

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

MARION AVENUE MANAGEMENT LLC,

Case No. 16-10213 (JLG)

Debtor.

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**AMENDED DISCLOSURE STATEMENT PURSUANT TO 11 U.S.C. §1125
RELATING TO DEBTOR'S PLAN OF REORGANIZATION**

THIS IS NOT A SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR BANKRUPTCY COURT APPROVAL, BUT HAS NOT YET BEEN ACTUALLY APPROVED.

Marion Avenue Management LLC (the "Debtor") hereby submits this Amended Disclosure Statement (the "Disclosure Statement") pursuant to §1125 of Title 11, United States Code (the "Bankruptcy Code"), in connection with Debtor's accompanying Plan of Reorganization dated November 23, 2016 (ECF #40) (the "Plan"). Defined terms in the Plan shall have the same meaning for purposes of this Disclosure Statement.

I. INTRODUCTION

The Plan addresses the relatively unique procedural posture of the Debtor's case. As noted in previous filings, the Debtor sought Chapter 11 protection because it faced an impending personal injury trial on damages, although the scope of its available insurance, if any, was still being litigated in the context of a Declaratory Judgment Action against a recalcitrant insurer, Public Service Mutual Insurance Company.

By filing the Chapter 11 petition, the Debtor was able to stay the personal injury action. The hope was that the Debtor would obtain a resolution of the Declaratory Judgment and Action first, and then proceed to trial on the personal injury claim so the Debtor would know for sure whether or not there was insurance in place. The Debtor is seeking to implement this strategy through the Plan even though the Declaratory Judgment Action was remanded from the Bankruptcy Court to the Supreme Court, Bronx County on May 3, 2016. Proceedings in the Declaratory Judgment Action will continue in Bronx County post-confirmation.

In the meantime, the automatic stay remains in place with respect to the personal injury litigation. The Plan maintains the status quo and provides for the continuation of the automatic stay on a post-confirmation basis until such time as the Declaratory Judgment Action is finally decided in the state court. Following this determination, the Personal Injury Action will then be restored to the state court to fix damages. These damages shall be paid by either available insurance (assuming the Debtor is successful in the Declaratory Judgment Action) or through a refinancing of the Debtor's property or a combination of both.

II. SCOPE OF THIS DISCLOSURE STATEMENT

This Disclosure Statement has been prepared by the Debtor in consultation with its attorneys, Goldberg Weprin Finkel Goldstein LLP, to provide creditors with all relevant information regarding the Debtor's ability to emerge from Chapter 11 and fund the distributions provided by the Plan. Pursuant to 11 U.S.C. §105(d)(2)(B), the Disclosure Statement has been conditionally approved by the Bankruptcy Court as containing adequate information within the meaning of 11 U.S.C. §1125 necessary for creditors to (i) evaluate the Plan; and (ii) determine whether to accept or reject the Plan. Final approval of the Disclosure Statement will be sought by

the Debtor in conjunction with actual confirmation of the Plan. The Court's preliminary approval of the Disclosure Statement is conditional, and creditors have the right to object to final approval of the Disclosure Statement, and to object to the Plan itself if they so elect. However, the Debtor has made an effort to craft a Plan that it believes will protect everyone's interests while maximizing the likelihood that all creditors will be paid in full. Accordingly, the Debtor hopes that creditors will support these efforts without any objection.

III. CONFIRMATION PROCESS

The Combined Hearing.

Pursuant to Sections 105 and 1128 of the Bankruptcy Code, the Bankruptcy Court has scheduled a combined hearing to consider both final approval of this Disclosure Statement and confirmation of the Plan on the same day and time, to wit January __, 2017 at ____ __.m. The combined hearing shall be conducted by the Honorable James L. Garrity Jr., U.S. Bankruptcy Judge, in Courtroom 601 at the U.S. Bankruptcy Court located at One Bowling Green, New York, NY 10004.

Voting on the Plan.

In accordance with section 1126(f) of the Bankruptcy Code, all classes of claims that are impaired may vote to accept or reject the Plan. A class of claims is impaired if the Plan modifies, alters or changes the Claimant's legal, equitable or contractual rights against the Debtor. In this case, the Class 3 Claims of General Unsecured Creditors and the Class 4 Tort Claim of Franklin Morales are non-insider impaired classes eligible to vote on the Plan.

Ballots for acceptance or rejection of the Plan will accompany the Plan, and should be completed by all voting classes of creditors. After carefully considering this Disclosure

Statement and the Plan, please indicate your vote on the enclosed ballot and return same before the voting deadline to Goldberg Weprin Finkel Goldstein LLP, Attn: Kevin J. Nash, 1501 Broadway, 22nd Floor, New York, New York 10036. Facsimile: (212) 422-6836. E-mail: KNash@GWFGlaw.com.

In order to be counted, your ballot must be actually received on or before _____, 2017 (the "Voting Deadline"). All forms of personal delivery of ballots including overnight delivery service, courier service, delivery by hand, facsimile and e-mail are acceptable. There is no need to file your Ballot with the Clerk of the Bankruptcy Court. If your ballot is damaged or lost, or if you do not receive a ballot to which you are entitled, you may request in writing a replacement by contacting Goldberg Weprin Finkel Goldstein LLP at the address listed below.

Only actual votes will be counted. A failure to return a ballot will not be counted either as a vote for or against the Plan. A returned ballot that fails to indicate a vote will not be counted either as a vote for or against the Plan. If a creditor casts more than one ballot voting the same Claim before the Voting Deadline, the latest dated Ballot received before the Voting Deadline will be deemed to reflect the voter's intent and thus to supersede any prior ballots.

IV. SIGNIFICANT EVENTS LEADING TO THE CHAPTER 11 FILING

The Debtor owns certain commercial real property located at 314-326 East 194th Street, Bronx, New York (the "Property"), consisting of seven (7) commercial tenants and currently generating annual rents of approximately \$216,000 per year. The Property has a fair market value of approximately \$2,000,000, and is encumbered by a first mortgage held by Santander Bank, N.A. ("Santander"). As of the Chapter 11 filing on January 29, 2016, the

balance due on the mortgage was \$522,746.58. The Debtor was and remains current on its obligations to Santander under the mortgage.

The Debtor's problems arose because of an accident involving a contractor, Franklin Morales, who was performing work for one of the Debtor's tenants on June 30, 2008, when he fell from a step-ladder and broke his thumb and ankle. Under New York labor law, liability is imposed upon property owners for injuries to third party contractors, even though the property owner did not hire the contractor and was not even aware of his presence on the property. Accordingly, after Mr. Morales commenced a lawsuit in the Supreme Court, Bronx County, the Debtor was held liable under Sections 240 and 246 of the New York Labor Law, and a separate trial on damages was scheduled for February 1, 2016 (the "Personal Injury Action").

The Debtor carried insurance through Public Service Mutual Insurance Company (the "Insurer"), which disclaimed coverage, alleging that the Debtor failed to provide prompt notice of Mr. Morales's claim. The Debtor received a letter dated December 1, 2008 from Richard Altman, Esq., attorney for Mr. Morales, advising of the injury and asserting a claim for damages (the "Claim Letter"). The Claim Letter was forwarded to the Insurer, which noted that the Claim Letter carried the notation "Third Notice". Despite an affidavit from Mr. Altman explaining that the notation "Third Notice" was a word processing error and that the Claim Letter was, in fact, the original notice, the Insurer continues to disclaim coverage.

Mr. Morales commenced his Personal Injury Action on or about April 8, 2011 under Index No. 303499/2011. In response, the Debtor filed an answer and commenced a third party Declaratory Judgment Action against the Insurer. The Declaratory Judgment Action was

later severed by Order dated April 19, 2013 and re-started under a separate index number (251287/2013).

Summary judgment was awarded against the Debtor in the Personal Injury Action on the question of liability. The amount of the damages was reserved for a jury trial.

After the Debtor obtained deposition testimony and an affidavit from Mr. Altman confirming that the Claim Letter was the first, rather than the third notice, the Debtor moved for summary judgment against the Insurer, which opposed the motion, and cross moved for summary judgment dismissing the Declaratory Judgment Action.

As the trial date in the Personal Injury Action approached without a resolution of the Declaratory Judgment Action, the Debtor was concerned that it would have been improvident to expose the Property to a damages trial in Bronx County without knowing whether or not the Insurer's efforts to disclaim coverage would be availing. Accordingly, the Debtor filed for Chapter 11 relief on January 29, 2016, thereby invoking the automatic stay imposed in all bankruptcy cases under Section 362 of the Bankruptcy Code.

V. SIGNIFICANT EVENTS DURING THE BANKRUPTCY CASE

After the petition was filed, the Debtor removed the Declaratory Judgment Action to the United States District Court for referral to the Bankruptcy Court. The case was transferred by Order dated February 24, 2016.

Thereafter, the Insurer moved for an Order from the Bankruptcy Court remanding the case to state court. The Debtor vigorously opposed the motion. However, after a hearing held on April 12, 2016, the Court found that the litigation was "non-core" and subject to mandatory abstention. An Order was entered on May 3, 2016 remanding the Declaratory Judgment Action to the Supreme

Court, Bronx County, where the case is now pending. The Debtor shall supplement this Disclosure Statement once a new hearing is scheduled on the pending cross motions for summary judgment in the Declaratory Judgment Action.

In the meantime, the Debtor met with counsel for the its lender, Santander Bank, to reassure the lender that the Debtor would remain current on its mortgage obligations and did not intend to restructure or otherwise modify the mortgage loan during the Chapter 11 case. The Debtor negotiated a stipulation with Santander Bank for the use of cash collateral, which was approved by the Court on June 28, 2016.

Since the Chapter 11 case began, the Debtor has complied with all of its obligations under the mortgage and the cash collateral stipulation, and is current in its payment to all of its other post-petition creditors.

VI. CLASSIFICATION AND TREATMENT OF CLAIMS UNDER THE PLAN

The Plan classifies the various pre-petition claims against the Debtor into essentially four classes as outlined below. Administrative expenses are not separately classified, and consist of the professional fees and expenses to be awarded to the Debtor's bankruptcy counsel, Goldberg Weprin Finkel Goldstein LLP. Additionally, U.S. Trustee Fees shall be paid by the Debtor until the bankruptcy case is closed.

A. Summary of Classification and Treatment of Claims and Equity Interests

Class	Designation	Impaired and Entitled to Vote
Class 1	Secured Claim of Santander Bank	No
Class 2	Priority Tax Claims of Governmental Units	No
Class 3	Unsecured Claims	Yes
Class 4	Tort Claim	Yes
Class 5	Equity Interests	No

B. Classification, Treatment and Voting

Class 1 —Secured Claim of Santander Bank

Classification: Class 1 is comprised of the remaining balance owed on the allowed Secured Claim of Santander Bank, which holds a first mortgage lien on the Debtor's real property and lease pursuant to the Collateral Documents.

Treatment: Pursuant to the certain Stipulation and Order for Authorizing the Debtor's use of cash collateral entered on June 28, 2016 (ECF #24) (the "Stipulation"), the claim of Santander Bank was effectively ratified and reaffirmed. The Debtor remains current on its mortgage obligations to Santander Bank. Accordingly, the secured claim shall be carried forward, and deemed "reinstated" as of the Effective Date within the meaning of 11 U.S.C. §1124, without being amended or modified by this Plan. Santander Bank shall retain its mortgage lien and assignment of leases following Confirmation in accordance with the Collateral Documents.

Voting: Because the Class 1 secured claim of Santander Bank is not in default and will continue to be paid in accordance with all existing terms of the Collateral Documents without modification, Santander Bank is unimpaired and deemed to accept the Plan pursuant to Section 1126(f) of the Bankruptcy Code

Class 2 —Priority Tax Claims of Governmental Units

Classification: Class 2 is comprised of the allowed Priority Tax Claims of governmental units consisting of filed proof of a claim by the IRS in the amount of \$500.00.

Treatment: The Class 2 Claims of the IRS shall be paid in full on the Effective Date.

Voting: Class 2 is unimpaired and deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

Class 3 – Unsecured General Claims

Classification: Class 3 is comprised of the allowed Unsecured General Claims (excluding personal injury tort claim of Franklin Morales). There are four Class 3 Claims owed the aggregate amount of \$14,000.00.

Treatment: Each holder of an Allowed Unsecured General Claim shall be paid in full in two payments of 50% each, one on the Effective Date of the Plan and one 3 months later. The second payment shall include post-petition interest at the federal judgment rate unless otherwise agreed by the respective Class 3 Claimants, in full settlement, satisfaction and release of such Claim.

Voting: Class 3 is impaired and has the right to vote on the Plan.

Class 4 –Tort Claim of Franklin Morales

Treatment: Class 4 is comprised of the unliquidated personal injury tort claim filed by Franklin Morales. This claim is purely estimated and has not yet been liquidated. Following conclusion of the Declaratory Judgment Action, the final amount of the Class 4 claim shall be fixed in the state court in connection with the trial on damages in the Personal Injury Action. For purposes of the claims resolution process, confirmation of the Plan shall be deemed a continuing objection by the Debtor to the final allowance of the Class 4 claim until the damages are fixed in the state court by a final order or judgment (including exhaustion of all appeals).

Payment: After a final determination of the Class 4 claim in the state court, Mr. Morales shall be paid first from available insurance proceeds, if any. If, at the conclusion of the

Personal Injury Action, the amount of Mr. Morales Class 4 Claim is greater than the available insurance proceeds, the balance due shall be paid by the Debtor through a refinance of the Property pursuant to Section 5.1(a) below.

Voting: The Class 4 Claim of Morales is deemed impaired.

Class 5 — Equity Interests

Classification: Class 5 Equity interests consist of the Debtor's current members Sion Sohayegh (50%) and Ladan N. Sohayegh (50%).

Treatment: The Class 5 equity holders shall continue to retain their respective membership interests in the Debtor and Reorganized Debtor (i.e., the Debtor following confirmation of the Plan) on the same terms and conditions. The Class 5 equity holders shall not receive any monetary distribution under the Plan.

Voting: As insiders of the Debtor, equity holders are not eligible to vote on the Plan.

VII. IMPLEMENTATION OF THE PLAN

Implementation. The payments of Administrative Expenses and Class 1, 2, and 3 Claims shall be made from operating income and other contributors of equityholder.

The Class 4 Claim of Mr. Morales shall be paid first from such insurance as may be available. In the event the final amount of the Class 4 Claim, as fixed in the state court, exceeds the amount of available insurance, the Debtor shall proceed to refinance the Property to satisfy the final allowed claim. There is equity in the Property, which is also income producing, so that the Debtor believes it is capable of obtaining any necessary refinancing.

Recording Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, the making, delivery or recording of a mortgage or transfer document in connection with a refinance of the Property or otherwise, as necessary, shall be done in furtherance of this Plan. Accordingly, any mortgage or transfer document shall not be subject to state or city recording taxes. Instead, the appropriate state or local government official or agent shall forego the collection of any such recording tax and accept for filing and recording all such documents, without the payment of any such recording taxes.

Executory Contracts and Unexpired Leases. All executory contracts and unexpired leases not rejected pursuant to Order of the Bankruptcy Court as of the Confirmation Hearing shall be deemed assumed without further order of the Bankruptcy Court, it being the Debtor's intent that all of leases of the Debtor's tenants shall pass through the Chapter 11 case without being effected thereby.

The Automatic Stay and the Plan Injunction. The Personal Injury Action shall be stayed and enjoined pursuant to 11 U.S.C. §§362 and 1141 following the Effective Date and until such time as the Declaratory Judgment Action is concluded by the entry of a final, non-appealable Judgment or Order (the "Declaratory Judgment Conclusion Date"). The Confirmation Order shall provide that the stay and injunction shall terminate on the first business day after the Declaratory Judgment Conclusion Date, following which the Personal Injury Action shall be restored to the trial calendar in the state court.

Except as otherwise provided in the Plan or the Confirmation Order, pursuant to 11 U.S.C. §1141, the entry of the Confirmation Order shall forever stay, restrain and permanently enjoin, on and after the Confirmation Date (1) the commencement or continuation of any action, the employment of process, or any act to collect, enforce, attach, recover or offset from the Debtor's

Property, (2) the creation, perfection or enforcement of any lien or encumbrance against the Property or (3) any Claim or Interest discharged under the Confirmation Order, the Plan, or pursuant to section 1141(d)(1) of the Bankruptcy Code, as against the Debtor's Property.

Except as otherwise provided in the Plan or the Confirmation Order, pursuant to 11 U.S.C. §1141, the entry of the Confirmation Order shall constitute an injunction against the commencement or continuation of any action, the employment of process, or any act, to collect, recover or offset from the Debtor's Property.

Nothing contained in the Plan or the Confirmation Order shall enjoin, limit or restrict in any manner Santander Bank from administering, enforcing, collecting, foreclosing or taking any other action under the Collateral Documents after the confirmation and consummation of this Plan.

Retention of Jurisdiction. The Bankruptcy Court shall retain jurisdiction until the bankruptcy case is closed to hear the following matters:

- (a) Ensure that the Plan is substantially consummated, and enter an Order closing the case;
- (b) Resolve all matters relating to the Plan, including, without limitation, the enforcement, interpretation and any issues or dispute relating to the consummation of the Plan;
- (c) Allow, disallow, determine, liquidate or classify, any secured or unsecured Claims, including, without limitation, (i) the resolution of any request for payment of professional fees or other Administrative Expenses; and (ii) the resolution of any objections to the allowance of Claims pending at the time of Confirmation, except as relates to the Class 4 Claim;
- (d) Grant or deny applications for allowance of final compensation and reimbursement of expenses by the professionals retained during the bankruptcy case;

- (e) Resolve any other motions or applications pending on the Effective Date; and
- (f) Enter such Order(s) as may be necessary or appropriate to implement or consummate the Plan, including re-opening the Chapter 11 case as may be necessary to administer the case and oversee the refinancing of the Debtor's mortgage to pay the Class 4 Claim as finally allowed.

VIII. LEGAL REQUIREMENTS FOR CONFIRMATION OF THE PLAN

Under bankruptcy law, a plan can be confirmed if it is accepted by all classes of impaired claims (Class 3 (unsecured creditors) and Class 4 (Tort Claims of Franklin Morales)) and otherwise meets the requirements of 11 U.S.C. § 1129(a). In this case, because the Plan provides a mechanism for all creditors to be paid in full, the Debtor anticipates that every class will support confirmation. In addition to acceptance of the Plan by creditors, there are two additional requirements that are worth highlighting for purposes of the Disclosure Statement:

A. Feasibility of the Plan. As a prerequisite to confirmation, Bankruptcy Code § 1129(a)(11) requires that the Debtor and its equity interest holders demonstrate their ability to fund the Plan and establish that confirmation is not likely to be followed by the need for further financial reorganization. In this case, the Debtor believes that its insurance will ultimately cover the tort claim asserted by Mr. Morales. However, as explained above, the Plan provides that in the event the Insurer is permitted to disclaim coverage, or the amount of Mr. Morales' claim as finally fixed after trial otherwise exceeds the amount of the available insurance, the Debtor will seek to use the equity in its Property to refinance the mortgage and pay the allowed tort claim. The Debtor projects there is at least \$1,000,000 available on a refinancing based on an estimated value of the Property of approximately \$2,000,000.

B. Best Interests Of Creditors Test. The Plan must also be in the best interests of creditors. This is a legal term of art which requires that the Plan provides a dividend to a class of creditors that votes against the Plan which is equal to or greater than the distribution those creditors would realistically receive if the Debtor were to be liquidated under Chapter 7 of the Bankruptcy Code. Since the Debtor is paying all claims 100% of their respective allowed amounts over time, with interest, the best interests requirement is met.

IX. CONCLUSION

The Plan provides an appropriate mechanism for the payment of all claims, and thus creditors are urged to vote favorably on the Plan.

Dated: New York, New York
November 30, 2016

MARION AVENUE MANAGEMENT LLC

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