

## Sip Happens: When Small Businesses Are In Distress



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## **Sip Happens: When Small Businesses Are In Distress**

- **Part 1 – Initial Consultation and Information Gathering**
  - Things to seek information about?
    - Client and story
    - Assets, debt structure, liquidity issues
    - Goal: reorganization, liquidation, sale, etc.
    - Potential adverse parties
  - How to protect yourself from bad, fraudulent, bad faith type cases (that may result in sanctions)?
    - Red/yellow flags
    - Consider independent directors, CRO
    - Involuntary cases
  - Common issues related to small business cases
    - Guarantor liability
    - Pending foreclosure of assets
    - Liquidity (including retainers for counsel/advisors), lean budgets, and possibility of debtor-in-possession financing
    - Inability to service debt and other obligations (taxes, payroll, etc.)
    - Pending litigation
    - Landlord/lease issues
  - Chapter 7 corporate cases may not make sense, and related risks
- **Part 2 – Solutions and Planning for Bankruptcy or Other Insolvency Proceeding**
  - Bankruptcy Types
    - Chapter 11
    - Chapter 11 (Sub V)
      - Eligibility and Differences from Regular Chapter 11
    - Other Bankruptcy Chapters/ABCs
  - How to tell client story to the Judge at the first hearing?
  - Managing Client Expectations
    - Do's and Don't

- Bankruptcy can be disruptive to business operations, especially if the client does not know what to expect post-petition.
  - Closing of pre-petition accounts, and re-opening of DIP accounts
  - No payment of pre-petition debt
  - Payment of administrative expenses
  - Cash collateral, financing
  - UST Reporting, MORs, Schedules, etc.
  - First day motions
  - Debtor-in-possession as fiduciary to creditors
  - Disclosure and discovery obligations (FRBP 2004 examinations, U.S. Trustee disclosures, etc.)
  
- Rights and duties of Chapter 13 debtor, chapter 11 debtor in possession (including in subchapter V), and the subchapter V trustee
  - Sole proprietorship or closely held corporation
  - Fiduciary and other duties
  - Use and control of estate property
    - 11 U.S.C. §§ 363, 365, and 541
    - All of the debtor’s business and personal property (with limited exceptions) becomes part of the bankruptcy estate. 11 U.S.C. § 541(a).
    - Once in the bankruptcy estate, the debtor’s ability to control the property and run the business is based on exercising the rights and powers of a bankruptcy trustee, with fiduciary duties, to use and control property of the bankruptcy estate.
    - Chapter 13. 11 U.S.C. §1303, “Subject to any limitations on a trustee under this chapter, the debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections 363(b), 363(d), 363(e), 363(f), and 363(l), of this title.”
    - Chapter 11. 11 U.S.C. § 1107, “[a] debtor in possession shall have all the rights, other than the right to compensation under section 330 of this title, and powers, and shall perform all the functions and duties, except the duties specified in sections 1106(a)(2), (3), and (4) of this title, of a trustee serving in a case under this chapter.
    - Subchapter V. 11 U.S.C. § 1184, “[a] debtor in possession shall have all the rights, other than the right to compensation under section 330 of this title, and powers, and shall perform all functions and duties, except the duties specified in paragraphs (2), (3), and (4) of section 1106(a) of this

title, of a trustee serving in a case under this chapter, including operating the business of the debtor.”

- Pre-filing checking of transfers, payments, granting of liens, and other dispositions of property by the debtor.
  - Insider vs. third-party
  - Preferences, 11 U.S.C. § 547.
  - Consider delaying filing of bankruptcy to allow the lien to mature beyond preference period. Consider payments made in the 90 days prior, whether they involve key creditors for ongoing operations who the debtor doesn't want to have to pay back a preference, and how the timing of filing may impact pre-petition payments to restructuring of debt and granting of liens.
- **Part 3 – Bankruptcy Case**
  - General Process:
    - First Day Motions
      - How to get a hearing? Is a hearing necessary?
        - Local rules and differences between N.D. Cal. vs. C.D. Cal. vs. E.D. Cal. vs. other venues
    - Cash Collateral and financing
    - Deadlines
      - Exclusivity, 364(d)(4), claims bar date, lease rejection, etc.
    - Disclosure Statement and Plan
    - Creditor/Committee Negotiations
  - Pitfalls and things to look out for?
    - Secret (*e.g.*, tax/ mechanics/ other statutory) liens, PACA, and trust claims that you may not find in a UCC-1 search.
    - 365(d)(4) “deemed rejection” of leases
    - Industry-specific issues (*e.g.*, perishable goods, timing of harvest, license counterparties, customer rebates)
    - Employee issues (*e.g.*, special pre-petition payroll, uncashed checks, accrued PTO, expense reimbursements, etc.)
    - Bankruptcy Employment/Compensation Disclosure Requirements
    - Dealing with creditors – it’s not always a fight to the death but can be a Help Me Help You” opportunity.

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13 *Debtors in Possession*

14 **UNITED STATES BANKRUPTCY COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**  
16 **SAN FRANCISCO DIVISION**

17 In re:

18 SHIFT TECHNOLOGIES, INC., *et al.*,<sup>1</sup>

19 Debtors.

20 Case No. 23-30687 (HLB) (Lead Case)

21 (Joint Administration Requested)

22 **DECLARATION OF JASON CURTIS IN**  
23 **SUPPORT OF CHAPTER 11 PETITIONS**  
24 **AND FIRST DAY MOTIONS**

25 <sup>1</sup> The last four digits of Shift Technologies, Inc.'s tax identification number are 5852. Due  
26 to the large number of debtor entities in these Chapter 11 Cases, a complete list of the Debtors  
27 and the last four digits of their federal tax identification numbers is not provided herein. A  
28 complete list of such information may be obtained on the website of the Debtors' proposed claims  
and noticing agent at <https://omniagentsolutions.com/Shift>. The Debtors' service address is 290  
Division Street, Suite 400, San Francisco, California 94103.

1 I, Jason Curtis, do hereby declare as follows:

2 1. I am Chief Financial Officer of Shift Technologies, Inc., a corporation organized  
3 under the laws of Delaware (“Shift Technologies”), and the Chief Financial Officer for each of  
4 the direct and indirect subsidiaries of Shift Technologies, Inc.: Shift Platform, Inc.; Shift  
5 Operations LLC; Shift Transportation LLC; Shift Insurance Services LLC; Shift Finance LLC;  
6 Shift Marketplace Holdings, LLC; Shift Marketplace, LLC; Fair Dealer Services, LLC; CarLotz,  
7 Inc. (Delaware); CarLotz Group, Inc.; CarLotz, Inc. (Illinois); CarLotz Nevada, LLC; CarLotz  
8 California, LLC; Orange Peel, LLC; Orange Grove Fleet Solutions, LLC; and CarLotz Logistics  
9 (collectively, with Shift Technologies, “Shift,” the “Company,” or the “Debtors”).

10 2. I joined Shift as its Chief Accounting Officer on June 1, 2021. I was appointed as  
11 Chief Financial Officer effective September 27, 2023, and I also continue to serve as Chief  
12 Accounting Officer of Shift. I am generally familiar with the day-to-day operations of the  
13 Debtors and their affairs, books, and records.

14 3. I submit this declaration pursuant to 28 U.S.C. § 1746 in support of the First Day  
15 Motions (as defined below). Except as otherwise indicated, all facts set forth in this declaration  
16 are based upon my personal knowledge, information supplied to me by other members of the  
17 Debtors’ management, employees, and professionals, or learned from my review of relevant  
18 documents or upon my opinion based upon my experience and knowledge of the Debtors’  
19 operations and financial condition. If called upon to testify, I could and would testify  
20 competently to the facts set forth herein. I am authorized by the Debtors to submit this  
21 declaration.

22 4. On the date hereof (the “Petition Date”), the Debtors filed voluntary petitions for  
23 relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the  
24 Northern District of California, thereby commencing the above-captioned chapter 11 cases (the  
25 “Chapter 11 Cases”). The Debtors are operating their businesses and managing their properties as  
26 debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee  
27 or examiner has been appointed in these Chapter 11 Cases.  
28



1           9.       In October 2020, Shift Technologies completed its de-SPAC transaction, as a  
2 result of which Shift Technologies became a public company.<sup>2</sup> Shift Technologies, Inc. is listed  
3 under the trade symbol “SFT” on the Nasdaq Capital Market.

4           10.       The Company aimed to provide digital solutions on a national basis throughout the  
5 car ownership lifecycle by operating platforms that allowed customers to: (a) find the right car  
6 and test drive it before purchasing, (b) access a seamless digitally-driven purchase transaction,  
7 including financing and vehicle products, and (c) utilize the Company’s digital trade-in/sale  
8 transaction, with support services from the Company during ownership.

9           11.       Shift invested significantly in its technology platforms, as well as focusing on  
10 finding new ways to expand through investments and mergers, in an attempt to drive growth  
11 through volume and presence. This included Shift’s acquisition of Fair Dealer Services, LLC, in  
12 May 2022, and Shift’s December 2022 merger with CarLotz, Inc., a consignment-to-retail used  
13 vehicle marketplace that operated a technology-enabled buying, sourcing, and selling model with  
14 an omnichannel experience. The Fair Dealer Services acquisition was intended to help Shift build  
15 a digital marketplace where both dealers and independent sellers could list their cars alongside  
16 Shift’s owned inventory, offering customers access to a greater selection of owned and third-party  
17 vehicles. The CarLotz merger was intended to allow Shift to leverage the Company’s presence  
18 and dealer marketplace platform on the East Coast through a new omnichannel experience, rather  
19 than the Company’s previous sole ecommerce platform.

20           12.       Unfortunately, as Shift continued to expend its available cash on technology  
21 development, capital markets in early-mid 2023 tightened and focused on profitability over  
22 growth, according to Shift’s advisors, which, along, with other factors impacting the industry,  
23 made it increasingly difficult to find capital to fund growth and operations absent immediate cash  
24 returns. Other companies in the auto ecommerce industry, such as Carvana and Vroom,  
25 experienced their own liquidity and operational challenges, and Shift needed additional capital  
26 and time (neither of which it had) to reach scale and build technology to compete effectively with

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27           <sup>2</sup>       A de-SPAC transaction is a merger of a privately-held operating company into a shell  
28 publicly-traded company (called a SPAC, or Special Purpose Acquisition Company).

1 those companies. It therefore became apparent that the Company would have significant  
2 difficulty continuing to invest in its ecommerce platform.

3 13. After the Company brought in new management experienced in the car dealership  
4 industry in June 2023, Shift decided to pivot entirely to a dealership model focused on profitable  
5 growth. By discontinuing its ecommerce investment, Shift's new business model became  
6 substantially less capital-intensive.

7 14. Even with the pivot to a dealership model, the Company's liquidity had already  
8 deteriorated, and Shift needed capital to see if the significant changes made to the operations of  
9 the business (under the leadership of new management) would make Shift profitable. Shift and  
10 its advisors spent months negotiating with the holders of the Company's convertible notes and  
11 senior unsecured notes, in the hopes that the noteholders would reach an agreement to restructure  
12 the outstanding debt and provide additional financing to support an out-of-court or in-court  
13 reorganization. The Company also pursued other potential sources of liquidity during this time,  
14 including potential debt and equity investments.

15 15. Ultimately, the Company's noteholders were unwilling to provide additional  
16 financing, and the Company was unable to secure any additional source of capital. As a result,  
17 the Debtors filed these Chapter 11 Cases to begin an orderly winddown.

## 18 **B. Shift's Corporate Structure and Business**

19 16. Shift Technologies is the ultimate corporate parent of each of the Debtors. A  
20 corporate organization chart is attached hereto as Exhibit 1.

21 17. Prior to the Petition Date, the Company was organized into two business  
22 segments: retail and wholesale. The retail segment represented retail sales of used vehicles  
23 through the Company's retail locations and ecommerce platform, and fees earned on sales of  
24 value-added products associated with those vehicle sales such as vehicle service contracts,  
25 guaranteed asset protection waiver coverage, prepaid maintenance plans, and appearance  
26 protection plans. The wholesale segment represented sales of used vehicles through wholesale  
27  
28

1 auctions or directly to a wholesaler. In connection with the announcement that the Company  
2 would file these Chapter 11 Cases, Shift ceased operation of its retail business.

3 **C. Shift's Secured and Unsecured Debt**

4 **1. Ally Flooring Line of Credit**

5 18. On December 9, 2021, the Company<sup>3</sup> entered into a \$100.0 million flooring line of  
6 credit facility with Ally Bank ("Ally") to finance its used vehicle inventory pursuant to Inventory  
7 Financing and Security Agreements (as amended, restated, supplemented, or otherwise modified  
8 from time to time, the "IFSA"), which is secured by substantially all of the Company's assets.  
9 Borrowings under the IFSA bore interest at the Prime Rate (as defined in the agreement) plus  
10 1.75%.

11 19. Under the IFSA, Ally provided inventory financing (*i.e.*, loans made pursuant to a  
12 revolving line of credit) for the acquisition of vehicles for sale through Shift's retail automotive  
13 sales business. Upon the sale of each vehicle, Shift agreed to repay Ally promptly for the amount  
14 that was advanced to it.

15 20. Under the IFSA, and in order to secure all present and future obligations of Shift to  
16 Ally, Shift granted Ally a continuing security interest in the following property, as well as any  
17 proceeds from the sale of such collateral (collectively referred to as the "Ally Collateral"):

18 all Vehicles, including but not limited to those for which either of Ally provides  
19 Inventory Financing; other inventory; equipment; fixtures; accounts, including  
20 factory open accounts of Dealership; deposit and other accounts with banks and  
21 other financial institutions; cash and cash equivalents; general intangibles; all  
22 documents; instruments; investment property; and chattel paper.

23 21. In connection with the IFSA, certain of the Debtors entered into guaranties  
24 (guaranteeing the obligations of the borrowers under the IFSA), and General Security Agreements  
25 (granting Ally a security interest in substantially all assets of the guarantor Debtors). Certain of  
26 the Debtors are also party to Credit Balance Agreements (as amended, restated, supplemented, or  
27 otherwise modified from time to time, collectively, the "CBA"),<sup>4</sup> whereby those Debtors agreed

27 <sup>3</sup> The Debtors that are party to the IFSA are Shift Technologies, Inc., Shift Operations LLC,  
28 CarLotz, Inc. [DE], CarLotz Group, Inc., CarLotz, Inc. [IL], and CarLotz California, LLC.

<sup>4</sup> The Debtors that are party to the Guaranties and the General Security Agreements are

1 to deliver funds to Ally to be held as principal payments on any outstanding balances Debtors  
2 owed to Ally under the IFSA.

3 22. Ally perfected its security interests in the Ally Collateral by filing UCC-1  
4 financing statements and amendments with the Office of the Secretary of State of Delaware, the  
5 Office of the Secretary of State of Illinois, and the Office of the Secretary of State of California.

6 23. Separate from the IFSA financing, the Debtors entered into certain Ally Master  
7 Retail Agreements (“Retail Agreements”) governing the terms under which Ally purchased  
8 consumer retail installment sales contracts from those Debtors. The Debtors have ongoing  
9 obligations to Ally under the Retail Agreements, and Ally asserts that the Debtors’ liability  
10 thereunder will be \$449,647.60, based upon Ally’s predictive default formula. (The Debtors have  
11 not taken a position on such assertion.) The Debtors’ liability to Ally under the Retail  
12 Agreements is secured by cross-collateralization provisions contained in the IFSA and the  
13 Guaranties.

14 24. As of October 5, 2023, the principal balance owed under the IFSA was  
15 \$6,974,114.13 (“IFSA Principal Balance”). Under the terms of the CBA, Ally held  
16 \$7,010,056.17 in funds delivered by Debtors as of October 6, 2023 (“CBA Balance”). Upon  
17 Ally’s application of the CBA Balance, as described below, as of the Petition Date, the IFSA  
18 Principal Balance is now \$0, and \$35,942.04 of the CBA Balance remains unapplied. After  
19 applying existing credits, as of the Petition Date, the Debtors have no payments due to Ally.  
20 However, as discussed in Part II, in connection with the Cash Collateral Stipulation Motion (as  
21 defined below), Ally contends that the Debtors have continuing unliquidated and contingent  
22  
23  
24  
25

26 \_\_\_\_\_  
27 Shift Technologies, Inc., Shift Platform, Inc., Shift Transportation LLC, Shift Finance, LLC, Shift  
28 Insurance Services LLC, Shift Marketplace Holdings, LLC, Shift Marketplace, LLC, Fair Dealer  
Services, LLC, CarLotz Nevada, LLC, and CarLotz Logistics, LLC. The Debtors that are party to  
the CBA are Shift Operations LLC, CarLotz, Inc. [DE], CarLotz Group, Inc., CarLotz, Inc. [IL],  
and CarLotz California, LLC.

1 obligations to Ally of nearly \$1 million. Other than the secured obligations owing to Ally, the  
2 Debtors have no other secured debt.

### 3 **2. Convertible Notes**

4 25. On May 27, 2021, the Company completed a private offering of its 4.75%  
5 Convertible Senior Notes due 2026 (the “Convertible Notes”). The aggregate principal amount of  
6 the Convertible Notes sold in the offering was \$150.0 million. The Convertible Notes are senior  
7 unsecured obligations of the Company and rank equally in right of payment with the Company’s  
8 other senior unsecured indebtedness and senior in right of payment to the Company’s  
9 indebtedness that is expressly subordinated to the Convertible Notes.

10 26. The Convertible Notes accrue interest payable semi-annually in arrears at a rate of  
11 4.75% per year. The Convertible Notes are held by noteholders through U.S. Bank, N.A., as  
12 indenture trustee.

### 13 **3. Senior Unsecured Notes**

14 27. On May 11, 2022, in connection with the Fair Acquisition, the Company entered  
15 into a Note Purchase Agreement (the “Note Purchase Agreement”) by and between the Company,  
16 certain of the Company’s subsidiaries party thereto as guarantors, and SB LL Holdco, Inc., a  
17 Delaware corporation (“SB LL Holdco”). Pursuant to the Note Purchase Agreement and the terms  
18 and conditions set forth therein, the Company agreed to issue and sell, and SB LL Holdco agreed  
19 to purchase, 6.00% Senior Unsecured Notes due May 11, 2025, with a principal amount of \$20.0  
20 million, and bearing interest at a rate of 6.00% per annum (the “Senior Unsecured Notes”). The  
21 Senior Unsecured Notes are senior unsecured indebtedness of the Company.

### 22 **D. Events Leading Up to Chapter 11 Filing**

23 28. Since inception, Shift generated recurring losses as it pursued its investments in  
24 building and expanding its ecommerce technology platform. Beginning in August 2022, Shift  
25 began to enter into cost-saving measures to achieve long-term profitable growth. On August 9,  
26 2022, in conjunction with the announcement of the merger with CarLotz, Shift announced the  
27 closure of seven inventory inspection, reconditioning, and storage facilities, or “hubs,” as part of  
28 a strategic review of the business. Shift intended to consolidate its operations around its most

1 efficient, online-centric fulfillment channel, and adjust its physical footprint and headcount  
2 accordingly. The hub closures in Seattle, San Diego, Sacramento, Austin, Houston, San Antonio,  
3 and Dallas resulted in an estimated workforce reduction of approximately 60%.

4 29. On May 11, 2023, Shift announced that its Board of Directors was exploring and  
5 evaluating strategic alternatives to enhance stockholder value, which could include exploring a  
6 potential sale of certain operating businesses, third party investment or partnership opportunities  
7 and/or funding alternatives for the Company's marketplace business, or the continued execution  
8 of the Company's business plans.

9 30. On May 31, 2023, the Company entered into confidentiality agreements and  
10 commenced discussions with legal advisors for a group of holders of the Convertible Notes and  
11 Senior Unsecured Notes (the "Noteholders") regarding a potential restructuring or refinancing  
12 and related transactions. On July 24, 2023, the confidentiality restrictions terminated without the  
13 Company and the Noteholders reaching an agreement.

14 31. While those discussions were ongoing, on July 11, 2023, the Company announced  
15 a restructuring plan, pursuant to which it reduced its headcount by approximately 34% and  
16 eliminated investment into the Company's dealer marketplace business, in order to focus on core  
17 operations of sales of its own inventory to customers and wholesalers.

18 32. On September 5, 2023, Shift announced the closing of its Portland-based vehicle  
19 storage and sales facility and additional streamlining of its corporate organization. These actions  
20 resulted in an estimated workforce reduction of approximately 25%.

21 33. In late September 2023, Shift entered into confidentiality agreements with the  
22 Noteholders to discuss whether the Noteholders would provide debtor-in-possession financing to  
23 support the Company's reorganization through a chapter 11 proceeding. For the ensuing two  
24 weeks, the Company and its advisors engaged with the Noteholders and provided financial  
25 information and a proposed budget.

26 34. While those discussions were taking place, the Company also engaged with Ally to  
27 discuss their plans to reorganize through a chapter 11 proceeding and the Debtors' need for Ally  
28 to continue to extend floor financing during the pendency of the Chapter 11 Cases. Ally

1 subsequently informed the Debtors that Ally would not agree to continue to provide floor  
2 financing to the Debtors, under the IFSA or otherwise, during or after the pendency of the  
3 Chapter 11 Cases.

4 35. Ultimately, the Noteholders did not agree to provide any debtor-in-possession  
5 financing to the Debtors.

6 36. On October 6, 2023, after the Debtors informed Ally that a chapter 11 filing was  
7 imminent, Ally applied the CBA Balance to satisfy in full the IFSA Principal Balance pursuant to  
8 the terms of the CBA.

9 37. Without financing from the Noteholders, floor financing from Ally, or any other  
10 financing source, the Debtors had no choice but to begin an orderly wind-down and liquidation.  
11 On October 6, 2023, Shift announced that it would close its website and car lots in Oakland and  
12 Pomona and terminate approximately 80% of its workforce prior to filing these Chapter 11 Cases.  
13 That reduction in workforce occurred on October 6. The remaining 24 employees of Shift are  
14 those necessary to facilitate an orderly wind-down of the Company's business and liquidation of  
15 its assets.

16 38. The Company determined that it was in the best interest of the Debtors' creditors  
17 to use cash on hand and cash generated by the liquidation of inventory through wholesale  
18 channels to provide the liquidity necessary to support the wind-down and the chapter 11 process,  
19 and to file these Chapter 11 Cases instead of liquidating through a chapter 7 proceeding. The  
20 Company concluded that its existing management and remaining employees will be able to obtain  
21 greater value for the Debtors' estates than could be accomplished through a chapter 7 proceeding,  
22 even net of the administrative expense of a chapter 11 proceeding. The Company's management  
23 and employees have been engaged in, and are experienced in, the business of selling the Debtors'  
24 cars in the ordinary course through wholesale channels and will be able to liquidate the Debtors'  
25 assets – the value of which is comprised primarily of the vehicle inventory – at greater values and  
26 more efficiently than could be accomplished through a chapter 7 proceeding. The Company's  
27 existing management and remaining employees also will be able to collect accounts receivable,  
28 title vehicles to realize value, use the proceeds of vehicle sales to pay Ally's secured obligations

1 quickly, and seek to sell intellectual property and other assets of the Debtors, all of which will  
2 maximize the value of the Debtors' estates.

3  
4 **II.**  
**FIRST DAY MOTIONS<sup>5</sup>**

5 **A. Joint Administration Motion**

6 39. By the *Motion of Debtors Pursuant to Fed. R. Bankr. P. 1015(b) for Entry of an*  
7 *Order Directing Joint Administration of the Debtors' Chapter 11 Cases* (the "Joint  
8 Administration Motion"), the Debtors request entry of an order directing the joint administration  
9 of the Chapter 11 Cases and the consolidation thereof for procedural purposes only and granting  
10 certain related relief.

11 40. Each Debtor other than Shift Technologies is a wholly owned direct or indirect  
12 subsidiary of Shift Technologies.

13 41. The joint administration of the Chapter 11 Cases will have several benefits,  
14 including (a) permitting the Clerk of the Court to utilize a single general docket for these Chapter  
15 11 Cases and combine notices to creditors of the Debtors' respective estates and other parties in  
16 interest; (b) avoiding the need for duplicative notices, motions and applications, thereby saving  
17 the Debtors' estates time and expense; (c) enabling parties in interest to have a single point of  
18 reference for all matters relevant to these Chapter 11 Cases; (d) significantly reducing the volume  
19 of pleadings that otherwise would be filed with the Clerk of this Court; (e) rendering the  
20 completion of various administrative tasks less costly; and (f) minimizing the number of  
21 unnecessary delays associated with the administration of separate chapter 11 cases.

22 **B. Schedules of Assets and Liabilities and Statements of Financial Affairs Motion**

23 42. By the *Motion of Debtors Pursuant to 11 U.S.C. §§ 521(a) and 105(a), and Fed.*  
24 *R. Bankr. P. 1007(c) for Entry of an Order Extending Time to File Schedules of Assets and*  
25 *Liabilities and Statements of Financial Affairs* (the "Schedules and Statements Motion") the  
26 Debtors request entry of an order substantially in the form attached to the Schedules and

27 \_\_\_\_\_  
28 <sup>5</sup> Defined terms used in Part II of this Declaration shall have the meanings ascribed to them  
in the motions to which the paragraphs relate.

1 Statements Motion as Exhibit A extending the initial fourteen (14) day period to file their  
2 schedules of assets and liabilities and statements of financial affairs (collectively, the “Schedules  
3 and Statements”) by thirty (30) days, allowing the Debtors a total of forty-four (44) days after the  
4 Petition Date to file their Schedules and Statements (the “Schedules and Statements Deadline”),  
5 without prejudice to the Debtors’ right to request additional time if necessary.

6 43. Prior to the Petition Date, a vast majority of the Debtors’ employees, including all  
7 clerical and administrative staff, were terminated. The remaining staff, including those in  
8 management, continue to focus their efforts on winding down its business locations and managing  
9 its remaining inventory for wholesale liquidation of its assets.

10 44. I understand that collecting the necessary information to prepare the Schedules and  
11 Statements requires an enormous expenditure of time and effort on the part of the Debtors, their  
12 remaining employees, and their professionals. While the Debtors, with the assistance of their  
13 professional advisors, have mobilized their remaining employees to work diligently and  
14 expeditiously to prepare the Schedules and Statements, the 14-day deadline is not achievable  
15 under the circumstances of these Chapter 11 Cases. As a practical matter, the Debtors are unable  
16 to properly and accurately complete the Schedules and Statements within the initial statutory  
17 period. The number of Debtors and the complexity of the Debtors’ businesses, coupled with the  
18 limited time and staff available to the Debtors, necessitate an extension of the Schedules and  
19 Statements Deadline.

### 20 **C. Creditor Matrix Motion**

21 45. By the *Motion of Debtors for Entry of Order (I) Authorizing the Debtors to (A)*  
22 *File a Consolidated List of Creditors in Lieu of Submitting a Separate Mailing Matrix for Each*  
23 *Debtor, (B) File a Consolidated List of the Debtors’ Thirty Largest Unsecured Creditors, and*  
24 *(C) Redact Certain Personally Identifiable Information for Individual Creditors and Interest*  
25 *Holder, (II) Implementing Certain Procedures for the Notice of Commencement, and (III)*  
26 *Granting Related Relief* (the “Creditor Matrix Motion”), the Debtors request entry of an order,  
27 substantially in the form attached to the Creditor Matrix Motion as Exhibit A, (i) authorizing the  
28 Debtors to (a) file a consolidated list of creditors in lieu of submitting a separate mailing matrix

1 for each Debtor (the “Creditor Matrix”), and (b) file a consolidated list of the Debtors’ thirty (30)  
 2 largest unsecured creditors in lieu of filing a separate top twenty creditor list for each Debtor (the  
 3 “Top 30 List”); (ii) implementing certain procedures for the mailing of the notice announcing the  
 4 commencement of these Chapter 11 Cases and the meeting of creditors to be held pursuant to  
 5 section 341 of the Bankruptcy Code (the “Notice of Commencement”); and (iii) granting related  
 6 relief.

7 46. In addition, the Debtors request that the Court establish the following procedures  
 8 (the “Privacy Procedures”) to balance the Debtors’ legal obligation to protect its individual users’,  
 9 employees’, equity holders’, and creditors’ personally identifiable information with the need to  
 10 disclose information regarding these bankruptcy cases to the public:

- 11 (a) The Debtors shall redact from any paper filed or to be filed with the Court in these  
 12 Chapter 11 Cases all personally identifiable information of the Debtors’ users who  
 13 purchased from or sold vehicles to the Debtors (the “Users”), the Debtors’ current  
 14 and former employees (the “Employees”), and Shift Technologies, Inc.’s  
 15 individual equity security holders (the “Individual Holders,”) and all physical and  
 16 email addresses of all other individual creditors (the “Other Individual Creditors,”  
 17 and, together with the Users, Employees, and Individual Holders, the “Individual  
 18 Noticing Parties”) from the Creditor Matrix, and from any certificate of service,  
 19 subject to section (d) below.
- 20 (b) The Debtors shall make an unredacted copy of the schedule of assets and liabilities  
 21 and statements of financial affairs (collectively, the “Schedules and Statements”) available to (i) the Court and to the United States Trustee upon request;  
 22 (ii) counsel to the official committee of unsecured creditors appointed in these  
 23 Chapter 11 Cases (if any); and (iii) any other party in interest only after this Court  
 24 has entered an order, after notice and a hearing, authorizing or directing the  
 25 Debtors to do so;
- 26 (c) The Debtors and/or their proposed claims and noticing agent<sup>6</sup> shall maintain a list  
 27 of Customers, Individual Holders, and Employees (collectively, the “Master List”) and shall make the Master List, or any portion thereof, available to any party in  
 28 interest only after this Court has entered an order, after notice and a hearing,  
 authorizing or directing the Debtors to do so; and
- (d) When the Debtors serve any paper upon any person listed on the Master List, the Debtors shall note in the respective certificate of service that the parties served include persons listed on the Master List, but shall not include the individual names or any other identifying information for Customers, Employees, or Individual Holders

6 Contemporaneously herewith, the Debtors have filed an application seeking the appointment of Omni Agent Solutions, Inc. (“Omni”) as their claims and noticing agent pursuant to 28 U.S.C. § 156(c).

1           47.     There are seventeen (17) debtors in these Chapter 11 Cases: Shift Technologies  
2 and sixteen wholly-owned subsidiaries of Shift Technologies. The Debtors operate as an  
3 integrated business and share cash management and operational systems. The Debtors submit  
4 that permitting them to maintain a single consolidated Creditor Matrix, in lieu of maintaining a  
5 separate creditor matrix for each Debtor, is warranted. Requiring the Debtors to segregate and  
6 convert their computerized records to a Debtor-specific creditor matrix format would be an  
7 unnecessarily burdensome task and would result in duplicate mailings. Instead, the Debtors, in  
8 consultation with Omni, their proposed claims and noticing administrative agent, have determined  
9 that utilizing their existing records to generate a consolidated Creditor Matrix is in the best  
10 interests of the estates and will not prejudice the Debtors' creditors. Accordingly, the Debtors  
11 seek authority to maintain a single, consolidated Creditor Matrix.

12           48.     Because many of the Debtors are co-obligors and/or guarantors with each other  
13 under certain debt, contractual, and other obligations, the Top 20 Lists of the Debtors could  
14 overlap. In addition, certain Debtors have fewer than twenty significant unsecured creditors (and,  
15 indeed, many of the Debtors have no significant unsecured creditors at all). Accordingly, the  
16 Debtors submit that filing separate Top 20 Lists for each Debtor would be of limited utility and,  
17 instead, the exercise of compiling separate Top 20 Lists for each Debtor would be no more than  
18 an unnecessary expenditure of the Debtors' limited time and resources. Further, the Debtors  
19 believe that a single, consolidated list of the Debtors' thirty largest unsecured creditors will aid  
20 the U.S. Trustee in its efforts to communicate with these Creditors.

21           49.     Certain of the names and addresses of the Individual Noticing Parties constitute  
22 confidential "commercial information." For example, the few remaining current Employees  
23 provide a range of necessary functions to the Debtors that are essential to the successful  
24 administration of these Chapter 11 Cases and wind-down of the Debtors' business and assets. As  
25 such, it is critical that they not be hired away by a competitor during this critical time, and  
26 therefore, the Employees' personally identifying information constitutes confidential  
27 "commercial information." Additionally, the Debtors serviced thousands of Users, the names and  
28 addresses of whom also constitute confidential "commercial information."

1           50. Personally identifiable information of the Individual Noticing Parties in any paper  
2 filed or to be filed with the Court could be used, among other things, to perpetrate identity theft or  
3 to locate survivors of domestic violence, perpetuate harassment, or stalking. The Debtors are  
4 concerned that the dissemination of personal addresses and contact information would  
5 unnecessarily render individuals more susceptible to identity theft and could jeopardize the safety  
6 of individuals who, unbeknownst to the Debtors, are survivors of domestic violence or stalking by  
7 publishing their home addresses without any advance notice or opportunity to opt out or take  
8 protective measures.

9           51. The Debtors have a privacy policy (the “Privacy Policy”) published on its website  
10 and linked through its on-line terms and conditions.<sup>7</sup> The Privacy Policy states that Shift may  
11 disclose a User’s personal information to only certain limited categories of other parties for a  
12 business and/or commercial purpose. While the Debtors have advised consumers in the Privacy  
13 Policy that they may disclose personal information for specified purposes, this does not cover  
14 disclosure as part of a public court filing.

15 **D. Cash Management Motion**

16           52. By the *Motion of the Debtors for an Order (I) Approving Continued Use of Debtors’*  
17 *Cash Management System, Bank Accounts, and Business Forms; (II) Authorizing the Debtors to*  
18 *Open and Close Bank Accounts; and (III) Authorizing Banks to Honor Certain Prepetition*  
19 *Transfers* (the “Cash Management Motion”), the Debtors seek entry of Interim and Final Orders,  
20 substantially in the forms attached to the Cash Management Motion as Exhibit C and Exhibit D,  
21 (i) approving the Debtors’ use of their current Cash Management System (as described below),  
22 existing Bank Accounts, and business forms and waiving certain requirements set forth in the  
23 operating guidelines for debtors in possession to facilitate the administration of chapter 11 cases  
24 established by the United States Trustee (the “UST Guidelines”); (ii) authorizing, but not directing,  
25 the Debtors to open and close Bank Accounts; and (iii) authorizing, but not directing, all Banks to  
26 honor certain prepetition transfers.

27 \_\_\_\_\_  
28 <sup>7</sup> As of October 6, 2023, the Debtors’ on-line website is unavailable. Copies of the  
Debtors’ privacy policies can be made available upon request.

1           53.     The Debtors currently have two (2) accounts (the “Wells Fargo Accounts”) open  
2 with Wells Fargo Bank N. A. (“Wells Fargo”). Wells Fargo is an FDIC-insured institution and a  
3 U.S. Trustee Authorized Depository for debtors in possession in the Northern District of California.

4           54.     The Debtors’ main holding Bank Account (Wells Fargo Account 5854) is the Bank  
5 Account into which receipts from the Debtors’ primary payment services, Stripe, Inc. (“Stripe”)  
6 and Chosen Payments, are deposited on a daily basis and into which non-retail deposits (*e.g.*, sub-  
7 lease income or insurance claim payments) and accounts receivable (*e.g.*, proceeds from cars sold  
8 at auction and financing and insurance income). Finally, the vehicle floor plan financing payments  
9 coming into the Debtors and loan payments going out to Ally CBA (“Ally”)<sup>8</sup> are made to and from  
10 this account. This account is also used to fund payments to car sellers, either through Stripe or  
11 directly if the seller does not have access to Stripe.

12           55.     The Debtors have a second Wells Fargo Bank Account (5797) for payroll,  
13 disbursement of vendor payments, and employee reimbursements.

14           56.     The Debtors maintain payment accounts with Stripe (UzYi, 9Pco and XJjy), Airbase  
15 and Chosen Payment (collectively, the “Payment Accounts”), which the Debtors use to receive  
16 payments from sales or pay for employees’ business expenses. The funds from the Payment  
17 Accounts flow in to and out of the Wells Fargo Bank Accounts. Stripe (UzYi) is used to transfer  
18 funds from car buyers to the Debtors’ Wells Fargo Bank Account (5854); Stripe (9Pco) is used to  
19 transfer funds from Wells Fargo Bank Account (5854) to car sellers’ bank accounts; and Stripe  
20 (XJjy) was intended to be used for transfers to and from Debtor Fair Dealer Services, LLC but that  
21 account is no longer used.

22           57.     In September 2023, the Debtors changed their dealership management system which  
23 was connected to a different payment system, Chosen Payment,<sup>9</sup> which they then used in place of  
24

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25           <sup>8</sup>     The Debtors entered into a \$100 million flooring line of credit facility with Ally Bank to  
26 finance their used vehicle inventory (the “Ally FLOC”), which is secured by substantially all of  
27 the Debtors’ assets. The Debtors have or will shortly have a stipulation with Ally for the use of  
28 its cash collateral. Further discussion of the Ally FLOC is contained in the motion to approve  
that stipulation.

<sup>9</sup>     Chosen Payment does not have account numbers assigned to the Debtors’ accounts.

1 Stripe. The Debtors have maintained the Stripe accounts to collect money from individual car  
2 sellers who owe the Debtors because their vehicles were worth less than the liens against them.

3 58. The Debtors use the Airbase account to reimburse employee business expenses.  
4 Once those expenses are approved, funds are transferred from Airbase directly to the employee's  
5 bank account. This streamlines the Debtors reimbursement process so that employees can be  
6 reimbursed more quickly.

7 59. The Debtors are in the process of consolidating their banking activity with Wells  
8 Fargo, however, the Debtors maintain three accounts (the "Chase Bank Accounts") with JPMorgan  
9 Chase Bank N.A. ("Chase") (1727, 9086 and 5916). Chase is an FDIC-insured institution and a  
10 U.S. Trustee Authorized Depository for debtors in possession in the Northern District of California.  
11 These three Chase Bank Accounts are legacy Carlotz accounts and Debtors are in the process of  
12 closing two of them. The third Chase Bank Account (1727) will remain open as a depository for  
13 the Debtors' funds as adequate assurance of post-petition payment to the Utility Companies, as  
14 defined in the *Motion of the Debtors for Interim and Final Orders Establishing Adequate Assurance*  
15 *Procedures with Respect to the Debtors' Utility Providers* filed concurrently herewith.

16 60. The Debtors anticipate that it may become necessary and appropriate to consolidate  
17 and close certain Bank Accounts during these Chapter 11 Cases. However, doing so prematurely  
18 would cause receipts to be denied or deferred, payments (including those payments that the Debtors  
19 seek authorization to make by the First Day Motions) would be rendered untimely because of  
20 administrative delays, and the efficiency and efficacy of the Debtors' efforts would be affected.  
21 Accordingly, while the Debtors may elect to rationalize their Cash Management System, requiring  
22 them to do so immediately will cause unnecessary burden on the estates and put at risk the timely  
23 collection of cash and the timely payment of important obligations, including employee payrolls.

24 61. From time to time, and in the ordinary course of business, the Debtors incur  
25 obligations for the maintenance of the Cash Management System. These obligations primarily  
26 consist of (a) amounts owed to the Banks for the maintenance of and services related to the Bank  
27 Accounts ("Bank Fees"), together with other fees and obligations relating to the maintenance of the  
28 Cash Management System (together with the Bank Fees, the "Cash Management Fees"). The Cash

1 Management Fees for the Wells Fargo Bank Accounts are withdrawn from each of those accounts  
2 on the 11th day of the month following the month for which fees are accrued. The total of the  
3 Wells Fargo fees averages approximately \$14,000 per month. The Cash Management Fees for the  
4 Chase Bank Accounts are withdrawn from each of those accounts on the 15th day of the month  
5 following the month for which fees are accrued. The total of the Chase fees averages approximately  
6 \$4,000 per month. The Debtors estimate that, other than the October Wells Fargo and Chase Cash  
7 Management Fees scheduled to be paid on October 11 and 15, respectively, there are no accrued,  
8 unpaid, and undisputed prepetition amounts outstanding as of the date hereof on account of the  
9 Cash Management Fees (“Cash Management Claims”). To safely pay all Cash Management  
10 Claims, the Debtors seek authorization to pay any Cash Management Claims up to \$25,000 on an  
11 interim basis.

12 62. In the ordinary course of business, the Debtors issue checks from time to time and  
13 use a variety of correspondence and business forms, including, but not limited to, letterhead,  
14 purchase orders, and invoices (collectively, the “Business Forms”). To minimize the expense to the  
15 Debtors’ estates associated with developing and/or purchasing entirely new forms or otherwise  
16 complying with Bankruptcy Local Rule 2015-1(a), the delay in conducting business prior to  
17 obtaining such forms, and the confusion of suppliers and other vendors, pursuant to the Cash  
18 Management Motion, the Debtors seek authority to continue using their Business Forms  
19 substantially in the forms used immediately prior to the Petition Date, without reference therein to  
20 the Debtors’ status as “Debtor in Possession.” The Debtors do not believe that any prejudice will  
21 be suffered by any party if this relief is granted.

22 **E. Employee Wages Motion**

23 63. By the *Motion of Debtors for Interim and Final Orders Authorizing the Debtors to*  
24 *(A) Pay Prepetition Employee Wages, Benefits, and Related Items; and (B) Continue Certain*  
25 *Employee Compensation and Benefit Programs in the Ordinary Course* (the “Employee Wages  
26 Motion”), the Debtors request entry of Interim and Final Orders, substantially in the forms  
27 attached to the Employee Wages Motion as Exhibit A and Exhibit B, (A) authorizing them to pay  
28 any outstanding (i) Prepetition Compensation; (ii) Prepetition Benefits; (iii) Payroll Tax

1 Obligations; and (iv) Reimbursable Expenses; and (B) authorizing, but not directing, the Debtors  
2 to continue to provide their ordinary course employee compensation, benefits, and related  
3 programs described herein (collectively, the “Employee Compensation and Benefit Programs”).

4 64. The Debtors’ employees are critical to maximizing the value of the Debtors’ estate  
5 for the benefit of their creditors. The employees’ skills, knowledge, and understanding of the  
6 Debtors’ infrastructure, operations and sales strategy are essential to the orderly liquidation of the  
7 Debtors’ business. Without them, the Debtors would have no way to realize, let alone maximize,  
8 the value of their remaining assets.

9 65. During 2022, the Company had an average of approximately 590 employees,  
10 having completed the merger with CarLotz on December 9, 2022. The Debtors operated multiple  
11 locations along the West Coast and throughout the United States as part of their omni-channel  
12 used car sales strategy. During 2023, in an attempt to reduce losses and focus on their path to  
13 profitability, the Debtors restructured, closed unprofitable stores, stopped the development of its  
14 capital-intensive dealer marketplace strategy, and reduced expenses, including streamlining their  
15 workforce in several rounds of layoffs. With the end of the marketplace strategy, engineering  
16 staff were let go. With the closure of each store, individuals supporting sales and vehicle  
17 reconditioning operations were let go. As the store base declined, centralized operations support  
18 was also reduced.

19 66. Before announcing their intention to file the Petition, the Debtors had  
20 approximately 144 people employed supporting the website and two locations in Oakland and  
21 Pomona, California. On October 6, 2023, they conducted a round of layoffs as they ceased sales  
22 operations, eliminating the majority of existing positions. All terminated employees received  
23 payment in full for their wages, commissions, if applicable, and accrued time off on their last day  
24 of employment. In order to wind down operations in an orderly fashion, 24 employees across  
25 operations, finance/accounting, human resources, and technology were retained. All sales and  
26 reconditioning positions were eliminated. The retained employees have the knowledge and  
27 experience necessary to close the stores, liquidate the inventory, close title and registration  
28 operations, prepare all required financial reporting, manage all data retention requirements, close

1 all technology resources, and wind down all technology infrastructure in place. All but two of the  
2 remaining staff are salaried.

3 67. The Debtors' employees receive their paychecks on two different schedules:

4 (1) the hourly employees are paid in arrears for the 1<sup>st</sup> - 15<sup>th</sup> days of the month on the 25<sup>th</sup> of that  
5 month and for the 16<sup>th</sup> - the last day of the month on the 10<sup>th</sup> of the following month (the "Hourly  
6 Wages"); and (2) the salaried employees are paid current for the 1<sup>st</sup> -15<sup>th</sup> days of the month on the  
7 15<sup>th</sup> of the month and the 16<sup>th</sup> - the last day of the month on the last business day of that month  
8 (the "Salary Wages"). Anticipating the filing of the bankruptcy petitions, the Debtors paid their  
9 employees on October 6, 2023, for work performed through and including October 6, 2023 (the  
10 "Pre-Petition Payroll"). The Debtors are to pay the next Hourly Wages on October 25,  
11 2023. These paychecks will cover work performed from October 7 – 15. The next Salary Wages  
12 are scheduled to be paid on October 13, 2023, for work performed from the Petition Date through  
13 October 15. As a result, the Debtors believe that substantially all prepetition wages have been  
14 paid. However, in an abundance of caution, the Debtors seek authority to pay any unpaid  
15 prepetition wages not to exceed \$15,150 to any individual (the maximum priority claim under  
16 sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, hereafter the "Section 507 Cap").

17 68. In addition to base wages, certain of the employees were eligible to earn variable  
18 commissions based on the achievement of certain performance targets (the "Commissions"). The  
19 Commissions are paid monthly by the second pay period of the month following the month in  
20 which the Commissions are earned. Commissions earned through October 6, 2023, were paid as  
21 part of the Pre-Petition Payroll; however, due to reporting delays, there may be certain former  
22 employees who did not receive their full Commission payments prior to the Petition Date. In an  
23 abundance of caution, the Debtors seek authority to pay any outstanding Commissions, in any are  
24 identified, and in aggregate amount not to exceed the Section 507 Cap.

25 69. The Debtors offer vacation benefits (the "Vacation Benefits") to their full-time  
26 employees. Certain employees receive unlimited Vacation Benefits and are not entitled to  
27 payment for those benefits upon termination. The rest of the employees accrue vacation time  
28 each pay period. As of the Petition Date, the Debtors do not believe that any current or former

1 employees are owed compensation for Vacation Benefits; however, to the extent they are, the  
2 Debtors seek authority to pay the Vacation Benefits up to the amount of the Section 507 Cap, per  
3 employee.

4 70. The Debtors take deductions from their employees' paychecks to make payments  
5 on behalf of the employees for or with respect to, among other things, the Debtors' Prepetition  
6 Benefits (defined below) and amounts due to federal, state and local taxing authorities for the  
7 Employee Taxes (defined below). As of the Petition Date, the Debtors' payroll processor, UKG  
8 Inc. ("UKG"), may be holding amounts deducted from their employees' Prepetition  
9 Compensation that have not yet been remitted to the taxing authorities or benefits providers  
10 (collectively, the "Prepetition Tax Obligations"). Such withheld funds, to the extent that they  
11 remain in the Debtors' or UKG's possession, constitute moneys held in trust and, therefore, are  
12 not property of the Debtors' estates. Thus, directing such funds to the appropriate parties should  
13 not require Court approval. Nevertheless, the Debtors seek authority to direct that any Prepetition  
14 Tax Obligations withheld from the employees' paychecks and owed to third party taxing  
15 authorities or benefits providers, including those incurred prior to the Petition Date, be delivered  
16 as required.

17 71. In the ordinary course of business, the Debtors maintain certain benefits for their  
18 employees, including the following: (a) health-related benefits, such as medical, dental, vision;  
19 and insurance benefits such as life insurance and short- and long-term disability insurance (the  
20 "Health Benefits")<sup>10</sup> and (b) provide access to a Health Savings Account ("HSA"), a Flexible  
21 Spending Account ("FSA"), Commuter Benefits, and a 401(k) plan (the "Voluntary Benefits,"  
22 and jointly with the Health Benefits, the "Employee Compensation and Benefit Programs").

23 72. The Debtors provide their employees with various health-related benefits. In  
24 California, they offer medical insurance through Kaiser Permanente ("Kaiser"). For non-Kaiser  
25 patients, they self-insure their medical benefits through a fronting policy administered by Cigna

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26 <sup>10</sup> The Debtors maintain workers' compensation insurance for their employees.  
27 Authorization to pay prepetition amounts owed to the workers' compensation plan is requested in  
28 the *Motion of Debtors for Interim and Final Orders Authorizing the Payment of Prepetition  
Insurance Obligations* filed concurrently herewith.

1 Healthcare (“Cigna”). They also offer dental and vision coverage through Cigna. The Debtors  
2 maintain stop-loss insurance for claims that exceed \$100,000 (the “Stop-Loss Amount”) through  
3 Cigna which is addressed in the Insurance Motion. Even though the majority of their employees  
4 have been terminated, the Debtors are obligated to cover various of their medical claims through  
5 the end of October 2023; and all of the Debtors’ current employees’ claims going forward. While  
6 the Debtors do not have an estimate of the amount that will be due to cover October or post-  
7 petition claims, the incurred but not reported amounts owed to Cigna for September medical  
8 claims was approximately \$200,000. Approximately \$45,000 is owed for Dental and Vision  
9 coverage for October premium payment, and \$37,901 is owed to Kaiser for the for the October  
10 premium payment. The Debtors seek authority to pay for the medical coverage provided by  
11 Kaiser, the dental and vision coverage provided by Cigna, and the medical claims up to the Stop-  
12 Loss Amount as they come due, all to the extent that they fall within the Section 507 Cap.

13 73. WEX Healthcare (“WEX”) provides an HSA on behalf of employees who have  
14 elected such plans. The Debtors contribute \$2,500 per year for employee only accounts and  
15 \$4,500 per year when a dependent is covered. The Debtors are not aware of any outstanding  
16 obligations to WEX for the HSA; however, subject to the Section 507 Cap, the Debtors seek  
17 authority to fund any residual obligations.

18 74. The Debtors provide their employees with life insurance and short- and long-term  
19 disability insurance through New York Life. The amounts owed to New York Life for this  
20 coverage for the September premium payments were paid prior to the Petition Date. The October  
21 bill has not been issued as of the Petition Date, but the Debtors anticipate it will be approximately  
22 \$6,825 based on previous months’ billings.

23 75. Debtors believe they are current on all of their other obligations under the Health  
24 Benefits. However, out of an abundance of caution, the Debtors seek authority, without being  
25 required, to pay all prepetition amounts under the Health Benefits that may be outstanding,  
26 including any that were incurred but not reported prepetition, in order to ensure that there is no  
27 disruption to employees’ health-related coverage, subject only to the Section 507 Cap.  
28

1           76.     The Debtors offer certain benefits to employees with contribution, such that the  
2 cost is divided between the participants and the Debtors with the participants portion funded  
3 through deductions from their paychecks. The Voluntary Benefits include, among others, an  
4 FSA, Commuter Benefits, and access to a 401(k) plan. With respect to the FSA and Commuter  
5 Benefits, employees have the option of putting pre-tax dollars into accounts to pay for either  
6 medical expenses or public transportation. With respect to the 401(k) plan, employees are  
7 automatically enrolled upon their hire and have the option to decline contributing to the plan.  
8 WEX administers the FSA and Commuter Benefits programs, and Fidelity Brokerage Services  
9 LLC administers the 401(k) plan.

10           77.     The Debtors are currently undergoing an audit of the Carlotz 401(k) plan, and it  
11 appears that they will have an unpaid obligation to fund up to \$20,000 for that plan. The Debtors  
12 seek authority to pay up to that amount to fulfill its obligations to the Carlotz 401(k) plan, subject  
13 to the Section 507 Cap.

14           78.     The Debtors, as employers, are required by law to withhold federal, state, and local  
15 taxes (the “Employee Taxes”) from wages for remittance to appropriate taxing authorities. These  
16 withheld funds, to the extent that they are in the Debtors’ possession, constitute monies held in  
17 trust and are not property of the Debtors’ bankruptcy estates. In addition to the Employee Taxes,  
18 the Debtors are required to pay, from their own funds, social security and Medicare taxes and pay,  
19 based on a percentage of gross payroll and subject to state-imposed limits, additional amounts for  
20 state and federal unemployment insurance (together with the Employee Taxes, the “Payroll Tax  
21 Obligations”) and remit the same to the appropriate state and federal taxing authorities. The  
22 Debtors should be authorized to pay all Payroll Tax Obligations as they come due, including any  
23 obligations arising from payment of the Prepetition Compensation pursuant to the Interim and  
24 Final Orders on the Employee Wages Motion.

25           79.     The Debtors’ employees pay for certain expenses for which the Debtors reimburse  
26 them. They customarily reimburse their employees for a variety of business expenses incurred in  
27 the ordinary course of their business, including airfare, hotels, meals during travel, other  
28 transportation expenses, postage and packaging, office supplies and fuel (the “Reimbursable

1 Expenses”). To obtain reimbursement of business expenses, an employee is required to submit a  
2 request, accompanied by itemized receipts for approval by the employee’s supervisors and/or  
3 management. Reimbursement requests must be submitted through Airbase within 30 days from  
4 when they are incurred. Once approved, reimbursements are paid directly to the employee’s bank  
5 account. In a typical bimonthly payroll period, the Debtors reimburse employees for  
6 approximately \$18,000 of expenses in the aggregate.

7 80. It is likely that certain employees have not been reimbursed for Prepetition  
8 Business Expenses incurred prior to the Petition Date. It is difficult for the Debtors to determine  
9 the exact amount of Prepetition Business Expenses that are outstanding because, among other  
10 things, employees may not have submitted reimbursement forms for all accrued expenses. The  
11 Debtors request that they be authorized to reimburse all such expenses when the reports are  
12 submitted, in order to assure such employees that they will be reimbursed for their actual out-of-  
13 pocket expenses incurred while acting within the scope of their employment.

14 81. The Debtors do not expect that their obligations for Prepetition Business Expenses  
15 as of the Petition Date will exceed \$10,000.

16 **F. Insurance Motion**

17 82. By the *Motion of the Debtors Pursuant To 11 U.S.C. §§ 105(A), 362(D), 363(B),*  
18 *363(C) And 503(B), and Fed. R. Bankr. P. 4001, 6003, and 6004 for Interim and Final Orders*  
19 *(I) Authorizing the Debtors to Maintain Insurance Programs and Pay Obligations With Respect*  
20 *Thereto; and (II) Granting Relief from the Automatic Stay with Respect to Workers’ Compensation*  
21 *Claims* (the “Insurance Motion”), the Debtors request entry of interim and final orders, in  
22 substantially the form attached to the Insurance Motion as Exhibit A and Exhibit B, authorizing  
23 them to (I) maintain the Insurance Programs (as defined herein); (II) to pay the Insurance  
24 Obligations (as defined herein); and (III) to modify the automatic stay imposed by section 362 of  
25 the Bankruptcy Code to permit employees to proceed with their claims under the Debtors’ programs  
26 established in compliance with various jurisdictions’ workers’ compensation requirements.

27 83. In connection with the operation of their businesses, the Debtors maintain multiple  
28 property and liability insurance programs that provide the Debtors with insurance coverage for

1 claims relating to, among other things, workers' compensation, property liability, and health<sup>11</sup>  
2 (collectively, the "Insurance Programs") through different insurance carriers (the "Insurance  
3 Carriers") including, but not limited to, the Insurance Programs and Insurance Carriers identified  
4 in Exhibit C to the Insurance Motion. The Debtors also maintain directors' and officers' liability  
5 insurance, but the Insurance Motion does not seek authority to purchase additional D&O insurance  
6 at this time.

7 84. The Debtors are required to pay, either directly or through the Debtors' insurance  
8 broker, premiums for coverage under the Insurance Programs (collectively, the "Insurance  
9 Premiums"). The Insurance Premiums are based upon a fixed rate established and billed by each  
10 Insurance Carrier. The premiums for most of the Insurance Programs are determined annually and  
11 are paid at the inception of each policy, on a monthly basis, or pursuant to the terms of the applicable  
12 insurance premium financing agreement. Because of the Debtors' very recent decision to liquidate  
13 and the concomitant reduction in force, their insurance needs have changed and they are in the  
14 process of negotiating a new, downsized program appropriate to their current status.

15 85. As of the Petition Date, the Debtors owe Cigna less than \$25,000 for stop-loss  
16 coverage on the Debtors' self-insured health plan, and are not aware of any other outstanding  
17 amounts owed with respect to any Insurance Program (the "Prepetition Insurance Obligations").  
18 However, it is possible that Debtors may identify outstanding Prepetition Insurance Obligations as  
19 of the Petition Date. Accordingly, the Debtors request authority to pay all Prepetition Insurance  
20 Obligations, in a total amount not to exceed \$30,000, if and to the extent necessary to continue  
21 operations.

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22  
23  
24 <sup>11</sup> The Debtors provide health insurance for their employees through a *self-insured* PPO with  
25 Cigna (nationwide) and for its California employees, an HMO with Kaiser. The Debtors also  
26 provide dental and vision plans with Cigna. These programs and policies are referenced in the  
27 Employee Wages Motion, also filed by the Debtors on this date. Because the Cigna health  
28 insurance is self-insured, the Debtors have direct insurance obligations to employees; those  
obligations are discussed in the Employee Wage Motion. Cigna also provides the Debtors with  
"stop loss" insurance on those obligations, which insurance is included in the Insurance Programs  
and the premiums for which are included in the Insurance Premiums.

1 86. More critically, certain of the Insurance Programs will expire imminently (the  
2 “Expiring Programs”), as provided below:

Insurance Program	Expiration Date
Workers’ Compensation <sup>12</sup>	10/13/2023
General Liability and Property	10/13/2023
Errors and Omissions	10/13/2023
Cyber	10/13/2023
Crime	10/13/2023
Employment Practices	10/13/2023
Fiduciary	10/13/2023
Umbrella	10/13/2023

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9 87. The renewal and continuation of the Expiring Programs is critical to a successful  
10 administration of these Chapter 11 Cases and required of chapter 11 debtors. The Debtors are  
11 negotiating a downsized package for the Insurance Programs and are confident that they can  
12 maintain them for six months for premiums that will not exceed, in the aggregate, \$800,000 (the  
13 “Immediate Post-Petition Insurance Obligations” and, with the Prepetition Insurance Obligations,  
14 the “Insurance Obligations”). Therefore, the Debtors request authority to renew the Expiring  
15 Policies and pay the premiums associated with the Expiring Policies when they become owing and  
16 due.

17 **G. Taxes Motion**

18 88. By the *Motion of the Debtors Pursuant to 11 U.S.C §§ 105, 363, 507(a), and 541(d)*,  
19 *and Fed. R. Bankr. P. 6003 and 6004 for Interim and Final Authority to Pay Certain Prepetition*  
20 *Taxes and Assessments* (the “Taxes Motion”), the Debtors request entry of interim and final orders,  
21 in substantially the form attached to the Taxes Motion as Exhibit A and Exhibit B, respectively,  
22 authorizing but not directing them to pay, in the ordinary course of business, certain prepetition  
23

24 <sup>12</sup> The Debtors pay Insurance Premiums for the Workers’ Compensation Program on an  
25 annual basis through its insurance brokers at the inception of the policy. After the coverage  
26 period is over, the Insurance Carriers will audit the period based on actual payroll obligations  
27 which may produce either a refund or additional premiums owed by the Debtors. The Debtors do  
28 not know whether the Workers’ Compensation Program for the coverage period ending October  
13, 2023, will produce additional premiums. At the final hearing the Debtors will request  
authority to pay (as an Insurance Obligation) all additional premiums owed with the respect to the  
Workers’ Compensation Program for the coverage period ending October 13, 2023.

1 taxes, assessments, fees, including any such taxes, assessments, fees, and charges subsequently  
 2 determined upon audit, or otherwise, to be owed (collectively, the “Taxes and Assessments”), and  
 3 other related relief.

4 89. In the ordinary course of its businesses, the Debtors collect, withhold, and incur a  
 5 variety of Taxes and Assessments that they remit periodically to various federal, state, and local  
 6 taxing, licensing, and other governmental authorities (collectively, the “Taxing Authorities”). A  
 7 list of the Taxing Authorities is annexed to the Taxes Motion as Exhibit C (the “Taxing Authorities  
 8 List”).<sup>13</sup>

9 90. As set forth in further detail below, the Debtors generally pay the Taxes and  
 10 Assessments monthly, quarterly,<sup>14</sup> semi-annually, or upon registration of a vehicle, in each case, as  
 11 required by applicable laws. As of the Petition Date, the Debtors estimate that an aggregate amount  
 12 of approximately \$1,647,870 in Taxes and Assessments are due and owing to the various Taxing  
 13 Authorities, some of which will come due within the thirty (30) days following the Petition Date.  
 14 A chart outlining the various categories and approximate amounts of the Taxes and Assessments  
 15 that the Debtors are seeking authority to pay pursuant to the Taxes Motion is set forth below. The  
 16 amounts of the Taxes and Assessments set forth below are good faith estimates based on the  
 17 Debtors’ books and records and remain subject to potential audits and other adjustments. As such,  
 18 the Debtors also seek authority to pay any Taxes and Assessments due and owing following any  
 19 such audit and adjustment.

Categories of Taxes and Assessments	Approx. Amount Seeking Authority to Pay on Final Basis
-------------------------------------	--

23 <sup>13</sup> The Debtors have made an extensive and good faith effort to identify on Exhibit C any  
 24 Taxing Authorities to which they owe any amounts as of the Petition Date. However, due to the  
 25 size and complexity of the Debtors’ historical operations, certain Taxing Authorities may not be  
 26 listed therein. Accordingly, Exhibit C is a non-exhaustive list of Taxing Authorities to which the  
 Debtors may owe Taxes and Assessments. To the extent the Debtors identify additional Taxing  
 Authorities not listed on Exhibit C, the Debtors seek authority to pay any Taxes and Assessments  
 due and owing to such Taxing Authorities.

27 <sup>14</sup> Certain of the Taxing Authorities in the State of New York are paid on an off-quarter  
 28 schedule, and those in the State of Arkansas are paid on an occasional basis, consistent with the  
 applicable laws and regulations of those states.

Sales and Use Taxes	\$1,527,389
Personal Property Taxes	\$120,482
<b>Total Taxes and Assessments</b>	<b>\$1,647,870</b>

91. The Debtors collect sales taxes on account of the sale of tangible personal property, primarily vehicles, sold by the Debtors in the ordinary course of business (collectively, the “Sales Tax”). The Debtors incur use taxes on account of the purchase of tangible personal property utilized by the Debtors in the ordinary course of business from vendors who do not collect sales tax (the “Use Taxes” and, together with the Sales Taxes, the “Sales and Use Taxes”).

92. The Debtors estimate that, as of the Petition Date, they owe approximately \$1,527,389.00 in Sales and Use Taxes, \$57,156.76 of which is known to become due and payable within the first thirty (30) days of the Chapter 11 Cases.<sup>15</sup> The Debtors seek authority to pay an additional \$15,000 for unidentified Sales and Use payments that may arise during the interim period.

93. Prior to the Petition Date, the Debtors operated in multiple locations in California, as well as in Florida, Louisiana, Oregon, Texas, Virginia, and Washington. The Debtors paid annual taxes to various Taxing Authorities on account of the Debtors’ personal property (collectively, the “Personal Property Taxes”). As of the Petition Date, the Debtors owe approximately \$120,482 in Personal Property Taxes, none of which the Debtors believe will become due and owing during the thirty (30) days after the Petition Date; however, the Debtors seek authority to pay an additional \$5,000 for unidentified Personal Property Tax payments that may arise during the interim period.

94. In addition, pursuant to the terms of leases held by various landlords for the leasing of car lots and buildings, the Debtors have an obligation to pay real property taxes on behalf of the

<sup>15</sup> The Debtors entered into a payment agreement with the California Department of Tax and Fee Administration whereby the Debtors agreed to pay approximately \$685,881.12 of its \$1,261,851.00 in total tax liability (the “California Sales and Use Taxes”) over the course of twelve (12) months. Pursuant to the agreement, the Debtors’ first payment of \$57,156.76 is due October 20, 2023. Notwithstanding the agreement, at the final hearing on the Taxes Motion the Debtors will seek authority to pay the California Sales and Use Taxes due and owing, in the ordinary course.

1 landlords. Although those amounts are paid directly to the relevant county taxing authority, they  
2 are obligations owed by the Debtors to the landlords, and, in turn, by the landlords to the taxing  
3 authority. The Debtors are aware of real property taxes that are due and owing in connection with  
4 certain leases as of the Petition Date. At this time, the Debtors request authority to pay real property  
5 taxes required under their leases only to the extent they accrue post-petition, they do not seek  
6 authority to pay any prepetition real property taxes.

7 95. Certain municipal and county governments require businesses to obtain business  
8 licenses and pay corresponding business license fees (collectively, the "Business License Fees").  
9 The Debtors are subject to such Business License Fees in certain local jurisdictions. As of the  
10 Petition Date, the Debtors are not aware of any outstanding unpaid Business License Fees owing  
11 to the Taxing Authorities. However, based on past experience, it is possible that Business License  
12 Fees that are owing have not been communicated to the Debtors. Accordingly, the Debtors request  
13 additional authority to pay all Business License Fees already due and any additional prepetition  
14 obligations for business licenses as necessary to continue operations.

15 96. Many federal, state and local Taxing Authorities impose personal liability on  
16 directors and/or responsible officers of entities responsible for collecting or paying certain taxes or  
17 fees in the event that such taxes or fees are not paid by the Debtors. Thus, if such taxes or fees  
18 remain unpaid, the Debtors' directors and officers may be subject to lawsuits or even criminal  
19 prosecution on account of nonpayment during the pendency of these Chapter 11 Cases. Such  
20 lawsuits or proceedings would constitute a significant distraction for the Debtors' directors and  
21 responsible officers at a time when they should be focused on the Debtors' efforts to preserve and  
22 maximize value for all stakeholders.

23 97. Although the Debtors believe that any such taxes and/or assessments for which the  
24 Debtors' directors and/or responsible officers may be personally liable are described herein, it is  
25 possible that other prepetition obligations, which carry similar liability, may be uncovered by the  
26 Debtors subsequent to the filing of the Taxes Motion. To the extent that such prepetition obligations  
27 exist, the Debtors seek authority to treat them as Taxes and Assessments as that term is defined and  
28 used in the Taxes Motion and pay them as they are discovered or arise.

1 **H. Utilities Motion**

2 98. By the *Motion of the Debtors for Interim and Final Orders Establishing Adequate*  
3 *Assurance Procedures with respect to the Debtors' Utility Providers* (the "Utilities Motion"), the  
4 Debtors request an order (i) establishing procedures for addressing any requests that a utility  
5 company (collectively, the "Utility Companies" and each, individually, a "Utility Company") may  
6 make for additional assurance of payment; (ii) prohibiting the Utility Companies from altering,  
7 refusing or discontinuing services to, or discriminating against the Debtors; (iii) approving an  
8 adequate assurance deposit as adequate assurance of post-petition payment to the Utility  
9 Companies; and (iv) granting certain related relief.

10 99. The Debtors rely on utility services, including, but not limited to, telephone, internet,  
11 gas and electric, waste removal, and water (collectively, the "Utility Services") provided by the  
12 Utility Companies, including those identified on Exhibit A to the Utilities Motion (the "Utility  
13 Service List"), to operate their businesses. However, in the *First Omnibus Motion of the Debtors*  
14 *for an Order Authorizing Rejection of Certain Unexpired Leases Effective Nunc Pro Tunc to the*  
15 *Petition Date*, filed on the Petition Date, the Debtors have sought to reject the unexpired leases for  
16 real property at all of their locations except for Beaverton, Oregon; Oakbrook, Illinois; Oakland,  
17 California; San Francisco, California; and Pomona, California (the "Core Locations"). The Debtors  
18 do not anticipate that they will continue to use Utility Services at locations except for the Core  
19 Locations.

20 100. Uninterrupted service from the Utility Companies at the Core Locations is essential  
21 to administering these Chapter 11 Cases. Any temporary or permanent discontinuation of utility  
22 services could irreparably disrupt the orderly administration of these Chapter 11 Cases, damage the  
23 Debtors' assets, and, as a result, diminish recoveries to the Debtors' stakeholders.

24 101. The Debtors propose to provide "adequate assurance" in two ways. First, they  
25 intend to pay any post-petition obligations to the Utility Companies in a timely fashion in the  
26 ordinary course of their business. Second, the Debtors propose to deposit, as adequate assurance  
27 of payment, approximately \$14,005.00 (the "Adequate Assurance Deposit") into a segregated  
28 account (the "Adequate Assurance Account") within 20 days of the Petition Date additional

1 adequate assurance. The Adequate Assurance Deposit equals approximately two weeks of the  
2 Debtors' estimated utility expenses for those Utility Services at the Core Locations. The Adequate  
3 Assurance Deposit equals approximately two weeks of the Debtors' estimated utility expenses for  
4 those Utility Services at the Core Locations.

5 **I. First Lease Rejection Motion**

6 102. By the *First Omnibus Motion of the Debtors for Entry of an Order Authorizing*  
7 *Rejection of Certain Unexpired Leases Effective Nunc Pro Tunc to the Petition Date* (the "Rejection  
8 Motion"), the Debtors request entry of an order, in substantially the form attached as Exhibit A to  
9 the Rejection Motion, authorizing but not directing them to reject the Leases effective *nunc pro*  
10 *tunc* to the Petition Date.

11 103. The Debtors operated multiple locations across the United States as part of their  
12 omni-channel used car sales strategy. The majority of these locations stored vehicles that were for  
13 sale on the Debtors' platform. During 2023, in an attempt to reduce losses and focus on their path  
14 to profitability, the Debtors restructured, closed unprofitable stores, stopped the development of  
15 their capital-intensive dealer marketplace strategy, and reduced expenses, including streamlining  
16 their workforce in several rounds of layoffs. As part of their restructuring, the Debtors closed  
17 facilities in California, Florida, Louisiana, Oregon, Texas, Virginia, and Washington. One of these  
18 Leases has expired but the rest remain active and continue to drain cash from the Debtors' estates.  
19 With respect to the Leases in Pomona, California, and Miami, Florida, the Debtors have sublet the  
20 property, and the tenants remain on the premises; however, the Debtors release all of their interest  
21 in those properties. The Debtors have exited the premises of each of the other Leases on the  
22 Contract Rejection Schedule and have turned over the property to the landlord.

23 104. The Debtors have reviewed their leases and have considered their cost in the context  
24 of the Debtors' reduced operations. The Debtors have determined that the Leases are unnecessary  
25 to the Debtors' ability to administer their estates and/or are burdensome to the Debtors' estates.  
26 Accordingly, the Debtors believe that rejecting the Leases, as described below, will be in the best  
27 interests of the Debtors, their creditors, and the estates:  
28

1 (a) Seven leases for dealership buildings (e.g., showrooms, service facilities) and  
 2 vehicle lots located in Baton Rouge, Louisiana; San Antonio, Texas; Midlothian,  
 3 Virginia; Seattle, Washington; Houston, Texas; Whittier, California; and Miami,  
 4 Florida, that were closed prior to the Petition Date;

5 (b) One yard lease that the Debtors no longer need in Oakland, California (the "Oakland  
 6 Lot Lease"); and

7 (c) Three leases that were assigned to third parties prior to the Petition Date for which  
 8 the Debtors are guarantors located in Merritt Island, Florida, Reno, Nevada and  
 9 Tampa, Florida.

10 105. The Oakland Lot Lease is leased by Prologis Mesquite, LLC (the "Oakland  
 11 Landlord"). The Oakland Landlord also owns and leases the dealership building in Oakland (the  
 12 "Oakland Building Lease" and jointly with the Oakland Lot Lease, the "Oakland Leases"). The  
 13 Oakland Leases have cross-default provisions that purport to create an event of default in one lease  
 14 if the other is breached. Other than these cross-default provisions, the Oakland Leases are separate,  
 15 fully-integrated agreements with separate purposes and consideration.

16 106. The Debtors remain at the Debtors' building in Oakland and do not propose to reject  
 17 the Oakland Building Lease by the Rejection Motion.

18 107. By rejecting the Leases, the Debtors estimate that they will save approximately  
 19 \$850,000 for the real property leases in monthly expenses.

20 **J. Motion to Sell Inventory**

21 108. By the *Motion of the Debtors for Expedited Entry of an Order Pursuant to 11 U.S.C.*  
 22 *§§ 105(a), 363(b), and 363(c), and Fed. R. Bankr. P. 6003 and 6004 Authorizing Debtors to Sell*  
 23 *Inventory Wholesale Free and Clear of Liens, Claims, Encumbrances, and Interests* (the "Motion  
 24 to Sell Inventory"), the Debtors request entry of an order, in substantially the form attached as  
 25 Exhibit A to the Motion to Sell Inventory, (i) authorizing the Debtors to sell their vehicle inventory  
 26 through wholesale channels, at one or more auctions beginning as early as October 17, 2023, free  
 27 and clear of all liens, claims, encumbrances, and interests; and (ii) granting certain related relief.  
 28 In the alternative, in the event that the Court is unwilling to enter an expedited order granting the

1 Motion to Sell Inventory before October 17, 2023, the Debtors request a “comfort order” from the  
2 Court, pursuant to section 363(c) of the Bankruptcy Code, authorizing the Debtors to sell up to 200  
3 vehicles through wholesale channels in the ordinary course of business, without further notice or  
4 hearing, while the balance of the Motion to Sell Inventory is pending hearing.

5 109. By and through the Motion to Sell Inventory, the Debtors seek to sell all or most of  
6 their vehicle inventory (the “Wholesale Inventory Sale”), which, as of the Petition Date, consists  
7 of approximately 400 used vehicles, at one or more auctions conducted through the established  
8 wholesale market by ADESA (“ADESA”), the first of which is scheduled to take place on October  
9 17, 2023 (collectively, the “Wholesale Auctions”), or immediately after the Wholesale Auctions at  
10 no lower than the highest price offered for a vehicle at the Wholesale Auction, to the extent such  
11 vehicle was unsold at the Wholesale Auction.

12 110. As discussed above, prior to the Petition Date, the Company was organized into two  
13 business segments: retail and wholesale. The retail segment represented retail sales of used vehicles  
14 through the Company’s ecommerce platform, and fees earned on sales of value-added products  
15 associated with those vehicles sales such as vehicle service contracts, guaranteed asset protection  
16 waiver coverage, prepaid maintenance plans, and appearance protection plans. The wholesale  
17 segment represented sales of used vehicles through wholesale auctions or directly to a wholesaler.

18 111. Shortly before the commencement of these Chapter 11 Cases, on October 6, 2023,  
19 Shift ceased operation of its retail business. Shift also no longer purchases vehicles for sale. As a  
20 result, as of the Petition Date, Shift’s business now consists solely of selling vehicles through its  
21 wholesale segment.

22 112. From January 2023 through the Petition Date, Shift sold over 1,000 cars through  
23 wholesale channels, representing approximately 8% of the Debtors’ inventory. The aggregate  
24 purchase price obtained from the Debtors’ wholesale sales in 2023 was approximately \$13  
25 million.

26 113. Under the leadership of new management experienced in the car dealership  
27 industry and Shift’s decision to pivot to a dealership model focused on profitable growth, Shift’s  
28 use of wholesale channels accelerated. In August 2023, the Debtors sold approximately 350

1 vehicles through wholesale channels, representing \$5 million in purchase price proceeds and  
2 approximately 25% of the Debtors' inventory at the time. In September 2023, the Debtors sold  
3 more than 200 wholesale units, representing approximately \$1.6 million in purchase price  
4 proceeds and approximately 25% of the Debtors' inventory. In the two weeks between  
5 September 22 and the Petition Date, the Debtors sent 137 cars to wholesale auctions, of which  
6 115 cars were sold. In other words, as of the Petition Date, the Debtors were engaged in the  
7 business of selling used cars through wholesale channels.

8 114. The used car wholesale market is a well-established marketplace. Auctions are  
9 conducted by ADESA – a well-known and reputable wholesale vehicle auction provider – at  
10 various locations. ADESA will pick up the vehicles, prepare a condition report, and list the  
11 vehicles on their website. During the Wholesale Auctions, Shift's management and/or employees  
12 will be available online to watch the auction and answer any questions that may come up during  
13 the sale. Any cars that do not sell on the date of the auction will then go to ADESA's online  
14 auction, which will run until the unsold cars are able to run at the live auction the following week.

15 115. Historically, the Debtors have experienced an approximate sell rate of between  
16 85% and 90% at these wholesale auctions. After cars are sold, the Debtors provide titles and  
17 paperwork, to the extent available, and typically receive payment within 72 hours.<sup>16</sup>

18 116. The first Wholesale Auction at which the Debtors propose to sell their vehicle  
19 inventory will take place at ADESA Golden Gate in Tracy, CA, on October 17, 2023. The  
20 Debtors propose to sell their vehicle inventory located in Oakland at this Wholesale Auction. The  
21 Debtors propose to sell their vehicle inventory located in Pomona at a Wholesale Auction that  
22 will take place on October 20, 2023, at ADESA Los Angeles in Mira Loma, CA.

23 117. The Debtors anticipate that the sales at the Wholesale Auctions will maximize  
24 recoveries on the vehicle inventory. In addition, the longer that the Debtors hold the vehicle  
25

---

26 <sup>16</sup> For cars that are sold without titles, payment may occur later than 72 hours. In addition,  
27 cars that are sold "green light," i.e., with guarantees, are typically sold subject to an arbitration  
28 period and right to refund. Cars that are sold "red light," i.e., as-is, where-is, are sold on a final  
basis but typically at lower prices.

1 inventory, the more likely it is that the value of the cars will depreciate and obtain lower purchase  
2 prices if sold at a later date. Moreover, delaying the sale of the vehicle inventory may expose the  
3 Debtors to security concerns; for example, vehicles that remain on the Debtors' lots are at risk of  
4 theft or damage. Finally, there is seasonality to the wholesale auto market, which softens in  
5 November and December, as auto dealers typically slow down on wholesale purchases during the  
6 holiday season.

7 118. Because the Company's plan is to use cash generated by the liquidation of  
8 inventory through wholesale channels to provide the necessary liquidity to support the winddown  
9 and the chapter 11 process, the Debtors must sell at least a substantial part of their vehicle  
10 inventory at the upcoming Wholesale Auctions, beginning on October 17, 2023, in order to both  
11 (1) ensure that they have sufficient liquidity to pay essential administrative expenses as they come  
12 due in the first few weeks of the Chapter 11 Cases, including, for example, unpaid sales taxes,  
13 insurance, and payroll, and (2) immediately reduce the foregoing and other administrative  
14 expenses, including rent, which could materially reduce distributions available to creditors if not  
15 swiftly addressed.

16 **K. Stipulation/Motion to Use Cash Collateral of Ally Bank**

17 119. By the *Motion for an Interim Order Authorizing Debtors to Enter into Stipulation*  
18 *for Use of Cash Collateral and for Adequate Protection (Ally); and for a Final Hearing Thereon*  
19 (the "Cash Collateral Motion"), the Debtors request entry of an order, in substantially the form  
20 attached as Exhibit A to the Cash Collateral Motion, authorizing use of Cash Collateral (as  
21 defined in the Cash Collateral Motion), setting of a final hearing, and other relief as set forth  
22 therein and in the Stipulation for Use of Cash Collateral and for Adequate Protection (the  
23 "Stipulation") by and among certain of the Debtors and Ally Bank and Ally Financial Inc.  
24 (collectively referred to as "Ally").

25 120. As indicated in the Budget, the Debtors believe that their only outstanding  
26 obligations to Ally, the Contingent Obligations, are secured many times over by anticipated  
27 liquidation proceeds. The Debtors further believe that such funds, after satisfaction of the  
28

1 Contingent Obligations will be sufficient to pay all priority and administrative claims and to  
2 provide for a small distribution to unsecured creditors.

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I declare under penalty of perjury that the foregoing is true and correct. Executed in  
Houston, Texas, on October 9, 2023.

/s/ Jason Curtis  
Jason Curtis

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address HANSON BRIDGETT LLP ANTHONY J. DUTRA, SBN 277706 adutra@hansonbridgett.com TAMAR TERZIAN SBN 254148 tterzian@hansonbridgett.com 777 S. Figueroa Street Suite 4200 Los Angeles, CA 90017 Tel: (323) 210-7747 Fax: (213) 395-7615  <input checked="" type="checkbox"/> Attorney for: San Marino Café & Marketplace, LLC	FOR COURT USE ONLY
<b>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION</b>	
In re: SAN MARINO CAFÉ & MARKETPLACE, LLC, Debtor in Possession          Debtor(s).	CASE NO.: 2:23-bk-15814 VZ CHAPTER: 11  <div style="text-align: center;"> <b>SUBCHAPTER V PLAN OF REORGANIZATION</b>                      [11 U.S.C. §§ 1123, 1181, 1189, 1190]                 </div> <input checked="" type="checkbox"/> Initial Plan <input type="checkbox"/> 1 <sup>st</sup> Amended Plan <input type="checkbox"/> For information on court hearings, see the separately filed notice(s) of hearing.

On (specify the "petition date") **9/7/2023**, the Debtor filed a voluntary bankruptcy petition under Chapter 11 of the Bankruptcy Code ("Code"). This Subchapter V Plan of Reorganization ("**Plan**") is filed by the Debtor pursuant to 11 U.S.C. § 1189.

**PLAN.** The terms regarding classification and treatment of claims and interests, located at Sections **VIII – XI** of the Plan, comply with the requirements of 11 U.S.C. § 1123, including the proposed treatment of claims of the Debtor's creditors and, if applicable, the interests of shareholders or partners. **The Court has not yet confirmed the Plan, which means the terms of the Plan are not now binding on anyone;** however, if the Plan is confirmed, the terms will bind the Debtor and any holders of claims or interests treated by the plan.

**DISCLOSURES AND FINANCIAL PROJECTIONS.** Sections **I – VII** of the Plan provide disclosures and financial projections and describe the assumptions that underlie the Plan and how the Plan will be executed. **This information is for explanatory purposes only and is as accurate as possible.**

**SUPPORTING EXHIBITS AND DECLARATIONS.** Concurrent with filing this Plan, the Debtor is filing a document titled Exhibits and Declarations in Support of Subchapter V Plan of Reorganization ("Plan Exhibits and Declarations") to supplement and support the disclosures and financial projections set forth in Sections I - VII of the Plan.

Any interested party desiring further information should contact the attorney for the Debtor (or the Debtor if the Debtor is not represented by an attorney); contact information is identified above in the box at top left of this page.

<b>NOTE ABOUT CITATIONS</b>	
“Chapter, section and §” references are to 11 U.S.C. §§ 101-1532 of the Bankruptcy Code.	
“FRBP” references are to the Federal Rules of Bankruptcy Procedure.	
“LBR” references are to the Local Bankruptcy Rules for the Central District of California.	

<b>TABLE OF CONTENTS</b>		
<b>DISCLOSURES AND FINANCIAL INFORMATION</b>		<b>Page</b>
<b>I.</b>	General Disclaimer	<b>3</b>
<b>II.</b>	Type of Plan of Reorganization; Important Dates	<b>3</b>
<b>III.</b>	Description of Debtor’s Past and Future Activities, Operations and Events Precipitating Bankruptcy Filing	<b>3</b>
<b>IV.</b>	Definitions and Preliminary Information	<b>5</b>
<b>V.</b>	Source of Money to Satisfy Claims and Interests	<b>8</b>
<b>VI.</b>	Assets and Liabilities of the Estate	<b>11</b>
<b>VII.</b>	Liquidation Analysis; Treatment of Nonconsenting Members of Consenting Class	<b>11</b>
<b>CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS</b>		
<b>VIII.</b>	Treatment of Claims and Interests	<b>12</b>
<b>A.</b>	Post-Petition Domestic Support Obligation: Pay Before Plan is Confirmed	<b>12</b>
<b>B.</b>	Assumption and Rejection of Executory Contracts and Unexpired Leases	<b>12</b>
<b>C.</b>	Unsecured Claims: Administrative Expenses, Taxes	<b>13</b>
<b>D.</b>	CLASS # 1: Priority Unsecured Claims	<b>14</b>
<b>E.</b>	CLASS # 2: Unsecured Claims: Nominal and General	<b>15</b>
<b>F.</b>	CLASS # 3, # 4 and #5: Secured Claims	<b>16</b>
<b>G.</b>	Equity Security Interests and Other Ownership Interests	<b>19</b>
<b>IX.</b>	Unclaimed or Undeliverable Plan Distributions	<b>20</b>
<b>X.</b>	Effect of Confirmation	<b>20</b>
<b>XI.</b>	Appendices of Additional Claims Not Identified in Sections VIII.A – VIII.F	<b>21</b>
	Proof of Service (Refer to Notice of Dates and Deadlines for Service Protocol)	<b>22</b>

### I. GENERAL DISCLAIMER

PLEASE READ THIS DOCUMENT CAREFULLY, INCLUDING THE SEPARATELY FILED PLAN EXHIBITS AND DECLARATIONS. IT EXPLAINS WHO IS ENTITLED TO (A) VOTE TO ACCEPT OR REJECT THE PLAN, AND (B) FILE AN OBJECTION TO CONFIRMATION OF THE PLAN. IT ALSO IDENTIFIES THE TREATMENT THAT CREDITORS AND INTEREST HOLDERS (EQUITY SECURITY INTERESTS OR OTHER OWNERSHIP INTERESTS) CAN EXPECT TO RECEIVE UNDER THE PLAN, IF THE PLAN IS CONFIRMED BY THE COURT.

THE SOURCES OF FINANCIAL DATA RELIED ON TO FORMULATE THIS DOCUMENT ARE IN THE PLAN EXHIBITS AND DECLARATIONS. ALL REPRESENTATIONS ARE TRUE TO THE BEST KNOWLEDGE OF THE DEBTOR. UNLESS THE COURT ORDERS OTHERWISE, NO REPRESENTATIONS ARE AUTHORIZED CONCERNING THE DEBTOR THAT ARE NOT CONSISTENT WITH INFORMATION CONTAINED IN THIS PLAN.

AFTER CAREFULLY REVIEWING THIS DOCUMENT AND THE PLAN EXHIBITS AND DECLARATIONS, PLEASE REFER TO THE SEPARATELY FILED NOTICE OF DATES RELATED TO A HEARING ON MOTION TO CONFIRM THE PLAN. THAT NOTICE WILL IDENTIFY THE DATES AND DEADLINES TO FILE DOCUMENTS AND SUBMIT A BALLOT.

### II. TYPE OF PLAN OF REORGANIZATION; IMPORTANT DATES

Payments and treatments under the Plan have a start date ("**Effective Date**"), a period of time after the Effective Date to continue payments ("**Plan Term**"), and a final payment date ("**Final Payment**").

Plan Type	Effective Date	Plan Term	Final Payment Date
<input type="checkbox"/> Liquidating: See Section V.A.2 below for anticipated sale(s) <input checked="" type="checkbox"/> Operating: See Section III below	<input checked="" type="checkbox"/> 14 days after order confirming Plan <input type="checkbox"/> Other date:	<input checked="" type="checkbox"/> 5 years; or <input type="checkbox"/> months	May 2029

### III. DESCRIPTION OF DEBTOR'S PAST AND FUTURE ACTIVITIES, OPERATIONS AND EVENTS PRECIPITATING BANKRUPTCY FILING

#### A. PAST AND FUTURE ACTIVITIES OR BUSINESS OPERATIONS

1. **Debtor's Status.** The Debtor is:

a.  an individual or sole proprietor:

From the dates of \_\_\_\_\_ to \_\_\_\_\_, the Debtor was employed by \_\_\_\_\_, a business that conducted or provided the following services:

From the dates of \_\_\_\_\_ to \_\_\_\_\_, the Debtor was self-employed and conducted or provided the following services:

b.  organized as a  corporation or  partnership or  LLC or  Other:

This entity was formed in the year 2017 and during the years of 2017 through present, the Debtor conducted 100 percent of its business activity in the city of San Marino, State of California.

2. **Past Activities and Operations.** Before this bankruptcy case was filed, the Debtor:

provided the following services for pay: The Debtor operated a small café where she would serve coffee, pastries, lunch and other items. The Debtor also provided private catering for individuals and corporations.

manufactured or sold the following products:

- was in the business of renting real estate. [see **Plan Exhibits and Declarations** (Exhibit C) for a detailed description of Debtor's property(ies) including locations, square footage, occupancy rates, etc.]
- was in the business of developing real estate. [see **Plan Exhibits and Declarations** (Exhibit C) for a detailed description of Debtor's property(ies) including locations, size of lot(s), stage of development, etc.)
- other:

3. **Future Activities and Operations.** The Debtor  will, or  will not continue some or all of these activities and operations, as described below:

**Continue to provide food and beverage to its customers and continue with catering small events.**

**B. FACTORS THAT LED TO FILING THIS BANKRUPTCY CASE** (*Describe briefly*):

**The Debtor incurred significant loans during the pandemic that have high interest rates. The Debtor was sued by one of the loan holders and desires to reorganize its debts to continue its operations. The Debtor is a small business.**

**C. ACTIONS TAKEN TO SOLVE FINANCIAL PROBLEMS.** The Debtor took the following action to solve financial problems that led to filing this bankruptcy case:

**1.Actions Taken Before Petition Date:**

The Debtor reduced her employees and changed certain items on her menu to make it more cost efficient and increase her margins.

**2.Actions Taken After Petition Date:**

After the Petition Date the Debtor intends to reduce a few more employees and personally prepared certain goods herself rather than purchasing from vendors.

**D. FUTURE FINANCIAL OUTLOOK.** Debtor believes that its economic health has, or will, improve from its prebankruptcy state for the following reasons. (*Describe briefly*)

**The Debtor believes that based on the foregoing adjustments, the Debtor will continue to provide food and beverage to her customers. The accounting and the relief by reducing the payment to unsecured creditors will assist in the reorganization process.**

**E. MANAGEMENT OF THE DEBTOR** (If Debtor is a business entity or will be organized as a business entity):

- See details below; OR  
 See Exhibit

1. Names of persons managing the Debtor's business affairs, and job title:
  - a. During the bankruptcy case: Linda G. Zadoian, 100% owner, managing member, baker, administrator and treasurer.
  - b. After the Plan is confirmed: Linda G. Zadoian, 100% owner, managing member, baker, administrator and treasurer.
2. Proposed compensation to persons listed above:
  - a. During the bankruptcy case: Linda G. Zadoian, owner of the Debtor receives compensation of \$12,000 per month.
  - b. After the Plan is confirmed: Linda G. Zadoian, owner of the Debtor receives compensation of \$12,000 per month.
3. Job description and qualifications of persons listed above: Linda G. Zadoian is the owner and operator of the Debtor for the past 5 years. She created the client base the client base for the San Marino Café & Marketplace. It is one of the two restaurants located in a small section of the City of San Marino and serves the community.
4. Affiliation of persons listed above to Debtor. Founder and 100% owner.

**F. PROPOSED  DISBURSING AGENT  MULTI-PURPOSE POST-CONFIRMATION AGENT** will pay all amounts due under the Plan from a fund hereby authorized to be opened. This fund shall be maintained in a segregated, interest-bearing account in a depository approved by the United States trustee for the Central District of California for deposits of funds by trustees.

1. Name of person responsible for collecting money intended for distribution to claimants and transmitting it to claimants: Linda G. Zadoian
2. Disbursing agent's address: 610 E. Dessert Willow Road, Azusa, CA 91702.
3. Disbursing agent's phone number: (818) 967-7742.
4. Proposed compensation for person listed above: No compensation for acting as disbursing agent.
5. Job description and qualifications of person listed above: Owner and Manager
6. Affiliation of person listed above, to Debtor: Owner and Manager

## **IV. DEFINITIONS AND PRELIMINARY INFORMATION**

### **A. CLAIMS AND INTERESTS**

1. Claims [ §§ 101(5), (7) and (12); § 102(2) ]; Interests [ § 101(16) ]. "Claims" refers to all debts and other obligations of the Debtor or against property of the Debtor. Claims treated under the Plan are included whether the claim arose before or after the bankruptcy case was filed, and whether or not a claim or obligation involves a cash payment. "Interests" refer to equity securities and any other ownership stakes in the Debtor.

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This form has been approved for use in chapter 11 cases assigned to Judge Vincent P. Zurzolo.

2. Creditors [§ 101(10)]; Interest Holders [§ 101(17)]. A creditor refers to the holder of any claim treated under the Plan, even if the creditor did not file a proof of claim. An interest holder refers to a holder of an interest treated under the Plan, even if the interest holder did not file a proof of interest.

**B. ALLOWED, DISALLOWED, AND DISPUTED CLAIMS AND INTERESTS**

1. Allowed Claims and Interests. A claim or interest is allowed if it is timely and properly scheduled or filed, and (a) was not objected to; or (b) was objected to or was settled by the parties or otherwise determined by a court order. **Allowed claims and interests are treated under the Plan.**
2. Disallowed Claims and Interests. A claim or interest is disallowed if it was timely objected to by the Debtor and the court made a ruling that the claim or interest is disallowed in part or entirely. **Disallowed claims are not treated under the Plan.**
3. Disputed Claims and Interests. A claim or interest is disputed if a ruling on allowance has yet to be made and (a) a proof of claim or interest has been filed or deemed filed and the Debtor or a party in interest has filed an objection; or (b) a proof of claim or interest has not been filed and the Debtor scheduled such claim or interest as disputed, contingent, unliquidated or unknown.
  - a. Timeline of Objection Process.
    - (1) The last date to file a proof of claim or interest is: 11/16/2023; and
    - (2) The last date to hold a hearing on any objection to claim or interest is: 2/29/2024
  - b. Intent to Object to Claims and Interests.
 

Debtor completed this process and does not anticipate objecting to any other claim or interest; or

The objection process is pending, or will begin, for the following claims or interests:

Creditor or Interest Holder	# of Proof of Claim / Interest	Amount of Claim / Interest	Basis of Objection to Claim or Interest
U.S. Small Business Administration	1	\$529,806.36	Debtor intends to object to this claim as being partially unsecured. Debtor's assets are significantly less making part of the claim unsecured.
ERC Specialists	2	\$34,724.65	Debtor intends to object to this claim because Debtor did not receive the ERC credit that ERC Specialists Debtor would receive for the quarters submitted.
Ascentium Capital	5	\$10,008.48	Debtor intends to object to this claim as being partially unsecured. Debtor's assets are significantly less making part of the claim unsecured.
Ascentium Capital	6	\$36,833.76	Debtor intends to object to this claim as being partially unsecured. Debtor's assets are significantly less making part of the claim unsecured.

Ascentium Capital	7	\$5,649.03	Debtor intends to object to this claim as being partially unsecured. Debtor's assets are significantly less making part of the claim unsecured.
Ascentium Capital	8	\$24,267.22	Debtor intends to object to this claim as being partially unsecured. Debtor's assets are significantly less making part of the claim unsecured.
Perrin Bernard Supowitz, LLC dba Individual Foodservice	9	\$3,050.78	Debtor intends to object to this claim as being partially unsecured. Debtor's assets are significantly less making part of the claim unsecured.
The Business Backer	10	\$143,096.12	Debtor intends to object to this claim as being partially unsecured. Debtor's assets are significantly less making part of the claim unsecured.
EBF Holdings, LLC d/b/a Everest Business Funding	11	\$64,426.14	Debtor intends to object to this claim as being partially unsecured. Debtor's assets are significantly less making part of the claim unsecured.
Webbank	12	\$50,427.58	Debtor intends to object to this claim as being partially unsecured. Debtor's assets are significantly less making part of the claim unsecured. In addition, this claim was filed on 11/29/2023 after the deadline to file a proof of claim 11/16/2023.

- c. Delayed Distribution on Disputed Claims and Interests; Settlement: No distribution will be made on a disputed portion of a claim or interest unless allowed by a final, non-appealable order. FRBP 9019 authorizes the Debtor to settle disputed claims and interests with court approval; but, court approval is not required if a proposed settlement does not exceed \$10,000. The Debtor is required to reserve funds to pay the amount a creditor or interest holder would receive if the claim or interest is allowed in full (unless the court approves a different amount). To the extent a disputed claim or interest is disallowed, (a) the funds that had been reserved for such claims and interests will be distributed as provided in the Plan to other creditors or interest holders of the same class (or as ordered by the court); or (b) if this box is checked  then such funds will be distributed to the Debtor.

**C. POTENTIAL § 1111(b) ELECTIONS.** Pursuant to 11 U.S.C. § 1111(b) and FRBP 3014 a partially secured claim to may be treated as fully secured under certain conditions, notwithstanding § 506(a). Creditors should consult their attorney to evaluate if a § 1111(b) election is available and is in their best interest.

The court set \_\_\_\_\_ as the deadline for making an election under § 1111(b).

The court has not set a deadline for making an election under § 1111(b).

**D. VOTING BY BALLOT; FILING OBJECTION TO CONFIRMATION OF PLAN.**

1. **Introduction.** “Voting” to accept or reject the Plan is different from “objecting” to confirmation of the Plan.
  - a. **What does voting mean?** Voting means a creditor or interest holder submits a ballot to the Debtor. Ballots are counted so the court can determine (1) which claims, interests, and classes of claims and interests accepted proposed treatment, and (2) which classes of claims and interests rejected the proposed treatment. Whether each class “accepts” or “rejects” treatment is only one factor the court must consider when determining whether to grant the Debtor’s request to confirm the Plan.
  - b. **What does “objecting to confirmation” mean?** Objecting to confirmation means a party files and serves a document that contains legal and factual assertions as to whether the Debtor satisfied its requirements for the court to confirm the Plan [11 U.S.C. § 1129].
  - c. **Notice of Deadlines for Voting and Objecting.** The Debtor will file and serve a Notice of Dates Related to Confirmation of Plan and Deadlines to (A) Submit Ballot; (B) File Preliminary Objection to Confirmation of Plan; and (C) File Response to Motion to Confirm Plan (“**Notice of Deadlines Related to Confirmation**”).

2. **Voting by Ballot.**

a. **Who May Vote (§ 1124).**

- (1) **Not Entitled to Vote.** The Bankruptcy Code treats many creditors and interest holders as having accepted the Plan without a vote because they are treated under the Plan exactly as required by the Bankruptcy Code. The Bankruptcy Code also treats creditors and interest holders as having rejected the Plan without a vote if (a) the creditor or interest holder is to receive no distribution under the Plan; (b) an objection has been filed to that party’s claim or interest and the objection has not been resolved prior to filing the Plan; or (c) Debtor scheduled a claim or interest as contingent, disputed, unliquidated or unknown and the creditor or interest holder has not filed a proof of claim or interest.
- (2) **Entitled to Vote.** Creditors and interest holders are entitled to vote when their claim or interest is allowed and it is impaired, i.e. the Plan alters the contractual, legal or equitable rights of the creditor or interest holder. In addition, if the Debtor has objected to a scheduled claim or interest as contingent, disputed, unliquidated or unknown, or a proof of claim or interest has not been filed, and the creditor or interest holder wants to vote, the creditor or interest holder must file a motion to have its claim or interest allowed for voting purposes in time for that motion to be heard before the hearing on confirmation of the Plan.

<b>Classes Entitled to Vote Because the Class is Impaired:</b>	<b>Classes Not Entitled to Vote Because the Class is Unimpaired:</b>
<b>Secured, Priority and Unsecured Classes are Impaired</b>	<b>None.</b>

A creditor or interest holder that disputes Debtor’s characterization of its claim or interest as unimpaired and wants to vote may request a finding of impairment from the Court in order to obtain the right to vote.

- b. **Effect of Vote.** The Plan can be confirmed if (i) it is accepted by each impaired class because a majority in number and at least two-thirds in dollar amount of the claimants in that class who timely voted to accept the Plan; or (ii) it is not accepted by certain impaired class(es), but the court determines the Plan does not discriminate unfairly and is “fair and equitable” [as defined by §1191(b)] to all rejecting classes of claims or interests, or interest holders, and it meets all other criteria required for confirmation.
- c. **How to Vote.** A ballot will accompany the Notice of Deadlines Related to Confirmation. A voting creditor or interest holder must follow the instructions set forth in the Notice of Deadlines Related to Confirmation. A creditor or interest holder whose claim or interest is allowed as partly secured and partly unsecured is

entitled to vote in each capacity by delivering one ballot for the secured part of the claim or interest and another ballot for the unsecured portion of the claim or interest.

**3. Filing an Objection to Confirmation of the Plan**

- a. **Who May Object.** Any creditor, interest holder or other party may object to confirmation of the Plan.
- b. **How to Object.** Follow the instructions set forth in the Notice of Deadlines Related to Confirmation.
- c. **Effect of Objection.** The court will consider all objections that are timely and properly filed and served. If the objection has merit, it may result in the court denying the Debtor's request to confirm the Plan.

**V. SOURCE OF MONEY TO SATISFY CLAIMS AND INTERESTS**

The Plan cannot be confirmed unless the Court finds it is "feasible"; pursuant to 11 U.S.C. §§ 1190(1)(C) and 1191(c), this means the Debtor submitted evidence establishing that the Debtor will have sufficient funds available to satisfy all expenses, including the scheduled payments to claimants discussed in section VIII below.

**A. NON-INCOME SOURCES TO FUND PLAN.** See **Plan Exhibits and Declarations** (Exhibits D and \_\_\_\_ ) for income and other contributions that will fund the Plan. For other funding sources (non-income), see below:

1. Loan or Line of Credit:  None  Loans or Lines of Credit are as follows:

NAME OF LENDER	CONTRIBUTION TYPE	TERM	INT RATE	PROCEEDS
(a)	<input type="checkbox"/> Loan <input type="checkbox"/> Credit Line		%	\$
(b)	<input type="checkbox"/> Loan <input type="checkbox"/> Credit Line		%	\$

2. Sales of Property:

- None
- All or substantially all of Debtor's assets will be sold. Terms of proposed sale(s) and evidence of the financial solvency of proposed buyer(s) is attached in **Plan Exhibits and Declarations** (Exhibit \_\_\_\_)
- The specified property of Debtor is planned to be sold as follows:

PROPERTY DESCRIPTION:	PROPOSED SALE DATE	PROPOSED SALE PRICE	PROCEEDS TO FUND THE PLAN
(a) <input type="checkbox"/> Property in CLASS #3, #4 or #5: <b><u>Check only ONE:</u></b> <input type="checkbox"/> 3a <input type="checkbox"/> 3b <input type="checkbox"/> 3c <input type="checkbox"/> 3d <input type="checkbox"/> 3e <input type="checkbox"/> 4a <input type="checkbox"/> 4b <input type="checkbox"/> 4c <input type="checkbox"/> 4d <input type="checkbox"/> 4e <input type="checkbox"/> 5a <input type="checkbox"/> 5b <input type="checkbox"/> 5c <input type="checkbox"/> 5d <input type="checkbox"/> 5e		\$	\$
(b) <input type="checkbox"/> Property in CLASS #3 or #4: <b><u>Check only ONE:</u></b> <input type="checkbox"/> 3a <input type="checkbox"/> 3b <input type="checkbox"/> 3c <input type="checkbox"/> 3d <input type="checkbox"/> 3e <input type="checkbox"/> 4a <input type="checkbox"/> 4b <input type="checkbox"/> 4c <input type="checkbox"/> 4d <input type="checkbox"/> 4e <input type="checkbox"/> 5a <input type="checkbox"/> 5b <input type="checkbox"/> 5c <input type="checkbox"/> 5d <input type="checkbox"/> 5e		\$	\$

- See **Plan Exhibits and Declarations** (Exhibit \_\_\_\_ ) for additional anticipated sales of property.

3. **Adversary Proceedings:**  No adversary proceedings  Adversary proceedings are as follows:

	<b>ADVERSARY PROC. DESCRIPTION: FRBP 7001 and LBR 7004-1 require a summons/complaint.</b>	<b>DATE FILED OR TO BE FILED</b>	<b>ADV. PROC. NUMBER</b>	<b>ANTICIPATED RECOVERY</b>
(a)				\$
(b)				\$

See **Plan Exhibits and Declarations (Exhibit \_\_\_\_)** for additional adversary proceedings.

**B. PAYMENTS ON THE EFFECTIVE DATE.** This section demonstrates the Plan is feasible on the Effective Date.

<b>(1) CLAIMS AND EXPENSES TO BE PAID ON THE EFFECTIVE DATE</b>	<b>AMOUNT</b>
Cure Payments: Executory Contracts, Unexpired Leases: Section VIII.B.2.	\$0.00
Administrative Claims + Statutory Costs/Charges: Section VIII.C.1. + court costs	\$20,000.00
Nominal Unsecured Claims: Section VIII.E.1.	\$
First Payments: General Unsecured Claims: Section VIII.E.2.	\$3,741.00
Arrearages + First Payments: Secured Claims: Sections VIII.F.	\$
TOTAL TO BE PAID ON THE EFFECTIVE DATE:	\$18,000
<b>(2) SOURCE OF FUNDS ON THE EFFECTIVE DATE</b>	
Cash on Hand:	\$20,000
Loan or Line of Credit: Described above in: <input type="checkbox"/> V.A.(1a) <input type="checkbox"/> V.A.(1b)	\$0.00
Sale of Property: Described above in: <input type="checkbox"/> V.A.(2a) <input type="checkbox"/> V.A.(2b)	\$0.00
Adversary Proceeding Recovery: Described above in: <input type="checkbox"/> V.A.(3a) <input type="checkbox"/> V.A.(3b)	\$0.00
Other Sources: <input checked="" type="checkbox"/> ( <i>identify</i> ): Post-petition operations	\$0.00
TOTAL FUNDS AVAILABLE ON THE EFFECTIVE DATE:	\$20,000
<b>(3) CASH AVAILABLE AFTER PAYMENTS MADE ON THE EFFECTIVE DATE:</b>	<b>\$84.50</b>

**C. PAYMENTS DURING THE PLAN TERM.** See **Plan Exhibits and Declarations (Exhibit D)** for projections of cash flow for the duration of the Plan, to help determine the Plan is feasible during the plan term. The focus is on projected cash receipts and disbursements. All non-cash items such as depreciation, amortization, gains and losses are omitted. A positive number reflects a source of cash; a (negative number) reflects a use of cash. **Plan Exhibits and Declarations (Exhibit D)** also contains details of assumptions that underlie the projections.

**D. FINANCIAL RECORDS TO ASSIST IN DETERMINING WHETHER PROPOSED PAYMENT IS FEASIBLE**  
See **Plan Exhibits and Declarations (Exhibit E)** for three types of financial documents related to past activities. The two time periods are: (1) the most recent twelve-month calendar year; and (2) all months subsequent thereto. The financial documents include: balance sheets, cash flow statements and income and expense statements.

**E. TAX CONSEQUENCES OF THE PLAN.**

1. To the Debtor: Tax consequences to the Debtor are: This is a reorganization and Debtor does not anticipate tax liability associated with this bankruptcy process and cancelation of debt. Further any debt owed to IRS or EDD for payroll taxes will continues to be the obligation of the Debtor. The Debtor has a duty to continue to file its tax returns and pay all tax liabilities during this process.
  
2. To Creditors and Interest Holders: Creditors and interest holders should consult their advisors regarding potential tax effects of the Plan; nevertheless:
  - The Debtor believes tax consequences are:
  
  - The Debtor is not certain of tax consequences, because: Creditors will be entitled to write off debts after a period of time since collections efforts will be unlikely in this case and Debtor after consummating the plan will be entitled to a discharge of the remaining debt.

**F. EXPLANATION OF RISK FACTORS AND POTENTIAL FLUCTUATIONS WHEN IMPLEMENTING THE PLAN.**

RISK FACTOR	EXPLANATION OF RISK AND FLUCTUATIONS
<input checked="" type="checkbox"/> Business/Economic <input type="checkbox"/> Sale of Property <input type="checkbox"/> Balloon Payment <input type="checkbox"/> Int. Rate Adjustment <input type="checkbox"/> Other	The primary risk is the continued increase of inflation on food and beverages. This could result in an increase in prices for goods and reduction of demand from customers. The Debtor has increase prices since the filing of the Petition and has seen that the income generated in comparison to 2022 is slightly less this year.
<input type="checkbox"/> Business/Economic <input type="checkbox"/> Sale of Property <input type="checkbox"/> Balloon Payment <input type="checkbox"/> Int. Rate Adjustment <input type="checkbox"/> Other	
<input type="checkbox"/> Business/Economic <input type="checkbox"/> Sale of Property <input type="checkbox"/> Balloon Payment <input type="checkbox"/> Int. Rate Adjustment <input type="checkbox"/> Other	
<input type="checkbox"/> Business/Economic <input type="checkbox"/> Sale of Property <input type="checkbox"/> Balloon Payment <input type="checkbox"/> Int. Rate Adjustment <input type="checkbox"/> Other	

**VI. ASSETS AND LIABILITIES OF THE ESTATE**

- A. ASSETS. Plan Exhibits and Declarations (Exhibit C)** contains a list and fair market values of property of the estate so that parties can assess what assets are at least theoretically available to satisfy claims and interests

and evaluate the overall worth of the bankruptcy estate. Any proposed sale of these assets is discussed in Section V.A.2 above.

- B. **LIABILITIES. Plan Exhibits and Declarations (Exhibit B)** identifies the allowed claims against the estate. Treatment of allowed claims is explained in section VIII below.
- C. **SUMMARY.** The fair market value of all property of the estate is \$25,000. Total liabilities are \$902,736.13.

### VII. LIQUIDATION ANALYSIS; TREATMENT OF NONCONSENTING MEMBERS OF CONSENTING CLASS

The Plan must provide that a nonconsenting impaired creditor or interest holder of a consenting class receive at least as much as it would if the Debtor was instead in chapter 7 case. In chapter 7, the general rule is that the Debtor's assets are sold by a trustee. Unsecured claims generally share in proceeds only after secured claims and administrative claims are paid. Certain unsecured claims get paid before other unsecured claims. Unsecured claims with the same priority share in proportion to the amount of their allowed claim in relationship to the total amount of allowed claims.

A creditor would recover less under chapter 7 than under chapter 11 for a number of reasons including: (1) for the reasons detailed in **Plan Exhibits and Declarations (Exhibit C)**, the liquidation value of Debtor's assets is less than its fair market value; (2) in a chapter 7 case a trustee is appointed and is entitled to compensation from the bankruptcy estate as reflected in the chart below; and (3) an individual debtor is permitted to exempt a certain amount of the sales proceeds before unsecured claims are paid anything.

CALCULATION OF ESTIMATED PERCENT RECOVERY	CHAPTER 7	CHAPTER 11
(a) <u>Total value of the Debtor's assets:</u> See <b>Plan Exhibits and Declarations (Exhibit C)</b> for a list of all property, valuations, and valuation methods.	\$17,100	\$17,100 Funding the Chapter 11 plan is based on expected monthly income of \$105,000 per month
(b) <u>Administrative Expense Claims:</u>	\$20,000	\$20,000
(c) <u>Tax Claims:</u>	\$80,694.54	\$80,694.54 <sup>1</sup>
(d) <u>Other Unsecured Claims to be Paid Before General Unsecured Claims:</u>	N/A	N/A
(e) <u>Trustee's Fees:</u> Assuming the chapter 7 trustee disburses the net liquidation value of assets to claimants, 11 U.S.C. § 326 indicates the chapter 7 trustee is entitled to fees of:  * 25% on the first \$5,000 of all moneys disbursed = \$ , * 10% on any amount over \$5,000 but less than \$50,000 = \$2500 * 5% on any amount over \$50,000 but not in excess of \$1 million = \$ , * 3% on all amounts over \$1 million) = \$ ,  <b style="text-align: center;">TOTAL TRUSTEE'S FEES =</b>	\$2500	N/A
(f) <u>Dollar Amount Available for General Unsecured Claims:</u> (a) minus (b), (c), (d) and (e) =	\$0	\$135,410.42
(g) <u>Dollar Amount of General Unsecured Claims: =</u>	\$1,101,531.93	\$1,101,531.93

<sup>1</sup> Through the Chapter 11 plan of reorganization Debtor intends to pay all tax claims and the unsecured creditors in the amount of \$138,000.

(h) % recovery on general unsecured claims: [(g) divided by (h)] x 100% =	0	12.5%
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**VIII. TREATMENT OF CLAIMS AND INTERESTS**

Below is a summary of who gets paid, in what amount, when, and from what source. The Debtor is usually not required by law to pay the holder of an unsecured claim or interest everything it would otherwise be entitled to, had a bankruptcy case not been filed.

**A. DOMESTIC SUPPORT OBLIGATION THAT MUST BE PAID BEFORE PLAN IS CONFIRMED.** [§ 1129(a)(14)] Before the Plan can be confirmed, § 1129(a)(14) requires the Debtor to pay all domestic support obligations that became due after the bankruptcy case was filed. Domestic support obligations are defined in § 101(14A).

- The Debtor did not have domestic support obligations that became due after the bankruptcy case was filed.
- The following domestic support obligation became due after the bankruptcy case filed:

Holder of Domestic Support Claim:			
Statute, Judicial Order, or Administrative Order that Creates the Obligation	First Date After Petition Date that Obligation was Due	Total Due After Petition Date	Date Final Amt <input type="checkbox"/> was paid <input type="checkbox"/> will be paid

- See Appendix \_\_\_\_ for additional domestic support obligation(s).

**B. ASSUMPTION AND REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES.** [§ 365]

1.  There are no executory contracts or unexpired leases.
2.  **Assumption.** The post-confirmation debtor will perform all related obligations whether arising before or after confirmation of the Plan. Any arrearages arising before confirmation of the Plan will be paid by the first day of the month following the Effective Date unless the parties agree otherwise or the court finds that a longer payment schedule still provides the creditor with timely cure and adequate assurance of future performance. Obligations that arise after confirmation of the Plan will be paid as they come due.

**Previously Assumed:**

DESCRIPTION OF EXECUTORY CONTRACT OR UNEXPIRED LEASE	DATE OF ORDER TO ASSUME	CURE AMOUNT: Must be paid on Effective Date
(a)		\$
(b)		\$

**To be Assumed on the Effective Date.**

DESCRIPTION OF EXECUTORY CONTRACT OR UNEXPIRED LEASE	CURE AMOUNT: Must be paid on Effective Date
(a) Lease with Landlord for Debtor's continued operations	\$0.00

(b)		\$
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3.  **Rejection.** Claims arising from the rejection of an executory contract or unexpired lease are treated as general unsecured claims in CLASS #2, except to the extent the court orders otherwise. A claim arising from the rejection must be filed no later than 30 days after the date of the order confirming the Plan.

DESCRIPTION OF EXECUTORY CONTRACT OR UNEXPIRED LEASE		
(a)		<input type="checkbox"/> Rejected: <input type="checkbox"/> Order Entered on: <input type="checkbox"/> Deemed Rejected on: <input type="checkbox"/> To be Rejected on the Effective Date
(b)		<input type="checkbox"/> Rejected: <input type="checkbox"/> Order Entered on: <input type="checkbox"/> Deemed Rejected on: <input type="checkbox"/> To be Rejected on the Effective Date

See Appendix \_\_\_\_ for additional executory contracts and unexpired leases to be assumed or rejected.

**C. UNSECURED CLAIMS THAT MUST BE TREATED AS REQUIRED BY § 1129(a)(9)(A) and § 1129(a)(9)(C), UNLESS A CLAIMANT CONSENTS TO A DIFFERENT TREATMENT.** §§ 1129(a)(9)(A) and (C) require that certain claims be treated one at a time, rather than as a class. Even if another claimant votes to accept a lesser treatment, the claims listed below are not altered. The debtor must prove to the court that claims are either being treated as 1129(a)(9) requires, or that the holder of the claim agreed to some other treatment.

1. **Administrative Expense Claims - § 507(a)(2) and § 1129(a)(9)(A).** These include: (1) court-approved claims of attorneys and other professionals; and (2) United States trustee fees under 28 U.S.C. chapter 123.

- There are no administrative expense claims.
- The deadline to file administrative expensive claims is (date) \_\_\_\_\_.
- All administrative expense claims  have been filed or  are anticipated to be filed; the claims and amounts indicated below are the amounts requested or anticipated to be requested:

<b>Holder of Administrative Expense Claim:</b> Terzian Law Group, a Professional Corporation						
Claim Amount (less paid to date) <input checked="" type="checkbox"/> Actual <input type="checkbox"/> Estimated	Interest Rate (if any)	Amount Paid on Effective Date	Amount Paid After Effective Date			
			Frequency	Each Payment	Balloon Pymts	Term of Payments
\$ 5,000- Retainer of \$10,000	%	\$	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly		\$	

<b>Holder of Administrative Expense Claim:</b> Hanson Bridgett, LLC						
Claim Amount (less paid to date) <input type="checkbox"/> Actual <input checked="" type="checkbox"/> Estimated	Interest Rate (if any)	Amount Paid on Effective Date	Amount Paid After Effective Date			
			Frequency	Each Payment	Balloon Pymts	Term of Payments
\$ 20,000- less retainer of \$5,000	%	\$	<input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly	\$2,500	\$	6 months

Holder of Administrative Expense Claim: Subchapter V Trustee, Stradling Yocca Carlson & Rauth						
Claim Amount (less paid to date) <input type="checkbox"/> Actual <input checked="" type="checkbox"/> Estimated	Interest Rate (if any)	Amount Paid on Effective Date	Amount Paid After Effective Date			
			Frequency	Each Payment	Balloon Pymts	Term of Payments
\$ 10,000	%	\$	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly	\$1,666.67	\$	6 months

See Appendix \_\_\_\_ for additional administrative expense claim(s).

2. **Tax Claims - § 507(a)(8) and § 1129(a)(9)(C).** Must be paid in full within 5 years after the Petition Date.

There are no tax claims     All tax claims have been filed or scheduled, and are indicated below:

Holder of Tax Claim: Los Angeles County Tax Collector						
Claim Amount (less paid to date) <input checked="" type="checkbox"/> Actual <input type="checkbox"/> Estimated	Interest Rate (\$511)	Amount Paid on Effective Date	Amount Paid After Effective Date			
			Frequency	Each Payment	Balloon Pymts	Term of Payments
\$ 325.05	%	\$325.05	<input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly	\$	\$	months

Holder of Tax Claim:						
Claim Amount (less paid to date) <input type="checkbox"/> Actual <input type="checkbox"/> Estimated	Interest Rate (\$511)	Amount Paid on Effective Date	Amount Paid After Effective Date			
			Frequency	Each Payment	Balloon Pymts	Term of Payments
\$	%	\$	<input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly	\$	\$	months

See Appendix \_\_\_\_ for additional unsecured claims (not listed in VIII.C) on which voting is not allowed.

- § 507(a)(2) – Administrative Expense Claims
- § 507(a)(8) – Tax Claims
- § 507(a)(3) – Involuntary Gap Claims Allowed Under § 502(f)

**D. UNSECURED CLAIMS THAT MUST BE TREATED AS REQUIRED BY § 1129(a)(9)(B) – CLASS #1.**

§ 1129(a)(9)(B) requires certain unsecured claims to be treated with priority over general unsecured claims, and pay them in full on the Effective Date or as soon as practicable after unless claimants vote as a class to accept deferred payments. If so, claims are impaired and claimants are entitled to vote to accept or reject the Plan.

There are no claims in CLASS #1.

CLASS #1a: § 507(a)(1) - Wage and Commission Claims

Unsecured Creditor:						
Claim Amount (less paid to date) <input type="checkbox"/> Actual <input type="checkbox"/> Estimated	Interest Rate (if any)	Amount Paid on Effective Date	Amount Paid After Effective Date			
			Frequency	Each Payment	Balloon Pymts	Term of Payments
\$	%	\$	<input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly	\$	\$	months

- See Appendix for additional unsecured claims in Class #1:
  - CLASS #1(a): § 507(a)(4) - Wage and Commission Claims
  - CLASS #1(b): § 507(a)(5) – Employee Benefit Plan Contribution Claims
  - CLASS #1(c): § 507(a)(6) – Grain Producer and Fisherman Claims
  - CLASS #1(d): § 507(a)(7) – Consumer Deposit Claims

**E. OTHER UNSECURED CLAIMS – CLASS #2.**

- There are no claims in CLASS #2.
- See Exhibit B for a list of all CLASS #2 claimants and amount owed to each.
  1.  CLASS #2a: Nominal Unsecured Claims. These include “nominal” claims of \$\_\_\_\_\_ or less, and any larger unsecured claims whose claimant agreed to reduce its claim to this amount. Creditors are **not entitled to vote** to accept or reject the Plan.  
  
Creditors will be paid the nominal amount on the Effective Date, or as soon as practicable thereafter. Estimated total payments are \$\_\_\_\_\_.
  2.  CLASS #2b: General Unsecured Claims. These are other unsecured claims that are not included in CLASS #2a, and will be paid as follows. Creditors are **entitled to vote** to reject or accept the Plan.
    - Percent Plan. Each creditor in CLASS #2b will be paid 15% its claim beginning the first relevant date after the Effective Date:
      - a. Over 5 years equal  monthly  quarterly installments, due on the first day of each calendar month/quarter;
      - b.  with interest at the rate of \_\_\_\_\_% per annum, or  without interest; and.
      - c. The amount each creditor receives depends on the total amount of allowed claims in this class.
    - Pot Plan. Each member of CLASS #2b will be paid a pro rata share of a fund totaling \$\_\_\_\_\_, created by the Debtor’s payment:
      - a. Pro rata means the entire fund amount divided by the total of all allowed claims in this class.
      - b. Payment amount is \$\_\_\_\_\_ per  month  quarter for a period of \_\_\_\_\_ months/quarters,
      - c. Payments will begin on (date): \_\_\_\_\_
    - Other: See Appendix \_\_\_\_ for additional information about unsecured claims in Class #2:

**F. SECURED CLAIMS – CLASS #3, CLASS #4 and Class #5.**

**CLASS #3 - Unimpaired Non-Insider Claims.** Creditors **are not entitled** to vote to accept or reject the Plan. Until claims are fully paid, creditors retain their interest in the property securing the claim. Treatment is:

- There are no claims in CLASS #3.

<input type="checkbox"/> CLASS #3a	<b>Secured Creditor:</b>  <b>Basis for secured status:</b>  <b>Priority of lien:</b>
------------------------------------	--

Total Amount of Allowed Claim	Total Amount of Payments Over Time to Satisfy Secured Claim	Interest Rate	First Payment Date	Amount of Each Installment	Frequency of Payments	Total Yearly payments	Final Payment date
\$	\$	%		\$		\$	

**Address or Other Description of Collateral Securing Claim 3a:**

<b>Value:</b> \$	<b>Valuation Method</b>	<input type="checkbox"/> Order on motion or stipulation <input type="checkbox"/> Declaration: Certified appraiser <input type="checkbox"/> Other:
---------------------	-------------------------	--

Additional comments relating to Class #3a:

<input type="checkbox"/> <b>CLASS #3b</b>	<b>Secured Creditor:</b> <b>Basis for secured status:</b> <b>Priority of lien:</b>
---	--

Total Amount of Allowed Claim	Total Amount of Payments Over Time to Satisfy Secured Claim	Interest Rate	First Payment Date	Amount of Each Installment	Frequency of Payments	Total Yearly payments	Final Payment date
\$	\$	%		\$		\$	

**Address or Other Description of Collateral Securing Claim 3b:**

<b>Value:</b> \$	<b>Valuation Method</b>	<input type="checkbox"/> Order on motion or stipulation <input type="checkbox"/> Declaration: Certified appraiser <input type="checkbox"/> Other:
---------------------	-------------------------	--

Additional comments relating to Class #3b:

<input type="checkbox"/> <b>CLASS #3c</b>	<b>Secured Creditor:</b> <b>Basis for secured status:</b> <b>Priority of lien:</b>
---	--

Total Amount of Allowed Claim	Total Amount of Payments Over Time to Satisfy Secured Claim	Interest Rate	First Payment Date	Amount of Each Installment	Frequency of Payments	Total Yearly payments	Final Payment date
\$	\$	%		\$		\$	

**Address or Other Description of Collateral Securing Claim 3c:**

<b>Value:</b>	<b>Valuation</b>	<input type="checkbox"/> Order on motion or stipulation <input type="checkbox"/> Declaration: Certified appraiser
---------------	------------------	---

This form has been approved for use in chapter 11 cases assigned to Judge Vincent P. Zurzolo.

\$	<b>Method</b>	<input type="checkbox"/> Other:
----	---------------	---------------------------------

Additional comments relating to Class #3c:

**See Appendix** \_\_\_\_ for more unimpaired secured claims. Label as Class #3d, #3e, etc.

**CLASS #4 - Impaired Non-Insider Claims.** Creditors **are entitled** to vote to accept or reject the Plan. Until claims are fully paid, creditors retain their interest in the property securing the claim. Treatment is:

There are no claims in CLASS #4.

<input type="checkbox"/> <b>CLASS #4a</b>	<b>Secured Creditor:</b> <b>Basis for secured status:</b> <b>Priority of lien:</b> <input type="checkbox"/> Lien is not modified in any way. <input type="checkbox"/> Lien is modified as follows:
---	--

Total Amount of Allowed Claim	Total Amount of Payments Over Time to Satisfy Secured Claim	Interest Rate	First Payment Date	Amount of Each Installment	Frequency of Payments	Total Yearly payments	Final Payment date
\$	\$	%		\$		\$	

<b>Address or Other Description of Collateral Securing Claim 4a:</b>		
<b>Value:</b> \$	<b>Valuation Method</b>	<input type="checkbox"/> Order on motion or stipulation <input type="checkbox"/> Declaration: Certified appraiser <input type="checkbox"/> Other:

Additional comments relating to Class #4a:

<input type="checkbox"/> <b>CLASS #4b</b>	<b>Secured Creditor:</b> <b>Basis for secured status:</b> <b>Priority of lien:</b> <input type="checkbox"/> Lien is not modified in any way. <input type="checkbox"/> Lien is modified as follows:
---	--

Total Amount of Allowed Claim	Total Amount of Payments Over Time to Satisfy Secured Claim	Interest Rate	First Payment Date	Amount of Each Installment	Frequency of Payments	Total Yearly payments	Final Payment date
\$	\$	%		\$		\$	

<b>Address or Other Description of Collateral Securing Claim 4b:</b>		
<b>Value:</b> \$	<b>Valuation Method</b>	<input type="checkbox"/> Order on motion or stipulation <input type="checkbox"/> Declaration: Certified appraiser <input type="checkbox"/> Other:

Additional comments relating to Class #4b:

<input type="checkbox"/> <b>CLASS #4c</b>	<b>Secured Creditor:</b> <b>Basis for secured status:</b> <b>Priority of lien:</b> <input type="checkbox"/> Lien is not modified in any way. <input type="checkbox"/> Lien is modified as follows:
---	--

Total Amount of Allowed Claim	Total Amount of Payments Over Time to Satisfy Secured Claim	Interest Rate	First Payment Date	Amount of Each Installment	Frequency of Payments	Total Yearly payments	Final Payment date
\$	\$	%		\$		\$	

<b>Address or Other Description of Collateral Securing Claim 4c:</b>		
<b>Value:</b> \$	<b>Valuation Method</b>	<input type="checkbox"/> Order on motion or stipulation <input type="checkbox"/> Declaration: Certified appraiser <input type="checkbox"/> Other:

Additional comments relating to Class #4c:

See Appendix \_\_\_\_ for more impaired secured claims. Label as Class #4d, #4e, etc.  
**CLASS #5 - Insider Claims.** These are claims of persons defined in 11 U.S.C. §101(31). Essentially, an insider is a person with a close relationship with the Debtor other than a creditor-debtor relationship. Treatment is:

There are no claims in CLASS #5.

<input type="checkbox"/> <b>CLASS #5a</b>	<b>Insider Secured Creditor:</b> <b>Basis for secured status:</b> <b>Priority of lien:</b> <input type="checkbox"/> Lien is not modified in any way. <input type="checkbox"/> Lien is modified as follows:
---	--

Total Amount of Allowed Claim	Total Amount of Payments Over Time to Satisfy Secured Claim	Interest Rate	First Payment Date	Amount of Each Installment	Frequency of Payments	Total Yearly payments	Final Payment date
\$	\$	%		\$		\$	

<b>Address or Other Description of Collateral Securing Claim 5a:</b>		
<b>Value:</b> \$	<b>Valuation Method</b>	<input type="checkbox"/> Order on motion or stipulation <input type="checkbox"/> Declaration: Certified appraiser <input type="checkbox"/> Other:

Additional comments relating to Class #5a:

**See Appendix** \_\_\_\_ for more insider secured claims. Label as Class #5b, #5c, etc.

**G. EQUITY SECURITY AND OTHER OWNERSHIP INTERESTS**

1.  **Corporation** (Check all that apply)

- a.  Governing Documents.  Articles of Incorporation or  Bylaws have been changed to include a provision prohibiting the issuance of nonvoting equity securities as required by 11 U.S.C. §1123(a)(6).
- b.  Shares. Under the Plan:
  - Shareholders simply retain their shares of stock.
  - Shareholders redeem shares and receive the following consideration:

2.  **Partnership** (Check all that apply)

- a.  Governing Documents.  Partnership Agreement and/or  Bylaws have been changed to include a provision prohibiting the issuance of nonvoting equity securities as required by 11 U.S.C. §1123(a)(6).
- b.  Identity of Partners.
  - (1)  General Partners.
    - There are no general partners or
    - There are general partners and their identities are:
  - (2)  Limited Partners.
    - There are no limited partners or
    - There are limited partners and their identities are:
- c.  Partnership Interests.
  - Each partner's interest in the debtor will remain as it is now; or
  - The interest of  some or  all partners changes under the Plan as follows:

3.  **Other Ownership Interests** (Complete all sections)

- a. Description of Ownership Interest (other than corporation or partnership).
- b. Identities of Owners:
- c. Changes.
  - There are no changes to the description of ownership or identities of owners; or
  - Changes to the description of ownership or identities of owners are:

**IX. UNCLAIMED OR UNDELIVERABLE PLAN DISTRIBUTIONS**

Payments or distributions that are attempted under the Plan but remain unclaimed or undeliverable for six (6) months, will revert in the post-confirmation debtor free of restriction. Any entitlement to distribution will be barred.

## **X. EFFECT OF CONFIRMATION.**

### **A. General Comments** [11 U.S.C. § 1141]

The provisions of a confirmed Plan bind the Debtor, any entity acquiring property under the Plan, and any creditor, equity security holder, or general partner of the Debtor, even those who do not vote to accept the Plan.

Except as provided in the Plan, the entry of an order confirming the Plan vests all property of the estate in the Debtor and, pursuant to 11 U.S.C. § 362(c)(1), the automatic stay no longer applies to property of the estate.

However, the stay of § 362(a) continues to prohibit collection or enforcement of pre-petition claims against the Debtor and Debtor's property until the Debtor receives a discharge. Section X.B. below provides the Debtor's intent regarding discharge. If the Debtor does not seek a discharge, the discharge is deemed denied and the stay of § 362(a) terminates as to the Debtor and the Debtor's property upon entry of the order confirming the Plan.

### **B. Discharge of Liability for Payment of Debts; Termination of Rights and Interests of Equity Security Holders and General Partners Provided for by the Plan**

1.  No Discharge. Pursuant to 11 U.S.C. § 1141(d)(3), Debtor is not eligible for a discharge, because *(check all that apply)*:

- the Plan provides for the liquidation of all, or substantially all, of the property of the estate.
- the Debtor will not engage in business after consummation of the Plan.
- the Debtor would be denied a discharge under 11 U.S.C. § 727(a) if the case were under chapter 7.

2.  Eligible for Discharge.

a.  **Debtor Seeks Confirmation Under 11 U.S.C. § 1191(a).**

Debtor is an Individual. On the effective date of the Plan, the Debtor will be discharged from any debt that arose before confirmation of the Plan, as provided in 11 U.S.C. § 1141(d)(1)(A). Pursuant to 11 U.S.C. § 1141(d)(2), the Debtor will not be discharged from any debt excepted from discharge under 11 U.S.C. § 523(a), except as provided in FRBP 4007(c).

Debtor is a Partnership. On the effective date of the Plan, the Debtor will be discharged from any debt that arose before confirmation of this Plan, as provided in 11 U.S.C. § 1141(d)(1)(A).

Debtor is a Corporation. On the effective date of the Plan, the Debtor will be discharged from any debt that arose before confirmation of this Plan, as provided in 11 U.S.C. § 1141(d)(1)(A). Pursuant to § 1141(d)(6), the Debtor will not be discharged from any debt of a kind specified in 11 U.S.C. § 523(a)(2)(A)-(B) that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of Chapter 37 of title 31 or any similar State statute, or for a tax or customs duty with respect to which the debtor made a fraudulent tax return or willfully attempted in any manner to evade or to defeat such tax or such customs duty.”

b.  **Debtor Seeks Confirmation Under 11 U.S.C. § 1191(b)**. Pursuant to 11 U.S.C. § 1192, the court shall grant the Debtor a discharge of all debts (i) provided in 11 U.S.C. § 1141(d)(1)(A), and (ii) allowed under 11 U.S.C. § 503 and provided for in the Plan, and shall do so as soon as is practicable after the Debtor completes all payments due within the first 3 years of this Plan or as otherwise provided in 11 U.S.C. § 1192. The Debtor will not be discharged from any debt (i) on which the last payment is due after the first 3 years of the Plan, or as otherwise provided in § 1192, or (ii) which is excepted from discharge under § 523(a), except as provided in FRBP 4007(c).

3.  Additional Discharge Provisions:

### **C. Modification of the Plan**. Pursuant to 11 U.S.C. § 1193, the Debtor may modify the Plan.

D. **Final Decree.** Once the Plan has been consummated, a motion for final decree may be filed. Once a final decree is entered, the bankruptcy case will be closed. After such closure, a party seeking any type of relief relating to a Plan provision can seek such relief in a state court of general jurisdiction.

**XI. APPENDICES OF ADDITIONAL CLAIMS THAT ARE NOT IDENTIFIED IN SECTIONS VIII.A. – VIII.F.**

- Appendix #1:** Additional Claim(s),  VIII.A  VIII.B  VIII.C  VIII.D  VIII.E  VIII.F
- Appendix #2:** Additional Claim(s),  VIII.A  VIII.B  VIII.C  VIII.D  VIII.E  VIII.F
- Appendix #3:** Additional Claim(s),  VIII.A  VIII.B  VIII.C  VIII.D  VIII.E  VIII.F
- Appendix #4:** Additional Claim(s),  VIII.A  VIII.B  VIII.C  VIII.D  VIII.E  VIII.F
- Appendix #5:** Additional Claim(s),  VIII.A  VIII.B  VIII.C  VIII.D  VIII.E  VIII.F
- Appendix #6:** Additional Claim(s),  VIII.A  VIII.B  VIII.C  VIII.D  VIII.E  VIII.F
- Appendix #7:** Additional Claim(s),  VIII.A  VIII.B  VIII.C  VIII.D  VIII.E  VIII.F
- Appendix #8:** Additional Claim(s),  VIII.A  VIII.B  VIII.C  VIII.D  VIII.E  VIII.F

Date: December 6, 2023

/s/Tamar Terzian

Signature of attorney for Debtor

Tamar Terzian

Printed name of attorney for Debtor

**PROOF OF SERVICE OF DOCUMENT**

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

Hanson Bridgett, LLP  
425 Market Street, 26th Floor,  
San Francisco, CA 94105

A true and correct copy of the foregoing document entitled: **SUBCHAPTER V PLAN OF REORGANIZATION OF DEBTOR [11 U.S.C. §§ 1123, 1181, 1189, 1190]** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) December 6, 2023 /ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Gregory K. Jones, Esq., Sub V Trustee  
Kelly L Morrison, OUST  
Tamar Terzian, Esq., Debtor's Counsel  
United States Trustee (LA)  
Patrick Small, Ascentium Capital  
Celtic Bank Corp. dba Bluevine

gjones@stradlinglaw.com  
kelly.l.morrison@usdoj.gov  
tterzian@hansonbridgett.com  
ustpregion16.la.ecf@usdoj.gov  
patricksmall@ascentiumcapital.com  
legal@bluevine.com

Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (date) December 6, 2023, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

**The Honorable Vincent P. Zurzolo  
U.S. Bankruptcy Court  
255 E. Temple St., Suite 1360  
Los Angeles, CA 90012**

Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served):**

Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

12-06-2023      Sharrol Singh

Date                      Printed Name



Signature

Label Matrix for local noticing

0973-2

Case 2:23-bk-15814-VZ

Central District of California

Los Angeles

Wed Dec 6 15:19:09 PST 2023

Internal Revenue Service

PO Box 7346

Philadelphia, PA 19101-7346

San Marino Cafe and Marketplace LLC

2507 Mission Street

San Marino, CA 91108-1637

AG Adjustments

740 Walt Whitman Rd.

Melville, NY 11747-2212

CT Corporation System

330 N Brand Blvd Suite 700

Glendale, CA 91203-2336

Diamond Debt Relief

333 W. 39th St.

#1101A

New York, NY 10018-1410

Everest Business Funding

102 W. 38th Street

6th Floor

New York, NY 10018-3664

Gil Hopenstand

312 N Spring Street, 5th Fl

Los Angeles, CA 90012-4701

Perrin Bernard Supowitz, LLC

dba Individual Foodservice

c/o Law Offices of Gary S. Sherman

21112 Ventura Blvd

Woodland Hills, CA 91364-2103

Reliable Fast Cash, LLC

262A Albany Ave

Brooklyn, NY 11213-2720

Employment Development Dept  
Main Document Page 24 of 26

Bankruptcy Group MIC 92E

P.O. Box 826880

Sacramento, CA 94280-0001

(p)LOS ANGELES COUNTY TREASURER AND TAX COLLE

ATTN BANKRUPTCY UNIT

PO BOX 54110

LOS ANGELES CA 90054-0110

Securities & Exchange Commission

444 South Flower St., Suite 900

Los Angeles, CA 90071-2934

Ascentium Capital

2397 Highway 59 N

patricksmall@ascentiumcapital.com

Kingwood, TX 77339

Celtic Bank Corp. dba Bluevine

401 Warren St.

Suite 300

legal@bluevine.com

Oakland, CA 94603

EBF Holdings, LLC d/b/a Everest Business Fun

c/o Michael W. Davis

601 S. Figueroa Street, Suite 2130

Los Angeles, CA 90017-5729

Fish King Seafood

414 S. Lake Street

Burbank, CA 91502-2182

INTERNAL REVENUE SERVICE

CENTRALIZED INSOLVENCY OPERATIONS

PO BOX 7346

PHILADELPHIA, PA 19101-7346

Perrin Bernard Supowitz, LLC dba Individual

5496 Lindbergh Lane

Bell, California 90201-6409

Republic National Distributing Co.

16123 Covello St

Van Nuys, CA 91406-2911

Franchise Tax Board

Bankruptcy Section MS: A-340

P.O. Box 2952

Sacramento, CA 95812-2952

(p)OFFICE OF FINANCE CITY OF LOS ANGELES

200 N SPRING ST RM 101 CITY HALL

LOS ANGELES CA 90012-3224

Los Angeles Division

255 East Temple Street,

Los Angeles, CA 90012-3332

(p)ASCENTIUM CAPITAL

Attn: Dominic Diloreto

239070 US 59 North

Kingwood, TX 77339

Corporation Service Company

801 Adlai Stevenson Drive

Springfield, IL 62703-4261

ERC Specialists

560 E. Timpanogos Circle

Orem, UT 84097-6225

Franchise Tax Board

Bankruptcy Unit

P.O. Box 2952

Mail Stop 8340

Sacramento, CA 95812-2952

Office of the United States Trustee

915 Wilshire Blvd.,

Suite 1850

Los Angeles, CA 90017-3560

Premier Patio Heating

PO Box 6470

Oceanside, CA 92052-6470

San Marino Windsor LLC

c/o Haroutun Zarougian

4647 W Avenue 41

Los Angeles, CA 90065-4907

Small Business Administration  
2 North 20th Street, Suite 320  
Birmingham, AL 35203-4002

SOUTHERN CALIFORNIA EDISON COMPANY  
Main Document Page 25 of 26  
1551 W SAN BERNARDINO ROAD  
COVINA CA 91722-3407

Charter Communications  
PO Box 60074  
City of Industry, CA 91716-0074

Square Financial Services, Inc.  
3165 E Millrock Drive, Suite 160  
Salt Lake City, UT 84121-5987

State Farm Insurance  
43525 Ridge Park Drive, Suite 300  
Temecula, CA 92590-3682

State of California Department of  
Tax and Fee Administration  
PO Box 942879  
Sacramento, CA 94279-0001

Swift Funding Source  
c/o The Klein Law Firm, LLC  
1820 Swarthmore Avenue  
#714  
Lakewood, NJ 08701-8430

Tama Trading Company, Inc.  
1920 East 20th Street  
Los Angeles, CA 90058-1076

The Business Backer  
10856 Reed Hartman Highway  
Suite 100  
Cincinnati, OH 45242-0209

The Klein Law Firm LLC  
535 Fifth Avenue  
4th Floor  
New York, NY 10017-8020

U.S. Small Business  
Administration  
211 N Florence St. #201  
El Paso, TX 79901-1666

U.S. Small Business  
Administration  
PO Box 3918  
Portland, OR 97208-3918

(p)U S SMALL BUSINESS ADMINISTRATION  
312 N SPRING ST 5TH FLOOR  
LOS ANGELES CA 90012-2678

Uline  
12575 Uline Dr  
Pleasant Prairie WI 53158-3686

Union Funding Source, Inc.  
1835 E. Hallandale Beach Blvd.  
#278  
Hallandale, FL 33009-4619

United States Trustee (LA)  
915 Wilshire Blvd, Suite 1850  
Los Angeles, CA 90017-3560

Verliance, Inc.  
43525 Ridge Park Dr #300  
Temecula, CA 92590-3682

WEBBANK  
401 Park Drive Suite 801  
Boston, MA 02215-3372

Web Bank  
215 State St Suite 1000  
Salt Lake City, UT 84111-2336

Web Bank  
c/o Toast Capital  
401 Park Dr,, Suite 801  
Boston, MA 02215-3372

Gregory Kent Jones (TR)  
Stradling Yocca Carlson & Rauth  
10100 N. Santa Monica Blvd., Suite 1400  
Los Angeles, CA 90067-4140

Tamar Terzian  
Hanson Bridgett LLP  
777 S Figueroa St  
Suite 4200  
Los Angeles, CA 90017-5837

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

L.A. County Tax Collector  
Bankruptcy Unit  
P.O. Box 54110  
Los Angeles, CA 90051-0110

Los Angeles City Clerk  
P.O. Box 53200  
Los Angeles, CA 90053-0200

Ascentium Capital  
23970 Highway 59 N  
Kingwood, TX 77339

Case 2:23-bk-15814-VZ  
(d) LOS ANGELES COUNTY TREASURER AND TAX COLLE  
ATTN: BANKRUPTCY UNIT  
PO BOX: 54110  
LOS ANGELES, CA 90054-0110

Doc 52 Filed 12/06/23 Entered 12/06/23 15:51:08 Desc  
Main Document Page 26 of 26  
Southern California Edison  
PO Box 300  
Rosemead, CA 91772-0002

U.S. Small Business Administration  
312 N Spring Street, 5th Fl  
Los Angeles, CA 90012

End of Label Matrix	
Mailable recipients	51
Bypassed recipients	0
Total	51

# Bankruptcy Primer for Small Businesses

*Prepared by the Small Business Reorganization Task Force,  
United States Bankruptcy Court, Central District of California*





## DID YOU KNOW?

**99%**

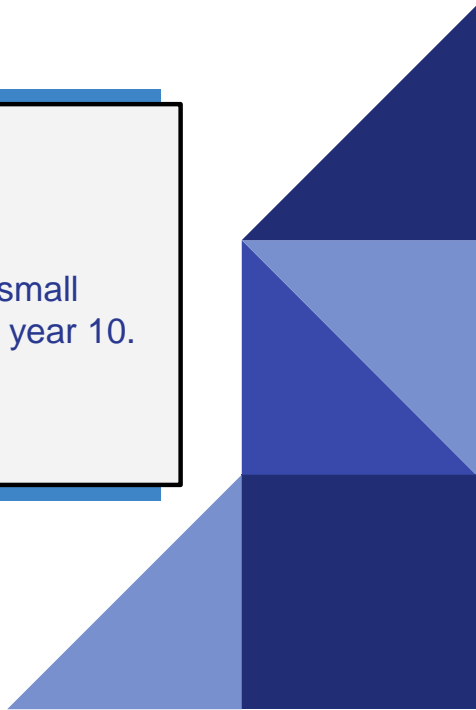
Ninety-nine percent of U.S. businesses are “small businesses” as defined by the Small Business Administration.

**47.1%**

“Small businesses” employ 47.1% of workers in the U.S.

**66%**

Almost 2 out of 3 small businesses fail by year 10.

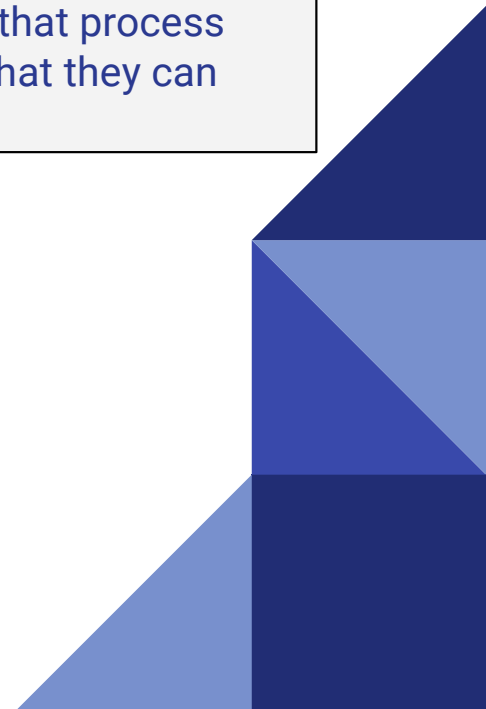


# Bankruptcy Primer for Small Businesses

Recognizing the difficulties of small businesses (worse with COVID-19) and their contributions to our economy, this material is intended to provide small business owners with a primer for various options, particularly bankruptcy, when in financial distress.

It is also intended to provide some bankruptcy basics in an effort to make that process more accessible to business owners and remind them, if they so choose, that they can keep their business alive and pay creditors over time.

\*Nothing contained herein is intended to be construed as legal, accounting or other advice, to address any specific legal inquiry, nor to act as a substitute for independent legal research or obtaining separate legal advice regarding a specific legal situation.



# Topics for Discussion

- **Small Businesses in Financial Distress**
- **Options for Small Businesses in Financial Distress**
  - Court supervised (Bankruptcy and Receivership)
  - Out of Court (Dissolution, Work Outs, Assignment for the Benefit of Creditors)
- **Bankruptcy**
  - Basic Principles, Key Terms, Key Parties
  - SBRA – newly enacted streamlined Subchapter V of Chapter 11
  - Chapter 11 Bankruptcy and Benefits (whether Sub V or small business Chapter 11)
    - Automatic Stay
    - 363 Sales
  - Life of Chapter 11
  - Summary of Pros and Cons of Chapter 11
  - Other Chapters available for small businesses
- **Other Non-Bankruptcy Options**
  - Receivership
  - Out of Court options
- **Tips**

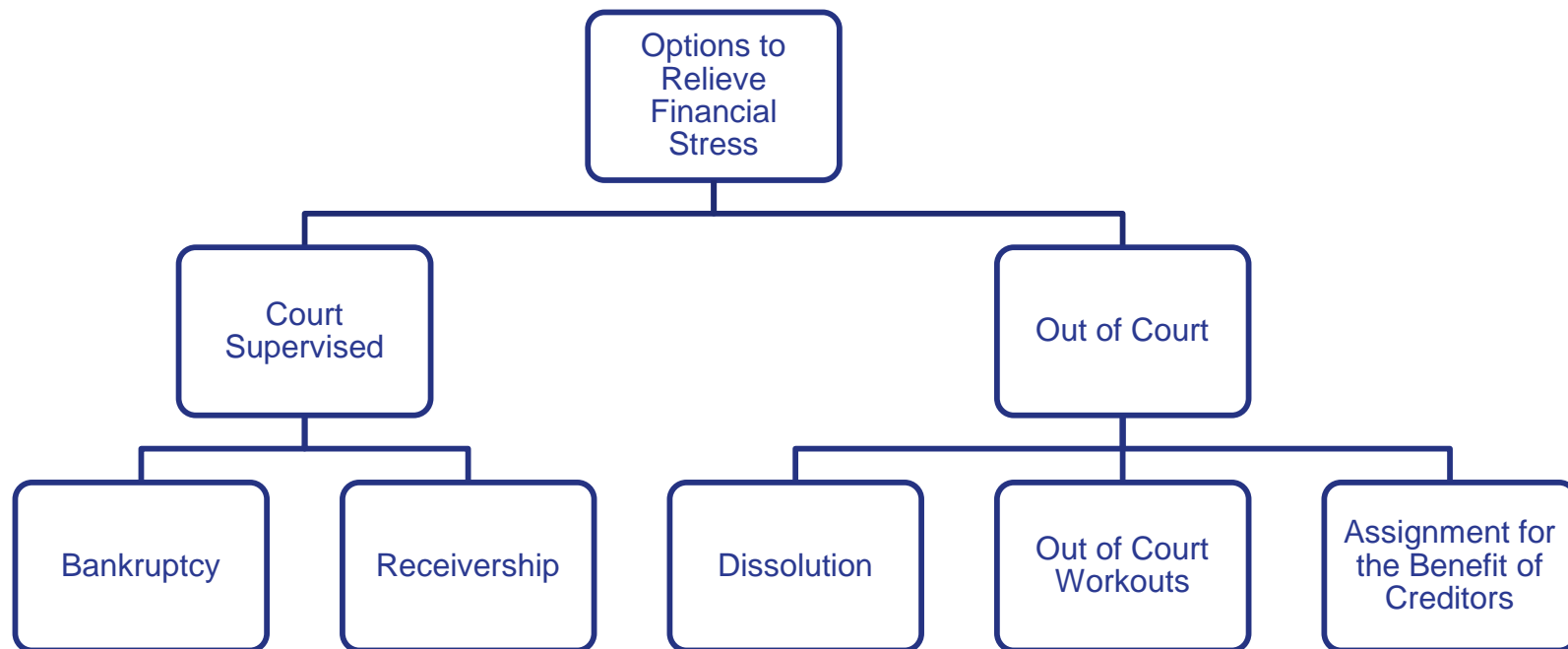
# Small Business Distress

**Financial distress** for a business includes:

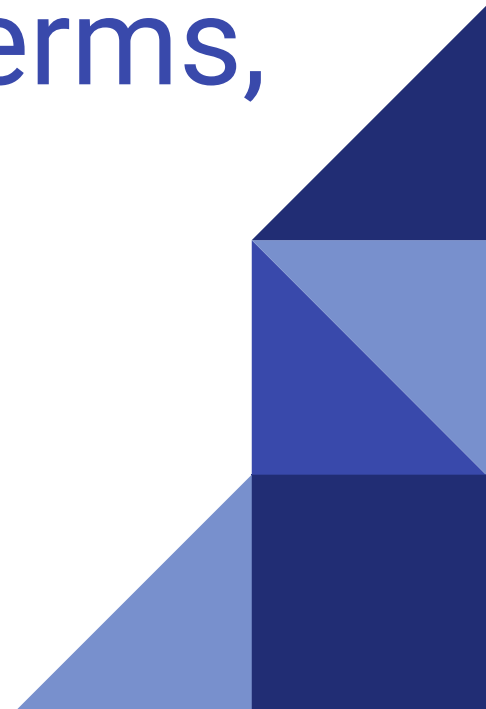
- Lacking sufficient cash flow to service debts;
- Creditors taking collection actions against the company;
- Carrying excessive liabilities;
- Confronting a large judgment without sufficient assets to repay;
- Having substantial tax liabilities;
- Facing a pending foreclosure; and
- Starting to default on loans



# Options for Small Businesses in Financial Distress



# Bankruptcy Basics, Key Terms, and Parties



# Fundamental Bankruptcy Principles

Bankruptcy law is based on the following principles to address the competing interests of debtors and creditors:

- Providing a “fresh start” for an individual or business from debts such as credit card debt, commercial debt, and many other types of debts through a discharge (elimination).
- Effectuating the orderly and fair liquidation or rehabilitation of the individual or business in bankruptcy.
- Ensuring equal treatment of similarly situated creditors.



# Chapter 11 - Key Parties

- **Debtor**: The business (or individual) that filed for bankruptcy.
- **Debtor-in-Possession**: The business (or individual) that is operating in a Chapter 11 bankruptcy.
- **Creditor**: An entity or person who is owed money or obligation from the business in bankruptcy.
- **Bankruptcy Judge**: Specialized set of judges that hear only bankruptcy matters.
- **Office of the United States Trustee (OUST)**: Agency of the U.S. Department of Justice that monitors the businesses' compliance and operational requirements, *i.e.*, ensuring debtor's payment of payroll, property taxes & insurance, enforcing debtor's transactional activity, monthly reporting, and conducting an examination at case outset.
- **Trustee (Chapter 11 or 7 if the case is converted)**: An individual may be appointed in situations to take over operations if management mismanages (usually egregious) or no longer wants to manage, or in situations where the court determines that such an appointment is in the best interest of all creditors and stakeholders.
- **Subchapter V Trustee**: An individual appointed by the OUST in each Subchapter V bankruptcy case, who will work with the small business debtor and its creditors to facilitate the development of a consensual plan.

# Chapter 11 - Key Terms

- **Bankruptcy Estate**: An estate created at the time of bankruptcy filing and defined in the Bankruptcy Code as all legal or equitable interest of the Debtor, including claims and appellate rights.
- **Automatic Stay**: An injunction staying all actions by creditors to recover a claim against the Debtor.
- **Discharge**: Release of debt or debt cancellation.
- **Discharge Injunction**: An injunction against collection or recovery of debt against the Debtor.
- **Proof of Claim**: Form that creditors need file to be paid from the Bankruptcy Estate.
- **Secured Claims**: Claims for debts that are secured by an interest in property (the collateral).
- **Priority Unsecured Claims**: Claims not secured by collateral but have priority over other debts under bankruptcy law.
- **General Unsecured Claims**: Claims that have no priority and are not backed by collateral.
- **Adversary Proceedings**: A lawsuit filed within a bankruptcy case.

# New Bankruptcy Law for Small Businesses



# Small Business Reorganization Act (“SBRA”)\*

- **Brand new type of Chapter 11 case (Subchapter V)** - Effective February 2020
- **Intended** to allow small business debtors to file in a timely and cost-effective manner so they can remain in business, which benefits the owners, employees, suppliers, customers and others who rely on that business.



# Small Business Reorganization Act (“SBRA”)\*

- **Revises and defines a “small business debtor” as:**
  1. A person or company engaged in commercial or business activities (except a person whose primary activity is in the business of owning single asset real estate);
  2. Whose total noncontingent liquidated secured and unsecured debts is no more than \$2,725,625\* (excluding debts owed to one or more affiliates or insiders); and
  3. With 50% or more of the debt arising from the commercial or business activities of the person or company.

See 11 U.S.C. § 101(51D). Eligible small business debtors have to elect a Subchapter V upon filing for bankruptcy.

\*The CARES Act temporarily increased the \$2,725,625 debt ceiling to \$7.5 million; however, the increase expires on or about March 27, 2021.

\* There are 2 sets of provision in Chapter 11 for small business debtors: Subchapter V and small business debtors in Chapter 11 cases. SBRA does not repeal existing provisions of a small business Chapter 11.

# Highlights of SBRA

## Procedural Benefits (expedited process)

### Streamlined requirements

- No creditor committee unless court orders
- No disclosure statement
- Administrative expenses (including trustee fees) may be paid over time through the plan
- Debtors do not pay quarterly fees to to the OUST.

### Tighter timeline

- Subchapter V Trustee appointed and 341a meeting of creditors set within 24-48 hours
- OUST conducts initial debtor interview within 10 days of case filing
- 341a meeting held approximately 21 days after filing
- Court holds status conference not later than 60 days after case is filed
- 14 days before status conference, Debtor has to file status report re efforts towards consensual plan
- Debtor shall file plan not later than 90 days after petition date

# Highlights of SBRA

## Substantive Benefits (lower administrative costs and other beneficial rights)

- Save costs because of the streamline requirements.
- Only Debtor may propose a plan (i.e. Debtor can still propose plan if debtor has been removed as DIP).
- Debtor does not need to obtain acceptance of plan of even one impaired class of creditors.
- Plan can modify mortgage on his/her primary residence if loan proceeds obtained were used primarily for business purpose (as opposed to acquiring the residence)(this right is not available in other chapter 11, chapter 12 or chapter 13).
- Debtor has flexibility to pay administrative claims over life of the plan.
- Owners (equity holders) can retain their interests in the business even if plan does not pay unsecured claims in full so long as the Debtor uses “projected disposable income” to make payments under the plan for a minimum of 3 and maximum of 5 years.
- Debtor gets immediate discharge upon confirmation if plan is consensual. If plan is not consensual, then discharge is entered “as soon as practicable” after the Debtor completes all payments.

# Chapter 11 Bankruptcy



# Benefits of Chapter 11

**For small businesses in financial distress, bankruptcy (whether under the SBRA or generally) can be a temporary lifeline:**

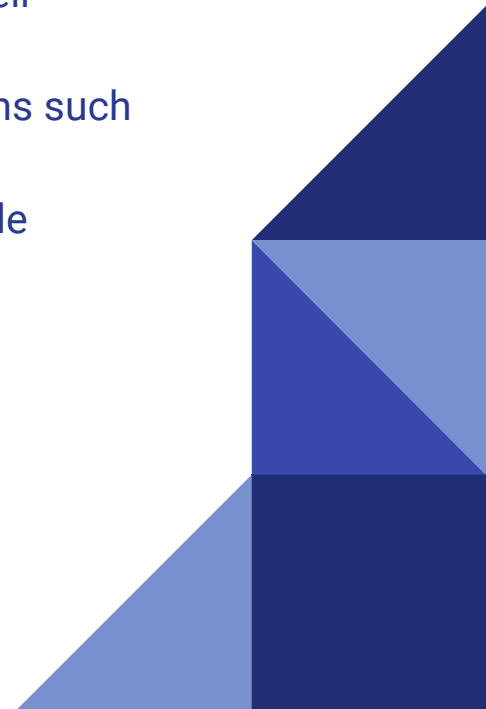
- Filing bankruptcy automatically prevents, or "stays," debt collection actions against the debtor and the debtor's property. As long as the stay ("Automatic Stay") remains in effect, creditors cannot bring or continue lawsuits, make wage garnishments, or even make telephone calls demanding payment.
- Small businesses can continue to operate.
- Management can remain in control of the business, unless the court orders otherwise.
- Management can work closely with a bankruptcy attorney and other professionals to attempt to reduce liabilities and give a company a new beginning or a "fresh start" without closing its doors.



# Benefits of Chapter 11

## Additional benefits:

- **Deferral**: A bankruptcy filing defers the time to make certain payments on certain debts.
- **Financing**: Debtors can borrow money while in bankruptcy in order to finance their reorganization.
- **Cure Defaults**: Debtors use the chapter 11 process to cure defaults on obligations such as mortgages, taxes and other obligations.
- **Reevaluate Contracts**: The Bankruptcy Code allows a debtor to reject unfavorable contracts or unexpired leases.



# Benefits of Chapter 11

## Additional benefits:

- **Reduce Interest Rate**: Debtors can adjust certain interest rates of loans secured by commercial equipment, vehicle or certain real estate.
- **Sale**: A court may approve the sale of assets “free and clear” of claims, liens and interests. The secured creditors’ claims, liens and interests would attach solely to the sale proceeds. Generally, there is no successor liability for a purchaser.
- **“Cram Down”** - A plan can be confirmed even if a class of creditors votes against the plan of reorganization and they disagree with how are treated in the plan.
- **“Discharge”**- After confirmation and payment under the terms of the plan, most but not all debts incurred prior to the bankruptcy filing are cancelled.

# Benefits of Chapter 11

**While operating, a Debtor has various options to restructure financial obligations and reorganize debts in Chapter 11:**

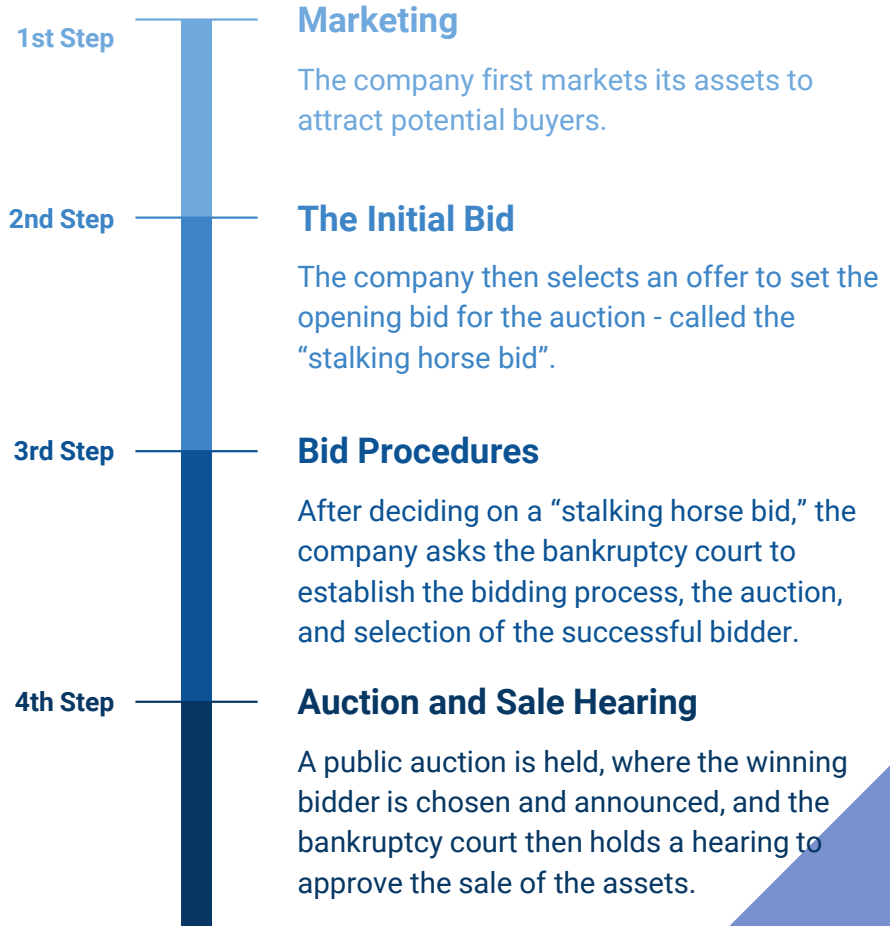
- The Bankruptcy Code provides the Debtor a host of powers to remedy operational problems (*i.e.* reject executory contracts and unexpired leases)
- The Bankruptcy Code allows a small business time and ability to propose a plan that restructures the debtor's debts and reorganizes the debtor's business allowing it to continue to operate (through a confirmed or approved plan). Some plans can be a liquidating plan.
- Other "bankruptcy powers" include imposing a plan on dissenters, holding creditors at bay (through the automatic stay) while negotiating with creditors, and getting a clean deal in one wrapped up confirmation order enforceable by a federal bankruptcy judge that is binding on all state and federal courts once it is final and non-appealable.

# Benefits of Chapter 11: The Automatic Stay

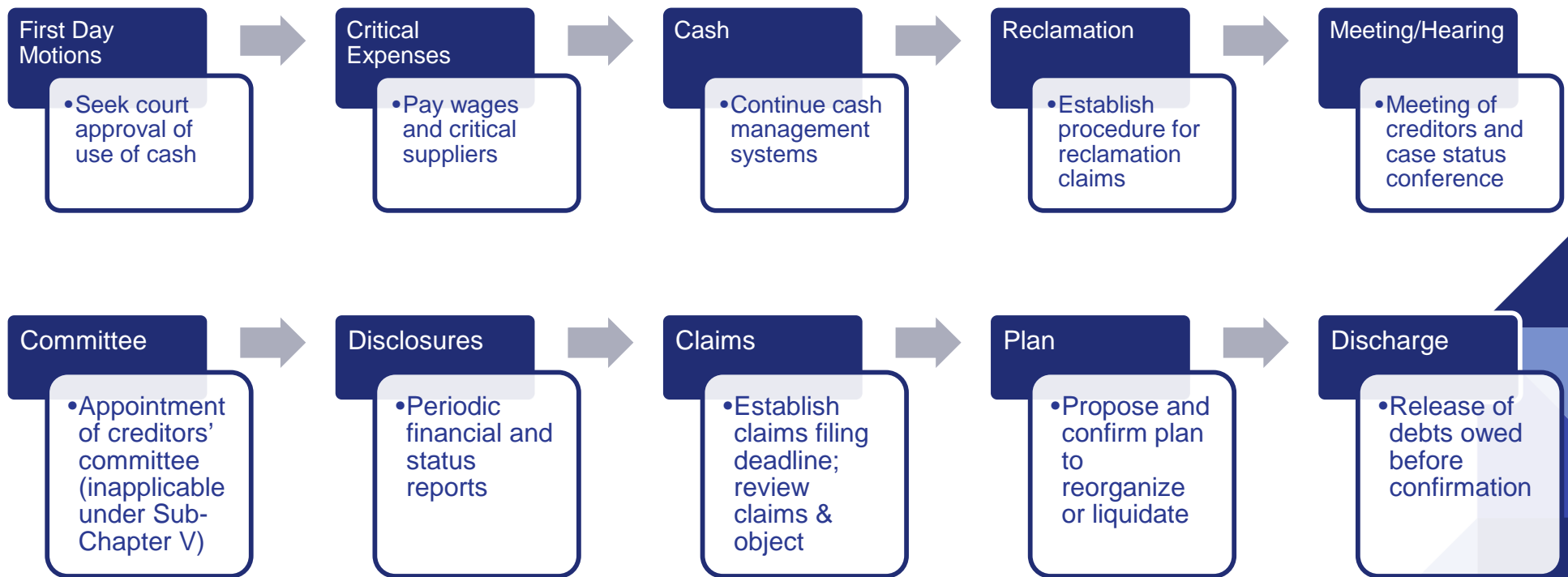
- The filing of bankruptcy creates an injunction staying all actions by creditors to recover on a claim against the debtor.
- The purpose of the Automatic Stay: “Provide breathing space to the debtor, prevent harassment of the debtor, assure that all claims against the debtor will be brought in the sole forum of the bankruptcy court, and protect creditors as a class from the possibility that one or more creditors will obtain payment to the detriment of others.” *Daff v. Good (In re Swintek)*, 906 F.3d 1100, 1103 (9th Cir. 2018).
- Great tool to use to keep creditors at bay while negotiating and “restructuring” the terms with creditors.

# Benefits of Chapter 11: Asset Sales

- **Asset Sale:** Companies that lack the financial means or desire to undergo a reorganization have the option to quickly sell all or substantially all of their assets "free and clear" of liens, claims, and interests.
- **For Sellers:** Chapter 11 gives a company the ability to conduct an orderly sale and maximize returns by selling the company as an operating business.
- **For Buyers:** Buyers are able to acquire assets free and clear of liens, claims and interests, and take advantage of procedures that enable sales to close quickly and obtain certain protections for finality of the sale.



# Typical Life of Chapter 11 Reorganization



# Summary: Pros and Cons of Filing Chapter 11

<b>Pros:</b>	<b>Cons:</b>
<ul style="list-style-type: none"><li>• Debtor-in-possession remains in control of assets.</li><li>• Reduce and discharge debts/obligations during the reorganization process.</li><li>• Preserve the business name, goodwill and customer base.</li><li>• Continue to operate while paying off debts.</li><li>• Trigger the Automatic Stay which prevents creditors from taking any collection action against assets.</li><li>• Section 363 Asset Sales.</li><li>• Restructure debts allowing for lower payments to be made over a longer period of time.</li></ul>	<ul style="list-style-type: none"><li>• Financial record keeping and extensive oversight and scrutiny of reporting requirements, which may ultimately benefit the company.</li><li>• Restrictions on the compensation of debtor's insiders/owners/officers.</li><li>• Court may reject a proposed reorganization plan if it determines it is not viable, compliant or realistic.</li><li>• Expensive.</li></ul>

# Ch. 11 Small Business vs. SBRA\*

	Small Business Chapter 11	SBRA
Deadline to File and Confirm Plan	300 days to file Plan; 45 days after filing to confirm Plan	90 days to file Plan; No deadline to confirm Plan
U.S. Trustee Fees	Yes, paid quarterly	No
Disclosure Statement, describing the Chapter 11 plan of reorganization	Yes	No, unless Court orders otherwise "for cause"; Plan must include a brief history of the business operations of the debtor
Creditors Committee	Possible, but unlikely	No, but a Subchapter V Trustee is appointed
Absolute Priority Rule (strict hierarchy of payment among claims of differing priorities)	Yes. To retain ownership of their business without paying creditors in full, (1) creditors must vote to accept the plan or (2) equity holder must pay "new value" to the business in a substantial amount.	No, management retains equity
Administrative Expenses (actual and necessary expenses incurred during the bankruptcy to preserve the estate)	Must be paid on Plan's effective date	Can be extended over life of the Plan

\* There are 2 sets of provisions in Chapter 11 for small businesses: Subchapter V and small business Chapter 11 case. SBRA does not repeal existing provisions of a small business Chapter 11.

# Other Bankruptcy Options

In addition to Chapter 11, there are other chapters that a business can utilize (reorganization or liquidation) if qualified:

- If the debtor is operating a sole proprietorship, a **Chapter 13** reorganization is an option. It has to have regular income whose unsecured debts are less than \$419,275 and secured debts are less than \$1,257,850.
- If the debtor is be a family farmer or fisherman with regular annual income, a **Chapter 12** reorganization is an option.
- If the debtor simply wants to stop business operations and walk away without dissolving the business, a **Chapter 7 liquidation** is an option. There are no monetary or type of business restrictions.

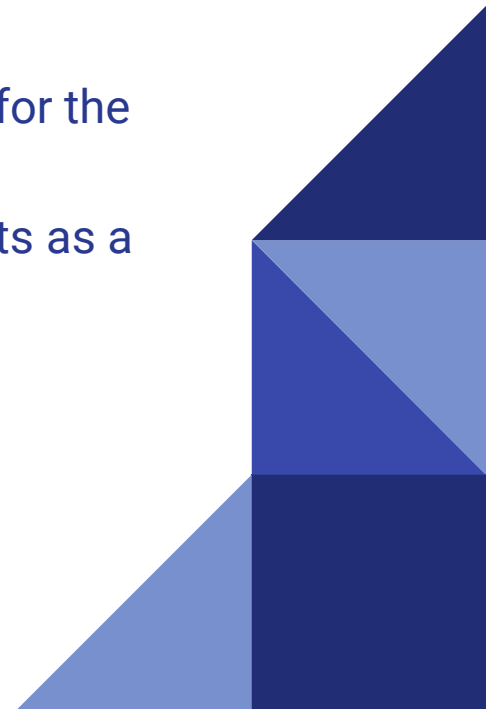
# Receiverships



# Other Court Supervised Options

## Receivership [Cal Civ. Code § 564 *et seq.*]

- A receivership is a process or solution that is put in place to protect the company.
- A receivership is a remedy available to preserve and protect assets for the benefit of creditors in the event a company defaults.
- A receiver is an agent of the court, not of any party to a litigation, acts as a neutral, and holds assets for the Court.



# Pros and Cons of Receivership

## Pros

- Provide many of the protections afforded in bankruptcy
- Less administrative expenses (but can be expensive if the parties are litigious)
- No Creditors' Committee expense
- No plan and disclosure statement

## Cons

- Company loses control over operation of business to an independent third-party receiver
- Ability to sell free and clear is not as defined as it is in the Bankruptcy Court
- Receiver compensation not subject to a cap like a Trustee, but is an agreed hourly rate

# Out of Court Options



# Out of Court Options

- **Dissolution**
  - Terminate (dissolve) the company.
- **Out of Court Workouts**
  - Financial rescue of a company outside of formal bankruptcy and insolvency laws. Most chapter 11 practitioners can advise on out of Bankruptcy Court workouts.
- **Assignment for the Benefit of Creditors [Cal Civ. Code §§ 493.010 to 493.060]**
  - A California State law alternative to liquidation under Chapter 7 bankruptcy law. In an assignment, the business transfers all of its assets and liabilities to another individual or business (the assignee).

# Pros and Cons of Dissolution

## Pros

- Creates finality for business closure.
- Attorney takes all collection calls for business.
- Stops running of business taxes and requirement of filing taxes returns.
- Prevent minority owners/principals from suing majority.
- Puts creditors on notice that the business can no longer incur business debts.
- Dissolved entity can distribute funds as part of its wind down (if not dissolved, and company gets money, company has to be reinstated to deposit cash).

## Cons

- Costs money (compared with just disappearing)(but probably least expensive of the all out-of-court alternatives).
- Have to be in good standing to dissolve.
- Not as protected as bankruptcy, ABC, receivership.
- Principals can still be sued by creditors (although unlikely).

# Pros and Cons of Out-of-Court Alternatives

	Pros	Cons
<b>Out of Court Workouts</b>	<ul style="list-style-type: none"> <li>• Less administrative expense</li> <li>• Informal; flexible</li> <li>• Private and unsupervised</li> <li>• Avoid “stigma” of a bankruptcy filing</li> <li>• Fast</li> <li>• Liquidation of assets</li> </ul>	<ul style="list-style-type: none"> <li>• No automatic stay</li> <li>• Refusal by creditors to consent to workout arrangement</li> <li>• Rules to determine validity of creditor claims and set priorities of payments</li> </ul>
<b>Assignment for the Benefit of Creditors (“ABC”)</b>	<ul style="list-style-type: none"> <li>• Simple transfer in trust</li> <li>• Less cumbersome</li> <li>• Less administrative expense</li> <li>• Faster and flexible liquidation process</li> <li>• Publicity minimized</li> </ul>	<ul style="list-style-type: none"> <li>• No automatic stay</li> <li>• No Court approval of sale transaction</li> <li>• Certain types of contracts &amp; leases cannot be assigned without the consent of the contracting or leasing party</li> <li>• Creditors may enforce contractual provisions that make an ABC prohibitive</li> <li>• No sale free and clear of liens</li> </ul>

Tips

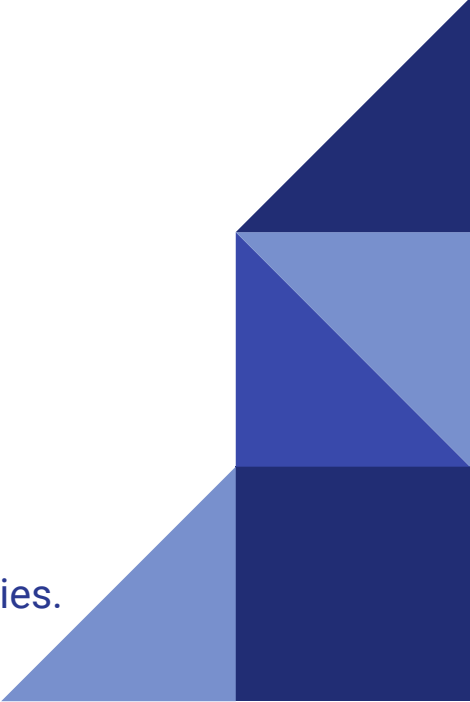


# Gather Your Documents!

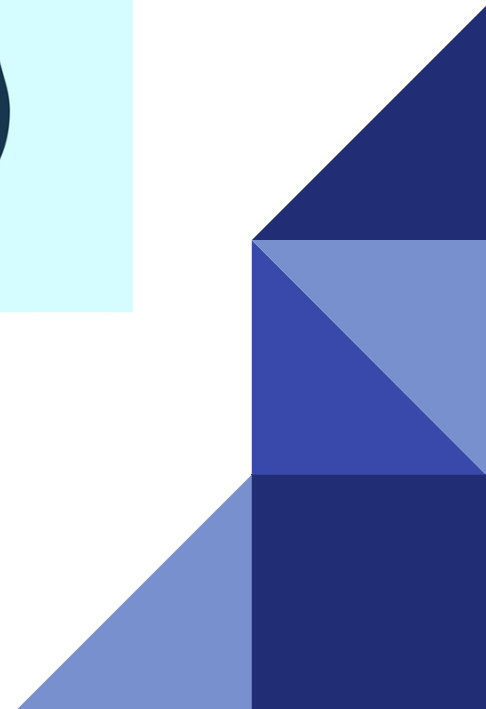
If the business is going through financial distress, it is best to start gathering documents to streamline the process:

- **Corporate documents**
  - Proof of good standing, by-laws, minutes, corporate resolutions, stock ledgers
  - Operating agreements, member unit ledgers, partnership agreements
- **Financial documents**
  - Federal and state tax returns (last 3 years)
  - Balance sheet, profit and loss statements, and cash flow statements (last 3 years)
  - Bank statements (last 3 years)
- **Licenses**
  - Including any city permits and professional licenses
- **Insurance policies**
  - Including coverage of real property, personal property, business (D&O), and workers' compensation
- **Ownership documents**
  - Certificates of title
  - Grant deeds
- **Documents relating to lawsuits, liens, judgments, loans or notices from taxing authorities**

# Word of Caution: Follow the Bankruptcy Code and Rules

- **To ensure success of the bankruptcy case, the Debtor must do the following:**
    - Maintain full disclosure to the Office of United States Trustee;
    - Continue to comply with court orders;
    - Continue to maintain accurate financial records;
    - Continue to update insurance and licensing; and
    - Assure that the parties are working towards a Plan of Reorganization.
  - **If the Debtor does not comply with the Bankruptcy Code and Rules:**
    - A Trustee may be appointed to take over management;
    - The case may be converted to Chapter 7;
    - The case may be dismissed; and
    - Managers and owners may be subject to lawsuits for breach of fiduciary duties.
- 

This presentation provides general information about the bankruptcy process. This information is not intended to constitute legal or financial advice, and should not substitute for the advice of competent legal counsel. It is always best to consult an attorney about your legal rights and responsibilities in your particular case.



**LBR 9071-1. STIPULATION**

**(a) General.**

- (1) Oral Stipulation. An oral stipulation will be enforceable by the court if made and approved in open court.
- (2) Written Stipulation. A written stipulation entered into pursuant to these rules must be filed with the court, but will not be effective until a separate order thereon

is entered.

- (3) Order on Stipulation. An order on a stipulation must be prepared and lodged in accordance with LBR 9021-1(b)(2).

**(b) Stipulation Requiring Notice under FRBP 4001(d) or 9019.**

- (1) Unless otherwise ordered by the court, the notice requirement of FRBP 4001(d) or FRBP 9019 may be satisfied by either serving the motion on each of the entities specified in the applicable rule when it is filed or by serving on such entities a motion for approval of the proposed settlement stipulation pursuant to LBR 9013-1(o).
- (2) A stipulation requiring notice under either FRBP 4001(d) or FRBP 9019 requires approval by the court.

**LBR 9074-1. APPEARANCES AT COURT HEARINGS BY TELEPHONE, VIDEOCONFERENCE, OR IN PERSON**

A party must consult the presiding judge's web page or posted calendar to determine whether it is permissible to appear at a particular hearing by telephone or videoconference instead of in person. See section 3-04 of The Central Guide to obtain the judge's procedure for making an appearance.

**LBR 9075-1. EMERGENCY MOTIONS AND APPLICATIONS FOR ORDERS SETTING HEARING ON SHORTENED NOTICE**

**(a) Emergency Motion.**

- (1) Scope of Rule. An emergency motion requiring an order on less than 48 hours notice must be obtained in accordance with this rule.
- (2) Obtaining Hearing Date and Time. Unless otherwise ordered by the court, a hearing date and time may be obtained by telephoning the chambers of the judge to whom the case is assigned or such member of the judge's staff as may be designated to schedule hearings on emergency motions.
  - (A) The contact information for the designated member of the judge's staff is available in [The Central Guide](#), Section 3-08. Prior to telephoning chambers, the court's website should be consulted to determine whether the judge has additional procedures or instructions for obtaining a hearing on an emergency motion.
  - (B) The request for a hearing on less than 48 hours notice may be granted if the party shows cause why a hearing is needed within 48 hours, and why the court should set a hearing before the motion is filed and before a declaration has been filed setting forth the need for a hearing on less than 48 hours notice.

- (3) Court Ruling on Request for Hearing. The request for a hearing on less than 48 hours notice will be determined by the court on the basis of the telephonic communication, subject to the right of any party to object to the adequacy of notice pursuant to subsection (c) of this rule. The court will promptly notify the movant whether it approves or denies the movant's request.
  - (4) Contents of Motion. The motion must: (A) state the relief requested, (B) comply with any other applicable provisions of these rules regarding the relief requested, and (C) be accompanied by the declaration of one or more competent witnesses under penalty of perjury that (i) justifies the setting of a hearing on less than 48 hours notice and (ii) supports the granting of the motion itself on the merits. A separate motion for an expedited hearing is not required under this rule.
  - (5) Telephonic Notice. Unless otherwise ordered by the court, immediately upon obtaining a hearing date and time, movant must give telephonic notice of the emergency hearing and the substance of the motion to the parties to whom notice of the motion is required to be given under the FRBP and these rules, the United States trustee, and any other party that is likely to be adversely affected by the granting of the motion. Movant must also advise the parties by telephone whether the motion will be served by email, fax, or personal service.
  - (6) Service of Motion. Unless otherwise ordered by the court, movant must serve the motion by email, fax, or personal service on the parties set forth in subsection (a)(5) not later than the time the motion is filed with the court.
  - (7) Filing of Motion. Unless otherwise ordered by the court, the motion must be filed not later than 2 hours before the time set for the hearing and a judge's copy served on the judge in chambers in accordance with LBR 5005-2(d).
  - (8) Response to Motion. Any response, written or oral, to the motion may be presented at the time of the hearing on the motion.
  - (9) Proof of Notice to be Presented at the Hearing. At the time of the hearing, movant must present to the court and file (A) a declaration of the efforts made to give telephonic notice of the hearing and substance of the emergency motion to the parties set forth in subsection (a)(5) and (B) a proof of service of the motion.
- (b) **Order Setting Hearing on Shortened Notice.**
- (1) Scope of Rule. A party may request that a non-emergency motion be heard on notice shorter than would otherwise be required by these rules. Such a request must be made by written application consistent with court-approved form [F 9075-1.1.APP.SHORT.NOTICE](#), Application for Order Setting Hearing on Shortened Notice ("application"). The application may be granted for good cause shown in accordance with this rule.

- (2) Contents of Application. Unless otherwise ordered by the court, the application must:
  - (A) Describe the nature of the relief requested in the underlying motion, identify the parties affected by the relief requested in the motion, and state the reasons necessitating a hearing on shortened notice; and
  - (B) Be supported by the declaration of one or more competent witnesses under penalty of perjury that justifies the setting of a hearing on shortened notice and establishes a prima facie basis for the granting of the underlying motion.
- (3) Filing of Application. An application must be filed with the clerk concurrently with the motion that is to be heard on shortened notice.
- (4) Service of Application. Unless otherwise ordered by the court, movant must serve the application and the motion on each of the parties to whom notice of the underlying motion is required to be given under the FRBP and these rules, the United States trustee, and any other party that is likely to be adversely affected by the granting of the underlying motion. A separate notice of the application is not required.
- (5) Proposed Order Setting Hearing on Shortened Notice. At the time the application and underlying motion are filed, movant must lodge a separate proposed order consistent with court-approved form [F 9075-1.1.ORDER.SHORT.NOTICE](#), Order Setting Hearing on Shortened Notice that (A) identifies the parties to whom notice is proposed to be given; (B) states the nature and timing of the proposed shortened notice, which must not be less than 48 hours; (C) states the means of service, *i.e.*, telephone, fax, email, personal service, or as ordered by the court; and (D) contains appropriate blanks for the court to insert the date and time of the hearing and the date for filing and serving the opposition.
- (6) Court Ruling on Application. The application will be determined by the court on the basis of the documents submitted with the application, subject to the right of any party to object to the adequacy of notice pursuant to subsection (c) of this rule. The court will promptly notify the movant of its decision on the application and, if granted, the date and time set for the hearing.
- (7) Notice of Hearing.
  - (A) If the application is granted, movant must serve the order setting the hearing on shortened notice on each of the parties to whom notice of the underlying motion is required to be served by the FRBP and these rules, the United States trustee, any other party that is likely to be adversely affected by the granting of the underlying motion, and as otherwise ordered by the court. Notice must be given by telephone, fax, email, personal service, or as ordered by the court.
  - (B) If the application is denied, movant may, unless otherwise ordered by the

court, set the underlying motion for hearing on regular notice and serve notice of the hearing in accordance with LBR 9013-1(d).

- (8) Proof of Service. Proof of service of all required documents must be filed at least 2 days before the hearing, unless otherwise ordered by the court.
- (c) Objection to Timing of Hearing. At the hearing on the motion, any party may object to the adequacy of the notice provided and seek a continuance for good cause shown.

(o) **Motions and Matters Determined After Notice of Opportunity to Request Hearing.**

(1) Matters That May Be Determined Upon Notice of Opportunity to Request Hearing. Except as to matters specifically noted in subsection (o)(2) below, and as otherwise ordered by the court, any matter that may be set for hearing in accordance with LBR 9013-1(d) may be determined upon notice of opportunity to request a hearing.

(A) Notice. When the notice of opportunity for hearing procedure is used, the notice must:

(i) Succinctly and sufficiently describe the nature of the relief sought and set forth the essential facts necessary for a party in interest to determine whether to file a response and request a hearing;

(ii) State that LBR 9013-1(o)(1) requires that any response and request for hearing must be filed with the court and served on the movant and the United States trustee within 14 days after the date of service of the notice; and

(iii) Be filed with the court and served by the moving party on all creditors and other parties in interest who are entitled to notice of the particular matter.

(B) Motion. The motion and supporting documents must be filed with the notice, but must be served only on the United States trustee and those parties who are directly affected by the requested relief.

(2) Matters that May Not be Determined Upon Notice of Opportunity to Request Hearing. Unless otherwise ordered by the court, the following matters may not be determined by the procedure set forth in subsection (o)(1) above:

(A) Objections to claims;

(B) Motions regarding the stay of 11 U.S.C. § 362;

- (C) Motions for summary judgment and partial summary adjudication;
  - (D) Motions for approval of cash collateral stipulations;
  - (E) Motions for approval of postpetition financing;
  - (F) Motions for continuance;
  - (G) Adequacy of chapter 11 disclosure statements;
  - (H) Confirmation of plans in chapter 9, chapter 11, chapter 12, and chapter 13 cases;
  - (I) Motions for orders establishing procedures for the sale of the estate's assets under LBR 6004-1(b);
  - (J) Motions for recognition of a foreign proceeding as either a main or a nonmain proceeding;
  - (K) Motions for the adoption of a chapter 15 administrative order;
  - (L) Motions for the adoption of a cross-border protocol;
  - (M) Motions to value collateral and avoid liens under 11 U.S.C. § 506 in chapter 11, 12, and 13 cases; and
  - (N) Motions for issuance of a TRO or preliminary injunction.
- (3) No Response and Request for Hearing. If the response period expires without the filing and service of any response and request for hearing, the moving party must do all of the following:
- (A) File Declaration of Service and Non-response. Promptly file a declaration attesting that: (i) no timely response and request for hearing was served upon the moving party; and (ii) that the declarant has checked the docket of the bankruptcy case or the adversary proceeding and no response and request for hearing was timely filed. A copy of the motion, notice, and proof of service of the notice and motion must be attached as exhibits to the declaration. No service is required prior to filing the declaration.
  - (B) Lodge Proposed Order. Lodge a proposed order in accordance with LBR 9021-1 and [The Central Guide](#), except that the proposed order need not be served prior to lodging, except as otherwise required in these rules.
  - (C) Deliver Copies to Court. Promptly deliver a judge's copy of the

declaration as required by LBR 5005-2(d).

- (4) Response and Request for Hearing Filed. If a timely response and request for hearing is filed and served, within 14 days from the date of service of the response and request for hearing the moving party must schedule and give not less than 14 days notice of a hearing to those responding and to the United States trustee. If movant fails to obtain a hearing date, the court may deny the motion without prejudice, without further notice or hearing.

## **9014-1. Case Motions and Objections.**

### **(a) Matters Covered By Rule.**

This rule shall apply to any motion, application or objection with respect to which the Bankruptcy Code provides that relief may be obtained after “notice and a hearing” or similar phrase, but does not apply to: (1) motions for relief from the automatic stay; (2) proceedings that must be initiated by complaint under Bankruptcy Rule 7001 (adversary proceedings) or motions therein, except as provided in B.L.R. 9014-1(b)(4)(B); (3) hearings on approval of disclosure statements and confirmation of Chapter 11, 12 and 13 plans; and (4) matters that may properly be presented to a Judge ex parte.

### **(b) Procedures For Hearings and Disposition.**

**(1) Hearing Required.** Unless otherwise ordered, the following shall be set for an actual hearing:

**(A)** Motions governed by Bankruptcy Rule 4001 (b), (c), and (d) other than motions to approve agreements to modify or terminate the automatic stay;

**(B)** Hearings on applications for compensation or reimbursement of expenses, totaling in excess of \$1,000, other than applications for compensation for appraisers, auctioneers, and real estate brokers;

**(C)** Motions to dismiss a case, other than a debtor’s request for dismissal under 11 U.S.C. §§ 1208(b) or 1307(b), or a Chapter 13 trustee’s request for dismissal under 11 U.S.C. § 1307(c);

**(D)** Motions to appoint a trustee or an examiner; and

**(E)** Objections to a debtor’s claim of exemption.

**(2) Hearing Permitted.** In addition to the required hearings described in B.L.R. 9014-1(b)(1), any matter within the scope of this rule may be set for a hearing.

**(3) Notice and Opportunity for Hearing.** Unless otherwise ordered, a party in interest may initiate a request for relief, without setting a hearing, regarding any matter within the scope of this rule, other than those matters described in B.L.R. 9014-1(b)(1).

**(A) Notice.** A request for relief governed by B.L.R. 9014-1(b)(3) shall be accompanied by a notice and opportunity for hearing with the following language set forth verbatim and conspicuously in the notice:

**“Any objection to the requested relief, or a request for hearing on the matter, must be filed and served upon the initiating party within 21 days of mailing the notice;**

**Any objection or request for a hearing must be accompanied by any declarations or memoranda of law any requesting party wishes to present in support of its position;**

**If there is no timely objection to the requested relief or a request for hearing, the court may enter an order granting the relief by default.**

**In the event of a timely objection or request for hearing, (either):**

**The initiating party will give at least seven days written notice of the hearing to the objecting or requesting party, and to any trustee or committee appointed in the case; or**

**The tentative hearing date, location and time are (insert date location and time).”**

**(B) Procedure for Tentative Hearing Dates.** A tentative hearing shall be set at least 14 days after the last date for parties to file objections or requests for hearings in accordance with B.L.R. 9014-1(b)(3)(A). The tentative hearing will not go forward unless an objection or request for hearing is timely filed and served, in which case the party initiating the proceedings under B.L.R. 9014-1(b)(3) shall file and serve not less than 7 days before the hearing, notice that the tentative hearing will be conducted as an actual hearing. Such Notice of Hearing is to be in writing, and is to be given to the objecting or requesting party, any trustee and any committee appointed in the case, and the Court. The Court will not schedule the matter on the judge’s calendar unless the Notice of Hearing has been filed and served timely. The initiating party shall also give 7 days telephonic notice to the Judge’s Calendar Clerk/Courtroom Deputy that the tentative hearing will be an actual hearing.

**(C) Conduct of Hearing.** At the hearing the Court will proceed in accordance with B.L.R. 3007-1 on objections to claims. On other matters in which the Court determines that there is a genuine issue of material fact, the Court may treat the hearing as a status conference and schedule further hearings as appropriate.

**(4) Relief Upon Default.**

**(A) Relief Upon Default for Matters Noticed Under BLR 9014-1(b)**

**(3).** When no objection or request for a hearing has been filed or served within the time provided in B.L.R. 9014-1(b)(3)(A), the initiating party may request relief by default by submitting a request for entry of an order by default and a proposed order. Any such request for relief upon default shall contain a concise statement of what relief or Court action the movant seeks. If the initiating party is an ECF Registered Participant, the electronically filed request shall contain a declaration confirming that no response has been received. The electronically filed request shall refer to existing event(s) within the ECF System to the previously filed motion, application, or objection and the certificate of service for the previously filed document (and copies of such motion, application, objection and certificate of service need not be filed with the request). If the initiating party is not an ECF Registered Participant and the request is to be filed in paper form, a copy of the original motion, application, or objection shall be attached to the request, and the request shall be accompanied by a certificate of service of the

papers initiating the request, as well as the declaration confirming that no response has been received. In addition:

- (i) In the case of an objection to a claim, a motion to avoid a lien pursuant to 11 U.S.C. § 522(f), or other request for relief as against an identified, named entity, the request for entry of order by default shall be served upon the entity against whom relief is sought. If relief is sought against any entity that has filed a claim, the request shall be mailed to the address shown on the proof of claim.
- (ii) In cases seeking relief generally, and not against an identified, named entity, the request shall be served upon:
  - (a) the debtor;
  - (b) any trustee serving in the case; and
  - (c) any committee of unsecured creditors that has been appointed in the case.

**(B) Certificate of No Objection for Matters Noticed under BLR 9014-1(b)(1) or (2).** Forty-eight (48) hours after the objection date has passed, counting time in accordance with Fed. R. Bankr. P. 9006(a)(2), with no objection having been filed or served and no informal extension having been permitted, counsel for the movant may file a certificate of no objection (the “Certificate of No Objection” or “CNO”), substantially in the form of Local Form for Certificate of No Objection, stating that no objection has been filed or served on the movant. Service of the CNO is not required. By filing the CNO, counsel for the movant represents to the Court that the movant is unaware of any objection to the motion or application and that counsel has reviewed the Court's record and no answer, objection, or other responsive pleading to the motion or application appears. Upon receipt of the CNO, the Court may elect to enter an order uploaded concurrently with the filing of the CNO. If the order is entered, the hearing scheduled on the motion will be vacated without further notice.

**(C)** Where a party files and serves a Request for Relief Upon Default pursuant to BLR 9014-1(b)(4)(A) or files a Certificate of No Objection in accordance with BLR 9014-1(b)(4)(B), the court may grant the underlying motion and vacate the hearing thereon.

**(c) Schedule For Filing of Papers.**

**(1)** Where the matter is governed by B.L.R. 9014-1(b)(1), or the initiating party desires a hearing under B.L.R. 9014-1(b)(2), and relief is sought against an identified, named entity, the motion, notice of the hearing, supporting declarations, memoranda, and all other papers shall be filed and served at least 28 days before the actual scheduled hearing date. Any opposition shall be filed and served on the initiating party at least 14 days prior to the actual scheduled hearing date. Any reply shall be filed and served at least 7 days prior to the actual scheduled hearing date. Notwithstanding the foregoing, no responsive pleading to an objection to a claim of exemption shall be required.

(2) Where the matter is governed by B.L.R. 9014-1(b)(1) or (b)(2) and relief is sought generally, and not against an identified, named entity, the motion or application, notice of the hearing, supporting declarations, memoranda, and all other papers shall be filed and served at least 21 days before the actual scheduled hearing date. Any opposition to the requested relief shall be filed and served on the initiating party no less than 7 days before the actual scheduled hearing date.

(3) Where the matter is governed by B.L.R. 9014-1(b)(3), the initiating party may file and serve any reply to the objecting party's opposition no less than 7 days before the hearing.

**(d) Shortened Notice Period Where Chapter 7 Estate Accruing Administrative Rent.**

(1) A Chapter 7 Trustee may, without the necessity of an order shortening time, set for hearing on 7 days notice:

(a) Any motion to sell personal property of the estate (whether free and clear of, or subject to, liens), or any motion to abandon personal property, if the subject property is situated on leased premises for which the estate is accruing periodic administrative rent;

(b) Any motion to assume and assign (but not just to assume) an unexpired lease of nonresidential real property where the debtor is the tenant, with notice to be provided in accordance with B.L.R. 6006-1(a).

(2) A Chapter 7 Trustee may notice a motion to reject an unexpired lease of nonresidential real property where the debtor is the tenant on 24-hours notice, with notice to be provided in accordance with B.L.R. 6006-1(b).

(3) Opposition to motions made pursuant to this subparagraph may be presented at or before the hearing or, if the matter may not require a hearing pursuant to B.L.R. 6006-1(b), by filed opposition before the 24-hour-hour period has elapsed.

**9015-1. Jury Trial of Right.**

FRCivP 38(a)-(d) applies in adversary proceedings.

**9015-2. Jury Trials and Personal Injury and Wrongful Death Claims.**

**(a) Determination of Right.**

In any proceeding in which a demand for jury trial is made, the Bankruptcy Judge shall, upon the motion of one of the parties, or upon the Bankruptcy Judge's own motion, determine whether the demand was timely made and whether the demanding party has a right to a jury trial. The Bankruptcy Judge may, on the Judge's own motion, determine that there is no right to a jury trial in a proceeding even if all of the parties have consented to a jury trial.

**(b) Motion and Certification to District Court.**

 KeyCite Yellow Flag - Negative Treatment

Declined to Follow by [In re American Intern. Refinery, Inc.](#),  
Bankr.W.D.La., August 27, 2010

63 F.3d 877

United States Court of Appeals,  
Ninth Circuit.

In re PARK-HELENA CORP., Debtor.  
NEBEN & STARRETT, INC., Plaintiff-Appellant,

v.

CHARTWELL FINANCIAL  
CORPORATION, Defendant-Appellee.

No. 94-55686.

|  
Argued and Submitted June 8, 1995.

|  
Decided Aug. 21, 1995.

Creditor objected to fee application filed by Chapter 11 debtor's attorneys, based on attorneys' alleged failure to properly disclose source of prepetition retainer. The United States Bankruptcy Court for the Central District of California held that attorneys had violated disclosure obligations under Bankruptcy Code and Bankruptcy Rules and entered order denying fees. Debtor's attorneys appealed. The District Court, [Linda Hodge McLaughlin, J.](#), affirmed. On further appeal, the Court of Appeals, [Wiggins](#), Circuit Judge, held that: (1) attorneys violated obligation to disclose source of prepetition retainer by representing that retainer was paid by Chapter 11 debtor, when, in fact, it was paid by debtor's president with funds which he had previously borrowed from debtor; (2) violation was "willful"; and (3) complete denial of attorneys' fee application as sanction for disclosure violation was not abuse of discretion.

Affirmed.

West Headnotes (14)

**[1] Bankruptcy**

 [Conclusions of law;de novo review](#)

On appeal from district court's affirmance of judgment of bankruptcy court, Court of

Appeals independently reviews bankruptcy court's decision.

[17 Cases that cite this headnote](#)

**[2] Bankruptcy**

 [Conclusions of law;de novo review](#)

**Bankruptcy**

 [Clear error](#)

Bankruptcy court's findings of fact are reviewed for clear error; its conclusions of law, de novo. [Fed.Rules Bankr.Proc.Rule 8013](#), [11 U.S.C.A.](#)

[29 Cases that cite this headnote](#)

**[3] Bankruptcy**

 [Discretion](#)

Bankruptcy court's decision as to proper amount of legal fees to be awarded to debtor's counsel is reviewed for abuse of discretion.

[5 Cases that cite this headnote](#)

**[4] Bankruptcy**

 [Disclosure requirements](#)

By failing to disclose that retainer had been paid not by Chapter 11 debtor itself, but by debtor's president with funds from his personal checking account, debtor's attorneys violated obligation to disclose source of retainer, notwithstanding that funds in president's account may have represented money borrowed from corporation and that president's payment of debtor's legal fees may have been credited against president's obligation to debtor on loan. [Bankr.Code](#), [11 U.S.C.A. § 329](#); [Fed.Rules Bankr.Proc.Rule 2016\(a\)](#), [11 U.S.C.A.](#)

[6 Cases that cite this headnote](#)

**[5] Bankruptcy**

 [Attorneys](#)

Bankruptcy court must ensure that attorneys who represent debtor do so in best interest of bankruptcy estate.

[15 Cases that cite this headnote](#)

**[6] Bankruptcy**

 [Frivolity or bad faith;sanctions](#)

**Bankruptcy**

 [Attorneys](#)

Disclosure obligations imposed on attorney's who seek to represent debtor are independent of all other requirements, and attorney's failure to comply with disclosure rule is sanctionable conduct, even if proper disclosure would have shown that attorney had not actually violated any Bankruptcy Code provision or any Bankruptcy Rule. Bankr.Code, 11 U.S.C.A. § 329; Fed.Rules Bankr.Proc.Rules 2014, 2016, 11 U.S.C.A.

[40 Cases that cite this headnote](#)

**[7] Bankruptcy**

 [Application;documentation and itemization](#)

Professional fee applicant must disclose precise nature of fee arrangement and not simply identify ultimate owner of funds from which payment was made. Bankr.Code, 11 U.S.C.A. § 329; Fed.Rules Bankr.Proc.Rule 2016(a), 11 U.S.C.A.

[16 Cases that cite this headnote](#)

**[8] Bankruptcy**

 [Attorneys](#)

Disclosure requirements for attorneys seeking to represent debtor are applied literally, even if results are sometimes harsh. Bankr.Code, 11 U.S.C.A. § 329; Fed.Rules Bankr.Proc.Rules 2014, 2016, 11 U.S.C.A.

[6 Cases that cite this headnote](#)

**[9] Bankruptcy**

 [Attorneys](#)

Negligent or inadvertent nature of attorney's nondisclosure does not vitiate attorney's failure to disclose conflict of interest or

source of fee in accordance with disclosure requirements of Bankruptcy Code and Bankruptcy Rules. Bankr.Code, 11 U.S.C.A. § 329; Fed.Rules Bankr.Proc.Rules 2014, 2016, 11 U.S.C.A.

[45 Cases that cite this headnote](#)

**[10] Bankruptcy**

 [Frivolity or bad faith;sanctions](#)

Failure of debtor's attorney to comply with disclosure obligations under Bankruptcy Code and Bankruptcy Rules may result in imposition of sanctions against attorney, regardless of actual harm to estate. Bankr.Code, 11 U.S.C.A. § 329; Fed.Rules Bankr.Proc.Rules 2014, 2016, 11 U.S.C.A.

[20 Cases that cite this headnote](#)

**[11] Bankruptcy**

 [Attorneys](#)

Failure of Chapter 11 debtor's attorneys to accurately and precisely disclose source of prepetition retainer, as being paid not from corporate accounts of Chapter 11 debtor but from money which debtor's president had borrowed from debtor and deposited in personal checking account, violated attorney's obligation to disclose all connections with debtor, debtor's officers, creditors and any other parties in interest. Fed.Rules Bankr.Proc.Rule 2014, 11 U.S.C.A.

[3 Cases that cite this headnote](#)

**[12] Bankruptcy**

 [Disclosure requirements](#)

Even a negligent or inadvertent failure to fully disclose relevant information as required under Bankruptcy Code and Bankruptcy Rules may result in denial of all requested compensation for professional fee applicant. Bankr.Code, 11 U.S.C.A. § 329; Fed.Rules Bankr.Proc.Rules 2014, 2016, 11 U.S.C.A.

[49 Cases that cite this headnote](#)

**[13] Bankruptcy****🔑 Disclosure requirements**

Failure of Chapter 11 debtor's attorneys to accurately disclose that the prepetition retainer which they claimed to have received from Chapter 11 debtor was, in fact, paid by debtor's president with funds he had borrowed from debtor and deposited in personal account was "willful" violation of attorney's disclosure obligations, given evidence that attorneys knew all of the salient facts regarding payment of retainer but chose not to reveal them. Bankr.Code, [11 U.S.C.A. § 329](#); [Fed.Rules Bankr.Proc.Rules 2014, 2016, 11 U.S.C.A.](#)

[13 Cases that cite this headnote](#)

**[14] Bankruptcy****🔑 Disclosure requirements**

Denial of any compensation to Chapter 11 debtor's attorney's for legal services which they had provided, based on attorney's failure to accurately and precisely disclose that prepetition retainer which they claim to have received from Chapter 11 debtor was, in fact, paid by debtor's president with funds which he had borrowed from corporation and placed in personal account, was not abuse of discretion, given evidence that attorneys were aware of all of the salient facts regarding payment of retainer and willfully chose not to reveal them. Bankr.Code, [11 U.S.C.A. § 329](#); [Fed.Rules Bankr.Proc.Rules 2014, 2016, 11 U.S.C.A.](#)

[12 Cases that cite this headnote](#)

**Attorneys and Law Firms**

\***879** [Lisa A. Roquemore](#), Neben & Starrett, Newport Beach, CA, for plaintiff-appellant.

[Leonard M. Shulman](#) and [Leslie Anne Hawes](#), Marshack & Goe, Santa Ana, CA, for defendant-appellee.

Before: [FLETCHER](#), [WIGGINS](#), and [FERNANDEZ](#), Circuit Judges.

[WIGGINS](#), Circuit Judge:

**OVERVIEW**

The bankruptcy court denied all fees and costs requested by the law firm of Neben & Starrett, which represents the debtor, Park-Helena Corporation. The bankruptcy court found that Neben & Starrett had violated various bankruptcy statutes and court rules by willfully failing to disclose (1) the source of a \$150,000 retainer paid to the firm, and (2) the firm's connections to a related party. We have jurisdiction pursuant to [28 U.S.C. § 158\(d\)](#), and we affirm.

**FACTS**

On July 16, 1992, William Starrett (a partner in Neben & Starrett) received from Gerald Meyer (president of Park-Helena) a \$150,000 retainer. The retainer was in contemplation of Park-Helena's chapter 11 bankruptcy filing. Meyer wrote a \$150,000 check out of his personal account, and the check was accepted by Starrett as a retainer.

Neben & Starrett completed an Application for Employment, pursuant to [Fed.R.Bankr.P. 2014](#), in which the firm stated that it received a retainer from Park-Helena and did not have connections with Park-Helena's creditors. The bankruptcy court approved Neben & Starrett's employment as Park-Helena's counsel on August 11, 1992.

On December 4, 1992, Neben & Starrett filed an Application for Compensation, in which the firm again indicated that it had received a retainer from "the Debtor," *i.e.*, Park-Helena. Neben & Starrett requested a total of \$74,497.30, to be offset against the \$140,900.75 that remained of the previously received retainer.<sup>1</sup> Park-Helena's major creditor, Chartwell Financial Corp. ("Chartwell"), objected to the fee request. Chartwell alleged, *inter alia*, that Park-Helena violated [11 U.S.C. § 329](#) and [Fed.R.Bankr.P. 2014](#) and [2016](#) by failing to disclose that Meyer, rather than Park-Helena, had paid the retainer to Starrett out of Meyer's personal account. Neben & Starrett argued that Meyer's payment was, in effect, a payment from Park-Helena because Meyer had

previously received a \$1.35 million “loan” \*880 from Park-Helena<sup>2</sup> and his \$150,000 payment to Neben & Starrett was credited toward his debt.

The bankruptcy court concluded that Neben & Starrett had violated [section 329 of the Bankruptcy Code](#) and [Federal Rules of Bankruptcy Procedure 2014 and 2016](#) by failing to disclose (1) the true source of the retainer, and (2) the firm's connections to Meyer. The bankruptcy court granted Neben & Starrett's motion for reconsideration, but again found that Neben & Starrett had violated [section 329](#) and [Rules 2014 and 2016](#). The court also found that Neben & Starrett may have been aware of an attempt by Park-Helena to deplete the assets of the bankruptcy estate. Accordingly, the court found that Neben & Starrett's failure to disclose was willful, and the court denied Neben & Starrett's entire fee request. The district court affirmed, holding that the bankruptcy court's conclusion was not clearly erroneous.

## DISCUSSION

### I. STANDARD OF REVIEW

[1] [2] [3] This court is in “‘as good a position to review the bankruptcy court's decision as is the district court.’” *Sousa v. Miguel (In re United States Trustee)*, 32 F.3d 1370, 1372 (9th Cir.1994) (quoting *Sambo's Restaurants, Inc. v. Wheeler (In re Sambo's Restaurants)*, 754 F.2d 811, 814 (9th Cir.1985)). Therefore, this court “reviews the bankruptcy court's decision independently.” *Allred v. Kennerley (In re Kennerley)*, 995 F.2d 145, 146 (9th Cir.1993). The bankruptcy court's findings of fact are reviewed for clear error and its conclusions of law are reviewed *de novo*. *Sousa*, 32 F.3d at 1372. The court's decision about the proper amount of legal fees to be awarded is reviewed for an abuse of discretion. *In re Film Ventures Int'l, Inc.*, 75 B.R. 250, 253 (9th Cir. BAP 1987).

### II. DISCLOSURE OF THE SOURCE OF THE RETAINER

[4] [5] [6] The bankruptcy court must ensure that attorneys who represent the debtor do so in the best interests of the bankruptcy estate. See *In re Lincoln N. Assocs., Ltd.*, 155 B.R. 804, 808 (Bankr.E.D.Mass.1993); *In re EWC, Inc.*, 138 B.R. 276, 280-81 (Bankr.W.D.Okla.1992). The court must ensure, for example, that the attorneys do not have interests

adverse to those of the estate, [11 U.S.C. § 327](#), that the attorneys only charge for services that benefit the estate, *Pfeiffer v. Couch (In re Xebec)*, 147 B.R. 518, 523 (9th Cir. BAP 1992), and that they charge only “reasonable” fees, [11 U.S.C. § 329\(b\)](#). To facilitate the court's policing responsibilities, the Bankruptcy Code and Federal Rules of Bankruptcy Procedure impose several disclosure requirements on attorneys who seek to represent a debtor and who seek to recover fees. See [11 U.S.C. § 329](#); [Fed.R.Bankr.P. 2014 & 2016](#). The disclosure rules impose upon attorneys an independent responsibility. Thus, failure to comply with the disclosure rules is a sanctionable violation, even if proper disclosure would have shown that the attorney had not actually violated any Bankruptcy Code provision or any Bankruptcy Rule. *In re Film Ventures Int'l*, 75 B.R. at 252.

When a debtor's attorney seeks compensation for fees, [Federal Rule of Bankruptcy Procedure 2016\(a\)](#) requires the attorney to file an application that includes “a statement as to what payments have theretofore been made or promised ..., [and] the source of the compensation so paid or promised.” Regardless of whether fees are actually sought, [11 U.S.C. § 329](#) requires the attorney to “file with the court a statement of the compensation paid or agreed to be paid, ... and the source of such compensation.”<sup>3</sup>

Neben & Starrett's disclosures pursuant to [11 U.S.C. § 329](#) and [Fed.R.Bankr.P. 2016](#) stated that the firm received a \$150,000 retainer “paid by the Debtor,” *i.e.*, Park-Helena. The firm did not initially explain that the payment was actually made by Park-Helena's president, Meyer, out of Meyer's personal checking account. It only disclosed \*881 these details after Chartwell objected to Neben & Starrett's fee request. Neben & Starrett argues that the distinction between Meyer and “the Debtor” is one of form over substance because Meyer's personal check reflected funds that he owed to Park-Helena. Thus, according to Neben & Starrett, the retainer was paid with funds “of the debtor,” and the statement in the Application for Employment, that Neben & Starrett received a retainer “paid by the debtor,” was accurate and sufficient.

We reject this argument. Regardless of whether the funds used to pay the retainer were, in some sense, Park-Helena's funds, the question here is whether Neben & Starrett's failure to provide the details of the payment constitutes

a violation of the [section 329](#) and [Rule 2016](#) disclosure requirements. We hold that it does.

[7] A fee applicant must disclose “the precise nature of the fee arrangement,” and not simply identify the ultimate owner of the funds. See *In re Glenn Elec. Sales Corp.*, 99 B.R. 596, 600 (D.N.J.1988); see also *In re Bob's Supermarket's, Inc.*, 146 B.R. 20, 25 (Bankr.D.Mont.1992) (“[D]ebtor's counsel [must] lay bare all its dealings ... regarding compensation.... Counsel's fee revelations must be direct and comprehensive. Coy, or incomplete disclosures ... are not sufficient.”) (quoting *In re Saturley*, 131 B.R. 509, 516-17 (Bankr.D.Me.1991)), *aff'd in part and rev'd in part*, 165 B.R. 339 (9th Cir. BAP 1993); *In re Plaza Hotel Corp.*, 111 B.R. 882, 883 (Bankr.E.D.Cal.) (“the duty is one of complete disclosure of *all facts*”) (emphasis added), *aff'd*, 123 B.R. 466 (9th Cir. BAP 1990); *In re B.E.S. Concrete Prods., Inc.*, 93 B.R. 228, 237 (Bankr.E.D.Cal.1988) (“The burden is on the person to be employed to come forward and make *full, candid, and complete disclosure.*”) (emphasis added).

[8] [9] [10] The disclosure rules are applied literally, even if the results are sometimes harsh. See *In re Plaza Hotel*, 111 B.R. at 883. Negligent or inadvertent omissions “do not vitiate the failure to disclose.” *In re Maui 14K, Ltd.*, 133 B.R. 657, 660 (Bankr.D.Haw.1991); *In re Coastal Equities, Inc.*, 39 B.R. 304, 308 (Bankr.S.D.Cal.1984). Similarly, a disclosure violation may result in sanctions “regardless of actual harm to the estate.” *In re Maui 14K*, 133 B.R. at 660.

Neben & Starrett's failure to describe the transaction and indicate that Meyer paid the retainer out of his personal account constitutes a violation of [11 U.S.C. § 329](#) and [Fed.R.Bankr.P. 2016](#). Our holding does not impose any new or additional investigatory burden on firms that represent a debtor. A law firm must at least disclose the facts of the transaction, as those facts were known to the firm. This Neben & Starrett failed to do. Because Neben & Starrett did not disclose known facts, we need not decide in this case whether the obligation should be even broader than that.

### III. DISCLOSURE OF CONNECTIONS WITH THE DEBTOR

[11] The bankruptcy court found that Neben & Starrett's conduct also violated [Fed.R.Bankr.P. 2014\(a\)](#), which requires that a firm's Application for Employment

disclose “all of the [applicant's] connections with the debtor, creditors, [or] any other party in interest....” This rule assists the court in ensuring that the attorney has no conflicts of interest and is disinterested, as required by [11 U.S.C. § 327\(a\)](#). The bankruptcy court found a [Rule 2014](#) violation because Neben & Starrett failed to disclose that Meyer, who was a “party in interest,”<sup>4</sup> paid the \$150,000 retainer to Neben & Starrett out of his personal account.<sup>5</sup>

The disclosure requirements of [Rule 2014](#) are applied as strictly as the requirements of [Rule 2016](#) and [section 329](#), described above. \*882 See, e.g., *In re Haldeman Pipe & Supply Co.*, 417 F.2d 1302, 1304 (9th Cir.1969) (“General Order 44 [the precursor to [Rule 2014](#)] does not give the attorney the right to withhold information because it is not apparent to him that there is a conflict.”); *In re Hathaway Ranch Partnership*, 116 B.R. 208, 219 (Bankr.C.D.Cal.1990) (“*All facts that may be pertinent* to a court's determination of whether an attorney is disinterested or holds an adverse interest to the estate must be disclosed.”) (emphasis added); *In re EWC*, 138 B.R. at 280-81 (“The duty of professionals is to disclose all connections with the debtor, debtor-in-possession, insiders, creditors, and parties in interest.... They cannot pick and choose which connections are irrelevant or trivial.... No matter how old the connection, no matter how trivial it appears, the professional seeking employment must disclose it.”); *In re B.E.S. Concrete Prods.*, 93 B.R. at 236 (“Appearances count. Even conflicts more theoretical than real will be scrutinized.”).

Like the disclosure provisions of [11 U.S.C. § 329](#) and [Rule 2016](#), the provisions of [Rule 2014](#) impose an independent requirement on attorneys. See *In re Film Ventures Int'l*, 75 B.R. at 252; *In re EWC*, 138 B.R. at 280-81. Thus, even if the retainer was paid out of funds ultimately belonging to Park-Helena, and even if Neben & Starrett's acceptance of a check from Meyer did not create any actual conflict of interest, Neben & Starrett's failure to describe the circumstances of the payment violated [Rule 2014's](#) disclosure requirements.

### IV. DENIAL OF FEES

[12] [13] Even a negligent or inadvertent failure to disclose fully relevant information may result in a denial of all requested fees. *In re Maui 14K*, 133 B.R. at 660; *In re Coastal Equities*, 39 B.R. at 308. The bankruptcy court in this case concluded that Neben & Starrett's

failure to disclose fully the circumstances surrounding payment of the retainer was not negligent or inadvertent, but willful. This finding is not clearly erroneous. There can be no doubt that the firm did know all of the salient facts regarding the payment of the retainer but chose not to reveal them. Moreover, he bankruptcy court permissibly discounted the evidence that tended to show a lack of willfulness, *i.e.*, the affidavit of Darrell Townsend, a member of the Park-Helena Board of Directors, because his affidavit exhibited inconsistencies and generally incredible assertions.

[14] The court's denial of all fees was within its discretion. See *In re Crimson Investments*, 109 B.R. 397, 402 (Bankr.D.Ariz.1989) (failure to disclose forthrightly source of compensation warranted denial of

all compensation); *In re Hathaway Ranch*, 116 B.R. at 220 (applicant who fails to provide complete disclosure may be ordered to disgorge previously paid compensation).

#### CONCLUSION

The bankruptcy court's order denying Neben & Starrett's entire fee request is AFFIRMED.

#### All Citations

63 F.3d 877, 64 USLW 2147, 34 Collier Bankr.Cas.2d 429, 27 Bankr.Ct.Dec. 893, Bankr. L. Rep. P 76,602, 95 Cal. Daily Op. Serv. 6558, 95 Daily Journal D.A.R. 11,215

#### Footnotes

- 1 The firm had already applied \$9,099.25 in pre-petition fees against the retainer. That amount is not at issue in this case.
- 2 Park-Helena authorized a loan of up to \$1.5 million, but Meyer actually received only \$1.35 million.
- 3 The disclosure requirements of [Rule 2014](#), which applies to the attorney's Application for Employment, are addressed in part III, *infra*.
- 4 Meyer held 23.5% of Park-Helena's shares and allegedly was indebted to Park-Helena for a \$1.35 million loan.
- 5 Neben & Starrett argues that it is unclear whether the bankruptcy court's conclusion that the firm violated [Rule 2014](#) was based on a finding that there was, in fact, a conflict of interest, or on a finding that Neben & Starrett did not make an adequate disclosure. The court's statements, however, clearly indicate that it made the latter finding: The court stated there was insufficient proof that a conflict actually existed, and the court expressly found a violation of "[Rule 2014](#)," which is purely a disclosure requirement.