

Acacia Diversified Holdings, Inc.  
Form 10-Q  
November 19, 2012

---

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

\_\_\_\_\_  
Form 10-Q  
\_\_\_\_\_

(Mark One)

QUARTERLY REPORT UNDER SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2010

TRANSITION REPORT UNDER SECTION 13 OR 15(d) OF THE  
EXCHANGE ACT

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 1-14088

Acacia Automotive, Inc.  
(Exact name of small business issuer as specified in its charter)

Texas  
(State or other jurisdiction of incorporation or  
organization)

(IRS Employer Identification No.)

3515 East Silver Springs Blvd. - #243 Ocala, FL  
(Address of principal executive offices)

34470  
(Zip Code)

(877) 513-6294  
(Registrant's telephone number)

(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Edgar Filing: Acacia Diversified Holdings, Inc. - Form 10-Q

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller Reporting Company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes  No

APPLICABLE ONLY TO ISSUERS INVOLVED IN BANKRUPTCY  
PROCEEDINGS DURING THE PRECEDING FIVE YEARS:

Indicate by check mark whether the registrant HAS FILED ALL DOCUMENTS AND REPORTS REQUIRED TO BE FILED BY Sections 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court. Yes  No

APPLICABLE ONLY TO CORPORATE ISSUERS

State the number of shares outstanding of each of the issuer's classes of common equity, as of September 30, 2010: 12,082,524.

Table of Contents

TABLE OF CONTENTS

|                                                                                                      | Page |
|------------------------------------------------------------------------------------------------------|------|
| PART I. Financial Information                                                                        |      |
| Item 1. <u>Financial Statements</u>                                                                  | F-1  |
| Item 2. <u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u> | 1    |
| Item 4(T). <u>Controls and Procedures</u>                                                            | 11   |
| PART II. Other Information                                                                           |      |
| Item 5. <u>Other Information</u>                                                                     | 13   |
| Item 6. <u>Exhibits</u>                                                                              | 16   |
| <u>Signatures</u>                                                                                    | 17   |

---

Table of Contents

## PART I FINANCIAL INFORMATION

## Item 1. Financial Statements

ACACIA AUTOMOTIVE, INC.  
CONSOLIDATED BALANCE SHEETS

|                                                                                                                  | September 30,<br>2010<br>(Unaudited) | December 31,<br>2009<br>(Audited) |
|------------------------------------------------------------------------------------------------------------------|--------------------------------------|-----------------------------------|
| <b>ASSETS</b>                                                                                                    |                                      |                                   |
| <b>Current assets</b>                                                                                            |                                      |                                   |
| Cash and cash equivalents                                                                                        | \$ 4,955                             | \$ 21,035                         |
| Certificate of deposit (restricted)                                                                              | 150,005                              | 150,041                           |
| Accounts receivable                                                                                              | 601,743                              | 208,546                           |
| Deposits and prepaid expenses                                                                                    | 21,331                               | 18,006                            |
| Assets of discontinued operations                                                                                | -                                    | 250,416                           |
| Total Current Assets                                                                                             | 778,034                              | 648,044                           |
| Property and equipment, net of accumulated depreciation of \$136,504 and \$92,005 in 2010 and 2009, respectively | 187,986                              | 185,487                           |
| <b>Other assets</b>                                                                                              |                                      |                                   |
| Goodwill                                                                                                         | 427,929                              | 427,929                           |
| Customer list and Non-Compete Agreement, net of amortization of \$387,932 and \$359,884, respectively            | 253,202                              | 281,250                           |
| Total Other Assets                                                                                               | 681,131                              | 709,179                           |
| Total assets                                                                                                     | \$ 1,647,151                         | \$ 1,542,710                      |
| <b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>                                                                      |                                      |                                   |
| <b>Current liabilities</b>                                                                                       |                                      |                                   |
| Cash overdraft                                                                                                   | \$ 221,561                           | \$ 20,400                         |
| Accounts payable                                                                                                 | 434,689                              | 318,814                           |
| Accrued liabilities                                                                                              | 180,628                              | 354,622                           |
| Line of credit                                                                                                   | 159,000                              | 265,000                           |
| Capital lease obligations, current portion                                                                       | 17,844                               | 31,362                            |
| Liabilities of discontinued operations                                                                           | 150,000                              | 240,461                           |
| Total Current Liabilities                                                                                        | 1,163,722                            | 1,230,659                         |
| <b>Noncurrent liabilities</b>                                                                                    |                                      |                                   |
| Capital lease obligations, less current portion                                                                  | 60,372                               | 47,320                            |
| Total liabilities                                                                                                | 1,224,094                            | 1,277,979                         |
| <b>Stockholders' equity</b>                                                                                      |                                      |                                   |
| Common stock, \$0.001 par value, 150,000,000 shares authorized; 12,082,524 shares issued and outstanding.        | 12,082                               | 12,082                            |

Edgar Filing: Acacia Diversified Holdings, Inc. - Form 10-Q

|                                            |              |              |
|--------------------------------------------|--------------|--------------|
| Additional paid-in capital                 | 11,327,348   | 11,277,668   |
| Retained deficit                           | (10,916,373) | (11,025,019) |
| Total stockholders' equity                 | 423,057      | 264,731      |
| Total liabilities and stockholders' equity | \$ 1,647,151 | \$ 1,542,710 |

The accompanying notes are an integral part of these financial statements.

F-1

---

Table of Contents

## ACACIA AUTOMOTIVE

## CONSOLIDATED STATEMENTS OF OPERATIONS

|                                                                               | Three Months Ended |                    | Nine Months Ended   |                     |
|-------------------------------------------------------------------------------|--------------------|--------------------|---------------------|---------------------|
|                                                                               | September 30,      |                    | September 30,       |                     |
|                                                                               | 2010               | 2009               | 2010                | 2009                |
|                                                                               | (Unaudited)        | (Not reviewed)     | (Unaudited)         | (Not reviewed)      |
| Revenues                                                                      |                    |                    |                     |                     |
| Buyers fees                                                                   | \$ 198,583         | \$ 165,822         | \$ 627,148          | \$ 485,496          |
| Sellers fees                                                                  | \$ 141,833         | \$ 137,875         | \$ 432,693          | \$ 430,840          |
| Other income                                                                  | \$ 161,836         | \$ 67,469          | \$ 399,037          | \$ 252,846          |
| <b>Total revenues</b>                                                         | <b>\$ 502,252</b>  | <b>\$ 371,166</b>  | <b>\$ 1,458,878</b> | <b>\$ 1,169,182</b> |
| Costs and expenses                                                            |                    |                    |                     |                     |
| Cost of fees earned                                                           | 88,105             | 61,958             | 214,828             | 155,113             |
| Employee compensation                                                         | 96,090             | 111,308            | 273,579             | 326,374             |
| General and administrative                                                    | 352,084            | 260,116            | 882,484             | 656,148             |
| (Gain) loss on sale of assets                                                 | -                  | (872)              | -                   | 2,638               |
| Depreciation and amortization                                                 | 24,754             | 22,834             | 72,547              | 132,617             |
| <b>Total costs and expenses</b>                                               | <b>561,033</b>     | <b>455,344</b>     | <b>1,443,438</b>    | <b>1,272,890</b>    |
| <b>Operating income (loss) before other income (expense) and income taxes</b> | <b>(58,781)</b>    | <b>(84,178)</b>    | <b>15,440</b>       | <b>(103,708)</b>    |
| Other income (expense)                                                        |                    |                    |                     |                     |
| Interest income                                                               | 23                 | 434                | 136                 | 1,653               |
| Other income                                                                  | -                  | -                  | -                   | -                   |
| Interest expense                                                              | (2,134)            | (2,858)            | (10,201)            | (14,624)            |
| <b>Total other income (expense)</b>                                           | <b>(2,111)</b>     | <b>(2,424)</b>     | <b>(10,065)</b>     | <b>(12,971)</b>     |
| <b>Income (loss) before income taxes</b>                                      | <b>(60,892)</b>    | <b>(86,602)</b>    | <b>5,375</b>        | <b>(116,679)</b>    |
| Income taxes                                                                  | -                  | -                  | -                   | -                   |
| <b>Income (loss) from continuing operations</b>                               | <b>(60,892)</b>    | <b>(86,602)</b>    | <b>5,375</b>        | <b>(116,679)</b>    |
| Gain (loss) on discontinued operations                                        |                    |                    |                     |                     |
| (Loss) on discontinued operations, net                                        | (158,715)          | -                  | (346,784)           | -                   |
| Gain on disposition of discontinued operations                                | 231,163            | -                  | 450,055             | -                   |
| <b>Net gain (loss) from discontinued operations</b>                           | <b>72,448</b>      | <b>-</b>           | <b>103,271</b>      | <b>-</b>            |
| <b>Net income (loss)</b>                                                      | <b>\$ 11,556</b>   | <b>\$ (86,602)</b> | <b>\$ 108,646</b>   | <b>\$ (116,679)</b> |
| Basic and diluted loss per share                                              |                    |                    |                     |                     |
| Income (loss) from continuing operations                                      | \$ 0.00            | \$ (0.01)          | \$ 0.00             | \$ (0.01)           |
| Income (loss) from discontinued operations, net                               | \$ 0.00            | \$ 0.00            | \$ 0.01             | \$ 0.00             |
| <b>Net income (loss)</b>                                                      | <b>\$ 0.00</b>     | <b>\$ (0.01)</b>   | <b>\$ 0.01</b>      | <b>\$ (0.01)</b>    |
| Weighted average number of common shares outstanding                          | 12,082,524         | 12,017,524         | 12,082,524          | 12,017,524          |

The accompanying notes are an integral part of these financial statements.

Table of Contents

## ACACIA AUTOMOTIVE, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS  
NINE MONTHS ENDED SEPTEMBER 30, 2010 AND 2009

|                                                                                         | 2010<br>(Unaudited) | 2009<br>(Not reviewed) |
|-----------------------------------------------------------------------------------------|---------------------|------------------------|
| Cash flows from operating activities                                                    |                     |                        |
| Net Income (loss)                                                                       | \$ 108,646          | \$ (116,679)           |
| Less income (loss) from discontinued operations, net of income taxes                    | (103,271)           | -                      |
| Net income (loss) before discontinued operations                                        | 5,375               | (116,679)              |
| Adjustment to reconcile net loss before discontinued operations to net cash provided by |                     |                        |
| (used in) operating activities:                                                         |                     |                        |
| Depreciation and amortization                                                           | 72,547              | 132,617                |
| Stock options issued for services                                                       | 49,680              | 48,531                 |
| (Gain) loss on disposal of assets                                                       | -                   | 2,638                  |
| Changes in Operating Assets and Liabilities                                             |                     |                        |
| Certificate of Deposit (restricted)                                                     | 36                  | 6,098                  |
| Accounts Receivable                                                                     | (393,197)           | (305,751)              |
| Deposits and prepaid expenses                                                           | (3,325)             | (2,085)                |
| Accounts Payable                                                                        | 115,875             | 320,915                |
| Accrued Liabilities                                                                     | (173,994)           | 17,968                 |
| Shareholder payable                                                                     | -                   | (17,192)               |
| Cash provided by (used in) continuing activities                                        | (327,003)           | 87,060                 |
| Cash provided by (used in) discontinuing activities                                     | 114,352             | -                      |
| Net cash flow provided by (used in) operating activities                                | (212,651)           | 87,060                 |
| Cash flows provided by (used from) investing activities                                 |                     |                        |
| Proceeds from sale of assets                                                            | -                   | 33,077                 |
| Purchase of equipment/leasehold improvements                                            | (21,887)            | (92,169)               |
| Cash provided by (used in) continuing activities                                        | (21,887)            | (59,092)               |
| Cash provided by (used in) discontinuing activities                                     | 105,142             | -                      |
| Net cash provided by (used in) investing activities                                     | 83,255              | (59,092)               |
| Cash flow provided by (used in) financing activities                                    |                     |                        |
| Cash Overdraft                                                                          | 201,161             | -                      |
| Borrowings line of credit and revolver (net)                                            | (106,000)           | (21,000)               |
| Capital lease payments                                                                  | (25,578)            | -                      |
| Cash provided by (used in) continuing activities                                        | 69,583              | (21,000)               |
| Cash provided by (used in) discontinuing activities                                     | 43,733              | -                      |
| Net cash provided by (used in) financing activities                                     | 113,316             | (21,000)               |
| Net increase (decrease) in cash and cash equivalents                                    | (16,080)            | 6,968                  |
| Cash, beginning of period                                                               | 21,035              | 5,586                  |
| Cash, end of period                                                                     | \$ 4,955            | \$ 12,554              |
| Supplemental disclosures of cash flow information                                       |                     |                        |
| Cash paid during period for:                                                            |                     |                        |
| Interest                                                                                | \$ 8,067            | \$ 14,624              |
| Income tax                                                                              | \$ -                | \$ -                   |
| Non-cash investing and financing activities                                             |                     |                        |
| Capital lease obligations                                                               | \$ 25,112           | \$ -                   |

Edgar Filing: Acacia Diversified Holdings, Inc. - Form 10-Q

|                            |          |          |
|----------------------------|----------|----------|
| Equipment                  | (25,112) | -        |
| Additional paid-in capital | -        | 48,531   |
| Legal fees payable         | -        | (930)    |
| Officer salaries payable   | -        | (11,214) |
| Directors fees payable     | -        | (36,387) |
|                            | \$ -     | \$ -     |

The accompanying notes are an integral part of these financial statements.

F-3

---

Table of Contents

ACACIA AUTOMOTIVE, INC.

NOTES TO FINANCIAL STATEMENTS  
September 30, 2010 AND 2009

NOTE 1 – THE COMPANY AND BASIS OF PRESENTATION

Acacia Automotive, Inc. (“Acacia” or the “Company”) is engaged in acquiring and operating automotive auctions, including automobile, truck, equipment, boat, motor home, RV, motorsports, and other related vehicles.

BASIS OF PRESENTATION

The Company has elected to prepare its financial statements in accordance with generally accepted accounting principles (United States) with December 31st as its year-end. The financial statements and notes are representations of the Company’s management who are responsible for their integrity and objectivity.

The accompanying financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America for annual financial information and with the instructions to Form 10-Q and Article 10 of Regulation SX. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete consolidated financial statements. In the opinion of management, all adjustments considered necessary for a full presentation have been included. All such adjustments are of a normal and recurring nature.

CONSOLIDATION

The Company owns 100% of the voting stock of Acacia Augusta Vehicle Auction, Inc. The consolidated financial statements include the accounts of the Company and Acacia Augusta Vehicle Auction, Inc. dba / Augusta Auto Auction, Inc. The Company also owns 100% of the capital stock of Acacia Chattanooga Vehicle Auction, Inc., but no longer operates that auction and has reported those as discontinued operations in its Quarterly Report on form 10-Q for the period ended September 30, 2010.

Following December 26, 2009, the Company’s consolidated financial statements include the accounts of the Company and Acacia Augusta Vehicle Auction, Inc., and has accounted for Acacia Chattanooga Vehicle Auction, Inc. as discontinued operations. All significant intercompany accounts and transactions are eliminated in consolidation. (See Note 2 – Subsequent Events)

NOTE 2 – SUBSEQUENT EVENTS

On July 10, 2007, Acacia Automotive, Inc. (the “Company”) purchased certain assets and liabilities of Augusta Auto Auction, Inc. through its wholly-owned subsidiary Acacia Augusta Vehicle Auction, Inc., which operates an auto auction in the Augusta, Georgia area from a leased facility located in North Augusta, South Carolina. The purchase was accounted for under the purchase method of accounting. The results of operations for the Acacia Augusta Vehicle Auction, Inc. business are included in these financial statements from the date of the purchase. That auction also does business under the trade name Augusta Auto Auction, Inc.

On August 31, 2009, the Company entered into a Management Agreement with the owners of Chattanooga Auto Auction Limited Liability Company, which provided for the Company to temporarily act as manager of that auction for the Seller from September 1, 2009, through December 25, 2009, as it awaited the transfer of ownership of the assets it was to acquire in an Asset Purchase Agreement (see below). Under the terms of the Management Agreement, the Company was to receive 50% of the net profits of the auction for the period. However, the Company soon entered

into a verbal agreement with the Seller that it would forego the right to any portion of the profits during that period if the Seller would agree to fund certain maintenance, repair, and improvements to the physical plant and premises prior to the Company's assumption of a lease thereon. Additionally, there was no accounting of the operations of the Seller for that period provided to the Company until approximately April 1, 2010. The final result was that there were no profits shared.

On August 31, 2009, simultaneous with execution of the Management Agreement, the Company executed documents to purchase certain assets and the related business of Chattanooga Auto Auction Limited Liability Company through the Company's newly-formed wholly-owned subsidiary, Acacia Chattanooga Vehicle Auction, Inc., which then began operating the auction from a leased facility in Chattanooga, Tennessee following the transfer of assets on December 26, 2009. The Company commenced operations at that location under the name of Acacia Chattanooga Vehicle Auction, Inc. dba/Chattanooga Auto Auction, and the acquisition was accounted for under the purchase method of accounting. The results of operations for the Acacia Chattanooga Auto Auction, Inc. business have been included in the Company's financial statements beginning with the Annual Report 10-K for the period ended December 31, 2009.

Table of Contents

In an 8-K filed on September 16, 2009, the Company included copies of all the execution documents and related forms of other documents available as of the execution of the Asset Purchase Agreement and the Management Agreement on August 31, 2009, including anticipated financing agreements, lease, etc., all of which were to be executed at a final closing effective December 26, 2009.

In a subsequent 8-K filed 12-30-09, the Company indicated that the acquisition transaction had closed on the date planned, that the line of credit was increased from \$1.5 to \$2.0 million with the terms of that credit line eased to allow the Company to use the funds for “general corporate purposes in the normal course of business”, and also referenced that the original transaction documents were filed with the 8-K dated 9-16-09. The Company, through an unintentional oversight, failed to include certain changed or updated documents with that 8-K, and has since filed a Current Report on Form 8-K/A dated October 19, 2012 including those updated documents.

The Company ceased to operate the Chattanooga auction effective August 31, 2010, its last full month in management and control of that facility and operation. The Company has accounted for the Chattanooga unit as discontinued operations on its consolidated financial statements in the report for the period ended June 30, 2010. (See Subsequent Events in Part II, Item 5 - Other Information.)

This report supplements information provided in the Quarterly Report on Form 10-Q for the three months and nine months ended September 30, 2009 filed on November 16, 2009 by Acacia Diversified Holdings, Inc. f/k/a Acacia Automotive, Inc. in order to fully disclose information then-disclosed in its financial results and in its Management’s Discussion and Analysis of Financial Condition and Results of Operations. On July 26, 2012, the shareholders of the Company voted to change the name of the Company to Acacia Diversified Holdings, Inc., which name became effective on October 18, 2012.

We have determined that our previously reported financial results for the three months and nine months ended September 30, 2009 were not reviewed by the Company’s auditors. However, by reason of unintentional oversight, the Company erroneously failed to label those results as having been “Not Reviewed”. Notwithstanding the foregoing, the annual financial results of the Company were audited in 2009 and 2008.

Moreover, we have further determined that management's discussion provided in various parts of the quarterly report was not adequate to provide an accurate basis for review.

Accordingly, we have made necessary conforming changes in “Management’s Discussion and Analysis of Financial Condition and Results of Operations” resulting from the correction of these errors, and have labeled certain 2009 financial information as “Not Reviewed” where applicable.

Management does not consider any of the previously reported financial information to have contained material deficiencies. As such, this report does not reflect any material changes to the financial statements of the Company, but is set forth to properly reflect previous periods in which the quarterly financial statements were not reviewed by the Company’s independent auditors.

On September 24, 2010, Ms. Alexis Ann Jacobs (“Jacobs”) caused a complaint to be filed in the United States District Court for the Southern District of Ohio, Eastern Division, naming the Company, its wholly-owned subsidiary Acacia Chattanooga Vehicle Auction, Inc. (“ACVA”) and its Chief Executive Officer, Mr. Steven Sample as defendants (the “Complaint”). Jacobs was principal seller of the assets and business of the Chattanooga Auto Auction Limited Liability Company (e.g., the principal assets of ACVA) and also provided a financing facility to the Company’s ACVA subsidiary. The Complaint alleged that events of default had occurred in regard to ACVA’s obligations pursuant to a certain loan note and related agreements (the “Agreements”), claims the Company vigorously disputed. Failing to gain a timely cognovit judgment as anticipated, Jacobs then on October 7, 2010, withdrew her complaint from the Federal

Court and again attempted to gain a cognovit judgment in the Court of Common Pleas in Franklin County, Columbus, Ohio.

F-5

---

## Table of Contents

On October 12, 2010, the Company filed a Notice of Removal to move the case from the Court of Common Pleas back to the United States District Court and would thereafter answer the Complaint and file counterclaims against Jacobs, alleging, among other things, that Jacobs' declaration of default was wrongful and malicious, having no basis in fact. The Company's case also made other allegations against the parties.

On November 5, 2010, the Company and Mr. Sample filed a complaint in the same United States District Court naming Jacobs, Keith E. Whann, CAA Liquidation, LLC (the renamed entity that sold the Chattanooga assets to the Company), Auction Venture Limited Liability Company (the Lessor of the Chattanooga facility to ACVA), Tony Moorby (an ex-officer and director of the Company who had become employed by Jacobs, and John David Bynum, also an ex-officer and director of the Company who had become employed by Jacobs. The Company sought a declaratory judgment and injunctive relief against the other parties.

The litigants would eventually enter into discussions resulting in a full Settlement Agreement and Release (the "Settlement Agreement") on February 28, 2012, effectively ending the ongoing litigation and disputes between the parties.

As a result of this dispute and the actions surrounding it, the Company deemed its Chattanooga subsidiary's operations to have been effectively discontinued as of August 31, 2010, the last month for which the Company had access to or controlled the Chattanooga auction operation. The financial statements contained herein reflect this determination as the Company booked an income from discontinued operations in Chattanooga of \$72,448 and \$103,271 for the three months and nine months ended September 30, 2010, respectively. (See Part II Other Information – Legal Proceedings)

On October 18, 2012 the Company changed its name from Acacia Automotive, Inc. to Acacia Diversified Holdings, Inc. The Company will continue to file its Annual Reports 10-K through the period ended December 31, 2011, and its Quarterly Reports 10-Q through the period ended September 30, 2012 under the name Acacia Automotive, Inc. However, the Company will file any interim 8-K Current Reports or other special reports under the name Acacia Diversified Holdings, Inc. effective with the changing of its name.

### NOTE 3 – GOING CONCERN

As of December 31, 2009 and in subsequent periods thereto, the Company had limited disposable cash and its revenues were not sufficient to and cannot be projected to cover operating expenses and expansion by the Company. These factors raise substantial doubt as to the ability of the Company to continue as a going concern. Management's plans include attempting to find additional operational auto auctions to buy and raising funds from the public through a stock offering. Management intends to make every effort to identify and develop sources of funds. There is no assurance that Management's plans will be successful.

### Item 1B. Unresolved Staff Comments

The Company is in receipt of a comment letter from the Securities and Exchange Commission dated November 22, 2010 (the "Comment Letter"). The Comment Letter propounded thirty (30) comments relating to the Company's: (a) Annual Report on Form 10-K filed for the period ending December 31, 2009; (b) Quarterly Report on Form 10-Q for the period ending September 30, 2009; (c) Quarterly Report on Form 10-Q for the period ending March 31, 2010; and (d) Current Report on Form 8-K dated October 25, 2010. The first amendment on Form 10-K/A, the first amendment on Form 10-Q/A for the period ended September 30, 2009, the first amendment on Form 10-Q/A for the period ended March 31, 2010, and the first amendment to Form 8-K/A for events first reported on September 16, 2009 were filed on October 19, 2012 in response to the Comment Letter in connection with the presentment of our financial statements, management's discussion and analysis thereof, controls and procedures and information presented on Forms 8-K.



## Table of Contents

### Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

#### Forward-Looking Information

The Management's Discussion and Analysis of Financial Condition and Results of Operations and other sections of the Form 10-Q contain forward-looking information. The forward-looking information involves risks and uncertainties that are based on current expectations, estimates, and projections about the Company's business, management's beliefs and assumptions made by management. Words such as "expects", "anticipates", "intends", "plans", "believes", "seeks", "estimates", and variations of such words and similar expressions are intended to identify such forward-looking information. Therefore, actual outcomes and results may differ materially from what is expressed or forecasted in such forward-looking information due to numerous factors, including, but not limited to, availability of financing for operations, successful performance of internal operations, impact of competition and other risks detailed below as well as those discussed elsewhere in this Form 10-Q and from time to time in the Company's Securities and Exchange Commission filings and reports. In addition, general economic and market conditions and growth rates could affect such statements.

#### General

The Company believes that vehicle auctions have historically shown that units they sell do not generally decline substantially during recession. We believe this is attributable to, among other facts, that in a recession the overall demand for used vehicles does not decline as significantly, or at least declines less than new car production would indicate, because some consumers that would otherwise purchase new vehicles purchase used vehicles, acquiring vehicles traditional purchasers of used vehicles may otherwise forgo or delay. For those reasons and more, we believe that the auto auction industry is more dependent upon the number of actual used vehicles in operation (VIO) in the U.S., rather than upon retail vehicle sales and manufacturing output. However, the recent recession proved to be quite severe, and resulted in a greater loss of units for sale or sold at most auto auctions than in recent recessionary periods, even though our auction operations have actually seen an increase in volumes in most instances.

As is common with other auto auctions, the Company has experienced and expects to continue to experience fluctuations in its quarterly results of operations due to a number of factors, many of which are beyond the Company's control and which are common to the auto auction industry. Generally, the volume of vehicles sold at the Company's auctions is highest in the first and second calendar quarters of each year and slightly lower in the third quarter. Fourth quarter volume of vehicles sold is generally lower than all other quarters. This seasonality is affected by several factors including weather, the timing of used vehicles available for sale from selling customers, holidays, and the seasonality of the retail market for used vehicles, which affect the demand side of the auction industry. Used vehicle auction volumes tend to decline during prolonged periods of winter weather conditions. Among the other factors that have in the past and/or could in the future affect the Company's operating results are: general business conditions; trends in new and used vehicle sales and incentives, including wholesale used vehicle pricing; economic conditions including fuel prices and interest rate fluctuations; trends in the vehicle remarketing industry; the introduction of new competitors; competitive pricing pressures; and costs associated with the acquisition of businesses or technologies. As a result of the above factors, operations are subject to significant variability and uncertainty from quarter to quarter, and revenues and operating expenses related to volume will fluctuate accordingly on a quarterly basis.

#### Background

Acacia Automotive, Inc. ("we", "us", or the "Company") was incorporated in Texas 1984 as "Gibbs Construction, Inc.". In the following years, the Company grew to a full service, national commercial construction company and completed an initial public offering of its Common Stock pursuant to a registration thereof on Form S-1 in January 1996. In April 2000, Gibbs Construction, Inc. sought protection under Chapter 11 of the United States Bankruptcy Code following a

similar filing by the Company's largest client, which led to significant losses on several of the Company's projects.

Prior to filing its petition for relief, Gibbs Construction, Inc. had 4,060,000 shares of Common Stock issued and outstanding. The plan of reorganization filed by the Company placed the then-existing assets of the Company in a liquidating trust, issued 501,000 shares of Common Stock to such trust, and agreed to issue 1,000,000 shares of preferred stock to its primary creditor, Thacker Asset Management, LLC ("TAM"). TAM thereafter agreed to sell to the Company certain existing contracts, furniture, fixtures and equipment in exchange for an additional 4,000,000 shares of Common Stock. Following these transactions, there were 8,561,000 shares of the Company's Common Stock issued and outstanding, the majority of which were held by TAM.

TAM was unsuccessful in its efforts to bring the Company back to profitability and out of bankruptcy. Accordingly, all operating activities ceased in 2002. On June 26, 2006, the bankruptcy trustee requested and received an Order for Final Decree. On October 5, 2006, the 501,000 shares of common stock issued to the Trust were abandoned, returned to the Company, and thereupon cancelled leaving 8,060,000 shares issued and outstanding.

## Table of Contents

### Post Bankruptcy Restructuring

On August 15, 2006, for the sum of \$50,000.00, Steven L. Sample acquired 4,000,000 shares, or 46.7%, of the 8,561,000 issued and outstanding shares of Common Stock of the Company from TAM and its associates. Mr. Sample also satisfied several outstanding liabilities of the company such as those associated with completing the bankruptcy proceedings, professional costs related to the Company's ongoing SEC reporting requirements and expenses associated with recapitalizing the Company. These expenses totaled \$138,862. As consideration for the payment of these expenses, by Mr. Sample, the Company agreed to effect a one for eight reverse stock split, to issue to Mr. Sample an additional 8,117,500 shares of Common stock and 500,000 shares of Preferred stock. For the assistance of Harry K. Myers, Jr., a principal of Baker #1, Ltd., the entity owning TAM, the registrant agreed to issue to him 25,000 shares of preferred stock and 450,000 shares of Common Stock.

In order to further restructure and rehabilitate the Company and to satisfy its obligations to Mr. Sample, its board of directors recommended that its stockholders amend the Articles of Incorporation to effect a one for eight reverse stock split, thereby increasing the number of authorized shares of Common Stock to 150,000,000. The board of directors also recommended the authorization of a series of preferred stock. On February 1, 2007, the Company's shareholders approved these actions and also approved changing the Company's name from Gibbs Construction, Inc. to Acacia Automotive, Inc. These amendments to the Company's Articles of Incorporation were effective February 20, 2007.

Immediately following the approval of these amendments, the Company adopted a stock option plan, which was ratified by the Company's stockholders in November 2007; reserving 1,000,000 shares thereunder. In February 2007, pursuant to such plan, the directors granted 500,000 shares of its Common Stock to Mr. Tony Moorby, who was at that time the Company's president, as well as 15,000 total shares to two then-officers. With these grants, the exercise of warrants to purchase 250,000 shares of Common Stock, the exchange of the preferred stock issued to a creditor in the bankruptcy proceeding for 100,000 shares of Common Stock, and the payment of 10,000 shares of Common Stock to a consultant, there were 11,997,524 shares of Common Stock issued and outstanding on March 31, 2008.

### History of Augusta Auto Auction

Augusta Auto Auction, Inc. (the "Augusta Auction") is an automotive auction located in North Augusta, South Carolina, part of the Augusta, Georgia, metropolitan area, and is located three miles from the center of that city. The auction was originally formed and operated for many years in its present location as Hilltop Auto Auction. In 2002 the group of three individuals from which the registrant purchased the auction formed Augusta Auto Auction, Inc. after acquiring it from the owners of Hilltop Auto Auction. The auction consists of a leased premises of approximately five acres, as well as additional rented property directly across the street. The main facility consists of a two-lane auction arena housed within one of two administration buildings that total some 4,900 square feet, three smaller outbuildings consisting of two storage buildings, and a security building also utilized for vehicle check-in and check-out. The additional rented property provides several additional acres of parking and an indoor storage facility of some 1,800 square feet.

In July, 2007, the Company caused to be formed Acacia Augusta Vehicle Auction, Inc., a South Carolina corporation and wholly-owned subsidiary of the Company. ("AAVA"). AAVA was formed for the sole purposes of acquiring the assets of the Augusta Auto Auction, which it did in July of 2007 and operating the auction.

### History of Chattanooga Auto Auction

Chattanooga Auto Auction (the "Chattanooga Auction") is an automotive auction located in Chattanooga, Tennessee, and is located approximately ten miles from the center of that city. The auction was originally formed January 24, 1996, as Chattanooga Auto Auction Limited Liability Company and thereafter continued to operate in its present

location until its assets were acquired by the Company on December 26, 2009. The property consists of approximately 56 acres, mostly paved, with a two-lane test-driving track and several buildings. The auction arena consists of eight lanes attached to a 25,730 square foot office complex. The property includes a three lane, 14,800 square foot reconditioning center, a 4,500 square foot vehicle check-in center, and a 3,130 square foot five-bay structure intended for use as a mechanical repair center.

In August of 2009, the Company caused to be formed Acacia Chattanooga Vehicle Auction, Inc. a Tennessee corporation and wholly-owned subsidiary of the Company (“ACVA”). ACVA was formed for the sole purpose of acquiring the assets of the Chattanooga Auto Auction Limited Liability Company in December of 2009 and operating the auction.

The Company ceased to operate the Chattanooga auction effective August 31, 2010, its last full month in management and control of that facility and operation. The Company has accounted for the Chattanooga unit as discontinued operations on its consolidated financial statements in the report for the period ended June 30, 2010. (See Subsequent Events in Part II, Item 5 - Other Information.)

## Table of Contents

### Business of the Auctions

Both the Company's auctions have primarily sold "whole car" vehicles for automotive dealers and commercial concerns, and to a lesser extent, salvage units. Whole car units are usually units in reasonable repair and operating condition, while salvage units are generally, but not always, inoperative and often have been damaged or devalued as a result of exposure to water, fire, collision, theft or otherwise. The Chattanooga Auction also sold vehicles and equipment under a contract with the U.S. Government's General Services Administration (GSA), primarily offering off-lease vehicles and other units for the GSA and other governmental agencies, and the Augusta Auction sells vehicles and equipment under a contract with the United States Marshals Service. Dealers and other qualified buyers attend the weekly auctions and bid on offered units. The highest bidder owns the vehicle, subject to any limiting reserve prices established by the owner/seller of the unit(s). In most cases, the buyers and sellers of the units pick up and deliver them to the Auction property, but the Auction does provide transport services, generally for a fee. Both the Company's auctions also held Friday night auctions that have been open to public bidders in addition to dealers, and occasionally held special sales at other times.

The Auctions generate revenues from fees for services, including buyer fees, seller fees, transportation fees, title fees, draft and floor plan fees, reconditioning fees, and more. Augusta Auto Auction primarily relies upon the efforts of its management for sales and marketing, but anticipates adding additional personnel in the future to increase the scope of those operations. Chattanooga Auto Auction, the larger of the two, had a separate sales and marketing staff, while both auctions also marketed their activities through their employees and commercial media.

### Discussion Regarding Costs of Fees Earned (Same as Costs of Goods Sold)

As is generally consistent with reporting in the auto auction industry, the Company has designed its financial reports to reflect total revenues less costs of goods sold (indicated in our financial reports as "Costs of Fees Earned") in arriving at a gross profit before deducting operating expenses. Costs of goods sold include costs similar to "production costs", including certain subscribed services; auctioneers and ringmen; contract labor for lot operations, sale day drivers, arbitration mechanic, and related; outside services, contract towing, pick up and delivery, rental of vehicles or equipment to facilitate operations, direct tools/supplies/equipment; fuel expense for auction operations; maintenance – lot operations; parts for lot operations (as with maintenance); vehicle lot damage associated with lot operations; vehicle transport damage; keys as outside services; title expense; shipping costs, bailout/reimbursement (contra) expenses – particularly relating to repossession operations; marshaling expense; gain/loss on sale of inherited vehicles; ASI costs of good sold – being an account ASI utilized in the software operating system for certain applications (not material); buyer's fee policy allowance; sellers fee policy allowance; vehicles return allowances; miscellaneous operations expenses. The Company's independent accounts have elected to class the salaries, including related taxes, of auction production personnel to the "salary" classification in its consolidated reports.

### Discussion Regarding Management Fees

In the same fashion as some other auction holding companies, the Company generates revenues to pay its corporate overhead by assessing fees to its operating units. These fees, designated as intercompany charges or management fees "Management Fees"), appear as "Other Expense" below the Net Ordinary Income line on the operating units' income statements and as income on the parent company's operating statements. In 2009, the Company's Augusta Auto Auction unit, its only operating unit for all but 6 days of that year, generated a profit of \$271,892 before assessment of Management Fees at \$25,000 per month, and sustaining a net loss of \$28,108 for the year after the assessment of Management Fees. In 2010, the Company has continued assessing the same \$25,000 monthly Management Fee to its Augusta auction, anticipating an additional assessment at year end, and effective January 1st also allocated a \$35,000 monthly Management Fee to its Chattanooga auction unit assessed as its share of the Company's corporate overhead with an anticipation of additional year-end assessments based on performance. As a result of the newness of the

Chattanooga operation, the complexities of combining that material acquisition into our management system and consolidated financial reporting, and a final decision on the Management Fee allocation for that auction not being announced to the Company's management until February 2010, the Management Fee for the Chattanooga auction was not yet reflected as an operating expense in that auction's financial reports for Q1 of 2010, although amounts were allocated as Intercompany Charges on the Company's balance sheet during that period with provisions to report those costs going forward. Management Fees, as with all significant intercompany accounts and transactions, are eliminated in consolidation.

#### Discussion Regarding the Company's First and Second Acquired Operating Entities

With the acquisition of the Augusta Auto Auction on July 10, 2007, the Company commenced operations and conducted its first weekly auction on July 11, 2007, under Acacia's management. The Company's only operations were those operations until the acquisition of its second automotive auction in late December of 2009. With the acquisition of Chattanooga Auto Auction on December 26, 2009, the Company had two operating entities. The Chattanooga auction conducted its first weekly auction under the Company's ownership on December 29th. In subsequent events, the Company ceased to operate the Chattanooga auction effective August 31, 2010, its last full month in management and control of that facility and operation. The Company has accounted for the Chattanooga unit as discontinued operations on its consolidated financial statements. (See Subsequent Events in Part II, Item 5 - Other Information.)

Table of Contents

## Operating Results of the Auctions

Three months ended September 30, 2010

## Augusta Auto Auction

The Augusta auction incurred, before \$75,000 in Management Fees to the parent, a profit of \$133,573 on revenues of \$492,756 for the three months ended September 30, 2010, compared to a profit of \$77,698 on revenues of \$371,166 in the same period of 2009. Of that Q3 2010 profit, \$21,309 represented non-cash expenses for amortization and depreciation and \$1,605 represented interest charges, compared to \$19,784 in non-cash expenses for amortization and depreciation and \$2,078 in interest charges during the same period of 2009, leaving the auction in a positive cash-flow posture for both periods. Similar to other auction holding companies, the Company assesses Intercompany Charges in the form of Management Fees to its auction operating units to cover the operating overheads of the parent Company. The Management Fee allocation at the Augusta auction unit was set at \$25,000 per month in 2010 and 2009. After Management Fees payable to the parent Company during the period, the auction earned a net profit of \$58,573 and \$2,698 in 2010 and 2009, respectively.

The third quarter of 2010 saw a 1.0% decrease in the number of vehicles sold on a decrease of 9.0% in units offered at our Augusta Auto Auction operation versus the same period in the previous year.

| Augusta Auto Auction Q3                     | 2010   |
|---------------------------------------------|--------|
| Units Offered vs. Q3 2009                   | -9.0%  |
| Units Sold vs. Q3 2009                      | -1.0%  |
| Conversion Rate Q3 2009                     | 49.6%  |
| Conversion Rate Q3 2010                     | 50.6%  |
|                                             | 15.7%  |
| Change in Buy/Sell Fee Revenues vs. Q3 2009 | +12.1% |

The Augusta auction continued to display strong growth under Acacia's management versus previous periods. This was evidenced by the auction's Q3 2010 year-over-year buy/see fee revenue increase of 12.1% and overall revenue increase of 32.7% versus Q3 2009 after seeing 4.2% lower overall revenues in Q3 2009 versus 2008.

## Chattanooga Auto Auction

The Company discontinued operations at its Chattanooga auction location after August 31, 2010, reporting a loss of \$14,667 on those discontinued operations in the three months ended June 30, 2010. The Chattanooga auction did not have comparative financial results to 2009 performance under prior ownership.

The Company has accounted for the Chattanooga unit as discontinued operations on its consolidated financial statements in the report for the period ended June 30, 2010. In September and October of 2010 the Company entered into litigation with the parties related to the sale of the Chattanooga Auction. (See Part II, Item 5 - Other Information - Subsequent Events and Part II Other Information - Legal Proceedings.)

## The Parent Company

We incur expenses at the corporate level in addition to those incurred at our auto auction operations. In the three month period ended September 30, 2010, compensation for our executives was about \$15,000 per month and our option and warrant expense averaged about \$5,500 per month. For the same three-month period the Company incurred a net ordinary loss of approximately \$161,700 before booking Intercompany Charges of \$75,000 as

Management Fees from its Augusta operating unit, resulting in a net loss of approximately \$86,700 for the period before adjustments for discontinued operations of \$315,000. Corporate G&A expenses accounted for approximately \$161,000 in the third quarter of 2010, and included a charge for legal and accounting fees of approximately \$46,400, office rental costs of approximately \$2,700, non-cash warrant and option expenses of approximately \$16,560, and other traditional expenses for travel, convention expenses, equipment lease/rental, postage and shipping, printing and office supplies, insurance, telephone, light heat power, etc.

Table of Contents

## Consolidated Operations

The Company's consolidated Q3 net profit of \$11,556 compares to a consolidated net loss in the same period of 2009 of \$86,602. Of this consolidated Q3 2010 net profit, \$60,892 represented a loss from continuing operations, \$2,993 represented income from discontinued operations in Chattanooga. \$24,754 represented non-cash expenses for amortization and depreciation during the period, and \$2,111 represented net interest charges. The Company also incurred a charge of \$16,560 in non-cash operating expenses for options and warrants issued under the Company's 2007 Stock Incentive Plan as the ratable expense for Q3 2010 resulting from options and warrants issued in 2006, 2007, 2008, and 2009 but not yet fully vested or exercised. (See Liquidity and Need for Additional Capital.)

Nine months ended September 30, 2010

## Augusta Auto Auction

The Augusta auction incurred, before Intercompany Charges, a profit of \$441,187 on revenues of \$1,457,377 for the nine months ended September 30, 2010, compared to a profit of \$297,017 on revenues of \$1,168,582 in the same period of 2009. Of that 2010 profit, \$63,394 represented non-cash expenses for amortization and depreciation and \$7,523 represented interest charges, compared to \$126,291 in non-cash expenses for amortization and depreciation and \$12,213 in interest charges during the same period of 2009, leaving the auction in a positive cash-flow posture for both periods. Similar to other auction holding companies, the Company assesses Intercompany Charges in the form of Management Fees to its auction operating units to cover the operating overheads of the parent Company. The Management Fee allocation at the Augusta auction unit was set at \$25,000 per month in 2010 and 2009, and may be increased or decreased as the Company sees fit. After a deduction for the \$225,000 in Management Fees payable to the parent Company during the period, the auction earned a profit of \$216,187 and \$72,017 in 2010 and 2009, respectively.

The first nine months of 2010 saw a 14.2% increase in the number of vehicles sold and an increase of 6.2% in units offered at our Augusta Auto Auction operation versus the same period in the previous year. This signaled an improvement in the conversion rate in the 2010 period, being the percentage of units sold versus those offered for sale, or one measure of efficiency in the selling process. The Company considered these increases as a noteworthy result in consideration of the fact that it has consistently shown growth before, during, and after the recessionary periods and compared to all years since the Company acquired the auction in July of 2007. In addition, the auction registered a year-over-year increase in buy/sell fee revenues of 15.7% and an increase in overall revenues of 24.7% for the first nine months of 2010 versus the same period in 2009.

| Augusta Auto Auction Nine Months                     | 2010    |
|------------------------------------------------------|---------|
| Units Offered vs. Nine Months 2009                   | +6.2%   |
| Units Sold vs. Nine Months 2009                      | +14.2%  |
| Conversion Rate Nine Months 2009                     | 50.0%   |
| Conversion Rate Nine Months 2010                     | 53.9%   |
| Change in Buy/Sell Fee Revenues vs. Nine months 2009 | +15.7%% |

## Chattanooga Auto Auction

The Company discontinued operations at its Chattanooga auction location after August 31, 2010, reporting a loss of \$14,667 on those discontinued operations in the three months ended June 30, 2010. The Chattanooga auction did not have comparative financial results to 2009 performance under prior ownership.

The Company has accounted for the Chattanooga unit as discontinued operations on its consolidated financial statements in the report for the period ended June 30, 2010. In September and October of 2010 the Company entered into litigation with the parties related to the sale of the Chattanooga Auction. (See Part II, Item 5 - Other Information – Subsequent Events and Part II Other Information – Legal Proceedings.)

#### The Parent Company

The Company incurs expenses at the corporate level in addition to those incurred at our auto auction operations. Those expenses for the nine month period ended September 30, 2010, included compensation for our executives at about \$13,200 per month and our option and warrant expense averaged about \$5,500 per month. For the nine-month period we incurred a loss of approximately \$399,000 before accounting for Management Fees of \$225,000 generated from the Company's operating units, and a net gain of approximately \$546,000 on discontinued operations, resulting in a net income of approximately \$147,000 for the period. Corporate G&A expenses were approximately \$399,000, and included a charge for legal and accounting fees of approximately \$68,500, office rental costs of approximately \$6,500, non-cash warrant and option expenses of approximately \$50,000, and other traditional expenses for travel, convention expenses, equipment lease/rental, postage and shipping, printing and office supplies, insurance, telephone, light heat power, etc.

Table of Contents

## Consolidated Operations

Consolidated revenues for the three months and nine months ended September 30, 2010, were up \$131,086, or 35.3% and \$289,696, or 24.8%, respectively, versus the same periods in 2009, as a result of increased revenue performance at the Company's Augusta auction location.

Total consolidated operating expenses for the three months ended September 30, 2010, versus the same period in 2009 increased \$104,817 or 22.9%, and increased \$173,186 or 13.6% versus the same nine month period in 2009, generally reflecting the higher costs associated with the higher revenues in the period which more than offset the increased expenses.

The Company posted a loss from continuing operations of \$60,892 for the three-month period, while generating an income of \$5,375 for the nine month period.. The Company discontinued operations at its Chattanooga auction location after August 31, 2010, booking a net income of \$72,448 and \$103,271 on those discontinued operations in the three months and nine months ended September 30, 2010, respectively.

This resulted in the Company registering a consolidated net income after discontinued operations of \$11,556 for the three months and \$108,646 for the nine months ended September 30, 2010.

## Discussion Regarding EBITDA

EBITDA, as presented herein, is a supplemental measure of our performance that is not required by, or presented in accordance with, generally accepted accounting principles in the United States, or GAAP. It is not a measurement of our financial performance under GAAP and should not be considered as a substitute for net income (loss) or any other performance measures derived in accordance with GAAP or as substitutes for cash flow from operating activities as measures of our liquidity.

EBITDA is defined as net income (loss), plus interest expense net of interest income, depreciation and amortization. Use of EBITDA as an evaluation of performance is commonly used in the vehicle auction industry.

Management uses the EBITDA measure to evaluate our performance, to compare our performance to major auction companies' results, and to evaluate our results relative to certain incentive compensation targets. Management believes its inclusion is appropriate to provide additional information to investors for purposes of comparisons. EBITDA has limitations as analytical tools, and should not be considered in isolation, or as a substitute for analysis of the results as reported under GAAP. While the Company believes that EBITDA may be a useful tool in comparing the financial performance of the Company to other auto auction entities, it may not be comparable to similarly titled measures reported by other companies.

The following tables represent the consolidated EBITDA results for the Company during the third quarter of 2010 and 2009 and for nine months 2010 and 2009:

|                    | Quarter Ended                   |                                       |
|--------------------|---------------------------------|---------------------------------------|
|                    | Sept 30,<br>2010<br>(Unaudited) | Sept 30,<br>2009<br>(Not<br>reviewed) |
| Net income (loss)* | \$ 11,556                       | \$ (86,602 )                          |
| Add back:          |                                 |                                       |
| Income taxes       | -                               | -                                     |

Edgar Filing: Acacia Diversified Holdings, Inc. - Form 10-Q

|                                          |                  |                    |
|------------------------------------------|------------------|--------------------|
| Interest expense, net of interest income | 2,111            | 10,065             |
| Depreciation and amortization**          | 41,314           | 39,011             |
| <b>EBITDA</b>                            | <b>\$ 54,981</b> | <b>\$ (37,526)</b> |

\* Reflects Q3 2010 loss of \$60,892 from continuing operations and benefit of \$72,448 from discontinued operations in 2010, for a net income of \$11,556 for the quarter.

\*\* In addition to the non-cash depreciation and amortization of \$24,574 and \$22,834 in Q3 2010 and 2009, respectively, we included amounts accrued for the issuance of stock options and warrants of \$16,560 in Q3 of 2010 and \$16,177 in Q3 2009.

Table of Contents

|                                          | Nine Months Ended               |                                       |
|------------------------------------------|---------------------------------|---------------------------------------|
|                                          | Sept 30,<br>2010<br>(Unaudited) | Sept 30,<br>2009<br>(Not<br>Reviewed) |
| Net income (loss)*                       | \$ 5,375                        | \$ (116,679)                          |
| Add back:                                |                                 |                                       |
| Income taxes                             | -                               | -                                     |
| Interest expense, net of interest income | 10,065                          | 12,971                                |
| Depreciation and amortization**          | 122,227                         | 181,148                               |
| <b>EBITDA</b>                            | <b>\$ 137,667</b>               | <b>\$ 77,440</b>                      |

\* Reflects 2010 nine month income of \$5,375 from continuing operations and benefit of \$103,271 from discontinued operations in 2010, for a net income of \$108,646 for the period.

\*\* In addition to the non-cash depreciation and amortization of \$72,547 and \$132,617 for the nine months ended September 30, 2010 and 2009, respectively, we included amounts accrued for the issuance of stock options and warrants of \$49,680 in 2010 and \$48,531 in 2009.

## Discontinued Operations

The Company discontinued operations at its Chattanooga auction location after August 31, 2010. For the nine months ended September 30, 2010, the Company booked a loss from discontinued operations of \$346,784 while gaining \$450,055 on disposal of the Chattanooga subsidiary, for a net gain of reporting a loss of \$346,784 on those discontinued operations and a gain of \$450,055 on disposal of the Chattanooga subsidiary for a net income from discontinued operation of \$103,271. After income of \$5,375 from continuing operations in the period, the company registered a net income of \$108,646.

For the three months ended September 30, 2010, the Company booked a loss from discontinued operations of \$158,715 while gaining \$231,163 on disposal of the Chattanooga subsidiary, for a net gain of \$72,448 on discontinued operations. After a loss of \$60,892 from continuing operations in the period, the company registered a net income of \$11,556. (See Subsequent Events in Part II, Item 5 - Other Information)

## Liquidity and Need for Additional Capital

Our accountants have issued, in their audit report, a going concern opinion reflecting a conclusion that our operations may not be able to continue because of a lack of financial resources.

As of September 30, 2010, the Company has accrued salaries of \$110,488 owed to Mr. Steven Sample, the Company's Chief Executive Officer and Mr. Tony Moorby, the Company's President and Chief Operating Officer until December 31, 2008. This deferral of salary is not pursuant to any employment agreement but reflects an accommodation by Messrs. Sample and Moorby to assist the Company's cash management in 2008 and beyond, and Mr. Sample's accommodations for periods thereafter. The Company does not anticipate paying either Mr. Moorby or Mr. Sample in either Preferred or Common stock.

We look for our operations to provide the cash flow and cash return on our investment. On an operating basis, the Company was cash flow positive as a consolidated entity in 2009, largely as a result of the operating and financial

successes at its Augusta auction unit. The Company's cash in fiscal year 2009 was provided mostly by Management Fee revenues assessed to the Company's Augusta Auto Auction operations as Intercompany Charges. The Company's cash in fiscal year 2010 has been provided mostly by Management Fee revenues assessed to the Company's Augusta and Chattanooga Auto Auction operations as Intercompany Charges. In both years the Company's cash was augmented to a lesser extent by personal financial support from the Company's CEO.

The Company had a negative consolidated operating cash flow of \$212,651 and a negative consolidated net cash flow of \$16,080 in the first nine months of 2010, primarily as a result of the cash used in activities at the Chattanooga auction. By contrast, the Company had a positive operating cash flow of \$80,962 and a positive net cash flow of \$6,968 as a consolidated entity in the same period of 2009. The Company has not attempted to secure capital through a private placement of its securities in 2009 or 2010.

Table of Contents

Presently, the cash flow from our Augusta operation is sufficient to support those operations in the current manner, but is not sufficient to also support the Parent Company's operations on a consolidated basis. The Company's Chattanooga auction, having been reported as discontinued as of the end of the second quarter of 2010, was not yet brought to profitability and was not operating on a cash flow positive basis at the time of its operations being discontinued at August 31, 2010. As a result of the insufficient cash flow at our Augusta operations coupled with the negative cash flow posture at Chattanooga, our operations in 2010 have not provided sufficient cash flow to cover our corporate activity on an ongoing basis, essentially our executive officers, administrative overhead, and overhead that includes the cost of lawyers and accountants required to be publicly held. As a result of these deficiencies, the Company will have to reduce overheads, increase cash flow from operations, and/or acquire additional operations sufficient to cover the costs of overheads. The Company's Augusta auction operations continue to flourish and grow, but ultimately could outgrow the present facility. As a result, the Company could ultimately be forced to seek a larger operating facility for its auction operations there, since the auction cannot accommodate the desired growth at its present location. (See Subsequent Events in Part II, Item 5 - Other Information.)

The Augusta Auction's liquidity in 2010 has been and will continue to be supplemented by a \$300,000 line of credit negotiated with Wachovia Bank, N.A. secured against the assets of its North Augusta location. Since 2007, the Company has maintained a certificate of deposit with the Wachovia Bank of just over \$150,000, also partially guaranteeing its \$300,000 line of credit for use at the Augusta auction. The bank charged an interest rate on the line of credit equal to prime plus 1.5% on the outstanding daily balance, if any, and the greater of (i) the sum of the one month London interbank offered rate (Libor) as published in the Wall Street Journal (or such other publication or reference reasonably selected by the Lender if no longer published in the Wall Street Journal) plus 500 basis points, or (ii) 6.0% percent per annum, respectively. The Augusta line of credit was secured by all of the Company's deposits at the bank and a certificate of deposit with Wachovia Bank of just over \$150,000 which the Company has held since mid-2007.

The Company's Augusta auction operations continue to expand, and ultimately could outgrow the present physical facility. As a result, the Company may ultimately be forced to seek a larger operating facility for its auction operations there, since the auction cannot accommodate the desired growth at its present location. In that event, the Company will be faced with a need to raise additional capital to fund the changes. There is no assurance the Company will be able to secure the funding to do so, and as a result its future growth may ultimately be limited.

Additionally, a \$2,000,000 line of credit was negotiated by the seller of the Chattanooga Auction to be maintained at First Volunteer Bank in Chattanooga for general corporate purposes in the normal course of business by the Company's subsidiary there. That line of credit is secured by the assets of the Chattanooga auction, all of which are further guaranteed by the parent Company and personally guaranteed by the Company's CEO, Mr. Sample. The lender, Alexis Ann Jacobs, placed \$2,000,000 cash on deposit with the bank that was linked to the Company's Chattanooga auction CAR account, such that any cash requirement created on a day-to-day basis would be automatically covered through drafts on the lender's account at that same bank. Financing at the Augusta unit has been satisfactory, and liquidity there has been sufficient to maintain the auction's operations. In 2009, the Company only operated the Chattanooga operation for the last five days of that year, utilizing its credit resources at that location very little. The Company's Chattanooga subsidiary utilized the credit line at that location to a fuller extent in the normal course of business until discontinuing operations at that location as of the end of August 2010. That credit line was originally set to mature December 28, 2012, but the Company discontinued access to that line at the time it discontinued operations at the Chattanooga subsidiary.

The lender at Chattanooga charged an interest rate equal to: (a) prime plus 1.5% on the outstanding daily balance, if any; and, (b) the greater of (i) the sum of the one month London interbank offered rate (Libor) as published in the Wall Street Journal (or such other publication or reference reasonably selected by the Lender if no longer published in the Wall Street Journal) plus 500 basis points, or (ii) 6.0% percent per annum, respectively.

The line of credit in Augusta, and previously the line of credit at Chattanooga, have been designated for general corporate purposes in the normal course of business and to cover some instances in which payments to dealers selling vehicles through the auctions are advanced prior to collecting payments from buyers of those vehicles. The Company anticipates increasing the size of the available line of credit at Augusta as its sales volume grows.

A given auction will generate large receivables and payables, only part of which are revenues and expenses, representing receivables from purchasers of vehicles and payables to those selling vehicles. Settling these transactions, not only the cash transfers between buyers and sellers but administrative tasks such as title clearance on vehicles, typically takes only a few days after an auction. Frequently, when we hold an auction near the end of a quarter, those unsettled receivables and payables will appear large relative to revenues, particularly since these receivables and payables reflect not only our fees but the sales price of the vehicles, and may distort the ratio of receivables or payables to revenues, causing them to appear exceptionally large. We must have readily available funds to facilitate these transactions, funds which are made available to our operations in the forms of the lines of credit.

Frequently, when we hold an auction near the end of a quarter, our receivables and payables will be large compared to prior quarters or as a ratio of receivables or payables to revenues for that quarter and the other quarters. Receivables and payables for a given auction are substantially liquidated within days of the auction process, but may appear distorted when occurring close to the end of an accounting period.

## Table of Contents

The Company is currently engaged in its plan of seeking to grow through acquisitions as well as through organic means. To succeed in doing so, the Company will require additional capital, which the Company anticipates raising through sale of Common stock, but does not yet have a planned date or target amount for any such offering. Moreover, no guarantees can be made that, should the Company endeavor to sell its equity securities, that it will be able to find willing buyers for such securities. The Company did not attempt to secure capital through a private placement of its securities in 2009 or 2010, and does not expect to secure capital in that manner in the short term in 2010.

### Cash Balances vs. Overdraft

Our auction operating software accounts for checks made as payments to sellers when written, even though they may not actually be issued to the seller, since the sellers are only paid when they actually present to the auction a title representing ownership in any unit sold. Additionally, the auction's rules require that it cannot deposit the buyer's funds until we provide him with the title representing ownership of the vehicle purchased. The auction's operating software systems, however, creates a check or "virtual" check immediately following sale of the unit, whether or not the title has been presented. Hence, the operating and thus, financial, systems reflect that we have issued a large number of checks to sellers when, in fact, they have not been "virtually" issued but not "physically" issued, resulting in the appearance that funds have been paid to sellers when in fact they have not yet been released. In those instances where the title has not yet been presented, and where the system indicates that a virtual payment has been made to the seller, the auction is also not allowed to deposit the purchase payment funds from the buyers of those units, thus making it appear as if our CAR (checking) account is overdrafted – when in truth and in fact it is not. Thus, we actually have a cash balance in the CAR account, generally quite significantly so, while the system shows as a virtual concept that the account is overdrafted. The software system used by the auction is provided by Auction Software, Inc. (ASI), is in use by nearly 100 independent auctions, is the most common independent auction operating system in use in the United States, and is in the opinion of the auction the best software available for its use at this time. One must therefore review the balance sheet to see the number of ASI payables and ASI receivables AND look at the cash in the account to determine the actual status. That appears to be common practice in this type of industry. The actual overdraft account as depicted in the Company's financial reporting is reviewed by the Company's auditors to reflect outstanding checks to the Car Account and insure accurate reporting.

The Company will require substantial infusions of working capital or a substantial increase in the cash generated from operations to insure long-term liquidity, and may seek infusions of working capital in the form of equity or debt capital, the former being considered most beneficial to the Company, but not being considered a viable option in the economic conditions the country has experienced in 2009 and 2008 and continuing into the current period. There is no assurance the Company will be successful in obtaining infusions of capital to fuel its growth. As such, the Company determined to concentrate on maximizing its opportunities at the auction level, and has heretofore been quite successful in that effort. The Company's corporate overhead is not large by industry standards, but it nonetheless will require additional revenues or reduced overheads, or both, so achieve liquidity in the absence of additional injections of capital.

### Accounts Receivable

Trade receivables include the unremitted purchase price of vehicles purchased by third parties at the auctions, fees to be collected from those buyers and amounts for services provided by the Company related to certain consigned vehicles in our possession. These amounts due with respect to the consigned vehicles are generally deducted in settlement from the sales proceeds upon the eventual auction or other disposition of the related vehicles. Due to the nature of the Company's business, substantially all trade and finance receivables are due from vehicle dealers, salvage buyers and sellers, institutional, commercial and fleet sellers, governmental agencies, and insurance companies. The Company has possession of vehicles or vehicle titles collateralizing a significant portion of the trade and finance

receivables. The Company's receivables are recorded when billed, advanced, or accrued and represent claims against third parties that will be settled in cash. The carrying value of the Company's receivables, net of allowance for doubtful accounts, represents their estimated net realizable value. The Company estimates its allowance for doubtful accounts based on historical collection trends, the age of the outstanding receivables and existing economic conditions. The allowances for doubtful accounts and credit losses are based on management's evaluation of the receivables portfolio under current conditions, the volume of the portfolio, overall portfolio credit quality, review of specific collection issues and such other factors which in management's judgment deserve recognition in estimating losses.

#### Revenue Recognition

Revenues and the related costs are recognized when the services are performed. Auction fees from sellers and buyers are recognized upon the sale of the vehicle through the auction process. Most of the vehicles that are sold at auction are consigned to the Company by the seller and held at the Company's facilities. The Company does not take title to these consigned vehicles and recognizes revenue when a service is performed as requested by the owner of the vehicle. The Company does not record the gross selling price of the consigned vehicles sold at auction as revenue. Instead, the Company records only its auction fees as revenue because it does not take title to the consigned vehicles, has no influence on the vehicle auction selling price agreed to by the seller and buyer at the auction and the fees that the Company receives for its services are generally based on fixed amounts according to locally-published rate schedules. Revenues from reconditioning, logistics, vehicle inspection and certification, titling, and salvage recovery services are generally recognized when the services are performed.

## Table of Contents

### Discussion Regarding Allowance for Bad Debts.

The Company estimates its allowance for doubtful accounts based on historical collection trends, the age of the outstanding receivables and existing economic conditions. The allowances for doubtful accounts and credit losses are based on management's evaluation of the receivables portfolio under current conditions, the volume of the portfolio, overall portfolio credit quality, review of specific collection issues and such other factors which in management's judgment deserve recognition in estimating losses. At December 31, 2009 and 2008, there was no allowance for doubtful accounts required based on management's estimates. For the years ended December 31, 2009 and 2008, the Company recognized uncollectable accounts receivable losses of \$25,685 and \$27,370, respectively.

The Company's significant charge-offs have generally been those temporarily required to be made by its independent accountants due to aging, all of which have been subsequently recovered, resulting in no loss to the Company or its subsidiaries. There were two charge-offs in 2009 totaling \$16,090. Those amounts were charged off at the direction of our independent accounting firm due to their aging, but both were subsequently collected, again resulting in no loss to the Company. The Company has not had any significant charge-offs in 2010.

### Financing of Planned Expansions and Other Expenditures

The Company is currently engaged in its plan of seeking to grow through acquisitions as well as through organic means. To succeed in doing so, the Company will require additional capital, anticipated to be through sale of Common Stock. There is no assurance the Company will be successful in its attempts to locate and secure additional funding or additional acquisitions.

### Financial Reporting and New Technologies

As part of its commitment to improve our operating and reporting efficiencies, the Company engaged a certified public accountant and is currently seeking a Controller and/or Chief Financial Officer.

### Contemplated Business

The Company's primary objective is to identify and acquire going concerns in the automotive auction industry, with a focus on whole vehicle automobiles and light trucks. Whole vehicle refers to vehicles that are generally in good repair, are roadworthy, and operate under their own power as opposed to salvage units, being damaged vehicles that are often considered total losses for insurance or business purposes. In addition, the Company believes that if the acquired auction or auctions do not service the boat, recreational or motor home segments or the medium and heavy-duty truck and equipment segments, it will seek to add one or more of those services to the auction's activities, assuming the local market will support such additional services.

With the acquisition of the Chattanooga auction in December of 2009 to augment its Augusta auction operation, the Company considers those first two automobile auctions as indicative of the basis of services rendered by the Company. The Chattanooga auction business has now been accounted as discontinued operations. The Company will have to raise cash to acquire additional automobile auctions, possibly through the sale of Common Stock.

### Implementation of Business Plan

The Company currently does not have sufficient working capital to pursue our business plan in its entirety as described herein. Our ability to implement our business plan will depend on our ability to obtain sufficient working capital and to execute the business plan. No assurance can be given that we will be able to obtain additional capital, or, if available, that such capital will be available at terms acceptable to us, or that we will be able to generate profit

from operations, or if profits are generated, that they will be sufficient to carry out our business plan, or that the plan will not be modified.

10

---

## Table of Contents

### Conflicts of Interest.

The Company is or may be subject to various conflicts of interest. The Company does not have a fully-independent management staff, and will be relying on its management for the day-to-day management and operations of the Company and the Company's assets. As such, certain employees may have conflicts of interest in allocating time, services and functions to the Company in deference to their other activities.

The Company's full-time salaried Vice President and COO who served until September 17, 2010, was engaged in ownership of a used car operation in Georgia and bought and financed vehicles for that operation, and also engaged in various real estate transactions, all of which competed for his time and attention in the Company's core auction business and related operations.

The Company's Secretary, a non-salaried position with the Company, is employed full-time in Nashville, Tennessee in a diverse business. The Company does not make heavy demands on its Secretary, who is not expected to give substantial time to the affairs of the Company.

Except for its Vice President/COO, who left the company subsequent to September 17, 2010, the Company has no other full-time corporate managerial staff except for its President and CEO, who devotes the majority of his business time and efforts to the management and direction of the Company. As such, there is not now, nor has there previously been considered to be, any material conflict of interest on his part.

The President and CEO of the Company, and the Vice-President of the company until his departure on September 17, 2010, served as directors of the Company as well as officers and directors of the Company's subsidiary corporations. Service in those capacities with the subsidiaries was not considered in itself to constitute a conflict of interest on the part of those employee/directors. The Company's President and CEO continues to serve in those capacities, and no conflict of interest is perceived.

Investment in the Company will not carry with it the right to invest in any other property or venture of the President or other officers, employees, and directors of the Company.

### Dependence on Steven L. Sample

The Company depends in large part upon the continuing service of its President and CEO, Steven L. Sample. Mr. Sample was responsible for bringing the corporate shell out of bankruptcy after being in the court of some six years, through the payment of expenses and taking actions to guide the Company into the future. Mr. Sample has invested significant capital into the Company, assisted the Company with capital during periods of shortages, allowed the Company to defer pay and expenses when necessary, and worked substantially more hours than expected of a normal management employee. If Mr. Sample were to become unable to manage the affairs of the Company for any reason, the Company may suffer materially from the loss of his leadership, guidance, and financial support.

### Item 4T. Controls and Procedures

#### Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). The Company maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in the Company's Securities Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms, and that such information is accumulated and communicated to the Company's

management, including its Chief Executive Officer who acts as our Chief Financial Officer, to allow timely decisions regarding required disclosure. During the 90-day period prior to the date of this report, an evaluation was performed under the supervision and with the participation of the Company's management, including the Chief Executive Officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures.

We conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework set forth in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based upon that evaluation, for the reasons set forth above, and the fact that certain of the prior comparative financial statements contained herein were not reviewed by the Company's independent accountants, the Chief Executive Officer concluded that the Company's disclosure controls and procedures were not effective. As such, we have identified areas that we are addressing and which we believe need to be rectified.

## Table of Contents

### Changes in Internal Control over Financial Reporting

In the course of conducting our audit for the fiscal year 2009, our auditor, Killman, Murrell & Company, P.C. indicated that we have three material weaknesses: (i) Reconciliations and account analysis were not performed in a timely manner as the Company did not have fully trained financial accounting personnel, which resulted in adjusting journal entries; (ii) The sales and accounts receivable software is not integrated with the financial accounting software and accounting personnel did not perform routine reconciliations of data entered on the sales reporting system to appropriate control accounts in the general ledger system with reconciliations made in the aggregate without individual account scrutiny regardless of materiality; and (iii) Before the audit sign off date the Company suffered a system failure. Even though there was no apparent loss of data, there was a failure of operations personnel to perform systematic and recurring data backups on a routine basis.

During fiscal 2009 at the Company's Augusta and parent Company operations, the Company performed reconciliations and account analysis in a timely manner using a fully trained financial accountant. However, with the acquisition of its Chattanooga subsidiary on December 26, 2009, and personnel issues associated with the accounting staff and supervision at that location, the Company attempted to reconcile Chattanooga's software and data with the parent Company's software and data, but has been unsuccessful in achieving a timely and efficient melding of the systems. In addition, the Company was unsuccessful in locating financial personnel who were proficient with Chattanooga's software, all of which resulted in failures to reconcile its accounts to the Annual Report and Quarterly Reports in a timely manner. Ultimately the Company discontinued use of the financial software and server it acquired in the Chattanooga asset purchase and installed its own software at the Chattanooga location, establishing a parallel accounting system with its parent Company and other operating unit, allowing for proper reconciliations and consolidation of the operating units. During this period, many reconciliations and account analysis were not performed in a timely or efficient manner by the auction's personnel and management. The Company worked to train the appropriate personnel at all locations to improve the speed and accuracy of reconciliations, and hired a qualified controller to its corporate team. The Company had considered that those actions would mitigate these issues in the future. However, subsequent disputes that arose in Chattanooga followed by the launching of litigation and the Company's ultimate separation from that operating unit resulted in a situation whereby the Company's access to its accounting and operating data at Chattanooga were severed, resulting in continuing difficulties in reporting on the operating unit and the consolidated entities. Consistent with the Company discontinuing operations at Chattanooga in September 2010, the Controller's employment with the Company was discontinued in September as well.

As with most independent vehicle auction companies of its size, the Company's sales and accounts receivable software, as a part of its auction operating software, is not integrated with its financial accounting software. The integration requires additional meticulous steps to be undertaken on a regular basis as well as general business review of business practices reflected by the information. We continue to press for efficient integration of information and seek qualified personnel to effect these processes.

The Company suffered a computer server failure at its Augusta location in February of 2010, and discovered that its practices in backing up and protecting certain digital financial data were insufficient. While the Company currently backs up its digital data from the auction operating systems on a daily basis, it had not been making daily backups of its financial data. The data in question covered a period from mid-February to mid-April of 2010, was protected by hard copy financial records, was fully restored within a short time after the anomaly, and resulted in no compromise or loss of financial data, either digital or otherwise. Although there was no loss or damage, the Company recognized its deficiency in that area and immediately initiated new and improved provisions for protecting and preserving its digital data and information at all locations.



Table of Contents

PART II OTHER INFORMATION

Item 5. Other Information.

As used in comparison to the current year's financial reports, the Company's Balance Sheets as of September 30, 2009, the Statement of Operations for three months and nine months ended September 30, 2009, and the Statement of Cash Flows for the nine months ended September 30, 2009 were not reviewed by the Company's independent accountants and as such are deemed deficient. The Company believes that this information, nonetheless, is not materially inaccurate and the information for the periods referred to are included in the audited information set forth in the Company's Annual Report on Form 10-K for the period ended December 31, 2009. Additionally, the Company's interim financial reports on Forms 10-Q as reported for the periods ended March 31, June 30, and September 30, 2010 have been reviewed by the Company's independent accountants. As such, the Company has no current plan to address this deficiency.

During Q1 2010, the Company's CEO acquired 20,114 shares of the Company's Common stock by purchasing them on the open market at an average price per share of \$0.302. Those transactions were reported by him as the Reporting Person on SEC Forms 4 dated 1/15, 1/19, 2/4, 2/11, 2/18, 2/23, and 3/11 of 2010. During Q2 2010, the Company's CEO acquired an additional 500 shares of the Company's stock by purchasing them on the open market at an average price per share of \$0.927 per share. Those transactions were reported by him as the Reporting person on SEC Forms 4 dated 4/6, 5/4, and 5/14 of 2010. The CEO, as the Reporting Person, has never sold any shares of the Company and does not currently have any plans to do so.

On October 18, 2012 the Company changed its name from Acacia Automotive, Inc. to Acacia Diversified Holdings, Inc. The Company will continue to file its Quarterly Reports 10-Q and its Annual Reports 10-K under the name Acacia Automotive, Inc. until the reporting of its Quarterly Report 10-Q for the period ended September 30, 2012. However, the Company will file any interim 8-K Current Reports or other special reports under the name Acacia Diversified Holdings, Inc. effective with the changing of its name.

Subsequent Events.

The Company discontinued operations at its Chattanooga auction location after August 31, 2010. For the nine months ended September 30, 2010, the Company booked a loss from discontinued operations of \$346,784 while gaining \$450,055 on disposal of the Chattanooga subsidiary, for a net gain of reporting a loss of \$346,784 on those discontinued operations and a gain of \$450,055 on disposal of the Chattanooga subsidiary for a net income from discontinued operation of \$103,271. After income of \$5,375 from continuing operations in the period, the company registered a net income of \$108,646.

For the three months ended September 30, 2010, the Company booked a loss from discontinued operations of \$158,715 while gaining \$231,163 on disposal of the Chattanooga subsidiary, for a net gain of \$72,448 on discontinued operations. After a loss of \$60,892 from continuing operations in the period, the company registered a net income of \$11,556.

Legal Proceedings.

On September 17, 2010, a dispute arose between the Company and Ms. Alexis Ann Jacobs ("Jacobs"), the principal seller of the Chattanooga Auto Auction and the party that also provided a line of credit for use by the Company's Acacia Chattanooga Vehicle Auction, Inc. ("ACVA") subsidiary).

At 4:29 PM on September 17, 2010, the day on which the dispute arose, Tony Moorby, then a director of the Company, emailed an unsigned letter to the Company's Chief Executive Officer resigning as a director and asserting that his current financial situation necessitated payment of back wages. In the letter he also asserted unspecified concerns over the Company's financial reporting and alleged such concerns had been expressed in the presence of David Bynum, also then a director of the Company and also the Company's then Chief Operating Officer, events the Company disputed. The Company believed that Mr. Bynum, who had been managing the Chattanooga auction for the Company until the events of September 17, 2010 and Mr. Moorby, after having been unemployed by the Company since January of 2009 but who remained a director of the Company, were then employed at the Chattanooga auction on behalf of Ms. Jacobs prior to resigning as directors of the Company. Mr. Bynum resigned via email to the Company's Chief Executive Officer at 9:15 PM on the same date, after Mr. Moorby. The Company disputed that its financial reporting involved any irregularities, and believed that the resignations arose in connection with the actions described herein and in connection with communications by Messrs. Moorby and Bynum with Ms. Jacobs and her counsel, Keith Whann, communications unknown to the Company when made and made prior to their resignations as directors.

Table of Contents

On September 24, 2010, Jacobs caused a complaint to be filed in the United States District Court for the Southern District of Ohio, Eastern Division as Case Number 2:10-cv-00912-GCS-MRA, naming the Company, its wholly-owned subsidiary Acacia Chattanooga Vehicle Auction, Inc. (“ACVA”) and its Chief Executive Officer, Mr. Steven Sample as defendants (the “Complaint”). On the same date as they instituted legal proceedings against the Company, Jacobs and Whann took actions by exercising a Stock Power Agreement and a Stock Pledge Agreement related to the Company’s guarantees in the 2009 acquisition agreements in converting control to Jacobs of the Company’s ACVA Common stock representing ownership of the Chattanooga auction, all of which was done without the prior knowledge or approval of the Company. In so doing, Whann and Jacobs voted themselves or their assigns as the only directors and officers of ACVA, taking control of the ACVA site and operations.

Simultaneously, Jacobs and Whann denied the Company from physical and electronic access to the Chattanooga auction, its operating systems and data resources, and excluded the Company’s employees from further access to the premises.

Following those events, and as a result of the Company on or after September 17, 2010: (a) being prevented from physically or electronically having access to the Chattanooga auction subsidiary’s premises or the operating and financial data of the Chattanooga auction; (b) being prevented from operating, directing, managing or participating in the affairs of the Chattanooga auction either alone or in concert with other parties; (c) having no knowledge as to whether or not the auction was being operated in a prudent manner and with a commercially reasonable responsibility in the absence of the Company; and, (d) being unable to accurately report the activities of the Chattanooga auction, the Company elected to discontinue operations of the Chattanooga auction subsidiary effective with the close of business August 31, 2010. The financial statements included with this report and those effective with the close of the second quarter of 2010 reflect that determination and those actions.

Pursuant to the actions of Whann and Jacobs, the Company subsequently discontinued its legal representation of ACVA, which had come to be under the control of those parties.

Failing to gain a timely *cognovit* judgment in the First Federal Action as anticipated, Jacobs then on October 7, 2010, through the same Putative Attorney who purported again to represent the Company, ACVA and Mr. Sample and again in their absence and without their knowledge, filed a Stipulation of Dismissal with the Federal Court in the First Federal Action and refiled the action on the same day in the Court of Common Pleas in Franklin County, Columbus, Ohio (the “State Court Action”).

The Company’s Acacia Chattanooga subsidiary was current in all rent payments and payments due under the line of credit at the time of Jacobs’ claims and prior thereto, and upon learning of these actions, the Company, its subsidiary, and Mr. Sample adamantly denied that there had been an event of default under any agreement with Ms. Jacobs and that Ms. Jacobs’s litigation was without merit. The Company vigorously defended the action. The Company, ACVA, and Mr. Sample further denied that the Putative Attorney selected by Jacobs had the power to represent them or to file the *Cognovit* Complaints or the Stipulation of Dismissal with the Federal Court or the *Cognovit* Complaint with the Court of Common Pleas.

On October 12, 2010, the Company, as Defendants, filed a Notice of Removal to move the case from the Court of Common Pleas back to the United States District Court in the Southern District of Ohio, Eastern Division (the “Second Federal Action”). On the same day, the Company, ACVA, and Mr. Sample answered the Complaint restored to that court and adamantly denied that there was any event of default or that the Putative Attorney had the power to file any actions on their behalf.

On November 5, 2010, the Company and Mr. Sample filed a separate complaint in the same United States District Court as Case Number 2:10-cv-00995-GCS-MRA (the “Third Federal Action”), naming Alexis Ann Jacobs, Keith E.

Whann, CAA Liquidation, LLC, (the renamed entity that sold the Chattanooga assets to the Company), Auction Venture Limited Liability Company (the Leasor of the Chattanooga facility to ACVA) (collectively the “Jacobs Defendants”), Mr. Tony Moorby (“Moorby”) and Mr. John David Bynum (“Bynum”) (collectively “Moorby and Bynum”) (Moorby and Bynum and the Jacobs Defendants collectively referred to as “Third Federal Action Defendants”). The Company’s case alleged that the declaration of default by Ms. Jacobs and subsequent conversion of control of ACVA was wrongful and malicious, having no basis in law or fact. The Company’s case also alleged that, without the knowledge of the Company, Mr. Whann acted in concert with Messrs. Moorby and Bynum while each was still a director of the Company. The suit also alleged that Messrs. Moorby and Bynum were working at the direction of Mr. Whann and Ms. Jacobs for Ms. Jacobs at the Chattanooga auction prior to their resignation as officers or directors of the Company.

Table of Contents

The Company's complaint sought a declaratory judgment that, among other issues, neither Acacia Chattanooga, Acacia Automotive, nor Steven L. Sample defaulted under any of the agreements. It also claimed damages in excess of \$75,000 for each of the following causes of action: that Ms. Jacobs and Auction Ventures breached certain contracts; that Ms. Jacobs, Mr. Whann and Auction Venture converted control of the Company's Common stock representing ownership of the Acacia Chattanooga operations; that Messrs Bynum and Moorby breached their fiduciary duty to the Company; that Ms. Jacobs and Mr. Whann and CAA committed fraud; and that Ms. Jacobs, Messrs. Whann, Moorby and Auction Venture conspired against the Company. The complaint also sought injunctive relief against all parties in concert and Ms. Jacobs.

On April 1, 2011, pursuant to court-ordered guidelines, the parties began discussions related to settling their disputes in the various actions. Those settlement discussions continued over the next eleven months, at which time the parties finally reached a global Settlement Agreement and Release on February 28, 2012 as reported on the Current Reports filed on Forms 8-K filed March 6, 2012. Reference is also made to the Current Report filed on Form 8-K dated November 16, 2012 filed concomitant with this report containing the full text of the Settlement and Release Agreement and related documents (the "Settlement Agreement") including the Court orders stipulating dismissal of the actions.

The Settlement Agreement provided for the following primary actions to be taken by the parties:

1. Jacobs, as Plaintiff in the First Federal Action, the State Court Action, and the Second Federal Action, together with the remaining third Federal Action Defendants, agreed to, among other things: (i) provide the Company and Mr. Sample with a release of their obligations under the guaranties and the stock pledge agreement and from their obligations under the line of credit, the loan agreement, the loan note, the guaranties and the security agreement; (ii) provide the Company and Mr. Sample with an executed termination statement with respect to all financing statements and security agreements, the guaranties, and the line of credit; (iii) execute and file termination of all financing statements identifying it as a creditor of Sample, and to file similar terminations for the Company and its ACVA subsidiary when all requirements of the Settlement Agreement had been met; (iv) provide the Company with a notice of termination of the Stock Pledge with respect to the Company's Chattanooga subsidiary capital stock and return the certificate representing the shares of the capital stock of the Company's ACVA subsidiary when the requirements of the Settlement Agreement had been met; (v) release the Company and any guarantors from the lease of the Chattanooga property; and, (vi) provide the Company with a notice of full satisfaction of all the obligations of its Chattanooga subsidiary to the Seller under the line of credit, the loan agreement, the loan note, and the security agreement. While certain of these things have not yet been implemented by the Jacobs parties or received by the Company, the Company feels the promise to do so as tendered in the Settlement Agreement was made in good faith and that Ms. Jacobs and related parties will provide the required items to the Company and Mr. Sample within a reasonable period time.

In addition to those terms, Mr. Moorby agreed to return to the Company for cancellation 500,000 shares of Acacia common stock awarded to him in conjunction with his hiring. Further pursuant to the Settlement Agreement, Ms. Jacobs and Mr. Whann provided affidavits necessary to cancel and return to the Company's treasury 20,000 shares of Acacia common stock (10,000 shares each person) issued on the books of the Company's transfer agent in December of 2009, but which Jacobs and Whann claimed to have not received.

Additionally, Mr. Moorby, Mr. Bynum, and their respective families agreed to return to Mr. Sample 42,000 shares of Acacia common stock Mr. Sample had personally gifted to them. All these cancellations and gift return have been completed as agreed.

Further to the terms of the Settlement Agreement, Mr. Moorby and Mr. Bynum agreed that for twenty-four (24) months following the Closing Date, they would not knowingly, directly or indirectly, own, manage, operate, control,

be employed by, work on behalf of, invest in, assist (financially or otherwise), provide advisory services to, provide consulting services to, or provide other services to any person or any entity who is engaged in the operation of a licensed auto auction or similar business, for the purpose of engaging in the operation of a licensed auto auction or similar business within fifty (50) miles of the Company's Augusta auction location. Additionally, CAA Liquidation, LLC, Auction Venture Limited Liability Company, Whann, and Jacobs, agreed to not operate a licensed auto auction or similar business from a physical location within 150 miles of the Company's Augusta auction location for a period of twelve (12) months following the Closing Date.

2. The Company and Mr. Sample, as Defendants in the First Federal Action, the State Court Action, and the Second federal Action, and as Plaintiffs in the Third Federal Action, and ACVA as defendant or plaintiff in the various actions agreed, among other things: (i) that ACVA will sell and transfer to Jacobs' CAA Liquidation, LLC (fka Chattanooga Auto Auction Limited Liability Company) (hereinafter "CAA") entity the assets of ACVA, excluding any rights to the Acacia name or marks, for the original purchase price paid to CAA of \$5,000; (ii) The Company, ACVA, and Mr. Sample would jointly pay to CAA the sum of \$150,000 (all paid by the ACVA subsidiary controlled by Jacobs, with the exception of \$1.00 paid by the Company and \$1.00 paid by Mr. Sample); (iii) the Company would cause ACVA to assist CAA with the execution of a novation agreement with regard to the General Services Administration contract for selling vehicles at the Chattanooga auction; (iv) as part of the Settlement Agreement. The Company filed with the United States Securities and Exchange Commission ("SEC") on March 6, 2012 a Form 8-K which is incorporated herein by reference.

On March 6, 2012 the Company and Mr. Sample reported reaching the Settlement Agreement with the Jacobs parties on Form 8-K which is incorporated herein by reference.

Table of Contents

Legal and equitable claims were asserted by the Company and Mr. Sample against Mr. Moorby and Mr. Bynum in the United States District Court for the Southern District of Ohio, Case No. 2:10-cv-995. Similarly, claims were asserted by Mr. Moorby and Mr. Bynum, as defendants in that action, against the Company and Mr. Sample.

On February 28, 2012 the Company”) and Mr. Sample entered into the Settlement Agreement concluding their litigation with Mr. Moorby and Mr. Bynum.

All claims by the Company, Mr. Sample, Mr. Moorby, and Mr. Bynum have been dismissed by agreement of the respective parties, and all parties have released the others from any known or unknown causes of action. The Company and Messrs. Bynum and Moorby acknowledged that neither the Company nor Mr. Sample were found by the Court to have committed any misdeeds and that neither Mr. Moorby nor Mr. Bynum were found by the Court to have breached their fiduciary duties to the Company.

The Settlement does not constitute an admission by the Company, Mr. Sample, Mr. Moorby, or Mr. Bynum of any liability or violation of law.

On March 6, 2012 the Company and Mr. Sample reported the Settlement Agreement with Messrs. Moorby and Bynum on Form 8-K, which is incorporated herein by reference.

3. Concurrent with the Closing of the Settlement Agreement, all the Parties agreed: (i) to sign entries of release and dismissal so as to subsequently dismiss with prejudice all pending litigation proceedings and to release and discharge any judgments or judgment liens obtained in or as a result of the litigation proceedings; (ii) that the court costs incurred in the Litigation Proceedings were to be borne equally by the parties; (iii) to a no disparagement provision, and stipulated that the Settlement Agreement shall not be interpreted to render either party the prevailing party for any purpose; (iv) not to sue or bring claims against, or have any entities with which they are affiliated sue or bring claims against the other(s); and, (v) to cooperate and exercise reasonable efforts to accomplish and implement all acts necessary to reasonably conclude the Settlement Agreement and the actions contemplated by it in good faith and to take no action that is inconsistent with full performance of the Settlement Agreement or any term thereof.

All the parties to the Settlement Agreement agreed to a mutual non-disparagement agreement and release from any liabilities or future litigations.”

Item 8.01. Other Events.

None.

Item 6. Exhibits

| Exhibit Number | Exhibit Description                                                                                                      |
|----------------|--------------------------------------------------------------------------------------------------------------------------|
| 31.1           | <u>Certification Pursuant To 18 U.S.C. Section 1350 As Adopted Pursuant to Section 302 of Sarbanes-Oxley Act Of 2002</u> |
| 32.1           | <u>Certification Pursuant To 18 U.S.C. Section 1350 As Adopted Pursuant to Section 906 of Sarbanes-Oxley Act Of 2002</u> |

Table of Contents

SIGNATURES

Pursuant to the requirements of the Securities exchange Act of 1934, registrant has duly caused this report to be signed on its behalf by the undersigned.

Acacia Automotive, Inc.

Date: November 16, 2012

By: /s/ Steven L. Sample  
Steven L. Sample  
Chief Executive Officer and  
Principal Financial Officer

Table of Contents