

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NORTH DAKOTA**

In Re: Vanity Shop of Grand Forks, Inc., Debtor.	Case No.: 17-30112 Chapter 11
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**DECLARATION OF JAMES BENNETT IN SUPPORT OF
DEBTOR'S THIRD PLAN OF LIQUIDATION DATED MAY 18, 2018**

I, James Bennett, hereby declare as follows:

1. I am the President of Vanity Shop of Grand Forks, Inc. (the "**Debtor**"). In this capacity, I am familiar with the Debtor's day-to-day operations, businesses, financial affairs, and books and records. I also was involved in the negotiation and preparation of the Debtor's Plan (defined below).

2. I submit this declaration (the "**Declaration**") in support of confirmation of the *Debtor's Second Plan of Liquidation dated April 9, 2018* [Doc. 646] (as amended by the *Debtor's Third Plan of Liquidation dated May 18, 2018* [Doc. 719], the "**Plan**").¹ Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents or my opinion based upon my experiences, knowledge and information concerning the Debtor's operations, financial condition and the industry as a whole. I am at least eighteen (18) years old, and if I were called upon to testify,

¹ All capitalized terms used herein and not otherwise defined are used as defined in the Plan.



I would testify competently to the facts set forth herein. I am authorized by the Debtor to submit this Declaration.

3. Based upon my active, personal involvement in the above-captioned Chapter 11 case, I believe that the Plan was proposed in good faith. Furthermore, I believe that the Debtor, acting through its agents, representatives and professionals, conducted itself in a manner that complies with applicable law relating to the formulation and negotiation of, and voting on, the Plan.

4. On November 22, 2017, the Debtor filed the *Plan of Liquidation* dated November 22, 2017 [Doc. 511] and *Disclosure Statement with Respect to Chapter 11 Plan of Liquidation of Vanity Shop of Grand Forks, Inc.* [Doc. 510].

5. On April 11, 2018, the Debtor filed the *Second Plan of Liquidation* dated April 9, 2018 [Docket No. 646], and the *Disclosure Statement with Respect to Chapter 11 Plan of Liquidation of Vanity Shop of Grand Forks, Inc.* dated April 9, 2018 [Doc. 645] (the “*Disclosure Statement*”).

6. On April 11, 2018, the Court entered the *Order Approving Disclosure Statement and Setting Deadline for Return of Ballots and Objections to Confirmation and Scheduling Confirmation Hearing* (the “*Disclosure Statement Order*”) [Doc. 655].

7. After reviewing the objections filed to the Plan, on May 18, 2018 the Debtor filed the *Proposed Third Plan of Liquidation* dated May 18, 2018 [Doc. 719] (the “*Plan*”).

8. To the best of my knowledge, the Debtor, as the proponent of the Plan, has complied with the Bankruptcy Code in proposing the Plan in good faith and not by any means forbidden by law. Additionally, the Debtor, as proponent of the Plan has acted in good

faith and in compliance with the Disclosure Statement Order in conducting the Plan solicitation.

9. The Plan provides for the separate classification of claims and equity interests into the following five (5) classes based upon difference in the legal nature and/or priority of such claims and equity interests:

- Class 1 Wells Fargo Bank Claim
- Class 2 Convenience Class – General Unsecured Claims
- Class 3 Effective Date Allowed Unsecured Claims
- Class 4 Post-Effective Date Unsecured Claims
- Class 5 Equity Interest Claims

10. The Class 2 Convenience Class consists of unsecured creditor claims under \$1,500 and allows creditors to elect to reduce their claim to \$1,500 and receive treatment under Class 2. As of the Record Date (April 13, 2018), a total of 547 claims were classified as Class 2. The great majority of these claims were gift card holders, former employees, and service providers for the previous Vanity stores including utility providers, maintenance, window cleaning, etc. Many are stereotypical “mom-and-pop” small business service providers.

11. In contrast, Class 3 had a total of 198 claims and Class 4 had a total of 248 claims as of the Record Date (April 13, 2018). [Doc. 610] Accordingly, Class 2 is the largest class of creditors by far.

12. No statutory insider claims are included in Class 2.

13. The Class 2 convenience class was created to ease the administrative burden of the Plan Administrator by allowing for the resolution of over 50% of the claims in this case as soon as possible after the Effective Date for less than \$55,000. Accordingly, the creation of the Class 2 convenience class was reasonable and necessary for administrative convenience.

14. Class 3 Effective Date Allowed Unsecured Claims includes unsecured creditor claims that are not disputed by the Debtor. For example, pre-petition landlord rent claims for the month of February 2017 are all included within Class 3 because it is undisputed that the Debtor did not pay rent for that month. Additionally, creditors listed on the Debtor's schedules are believed to be valid claims.

15. The Plan provides that Class 3 claims will receive an interim distribution. The Debtor currently has over \$7M in cash and Class 3 creditors whose claims are undisputed should receive an interim distribution rather than having the Debtor sit on that cash indefinitely while the claims reconciliation process plays out.

16. Class 4 Post-Effective Date Unsecured Claims includes unsecured creditor claims that are currently disputed by the Debtor. For example, trade vendor claims where the Debtor did not receive the goods are included in Class 4 because the Debtor is entitled to assert the defense of mitigation. Similarly, landlord rejection damages claims are included in Class 4 because the Debtor is entitled to discovery as to the landlord's mitigation efforts and calculation of the rejection damages under 11 U.S.C. § 502(b)(6).

17. Certain of the objections filed by landlords to confirmation of the Plan were based on the concern that the Debtor's classification of claims as Class 4 was intended to be dispositive. The Plan has been revised to clarify that the validity of Class 4 claims will be

resolved through the claims objection process and the placing of a particular claim in Class 4 is not dispositive.

18. There are four (4) impaired classes under the Plan: Class 2—Convenience Unsecured Claims, Class 3—Effective Date Unsecured Claims, Class 4—Post-Effective Date Unsecured Claims and Class 5—Equity Interests. Class 2 voted to accept the Plan. Classes 3 and 4 rejected the Plan. Class 5—Equity Interests are deemed to have rejected the Plan. Therefore, in order to show that the Plan is in the best interests of Class 3, Class 4, and Class 5, it must be shown that the Plan provides for them to not receive less than they would have had the Debtor gone through a Chapter 7 liquidation.

19. The Class 3 and Class 4 claims will receive more or the same amount under the Plan than would occur in a Chapter 7 case.

20. The Debtor does not believe that the Class 3 and Class 4 Claims will be fully satisfied under either the Plan or in a Chapter 7 scenario. Therefore, the Class 5 Equity Interests will not be entitled to a recovery under either the Plan or any Chapter 7 scenario.

21. The Debtor did not begin solicitation of votes for the Plan until after the Disclosure Statement was mailed to creditors.

22. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Dated this 21st day of May, 2018.



James Bennett