

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION

IN RE:  
ELROY J. MILLER &  
KRISTA MILLER

CHAPTER 11

CASE NO. 16-50309

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**FIRST AMENDED PLAN AND DISCLOSURE STATEMENT**

NOW INTO COURT, through undersigned counsel comes ELROY J. & KRISTA MILLER, Debtor(s)-in- Possession, who presents the following Combined Plan and Disclosure Statement:

On the 8<sup>TH</sup> day of March, 2016, ELROY J. & KRISTA MILLER. (Hereinafter, MILLER) filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Louisiana, Lafayette, Division.

After the filing of the bankruptcy petition, MILLER was authorized to continue in business under the protection of the Bankruptcy Code and to attempt to work out an arrangement with creditors on a plan for the repayment of their debts. This document explains how MILLER proposes to pay creditors. If the Bankruptcy Court approves this plan, the creditors' rights to collect their debt will be limited by federal law (the Bankruptcy Code). If the plan is approved, creditors will only be allowed to collect from MILLER as provided in this document.

**1. Why did ELROY J. & KRISTA MILLER file this Bankruptcy**

Mr. and Mrs. Miller are both registered nurses. Mrs. Miller is employed with Gordian Medical, Inc. She has been with Gordian for 11 years. Mr. Miller was also employed with Gordian Medical, Inc. until August of 2013 when he was terminated. He was there after in and

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out of work and had three back surgeries. He then started his own business known as 5M Medical Services and Consulting, LLC. As a new start up income is not where it needs to be to maintain the monthly living expenses.

**ASSETS OF THE DEBTOR (LIQUIDATION ANALYSIS)**

The MILLERS have their home located at 407 Boulder Creek Drive in Lafayette, Louisiana. The millers have no other real estate. The Millers have three vehicles one of which is leased. The following is submitted as a liquidation analysis of the Debtor’s assets:

<u>Asset</u>	<u>Value</u>	<u>Exempt</u>	<u>Lien</u>	<u>Value to Estate</u>
407 Boulder Creek	\$699,000.00	\$35,000.00	\$705,124.00	\$0.00
GMC Yukon	Lease	no	\$.000	\$ 0.00
GMC Sierra	\$30,000.00	no	\$29,617.48	\$382.52
2007 Ford F150	\$6,000.00	\$7,500.00	no	\$ 0.00
Household goods	\$11,500.00	\$11,500.00	no	\$0.00
Cash, accounts	\$2,700.00	no	no	\$2,700.00
401K	\$150,000.00	yes	no	\$0.00
<b>Liquidation Value:</b>				<b><u>\$3,082.52</u></b>

**2. What has happened since the Bankruptcy Case was filed?**

The Debtor has filed schedules with the Bankruptcy Court that are believed to list all assets

and Debts. These Schedules included an election by the Debtor to be treated as a Small Business. As a result of same, the Debtor is entitled to file this combined Plan and Disclosure Statement and to set same for hearing on an abbreviated basis. The Bankruptcy Court approved the application of William Vidrine, with Vidrine & Vidrine, PLLC, as general counsel for the Debtors. The debtors were authorized to continue to pay Stone Gate Mortgage (mortgage on residence), Wells Fargo (Lien on GMC Sierra) and Americredit/GM Financial (Lease on Yukon). A bar date was set by the court and noticed out to creditors as May 31, 2016.

The Debtor has filed monthly operating reports. Mrs. MILLER's work is consistent and Mr. Miller's company is showing promise. All post petition taxes, fees and costs are paid. The Debtor maintains a positive cash flow.

### **3. How does MILLER propose to pay his debts?**

#### **a. The Creditors are divided into classes**

The Bankruptcy Code requires MILLER to divide its creditors into classes. Creditors with the same legal rights must be put into the same class. In this case, each secured creditor (a creditor with a lien or mortgage on movable or immovable property) has different legal rights, so each secured creditor is put in a separate class. The Debtor's Bankruptcy Lawyer and Accountant are put in a separate category for administrative creditors, creditors who have assisted with this Bankruptcy Case. Priority tax creditors and other Claims of taxing authorities are also put in a separate category. All other creditors, the "unsecured creditors," are also placed into a separate class.

#### **b. How much and when does ELROY J. & KRISTA MILLER. propose to pay creditors?**

This disclosure statement and plan outlines MILLER'S proposed payment schedule to creditors.

All of the Assets of the Reorganized Debtor, including all furniture, fixtures, equipment, intangibles, movable property and immovable property will remain in the possession of MILLER free and clear of any mortgage, lien, judgment and/or other encumbrances, none of which will be recognized and maintained under this plan, unless provided for herein.

The United States Trustee's fees do not require allowance by the Court. Both pre-confirmation and post-confirmation UST fees shall be paid in cash and in full pursuant to all applicable provisions of the Bankruptcy Code and other statutory provisions. The Debtor will be required to continue to file monthly operating reports and/or disbursement reports and shall pay quarterly fees to the UST until this case is closed, converted or dismissed. The reports shall be filed on the same frequency as operating reports were filed according to the Debtor In Possession Order.

**Administrative Claims**– Administrative claims, including claims of MILLER's lawyer and accountant, will be paid in full in cash on the effective date of the Plan. Governmental units are exempt from the requirement of filing a request for payment of an expense as a condition of it being allowed an administrative claim.

**Priority Tax Claims**– MILLER does owe priority claims. All priority tax creditors will be paid the full amount of their priority tax claims within five (5) years from the entry of the order for relief. The first payment will be thirty (30) days after the effective date of the plan and payments thereafter will occur on a monthly basis. **The Effective date of the plan is defined as the date the Confirmation Order is entered.** Interest will continue to accrue on the priority claims

at the federal statutory rate for any claim of the IRS.

Priority tax claims due to the Louisiana Department of Revenue will be paid at the Louisiana Department of Revenue's interest rate in effect in the month the plan becomes effective. Louisiana Department of Revenue will notify the Debtors in writing as to the proper interest rate to be applied.

*If the reorganized debtor substantially defaults, defined as failing to make payments as per the confirmed plan, on the payments of a tax due to the IRS or the State of Louisiana under the plan, the entire tax debt still owed to the IRS or the State shall become due and payable immediately, and the IRS and/or the State of Louisiana may collect these unpaid tax liabilities through the administrative collection provisions of the Internal Revenue Code and /or Title 47 of the Louisiana Revised Statutes, which ever is applicable.*

Taxes Due:

**Internal Revenue Service: Priority claim of \$29,516.72.** Payments will be made by the Debtors in the amount of \$570.00 per month to the Internal Revenue Service for a total of 52 months.

**Default:**

If the reorganized Debtor substantially defaults, defined as failing to make payment as per the confirmed plan, on the plan payments due to the IRS, the State of Louisiana, or any other claim, the outstanding balance is immediately due and payable. Payment shall be for the entire amount owed to the IRS, the State or other claims under the plan. The IRS, the State of Louisiana or any other claimant may motion the court to convert the case to a Chapter 7 or in the alternative, dismiss the case or request a lifting of the stay in order that it can collect these unpaid liabilities through the administrative collection provisions of the Internal Revenue Code, the State tax code and/or other collections laws of the State of Louisiana.

Notwithstanding anything in the Plan to the contrary, the Bankruptcy Court shall not retain jurisdiction with respect to the pre-petition tax claims except for (i) resolving the amount of any state tax claim arising prior to confirmation, and (ii) enforcing the discharge provision of the Plan.

A failure of the reorganized Debtor(s) ("Debtors") to make a payment due under the confirmed plan or due on any tax for any post-confirmation tax period while making the

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installment payments due pursuant to the terms of the Plan to the Louisiana department of Revenue shall be an Event of Default. Failure to declare a default does not constitute a waiver by the Louisiana Department of Revenue's rights to declare that the Debtors are in default.

The Louisiana Department of revenue will give the Debtors written notice of the Event of Default at the address listed on the Debtor's Chapter 11 Petition or the Debtor's most recent filed tax return, with a copy to the Debtor's counsel. The Debtors may cure such default within fourteen (14) days from the receipt of such notice. If the reorganized Debtor fails to cure the default with fourteen (14) days after receipt of written notice of default, then the Louisiana Department of Revenue may (a) enforce the entire amount of its claim; (b) exercise any and all rights and remedies allowed under state law or any other applicable non-bankruptcy law; and/or (c) seek such relief as may be available in the Court, meaning any Louisiana court of proper jurisdiction and venue or any other court of proper jurisdiction and venue. All unpaid priority tax claims remain non-dischargeable after confirmation pursuant to 11 U.S.C. §1141(d)(2), and the debtors and any property of the debtors remain liable for all unpaid priority tax claims after confirmation.

**Class 1. Secured Claim of Stone Gate Mortgage:**

Stone Gate Mortgage holds a mortgage on the Miller's residence located at 407 Boulder Creek, Lafayette, Lafayette Parish, Louisiana. This plan does not attempt to modify the mortgage. The Debtor's will continue to make payments on the mortgage as per the terms of the note and mortgage. The monthly payment is \$4,172.00 per month.

**Class 2. Secured Claim of Wells Fargo Bank:**

Wells Fargo Bank has a lien on the GMC Sierra. The Debtor's will continue to make payments as per the note and the authority given to them by the court. The claim is unimpaired by this plan. The payment is \$650.00 per month.

**Class 3: General Unsecured Claims:**

The following unsecured creditors filed claims:

Iberia Bank (claim 1)	\$38,995.91
Navient (claim 2)	\$12,221.27
Whitney Bank (claim 3)	\$66,163.22

Whitney Bank (claim 4)	\$41,368.47
Whitney Bank (claim 5)	\$19,776.49
Synchrony Bank (claim 9)	\$ 526.91
<b><u>Total Unsecured claims</u></b>	<b><u>\$179,052.27</u></b>

The Debtor proposes to pay \$1,000.00 per quarter to General Unsecured Claims to be paid on a pro rata basis. This will amount to payments of \$20,000.00 over the course of the plan. The payment proposed to unsecured creditors exceeds the liquidation value and amounts to a 10% distribution.

**CLAIMS NOT FILED:**

Claims not filed by the bar date will be disallowed and those creditors will not receive a distribution under the plan. The debt will be discharged at the completion of the plan. Any collateral held by a secured creditor, who does not file a claim, will be turned over to the debtor at the completion of the plan by surrender of any and all titles and/or proof of ownership free and clear of any liens, encumbrances and/or mortgages.

**c. Future Management and ownership**

MILLER will continue to maintain ownership of all assets.

**d. Creditors have the right to vote on the plan**

After reading this plan and disclosure statement, creditors will have the right to Vote on whether the Bankruptcy Court should “confirm” this plan. Each creditor should read this combined plan and disclosure statement carefully, discuss it with a lawyer, and then fill out the ballot, when provided. MILLER’s lawyer will assemble the ballots and report to the Bankruptcy Judge. At that time, the court will conduct a confirmation hearing in this case and

decide whether to confirm the plan.

**e. Creditors also have the right to object to this Disclosure Statement and/or object to confirmation of the plan**

If a creditor believes that the Combined Plan and Disclosure Statement does not contain sufficient information to decide whether to vote for (or against) the plan, the creditor may file a written objection with the Bankruptcy Court. If a creditor believes that the plan does not meet the requirements of the Bankruptcy Code, then the creditor may also file a written objection with the Bankruptcy Court. The deadline for filing objections will be provided at a latter date.

**f. The Court may approve this plan and limit creditors' legal rights**

The Court will only consider ballots and written objections that are timely filed. If no objections are timely filed, or if the Court overrules all objections, and at least one class of creditors accepts the plan, the Court may approve the plan. If the Court approves the plan, all creditors will be bound, even if a creditor did not vote or even if a creditor voted against the plan. This means that a creditor will not be allowed to collect its claim against MILLER except as provided for in the plan.

**g. How does a class accept the plan?**

Each class is considered separately. Only the creditors who vote are counted. The Court will conclude that a class "accepts" the plan only if two requirements are met: 1) More than 50% of the voting creditors in that class vote in favor of the plan; and 2) Those creditors voting in favor of the plan hold at least 2/3 of the total amount of the debt that is voted.

**h. What if a creditor is not listed in This Plan**

All unsecured creditors who have filed a claim are listed herein. The proof of claim



deadline has been set by the court. All unsecured claims that MILLER agrees to pay (or that are disputed) are listed. If a creditor's claim is not listed and/or a creditor fails to timely file a claim with the Bankruptcy Court, MILLER will not pay any money to that creditor, but that creditor's claim will nevertheless be discharged (that is, the creditor will not be allowed to collect any money from MILLER). A discharge will only be granted after the Debtors have completed all payments to the plan and upon motion to the court. If a creditor believes this provision violates its legal rights, the creditor should contact a lawyer and file an objection with the Court.

**i. What to do for more information?**

Creditors should talk with a lawyer about their rights and responsibilities in this case. A creditor should have its lawyer call ELROY J. & KRISTA MILLER 'S lawyer, who may be contacted as follows:

**William C. Vidrine  
Vidrine & Vidrine, PLLC  
711 W. Pinhook Road  
Lafayette, LA 70503  
337-233-5195  
[WilliamV@Vidrinelaw.com](mailto:WilliamV@Vidrinelaw.com)**

If a creditor does not have a lawyer, he can call MILLER 's lawyers directly.

REMEMBER THAT MILLER 's LAWYERS CANNOT GIVE CREDITORS LEGAL OR FINANCIAL ADVICE BECAUSE THEY REPRESENT MILLER, NOT CREDITORS.

**j. Preferences and Fraudulent Transfers.**

After a review of its records, MILLER does not believe that any actionable claims exist for preferences or fraudulent transfers against any insiders or any other persons. Thus, MILLER does not intend to pursue any preference or fraudulent conveyance causes of action

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after confirmation.

**4. Does ELROY J. & KRISTA MILLER have enough money and earnings to make the payments called for in the plan?**

MILLER believe they will have sufficient income from employment to make payments to all creditors. Mrs. Miller's employer discovered she was over paid commissions for 6 months in the amount of \$23,000.00. Her commission rate will be adjusted and the amount of \$2,567.00 will be deducted from her pay for a 9 month period of time beginning in May of 2016. Sales have increased so commissions are making up for some of the short fall. Mr. Miller is self employed with 5M Medical Services and Consulting. The company is a start up having been started in February 2015. Mr. Miller believes that operations will continue to be positive.

Operating reports have been filed by the Debtor which reports include financial data since March, 2016. The following is a summary of the monthly reports.

Summary of the operating reports:

<u>Month</u>	<u>Income</u>	<u>Expense</u>	<u>Net Income</u>
March 2016	\$11,835.43	\$7,92.98	\$ 4,440.45
April 2016	\$15,049.48	\$13,564.83	\$ 1,484.65
May 2016	\$11,537.33	\$14,338.58	\$ -2,801.25
June 2016	\$11,331.15	\$10,284.88	\$ 1,046.27
July 2016	\$12,386.75	\$12,660.68	\$ -273.93
August 2016	\$13,726.75	\$12,996.75	\$ 730.00

**5. Rejection of Executory Contracts and Unexpired Leases.**

The Millers will accept the lease to ACAR Leasing, LTD dba GM Financial Leasing for the 2015 GMC Yukon. Lease payments are \$950.00 per month.

Payment Schedule (monthly) pre confirmation ( included in monthly operating reports)

Stone Gate Mortgage	\$4,172.00
Wells Fargo	\$650.00
Americredit/GM Financial	\$950.00

Additional Payments required upon confirmation on a monthly basis:

Internal Revenue Service	\$570.00
Unsecured Creditors	\$333.33

**6. Are there any alternatives to the plan?**

The only alternative is liquidation under Chapter 7 or dismissal of this case. In a liquidation scenario, unsecured creditors will receive less than they are under this plan. Liquidation under Chapter 7 would also incur additional administrative costs, including fees for a Chapter 7 trustee and his/his lawyers and accountants, real estate agent, which could substantially reduce the value of any distributions to creditors. Unsecured Creditors would receive at most the liquidation value of assets which would be about \$3,000.00 or less in a Chapter 7 liquidation. The unsecured creditors will receive 5% (\$20,000.00) under this Chapter 11 Plan.

**9. Is there any risk that the plan might not succeed?**

The revenues derived from the Debtor's income may not be sufficient to make all

payments due under the plan payments. There is some chance that MILLER may not be able to continue to work at the same pace they currently are but MILLER believes that they can pay creditors as per this plan and will try their utmost to ensure that all creditors are paid as per the plan allow the Debtor's to fund the plan.

**10. Are there any tax effects from this plan?**

Tax Effects for the Debtor: MILLER believes that it will suffer no unexpected tax effects from this plan or due to the fact that they have become insolvent.

Tax Effects to Creditors: MILLER also does not believe that Creditors will have any tax effects as a result of the filing of this Bankruptcy Proceeding or the confirmation of this plan. It is possible that some of the Creditors may be able to deduct some of MILLER debt as a bad debt expense but that would only be for certain creditors on an accrual accounting basis. However, each Creditor should consult with its own tax advisor to be sure.

**11. Please vote for this plan**

MILLER asks that creditors vote in favor of this plan.

RESPECTFULLY SUBMITTED  
ELROY AND KRISTA MILLER

By: /s/ ELROY AND KRISTA MILLER

By: /s/ William Vidrine  
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