

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

SUBASHINI R. DANIEL,

Debtor.

Case No. 16-60376

Chapter 11

DISCLOSURE STATEMENT

I.

INTRODUCTION

The Debtor, Subashini R. Daniel, as and for her Disclosure Statement, as required under 11 U.S.C. §1125, makes the following disclosure to creditors as part of her solicitation for approval of her proposed Reorganization Plan.

On March 22, 2016 (the “Petition Date”), Subashini R. Daniel (hereinafter referred to as the “Debtor”) filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The bankruptcy filing was prompted by failed attempts to negotiate a payment schedule with the Internal Revenue Service and the State of California that allowed the Debtor sufficient funds to pay for her residence and provide for her infant daughter. These obligations overwhelmed the Debtor’s ability to pay bills each month with income received from her employment at Bassett Hospital in Cooperstown, New York.

Before the Debtor's Plan may be approved ("Confirmed") by the Bankruptcy Court, the Bankruptcy Code requires that it must be submitted to certain creditors and security holders for a vote. Depending on your treatment under the Plan, you are being asked to indicate on the enclosed ballot whether you are in favor of (accept) or opposed to (reject) the Plan. More detailed voting instructions are contained in Section I.A. below, as well as on the enclosed ballot.

The Bankruptcy Code requires that each creditor or security holder whose vote is solicited receives a Disclosure Statement which contains information of a kind, and in sufficient detail, that would enable a reasonable investor to make an informed judgment about the Plan ("Adequate Information"). This Disclosure Statement (the "Disclosure Statement") has been approved by Order of the Bankruptcy Court, dated _____, 2016, as containing Adequate Information to enable you to make an informed judgment about the Accompanying Plan.

This Disclosure Statement does not reflect any events which may occur subsequent to the date it was approved by the Bankruptcy Court. It is not anticipated that any amendments or supplements to the Disclosure Statement will be distributed to reflect changes subsequent to that date.

This Disclosure Statement describes the Plan and contains information concerning the history, business, results of operations, management, properties, liabilities and pending litigation of the Debtor. **THE DEBTOR STRONGLY URGES THAT YOU CAREFULLY REVIEW THE CONTENTS OF THIS DISCLOSURE STATEMENT, THE PLAN, AND THE OTHER DOCUMENTS WHICH ARE EXHIBITS HERETO, BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.** Particular attention should be directed to the provisions of the Plan affecting or impairing the rights of creditors and security holders.

Your vote on the Plan is important. Although the Plan may, if certain legal requirements are met, be Confirmed regardless of its acceptance by most creditors and security holders, non-acceptance may impede or delay confirmation of the Plan and the distribution to creditors and security holders which is contemplated thereunder, or lead to confirmation of another Plan which may or may not provide for distribution of as much value, or as soon, as does the Plan.

A. VOTING INSTRUCTIONS

Included in the package of materials forwarded to you along with this Disclosure Statement and the Plan is a Ballot form for your acceptance or rejection of the Plan. After reviewing this Disclosure Statement and Plan, please indicate your vote on the enclosed Ballot and return it as directed.

Ballots should be returned to:

Richard L. Weisz, Esq.
Hodgson Russ LLP
Attorneys for Debtor
677 Broadway, Suite 301
Albany, New York 12207

BALLOTS MUST BE RECEIVED ON OR BEFORE _____, 2016,
NOT LATER THAN 5:00 P.M. (EST).

THE DEBTOR BELIEVES THAT HER PLAN PROVIDES THE BEST POSSIBLE RECOVERIES FOR THE CREDITORS. THE DEBTOR FURTHER BELIEVES THAT THE ACCEPTANCE OF THE PLAN IS IN THE BEST INTERESTS OF ALL CREDITORS AND ASKS THAT THEY VOTE TO ACCEPT THE PLAN.

THIS DISCLOSURE STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN. IT IS THEREFORE RECOMMENDED THAT ALL CREDITORS AND OTHER PARTIES IN INTEREST REVIEW THE FULL TEXT OF THE PLAN PRIOR TO DETERMINING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. A copy of the Plan is submitted herewith.

B. GENERAL DESCRIPTION OF THE PLAN

The specific technical aspects of classification of claims and interests, payment of claims, the risks to the Estate, a comparison of proposed payments under the Plan as proposed by the Debtor compared to the Debtor's proposed Plan and the applicable Bankruptcy Code provisions and consequences of Plan confirmation are set forth hereafter at length.

The Debtor is proposing payment in full with allowed priority tax claims including post-petition interest paid by March 1, 2021, paying her mortgage and all post-petition payments as they become due, with any missed pre-petition payments and interest accrued thereon made after the initial maturity date, with all other creditors to be paid within six (6) years. The vehicle lease by its terms will end in November of 2016, by which time the lease will be brought current by the Debtor and assumed by her. The vehicle loan will be paid by post-petition payments when due and the pre-petition payments brought current by March 31, 2017.

C. SUMMARY GUIDE TO CLASSIFICATION OF CLAIMS AND INTERESTS

<u>Class</u>	<u>Description</u>
Class 1	Attorneys' and Accountants' Fees and other claims allowed in accordance with Sections 503(b) and 507(a)(1) of the Bankruptcy Code;
Class 2	Tax Claim of Internal Revenue Service;
Class 3	Allowed Priority Tax Claim of New York State;
Class 4	Allowed Priority Tax Claim of State of California;
Class 5	Secured Claim of VW Credit, Inc. as servicing agent for VW Credit Leasing, Ltd.;
Class 6	Mortgage Claim of Citizens Bank on Debtor's Residence;
Class 7	Claim of Bankers Healthcare Group, LLC;
Class 8	General Unsecured Creditors with Allowed Claims Exceeding \$1,500.00;
Class 9	General Unsecured Creditors with Allowed Claims of \$1,500.00 or Less, and Creditors with Allowed Claims over \$1,500.00 but Willing to Accept \$1,500.00 as Full Payment of their Claim.

The total Projected Distribution under the Plan of Reorganization is as follows:

<u>Class</u>	Estimated Distribution as % of Allowed <u>Claim</u>	<u>Method of Payment</u>
Class 1	100%	Paid on the Effective Date of the Plan;
Class 2	100%	Paid within five (5) years of the Petition Date of the Plan with monthly payments of approximately \$4,000.00, commencing on the first day of the first whole month following the Effective Date of the Plan;
Class 3	100%	Paid within five (5) years of the Petition Date of the Plan with equal monthly payments, if necessary. The Debtor believes she had paid all New York State taxes.;
Class 4	100%	Paid within five (5) years of the Petition Date of the Plan with monthly payments of approximately \$1,300.00 commencing on the first day of the first whole month following the Effective Date of the Plan;
Class 5	100%	The vehicle owned by the Debtor will be retained with monthly payments continuing and pre-petition missed payments (three (3) months) paid by March 31, 2017. The Debtor's leased vehicle will be returned in November, 2016 to VW Credit, Inc. as servicing agent for VW Credit Leasing, Ltd. at the conclusion of the lease and all past-due payments will be brought current by October 31, 2016.

<u>Class</u>	Estimated Distribution as % of Allowed <u>Claim</u>	<u>Method of Payment</u>
Class 6	100%	The residence owned by the Debtor will be retained with monthly payments continuing at the contract rate of \$5,500.00 per month, plus any escrow increases, together with missed payments, with interest thereon, made each month for four (4) months after the scheduled maturity date of the mortgage loan;
Class 7	100%	Paid in 60 equal monthly payments of \$600.00 each commencing on the Effective Date of the Plan, and then equal monthly payments of \$4,000.00 each commencing on the 61 st month following the Effective Date of the Plan and continuing until paid in full (estimated 3 years);
Class 8	100%	Paid pro-rata in 60 equal monthly payments of \$400.00 each commencing on the Effective Date of the Plan, and then equal monthly payments of \$2,000.00 each commencing on the 61 st month following the Effective Date of the Plan and continuing until paid in full (estimated 3 years);
Class 9	100%	Paid on the Effective Date of the Plan.

II.

BACKGROUND

The Debtor, Subashini R. Daniel, moved to Cooperstown, New York from California in 2014 to accept employment as a cardiac surgeon at Bassett Hospital.

The bankruptcy was caused by unpaid income tax obligations which Dr. Daniel believed were being withheld and paid while she worked in the State of California. By the time she realized that nothing had been withheld, the amounts due had substantially increased due to penalties and interest. Dr. Daniels retained an accountant to attempt to negotiate a repayment plan for full payment of the tax obligations in monthly installments that would leave her sufficient funds for her other expenses, including the mortgage on her residence, payment of other debt, and caring for her infant daughter. When the tax entities refused to accept a repayment plan of longer than 18 months, which resulted in required monthly installments in payment amounts of more than 60% of her available current income, she began missing payments to other creditors. The Debtor realized that she could not keep her residence and care for her infant daughter without lowering the amount she had to pay for these tax obligations. Since a Chapter 11 bankruptcy proceeding gives her five (5) years from the Petition Date of March 22, 2016 to pay taxes and freezes penalties, Dr. Daniels filed this Chapter 11 bankruptcy proceeding. She is proposing a 100% repayment plan to all of her creditors as is described below.

The Debtor is now subject to withholding as a W-2 employee and has filed her 2015 tax returns claiming a small refund. The Debtor's real property taxes were paid through a mortgage escrow. The Debtor therefore believes that she will remain current on all post-petition taxes.

The Debtor believes that her pre-petition tax liability is approximately \$280,000.00. The Internal Revenue Service has filed a Proof of Claim in the amount of \$214,641.13. The State of

California has not yet filed a Proof of Claim. The Debtor believes that all New York State taxes have been paid. The Debtor believes that monthly payments on pre-petition taxes will total approximately \$5,000.00 based on 54 monthly payments and applicable interest.

The Debtor's monthly mortgage payment is \$5,500.00, which includes insurance and real estate tax escrow. The Debtor's other monthly expenses total \$10,000.00. Therefore, the Debtor believes that she will be able to pay at least \$1,000.00 per month towards the claims of general unsecured creditors for five (5) years, and then make payments to general unsecured creditors in the sixth (6th) year of her Plan after pre-petition taxes are paid to pay off any balances. The Debtor will pay small unsecured claims (less than \$1,500.00) in full as an administrative convenience on the Effective Date of the Plan.

The Debtor would prefer to make all payments by automatic withdrawal, but if any creditor cannot accept payment in that way she would send checks every six (6) months.

The Debtor is aware that Bankers Healthcare Group, LLC has filed two (2) secured claims totaling \$184,250.74. However, the asserted collateral is a general security interest in the Debtor's personal property which may be unenforceable under New York Personal Property Law 421. Since the Debtor is proposing a 100% Plan, she believes that it is not necessary to obtain a ruling on how much of this claim is secured and how much is a deficiency unsecured claim, and she will classify the claim of Bankers Healthcare Group, LLC in Class 7 of her Plan but pay it along with the unsecured Class 8 claims.

The Debtor believes that her general unsecured claims, not including Bankers Healthcare Group, LLC, total approximately \$140,000.00. The Debtor acknowledges that VW Credit, Inc. as servicing agent for VW Credit Leasing, Ltd. holds a security interest in her vehicle and another leased vehicle. As is described below, the Debtor intends to assume and then surrender the leased

vehicle in November, 2016 when the lease expires and retain the purchased vehicle and make payments thereon.

The proposed Effective Date of the Plan is January 1, 2017. However, if the Plan is not confirmed by that date, the Effective Date shall be the first day of the calendar month next following the date of entry of the Order of Confirmation.

III.

PENDING LITIGATION

At the time of the bankruptcy filing, the Debtor was not involved in any pending litigation.

IV.

TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN AND DESIGNATION OF IMPAIRED AND UNIMPAIRED CLASSES

A. DEFINITION OF IMPAIRMENT

A class of claims is not impaired under the Plan if the holders of such class receive cash or other property equal to the allowed amount of its claims as of the consummation date of the Plan of Reorganization. A Class of Claims is impaired under the Plan if the members of such class do not receive cash or other property equal to the allowed amount of their claims as of the consummation date of the Plan. As is explained in more detail below, all Classes are impaired, except for Class 1.

The consummation date, also called the Effective Date, of the Plan will be January 1, 2017. However, if the Plan of Reorganization is not confirmed by that date, the Effective Date of the Plan shall be the first day of the month following the date of confirmation of the Plan.

B. PARTY RESPONSIBLE FOR MAKING PAYMENTS
REQUIRED UNDER THE PLAN

The Debtor shall be responsible for making all distributions under the Plan.

C. DESIGNATION OF CLASSES UNDER THE PLAN

The specific creditors and amounts under the Plan are designated as follows:

CLASS 1 -- Administrative Claims, Including Attorneys' Fees and Trustee's Commission:

A) Attorneys' Fees:

Counsel for the Debtor is Hodgson Russ LLP, 677 Broadway, Suite 301, Albany, New York, 12207. It is estimated that total bankruptcy attorneys' fees for the Debtor's counsel will be approximately \$35,000.00 and disbursements will be approximately \$2,500.00. Hodgson Russ LLP is holding a pre-petition retainer of \$11,144.85.

Total attorneys' fees and disbursements will be paid as allowed by the Court on the Effective Date of the Plan independently of the distributions to unsecured creditors.

B) Trustee's Commissions:

In a case under Chapter 11 of the Bankruptcy Code, unless the Court appoints a Trustee, the Debtor remains in possession and no Trustee commissions are incurred. The Court has not appointed a Trustee in this case and none is expected to be appointed. The Debtor will have to pay fees to the Office of the U.S. Trustee pursuant to the revised fee schedule. All fees due to the U.S. Trustee will be paid prior to the Effective Date of the Plan.

CLASS 2 – Allowed Priority Tax Claim of the Internal Revenue Service

The Internal Revenue Service has filed a Proof of Claim in the amount of \$216,673.13 which was subsequently amended to \$214,641.13. This claim will be paid within five (5) years of the Effective Date of the Plan. The Debtor believes that monthly payments of approximately \$4,000.00 per month, commencing on the first day of the first whole month following the Effective Date of her Plan, should pay this claim in full together with all post-petition interest.

CLASS 3 -- Allowed Priority Tax Claim of New York State

This claim, if any, will be paid within five (5) years of the Effective Date of the Plan. The Debtor believes that there is no such claim, and no claim has been filed by New York State.

CLASS 4 – Allowed Priority Tax Claim of State of California

The State of California has not yet filed a Proof of Claim. Upon information and belief, the amount due is approximately \$63,000.00. This claim will be paid within five (5) years of the Effective Date of the Plan. The Debtor believes that monthly payments of approximately \$1,300.00 per month, commencing on the first day of the first whole month following the Effective Date of her Plan, should pay this claim in full together with all post-petition interest.

CLASS 5 -- Allowed Secured Claim of VW Credit, Inc. as servicing agent for VW Credit Leasing, Ltd.

The Debtor will continue to make monthly payments in the amount of \$979.72 on the 2014 Audi vehicle that she owns. At the time of the bankruptcy filing, the Debtor was three (3) months in arrears. She will make up the missed three (3) months on or before March 31, 2017. VW Credit, Inc. shall retain its lien on the vehicle. The Debtor intends to assume the lease on her other vehicle and surrender it when the lease expires in November, 2016. She will make up the three (3) missing pre-petition lease payments by October 31, 2016.

CLASS 6 – Allowed Mortgage Claim of Citizens Bank on Debtor’s Residence

The Debtor will continue to make mortgage payments on her residence. Monthly payments are \$5,500.00 subject to adjustment for tax and insurance escrow. At the time of the bankruptcy filing, the Debtor was four (4) months in arrears. She will make monthly payments for the missed payments for four (4) months after the scheduled maturity date of the loan. She will then pay whatever additional interest is due. Citizens Bank shall retain its mortgage lien on her residence.

CLASS 7 – Claim of Bankers Healthcare Group, LLC

As stated above, there are two (2) filed “secured” claims totaling \$184,250.74. These claims shall be paid in full in sixty (60) monthly payments in the amount of \$600.00 each commencing on the Effective Date of the Plan, and then in monthly payments of \$4,000.00 each commencing on the 61st month thereafter until the claims are paid in full (estimated to be approximately three (3) years). The Debtor proposes automatic monthly withdrawals for these payments. Any creditor who cannot process automatic withdrawals shall receive a check every six (6) months after the Effective Date of the Plan with each check representing six (6) monthly payments. The Debtor reserves the right to prepay these claims in full without penalty.

CLASS 8 -- General Unsecured Creditors with Allowed Claims Exceeding \$1,500.00

These claims, totaling approximately \$100,000.00, are primarily for business expenses and personal loans. The claims shall be paid in full in sixty (60) monthly payments in the amount of \$400.00 each commencing on the Effective Date of the Plan, and then in monthly payments of \$2,000.00 each commencing on the 61st month thereafter until the claims are paid in full (estimated to be three (3) years). The Debtor proposes automatic monthly withdrawals for these payments. Any creditor who cannot process automatic withdrawals shall receive a check every

six (6) months after the Effective Date of the Plan with each check representing six (6) monthly payments. The Debtor reserves the right to prepay these claims in full without penalty.

CLASS 9 -- General Unsecured Creditors with Allowed Claims of \$1,500.00 or less, and Creditors with Allowed Claims over \$1,500.00 but willing to accept \$1,500.00 as full payment of their Claim

The Debtor shall pay all claims under \$1,500.00 in full on the Effective Date of the Plan as a matter of administrative convenience. The Debtor believes that the Administrative Class will include less than five (5) creditors and the total payments for this Class will be less than \$4,000.00. Any creditor who is willing to reduce its claim to \$1,500.00 and receive payment in full on the reduced claim may qualify to be a Class 9 Creditor.

V.

FEASIBILITY AND LIQUIDATION

The Debtor believes that her Plan is feasible because it relies on Dr. Daniel's income as an employee at Bassett Hospital. Income taxes are being withheld. Real property taxes are included in the monthly mortgage payments.

The Debtor's creditors will receive payment of their claim in full.

VI.

EXECUTORY CONTRACTS AND LEASES

The Debtor will assume the vehicle lease with VW Credit, Inc. which terminates in November of 2016. The Debtor will reject all other pre-petition executory contracts and leases.

VII.

PAYMENTS NEEDED AT CONFIRMATION

The Debtor estimates payments needed on the Effective Date of the Plan as follows:

a)	Balance of Attorneys' Fees and Disbursements (estimated), Net of Retainer:	\$ 20,000.00 *
b)	United States Trustee's Fees (estimated):	650.00
c)	First Installment Due Internal Revenue Service:	4,000.00 **
d)	First Installment Due New York State:	0.00 **
e)	First Installment Due State of California:	1,300.00
f)	Installment Due VW Credit, Inc.:	979.72
g)	Regular Monthly Installment Due Citizens Bank on Mortgage:	5,500.00
h)	Initial Distribution to Bankers Healthcare Group, LLC	600.00
i)	Initial Distribution to Unsecured Creditors (5% of Allowed Claims):	400.00
i)	Administrative Convenience Payments:	<u>4,000.00</u> **
	TOTAL:	\$ 37,429.72

* Payment as allowed by the Bankruptcy Court

** Estimated Amount

The Debtor believes she will have sufficient funds to make payments on the Effective Date of the Plan.

IX.

OTHER PLAN PROVISIONS

A. AMENDMENTS TO A CONFIRMED PLAN

The Plan provides a mechanism for amendments to be made after confirmation. An individual creditor may elect to accept a modified treatment of its claim without notice or formal amendment of the Plan. However, if the Debtor seeks to change her Plan to decrease the amount due to creditors after the plan is confirmed, then she must give notice to all creditors and seek Bankruptcy Court approval for the change.

B. EFFECT OF CONSUMMATION OF PLAN

The Bankruptcy Code and the Plan provide that confirmation of the Plan, on the consummation date (when the Debtor has completed all acts required under the Plan and made all payments) discharges the Debtor from any further claim against her for debts existing prior to the filing of the Bankruptcy petition.

C. CONTINUING JURISDICTION OF BANKRUPTCY COURT

The Plan provides for the Bankruptcy Court to retain jurisdiction until there is substantial consummation of the Plan. Assuming the other conditions of 11 U.S.C. §1101(2) are satisfied, the Bankruptcy Court may find a Plan to be substantially consummated at the time the first payment is made pursuant to the Plan.

D. DISPUTED CLAIMS AND INTERESTS

The Plan provides a mechanism for resolving disputes concerning the amount of any Claim or Interest and for making a distribution on account of any such Claim or Interest once the dispute has been resolved.

If the Schedule of Assets and Liabilities or any amendment thereto filed by the Debtor with the Bankruptcy Court (the “Schedules”) listed your Claim in a particular amount and with a particular or no priority and did not indicate that the amount of the Claim is disputed, then the Debtor does not intend to object to the allowance of your Claim in that particular amount. This means that, unless you have filed a Proof of Claim in a larger amount or some party in interest (such as the Committee or any individual Creditor or Security Holder) files an Objection to your Claim and gives you notice thereof, your Claim will be allowed in time to receive the Initial Distribution and any subsequent distributions to your Class. The Debtor reserves the right under her Plan to challenge any Claim.

If the Schedules indicate that your Claim is disputed, or if you filed a Proof of Claim in a larger amount than is listed in the Schedules, then an Objection to your Claim will likely be filed. In addition, if you have filed a Proof of Claim seeking alleged damages arising from the Debtor’s rejection of an executory contract or unexpired lease, then, if the Debtor disagrees with your Claim, it will be disputed.

Until such time as the amount of a Disputed Claim or Interest is determined, the holder of the Claim will not participate in any distributions made to other members of the same class. However, there will be set aside and reserved by the Estate the property the Claimant would be entitled to receive if the Claim or Interest were allowed in the full amount sought by the Claimant. Once the amount of the Claim has been determined, whether by agreement or by a Final Order of the Bankruptcy Court, this amount will form the basis for a distribution to the Claimant equal to the amount that would have been distributed if the Claim or Interest had been allowed in that amount on the Consummation Date.

E. “BEST INTERESTS” OF UNSECURED CREDITORS AND SECURITY HOLDERS

Notwithstanding acceptance of the Plan by creditors and Security Holders, in order to confirm the Plan the Bankruptcy Court must independently determine that the Plan is in the best interests of all Classes of creditors and Security Holders. The “best interests” test requires that the Bankruptcy Court find that the Plan provides to each member of each impaired Class of Claims and Interests a recovery which has a present value at least equal to the present value of the distribution which each such person would receive if the Debtor’s Chapter 11 bankruptcy was instead liquidated under Chapter 7 of the Bankruptcy Code.

F. THE DEBTOR BELIEVES THAT HER PLAN IS IN THE BEST INTERESTS OF ALL CREDITORS AND SECURITY HOLDERS

To calculate what members of each impaired class of unsecured Claims and Interests would receive if the Debtor’s Chapter 11 bankruptcy was liquidated, the Bankruptcy Court must first determine the dollar amount that would be generated from the Debtor’s liquidation (“Liquidation Fund”). The Liquidation Fund of the Debtor would consist of the proceeds from the disposition of the assets of the Debtor, augmented by the cash held by the Debtor, if any, and recoveries on actions against third parties, if any. The Liquidation Fund would then be reduced by the costs of the liquidation. The Debtor’s cost of liquidation under Chapter 7 would likely include the fees of a Trustee, as well as those of counsel and other professionals that might be retained by the Debtor’s Trustee, selling expenses, any unpaid Chapter 11 expenses and any claims arising by reason of the trustee’s rejection of obligation incurred by the Debtor during the pendency of the Plan.

THE DEBTOR THEREFORE BELIEVES THAT ACCEPTANCE OF HER PLAN IS IN THE BEST INTERESTS OF ALL CREDITORS AND RECOMMENDS THAT YOU VOTE TO ACCEPT THE PLAN.

G. ACCEPTANCE AND CONFIRMATION

In order to confirm the Plan, the Bankruptcy Code requires that the Bankruptcy Court make a series of determinations concerning the Plan, including: (i) that the Plan has classified creditor and Security Holders Interests in a permissible manner; (ii) that the contents of the Plan comply with the technical requirements of the Bankruptcy Code (see discussion below); (iii) that the Debtor has proposed the Plan in good faith; and (iv) that the Debtor has made disclosures concerning the Plan which are adequate and include information concerning all payments made or promised in connection with the Plan and the Chapter 11 case. The Debtor believes that all of these conditions have been or will be met.

The Bankruptcy Code also requires, as a condition precedent to confirmation, that the Plan be accepted by the requisite votes of each Class of Creditors and Security Holders voting as separate classes and hence the Bankruptcy Court must find, in order to confirm the Plan, that the Plan has been duly accepted. In addition, the Bankruptcy Court must find that the Plan is feasible and that the Plan is in the “best interest” of all Creditors and Security Holders. Thus, even if Creditors and Security Holders of the Debtor accept the Plan by the requisite votes, the Bankruptcy Court must make independent findings respecting the Plan’s feasibility and whether it is in the best interests of the Debtor’s Creditors and Security Holders before it can confirm the Plan.

H. ACCEPTANCE

Acceptance of the Plan requires that each impaired Class of Claims or Interests accepts the Plan, with certain exceptions hereinafter discussed in Section VIII (I) entitled “Non-Acceptance and ‘Cramdown’”. A Class is impaired if the legal, equitable or contractual rights attaching to the Claims or Interests of that Class are modified other than by curing defaults and reinstating maturities or by payment in full in cash.

Classes of Claims and Interests that are not impaired under a Plan are deemed to have accepted the Plan. Class 1 is not impaired and therefore will not receive ballots. Acceptances of the Plan are being solicited only from those persons who hold Claims or Interests of impaired Classes. Under the proposed Plan, all classes are impaired, except for Class 1.

The Bankruptcy Code defines acceptance of a Plan by a Class of Claims as acceptance by the holders of two-thirds (2/3) in dollar amount and a majority in number of Claims of that Class, but for that purpose, only those Claims, the holders of which actually vote to accept or reject the Plan, are counted. The Bankruptcy Code defines acceptance of a Plan by a Class of Interests as acceptance by the holders of two-thirds (2/3) in number of shares or other equity securities, but for that purpose only those shares or other equity securities, the holders of which actually vote to accept or reject the Plan, are counted. Put another way the Claims and Interests of Creditors and Security Holders, respectively, who fail to vote on the Plan are not counted in the determination of whether the Plan has been accepted or rejected.

I. NON-ACCEPTANCE AND “CRAMDOWNS”

The Bankruptcy Code contains provisions for confirmation of a Plan even if that Plan is not accepted by all impaired Classes, as long as at least one impaired class of claims has accepted the Plan. These “cramdown” provisions for confirmation of a Plan despite the non-acceptance of one or more impaired classes of claims or interest, are set forth in §1129(b) of the Bankruptcy Code.

Pursuant to §1129(b)(2)(B), if a class of claims rejects a Plan it may still be confirmed so long as the plan provides that (i) each holder of a Claim included in the rejecting Class will receive or retain on account of that Claim property which has a value, as of the Effective Date of the Plan, equal to the allowed amount of such Claim, or (ii) a holder of any Claim or Interest that is junior to the Claims of such Class will not receive or retain on account of such junior Claim or Interest any property at all.

Pursuant to §1129(b)(2)(C), if a Class of Interests rejects a Plan, such Plan may still be confirmed so long as it provides that (i) each holder of an Interest included in the rejecting Class will receive or retain on account of that Interest property which has a value, as of the Effective Date of the Plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such Interest, or (ii) the holder of any Interest that is junior to the Interest of such Class will not receive or retain under the Plan on account of such junior Interest any property at all. The Debtor believes that her Plan complies with the requirements of 11 U.S.C. §1129(b)(2)(C).

X.

EFFECTS OF CONFIRMATION

Because the Debtor is an individual, confirmation of the Debtor's Plan does not discharge all pre-petition debts. Under 11 U.S.C. §1141(d)(5), the Debtor may seek a discharge at the conclusion of her making all of the payments provided for in the Confirmed Plan.

CONCLUSION

The Debtor, Subashini R. Daniel, therefore recommends approval of her Plan because the Plan proposes a payment in full of all allowed claims.

DATED: July 18, 2016

HODGSON RUSS LLP
Attorneys for Debtor

By: 

RICHARD L. WEISZ

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Albany, New York 12207
(518) 465-2333



SUBASHINI R. DANIEL