

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE:

LEONEL DIAZ HERNANDEZ
ROSEMARIE ESPINAL CASTILLO

CASE #15-06796 ESL

Debtor

CHAPTER 11

DEBTOR'S FIRST AMENDED DISCLOSURE STATEMENT

PURPOSE OF THIS DISCLOSURE STATEMENT

LEONEL DIAZ CASTILLO AND ROSEMARIE ESPINAL CASTILLO (DEBTORS), provides this Disclosure to enable each creditor that is so entitled to make an informed judgment in exercising the right to vote on the Debtor's Plan of Reorganization (the "Plan"). The information herein contained is intended solely for that purpose and solely for the use of Debtor's creditors. This Disclosure Statement may not be relied upon for any other purpose. Nothing contained in this Disclosure Statement constitutes an admission of any fact or liability by any party. The information contained in this Disclosure Statement has been submitted by debtors based upon their knowledge of debtor's records, business and affairs.

No representation concerning these disclosure or the Plan are authorized by Debtors other than as set forth in this Disclosure Statement. Any representation made by any person to secure your vote other than those contained in this Disclosure Statement should not be relied upon. Any person making representations or inducements concerning acceptance or rejection of the Plan should be reported to the Court.

1. INTRODUCTION:

LEONEL DIAZ HERNANDEZ AND ROSEMARIE ESPINAL CASTILLO, as debtors in possession, provides this Disclosure Statement to all of Debtor's known creditors in order to disclose the information deemed by debtors to be material, important and necessary for its creditors to arrive at a reasonably informed decision, in exercising their right to vote for Acceptance or Rejection of Debtor's Amended Plan of Reorganization dated as of the date of the Amended Disclosure Statement, hereinafter referred to as the "Plan", and any other pertinent matters in this case. The Amended Plan is being filed with the Bankruptcy Court simultaneously herewith.

Debtor recommends that you vote to accept the Plan. Each creditor must, however review the Plan and the Disclosure Statement carefully, including all exhibits in their entirety, and determine whether or not to accept or reject the Plan based upon that creditor's independent judgement and evaluation. The description of the Plan in the Amended Disclosure Statement is in summary form and is qualified by reference to the actual terms and conditions of the Plan, which should be reviewed carefully before making a decision to accept or reject the Plan. Capitalize terms not otherwise defined herein have the same meaning as set forth in the Plan; other terms shall have the meaning ascribed to them in the Bankruptcy Code.

Debtors believe that the Plan provides the quickest recovery and will maximize the return to creditors on their Claims. **ACCORDINGLY, DEBTORS URGES ALL CREDITORS TO VOTE IN FAVOR OF THE PLAN.**

DISCLAIMER

Creditors are advised that the financial information contained in this Disclosure Statement has not been the object of an audit and is not certified by independent public accountants, except where expressly stated otherwise. The Debtors believe but does not warrant or represent that the information contained herein is without inaccuracy notwithstanding its efforts to disclose all matters with careful attention to accuracy and completeness. This Disclosure Statement and its exhibits should be read in its entirety.

VOTING REQUIREMENTS

The Court will set a hearing on the Acceptance or Rejection of the Plan Of Reorganization after this Disclosure Statement has been approved by the Court. In order for the Plan to be confirmed

by the Bankruptcy Court, the Bankruptcy Code requires that the Plan be approved by all classes of creditors and interest holders or that the Court find that the Plan is “fair and equitable” as to any dissenting class.

As provided by 11 U.S.C. 1124, a class of claims or interests is impaired under a plan unless, with respect to each claim or interest of such a class, the plan

(1) leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest; or

(2) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default

(A) cures any such default that occurred before or after the commencement of the case under this title, other than a default of a kind specified in Section 365(b) of this title;

(B) reinstates the maturity of such claim or interest as such maturity existed before such default;

(C) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; and

(D) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

Ordinarily, but not in all circumstances, a plan may not be confirmed unless at least one impaired, assuming there is at least one impaired class, accepts the plan. A class has accepted the plan if such a plan has been accepted by creditors, other than those under 11 U.S.C. 1126(e), that hold at least two-thirds ($2/3$) in amount and more than one half ($1/2$) in number of the allowed claims of such class held by creditors, that have accepted or rejected such plan, i.e., those actually voting for the Plan. Creditors may vote for the acceptance or rejection of the plan.

Each creditor is urged to consult with its own attorney and obtain advice on the proposals and dispositions of the Amended Disclosure Statement and Amended Plan of Reorganization. The statements contained herein are only a brief summary of the confirmation process and should not be relied upon in making your determination as to whether to vote in favor of or against the plan. Creditors should consult their attorneys before making a determination to vote for or against the Plan.

Creditors are expressly referred to the Debtor's Schedules of Assets and Liabilities, the Statement of Financial Affairs and all other documents duly filed in this case with the Bankruptcy Court. This Amended Disclosure Statement is predicated upon certain assumptions which may not materialize, and you are urged to give consideration to such assumptions.

No representation concerning the Debtors or as to the actual or realizable value of its property, are authorized by the Debtors other than as set forth in this Amended Disclosure Statement. Any amendments or clarifications to this Disclosure statement or the Plan shall be in writing and filed with the Court. Debtor proposes that the proposed plan effective date and repayment of the plan will be thirty (30) days after confirmation of the Plan.

2. BRIEF HISTORY OF DEBTOR:

LEONEL DIAZ HERNANDEZ and his wife ROSEMARIE ESPINAL CASTILLO (Debtors) are a married couple with residence at Urb. Sierra Del Rio; calle 13 R 7, San Juan, Puerto Rico. Mr. Leonel Diaz Hernandez has been sales manager at DC Produce Corp for the past 6 years. DC Produce sales fresh fruits and vegetables to customers in Puerto Rico. Co debtor Rosemarie Espinal Castillo works as Accountant at Jose Espinal Vazquez & Associates for the past 28 years. **Debtors receives monthly salary for their services. As per schedule I debtors receive a gross monthly salary income of \$3,350.00 and co-debtor Espinal a gross monthly income of \$3,491.00. Mr Diaz owns 49% shares on DC Produce, Corp. This shares are pledged as collateral on a \$250,000.00 debt to secured creditor Hugo Cabrera Perez as per claim #4. Debtors are 100% owners of Ganaderia Del Suroeste, Inc. This corporation does not owns any real estate and its only business activity is to use the land rented for purposes of growing cattle belonging to third party. The corporation does not owns any cattle. Debtors does not receive any monthly salary payments and no dividends from this corporation. Codebtor Espinal has 8% shares on New Century Investment, Corp., with no monthly salary payment from the corporation and no dividends received. The only real estate property of debtors listed on Schedule A of the Petition is their only residence with Hogar Seguro Clause registered and located at Urb. Sierra del Rio, Calle 13 R-7, San Juan Puerto Rico. During the month of July**

2016 debtors finished with their monthly mortgage payment of \$1,961.00 to secured creditor Scotiabank de PR paying off the mortgage. . Debtors has assets of \$648,292.00 and liabilities of \$5,849,679.00. In an effort to provide a solution to this matter, Debtor is proposing a plan to cure and pay arrears on security debts, to cure and pay the priority obligations if any; allowed in full in a period no more than 5 years (60 months) from the date of filing the petition; and pay 3% to the unsecured claims that are allowed within a period no longer than 36 months.

The operating reports and statements filed since the filing were prepared by Debtor.

3. EVENTS LEADING TO BANKRUPTCY:

On February 22, 2002 Debtors executed individual guarantees as part of Commercial Loan credit facilities to Puerto Nuevo Cold Storage, Inc. By Western Bank. Debtor signed their personal guaranty for this loan in the amount of \$6,000,000. As part of the considerations and requirements of the bank to close said loan. Puerto Nuevo Cold Storage was not able to pay the loan and after legal collection action was filed a judgement was obtained by the Bank against all the signing parties including debtors. The judgment for 6 millions against debtors is the main reason for filing for bankruptcy. With this judgment pending execution with the possibility of attachments to property, bank account and salary as part of the procedure. And as a precaution and existing the possibility of any attachments by BPPR, debtor was thus forced to file the instant petition under Chapter 11 of the Bankruptcy Code to protect their salary deposits and operations. Debtors has continued operating as Debtors In Possession since then and is now in a position to propose a Plan of reorganization to creditors.

4. FINANCIAL INFORMATION:

Debtor's financial information is herein provided as Exhibit #1 and #3 which are the projections for the five (5) years of the proposed Plan and **a schedule of the payments to be made under the Plan to each allowed creditor**

The information provided in the Schedules and the Statement of Financial Affairs filed with the Court, reflect the Debtor's financial situation on the date of the petition.

Monthly Operating Reports available in the Bankruptcy Court's file, reflect Debtor's post petition finances. The Monthly Operating Reports provided by Debtor have been considered to establish the basis for payments under the Plan. **Copy of Debtor's Monthly Operating Report for the month of July 2016 is hereby attached as Exhibit 4.**

Debtor urges creditors and parties in interest to also review the documents available on file at the Bankruptcy Court, in order to make a conscious decision when voting **for or against** the proposed plan of reorganization herein provided by the Debtor.

5. ASSETS AND LIABILITIES

LEONEL DIAZ HERNANDEZ and ROSEMARIE ESPINAL CASTILLO, filed a voluntary bankruptcy petition on September 2, 2015 under case number 15-06796 ESL. The schedules filed showed total assets of \$648,292.00. Debtor's liabilities included are in the amount of \$5,849,679.00. **LEONEL DIAZ HERNANDEZ and ROSEMARIE ESPINAL CASTILLO'S** assets and value thereof are addressed in the projections prepared by Debtors. Copy attached herewith. **In addition Debtors will have a reasonable increase in the cash flow(\$1,961.00) due to pay off of the residential mortgage to Scotiabank on July 2016; and monthly car allowance to debtor in the amount of \$600.00., commencing on July 2016.** This amounts will be included as part of the proposed payment Plan and the amounts will be shown in the proposed projected income. Debtors believes that this together with proper management and savings in their budget will allow Debtors to remain under the protection of the Bankruptcy Code and present a feasible and confirmable Plan.

6. LIABILITIES AS OF PETITION DATE

Debtor's creditors as of the time of the petition were listed as follows:

a.) Secured interest claim holders: As of May 30, 2016, secured creditors have been claimed and scheduled in the amount of \$1,267,287.29

b.) Unsecured interest priority claimholders: At this time, no unsecured priority creditors have

been claimed or filed. Debtors disclosed no Priority debts in their petition.

c.) Unsecured interest claimholders: At this time, general unsecured creditors have been claimed and scheduled in the amount of \$6,956,176.36. A detail of all pre-petition debts, as classified by debtor is provided in the schedule of Payments under the Plan of Reorganization enclosed.

d.) Administrative debts: Debtor will pay pre petition administrative expenses on the effective date.

7. OWNERSHIP AND MANAGEMENT:

LEONEL DIAZ HERNANDEZ and his wife ROSEMARIE ESPINAL CASTILLO as debtors are the owners of the professional and private activities already described in the present Disclosure. **Debtors are responsible for the performance of the existing operation activities and services in their jobs practice with DC Produce Corp and Jose Espinal Vazquez & Associates. None of the insiders received any compensation from Debtors, as was testified at the 341 meeting of creditors. Debtor estimates that the administrative expenses including attorney and accountants fees will not be greater than \$25,000.00.**

8. LIQUIDATION ANALYSIS

One requirement for the confirmation of a plan under Chapter 11 of the Code is that with respect to each impaired class of claims, each claim holder of such class has accepted the plan or will receive or retain under the plan on account of such allowed claim, a value as of the effective date of the plan, that is not less than the amount such claim holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Code, on such date. In order to provide the value as of the effective date of the plan under Chapter 7 of the Code, the Debtor provides the following liquidation analysis. For the purpose of determining a liquidation value, the scheduled value of the property, has been determined at market value and adjusted using Debtor's experience as to the liquidation value of the office equipment and the inventory.

The liquidation analysis prepared for this case, after deducting the portion belonging to the payroll obligation, shows that the estimated dividend for the unsecured creditors under a Chapter 7

scenario is less than 1% of the debt. **Under the proposed plan of reorganization Debtor provides a 3% dividend to all unsecured creditors to be payable in no more than three (3) years from the effective date.**

Confirmation of the Plan will not only ensure that holders of any Allowed Priority Claims, Secured Creditors, be paid in full and Allowed General Unsecured Claims, will be paid 3% , but also that they will avoid the risk, costs and uncertainties related to a liquidation process, the lack of familiarity by a Trustee with Debtor's assets. The only real estate property in this case is the residential and only property of debtors with PR Homestead Exemption claimed.

9. SUMMARY OF PLAN:

Debtor's Amended Plan Of Reorganization dated SEPTEMBER 3, 2016 classifies and treats claims as follows:

DESIGNATION OF CLASSES OF CLAIMS AND INTERESTS:

The plan divides the creditors into classes in accordance with the dispositions of 11 U.S.C. 1122 and 1123. Creditors and other parties in interest are urged to read and consider the Plan in full inasmuch as it represents a proposed legally binding agreement with Debtor and any other party involved. The classes of creditors are as follows:

CLASS 1- ADMINISTRATIVE EXPENSES

(1) Class 1 shall consist of allowed Cost and Expenses of Administration as defined in the Bankruptcy Code under Section 503, including but not limited to the fees to the United States Trustee, fees and expenses of the Debtor's counsel and accountant as may be allowed by the Bankruptcy Court upon application thereof and after notice and hearing in accordance with the Bankruptcy Code and Rules, **any unpaid taxes or fees accrued since petition date and court costs accrued since the petition date. This will be paid in full on the effective date.**

CLASS 2- GENERAL SECURED CLAIMS

(2) Class 2 consists on all secured claims or portions of claims to date filed. The expected

amount allowed in these claims is \$250,000.00 to be paid to secured creditor Hugo Cabrera as per proof of claim number 4. DEBTOR hereby surrenders the Collateral and agree that Lift of Stay be granted in favor of the following creditor:

a. Condado 2 LLC; Secured portion of 1 million dollars as listed in Claim # 5 filed by Condado 2 LLC.

CLASS 3- UNSECURED PRIORITY CLAIMS

(3) Class 3 are claims entitled to priority pursuant to 11 U.S.C. Sections 507 (a)(2),(3), (4), (5), (6), (7),(8) and (9) of the Bankruptcy Code, as the same are allowed, approved and ordered paid by the Court. Any amounts owed under this class shall be paid in full by debtor over a period not exceeding five (5) years from the filing of the petition, commencing on the effective date of the plan. **No priority claims have been filed to this date.**

CLASS 4- GENERAL UNSECURED CREDITORS

(4) Class 4 are unsecured claims whose claims to the extent that such claims are approved and allowed by the Court or deemed allowed under the provisions of the Bankruptcy Code. Each member of this class will receive a distribution equal to 3% of its allowed claim pursuant to the terms and conditions of the plan, that is during the three (3) years following the effective date.

Classes 1, 2 and 3 are not impaired by the Plan. Class 4 is impaired by the Plan.

10. TREATMENT OF CLASSES

Claims are divided into four classes and their treatment is described below. Class 1 is not impaired by the Plan.

CLASS 1 Shall consist of allowed Administrative expense priority claims as provided under Section 503 of the Code, including but not limited to the fees to the United States Trustee, fees and

expenses of the Debtor's counsel and accountant as may be allowed by the Bankruptcy Court upon application thereof and after notice and hearing in accordance with the Bankruptcy Code and Rules, any unpaid taxes or fees accrued since petition date and court costs accrued since the petition date.

This class shall be paid in cash and in full on the Effective Date or as soon as feasible after the date any such claim becomes an allowed Administrative claim, or as otherwise due in the normal course of Debtor's activities.

CLASS 2 Shall consists on all secured claims or portions of claims. Any amount owed under this class will be paid in full over a period not exceeding five (5) years from the effective date of the Plan.

CLASS 3 are the claims of taxing authorities entitled to priority pursuant to 11 U.S.C. section 507 (a) (7) to the extent that such claims are allowed and ordered paid by the Court. Claims allowed in this class will be paid in full as provided in 11 U.S.C. section 1129 (a) (9) ©. **This claims will be paid in full by Debtors over a period not exceeding five (5) years from the filing of the petition commencing on the effective date of the Plan.**

CLASS 4 are the claims of unsecured creditors without priority to the extent that such claims are not disputed and are allowed and ordered paid by the Court. Creditors in this class will be paid 3% on monthly installments within a period not to exceed 36 months.

THE FOREGOING IS A PRESENTATION OF THE CLASSIFICATION OF CLAIMS UNDER THE PLAN. CREDITORS ARE URGED TO READ THE PLAN IN FULL. THEY ARE FURTHER URGED TO CONSULT WITH COUNSEL IN ORDER TO FULLY UNDERSTAND THE PLAN.

LEASES AND EXECUTORY CONTRACTS

Debtors has no residential and/or commercial office leases as described in Schedule "G" of

the petition.

MEANS FOR EXECUTION OF THE PLAN

As soon as feasible after the Order of Confirmation of this Plan becomes final and unappealable, the operation of the Debtors shall be and will become the general responsibility of the Debtors.

Except as otherwise provided in the Plan, Debtor will effect payment of all Administrative Expense Claims, Priority Tax Claims if any; secured claim and General Unsecured Claims. The other claims will be paid according to the Plan schedule provided.

On the Effective Date of the Plan the distribution, administration and management of debtor's affairs, collection of moneys and distribution to creditors, will be under the control and supervision of both debtors in possession. They will assume the same roles that he has been assuming throughout this reorganization process. Debtors does not anticipate reduction to salary during the next five years or during the life of the reorganization plan. Effective July 2016 debtor Diaz Hernandez will receive \$600.00 car allowance per month and a sales commission payment of approximately \$2,500.00 per month from DC Produce.

The Plan shall be funded by the following means:

Cash on hand at the Effective Date.

Debtors income, savings on reduction of expenses. Savings on mortgage monthly payments in the amount of \$1,961.00 due to pay off the same effective July 2016, will be use also for the payment plan. Projections for the next five years are attached herewith.

EFFECT OF CONFIRMATION OF PLAN

A. DISCHARGE OF DEBTOR

Discharge. Except as otherwise expressly provided in Section 1141 of the Bankruptcy Code or the Plan, the distributions made pursuant to and in accordance with the applicable terms and conditions of the Plan are in full and final satisfaction, settlement, release and discharge of Debtor of any debt of Debtor that arose before the Effective Date, and any debt of Debtor of a kind specified in Section 502 (g), 502 (h), or 502 (I)

of the Bankruptcy Code, and all Claims against the Debtors or their Estate of any nature, including, without limitation, any interest accrued thereon from and after the Petition Date, whether or not (i) a proof of claim based on such debt, obligation or equity interest is filed or deemed filed under section 501 of the Bankruptcy Code; (ii) such Claim is Allowed under Section 502 of the Bankruptcy Code; or (iii) the holder of such Claim has accepted the Plan.

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 revoting 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 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.

APPROVAL OF THE PLAN:

It is important that you exercise your right to vote on acceptance or rejection of the Plan. A ballot form is attached which you may use for this purpose. (See exhibit # 5)

Debtor submits that the Plan is fair and reasonable and in the best interest of the Estate and Creditors and offers the best possible recoveries for Creditors under the circumstances. Debtor therefore, urges creditors to vote in favor of the Plan

RESPECTFULLY SUBMITTED in San Juan , Puerto Rico, this 3rd day of September, 2016.

s/ Leonel Diaz Hernandez

LEONEL DIAZ HERNANDEZ

s/Rosemarie Espinal Castillo

ROSEMARIE ESPINAL CASTILLO

I hereby certify that on this date true and correct copies of this Disclosure Statement and Plan of Reorganization, has been electronically filed with the Clerk of Court using the CM/ECF System which will notify the parties in interest.

s/Luis D. Flores González

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