

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

Kenrock Enterprises LLC,

Case No. 23-10197 (DSJ)

Debtor.  
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In re:

Chapter 11

Rockwood Music Corporation,

Case No. 23-10198 (DSJ)

Debtor.  
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**DEBTORS' JOINT CHAPTER 11  
(SUBCHAPTER V) PLAN OF REORGANIZATION**

**THE DEBTORS ARE SMALL BUSINESSES UNDER THE BANKRUPTCY CODE. AS SUCH, THE DEBTORS ARE ELIGIBLE FOR CERTAIN ADDED PROTECTIONS AND BENEFITS DESIGNED TO MAXIMIZE THEIR OPPORTUNITY TO REMAIN IN BUSINESS EVEN OVER THE OBJECTION OF CREDITORS. THE DEBTORS ARE FILING THIS PLAN TO RESTRUCTURE THEIR DEBTS AND OBLIGATIONS PURSUANT TO 11 U.S.C. §§ 1189 AND 1190. THE DEBTORS ARE SEEKING CONFIRMATION OF THE PLAN PURSUANT TO 11 U.S.C. §1191 WITHOUT FORMAL APPROVAL OF A DISCLOSURE STATEMENT. THE PLAN, HOWEVER, CONTAINS SUFFICIENT FINANCIAL AND OPERATING INFORMATION FOR CREDITORS TO MAKE AN INFORMED DECISION ON WHETHER TO VOTE TO ACCEPT THE PLAN.**

Kenrock Enterprises LLC and Rockwood Music Corporation (collectively the “Debtors”) hereby propose the following Joint Plan of Reorganization, pursuant to the provisions of Subchapter V of Chapter 11 of Title 11 of the United States Code (the “Plan”).

**BACKGROUND**

**A. Introduction**

The Debtors operate a popular music venue on the Lower East Side of Manhattan known as Rockwood Music Hall (“Music Hall”) and qualify as small businesses within the meaning of

11 U.S.C. § 101(51D). For eighteen years, contemporary artists have performed at Rockwood Music Hall playing rock and roll, hip hop, and jazz on various stages. Like so many entertainment related business, the Debtors were profoundly impacted by the Covid-19 pandemic. Although the Debtors foresee better days ahead, in the wake of Covid-19 and the ensuing shutdown of business for some fifteen months in 2020-2021, the Debtors' business declined significantly. As a result, the Debtors became delinquent with their sales tax and rent obligations. This in turn led to the filing of NYS tax liens and warrants and the prospect of rent non-payment proceedings. The Chapter 11 filings were made on an emergency basis to stay a then-imminent levy by the New York State Department of Taxation and Finance ("NYS").

The Debtors' principal and sole member and manager is Ken Rockwood, who has been in the entertainment business for most of his adult life. Mr. Rockwood has developed a strong loyalty with various artists, who have offered to perform a series of benefit concerts during the upcoming summer months in an effort to "Save Rockwood" (the "Benefit Concerts"). The Debtors project that the Benefit Concerts will generate sufficient available cash to emerge from Chapter 11 in the total sum of between \$500,000 to \$600,000. Based upon the anticipated cash revenues from the Benefit Concerts, the Debtors are filing this Plan for consideration by the Court and the creditors.

The Debtors have negotiated with the Landlord for a modification of the existing leases at reduced rent and received various accommodations from NYS concerning deferred payments of sales tax. Thus, the Debtors are optimistic about their ability to successfully emerge from bankruptcy, giving added meaning to the concept that "rock and roll will never die".

## **B. Operations**

The Debtors jointly lease premises from Allen/Orchard LLC ("the Landlord") pursuant to a lease originally dated December 2005, as subsequently amended. The premises consists of three

separate stages, one operated by Rockwood, which puts on shows with no cover charge and generates revenues from the sale of food and liquor; and two operated by Kenrock, which charges an admission fee as well as generating revenue from the sale of food and liquor. Rockwood employed workers on an as-needed per diem basis, while Kenrock employs up to 15 full and part time employees, including bartenders, wait staff, security, back-office workers and technicians.

This business model was successful for a number of years but could not be sustained during Covid. When the Debtors reopened in the summer 2022, they made the mistake of doing so without a full complement of trained employees after many pre-Covid employees found employment elsewhere. In turn, the Debtors were unable to service their customers properly. This, combined with reduced audience sizes resulted in declining revenues well below pre-Covid levels.

A lack of sufficient cash flow made it difficult to hire experienced replacement staff, not to mention led to tax delinquencies and rent arrears. Although the Landlord worked with the Debtors on Covid-19 rent reductions and a forbearance under an omnibus agreement dated May 1, 2021, the Debtors were unable to meet even these reduced obligations as they struggled to regain their core audience.

At the time of bankruptcy, the Debtors faced enormous challenges in terms of sales tax debt of almost \$900,000, withholding taxes estimated at over \$600,000,<sup>1</sup> rent arrears in excess of \$1.5 million, and unpaid priority employee wage claims of approximately \$88,000.

### **C. Debtors' Subchapter V Cases**

On February 9, 2023 (the "Petition Date"), the Debtors each filed a voluntary petition under Subchapter V of Chapter 11 of the Bankruptcy Code and have thereafter remained in possession of their respective assets as debtors and debtors-in-possession. The Debtors' cases are

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<sup>1</sup> Once all of the returns are filed, the Debtors believe that this number will be significantly reduced.

being jointly administered pursuant to Order dated March 23, 2023. On February 15, 2023, Heidi Sorvino was appointed as the Subchapter V trustee in these Chapter 11 cases.

On March 23, 2023, the Court entered an order establishing May 5, 2023 as the deadline for filing claims against the Debtors.<sup>2</sup> To date, a total of 22 claims have been filed, including taxes, wages, rent, suppliers and two U.S. Small Business Administration loans issued under the Covid-19 relief programs.

By Order dated March 29, 2023, the Court vacated the automatic stay to permit the Landlord to commence eviction and enforcement proceedings due to non-payment of rent and things looked bleak, to say the least.

However, Ken Rockwell was able to negotiate a new lease arrangement with the Landlord which brought renewed life to the Music Hall. Under the proposed Second Omnibus Lease Amendment, the Debtors are surrendering a portion of the Kenrock premises (Store A) and retaining the balance of the Kenrock premises (Store B) at 190-192 Allen Street, together with all of the Rockwood premises at 196 Allen Street. The Debtors are also eligible for significant reductions of the rent arrears of at least \$750,000 based upon a lump sum payment of \$275,000 plus payment of rent for April and May at reduced levels of \$17,875 per month for the Kenrock space and \$9,625 per month for the Rockwood case, for a new combined rent of \$27,500 per month going forward. While certain deadlines requested by the Landlord are still being reviewed and discussed, the Debtors intend to move by separate application for Bankruptcy Court approval of the Second Omnibus Lease Amendment pursuant to Bankruptcy Rule 9019(a) in advance of a

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<sup>2</sup> Pursuant to the same order, the deadline by which government entities must file a claim against the Debtor is August 8, 2023.

hearing on confirmation of the Plan. The monies needed to make the lump sum payments shall be generated by the Benefit Concerts.

Insofar as the taxes are concerned, NYS has agreed accept payment of the secured and priority portions of its tax totaling approximately \$820,000 in monthly installments over five (5) years from the Petition Date with post-confirmation interest at the reduced rate of eight (8%) percent per annum and to classify all penalties of approximately \$65,000 as general unsecured claims, rather than secured or priority claims.

Informal discussions with the IRS have been had with a representative of the IRS. While the Plan provides for the federal taxes to be paid in quarterly installments over five years from the petition date with statutory interest, once all of the outstanding returns have been filed, the Debtors will seek to negotiate a re-payment plan with terms similar to those accepted by NYS.

## **ARTICLE I**

### **Definitions**

For the purposes of this Plan, the following terms shall have the respective meanings set forth below (such meanings to be equally applicable to the singular and plural forms of the terms defined, unless the context otherwise requires):

1.1 “Administrative Claims” shall mean all costs and expenses of administering the Chapter 11 case allowed under Section 503(b) or 330(a) of the Bankruptcy Code, including professional fees of the Debtors’ counsel and the fees of the Subchapter V Trustee.

1.2 “Allowed” shall mean a Claim or Interest or any portion thereof that (i) has been timely filed with the Bankruptcy Court and is liquidated in amount and has not been objected to; (ii) has been listed by either Debtor in its respective Schedules as being neither contingent, unliquidated nor disputed; or (iii) has been allowed by a Final Order of the Bankruptcy Court.

1.3 “Available Cash” shall mean the sum of \$500,000 to \$600,000 in cash proceeds to be generated from the Benefit Concerts.

1.4 “Bankruptcy Court” shall mean the United States Bankruptcy Court for the Southern District of New York.

1.5 “Business Day” shall mean any day other than a Saturday, Sunday or “legal holiday” as defined in Rule 9006(a).

1.6 “Causes of Action” shall mean any and all actions, causes of action, suits, debts, rights to payment and claims, whether known or unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured and whether asserted or assertable directly or derivatively, in law, equity or otherwise.

1.7 “Chapter 11 Cases” shall mean the Debtors’ cases filed under Subchapter V currently pending before the Bankruptcy Court.

1.8 “Claim” shall mean the debts and liabilities as defined in Section 101(5) of the Bankruptcy Code.

1.9 “Class” shall mean a group of Claims or Interests that are substantially similar in nature and are grouped together for similar treatment pursuant to the Plan.

1.10 “Confirmation Date” shall mean the date upon which the Confirmation Order is entered by the Bankruptcy Court.

1.11 “Confirmation Order” shall mean the order entered by the Bankruptcy Court confirming the Plan.

1.12 “Disputed Claim” shall mean any Claim designated as disputed, contingent or unliquidated on the Schedules and/or any Claim against which an objection to the allowance thereof has been interposed by either of the Debtors prior to the Confirmation Date.

1.13 “Effective Date” shall mean the later of the first business date following the day on which the Confirmation Order becomes a Final Order, or twenty (20) business days following the last Benefit Concert.

1.14 “Equity Interests” shall mean the existing pre-petition ownership interest of Ken Rockwood in each of the Debtors.

1.15 “Final Order” shall mean an order or judgment which has not been stayed and as to which order or judgment the time to appeal or seek review or rehearing has been waived or expired and as to which no appeal, petition for review or rehearing is pending or, in the case of an appeal, any such appeal or petition for review, rehearing or certiorari has been dismissed.

1.16 “General Unsecured Trade Claim” shall mean any Claim of a vendor or service provider that does not qualify as an Administrative Claim, Priority Wage, Tax Claim, or Secured Claim.

1.17 “New Value Contribution” shall mean the proceeds of the Benefit Concerts procured through the efforts of Ken Rockwood.

1.18 “Petition Date” shall mean February 9, 2023.

1.19 “Priority Wage Claim” shall be a claim entitled to priority under Section 507(a)(4) for wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual within 180 days prior to the Petition Date.

1.20 “Professional” shall mean any attorney, accountant, or other professional retained by the Debtor in this Chapter 11 Case.

1.21 “Professional Fees” shall mean any claim for compensation and/or reimbursement of expenses under Section 330, 331 or 503(b) of the Bankruptcy Code by any Professional retained by order of the Bankruptcy Court.

1.22 “SBA” shall mean the U.S. Small Business Administration, which holds secured claims against each of the Debtors.

1.23 “Schedules” shall mean the schedule of assets and liabilities and the statement of financial affairs filed by each of the Debtors as required by Section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, and all amendments thereto.

1.24 “Subchapter V Trustee” shall mean Heidi Sorvino, Esq., who was appointed by the United States Trustee by *Notice Appointing Subchapter V Trustee* filed on the docket for this Chapter 11 Case on June 16, 2022 [ECF No. 3].

1.25 “Tax Claim” shall mean a Claim that is entitled to treatment under Section 507(a)(8) of the Bankruptcy Code regardless of whether the claim is asserted as secured or as an unsecured priority by the respective taxing authority.

## ARTICLE II

### Summary

2.1 The Plan establishes and provides treatment of the following classes of Claims and Interests:

1. Secured Claim of the SBA for Covid-19 related loans in the total principal sum of \$1,722,100, to be paid in accordance with the terms of the loan documents over thirty (30) years at \$8,438 per month
2. Secured and Priority Claims of NYS to be paid in monthly installments over five years on modified terms agreed to between the Debtors and NYS
3. Secured and Priority Claims of the IRS to be paid in monthly installments over five years
4. Priority Wage Claims in the total amount of \$88,124.76
5. General Unsecured Claims in the amount of \$240,432.12
6. Convertible claim of Michael Levine in the amount of \$1,155,012.00

## 7. Equity Interests.

The Plan also provides that the Debtors shall pay Allowed Administrative Expense Claims in full (consisting primarily of the Professional Fees of the Debtors' bankruptcy counsel).

All creditors should refer to Articles III through VI of the Plan for information regarding the precise treatment of their particular claims. The Court must find that all creditors who do not accept this Plan will receive at least as much under this Plan as such claim holder would receive in a Chapter 7 liquidation. Since the Debtors have little value in liquidation and their assets are subject to various liens held by the SBA, NYS and the IRS there is absolutely nothing available for unsecured creditors in Chapter 7 liquidation. Thus, the Plan easily meets the Best Interests of Creditors test.

The Debtors must also establish that the Plan is feasible (*i.e.*, the Debtors have the projected Available Cash in their possession prior to Confirmation), and that they can generate sufficient disposable income over the life of the Plan to make the Plan payments while continuing to operate the Debtors' business and pay debts in the regular course. The Debtors have prepared monthly projections through June 2024, and annual projections for the years July 2024 through June 2025, and July 2025 through June 2026, in support of the Plan, collectively annexed as Exhibit "A". The financial projections show that the Debtor will generate at least \$35,000 per month in disposable income (as defined by 11 U.S.C. §1191(d) of the Bankruptcy Code) from which to make all of the required payments to the creditors under this Plan.

## ARTICLE III

### Treatment of Administrative Claims

3.1 **Administrative Claims**. Administrative Expense Claims are not classified under the Plan in accordance with Section 1123(a)(1) of the Bankruptcy Code. Administrative Expenses

consist primarily of Professional Fees, plus ordinary post-petition vendor bills incurred by the Debtors during the Chapter 11 cases in the normal course of business. These post-petition bills shall continue to be paid in the regular course under the terms of existing invoices without specific treatment under the Plan. The Debtors' post-petition rent arrears, as compromised, will be paid from Available Cash in accordance with the Second Omnibus Lease Agreement. In the event that the Debtors are in arrears on their post-petition taxes, these arrears will be paid on the Effective Date of the Plan from Available Cash.

3.2 **Administrative Expense Bar Date.** A date establishing an Administrative Expense Bar Date to be established by separate Order shall be served upon all creditors and other parties-in-interest. All requests for payment of Administrative Expenses that accrued on or before the Confirmation Date must be filed with the Bankruptcy Court by the Administrative Expense Bar Date, except for Professional Fee Claims. Any holder of an Administrative Expense which fails to file a timely request for the payment of an Administrative Expense shall be forever barred, estopped and enjoined from asserting such Administrative Expense against the Debtors and Reorganized Debtors.

3.3 **Professional Fee Claims.** All requests by the Debtors' retained professionals, bankruptcy counsel, Goldberg Weprin Finkel Goldstein LLP ("GWFG"), for allowance of fees and reimbursement of expenses ("Professional Fee Claims") shall be filed no later than thirty (30) days after the Effective Date in accordance with 11 U.S.C. § 330. The allowed amounts of Professional Fee Claims shall be determined by the Bankruptcy Court and paid from Available Cash after entry of an appropriate Order awarding such compensation. The Debtors project that the balance of compensation owed to GWFG will total approximately \$75,000.

## ARTICLE IV

### Classification of Claims and Interests

7.1 Designation of Classes Pursuant to Sections 1122 and 1123(a)(1) of the Bankruptcy Code. Set forth in Section 7.3 below is the designation of Classes of Claims and Interests.

7.2 Allowed Amount in a Particular Class. An Allowed Claim or Allowed Interest is part of a particular Class only to the extent of the amount of the Allowed Claim or Allowed Interest that qualifies for treatment within that Class and is in a different Class to the extent that the remaining amount of the Allowed Claim or Allowed Interest qualifies for treatment within that different Class. So, for example, a wage claim is entitled to priority up to the amount of \$15,150. Any amount in excess of \$15,150 owed to an employee shall be treated as a general unsecured claim.

7.3 Classes. All Claims and Interests shall be divided into the following Classes for all purposes, including voting, confirmation, and distribution pursuant to the Plan, as follows, which Classes shall be mutually exclusive:

Class	Designation	Impaired	Entitled to Vote
Class 1	Secured Claims of the SBA	No	No
Class 2	Secured and Priority Claims of NYS	Yes	Yes
Class 3	Secured and Priority Claims of NYS	Yes	Yes
Class 4	Priority Wage Claims	No	No
Class 5	General Unsecured Trade Claims	Yes	Yes
Class 6	Convertible Claim of Mike Levine	N/A	No
Class 7	Equity Interests	N/A	No

## ARTICLE V

### **Treatment of Claims and Interests**

#### 5.1 Class 1: Secured Claims of the SBA

(a) Classification. Class 1 consists of the Secured Claims of the SBA for a loan to Kenrock in the principal amount of \$500,000, and a loan to Rockwood in the principal amount of \$1,222,100. Both loans are guaranteed by Ken Rockwell.

(b) Treatment. The SBA loans are each for a term of thirty (30) years (maturing in 2051) and shall be cured and reinstated under the provisions of 11 U.S.C. §1124(2). Regular monthly payments of principal and interest in the amount of \$2,437 on the Kenrock loan and \$6,046 on the Rockwood loan shall resume ninety (90) days after the Effective Date and continue thereafter until the loans are fully repaid. All arrears shall be cured by making double monthly payments until the arrears are paid in full.

(c) Voting. Class 1 is Unimpaired and not entitled to vote on the Plan.

#### 5.2 Class 2: Secured and Priority Tax Claims of NYS

(a) Classification. The secured and priority portions of the claims of NYS shall be treated as Class 2 Claims, except for penalties and the unsecured non-priority portion of the claims which shall be reclassified as Class 5 general unsecured claims. More specifically, NYS has filed secured and priority claims totaling approximately \$885,000 and approximately \$12,500 in unsecured non-priority claims. Of the secured and priority claims, approximately \$65,000 consists of penalties. Under the Plan, the Class 2 claim will consist solely of the secured and priority non-penalty claims, or about \$820,000, and the balance of the claims, consisting of penalties in the amount of approximately \$65,000 and unsecured non-priority claims in the approximate amount of \$12,500 shall be reclassified as Class 5 general unsecured claims.

(b) Treatment. The Class 2 Claims of NYS shall be paid in accordance with the agreement of NYS, in monthly installments over five (5) years from the Petition Date, commencing on the Effective Date of approximately \$15,000, with post-confirmation interest at eight (8%) percent per annum, until the Allowed Class 2 Claims are paid in full. NYS shall retain its liens to the same extent and priority as existed on the Petition Date. Failure by the Reorganized Debtors to make a payment to NYS pursuant to the Plan shall be an Event of Default. If the Reorganized Debtors fail to cure an Event of Default within thirty (30) days of written notice to the Reorganized Debtors, then NYS may take action in accordance with non-bankruptcy law to collect the balance of its claim without further order of the Bankruptcy Court. All payments made to NYS pursuant to the Plan shall be sent to counsel to NYS at the following address: Office of the NYS Attorney General, 28 Liberty Street, 17<sup>th</sup> floor, New York, NY 10005, Attention: Enid Nagler Stuart, Esq.

(c) Voting. Class 2 Claims are impaired and entitled to vote on the Plan.

5.3 Class 3: Secured and Priority Tax Claims of the IRS

(a) Classification. The secured and priority portions of the claims of IRS shall be treated as Class 3 Claims.

(b) Treatment. Unless the IRS consents to different treatment prior to confirmation, the Class 3 Claims of the IRS shall be paid in monthly installments over five (5) years from the Petition Date, commencing on the Effective Date of approximately \$11,125, with post-confirmation interest at the statutory rate until the Class 3 Claims are paid in full. The IRS shall retain its liens to the same extent and priority as existed on the Petition Date. Failure by the Reorganized Debtors to make a payment to the IRS pursuant to the Plan shall be an Event of Default. If the Reorganized Debtors fail to cure an Event of Default within thirty (30) days of

written notice to the Reorganized Debtors, then the IRS may take action in accordance with non-bankruptcy law to collect the balance of its claim without further order of the Bankruptcy Court.

The Debtors reserve all rights to object to those portions of the claims filed by the IRS based upon estimates, once the applicable tax returns are filed.

(c) Voting. Class 3 Claims are impaired and entitled to vote on the Plan.

5.4 Class 4: Priority Wage Claims

(a) Classification. The priority wage claims of employees and former employees shall be treated as Class 4 Claims.

(b) Treatment. The Class 4 Claims shall be paid in full on the Effective Date from Available Cash.

(c) Voting. Class 4 Claims are Unimpaired and not entitled to vote on the Plan.

5.5 Class 5: General Unsecured Claims

(a) Classification. Class 5 consists of General Unsecured Claims, including the reclassified claims of NYS.

(b) Treatment. Each holder of an Allowed General Unsecured Claim shall be paid up to the full amount of its Allowed Claim from Disposable Cash over a period of up to 48 months commencing on the Effective Date of the Plan.

(c) Voting. Class 5 is impaired under the Plan and eligible to vote.

5.6 Class 6: Michael Levine

(a) Classification. Class 6 consists of the claim in the amount of \$1,155,012.00 of Michael Levine (“Levine”) a prior investor in the Debtors who previously converted his equity into debt.

(b) Treatment. The Debtors do not have the liquidity to repay Levine and instead are providing Levine with the option of either accepting a lump sum cash payment in an amount to be negotiated depending on the success of the Benefit Concerts, or receiving certain minority equity in the Reorganized Debtors consist of 100 shares of Class B stock in the Reorganized Rockwell debtor, and 100% of the Class B membership interests in the Reorganized Kenrock debtor, to be issued pursuant to Section 5.7 below. At Levine's option, these ownership interests can be converted to debt at any time following the completion of the payments to be made to the Class 5 creditors.

(c) Voting. Levine is impaired under the Plan, but as an insider, he is not eligible to vote.

5.7 Class 7: Equity Interests.

(a) Classification. Class 7 consists of the Equity Interests in the respective Debtors, currently held by Ken Rockwood.

(b) Treatment. On the Effective Date or as soon as practicable thereafter, all existing Equity Interests in the Debtors shall be retained by and revert in Ken Rockwood in the Reorganized Debtors as existed pre-petition, subject to Levine's option and conversion rights.

(c) Voting. Class 7 Equity Interests are not eligible to vote because of their insider status.

## ARTICLE VI

### Impaired and Unimpaired Classes

6.1 Classes of Claims Impaired by the Plan and Entitled to Vote. Allowed Claims in Class 2, 3, and 5 are Impaired and the holders of such Allowed Claims are entitled to vote to accept or reject the Plan.

6.2 Acceptance by an Impaired Class of Claims. Consistent with Section 1126(c) of the Bankruptcy Code, and except as provided in Section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted the Plan if the Plan is accepted by holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims in such Class that have timely and properly voted to accept or reject the Plan.

6.3 Class of Claims Unimpaired by this Plan is Conclusively Presumed to Accept this Plan. Holders of Allowed Class 1 and 4 claims and Allowed Class 6 and 7 interests are deemed Unimpaired by the Plan. Under Section 1126(f) of the Bankruptcy Code, the holders of these Claims are conclusively presumed to accept the Plan, and the acceptances of holders of such Allowed Claims shall not be solicited.

6.4 Confirmation Pursuant to Section 1191 of the Bankruptcy Code (“Cram Down”). With respect to any Impaired Class that does not accept the Plan or is deemed to have rejected the Plan pursuant to Section 1126(f) of the Bankruptcy Code, the Debtors reserve the right to request that the Bankruptcy Court “cram down” any such Class(es) and confirm the Plan in accordance with Section 1191(b) of the Bankruptcy Code based on the following criteria: (i) the Plan is fair and equitable to each impaired class of creditors that does not accept the Plan; (ii) the Debtors’ projected disposable income of approximately \$35,000 per month will be used for payments under the Plan; and (iii) there is a reasonable likelihood that all proposed Plan payments will be made.

## ARTICLE VII

### Controversy with Respect to Impairment

7.1 In the event of a controversy as to whether a Class of Claims or Interests is Impaired, the Bankruptcy Court shall determine such controversy.

## ARTICLE VIII

### **Unexpired Leases and Executory Contracts**

8.1 The Lease. The Debtors hereby assume the existing Lease with the Landlord, subject to the execution of the Second Omnibus Lease Amendment, the terms of which are expressly incorporated into this Plan and shall govern the rights of the Debtors and the Landlord pursuant to Section 365 of the Bankruptcy Code relating to lease assumption.

8.2 Executory Contracts and Equipment Leases. All executory contracts and equipment leases with service providers are hereby assumed. Any arrears evidenced by a timely filed Administrative Expense Claim prior to the Administrative Claim Bar Date shall be paid on the later of the Effective Date or the entry of an Order allowing the Administrative Expense Claim.

## ARTICLE IX

### **Means for Implementing the Plan**

9.1 The Plan shall be funded from Available Cash, plus future disposable income. The Debtor projects that the Available Cash of \$500,000 to \$600,000 will be available on the Effective Date of the Plan from the proceeds of the Benefit Concerts, to be disbursed as follows:

a.	Projected payment to Subchapter V Trustee	\$10,000
b.	Professional Fees to GWFG (estimated)	\$75,000
c.	Initial monthly payment to the Tax Creditors	\$26,000
d.	Payment of priority wage claims	\$88,125
e.	Initial payment to Landlord	\$275,000
f.	Initial quarterly payment to General Unsecured Creditors	\$10,000
g.	Miscellaneous	<u>\$5,000</u>
	Total:	\$489,125

9.2 No Substantive Consolidation. Although the Debtors have filed a joint Plan, the two Debtors are not being substantively consolidated and the Reorganized Debtors will continue to operate separately.

9.3 Preservation of Other Rights and Claims. Although at this point in time the Debtors have not identified any potential, Causes of Action, any claims against third parties, including all Causes of Actions, shall remain the property of the Debtors' estates and shall be vested in the Reorganized Debtors.

9.4 Post-Confirmation Management. The Reorganized Debtors shall continue to be managed by Ken Rockwood.

## ARTICLE X

### Disputed Claims Reserve

10.1 Disputed Claims Reserve. The Debtors shall maintain an appropriate reserve with respect to any claims under objection as of the Confirmation Date. There shall be no payments or distributions to a Disputed Claim until such claim is deemed Allowed in whole or in part.

10.2 Withholding of Taxes. The Debtors shall withhold from any distributions to Class 4 Priority Wage Claimants all required federal and state withholding for taxes payable by the person entitled to such distribution to the extent required by applicable law. As a condition to making any distribution under the Plan, the Debtors may request that the holder of an Allowed Class 4 Priority Wage Claim provide such holder's taxpayer identification number and such other certification or documentation as may be deemed necessary to comply with applicable tax reporting and withholding laws.

10.3 Notwithstanding any other provision of the Plan, each creditor receiving a distribution of cash pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on it by any governmental unit on account of such distribution, including income and other tax obligations.

10.4 Undeliverable or Unclaimed Distributions. All distributions under the Plan to any holder of an Allowed Claim shall be made at the address of such holder according to the Debtors' records, unless the Debtors have been notified in writing after the Effective Date of a change of address. Any creditor that is entitled to receive a cash distribution under the Plan but that fails to cash a check within one hundred twenty (120) days of its issuance shall be deemed to have forfeited the amount of the distribution provided for in such check to the Debtors.

10.5 Post-Effective Date Services by the Debtor's Professionals. The reasonable fees and expenses of the Professionals incurred after the Confirmation Date shall constitute Operating Expenses of the Debtor and shall be payable upon presentment of a statement for services rendered and for reimbursement of expenses to the Debtors. The Debtors shall have ten (10) days from the receipt of any such fee and expense statements to dispute all or part of such statement. Upon the expiration of said ten (10) days, the Debtors shall pay the Professionals the undisputed portion of such fees and expenses. Any disputes shall be submitted by the objecting party in a motion to the Bankruptcy Court for determination within ten (10) days of receipt of the statement. In the event no submission is made to the Bankruptcy Court, the objection shall be deemed withdrawn.

## **ARTICLE XI**

### **Injunction and Exculpation**

11.1 Injunction. Except (i) as otherwise provided in the Plan or Confirmation Order or (ii) to enforce the Plan or Confirmation Order, on and after the Effective Date, all persons and entities that have held, currently hold, or may hold, a claim, lien, interest or other liability against or in the Debtors that would be discharged or satisfied upon confirmation of the Plan and the Effective Date but for the provisions of Section 1141(d)(3) of the Bankruptcy Code are permanently enjoined from taking any of the following actions on account of such claim, lien,

interest or right: (a) commencing or continuing in any manner any action or other proceeding on account of such claim, lien, interest, or right against the Debtors, their respective successors, their respective property or any other property that is to be distributed under the Plan or otherwise by the Debtors; or (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree, or order against the Debtors, their successors, their respective property or any other property to be distributed under the Plan or otherwise by the Debtors.

11.2 Exculpation. Notwithstanding any other provision of the Plan, neither the Debtors nor their officers, directors, members, employees or other agents, financial advisors, attorneys, accountants or Professionals shall have any liability to any holder of any Claim or Interest for any act or omission in connection with or arising out of the negotiation, preparation and pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan, the Chapter 11 Cases, or any of the transactions contemplated under the Plan, except for liability resulting from conduct constituting gross negligence, willful misconduct or breach of fiduciary duty as determined by a Final Order of the Bankruptcy Court.

## ARTICLE XII

### **Discharge; Limitation of Liability**

#### 12.1 Discharge.

(a) If this Plan is confirmed under Section 1191(a) of the Bankruptcy Code, on the Effective Date of the Plan, the Debtor shall be discharged from any debt that arose before Confirmation of this Plan, to the extent specified in Section 1141(d)(1)(A) of the Bankruptcy Code, except that the Debtor will not be discharged of any debt:

- i. imposed by this Plan; or
- ii. to the extent provided in Section 1141(d)(6)

(b) If this Plan is confirmed under Section 1191(b) of the Bankruptcy Code, confirmation of this Plan does not discharge any debt provided for in this Plan until the Court grants a discharge upon completion of all payments due hereunder over the forty-eight (48) month period following the Effective Date, as otherwise provided in Section 1192 of the Bankruptcy Code. The Debtor will not be discharged of any debt:

- i. on which the last payment is due after the four (4) years of this Plan, as otherwise provided in Section 1192 of the Bankruptcy Code; or
- ii. excepted from discharge under Section 523(a) of the Bankruptcy Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.

### **ARTICLE XIII**

#### **Miscellaneous Provisions**

13.1 Bankruptcy Court to Retain Jurisdiction. Notwithstanding entry of the Confirmation Order, the occurrence of the Effective Date, consummation of the Plan, the Chapter 11 Case having been closed, or a Final Decree having been entered, the Bankruptcy Court shall have and retain jurisdiction of matters arising in or related to the Chapter 11 Case and the Plan under, and for the purposes of, Sections 105(a), 1127, 1142 and 1144 of the Bankruptcy Code and for, among other things, the following purposes:

(a) To consider any modification of the Plan under Section 1127 of the Bankruptcy Code and/or modification of the Plan before “substantial consummation” as defined in Section 1101(2) of the Bankruptcy Code, and to consider any modification of the Plan to cure any defect or omission, or to reconcile any inconsistency in the Plan or in any order of the Bankruptcy Court.

(b) To determine any and all objections to claims, adversary proceedings, applications, and contested matters filed or commenced by the Debtors, including, without limitation, any Causes of Action.

(c) To ensure that all distributions and Plan payments are accomplished as provided in the Plan.

(d) To protect the Debtors' estate from adverse claims or interference inconsistent with the Plan.

(e) To hear and determine all applications for compensation and reimbursement of expenses of Professionals under Sections 330 and 503(b) of the Bankruptcy Code for services rendered and expenses incurred prior or subsequent to the Confirmation Date.

(f) To enter a Final Decree closing the Chapter 11 Case.

(g) Without limiting the generality of the foregoing and notwithstanding the Effective Date and to the fullest extent permitted by law, the Bankruptcy Court shall retain exclusive jurisdiction over the Plan and administration of the Debtors' estates after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suits and issues that may arise in connection herewith.

13.2 Binding Effect of the Plan. Nothing contained in the Plan shall limit the effect of confirmation as set forth in Section 1141 of the Bankruptcy Code. The provisions of the Plan shall be binding upon and inure to the benefit of the Debtors, any holder of a Claim or Interest, and their respective predecessors, successors, assigns, agents, officers, managers, members and directors.

13.3 Successors and Assigns. The rights and obligations of any creditor shall be binding upon, and shall inure to the benefit of, the successors and assigns of such creditor.

13.4 Authorization of Corporate Action. Upon the entry of the Confirmation Order, all actions contemplated by the Plan shall be deemed authorized and approved in all respects (subject to the provisions of the Plan).

13.5 Amendments and Modifications to Plan. The Plan may be altered, amended or modified from time to time by the Debtors, before or after the Confirmation Date, as provided in Section 1127 of the Bankruptcy Code. The Debtors may also seek to modify the Plan at any time after confirmation so long as (a) the Plan has not been substantially consummated, and (b) the Bankruptcy Court authorizes the proposed modification after notice and a hearing.

13.6 Section 1125(e) of the Bankruptcy Code. Confirmation of the Plan shall constitute a finding that the Debtors have proposed and solicited acceptances of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code

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Kenrock Enterprises LLC  
Rockwood Music Corporation

GOLDBERG WEPRIN FINKEL  
GOLDSTEIN LLP  
Attorneys for the Debtors  
125 Park Avenue, 12<sup>th</sup> Floor  
New York, NY 10017

By: /s/Ken Rockwood

By: /s/ Kevin J. Nash