

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK
UTICA DIVISION

In re

JOSE L. LIZARDI,

Debtor.

Chapter 11
Case No. 12-62352-6

**DEBTOR'S STATEMENT IN RESPONSE TO
U.S. TRUSTEE'S MOTION TO DISMISS**

JOSE L. LIZARDI ("Debtor"), by his attorneys, Nolan & Heller, LLP, hereby states as follows in response to the United States Trustee's Motion to Dismiss the above-captioned bankruptcy case:

1. The filing of this bankruptcy case was precipitated by the entry of a substantial judgment against the Debtor, in a medical malpractice action. The Debtor filed an amended Chapter 11 plan that was, in part, dependent upon a favorable outcome of a state court appeal of the verdict and judgment in the malpractice action. The judgment creditor opposes the plan. The NYS Appellate Division has issued a decision affirming the verdict and judgment.

2. As a result of the Appellate Division decision, the Debtor has determined that the proposed plan may not be feasible, and that, in light of the judgment creditor's objections, may not be confirmable. Accordingly, the Debtor has also determined that dismissal of this case is in the best interests of the Debtor and the estate.

3. Based on the foregoing, the Debtor consents to dismissal pursuant to Bankruptcy Code §1112(b).

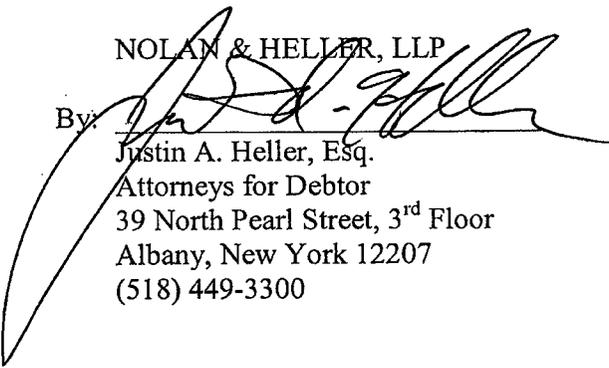
4. However, the Debtor disputes the grounds relied on by the U.S. Trustee for establishing "cause" for dismissal. Throughout the pendency of this case, the Debtor has openly disclosed on his operating reports that he provides financial support to his son, and limited financial support to his mother and sister, all without opposition from any party. In addition, upon

information and belief, the September 17, 2013 disbursement of \$50,000 referred to in the Motion was intended as payment of income taxes, however, the payment was voided and was never actually made.

5. Accordingly, while the Debtor consents to dismissal for "cause" under Bankruptcy Code §1112(b), the Debtor objects to a finding of cause on the grounds alleged by the U.S. Trustee.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order dismissing this bankruptcy case.

Dated: December 10, 2013
Albany, New York

NOLAN & HELLER, LLP
By: 
Justin A. Heller, Esq.
Attorneys for Debtor
39 North Pearl Street, 3rd Floor
Albany, New York 12207
(518) 449-3300