

2. [11-94410-E-11](#) SAWTANTRA/ARUNA CHOPRA
MG-3 Robert S. Marticello

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
12-4-13 [[684](#)]

LUCILLE ARTERBURN VS.

Local Rule 9014-1(f) (2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 11 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on December 3, 2013. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Final Ruling: The hearing has been continued pursuant to the Stipulation of the Parties and Order of the court to 3:30 pm. on March 6, 2014.

DECEMBER 19, 2013 HEARING

Lucille E. Arterburn, Trustee of Trust A established under the Jessie O. and Lucille E. Arterburn Trust dated March 7, 1984; Sylvan J. Farrell, Trustee of the Trust A established under the Sylvan J. Farrell & Marie E. Farrell Family Trust dated September 6, 1984; David J. Arterburn and Edith A. Arterburn (Watters), Trustees of Arterburn & Watters, LLP Profit Sharing Plan & Trust; John A & C Jeanie Miller, Trustee of the Miller Family Trust dated November 1, 2000; Thomas A. Miller and Judith A. Miller, husband and wife; Pensco Trust Company Custodian FBO James Wilson IRA Pensco Account #W1240; Pensco Trust Company Custodian FBO Frederick J. Dotzler IRA Pensco Account #70002038; Michael LaPlante and Elizabeth LaPlante, Trustees of the LaPlante Family Trust; Larry Cleveland, Trustee of the Larry Cleveland 401(k) Profit Sharing Plan; Gregory and Amanda Smith Family Trust dated 19 March 2007; Ted Smith and Joyce Smith, Trustees of the Ted and Joyce Smith Trust; John A. Miller Retirement Account; Vida B. Harris, Trustee of the Vida B. Harris Revocable Living Trust dated April 1, 1992; George H. Lehman, Trustee of the George H. Lehman Family Trust (collectively, "Movants") seek relief from the automatic stay with respect to the real property commonly known as 4754 Dale Road, Modesto, California, providing adequate protection to Movants by requiring payment of real property taxes, and waiving the 14-day stay.

On or about December 3, 2009, Mid Valley Services Inc. ("Mid Valley") funded a \$550,000 loan to Aruna Chopra secured by a deed of trust

on the Dale Road Property. Based on representations of Mrs. Chopra, the deed of trust securing the \$550,000 loan was to be in first priority on Lot C. A year later on or about December 17, 2010, Mid Valley funded two additional loans to Mrs. Chopra secured by deeds of trust on the Dale Road Property Lot B. The first of the two loans was in the amount of \$1,250,000 and the second was in the amount of \$700,000. Based on representations of Mrs. Chopra, the deed of trust securing the \$1,250,000 loan was to be in first priority and the deed of trust securing the \$700,000 loan was to be in second priority on Lot B.

Currently, there is a priority lien dispute based on Mrs. Chopra's alleged fraud.

Movant state the delinquent real property taxes on the Dale Road Property have been paid; however, Movant states the first installment of real property taxes for 2013-2014 is due on December 10, 2013 and the second installment will be due on April 10, 2014. The real property taxes are a lien senior to the consensual liens of the Bledsoe Fischer Plaintiffs and the Mid Valley Assignees. Movant argues that as adequate protection, the Court should require the current real property taxes to be paid.

DEBTOR'S OPPOSITION

Debtors oppose the motion stating they are selling the Dale Road Property as part of their plan of reorganization. Debtors argue a foreclosure sale of one-half of the Dale Road project would destroy the value that could be realized for all parties involved. Debtors state that even if the stay relief motions are granted, the Mid Valley Assignees and the Bledsoe/Fisher Plaintiffs cannot collect on their respective asserted claims until after the lien priority dispute among the parties is resolved.

Debtors argue that they are attempting to make arrangements for the payment of the real property taxes for the Dale Road Property from a non-estate source. If they are unable to do so, Debtors state the accrued and unpaid real property taxes will be paid at the sale closing from the net proceeds of the \$9,000,000.00 due at that time and the payment at closing will not affect the payment in full of the claims. Debtors state the court could grant Mid Valley Assignees and the Bledsoe/Fisher Creditors replacement liens against the Dale Road Properties behind existing encumbrances only if and to the extent that real property taxes accrue on the properties and the accrual of taxes causes a diminution in value.

JANUARY 16, 2013, HEARING

It is not clear whether the December 10, 2013 taxes have been paid. The Debtors argue in their opposition that they are attempting to make arrangements to pay the taxes but that the taxes will be paid at the sale closing from the net proceeds of the \$9,000,000.00 due at that time.

3. [11-94410](#)-E-11 SAWTANTRA/ARUNA CHOPRA
SSA-4 Robert S. Marticello

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
9-26-13 [[597](#)]

JOANN IRENE BLEDSOE, CARL R.
FISCHER JR., SANDY FISCHER
VS.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 11 Trustee, creditors holding the 20 largest unsecured claims, all creditors, parties requesting special notice, and Office of the United States Trustee on September 26, 2013. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Final Ruling: The hearing has been continued pursuant to the Stipulation of the Parties and Order of the court to 3:30 pm. on March 6, 2014. No appearance at the January 16, 2014 hearing is required.

Movants Joanne Irene Bledsoe; Carl R. Fischer, Jr. and Sandy Fischer, as trustees of the Carl R. Fischer, Jr. and Sandy Fischer Revocable Trust UDT dated September 25, 2000; Amy C. Sherman, formerly known as Amy C. Fischer, as Trustee of the Amy C. Fischer Revocable Trust UDT dated November 14, 2005; and Robert Daniel Fischer (collectively "Bledsoe-Fischer Creditors" or "Movants") seek relief from the automatic stay with respect to the real property commonly known as 4754 Dale Road, Modesto, California. The moving party has provided the Declaration of Joann Irene Bledsoe to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

Movants contend that the property has no equity, as the market value is \$2,490,000.00 and are owed \$8,395,557.47 in principal and interest. In addition, the Mid-Valley Creditors assert a lien on the real property in the amount of \$2,691,949.04. Additionally, Movant states there is accrued property taxes on the property owed in the amount of \$99,256.16. Movants also argue that the property is not necessary for an effective reorganization.

In the alternative, Movant argues that causes exists for terminating the stay where the debtors have not made post-petition payments. Movants state Debtors have failed to make any payments on the note, either pre- or post-petition.

TRUSTEE'S OPPOSITION

Chapter 11 Trustee opposes the Motion for Relief because the subject parcels are necessary to an effective reorganization in prospect, which the Trustee believes to have a reasonable likelihood of confirmation within a reasonable time period. Trustee states the plan of reorganization is built around the Dale Road Project, of which the subject parcels are a part. Trustee is also informed that the Debtors have obtained a fully executed purchase and sale agreement, pursuant to which the Dale Road Property will be sold for approximately \$17,000,000.00.

Trustee also states that the Debtors recently arranged for payment of \$99,256.16 in property taxes assessed against the subject parcels, which demonstrates their seriousness in attempting to confirm a plan or reorganization around this property.

The Trustee contends that the subject parcels are necessary to an effective plan of reorganization and believes the Debtors should be given a reasonable amount of time to attempt to confirm their plan or reorganization and that the motion should be denied or continued with the confirmation hearing.

DEBTOR'S OPPOSITION

Debtors oppose the motion on the basis that the Dale Road properties are necessary to an effective reorganization. The Debtors have negotiated an agreement for the sale of the properties for \$17,000,000.00, which will be consummated through confirmation of a chapter 11 plan. Debtors state the granting of this motion will destroy the proposed sale and eviscerate the value for the other creditors of this estate. The Debtor states the amended plan will pay creditors 100% of their allowed claims from the proceeds of the sale.

Debtors state the Bledsoe-Fischer Creditors have failed to show they are entitled to adequate protection because they are undersecured creditors and have not shown that their collateral is depreciating post-petition.

Debtors also state that the \$99,256.16 in accrued real property taxes related to the property have been paid. Debtors state that Movant has not provided any evidence that their collateral is declining in value post-petition.

Debtors request that the motion be denied so they can proceed with their proposed 100% plan.

MOVANT'S REPLY

Movant concedes that the Dale Road property is necessary to an effective reorganization. Movant states that it remains to be seen whether the prospective buyer will actually perform and pay the estate \$17 million. Movant states the Agreement for Purchase and Sale of Real Property is contingent upon several conditions, including confirmation of a Chapter 11 plan, list pendens removal, recordation of a parcel map, and Trustee approval.

Movant also concedes that Debtors have filed a multitude of documents, including a Amended Disclosure Statement and First Amended Plan, but the actual efficacy of the documents filed is still a critical issue.

Lastly, the Movant states that it is unwilling to remove the Lis Pendens, which impedes the Debtor's reorganization.

Movant requests that its motions be granted, but that if the court deny its motions, then continue them rather to be hearing with plan confirmation.

DISCUSSION

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985); 11 U.S.C. § 362(d)(1).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2).

The party seeking stay relief has the burden of demonstrating the lack of equity; the party opposing stay relief bears the burden of proof on all other issues. 11 U.S.C. § 362(g); see also, *In re Bonner Mall Partnership*, 2 F.3d 899, 902 (9th Cir. 1993).

The parties appear to agree that there is no equity in the subject real property parcels. While Movant, in its reply, concedes that the property appears to be necessary for an effective reorganization, the true concern lies in the confirmation of the Chapter 11 plan of reorganization and the related sale.

4. [11-94410-E-11](#) **SAWTANTRA/ARUNA CHOPRA**
SSA-5 **Robert S. Marticello**

**CONTINUED MOTION TO COMPEL
ABANDONMENT
9-26-13 [[606](#)]**

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 11 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 26, 2013. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Abandon Real Property has been set for hearing on the notice required by Federal Rule of Bankruptcy Procedure 6007(b) and Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Final Ruling: The hearing has been continued pursuant to the Stipulation of the Parties and Order of the court to 3:30 pm. on March 6, 2014. No appearance at the January 16, 2014 hearing is required.

Movants Joanne Irene Bledsoe; Carl R. Fischer, Jr. and Sandy Fischer, as trustees of the Carl R. Fischer, Jr. and Sandy Fischer Revocable Trust UDT dated September 25, 2000; Amy C. Sherman, formerly known as Amy C. Fischer, as Trustee of the Amy C. Fischer Revocable Trust UDT dated November 14, 2005; and Robert Daniel Fischer (collectively "Bledsoe-Fischer Creditors" or "Movants") move to abandon the property parcel 078-015-029 and 078-015-030. Movant main contention is that the property is of no value to the estate and because the Debtors have not paid the property taxes.

TRUSTEE'S OPPOSITION

The Chapter 11 Trustee opposes the motion because the parcels are not of inconsequential value or benefit to the estate and are not burdensome. Trustee states the plan of reorganization is built around the Dale Road Project, of which the subject parcels are a part. Trustee is also informed that the Debtors have obtained a fully executed purchase and sale agreement, pursuant to which the Dale Road Property will be sold for approximately \$17,000,000.00.

Trustee states the parcels are of consequential value to the estate in that they are necessary to an effective plan or reorganization with a reasonable likelihood of being confirmed. Trustee states Debtors should be given a reasonable amount of time to attempt to confirm their plan or reorganization and that the motion should be denied or continued with the confirmation hearing.

DEBTOR'S OPPOSITION

Debtors oppose the motion arguing that the Motion should be denied because the Dale Road Properties are not of inconsequential value or benefit of the estate. The Debtors have negotiated an agreement for the sale of the properties for \$17,000,000.00, which will be consummated through confirmation of a chapter 11 plan. Debtors state the granting of this motion will destroy the proposed sale and eviscerate the value for the other creditors of this estate. The Debtor states the amended plan will pay creditors 100% of their allowed claims from the proceeds of the sale.

Debtors also state that the \$99,256.16 in accrued real property taxes related to the property have been paid.

MOVANT'S REPLY

Movant concedes that the Dale Road property is necessary to an effective reorganization. Movant states that it remains to be seen whether the prospective buyer will actually perform and pay the estate \$17 million. Movant states the Agreement for Purchase and Sale of Real Property is contingent upon several conditions, including confirmation of a Chapter 11 plan, list pendens removal, recordation of a parcel map, and Trustee approval.

Movant also concedes that Debtors have filed a multitude of documents, including a Amended Disclosure Statement and First Amended Plan, but the actual efficacy of the documents filed is still a critical issue.

Lastly, the Movant states that it is unwilling to remove the Lis Pendens, which impedes the Debtor's reorganization.

Movant requests that its motions be granted, but that if the court deny its motions, then continue them rather to be hearing with plan confirmation.

DISCUSSION

After notice and hearing, the court may order the Trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b), *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000). An order compelling abandonment is the exception, not the rule. *Id.* at 647. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset and absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered. *Id.*

5. [11-94410](#)-E-11 SAWTANTRA/ARUNA CHOPRA
WGS-3 Robert S. Marticello

CONTINUED MOTION TO VALUE
COLLATERAL OF THE
BLEDSOE-FISCHER CREDITORS
10-3-13 [[613](#)]

CONT. FROM 10-31-13

Local Rule 9014-1(f)(1) Motion - Continued Hearing.

Correct Notice Provided. Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 11 Trustee, respondent creditor, and Office of the United States Trustee on October 3, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Final Ruling: The hearing has been continued pursuant to the Stipulation of the Parties and Order of the court to 3:30 pm. on March 6, 2014. No appearance at the January 16, 2014 hearing is required.

PRIOR HEARING

The parties reached an agreement to continue the hearing on the Motion to Value Collateral to December 19, 2013, in return for the immediate payment from a non-estate source of \$99,256.16 in unpaid property taxes to the Stanislaus County Tax Collector which relates to APN 029 and APN 030 on the Dale Road Project located at 4754 Dale Road, Modesto, California. The moving party submitted a Stipulation based on the agreement, and the court granted the Stipulation. Dckt. 632.

DEBTOR'S MOTION

Debtors seek to fix the amount of the Bledsoe-Fischer Creditors secured claim at no more than the value of the real property collateral. The motion is accompanied by the Debtor's declaration. Debtors seek to value the property at \$2,490,000.00, as depicted in the appraisal of David R. Giom of Cogdil & Giomi, Inc., the Bledsoe-Fischer Creditor's appraiser.

CREDITOR'S RESPONSE

Creditor responds, not opposing the ability for Debtor's to value their secured claim, but to the all encompassing language used in the motion.

6. [11-94410-E-11](#) SAWTANTRA/ARUNA CHOPRA
WGS-4 Robert S. Marticello

APPROVAL OF FIRST AMENDED
DISCLOSURE STATEMENT FILED BY
DEBTORS
12-5-13 [[705](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, all creditors, and Office of the United States Trustee on December 5, 2013. By the court's calculation, 42 days' notice was provided.

Tentative Ruling: The Motion to Approve First Amended Disclosure Statement has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to continue the hearing on the Motion to Approve First Amended Disclosure Statement to 3:30 p.m. on March 6, 2014. No appearance at the January 16, 2014 hearing is required.

REVIEW OF THE DISCLOSURE STATEMENT

Case filed: December 30, 2011

Background:

The Debtors are physicians and philanthropists, as well as and owners of and developers of real estate.

Creditor/Class	Treatment	
Administrative Expenses	Claim Amount	\$46,006.75 estimation
	Impairment	
	Law Offices of Peter Fear: \$46,006.75 paid in full on the later of the effective date of the date that is ten business days after the court enters final order allowing the fees	
	Gary Farrar: to be provided	
	Hefner Start: to be provided	
	Ryan, Christie, Quinn & Horn: to be provided	
Priority Tax Claims	Claim Amount	\$100,673.43

	Impairment	
	<p>The Holders of Allowed Priority Tax Claims will be paid in full the allowed amount of their Claims on the Effective Date or as soon as reasonably practicable thereafter, but, in no event, more than five (5) years from the entry of the Orders for Relief. Allowed Priority Tax Claims shall accrue interest from the Effective Date on the unpaid balance of the Allowed Priority Tax Claim at the rate required by 11 U.S.C. § 511 to provide "present value" of the Allowed Priority Tax Claim. The Debtors reserve the right to pay any Allowed Priority Tax Claim in full on the Effective Date.</p>	
<p>Class 1: Secured claim of Bledsoe-Fischer</p>	Claim Amount	\$2,500,000.00 allowed secured claim
	Impairment	
	<p>Bledsoe-Fischer asserts a Claim in the amount of \$7,694,997.82 secured by a first priority lien against Dale Road Properties 029 and 030. The priority of Bledsoe-Fischer's liens are subject to the Lien Priority Litigation.</p> <p>If Bledsoe-Fischer holds first-priority liens against Dale Road Properties 029 and 030, then it will have an Allowed Class 1 Secured Claim in the lesser amount of the value of Dale Road Properties 029 and 030, as determined by the Court, or the amount of its Claim. Alternatively, if Bledsoe-Fischer holds liens that are junior to the Mid Valley Assignees' liens, then it will have an Allowed Class 1 Secured Claim only if and to the extent the value of Dale Road Properties 029 and 030, as determined by the Court, exceeds the amount of the Mid Valley Assignees' Allowed Secured Claims, up to the amount of its Claim. Bledsoe-Fischer will be paid the Allowed amount of its Class 1 Secured Claim in one of three alternative ways.</p>	
<p>Class 2: Secured claim of New Era (Oakdale)</p>	Claim Amount	
	Impairment	

	<p>New Era will be paid the Allowed amount of its Class 2 Secured Claim as follows:</p> <p>a. Payment of Allowed Claim. New Era's Allowed Class 2 Secured Claim shall accrue simple interest at the rate of five (5) % per annum and shall mature on the date that is five (5) years after the Effective Date. New Era's Allowed Class 2 Secured Claim shall be paid in full by its maturity date. The Debtors shall not be obligated to make any payments prior to the maturity date for the Allowed Class 2 Secured Claim, however, the Debtors reserve the right to make periodic payments of principal and/or interest on account of such Claim from the rental income generated by the Oakdale Property.</p> <p>b. Lien Retention. New Era shall retain its lien on the Oakdale Property to the same extent, validity, and priority as of the Petition Date, until the full satisfaction of New Era's Allowed Class 2 Secured Claim, if any, as provided herein, at which time New Era's lien shall be released and the Debtors shall retain title to the Oak Dale Property free and clear of New Era's lien.</p> <p>The treatment provided herein shall be in full settlement and satisfaction of New Era's Allowed Class 2 Secured Claim. For purposes of clarity, in no circumstances will New Era receive more than the amount of any Allowed Class 2 Secured Claim.</p>	
<p>Class 3: Secured claim of \$550K Lot C Assignees</p>	<p>Claim Amount</p>	<p>\$579,159.62</p>
	<p>Impairment</p>	
	<p>The \$550K Lot C Assignees assert a Claim in the amount of \$579,159.62, which is secured by a second priority lien against Dale Road Property 030. The priority of the \$550K Lot C Assignees' lien is subject to the Lien Priority Litigation. If the \$550K Lot C Assignees hold a first priority lien against Dale Road Property 030, then they will have an Allowed Secured Claim in the lesser amount of the value of Dale Road Property 030, as determined by the Court, or the amount of their Claim. Alternatively, if the \$550K Lot C Assignees hold a lien that is junior to Bledsoe-Fischer's lien, then they will have an Allowed Class 3 Secured Claim only if and to the extent the value of Dale Road Property 030, as determined by the Court, exceeds the amount of Bledsoe-Fischer's Allowed Secured Claim, up to the amount of their Claim. The \$550K Lot C Assignees will be paid the Allowed amount of their Class 3 Secured Claim in one of two alternative ways.</p>	

Class 4: Secured claim of \$1.25 MIL Lot B Assignees	Claim Amount	\$1,340,400.12
	Impairment	
	<p>The \$1.25 MIL Lot B Assignees assert a Claim in the amount of \$1,340,400.12, which is secured by a second priority lien against Dale Road Property 029. The priority of the \$1.25 MIL Lot B Assignees' lien is subject to the Lien Priority Litigation. If the \$1.25 MIL Lot B Assignees hold a first priority lien against Dale Road Property 029, then they will have an Allowed Secured Claim in the lesser amount of the value of Dale Road Property 029, as determined by the Court, or the amount of their Claim. Alternatively, if the \$1.25 MIL Lot B Assignees hold a lien that is junior to Bledsoe- Fischer's lien, then they will have an Allowed Class 3 Secured Claim only if and to the extent the value of Dale Road Property 029, as determined by the Court, exceeds the amount of Bledsoe- Fischer's Allowed Secured Claim, up to the amount of their Claim. The \$1.25 MIL Lot B Assignees will be paid the Allowed amount of their Class 4 Secured Claim in one of two alternative ways.</p>	
Class 5: Secured Claim of the \$700K Lot B Assignees	Claim Amount	\$752,389.30
	Impairment	
	<p>The \$700K Lot B Assignees assert a Claim in the amount of \$752,389.30, which is secured by a second priority lien against Dale Road Property 007, a third priority lien against Dale Road Property 029, and a first priority lien against the East F Street Property. The priority of the \$700K Lot B Assignees' lien against Dale Road Property 029 is subject to the Lien Priority Litigation. The \$700K Lot B Assignees will be paid the Allowed amount of their Class 5 Secured Claim in one of two alternative ways.</p>	
Class 6: Secured claim of Mosco	Claim Amount	\$918,549.99
	Impairment	

Mosco asserts a Claim in the amount of \$918,549.99 secured by a first priority lien against Dale Road Property 007 and a second priority lien against the Banner Court Property.

a. Payment of Claim. By August 30, 2014 (the "Drop Dead Date"), the Mosco will be paid from escrow the Net Proceeds from the sale or refinance of Dale Road Property 007 and/or the Banner Court Property the sum of \$918,549.99 (the "Mosco Payment Amount"). Mosco's receipt of the Mosco Payment Amount by the Drop Dead Date shall be in full settlement and satisfaction of Mosco's Claim, and Mosco releases and waives any amounts in excess of the Mosco Payment Amount, including based on the Mosco Note, Deed of Trust, and/or any amendments thereto, against the Debtors, the Estate, and/or their respective property, and Mosco's liens against Dale Road Property 007 and against the Banner Court Property shall be deemed released. The Debtors shall not be required to make any payments pending the Drop Dead Date.

b. Right to Proceed With Foreclosure. If Mosco does not receive the Mosco Payment Amount by the Drop Dead Date, then it shall be entitled to proceed with foreclosure proceedings regarding Dale Road Property 007 and the Banner Court Property in full settlement and satisfaction of Mosco's Claim, and Mosco releases and waives any amounts in excess of the amount it obtains through a foreclosure sale, including based on the Mosco Note, Deed of Trust, and/or any amendments thereto, against the Debtors, the Estate, and/or their respective property.

c. Sole Recourse. Mosco's sole recourse on account of its Claim is to receive the Mosco Payment Amount from the Net Proceeds from the sale or refinance of Dale Road Property 007 and/or the Banner Court Property, as provided herein, or, if such payment is not made by the Drop Dead Date, then to foreclose on Dale Road Property 007 and/or the Banner Court Property, and Mosco waives and releases any and all rights and claims to pursue, or recover from, the Debtors, the Estate, and/or their respective property, including for any amounts in excess of the Mosco Payment Amount or the amount obtained through a foreclosure sale, as the case may be. Mosco shall not have any General Unsecured Claim for any such deficiency in this Case.

d. Lien Retention. Subject to subparagraph e. below, Mosco shall retain its lien on Dale Road Property 007 and the Banner Court Property, to the same extent, validity, and priority as of the Petition Date, until

Class 7: Secured claim of New Era (Dale Road Property 025)	Claim Amount	\$700,000.00
	Impairment	
	<p>New Era will not receive anything on account of its Class 7 Secured Claim and New Era shall not have any deficiency Claim in this case.</p> <p>a. Sale Free and Clear of Liens. The sale of Dale Road Property 025 shall be free and clear of any lien, claim, or interest of any kind or nature whatsoever of New Era.</p> <p>b. Junior Liens. New Era consents to the Debtors granting to each the \$550K Lot C Assignees and the \$1.25 MIL Lot B Assignees a deed of trust against Dale Road Property 025 that is subordinate to its lien to secure their respective Secured Claims, as provided above.</p> <p>c. Consent to the Recordation of the Final Map. The Confirmation Order shall provide that the New Era is deemed to have consented to the recordation of the Parcel Map and the Subdivision Maps. The treatment provided herein shall be in full settlement and satisfaction of New Era's Allowed Class 7 Secured Claim.</p>	
Class 8: Secured Claim of BOW (Hillcrest)	Claim Amount	\$383,667.01
	Impairment	

	<p>BOW's will be paid its Allowed Class 8 Secured Claim in full as follows:</p> <p>a. Payment of Allowed Claim. BOW will continue to receive monthly payments as provided in the BOW Note 1. The monthly payments will be in the amount and will be made on the date set forth in the BOW Note 1. BOW's Allowed Class 8 Secured Claim will mature on the "Maturity Date" set forth in the BOW Note 1. Interest will accrue and be paid will at the rate provided in the BOW Note 1.</p> <p>b. Lien Retention. BOW shall retain its lien on the Hillcrest Property to the same extent, validity, and priority as of the Petition Date, until the full satisfaction of BOW's Allowed Class 8 Secured Claim, if any, as provided herein, at which time BOW's lien shall be released and the Debtors shall retain title to the Hillcrest Property free and clear of BOW's lien.</p> <p>The treatment provided herein shall be in full settlement and satisfaction of BOW's Allowed Class 8 Secured Claim. For purposes of clarity, in no circumstances will BOW receive more than the amount of any Allowed Class 8 Secured Claim.</p>	
Class 9:	Claim Amount	\$1,804,172.01
Secured Claim of BOW (Banner)	Impairment	

a. Payment of Allowed Claim. On the Effective Date, BOW shall have an Allowed Class 9 Secured Claim in an amount equal to the value of the Banner Court Property, as determined by the Court, up to the maximum amount of \$1,804,172.01. The Debtors believe that the Banner Court Property is currently worth approximately \$1,200,000.00, and, therefore, BOW will have an Allowed Class 9 Secured Claim in that amount. The principal amount of BOW's Allowed Class 9 Secured Claim will accrue simple interest at the rate of 5% or at such other rate ordered by the Court (the "BOW Class 9 Interest Rate"). BOW's Allowed Class 9 Claim will mature on and will be paid in full by the date that is five (5) years after the Debt Service Commencement Date (as defined below), but the Allowed Class 9 Claim will be amortized over a thirty (30) year period.

BOW will receive interest only payments for months 1 through 30 and principal and interest payments based on a thirty (30) year amortization for months 31 through 60. Payments shall begin on the 1st of the first full month following the Effective Date (the "Debt Service Commencement Date") and monthly payments thereafter will be made on the 1st of each month.

b. Prepayment. The Debtors may pre-pay the remaining principal balance of the Allowed Class 9 Secured Claim of BOW, in whole or part on any date, without any penalty or fee.

c. Lien Retention. BOW shall retain its lien on the Banner Court Property in order secure only the Allowed amount of its Class 9 Secured Claim, as determined by the Court, to the same extent, validity, and priority as of the Petition Date, until the full satisfaction of BOW's Allowed Class 9 Secured Claim, if any, as provided herein, at which time BOW's lien shall be released and the Debtors shall retain title to the Banner Court Property free and clear of BOW's lien.

d. Deficiency Claim. The amount of BOW's Claim in excess of the amount of its Allowed Class 9 Secured Claim determined by the Court shall be deemed and considered a General Unsecured Claim and treated in Class 12 and BOW's lien to secure such unsecured deficiency Claim shall be deemed void and released as of the Effective Date.

The treatment provided herein shall be in full settlement and satisfaction of BOW's Allowed Class 9 Secured Claim. For purposes of clarity, in no circumstances will BOW receive more than the amount of Any Allowed Class 9 Secured Claim.

Class 10:	Claim Amount	\$1,900,000.00
Secured Claim of Triunfo	Impairment	

BOW's will be paid its Allowed Class 9 Secured Claim in full as follows:

a. Payment of Allowed Claim. On the Effective Date, BOW shall have an Allowed Class 9 Secured Claim in an amount equal to the value of the Banner Court Property, as determined by the Court, up to the maximum amount of \$1,804,172.01. The Debtors believe that the Banner Court Property is currently worth approximately \$1,200,000.00, and, therefore, BOW will have an Allowed Class 9 Secured Claim in that amount.

The principal amount of BOW's Allowed Class 9 Secured Claim will accrue simple interest at the rate of 5% or at such other rate ordered by the Court (the "BOW Class 9 Interest Rate"). BOW's Allowed Class 9 Claim will mature on and will be paid in full by the date that is five (5) years after the Debt Service Commencement Date (as defined below), but the Allowed Class 9 Claim will be amortized over a thirty (30) year period.

BOW will receive interest only payments for months 1 through 30 and principal and interest payments based on a thirty (30) year amortization for months 31 through 60. Payments shall begin on the 1st of the first full month following the Effective Date (the "Debt Service Commencement Date") and monthly payments thereafter will be made on the 1st of each month.

b. Prepayment. The Debtors may pre-pay the remaining principal balance of the Allowed Class 9 Secured Claim of BOW, in whole or part on any date, without any penalty or fee.

c. Lien Retention. BOW shall retain its lien on the Banner Court Property in order secure only the Allowed amount of its Class 9 Secured Claim, as determined by the Court, to the same extent, validity, and priority as of the Petition Date, until the full satisfaction of BOW's Allowed Class 9 Secured Claim, if any, as provided herein, at which time BOW's lien shall be released and the Debtors shall retain title to the Banner Court Property free and clear of BOW's lien.

d. Deficiency Claim. The amount of BOW's Claim in excess of the amount of its Allowed Class 9 Secured Claim determined by the Court shall be deemed and considered a General Unsecured Claim and treated in Class 12 and BOW's lien to secure such unsecured deficiency Claim shall be deemed void and released as of the Effective Date.

Class 11: General Unsecured claim of Loanvest	Claim Amount	\$295,000.00
	Impairment	
	<p>Loanvest's will be paid its Allowed Class 11 Unsecured Claim in full as follows:</p> <p>In full settlement and satisfaction of its Allowed Class 11 Unsecured Claim, Loanvest will be paid \$100,000.00 by the date that is two (2) years after the Effective Date, and \$125,000.00 by the date that is three (3) years after the Effective Date, for a grand total of \$225,000.00. The treatment provided herein shall be in full settlement and satisfaction of Loanvest's Allowed Class 11 Unsecured Claim. For purposes of clarity, in no circumstances will Loanvest receive more than the amount of any Allowed Class 11 Unsecured Claim. Loanvest shall not have a Claim in any other Class under the Plan.</p>	
Class 12: General Unsecured Claims (Excluding Loanvest)	Claim Amount	\$1,106,637.36
	Impairment	
	<p>Class 12 consists of General Unsecured Claims, excluding the Allowed General Unsecured Claim of Loanvest. The Holders of Allowed General Unsecured Claims will receive their respective Pro Rata Shares from Net Loan Proceeds on any Interim Distribution Dates and will be will be paid in full from the Net Loan Proceeds by no later than the General Unsecured Creditor Note Maturity Date.</p> <p>The treatment provided herein shall be in full settlement and satisfaction of any Allowed General Unsecured Claims. For purposes of clarity, in no circumstances will a Holder of an Allowed General Unsecured Claim receive more than the amount of it Allowed General Unsecured Claim, if any. The Holders of General Unsecured Claims shall not have Claims in any other Class under the Plan.</p>	
Class 13: Interest Holders	Claim Amount	
	Impairment	
	<p>Class 13 Interest Holders are impaired under the Plan and will receive the pro-rata share of Cash available after the payment of Classes 1 through 12.</p>	

A. C. WILLIAMS FACTORS PRESENT

Y Incidents that led to filing Chapter 11

Y Description of available assets and their value

January 16, 2014 at 3:30 p.m.

Y Anticipated future of the Debtor
Y Source of information for D/S
Y Disclaimer
Y Present condition of Debtor in Chapter 11
Y Listing of the scheduled claims
Y Liquidation analysis
____ Identity of the accountant and process used
____ Future management of the Debtor
Y The Plan is attached

In re A.C. Williams, 25 B.R. 173 (Bankr. N.D. Ohio 1982); see also *In re Metrocraft*, 39 B.R. 567 (Bankr. N.D. Ga. 1984).

OBJECTIONS:

Don Mosco

Don Mosco filed a limited opposition to the disclosure statement on the grounds that he was not served with a copy of the disclosure statement, despite having filed a Request for Special Notice, and did not have an opportunity to review the disclosure statement (400+ pages with exhibits) to prepare the objection.

Mosco also argues that the disclosure statement fails to provide sufficient information about the proposed purchaser, Realm Investment Company to allow Mosco to make a fully informed decision whether to vote in support of the plan. Mosco states no projects are listed and no information is provided as to the outcome of the previous development efforts. Mosco states that Realm has no internet presence. Mosco also states that Realm's ability to deliver the funds or evidence of sufficient funds or letter of credit has not been provided.

Lastly, Mosco states that the plan proposes to treat his claim as impaired and fails to provide for interest and attorney fees despite Mosco being an oversecured creditor.

Bledsoe Fischer Creditors/Mid Valley Assignees

The Bledsoe Fischer Creditors and the Mid Valley Assignees object to the Debtors' proposed Disclosure Statement because it fails to provide adequate information about what creditors will be paid, when they will be paid and how they will be paid and what are their rights if the sale to Realm Investments LLC fails to close or be fully performed or the United States succeeds in its criminal forfeiture claims. It also fails to adequately forewarn creditors that Aruna Chopra, who the Bledsoe Fischer Creditors and the Mid Valley Assignees contend defrauded them by forging

reconveyance documents and materially misrepresenting priority of liens and who is presently a federal criminal defendant as a result thereof, will be revested with all assets other than the Dale Road Property and its proceeds if the proposed Plan is confirmed.

The Bledsoe Fischer Creditors and the Mid Valley Assignees also object that the Disclosure Statement does not provide adequate information concerning the lien priority disputes; the risks of the sale to Realm; the rights of creditors if the Dale Road Property does not sell; what claim objection, avoiding powers or other causes of action will be prosecuted; the potential absolute priority violations and other matters.

Lastly, The Bledsoe Fischer Creditors and the Mid Valley Assignees state the proposed Disclosure Statement describes a Plan that is unconfirmable on its face because it fails to resolve or provides for the forfeiture claims of the United States; fails to provide for the credit bid rights of secured creditors; provides a confirmation veto the Aruna Chopra's brother; gerrymanders unsecured classes; violates Section 1129(a)(15), and fails to satisfy the "Super Best Interest" test of Section 1129(a)(15).

Chapter 11 Trustee, Gary Farrar

Gary Farrar, the Chapter 11 Trustee, ("Trustee") opposes the disclosure statement on the basis that the Disclosure Statement does not provide adequate information in a number of respects.

First, the Trustee states he has requested certain Plan revisions to the Debtors with respect to the Trustee's authority as Plan Agent, limitations on liability, ability to employ and compensate professionals, and related matters. The Debtors' attorneys have indicated that the Trustee's revisions will be incorporated into revisions to the Plan, subject to approval by the Debtors. Based on the anticipated revisions to the Plan, the Disclosure Statement, as presently constituted, does not provide adequate information concerning the Plan Agent's role.

Second, the Trustee states that he anticipates that the joint opposition to the disclosure statement to be filed by the Bledsoe-Fischer creditors and the Mid Valley Assignees, the most active creditors in the case by far, may result in a number of revisions to the Plan and Disclosure Statement by the Debtors. Based on the anticipated revisions to the Plan, the Disclosure Statement, as presently constituted, does not provide adequate information.

Third, the Trustee argues that section III.B.1 contains a listing of professionals' administrative expenses, with those of the Trustee and his professionals listed as "\$0.00 (to be provided)." As set forth in various Monthly Operating Reports filed by the Trustee, the Trustee and his professionals have accrued, unpaid administrative claims. This discrepancy is relevant to several Disclosure Statement elements, including payments to be made out of escrow from the sale of the Dale Road Project, as well the Debtors' liquidation analysis.

Fourth, the Trustee states that while the disclosure statement states Peter Fear, Debtors' former counsel is owed \$46006.758, but Trustee is not aware of any administrative fees presently owed to Mr. Fear.

Fifth, Trustee states section III.C.2 describes three alternative payment scenarios for both the Bledsoe-Fischer Creditors and the Mid Valley Assignees (029 and 030 Dale Road parcels). Several of the alternatives anticipate payments of those portions of Net Closing Proceeds (from the sale of the Dale Road Project) attributable to each creditors' collateral, which is calculated by dividing the purchase price for the entire Dale Road Project by the number of acres, to arrive at a per acre price attributable to the creditors' collateral. The Disclosure Statement does not explain why all acres should be assumed to be of equal value.

Sixth, the Trustee argues section 11.1.3 contains insufficient information concerning the pending federal criminal action (United States v. Aruna Chopra), or its anticipated impacts on this case and the Plan, including with respect to the cause of action for civil forfeiture, or how the Debtors anticipate resolving that cause of action.

Seventh, the Trustee states that the disclosure statement contains an inadequate description of risk factors, including with respect to Realm Investment Company, LLC, the proposed buyer of the Dale Road Project. A material term of the Plan is the \$8,000,000.00 seller carry-back note to be administered by the Trustee as Plan Agent, pursuant to which the Trustee will collect payments, release lots, and distribute proceeds to creditors. Notwithstanding the importance of this element of the Plan, very little is presently known about Realm or its principals. The Trustee understands that the Bledsoe-Fischer Creditors and Mid Valley Assignees have raised specific concerns about Realm based upon their independent investigation. Additional information about Realm, its anticipated development of the Dale Road Project, buyer qualifications, funding, and related issues will need to be disclosed before the Disclosure Statement will contain adequate information in this regard.

Lastly, the Trustee states that the forms of Seller Note and Seller Deed of Trust are still being negotiated in connection with the anticipated sale of the Dale Road Project.

DEBTORS' RESPONSE

The Debtors state they are in the process of revising the Disclosure Statement and the Plan to include further information and to address certain of the objections raised by creditors and the Trustee. In particular, the Debtors and Realm are close to reaching an agreement on the form of the General Unsecured Creditor Note and Deed of Trust and the Disclosure Statement and the Plan will be revised to include those documents and to summarize their terms. The Debtors are also in the process of obtaining certain financial information from Realm regarding its ability to close the proposed sale of the Dale Road Properties. The Debtors believe that, with this information, the majority of the objections relating to the Disclosure Statement will be resolved. The Debtors are also revising the Disclosure Statement to include further information concerning the Lien Priority

Litigation, the indictment and civil forfeiture allegation contained in the indictment, and the risks associated with the Plan.

Based on the forgoing, the Debtors request a short continuance of the hearing on the Disclosure Statement and the other contested matters set for hearing on January 16, 2014, for approximately 30 days to allow the Debtors to obtain financial information from Realm and to file a Second Amended Disclosure Statement and Plan.

DISCUSSION:

1. Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).

2. "Adequate information" means information of a kind, and in sufficient detail, so far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).

3. Courts have developed lists of relevant factors for the determination of adequate disclosure. *E.g., In re A.C. Williams, supra.*

4. There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567 (Bankr. N.D.Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. *In re Michelson*, 141 B.R. 715, 718-19 (Bankr. E.D.Cal. 1992).

5. The court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D. Pa. 1982).

As the Debtors are working on a revised disclosure statement and plan based on the opposition filed in this matter, the court grants a continuance to March 6, 2014. This continuance is consistent with the continuance granted the parties pursuant to the stipulations in this case for continuances of the various contested matters relating to creditors objecting to confirmation.

7. 11-94224-E-11 EDWARD/ROSIE ESMAILI
 RHS-1 David C. Johnston

CONFIRMATION OF AMENDED PLAN OF
 REORGANIZATION FILED BY DEBTORS
 9-13-13 [[339](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors, and Office of the United States Trustee on November 14, 2013. By the court's calculation, 63 days' notice was provided.

Tentative Ruling: The Motion to Confirm Plan of Reorganization has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to deny the Motion to Confirm Plan of Reorganization. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Plan Proponent has complied with the Service and Filing Requirements for Confirmation:

- 11-15-13 Plan, Disclosure Statement, Disc Stmt Order, and Ballots Mailed
- 12-16-13 Last Day for Submitting Written Acceptances or Rejections
- 12-16-13 Last Day to File Objections to Confirmation
- 12-30-13 Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

No Tabulation of Ballots Filed:

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
	For: Against:		
	For: Against:		
	For: Against:		

	For: Against:		

EVIDENCE

No declaration has been filed in support of confirmation providing evidence of the compliance with the necessary elements for confirmation in 11 U.S.C. §1129.

OPPOSITION

Wells Fargo Bank, N.A. (Kay Circle Property)

Wells Fargo Bank, N.A., holding a first priority deed of trust against the real property commonly known as 1153 Kay Circle, Turlock, California, objects to the plan on the basis that it fails to comply with 11 U.S.C. § 1129(a)(11). Creditor states that while Debtors address how they intend to pay post-confirmation property taxes and insurance but have failed to address if they intend to pay the post-petition, pre-confirmation tax and insurance advances made by Creditor.

Creditor also argues that it is unclear if the rental properties listed by Debtors are income generating properties. If so, Debtors need to disclose which properties do and why Debtors should be allowed to retain and subsidize a negative cash flow property instead of surrendering it.

Lastly, Creditor states Debtors' Amended Plan cannot be confirmed on the grounds that the Debtors appear to have commingled Secured Creditor's cash collateral and/or used Wells Fargo's cash collateral without obtaining Wells Fargo's consent or prior Court approval. According to monthly operating report for month ending November 31, 2013, the cumulative (Case to Date) rents/leases collected is \$29,200.00. The bank account statement (account ending 8493) attached to the MOR where the rental income of \$1,100.00 appears to have been deposited, shows a beginning balance of \$761.83 and ending balance of \$559.65. Creditor argues that Debtor should explain and account for all of Creditor's cash collateral.

Wells Fargo Bank, N.A. (Aldersgate Property)

Wells Fargo Bank, N.A., holding a first priority deed of trust against the real property commonly known as 2281 Aldersgate, Turlock, California, objects to the plan on the basis that it fails to comply with 11

U.S.C. § 1129(a)(11). Creditor states that while Debtors address how they intend to pay post-confirmation property taxes and insurance but have failed to address if they intend to pay the post-petition, pre-confirmation tax and insurance advances made by Creditor.

Creditor also argues that it is unclear if the rental properties listed by Debtors are income generating properties. If so, Debtors need to disclose which properties do and why Debtors should be allowed to retain and subsidize a negative cash flow property instead of surrendering it.

Lastly, Creditor states Debtors' Amended Plan cannot be confirmed on the grounds that the Debtors appear to have commingled Secured Creditor's cash collateral and/or used Wells Fargo's cash collateral without obtaining Wells Fargo's consent or prior Court approval. According to monthly operating report for month ending November 31, 2013, the cumulative (Case to Date) rents/leases collected is \$29,200.00. The bank account statement (account ending 8493) attached to the MOR where the rental income of \$1,100.00 appears to have been deposited, shows a beginning balance of \$761.83 and ending balance of \$559.65. Creditor argues that Debtor should explain and account for all of Creditor's cash collateral.

BBCN Bank

Creditor BBCN Bank, successor in interest by merger with Nara Bank, objects to Debtors' Plan because it fails to contribute all of the Debtors' post-petition earnings to fund the plan and because the plan violates the absolute priority rule.

As explained in the Plan, the Bank holds a claim of \$130,000 as either an administrative claim or a secured claim. If the Bank's claim is allowed as an administrative claim, it will allegedly be paid on the Effective Date. If it is merely secured, it will be paid over ten years. Additionally, the Bank holds a general unsecured claim of \$677,057 which should fall into Class 7. It is not clear why the Debtors have placed secured and unsecured classes in the same class or whether this is even proper.

Creditor argues that the Plan only provides for payment of 20% to unsecured claims, yet the numbers provided by the Debtors indicate that they can contribute far more. Creditors state the Debtors claim a monthly net income of \$18,724 but only propose to pay \$14,110 into the Plan; a monthly disparity of \$4,614 that should also be paid to creditors. Furthermore, Creditor objects to several of the monthly expenses identified by the Debtors, including depreciation of \$1,365.00; administrative expense of \$10,421; equipment repairs of \$2,348; fees and charges of \$1,145; and professional fees of \$1,161. Creditor states that these are not explained and are not supported by any documentation whatsoever. Neither the Plan nor the accompanying Disclosure Statement attaches a single exhibit to support the business expenses claimed by the Debtors. Moreover, the Debtors provide themselves with a \$6,000 monthly draw with no discussion of their monthly expenses whatsoever even though this case is an individual Chapter 11 case.

DISCUSSION

The Debtors-in-Possession have not provided a tabulation of ballots in support of plan confirmation. Furthermore, the Debtors-in-Possession have not provided evidence in support of confirmation.

There still appear to be several issues with Creditor Wells Fargo Bank, N.A., holding interests in the rental properties of Debtor and Creditor BBCN Bank.

Based on the foregoing, it does not appear this plan can be confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Confirmation of the Amended Chapter 11 Plan of Reorganization filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

8. [13-90935-E-12](#) **ARTURO/RAMONA ROMERO** **CONTINUED MOTION TO CONFIRM**
KDG-5 **Hagop T. Bedoyan** **CHAPTER 12 PLAN**
8-12-13 [44]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 12 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 12, 2013. By the court's calculation, 80 days' notice was provided.

The Motion to Confirm Chapter 12 Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

The hearing on the Motion to Confirm Chapter 12 Plan has been continued to 3:30 p.m. on January 30, 2014, pursuant to the stipulation of the parties and order of the court. No appearance at the January 16, 2014 hearing is required.

Debtors-in-Possession move the court for an order confirming their Chapter 12 Plan filed on August 10, 2013.

OPPOSITION

Creditors American Equity Service, Inc. ("Creditor") objects to confirmation of the Chapter 12 Plan on several grounds.

First, Creditor argues that Debtors-in-Possession are not family farmers pursuant to 11 U.S.C. § 109(f). Creditor states that during 2012 the Debtors-in-Possession derived only 36.1% of their income from farming operations, and during 2011 and 2010 (the prior two years before filing) derived 32.2% and 34.5% of their gross income from farming respectively. Creditor argues that Debtors-in-Possession must have at least 50% of their gross annual income, during either the last full year before the Petition Date or during each of the two previous years, must be derived from farming operations. 11 U.S.C. § 101(18) (A).

Creditor also argues that Debtors-in-Possession do not propose to make any changes to their farming operations, which shows that their income will not be sufficiently stable and regular pursuant to 11 U.S.C. § 101(19).

Second, Creditor argues that the plan is not feasible. Creditor states that even if Debtors-in-Possession qualify as family farmers, they have failed to demonstrate that they will have the income or profits necessary to make the plan feasible. Creditor argues that the record includes no evidence that substantial and consistent operating losses of over the last six years will do anything other than remain substantial and consistent operating losses over the term of the Plan, and the Debtors-in-Possession have failed to show that sales of equipment that are proposed under the Plan will yield revenue sufficient to fund the plan.

Lastly, Creditor argues that the plan lacks good faith as to their claim. Creditors states that the plan proposes that Creditor, after the debt became due and payable in 2013, wait another ten years for payment. Creditor argues that the Debtors have a bad record regarding paying Creditor and that nothing would change the record in the future, except they will try to sell some poorly identified equipment, which does not state the tax consequences of such a sale. Creditor states that the circumstances of the case demonstrate that Debtors-in-Possession do not propose to make any significant changes in their activities to demonstrate that they in good faith intend that the plan will result in payment to Creditor and other creditors.

CONTINUANCE

The parties filed a Stipulation on September 19, 2013, to continue the hearing to allow the parties to negotiate. The court ordered the continuance on September 23, 2013. Dckt. 75.

AMENDED CHAPTER 12 PLAN DATED NOVEMBER 15, 2013

Debtors filed an Amended Chapter 12 Plan on November 19, 2013.

OPPOSITION

American Equity Service, Inc. continued its objection to the amended plan, as Debtors-in-Possession now propose to enter into a real estate purchase contract with their two daughters, giving their two daughters 90

days to conclude a purchase of the real property. If the 90 days pass without the sale, the Debtors-in-Possession are to immediately list the real property and would have until June 1, 2014 to place the property in escrow and until August 2014 to close escrow. Creditor objects as during this time no payments are being made to it.

Creditor maintains its prior objections, that Debtors-in-Possession are not family farmers pursuant to 11 U.S.C. § 109(f), and that the plan is not proposed in good faith.

Creditor adds objections that the amended plan contains an improper priority of distribution scheme, which violates the rules on prioritization of claims.

Creditor also objects to the 5% interest rate on their claim and that the amended plan does not provide what will happen if the Debtors-in-Possession default on their obligation to Creditor.

DEBTOR'S REPLY

Debtors-in-Possession filed a reply, stating they have continued negotiations concerning the terms of the plan and that they are close to an agreement with Creditor. However, to date, no agreement has been reached.

Debtors-in-Possession contend that they do qualify as family farmers as defined in 11 U.S.C. § 109(f), that the plan does meet the good faith requirement. Debtors-in-Possession also argue that the distribution scheme in the plan does not violate the law, stating that while Creditor did not cite law, that they assume Creditor objects to the payment of costs of sale and capital against taxes in advance of it's claim. Debtors-in-Possession states this does not violate the law because the proceeds received from the sale is sufficient to pay all claims in full and all creditors and costs will be paid at essentially the same time (and in full). Debtors-in-Possession also state that the costs of sale and capital gains taxes must be paid in the liquidating plan, otherwise the court will not generally allow the sale and the court can authorize a surcharge under section 503(c) if necessary.

Debtors-in-Possession also state under the U.S. Supreme Court decision, *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004), it has met its burden with respect to the 5% interest rate provided under the plan.

Debtors-in-Possession argue that the plan is feasible and that the Bankruptcy Code does not require that a plan must provide for the possibility of default to be confirmed.

9. 13-90935-E-12 ARTURO/RAMONA ROMERO
KDG-7 Hagop T. Bedoyan

CONTINUED MOTION TO SELL
11-20-13 [[110](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 12 Trustee, buyers, parties requesting special notice, and Office of the United States Trustee on November 20, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(2). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The hearing on the Motion to Sell Property has been continued to 3:30 p.m. on January 30, 2014, pursuant to the stipulation of the parties and order of the court. No appearance at the January 16, 2014 hearing is required.

The Bankruptcy Code permits the Debtor in Possession to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b).

Here, the Debtors-in-Possession propose to sell the real property commonly known as 6955 Faith Home Road, Ceres, California, which includes a 5600 square foot family residence, 20 acres of farmland planted in Hazel, Corral and Champagne cherries, 2 offices, 2 shops a barn and a 1979 Sandpointe single wide mobile home. The sales price is \$1.5 million and the named buyers are Gloria Romero, Debtors-in-Possession daughter, and Bernadette Estacio, Debtors-in-Possession other daughter. Debtors are insiders to Debtors-in-Possession.

The terms are set forth in the Purchase Agreement, entered into November 20, 2013, filed as Exhibit B in support of the Motion. Dckt. 113.

The subject real property is subject to a deed of trust held by American Equity Service, Inc., which asserts \$1,081,630.80 on the petition date. Debtors-in-Possession state they anticipate the cost of sale to be no more than two percent of the purchase price, or \$30,000.00 and there is no broker's commission to be paid. Debtors-in-Possession assert there will be no capital gains tax incurred as a result of the sale. Debtors-in-Possession state the proceeds of the sale will be paid to creditors in order of priority set by law and the remainder of the proceeds will be forwarded to the Trustee to fund the Amended Chapter 12 Plan.

Debtors-in-Possession estimate that the creditors will be paid 100 percent of the debts owed to them from the proceeds of the sale.

OPPOSITION

Creditor American Equity Service, Inc. objects to the Debtors-in-Possession motion on the grounds that the proposed sale is nothing more than a 90 day "free option" for the Debtors' two daughters to buy the residence, while making no debt service payments to Creditor. Creditor states that the \$5,000.00 deposit required by the buyers, which will be passed through to the Debtors-in-Possession to pay property tax payment, is the only substantive requirement by the buyers. Creditor seeks the property be listed for sale with a qualified broker immediately.

DISCUSSION

The court is concerned with one item of the proposed sale of the subject real property. While Debtors-in-Possession disclosed that the proposed sale is to their two (2) daughters, Debtors-in-Possession made no attempt to assure the court or the parties that the purchase price is fair market value. No evidence has been presented to the court that the purchase price of \$1.5 million is fair market value for the subject real property. It does not appear the sale is going through a broker as no broker fees are provided. The court is concerned that the sale to insiders has not been fully discussed.

10. [13-90935-E-12](#) ARTURO/RAMONA ROMERO CONTINUED MOTION FOR RELIEF
MHK-1 Hagop T. Bedoyan FROM AUTOMATIC STAY
8-27-13 [[49](#)]
**AMERICAN EQUITY SERVICE,
INC. VS.**

CONT. FROM 9-26-13

Local Rule 9014-1(f)(1) Motion - Continued Hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2013. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The hearing on the Motion for Relief From the Automatic Stay has been continued to 3:30 p.m. on January 30, 2014, pursuant to the stipulation of the parties and order of the court. No appearance at the January 16, 2014 hearing is required.

PRIOR HEARING

American Equity Service, Inc. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 6955 Faith Home Road, Ceres, California. The moving party has provided the Declaration of Devra Riggs to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

Movant contends that cause exists for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). The Riggs Declaration states that the Debtor failed to perform as agreed under the terms of their loan and Debtors have cancelled their insurance either differed times placing force-placed insurance on the property, seven forbearance agreements have been negotiated, and for formal loan modification have been executed, five notices of default entered. AES opines that the current value of the property is \$1,400,000, when the debtor lists the current value of the property at \$2,120,000 in their schedules. AES is owed \$1,081,630.80.

Movant argues that the Debtors past economic performance both before and after the loan shows Debtors will once again default on their obligations. Movant argues that the Debtors will be in their mid 90's when the loan becomes due under the plan and that most of the AES investors are elderly and unlikely to see the performance of the loan.

Movant states several plan objections, stating the proposed interest rate is too low, the plan treatment purports to amortize the claim over 30 years, but the plan treatment is inconsistent. Movant is not sure where the annual payment to AES will come from.

OPPOSITION

Debtors argues that the motion must be denied because a substantial equity cushion exists in the property to protect Movant's interest, well over 11.45 percent. Debtors state that the property is also currently covered by insurance. Debtors argue that there is not sufficient cause to lift the automatic stay.

STIPULATION

The parties filed a Stipulation to continue the hearing and Debtors agreed to provides AES with the following adequate protection:

(1) Debtors will provide AES with an accounting of the 2013 cherry crop and crop proceeds on or before October 24, 2013, and;

(2) Debtors will pay the net proceeds of the 2013 cherry crop, not to be less than \$8,000.00 to AES on or before October 10, 2013, to be applied to the outstanding debt owed to AES.

Movant filed a Notice of Compliance, stating Debtors complied with the Stipulation and provided AES with a check in the amount of \$8,048.28 and the 2013 cherry crop accounting from the packer.

DISCUSSION

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

11. [12-91442-E-11](#) **ALEXANDRINO/DURVALINA** **CONTINUED STATUS CONFERENCE RE:**
VASCONCELOS **VOLUNTARY PETITION**
5-18-12 [1]

Debtors' Atty: Thomas O. Gillis

Notes:

Continued from 8/1/13

Operating Reports Filed: 8/22/13, 9/14/13, 10/23/13, 11/13/13, 12/16/13

[PD-1] Motion for Approval of Stipulation re Treatment of Claim filed 7/1/13 [Dckt 140]; Order granting filed 8/29/13 [Dckt 171]

[TOG-15] Motion of Thomas O. Gillis for Approval of Interim Compensation and Reimbursement of Costs filed 8/27/13 [Dckt 164]; Order granting in part and denying in part filed 10/2/13 [Dckt 184]

[RHS-1] Order to Show Cause re improper order re plan lodged with the court by Thomas Gillis filed 12/3/13 [Dckt 194], to be heard 1/16/14 at 3:30 p.m.

[TOG-6] Order Confirming Chapter 11 Plan filed 12/19/13 [Dckt 198]

12. [12-91442-E-11](#) ALEXANDRINO/DURVALINA
RHS-1 VASCONCELOS
Thomas O. Gillis

ORDER TO SHOW CAUSE
12-3-13 [[194](#)]

Notice Provided: The Order to Show Cause was served by the Clerk of the Court through the Bankruptcy Noticing Center on Debtor, Attorney for Debtor and the Office of the U.S. Trustee, on December 3, 2013. 44 days notice of the hearing was provided.

On October 31, 2013, the court conducted a hearing on the confirmation of the proposed Chapter 11 Plan in this case. The court ordered the Plan confirmed and directed counsel for the Debtors in Possession to prepare and lodge with the court an order confirming the Plan. Civil Minutes, Dckt. 190. The court's findings of fact and conclusions of law are stated in the Civil Minutes. This court has maintained a policy, as is known to Thomas Gillis, counsel for the Debtors in Possession, and other attorneys that orders do not contain findings of fact and do not grant relief not properly requested from the court. Additionally, the court does not issue orders which repeat in order terms of Chapter 11 Plan or make "declarative statements" of what the Bankruptcy Code may apply.

On November 20, 2013, Thomas Gillis lodged with the court a proposed order confirming the Chapter 11 Plan which contained improper findings of fact and conclusions of law, and the improper granting of relief. Therefore, upon consideration of the files in this case; the hearing on confirmation; the court having previously approved the Disclosure Statement in this case, Dckt. 156; the proposed order lodged with the court on November 20, 2013, attached hereto as Addendum A; and good cause appearing;

The court ordered that Thomas Gillis, counsel for the Debtors and Plan Administrators, to show cause why said counsel should not be sanctioned \$2,500.00 for lodging an order confirming the Chapter 11 Plan which contained provisions inconsistent with the Plan and prior order of this court approving the Disclosure Statement, including the following:

- A. Order language re-approving the Disclosure Statement;
- B. Finding of fact that unstated "amendments" did not change the treatment of any creditor who had not accepted the plan in writing;
- C. Finding of fact that the Plan, as revised, is deemed accepted by all creditors who previously accepted the Plan;
- D. Finding of fact and order that Plan binds creditors and other persons;
- E. Contingent Order that property is revested in the Debtors free and clear of claims and interests (with no showing how interests or liens are stripped from the property), except as may be otherwise provided in the Plan. Such order language is vague and inaccurate on its face.
- F. Order that the Debtors are discharged from debts, except if the Plan provides otherwise. The Plan makes no express provision for a

discharge and the proposed Order language is inconsistent with the Plan and grants relief not requested from the court.

G. Order states an effective date, which is provided in the Plan, which is an unnecessary and inappropriate order because it is the Plan which controls. Additionally, the proposed language violates the terms of the Plan.

H. Order grants injunctive relief against creditors. No Adversary Proceeding, Fed. R. Bank. P.7001, filed for injunctive relief. Plan and Bankruptcy Code control what has been confirmed and rights under the Plan. Proposed Order improperly grants *ex parte*, secret relief not clearly noticed to creditors and parties in interest.

RESPONSE

Thomas O. Gillis opposes the imposition of sanctions on the grounds that he was unfamiliar with the form of order the court prefers in confirming a Chapter 11 plan. Mr. Gillis testifies that he was accustomed to the fact that the court requires great details in motion practice and wrongly assumed the court would want a detailed order confirming the plan. Mr. Gillis testifies that he uses the forms provided in the book Chapter 11 Start to Finish, written by Colin W. Wied, a California attorney, which is the book he obtained the form from. Mr. Gillis states he does not intend to offer an order that was inappropriate. After reading the Court's order to show cause, Mr. Gillis states he submitted an amended order.

The court notes that an amended order was submitted and signed by the court on December 19, 2013.

13. [13-91297-E-7](#) ARIANA AVESTA, INC.

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
7-11-13 [[1](#)]

CASE CONVERTED TO CH. 7 IN
12/30/13

Debtor's Atty: W. Steven Shumway

Final Ruling: The case having been converted to one under Chapter 7, **the Status Conference is removed from the calendar.** No appearance at the January 16, 2014 Status Conference is required.

Notes:

Continued from 11/21/13

[UST-1] United States Trustee's Motion to Covert or Dismiss filed 10/25/13 [Dckt 23]; Order converting filed 12/30/13 [Dckt 56]

[DBP-2] Motion by Property Owner for Relief from Automatic Stay to Terminate Month to Month Lease filed 12/5/13 [Dckt 43]; Order granting filed 12/25/13 [Dckt 53]

341 Meeting scheduled for 2/6/14 at 1:00 p.m.