

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
BAXANO SURGICAL, INC. ¹)	Case No. 14-12545 (CSS)
)	
Debtor)	(Jointly Administered)
)	Re: D.I. 564

CORRECTED²
DECLARATION OF CATHERINE NOWNES-WHITAKER
CERTIFYING VOTING RESULTS WITH RESPECT TO THE
SOLICITATION OF ACCEPTANCES REGARDING THE FIRST
AMENDED CHAPTER 11 PLAN OF BAXANO SURGICAL, INC.

I, Catherine Nownes-Whitaker, hereby declare that the following is true to the best of my knowledge, information, and belief:

1. I am over the age of 18 and competent to testify and make this declaration (the “Declaration”). I am an employee of Rust Consulting/Omni Bankruptcy (“Rust Omni”). Pursuant to the orders of the Court entered on November 21, 2014 [D.I. 62] and July 1, 2015 [D.I. 534], the Debtor has retained and employed Rust Omni to provide certain claim, noticing and administrative services in the above-captioned chapter 11 case, including the collection and tabulation of ballots cast with respect to any plan of reorganization.
2. Pursuant to the Order (I) Approving Disclosure Statement in Support of First Amended Chapter 11 Plan of Baxano Surgical, Inc.; (II) Establishing Record Dates; (III) Approving Solicitation Procedures, Forms of Ballots, and Manner of Notice; And (IV) Fixing the Date, Time, and Place For Confirmation Hearing

¹ The last four digits of the Debtor’s tax identification number are 9022. The Debtor’s mailing address is P.O. Box 98386, Raleigh, North Carolina 27624.

² The only change made herein to the Declaration filed on July 17, 2015 [D.I. 564], is the correction of the case number included in the caption to D.I. 564. Otherwise, this Correct Declaration is identical to D.I. 564.

and Deadline for Filing Objections Thereto [D.I. 496] (the “Disclosure Statement/Solicitation Procedures Order”), Rust Omni was instructed to and did solicit and tabulate votes from holders of all claims entitled to vote on the First Amended Chapter 11 Plan Of Baxano Surgical, Inc. [D.I. 490] (the “Plan”) in accordance with the procedures set forth in the Disclosure Statement/Solicitation Procedures Order.

3. I am authorized to submit this Declaration on behalf of Rust Omni and the Debtor. Unless otherwise stated in this Declaration, I have personal knowledge of the facts set forth herein. As to statements of fact of which I do not have direct personal knowledge, I understand and believe them to be true based upon information gathered from other employees of Rust Omni, my review of relevant documents and Court pleadings, and information provided to me by the Debtor and the Debtor’s advisors. If called upon as a witness, I could and would competently testify as to all of the matters stated herein on that basis
4. Pursuant to the Disclosure Statement/Solicitation Procedures Order, June 3, 2015 (the “Voting Record Date”) was established as the last date for determining which creditors were entitled to vote on the Plan. Pursuant to the Plan, Holders³ of Class 1, Class 2 and Class 3 Claims (collectively, the “Voting Classes”) as of the Voting Record Date were entitled to vote to accept or reject the Plan, except as otherwise provided by the Disclosure Statement/Solicitation Procedures Order. Rust Omni relied on the Disclosure Statement/Solicitation Procedures Order and the claims register it maintains in these chapter 11 cases, in consultation with

³ Capitalized terms not defined herein have the meanings given to them in the Plan.

counsel to the Debtor, to identify which Holders of Claims were entitled to vote to accept or reject the Plan.

5. On June 10, 2015, in accordance with the solicitation procedures as set forth in the Disclosure Statement/Solicitation Procedures Order, Rust Omni served via first class mail packages (the “Solicitation Packages”) on Holders of Claims in the Voting Classes entitled to accept or reject the Plan. *See* Affidavit of Service at D.I. 517.
6. In accordance with the Disclosure Statement/Solicitation Procedures Order, for a Ballot to be counted as valid, the Ballot must have been properly completed in accordance with the Disclosure Statement/Solicitation Procedures Order and executed by the holder, or such holder’s authorized representative, and must have been received by Rust Omni by the deadline of July 10, 2015, at 4:00 p.m. (prevailing Pacific Time) (the “Voting Deadline”). All completed Ballots were required to be mailed to Rust Consulting/Omni Bankruptcy, 5955 De Soto Ave., Suite 100, Woodland Hills, California 91367, which address was listed on the Ballots, so as to be received by Rust Omni no later than the Voting Deadline.
7. I was primarily responsible for supervising the employees of Rust Omni in connection with the tabulation of the Ballots received for the acceptance or rejection of the Plan. The pertinent information from the Ballots received from holders of Claims in Class 1, Class 2, and Class 3 (the “Counted Ballots”) was recorded on the ballot tabulation reports attached hereto as Exhibit A, Exhibit B, and Exhibit C, respectively. Copies of all of the Counted Ballots are available for inspection upon request.

8. The following chart summarizes the Counted Ballots:

Class 1 – Other Priority Claims		Result
Ballots Received	10 votes accepting the Plan. 0 votes rejecting the Plan.	Accept
Acceptance	100% in number of voted accepting the Plan 100% in dollar amount accepting the Plan (\$77,812.37)	
Rejection	0.0% in number of voted rejecting the Plan 0.0% in dollar amount rejecting the Plan (\$0.00)	
Class 2 – Hercules Allowed Secured Claim		Result
Ballots Received	1 vote accepting the Plan. 0 votes rejecting the Plan.	Accept
Acceptance	100% in number of voted accepting the Plan 100% in dollar amount accepting the Plan (\$75,000.00)	
Rejection	0.0% in number of voted rejecting the Plan 0.0% in dollar amount rejecting the Plan (\$0.00)	
Class 3 – General Unsecured Claims		Result
Ballots Received	39 votes accepting the Plan. 1 vote rejecting the Plan.	Accept
Acceptance	97.50% in number of voted accepting the Plan 97.97% in dollar amount accepting the Plan (\$12,316,707.76)	
Rejection	2.50% in number of voted rejecting the Plan 2.03% in dollar amount rejecting the Plan (\$255,275.10)	

9. Certain Ballots received by Rust Omni were deemed invalid and for any purpose. In accordance with the Disclosure Statement/Solicitation Procedures Order, such Ballots were not counted. All invalid Ballots received by Rust Omni are identified in Exhibit A, Exhibit B and Exhibit C attached hereto, with the reason for invalidity of the Ballot included.

10. All Ballots were tabulated in accordance with the procedures set forth in the Disclosure Statement/Solicitation Procedures Order. Rust Omni is in possession of the Ballots, and copies of such Ballots are available for review during Rust Omni's regular business hours at 5955 De Soto Ave., Suite 100, Woodland Hills, California 91367.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: July 17, 2015

Respectfully submitted,



Catherine Nownes-Whitaker

EXHIBIT A

Debtor: Baxano Surgical, Inc.**Case No. 14-12545-CSS****Claims Ballot Detail Results****Class 1 Other Priority Claims****Class Summary**Voting Outcome: **Accepted**

	Total Received	Total Valid	Accepted	Rejected	Invalid
# Votes:	11	10	10	0	1
Vote %:			100.00%	0.00%	
Amt:		\$77,812.37	\$77,812.37	\$0.00	
Amt %:			100.00%	0.00%	

Creditor	Ballot #	Clm Sch	Date Received	Printed Ballot Amount	Tabulated Vote Amount	Vote	Release Opt Out	Compromise Election	Comment
DEBORAH BAUGHMAN	3232	C77	6/24/2015	\$12,475.00	\$12,475.00	Accept	<input type="checkbox"/>	<input type="checkbox"/>	
DEBORAH BAUGHMAN	3231	C76	6/24/2015	\$12,475.00	\$12,475.00	Accept	<input type="checkbox"/>	<input type="checkbox"/>	
GREGORY WELSH	17	S3122	6/23/2015	\$4,975.00	\$4,975.00	Accept	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
JENNIFER TRAN	18	S3123	6/29/2015	\$2,399.80	\$2,399.80	Accept	<input type="checkbox"/>	<input type="checkbox"/>	
JOSEPH G. CARDAROPOLI	3280	C123	7/6/2015	\$15,000.00	\$15,000.00	Accept	<input type="checkbox"/>	<input type="checkbox"/>	
NGHIA VAN HUYNH	167	S3127	7/1/2015	\$7,350.75	\$7,350.75	Accept	<input type="checkbox"/>	<input type="checkbox"/>	
RICHARD J. NASCA	3216	C62	6/18/2015	\$2,250.00	\$0.00	Invalid	<input type="checkbox"/>	<input type="checkbox"/>	Subject to Ob
STEPHANIE TRAN	69	S3133	7/6/2015	\$3,200.08	\$3,200.08	Accept	<input type="checkbox"/>	<input type="checkbox"/>	
TAMMY NGUYEN	21	S3134	7/10/2015	\$2,400.06	\$2,400.06	Accept	<input type="checkbox"/>	<input type="checkbox"/>	
VANESSA LEE	22	S3136	7/2/2015	\$5,061.68	\$5,061.68	Accept	<input type="checkbox"/>	<input type="checkbox"/>	
WERB & SULLIVAN	3257	C101	6/22/2015	\$12,475.00	\$12,475.00	Accept	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

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EXHIBIT B

Debtor: Baxano Surgical, Inc.**Case No. 14-12545-CSS****Claims Ballot Detail Results****Class 2 Hercules Allowed Secured Claims****Class Summary**Voting Outcome: **Accepted**

	Total Received	Total Valid	Accepted	Rejected	Invalid
# Votes:	5	1	1	0	4
Vote %:			100.00%	0.00%	
Amt:		\$75,000.00	\$75,000.00	\$0.00	
Amt %:			100.00%	0.00%	

Creditor	Ballot #	Clm Sch	Date Received	Printed Ballot Amount	Tabulated Vote Amount	Vote	Release Opt Out	Comment
HERCULES TECH GROWTH CAPITAL INC.	67	S3117	7/8/2015	\$575,000.00	\$75,000.00	Accept	<input type="checkbox"/>	Creditor entered the amount of the Court Ordered allowed secured claim.
NGHIA VAN HUYNH	3416		7/2/2015		\$0.00	Invalid	<input type="checkbox"/>	Creditor not a voting party.
STEPHANIE TRAN	3420		7/6/2015		\$0.00	Invalid	<input type="checkbox"/>	Creditor not a voting party.
TAMMY NGUYEN	3423		7/10/2015		\$0.00	Invalid	<input type="checkbox"/>	Creditor not a voting party.
VANESSA B. LEE	3419		7/2/2015		\$0.00	Invalid	<input type="checkbox"/>	Creditor not a voting party.

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Debtor: Baxano Surgical, Inc.**Case No. 14-12545-CSS****Claims Ballot Detail Results****Class 3 General Unsecured Claims****Class Summary**

Voting Outcome:

Accepted

	Total Received	Total Valid	Accepted	Rejected	Invalid
# Votes:	47	40	39	1	7
Vote %:			97.50%	2.50%	
Amt:		\$12,571,982.86	\$12,316,707.76	\$255,275.10	
Amt %:			97.97%	2.03%	

Creditor	Ballot #	Clm Sch	Date Received	Printed Ballot Amount	Tabulated Vote Amount	Vote	Release Opt Out	Comment
ADVANCED TECHNICAL WELDING	3234	C79	6/18/2015	\$1,048.62	\$1,048.62	Accept	<input type="checkbox"/>	
AIM PLASTICS	3401	C80	7/6/2015	\$16,228.40	\$16,228.40	Accept	<input checked="" type="checkbox"/>	
BERG MANUFACTURING, INC.	3212	C58	7/6/2015	\$55,078.32	\$55,078.32	Accept	<input type="checkbox"/>	
CHARLES TORRES	3268	C111	7/2/2015	\$3,888.92	\$3,888.92	Accept	<input type="checkbox"/>	
CHARLES TORRES	3269	C112	7/2/2015	\$9,657.51	\$9,657.51	Accept	<input type="checkbox"/>	
CT CORPORATION	90	S2874	7/6/2015	\$105.75	\$0.00	Invalid	<input type="checkbox"/>	Duplicate conflicting ballot
CT CORPORATION SYSTEM	3363	C39	7/6/2015	\$991.79	\$991.79	Accept	<input type="checkbox"/>	
DAFNA LIFE SCIENCE LP	3299	C141	7/9/2015	\$2,094,907.00	\$2,094,907.00	Accept	<input checked="" type="checkbox"/>	
DAFNA LIFE SCIENCE MARKET NEUTRAL LP	3300	C142	7/9/2015	\$362,579.00	\$362,579.00	Accept	<input checked="" type="checkbox"/>	
DAFNA LIFE SCIENCE SELECT, LP	3301	C143	7/9/2015	\$1,571,179.00	\$1,571,179.00	Accept	<input checked="" type="checkbox"/>	
DE LAGE LANDEN FINANCIAL SERVICES	3279	C122	6/19/2015	\$1,669.89	\$1,669.89	Accept	<input type="checkbox"/>	
EAGLE STAINLESS TUBE & FAB	3214	C60	6/23/2015	\$1,706.50	\$1,706.50	Accept	<input type="checkbox"/>	
EARTHLINK BUSINESS	3339	C20	6/30/2015	\$5,645.27	\$5,645.27	Accept	<input checked="" type="checkbox"/>	
FROST AND SULLIVAN	3263	C106	6/30/2015	\$20,000.00	\$20,000.00	Accept	<input type="checkbox"/>	
GE HEALTHCARE OEC	3341	C22	6/22/2015	\$3,389.26	\$3,389.26	Accept	<input checked="" type="checkbox"/>	
GREGORY WELSH	3333	C14	6/23/2015	\$225,000.00	\$225,000.00	Accept	<input type="checkbox"/>	
GREGORY WELSH	3354	C35	6/23/2015	\$19,471.15	\$19,471.15	Accept	<input type="checkbox"/>	

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Debtor: Baxano Surgical, Inc.**Case No. 14-12545-CSS****Claims Ballot Detail Results****Class 3 General Unsecured Claims**

Creditor	Ballot #	Clm Sch	Date Received	Printed Ballot Amount	Tabulated Vote Amount	Vote	Release Opt Out	Comment
JOHNSON MATTHEY INC.	105	S2930	7/8/2015	\$38,600.05	\$38,600.05	Accept	<input type="checkbox"/>	
MACKAY MANUFACTURING	3294	C136	6/18/2015	\$10,038.40	\$10,038.40	Accept	<input type="checkbox"/>	Creditor entered amount of \$10,038.40, therefore ballot is invalid
MARSHALL'S LOCKSMITH SERVICES, INC.	3350	C31	7/9/2015	\$2,786.32	\$2,786.32	Accept	<input checked="" type="checkbox"/>	
MARTINA HRNCIR	3276	C119	6/30/2015	\$58,809.34	\$58,809.34	Accept	<input type="checkbox"/>	
MARTINA HRNCIR	3273	C116	6/30/2015	\$54,438.51	\$54,438.51	Accept	<input type="checkbox"/>	
MARTINA HRNCIR	3274	C117	6/30/2015	\$7,335.41	\$7,335.41	Accept	<input type="checkbox"/>	
MARTINA HRNCIR	3275	C118	6/30/2015	\$61,773.92	\$61,773.92	Accept	<input type="checkbox"/>	
MJW CAREERS	252	S2970	6/24/2015	\$4,310.00	\$4,310.00	Accept	<input type="checkbox"/>	Creditor entered amount of \$4,310.00, therefore ballot is invalid
MOUNTAIN MANUFACTURING TECH.	3284	C127	7/8/2015	\$255,275.10	\$255,275.10	Reject	<input type="checkbox"/>	
MSC INDUSTRIAL SUPPLY CO	255	S2975	7/6/2015	\$1,344.43	\$1,344.43	Accept	<input type="checkbox"/>	
NGHIA VAN HUYNH	3417		7/2/2015		\$0.00	Invalid	<input type="checkbox"/>	Creditor not a voting party
NORTH AMERICAN SPINE SOCIETY	3369	C47	6/29/2015	\$7,631.25	\$7,631.25	Accept	<input type="checkbox"/>	
OTTO FREI	3259	C102	7/2/2015	\$1,056.46	\$1,056.46	Accept	<input type="checkbox"/>	
PACIFIC AMERICAN LIFE SCIENCE	41	S2995	6/19/2015	\$8,265.00	\$8,265.00	Accept	<input type="checkbox"/>	
PREMIER RESEARCH INTERNATIONAL LLC	3386	C10	6/25/2015	\$30,770.26	\$30,770.26	Accept	<input type="checkbox"/>	
RESEARCH FOR LIFE LLC	3248	C92	6/15/2015	\$5,384.07	\$5,384.07	Accept	<input type="checkbox"/>	
RF INDUSTRIES, LTD	50	S3018	6/26/2015	\$8,424.50	\$8,424.50	Accept	<input type="checkbox"/>	
RICHARD J. NASCA	3217	C62	6/18/2015	\$2,250.00	\$2,250.00	Accept	<input type="checkbox"/>	
RICHARD J. NASCA	124	S2978	6/18/2015	\$2,250.00	\$0.00	Invalid	<input type="checkbox"/>	Duplicate conflicting ballot
SABBY HEALTHCARE VOLATILITY MASTER FUND, LTD.	3286	C129	7/10/2015	\$5,296,102.54	\$5,296,102.54	Accept	<input checked="" type="checkbox"/>	
SABBY VOLATILITY WARRANT MASTER FUND, LTD	3285	C128	7/10/2015	\$1,765,366.60	\$1,765,366.60	Accept	<input checked="" type="checkbox"/>	
STAR2STAR COMMUNICATIONS	4	S3053	7/6/2015	\$3,009.41	\$0.00	Invalid	<input type="checkbox"/>	Duplicate conflicting ballot
STAR2STAR COMMUNICATIONS, LLC	3346	C27	7/6/2015	\$2,002.74	\$2,002.74	Accept	<input checked="" type="checkbox"/>	

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Debtor: Baxano Surgical, Inc.**Case No. 14-12545-CSS****Claims Ballot Detail Results****Class 3 General Unsecured Claims**

Creditor	Ballot #	Clm Sch	Date Received	Printed Ballot Amount	Tabulated Vote Amount	Vote	Release Opt Out	Comment
STEPHANIE TRAN	3421		7/6/2015		\$0.00	Invalid	<input type="checkbox"/>	Creditor not a voting party
SUN LIFE ASSURANCE COMPANY OF CANADA	3405	C108	7/8/2015	\$361,868.04	\$361,868.04	Accept	<input checked="" type="checkbox"/>	
TAMMY NGUYEN	3422		7/10/2015		\$0.00	Invalid	<input type="checkbox"/>	Creditor not a voting party priority \$2,400.06.
VANESSA B. LEE	3418		7/2/2015		\$0.00	Invalid	<input type="checkbox"/>	Creditor not a voting party
VORZEIGEN MEDICAL	3233	C78	7/6/2015	\$56,130.00	\$56,130.00	Accept	<input type="checkbox"/>	
WERB & SULLIVAN	3258	C101	6/22/2015	\$110,376.55	\$110,376.55	Accept	<input checked="" type="checkbox"/>	
WESTWICKE PARTNERS	162	S3095	6/30/2015	\$29,202.74	\$29,202.74	Accept	<input type="checkbox"/>	

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