

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 11

**FRANK CARDELLO**  
**A/k/a Frank M. Cardello MD**

Case # **1-11-42040-CEC**

Debtor.

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**DEBTOR’S SECOND AMENDED DISCLOSURE STATEMENT, DATED OCTOBER 14,  
2016**

**I. INTRODUCTION**

This is the Second Amended Disclosure Statement (the “Disclosure Statement”) in the Chapter 11 Case of Frank Cardello (the “Debtor” or the “Plan Proponent”). This Disclosure Statement contains information about the Debtor and describes the Chapter 11 Plan (the “Plan”) dated October 14, 2016. A full copy of the Plan is attached to this Disclosure Statement as **Exhibit A**. Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.

**A. Purpose of This Document**

This Disclosure Statement describes:

- The Debtor and significant events during the Bankruptcy Case,
- How the Plan proposes to treat claims or equity interests of the type you hold (i.e., what you will receive on your claim or equity interest if the Plan is confirmed),
- Who can vote on or object to the Plan,
- What factors the Bankruptcy Court (the “Court”) will consider when deciding whether to confirm the Plan,
- Why Debtor believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

**B. Defined Terms**

All defined terms in this plan have the meaning assigned to them by section 101 of the Bankruptcy Code (the “Code”) or the Plan. If you are unclear of the meaning of any defined terms, you should consult section 101 of the Code or the Plan.

**C. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing**

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

*1. Time and Place of the Hearing to Approve This Disclosure Statement and Confirm the Plan*

The hearing at which the Court will determine whether to approve this Disclosure Statement and fix a date for a hearing on whether to confirm the Plan will take place on \_\_\_\_\_ 2016 at \_\_\_\_\_, in Courtroom 3529, at the United States Bankruptcy Court, 271-C Cadman Plaza East, Brooklyn, New York 11201.

*2. Deadline for Voting to Accept or Reject the Plan*

If you are entitled to vote to accept or reject the plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to David J. Doyaga, Sr., Doyaga & Schaefer, 26 Court Street, Suite 1002, Brooklyn, New York 11242.

**Your ballot must be received by \_\_\_\_\_ or it will not be counted.**

*3. Deadline for Objecting to the Adequacy of Disclosure and Confirmation of the Plan*

Objections to this Disclosure Statement or to the confirmation of the Plan must be filed with the Court and served upon Doyaga & Schaefer by \_\_\_\_\_.

*4. Identity of Person to Contact for More Information*

If you want additional information about the Plan, you should contact the Debtor’s attorney, in writing at David J. Doyaga, Sr., 26 Court Street, Suite 1002, Brooklyn, New York 11242, or by e-mail at david.doyaga@verizon.net.

**D. Disclaimer**

*The Court has not yet approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms.*

*The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted.*

## **II. BACKGROUND**

### **A. Description and History of the Debtor's Business**

The Debtor is an individual. The Debtor has been a medical doctor of Internal Medicine for over 30 years. Debtor's practice remains steady and is addressed in more detail in paragraph II G. below.

### **B. Insiders of the Debtor**

There are no insider creditors of the Debtor. Celine Cardello is a creditor but is the ex-wife of the Debtor and as such is not an insider.

### **C. Events Leading to Debtor's Bankruptcy Filing**

The cause of Debtor's current financial condition was unpaid income taxes owed to the Department of the Treasury of the United States, the Internal Revenue Service, ("IRS") as reflected on various proof of claim filed by IRS in the Case. The original claim filed by IRS was for a total of \$537,539.88 in taxes. Not only was this figure staggering and insurmountable, absent a Bankruptcy Filing, the Debtor was caught in a "Catch 22" situation wherein pursuant to his Divorce Judgment he could not sell his two co-owned real properties and use his share of the proceeds to pay IRS unless he first paid the tax liens in full before the sale. He could not afford to pay these liens before sale and so could not sell.

### **D. Significant Events During the Bankruptcy Case**

On March 16, 2011 (the "Filing Date"), the above captioned Debtor, Frank Cardello filed a voluntary petition (the "Petition") for relief in accordance with Chapter 13 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Eastern District of New York, at Brooklyn (the "Court"). Thereafter, by Notice of Appointment, Michael J. Macco, Esq., was appointed the Chapter 13 Trustee (the "Trustee") of the Debtor. On October 7, 2015 an Order was entered converting the Case from Chapter 13 to Chapter 11. Conversion was necessary because the Debtor could not make all the necessary payments within the 5 year restriction of Chapter 13.

The Debtor retained counsel the Court noticed a deadline for the filing of claims and Debtor has negotiated the terms of two agreements with his ex-wife, Celine Cardello and IRS. These agreements are annexed as Exhibit B and C

This Case has a long history but the more significant events are as follows: on the Filing Date, the Debtor co-owned two real properties with his ex-wife. One that was the former marital Residence at 50 Ryan Place and one that was used for his medical office. Both of these were sold after protracted litigation during the Case with his co-owner, ex-wife, Celine Cardello. After a trial on the issue of the sale of the Office Property, the Court entered an Order directing the sale of the Office Property located at 5430 Amboy Road, Staten Island, New York. Pursuant to an Order entered by the Court on July 30, 2012 the proceeds of that mortgage payoff to Victoria Nasta, payment of tax liens, and the commissions of Michael J. Macco, the Trustee. Thereafter, another adversary proceeding was brought against Celine Cardello and the IRS to compel the sale of the former marital residence at 50 Ryan Place, Staten Island, New York. This matter was sent to Judge Elizabeth S. Stong for mediation.

Mediation resulted in a settlement with IRS and Celine Cardello as reflected in the Stipulations attached as Exhibits B and C hereto. The effects of these stipulations was to provide a mechanism by which the sale of the Ryan Property could properly take place and Celine Cardello and Debtor can realize their respective shares in the Ryan Place Property. The Debtor's share of Ryan Place (\$96,000) would go entirely to IRS plus \$24,000 that was coming from Celine Cardello's share that the Debtor shall repay to Celine Cardello over time pursuant to the Stipulation. The IRS agreed to accept the \$120,000 in full satisfaction of its secured claims and has amended its claim to be \$120,000 secured, \$124,494.36 priority and \$266,197.72 unsecured. The Stipulation further provides that the Debtor shall pay the IRS its priority claim of \$124,494.36 in 5 years from confirmation. The Plan so provides

As to this Ryan Place Property, Celine Cardello had until the end of February to market the Property and did, in fact, finally find a buyer offering an amount she found acceptable. The Contract of Sale was then approved by this Court and the Property was sold.

From the Sale proceeds, IRS received \$120,000 on its amended proof of claim pursuant to the Stipulation of Settlement between IRS, Celine Cardello and the Debtor. Celine Cardello had owed Frank Cardello approximately \$96,000 from the Sale of the Ryan Street Property and, pursuant to these stipulations (Exhibits B & C) she added to the \$96,000 the \$24,000 needed to get IRS to the \$120,000 figure. Pursuant to these Stipulations, Frank Cardello is repaying Celine Cardello \$333.34 a month for 72 months until the \$24,000 is paid in full

From the Sale of the Ryan Place Property, Celine Cardello paid \$75,000 to her attorney Pasquale Calcagno and \$200,000 was set aside to pay her prior attorney Shoshana Myerson pending resolution of a dispute between them concerning the amount of Shoshana Myerson's Claim against Celine. Finally, and perhaps most importantly, for purposes of this Case, the Sale of Ryan Place triggered the reduction of the support payments to Celine Cardello; and not just a reduction, but also the commencement of the 6 year end to her support. So the payments required to be made to Celine were reduced by about \$4,500 a month thus freeing disposable income in order to commence paying IRS on its priority claim of \$124,494.96, to repay Shoshana Myerson on her Domestic Support obligation claim, \$70,000, and to make all the payments required under the plan.

#### Recent Complications

Debtor is now positioned to make payment towards his creditors and has been instructed by his counsel to commence making payments to escrow equal to \$4,000 a month to demonstrate he can afford the plan. A recent complication that has developed is that neither Celine Cardello, nor

her attorney Pasquale Calcagno have been responsive to any inquiries concerning the reduction or withdrawal of Celine Cardello's claim for Domestic Support obligation arrears or defaults Debtor maintains that Celine's claim should be withdrawn in full or drastically reduced but attempts to resolve the claim have been met with no response. So Debtor's counsel made a motion to strike the claim returnable November 9, 2016.

Nevertheless, Debtor believes he is positioned to move forward to confirmation.

**E. Projected Recovery of Avoidable Transfers**

The Debtor has conducted an investigation and determined that there are no viable preference or avoidance actions to pursue at this time.

**F. Claims Objections**

Except to the extent that a claim is not already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The procedures for resolving disputed claims are set forth in Article V of the Plan. Debtor has objected to claims 10 and 12 of Celine Cardello for reasons including but not limited the fact that her claims are duplicative and contain the claims of other claimants.

**G. Current and Historical Financial Conditions and Projections**

The Debtor works as an employee of a medical management company that manages his patients and their billings. He does not have any ownership interest in the management company, but the patients always remain his patients in the event the Debtor ends the management agreement. Debtor receives all of his income in the form of paychecks.

The Debtor has no other income. The Debtor's 2014 tax returns showed a total adjusted gross income of \$274,243. Debtor's income should remain stable for the length of his Plan. Debtor's is 59 years old. The only projections that can be made is that the Debtor's adjusted gross income has remained stable at the present rate for several years and should continue.

**III. SUMMARY OF THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS**

**A. What is the Purpose of the Plan of Reorganization?**

As required by the Code, the Plan places claims in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

**B. Unclassified Claims**

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may,

however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan Proponent has not placed the following claims in any class:

*Administrative Expenses*

Administrative expenses are costs or expenses of administering the Debtor's Chapter 11 case which are allowed under § 507(a)(2) of the Code. The Code requires that all administrative expenses be paid on the Effective Date of the Plan, unless a particular claimant agrees to a different treatment. These claims are not impaired and do not vote. The only two creditors in this category are the office of the United States Trustee and Debtor's Counsel. Debtor's Counsel shall be owed approximately \$75,000 upon confirmation and shall have to accept payment over time, probably for 7 years at \$900 a month.

**C. Classes of Claims**

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

1. Since the secured claims in this Case were all paid in full from the sale of the two real properties, there is no provision for these claims; they are paid already.

*2. Domestic Support Claims -Designated Class 1.*

The Debtor had owed his ex-wife Celine Cardello some Domestic Support arrears but these were entirely cured during the plan. Also Debtor owes \$70,000 to Shoshana A. Myerson, Celine Cardello's former attorney. To the extent allowed after objection, this claim shall be paid in full over five years under the Plan. This class shall be paid \$1166.67 a month for 60 months, with Shoshana Myerson receiving this payment pursuant to a stipulation of settlement Debtor also must pay Celine \$333.34 a month for 72 months.

3. *Priority Tax Claims-Designated Class 2.* Priority tax claims are claims for certain unpaid pre-petition taxes owed by the Debtor under § 507(a)(8) of the Code. In this Case, the IRS has such a claim but has agreed to the payment in full in five years from the date of confirmation of a Plan of \$124,494.96. This would require a payment of \$2,074.90 a month (plus Statutory Interest that changes annually) (approximately \$80 a month). The plan also provides as to IRS that it shall be an event of default if the Debtor fails to make any payment as provided in the Plan. Upon written receipt from the Internal Revenue Service of notice of default relating to payment, the Debtor shall have a period of thirty (30) days from receipt of such notice to cure such default and during such thirty (30) days, the Internal Revenue Service shall take no action to terminate this Plan. If such default is cured by the Debtor within said thirty (30) day period, then the Plan shall continue in full force and effect. Any notices of default under the Plan shall be sent to the Debtor and Debtor's attorneys. If full payment is not made within thirty (30) days of such demand, then the Internal Revenue Service may collect the entire imposed liability, together with any unpaid

current liabilities, plus accruals, shall become due and payable immediately, through the administrative collection provisions of the Internal Revenue Code, and the automatic stay of 11 U.S.C. 362(a) is lifted for this purpose without further order of the Court. In addition, if the Debtor fails to pay any post confirmation tax liability or fails to file post-confirmation tax returns by the due date of the return, then the United States may declare a default of the Plan.

New York State is owed priority taxes of \$22,581.27 and while they filed as a secured claim, because their liens were filed in 2010, they are primed by the large IRS liens ahead of them. Thus, they are unsecured, priority claims. This NY State claim shall also be paid in full over 5 years from confirmation at a rate of \$376.36 a month plus statutory interest.

#### 4. *General Unsecured Claims-Designated Class 3*

All general unsecured claims of entities of the Debtor shall be paid 1% of their claim within 60 months of the Effective Date, unless a particular claim is objected to and the objection is sustained. These claims include:

- Claim No. 4: Candica, L.L.C./o Weinstein & Riley, P.S. amount of \$9,470.3;
- Claim No. 5: Portfolio Recovery Associates, LLC c/o HSBC Bank Nevada, N.A, in the amount of \$323.97;
- Claim No. 7: Portfolio Recovery Associates, LLC., in the amount of \$2,977.63;
- Claim No. 8. Jefferson Capital Systems LLC, in the amount of \$322.58; and
- Claim No. 3: IRS (unsecured claim ) in the amount of \$266,197.72.

These claims total \$279,295.20. This Class is impaired and is entitled to vote on the Plan.

The payment to this class shall be 1% or a total of \$50 a month.

#### D. *Means of Implementing the Plan*

##### 1. *Source of Payments*

Payments and distributions under the Plan shall be funded by the net income from Debtor's employment.

##### 2. *Post-confirmation Management*

The Debtor, Frank Cardello, shall continue to manage his financial affairs.

#### E. **Risk Factors**

The proposed Plan has the following risks:

- Debtor could die or become disabled preventing continuing employment.

#### F. **Executory Contracts and Unexpired Leases**

The Plan provides for the assumption of all executory contracts and unexpired leases to the extent any exist.

If you object to the assumption of your unexpired lease or executory contract, the proposed cure of any defaults, or the adequacy of assurance of performance, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set an earlier time.

If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan.

The deadline for filing a proof of claim based on a claim arising from the rejection of a lease or contract shall be 30 days after the date of any confirmation order. Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.

#### **G. Tax Consequences of Plan**

Creditors and holders concerned with how the plan may affect their tax liability should consult with their own accountants, attorneys, and/or advisors. Since no debt is discharged or property transferred, there shall be no tax effect on the Debtor.

#### **H. Liquidation Analysis**

The Debtor has no non-exempt assets the liquidation of which could provide any distribution to unsecured creditors, Let alone Domestic support obligations or priority taxes.

### **IV. CONFIRMATION REQUIREMENTS AND PROCEDURES**

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Code. These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation. In a liquidation, it is believed that priority creditors and unsecured all creditors would receive no repayment. Under the Plan priority shall be paid in full, Domestic Support Obligations shall be paid in full and all general unsecured creditors shall be paid 1% of their claim.

#### **A. Who May Vote or Object**

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.



Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor has a right to vote for or against the Plan only if that creditor has a claim that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Debtor believes that classes 1, 2, and 3 are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan.

*1. What Is an Allowed Claim?*

Only a creditor with an allowed claim has the right to vote on the Plan. Generally, a claim is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest. When a claim or equity interest is not allowed, the creditor cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

*2. What Is an Impaired Claim?*

As noted above, the holder of an allowed claim has the right to vote only if it is in a class that is impaired under the Plan. As provided in § 1124 of the Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

*3. Who is Not Entitled to Vote?*

The holders of the following three types of claims are not entitled to vote:

- holders of claims in unimpaired classes;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code; and
- administrative expenses.

**EVEN IF YOU ARE NOT ENTITLED TO VOTE ON THE PLAN, YOU HAVE A RIGHT TO OBJECT TO THE CONFIRMATION OF THE PLAN AND TO THE ADEQUACY OF THE DISCLOSURE STATEMENT.**

*4. Who Can Vote in More Than One Class?*

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise holds claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim. The IRS is one.

## **B. Votes Necessary to Confirm the Plan**

Generally, if a Plan is not accepted by all impaired classes, it may nevertheless be confirmed by the Bankruptcy Court if (i) the Plan is accepted by at least one impaired class and it meets all of the other requirements of Section 1129(a) of the Bankruptcy Code; (ii) the plan does not discriminate unfairly; and (iii) the Plan is fair and equitable to the rejecting classes.

### *1. Votes Necessary for a Class to Accept the Plan*

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half (1/2) in number of the allowed, voting claims in the class vote to accept the Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed, voting claims in the class vote to accept the Plan.

The Debtor cannot vote on the Plan.

### *2. Treatment of Nonaccepting Classes*

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds nonaccepting classes is commonly referred to as a “cramdown” plan. The Code allows the Plan to bind nonaccepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not “discriminate unfairly,” and is “fair and equitable” toward each impaired class that has not voted to accept the Plan.

You should consult your own attorney if a “cramdown” confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.

## **C. Liquidation Analysis**

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. A liquidation analysis is not attached to this Disclosure Statement because has no non-exempt assets that could provide any distribution.

## **D. Feasibility**

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan.

The Plan is being funded by post-petition income. During the course of the Chapter 11 Case, the Debtor has been paying all current expenses and mortgage payments and Debtor intends to remain employed.

It is anticipated that there shall be sufficient moneys on hand to pay all unpaid administrative expenses upon confirmation.

The Debtor believes there will be enough cash on hand on the Effective Date of the Plan to pay all the claims and expenses that are entitled to be paid on that date.

**V. EFFECT OF CONFIRMATION OF PLAN**

**A. DISCHARGE OF DEBTOR**

Discharge. On the Effective Date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the Effective Date, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor shall not be discharged of any debt imposed by the Plan. After the effective date of the Plan your claims against the Debtor will be limited to the debts described in the Plan.

The Debtor is an individual. The Debtor is required by a judicial or administrative order or by statute to pay a Domestic Support Obligation. The Debtor has such obligations.

**B. Modification of Plan**

The Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or re-voting on the Plan.

The Plan Proponent may also seek to modify the Plan at any time after confirmation only if (1) the Plan has not been substantially consummated and (2) the Court authorizes the proposed modifications after notice and a hearing.

**C. Final Decree**

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Plan Proponent, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion.

Dated: Brooklyn, New York  
October 7, 2016

/s/Frank Crdello.

Frank Cardello

/s/David J. Doyaga, Sr.

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