

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

IN RE: *
* CASE NO. 15-07225 MCF
HERNAN VELEZ JUAN *
* CHAPTER 11
DEBTOR *

AMENDED DISCLOSURE STATEMENT
SEPTEMBER 30, 2016

TO THE HONORABLE COURT
TO CREDITORS
TO OTHER PARTIES IN INTEREST

The debtor herein, as debtor in possession, through the undersigned attorney, submit this Disclosure Statement dated as of September 30, 2016, together with the proposed Amended Plan of Reorganization.

Respectfully submitted, in San Juan, P.R. this 30th of September of 2016.

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Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

TABLE OF CONTENTS

- 1. INTRODUCTION AND BANKRUPTCY PROVISIONS**
 - 1.1 BANKRUPTCY CODE PROVISIONS FOR POST PETITION DISCLOSURE
 - 1.2 DISCLAIMER
 - 1.3 VOTING REQUIREMENTS
- 2. DEBTOR'S HISTORY**
 - 2.1 DEBTOR'S HISTORY AND EVENTS LEADING TO BANKRUPTCY
 - 2.2 DATE THE PETITION WAS FILED
 - 2.3 BANKRUPTCY PROCEEDINGS
- 3. DEBTOR'S FINANCIAL INFORMATION**
 - 3.1 GENERAL FINANCIAL INFORMATION
 - 3.2 ASSETS AND LIABILITIES AS OF PETITION DATE
 - 3.3 PENDING LITIGATION
 - 3.4 LIQUIDATION ANALYSIS
- 4. SUMMARY OF THE AMENDED PLAN OF REORGANIZATION**
 - 4.1 DESIGNATION OF CLASSES OF CLAIMS AND INTERESTS
 - 4.2 TREATMENT FOR CLASSES OF CLAIMS AND INTEREST
 - 4.3 PAYMENT OF UNSECURED PRIORITY GOVERNMENT CLAIMS UNDER 11 U.S.C. SECTION 507(a)(8)
 - 4.4 IMPAIRMENT OF EXISTING CLAIMS AND INTERESTS

Amended Disclosure Statement

Hernan Vélez Juan

Case No. 15-07225 (MCF)

4.5 DISCHARGE OF CLAIMS

4.6 OBJECTIONS TO CLAIMS

5. OTHER MISCELLANEOUS PROVISIONS

5.1 EXECUTORY CONTRACTS

5.2 MEANS OF EXECUTION OF THE **AMENDED PLAN**

5.3 PROVISIONS FOR THE MODIFICATION OF THE PLAN

5.4 CLOSING OF THE CASE

5.5 RETENTION OF JURISDICTION

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

1. INTRODUCTION AND BANKRUPTCY PROVISIONS

1.1 BANKRUPTCY CODE PROVISIONS FOR POST PETITION DISCLOSURE:

Section 1125 of the Bankruptcy Code requires that the debtor makes post-petition disclosure in the form of a Disclosure Statement which provides "adequate information" to his creditors before Debtor or a party acting on his behalf may solicit acceptances of a Chapter 11 **Amended Plan** of Reorganization. Creditors are urged to consult with their own attorney, or with each other, and to review all of the pleadings and other documents on file with the U.S. Bankruptcy Court in order to fully understand the disclosures made herein, regarding Debtor's proposed **Amended Plan** of Reorganization (hereafter referred to as the "Plan") and any other pertinent matters in this case. A copy of the **Amended Plan** is attached to this Disclosure Statement.

1.2 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. Debtor does not warrant or represent that the information contained herein is without inaccuracy notwithstanding the efforts to disclose all matters with careful attention to accuracy and completeness. The information relevant and required for the preparation of this Disclosure Statement and Debtor's **Amended Plan** of Reorganization has been provided and facilitated by the Debtor.

1.3 VOTING REQUIREMENTS:

In order for the **Amended Plan** to be confirmed by the Bankruptcy Court, the Bankruptcy Code requires that the **Amended Plan** be approved by all classes of creditors and interest holders

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

or that the Court finds that the *Amended 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 an *Amended Plan* unless, with respect to each claim or interest of such a class, if 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)(2) 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) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

(E) 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, an **Amended Plan** may not be confirmed unless at least one impaired class, assuming there is at least one impaired class, accepts the plan. A class has accepted the **Amended Plan** if such an **Amended 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, 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 this 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 and the statement of financial affairs and all other documents duly filed with the Bankruptcy Court. This **Amended Plan** is predicated upon certain assumptions that may not materialize, and you are urged to give consideration to such assumptions.

No representation concerning Debtor, or as to the actual or realizable value of their property, is authorized by the debtors other than as set forth in this Disclosure Statement. Any

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

amendments or clarifications to this Disclosure Statement or the Plan, shall be in writing and filed with the Court.

2. DEBTOR'S HISTORY

2.1 DEBTOR'S HISTORY and EVENTS LEADING TO BANKRUPTCY:

Debtor's Personal and Professional Background:

After completing his 4 years, Hernan Velez Juan obtained his title of Doctor in Dental Medicine from the Dental Medicine School of the Campus of Medical Science at the University of Puerto Rico in 1975. From the years 1975 to 1977 he completed his fellowship as a certificate in orthodontics from the School of Dental Medicine at Tuft University in Boston Massachusetts. For more than 39 years Mr. Velez has been successfully practicing as an Orthodontists serving thousands of patients in Puerto Rico. Debtor's education, experience and unchangeable devotion to his profession has aided and has been vital towards distinguishing himself in this area of practice.

Since May 1, 1985, Debtor has been married to Mrs. Elke Walter Bohme. With Mrs. Walter Bohme he has one son, and also two daughters from his prior marriage. On its part, Mrs. Walter has two additional sons who also grew up under the same common household. Although always related to the operations of the practice, for the past two year Mrs. Walter Bohme has become actively involved in the administration of the medical practice.

Debtor and Mrs. Walter Bohme have lived at Urb. Baldwin No. 1 Bloque B Guaynabo, PR since July 2004.

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

Debtor's Business Ventures:

Back in 1981 Debtor established a business relationship with Dr. Noel Molini Vivaldi, another doctor in orthodontics. Further, they channeled their former business relationship, through two partnerships known as “*Sociedad Especial M & V Investment SE*” & “*Sociedad Profesional Molini & Velez Orthodontics*”.

The original agreement entered with his former partner called for the operation of three business locations, Bayamon, Rio Pedras and Humacao all under the entity known as *Sociedad Profesional Molini & Velez Orthodontics*. Debtor was to operate from the commercial property located Bayamon Medical Plaza Building Suite 801, Bayamón P.R. This commercial space, which is titled to “*Sociedad Especial M & V Investment SE*”, has been occupied by Mr. Velez for more than twenty years.

On the other hand, Dr. Molini Vivaldi was to remain operating the Rio Piedras and the Humacao Office. The Rio Piedras Office titled personally to him. However, since 1997, the Debtor and his former partner have been immersed in an arbitrage proceeding, which relates and seeks the culmination and/or liquidation of prior business relationships and partnerships between them.

This prolonged and costly business detachment which has endured almost two decades of litigation has been focused to the adjudication of the first partnership *Sociedad Especial M & V Investment SE* and has entailed at least three arbitration rulings and several reviews of those determinations at the Puerto Rico First Instance and Appellate Court.

On grounds prompted by the other party, the liquidation of *Sociedad Profesional Molini &*

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

Velez Orthodontics has been held in abeyance up to the liquidation of the first partnership.

This State Court litigation process has remained stayed upon filing of the bankruptcy proceeding and a request for the modification of the automatic stay has been recently filed in order to continue with this process.

Debtor also owns a 5.76% participation in a real estate development entity named Plaza Santa Cruz, SE. With an original carrying value of \$167,590, this came as a real estate opportunity to acquire a share of what was thought to be a prime medical location at Bayamon conceived by several doctors. To all regrets and principally on the decline of the real estate market, this commercial property venture never developed rendering this investment worthless, both in value or future income potential.

Reasons for Filing de Bankruptcy Petition:

For many years, Debtor committed himself to the operation of his business and devoted most of his business surplus to the educational and professional development of his sons and daughters. Regrettably, this commendable interest in the wellbeing of his offspring, clashed with bad business decision of postponing and delaying the payment of the required tax obligations with the respective governmental entities. A deficient financial advice coupled with poor business judgment have caused significant and costly arrears on personal taxes.

The main event that contributed to the filing of the instant petition was Debtor's outstanding debts with the Internal Revenue Service (IRS) and the PR Department of Treasury. These creditors were actively garnishing Debtor's funds for the repayment of these outstanding debts.

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

Also, within the arbitrage proceedings aimed to liquidate the two aforementioned partnerships to wit, “*Sociedad Especial M & V Investment SE*” & “*Sociedad Profesional Molini & Velez Orthodontics*”, Debtor’s counterparts were able to obtain a provisional garnishment remedy through which accounts receivables started to being seized and deposited at the State Court in order to secure the satisfaction of a potential judgment.

The ongoing attachments and garnishments severally disrupted Debtor’s business operations and cash flow requirements for a sound administration and full compliance with his current debts.

Finally, the filing of a mortgage foreclosure lawsuit on Debtor’s residential real property docketed as Civil Case No. DCD2014-1181 by Debtor’s principal secured creditor also contributed to the filing of the above captioned case.

2.2 *DATE THE PETITION WAS FILED*

The bankruptcy petition was filed on September 18, 2015, under the provisions of the Chapter 11 of the Bankruptcy Code. Since that date, Debtor remains operating as a Debtor in Possession.

2.3 *BANKRUPTCY PROCEEDINGS:*

Compliance with Operating Guidelines and DIP Requirements:

Upon filing of this bankruptcy petition, debtor has taken all possible measures necessary to reorganize his household and business oriented finances. Debtor is in compliance with the U.S. Trustee Office Operating Guidelines as follows:

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

- a) Debtor has filed all Monthly Operating Reports up to June 2016.
- b) Property, public and professional liability insurance have been maintained.
- c) Quarterly fees required by the U.S. Trustee are up to date.
- d) Post-petition expenses are being paid in the ordinary course of business or as these become due.
- e) Post-petition taxes, including estimated payments on personal taxes, are being paid as these become due.

Debtor is working hard in restructuring his business operation and with the assistant of a new Certified Public Accountant has been able to conduct his business in a sound and stable fashion which will provide for the intended reorganization pursued within this bankruptcy case.

Starting in January 2015 and as the first step for refreshing and reorganizing his practice, Debtor with his wife organized a corporation to administer and manage the dental practice. Through this corporation, Velez Orthodontics, Inc., Debtor has commenced to reorganize his personal finances by segregating for the first time in many years business operations from personal spending. Strict operating and expending measures adopted and observed are geared to provide a feasible payment **Amended Plan** to allowed creditors.

In addition, the new business structure has allowed the development of new business opportunities. Preparing for the eventual termination of all business relation with his former partner, on July 19, 2016, all business operation has been relocated from the Bayamon Medical Plaza Building Suite 801 property to a new leased location at Plaza del Sol, Bayamon.

Debtor foresees as the best feasible alternative for funding his **Amended Plan** of

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

reorganization is the continuance of his professional, in order to cover general household expenses and all payments to creditors proposed herein.

Employment of Professionals:

On October 1, 2015, Debtor filed an application to employ Wigberto Lugo Mender, Esq., and the firm of Lugo Mender Group LLC, to serve as attorney for the debtor in possession. On November 3, 2015, the Court entered an Order approving this employment. (Dockets No. 10 & 20).

On October 21, 2015, Debtor retained the services of Albert Tamarez-Vázquez, CPA, as his accountant. This professional will assist debtor in the preparation of the Monthly Operating Reports to be filed in this case, in the general accounting and tax consulting matters related to debtor's business operation within and outside this reorganization proceeding. On December 9, 2015, the Honorable Court entered Order approving this Application for Employment. (Dockets No. 16 & 31)

3. DEBTOR'S FINANCIAL INFORMATION

3.1 GENERAL FINANCIAL INFORMATION:

Debtor includes as **Exhibit 1** of the Disclosure Statement copies of the Joint personal income tax returns for the years 2013, 2014 and 2015. For purposes of filing this bankruptcy petition, debtor and together with the appointed accountant analyzed and presented the required Schedules and Statement of Financial Affairs. The information provided in these documents shows Debtor's financial position as of the date of the filing of the petition. (Docket No. 12)

A particular consideration present in this case is the fact that all real property and personal

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

assets are co-owned with Debtor's spouse, Elke Walter Boehme, who is committed to assist and support Debtor throughout this reorganization process as required to fulfill the covenants detailed in the *Amended Plan* of Reorganization.

Additionally, Debtor has been filing the Monthly Operating Reports which are available for review in the Bankruptcy Court. A Summary of the Monthly Operating Reports is enclosed as **Exhibit 2**.

3.2 *ASSETS AND LIABILITIES AS OF PETITION DATE:*

Schedules and Statement of Financial Affairs

The Debtor filed the Schedule of Assets and Liabilities and Statement of Financial Affairs (collectively, the "Schedules and Statements") with the Bankruptcy Court on October 7, 2015 (Docket entry no. 12). Among other things, the Schedules and Statements set forth the Claims of known creditors against Debtor as of the Petition Date, based upon Debtor's books and records. This information was provided by Debtor.

Moreover, a detail of all assets is provided in the Liquidation Analysis worksheet enclosed as **Exhibit 3**, which shows updated property values as detailed herein.

Claims Bar date and Proof of Claims

On September 22, 2015, the Bankruptcy Court entered an order setting the bar date for general unsecured claims on January 24, 2016, and for governmental units (as defined by section 101 (27) of the Bankruptcy Code) on March 20, 2016 (the "Bar Dates"). To this date, the Debtor has received 8 proofs of claim forms asserting approximately \$7,592,058.17 in claims. The Debtor has reviewed the asserted Claims and objections to those Claims have been identified and filed to

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

in order to provide an estimate of which should be disallowed in whole or in a part.

Debtor's estimates of Allowed Claims are identified herein. See Schedule of Payments under the *Amended Plan* of Reorganization enclosed as *Amended Exhibit 4*.

3.3 PENDING CONTESTED MATTERS AND/OR ADVERSARIES

On July 22, 2016, Debtor filed an Objection to POC No. 5 filed by Noel Molini Vivaldi & Idalia Vizcarrondo. Although Debtor understand that there may be an amount due to these claimants, it is Debtor's contention that their claim is at this time unliquidated and disputed. Absent a final resolution from the Court with Jurisdiction to entertain their purported claim, it is no more than an estimated amount which, as of this date, lacks disposition as to any final amount due by the Debtor, if any is to be awarded. (Docket No. 76)

A similar claim, this docketed as proof of claim #6, was filed by Mr. Molini Vivaldi, but on behalf of the entity named "*Sociedad Especial M & V Investment SE*". This claims is also to be objected on the grounds of being unliquidated and disputed at this time.

On July 12, 2016, these creditors filed a request to modify the automatic stay provisions in order to continue the proceeding that were stayed upon the filing of the filing of this bankruptcy proceeding. Debtor's position regarding this request was filed on July 26, 2016. (Docket No. 79)

Also, on July 22, 2016, Debtor filed Adversary Proceeding No. 16-00159 against Noel Molini Vivaldi, Idalia Vizcarrondo and the Internal Revenue Service (IRS). Within this Adversary Proceeding Debtor is seeking the recovery of funds consigned at the State Court in order to distribute the same to the senior secured holder Internal Revenue Services.

3.4 PENDING LITIGATION:

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

Noel Molini Vivaldi et al vs Hernan Vélez Juan et al. – Civil Case No. KAC1997-0902 (906), at the Puerto Rico First Instance Court – San Juan Section– This case relates to an arbitrage proceeding concerning the liquidation of two partnerships known as “*Sociedad Especial M & V Investment SE*” & “*Sociedad Profesional Molini & Velez Orthodontics*” held by Debtor and his former partner. Other cases docketed as Civil Case No. KAC2007-0572 (906); KLCE20012-00975 and KAC2015-0337 are proceedings, reviews or appeals filed regarding certain rulings related to the original case. At the filing date, the final adjudication or liquidation of “*Sociedad Especial M & V Investment SE*” was pending a review by Debtor at the Civil Case docketed as No. KAC2015-0337. This litigation has been stayed upon the filing of this case. On January 22, 2016, Noel Molini-Vivaldi filed the claims no. 5 & 6 which relate to these proceedings. If ultimately any amounts related to this claimed are allowed, the same will be considered as an unsecured claims. A request for lift of stay has been filed by Noel Molini-Vivaldi in order to continue up to the time this determination become final.

In summary, Debtor has consented to the modification of the stay until the point of judgment, however, Debtor will pursue the liquidation and collection of the partnership known as “*Sociedad Profesional Molini & Velez Orthodontics*” against Noel Molini Vivaldi & Idalia Vizcarrondo.

Scotiabank of PR vs. Hernan Vélez Juan et al. – Civil Case No. DCD2014-1181, at the Puerto Rico First Instance Court – Bayamón Section– This proceeding concerns a collection of money and foreclosure filed by Scotiabank de PR before the date of the filing of the instant bankruptcy petition. This litigation has been stayed upon the filing of this case. The amount

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

claimed will be considered as a secured claim with treatment provided through the *Amended Plan* of Reorganization.

Banco Popular de PR vs. Pharmatek Inc, Hernan Velez Juan et al. – Civil Case No. KCD2003-798, at the Puerto Rico First Instance Court – Bayamon Section– This proceeding concerns a collection of money filed by Banco Popular de PR before the date of the filing of the instant bankruptcy petition for a closed business once operated by Debtor’s spouse. A final judgment was entered on August 30, 2007. The amount claimed will be considered and classified as a general unsecured claim.

3.5 *LIQUIDATION ANALYSIS:*

One requirement for the confirmation of a *Amended Plan* under Chapter 11 of the U.S. Code is that, with respect to each impaired class of claims, each claim holder of such class has accepted the *Amended Plan* or will receive or retain under the *Amended 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 holders would receive or retain if the debtors were liquidated under Chapter 7 of the Code on such date. In order to provide the value as of the effective date of the *Amended Plan* under a Chapter 7 scenario, Debtor provides a detailed liquidation analysis.

For purposes of determining a liquidation value, Debtor has estimated as realizable in a chapter 7 scenario the value for existing real and personal property. The estimated realizable values have been deducted for purposes of the liquidation analysis using the experience of liquidation of assets under Chapter 7 bankruptcy cases.

For the estimated realizable value, estimated administrative expenses have been reduced

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

to determine the estimated amount for unsecured creditors in liquidation. A detailed liquidation analysis, with the bases for preparation thereof, is enclosed herein as **Exhibit 3**.

The liquidation analysis prepared for this case shows that, upon realization of estate assets and payment of liens, expenses and unsecured priority claims, there should be no net available assets in a liquidation proceeding for general unsecured creditors.

4. SUMMARY OF THE AMENDED PLAN OF REORGANIZATION

4.1 DESIGNATION OF CLASSES OF CLAIMS AND INTERESTS

The **Amended Plan** divides the creditors into FOUR (4) classes. The classes of creditors are as follows:

CLASS 1: ADMINISTRATIVE EXPENSES

Shall consist of Allowed Administrative Expense Claims, as provided under Section 503 of the Code including, but not limited to, the United States Trustee quarterly fees, fees and expenses of Debtor's counsel and other professionals as may be allowed by the Bankruptcy Court upon application and after notice and hearing according to the Bankruptcy Code and Rules, any unpaid taxes or fees accrued since petition date, and court cost accrued since the petition date.

Debtor estimates the liability in this Class 1 as of this date to be around \$30,000.

CLASS 2: SECURED CLAIMS – DEBTOR'S RESIDENCE

Sub-Class 2.1 – First Mortgage Note:

On July 28, 2016, Scotiabank de Puerto Rico filed its amended POC No. 8-2, in the total amount of \$732,706.83 as fully secured. This amount is in regards to a Mortgage Note secured by debtor's principal residence located at Urb. Baldwin Park No. 1 Bloque B, Guaynabo, Puerto Rico.

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

The first rank promissory note is payable to New York Mortgage, now Scotiabank, with a face value of \$743,750 and due on August 1, 2034.

Refer to the enclosed title search on **Exhibit 5**

Sub-Class 2.2 – Real Property Taxes Due on Residence:

This sub-class accounts for real property taxes due on the residential property debtor's principal residence located at Urb. Baldwin Park No. 1 Bloque B, Guaynabo, Puerto Rico. The amount due for real property taxes is still to be confirmed with creditor Centro de Recaudación de Ingresos Municipales who as of today has not filed a proof of claim for any amounts due on this property.

CLASS 3: SECURED CLAIMS – IRS RECORDED TAX LIENS

On May 9, 2016, the Internal Revenue Services filed its amended POC No. 2, in the total amount of \$597,947.92. The amounts claimed within POC No. 2 address certain tax deficiencies imposed on the Debtor by the IRS, related to the 1040, 940 & 941 forms, returns and their applicable tax requirements. The amounts due under this class relate to those amounts classified by the IRS as secured pursuant to the filing of several Notices of Federal Tax Lien which were disclosed in the amount of \$522,166.37.

CLASS 4: GENERAL UNSECURED CREDITORS

General unsecured creditors considering those listed by the Debtor, those who filed a proof of claim and those secured creditors, who after Debtor's efforts have agreed to be considered part of their claim as unsecured, are included in this class. This class also includes the POC No. 5 & 6

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

and the unsecured portions of POC No.2 which aren't supported by the value of the estate's property pursuant Section § 506(a).

The debt under this class has been estimated by debtor in the amount of \$3,206,978.

4.2 TREATMENT FOR CLASSES OF CLAIMS AND INTEREST:

CLASS 1: ADMINISTRATIVE EXPENSES

Shall consist of Allowed Administrative Expense Claims as provided under Section 503 of the Code. This class shall be paid full in cash as soon as practicable no later than (a) the Effective Date or as agreed with the creditor or (b) the date any such claim becomes an allowed Administrative Claim. The total amount in this class as of this date is estimated around \$30,000.

Attorney fees are estimated in the amount of \$25,000 and will be paid only after full payment of any amounts due to the United States Trustee. Fees for the accountant for the estate have been estimated in \$5,000.00.

US Trustee fees, taxes and other professionals will continue to be paid as they become due.

This class is not impaired.

CLASS 2: SECURED CLAIMS – DEBTOR'S RESIDENCE

Sub-Class 2.1 – First Mortgage Note:

The amount due under this class will be paid in full but on modified terms. On the effective date of the plan, the outstanding secured debt of this creditor will be restructured, under either of the two alternatives to be determined at the discretion of the creditor:

1) into an installment payment **Amended Plan** calling for consecutive monthly payments to pay a reduced secured amount of \$550,000.00 as fixed herein in cash and in full with interest

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

computed at fixed interest rate of 3.5%, payable in monthly payments of no more than \$2,469.75 during a period of 360 months, this payment including escrow reserves.

2) into an agreed loan modification relief agreement that could be negotiated with the secured creditor as these may be available to preserve and maintain this residential dwelling through any available alternatives including but not limited to the Home Affordable Modification Program guidelines adopted by the government's initiative to avoid residential foreclosures.

Payments within subsection #1 above will commence automatically on the effective date of the Plan. After twelve (12) consecutive payments pursuant subsection #1, this treatment shall become final and binding, if the procedure within subsection #2, hasn't commenced within said period.

In any event, if this residential dwelling is foreclosed, any deficiency amount that may arise upon execution of judgment will be considered as a general unsecured claim sharing in pro-rata distribution with other allowed claimants under Class 4.

Refer to Schedule of Payments under the **Amended Plan** of Reorganization enclosed herein as **Amended Exhibit 4**.

This class is impaired.

Sub-Class 2.2 – Real Property Taxes Due on Residence:

To the extent Debtor is able to restructure the amounts due under the First Mortgage Note as detailed in Sub-Class 2.1, allowed secured real property taxes on Debtor's residential property located at Urb. Baldwin Park No. 1 Bloque B, Guaynabo, Puerto Rico which are determined to be due as of petition date will be afforded a similar treatment as provided under 11 U.S.C. § 507(a)(8)

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

of the Code and shall be paid through monthly installments commencing on the effective date and during a period not exceeding five (5) years from the date of the filing of the captioned case. The amount due is to be evidenced by a promissory note for the full amount thereof, bearing interest at the statutory rate, dated as of the Effective Date, the value of the future payments to be equal to its allowed amount.

In any event, if this residential dwelling is foreclosed, any amounts due for real property taxes under this class that may arise upon execution of judgment will be considered as a general unsecured claim sharing in pro-rata distribution with other allowed claimants under Class 4.

This class is impaired.

CLASS 3: SECURED CLAIMS – IRS RECORDED TAX LIENS

In general terms, IRS, as secured creditor of this estate, shall retain unaltered its statutory lien rights over the prepetition assets which were otherwise unencumbered pursuant a prior consensual lien. Notwithstanding, the repayment of the secured detailed within POC No. 2-3 will be paid pursuant the following terms.

On the effective date of the **Amended Plan** IRS's claim secured amount will be fixed in \$101,198.00. This secured amount is fixed without considering the potential realizable value by the Debtor on his resulting interest in “*Sociedad Especial M & V Investment SE*” or “*Sociedad Profesional Molini & Velez Orthodontics*” which values are contingent to the amounts actually collected or realized under resolution of the pending State Court proceeding. Review Re-allocation of POC No. 2 attached as **Exhibit 6**.

Accordingly, the remaining amount of \$431,395.00 will be considered a general unsecured

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

claim inasmuch it is unsupported by the realizable value of Debtor's assets and subject to the special provisions detailed herein, the same will be paid according to the treatment proposed for general unsecured creditors in Class 5. This unsecured portion will have a potential secured valued equal to the amounts collected within the liquidation of "*Sociedad Especial M & V Investment SE*" or "*Sociedad Profesional Molini & Velez Orthodontics*".

Pursuant the aforementioned, the secured amount of \$101,198.00, will be deemed fully secured and paid as follows:

- **Initial Lump Sum Payment** - Upon a favorable resolution of Adversary Proceeding No. 16-00159 filed against Noel Molini Vivaldi, Idalia Vizcarrondo, and no later than 10 days after receipt of the claimed proceeds, the Internal Revenue Service (IRS) their collection will receive a lump sum payment equivalent to all proceeds recovered currently estimated in the amount of \$92,184.00. Said funds are currently consigned at the Puerto Rico State Court due to a provisional garnishment remedy granted on June 6, 2012 by the State Court in favor Debtor's former partner through which accounts receivables started to being seized and deposited at the State Court in order to secure satisfaction of a potential judgment.

Notwithstanding, at the time the garnishments took place, the IRS had already filed its Notices of Federal Tax Lien, therefore, the IRS has a superior lien over said funds.

Prior to the filing of this Disclosure Statement, on July 22, 2016, Debtor filed the Adversary Proceeding Docketed as No. 16-00159, in order to determine the extent

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

of the liens and for a declaratory judgment on these same grounds.

- **Additional Interim Payments up to Confirmation:** Following the filing of the bankruptcy petition Debtor has been remitting adequate protection payments to the Internal Revenue Service in the amount of \$2,000 per month. To this date the aggregate amount of these payments is \$16,000 and said payments are to remain until the effective date of the **Amended Plan** but will cease upon confirmation. Any and all interim payments remitted to this creditor on account of adequate protection payments are to be considered as additional payments on the secured amounts due under this class.
- **Additional Monthly Payments Through Plan:** The remaining amount of secured taxes not to be covered by the lump sum aforementioned have been estimated in the amount of \$9,014.00. This amount will be provided the same treatment proposed by Debtor to the unsecured priority claims which fall within the purview of 11 U.S.C. § 507(a)(8) until their full satisfaction.
- **Additional Potential Payments upon Resolution of State Court Proceedings:** In the event that any amount is materialized by Debtor pursuant the pending liquidation of “*Sociedad Especial M & V Investment SE*” and “*Sociedad Profesional Molini & Velez Orthodontics*” either throughout a judicial ruling or a potential settlement, the IRS shall be considered to possess a lien over said funds and shall be entitled to receive the after tax net proceeds of said judgment or settlement after the deduction of the necessary costs. Said proceeds shall be applied

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

in equal amount to the portion classified herein as general unsecured.

Refer to Schedule of Payments under the **Amended Plan** of Reorganization enclosed herein as **Amended Exhibit 4**.

This class is impaired.

CLASS 4: GENERAL UNSECURED CREDITORS

On the effective date of the plan, Class 5 claimants shall receive from the Debtor a non-negotiable, non-interest bearing promissory note, dated as of the Effective Date, providing for a total amount of \$100,000 to be paid pro-rata to all allowed claimants under this class, which shall be payable in consecutive monthly installments of \$1,667 during a period of five (5) years.

Refer to the Schedule Payments under the **Amended Plan** of Reorganization enclosed as **Amended Exhibit 4**.

This class is impaired.

4.3 PAYMENT OF UNSECURED PRIORITY GOVERNMENT CLAIMS UNDER 11

U.S.C. SECTION 507(a)(8):

All allowed unsecured priority claims pursuant to 11 U.S.C. § 507(a)(8) of the Code, as the same are allowed, approved and ordered to be paid by the Court, will be paid as stated below.

Debtor estimates this priority claims in the amount of \$922,337. The same are detailed as follows:

- a. Internal Revenue Service: \$65,355 (Priority Portion) as per POC No. 2-3;
- b. State Insurance Fund: \$5,525 (Priority Portion) as per POC No. 3;
- c. PR Treasury Department: \$304,225 (Priority Portion) as per POC No. 7;
- d. CRIM; Scheduled amount of \$6,360 (Secured Portion);

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

- e. PR Department of Labor (Unemployment): Scheduled at \$2,369.00; Proposed Payment \$0.00. This claim was scheduled as disputed and no claim was filed by the creditor. Accordingly, Debtor's **Amended Plan** will not provide any payment for this claim;
- f. PR Department of Labor (Disability Portion): Scheduled at \$417; Proposed Payment \$0.00. This claim was scheduled as disputed and no claim was filed by the creditor. Accordingly, Debtor's **Amended Plan** will not provide any payment for this claim;
- g. Municipality of Bayamon (Municipality License): (Priority Portion) Scheduled amount of \$15,919.

All allowed unsecured priority claims, pursuant to 11 U.S.C. § 507(a)(8) of the Code, as the same are allowed, approved and ordered to be paid by the Court, **shall be paid through monthly installments commencing on the effective date and during a period not exceeding five (5) years from the date of the filing of the captioned case.** Each claim is to be evidenced by a promissory note for the full amount thereof, bearing interest at the statutory rate, dated as of the Effective Date, the value of the future payments to be equal to its allowed amount.

In relation to the claim of the IRS, if Debtor fails to make any deposits of any current employment tax liability; fail to make any payment of any tax to IRS within 10 days of the due date of such deposits or payment; fail to file required federal tax return by the due date; or fail to make any payments due to the IRS under this plan, the IRS may declare that Debtor is in default, given that a written notice will be sent to Debtor to the address of record. If the IRS declares the Debtor in default, then Debtors must cure that default within 30 days. If the total amount in default is not cured, then the entire imposed liability to be paid under the plan, together with any unpaid

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

current liability, shall become due and payable immediately upon written demand.

The IRS, notwithstanding any stay which may be in effect, may then collect any unpaid liabilities through the administrative collection provision of the IRS.

See Schedule Payments under the **Amended Plan** of Reorganization **Amended Exhibit 4**.

4.4 IMPAIRMENT OF EXISTING CLAIMS AND INTERESTS:

As provided by 11 U.S.C. 1124, a class of claims or interests is impaired under a **Amended 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)(2) 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) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and

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

4.5 DISCHARGE OF CLAIMS:

Confirmation of this **Amended Plan** does not discharge any debt provided for in this **Amended Plan** until the Court grants a discharge on completion of all payments under this Plan, or as otherwise provided in § 1141(d)(5) of the Code. The Debtor will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.

At any time after the confirmation of the plan, and after notice and a hearing, the Court may grant a discharge to the debtor who has not completed payments under the **Amended Plan** if certain statutory conditions are met. Upon entry of the discharge order, all existing claims shall be deemed to be exchanged, satisfied, discharged and released in full; and all holders of claims shall be precluded from asserting any other or future claim based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Consummation Date, whether or not such holder filed a proof of claim.

Pursuant to the abovementioned, upon an eventual failure from Debtor to comply with the payments and distributions detailed and proposed within the Amended Plan of Reorganization prior the entry of an Order of Discharge by the Bankruptcy Court or any Court

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

with jurisdiction, creditors and parties in interest are urged to consult with their own attorney to ascertain any right to which they may be entitled either pursuant the Bankruptcy Code, non-bankruptcy law or equity, as may be appropriate.

4.6 *OBJECTIONS TO CLAIMS:*

The Debtor, as he may desire or upon order of the Bankruptcy Court, if requested, may file an objection to any claim as to its validity or amount within 30 days before the confirmation date and may substitute for the Debtor as the objecting party to any pending claim objections. Objections not filed by the date of confirmation shall be deemed waived. If an objection is made, payment to such claimants will be made only after the entry of a final order by the Court, allowing such claim and in accordance with the provisions of the *Amended Plan* governing such class to which such claims belongs.

The claim of any creditor whose claim has been scheduled as disputed but who has not filed a proof of claim, shall be disallowed by confirmation of the Plan, unless written objection to such disallowance is filed prior to the confirmation hearing.

5. OTHER PROVISIONS

5.1 *EXECUTORY CONTRACTS:*

Debtor assumes all unexpired leases and executory contracts to which it is a party and which have not been expressly rejected pursuant to 11 U.S.C. Section 365(a).

5.2 *MEANS OF EXECUTION OF THE PLAN:*

Debtor shall have sufficient funds to make all payments due under this Plan. The funds will be obtained from continuing operation of his medical private practice and through

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

contributions made by Velez Orthodontics, Inc. **In addition, living expenses related to food, clothing, housing costs and taxes will be covered and/or supplemented through Debtor's non-filing spouse's regular income. A set of personal projections supporting the feasibility and confirmation of the Amended Plan will be provided prior to the confirmation hearing scheduled to be held on December 7, 2016.**

On the Consummation Date of the plan, the administration of Debtor's property and well as any ongoing litigation shall be and become the general responsibility of Debtor, who shall thereafter have the responsibility for the management, control and administration. Management of Debtor's affairs, collection of money and distribution to creditors, will be under the control and supervision of Debtor, who will assume the same role they have assumed throughout this reorganization process.

5.3 PROVISIONS FOR THE MODIFICATION OF THE PLAN:

The Debtor may propose amendments or modifications of this **Amended Plan** at any time prior to its confirmation pursuant to 11 U.S.C. 1127. After confirmation of the Plan, the Reorganized Debtor may, with the approval of the Court and as long as it does not adversely affect the interests of the creditors, remedy any defect or omission in such manner as may be necessary to carry out the purposes and effects of the same.

5.4 CLOSING OF THE CASE:

At the time that the case has been substantially consummated, the case shall be closed. In order for the case to be closed, debtor shall file an application for final decree showing that the case has been fully administered and the **Amended Plan** has been substantially consummated. The

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

Court may conduct a hearing upon application thereof and after notice to all creditors and parties of interest. Thereafter an order approving the debtor's report and closing, the case shall be entered.

5.5 RETENTION OF JURISDICTION:

The Bankruptcy Court shall retain jurisdiction over this case to enable the debtors to consummate those proceedings that may arise in order to carry out the provisions of this **Amended Plan** before or after the entry of the confirmation order and up to the date of the closing of the case. Specifically, upon the entry of the Order of confirmation, this Court will retain jurisdiction to rule and dispose of any objection to the allowance of proof of claims filed within the terms detailed herein.

This is the Disclosure Statement and **Amended Plan** of Reorganization hereby proposed to creditors and parties in interest, filed with the Honorable Bankruptcy Court on this same date. Parties are encouraged to review these documents in order to formulate an informed decision on debtor whereabouts and conditions. A hearing to consider the approval of this Disclosure Statement will be scheduled by the Honorable Court, with Notice of said hearing served to all parties as per the master address list.

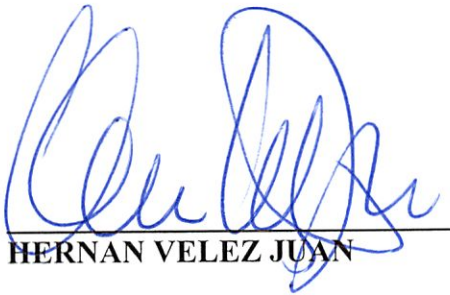
Amended Disclosure Statement

Hernan Vélez Juan

Case No. 15-07225 (MCF)

RESPECTFULLY SUBMITTED,

In San Juan, Puerto Rico, this 30th day of September of 2016.



HERNAN VELEZ JUAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY: That on this date I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notice of such filing to: **Wally de la Rosa Vidal, Esq.** (Attorney for State Insurance Fund) at wde ROSA@CFSE.GOV.PR; **Migdalia Effie Guasp, Esq.** (Attorney for Banco Popular) at megbky@bppr.com & migdalia.guasp@popular.com; **Eduardo M. Veray, Esq.** (Attorney for Banco Popular) at eduardo.veray@popular.com, **Madeline Soto Pacheco, Esq.** (Attorney for M&V Investment S.E. & Noel Molini Vivaldi) at lubeysoto@gmail.com and to all registered participants appearing in this case.

I HEREBY CERTIFY: That on this same date, a true and correct copy of the foregoing Disclosure Statement and Amended Plan of Reorganization, has been hand delivered to the United States Trustee, and mailed by first class service to those parties that, in writing, have requested copy of said document, as ordered by the Court.

Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

Lugo Mender Group, LLC

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/S/ Wigberto Lugo Mender

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Amended Disclosure Statement

Hernan Vélez Juan
Case No. 15-07225 (MCF)

INDEX TO EXHIBITS

Exhibit Number	Description
1.	Tax Returns for the Years 2013; 2014 & 2015.
2.	Summary of Monthly Operating Reports
3.	Detailed Liquidation Analysis
4.	Schedule of Payments Under The <u>Amended Plan</u> of Reorganization
5.	Title Search of real property
6.	Reallocation of POC No. 2
7.	Projections (To be provided)