



Signed and Filed: November 10, 2022

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HANNAH L. BLUMENSTIEL
U.S. Bankruptcy Judge

Attorneys for Peter C. Kane, Creditor and
Sole Shareholder

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

KANE CORPORATION,

Debtor.

Case No. 21-30819-HLB

Chapter 11 (Converted)

Date: November 10, 2022
Time: 2:00 p.m.
Place: By Tele/Zoom Videoconference
Judge: Hon. Hannah L. Blumenstiel

**ORDER: (1) CONVERTING DEBTOR’S CASE TO CHAPTER 11;
(2) TERMINATING PLAN EXCLUSIVITY; AND (3) SETTING CLAIMS BAR DATE**

On October 13, 2022, creditor and sole shareholder PETER C. KANE (“Mr. Kane”), filed the *Motion of Peter Kane To: (1) Convert Case to Chapter 11; (2) Terminate Plan Exclusivity; (3) Set Claims Bar Date; And (4) Establish Plan Processes* (the “Motion,” docket no. 58) in the above-captioned chapter 7 case of KANE CORPORATION (the “Debtor”), together with the declaration of Mr. Kane in support of the Motion, and notice of hearing of the Motion (docket no. 59).

On October 25, 2022, the Debtor filed *its Statement of Non-Opposition Re: Motion of Peter Kane To: (1) Convert Case to Chapter 11; (2) Terminate Plan Exclusivity; (3) Set Claims Bar Date; And (4) Establish Plan Processes* (docket no. 61). On October 26, 2022, Mr. Kane filed the *Submission of Statement of Support by Cornish & Carey Commercial D/B/A Newmark Knight Frank* (docket no. 62). On October 31,

1 2022, E. Lynn Schoenmann, as trustee of the Debtor’s chapter 7 estate (the “Trustee”), filed the *Chapter 7*
2 *Trustee’s Statement Of Non-Opposition to Peter Kane’s Motion to Convert Case To Chapter 11* (docket no.
3 63).

4 On November 10, 2022, this Court conducted a hearing of the Motion by Zoom video conference.
5 Merle C. Meyers, Esq. and Kathy Quon Bryant, Esq. appeared for Mr. Kane; Matthew D Metzger, Esq.
6 appeared for the Debtor; Julie Glosson Ishii, Esq. appeared for the Trustee; and Carolyn Lachman, Esq.
7 appeared for Pension Benefit Guaranty Corporation.

8 Based upon the Court’s review and consideration of the Motion and all other pleadings filed in
9 relation thereto, and all other arguments presented at the hearing, following due and adequate notice, and for
10 good cause shown and for the reasons set forth orally by the Court during said hearing,

11 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

12 1. The Motion is hereby granted.

13 2. The Debtor’s case is hereby converted from a case under chapter 7 to a case under chapter 11
14 of the Bankruptcy Code, pursuant to 11 U.S.C. § 706(b).

15 3. The Debtor’s chapter 11 plan exclusivity periods are hereby terminated pursuant to 11 U.S.C.
16 § 1121(d)(1).

17 4. Pursuant to Rule 3003(c)(3) of the Federal Rules of Bankruptcy Procedure, the chapter 11
18 claims bar date shall be December 19, 2022 (the “Claims Bar Date”).

19 5. On or before November 17, 2022, Mr. Kane shall serve and file a proposed *Combined Plan of*
20 *Reorganization And Disclosure Statement* the (“Proposed Plan”), using this District’s Standard-Form
21 Combined Plan and Disclosure Statement, and shall schedule a hearing for tentative approval of the
22 disclosure statement therein for December 1, 2022 at 10:00 a.m. (the “Disclosure Statement Hearing”).

23 6. On or before November 17, 2022, counsel for Mr. Kane shall serve and file a notice of (a)
24 conversion of the Debtor’s case to chapter 11; (b) termination of the Debtor’s exclusivity periods; (c) the
25 Claims Bar Date; and (d) the Disclosure Statement Hearing.

26 ** END OF ORDER **
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6 Attorneys for Peter C. Kane, Creditor and
7 Sole Shareholder

8 IN THE UNITED STATES BANKRUPTCY COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 In re:	Case No. 21-30819-HLB
12 KANE CORPORATION,	Chapter 7
13 Debtor.	Date: November 10, 2022
	Time: 2:00 p.m.
	Place: By Tele/Zoom Videoconference
	Judge: Hon. Hannah L. Blumenstiel

16 **MOTION OF PETER KANE TO: (1) CONVERT CASE TO**
17 **CHAPTER 11; (2) TERMINATE PLAN EXCLUSIVITY;**
18 **(3) SET CLAIMS BAR DATE; AND (4) ESTABLISH PLAN PROCESSES**

18 Creditor and sole shareholder PETER C. KANE (“Mr. Kane”), by and through his counsel of
19 record, moves the above-captioned Court for an order: (1) converting the chapter 7 case of KANE
20 CORPORATION (the “Debtor”) to a case under chapter 11 of the Bankruptcy Code, pursuant to 11
21 U.S.C. § 706(b); (2) terminating plan exclusivity under 11 U.S.C. § 1121(d)(1); (3) setting a chapter
22 11 claims bar date that is thirty (30) days from the date of notice of conversion of the case, pursuant
23 to Rule 3003(c)(3) of the Federal Rules of Bankruptcy Procedure; and (4) establishing dates and
24 procedures for the plan confirmation process. In support of the Motion, Mr. Kane respectfully
25 represents as follow:

26 **I. BACKGROUND**

27 The following facts are established by the record of this Court and the declaration of Peter C.
28 Kane (the “Kane Decl.”) filed concurrently herewith:

1 **A. Generally**

2 1. The Debtor filed a voluntary chapter 7 petition on December 17, 2021 (the “Petition
3 Date”). E. Lynn Schoenmann was appointed as trustee (the “Trustee”) of the Debtor’s chapter 7
4 estate (the “Estate”) and continues to serve in that capacity.

5 2. The Debtor was formed in 1984 as a California corporation. Mr. Kane is its sole
6 shareholder, president and chief executive officer.

7 3. Until the Petition Date, the Debtor operated as a real estate consulting and
8 management company. The Debtor holds a California state real estate brokerage license. Mr. Kane
9 is also a licensed California real estate agent, and his adult children, Jason Kane and Christina Kane,
10 are the Debtor’s sole employees.

11 4. Mr. Kane has filed a claim against the Debtor’s estate in the amount of \$3,185,706.34,
12 based on advances made by Mr. Kane from time to time, net of repayments made by the Debtor to or
13 on behalf of Mr. Kane. Jason and Christina Kane have also filed claims in the case, each in the
14 amount of \$10,000.00, for priority wages.

15 **B. Barbaccia Litigation**

16 5. In 2018, the Debtor, together with Cornish & Carey Commercial, dba Newmark
17 Knight Frank (“Newmark”), another real estate brokerage, filed a complaint in Santa Clara County
18 Superior Court, commencing a breach of contract action against Barbaccia Properties Holdings, LLC
19 (“Barbaccia”), seeking recovery of damages in the approximate amount of \$1.8 million, for
20 commission owed by Barbaccia to the Debtor and Newmark arising out of a complex commercial
21 real estate transaction (the “State Court Action”). Barbaccia made a demand for arbitration under the
22 terms of an April 30, 2014 Membership Interest Purchase and Sale Agreement (the “MIPSA”), and
23 thereafter the parties to the State Court Action stipulated to arbitration through JAMS (the
24 “Arbitration”).

25 6. In the Arbitration, Barbaccia sought declaratory relief and disgorgement of a
26 \$1,080,000 commission that had already been paid to the Debtor and Newmark, and the Debtor and
27 Newmark asserted the State Court Action claims.

28 7. A three-day arbitration was held by JAMS in March and April 2021. On July 26,

1 2021, the JAMS arbitrator issued his Interim Award (the “Interim Award”). In the Interim Award,
2 the arbitrator denied each party’s respective claims for damages and/or disgorgement, and each party
3 took nothing by way of those claims. Importantly, however, the Interim Award also determined that
4 Barbaccia was the prevailing party in the matter and that it was entitled to recover its attorneys’ fees,
5 costs and expenses under the terms of the MIPSAs. This came as a complete surprise to the Debtor
6 and Newmark, having been advised by their counsel, the law firm of Pahl & McCay, APC (“P&M”),
7 that they were not at risk of becoming liable for Barbaccia’s fees, as described below.

8 8. On October 29, 2021, the JAMS arbitrator issued his Final Award, wherein Barbaccia
9 was awarded attorneys’ fees in the amount of \$1,269,722.60 and costs and expenses in the amount of
10 \$67,576.22, for a total award of \$1,337,298.80, against the Debtor and Newmark jointly and
11 severally.

12 9. In the State Court Action and the Arbitration, the Debtor and Newmark were jointly
13 represented by P&M. Stephen D. Pahl, Esq. and Sonia S. Shah, Esq. of P&M served as their lead
14 counsel. P&M’s attorneys did not advise the Debtor at any time before or during P&M’s
15 representation of the Debtor in the State Court Action or the Arbitration, that the Debtor was at risk
16 of bearing the attorneys’ fees, costs and expenses of Barbaccia, should Barbaccia prevail in the State
17 Court Action or the Arbitration. To the contrary, the firm assured the Debtor that such a risk had
18 been avoided procedurally.

19 10. On February 11, 2022, P&M filed Proof of Claim Number 1 in the Debtor’s case in
20 the amount of \$29,771.16 for the balance of legal services allegedly owed by the Debtor to P&M
21 (“Claim 1”).

22 **C. Settlement With Newmark**

23 11. On April 14, 2022, Newmark filed Proof of Claim Number 10 in the Debtor’s case in
24 the amount of \$1,240,000.00 (“Claim 10”), based on theories of contribution and unjust enrichment,
25 and arising from a payment made by Newmark to Barbaccia in that amount in exchange for release of
26 the Final Award as against Newmark. Other than Mr. Kane’s claim, Claim 10 is by far the largest
27 claim filed in the Debtor’s case.

28 12. In September 2022, the Debtor and Newmark entered into discussions seeking a

1 mutually agreeable resolution of issues between them. By late September, a tentative settlement
2 between the parties had been reached, subject to documentation. The terms of the settlement have
3 been incorporated into a proposed plan of reorganization that Newmark, the Debtor and the Trustee
4 now support, as described below.

5 **D. Trustee's Administration of the Chapter 7 Case**

6 13. The Trustee has administered the Debtor's estate to date, liquidating assets and
7 considering claims against third parties, including Mr. Kane. In particular:

8 (a) **Notes and a Vehicle**

9 14. As of the Petition Date, the Debtor's assets other than intangible property such as
10 goodwill and client lists, consisted primarily of various notes receivable, potential claims against
11 P&M for malpractice, and a used vehicle. During the course of the chapter 7 case, the Trustee
12 liquidated the notes (all but one of which proved to be uncollectible) and the vehicle (which was sold
13 to Mr. Kane). As a result of her liquidation efforts, the Trustee collected, and now holds,
14 approximately \$30,000.

15 (b) **Transfers to Mr. Kane**

16 15. During the chapter 7 case, the Trustee has investigated and considered recovery of
17 transfers by the Debtor to or for the benefit of Mr. Kane, as avoidable transfers. In the normal course
18 of the Debtor's business, Mr. Kane regularly made advances to the Debtor for operating expenses,
19 and those advances were repaid from time to time by the Debtor's payment of Mr. Kane's personal
20 expenses. As of the petition date in the Debtor's case, the balance of Mr. Kane's loan to the Debtor
21 was in the amount of \$3,185,706.34. In the year immediately preceding the Petition Date, the Debtor
22 made payments to or on account of Mr. Kane in the net amount of \$197,445.07. However, no such
23 payments were made after the issuance of the arbitrator's Final Award.

24 16. Mr. Kane has contended that none of the payments are avoidable, either as fraudulent
25 conveyances or preferences, for multiple reasons, including: None of the payments were made out of
26 the ordinary course of business; none of the payments were made at a time at which the Debtor knew
27 that it was insolvent (given the surprise of the arbitrator's adverse decision); and none of the
28 payments were in fact made at a time that the Debtor was insolvent, in light of claims against P&M

1 that entirely offset amounts owing under the Final Award.

2 17. To date, the Trustee has not initiated any action against Mr. Kane to recover any of the
3 subject payments. If the Trustee were to do so, Mr. Kane would actively oppose, and defend against,
4 any such recovery.

5 **(c) Pension Plans**

6 18. In addition, the Debtor is the sponsor of two pension plans, the Kane Corporation
7 Salary Deferral Plan and the Kane Corporation Cash Balance Plan, which in the aggregate hold assets
8 valued by the plans' institutional administrator as of September 30, 2022 at approximately
9 \$2,122,209.37. The beneficiaries of the plans consist of Mr. Kane, Jason Kane and Christina Kane,
10 employees of the Debtor. In the chapter 7 case, the Trustee has become responsible for the
11 administration of the plans, pursuant to Section 704((a)(11) of the Bankruptcy Code. The Trustee has
12 advised Mr. Kane that she is considering termination of the pension plans in order to recover
13 potential surpluses for the estate. The potential amount of such surpluses is undetermined and
14 dependent upon multiple variables, including actuarial analyses, beneficiaries' rights to additional
15 funds, excise taxes and administrative costs. However, based upon valuations made as of September
16 30, 2022, Mr. Kane believes that any surplus, after liquidation of the plans' assets, payment of
17 administrative costs and payment of all obligations owing to beneficiaries, would likely be minimal
18 or non-existent.

19 19. However, the beneficiaries of the plans take the position that because they would be
20 ill-served by a termination, in part by depriving them of the right to incrementally greater benefits
21 over time, termination of the plans would violate the Trustee's fiduciary duties, as the plan
22 administrator, to those beneficiaries, precluding termination. Instead, the beneficiaries have urged
23 the Trustee to consent to a transfer of sponsorship of the plans to a new entity. To date, the Trustee
24 has declined to do so, and the parties are therefore in disagreement and at risk of protracted litigation
25 regarding the Trustee's duties and rights with respect to the pension plans.

26 **E. Proposed Plan**

27 20. Mr. Kane now seeks conversion of the Debtor's case to chapter 11 in order to pursue a
28 proposed plan of reorganization (the "Plan") that has the support of both Newmark and the Debtor,

1 and which will allow the Debtor to reorganize and continue in operation.

2 21. The essential terms of the Plan, which is attached to the Kane Decl. as **Exhibit “A,”**
3 are as follows:

4 A. The Debtor will pay to each holder of an allowed claim 15.75% of the allowed
5 amount of the claim, on the earlier of the Effective Date or final allowance of the claim.

6 B. In addition, each holder of an allowed claim will receive a pro-rata share of
7 any net proceeds of claims brought against P&M by Newmark as the Special Representative,
8 as described below.

9 C. Newmark’s claim will be allowed as filed, and the Debtor will make a
10 distribution to Newmark on account of the claim in the amount of \$195,000 (slightly less than
11 15.75%). The Debtor will file objections to other claims as it deems appropriate.

12 D. Newmark will be appointed as a Special Representative of the estate, and in
13 that capacity will acquire any and all claims that the Debtor may have against P&M, without
14 representation or warranty. Newmark will have sole discretion as to whether to prosecute,
15 compromise or abandon those claims, and in the event that Newmark prosecutes and/or settles
16 such claims, it will do so jointly with its own claims against P&M. Any proceeds of such
17 prosecution or compromise, net of reasonable costs, will be shared proportionately between
18 the Debtor’s estate and Newmark, based upon a reasonable allocation.

19 E. The Debtor will pay all Court-approved chapter 7 administrative expenses of
20 the Trustee, the Debtor and their respective retained professionals.

21 F. In order to effectuate the Plan, Mr. Kane will (a) advance to the Debtor all
22 funds necessary to the Plan’s implementation, in the initial amount of \$270,000.00; and (b)
23 subordinate his own claim against the Debtor to all other obligations under the Plan.

24 G. The Debtor will receive a full discharge and release of all preconfirmation
25 claims asserted against it, and will continue its operations as a reorganized entity. The
26 Debtor’s pension plans will remain intact, administered by the Debtor.

27 22. Mr. Kane believes that the Plan will result in a greater distribution to creditors than in
28 a chapter 7 liquidation, in which Mr. Kane believes creditors would likely receive little or no

1 distribution at all. Further, the Plan will avoid likely litigation that would occur in a chapter 7
2 liquidation, by resolving all issues as to potential avoidance actions, pension plan administration and
3 Newmark’s claim.

4 23. As such, Mr. Kane believes that conversion of the Debtor’s case to chapter 11, in
5 order to pursue confirmation of the Plan, is in the best interests of creditors. Mr. Kane has been
6 advised, through counsel, that the Plan and the relief sought in this motion are supported by
7 Newmark, and that the Trustee does not oppose conversion.

8 **II. LEGAL DISCUSSION**

9 Based on the foregoing, Mr. Kane submits that the relief requested in this motion is supported
10 by the following legal discussion.

11 **A. Conversion To Chapter 11**

12 Regarding conversion of a case from chapter 7 to chapter 11, Section 706(b) of the
13 Bankruptcy Code provides that, “On request of a party in interest and after notice and a hearing, the
14 court may convert a case under this chapter to a case under chapter 11 of this title at any time.” 11
15 U.S.C. § 706(b). The burden is on the movant to show that the case should be converted to chapter
16 11. *In re Parvin*, 538 B.R. 96, 102 (Bankr. W.D.Wash. 2015) (citations omitted). “[T]here is no
17 requirement that a debtor have an ongoing business to be eligible for a Chapter 11 reorganization.”
18 *Proudfoot Consulting Co. v. Gordon (In re Gordon)*, 465 B.R. 683, 692 (Bankr. N.D.Ga. 2012)
19 (citation omitted).

20 As Section 706(b) does not provide any specific requirements for converting a case to chapter
21 11, “[t]he decision whether to convert is left in the sound discretion of the court, based on what will
22 most inure to the benefit of all parties in interest.” *Id.* (quoting S.REP. No. 95-989, at 940 (1978),
23 reprinted in 1978 U.S.C.C.A.N. 5787, 5880). “Since there are no specific grounds for conversion, a
24 court ‘should consider anything relevant that would further the goals of the Bankruptcy Code.’”
25 *Schlehuber v. Fremont Nat’l. Bank & Trust Co. (In re Schlehuber)*, 489 B.R. 570, 573 (8th Cir.
26 B.A.P. 2013) (quoting *Proudfoot Consulting Co. v. Gordon (In re Gordon)*, 465 B.R. 683, 692
27 (Bankr. N.D.Ga. 2012) (quoting *In re Lobera*, 454 B.R. 824, 854 (Bankr. D.N.M. 2011))).

1 In determining whether to convert a case from chapter 7 to chapter 11 pursuant to § 706(b),
2 courts have considered a “variety of factors” including “whether the debtor can propose a
3 confirmable plan, whether the primary purpose of the chapter 11 is to liquidate or reorganize, and
4 whether conversion benefits all parties in the case.” *In re Parvin*, 538 B.R. 96, 102 (Bankr.
5 W.D.Wash. 2015) (internal quotations and citation omitted). “A debtor’s ability to pay typically is a
6 starting point in the analysis, however, since the whole reason for asking for a case to be converted is
7 the assumption that creditors would receive more in a chapter 11 than a chapter 7.” *Id.* (internal
8 quotations, alterations, and citation omitted).

9 Here, based on those considerations, conversion of the Debtor’s case to chapter 11 is
10 appropriate under Section 706(b) of the Bankruptcy Code, in light of these factors among others:

- 11 • As a debtor-in-possession, the Debtor will be able to resume its real estate consulting
12 business, preserving the company’s goodwill, employees’ jobs and the company’s two
13 pension plans.
- 14 • Mr. Kane will be able to propose the Plan, supported by the Debtor and its largest non-
15 insider creditor, and providing for the Debtor’s reorganization and a distribution to
16 creditors.
- 17 • In Mr. Kane’s view, the Plan will provide a greater and faster distribution to creditors
18 than would a chapter 7 liquidation, with more certainty and far less litigation costs and
19 delay.
- 20 • The Debtor will have the funds necessary to perform under the Plan, by way of loans
21 made to the Debtor by Mr. Kane.
- 22 • The Plan will allow for the efficient prosecution of any claims against P&M for the
23 benefit of creditors, by assigning the claims to Newmark for the benefit of the estate.
24 Insofar as Newmark has similar or identical claims against P&M of its own, the joint
25 prosecution of the claims will be beneficial to both Newmark and the estate.

26 Under these circumstances, Mr. Kane submits that conversion of the case from chapter 7 to
27 chapter 11 is warranted.

28

1 **B. Termination of Plan Exclusivity**

2 Section 1121(d)(1) of the Bankruptcy Code authorizes termination of the 120-day and 180-
3 day exclusivity periods in which a debtor has to file a chapter 11 plan and to obtain acceptance of the
4 same, respectively. 11 U.S.C. § 1121(d)(1). In relevant part, Sec. 1121(d)(1) states, “on request of a
5 party in interest made within the respective periods specified . . . and after notice and a hearing, the
6 court may for cause reduce or increase the 120-day period or the 180-day period referred to in this
7 section.” 11 U.S.C. § 1121(d)(1). The moving party bears the burden of proof, and where immediate
8 termination is sought, the burden is a heavy one. *In re Energy Conversion Devices Inc.*, 474 B.R.
9 503, 508 (Bankr. E.D.Mich. 2012).

10 “Cause” as used in Sec. 1121(d)(1) is not defined by the Bankruptcy Code. *Id.* at 507. Thus,
11 to determine whether to extend or terminate a debtor’s statutory periods of exclusivity, courts
12 consider nine factors:

- 13 1. the size and complexity of the case;
- 14 2. the necessity of sufficient time to permit the debtor to negotiate a plan of
15 reorganization and prepare adequate information;
- 16 3. the existence of good faith progress toward reorganization;
- 17 4. the fact that the debtor is paying its bills as they become due;
- 18 5. whether the debtor has demonstrated reasonable prospects for filing a viable
19 plan;
- 20 6. whether the debtor has made progress in negotiations with its creditors;
- 21 7. the amount of time which has elapsed in the case;
- 22 8. whether the debtor is seeking an extension of exclusivity in order to pressure
23 creditors to submit to the debtor’s reorganization demands; and
- 24 9. whether an unresolved contingency exists.

25 *Id.*

26 In the Debtor’s case, almost all of the aforementioned factors, to the extent relevant, weigh in
27 favor of finding cause to support termination of exclusivity. Most of the stated factors are designed
28 to take into account circumstances that might justify a debtor’s argument for continuation of

1 exclusivity. However, here, the Debtor supports termination of exclusivity, and as such those
2 circumstances are not relevant.

3 The third, fifth and sixth factors, the existence of good faith progress toward reorganization;
4 whether the debtor has demonstrated reasonable prospects for filing a viable plan; and whether the
5 debtor has made progress in negotiations with its creditors, are, like the earlier factors intended to
6 provide a basis, if positive, for a continuation of exclusivity. Here, however, those factors support the
7 opposite: Whereas the Debtor does not intend to file its own plan, Mr. Kane has negotiated a plan in
8 good faith negotiations with the largest non-insider creditor, a plan that the Debtor supports.

9 Accordingly, on balance, the circumstances of this case warrant a finding of cause under
10 Section 1121(d)(1).

11 **C. Setting an Early Claims Bar Date**

12 Under Rule 3003(c)(3) of the Bankruptcy Rules, in a chapter 11 case the court shall fix the
13 time within which proof of claim or interest may be filed. FRBP Rule 3003(c)(3). Rule 2002(a)(7)
14 of the Bankruptcy Rules provides for twenty-one days' notice by mail of the time fixed for filing
15 proofs of claims pursuant to Rule 3003(c). FRBP Rule 2002(a)(7).

16 Here, if the Debtor's case is converted to chapter 11 as requested, setting a claims bar date
17 that is thirty (30) days from the service date of the notice of conversion will be appropriate under the
18 aforementioned rules, particularly where creditors have already had a full opportunity to file claims in
19 the preceding chapter 7 case.

20 **D. Plan Confirmation Process**

21 Lastly, upon conversion of the case to chapter 11, Mr. Kane intends to file the Plan and to
22 seek confirmation of the Plan as soon as possible thereafter. To that end, Mr. Kane requests approval
23 of the following procedures:

- 24 • Within 14 days following entry of an order granting this motion, Mr. Kane will file a
25 plan of reorganization, substantially conforming to the attached Plan and using this
26 District's Standard-Form Combined Plan and Disclosure Statement.
- 27 • A hearing to consider tentative approval of the disclosure statement portion of the
28 Plan, as well as a chapter 11 status conference, will be conducted by the Court

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approximately 28 days following entry of an order granting this motion, and Mr. Kane shall provide notice thereof to parties-in-interest concurrently with the filing of the Plan.

- A plan confirmation hearing shall be scheduled thereafter at the Court’s convenience.

III. CONCLUSION

Based upon all of the foregoing, Mr. Kane respectfully requests that the Motion be granted in its entirety, or for such other further relief that the Court deems proper.

DATED: October 13, 2022

MEYERS LAW GROUP, P.C.

By /s/ Merle C. Meyers
Merle C. Meyers, Esq.
Attorneys for Peter C. Kane,
Creditor and Sole Shareholder

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6 Attorneys for Peter C. Kane, Creditor and
7 Sole Shareholder

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9 IN THE UNITED STATES BANKRUPTCY COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 In re:	Case No. 21-30819-HLB
13 KANE CORPORATION,	Chapter 7
14 Debtor.	Date: November 10, 2022
	Time: 2:00 p.m.
	Place: By Tele/Zoom Videoconference
	Judge: Hon. Hannah L. Blumenstiel

16 **DECLARATION OF PETER C. KANE IN SUPPORT OF MOTION OF PETER KANE**
17 **TO: (1) CONVERT CASE TO CHAPTER 11; (2) TERMINATE PLAN EXCLUSIVITY;**
18 **(3) SET CLAIMS BAR DATE; AND (4) ESTABLISH PLAN PROCESSES**

18 I, PETER C. KANE, declare as follows:

19 1. I am an individual who resides in Atherton, California, and am a creditor and the sole
20 shareholder of KANE CORPORATION, a California corporation and the chapter 7 debtor (the
21 “Debtor”) herein, and in such capacity, I am personally familiar with each of the facts stated herein,
22 to which I could competently testify if called upon to do so in a court of law.

23 2. I make this declaration in support of the *Motion Of Peter Kane To: (1) Convert Case*
24 *To Chapter 11; (2) Terminate Plan Exclusivity; (3) Set Claims Bar Date; And (4) Establish Plan*
25 *Processes* (the “Conversion Motion”).¹

26 3. The Debtor filed a voluntary chapter 7 petition on December 17, 2021 (the “Petition
27 Date”). E. Lynn Schoenmann was appointed as trustee (the “Trustee”) of the Debtor’s chapter 7

28 ¹ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Conversion Motion.

1 estate (the “Estate”) and continues to serve in that capacity.

2 4. The Debtor was formed in 1984 as a California corporation. I am its sole shareholder,
3 president and chief executive officer.

4 5. Until the Petition Date, the Debtor operated as a real estate consulting and
5 management company. The Debtor holds a California state real estate brokerage license. I am also a
6 licensed California real estate agent, and my adult children, Jason Kane and Christina Kane, are the
7 Debtor’s sole employees.

8 6. I have filed a claim against the Debtor’s estate in the amount of \$3,185,706.34, based
9 on advances made by me from time to time, net of repayments made by the Debtor to or on behalf of
10 me. Jason and Christina Kane have also filed claims in the case, each in the amount of \$10,000.00,
11 for priority wages.

12 7. In 2018, the Debtor, together with Cornish & Carey Commercial, dba Newmark
13 Knight Frank (“Newmark”), another real estate brokerage, filed a complaint in Santa Clara County
14 Superior Court, commencing a breach of contract action against Barbaccia Properties Holdings, LLC
15 (“Barbaccia”), seeking recovery of damages in the approximate amount of \$1.8 million, for
16 commission owed by Barbaccia to the Debtor and Newmark arising out of a complex commercial
17 real estate transaction (the “State Court Action”). Barbaccia made a demand for arbitration under the
18 terms of an April 30, 2014 Membership Interest Purchase and Sale Agreement (the “MIPSA”), and
19 thereafter the parties to the State Court Action stipulated to arbitration through JAMS (the
20 “Arbitration”).

21 8. In the Arbitration, Barbaccia sought declaratory relief and disgorgement of a
22 \$1,080,000 commission that had already been paid to the Debtor and Newmark, and the Debtor and
23 Newmark asserted the State Court Action claims.

24 9. A three-day arbitration was held by JAMS in March and April 2021. On July 26,
25 2021, the JAMS arbitrator issued his Interim Award (the “Interim Award”). In the Interim Award,
26 the arbitrator denied each party’s respective claims for damages and/or disgorgement, and each party
27 took nothing by way of those claims. Importantly, however, the Interim Award also determined that
28 Barbaccia was the prevailing party in the matter and that it was entitled to recover its attorneys’ fees,

1 costs and expenses under the terms of the MIPSAs. This came as a complete surprise to the Debtor
2 and Newmark, having been advised by their counsel, the law firm of Pahl & McCay, APC (“P&M”),
3 that they were not at risk of becoming liable for Barbaccia’s fees, as described below.

4 10. On October 29, 2021, the JAMS arbitrator issued his Final Award, wherein Barbaccia
5 was awarded attorneys’ fees in the amount of \$1,269,722.60 and costs and expenses in the amount of
6 \$67,576.22, for a total award of \$1,337,298.80, against the Debtor and Newmark jointly and
7 severally.

8 11. In the State Court Action and the Arbitration, the Debtor and Newmark were jointly
9 represented by P&M. Stephen D. Pahl, Esq. and Sonia S. Shah, Esq. of P&M served as their lead
10 counsel. P&M’s attorneys did not advise the Debtor at any time before or during P&M’s
11 representation of the Debtor in the State Court Action or the Arbitration, that the Debtor was at risk
12 of bearing the attorneys’ fees, costs and expenses of Barbaccia, should Barbaccia prevail in the State
13 Court Action or the Arbitration. To the contrary, the firm assured the Debtor that such a risk had
14 been avoided procedurally.

15 12. On February 11, 2022, P&M filed Proof of Claim Number 1 in the Debtor’s case in
16 the amount of \$29,771.16 for the balance of legal services allegedly owed by the Debtor to P&M
17 (“Claim 1”).

18 13. On April 14, 2022, Newmark filed Proof of Claim Number 10 in the Debtor’s case in
19 the amount of \$1,240,000.00 (“Claim 10”), based on theories of contribution and unjust enrichment,
20 and arising from a payment made by Newmark to Barbaccia in that amount in exchange for release of
21 the Final Award as against Newmark. Other than my claim, Claim 10 is by far the largest claim filed
22 in the Debtor’s case.

23 14. In September 2022, the Debtor and Newmark entered into discussions seeking a
24 mutually agreeable resolution of issues between them. By late September, a tentative settlement
25 between the parties had been reached, subject to documentation. The terms of the settlement have
26 been incorporated into a proposed plan of reorganization that Newmark, the Debtor and the Trustee
27 now support, as described below.

28 15. The Trustee has administered the Debtor’s estate to date, liquidating assets and

1 considering claims against third parties, including me. In particular:

2 16. As of the Petition Date, the Debtor's assets other than intangible property such as
3 goodwill and client lists, consisted primarily of various notes receivable, potential claims against
4 P&M for malpractice, and a used vehicle. During the course of the chapter 7 case, the Trustee
5 liquidated the notes (all but one of which proved to be uncollectible) and the vehicle (which was sold
6 to me). As a result of her liquidation efforts, the Trustee collected, and now holds, approximately
7 \$30,000.

8 17. During the chapter 7 case, the Trustee has investigated and considered recovery of
9 transfers by the Debtor to or for my benefit, as avoidable transfers. In the normal course of the
10 Debtor's business, I regularly made advances to the Debtor for operating expenses, and those
11 advances were repaid from time to time by the Debtor's payment of my personal expenses. As of the
12 petition date in the Debtor's case, the balance of my loan to the Debtor was in the amount of
13 \$3,185,706.34. In the year immediately preceding the Petition Date, the Debtor made payments to or
14 on account of me in the net amount of \$197,445.07. However, no such payments were made after the
15 issuance of the arbitrator's Final Award.

16 18. I have contended that none of the payments are avoidable, either as fraudulent
17 conveyances or preferences, for multiple reasons, including: None of the payments were made out of
18 the ordinary course of business; none of the payments were made at a time at which the Debtor knew
19 that it was insolvent (given the surprise of the arbitrator's adverse decision); and none of the
20 payments were in fact made at a time that the Debtor was insolvent, in light of claims against P&M
21 that entirely offset amounts owing under the Final Award.

22 19. To date, the Trustee has not initiated any action against me to recover any of the
23 subject payments. If the Trustee were to do so, I would actively oppose, and defend against, any such
24 recovery.

25 20. In addition, the Debtor is the sponsor of two pension plans, the Kane Corporation
26 Salary Deferral Plan and the Kane Corporation Cash Balance Plan, which in the aggregate hold assets
27 valued by the plans' institutional administrator as of September 30, 2022 at approximately
28 \$2,122,209.37. The beneficiaries of the plans consist of Jason Kane and Christina Kane, employees

1 of the Debtor, and I. In the chapter 7 case, the Trustee has become responsible for the administration
2 of the plans, pursuant to Section 704((a)(11) of the Bankruptcy Code. The Trustee has advised me
3 that she is considering termination of the pension plans in order to recover potential surpluses for the
4 estate. The potential amount of such surpluses is undetermined and dependent upon multiple
5 variables, including actuarial analyses, beneficiaries' rights to additional funds, excise taxes and
6 administrative costs. However, based upon valuations made as of September 30, 2022, I believe that
7 any surplus, after liquidation of the plans' assets, payment of administrative costs and payment of all
8 obligations owing to beneficiaries, would likely be minimal or non-existent.

9 21. However, the beneficiaries of the plans take the position that because they would be
10 ill-served by a termination, in part by depriving them of the right to incrementally greater benefits
11 over time, termination of the plans would violate the Trustee's fiduciary duties, as the plan
12 administrator, to those beneficiaries, precluding termination. Instead, the beneficiaries have urged
13 the Trustee to consent to a transfer of sponsorship of the plans to a new entity. To date, the Trustee
14 has declined to do so, and the parties are therefore in disagreement and at risk of protracted litigation
15 regarding the Trustee's duties and rights with respect to the pension plans.

16 22. I now seek conversion of the Debtor's case to chapter 11 in order to pursue a proposed
17 plan of reorganization (the "Plan") that has the support of both Newmark and the Debtor, and which
18 will allow the Debtor to reorganize and continue in operation.

19 23. The essential terms of the Plan, which is attached hereto as **Exhibit "A"** in draft form,
20 are as follows:

21 A. The Debtor will pay to each holder of an allowed claim 15.75% of the allowed
22 amount of the claim, on the earlier of the Effective Date or final allowance of the claim.

23 B. In addition, each holder of an allowed claim will receive a pro-rata share of
24 any net proceeds of claims brought against P&M by Newmark as the Special Representative,
25 as described below.

26 C. Newmark's claim will be allowed as filed, and the Debtor will make a
27 distribution to Newmark on account of the claim in the amount of \$195,000 (slightly less than
28 15.75%). The Debtor will file objections to other claims as it deems appropriate.

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D. Newmark will be appointed as a Special Representative of the estate, and in that capacity will acquire any and all claims that the Debtor may have against P&M, without representation or warranty. Newmark will have sole discretion as to whether to prosecute, compromise or abandon those claims, and in the event that Newmark prosecutes and/or settles such claims, it will do so jointly with its own claims against P&M. Any proceeds of such prosecution or compromise, net of reasonable costs, will be shared proportionately between the Debtor’s estate and Newmark, based upon a reasonable allocation.

E. The Debtor will pay all Court-approved chapter 7 administrative expenses of the Trustee, the Debtor and their respective retained professionals.

F. In order to effectuate the Plan, I will (a) advance to the Debtor all funds necessary to the Plan’s implementation, in the initial amount of \$270,000.00; and (b) subordinate my own claim against the Debtor to all other obligations under the Plan.

G. The Debtor will receive a full discharge and release of all preconfirmation claims asserted against it, and will continue its operations as a reorganized entity. The Debtor’s pension plans will remain intact, administered by the Debtor.

24. I believe that the Plan will result in a greater distribution to creditors than in a chapter 7 liquidation, in which I believe creditors would likely receive little or no distribution at all. Further, the Plan will avoid likely litigation that would occur in a chapter 7 liquidation, by resolving all issues as to potential avoidance actions, pension plan administration and Newmark’s claim.

25. As such, I believe that conversion of the Debtor’s case to chapter 11, in order to pursue confirmation of the Plan, is in the best interests of creditors. I have been advised, through counsel, that the Plan and the relief sought in the Conversion Motion are supported by Newmark, and that the Trustee does not oppose conversion.

26. I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on October 12, 2022 at Atherton, California.

/s/ Peter Kane
PETER C. KANE



Signed and Filed: February 16, 2023

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HANNAH L. BLUMENSTIEL
U.S. Bankruptcy Judge

Attorneys for Peter C. Kane, Plan Proponent

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

KANE CORPORATION,

Debtor.

Case No. 21-30819-HLB

Chapter 11 (Converted)

ORDER CONFIRMING COMBINED PLAN OF REORGANIZATION AND DISCLOSURE STATEMENT PROPOSED BY PETER KANE (DECEMBER 7, 2022)

On December 7, 2022, Peter C. Kane, as the plan proponent herein (“Mr. Kane”), filed the *Combined Plan of Reorganization and Disclosure Statement Proposed by Peter Kane (December 7, 2022)* (the “Plan,” docket no. 90) in the chapter 11 case of KANE CORPORATION (the “Debtor”).

On December 22, 2022, the Court entered the *Order Tentatively Approving Disclosures In Combined Plan And Disclosure Statement, Fixing Time For Submitting Ballots And Filing Objections To Confirmation Of Plan And/Or Final Approval Of Disclosures, And Setting Confirmation Hearing* (the “Procedures Order” docket no. 99). Pursuant to the terms of the Procedures Order, Mr. Kane served the Plan, the Procedures Order, a ballot and a self-addressed stamped envelope (collectively, the “Solicitation Materials”), on all known creditors on December 23, 2022 (docket no. 101).

On January 26, 2023, Mr. Kane filed the *Ballot Tabulation And Voting Results For Combined Plan Of Reorganization And Disclosure Statement (December 7, 2022)* (the “Ballot Tabulation,” docket no. 111).

1 On February 2, 2023, Mr. Kane filed the *Plan Proponent’s Memorandum In Support Of Plan Confirmation*
2 (the “Confirmation Brief,” docket no. 112), as supported by the declaration of Peter C. Kane filed
3 concurrently therewith (the “Kane Declaration”).¹ No objections to the Plan were served or filed. On
4 February 16, 2023, a confirmation hearing (the “Confirmation Hearing”) was held by the Court. Merle C.
5 Meyers, Esq. and Kathy Quon Bryant appeared on behalf of Mr. Kane, and Matthew Metzger appeared on
6 behalf of the Debtor.

7 The Court having reviewed and considered the Plan, the Ballot Tabulation, the Confirmation Brief,
8 the Kane Declaration, and all supporting documents filed in connection therewith; for the reasons, findings
9 and conclusions stated orally by the Court during the course of the Confirmation Hearing, notice having been
10 properly given, and for good cause shown,

11 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

12 1. The disclosure statement contained in the Plan, tentatively approved by the Court in the
13 Procedures Order, is hereby approved on a final basis as containing adequate information within the meaning
14 of Section 1125(a) of the Bankruptcy Code.

15 2. As proposed by Mr. Kane in Section B(1) of the Confirmation Brief, Part 1(b)(3) and (6) of
16 the Plan are hereby deemed modified to read as follows:

17 3. Claim no. 4 filed by Peter Kane in the amount of \$3,185,706.34 shall be
18 allowed in full and shall be paid 15.75% of such amount, subject to the following: (a) no
19 payment on account of such claim shall be made by the Debtor until and unless all other
20 payments required of the Debtor (as distinguished from payments required of the Special
21 Representative) under this Plan have been made or have been accounted for with appropriate
22 reserves under the provisions of Part 8(c) of this Plan; and (b) payments will be made on the
23 claim only as future cash flow of the Debtor permits, based on the Debtor’s projections of
24 anticipated revenues and expenses.

25 6. The scheduled claim of Sunbow Properties, LLC, in the amount of
26 \$105,000.00, shall be allowed in full and shall be paid 15.75% of such amount, subject to the
27 following: (a) no payment on account of such claim shall be made by the Debtor until and
28 unless all other payments required of the Debtor (as distinguished from payments required of
the Special Representative) under this Plan have been made or have been accounted for with
appropriate reserves under the provisions of Part 8(c) of this Plan; and (b) payments will be
made on the claim only as future cash flow of the Debtor permits, based on the Debtor’s

¹ The Ballot Tabulation, the Confirmation Brief, and the Kane Declaration were served on February 2, 2023 (docket no. 113).

1 projections of anticipated revenues and expenses.

2 3. The Court finds and concludes that the Plan, as modified herein, complies with all
3 confirmation requirements of the Bankruptcy Code, including all of those requirements contained in Section
4 1129 of the Bankruptcy Code.

5 4. Accordingly, the Plan is hereby CONFIRMED.

6 ** END OF ORDER **
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**United States Bankruptcy Court
Northern District of California
San Francisco Division**

In re:

Case No. 21-30819
Chapter 11

KANE CORPORATION,

Debtor

_____ /

**COMBINED PLAN OF REORGANIZATION
AND DISCLOSURE STATEMENT PROPOSED BY PETER KANE**
(December 7, 2022)

INTRODUCTION

This is a Combined Chapter 11 Plan of Reorganization and Disclosure Statement (the "Plan") filed by PETER KANE ("Mr. Kane"), a creditor and the sole equity security holder of the debtor herein, KANE CORPORATION (the "Debtor"). The Plan identifies each known creditor by name and describes how each claim will be treated if the Plan is confirmed.

Part 1 contains the treatment of creditors with general unsecured claims - Class A - they will be paid 15.75% of allowed claims, plus a pro rata share of any litigation net proceeds. Part 2 contains the treatment of priority and administrative claims - they will be paid in full to the extent allowed. Part 3 contains the treatment of equity interests - Class B - equity interests will be retained but there will be no distributions unless and until all other payment obligations under the Plan have been met. There are no secured claims. Part 4 contains treatment of executory contracts and unexpired leases. Parts 5 and 6 contain discharge and default provisions. Part 7 contains the appointment of a Special Representative for the benefit of creditors. Part 8 contains general provisions. Part 9 contains details and information regarding the Debtor's pension plan and the role and claims of the Pension Benefit Guaranty Corporation ("PBGC"), a wholly-owned United States government corporation, and an agency of the United States created by ERISA¹ with respect thereto.

¹Meaning, the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1301-1461 (2018), and the regulations promulgated thereunder.

Claims within Class A (general unsecured claims) will be impaired under the Plan, and creditors holding those claims are therefore entitled to vote on confirmation of the Plan. Equity interests within Class B (equity security holders) will be impaired under the Plan, and holders of those equity interests are entitled to vote on the confirmation of the Plan. Completed ballots must be received by Mr. Kane's counsel, and objections to confirmation must be filed and served, no later than [REDACTED], 2022. The court will hold a hearing on confirmation of the Plan on [REDACTED], 2022, at [REDACTED] .m. Addresses and other contact information are contained in the notice of confirmation hearing accompanying this document.

Attached to the Plan are exhibits containing financial information that may help you decide how to vote and whether to object to confirmation. **Exhibit 1** includes background information regarding the Debtor and the events that led to the filing of the bankruptcy petition and describes significant events that have occurred during this chapter 11 case and the preceding chapter 7 case. **Exhibit 2** contains an analysis of how much creditors would likely receive in a Chapter 7 liquidation. **Exhibit 3** contains an analysis of the Debtor's ability to perform its Effective Date obligations, as a matter of feasibility.

Whether the Plan is confirmed is subject to complex legal rules that cannot be fully described here. You are strongly encouraged to read the Plan carefully and to consult an attorney to help you determine how to vote and whether to object to confirmation of the Plan.

If the Plan is confirmed, the payments promised in the Plan constitute new contractual obligations that replace the Debtor's pre-confirmation debts. Creditors may not seize their collateral or enforce their pre-confirmation debts so long as the Debtor performs all obligations under the Plan. If the Debtor defaults in performing Plan obligations, any creditor can file a motion to have the case dismissed or converted to a Chapter 7 liquidation, or to enforce their non-bankruptcy rights. The Debtor will be discharged from all pre-confirmation debts (with certain exceptions) if the Debtor makes all required Plan payments. Enforcement of the Plan, discharge of the Debtor, and creditors' remedies if the Debtor defaults are described in detail in Parts 5 and 6 of the Plan.

PART 1: TREATMENT OF GENERAL UNSECURED CREDITORS - Class A

(a) To the extent allowed, the general unsecured claims

asserted in this case, either as scheduled or as filed, are within Class A, as follows:

<i>Name of Creditor</i>	<i>Amount of Claim</i>	<i>Claim no. or Scheduled</i>	<i>Disputed Under Plan Y/N</i>	<i>Plan Proponent's Comment</i>
Pahl & McCay, APC	29,771.16	1	Y	Not owed and subject to offsets
Cross River Bank	24,630.00	3	Y	Subject to forgiveness under applicable law.
Peter Kane	3,185,706.34	4	N	Allowed and to be subordinated
Pension Benefit Guaranty Corporation	0.00	7	Y	Pension plans will not be terminated.
Pension Benefit Guaranty Corporation	0.00	8	Y	Pension plans will not be terminated.
Pension Benefit Guaranty Corporation	0.00	9	Y	Pension plans will not be terminated.
Cornish & Carey Commercial, dba Newmark Knight Frank	1,240,000	10	N	Resolved by plan settlement.
State Compensation Insurance Fund	129.00	Sched'd	N	
Sunbow Properties, LLC	105,000.00	Sched'd	N	Allowed and to be subordinated
Travelers Insurance	1,335.75	Sched'd	N	
Barbaccia Properties Holdings, LLC	1,337,298.82	Sched'd	Y	No longer owed

(b) Treatment. Allowed claims of general unsecured creditors (including allowed claims of creditors whose executory contracts or unexpired leases are being rejected under this Plan) shall be paid as follows: Each holder of such a claim, to the extent allowed by a Final Order,² will be paid 15.75%

²The term "Final Order" means: an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, that has not been reversed, stayed, modified or amended, and as to which the time to appeal or seek certiorari or move for a new trial, re-argument or rehearing has expired, and no appeal or petition for certiorari or other proceedings for a new trial, re-argument or

(fifteen and three-quarters percent) of the allowed amount of such claim, plus a pro-rata share of net proceeds of the prosecution of claims against the Debtor's former counsel, Pahl & McCay, APC, as set forth in Part 7 herein, subject to the following:

1. Claim no. 1 filed by Pahl & McCay, APC in the amount of \$29,771.16 is disputed and shall not be paid until, unless and to the extent, if any, allowed by a Final Order. The Debtor shall prosecute an objection to such claim.

2. Claim no. 3 filed by Cross River Bank in the amount of \$24,630.00 is disputed and shall not be paid until, unless and to the extent, if any, allowed by a Final Order. The Debtor shall prosecute an objection to such claim.

3. Claim no. 4 filed by Peter Kane in the amount of \$3,185,706.34 shall be allowed and paid in full (i.e., 100% of the claim rather than 15.75%), *provided, however*, that no payment on account of such claim shall be made by the Debtor until and unless all other payments required of the Debtor (as distinguished from payments required of the Special Representative) under this Plan have been made or have been accounted for with appropriate reserves under the provisions of Part 8(c) of this Plan.

4. Claims nos. 7, 8 and 9 filed by the Pension Benefit Guaranty Corporation, each in the amount of \$0.00, shall be deemed withdrawn as of the Effective Date, in light of the continuation and maintenance of the pension plans administered by the Debtor, subject to the provisions of Part 9 herein.

5. Claim no. 10 filed by Cornish & Carey Commercial, dba Newmark Knight Frank ("Newmark"), shall be allowed in the amount of \$1,240,000.00, as asserted in Newmark's proof of claim. Such claim shall be paid (a) \$195,000.00 in cash on the Effective Date; and (b) a pro-rata share of net proceeds, if any, in any lawsuit brought against the

rehearing has been timely filed, or as to which any appeal that has been filed or any petition for certiorari that has been timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, re-argument or rehearing shall have been denied or resulted in no modification of such order.

Debtor's former counsel, Pahl & McCay, APC, by Newmark acting as the Special Representative, as set forth in Part 7 herein.

6. The scheduled claim of Sunbow Properties, LLC, in the amount of \$105,000.00, shall be allowed and paid in full (i.e., 100% of the claim rather than 15.75%), *provided, however,* that no payment on account of such claim shall be made by the Debtor until and unless all other payments required of the Debtor (as distinguished from payments required of the Special Representative) under this Plan have been made or have been accounted for with appropriate reserves under the provisions of Part 8(c) of this Plan.

7. The scheduled claim of Barbaccia Properties Holdings, LLC ("Barbaccia") shall be deemed disallowed as of the Effective Date, *provided, however:*

(a) As soon as practicable after the Effective Date, Mr. Kane shall provide to Barbaccia, through counsel, notice (the "Barbaccia Notice") of the provisions of this subpart 7, by electronic mail.

(b) If within fourteen (14) days following receipt of the Barbaccia Notice, Barbaccia files with the Court, and serves upon Mr. Kane, a claim against the estate herein and a written assertion of the amount that must be reserved therefor as a disputed claim (collectively, the "Barbaccia Assertion"), then, the Debtor shall either (a) file an objection to such claim on any grounds (including that it was filed after the claims bar date in the Chapter 11 Case) and/or challenge the amount of the required reserve asserted by Barbaccia; or (b) treat the filed claim as allowed and make a distribution thereupon in accordance therewith.

(c) If Barbaccia does not timely file and serve the Barbaccia Assertion, then Barbaccia shall be deemed to have no claim against the estate herein and shall receive no distribution under the Plan.

(d) The Bankruptcy Court shall retain jurisdiction to resolve any dispute under this subpart 7 by motion practice.

Creditors in this class may not take any collection action

against the Debtor so long as the Debtor is not in material default under the Plan (defined in Part 6(c)). **This class is impaired and is entitled to vote on confirmation of the Plan.**

PART 2: TREATMENT OF PRIORITY AND ADMINISTRATIVE CLAIMS

(a) Trustee's and Professionals' Fees. E. Lynn Schoenmann, the trustee in the preceding chapter 7 case (the "Trustee"), all professionals retained by the Trustee pursuant to Section 327 of the Bankruptcy Code in the chapter 7 case, and all professionals retained by the Debtor pursuant to Section 327 of the Bankruptcy Code in the chapter 11 case (collectively, the "Case Professionals"), shall file applications for final approval of fees and reimbursable costs no later than thirty (30) days following the Effective Date, upon which the Debtor will schedule a deadline for objections and a hearing, in accordance with applicable rules of the Bankruptcy Court. All such fees and costs approved by the Bankruptcy Court shall be paid in full by the Debtor within thirty (30) days following entry of a Final Order approving such fees and costs. Those fees and costs have been estimated by the Trustee and her retained Case Professionals to be as follows, as of September 30, 2022 (those fees and expenses are not expected to increase materially by the Effective Date); and the fees and costs of the Debtor's chapter 11 counsel have been estimated as follows, up to the Effective Date:

Trustee and Case Professionals	Estimated Amount
E. Lynn Schoenmann, Trustee	30,000
Hall Law Group LLC, Bankruptcy Counsel for Trustee	23,000
Matthew J. Borrer, ERISA Counsel for Trustee	11,000
Bachecki, Crom & Co., LLP, Accountants for Trustee	20,300
Mathew Metzger, Counsel for Chapter 11 Debtor	10,000

(b) Other Administrative Claims. The Debtor will pay other allowed claims entitled to priority under Section 503(b) of the Bankruptcy Code no later than the latest of the following dates: (i) on, or as soon as practicable after, the Effective Date, or on such later date as to which the holder of such claim may have consented; (ii) on the date when such claim becomes due according to contractual, statutory or other terms applicable thereto; or (iii) as soon as practicable after entry of a Final Order allowing such Claim, if the Claim is disputed or if applicable provisions of the Bankruptcy Code otherwise require Court approval; except expenses incurred in the ordinary course

of Debtor's business or financial affairs, which shall be paid when normally due and payable (these creditors are not listed below). All fees payable to the United States Trustee as of confirmation will be paid on the Effective Date; post-confirmation fees owing to the United States Trustee, if any, will be paid when due. Asserted administrative claims, other than those held by the Trustee and the Case Professionals, are as follows:

<i>Name of Creditor</i>	<i>Amount of Claim</i>	<i>Claim no.</i>	<i>Disputed Under Plan Y/N</i>	<i>Plan Proponent's Comment</i>
Office of the United States Trustee	325.00	N/A	N	(estimated)
Franchise Tax Board	821.97	2	N	

(c) Injunction and Voting. Holders of administrative expenses may not take collection action against the Debtor so long as the Debtor is not in material default under the Plan (defined in Part 6(c)). **Such holders are not entitled to vote on confirmation of the Plan.**

(d) Priority Non-Tax Claims. The Debtor will pay allowed claims entitled to priority under Section 507(a) of the Bankruptcy Code at any time on or before the first anniversary of the Effective Date of the Plan. The following non-tax claims entitled to priority under Section 507(a) shall be deemed allowed in the following amounts:

<i>Name of Creditor</i>	<i>Amount of Claim</i>	<i>Claim no.</i>	<i>Disputed Under Plan Y/N</i>	<i>Plan Proponent's Comment</i>
Jason Kane	10,000.00	5	N	
Christina Kane	1,500.00	6	N	

(e) Priority Tax Claims. There are no allowable or asserted priority tax

PART 3: TREATMENT OF EQUITY SECURITY HOLDERS - Class B

(a) Treatment. Equity interests in the Debtor are within Class B. The sole shareholder, or equity security holder, of the Debtor is the plan proponent, Peter Kane. Mr. Kane shall retain his shares of stock of the Debtor, *provided* that no

distributions shall be made by the Debtor on account of such shares unless and until all of the Debtor's payment obligations owing under the plan have been satisfied in full.

(b) Voting. **Equity security holders are entitled to vote on confirmation of the Plan.**

PART 4: EXECUTORY CONTRACTS AND UNEXPIRED LEASES

(a) Executory Contracts/Unexpired Leases Assumed. The Debtor shall assume the following executory contracts and/or unexpired leases upon confirmation of this Plan and will perform all pre-confirmation and post-confirmation obligations thereunder.

Description of Contract/Lease	Cure Amount
Kane Corporation Salary Deferral Plan	0.00
Kane Corporation Cash Balance Plan	0.00

(b) Executory Contracts/Unexpired Leases Rejected. The Debtor rejects the following executory contracts and/or unexpired leases and surrenders any interest in the affected property, and allows the affected creditor to obtain possession and dispose of its property, without further order of the court. Claims arising from rejection of executory contracts, if any, have been included in Class G (general unsecured claims).

Name of Counter-Party	Description of Contract/Lease
None	None
None	None0

(c) Executory contracts and unexpired leases not specifically assumed or rejected above will be deemed rejected.

PART 5: DISCHARGE AND OTHER EFFECTS OF CONFIRMATION

(a) Discharge. Debtor shall be discharged of all debts, claims, obligations and damages arising or accruing prior to the Effective Date of the Plan, provided that such discharge will not be effective until the Debtor (as distinguished from the Special Representative) has made all payments, or reserves pursuant to Part 8(c) herein, required of it under the Plan or the court grants a hardship discharge.

(b) Vesting of Property. On the Effective Date, all property of the estate and interests of the Debtor will revert in the Debtor pursuant to § 1141(b) of the Bankruptcy Code, free and clear of all claims and interests except as provided in this Plan, subject to revesting upon conversion to Chapter 7 as provided in Part 6(f) below, except as follows: All claims, damages, causes of action and claims for relief held by the estate against the Debtor's former counsel, Pahl & McCay, APC, as of the Effective Date shall be assigned to the Special Representative for the benefit of the estate, as set forth in Part 7 herein, without representation or warranty of any kind.

(c) Plan Creates New Obligations. Except as provided in Part 6(d) and (e), the obligations to creditors that the Debtor undertakes in the confirmed Plan replace those obligations to creditors that existed prior to the Effective Date of the Plan. The Debtor's obligations under the confirmed Plan constitute binding contractual promises that, if not satisfied through performance of the Plan, create a basis for an action for breach of contract under California law. To the extent a creditor retains a lien under the Plan, that creditor retains all rights provided by such lien under applicable non-Bankruptcy law.

PART 6: REMEDIES IF DEBTOR DEFAULTS IN PERFORMING THE PLAN

(a) Creditor Action Restrained. The confirmed Plan is binding on every creditor whose claims are provided for in the Plan. Therefore, even though the automatic stay terminates on the Effective Date with respect to secured claims, no creditor may take any action to enforce either the pre-confirmation obligation or the obligation due under the Plan, so long as the Debtor is not in material default under the Plan, except as provided in Part 6(e) below.

(b) Obligations to Each Class Separate. The Debtor's obligations under the Plan are separate with respect to each class of creditors. Default in performance of an obligation due to members of one class shall not by itself constitute a default with respect to members of other classes. For purposes of this Part 6, the holders of all administrative claims shall be considered to be a single class, the holders of all priority claims shall be considered to be a single class, and each non-debtor party to an assumed executory contract or lease shall be considered to be a separate class.

(c) Material Debtor Default Defined. If the Debtor (as distinguished from the Special Representative) fails to make any payment, or to perform any other obligation required of the

Debtor under the Plan, for more than 10 days after the time specified in the Plan for such payment or other performance, any member of a class affected by the default may serve upon the Debtor and the Debtor's attorney (if any) a written notice of the Debtor's default. If the Debtor fails within 60 days after the date of service of the notice of default either: (i) to cure the default; (ii) to obtain from the court an extension of time to cure the default; or (iii) to obtain from the court a determination that no default occurred, then the Debtor is in Material Default under the Plan to all the members of the affected class.

(d) Material Special Representative Default Defined. If the Special Representative fails to make any payment, or to perform any other obligation required of the Special Representative under Part 7 of the Plan, for more than 10 days after the time specified in the Plan for such payment or other performance, the Debtor or any creditor may serve upon the Special Representative and the Special Representative's attorney (if any) a written notice of such default. If the Special Representative fails within 30 days after the date of service of the notice of default either: (i) to cure the default; (ii) to obtain from the court an extension of time to cure the default; or (iii) to obtain from the court a determination that no default occurred, then the Special Representative is in Material Default under the Plan.

(e) Remedies Upon Material Default. Upon Material Default by the Special Representative, any member of a class affected by the default: (i) may file and serve a motion for such relief as is appropriate under the circumstances of the default.

(f) Claims not Affected by Plan. Upon confirmation of the Plan, and subject to Part 5(c), any creditor whose claims are left unimpaired under the Plan may, notwithstanding paragraphs (a), (b), (c), and (d) above, immediately exercise all of its contractual, legal, and equitable rights, except rights based on default of the type that need not be cured under section 1124(2)(A) and (D).

(g) Effect of Conversion to Chapter 7. If the case is at any time converted to one under Chapter 7, property of the Debtor shall vest in the Chapter 7 bankruptcy estate to the same extent provided for in section 348(f) of the Bankruptcy Code upon the conversion of a case from Chapter 13 to Chapter 7.

(h) Retention of Jurisdiction. The bankruptcy court may exercise jurisdiction over proceedings concerning: (i) whether

the Debtor or the Special Representative is in Material Default of any Plan obligation, and if so, the remedies to be ordered; (ii) whether the time for performing any Plan obligation should be extended; (iii) adversary proceedings and contested matters pending as of the Effective Date or specifically contemplated in this Plan to be filed in this court (see Part 7(f)); (iv) whether the case should be dismissed or converted to one under Chapter 7; (v) any objections to claims; (vi) compromises of controversies under Fed. R. Bankr. Pro. 9019; and (vii) other questions regarding the interpretation and enforcement of the Plan.

PART 7: SPECIAL REPRESENTATIVE

(a) Appointment and Assignment. As of the Effective Date:

(i) Newmark shall be appointed as a representative of the Debtor's estate (the "Special Representative") solely for the purposes set forth in this Part 7 of the Plan; and

(ii) The Special Representative shall be assigned, without representation or warranty of any kind whatsoever, any and all claims, damages, rights and causes of action (the "P&M Claims") held by the Debtor as of the Effective Date as against the Debtor's former counsel, Pahl & McCay, APC ("P&M").

(b) Prosecution of PM Claims. With the agreement of the Debtor as to a course of action that is in the best interests of creditors,³ the Special Representative shall prosecute, compromise and/or abandon the P&M Claims on behalf of the Debtor's estate, and shall distribute net proceeds thereof, if any, to the Debtor, which in turn shall distribute such net proceeds to holders of allowed unsecured claims, subject to the following:

(i) Costs. To the extent that the Special Representative chooses to pursue the P&M Claims, Newmark shall advance all costs and expenses reasonably necessary in order to investigate and prosecute such claims.

(ii) Concurrent Claims. The Special Representative shall prosecute, compromise or abandon the P&M Claims concurrently with prosecution of Newmark's own claims

³ In the event of a dispute between the Special Representative and the Debtor as to such prosecution, compromise or abandonment, the Bankruptcy Court shall retain jurisdiction to resolve such dispute by motion practice.

against P&M.

(iii) Cooperation. The Debtor and Mr. Kane shall cooperate and consult with the Special Representative on a reasonable basis, as potential witnesses with respect to the P&M Claims. Newmark, both in its own capacity and as the Special Representative, on the one hand, and the Debtor and Mr. Kane, on the other hand, shall have the benefits and rights of confidentiality and other privileges associated with a common defense and prosecution, pursuant to an agreement to be executed by all such parties.

(iv) Reporting. No less frequently than once every calendar quarter, the Special Representative shall report to the Debtor on a confidential basis the status and intended schedule of its investigation, prosecution and/or compromise of the P&M Claims.

(v) Distributions. Upon partial or full resolution of the P&M Claims, either by litigation or settlement, the Special Representative shall distribute any and all proceeds of such claims as follows:

(1) From all gross recoveries arising from either the P&M Claims or Newmark's own claims against P&M, Newmark shall be reimbursed its costs, including legal fees, reasonably incurred in investigating, prosecuting and/or compromising such claims.

(2) After such cost reimbursements, remaining net proceeds shall be prorated between Newmark and the Debtor's estate based on the amounts of damages reasonably asserted by each party against P&M, as agreed upon by the Special Representative and the Debtor in good faith. In the event of a dispute between the Special Representative and the Debtor as to such allocation, the Bankruptcy Court shall retain jurisdiction to resolve such dispute by motion practice. The prorated portion of net proceeds attributable to the P&M Claims shall then be distributed by the Debtor to holders of allowed general unsecured claims against the Debtor's estate, consistent with the provisions of this Plan.

PART 8: GENERAL PROVISIONS

(a) Effective Date of Plan. The Effective Date of the Plan is a date to be designated by Mr. Kane, but in no event

later than 30 (thirty) days following the date of the entry of the order of confirmation, if no notice of appeal from that order has been filed. If a notice of appeal has been filed, Mr. Kane may waive the finality requirement and put the Plan into effect, unless the order confirming the Plan has been stayed. If a stay of the confirmation order has been issued, the Effective Date will be a date designated by Mr. Kane that is no later than 30 (thirty) days following the first day on which no stay of the confirmation order is in effect, provided that the confirmation order has not been vacated.

(b) Condition to Effectiveness. The effectiveness of the Plan is conditioned upon Mr. Kane's advance to the Debtor on the Effective Date in the amount of \$280,000 in order to fund estimated Effective Date expenses. Thereafter, Mr. Kane shall advance additional funds to the Debtor to the extent necessary for the Debtor to perform its obligations under the terms of the Plan. Mr. Kane's advances to the Debtor, including the loan to be made on the Effective Date, shall be made to the reorganized Debtor, not to the debtor-in-possession, and shall therefore require no approval by the Bankruptcy Court other than confirmation of the Plan.

(c) Disputed Claim Reserve. Subject to the provisions of Part 1(b)(7) of the Plan, the Debtor will create a reserve for disputed claims. Each time the Debtor makes a distribution to the holders of allowed claims, the Debtor will place into a reserve the amount that would have been distributed to the holders of disputed claims if such claims had been allowed in the full amount claimed. If a disputed claim becomes an allowed claim, the Debtor shall immediately distribute to the claimant from the reserve an amount equal to all distributions due to date under the plan calculated using the amount of the allowed claim. Any funds no longer needed in reserve shall be distributed pro-rata among allowed claims in this class.

(d) Cramdown. Pursuant to section 1129(b) of the Bankruptcy Code, the Debtor reserves the right to seek confirmation of the Plan despite the rejection of the Plan by one or more classes of creditors.

(e) Severability. If any provision in the Plan is determined to be unenforceable, the determination will in no way limit or affect the enforceability and operative effect of any other provision of the Plan.

(f) Governing Law. Except to the extent a federal rule of decision or procedure applies, the laws of the State of

California govern the Plan.

(g) Lawsuits. Mr. Kane's counsel has reviewed Debtors' schedules of prepetition transactions, and on the basis of that review does not believe that any causes of action for fraudulent transfers, voidable preferences, or other claims for relief exist, subject to the following:

(1) During the preceding chapter 7 case, the Trustee and her counsel and accountants investigated prepetition transfers made to or on behalf of Mr. Kane by the Debtor, as possibly avoidable transactions.⁴ Mr. Kane, however, does not believe that any such transfers are avoidable, in part because: (a) all of the payments were made in exchange for adequate consideration; (b) all such transfers were made in the ordinary course of business; and (c) all such payments were made at times when the Debtor and Mr. Kane reasonably believed that the Debtor was solvent. Notwithstanding the Trustee's investigation, no demand had been made, or complaint had been filed, by the Trustee against Mr. Kane as of the date of conversion to chapter 11.

(2) Pursuant to Section 704(a)(11) of the Bankruptcy Code, the Trustee became responsible for the administration of two pension plans sponsored by the Debtor, as of the Effective Date. The Trustee stated to Mr. Kane, through counsel, that she was considering termination of the pension plans as part of such administration; however, Mr. Kane and the other beneficiaries of the pension plans argued that because such termination would not be in the best interests of the plans' beneficiaries, termination of the plans would be improper. Had the plans been terminated, over the Debtor's and Mr. Kane's objections and after anticipated litigation, an undetermined surplus of funds might have been obtained by the estate for the benefit of creditors.⁵ No such termination had been commenced by the Trustee as of the date of conversion to chapter 11.

⁴ In discussions with Mr. Kane's counsel, the Trustee did not identify a specific amount of targeted transfers. The Debtor's schedules, however, state that in the year immediately preceding the petition date, transfers made by the Debtor to or on behalf of Mr. Kane were in the net amount of \$197,445.07. Additional transfers were made in the Debtor's ordinary course prior to the one-year period as well.

⁵ As described below, in light of current estimated values of the plans, Mr. Kane does not believe that any surplus would be substantial.

(3) The Debtor believes that it holds substantial claims against P&M on account of professional malpractice committed by the firm in its representation of the Debtor. Any such claims will be pursued by the Special Representative on behalf of the Debtor's estate and its creditors, at its discretion, concurrent with its pursuit of concurrent claims by Newmark against P&M in the same matters.

(h) Notices. Any notice to the Debtor or the Special Representative shall be in writing, and will be deemed to have been given seven days after the date sent by first-class mail, postage prepaid and addressed, or on the date of delivery by electronic mail, as follows:

To the Debtor:

Kane Corporation
Attn: Peter Kane, President
67 Selby Lane
Atherton, CA 94027
Email: kanecorp2022@gmail.com

With a copy to:

Merle C. Meyers, Esq.
Meyers Law Group, P.C.
100 Shoreline Highway, Suite B160
Mill Valley, CA 94941
Email: mmeyers@meyerslawgroup.com

To the Special Representative:

Cornish & Carey Commercial d/b/a Newmark Knight Frank
Attn: Joshua Davis, Esq., General Counsel
125 Park Avenue
New York, NY 10017

With a copy to:

Nirav S. Shah, Esq.
Cantor Fitzgerald
110 East 59th Street, Seventh Floor
New York, NY 10022
Email: nirav.shah@cantor.com

(i) Post-Confirmation United States Trustee Fees. Following confirmation, the Debtor shall continue to pay quarterly fees to the United States Trustee to the extent, and in the amounts, required by 28 U.S.C. § 1930(a)(6). So long as the Debtor is required to make these payments, the Debtor shall file with the court quarterly reports in the form specified by the United States Trustee for that purpose. In particular, without limiting the foregoing, in April 2023, the Debtor will pay quarterly fees to the United States Trustee for the first quarter of 2023, based upon distributions made in accordance with the Plan's terms, in the approximate amount of \$1,240 (based on estimated approximate distributions of \$310,000 in the quarter). Mr. Kane will advance funds to the Debtor to the extent necessary to make that payment.

(j) Deadline for § 1111(b) Election. Creditors with an allowed secured claim can make a timely election under section 1111(b) no later than 14 days before the first date set for the hearing on confirmation of the Plan.

(k) Means for Implementation of the Plan. The Plan will be effectuated by the Debtor. Among the Debtor's duties and authority will be the following:

(1) Plan Account and Deposit. On the Effective Date, the Debtor shall establish an account for the purpose performing its obligations under the Plan, and shall deposit into such account the amount of \$311,000, including funds presently held by the Debtor and funds to be advanced by Mr. Kane. From time to time as needed, the Debtor shall deposit additional funds if required for such performance.

(2) Settlements and Objections. The Debtor shall have authority to enter into settlements if deemed by the Debtor to be reasonable and beneficial, object to claims, and generally take actions consistent with the terms of the Plan, without the necessity of approval by the Bankruptcy Court, *provided* that any compromise of a claim asserted against the estate for an amount greater than \$250,000, will require ten (10) days' notice to creditors and an opportunity for hearing. In the event of a timely objection, the Debtor will schedule a hearing for Court approval on no less than ten (10) days' notice.

(3) Retention of Professionals. The Debtor may retain and compensate, without Bankruptcy Court approval, counsel and other professionals for the purpose of advising the Debtor and representing the Debtor with respect to the

implementation of the Plan, including without limitation counsel also representing Mr. Kane.

PART 9: PROVISIONS RELATED TO PBGC CLAIMS

(a) Role of PBGC. PBGC is the wholly owned United States government corporation and agency created under Title IV of ERISA to administer the federal pension insurance program and to guarantee the payment of certain pension benefits upon termination of a pension plan covered by Title IV of ERISA. Debtor sponsors the Pension Plan, which is covered by Title IV of ERISA.

(b) Debtor's Continuation of Pension Plan. The Plan provides that on the Effective Date, the Debtor shall assume and continue the Pension Plan⁶ and shall pay in cash any aggregate unpaid (i) minimum required funding contributions, if any, under 26 U.S.C. §§ 412 and 430 and 29 U.S.C. §§ 1082 and 1083 and (ii) delinquent premiums, if any, owed to PBGC under 29 U.S.C. §§ 1306 and 1307, in each case with interest, for the Pension Plan under ERISA or the Internal Revenue Code.

(c) Potential PBGC Claim for Termination. During the bankruptcy proceeding, the Pension Plan may terminate under the distress termination provisions of 29 U.S.C. § 1341(c) or under the provisions for PBGC-initiated terminations under 29 U.S.C. § 1342(a). If the Pension Plan terminates, the sponsor of the Pension Plan and all members of its controlled group are jointly and severally liable for the unfunded benefit liabilities of the terminated Pension Plan. See 29 U.S.C. § 1362(b). PBGC has filed unliquidated contingent claims, subject to termination of the Pension Plan during the bankruptcy proceeding, against the Debtor for unfunded benefit liabilities. PBGC asserts that this termination liability claim is entitled to priority under 11 U.S.C. §§ 507(a)(2) and (a)(8) in unliquidated amounts.

(d) Potential PBGC Claim for Contributions. The sponsor of the Pension Plan and all other members of its controlled group are obligated to pay the contributions necessary to satisfy the minimum funding standards under sections 412 and 430 of the Internal Revenue Code and sections 302 and 303 of ERISA. PBGC has filed unliquidated claims against the Debtor for unpaid required minimum contributions owed to the Pension Plan. PBGC asserts that the claims for required minimum contributions owed are entitled to priority under 11 U.S.C. §§ 507(a)(2) and (a)(5)

⁶ Meaning, the Kane Corporation Cash Balance Plan, a single-employer defined benefit plan insured by PBGC and covered by Title IV of ERISA.

in unliquidated amounts.

(e) Potential PBGC Claim for Premium Payments. The sponsor of the Pension Plan and all other members of its controlled group are jointly and severally liable to PBGC for all premium obligations owed to the Pension Plan. See 29 U.S.C. § 1307. PBGC has filed claims against the Debtor for unpaid statutory premiums, if any, owed to PBGC on behalf of the Pension Plan in an unliquidated amount.

(f) Potential PBGC Claim for Termination Premium. If the Pension Plan terminates in a distress or PBGC-initiated termination during the bankruptcy proceeding, the sponsor of the Pension Plan and its controlled group are liable to PBGC for a termination premium at the rate of \$1,250 per plan participant per year for three years under 29 U.S.C. § 1306(a)(7). PBGC asserts that if the Pension Plan is terminated prior to confirmation of the Plan, the obligation to PBGC for termination premiums does not exist until after the Plan is confirmed and the Debtor has exited bankruptcy. PBGC asserts that under these circumstances, termination premiums are not a dischargeable claim or debt within the meaning of the Bankruptcy Code. PBGC estimates that the amount of the termination premium liability for the Pension Plan would total approximately \$11,250.

(g) Withdrawal of PBGC Claims. Since the Plan provides that the Debtor will continue the Pension Plan, upon the Plan becoming effective and the Debtor making all payments due under Part 9(b) herein, all PBGC claims shall be deemed withdrawn without incurring liability in the bankruptcy.

(h) Release Carve-Out Regarding PBGC. Nothing in the Chapter 11 case, the Disclosure Statement, the Plan, the Confirmation Order, or any other document filed in the Chapter 11 case shall be construed to discharge, release, limit, or relieve any individual from any claim by the PBGC or the Pension Plan for breach of any fiduciary duty under ERISA, including prohibited transactions, with respect to the Pension Plan, subject to any and all applicable rights and defenses of such parties, which are expressly preserved. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such fiduciary duty or related liability by any of the provisions of the Disclosure Statement, Plan, Confirmation Order, Bankruptcy Code, or other document filed in the Chapter 11 case. For the avoidance of doubt, the Debtor shall not be released from any liability or obligation under ERISA, the Internal Revenue Code, or any other applicable law relating to or arising from the Pension Plan.

DATED: December 7, 2022

/s/ Peter Kane
PETER KANE, Creditor and Sole
Shareholder

Attorney Certification

I, Merle C. Meyers, am legal counsel for the Debtor in the above-captioned case and hereby certify the following: (i) the foregoing plan is a true and correct copy of the Combined Plan and Disclosure Statement promulgated by the Northern District of California, San Francisco Division, on July 30, 2012 (the "Standard-Form Plan"); and (ii) except as specified below, there have been no alterations or modifications to any provision of the Standard-Form Plan other than formatting, numbering and related non-substantive changes.

The following provisions of the Standard-Form Plan have been altered or otherwise modified:

1. Introduction: The summary description of Parts 1-9 is modified to account for different classes and more parts.

2. Page 1 and Exhibits: Standard Exhibit 3 (monthly income and expenses) and Exhibit 5 (Investment Property Analysis) have been eliminated as unnecessary - all required funds will be advanced by Mr. Kane, and there is no investment property.

3. Page 2: Standard Part 1 has been eliminated because there are no secured creditors. New Part 1 covers general unsecured creditors.

4. Page 2: Class 2(a) (small claims): Eliminated - all unsecured claims receive the same treatment.

5. Page 3: The term "Final Order" has been added and defined in footnote 2.

6. Pages 3-5: Specific treatment of particular unsecured claims is identified.

7. Page 6: Procedures for professional fee applications is identified.

8. Page 7-8: Part 3 added for treatment of equity security holders.

9. Pages 8-10: Modifications made to account for distinction between defaults by the Debtor and defaults by the Special Representative.

10. Pages 11-12: Role, duties and scope of Special Representative identified.

11. Pages 17-19: Part 9, concerning claims of PBGC, has been added at PBGC's request.

I declare that the foregoing is true and correct. Executed this 7th day of December 2022.

MEYERS LAW GROUP, P.C.

By: /s/ Merle C. Meyers
Merle C. Meyers, Esq.
Attorneys for Debtor

Exhibit 1 - Events That Led to Bankruptcy

A. General

Kane Corporation, the Debtor, is a California corporation in the business of real estate consulting and management, and has operated since 1984 (other than during the preceding chapter 7 case. Peter Kane is its President, C.E.O. and sole shareholder, and the company employs Mr. Kane's son and daughter, Jason Kane and Christina Kane. The Debtor's revenues have varied over the years. In years 2019, 2020 and 2021 (partial), the company's revenues have been reported as \$53,956, \$82,098 and \$35,924, respectively.

B. Barbaccia Litigation and Award

In 2018, the Debtor and Newmark jointly sued Barbaccia for unpaid real estate commissions that the Debtor believed were owed to both the Debtor and to Newmark, in the California Superior Court, Santa Clara County. The litigation was referred to arbitration, and on July 26, 2021, after a trial before the arbitrator, the arbitrator issued an interim award denying the plaintiffs' claims for liability and finding that Barbaccia was the prevailing party entitled to recover attorneys' fees and costs. On October 29, 2021, the arbitrator issued his final award, finding Newmark and the Debtor jointly liable for Barbaccia's fees in the amount of \$1,337,298.80. The arbitrator's decision was entirely unexpected by the Debtor and Newmark, inasmuch as the plaintiffs expected to prevail in the matter, and had been advised by their counsel that even in the event of loss, Barbaccia would not be entitled to recover fees or costs.

Thereafter, on or about November 3, 2021, Newmark reached a settlement with Barbaccia whereby Newmark paid Barbaccia the amount of \$1,240,000 in exchange for a release of Newmark from any liability. Newmark has filed a claim in the Debtor's case for reimbursement of the full amount of its payment, and that claim is disputed by the Debtor. Further, the Debtor believes that any further liability to Barbaccia has been discharged by virtue of the payment by Newmark, which occurred without the Debtor's consent or knowledge.

C. Transfers to Mr. Kane

In the normal course of the Debtor's business, Mr. Kane regularly made advances to the Debtor for operating expenses, and those advances were repaid from time to time by the Debtor's payment of Mr. Kane's personal expenses. As of the petition date in the Debtor's case, the balance of Mr. Kane's loan to the Debtor was in the amount of \$3,185,706.34. In the year immediately preceding the petition date, the Debtor made payments to or on account of Mr. Kane in the net amount of \$197,445.07. However, no such payments were made after the issuance

of the arbitrator's final award, as described above.

D. Commencement of Bankruptcy Case, Estate Assets

Upon issuance of the arbitrator's final award, the Debtor determined that it required bankruptcy protection. Therefore, on December 17, 2021, the Debtor filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code. E. Lynn Schoenmann was appointed as the Trustee, and the Trustee thereafter hired attorneys and accountants with Court approval.

As of the date of the petition, the Debtor's assets other than intangible property such as goodwill and client lists, consisted primarily of various notes receivable, potential claims against P&M for malpractice, and a used vehicle. During the course of the chapter 7 case, the Trustee liquidated the notes (all but one of which proved to be uncollectible) and the vehicle (which was sold to Mr. Kane). As a result of her liquidation, the Trustee collected approximately \$31,000, which was turned over to the Debtor upon conversion of the case to chapter 11.

During the chapter 7 case, the Trustee investigated and considered pursuit of transfers by the Debtor to or for the benefit of Mr. Kane, as avoidable transfers, as described Subpart C above. However, Mr. Kane contended that none of the payments were avoidable, either as fraudulent conveyances or preferences for multiple reasons. The Trustee did not initiate any action against Mr. Kane to recover any of the subject payments.

The Debtor believes that it holds a malpractice claim against P&M, its counsel in the Barbaccia litigation, on account of incorrect and critical legal advice provided to the Debtor, resulting in the Barbaccia award. Under the Plan, the Debtor expects that such claims will be prosecuted, if economically and legally feasible, by the Special Representative for the benefit of creditors.

E. Pension Plans

The Debtor is the sponsor of two pension plans, the Kane Corporation Salary Deferral Plan and the Kane Corporation Cash Balance Plan, which in the aggregate hold assets valued by the plans' administrator as of September 30, 2022 at approximately \$2,122,209.37. The beneficiaries of the plans consist of Mr. Kane, Jason Kane and Christina Kane, employees of the Debtor. In the chapter 7 case, the Trustee became responsible for the administration of the plans, pursuant to Section 704(A)(11) of the Bankruptcy Code. The Trustee advised Mr. Kane that she was considering termination of the pension plans in order to recover potential surpluses for the estate. The potential amount of such surpluses is undetermined and dependent upon

multiple variables, including actuarial analyses, beneficiaries' rights to additional funds, excise taxes and administrative costs. However, based upon valuations made by the plans' institutional administrator as of September 30, 2022, Mr. Kane believes that any surplus, after liquidation of the plans' assets, payment of administrative costs and payment of all obligations owing to beneficiaries, would likely be minimal or non-existent. Nonetheless, for purposes of a liquidation analysis, referenced below, Mr. Kane has assumed a net surplus of \$100,000.

Mr. Kane and the other beneficiaries of the plans took the position that because the beneficiaries of the plans would be ill-served by a termination, depriving them of the right to incrementally greater benefits over time, termination of the plans would violate the Trustee's fiduciary duties to those beneficiaries, precluding termination. Instead, the beneficiaries urged the Trustee to consent to a transfer of sponsorship to a new entity. Ultimately, with the conversion of the case to chapter 11, no action was taken by the Trustee to either transfer or terminate the pension plans.

F. Settlement with Newmark, Conversion to Chapter 11

In an effort to avoid litigation over allegedly avoidable transfers, pension plan terminations and disputes as to Newmark's claim, Mr. Kane engaged in settlement discussions with Newmark to seek a consensual resolution that would allow the Debtor to resume its operations through conversion to chapter 11 and confirmation of a reorganization plan. Those efforts were successful, resulting in a settlement that the Debtor believes is beneficial to the Debtor, its principals, and all creditors. The terms of that settlement are incorporated into the Plan, as described below.

G. Plan Terms

This is a summary only of the Plan's principal terms, subject to details and additional provisions stated in the Plan itself:

Under the Plan, the Debtor will continue in business, and Mr. Kane will continue in his role as president and chief executive officer. The Debtor's pension plans will continue to be administered by the Debtor, in the same manner as maintained prior to the commencement of the Debtor's chapter 7 case.

The Plan provides for partial payment of allowed claims in exchange for a discharge of the balance of those claims as against the reorganized Debtor. The payments to creditors will come from two sources: (a) cash equal to 15.75% of allowed amounts of the claims (the

"Cash Component"), and (b) net proceeds of any claims pursued by the Special Representative against P&M (the "Litigation Component").

The Cash Component will be derived from cash on hand (approximately \$31,000) as of the Effective Date and an advance to be made by Mr. Kane to the Debtor in the amount of \$280,000 on the Effective Date. Mr. Kane will make additional advances to the Debtor if and to the extent needed in order to fulfill the Debtor's obligations under the Plan. The Cash Component will be paid to creditors holding undisputed claims on the Effective Date, and to other creditors when and to the extent that their claims are allowed by Final Orders. Newmark's claim in the amount of \$1,240,000 will be allowed in full, and Newmark will receive a distribution of the Cash Component in the amount of \$195,000 (slightly less than 15.75%) on the Effective Date.

The Litigation Component will be derived from net proceeds (after reasonable litigation costs are deducted) distributed on a pro-rata basis on account of allowed claims by the Special Representative upon the conclusion of prosecution of the P&M Claims, if pursued.

The Special Representative will be Newmark. Newmark was a co-plaintiff, and ultimately liable jointly, with the Debtor in the litigation of claims with Barbaccia, and both were represented by P&M in that litigation. As a result, Newmark and the Debtor hold similar claims against P&M, though with possibly varying calculations of damages. Under the terms of the Plan, the Debtor's claims will be assigned to Newmark for the benefit of creditors, and Newmark will determine in its sole discretion whether to prosecute, compromise or abandon the claims, along with its own claims, and will advance all expenses necessary to do so. In the event that the Debtor's claims against P&M are prosecuted or settled and result in recoveries, those recoveries (calculated proportionately with any recoveries on Newmark's own claims, will be used first to reimburse Newmark for all of its reasonable expenses and second to distribute to holders of allowed claims against the Debtor, on a pro rata basis.

Exhibit 2 - What Creditors Would Receive if the Case Were Converted to a Chapter 7⁷

Estate Assets:

Description	Estimated Amount
Cash	31,000
Pension Plan Surpluses	100,000 ⁸
Avoidable Transfers to Mr. Kane	200,000 ⁹
Net Proceeds of Claims Against P&M	Unknown ¹⁰
TOTAL:	331,000

Estate Liabilities:

Description	Estimated Amount
Chapter 7 Trustee's Fees/Costs	40,000 ¹¹
Chapter 7 Professional's Fees/Costs to date	50,000
Chapter 7 Professionals' Fees/Costs regarding pension plans	50,000
Chapter 7 Professionals' Fees/Costs regarding avoidance action	75,000
Chapter 7 Professionals' Fees/Costs regarding claims objections	40,000
Chapter 11 Debtor's Professionals' Fees/Costs	10,000
Priority Claims	11,500
NET FUNDS AVAILABLE FOR DISTRIBUTION TO CREDITORS	54,500

Estimated Amount of Unsecured Claims	621,465 ¹²
Percent Distribution to Unsecured Creditors Under Proposed Plan	15.75%
Percent Distribution to Unsecured Creditors Under Liquidation Analysis	8.77%

⁷ All estimates used for purposes of this liquidation analysis have been made by Mr. Kane in consultation with his counsel, using the upper range of predicted recoveries, and the lower range of predicted expenses, in a hypothetical chapter 7 liquidation, in order to present a chapter 7 outcome as favorable as possible, to compare to the proposed chapter 11 outcome.

⁸ This is an estimate only, and assumes fully prevailing over opposition in anticipated litigation with the plans' beneficiaries.

⁹ This is an estimate only, and assumes prevailing as to all transfers made within one year of the petition date, over opposition in anticipated litigation with Mr. Kane.

¹⁰ Mr. Kane cannot estimate net recoveries with respect to these claims, but in any event those recoveries would be similar or less than such recoveries under the Plan.

¹¹ Estimated based on \$800,000 of disbursements.

¹² Assumes that all disputed claims are disallowed, all insider claims are disallowed, and Newmark's claim is allowed at 50% of asserted amount.

Exhibit 3 - Effective Date Feasibility

Can the Debtor Make the Effective Day Payments?

	Amount	Amount
A. Projected Total Cash on Hand on Effective Date		311,000
Payments on Effective Date		
Unclassified Claims	1,200	
Administrative Expense Claims ¹³	100,000	
Priority Claims	0	
U.S. Trustee Fees	325	
Allowed, Unsubordinated Claims (15.75% of 1,242,000)	195,615	
Reserves for Disputed Claims, Claims 1 and 3 (15.75% of \$54,401.16)	8,568	
B. Total Payments on Effective Date		305,708
C. Net Cash on Effective Date (Line A - Line B) (Not feasible if less than zero)		5,292

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¹³ Including those payments to be made upon Court approval following the Effective Date.