

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

February 5, 2015 at 3:00 p.m.

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1. [14-29231](#)-E-11 MIZU JAPANESE SEAFOOD CONFIRMATION OF AMENDED PLAN OF
RLC-10 BUFFET, INC. REORGANIZATION FILED BY DEBTOR
Stephen M. Reynolds 12-24-14 [[111](#)]

Tentative Ruling: The Confirmation of Amended Plan of Reorganization has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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).

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.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, parties requesting special notice, and Office of the United States Trustee on January 5, 2015. By the court's calculation, 31 days' notice was provided, as provided in this court's order filed on December 26, 2014, Dckt. 113.

The Confirmation of Amended Plan of Reorganization has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to confirm the First Amended Plan of Reorganization.

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

January 5, 2015 Plan, Disclosure Statement, Disc Stmt Ord, and

February 5, 2015 at 3:00 p.m.

Ballot Mailed

January 22, 2015 Last Day for Submitting Written Acceptances or Rejections

January 22, 2015 Last Day to File Objections to Confirmation

January 29, 2015 Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

Tabulation of Ballots (Dckt. 120):

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
Class 1 Priority Wage	For: 21 Against: 0	For: 100%	For: \$36,240.03 Against: \$0.00
Class 2 Priority Taxes	For: 0 Against: 0	No Ballots	No Ballots
Class 3 General Unsecured	For: 1 Against: 0	For: 100%	\$1,026.04

Support Document (Dckt. 118) and Declaration of Jason Cheng (Dckt. 119) filed in support of confirmation provides evidence of the compliance with the necessary elements for confirmation in 11 U.S.C. § 1129:

11 U.S.C. § 1129(a).

1. The plan complies with the application provisions of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

Evidence: The plan designates three classes of claims and interest: Class 1- The claims of priority wage claim holders; Class 2 - The claims of governmental agencies for prepetition priority taxes eligible for 11 U.S.C. § 507(a)(8) priority; Class 3 - The claims of general unsecured.

The Plan designates classes of claims and classes of interest, pursuant to § 1112. The Plan specifies whether any class of claims or interests is unimpaired. The Plan specifies the treatment of any class of claims or interests that is impaired. The Plan provides the same treatment for each claim or interest in a particular class, unless a holder of a particular claim or interest agrees to less favorable treatment. The Plan provides for the Plan's implementation. The Plan makes no provision for and does not contemplate any change in the corporation's charter or articles of incorporation. The Plan is a liquidating Plan that contemplates a sale of essentially all of the Debtor's assets and the distribution of the proceeds.

Dckt. 118.

2. The proponent of the plan complies with the applicable provisions of the Bankruptcy Code.

Evidence: The court has approved the Disclosure Statement after submission pursuant to 11 U.S.C. § 1125(f). The Order Conditionally Approving Disclosure Statement was entered on December 29, 2014. Dckt. 113.

Dckt. 118.

3. The plan has been proposed in good faith and not by any means forbidden by law.

Evidence: Debtor has proposed a plan that liquidates the assets of the debtor and distributes the proceeds to creditors. The proposed liquidation and distribution will likely provide creditors a better return more quickly than a Chapter 7 liquidation.

Dckt. 118.

4. Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

Evidence: In adherence to 1129(a)(4), the only payments for services, costs, and expenses in connection with this case and the Plan are payments to professionals, which are subject to court approval.

Dckt. 118.

5. (A)(i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

Evidence: In compliance with 11 U.S.C. § 1129(a)(5), Debtor is a corporation and the current officers and directors will remain in place until completion of the plan. Dckt. 118.

6. With respect to each impaired class of claims or interests--

(A) each holder of a claim or interest of such class--

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective dates of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 701 et seq., on such date; or

(B) if section 1111(b)(2) of this title applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan an account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

Evidence: All voting classes have accepted the plan; these are classes 1 and 3. Class 2 are the priority tax claims of governmental units. No votes were received in opposition to plan confirmation. The equity security holders are proponents of the plan and support of the equity security holders is assumed.

Class 1 priority wage claim holder claim totals amount to \$49,808.90 and are to be paid in full under the terms of the plan. See Dckt. 111. At 6.

The Treatment for the Class 2 Claims priority claims provides for payment in full upon the close of the governmental claims bar date - March 16, 2015. Priority claims filed as of February 4, 2015 are: (1) Internal Revenue Service \$7,787.81 (Proof of Claim No. (2) for 2014 tax year; (2) State Board of Equalization for \$28,555.75 (Proof of Claim No. 6); and (3) Employment Development Department for \$2,881.92 (Proof of Claim No. 8). In addition, Win Woo Trading, Inc. has filed Proof of Claim No. 7 asserting a priority claim in the amount of 31,095.55 pursuant to 11 U.S.C. § 502(b)(9) for the value of good received by the debtor within 20 days before the commencement of the bankruptcy case. It appears questionable whether there is a priority claim in this case for any goods supplied to the Debtor (it having leased out the business).

Under a Chapter 7 liquidation, members of Class 3 creditors would have received 0% distribution, whereas under the proposed plan, Class 3 creditors will receive 6.4% distribution. See Dckt. 111. At 113.

Dckt. 118.

7. With respect to each class of claims or interests--

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

Evidence: Classes 1 and 3 are the only impaired classes and voted to accept the plan. No members of the impaired classes have voted to reject the plan. No member of any other class voted.

Dckt. 118.

8. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that--

(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

Evidence: Debtor will pay other allowed claims entitled to priority under section 503(b) in full on the effective date; except expenses incurred in the ordinary course of Debtor's business or financial affairs, which shall be paid when normally due and payable. All fees payable to the United States Trustee as of confirmation will be paid on the effective date. Post-confirmation fees to the United States Trustee will be paid when due. See Dckt. 111. At 7.

(B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code, each holder of a claim of such class will receive--

(i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;

Evidence: Unclaimed distributions, if any, remaining in the debtors' Account as of the end of the plan term will be deposited into the court's "Unclaimed Funds Account." Separate checks shall be delivered to the Clerk of the Court, made payable to "Clerk, U.S. Bankruptcy Court" with a reference to the entitled Claimant's name and the bankruptcy case number. See Dckt. 111. At 7.

Dckt. 118.

(C) with respect to a claim of a kind specified in

section 507(a)(8) of the Bankruptcy Code, the holder of such claim will receive on account of such claim regular installment payments in cash--

(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and

(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

9. If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

Evidence: Three Impaired Classes have accepted.

10. Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

Evidence: The plan calls for a more effective liquidation of Debtor's assets, therefore future reorganization will be unnecessary under the plan. See Dckt. 118 at 3.

11. All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

Evidence: The court approved One interim award of fees for Debtor's attorney. Debtor discloses possible future final fee applications for the attorney and the accountant for Debtor shortly after confirmation of the plan. Dckt. 118 at 4.

12. The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title [11 USCS § 1114], at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title [11 USCS § 1114], at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide

such benefits.

Evidence: Not applicable.

13. If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition.

Evidence: Not applicable.

14. In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan-

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

Evidence: Not applicable.

15. All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

Evidence: Sale of assets made pursuant to order of the court.

11 U.S.C. § 1129(b)

1. Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

Evidence: The plan conforms to the requirements of 11U.S.C.§1129(b), as all impaired parties have agreed to the terms of the plan and are receiving greater compensation under the plan than the alternative Chapter 7 liquidation. See generally, Dckt. 111 and 118.

2. For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following

requirements:

(A) With respect to a class of secured claims, the plan provides--

(i) (I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (I) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

Evidence: Not applicable.

(B) With respect to a class of unsecured claims--

(I) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class, will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

Evidence: Though not accepting, Class 2 provides for payment in full of the priority claims from the sales proceeds (approved at the time of confirmation) which are well in excess of the filed and projected claims.

(C) With respect to a class of interests--

(I) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation

preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

Evidence: Class 1 creditors shall be paid in full within 2 weeks of the effective date of the confirmed plan. Class 2 claim holders shall be paid in full. Class 3, General unsecured claim holders, under the plan shall receive distributions greater than the alternative Chapter 7 liquidation, adhering to 11 U.S.C. §1129(b). Dckt. 111, at 7, 13.

DISCUSSION

A review of the proposed Plan and the Disclosure Statement as well as the Supporting Document and Declaration, the Plan appears to comply with 11 U.S.C. § 1329.

No opposition to Confirmation has been filed by any creditor or party in interest. In fact, out of the voting creditors, all have voted to approve the Plan.

Counsel for the Debtor in Possession shall prepare and lodge with the court a proposed order confirming the plan consistent with this ruling and lodge such order with the court. A copy of the confirmed plan shall be attached to the order as an exhibit.

2. [14-20352-E-11](#) PATRICK GREENWELL
PBG-5

CONTINUED APPROVAL OF
DISCLOSURE STATEMENT FILED BY
DEBTOR
12-3-14 [[68](#)]

Tentative Ruling: The Motion to Approve 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).

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.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in pro per, parties requesting special notice, and Office of the United States Trustee on December 10, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Approve 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 defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion to Approve Disclosure Statement is granted, and the Amended Disclosure Statement filed on January 22, 2015 (Dckt. 98) is approved.</p>

Patrick Greenwell ("Debtor-in-Possession") filed the instant Motion to Approve Disclosure Statement on December 3, 2014. Dckt. 68.

JANUARY 8, 2015 HEARING

The court continued the hearing to 3:00 p.m. on February 5, 2015 to allow Debtor-in-Possession to file an amended Disclosure Statement that addressed the court's concerns over adequate information and service on the Internal Revenue Service. Dckt. 91.

The following review is based upon the amended Disclosure Statement filed on January 22, 2015. Dckt. 98.

REVIEW OF THE DISCLOSURE STATEMENT

Case filed: January 9, 2014

Background: Debtor-in-Possession is a practicing attorney for nearly 30 years. Debtor and his former wife invested in real estate. In approximately 2002, they acquired some undeveloped land in the City of Sonora. After a feasibility analysis showed a need, the started the process of building a 47 unit subdivision of detached single family homes. The first of those homes hit the market in 2005. The first of the homes sold quickly before the real estate market started to turn bad. Debtor and his former wife had a disagreement with the building contractor doing the work and agreed to sell the unfinished project to the builder. They received some money up front but carried a large note would be paid from future home sales. That deal was finalized right as the bottom dropped out of the real estate market. The builder lost the subdivision to foreclosure and since the Debtor was in second position, his interest was wiped out. While on paper the project made money from the first few sales, it was mostly reinvested in the project. The taxes due to the federal and state government are from the paper profits made from the project.

Debtor did close his law practice for approximately 2 years to devote his time and effort to the real estate business. When it failed he was left with no income and no assets. Everything was invested in the one project. He restarted his practice several years ago and it does continue to grow.

There was litigation following the project and no income to support Debtor. Debtor and his former wife separately filed Chapter 7 bankruptcy cases to deal with the immediate financial crisis. Debtor obtained a discharge in the prior Chapter 7 case, 09-91289.

The original disclosure statement represented that Debtor has never had issues with the IRS. He has always timely filed his returns and had paid his taxes. Debtor did make offers in compromises to both the IRS and the FTB. The State of California demanded approximately \$750.00 per month for 5 years and a proportionate increase of any future earnings. They also threatened him with pulling his law license if he did not pay. Debtor did not wait for the IRS to respond before filing this case. The Debtor could not afford the \$750.00 to the state, let alone whatever the IRS would add to it.

PROPOSED PLAN TREATMENT

Creditor/Class	Treatment	
Unclassified	Claim Amount	
Claims:	Impairment	

	<p>Unclassified claims, such as costs of administering this bankruptcy case, generally are entitled to be paid in full on the Plan's Effective Date, which is defined in the Plan and should be a short time after the Plan is confirmed.</p> <p>The only obligation that falls into this category is the quarterly fee paid to the US Trustee. Debtor-in-Possession is current on that fee and will remain so.</p>	
Class 1: Secured Tax Claims	Claim Amount	\$47,331.00
	Impairment	Impaired
	<p>Internal Revenue Services (Claim #1)</p> <p>These claims will be bifurcated into: (1) a secured claim equal to the value of the property (in this Class 1) and (2) an unsecured claim for the remainder, sometimes called the "deficiency" claim will be treated as a General Unsecured claim (class 4).</p> <p>The Class 1 portion of this single claim will be paid the full liquidation value of the estate as detailed in Part 3.F. That amounts of \$37,319. It will be paid monthly over 84 months at 3% interest or \$493.11 per month.</p>	
Class 2: All other Secured Claims	Claim Amount	\$16,934.64
	Impairment	Impaired
	<p>Steve & Gina Oliveria (Claim #5)</p> <p>This claim is currently paid monthly with 3.5 years remaining at 18% interest. It will be paid over 5 years with the interest rate reduced to 8% or \$283.87 per month. It will be paid from rental income through an arrangement with Springfield Flying Service.</p>	
Class 3: Priority Claims	Claim Amount	\$10,630.22
	Impairment	
	<p>Internal Revenue Service (Claim #1)</p> <p>This claim will be paid in full over the 7 years of the plan with a 3% interest rate. Monthly payments of \$140.46.</p>	
Class 4: General Unsecured Claims	Claim Amount	\$473,409.99
	Impairment	

	<p>Consists of "general" unsecured claims (claims that are not entitled to "priority" under the Bankruptcy Code and that are not secured by Collateral), which will receive, over time, the following estimated percentage of their claims: 0.00%</p> <p>Internal Revenue Service-Claim #1, Amount: \$306,273.32</p> <p>Internal Revenue Service(Deficiency)-Claim #1, Amount:\$10,012.00</p> <p>Franchise Tax Board- Claim #2, Amount: \$108,223.08</p> <p>Capital One Bank- Claim #3, Amount: \$286.75</p> <p>Capital One Bank- Claim #4, Amount: \$415.40</p> <p>Pacific Bell Telephone- Claim #6, Amount: \$240.22</p> <p>These claims will receive nothing under the plan. This class will receive no distribution and is presumed to reject the plan; this class is not entitled to vote on Debtor's Plan</p>
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A. C. WILLIAMS FACTORS PRESENT

- Y Incidents that led to filing Chapter 11
- Y Description of available assets and their value
- 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
- N Identity of the accountant and process used
- Y 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:

No objections have been filed in connection with this case.

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).

At the prior hearing the court concluded that the Original Disclosure Statement did not meet these standards. The Hearing was continued to allow the Debtor in Possession to file an amended disclosure statement since the deficiencies appeared to be easily remedied.

A review of the Amended Disclosure Statement filed by Debtor-in-Possession on January 22, 2015 shows that the Debtor in Possession has addressed the concerns of the court. The Debtor-in-Possession has complied all the necessary information into a single Disclosure Statement, allowing creditors to review the proposed plan in a single document. The Debtor-in-Possession has provided a thorough liquidation analysis as well as a table of available assets, providing adequate information.

The Debtor-in-Possession has provided "adequate information" to inform a "hypothetical reasonable investor typical of holder of claims against the estate to make a decision on the proposed plan of reorganization."

Therefore, upon review of the amended Disclosure Statement, the Motion for Approval of the Disclosure Statement is granted.

The Court shall issue an order approving the Disclosure Statement and setting the following dates and deadlines for a confirmation hearing:

- a. On or before -----, 2015, Debtor in Possession shall served the order approving the Disclosure Statement, notice of confirmation hearing, the proposed Plan, and the approved Disclosure Statement.
- b. On or before -----, 2015, oppositions to confirmation shall be flied and served, and ballots returned to counsel for the Debtor in Possession.
- c. On or before -----, 2015, Debtor in Possession shall files and served a Tabulation of Ballots, evidence in support of confirmation, and replies to oppositions to confirmation (if any).
- d. The confirmation hearing shall be conducted at 3:--- p.m. on -----, 2015.

3. 14-20352-E-11 PATRICK GREENWELL
PBG-8

MOTION TO VALUE COLLATERAL OF
I.R.S.
1-22-15 [[94](#)]

Tentative Ruling: The Motion to Value secured claim 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.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Internal Revenue Service, creditors, parties requesting special notice, and Office of the United States Trustee on January 21, 2015. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Value secured claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. At the hearing -----.

The Motion to Value secured claim of the Internal Revenue Service ("Creditor") is \$35,681.67, with the balance to be provided for as an unsecured claim in any bankruptcy plan in this case.

The Motion filed by Patrick Greenwell ("Debtor-in-Possession") to value the secured claim of Internal Revenue Service ("Creditor") is accompanied by Debtor's declaration. FN.1.

FN.1. The pleading title motion is a combined motion and points and authorities in which the grounds upon which the motion is based are buried in detailed citations, quotations, legal arguments, and factual arguments (the pleading being a "Mothorities") in which the court and creditors are put to the

Pickup Truck		\$1,500.00	\$1,500.00
Automobile		\$9,750.00	\$9,750.00
Airplane		\$17,000.00	\$17,000.00
Household Furnishings		\$4,500.00	\$4,500.00
Security Deposit		\$1,650.00	\$1,650.00
Interest in Law Firm		\$3,500.00	\$3,500.00
Interest in Aztec Aviation		\$2,500.00	
Clothing		\$0.00	\$3,000.00
TOTAL - Value of Personal Property as Exempt			\$44,831.67

Debtor-in-Possession states that the airplane has a purchase money security interest in favor of Steve and Gina Oliveria. Their lien against the airplane is approximately \$13,148.00. At the time of purchase of the aircraft, the title document was signed by both owners and delivered to Steve and Gina Oliveria. However, Steve and Gina Oliveria never sent that document to the FAA. Debtor-in-Possession believes that is sufficient perfection since Steve and Gina Oliveria could use that signed title document to take possession of the aircraft at any time. The Creditor takes the position that the security interest is not perfected. Debtor-in-Possession states that for purposes of this Motion only, Debtor-in-Possession will adopt the position of the Creditor.

The value of the household goods and clothing have been listed above with a value of \$7,500.00 must be deducted from the property potentially subject to the Internal Revenue Service tax lien since they are not subject to levy pursuant to 26 U.S.C. § 6334. (Personal property which is exempt from levy for the payment of a federal tax obligation.)

Additionally, the security deposit of \$1,650.00 is the collateral of the lessor of the property and subject to that creditor's pre-existing lien.

After adjusting for the \$7,500.00 in exempt from levy personal property and the \$1,650.00 security deposit subject to another creditor's lien, the remaining value for the Internal Revenue Service collateral is \$35,681.67. (The court's calculation is slightly lower than that of the Debtor in Possession.)

It is further asserted that the interest in the CalPers retirement is not property of the estate as provided by ERISA. See *Patterson v. Shumate*, 504 U.S. 753 (1992). Therefore, it is not included in the calculation of the Internal Revenue Service secured claim pursuant to 11 U.S.C. § 506(a). The court does not make any adjudication of the Internal Revenue Service lien, if any, on the CalPERS retirement monies. *I.R.S. v. Snyder*, 343 F.3d 1171 (9th Cir. 2003).

The value of the CalPERS account on the date the petition was filed was \$88,312.17. That amount was computed using the balance of the account on July 1, 2013, which was \$85,741.73 and adding \$2,570.44 in interest (6% CalPERS interest rate for one-half year).

Debtor-in-Possession states that the amount of the Creditor's lien against Debtor-in-Possession's CalPERS account on the date the petition was filed was \$88,312.17.

DISCUSSION

As the owner, the Debtor-in-Possession's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Debtor in Possession has shown that the personal property of the Estate (there being no real property in the estate) which is subject to the lien of the Internal Revenue Service is \$35,681.67. This include the value of the aircraft. There has been no determination by the court of the possible respective claims, but Debtor in Possession honestly discloses that the lien documents were not properly filed with the FAA for recordation of any interest of the competing creditors.

The court determines the secured claim of the Internal Revenue Service in this case to have a value of \$35,681.67, with the balance to be provided for as an unsecured claim for any bankruptcy plan in this case.

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 Motion for Valuation of Collateral filed by Patrick Greenwell ("Debtor-in-Possession") 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 pursuant to 11 U.S.C. § 506(a) is granted and the claim of Internal Revenue Service ("Creditor") secured by the property of the estate in this case has a value of \$35,681.67, with the balance to be provided for as an unsecured claim for any bankruptcy plan in this case. The property of the bankruptcy estate subject to the lien of the Internal Revenue Service in this case is \$35,681.67.