

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS

\_\_\_\_\_ DIVISION

In Re:

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§

Case No. \_\_\_\_\_

Debtor

Subchapter V

UNSWORN DECLARATION OF \_\_\_\_\_ IN SUPPORT OF  
CONFIRMATION OF THE DEBTOR(S) SUBCHAPTER V PLAN  
OF REORGANIZATION PURSANT TO 11 U.S.C. § 1191(b)

To the Honorable United States Bankruptcy Judge

I. INTRODUCTION

1. My name is \_\_\_\_\_. I am the Sole Manager and Chief Executive Officer of \_\_\_\_\_ (the “Debtor”), the debtor-in-possession in the above-captioned bankruptcy case. In this capacity, I oversee and am generally familiar with the Debtor(s) day-to-day operations, business and financial affairs, books and records. I submit this declaration in support of confirmation of the Debtor(s) subchapter V Plan of Reorganization filed on [Click or tap to enter a date.](#)\_, ECF No. \_\_\_\_\_ (the “Plan”). Except as otherwise indicated, all the facts and opinions set forth herein are based upon my personal knowledge of the Debtor(s) operations and finances, my opinion based on my qualifications and experience, information learned from my review of relevant documents, or information supplied to me by the Debtor(s) professionals. I am authorized to submit this declaration on behalf of the Debtor(s), and if called to testify, I could and would testify competently to the facts set forth herein.

II. THE PLAN SATISFIES THE REQUIREMENTS OF 11 U.S.C. § 1191(b)

2. **11 U.S.C. § 1129(a)(1): Compliance with the Bankruptcy Code.** I understand that, for the Plan to be confirmed, it must comply with the applicable provisions of the Bankruptcy Code. The Plan’s classification scheme is based upon the legal and business nature and relative rights of creditors’ claims and is not proposed for any improper purposes. Each class under the Plan contains only claims that are substantially similar to the other claims contained therein. Valid business, factual, and legal reasons exist for separate classification of each class of claims.
3. **11 U.S.C. § 1129(a)(2): Solicitation.** I understand that pursuant 11 U.S.C. § 1190, a subchapter V plan must include the following mandatory content: (i) a brief history of Debtor(s) business operations; (ii) a liquidation analysis; (iii) projections with respect to the Debtor(s) ability to make the payments under the Plan; and (iv) the submission of all or a portion of the Debtor(s) post-petition income from future earnings to the supervision and control of the trustee as is necessary for the execution of the plan. I understand that the Plan contains each of these required elements. Additionally, I understand that pursuant to 11 U.S.C. § 1126, holders of Claims or

Interests in Classes \_\_\_ through \_\_\_ are Unimpaired and are deemed to accept the Plan. Therefore, solicitation of acceptances from Holders of Claims or Interests in Classes 1 through 7 was not required. Classes \_\_\_ through \_\_\_ were impaired and voted in favor of the Plan. I understand that all Holders of Claims and Interests have accepted the Plan and that the Plan is presented for confirmation on a fully consensual basis.

4. **11 U.S.C. § 1129(a)(3): Good Faith.** I understand that to be confirmed, a plan must be proposed in good faith and not by any means forbidden by law. The Debtor(s) sought protection under subchapter V of the Bankruptcy Code to obtain a breathing spell in litigation, establish a centralized forum for the prompt and efficient resolution of creditor disputed claims, and to confirm a plan of reorganization that will preserve the Debtor(s) going concern value while allowing the Debtor(s) to pay allowed claims over time. I understand that the Plan incorporates each of the Debtor(s) stated goals and will preserve the Debtor(s) going concern value while permitting the Debtor(s) to pay allowed claims over time. I believe this is a good faith and proper use of the Bankruptcy Code.
5. **11 U.S.C. § 1129(a)(4): Payment of Professional's Fees.** I understand that the Bankruptcy Code requires that all payments by the Debtor(s) for professional services, costs, and expenses incurred during the bankruptcy case be subject to approval by the Bankruptcy Court. I understand that the Plan expressly provides that all claims for professionals' fees are subject to review and approval by the Court as a condition to being paid.
6. **11 U.S.C. § 1129(a)(5): Identity of Officers and Directors.** I understand that the Plan must contain certain information regarding individuals that will serve as officers, directors, or trustees of the Reorganized Debtor(s) after confirmation. The Plan discloses that I will continue in my role as the Sole Manager and Chief Executive Officer of the Reorganized Debtor(s), and my compensation is disclosed in the projections attached to the Plan. I have decades of experience in sales and have been responsible for all of the Debtor's operations since its inception in \_\_\_\_\_. The Debtor(s) is a closely held family business that relies heavily upon my expertise, contacts, and institutional knowledge for its continued success. My continuation as the sole manager and chief executive officer of the Reorganized Debtor(s) is thus consistent with the interests of creditors and equity security holders and with public policy.
7. **11 U.S.C. § 1129(a)(6): Regulatory Rates.** The Debtor(s) is not subject to the oversight of any regulatory commissions that has jurisdiction over the rates the Debtor(s) charges and the Plan does not provide for the change of any rate that is regulated by a governmental regulatory commission.
8. **11 U.S.C. § 1129(a)(7): Best Interest of Creditors.** I understand that one of the requirements of confirmation of a plan is that non-consenting creditors receive more under the plan than they would in a liquidation under chapter 7 of the Bankruptcy Code. First, I understand that all classes of claims under the Plan have voted in favor of the Plan and thus the Plan is presented for confirmation on a fully consensual basis. Regardless, the Debtor(s) primary value is in the cashflow the Debtor generates as a going concern, and the Debtor(s) has very few valuable assets other than cash and limited inventory that could be distributed to creditors in a liquidation. As reflected in the liquidation analysis attached to the Plan as **Exhibit \_\_\_**, which was prepared by the Debtor(s) long-time accountant \_\_\_\_\_, creditors will therefore receive far more under the Plan than they would in a liquidation under chapter 7.

9. **11 U.S.C. § 1129(a)(8): Acceptance by Creditors.** I understand that all classes of claims under the Plan have not voted in favor of the Plan and thus the Plan is presented for confirmation on a non-consensual basis, meaning that all classes have not accepted the Plan. Nevertheless, I understand that since I am seeking confirmation pursuant 11 U.S.C. § 1191(b), the Plan need not satisfy 11 U.S.C. § 1129(a)(8).
10. **11 U.S.C. § 1129(a)(9): Payment in Full of Administrative and Priority Tax Claims.** I understand that a plan must provide for payment in full of all allowed administrative claims, priority non-tax claims, and priority tax claims unless the holders of such claims agree to different treatment. It is my understanding that the Plan provides that all such claims will be paid in full unless the holder agrees to less favorable treatment.
11. **11 U.S.C. § 1129(a)(10): Impaired Accepting Class.** I understand that, if a class of creditors is impaired, at least one impaired class must vote to accept the Plan. In this case, not all classes have accepted the Plan and therefore this requirement is not satisfied. Nevertheless, I understand that since I am seeking confirmation pursuant 11 U.S.C. § 1191(b), the Plan need not satisfy 11 U.S.C. § 1129(a)(10).
12. **11 U.S.C. § 1129(a)(11): Feasibility.** I understand that, to be confirmed, the Plan must be feasible within the meaning of the Bankruptcy Code. The Plan contains Projections that demonstrate that the Plan is feasible and that the Debtor(s) will be able to make the required payments under the Plan. I was personally involved in the creation and vetting of the Projections together with \_\_\_\_\_, the Debtor's longtime accountant. The Projections are reasonably conservative, and the Plan does not depend on unrealistic or speculative increases in revenue. To the contrary, the Debtor's revenue projections are based upon historical sales trends, specifically including the Debtor's monthly average sales numbers during the pendency of this case as reflected on the Debtor's monthly operating reports. Further, the Debtor's operations are simple and the categories of operating expenses it incurs are fixed. It is unlikely that the Debtor will incur any unexpected expenses that would materially affect the Debtor's ability to make the payments required under the Plan. Accordingly, I believe the Projections supporting the Plan are achievable and that the Plan is therefore feasible.
13. **11 U.S.C. § 1129(a)(12): United States Trustee's Fees.** I understand that subchapter V debtors are not required to pay quarterly fees to the United States Trustee.
14. **11 U.S.C. § 1129(a)(13): Continuation of Retirement Benefits.** The Debtor(s) does not pay any "retiree benefits" within the meaning of the Bankruptcy Code. Specifically, the Debtor(s) is not obligated to make any payments or reimbursements for medical, surgical, or hospital care and does not provide benefits payable in the event of sickness, accident, disability, or death. To the extent the Debtor(s) is obligated to make any such payments or benefits, I understand that the Plan provides that they shall continue to be paid except to the extent they are consensually modified in accordance with the Bankruptcy Code.
15. **11 U.S.C. § 1129(a)(14): Domestic Support Obligations.** The Debtor(s) is a business entity and does not owe any domestic support obligations.
16. **11 U.S.C. § 1129(a)(15): Projected Disposable Income:** I understand that pursuant to 11 U.S.C. §1181(a), 11 U.S.C. § 1129(a)(15) is inapplicable in subchapter V.
17. **11 U.S.C. § 1129(a)(16): Transfers of Property by Non-Profit Entities.** The Debtor is a for-profit entity.

18. **11 U.S.C. § 1191(b) and (c):** I understand that in addition to meeting the aforementioned requirements I must also demonstrate that the Plan does not discriminate unfairly and is fair and equitable with respect each class of claims or interests that is impaired under, and has not accepted, the Plan. I understand that the Plan is “fair and equitable” because the Plan provides for secured creditors to retain their liens and receive on account of their claims deferred cash payments totaling at least the allowed amount of their claims, if the Plan contemplates a sale, the Plan provides that the secured creditor’s liens attach to the proceeds of the sale; and if the Plan contemplates neither, then the Plan provides that the secured creditors receive the indubitable equivalent of their claims. Additionally, the Plan provides for all of the Debtor(s) projected disposable income to be used to pay creditors over a period of three (3) years to make payments under the plan [**OR**], because it provides to pay the value of Debtor(s) projected disposable income and Debtor(s) will be able to make all plan payments [**OR**] there is a reasonable likelihood that Debtor(s) will be able to make all plan payments **AND** the Plan provides for appropriate remedies upon default to protect holders of claims or interests in the event payments are not made.
19. **Conclusion.** Based on the foregoing, and on my personal involvement in the Debtor(s) operations and reorganization proceeding, I believe the Plan satisfies all the applicable requirements for confirmation of a subchapter V plan of reorganization. The Debtor(s) has presented in the Plan as a good faith effort to reorganize and preserve the Debtor(s) value for the benefit of all stakeholders. I believe the Plan is feasible and in the best interests of the Debtor(s), its creditors, and its estate. I therefore believe the Plan should be confirmed.

Dated: Click or tap to enter a date.

/s/ \_\_\_\_\_  
Debtor(s) Representative  
Debtor(s)