

**IN THE UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

IN RE: )  
 )  
 ) **Chapter 11**  
SMALL LOANS, INC., *et al.*,<sup>1</sup> )  
 ) **Case No.: 11-12254 (WRS)**  
 )  
Debtors. ) **Jointly Administered**  
 )

**MOTION FOR ENTRY OF AN ORDER APPROVING  
DISCLOSURE STATEMENT AND SOLICITATION PROCEDURES**

COMES NOW, the Omnibus Official Committee of Unsecured Creditors in the above-referenced cases (the “**Committee**”) and S. Gregory Hays, Chapter 11 Trustee (the “**Trustee**”, and collectively with the Committee, the “**Proponents**”), and hereby file this Motion (the “**Motion**”) for entry of an order approving: (a) the *Disclosure Statement for the Joint Plan of Liquidation Filed by the Omnibus Official Committee of Unsecured Creditors and S. Gregory Hays, Chapter 11 Trustee* (the “**Disclosure Statement**”) and (b) certain solicitation procedures. In support of the Motion, the Proponents respectfully submit:

**BACKGROUND**

1. On December 16, 2011 (the “Filing Date”), the Debtors filed their voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Code”).
2. On January 9, 2012, the Court appointed separate Official Committees of Unsecured Creditors for The Money Tree, Inc. and The Money Tree of Georgia, Inc. On January 27, 2012, the committees held their organizational meeting. Subsequently, these committees consolidated into the omnibus Committee.

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<sup>1</sup> The related Debtors along with the last four digits of each Debtors’ federal tax identification number and respective case numbers are Small Loans, Inc. (3224) Case No. 11-12254, The Money Tree Inc. (1386) Case No. 11-12255, The Money Tree of Georgia Inc. (9228) Case No. 11-12258, The Money Tree of Florida Inc. (5315) Case No. 11-12257, and The Money Tree of Louisiana, Inc. (2592) Case No. 11-12256.

3. On May 2, 2012, the Court appointed S. Gregory Hays as chapter 11 trustee of the Debtors. After his appointment, the Trustee sold substantially all of the Debtors' assets.

4. On January 14, 2013, the Proponents filed their Joint Plan of Liquidation [Docket No. 692] and the Disclosure Statement [Docket No. 693].

### **JURISDICTION AND VENUE**

5. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. § 1408. This matter is core within the meaning of 28 U.S.C. § 157(b)(2).

6. The statutory predicates for the relief sought herein are sections 105 and 1125 of the Bankruptcy Code and Rules 2002, 3016, 3017, 3018, 3020, 9013, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

### **RELIEF REQUESTED**

7. By this Motion, the Proponents respectfully request the entry of an Order approving the Disclosure Statement and solicitation procedures.

#### **I. The Disclosure Statement Should be Approved**

A. The Disclosure Statement Contains "Adequate Information" Under Section 1125 of the Bankruptcy Code

8. Section 1125 of the Bankruptcy Code requires the proponent of a proposed chapter 11 plan to provide holders of claims and interests entitled to vote on the plan with "adequate information" regarding that plan. Under the Bankruptcy Code,

'[A]dequate information' means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of

claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan . . . .

11 U.S.C. § 1125(a)(1).

9. The primary purpose of a disclosure statement is to provide creditors and interest holders affected by a proposed plan with all material information necessary to make an informed decision whether to vote to accept or reject the plan. *See, e.g., In re New Power Co.*, 438 F.3d 1113, 1118 (11th Cir. 2006); *Century Glove, Inc. v. First Am. Bank of New York*, 860 F.2d 94, 100 (3d Cir. 1988) (“[Section] 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote.”); *Prudential Ins. Co. of Am. v. Monnier (In re Monnier Bros.)*, 755 F.2d 1336, 1342 (8th Cir. 1985) (stating that legislative history suggests that the disclosure requirements of section 1125(b) are intended to be flexible).

10. Courts will consider the particular facts and circumstances of each case in evaluating whether a disclosure statement provides “adequate information” within the meaning of section 1125 of the Bankruptcy Code. 11 U.S.C. § 1125(a)(1) (“[A]dequate information” means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records.”); *In re Brandon Mill Farms, Ltd.*, 37 B.R. 190, 192 (Bankr. N.D. Ga. 1984) (“The Bankruptcy Court shall review proposed disclosure statements on a case by case basis.”); *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988) (“From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case.”). Courts have broad discretion in making this determination. *See, e.g., In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984); *Texas Extrusion Corp. v. Lockheed Corp. (In re Texas Extrusion Corp.)*, 844 F.2d 1142, 1157 (5th Cir. 1988) (“The determination of what is adequate information is subjective and made on a case by case basis.

This determination is largely within the discretion of the bankruptcy court.”); *In re PC Liquidation Corp.*, 383 B.R. 856, 865 (E.D.N.Y. 2008) (“The standard for disclosure is, thus, flexible and what constitutes ‘adequate disclosure’ in any particular situation is determined on a case-by-case basis, with the determination being largely within the discretion of the bankruptcy court.”); *In re River Village Assocs.*, 181 B.R. 795, 804 (E.D. Pa. 1995) (same).

11. Accordingly, the Proponents respectfully submit that the Disclosure Statement complies with section 1125 of the Bankruptcy Code and includes “adequate information” within the meaning of the statute.

## **II. Under the Circumstances of these Cases, the Court Should Approve the Solicitation Procedures**

12. The Proponents respectfully submit that the circumstances of these chapter 11 cases justify and request approval of the solicitation process described below under Bankruptcy Rule 3017.

13. Bankruptcy Rule 3017 provides, in pertinent part:

(c) . . . On or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation. . . .

(d) . . . Upon approval of a disclosure statement,—except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders—the debtor in possession, trustee, proponent of the plan, or clerk as the court orders shall mail to all creditors and equity security holders, and in a chapter 11 reorganization case shall transmit to the United States trustee,

- (1) the plan or a court-approved summary of the plan;
- (2) the disclosure statement approved by the court;
- (3) notice of the time within which acceptances and rejections of the plan may be filed; and

(4) any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion.

14. In the instant case, the Plan designates five separate Classes of Claims and Equity Interests. Regarding Equity Interests, the Plan consolidates the equity interests of The Money Tree Inc. in Class 5. Under the Plan, those interest holders are fully impaired, and thus, are deemed to reject the Plan and are not entitled to vote. *See* 11 U.S.C. §1126(g) (holders of claims or interest that would not receive or retain any property under the plan are “deemed not to have accepted a plan”). Regarding holders of Claims in Classes 2 (Convenience Class), 3 (General Unsecured Claims), and 4 (Subordinated Claims), these claimants are partially impaired, and thus will be entitled to vote (collectively, the “**Voting Classes**”).

15. Because thousands of individuals invested in the Debtors pre-petition, more than 3,400 creditors or distinct account holders may ordinarily be entitled to receive a complete, printed copy of the Plan and Disclosure Statement (a “**Full Set**”). Of these creditors, almost 1,819 creditors have claims of less than \$10,000.00 and only 234 have claims more than \$100,000.00. However, the Estates’ funds are limited and providing a Full Set of solicitation materials to each creditor, as would be typically required by Rule 3017, would place an enormous burden on the Estates and ultimately reduce the distribution to creditors.

16. As an alternative, the Proponents seek authorization to mail to members of the Voting Classes a summary disclosure statement (the “**Summary Disclosure Statement**”) (substantially in the form attached hereto as Exhibit A).

17. The Summary Disclosure Statement is not intended to replace the Disclosure Statement, but simply to notify participants of the electronic publication of the Disclosure Statement and provided some basic information. As such, the Summary Disclosure Statement will contain, *inter alia*, (i) notification that the Plan and Disclosure Statement are available for

electronic viewing at [www.haysconsulting.net/the-money-tree-inc/](http://www.haysconsulting.net/the-money-tree-inc/); (ii) some basic information about the Plan; and (iii) a method by which the creditor can request a Full Set.

18. The Summary Disclosure Statement will not otherwise affect the mailing of ballots or other voting materials to each of the members of the Voting Classes.

19. The Proponents assert that the mailing of the Summary Disclosure Statement in lieu of a Full Set will provide parties in interest with adequate access to such documents and thus meet the requirements of Rule 3017. Further, the Proponents believe that implementation of this procedure is in the best interests of the estates and their creditors, and is supported by the equities of these cases. Pursuant to section 105 of the Bankruptcy Code, the solicitation procedures fall within the Court's ability to implement procedures that are harmonious with and intended to further the purposes of the Bankruptcy Code. In the instant case, because the Summary Disclosure Statement will minimize administrative costs and maximize distributions on each of the Allowed Claims, the equities favor approval of the solicitation procedures. Therefore, the Proponents respectfully submit that a modification of the traditional solicitation process and a waiver of any other requirements under Bankruptcy Rules 3017 is appropriate.

20. The Proponents also request approval of (a) the form of ballot attached hereto as Exhibit B, and (b) that all ballots be mailed to the Committee's counsel rather than be filed with the Court.

### **NOTICE**

21. Notice of this Motion has been served by U.S. mail or electronic mail on: (a) the Office of the Bankruptcy Administrator, (b) those parties requesting notice pursuant to Bankruptcy Rule 2002 in these cases, (c) the United States Securities and Exchange Commission, and (d) all parties receiving electronic notices in these cases. In light of the nature of relief requested herein, the Proponents submit no other or further notice is required.

**CONCLUSION**

WHEREFORE, based upon the foregoing, the Proponents respectfully request that the Court enter an order: (a) approving the Disclosure Statement, (b) approving the solicitation procedures described herein, and (c) such other relief as is just and proper.

Dated: January 14, 2013

**GREENBERG TRAUIG, LLP**

/s/ John D. Elrod

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Counsel for S. Gregory Hays, Chapter 11 Trustee

**EXHIBIT A**

**IN THE UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**IN RE:**

**SMALL LOANS, INC., et al.,<sup>2</sup>**

**Debtors.**

)  
)  
) **Chapter 11**  
)  
) **Case No.: 11-12254 (WRS)**  
)  
) **Jointly Administered**

**SUMMARY DISCLOSURE STATEMENT TO  
JOINT CHAPTER 11 PLAN OF LIQUIDATION**

On January 14, 2013, the Omnibus Official Committee of Unsecured Creditors and S. Gregory Hays, Chapter 11 Trustee (collectively, the “**Proponents**”) for Small Loans, Inc., et al. (the “**Debtors**”), filed the *Joint Chapter 11 Plan of Liquidation* (the “**Plan**”), in the Chapter 11 bankruptcy cases of the Debtors now pending before the United States Bankruptcy Court for the Middle District of Alabama (the “**Court**”).

**PLEASE TAKE NOTICE THAT** in order to minimize the expense to these bankruptcy estates and to maximize distributions to creditors of the Debtors, the Court approved this Summary Disclosure Statement (the “**Summary Disclosure Statement**”) on [\*\*], 2013, as an alternative means of providing creditors with the “adequate information” necessary to make an informed vote with regard to the Plan. **THIS SUMMARY DISCLOSURE STATEMENT IS NOT THE FULL DISCLOSURE STATEMENT**, and is not intended to replace the full Disclosure Statement. Rather, this Summary Disclosure Statement is intended to provide creditors of the Debtor with information to enable them to access the electronically published Plan and the accompanying full Disclosure Statement (the “**Full Disclosure Statement**”), which Full Disclosure Statement was approved by the Court on [\*\*], 2013 pursuant to the requirements of section 1125 of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE THAT THE FULL DISCLOSURE STATEMENT AND PLAN CAN BE FOUND AND ACCESSED FOR NO CHARGE AT:**

[www.haysconsulting.net/the-money-tree-inc/](http://www.haysconsulting.net/the-money-tree-inc/)

The Full Disclosure Statement and Plan set forth, among other things, the Debtors’ history and proposed treatment of the various holders of Claims against or Interests in the

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<sup>2</sup> The related Debtors along with the last four digits of each Debtors’ federal tax identification number and respective case numbers are Small Loans, Inc. (3224) Case No. 11-12254, The Money Tree Inc. (1386) Case No. 11-12255, The Money Tree of Georgia Inc. (9228) Case No. 11-12258, The Money Tree of Florida Inc. (5315) Case No. 11-12257, and The Money Tree of Louisiana, Inc. (2592) Case No. 11-12256.



Estates. **ALL CREDITORS ARE ADVISED AND ENCOURAGED TO READ THE FULL DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.**

**IF YOU ARE UNABLE TO ACCESS THE INTERNET, OR OTHERWISE CANNOT OBTAIN THE FULL DISCLOSURE STATEMENT AND/OR PLAN AT THE WEB ADDRESS PROVIDED ABOVE, YOU MAY, AT ANY TIME PRIOR TO THE VOTING DEADLINE, REQUEST THAT A PAPER COPY OF THE FULL DISCLOSURE STATEMENT AND PLAN BE MAILED TO YOU BY SUBMITTING A REQUEST VIA TELEPHONE, EMAIL, OR LETTER TO:**

John D. Elrod  
Greenberg Traurig, LLP  
3333 Piedmont Road, N.E., Suite 2500  
Atlanta, Georgia 30305  
(678) 553-2259; elrodj@gtlaw.com

Subject to the information in the Full Disclosure Statement, the Plan provides for the treatment of creditors consistent with the priorities found in the Bankruptcy Code. As of January 14, 2013, the Chapter 11 Trustee for the Debtors' Estates was holding approximately \$10,489,000 of cash and various unliquidated causes of action (the "**Causes of Action**"). First to be paid from those proceeds are Administrative Claims, those being reasonable, actual and necessary costs of preserving the bankruptcy estates; second, priority claims, such as tax claims; and third, general unsecured creditors whose claims arose prior to the bankruptcy filing, such as investor and vendor claims ("**General Unsecured Claims**"). After payment of Administrative and Priority Claims, the Proponents estimate that under the Plan, there will be between \$9,000,000 and \$8,500,000 plus any subsequent amounts that the Liquidating Trustee and the Post-Confirmation Committee can collect on the Causes of Action to distribute to the holders of General Unsecured Claims. The Proponents estimate that the initial distribution to the holders of General Unsecured Claims will take place approximately 60 days after the Plan is confirmed, with subsequent distributions made as, and to the extent, funds become available.

As further set forth in the Full Disclosure Statement, the Proponents believe the only alternative to the Plan is to convert these cases from Chapter 11 to Chapter 7. The Proponents do not believe that alternative will produce as good as a result for creditors because of the increased costs and delays that would be associated with proceeding in Chapter 7: a Chapter 7 trustee will be appointed and not only will he or she be entitled to a commission on what is distributed, but the Chapter 7 trustee will have to retain professionals to do the same work the Proponents have already undertaken or can finish more quickly and less expensively because of their familiarity with the Debtors, their history, and affairs.

The Committee and the Trustee recommend that all creditors vote in favor of the Plan.

**GREENBERG TRAURIG, LLP**

/s/ John D. Elrod

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Counsel for S. Gregory Hays, Chapter 11 Trustee

**EXHIBIT B**  
**IN THE UNITED STATES BANKRUPTCY COURT**  
**MIDDLE DISTRICT OF ALABAMA**  
**SOUTHERN DIVISION**

IN RE: )  
) )  
) **Chapter 11**  
SMALL LOANS, INC., *et al.*,<sup>3</sup> )  
) **Case No.: 11-12254 (WRS)**  
**Debtors.** )  
) **Jointly Administered**

**BALLOT FOR ACCEPTING OR REJECTING JOINT CHAPTER 11 PLAN OF LIQUIDATION<sup>4</sup>**

IF YOU WISH TO VOTE ON THE JOINT CHAPTER 11 PLAN OF LIQUIDATION DATED JANUARY \_\_\_\_, 2013 (THE "PLAN"), YOU MUST COMPLETE AND RETURN THIS BALLOT SO THAT IT IS DELIVERED NO LATER THAN \_\_\_\_\_, 2013 TO THE FOLLOWING ADDRESS:

Greenberg Traurig, LLP  
c/o John D. Elrod  
3333 Piedmont Road, N.E., Suite 2500  
Atlanta, Georgia 30305  
elrodj@gtlaw.com; (678) 553-2259

The Plan referred to in this ballot can be confirmed by the Court and thereby made binding upon you if it is accepted by the holders of two-thirds in amount and more than one-half in number of the claims in each class voting on the Plan. In the event the requisite acceptances are not obtained, the Court may nevertheless confirm the Plan if the Court finds that the Plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of §1129(b) of the Bankruptcy Code.

Any ballots received which do not indicate either acceptance or rejection of the Plan or that indicate both acceptance and rejection of the Plan will not be counted.

**The undersigned certifies that it is the holder of a Class \_\_\_\_ Claim against the Debtor in the total amount of \$ \_\_\_\_\_ (this amount is for voting purposes and will not effect the Allowed amount of your Claim).**

ACCEPTS     REJECTS        **[CHECK ONE BOX]**    the Plan.

Claimant's Name: \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_

Claimant's Signature: \_\_\_\_\_

<sup>3</sup> The jointly administered Debtors are The Money Tree Inc. (Case No. 11-12255), The Money Tree of Georgia Inc. (Case No. 11-12258), The Money Tree of Florida Inc. (Case No. 11-12257), and The Money Tree of Louisiana, Inc. (Case No. 11-12256).

<sup>4</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Plan. A copy of the Plan of Liquidation and accompanying Disclosure Statement is available at [www.haysconsulting.net/the-money-tree-inc/](http://www.haysconsulting.net/the-money-tree-inc/) or by contacting John D. Elrod at the contact information listed above.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the foregoing pleading upon all parties receiving notices via the ECF system on this 14<sup>th</sup> day of January, 2013, including the following:

Teresa R. Jacobs  
U.S. Bankruptcy Administrator  
Frank M. Johnson, Jr. Federal Building  
One Church Street, Suite 103  
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ba@almb.uscourts.gov

Daniel D. Sparks on behalf of S. Gregory Hays, Chapter 11 Trustee  
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Birmingham, Alabama 35203

/s/ John D. Elrod

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John D. Elrod