

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

In re:

Case No. 16-00367 ESL

CARIBBEAN CREAMERY INC

Chapter 11

Debtor (s)

**DISCLOSURE STATEMENT
FOR PLAN OF REORGANIZATION DATED OCTOBER 7, 2016**

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This Disclosure Statement is being filed in connection with the Plan of Reorganization dated October 7, 2016 (the "Plan") for the Corporate Chapter 11 Debtor. A copy of the Plan is attached hereto as **Exhibit A**.

ARTICLE 1. SUMMARY OF PLAN

The Debtor submits the following summary of the Plan (the "Summary") that sets forth the nature of the Plan and includes a clear description of the exact proposed treatment of each Class of Creditors; shows total amounts and timing of payments to be made under the Plan and all sources and amounts of funding thereof; as well as plainly identifies all Class of Creditors, the composition of each Class, the amount of Claims, and the property to be received by each Class, accordingly:

1.1. Debtor: CARIBBEAN CREAMERY INC

12 General Purpose: This Plan consists of tree (3) classes of creditors and Interests. The purpose of this Plan is to: (a) reorganize the secured claims of Banco de Desarrollo Economico de Puerto Rico (b) reorganize and pay the priority claims, and (c) reorganize and pay the unsecured claims.

The Debtors filed this petition in their corporate capacity. Debtors operate an ice cream parlor under the franchise name of Maggie Moos in Humacao Puerto Rico. The sale gross income is approximately \$26,800.00 per month. Debtor's expense is estimated in \$24,600.00 monthly.

The Debtor's only asset and liabilities are related to the Operation of the Ice Cream Parlor. The Debtor does not own any Real Properties. The only assets owned by the corporation are:

- 1) Machinery and equipment used to operate the Ice Cream Parlor.

13 Classification, Treatment of Creditors and Distributions to Claims and Interests: The Plan consists of one (1) class of administrative claims, which are not classified, one (3) classes of creditors, and one (1) class of equity holders. The Plan contemplates the following treatment and distributions:

1.3.1 Not Classified Administrative Claims: These Claims consists of Administrative Claims, including professional fees, against the Debtor.

1.3.1.1 *Treatment and Distributions.* Administrative Claims will be paid in full (100%) on or before the Effective Date of the Plan, except that Quarterly Fees due to the U.S. Trustee, if any, will be paid on or before the Confirmation Order. This Class in not impaired.

1.3.2 Claim filed by BDE (Claim #3) (Class 1 Claims): Class 1 Claims consists of the Allowed Secured Claims, if any, secured by the loan secured by the machinery and equipment used to operate the ice cream parlor.

1.3.3.1 *Treatment and Distributions.* The Holder of an Allowed Secured Class 1 Claim, if any, will receive, in full and complete satisfaction of and on account of its Allowed Secured Class 2 Claim, the amount of

1.3.4 Allowed Priority claims filed by Governmental Entities (Class 2): Class 2 Claims consists of the Allowed Priority Claims, if any, if any filed by governmental entities.

1.3.5.1 *Treatment and Distributions.* Allowed Class 2 Claims, if any, will receive a 100% distribution on their claims, plus interest based on an interest rate of four percent (4.00%). This Class is not impaired.

1.3.6 Allowed General Unsecured Claims (Class 3): Class 3 Claims consist of: (a) the pre-petition unsecured claims against the Debtor, to the extent Allowed, if any;

1.3.6.1 *Treatment and Distributions.* The Class 3 Claims will be Satisfied via monthly payments starting the Effective Date of the Plan. Total distribution on Class 3 Claims is estimated at \$38,700.00. Which is a 5.00% distribution on these claims. This class has a total claim of \$1,935.10. This Class is impaired

14 **Term:** The Plan contemplates that all distributions under the Plan will be Completed within **10 years** from the Effective Date of the Plan.

15 **Plan Funding:** As set forth in more detail in the Five Year Cash Flow attached as **Exhibit B**, the Plan will be funded by and through: (a) the Debtor's cash reserves as of the Effective Date of the Plan and (b) the future cash flows generated by Debtors business.

16 **Effective Date:** The Effective Date of the Plan will be the 10th day following the day this Honorable Court enters an Order of Confirmation, unless the Confirmation Order is stayed pending appeal, in which case the Effective Date shall be the first day, other than a Saturday, Sunday or legal holiday enumerated in Bankruptcy Rule 9006(a), after such stay is dissolved, vacated or expires.

17 **Voting:** Those creditors entitled to vote on the Plan should complete the enclosed ballot and return it to: JPC LAW OFFICE, Po Box 363565, San Juan Puerto Rico, 00936-3565. Only those ballots returned in a timely manner and in accordance with the accompanying notice and instructions will be counted in determining whether a particular Class of creditors has accepted or rejected the Plan. Acceptance of the Plan by a Class of Claims requires accepting votes by (1) more than half of the voting creditors of such class, and (2) holders of claims totaling at least two thirds of the total amount of claims held by voting creditors of such class. Acceptance of the Plan by a class of Interest requires acceptance by at least two-thirds (2/3) in amount of the allowed Interests of such class that have voted to accept or reject the Plan.

18 **Hearing:** **The** Confirmation Hearing shall be held before the Honorable Enrique S Lamoutte at the United States Bankruptcy Court, District of Puerto Rico, José V. Toledo Federal Building & US Courthouse 300 Recinto Sur Street, Courtroom #2, San Juan, Puerto Rico 00901 (the "Confirmation Hearing"). Three (3) days prior to the Confirmation Hearing is fixed as the last day for filing and serving written objections to the disclosure statement and confirmation of the plan, unless otherwise determined by an Order of the Court.

19 **Additional Information:** Request for information regarding the Plan or the Disclosure Statement should be directed to counsel for Debtor as follows:

JPC LAW OFFICE
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1.10 Liquidation Value: A Liquidation Analysis is attached hereto as **Exhibit C**. It shows that, in a hypothetical liquidation of the Debtor's assets under Chapter 7, creditors with enforceable claims against Debtor would be entitled to receive approximately \$0.00 or a 0% distribution. Under the Plan, however, creditors with Allowed General Unsecured Claims are projected to receive approximately \$1,935.10 which is 5% on their Allowed Claims.

1.11 Disposable Income: A Disposable Income Analysis is attached hereto as **Exhibit B**. It shows that Debtor's monthly disposable income, projected over 60 months pursuant to 11 U.S.C. § 1129(a) (15), would result in a distribution to unsecured creditors. Under the Plan, however, creditors with General Allowed Unsecured Claims are projected to receive a distribution in the amount of \$1,935.10 which is 5% on their Allowed Claims.

1.12 Tax Consequences: The confirmation and execution of the Plan may have tax consequences to holders of Claims. The Debtor does not offer any opinion as to any federal, state, local or other tax consequences to holders of Claims as a result of the Confirmation of the Plan. All holders of Claims are urged to consult their own tax advisors with respect to the federal, state, local and foreign tax consequences of the Plan. **THIS DISCLOSURE STATEMENT IS NOT INTENDED, AND SHOULD NOT BE CONSTRUED, AS LEGAL OR TAX ADVICE TO ANY CREDITOR.**

1.13 Disbursing Agent. Sergio Molina, who is the President of the corporation, shall be the disbursing agent for Plan payments.

1.14 Executory Contracts. The Debtor rejects any executory contract or lease not specifically assumed in the attached **Exhibit A** to the Plan.

ARTTICLE 2 THE PURPOSE OF THE DISCLOSURE STATEMENT AND THE PLAN CONFIRMATION PROCESS

The purpose of this Disclosure Statement is to provide each creditor with a description of the Plan as an aid in making an informed decision to accept or reject the Plan. Each impaired creditor is entitled to vote to accept or reject the Plan. **THE DISCLOSURE STATEMENT PROVIDES A BRIEF SUMMARY OF THE PLAN AND OTHER INFORMATION WITH RESPECT THERETO AND IS NOT INTENDED TO TAKE THE PLACE OF THE PLAN. EACH CREDITOR IS URGED TO STUDY THE PLAN IN FULL AND TO CONSULT WITH COUNSEL WITH RESPECT TO THE PLAN AND ITS EFFECT ON HIS/HER RIGHTS.**

The court will set a date for a hearing on the confirmation of the Plan. Creditors may vote on the Plan by filling out and mailing the accompanying Ballot for accepting or rejecting the Plan to Po Box 363565, San Juan PR 00936-3565. In order for the Plan to be accepted, claimants holding at least two thirds in amount and more than one half in numbers of the allowed claims in Classes 1 through 6 who vote, must vote in favor of the Plan. The Plan may be confirmed with the acceptance of one Class of Claimants as described hereinafter.

NO REPRESENTATIONS CONCERNING THE DEBTOR ARE AUTHORIZED OTHER THAN AS SET FORTH IN THIS STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE, WHICH ARE OTHER THAN AS CONTAINED IN THIS STATEMENT, SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION, AND SUCH ADDITIONAL REPRESENTATIONS AND

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INDEBTEDNESS SHOULD BE REPORTED TO THE OFFICE OF THE UNITED STATES TRUSTEE WHICH, IN TURN, SHALL DELIVER SUCH INFORMATION TO THE BANKRUPTCY COURT FOR SUCH ACTIONS AS MAY BE DEEMED APPROPRIATE. THE INFORMATION CONTAINED HEREIN HAS NOT BEEN SUBJECT TO A CERTIFIED AUDIT. THE DEBTOR DOES NOT WARRANT OR REPRESENT THE INFORMATION CONTAINED HEREIN IS WITHOUT ANY INACCURACY ALTHOUGH CONSIDERABLE EFFORT HAS BEEN MADE TO BE ACCURATE.

The Debtor has proposed its Plan of Reorganization in good faith and in compliance with the applicable provisions of the Bankruptcy Code. In a reorganizing Plan, if the Plan has been accepted by one impaired class, but all impaired classes have not accepted the Plan, the Court would normally determine whether to cram the plan down on the dissenting class or classes. The Court can only do this if the Plan does not discriminate unfairly as to each class of claims, and if the Plan is fair and equitable as to each class of claims. Whether a Plan is fair and equitable as to a class of claims is determined by the standards set out in § 1129(b) (2) of the Bankruptcy Code. In the Plan submitted by the Debtor, there are 1 impaired classes. Therefore, the “cram down” provisions of the bankruptcy code could be applied against a rejection class or classes of creditors. Regardless of the results of voting under any class of claims, the Debtor will ask the Court to confirm the Plan of Reorganization and find that the Plan does not discriminate unfairly and is fair and equitable with respect to the rejection creditors described in such cases.

ARTICLE 3. FINANCIAL INFORMATION RESPECTING DEBTOR

31 Description of the Debtor and His Business

The Debtor is a corporation. Debtors operate an ice cream parlor under the franchise name of Maggie Moos in Humacao Puerto Rico. The sale gross income is approximately \$26,800.00 per month. Debtor’s expense is estimated in \$24,600.00 monthly.

3.2 Debtor assets and Liabilities:

The Debtor’s primary assets and liabilities are related to the Debtor’s Real Properties. *See, Exhibit E*, Summary of Schedules, Schedules A, B, D, E, F, I and J.

The Debtor does not owns any Real Properties, but own a business Machinery and Equipment used in the Ice cream Parlor wich has a value of approximately \$70,000.00.

3.3. Factors Leading to Chapter 11:

Debtor filed a chapter 11 because the operation of the business was compromised due to a debt with the Treasury department and a debt with the Electric Company.

34 Best Interest of Creditors Test

3.4.1 **Liquidation Analysis:** Debtor’s assets have a lien with the Banco de Desarrollo Economico de Puerto Rico, reason why in a liquidation scenario general unsecured creditors will receive 0% distribution.

Attached hereto, as **Exhibit C**, is a Liquidation Value Analysis. This analysis of the Debtor’s Assets and Liabilities reveals that the debtor’s net worth is less than debtor’s liabilities reason why the proposed plan proposes to pay 5% of the general allowed unsecured claim.

3.4.2 **Best Interest Test:** In this case, the Debtor believe that Creditors,

3.5 Post-Petition Events

3.5.1 Post Petition Financial Condition and Post-Petition Monthly Operating Statements.

After the case was filed, in January 22 of 2016 the Debtor opened their DIP bank account. Additionally, the Debtor has filed all of their Monthly Operating Reports. The Operating Reports evidence income and expenses which are consistent with those projected herewith in the Five Year Cash Flow Projections. *See*, also, **Exhibit B**.

The Debtors generates income from operation of an ice cream parlor. This business operation generates income to cover the proposed disbursements and to cover their tax liabilities.

3.6 Cash Flow Projections.

Debtor's Cash Flow Projections are attached hereto as **Exhibit B**. Debtor estimates that the last distribution under the Plan will be on the 84th month following the Effective Date of the Plan. The Debtor's Cash-Flow Projections evidence Debtor's ability to fund Administrative Expenses, due upon Confirmation, and post-confirmation obligations under the Plan.

The Debtor's Projections evidence the Debtor's ability to meet Administrative expenses upon confirmation. Debtor estimates that at the time of an Order of Confirmation, Debtor will have in excess of \$20,000.00 in his Debtor in Possession Account. These projections are based on the Debtors pre-petition and post-petition income as well as the Debtor's current cash-balance in their DIP Account.

The Debtor's projected cash-flows also demonstrate a sustained ability to continue to regular operation of the business and to cover their personal expenses and co comply with the plan payments. The Plan proposes payments and distributions on all Allowed Claims. *See*, **Exhibit B**, Five Year Cash Flow Projections.

ARTICLE 4. CLASSES OF CLAIMS

4.1 Class Unclassified Claims. Unclassified Claims consist of Administrative Claims. In accordance with the scheme of distribution of creditors established by the Bankruptcy Code, Debtor's Chapter 11 Reorganization Plan provides for payment of Administrative Claims which generally consist of professional fees and unpaid expenses of the Debtor which arouse subsequent to the filing date of this case. These claims shall be paid either subsequent to an order of the court where so required or in the Debtor's ordinary course of business. With respect to professional fees, \$5,000.00 has already been paid and any remaining balance will be paid upon an Order of this Honorable Court. Any U.S. Trustee Fees owed will be paid prior to the Confirmation Order. Each holder of any other administrative expense claim allowed under § 503 of the Code will also be paid in full on the Effective Date of his Plan.

4.2 Class 1 Claim filed by BDE (Claim #3) (Class 1 Claims): Class 1 Claims consists of the Allowed Secured Claims, if any, secured by the loan secured by the machinery and equipment used to operate the ice cream parlor. The Holder of an Allowed Secured Class 1 Claim, if any, will receive, in full and complete satisfaction of and on account of its Allowed Secured Class 2 Claim, the amount of \$70,000.00. The \$70,000.00 will be paid via monthly installments of \$717.00, for a term of 120 months. This class is impaired.

4.3 Class 2 - Allowed Priority claims filed by Governmental Entities (Class 2): Class 2 Claims consists of the Allowed Priority Claims, if any, if any filed by governmental entities. Allowed Class 2 Claims, if any, will receive a 100% distribution on their claims, plus interest based on an interest rate of four percent (4.00%). This Class in not impaired.

4.4 Class 3 -Allowed General Unsecured Claims (Class 3): Class 3 Claims consist of: (a) the pre-petition unsecured claims against the Debtor, to the extent Allowed, if any. The Class 3 Claims will be Satisfied via monthly payments starting the Effective Date of the Plan. Total distribution on Class 3 Claims is estimated at \$38,700.00. Which is a 5.00% distribution on these claims. This class has a total claim of \$1,935.10. This Class is impaired

ARTICLE 5. MEANS OF IMPLEMENTING THE PLAN.

5.1 Funding the Plan.

5.1.1 Sources of Payment. The Plan establishes that the Plan will be funded from the Reorganized Debtor's cash flow generated by the Debtor. It generally consists of the by the operating of the business. The Debtor will contribute her cash flow to fund the Plan commencing on the Effective Date of the Plan and continue to contribute through the date that Holders of Allowed Class 1, 2 and 3, Claims receive the payments specified for in the Plan.

52 Distributions Under the Plan.

Funds will be distributed on a *pro rata* basis on the Class 1

53 Vesting of Assets.

The Plan provides that after the Effective Date of the Plan all of the Debtor's Real and Personal Property will vest in the Reorganized Debtor, free and clear of all liens, claims, interests and encumbrances, except as otherwise provided in the Plan or the Confirmation Order.

54 Risk Factors.

When deciding whether to vote for or against the Plan, Creditors should be aware of the following risk factors.

5.4.1 Income Risk.

Although the Debtors believes the Reorganized Debtor will be able to generate sufficient income subsequent to the Effective Date to make payments under the Plan, there is a risk that Debtors' income is interrupted or the projected rental income fails to materialize; thus, the Debtors will not achieve the income necessary to enable her to make payments to Creditors.

ARTICLE 6. OPERATION DURING THE CHAPTER 11

On the Petition Date, the Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code. Since that time, the Debtor has operated her financial affairs as a Debtor and Debtor in Possession.

The 341 Meeting of Creditors was held on February 29, 2016, at 9:00 AM. The last date and time by which anyone, including government units (as defined under Section 101(27) of the Bankruptcy Code), may file a Claim against Debtor was set for May 31, 2016.

ARTICLE 7. CONCLUSION

Debtor believes that the Plan provides for the maximum recovery for Claim holders. Accordingly, Debtor believes that approval of the Plan is in the best interest of the Debtors, their estate, and creditors; Debtor recommends that Claim holders that are Impaired vote to accept the Plan.

Respectfully Submitted,

/s/ Sergio Molina
DEBTOR

/s/JOSE M PRIETO CARBALLO, Esq.

ATTORNEY FOR DEBTOR

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