 a.m. Central Time, before the Honorable Catherine J. Furay, at the United States Bankruptcy Court, 120 North Henry Street, Madison, Wisconsin 53703. The Debtors are seeking Confirmation of the Plan at a hearing scheduled for [DATE], 2017,<sup>2</sup> which will likewise be held before the Honorable Catherine J. Furay, at the United States Bankruptcy Court, 120 North Henry Street, Madison, Wisconsin 53703.

At the Disclosure Hearing, the Bankruptcy Court will conduct a hearing to determine whether this Disclosure Statement contains adequate information to permit holders of Impaired Claims to make an informed judgment in exercising their rights to vote to accept or to reject the Plan. If this Disclosure Statement is approved as having adequate information, the Court will then schedule a hearing to consider Confirmation of the Plan.

The statements contained in this Disclosure Statement include summaries of the provisions contained in the Plan and in documents referred to therein. The statements contained

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<sup>2</sup> All date shall be completed following the Court’s entry of an order approving this Disclosure Statement.

in this Disclosure Statement do not purport to be precise or complete statements of all the terms and provisions of the Plan or documents referred to therein, and reference should be made to the Plan and documents referred to therein for the full and complete statements of the terms and provisions of those documents. All capitalized terms used herein, unless otherwise provided, have the meanings set forth in Article I of the Plan.

The Plan itself and the documents referred to therein control the actual treatment under the Plan of Claims against and Interests in the Debtors and will, upon the Effective Date of the Plan, be binding upon all holders of Claims against and Interests in the Debtors and their Estates, and other parties in interest. In the event of any conflict between this Disclosure Statement and the Plan, or any other operative document, the terms of the Plan or other operative document are controlling.

The Plan contains various bar dates for asserting Claims. Pursuant to the Claims Bar Date Order, the Court established a Claims Bar Date as follows: (a) with respect to Governmental Units holding Claims that arose prior to the Petition Date, as August 2, 2017, at 4:00 p.m., prevailing Central Time, or such other date established by the Court by which Proofs of Claims must have been Filed; and (b) with respect to all General Unsecured Claims arising prior to the Petition Date, as April 10, 2017, at 4:00 p.m., prevailing Central Time, or such other date established by the Court by which Proofs of Claims must have been Filed, in each case as set forth in further detail in the Claims Bar Date Order. The right to assert a Claim or bring an objection will be waived unless a creditor complies with the deadlines set by the Bankruptcy Court.

The Debtors believe that Confirmation of the Plan and Consummation of the reorganization provided for therein is in the best interests of the Debtors and all of their creditors. Accordingly, the Debtors urge each creditor that is Impaired under, and entitled to vote with respect to the Plan, to vote to accept the Plan. Detailed voting instructions are set forth in Article 14 of this Disclosure Statement.

To be counted, a ballot containing your acceptance or rejection of the Plan must be received by the Debtors' counsel at **Foley & Lardner LLP, 150 East Gilman Street Madison, WI 53703, Attn: Matthew D. Lee**, no later than the balloting deadline provided herein by first class U.S. mail or delivered by messenger or overnight courier. Ballots sent by facsimile, telecopy, or e-mail will not be accepted. **The balloting deadline is [DATE].** To be considered, all ballots must be received by the Debtors' counsel at the above address by no later than 4:00 p.m., prevailing Central Time, on [DATE]. Ballots received after the balloting deadline will not be counted or otherwise considered.

**THE DEBTORS STRONGLY URGE ACCEPTANCE OF THE PLAN.**

**NO PERSON IS AUTHORIZED BY THE DEBTORS IN CONNECTION WITH THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATION REGARDING THIS DISCLOSURE STATEMENT OR THE PLAN OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS AND SCHEDULES ATTACHED HERETO. THE ACCURACY OF THE ACCOUNTING, FINANCIAL, ECONOMIC AND**

OTHER INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS THE EXCLUSIVE RESPONSIBILITY OF THE DEBTORS.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN, AND THE DELIVERY OF THIS DISCLOSURE STATEMENT AT ANY TIME AFTER THE DATE HEREOF SHALL NOT CREATE AN IMPLICATION THAT THERE HAS BEEN ANY CHANGE IN THE INFORMATION STATED HEREIN.

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, INCLUDING THE INFORMATION REGARDING THE HISTORY, BUSINESS, AND OPERATIONS OF THE DEBTORS AND THE HISTORICAL AND PROJECTED FINANCIAL INFORMATION REGARDING THE DEBTORS IS INCLUDED FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE PLAN.

**FOR THE CONVENIENCE OF CREDITORS, THIS DISCLOSURE STATEMENT SUMMARIZES THE TERMS OF THE PLAN, BUT THE PLAN ITSELF QUALIFIES ALL SUMMARIES. IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE TERMS OF THE PLAN ARE CONTROLLING. SUMMARIES OF CERTAIN PROVISIONS OF AGREEMENTS REFERRED TO IN THIS DISCLOSURE STATEMENT DO NOT PURPORT TO BE COMPLETE AND ARE SUBJECT TO, AND ARE QUALIFIED IN ITS ENTIRETY BY REFERENCE TO, THE FULL TEXT OF THE APPLICABLE AGREEMENTS.**

## **I. OVERVIEW OF CHAPTER 11**

On February 3, 2017, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

Chapter 11 may be used to effectuate a reorganization of a debtor's business and assets. The commencement of a chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the filing date. The Bankruptcy Code contemplates that the Debtors, through their pre-bankruptcy management, will continue to operate the business in the ordinary course and remain in possession of their property during their cases while they seek to negotiate and implement a plan. The Bankruptcy Court must approve any activities that are not within the ordinary course of the Debtors' businesses or properties.

The consummation of a plan is a principal objective of a chapter 11 case. A plan of reorganization provides for a reorganization of the debtors' estates. Confirmation of a plan of reorganization by the Bankruptcy Court makes the plan binding upon the debtors, any person or entity acquiring property under the plan and any creditor of or equity security holder in the debtors, whether or not such creditor or equity security holder: (i) is impaired under or has accepted the plan; or (ii) receives or retains any property under the plan.

## **II. SUMMARY OF THE PLAN**

This section summarizes the major terms of the Plan proposed by the Debtors. The Plan is attached to this Disclosure Statement as **Exhibit A**. Parties are encouraged to review the Plan

in its entirety for a full understanding of its provision and impact on Creditors and holders of Interests.

A. Unclassified Allowed Administrative Claims and Priority Tax Claims

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, DIP Facility Claims, and Priority Tax Claims have not been classified and, thus, are excluded from the Classes of Claims and Interests set forth in Article 3 hereof.

Below is a summary of the unclassified Claims:

Claim Type	Description	Approximate Amount of Claims
Allowed Administrative Claims	Fee Claims are Claims for Accrued Professional Compensation.	\$100,000
	U.S. Trustee Fees	\$21,450.00
	Other fees and expenses	None
Priority Tax Claims	Any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.	EFI: \$621.53 Loomis: none

(i) *Administrative Claims*

Except with respect to Administrative Claims that are Fee Claims, and except to the extent that an Administrative Claim has already been paid during the Chapter 11 Case or a holder of an Allowed Administrative Claim and the Debtors agree to less favorable treatment with respect to such holder's Administrative Claim, each holder of an Allowed Administrative Claim shall receive, in full satisfaction, settlement, release and discharge of, and in exchange for, its Administrative Claim, Cash equal to the unpaid portion of its Allowed Administrative Claim, to be paid on the latest of: (a) the Effective Date, or as soon as reasonably practicable thereafter, if such Administrative Claim is Allowed as of the Effective Date; (b) the date such Administrative Claim is Allowed, or as soon as reasonably practicable thereafter; (c) the date such Allowed Administrative Claim becomes due and payable, or as soon as reasonably practicable thereafter; *provided, however*, that Allowed Administrative Claims that arise in the ordinary course of the Debtors' businesses shall be paid in the ordinary course of business, in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions; or (d) such other date as may be agreed upon between



the holder of such Allowed Administrative Claim and the Debtors or the Reorganized Debtors, as the case may be. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be Filed with respect to an Administrative Claim previously Allowed by Final Order.

Except as otherwise provided in Article III of the Plan or any prior applicable Court order, and except with respect to Administrative Claims that are Fee Claims, requests for payment of Allowed Administrative Claims must be Filed and served on the Reorganized Debtors pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order no later than the Administrative Claims Bar Date. Holders of Allowed Administrative Claims by such date that are required to, but do not, File and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors or their property, and such Administrative Claims shall be deemed discharged as of the Effective Date. Objections to such requests, if any, must be Filed and served on the Reorganized Debtors and the requesting party no later than thirty (30) days after the Administrative Claims Bar Date.

(ii) *Professional Compensation*

Applications for and Payment of Fee Claims

In accordance with Article III.B of the Plan, any Professional asserting a Fee Claim for services rendered to the Debtors on or before the Effective Date shall File with the Court an application for final allowance of the Professional's Fee Claim no later than 45 days after the Effective Date. Objections to any Fee Claim must be Filed and served on the Debtors and the requesting party no later than 75 days after the Effective Date. To the extent necessary, the Confirmation Order will amend and supersede any previously entered order of the Court regarding the payment of Fee Claims.

Post-Effective Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Effective Date, the Debtors or the Reorganized Debtors, as applicable, in the ordinary course of business and without any further notice to or action, order, or approval of the Court, shall pay in Cash the reasonable legal, professional, or other fees and expenses related to implementation and Consummation of the Plan incurred by the Reorganized Debtors.

Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtors may employ and pay any Professional in the ordinary course of business without any further notice to any party or action, order or approval of the Court.

(iii) *Priority Tax Claims*

The legal and equitable rights of the holders of Priority Tax Claims are Unimpaired under the Plan. Unless the holder of such Claim and the applicable Debtor agree to a different treatment, Holders of Priority Tax Claims shall be paid, to the extent such Claims are Allowed,

in the ordinary course of Debtor EFI's business, consistent with past practice; *provided, however*, that in the event the balance of any such Claim becomes due during the pendency of these Chapter 11 Cases and remains unpaid as of the Effective Date, the Holder of such Claim shall be paid in full in Cash on the Effective Date. In the event an Allowed Priority Tax Claim also is Secured, such Claim shall, to the extent it is Allowed, be treated as a Secured Claim if such Claim is not otherwise paid in full.

(iv) *Administrative Expense Claims Bar Date*

No Administrative Claim will be an Allowed Administrative Expense Claim and such Claim shall be forever barred and enjoined if it is not Filed by the Administrative Claims Bar Date. For the avoidance of doubt, Fee Claims need not be filed by the Administrative Claims Bar Date.

B. Classification of Claims and Interests

While the amount of distributions to certain Classes is currently unknown, the Debtors believe that the Plan provides the best and most prompt possible recovery for holders of Claims. Under the Plan, Claims against the Debtors and Interests in EFI are divided into different Classes as follows:

Class	Description	Status	Voting
Class 1	Priority Claims	Unimpaired	Deemed to Accept
Class 2	Secured Claims against Loomis	Unimpaired	Deemed to Accept
Class 3	Unsecured Claims Against EFI	Unimpaired	Deemed to Accept
Class 4	Unsecured Claims Against Loomis	Unimpaired	Deemed to Accept
Class 5	Fisher's Unsecured Claims Against EFI	Impaired	Entitled to Vote
Class 6	Fisher's Unsecured Claims Against Loomis	Impaired	Entitled to Vote
Class 7	EFI's Secured Inter-debtor Claim Against Loomis	Unimpaired	Deemed to Accept
Class 8	Unsecured Inter-debtor Claims	Unimpaired	Deemed to Accept

Class 9	Interests in EFI	Unimpaired	Deemed to Accept
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The following table is a summary of the treatment for distribution to holders of Classified Claims:

Class No.	Class Name	Approximate Amount of Claims	Treatment
Class 1 (Unimpaired – Not entitled to vote)	Priority Claims	\$0.00	Except to the extent that a Holder of an Allowed Priority Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Claim, each such Holder shall be paid, to the extent such claim has not already been paid during the Chapter 11 Cases, in full in Cash in the ordinary course of business by the Debtors or the Reorganized Debtors, as applicable, on or as soon as reasonably practicable after (i) the Effective Date, (ii) the date on which such Priority Claim becomes Allowed, or (iii) such other date as may be ordered by the Court.
Class 2 (Unimpaired – Not entitled to vote)	Secured Claims against Loomis	\$14,600.00	On the Effective Date, except to the extent that a Holder of a Secured Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Secured Claim, each Holder of an Allowed Secured Claim shall receive reinstatement pursuant to Section 1124 of the Bankruptcy Code.
Class 3 (Unimpaired – Not entitled to vote)	Unsecured Claims against EFI other than those in Class 5	\$53,668.00	On the Effective Date or as soon as reasonably practicable thereafter, except to the extent that a Holder of an Allowed Unsecured Claim against EFI agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Unsecured Claim against EFI, each Holder of an Allowed Unsecured Claim against EFI – other than Fisher, whose claims against EFI are included in

Class No.	Class Name	Approximate Amount of Claims	Treatment
			Class 5 – shall receive payment from EFI in full in Cash on account of such Claim.
Class 4 (Unimpaired – Not entitled to vote)	Unsecured Claims against Loomis other than those in Class 6	\$1,067.18	On the Effective Date or as soon as reasonably practicable thereafter, except to the extent that a Holder of an Allowed Unsecured Claim against Loomis agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Unsecured Claim against Loomis, each Holder of an Allowed Unsecured Claim against Loomis – other than Fisher, whose claims against Loomis are included in Class 6 – shall receive payment from Loomis in full in Cash on account of such Claim.
Class 5 (Impaired – Entitled to vote)	Fisher's Unsecured Claims against EFI	\$2,565,000.00	On the Effective Date or as soon as reasonably practicable thereafter, except to the extent that Fisher agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for Fisher's Unsecured Claims against EFI, Fisher shall receive \$400,000 on account of his Allowed Unsecured Claims against EFI; <u>provided, however</u> , that this payment must be made no later than 60 days following the Effective Date.
Class 6 (Impaired – Entitled to vote)	Fisher's Unsecured Claims Against Loomis	\$3,435,000.00	On the Effective Date or as soon as reasonably practicable thereafter, except to the extent that Fisher agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for Fisher's Unsecured Claims against Loomis, Fisher shall receive \$100,000 in one lump-sum Cash payment on account of his Allowed Unsecured Claims against Loomis; <u>provided, however</u> , that this payment must be made no later than 60 days following the Effective Date.
Class 7 (Unimpaired–	EFI's Secured Inter-debtor	\$326,071.05	On the Effective Date, except to the extent that EFI agrees to a less favorable

<b>Class No.</b>	<b>Class Name</b>	<b>Approximate Amount of Claims</b>	<b>Treatment</b>
Not Entitled to Vote)	Claim Against Loomis		treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for EFI's Secured Inter-debtor Claim against Loomis, EFI shall receive reinstatement pursuant to Section 1124 of the Bankruptcy Code.
Class 8 (Unimpaired– Not Entitled to Vote)	Unsecured Inter-debtor Claims	\$22,609.00	On the Effective Date, except to the extent that a Holder of an Unsecured Inter-debtor Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Unsecured Inter-debtor Claim, each Holder of an Allowed Unsecured Inter-debtor Claim shall receive payment in full in Cash on account of such claim.
Class 9 (Unimpaired– Not Entitled to Vote)	Interests in EFI	Not Applicable	All Holders of Interests in EFI shall retain their respective Interests in EFI through and after the Effective Date.

(i) *Debtors' Reservation of Rights Regarding Unimpaired Claims*

The Plan shall not affect the Debtors' rights with respect to any Unimpaired Claims, including all rights to assert legal and equitable defenses to, or setoffs or recoupment against, any Unimpaired Claim.

(ii) *Cram Down*

The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any Classes of Claims and Interests that vote not to accept the Plan. The Debtors reserve the right to modify the Plan in accordance with Article IV.D of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

(iii) *Subordinated Claims*

Except as otherwise provided in the Plan, the allowance, classification, and treatment of all Allowed Claims and Allowed Interests under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise.

### **III. DESCRIPTION OF THE DEBTORS AND THE DEBTORS' BUSINESS**

#### **A. Description of Debtor EFI**

EFI develops dietary supplement products and sells them to customers, primarily licensed health care practitioners, nationwide and internationally. EFI was formed in 1994 and is a Wisconsin corporation headquartered at 6421 Enterprise Lane in Madison, Wisconsin. That is the only location where EFI maintains business operations. It leases its building from Enzyme Formulations Liquidation Company, LLC ("Landlord"), which despite the similarity of its corporate name is not an Affiliate of EFI. Loomis is the corporate president and sole Interest Holder in EFI.

Including Loomis, EFI has 15 full time employees, all of whom work at the company's headquarters in Madison. Ten of the employees are paid on a salary basis and five are paid on an hourly basis.

EFI is classified under Food and Drug Administration regulations as an "own-label distributor." EFI develops its own dietary supplements, but does not manufacture its own products. That is done by independent manufacturers. Once a product is made, EFI buys the product back from the manufacturers fully labeled and sealed, and then distributes the product to its customers.

As of the Petition Date EFI had no secured debt. It still does not. It sustains its operations using cash on hand.

EFI has one operational affiliate, Food Enzyme Institute, LLC (the "Institute"), also founded and wholly-owned by Loomis. The Institute provides educational seminars to health care practitioners on the subject of enzyme nutrition. EFI pays the Institute booth fees so that EFI can market its products to students of the Institute's seminars. The Institute uses EFI's office space. The Institute has not filed a chapter 11 case concurrently with these cases, but has no tangible book value.

#### **B. Description of Debtor Loomis**

Loomis is an individual debtor. He is 79 years old. His principal assets include real property in Madison, Wisconsin and Branson, Missouri, cash deposits in his debtor-in-possession accounts at Associated Bank, N.A., and a 2013 Ford Navigator. Loomis' assets are described more thoroughly below.

#### **C. Description of Events Leading to These Chapter 11 Cases**

In 1994, EFI borrowed money from creditor Jerome M. Fisher ("Fisher") to start EFI's business. The loan to EFI was made in the principal amount of approximately \$320,000.00. Fisher concurrently issued a loan to Loomis in the principal amount of \$100,000.00. Loomis also personally guaranteed EFI's loan.

The loans were intended to be secured. However, Fisher never perfected his security interests in the collateral securing the loans. EFI and Loomis have never made payments to

Fisher on the loans, and Fisher has never filed an action to collect on them. As of the Petition Date, with 22 years' worth of interest having accrued on these loans, the amount outstanding on the loan to EFI is approximately \$2.6 million and the amount outstanding on the loan to Loomis is approximately \$850,000.00.

In 2016, as EFI began preparing a business succession plan, it realized that it would need to address its debt to Fisher, as would Loomis. Therefore, the Debtors approached Fisher to resolve the issue. Fisher believed that he was entitled to full repayment of all amounts owed, including the interest, whereas it was the Debtors' position that they had strong defenses to repayment of Fisher's loans. After extensive negotiations, the parties agreed to settle the issue as set forth in the Plan and this Disclosure Statement. However, as a condition to the settlement, EFI and Loomis each had to file for chapter 11 bankruptcy.

#### **IV. SIGNIFICANT EVENTS DURING THE BANKRUPTCY CASES**

##### **A. Petition Date**

The Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code on February 3, 2017, thereby commencing these Chapter 11 Cases. Since that date, the Debtors have been operating as debtors-in-possession under 11 U.S.C. §§ 1107 and 1108. As a consequence of the Debtors' commencement of the Bankruptcy Cases, all actions and proceedings against the Debtors and all acts to obtain property from the Debtors have been stayed under section 362 of the Bankruptcy Code.

##### **B. First Day Filings and Motions**

In order for EFI to continue to operate its business, and for Loomis to continue to be able to pay his personal expenses, on the Petition Date, the Debtors filed the following with the Court (collectively, the "First Day Motions"):

- Motion for Joint Administration of the Debtors' Chapter 11 Cases [Dkt. No. 2];
- Motion for Interim and Final Orders: (a) Prohibiting Utility Providers From Altering, Refusing, or Discontinuing Services to the Debtors; (b) Deeming Utility Providers Adequately Assured of Future Performance; and (c) Establishing Procedures to Determine Requests for Additional Adequate Assurance of Payment [Dkt. No. 5];
- Motion for Additional Time for Debtors to File Schedules and Statements [Dkt. No. 8];
- Motion for an Order Authorizing: (a) Payment of Certain Pre Petition Taxes; and (b) Financial Institutions to Receive, Process and Honor Related Checks and Transfers [Dkt. No. 10];
- Motion for an Order: (a) Authorizing Enzyme Formulations, Inc.'s: (1) Payment of Pre-Petition Employee Wages, Salary, and Other Compensation; (2) Reimbursement of Pre-Petition Employee Business Expenses; (3) Contributions

to Pre-Petition Employee Benefit Programs and Continuation of Such Programs in the Ordinary Course of Business; (4) Payment of Workers' Compensation Obligations; (5) Payments for Which Payroll Deductions Were Made; (6) Payments of All Costs and Expenses Incident to the Foregoing Payments and Contributions; (7) Payment to Third Parties of All Amounts Incident to the Foregoing Payments and Contributions; and (b) Authorizing Banks to Honor and Process Related Checks and Electronic Transfers [Dkt. No. 12];

- Motion for an Order: (a) Authorizing Enzyme Formulations, Inc. to Pay Section 503(b)(9) Claims on an Immediate Basis; and (b) Confirming Administrative Expense Priority For Goods Delivered Post-Petition [Dkt. No. 14];
- Motion for an Order Authorizing Enzyme Formulations Inc. to Pay Certain Transportation and Shipping Charges [Dkt. No. 16];
- Motion for an Order Authorizing: (a) Temporary Maintenance of Existing Bank Accounts; and (b) Continued Use of Existing Business Forms and Check Stock [Dkt. No. 18]; and
- Motion For Expedited Hearing and Limited Notice on First Day Motions [Dkt. No. 22].

In support of the First Day Motions, the Debtors submitted the Declaration of Howard F. Loomis, Jr. in Support of the Debtors' First Day Motions [Dkt. No. 20] and the Declaration of Howard F. Loomis III in Support of the Debtors' First Day Motions [Dkt. No. 21]. All of the First Day Motions were granted.

#### C. The Exit Facility

In order to fund the payments to the holders of claims in Class 5, the Debtors will enter into an Exit Facility upon confirmation of the Plan. Details of the Exit Facility will be provided in the Plan Supplement. It is expected that a financial institution will loan money to EFI on the Effective Date in an amount sufficient to satisfy Allowed Class 5 Claims, in exchange for a security interest in certain of EFI's assets.

#### D. Retention of Professionals

The Debtors have retained Foley & Lardner LLP ("Foley") as their bankruptcy counsel. On February 8, 2017, the Debtors Filed their Application for an Order Authorizing the Employment and Retention of Foley & Lardner LLP as Counsel for Enzyme Formulations, Inc. and Howard F. Loomis, Jr., Debtors and Debtors-In-Possession, *Nunc Pro Tunc* to the Petition Date (the "Foley Employment Application") [Dkt. No. 60], pursuant to which the Debtors seek to employ Foley as its general bankruptcy counsel. As of the date of this Disclosure Statement, the Foley Employment Application remains pending.



E. The Appointment of an Official Committee of Unsecured Creditors

The Office of the U.S. Trustee to date has not yet appointed an official committee of unsecured creditors in these Chapter 11 Cases pursuant to 11 U.S.C. § 1102(a) & (b).

**V. ASSETS AND LIABILITIES**

A. Assets of Debtor EFI

Cash

EFI's cash balance includes balances in all of its bank accounts, in the amount of approximately \$693,000.00 as of the Petition Date.

Accounts Receivable

EFI has approximately \$454,000.00 in accounts receivable, \$365,000.00 of which is more than 90 days old. EFI expects that it will be able to collect most or all of that amount over time.

Inventory

As of the Petition Date, EFI had approximately \$468,000.00 worth of inventory on hand. Much of the inventory is perishable. Approximately \$100,000.00 of the inventory was acquired within the 20 days prior to bankruptcy.

Equipment

EFI owns approximately \$14,000.00 of office equipment in use at its facility. It also leases a Xerox Office Machine, valued at approximately \$9,400.00

Right to Payment

EFI holds a right to payment from the Institute in the approximate amount of \$481,470.62.

Preferences/Fraudulent Transfer Actions

None known at this time.

Causes of Action and Other Assets

EFI holds a potential claim against CHUBB for payment of approximately \$20,000 under an insurance policy that EFI contends covers losses for business interruption. It also has a \$5,162.74 vendor credit with Summit Lake Labs, one of the prepetition manufacturers of its products, and an unsecured Inter-debtor Claim against Loomis for \$8,609.00, as well as a Secured Inter-debtor Claim against Loomis in the amount of approximately \$320,000 relating to the mortgage EFI holds on Loomis' Branson condominium.

B. Liabilities of Debtor EFI

The projected amount of priority, administrative and unsecured Claims against EFI is reflected in Article II above. As more fully discussed above, EFI owes approximately \$2.6 million to Fisher on account of a \$320,000.00 loan taken out in 1994, for which no payments were ever made and on which interest has accrued for approximately 22 years. Fisher and EFI have reached a settlement on that claim in the amount of \$400,000.00 to be paid within 60 days of the Effective Date of the Plan.

C. Assets of Debtor Loomis

Cash

Loomis holds approximately \$163,000.00 in cash deposits in his checking accounts and money market accounts.

Real Property

Loomis owns an unencumbered condominium unit located in Madison Wisconsin, valued at \$193,000.00, and a garage at the same property valued at \$10,000.00.

Loomis also owns a condominium unit located in Branson, Missouri, valued at \$365,000.00.

Personal Property

As more fully described on his Schedules A and B [Dkt. No. 63 in Case No. 17-10316], Loomis has miscellaneous personal property in the approximate amount of \$18,500.00, and a 2013 Ford Navigator valued at \$34,250.00.

Other Assets

Loomis owns 100% of the equity of EFI and the Institute. He also has certain security deposits and insurance policies, as more fully detailed on his Schedule B.

D. Liabilities of Debtor Loomis

The projected amount of priority, administrative and unsecured Claims against Loomis is reflected in Article II above. As more fully discussed above, Loomis owes approximately \$850,000.00 to Fisher on account of a \$100,000.00 loan taken out in 1994, for which no payments were ever made and on which interest has accrued for approximately 22 years. Fisher and Loomis have reached a settlement on that claim in the amount of \$100,000.00 to be paid within 60 days of the Effective Date of the Plan.

## **VI. DETAILS REGARDING IMPLEMENTATION OF PLAN**

### **A. Settlement with Fisher**

The Plan shall constitute a comprehensive settlement of all matters between the Debtors and Fisher pursuant to § 1123(b)(3)(A) of the Bankruptcy Code (the “Fisher Settlement”). The terms of the Fisher Settlement are as follows:

In full and complete satisfaction of Fisher’s Unsecured Claim against EFI arising out of the EFI Notes, EFI shall pay to Fisher the amount of \$400,000 in one lump sum on or after the Effective Date, but in no event later than 60 days following the Effective Date.

In full and complete satisfaction of Fisher’s Unsecured Claim against Loomis arising out of the Loomis Notes, Loomis shall pay to Fisher the amount of \$100,000 in one lump sum on or after the Effective Date, but in no event later than 60 days following the Effective Date.

Within five (5) calendar days of Fisher’s receipt of the above, Fisher shall cause to be terminated and canceled that certain Collateral Stock Pledge dated December 31, 1994, executed by Loomis and issued to Fisher and Landlord (the “Stock Pledge”), and the Debtors or Reorganized Debtors, as applicable, Fisher, and Enzyme Formulations Liquidation Company, L.L.C. (“Landlord”), or their respective successors or assigns, shall execute such documents as are necessary to terminate and cancel the Stock Pledge.

On the Effective Date, EFI and Landlord shall execute the New Lease, which shall amend and supersede the Existing Lease in all respects, and which shall run for a 12-month term commencing on the Effective Date, and under which EFI shall pay Landlord rent of \$15,000 per month.

Other than the Plan and the New Lease, all agreements between Fisher or any of his Affiliates, on the one hand, and either EFI, Loomis, or any Affiliate of either of them, on the other hand, shall be deemed terminated and cancelled as of the Effective Date.

Upon Fisher’s receipt of the amounts described above, Fisher shall be deemed to hereby release and forever discharge the Debtors or Reorganized Debtors, as applicable, and their respective officers, directors, employees, representatives, retained professionals, agents, trustees, predecessors, successors, heirs, assigns, beneficiaries, insurers, principals, managers, owners, joint venturers, or Affiliates from any and all liabilities, damages, liens, obligations, indemnities, promises, losses, fees, costs or expenses, causes of action, suits, contributions, debts, sums of money, accounts, claims and demands whatsoever, liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising in law, equity or otherwise, that are based in whole or in part on any act, omission, transaction or other occurrence taking place on or before the Effective Date, including, but not limited to, any claims arising under the Bankruptcy Code; provided, however, that this shall not release or be deemed to release the Debtors, the Reorganized Debtors, or their respective Affiliates from any obligation under the New Lease.

Upon Fisher’s receipt of the amounts described above, the Debtors or Reorganized Debtors, as applicable, shall be deemed to hereby release and forever discharge Fisher and any

entity controlled by him and their respective officers, directors, employees, representatives, retained professionals, agents, trustees, predecessors, successors, heirs, assigns, beneficiaries, insurers, principals, managers, owners, joint venturers, or Affiliates from any and all liabilities, damages, liens, obligations, indemnities, promises, losses, fees, costs or expenses, causes of action, suits, contributions, debts, sums of money, accounts, claims and demands whatsoever, liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising in law, equity or otherwise, that are based in whole or in part on any act, omission, transaction or other occurrence taking place on or before the Effective Date, including, but not limited to, any claims arising under the Bankruptcy Code; provided, however, that this shall not release or be deemed to release Fisher, Landlord, or any of their respective Affiliates from any obligation under the New Lease.

B. Corporate Existence of EFI

EFI, upon becoming a Reorganized Debtor, shall continue to exist in its current corporate form after the Effective Date, with all the powers of a corporation pursuant to Wisconsin law and pursuant to the respective certificate of incorporation and by-laws (or other formation documents) in effect before the Effective Date, except to the extent such certificate of incorporation and bylaws (or other formation documents) are amended by the Plan, and to the extent such documents are amended they are deemed to be amended pursuant to the Plan and require no further action or approval (other than any filings required under applicable state, provincial, or federal law).

C. Vesting of Assets in the Reorganized Debtors

Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement, on the Effective Date all property in the Estates, all Causes of Action, and any property acquired by the Debtors pursuant to the Plan shall vest in the Reorganized Debtors, free and clear of all liens, Claims, charges, or other encumbrances, except for liens securing the Exit Facility, if applicable, or liens attendant to the reinstatement of Allowed Class 2 Secured Claims or Allowed Class 7 Secured Inter-debtor Claims. On and after the Effective Date, except as otherwise provided in the Plan, the Reorganized Debtors may use, acquire, or dispose of property, and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

D. Existing Securities

The Interests in EFI will be unaffected by the Plan or Consummation, and the Holders of Interests as of the Petition Date shall retain them from and after the Effective Date.

E. Corporate Action

Upon the Effective Date, or as soon thereafter as is reasonably practicable, all corporate actions contemplated by the Plan shall be deemed authorized and approved in all respects. Upon the Effective Date, all matters provided for in the Plan involving the corporate structure of EFI, as reorganized, and any corporate action required by EFI in connection with the Plan shall be deemed to have occurred and shall be in effect, without any requirement of further action by the

security holders, directors, or officers of EFI. On or (as applicable) before the Effective Date, the appropriate officers of EFI shall be authorized and (as applicable) directed to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated by the Plan (or necessary or desirable to effect the transactions contemplated by the Plan) in the name of and on behalf of EFI, as reorganized. The authorizations and approvals contemplated by Article VI.E of the Plan shall be effective notwithstanding any requirements under nonbankruptcy law.

F. Directors and Officers of Reorganized Debtor EFI

EFI does not currently have a Board of Directors and does not intend to form one after the Effective Date. However, should that change, then pursuant to section 1129(a)(5) of the Bankruptcy Code, the Debtors will disclose in advance of the Confirmation Hearing the identity and affiliations of any Person proposed to serve on the Board of EFI, as well as those Persons that will serve as an officer of the EFI following the Effective Date. To the extent any such director or officer is an “insider” under the Bankruptcy Code, the nature of any compensation to be paid to such director or officer will also be disclosed. Each such director and officer shall serve from and after the Effective Date in accordance with the existing articles of incorporation, by-laws, and other foundational documents of EFI.

G. Effectuating Documents; Further Transactions

On and after the Effective Date, the Debtors and Reorganized Debtors, as applicable, are authorized to and may issue, execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan and the Exit Facility, in the name of and on behalf of the Reorganized Debtors, without the need for any approvals, authorization, or consents except those expressly required pursuant to the Plan.

H. Exemption from Certain Taxes and Fees

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents pursuant to such transfers of property without the payment of any such tax or governmental assessment.

I. Preservation of Causes of Action

In accordance with section 1123(b)(3) of the Bankruptcy Code and except as otherwise set forth herein, any Causes of Action that the Debtors hold against any Entity shall vest in the Reorganized Debtors. The Reorganized Debtors, through their authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action, whether arising before or after the Petition Date, except to the extent waived in the Plan. The Reorganized Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the

consent or approval of any third party or further notice to or action, order, or approval of the Court. These rights shall be preserved notwithstanding the occurrence of the Effective Date.

Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Court order, the Debtors or Reorganized Debtors, as applicable, expressly reserve all Causes of Action, for later adjudication. This shall include, without limitation, (i) any Cause of Action either Debtor has or may have for breach of contract, (ii) any Cause of Action either Debtor has or may have for collection of an account receivable or other sum due, (iii) any Cause of Action EFI has or may have against CHUBB Group of Insurance relating to EFI's claim for payment of insurance proceeds submitted before the Petition Date, (iv) any Cause of Action EFI has or may have against Summit Lake Labs relating to the application of EFI's account credit with Summit Lake Labs, (v) any Inter-debtor Claims held by either Debtor, (vi) any Cause of Action for misappropriation or other violation of the Debtors' intellectual property rights, and (vii) any Cause of Action either Debtor has or may have for contribution or indemnification. Therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation. **To the fullest extent permitted by applicable law, no Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Causes of Action against it as any indication that any Debtor or Reorganized Debtor will not pursue any and all available Causes of Action against that entity. The Debtors or the Reorganized Debtors, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan.**

J. Treatment of Executory Contracts and Unexpired Leases

(i) *Assumption and Rejection of Executory Contracts and Unexpired Leases*

On the Effective Date, except as otherwise provided herein, all Executory Contracts or Unexpired Leases will be deemed assumed, other than those that are identified on the Schedule of Rejected Executory Contracts and Unexpired Leases identified in the plan supplement or are the subject of pending motions to reject on the Effective Date. Entry of the Confirmation Order shall constitute a Court order approving the assumptions of such Executory Contracts or Unexpired Leases as set forth in the Plan or the rejection of such Executory Contracts and Unexpired Leases as set forth in the Plan on the Schedule of Rejected Executory Contracts and Unexpired Leases, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated or set forth in a motion or order relating to the same, assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Any motions to reject Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by a Final Order of the Court on or after the Effective Date.

(ii) *Claims Based on Rejection of Executory Contracts or Unexpired Leases*

Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases ("Rejection Claims"), if any, must be filed with the Court within the later of

(i) the Claims Bar Date, or (ii) thirty (30) days after the date of entry of an order of the Court (including the Confirmation Order) approving such rejection; provided, however, that Rejection Claims shall be subject to the caps on rejection damages under section 502(b) of the Bankruptcy Code. Any Rejection Claim not Filed within such time shall be automatically Disallowed and forever barred, and shall not be enforceable against, as applicable, the Debtors, the Reorganized Debtors, the Estates, or property of the foregoing. Rejection Claims shall be classified as Unsecured Claims (Class 3 if against EFI, Class 4 if against Loomis) and shall be treated in accordance with Article IV.B.3 or Article IV.B.4 of the Plan, as applicable.

(iii) *Cure of Defaults for Assumed Executory Contracts and Unexpired Leases*

Any Cure Claims, as reflected on the Cure Notice, shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the Cure Claim in Cash on the Effective Date, subject to the limitations described below, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (1) the amount of any Cure Claims, (2) the ability of the Reorganized Debtors to provide adequate assurance of future performance (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (3) any other matter pertaining to assumption, payments on Cure Claims required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order or orders resolving the dispute and approving the assumption.

Assumption of any Executory Contract or Unexpired Lease shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the date that a Debtor assumes such Executory Contract or Unexpired Lease. Any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed and for which the Cure Claim has been paid shall be deemed Disallowed and expunged, without further notice to or action, order, or approval of the Court..

K. Modifications, Amendments, Supplements, Restatements, or Other Agreements

Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and Executory Contracts and Unexpired Leases related thereto, if any, including easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan, or subject to a motion to reject such agreement.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

L. Reservation of Rights

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Schedule of Rejected Executory Contracts and Unexpired Leases, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors (or, after the Effective Date, the Reorganized Debtors) shall have twenty-eight (28) days following entry of a Final Order resolving that dispute to alter their treatment of such contract or lease.

M. Contracts and Leases Entered Into After the Petition Date

Contracts and leases entered into after the Petition Date by the Debtors, including any Executory Contracts and Unexpired Leases assumed by the Debtors, will be performed by the Debtors or Reorganized Debtors liable thereunder in the ordinary course of its business. Accordingly, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order.

N. Nonoccurrence of Effective Date

In the event that the Effective Date does not occur, the Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

## **VII. VOTING PROCEDURES**

A. Voting Procedures

Under the Bankruptcy Code, the only Classes that are entitled to vote to accept or reject a plan are Classes of Claims, or Interests, that are Impaired under the plan. Accordingly, Classes of Claims or Interests that are not Impaired are not entitled to vote on the plan.

Votes on the Plan will be counted only with respect to Claims: (a) that are listed on the Debtors' Schedules of Assets and Liabilities other than as Disputed, contingent, or unliquidated; or (b) for which a Proof of Claim was Filed on or before the bar date set by the Court for the filing of proofs of Claim (except for certain Claims expressly excluded from that bar date or which are allowed by Court order). However, any vote by a Holder of a Claim will not be counted if such Claim has been Disallowed or is the subject of an unresolved objection, absent an order of the Court allowing such Claim for voting purposes pursuant to 11 U.S.C. § 502 and Bankruptcy Rule 3018.

Voting on the Plan by each Holder of a Claim or Interest in an Impaired Class is important. After carefully reviewing the Plan and Disclosure Statement, each Holder of a Claim or Interest should vote on the enclosed ballot either to accept or to reject the plan, and then return the ballot by mail to the Debtors' attorney by the deadline previously established by the Court.



Any ballot that does not appropriately indicate acceptance or rejection of the Plan will not be counted.

A ballot that is not received by the deadline will not be counted.

If a ballot is damaged, lost, or missing, a replacement ballot may be obtained by sending a written request to the Debtors' attorneys.

B. Acceptance

The Bankruptcy Code defines acceptance of a plan by an impaired class of claims as acceptance by the holders of at least two-thirds in dollar amount, and more than one-half in number, of the claims of that class which actually cast ballots. The Bankruptcy Code defines acceptance of a plan by an impaired class of interests as acceptance by holders of at least two-thirds in number of the equity interests of that class that actually cast ballots. If no creditor or interest holder in an impaired class votes, then that class has not accepted the plan.

C. Confirmation

11 U.S.C. § 1129(a) establishes conditions for the confirmation of a plan. These conditions are too numerous and detailed to be fully explained here. Parties are encouraged to seek independent legal counsel to answer any questions concerning the chapter 11 process.

Among the several conditions for confirmation of a plan under 11 U.S.C. § 1129(a) are these:

1. Each class of impaired creditors and interests must accept the plan, as described in subparagraph B, above, subject to certain provisions more fully discussed in Article 7 below.
2. Either each holder of a claim or interest in a class must accept the plan, or if each class of impaired creditors does not vote in favor of the plan, then the plan must provide that each holder of a claim or interest will receive property of a value that, as of the effective date of the plan, is not less than the amount the holder would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code.

D. Modification

The Debtors reserve the right to modify or withdraw the Plan at any time before confirmation, subject to 11 U.S.C. § 1127.

E. Effect of Confirmation

If the Plan is confirmed by the Court:

Its terms are binding on the Debtors, all creditors, shareholders and other parties in interest, regardless of whether they have accepted the plan.

Except as provided in the Plan and in 11 U.S.C. § 1141(d):

In the case of EFI:

- All Claims will be discharged.
- Creditors will be prohibited from asserting their Claims against the Debtors or their assets.

In the case of Loomis:

- Claims will be discharged, except as provided in the Plan or in 11 U.S.C. §§ 523 and 1141(d). Unless the Court orders otherwise, the discharge will be entered only after completion of Plan payments as provided in § 1141(d)(5)(a).
- Creditors will be prohibited from asserting their Claims except as to those debts which are not discharged or dischargeable under 11 U.S.C. §§ 523 and 1141(d).

### **VIII. CRAMDOWN AND THE ABSOLUTE PRIORITY RULE**

If one or more of the Impaired Classes of Claims does not accept the Plan, it may nevertheless be confirmed and be binding upon the non-accepting Impaired Class through the “cram-down” provisions of the Bankruptcy Code, if the Plan does not “discriminate unfairly” and is “fair and equitable” with respect to the non-accepting Impaired Classes.

#### **A. The Plan Does Not Discriminate Unfairly**

The Bankruptcy Code requirement that a plan not “discriminate unfairly” means that a dissenting Class must be treated equally with respect to other Classes of equal rank. The Debtors believe that the Plan does not “discriminate unfairly” with respect to any Class of Claims or Interests because no Class is afforded treatment which is disproportionate to the treatment afforded other Classes of equal rank, and the treatment of each Class under the Plan follows the distribution scheme dictated by the Bankruptcy Code.

#### **B. The Plan is Fair and Equitable**

The “fair and equitable” test applies to Classes of different priority and status and includes the general requirement that no Class of Claims receives more than 100% of the Allowed amount of the Claims in that Class. As to the treatment that must be afforded to each rejecting Class, the test sets different standards, depending on the type of Claims or Interests in that Class:

##### **(i) *Secured Claims***

Each Holder of an Impaired Secured Claim must either (i) retain its Liens on the property, to the extent of the Allowed amount of its Secured Claim, and receive deferred Cash

payments having a value, as of the Effective Date, of at least the Allowed amount of the Claim, or (ii) have the right to credit bid the amount of its Claim if its collateral security is sold and retain its Liens against the net proceeds of the sale, or (iii) receive the “indubitable equivalent” of its Allowed Secured Claim.

All Secured Claims (Classes 2 and 7) will receive reinstatement of their Claims under the Plan. No Secured Claim is Impaired under the Plan. The Plan is therefore fair and equitable as to Secured Claims.

(ii) *Unsecured Claims.*

Either (i) each Holder of an Impaired Unsecured Claim (Classes 5 and 6) must receive or retain under the Plan property of a value equal to the amount of its Allowed Claim, or (ii) the Holders of Claims and Interests that are junior to the Claims of the dissenting Class must not receive any property under the Plan.

The Holders of Unsecured Claims in Classes 3, 4, and 8 are Unimpaired. The Plan is therefore fair and equitable as to Unimpaired Unsecured Claims.

The Holders of Impaired Unsecured Claims in Classes 5 and 6 have agreed to the treatment provided to them in the Plan through the Fisher Settlement. The Plan is therefore fair and equitable as to the Impaired Unsecured Claims.

(iii) *Interests.*

Either (i) each Interest Holder must receive or retain under the Plan property of a value equal to the greater of (a) the fixed liquidation preference or redemption price, if any, of the stock and (b) the value of the stock, or (ii) the Holders of Interests that are junior to the Interests of the dissenting Class must not receive or retain any property under the Plan.

Under the Plan, the Holders of Interests will retain those Interests. The Plan is therefore fair and equitable as to Interest Holders.

The Debtors reserve the right to seek Confirmation of the Plan, notwithstanding the rejection of the Plan by any Class entitled to vote. If one or more Classes votes to reject the Plan, the Debtors may request the Court to rule that the Plan meets the requirements specified in section 1129(b) of the Bankruptcy Code with respect to the rejecting Class or Classes. The Debtors will seek such a ruling with respect to each Class that is deemed to reject the Plan.

## **IX. BEST INTERESTS TEST**

The Bankruptcy Code requires that each holder of an Impaired Claim or Interest either (i) accepts the Plan or (ii) receives or retains under the Plan property of a value, as of the Effective Date, not less than the value the holder would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on that date. In this case, the Plan provides for full cash payments to nearly all of the unsecured creditors, excepting the claims held by Fisher, who has agreed to a reduced payment as part of a negotiated settlement. The Debtors’ secured creditors

will receive reinstatement of their claims under 11 U.S.C. §1124. EFI's equity holders will retain their Interests.

Because the Plan provides either complete reinstatement or a full payment to all creditors other than those who have agreed to a different arrangement, a chapter 7 liquidation by definition could not result in a better payout to those creditors. However, if the Debtors' assets were liquidated in a chapter 7 proceeding, it is unlikely that unsecured creditors would receive more than a nominal return on their Claims.

EFI's primary assets are its inventory, a significant portion of which is perishable, its office equipment, its leasehold interest in its business premises, certain intellectual property and confidential business information of intangible value including: trademarks, trade secrets, and customer lists. EFI does not own any real property, and does not manufacture its own products, and therefore it has only limited assets of tangible liquidation value. Therefore, in a chapter 7, it is not likely that a chapter 7 trustee would recover more than \$1 million from a fire sale liquidation of these assets.

Loomis is an individual, and would have only limited assets not subject to exemption. His assets that are not subject to a lien carry a value of less than \$600,000, which would be insufficient to satisfy all Unsecured Claims against him.

Before making any distribution to unsecured creditors, the Debtors' costs of liquidation under chapter 7 would need to be paid. These costs include the fees payable to a trustee in bankruptcy, as well as those fees that might be payable to attorneys and other professionals that the trustee might engage for purposes of liquidating the Debtors' assets.

The foregoing types of claims, costs, expenses, fees, and other similar charges that may arise in a liquidation case would be paid in full from the liquidation proceeds before the balance of those proceeds would be made available to pay pre-petition Claims.

The Debtors submit that Holders of Impaired Claims in each Impaired Class under the Plan are receiving more than what each Holder of a Claim in such Class would receive through a chapter 7 liquidation. Indeed, the Debtors would be less likely to recover the full amount of EFI's account receivables and the value of its inventory under a chapter 7 liquidation. Therefore, under a chapter 7 liquidation, all of the Unsecured Claims would receive less than they will under the Plan. Accordingly, the interests of the creditors are best served by confirming the Plan and allowing the Debtors to continue in possession and to reorganize according to the Plan, which will maximize the return to all creditors.

## **X. FEASIBILITY**

Before the Plan can be confirmed, the Bankruptcy Code requires the Court to determine that Confirmation of the Plan is not likely to be followed by liquidation or the need for further reorganization of the Debtors. The Debtors submit that the Plan satisfies the financial feasibility requirement imposed by the Bankruptcy Code, as evidenced by the Financial Projections of future performance of the Reorganized Debtors, as set forth in **Exhibit B** to this Disclosure Statement. At the confirmation hearing, the Court will determine whether the Plan is feasible.

## **XI. SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS**

### **A. Compromise and Settlement of Claims, Interests, and Controversies**

Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests, and Causes of Action relating to the rights that a Holder of a Claim or Interest has with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Court's approval of the compromise or settlement of all such Claims, Interests and Causes of Action, as well as a finding by the Court that such compromise or settlement is fair, equitable, and reasonable, and is in the best interests of the Debtors, the Estates, and the Holders of Claims and Interests.

### **B. Discharge of Claims and Termination of Interests**

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any agreement or document executed pursuant to the Plan, the distributions, rights, and treatment of Claims, Interests, and Causes of Action in the Plan shall be in complete satisfaction, discharge, and release, as of the Effective Date, of Claims, Interests, and Causes of Action that arose prior to the Effective Date, whether known or unknown, against, the Debtors or any of their assets or properties, including without limitation (i) any demands, liabilities, and Causes of Action that arose before the Effective Date, (ii) any liability to the extent such Claims or Interests relate to services performed by employees of the Debtors before the Effective Date and that arise from a termination of employment, (iii) any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and (iv) all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code. Any default by the Debtors with respect to any Claim or Interest that existed immediately before or on account of the filing of the Chapter 11 Case shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring.

### **C. Injunction**

**FROM AND AFTER THE EFFECTIVE DATE, ALL ENTITIES ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER ANY CAUSE OF ACTION RELEASED OR TO BE RELEASED PURSUANT TO THE PLAN OR THE CONFIRMATION ORDER.**

**FROM AND AFTER THE EFFECTIVE DATE, TO THE EXTENT OF THE RELEASES GRANTED IN THE PLAN, ALL ENTITIES SHALL BE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER AGAINST THE REORGANIZED DEBTORS AND THEIR ASSETS AND PROPERTIES, AS THE CASE MAY BE, ANY SUIT, ACTION, OR OTHER PROCEEDING, ON ACCOUNT OF OR RESPECTING ANY CLAIM, DEMAND, LIABILITY, OBLIGATION, DEBT, RIGHT,**

**CAUSE OF ACTION, INTEREST, OR REMEDY RELEASED OR TO BE RELEASED PURSUANT TO THE PLAN.**

**EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN OR FOR OBLIGATIONS ISSUED PURSUANT TO THE PLAN, ALL ENTITIES WHO HAVE HELD, HOLD, OR MAY HOLD CLAIMS OR INTERESTS THAT HAVE BEEN RELEASED, DISCHARGED, OR ARE SUBJECT TO EXCULPATION PURSUANT TO THE PLAN, ARE PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST THE REORGANIZED DEBTORS: (1) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (2) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (3) CREATING, PERFECTING, OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST SUCH ENTITIES OR THE PROPERTY OR ESTATES OF SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (4) ASSERTING ANY RIGHT OF SUBROGATION, SETOFF, OR RECOUPMENT OF ANY KIND AGAINST ANY OBLIGATION DUE FROM SUCH ENTITIES OR AGAINST THE INTERESTS, PROPERTY OR ESTATES OF SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; AND (5) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS RELEASED OR EXCULPATED PURSUANT TO THE PLAN.**

**THE RIGHTS AFFORDED IN THE PLAN AND THE TREATMENT OF ALL CLAIMS AND INTERESTS HEREIN SHALL BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION OF CLAIMS AND INTERESTS OF ANY NATURE WHATSOEVER, INCLUDING ANY INTEREST ACCRUED ON CLAIMS FROM AND AFTER THE PETITION DATE, AGAINST THE DEBTORS OR ANY OF THEIR ASSETS, PROPERTY, OR ESTATES. ON THE EFFECTIVE DATE, ALL SUCH CLAIMS AGAINST THE DEBTORS SHALL BE FULLY RELEASED AND DISCHARGED, AND THE INTERESTS SHALL BE CANCELLED.**

**EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN OR IN OBLIGATIONS ISSUED PURSUANT HERETO, FROM AND AFTER THE EFFECTIVE DATE, ALL CLAIMS SHALL BE FULLY RELEASED AND DISCHARGED, AND THE INTERESTS SHALL BE CANCELLED, AND THE DEBTORS' LIABILITY WITH RESPECT THERETO SHALL BE EXTINGUISHED COMPLETELY, INCLUDING ANY LIABILITY OF THE KIND SPECIFIED UNDER SECTION 502(G) OF THE BANKRUPTCY CODE.**

**ALL ENTITIES SHALL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTORS, THE ESTATES, THE REORGANIZED DEBTORS, EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AND EACH OF THEIR ASSETS AND PROPERTIES, ANY OTHER CLAIMS OR INTERESTS BASED UPON ANY DOCUMENTS, INSTRUMENTS, OR ANY ACT OR OMISSION, TRANSACTION, OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED BEFORE THE EFFECTIVE DATE.**

**D. Subordination Rights**

Any distributions under the Plan to Holders of Claims or Interests shall be received and retained free from any obligations to hold or transfer the same to any other holder and shall not be subject to levy, garnishment, attachment, or other legal process by any holder by reason of claimed contractual subordination rights. Any such subordination rights shall be waived, and the Confirmation Order shall constitute an injunction against any Entity from enforcing or attempting to enforce any contractual, legal, or equitable subordination rights to property distributed under the Plan, in each case other than as provided in the Plan

**E. Exculpation**

Except as otherwise specifically provided in the Plan or Plan Supplement, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from, any (1) Exculpated Claim and (2) any obligation, Cause of Action, or liability for any Exculpated Claim, except for gross negligence or willful misconduct, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have complied with the applicable provisions of the Bankruptcy Code and shall not be liable for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or distributions made pursuant to the Plan.

**XII. ALTERNATIVES TO CONFIRMATION  
AND CONSUMMATION OF THE PLAN**

If the Plan is not confirmed, the potential alternatives include (a) an alternative plan of reorganization under chapter 11 of the Bankruptcy Code, (b) dismissal of the case, or (c) conversion of this case to a case under chapter 7 of the Bankruptcy Code.

**A. Alternative Plan**

The Plan provides for full payment of all unsecured claims with the exception of those in Classes 5 and 6. The Holder of the Claims in Classes 5 and 6 has agreed to the treatment provided for in the Plan as to those Claims. Secured Claims in Classes 2 and 7 will receive reinstatement of their Claims pursuant to Section 1124 of the Bankruptcy Code. The Debtors therefore do not believe that there are any alternative plans that will provide for better treatment of all Classes of Claims or Interests than the Plan.

B. Liquidation under Chapter 7

If the Plan is not confirmed, the Bankruptcy Case may be converted to a chapter 7 liquidation case. In a chapter 7 case, a trustee would be elected or appointed to liquidate the assets of the Debtors. The proceeds of the liquidation would be distributed to the Holders of Claims and Interests in accordance with the priorities established by the Bankruptcy Code. As stated above, the Debtors believe that liquidation under chapter 7 would result in a diminution in the value of the Debtors' assets and increased administrative costs to the Estate which would result in significantly lower distributions to creditors and an increased delay in distribution.

**XIII. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

A. Introduction

The following discussion is a summary of certain federal income tax consequences to the Debtors and to certain Holders of Claims of the Consummation of the Plan. The following summary does not address the federal income tax consequences to Holders of Claims or Interests not entitled to vote to accept or reject the Plan. This summary is based on the Internal Revenue Code of 1986, as amended (the "IRC"), the U.S. Treasury Regulations promulgated thereunder, judicial authorities, published administrative positions of the U.S. Internal Revenue Service (the "IRS"), and other applicable authorities, all as in effect on the date of this Disclosure Statement and all of which are subject to change or differing interpretations. Due to the lack of definitive judicial and administrative authority in a number of areas, substantial uncertainty may exist with respect to some of the tax consequences described below. No opinion of counsel has been obtained and the Debtors do not intend to seek a ruling from the IRS as to any of the tax consequences of the Plan discussed below. The discussion below is not binding upon the IRS or the courts. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position than any position discussed herein. This summary does not apply to Holders of Claims that are not "U.S. persons" (as such phrase is defined in the IRC). This discussion does not purport to address all aspects of federal income taxation that may be relevant to the Debtors or to certain Holders in light of their individual circumstances. This discussion does not address tax issues with respect to such Holders subject to special treatment under the U.S. federal income tax laws (including, for example, banks, governmental authorities or agencies, pass-through entities, subchapter S corporations, dealers and traders in securities, insurance companies, financial institutions, tax-exempt organizations, small business investment companies, foreign taxpayers, persons who are related to the Debtors within the meaning of the IRC, persons using a mark-to-market method of accounting, Holders of Claims who are themselves in bankruptcy, regulated investment companies, and those holding, or who will hold, Claims, or the Exit Facility, as part of a hedge, straddle, conversion, or other integrated transaction). No aspect of state, local, estate, gift, or non-U.S. taxation is addressed. Furthermore, this summary assumes that a Holder of a Claim holds only Claims in a single Class and holds a Claim as a "capital asset" (within the meaning of Section 1221 of the Tax Code). Except as stated otherwise, this summary also assumes that the various debt and other arrangements to which the Debtors are a party will be respected for federal income tax purposes in accordance with their form.



**ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM. ALL HOLDERS OF CLAIMS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS FOR THE FEDERAL, STATE, LOCAL AND NON-FEDERAL TAX CONSEQUENCES OF THE PLAN.**

B. Certain Federal Income Tax Consequences of the Plan to the Debtors

(i) *Cancellation of Debt Income and Reduction of Tax Attributes*

In general, absent an exception, a debtor will realize and recognize cancellation of debt income (“COD Income”) upon satisfaction of its outstanding indebtedness for total consideration less than the amount of such indebtedness. The amount of COD Income, in general, is the excess of (a) the adjusted issue price of the indebtedness satisfied, over (b) the sum of (x) the amount of Cash paid, (y) the issue price of any new indebtedness of the taxpayer issued and (z) the fair market value of any new consideration given in satisfaction of such indebtedness at the time of the exchange.

A debtor will not, however, be required to include any amount of COD Income in gross income if the debtor is under the jurisdiction of a Bankruptcy Court in a case under title 11 of the Bankruptcy Code and the discharge of debt occurs pursuant to that proceeding. Instead, as a consequence of such exclusion, a debtor must reduce its tax attributes by the amount of COD Income that it excluded from gross income. In general, tax attributes will be reduced in the following order: (a) net operating losses for the taxable year of discharge and net operating loss carryovers from prior years; (b) general business tax credit carryforwards; (c) minimum tax credit carryforwards; (d) capital loss carryovers; (e) tax basis in assets (but not below the amount of liabilities to which the debtor remains subject); (f) passive activity loss and credit carryovers; and (g) foreign tax credit carryforwards. A debtor with COD Income may elect to alter the preceding order of attribute reduction and, instead, first reduce the tax basis of its depreciable assets (and possibly the depreciable assets of its subsidiaries). The reduction in tax attributes occurs only after the tax for the year of the debt discharge has been determined (i.e., such attributes may be available to offset taxable income earned between the date of discharge and the end of the debtor’s taxable year). Any excess COD income over the amount of available tax attributes is not subject to United States federal income tax and has no other United States federal income tax impact.

(ii) *Limitation of Tax Attributes*

The amount and character of the tax attributes that will be available to the Reorganized Debtors on the Effective Date is based on a number of factors and is impossible to calculate at this time. Some of the more important factors that will impact the amount of available tax attributes include: (a) the amount of the taxable income or loss of the Debtors for the current year; (b) the amount of the net operating losses and other tax attributes that carry forward into the current taxable year from prior taxable years, if any; and (c) the amount of COD Income incurred by the Debtors in connection with consummation of the Plan.

(iii) *Alternative Minimum Tax*

In general, an alternative minimum tax (“AMT”) is imposed on a corporation’s alternative minimum taxable income (“AMTI”) at a 20% rate to the extent such tax exceeds the corporation’s regular federal income tax for the year. AMTI is generally equal to regular taxable income with certain adjustments. For purposes of computing AMTI, certain tax deductions and other beneficial allowances are modified or eliminated. For example, only 90% of a corporation’s AMTI may be offset by available alternative tax NOL carryforwards. If the net operating losses of a debtor in bankruptcy are reduced as a result of the exclusion of COD income in bankruptcy, its net operating losses for AMT purposes are also reduced.

C. Certain Federal Income Tax Consequences of the Plan to Holders of Allowed Impaired Claims

(i) *Tax Treatment of Claims in Classes 5 and 6*

Pursuant to the Plan, each Holder of an Allowed Impaired Unsecured Claim (Classes 5 and 6) will receive Cash in exchange for such holder’s Claim. Holders of such Claims will recognize gain or loss equal to the difference between (1) the amount of such Cash received in exchange for such Holder’s Claim, and (2) the Holder’s adjusted tax basis in such Claim. The character of any recognized gain as capital gain or ordinary income will be determined by a number of factors, including the tax status of the Holder, the nature of the Claim in such Holder’s hands (including whether the Claim constitutes a capital asset), whether the Claim was purchased at a discount, whether and to what extent the holder has previously claimed a bad debt deduction with respect to its Claim, and whether any part of the Holder’s recovery is treated as being on account of accrued but unpaid interest. Accrued interest and market discount are discussed below.

(ii) *Accrued Interest*

To the extent that any amount received by a Holder of a surrendered allowed claim under the Plan is attributable to accrued but unpaid interest and such amount has not previously been included in the Holder’s gross income, such amount will be taxable to the Holder as ordinary interest income. Conversely, a Holder of a surrendered allowed claim may be able to recognize a deductible loss to the extent that any accrued interest on the debt instruments constituting such claim was previously included in the Holder’s gross income but was not paid in full by the Debtors.

The extent to which the consideration received by a Holder of a surrendered Allowed Claim will be attributable to accrued interest on the debts constituting the surrendered Allowed Claim is unclear. Certain legislative history indicates that an allocation of consideration as between principal and interest provided in a chapter 11 plan of reorganization is binding for federal income tax purposes, while certain Treasury Regulations treat payments as allocated first to any accrued but untaxed interest. Application of this rule to a final payment on a debt instrument being discharged at a discount in bankruptcy is unclear. Pursuant to the Plan, distributions in respect of Allowed Claims will be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration

exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest. However, the provisions of the Plan are not binding on the IRS nor the Court with respect to the appropriate tax treatment for creditors. Holders of Claims with accrued interest should consult with their tax advisors regarding the allocation of the consideration.

(iii) *Market Discount*

Under the “market discount” provisions of Sections 1276 through 1278 of the IRC, some or all of any gain realized by a Holder exchanging the debt instruments constituting its Allowed Claim may be treated as ordinary income (instead of capital gain), to the extent of the amount of “market discount” on the debt constituting the surrendered allowed claim.

In general, a debt instrument is considered to have been acquired with “market discount” if it is acquired other than on original issue and if its holder’s adjusted tax basis in the debt instrument is less than (a) the sum of all remaining payments to be made on the debt instrument, excluding “qualified stated interest” or, (b) in the case of a debt instrument issued with “original issue discount,” its adjusted issue price, by at least a *de minimis* amount (equal to 0.25% of the sum of all remaining payments to be made on the debt instrument, excluding qualified stated interest, multiplied by the number of remaining whole years to maturity).

Any gain recognized by a Holder on the taxable disposition of debts that it acquired with market discount will generally be treated as ordinary income to the extent of the market discount that accrued thereon while such debts were considered to be held by the Holder (unless the Holder elected to include market discount in income as it accrued). The market discount rules are complex, their application is uncertain, and Holders of Allowed Claims should consult their own tax advisors regarding their application.

(iv) *Withholding and Reporting*

The Debtors will withhold all amounts required by law to be withheld from payments of interest. The Debtors will comply with all applicable reporting requirements of the IRC. In general, information reporting requirements may apply to distributions or payments made to a Holder of a Claim. Additionally, backup withholding, currently at a rate of 28%, will generally apply to such payments if a Holder fails to provide an accurate taxpayer identification number or otherwise fails to comply with the applicable requirements of the backup withholding rules. Any amounts withheld under the backup withholding rules will be allowed as a credit against such Holder’s federal income tax liability and may entitle such Holder to a refund from the IRS, provided that the required information is provided to the IRS.

In addition, from an information reporting perspective, U.S. Treasury Regulations generally require disclosure by a taxpayer on its federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer’s claiming a loss in excess of specified thresholds. Holders are urged to consult their tax advisors regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations and require disclosure on the Holders’ tax returns.

**THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF CLAIMS AND INTERESTS SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR NON-U.S. TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.**

#### **XIV. VOTING INSTRUCTIONS**

##### **A. How to Vote**

Each Holder of a Claim in a voting Class should read this Disclosure Statement, together with the Plan and other exhibits hereto, in their entirety. After carefully reviewing the Plan and this Disclosure Statement and their respective exhibits, please complete the ballot, including indicating your vote thereon with respect to the Plan, and return it as provided below.

If you are a member of a voting Class and did not receive a ballot, if your ballot is damaged or lost, or if you have any questions concerning voting procedures, please call Matthew D. Lee, counsel for the Debtors, at (608) 257-5035, or email him at mdlee@foley.com.

**YOU SHOULD COMPLETE AND SIGN THE ENCLOSED BALLOT AND RETURN IT AS DESCRIBED BELOW. IN ORDER TO BE COUNTED, BALLOTS MUST BE DULY COMPLETED AND EXECUTED AND RECEIVED BY NO LATER THAN 4:00 P.M., PREVAILING CENTRAL TIME, ON THE BALLOT DATE DEADLINE OF [DATE], UNLESS SUCH DEADLINE IS EXTENDED BY COURT ORDER.**

All ballots should be returned and delivered by first class U.S. mail or delivered by messenger or overnight courier. Ballots sent by facsimile, telecopy, or e-mail will not be accepted. Ballots must be received on or before the ballot deadline by the Debtors' counsel as follows:

**Foley & Lardner LLP  
150 East Gilman Street  
Madison, WI 53703  
Attn: Matthew D. Lee, Esq.**

As the holder of an Allowed Claim in the voting Classes, your vote on the Plan is extremely important. In order for the Plan to be accepted and thereafter confirmed by the Court without resorting to the "cram-down" provisions of Section 1129(b) of the Bankruptcy Code as to other Classes of Allowed Claims, votes representing at least two-thirds in amount and more than one-half in number of Allowed Claims of each Impaired Class of Claims that are voting must be cast for the acceptance of the Plan. The Debtors are soliciting acceptances only from members of the voting Classes. You may be contacted with regard to your vote on the Plan.

**B. Confirmation Hearing**

Section 1128(a) of the Bankruptcy Code requires the Court, after appropriate notice, to hold a hearing on Confirmation of a Plan. The Court has ordered that the hearing on Confirmation of the Plan will begin at [TIME] (prevailing Central Time) on [DATE] before the Honorable Catherine J. Furay, United States Bankruptcy Judge, 120 N. Henry Street, Madison, WI 53703. The confirmation hearing may be adjourned from time to time by the Court without further notice except for an announcement of the adjourned date made at the confirmation hearing or any subsequent adjourned confirmation hearing.

The Plan will not constitute a valid and binding contract between the Debtors and their Creditors unless and until the Court has issued a Final Order confirming the Plan. The Court must hold a confirmation hearing before deciding whether to confirm the Plan.

Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation of a Plan. Any objection to Confirmation of the Plan must be in writing, must conform to the Federal Rules of Bankruptcy Procedure, must set forth the name of the objector, the nature and amount of Claims or Interests held or asserted by the objector against the Debtors, the basis for the objection, and the specific grounds therefore, and must be Filed with the Clerk of the Bankruptcy Court, 120 N. Henry Street, Madison, WI 53703, together with proof of service thereof, and served upon and received no later than 4:00 p.m., prevailing Central Time on [DATE], by counsel for the Debtors, Matthew D. Lee, Esq., Foley & Lardner LLP, 150 East Gilman Street, Madison, WI 53703. Notice of any objection must also be served on: (a) Attorney Thomas P. Walz, Office of the United States Trustee, 780 Regent Street, Room 304, Madison, Wisconsin 53715; and (b) Attorney Ann U. Smith, Michael Best & Friedrich LLP, counsel to Fisher, One S. Pinckney Street, Suite 700, Madison, Wisconsin 53703.

Unless an objection to Confirmation is timely served and filed, it may not be considered by the Court.

**XV. SUMMARY, RECOMMENDATION, AND CONCLUSION**

The Debtors submit that the Plan is feasible and in the best interests of all holders of Claims. In the event of a liquidation of the Debtors' assets under chapter 7 of the Bankruptcy Code, the Debtors submit that Holders of Claims in all Classes would receive considerably less than they will receive under the Plan. For these reasons, the Debtors recommend that the Plan be accepted.

Respectfully submitted, as of the first date set forth above,

Dated: March 8, 2017  
Madison, Wisconsin

FOLEY & LARDNER LLP

/s/ Matthew D. Lee

Matthew D. Lee (WI Bar No. 1061375)

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*Proposed Counsel for the Debtors  
and Debtors in Possession*

# EXHIBIT A

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

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In re:	Chapter 11
ENZYME FORMULATIONS, INC., <sup>1</sup>	Case No. 17-10315
Debtors.	Hon. Catherine J. Furay
	Jointly Administered

---

**JOINT CHAPTER 11 PLAN OF REORGANIZATION**

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Matthew D. Lee (WI Bar No. 1061375)  
Megan R. Stelljes (WI Bar No. 1092714)  
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608-258-4258 Facsimile  
mdlee@foley.com  
mstelljes@foley.com  
*Proposed Counsel for the Debtors  
and Debtors in Possession*

Dated: March 8, 2017

---

<sup>1</sup> The Debtors and the last four digits of their federal tax identification number or social security number are: Enzyme Formulations, Inc. (9388); Howard F. Loomis, Jr. (0308). The corporate headquarters for Enzyme Formulations, Inc. are located at 6421 Enterprise Lane, Madison, WI 53719. The usual mailing address of Howard F. Loomis, Jr. is 6421 Enterprise Lane, Madison, WI 53719.



## TABLE OF CONTENTS

INTRODUCTION .....	1
ARTICLE I DEFINED TERMS, RULES OF INTERPRETATION, AND COMPUTATION OF TIME.....	1
A. Defined Terms .....	1
B. Rules of Interpretation .....	8
C. Reference to the Debtors or Reorganized Debtors .....	8
D. Computation of Time.....	8
ARTICLE II CLASSES OF CLAIMS.....	8
A. Class 1 – Priority Claims .....	9
B. Class 2 – Secured Claim Against Loomis.....	9
C. Class 3 – Unsecured Claims Against EFI.....	9
D. Class 4 – Unsecured Claims Against Loomis.....	9
E. Class 5 – Fisher’s Unsecured Claims Against EFI.....	9
F. Class 6 – Fisher’s Unsecured Claims Against Loomis.....	9
G. Class 7 – Inter-debtor Claim by EFI against Loomis .....	9
H. Class 8 – Unsecured Inter-debtor Claims .....	9
I. Class 9 – Interests .....	9
ARTICLE III ADMINISTRATIVE CLAIMS, FEE CLAIMS, AND PRIORITY TAX CLAIMS .....	10
A. Administrative Claims .....	10
B. Fee Claims .....	10
C. Priority Tax Claims.....	11
ARTICLE IV TREATMENT OF CLAIMS AND INTERESTS .....	11
A. Summary of Classification, Claim Status, and Treatment.....	11
B. Treatment of Claims and Interests .....	12
1. Class 1 – Priority Claims .....	12
2. Class 2 – Secured Claims Against Loomis .....	13
3. Class 3 – Unsecured Claims Against EFI.....	13
4. Class 4 – Unsecured Claims Against Loomis.....	13
5. Class 5 – Fisher’s Unsecured Claims Against EFI.....	14
6. Class 6 – Fisher’s Unsecured Claims Against Loomis.....	14
7. Class 7 – EFI’s Secured Inter-debtor Claim Against Loomis.....	14
8. Class 8 –Unsecured Inter-debtor Claims .....	15
9. Class 9 – Interests in EFI .....	15
C. Debtors’ Reservation of Rights Regarding Unimpaired Claims.....	15
D. Cram Down.....	15
E. Subordinated Claims .....	15
ARTICLE V SETTLEMENT BETWEEN THE DEBTORS AND FISHER .....	16
A. Settlement .....	16
B. Mutual Releases .....	16

ARTICLE VI MEANS FOR IMPLEMENTATION OF THE PLAN.....	17
A. Restructuring Transactions .....	17
B. Plan Distributions.....	18
C. Corporate Existence of EFI.....	18
D. Vesting of Assets in the Reorganized Debtors .....	18
E. Corporate Action.....	19
F. Directors and Officers of Reorganized EFI .....	19
G. Effectuating Documents; Further Transactions .....	19
H. Exemption from Certain Taxes and Fees.....	19
I. Preservation of Causes of Action.....	20
J. Modifications, Amendments, Supplements, Restatements, or Other Agreements .....	21
K. Reservation of Rights.....	21
L. Contracts and Leases Entered Into After the Petition Date .....	21
ARTICLE VII TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	21
A. Assumption or Rejection.....	21
B. Rejection Claims .....	22
C. Cure of Defaults .....	22
D. Nonoccurrence of the Effective Date.....	22
ARTICLE VIII PROVISIONS GOVERNING DISTRIBUTIONS .....	23
A. Timing and Calculation of Amounts to be Distributed.....	23
B. Delivery of Distributions .....	23
C. Undeliverable Distributions .....	23
D. Securities Registration Exemption.....	24
E. Compliance with Tax Requirements.....	24
F. Setoffs and Recoupment .....	24
ARTICLE IX PROCEDURES REGARDING DISPUTED CLAIMS .....	24
A. Allowance of Claims or Interests.....	24
B. Authority to Administer, Object to, and Resolve Claims .....	25
C. Estimation of Claims.....	25
D. Claims Objections .....	25
E. Post-Effective Date Amendments to Claims .....	25
F. No Distributions Pending Allowance .....	25
ARTICLE X CONDITIONS PRECEDENT TO THE EFFECTIVENESS OF THE PLAN .....	26
A. Conditions Precedent to the Effective Date .....	26
B. Waiver of Conditions .....	26
C. Effect of Nonoccurrence of Conditions to the Effective Date .....	26
ARTICLE XI EFFECT OF CONFIRMATION OF THE PLAN .....	27
A. Compromise and Settlement .....	27
B. Discharge of Claims.....	27
C. Injunction .....	27

D. Subordination Rights ..... 29

E. Exculpation ..... 29

ARTICLE XII RETENTION OF JURISDICTION ..... 29

ARTICLE XIII MISCELLANEOUS PROVISIONS ..... 31

A. Immediate Effect of the Plan ..... 31

B. Additional Plan Documents ..... 31

C. Statutory Fees..... 31

D. Indemnification Provisions ..... 31

E. Reservation of Rights Pending the Effective Date ..... 32

F. Successors and Assigns..... 32

G. Service of Documents, Notices, and Pleadings ..... 32

H. Injunctions and Stays ..... 32

I. Entire Agreement ..... 33

J. Severability of Plan Provisions ..... 33

## **INTRODUCTION**

Debtors and debtors-in-possession Enzyme Formulations, Inc. (“EFI”) and Howard F. Loomis, Jr. (“Loomis,” and collectively with EFI, the “Debtors”) jointly propose this plan of reorganization (together with the documents comprising the Plan Supplement, the “Plan”) for the resolution of outstanding claims against, and interests in, the Debtors. Holders of Claims and Interests (as those terms are defined below) may refer to the Disclosure Statement (as defined below) for a discussion of the Debtors’ history, respective estates, assets, results of operations, historical financial information, and projections of future operations, as well as a summary and description of the Plan. The Debtors are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

ALL HOLDERS OF CLAIMS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING.

## **ARTICLE I** **DEFINED TERMS, RULES OF INTERPRETATION, AND COMPUTATION OF TIME**

### **A. Defined Terms**

As used in this Plan, capitalized terms shall have the meanings set forth below. Any term that is not otherwise defined herein, but that is used in title 11 of the United States Code, as amended from time to time and as in effect during the above-captioned chapter 11 cases (the “Bankruptcy Code”) or the Federal Rules of Bankruptcy Procedure, as amended from time to time and as in effect during the above-captioned chapter 11 cases (the “Bankruptcy Rules”), will have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

“**Administrative Claim**” shall mean a Claim for costs and expenses of administration of the Debtors’ Estates under sections 503(b) or 507(a)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estates and operating the businesses of the Debtors, (b) Allowed Fee Claims; and (c) all Allowed requests for compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Cases pursuant to sections 503(b)(3), (4), and (5) of the Bankruptcy Code.

“**Administrative Claims Bar Date**” shall mean the date that is 15 days after the Effective Date.

“**Affiliate**” shall have the meaning set forth in section 101(2) of the Bankruptcy Code.

“**Allowed**” shall mean, with respect to any Claim or Interest, except as otherwise provided herein: (a) a Claim or Interest that is evidenced by a Proof of Claim or Proof of Interest, as applicable, Filed by the applicable Claims Bar Date (or for which Claim or Interest under the Plan, the Bankruptcy Code, or a Final Order of the Court a Proof of Claim is or shall not be required to be Filed), (b) a Claim or Interest that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim or Proof of

Interest, as applicable, has been timely Filed, or (c) a Claim or Interest Allowed pursuant to the Plan or a Final Order of the Court; provided, however, that with respect to a Claim or Interest described in clauses (a) and (b) above, such Claim or Interest shall be considered Allowed only if no objection to its allowance has been made before the Claims Objection Deadline, or within such time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Court.

**“Branson Deed of Trust”** shall mean that certain Trust Deed dated July 25, 2013, executed and delivered by Loomis to EFI, securing Loomis’ payment of the purchase price for the Branson Property.

**“Branson Property”** shall mean that certain real property that Loomis acquired from EFI pursuant to the Agreement for Sale of Property dated July 25, 2013, which real property is described in the Branson Deed of Trust, and which bears the street address of 1415 Riverside Drive, Building 1, Unit 15, Branson, Missouri.

**“Cash”** shall mean the legal tender of the United States of America, or its equivalent.

**“Causes of Action”** shall mean any action, claim, cause of action, controversy, demand, right, action, lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, license, and franchise of any kind or character whatsoever, whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law, or in equity or pursuant to any other theory of law. For the avoidance of doubt, “Cause of Action” includes: (a) any right of setoff, counterclaim, or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity, (b) the right to object to Claims or Interests, (c) any Claim pursuant to section 362 or chapter 5 of the Bankruptcy Code, (d) any claim or defense including fraud, mistake, duress, and any other defenses set forth in section 558 of the Bankruptcy Code, (e) any state or foreign law fraudulent transfer or similar claim; (f) any cause of action listed on the list of retained causes of action set forth in the Plan Supplement; and (g) any cause of action described on the Debtors’ Schedules or Statements of Financial Affairs.

**“Chapter 11 Cases”** shall mean the cases pending for the Debtors under chapter 11 of the Bankruptcy Code in the Court.

**“Claim”** shall have the meaning set forth in section 101(5) of the Bankruptcy Code.

**“Claims Bar Date”** shall mean: (a) August 2, 2017, at 4:00 p.m., Central Standard Time, with respect to Governmental Units holding Claims that arose prior to the Petition Date, or such other date established by the Court by which Proofs of Claims must have been Filed, and (b) April 10, 2017, at 4:00 p.m., Central Standard Time, with respect to all other Claims arising before the Petition Date, including without limitation Claims arising under section 503(b)(9) of the Bankruptcy Code.

**“Claims Objection Deadline”** shall mean the deadline for objecting to a Claim, which shall be on the date that is the later of: (a) 180 days after the Effective Date, and (b) such other

period of limitation as may be specifically fixed by the Debtors or the Reorganized Debtors, as applicable, or by an order of the Court for objecting to such Claims.

**“Claims Register”** shall mean the official register of Claims maintained by the Debtors or Reorganized Debtors, as applicable.

**“Class”** shall mean a category of holders of Claims or Interests as set forth in Article II of the Plan, hereof pursuant to section 1122(a) of the Bankruptcy Code.

**“Confirmation”** shall mean the entry of the Confirmation Order on the docket of the Chapter 11 Cases.

**“Confirmation Order”** shall mean a Final Order of the Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

**“Consummation”** shall mean the occurrence of the Effective Date.

**“Court”** shall mean the United States Bankruptcy Court for the Western District of Wisconsin having jurisdiction over the Chapter 11 Cases, and, to the extent of the withdrawal of any reference under 28 U.S.C. § 157 or the General Order of the District Court pursuant to 28 U.S.C. § 151, the United States District Court for the Western District of Wisconsin.

**“Creditor”** shall have the meaning set forth in section 101(10) of the Bankruptcy Code.

**“Cure Claim”** shall mean a monetary Claim based upon a Debtor’s default(s) under any Executory Contract or Unexpired Lease at the time such contract or lease is assumed by that Debtor pursuant to section 365 of the Bankruptcy Code.

**“Cure Notice”** shall mean a notice of a proposed amount to be paid on account of a Cure Claim in connection with an Executory Contract or Unexpired Lease to be assumed under the Plan pursuant to section 365 of the Bankruptcy Code, which notice shall include: (a) procedures for objecting to proposed assumptions of Executory Contracts and Unexpired Leases, (b) Cure Claims to be paid in connection therewith, and (c) procedures for resolution by the Court of any related disputes.

**“Debtor” or “Debtors”** shall have the meaning set forth in the Introduction.

**“Disallowed”** shall mean, with respect to any Claim or Interest, a Claim or Interest or any portion thereof that: (a) has been disallowed by a Final Order, (b) is Scheduled as having a value of zero dollars or as contingent, disputed, or unliquidated and as to which no Proof of Claim or Proof of Interest or request for payment of an Administrative Claim has been timely filed or deemed timely filed pursuant to either the Bankruptcy Code or any Final Order of the Court or otherwise deemed timely filed under applicable law or this Plan, (c) is not Scheduled and as to which no Proof of Claim or Proof of Interest or request for payment of an Administrative Claim has been timely filed or deemed timely filed with the Court pursuant to either the Bankruptcy Code or any Final Order of the Court or otherwise deemed timely filed under applicable law or this Plan, (d) has been withdrawn by agreement of the applicable Debtor and the holder thereof, or (e) has been withdrawn by the holder thereof.

**“Disclosure Statement”** shall mean the *Disclosure Statement for the Debtors’ Joint Chapter 11 Plan of Reorganization* (as amended, supplemented, or modified from time to time) filed in the Chapter 11 Cases, including all exhibits and schedules thereto and references therein that relate to the Plan, and that is prepared and distributed in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law.

**“Disputed”** shall mean a Claim or Interest that is not yet Allowed.

**“Effective Date”** shall mean, with respect to the Plan, the date that is a Business Day selected by the Debtors and Fisher on which: (a) no stay of the Confirmation Order is in effect, (b) all conditions precedent to the occurrence of the Effective Date specified in Article X of the Plan have been satisfied or waived (in accordance with Article X.B of the Plan), and (c) the Plan is declared effective. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable after the Effective Date.

**“EFI”** shall mean Enzyme Formulations, Inc., either as debtor-in-possession or as reorganized as the context requires, and all of its successors, assigns, owners, employees, agents, Interest Holders, officers, principals, directors, attorneys, accountants, and other representatives.

**“EFI Notes”** shall mean (i) that certain Revolving Credit Note dated December 31, 1994, executed and delivered by EFI to Fisher in the original principal amount of \$100,000.00, and (ii) that certain Promissory Note dated December 31, 1994, executed and delivered by Landlord to Fisher in the original principal amount of \$319,635.21, and which debt was assumed by EFI on the same date.

**“Entity”** shall have the meaning set forth in section 101(15) of the Bankruptcy Code.

**“Estate”** shall mean the estate created for a Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

**“Exculpated Claim”** means any Claim related to any act or omission derived from, based upon, related to, or arising from the Debtors’ in or out-of-court restructuring efforts, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement, the Plan (including any term sheets related thereto), or any contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement, the Plan, the filing of the Chapter 11 Cases, the pursuit of Consummation, or the administration and implementation of the Chapter 11 Cases and the Plan, including the execution, delivery, and performance of the Exit Facility Documents, and the distribution of property under the Plan or any other agreement; provided, however, the foregoing shall not be deemed to release, affect, or limit any of the rights and obligations of the Exculpated Parties from, or exculpate the Exculpated Parties with respect to, any of the Exculpated Parties’ obligations or covenants arising under the Confirmation Order, the Plan, the Plan Supplement (if any), the Exit Facility Documents, or any contracts, instruments, releases, and other agreements or documents delivered in connection with, or contemplated by, the foregoing.

**“Exculpated Parties”** means each of the following in their capacity as such: (a) the Exit Facility Lender; (b) the Debtors and the Reorganized Debtors; (c) Fisher; and (d) with respect to each of the Entities in clauses (a) through (c), their current equity holders, including

shareholders, partnership interest holders, and limited liability company unit holders, Affiliates, partners, subsidiaries, members, officers, directors, managers serving on a board of managers, principals, employees, agents, advisors, attorneys, accountants, consultants, representatives, and other professionals, together with their respective predecessors, successors, and assigns (in each case, solely in their capacity as such).

**“Executory Contract”** shall mean a contract to which a Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

**“Existing Lease”** shall mean that certain Commercial net Lease between EFI and Landlord dated December 31, 1994.

**“Exit Facility”** shall mean the new senior secured lending facility that EFI will enter into on the Effective Date, the form of which shall be included in the Plan Supplement.

**“Exit Facility Documents”** shall mean the documents evidencing the Exit Facility.

**“Exit Facility Lender”** shall mean the financial institution financing the Exit Facility.

**“Fee Claim”** shall mean a Claim under sections 328, 330, 331, 503, or 1103 of the Bankruptcy Code for compensation of a Professional or other Entity for services provided to the Debtors, or expenses incurred in the course of providing services to the Debtors, during the Chapter 11 Cases.

**“File,” “Filed,” or “Filing”** shall mean file, filed, or filing in the Chapter 11 Cases with the Court.

**“Final Order”** shall mean an order or judgment of the Court (or any other court of competent jurisdiction) entered by the Clerk of the Court (or any other court) on the docket in the Chapter 11 Cases (or the docket of such other court), which has not been reversed, stayed, modified, amended, or vacated, and as to which: (a) the time to appeal, petition for certiorari, or move for a new trial, stay, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or motion for new trial, stay, reargument, or rehearing shall be pending, or (b) if an appeal, writ of certiorari, new trial, stay, reargument, or rehearing thereof has been sought, such order or judgment of the Court (or other court of competent jurisdiction) shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, stay, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari, or move for a new trial, stay, reargument, or rehearing shall have expired, as a result of which such order shall have become final in accordance with rule 8002 of the Bankruptcy Rules; provided, however, that the possibility that a motion under rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order, shall not cause an order not to be a Final Order.

**“Fisher”** shall mean Jerome M. Fisher and all of his successors, heirs, assigns, beneficiaries, and Affiliates, and any officers, directors, employees, representatives, retained professionals, agents, trustees, predecessors, successors, heirs, assigns, beneficiaries, insurers, principals, managers, owners, or joint venturers of any of the foregoing.



**“Governmental Unit”** shall have the meaning set forth in section 101(27) of the Bankruptcy Code.

**“Holder”** shall mean an Entity with ownership or legal control of a Claim or Interest.

**“Impaired”** shall mean, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is not Unimpaired.

**“Indemnification Provisions”** shall mean EFI’s indemnification provisions currently in place (whether in the by-laws, certificates of incorporation, board resolutions, indemnification agreements, insurance policies, or employment or other contracts) for the current owners, directors, officers, and employees of EFI.

**“Inter-debtor Claim”** shall mean any Claim of one Debtor against another Debtor.

**“Interest”** shall mean the common stock, limited liability company interests, and any other equity, ownership, or profits interests of EFI and options, warrants, rights, or other securities or agreements to acquire the common stock, limited liability company interests, or other equity, ownership, or profits interests of EFI (whether or not arising under or in connection with any employment agreement).

**“Landlord”** shall mean Enzyme Formulations Liquidation Company, L.L.C., and all of its successors, assigns, owners, employees, agents, Interest Holders, officers, principals, directors, attorneys, accountants, and other representatives.

**“Loomis”** shall mean Howard F. Loomis, Jr., and all of his successors, heirs, assigns, beneficiaries, and Affiliates, and any officers, directors, employees, representatives, retained professionals, agents, trustees, predecessors, successors, heirs, assigns, beneficiaries, insurers, principals, managers, owners, or joint venturers of any of the foregoing.

**“Loomis Note”** shall mean that certain Mortgage Note dated December 31, 1994, executed and delivered by Loomis to Fisher in the original principal amount of \$208,104.29.

**“New Lease”** shall mean that certain lease to be executed by EFI and Landlord to take effect on the Effective Date.

**“Petition Date”** shall mean February 3, 2017, the date on which the Debtors’ Chapter 11 Cases commenced.

**“Plan”** shall have the meaning set forth in the Introduction.

**“Plan Supplement”** shall mean the compilation of documents and forms of documents, schedules, and exhibits to the Plan (as amended, supplemented, or modified from time to time in accordance with the terms hereof and the Bankruptcy Code and the Bankruptcy Rules), to be Filed no later than five (5) days before the Voting Deadline, and additional documents or amendments to previously Filed documents, Filed before the Effective Date as amendments to the Plan Supplement, including the following: (a) the Exit Facility Documents, (b) Schedule of Assumed Executory Contracts and Unexpired Leases, and (c) the New Lease.

**“Priority Claim”** shall mean all claims entitled to priority under section 507 of the Bankruptcy Code, other than Priority Tax Claims.

**“Priority Tax Claim”** shall mean any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

**“Professional”** shall mean any Entity employed by a Debtor or an Estate in the Chapter 11 Cases under sections 327 or 1103 of the Bankruptcy Code or any Entity seeking compensation or reimbursement of expenses under section 503(b)(4) of the Bankruptcy Code.

**“Proof of Claim”** shall mean a Claim, along with any supporting documentation, Filed against a Debtor in the Chapter 11 Cases.

**“Reorganized Debtors” or “Reorganized Debtors”** shall mean a Debtor or both Debtors, as applicable, on and after the Effective Date.

**“Schedules”** shall mean, to the extent required, the respective schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs Filed by the Debtors pursuant to section 521 of the Bankruptcy Code and in substantial accordance with the Official Bankruptcy Forms, as the same may have been amended, modified, or supplemented from time to time.

**“Schedule of Rejected Executory Contracts and Unexpired Leases”** shall mean the schedule (including any amendments or modifications thereto) of certain Executory Contracts and Unexpired Leases to be rejected by the Debtors pursuant to the Plan, as set forth in the Plan Supplement, as amended from time to time before the Confirmation Date.

**“Secured”** means, when referring to a Claim, a Claim: (a) secured by a lien on property in which an Estate has an interest, which lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the Creditor’s interest in an Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or (b) otherwise Allowed by the Plan as a Secured Claim.

**“Unexpired Lease”** shall mean a lease of nonresidential real property to which a Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

**“Unimpaired”** shall mean, with respect to a Class of Claims or Interests, a Claim or an Interest that is unimpaired within the meaning of section 1124 of the Bankruptcy Code, including without limitation through payment in full in Cash.

**“Unsecured”** shall mean a Claim that is not an Administrative Claim, Fee Claim, Priority Claim, Priority Tax Claim, or Secured Claim.

**“Voting Deadline”** shall mean the date that is seven (7) days before the hearing on Confirmation of the Plan.

**B. Rules of Interpretation**

For purposes of this Plan: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (3) any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed, or to be Filed shall mean that document, schedule, or exhibit, as it may thereafter be amended, modified, or supplemented; (4) any reference to an Entity as a holder of a Claim or Interest includes that Entity's successors and assigns; (5) unless otherwise specified, all references herein to "Articles" are references to Articles hereof or hereto; (6) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (7) unless otherwise specified, the words "herein," "hereof," and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan; (8) subject to the provisions of any contract, certificate of incorporation, bylaw, instrument, release, or other agreement or document entered into in connection with the Plan, the rights and obligations arising pursuant to the Plan shall be governed by, and construed and enforced in accordance with applicable federal law, including the Bankruptcy Code and Bankruptcy Rules; (9) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (10) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (11) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases, unless otherwise stated; (12) references to "Proofs of Claim" and "Holders of Claim" shall include "Proofs of Interest" and "Holders of Interests" as applicable; and (13) any immaterial effectuating provisions may be interpreted by the Reorganized Debtors in such a manner that is consistent with the overall purpose and intent of the Plan without further Court order.

**C. Reference to the Debtors or Reorganized Debtors**

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or the Reorganized Debtors shall mean the Debtors and the Reorganized Debtors, as applicable, to the extent the context requires.

**D. Computation of Time**

Unless specifically stated otherwise, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed in the Plan.

**ARTICLE II**  
**CLASSES OF CLAIMS**

All Claims and Interests, except Administrative Claims and Priority Tax Claims, are placed in the Classes listed in this Article. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims, as described in Article III of

this Plan, have not been classified and thus are excluded from the following Classes. A Claim is classified in a particular Class only to the extent that the Claim qualifies within the description of that Class and is classified in other Classes to the extent that any remainder of the Claim qualifies within the description of such other Classes.

A. Class 1 – Priority Claims

Class 1 consists of all Priority Claims against either Debtor.

B. Class 2 – Secured Claim Against Loomis

Class 2 consists of Ford Motor Credit Company's Secured Claim against Loomis.

C. Class 3 – Unsecured Claims Against EFI

Class 3 consists of all Unsecured Claims by Creditors of EFI other than (i) Fisher's Claims against EFI and (ii) Loomis' Inter-debtor Claim against EFI for any unpaid salary or royalties.

D. Class 4 – Unsecured Claims Against Loomis

Class 4 consists of all Unsecured Claims by Creditors of Loomis other than Fisher's Claims against Loomis.

E. Class 5 – Fisher's Unsecured Claims Against EFI

Class 5 consists of Fisher's Unsecured Claims against EFI.

F. Class 6 – Fisher's Unsecured Claims Against Loomis

Class 6 consists of Fisher's Unsecured Claims against Loomis.

G. Class 7 – Inter-debtor Claim by EFI against Loomis

Class 7 consists of EFI's claim against Loomis relating to the Branson Mortgage.

H. Class 8 – Unsecured Inter-debtor Claims

Class 8 consists of Loomis' unsecured claim against EFI for unpaid salary or royalties, if any, and EFI's unsecured claim against Loomis relating to the prepetition sale of an automobile from EFI to Loomis.

I. Class 9 – Interests

Class 9 consists of all Interests in EFI. Loomis is the sole Holder of an Interest in EFI.

**ARTICLE III**  
**ADMINISTRATIVE CLAIMS, FEE CLAIMS, AND PRIORITY TAX CLAIMS**

**A. Administrative Claims**

Except with respect to Administrative Claims that are Fee Claims, and except to the extent that an Administrative Claim has already been paid during the Chapter 11 Case or a Holder of an Allowed Administrative Claim and a Debtor agree to less favorable treatment with respect to such Holder's Administrative Claim, each holder of an Allowed Administrative Claim shall receive, in full satisfaction, settlement, release and discharge of, and in exchange for, its Administrative Claim, Cash equal to the unpaid portion of its Allowed Administrative Claim, to be paid on the latest of: (a) the Effective Date, or as soon as reasonably practicable thereafter, if such Administrative Claim is Allowed as of the Effective Date; (b) the date such Administrative Claim is Allowed, or as soon as reasonably practicable thereafter; (c) the date such Allowed Administrative Claim becomes due and payable, or as soon as reasonably practicable thereafter; *provided, however*, that Allowed Administrative Claims that arise in the ordinary course of the Debtors' businesses or Estates shall be paid in the ordinary course of business, in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions; or (d) such other date as may be agreed upon between the Holder of such Allowed Administrative Claim and the applicable Debtor or the Reorganized Debtor, as the case may be. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be Filed with respect to an Administrative Claim previously Allowed by Final Order.

Except as otherwise provided in this Article III or any applicable Court order, and except with respect to Administrative Claims that are Fee Claims, requests for payment of Allowed Administrative Claims must be Filed and served on the Reorganized Debtors pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order no later than the Administrative Claims Bar Date. Holders of Allowed Administrative Claims by such date that are required to, but do not, File and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtor or its property, and such Administrative Claims shall be deemed discharged as of the Effective Date. Objections to such requests, if any, must be Filed and served on the applicable Reorganized Debtor and the requesting party no later than 30 days after the Administrative Claims Bar Date.

**B. Fee Claims**

Professionals asserting a Fee Claim for services rendered before or on the Effective Date shall File with the Court an application for final allowance of such Fee Claim no later than 30 days after the Effective Date. Objections to any Fee Claim must be Filed and served on the Debtors, the United States Trustee's Office, and the requesting party no later than 60 days after the Effective Date. To the extent necessary, the Confirmation Order will amend and supersede any previously entered order of the Court regarding the payment of Fee Claims.

Except as otherwise specifically provided in the Plan, for any services performed after the Effective Date, the Reorganized Debtors shall, in the ordinary course of business and without

any further notice to or action, order, or approval of the Court, pay the reasonable legal, professional, or other fees and expenses related to implementation and Consummation of the Plan incurred by the Reorganized Debtors.

Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtors may employ and pay any Professional in the ordinary course of business without any further notice to any party or action, order or approval of the Court.

C. Priority Tax Claims

The legal and equitable rights of the Holders of Priority Tax Claims are Unimpaired under the Plan. Unless the Holder of such Claim and the Debtor agree to a different treatment, holders of Priority Tax Claims shall be paid, to the extent such Claims are Allowed, in the ordinary course of the Reorganized Debtors' businesses, property, or Estates, consistent with their past practice; *provided, however*, that in the event the balance of any such Claim becomes due during the pendency of these Chapter 11 Cases and remains unpaid as of the Effective Date, the Holder of such Claim shall be paid in full in Cash on the Effective Date or as soon thereafter as is practicable. In the event an Allowed Priority Tax Claim also is Secured, such Claim shall, to the extent it is Allowed, be treated as an Other Secured Claim if such Claim is not otherwise paid in full.

**ARTICLE IV**  
**TREATMENT OF CLAIMS AND INTERESTS**

A. Summary of Classification, Claim Status, and Treatment

The categories of Claims and Interests are classified for all purposes, including voting, confirmation, and distribution, pursuant to the Plan as follows:

[table begins on the next page]

<b>Class</b>	<b>Claim/Interest</b>	<b>Impaired/Unimpaired</b>	<b>Voting Rights</b>
1	Priority Claims	Unimpaired	Deemed to Accept
2	Secured Claims Against Loomis	Unimpaired	Deemed to Accept
3	Unsecured Claims Against EFI Other Than Those In Class 5	Unimpaired	Deemed to Accept
4	Unsecured Claims Against Loomis Other Than Those In Class 6	Unimpaired	Deemed to Accept
5	Fisher's Unsecured Claims Against EFI	Impaired	Entitled to Vote
6	Fisher's Unsecured Claims Against Loomis	Impaired	Entitled to Vote
7	EFI's Inter-debtor Claim Against Loomis	Unimpaired	Deemed to Accept
8	Unsecured Inter-debtor Claims	Unimpaired	Deemed to Accept
9	Interests in EFI	Unimpaired	Deemed to Accept

**B. Treatment of Claims and Interests**

**1. Class 1 – Priority Claims**

- a. **Treatment:** Except to the extent that a Holder of an Allowed Priority Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Claim, each such Holder shall be paid, to the extent such claim has not already been paid during the Chapter 11 Cases, in full in Cash in the ordinary course of business by the Debtors or the Reorganized Debtors, as applicable, on or as soon as reasonably practicable after (i) the Effective Date, (ii) the date on which such Priority Claim becomes Allowed, or (iii) such other date as may be ordered by the Court.
- b. **Voting:** Class 1 is Unimpaired under the Plan. Holders of Claims in Class 1 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 1 Priority Claims are not entitled to vote to accept or reject the Plan.

2. Class 2 – Secured Claims Against Loomis

- a. Treatment: On the Effective Date, except to the extent that a Holder of a Secured Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Secured Claim, each Holder of an Allowed Secured Claim shall receive reinstatement pursuant to Section 1124 of the Bankruptcy Code.
- b. Voting: Class 2 is Unimpaired under the Plan. Holders of Claims in Class 2 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 2 Secured Claims are not entitled to vote to accept or reject the Plan.

3. Class 3 – Unsecured Claims Against EFI

- a. Treatment: On the Effective Date or as soon as reasonably practicable thereafter, except to the extent that a Holder of an Allowed Unsecured Claim against EFI agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Unsecured Claim against EFI, each Holder of an Allowed Unsecured Claim against EFI – other than Fisher, whose claims against EFI are included in Class 5 – shall receive payment from EFI in full in Cash on account of such Claim.
- b. Voting: Class 3 is Unimpaired under the Plan. Holders of Claims in Class 3 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Class 3 Unsecured Claims are not entitled to vote to accept or reject the Plan.

4. Class 4 – Unsecured Claims Against Loomis

- a. Treatment: On the Effective Date or as soon as reasonably practicable thereafter, except to the extent that a Holder of an Allowed Unsecured Claim against Loomis agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Unsecured Claim against Loomis, each Holder of an Allowed Unsecured Claim against Loomis – other than Fisher, whose claims against Loomis are included in Class 6 – shall receive payment from Loomis in full in Cash on account of such Claim.
- b. Voting: Class 4 is Unimpaired under the Plan. Holders of Claims in Class 4 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore,



holders of Class 4 Unsecured Claims are not entitled to vote to accept or reject the Plan.

5. Class 5 – Fisher’s Unsecured Claims Against EFI

- a. Treatment: On the Effective Date or as soon as reasonably practicable thereafter, except to the extent that Fisher agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for Fisher’s Unsecured Claims against EFI, Fisher shall receive \$400,000 on account of his Allowed Unsecured Claims against EFI; provided, however, that this payment must be made no later than 60 days following the Effective Date.
- b. Voting: Class 5 is Impaired under the Plan. Holders of Class 5 Claims are entitled to vote to accept or reject the Plan.

6. Class 6 – Fisher’s Unsecured Claims Against Loomis

- a. Treatment: On the Effective Date or as soon as reasonably practicable thereafter, except to the extent that Fisher agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for Fisher’s Unsecured Claims against Loomis, Fisher shall receive \$100,000 in one lump-sum Cash payment on account of his Allowed Unsecured Claims against Loomis; provided, however, that this payment must be made no later than 60 days following the Effective Date.
- b. Voting: Class 6 is Impaired under the Plan. Holders of Class 6 Claims are entitled to vote to accept or reject the Plan.

7. Class 7 – EFI’s Secured Inter-debtor Claim Against Loomis

- a. Treatment: On the Effective Date, except to the extent that EFI agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for EFI’s Secured Inter-debtor Claim against Loomis, EFI shall receive reinstatement pursuant to Section 1124 of the Bankruptcy Code.
- b. Voting: Class 7 is Unimpaired under the Plan. Holders of Claims in Class 7 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 7 Claims are not entitled to vote to accept or reject the Plan.

8. Class 8 –Unsecured Inter-debtor Claims

- a. Treatment: On the Effective Date, except to the extent that a Holder of an Unsecured Inter-debtor Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Unsecured Inter-debtor Claim, each Holder of an Allowed Unsecured Inter-debtor Claim shall receive payment in full in Cash on account of such claim.
- b. Voting: Class 8 is Unimpaired under the Plan. Holders of Claims in Class 8 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 8 Claims are not entitled to vote to accept or reject the Plan.

9. Class 9 – Interests in EFI

- a. Treatment: All Holders of Interests in EFI shall retain their respective Interests in EFI through and after the Effective Date.
- b. Voting: Class 9 is Unimpaired under the Plan. Holders of Class 9 Interests in EFI are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 9 Interests in EFI are not entitled to vote to accept or reject the Plan.

C. Debtors' Reservation of Rights Regarding Unimpaired Claims

The Plan shall not affect the Debtors' rights with respect to any Unimpaired Claims, including all rights to assert legal and equitable defenses to, or setoffs or recoupment against, any Unimpaired Claim.

D. Cram Down

The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any Classes of Claims and Interests that vote not to accept the Plan. The Debtor reserves the right to modify the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

E. Subordinated Claims

Except as otherwise provided in the Plan, the allowance, classification, and treatment of all Allowed Claims and Allowed Interests under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise.

**ARTICLE V**  
**SETTLEMENT BETWEEN THE DEBTORS AND FISHER**

**A. Settlement**

This Plan shall constitute a comprehensive settlement of all matters between the Debtors and Fisher pursuant to § 1123(b)(3)(A) of the Bankruptcy Code (the “Fisher Settlement”). The terms of the Fisher Settlement are as follows:

1. In full and complete satisfaction of Fisher’s Unsecured Claims against EFI arising out of the EFI Notes, EFI shall pay to Fisher the amount of \$400,000 in one lump sum on or after the Effective Date, but in no event later than 60 days following the Effective Date.
2. In full and complete satisfaction of Fisher’s Unsecured Claims against Loomis arising out of the Loomis Notes and Loomis’ guaranty of the EFI Notes, Loomis shall pay to Fisher the amount of \$100,000 in one lump sum on or after the Effective Date, but in no event later than 60 days following the Effective Date.
3. Within five (5) calendar days of Fisher’s receipt of the amounts listed in Article V.A.1 and Article V.A.2 of the Plan, Fisher shall cause to be terminated and canceled that certain Collateral Stock Pledge dated December 31, 1994, executed by Loomis and issued to Fisher and Landlord (the “Stock Pledge”), and the Debtors or Reorganized Debtors, as applicable, Fisher, and Enzyme Formulations Liquidation Company, L.L.C., or their respective successors or assigns, shall execute such documents as are necessary to terminate and cancel the Stock Pledge.
4. On the Effective Date, EFI and Landlord shall execute the New Lease, which shall amend and supersede the Existing Lease in all respects, and which shall run for a 12-month term commencing on the Effective Date, and under which EFI shall pay Landlord rent of \$15,000 per month.
5. Other than the Plan and the New Lease, all agreements between Fisher or any of his Affiliates, on the one hand, and either EFI, Loomis, or any Affiliate of either of them, on the other hand, shall be deemed terminated and cancelled as of the Effective Date.

**B. Mutual Releases**

1. Upon Fisher’s receipt of the amounts listed in Articles V.A.1 and V.A.2 of the Plan, Fisher shall be deemed to hereby release and forever discharge the Debtors and Reorganized Debtors and their respective officers, directors, employees, representatives, retained professionals, agents, trustees, predecessors, successors, heirs, assigns, beneficiaries, insurers, principals, managers, owners, joint venturers, or Affiliates from any and all liabilities, damages, liens, obligations, indemnities, promises, losses,

fees, costs or expenses, causes of action, suits, contributions, debts, sums of money, accounts, claims and demands whatsoever, liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising in law, equity or otherwise, that are based in whole or in part on any act, omission, transaction, or other occurrence taking place on or before the Effective Date, including, but not limited to, any claims arising under the Bankruptcy Code; provided, however, that this shall not release or be deemed to release the Debtors, Reorganized Debtors, or any of their respective Affiliates from any obligation under the New Lease.

2. Upon Fisher's receipt of the amounts listed in Articles V.A.1 and V.A.2 of the Plan, the Debtors and Reorganized Debtors shall be deemed to hereby release and forever discharge Fisher and any entity controlled by him and their respective officers, directors, employees, representatives, retained professionals, agents, trustees, predecessors, successors, heirs, assigns, beneficiaries, insurers, principals, managers, owners, joint venturers, or Affiliates from any and all liabilities, damages, liens, obligations, indemnities, promises, losses, fees, costs or expenses, causes of action, suits, contributions, debts, sums of money, accounts, claims and demands whatsoever, liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising in law, equity or otherwise, that are based in whole or in part on any act, omission, transaction, or other occurrence taking place on or before the Effective Date, including, but not limited to, any claims arising under the Bankruptcy Code; provided, however, that this shall not release or be deemed to release Fisher, Landlord, or any of their respective Affiliates from any obligation under the New Lease.

## **ARTICLE VI**

### **MEANS FOR IMPLEMENTATION OF THE PLAN**

#### **A. Restructuring Transactions**

On the Effective Date, or as soon as reasonably practicable thereafter, the Reorganized Debtors may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including: (i) the execution and delivery of the Exit Facility Documents and other appropriate agreements or other documents containing terms that are consistent with the Plan, that satisfy the requirements of applicable law, and containing any other terms to which the applicable Entities may agree; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the Plan; (iii) the filing of appropriate corporate documents under applicable state law; and (iv) all other actions that the Reorganized Debtors determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law.

B. Plan Distributions

The Reorganized Debtors shall fund distributions under the Plan as follows:

1. Cash On Hand. Except to the extent otherwise set forth herein, all Cash consideration necessary for the Reorganized Debtors to make payments or distributions to Classes 1, 3, 4, 6, and 8 pursuant to the Plan shall be obtained from the Debtors' other Cash on hand, including Cash derived from business operations.
2. EFI Exit Facility. On the Effective Date, EFI shall enter into the Exit Facility. Confirmation shall be deemed approval of the Exit Facility, the transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred by EFI in connection therewith. EFI is authorized to execute and deliver those documents necessary or appropriate to obtain the Exit Facility, including the Exit Facility Documents, without further notice to or order of the Court, act or action under applicable law, regulation, order, or rule or vote, consent, authorization, or approval of any Person, subject to such modifications as EFI and the Exit Facility Lender may deem to be necessary to consummate the Exit Facility. Proceeds of the Exit Facility shall be used to satisfy Fisher's Class 5 Unsecured Claims against EFI.
3. Reinstatement. On the Effective Date, the Reorganized Debtors shall enter into such agreements as may be necessary to facilitate reinstatement of all Allowed Class 2 Secured Claims and Allowed Class 7 Secured Inter-debtor Claims.

C. Corporate Existence of EFI

EFI, upon becoming a Reorganized Debtor, shall continue to exist in its current corporate form after the Effective Date, with all the powers of a corporation pursuant to Wisconsin law and pursuant to the respective certificate of incorporation and by-laws (or other formation documents) in effect before the Effective Date, except to the extent such certificate of incorporation and bylaws (or other formation documents) are amended by the Plan, and to the extent such documents are amended they are deemed to be amended pursuant to the Plan and require no further action or approval (other than any filings required under applicable state, provincial, or federal law).

D. Vesting of Assets in the Reorganized Debtors

Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement, on the Effective Date all property in the Estates, all Causes of Action, and any property acquired by the Debtors pursuant to the Plan shall vest in the Reorganized Debtors, free and clear of all liens, Claims, charges, or other encumbrances, except for liens securing the Exit Facility, if applicable, or liens attendant to the reinstatement of Allowed Class 2 Secured Claims or Allowed Class 7 Secured Inter-debtor Claims. On and after the Effective Date, except as otherwise provided in the Plan, the

Reorganized Debtors may use, acquire, or dispose of property, and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

E. Corporate Action

Upon the Effective Date, or as soon thereafter as is reasonably practicable, all corporate actions contemplated by the Plan shall be deemed authorized and approved in all respects. Upon the Effective Date, all matters provided for in the Plan involving the corporate structure of EFI, as reorganized, and any corporate action required by EFI in connection with the Plan shall be deemed to have occurred and shall be in effect, without any requirement of further action by the security holders, directors, or officers of EFI. On or (as applicable) before the Effective Date, the appropriate officers of EFI shall be authorized and (as applicable) directed to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated by the Plan (or necessary or desirable to effect the transactions contemplated by the Plan) in the name of and on behalf of EFI, as reorganized. The authorizations and approvals contemplated by this Article VI.E shall be effective notwithstanding any requirements under nonbankruptcy law.

F. Directors and Officers of Reorganized EFI

EFI does not currently have a Board of Directors and does not intend to form one after the Effective Date. However, should that change, then pursuant to section 1129(a)(5) of the Bankruptcy Code, the Debtors will disclose in advance of the Confirmation Hearing the identity and affiliations of any Person proposed to serve on the Board of EFI, as well as those Persons that will serve as an officer of the EFI following the Effective Date. To the extent any such director or officer is an “insider” under the Bankruptcy Code, the nature of any compensation to be paid to such director or officer will also be disclosed. Each such director and officer shall serve from and after the Effective Date in accordance with the existing articles of incorporation, by-laws, and other foundational documents of EFI.

G. Effectuating Documents; Further Transactions

On and after the Effective Date, the Debtors and Reorganized Debtors, as applicable, are authorized to and may issue, execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan and the Exit Facility, in the name of and on behalf of the Reorganized Debtors, without the need for any approvals, authorization, or consents except those expressly required pursuant to the Plan.

H. Exemption from Certain Taxes and Fees

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property under the Plan shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents pursuant to such transfers of property without the payment of any such tax or governmental assessment.

I. Preservation of Causes of Action

In accordance with section 1123(b)(3) of the Bankruptcy Code and except as otherwise set forth herein, any Causes of Action that the Debtors hold against any Entity shall vest in the Reorganized Debtors. The Reorganized Debtors, through their authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action, whether arising before or after the Petition Date, except to the extent waived in the Plan. The Reorganized Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or further notice to or action, order, or approval of the Court. These rights shall be preserved notwithstanding the occurrence of the Effective Date.

Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Court order, the Debtors or Reorganized Debtors, as applicable, expressly reserve all Causes of Action, for later adjudication. This shall include, without limitation, (i) any Cause of Action either Debtor has or may have for breach of contract, (ii) any Cause of Action either Debtor has or may have for collection of an account receivable or other sum due, (iii) any Cause of Action EFI has or may have against CHUBB Group of Insurance relating to EFI's claim for payment of insurance proceeds submitted before the Petition Date, (iv) any Cause of Action EFI has or may have against Summit Lake Labs relating to the application of EFI's account credit with Summit Lake Labs, (v) any Inter-debtor Claims held by either Debtor, (vi) any Cause of Action for misappropriation or other violation of the Debtors' intellectual property rights, and (vii) any Cause of Action either Debtor has or may have for contribution or indemnification. Therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation. **To the fullest extent permitted by applicable law, no Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Causes of Action against it as any indication that any Debtor or Reorganized Debtor will not pursue any and all available Causes of Action against that entity. The Debtors or the Reorganized Debtors, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan.**

J. Modifications, Amendments, Supplements, Restatements, or Other Agreements

Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and Executory Contracts and Unexpired Leases related thereto, if any, including easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan, or subject to a motion to reject such agreement.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

K. Reservation of Rights

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Schedule of Rejected Executory Contracts and Unexpired Leases, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors (or, after the Effective Date, the Reorganized Debtors) shall have twenty-eight (28) days following entry of a Final Order resolving that dispute to alter their treatment of such contract or lease.

L. Contracts and Leases Entered Into After the Petition Date

Contracts and leases entered into after the Petition Date by the Debtors, including any Executory Contracts and Unexpired Leases assumed by the Debtors, will be performed by the Debtors or Reorganized Debtors liable thereunder in the ordinary course of its business. Accordingly, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order.

**ARTICLE VII**  
**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

A. Assumption or Rejection

On the Effective Date, except as otherwise provided herein, all Executory Contracts or Unexpired Leases will be deemed assumed, other than those that are identified on the Schedule of Rejected Executory Contracts and Unexpired Leases or are the subject of pending motions to reject on the Effective Date. Entry of the Confirmation Order shall constitute a Court order approving the assumptions of such Executory Contracts or Unexpired Leases as set forth in the Plan or the rejection of such Executory Contracts and Unexpired Leases as set forth in the Plan on the Schedule of Rejected Executory Contracts and Unexpired Leases, pursuant to sections



365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated or set forth in a motion or order relating to the same, assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Any motions to reject Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by a Final Order of the Court on or after the Effective Date.

**B. Rejection Claims**

Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases ("Rejection Claims"), if any, must be filed with the Court within the later of (i) the Claims Bar Date, or (ii) thirty (30) days after the date of entry of an order of the Court (including the Confirmation Order) approving such rejection; provided, however, that Rejection Claims shall be subject to the caps on rejection damages under section 502(b) of the Bankruptcy Code. Any Rejection Claim not Filed within such time shall be automatically Disallowed and forever barred, and shall not be enforceable against, as applicable, the Debtors, the Reorganized Debtors, the Estates, or property of the foregoing. Rejection Claims shall be classified as Unsecured Claims (Class 3 if against EFI, Class 4 if against Loomis) and shall be treated in accordance with Article IV.B.3 or Article IV.B.4 of the Plan, as applicable.

**C. Cure of Defaults**

Any Cure Claims, as reflected on the Cure Notice, shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the Cure Claim in Cash on the Effective Date, subject to the limitations described below, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (1) the amount of any Cure Claims, (2) the ability of the Reorganized Debtors to provide adequate assurance of future performance (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (3) any other matter pertaining to assumption, payments on Cure Claims required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order or orders resolving the dispute and approving the assumption.

Assumption of any Executory Contract or Unexpired Lease shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the date that a Debtor assumes such Executory Contract or Unexpired Lease. Any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed and for which the Cure Claim has been paid shall be deemed Disallowed and expunged, without further notice to or action, order, or approval of the Court.

**D. Nonoccurrence of the Effective Date.**

In the event that the Effective Date does not occur, the Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

**ARTICLE VIII**  
**PROVISIONS GOVERNING DISTRIBUTIONS**

A. Timing and Calculation of Amounts to be Distributed

Unless otherwise provided in the Plan, on the Effective Date (or if a Claim is not an Allowed Claim on the Effective Date, on the date that such Claim becomes Allowed, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim (or such holder's Affiliate) shall receive the full amount that the Plan provides for the Holder's Allowed Claim. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Article IX of the Plan. Except as otherwise provided in the Plan, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date. The Reorganized Debtors shall have no obligation to recognize any transfer of Claims occurring on or after the Effective Date.

B. Delivery of Distributions

Except as otherwise provided in the Plan, distributions on account of Allowed Claims (other than holders of Class 2 Secured Claims and Class 7 Secured Inter-debtor Claims) shall be made to: (1) the signatory set forth on any of the Proofs of Claim Filed by such holder or other representative identified therein (or at the last known addresses of such holder if no Proof of Claim is Filed or if the Debtor has been notified in writing of a change of address); (2) the addresses set forth in any written notices of address changes delivered to the Reorganized Debtors after the date of any related Proof of Claim; (3) the addresses reflected in the Schedules if no Proof of Claim has been Filed and the Reorganized Debtor has not received a written notice of a change of address; or (4) any counsel that has appeared in the Chapter 11 Cases on the Holder's behalf. Distributions under the Plan on account of Allowed Claims shall not be subject to levy, garnishment, attachment, or like legal process, so that each Holder of an Allowed Claim shall have and receive the benefit of the distributions in the manner set forth in the Plan. The Debtors and the Reorganized Debtors shall not incur any liability whatsoever on account of any distributions under the Plan except for gross negligence or willful misconduct.

C. Undeliverable Distributions

In the event that any distribution made on account of a Claim is returned as undeliverable, no distribution to such Holder shall be made unless and until the Reorganized Debtors have determined the then-current address of such holder, at which time such distribution shall be made to such Holder without interest; provided, however, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code on the date that is one calendar year following the Effective Date. All unclaimed property or interests in property shall be returned to the applicable Debtor without need for further order by the Court (notwithstanding any applicable federal, provincial, or state escheat, abandoned, or unclaimed property laws to the

contrary), and the Claim of any Holder to such property or Interest in property shall be discharged and forever barred.

**D. Securities Registration Exemption**

To the extent applicable, pursuant to section 1145 of the Bankruptcy Code, the offering, issuance, and distribution of securities under the Plan shall be exempt from, among other things, the registration requirements of section 5 of the Securities Act and any other applicable law requiring registration prior to the offering, issuance, distribution, or sale of securities. In addition, under section 1145 of the Bankruptcy Code, such securities will be freely tradable in the U.S. by the recipients thereof, subject to the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(11) of the Securities Act, and compliance with applicable securities laws and any rules and regulations of the Securities and Exchange Commission, if any, applicable at the time of any transfer of such securities or instruments.

**E. Compliance with Tax Requirements**

In connection with the Plan, to the extent applicable, the Reorganized Debtors shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements.

Each Holder of an Allowed Claim is required to provide the Debtors or Reorganized Debtors, as applicable, any information necessary to effect the reporting and withholding of applicable taxes with respect to distributions to be made under the Plan. The Reorganized Debtors shall be entitled in their sole discretion to withhold any distributions to a Holder of an Allowed Claim who fails to provide tax identification or social security information within 30 days of the delivery of a request for such information in writing to such holder of an Allowed Claim.

**F. Setoffs and Recoupment**

The Debtors or the Reorganized Debtors, as applicable, may, but shall not be required to, setoff against or recoup from any Claims of any nature whatsoever that the Debtors or the Reorganized Debtors may have against any Holder of a Claim, but neither the failure to do so nor the allowance of any Claim shall constitute a waiver or release by the Debtors or the Reorganized Debtors of setoff or recoupment rights against the Holder of such Claim.

**ARTICLE IX**  
**PROCEDURES REGARDING DISPUTED CLAIMS**

**A. Allowance of Claims or Interests**

After the Effective Date, the Reorganized Debtors shall have and retain any and all rights and defenses they had with respect to any Claim or Interest immediately before the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), no Claim shall become an

Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Cases allowing such Claim. Any Claim or Interest that is subject to the Claims Bar Date and as of the Claims Bar Date has been listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim or Proof of Interest is or has been timely Filed, shall be Disallowed and expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Court.

B. Authority to Administer, Object to, and Resolve Claims

Except as otherwise specifically provided in the Plan and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, after the Effective Date, the Reorganized Debtors shall have sole authority to: (1) File, withdraw, or litigate to judgment objections to Claims; (2) settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Court.

C. Estimation of Claims

The Debtors or the Reorganized Debtors, as applicable, may (but are not required to) at any time request that the Court estimate any Disputed Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code. The Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection.

D. Claims Objections

Any objections to Claims shall be Filed on or before the Claims Objection Deadline, unless such deadline is extended by order of the Court.

E. Post-Effective Date Amendments to Claims

On or after the Effective Date, except as provided in the Plan or the Confirmation Order, a Claim or Interest may not be Filed or amended without leave of the Court, as applicable, and any such new or amended Claim or Interest Filed shall be deemed Disallowed in full and expunged without any further action, order, or approval of the Court.

F. No Distributions Pending Allowance

If an objection to a Claim or Interest is Filed, no payment or distribution shall be made on account of such Claim, or any portion thereof, unless and until such Disputed Claim becomes an Allowed Claim. To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan and any related order of the Court.

**ARTICLE X**  
**CONDITIONS PRECEDENT TO THE EFFECTIVENESS OF THE PLAN**

A. Conditions Precedent to the Effective Date

It shall be a condition to Consummation of the Plan that the following conditions shall have either (i) been satisfied, or (ii) waived pursuant to Article X.B of the Plan:

1. The Court shall have entered the Confirmation Order confirming this Plan;
2. The Confirmation Order shall have become a Final Order that has not been stayed or modified or vacated on appeal;
3. The Exit Facility Documents shall have been executed and delivered by all of the Entities that are parties thereto, and all conditions precedent to the consummation of the Exit Facility, other than the occurrence of the Effective Date of the Plan, shall have been waived or satisfied in accordance with the terms thereof;
4. All governmental and material third party approvals and consents, including Court approval, necessary in connection with the transactions contemplated by this Plan shall have been obtained, not be subject to unfulfilled conditions, and be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent, or otherwise impose materially adverse conditions on such transactions; and
5. All documents and agreements necessary to implement the terms of this Plan, including without limitation all agreements effectuating the Fisher Settlement, shall have (a) been tendered for delivery and (b) been effected or executed by all Entities party thereto, and all conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

B. Waiver of Conditions

The conditions to the Effective Date of the Plan set forth in this Article X may be waived only by written consent of the Debtors and Fisher; provided, however, that the Debtors may not waive entry of the Order approving the Disclosure Statement and the Confirmation Order.

C. Effect of Nonoccurrence of Conditions to the Effective Date

If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims by or Claims against or Interests in the Debtors; (2) prejudice in any manner the rights of the Debtors, any holders of a Claim or Interest or any other Entity; or

(3) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, any holders, or any other Entity in any respect.

**ARTICLE XI**  
**EFFECT OF CONFIRMATION OF THE PLAN**

A. Compromise and Settlement

Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests, and Causes of Action relating to the rights that a Holder of a Claim or Interest has with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Court's approval of the compromise or settlement of all such Claims, Interests and Causes of Action, as well as a finding by the Court that such compromise or settlement is fair, equitable, and reasonable, and is in the best interests of the Debtors, the Estates, and the Holders of Claims and Interests.

B. Discharge of Claims

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any agreement or document executed pursuant to the Plan, the distributions, rights, and treatment of Claims, Interests, and Causes of Action in the Plan shall be in complete satisfaction, discharge, and release, as of the Effective Date, of Claims, Interests, and Causes of Action that arose prior to the Effective Date, whether known or unknown, against, the Debtors or any of their assets or properties, including without limitation (i) any demands, liabilities, and Causes of Action that arose before the Effective Date, (ii) any liability to the extent such Claims or Interests relate to services performed by employees of the Debtors before the Effective Date and that arise from a termination of employment, (iii) any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and (iv) all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code. Any default by the Debtors with respect to any Claim or Interest that existed immediately before or on account of the filing of the Chapter 11 Case shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring.

C. Injunction

**FROM AND AFTER THE EFFECTIVE DATE, ALL ENTITIES ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER ANY CAUSE OF ACTION RELEASED OR TO BE RELEASED PURSUANT TO THE PLAN OR THE CONFIRMATION ORDER.**

**FROM AND AFTER THE EFFECTIVE DATE, TO THE EXTENT OF THE RELEASES GRANTED IN THE PLAN, ALL ENTITIES SHALL BE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER AGAINST THE REORGANIZED DEBTORS AND THEIR ASSETS AND PROPERTIES, AS THE CASE MAY BE, ANY SUIT, ACTION, OR OTHER PROCEEDING, ON ACCOUNT OF**

**OR RESPECTING ANY CLAIM, DEMAND, LIABILITY, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, INTEREST, OR REMEDY RELEASED OR TO BE RELEASED PURSUANT TO THE PLAN.**

**EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN OR FOR OBLIGATIONS ISSUED PURSUANT TO THE PLAN, ALL ENTITIES WHO HAVE HELD, HOLD, OR MAY HOLD CLAIMS OR INTERESTS THAT HAVE BEEN RELEASED, DISCHARGED, OR ARE SUBJECT TO EXCULPATION PURSUANT TO THE PLAN, ARE PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST THE REORGANIZED DEBTORS: (1) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (2) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (3) CREATING, PERFECTING, OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST SUCH ENTITIES OR THE PROPERTY OR ESTATES OF SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (4) ASSERTING ANY RIGHT OF SUBROGATION, SETOFF, OR RECOUPMENT OF ANY KIND AGAINST ANY OBLIGATION DUE FROM SUCH ENTITIES OR AGAINST THE INTERESTS, PROPERTY OR ESTATES OF SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; AND (5) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS RELEASED OR EXCULPATED PURSUANT TO THE PLAN.**

**THE RIGHTS AFFORDED IN THE PLAN AND THE TREATMENT OF ALL CLAIMS AND INTERESTS HEREIN SHALL BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION OF CLAIMS AND INTERESTS OF ANY NATURE WHATSOEVER, INCLUDING ANY INTEREST ACCRUED ON CLAIMS FROM AND AFTER THE PETITION DATE, AGAINST THE DEBTORS OR ANY OF THEIR ASSETS, PROPERTY, OR ESTATES. ON THE EFFECTIVE DATE, ALL SUCH CLAIMS AGAINST THE DEBTORS SHALL BE FULLY RELEASED AND DISCHARGED, AND THE INTERESTS SHALL BE CANCELLED.**

**EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN OR IN OBLIGATIONS ISSUED PURSUANT HERETO, FROM AND AFTER THE EFFECTIVE DATE, ALL CLAIMS SHALL BE FULLY RELEASED AND DISCHARGED, AND THE INTERESTS SHALL BE CANCELLED, AND THE DEBTORS' LIABILITY WITH RESPECT THERETO SHALL BE EXTINGUISHED COMPLETELY, INCLUDING ANY LIABILITY OF THE KIND SPECIFIED UNDER SECTION 502(G) OF THE BANKRUPTCY CODE.**

**ALL ENTITIES SHALL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTORS, THE ESTATES, THE REORGANIZED DEBTORS, EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AND EACH OF THEIR ASSETS AND PROPERTIES, ANY OTHER CLAIMS OR INTERESTS BASED UPON ANY DOCUMENTS, INSTRUMENTS, OR ANY ACT OR OMISSION, TRANSACTION, OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED BEFORE THE EFFECTIVE DATE.**

**D. Subordination Rights**

Any distributions under the Plan to Holders of Claims or Interests shall be received and retained free from any obligations to hold or transfer the same to any other holder and shall not be subject to levy, garnishment, attachment, or other legal process by any holder by reason of claimed contractual subordination rights. Any such subordination rights shall be waived, and the Confirmation Order shall constitute an injunction against any Entity from enforcing or attempting to enforce any contractual, legal, or equitable subordination rights to property distributed under the Plan, in each case other than as provided in the Plan.

**E. Exculpation**

Except as otherwise specifically provided in the Plan or Plan Supplement, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from, any (1) Exculpated Claim and (2) any obligation, Cause of Action, or liability for any Exculpated Claim, except for gross negligence or willful misconduct, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have complied with the applicable provisions of the Bankruptcy Code and shall not be liable for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or distributions made pursuant to the Plan.

**ARTICLE XII**  
**RETENTION OF JURISDICTION**

On and after the Effective Date, the Court shall retain such jurisdiction over the Chapter 11 Cases and all matters, arising out of, or related to, the Chapter 11 Cases, the Confirmation Order, and the Plan, including:

1. to determine the allowance or classification of Claims and Interests and to hear and determine any objections thereto;
2. to ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;
3. to hear and determine any motions for the assumption, assumption and assignment, or rejection of executory contracts or unexpired leases, and the allowance of any Claims resulting therefrom;



4. to determine any and all motions, adversary proceedings, applications, contested matters, and other litigated matters in connection with the Chapter 11 Cases that may be pending in the Court on, or initiated after, the Effective Date;
5. to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;
6. to issue such orders in aid of the execution, implementation, and Consummation of this Plan to the extent authorized by section 1142 of the Bankruptcy Code or otherwise;
7. to construe, and take any action to enforce, this Plan;
8. to reconcile any inconsistency in any order of the Court, including, without limitation, the Confirmation Order;
9. to modify this Plan pursuant to section 1127 of the Bankruptcy Code, remedy any apparent non-material defect or omission in this Plan, or reconcile any non-material inconsistency in this Plan so as to carry out its intent and purposes;
10. to hear and determine all applications for compensation and reimbursement of expenses of Professionals under sections 330, 331, and 503(b) of the Bankruptcy Code;
11. to determine any other requests for payment of Priority Tax Claims, Priority Claims, Fee Claims, or Administrative Claims;
12. to hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;
13. to consider and act on the compromise and settlement or payment of any Claim against any Debtor;
14. to recover all assets of the Debtors and property of the Estates, wherever located;
15. to issue injunctions, enter and implement other orders or to take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation, or enforcement of this Plan or the Confirmation Order;
16. to resolve and finally determine all disputes that may relate to, impact on or arise in connection with, this Plan;

17. to determine such other matters and for such other purposes as may be provided in the Confirmation Order;
18. to enforce the injunction, release, and exculpation provisions;
19. to hear any other matter consistent with the provisions of the Bankruptcy Code; and
20. to enter a final decree closing these Chapter 11 Cases.

### **ARTICLE XIII** **MISCELLANEOUS PROVISIONS**

#### **A. Immediate Effect of the Plan**

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, any Plan Supplement, and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Debtors or the Reorganized Debtors, as applicable, and any and all holders of Claims or Interests (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements (including the Fisher Settlement), compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan or the Confirmation Order, and any and all non-debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims and debts shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted for the Plan.

#### **B. Additional Plan Documents**

On or before the Effective Date, the Debtors may File, to the extent the court may require, such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors and all holders of Claims or Interests receiving distributions under the Plan, and all other parties in interest, shall from time to time prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

#### **C. Statutory Fees**

All fees payable pursuant to section 1930(a) of the Judicial Code shall be paid by the Debtors (prior to or on the Effective Date) or the Reorganized Debtors (after the Effective Date) for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first.

#### **D. Indemnification Provisions**

The Indemnification Provisions shall not be discharged or impaired by Confirmation, shall survive Confirmation and shall remain unaffected through and after the Effective Date.

Entry of the Confirmation Order will constitute the Court's approval of the Debtors' assumption of each of the Indemnification Provisions.

E. Reservation of Rights Pending the Effective Date

Neither the Plan, any statement or provision contained in the Plan, nor any action taken or not taken by the Debtor with respect to the Plan, the Disclosure Statement, the Confirmation Order, or the Plan Supplement shall be deemed to be an admission or waiver of any rights of the Debtor with respect to the holders of Claims or Interests prior to the Effective Date.

F. Successors and Assigns

The rights, benefits, and obligations of any Entity named or referred to in the Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, manager, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

G. Service of Documents, Notices, and Pleadings

Any pleading, notice, or other document required by the Plan to be served on or delivered to the Debtors or Reorganized Debtors, as applicable, shall be served on:

EFI: Enzyme Formulations, Inc.  
Attn: Howard F. Loomis III  
6421 Enterprise Lane  
Madison, WI 53719

Loomis: Howard F. Loomis, Jr.  
c/o Enzyme Formulations, Inc.  
6421 Enterprise Lane  
Madison, WI 53719

w/ copies to: Foley & Lardner LLP  
Attn: Matthew D. Lee  
150 East Gilman Street  
Madison, WI 53703

H. Injunctions and Stays

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Court (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in effect until the Effective Date unless otherwise ordered by the Court. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

I. Entire Agreement

The Plan, the Confirmation Order, the Plan Supplement, and the Exit Facility Documents supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

J. Severability of Plan Provisions

If, before Confirmation, any term or provision of the Plan is held by the Court to be invalid, void, or unenforceable, the Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtor's consent; and (3) non-severable and mutually dependent on the other terms of Plan.

Respectfully submitted this 8th day of March, 2017.

FOLEY & LARDNER LLP

/s/ Matthew D Lee

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*Proposed Counsel for the Debtors  
and Debtors in Possession*

# **EXHIBIT B**

## **Industry outlook**

The global digestive enzyme supplements market size was valued at USD 794.4 million in 2015 and is expected to reach USD 1.6 billion by 2025. Plant-based enzymes accounted for 41.3% of the overall revenue in 2015 and are expected to foresee considerable growth as these products aid in reducing acid indigestion, heartburn, reflux, and other digestive disturbances. The industry is highly competitive owing to the presence of various large and small scale manufacturers. Key players including Klair Labs, National Enzyme Company, ProteoZymes, Metagenics, and Douglas Labs are focusing on increasing their industry share along with profitability through product innovation and empowering their R&D activities.

*Source: Grand View Research, Inc. – January 2017 market analysis report*

## **Sales**

Since opening in 1995, EFI has typically experienced a 1% to 6% annual increase in sales. In 2016, sales decreased due to a supply chain interruption. Our primary manufacturer, National Enzyme Company, experienced a significant fire that affected the manufacturing lead times of EFI products and ultimately impacted 4th quarter sales. Market research forecasts a 50% growth from 2015 to 2025, a 5% growth from year to year. In calculating our growth, a conservative 4% year to year increase was used.

## **Selling costs**

Selling costs will continue to rise 2% to 6% per year. This is generally due to increases in the cost of raw materials and packaging required to produce our goods. Future periods were calculated by taking an average of the year to year percent change from 2013 through 2016 (4%) and applying this change to the future years. Selling costs are extremely difficult to forecast in this industry. EFI uses over 150 different ingredients. Many of the botanical ingredients have seasonal availabilities and/or crop failures. The cost of animal source ingredients can be adversely affected by market conditions. In the event of unforeseen increases in the cost of goods, EFI has a procedure in place to ensure the increased cost is recouped through sale price.

## **Gross Profit**

While we have seen a decrease in Gross Profit since 2014, this number will improve as we move away from absorbing cost increases and the uniform pricing model. EFI historically has passed price increases on to our customers approximately every 3 years. In 2017 we will begin to pass these increases on to our customers as they happen. At that time a new price will be calculated by cost of good + margin, resulting in non-uniform customer pricing across the product line and predictable profit margin per unit sold.

## **Expenses**

### *Promotional expenses*

In 2016 promotional expenses were reduced by ~\$300,000. This is due to a change in accounting for Food Enzyme Institute. This amount has been accounted for on the P&L statement as "Receivables - Institute". A 1% year to year increase was calculated for the future

periods. With a focus on social media and eCommerce, this is a realistic estimate as EFI produces these campaigns in house.

*Office expenses*

In 2016, office expenses saw a significant increase. This is in large part due to an aging technology infrastructure and the costs associated with maintaining and securing that infrastructure. Future projects include replacing the onsite ERP and eCommerce systems with hosted ("cloud") ERP and eCommerce systems. Once completed this change would realize a significant cost savings and predictable ongoing costs. Future periods were not calculated with these anticipated cost savings. Rather a 1% percent increase was added to the unusually high 2016 amount out of an abundance of caution.

*Payroll expenses*

Payroll expenses were forecasted by averaging the historical year to year percent increases then applying that increase to the future periods.

*Shipping expenses*

Shipping expenses were reduced by almost \$20,000 in 2014. This was due to EFI signing a comprehensive Quality agreement with National Enzyme Company in January 2013, and designating them as our exclusive manufacturer. Previously, EFI had also used two manufacturers located on the west coast. National Enzyme Company is in Missouri, incoming freight costs and transit times are significantly less in comparison to the west coast manufacturers. With a quality agreement in place with NEC, and negotiated rates with our carriers, EFI is confident the growth of this expense will not exceed 2% year to year. If it does increase beyond 2% it will be due to increased customer shipments paid for by EFI. When this occurs a corresponding increase in sales will accompany it as our free shipping options for customers are tied to order amount.

*Building Expenses*

2017's total increased the 2016 expense by ~\$34,000, which reflects the new rent amount for half of the year. 2018's total increased the 2016 amount by ~\$68,000, which reflects a full year of the new rent amount. In the subsequent years, we started from the 2018 amount and added a 2% increase out of an abundance of caution. Years preceding 2017 did not exceed .5% on average.

**Miscellaneous**

Future periods were calculated by taking an average of the previous two year's percent change. This average percent change was then applied to the future years. These two amounts are the most difficult to forecast based on the items they contain. Miscellaneous expenses were significantly higher in 2013 and 2014 because of donations. This expense will not be incurred in the future. However, bad debts and product development can be highly variable.

**Debt Service**

To settle the Fisher debt, EFI has verbally secured a loan for \$400,000 from McFarland State bank. The loan term is 48 months and a 6.5% rate was used.

## EFI HISTORICAL AND PROJECTED FINANCIALS

	2013	2014	2015	2016	2017*	2018*	2019*	2020*	2021*
Revenue	\$ 4,654,472.00	\$ 4,935,474.00	\$ 4,975,498.00	\$ 4,947,410.00	\$ 5,145,306.40	\$ 5,351,118.66	\$ 5,565,163.40	\$ 5,787,769.94	\$ 6,019,280.74
Selling Costs	\$ 2,184,687.00	\$ 2,318,960.00	\$ 2,379,576.00	\$ 2,475,532.00	\$ 2,581,092.90	\$ 2,691,155.10	\$ 2,805,910.54	\$ 2,925,559.35	\$ 3,050,310.19
Gross Profit	\$ 2,469,785.00	\$ 2,616,514.00	\$ 2,595,922.00	\$ 2,471,878.00	\$ 2,564,213.50	\$ 2,659,963.55	\$ 2,759,252.86	\$ 2,862,210.59	\$ 2,968,970.55
Promo. Expenses	\$ 519,941.00	\$ 481,819.00	\$ 357,040.00	\$ 53,081.00	\$ 53,611.81	\$ 54,147.93	\$ 54,689.41	\$ 55,236.30	\$ 55,788.66
Adj. Gross Profit	\$ 1,949,844.00	\$ 2,134,695.00	\$ 2,238,882.00	\$ 2,418,797.00	\$ 2,510,601.69	\$ 2,605,815.62	\$ 2,704,563.45	\$ 2,806,974.28	\$ 2,913,181.88
Office Expenses	\$ 358,823.00	\$ 294,867.00	\$ 283,125.00	\$ 352,503.00	\$ 355,673.66	\$ 358,872.83	\$ 362,100.78	\$ 365,357.76	\$ 368,644.04
Payroll Expenses	\$ 1,271,815.00	\$ 1,394,282.00	\$ 1,395,928.00	\$ 1,413,628.00	\$ 1,465,533.29	\$ 1,519,344.44	\$ 1,575,131.40	\$ 1,632,966.75	\$ 1,692,925.67
Shipping Expenses	\$ 52,130.00	\$ 33,172.00	\$ 41,470.00	\$ 36,388.00	\$ 37,115.76	\$ 37,858.08	\$ 38,615.24	\$ 39,387.54	\$ 40,175.29
Building Expenses	\$ 178,703.00	\$ 178,273.00	\$ 179,363.00	\$ 180,245.00	\$ 214,245.00	\$ 248,195.00	\$ 253,158.90	\$ 258,222.08	\$ 263,386.52
Total Admin. Expenses	\$ 1,861,471.00	\$ 1,900,594.00	\$ 1,899,886.00	\$ 1,982,764.00	\$ 2,072,567.71	\$ 2,164,270.34	\$ 2,229,006.32	\$ 2,295,934.13	\$ 2,365,131.53
Net Profit	\$ 88,373.00	\$ 234,101.00	\$ 338,996.00	\$ 436,033.00	\$ 438,033.98	\$ 441,545.28	\$ 475,557.13	\$ 511,040.16	\$ 548,050.35
Misc. Expenses	\$ 133,814.00	\$ 88,765.00	\$ 42,544.00	\$ 29,428.00	\$ 35,986.00	\$ 36,705.72	\$ 37,439.83	\$ 38,188.63	\$ 38,952.40
Misc. Revenue	\$ 16,306.00	\$ 38,716.00	\$ 45,183.00	\$ 5,676.00	\$ 25,429.00	\$ 25,937.58	\$ 26,456.33	\$ 26,985.46	\$ 27,525.17
Debt service	-	-	-	-	\$ 66,401.87	\$ 113,831.77	\$ 113,831.76	\$ 113,831.79	\$ 47,429.93
Adj. Net Profit	\$ (29,135.00)	\$ 184,052.00	\$ 341,635.00	\$ 412,281.00	\$ 361,075.11	\$ 316,945.37	\$ 350,741.87	\$ 386,005.19	\$ 489,193.19

\* = Projected

[3]