

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Modesto, California

February 12, 2015 at 2:35 p.m.

1. [13-90901](#)-E-12 ANDREW NAPIER

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
5-9-13 [[1](#)]

Final Ruling: No appearance at the February 12, 2015 Status Conference is required.

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Debtor's Atty: Scott A. CoBen

The Status Conference is continued to 10:30 a.m. on May 21, 2015 (specially set to be in conjunction with the continued hearing on the Plan Receiver fees)

Notes:

Continued from 11/20/14

[SAC-10] Order granting Motion to Confirm the Modified Chapter 12 Plan filed 11/25/14 [Dckt 310]

[SAC-10] Order Confirming Plan filed 12/12/14 [Dckt 318]

[SAC-12] Motion for Order Authorizing Chapter 12 Trustee to Compensate Receiver John Bell filed 12/10/14 [Dckt 312]; Interim Order for compensation and continuing hearing to 5/21/15 at 10:30 a.m. filed 1/21/15 [Dckt 328]

**February 12, 2015 Status Conference**

The parties have been actively prosecuting this case post-petition. The Plan was modified to address the post-confirmation defaults and the appointment of a Plan Receiver. The last hearing was conducted on January 15, 2015, and the court is satisfied that for "status conference purposes," no further status conference is required until May 2015.

2. [12-93049-E-11](#) MARK/ANGELA GARCIA

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
11-30-12 [[1](#)]

Debtor's Atty: Mark J. Hannon

Notes:

Continued from 10/30/14

Operating Reports filed: 11/15/14; 12/15/14; 1/15/15

[MF-1] Motion for Order to Compel filed 11/19/14 [Dckt 427]; Order denying filed 11/26/14 [Dckt 455]

[PA-2] Amendment to First Interim Application for Compensation of John Bell, Chapter 11 Trustee filed 12/9/14 [Dckt 463]; Order granting filed 12/22/14 [Dckt 476]

[JDM-1] Motion for Relief from Automatic Stay [Travis Credit Union] filed 1/12/15 [Dckt 482]; Order granting filed 1/31/15 [Dckt 502]

[SDN-1] YP Formerly Known as Pacific Bell Directory's Supplemental Disclosure Statement of Debtors (Dated January 23, 2015) filed 1/23/15 [Dckt 491]; set for hearing 2/12/15 at 2:35 p.m.

3. [12-93049](#)-E-11 MARK/ANGELA GARCIA  
SDN-1

CONTINUED APPROVAL OF  
DISCLOSURE STATEMENT FILED BY  
CREDITOR YP WESTERN DIRECTORY,  
LLC  
10-29-14 [[414](#)]

**No Tentative Ruling:** The Motion for Approval of Disclosure Statement Filed by Creditor YP Western Directory, LLC 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.**

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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, Debtor's Attorney, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 31, 2014. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion for Approval of Disclosure Statement Filed by Creditor YP Western Directory, LLC 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.

**The hearing on the Motion for Approval of Disclosure Statement Filed by Creditor YP Western Directory, LLC is xxxxxxxxxxxx.**

Creditor YP Western Directory, LLC filed a Disclosure Statement on October 29, 2014. Dckt. 414.

**REVIEW OF THE OCTOBER 29, 2014 DISCLOSURE STATEMENT**

Case filed: November 30, 2012

Background: Mark and Angela Garcia are the Debtors in this Chapter 11 Case. YP western Directory, LLC, a Delaware limited liability company, formerly known as Pacific Bell Directory, a California corporation ("Creditor") filed the instant Disclosure Statement because the Debtors failed to file and confirm a

Plan within 300 days of the date of the petition as required by 11 U.S.C. § 1121(e)(2).

The Debtors are individuals and in 1999 commenced operating a bail bond agency in Modesto, California, under the names of Garcia Family Bail Bonds and/or Familia Garcia Bail Bonds.

The Debtors formerly operated under a corporation, Garcia Family Bail Bond, Inc., as sole owners and shareholders, but shortly before the bankruptcy was filed, the Debtors suspended the corporation and now operate as a sole proprietorship.

Concurrently, the Debtors were the sole owners and shareholders of the Most Wanted Wine Co., Inc. from April 2009 until May 20, 2014, when the court approved the sale of the Most Wanted Wine Co. name and assets. The wine company was a small business that was not a source of income for the Debtors.

The Debtors are the principals of Garcia Family Bail Bonds and were the sole shareholders of the Most Wanted Wine Company, Inc. There are no other principals or insider.

Creditor/Class	Treatment	
Administrative Expenses:	<b>Claim Amount</b>	\$76,950.00
	<b>Impairment</b>	
	Includes: (1) Expenses arising in the ordinary course of business after the petition date; (2) the value of goods received in the ordinary course of business within 20 days before the petition date; (3) professional fees, as approved by the court; (4) clerk's office fees; (5) other administrative expenses; and (6) Office of the U.S. Trustee fees.	
Priority Tax Claims	<b>Claim Amount</b>	\$52,028.02
	<b>Impairment</b>	
	Includes: (1) Internal Revenue Service (Corporate Income Tax); (2) Internal Revenue Service (Individual Income Tax); (3) Franchise Tax Board (Individual Income Tax); (4) Gordon B. Ford (Real Property Tax); and (5) Gordon B. Ford.  Monthly Payment = \$1,100.31 Total Payout Amount for All Priority = \$66,018.50	
Class 1: HSBC Bank	<b>Claim Amount</b>	\$464,663.61
	<b>Impairment</b>	Impaired

	<p>The Plan will not modify this claim. The Debtors have applied for a loan modification with HSBC and with PHH Mortgage to have a forbearance of the arrearage pre and post petition. Any modification of this first deed of trust will be dependent upon the approval of HSBC and/or PHH Mortgage Services. Entry of the order confirming Debtor's Plan shall constitute an order modifying the automatic stay to allow HSBC to repossess, receive, take possession of, foreclose upon, and exercise its rights and judicial and non-judicial remedies against its collateral.</p>	
Class 2: JP Morgan Chase Bank, N.A.	<b>Claim Amount</b>	\$254,992.88
	<b>Impairment</b>	Impaired
	<p>JP Morgan Chase Bank, N.A. did not record the reconveyance of its former second deed of trust on the Debtors' residence, as JP Morgan Chase Bank, N.A. failed to file a claim and Debtors objected to the claim, there is no claim remaining of JP Morgan Chase Bank, N.A. and no provision in the Plan will be made for JP Morgan Chase Bank, N.A.</p>	
Class 3: United States Fire Insurance Company	<b>Claim Amount</b>	\$340,161.14
	<b>Impairment</b>	Impaired
	<p>United States Fire Insurance Company (USFI) is the older of a second deed of trust on the Debtors' residence located at 5672 Eleanor Road, Oakdale, California. The property is worth \$550,000.00 and subject to a first deed of trust with HSBC in the sum of \$454,563,61. The secured claim of USFI is \$340,161.14 and shall be paid at the sum of \$1,562.18 monthly beginning upon an order confirming Debtor's Plan. The term shall be 30 years with interest at 3.4%. Five years after entry of the order confirming Debtors Plan the entire sum shall be due and payable, by refinancing if necessary. Property values in California have risen in the last 2 years. Entry of the order confirming Debtors Plan shall constitute an order modifying the automatic stay; to allow USFI to repossess, receive, take possession of, foreclose upon, and exercise its rights and judicial and non-judicial remedies against its collateral. Additionally USFI, filed a contingent claim of \$505,000.00 but all of these have been exonerated by Court order except one for a Miguel Rodriguez, aka Arceo. In January 2014 a California appeals court denied an appeal on a bond forfeiture, resulting in a new claim of USFI in the sum of \$177,753.00, which will be paid as unsecured.</p>	
Class 4: LSC Realty California, LLC	<b>Claim Amount</b>	\$700,000.00
	<b>Impairment</b>	Impaired

LSC Realty California, LLC, was the holder of a first deed of trust on the Debtors' Commercial Property at 900 G Street, Modesto, California. The property is worth \$700,000.00. The secured claim was filed in the sum of \$650,000.00. The Court valued the commercial Property at \$650,000.00. LSC Realty California LLC shall receive the sum of \$4,310.02 monthly, either in third party rents or payment by the Debtors as needed. This monthly sum is the secured value of \$700,000.00 amortized over 30 years at 6.25% interest. This loan shall mature 5 years after entry of the order confirming Debtors Plan and Debtors shall obtain refinancing if needed. Property values in California have risen in the last 2 years.

Debtors have previously refinanced this commercial loan three times.

LSC Realty California LLC filed an assignment of its interest on May 1, 2013, (DCN138) to G Street Investments, LLC, and the terms of transfer was filed by the transferee G Street Investments, LLC on October 22, 2014 (DCN 405). Debtors requested proper notice of the assignment from G Street Investments, LLC, and G Street Investments, LLC provided it over 1 year later. G Street Investments, LLC has not provided 1098 forms to the Debtors or the estate for interest payments made in 2013.

LSC Realty California, LLC filed unsecured claims in the sum of \$180,054.27 (Claim No. 12) and the sum of \$117,864.75 (Bifurcated amount on Claim No. 13). These unsecured sums total \$297,919.02. \$50,000.00 of this unsecured sum is to be paid as secured, leaving an unsecured claim of \$247,919.02. This unsecured sum is to be paid at 25% over a 5 year period.

If G Street Investments, LLC determines to take an 11 U.S.C. § 1111(b)(2) instead, G Street Investments, LLC would then have a fully secured claim in the sum of \$947,919.02, and G Street Investments, LLC would receive a total of payments in the aggregate that equal \$947,919.02 but whose present value is \$700,000.00.

Under an 1111(b)(2) election, G Street Investments, LLC would receive 219 monthly payments of \$4,310.02 (this uses an amortizing balance of the collateral value, \$700,000.00, and assumes a market rate of interest of 6.25%), with a balloon or final payment of \$4,024.64. This would pay G Street Investments, LLC an aggregate payment amount equal to G Street Investments, LLC's total secured claim of \$947,919.02.

Class 6: Bankers Surety Services, Inc.	<b>Claim Amount</b>	\$947,919.02
	<b>Impairment</b>	Impaired
	Bankers Surety Services, Inc. is the holder of a third deed of trust on the Debtors' Commercial Property at 900 G Street, Modesto CA. The property is worth \$650,000 and subject to a first deed of trust with G Street Investments, LLC in the sum of \$767,864.75 and a second deed of trust with G Street Investments, LLC in the sum of \$180,054.27, the total of first and second trust deeds is \$947,919.02. The Court ruled that the secured claim of Bankers Surety Services, Inc. is zero. Bankers Surety Services LLC shall retain its lien until paid or completion of the Plan.	
Class 7: Gorden B. Ford, pre-petition real property taxes on Debtors' Commercial Property at 900 G Street, Modesto, California	<b>Claim Amount</b>	\$16,878.16 (excluding penalties)
	<b>Impairment</b>	Impaired
	The claim shall be paid within 5 years with statutory interest. The sum owed is \$16,878.16 excluding penalties. This claim shall be paid within 5 years at a monthly payment of \$428.59 upon confirmation of the Debtors' Plan. Interest shall be the statutory rate currently 18%. This claim was filed as a priority claim.	
Class 8: Travis Credit Union	<b>Claim Amount</b>	\$7,163.57
	<b>Impairment</b>	Impaired
	The claim is secured by a 2000 Mercedes Benz ML55. The collateral will be surrendered and there will be no deficiency claim allowed. The claim is in the sum of \$7,163.57.	
Class 8.1: General Unsecured Claims	<b>Claim Amount</b>	\$618,203.93
	<b>Impairment</b>	Impaired

The following is a list of the filed unsecured claims in this case:

<u>Name</u>	<u>Amount</u>
CBS Outdoor	\$ 2,944.97
Capital One	148.55
Law Office of Brunn & Flynn	32,729.92
Pitney Bowes Inc	829.58
YP	150,000.00
American Express Bank, FSB	17,133.62
Pacific Bell Telephone Company	1,606.84
American Info Source Agent For DirecTv, LLC	1,236.91
Ian MacDonald Formerly DBA MacDonald & Assoc	16,270.01
LSC Realty California, LLC (G Street Investments)	247,919.02
USFI	117,753.00
Department Stores National Bank Visa	6,704.26
John Rorabaugh	22,927.25
<b>TOTAL</b>	<b>\$618,203.93</b>

USFI had contingent claim that occurred post-petition, in January 2014, in the sum of \$117,753.00, when a California Appeals Court denied an appeal over a bond forfeiture. This sum is added to the class in 8.1. Further, if USFI occurs any further losses from bond forfeitures from prior contracts with the Debtors, either before or after the Petition Date, Debtors will pay these sums as unsecured. Creditor YP's Plan proposes a 35% distribution to general unsecured creditors in Class 8.1, over a term of 4 years, to be paid equally monthly payments, commencing 1 year after confirmation.

	<b>Claim Amount</b>	784,447.33																											
	<b>Impairment</b>	Impaired																											
Class 8.2: Secured Claims who did not file an unsecured claim after a 506(a) ruling determined their secured interest at zero	<p>The following is a list of the secured claims who did not file an unsecured claim after a 506(a) ruling determined their secured interest at zero:</p>																												
	<table> <tr> <td>Bankers Surety Services, Inc</td> <td style="text-align: right;">\$ 83,160.62</td> </tr> <tr> <td>JP Morgan Chase Bank, N.A.</td> <td style="text-align: right;">\$254,992.88</td> </tr> </table> <p>Additionally, JP Morgan Chase Bank, N.A. recorded a deed of reconveyance of its secured claim in or about February 2013. These two creditors will not receive a distribution under the Plan, consistent with the holding and principles in <i>In Re J.H. Investment Services</i> (2011), No. 15627, 11th Cir. Court of Appeals, holding that 506(a)(1) does not automatically create an unsecured claim in a Chapter 11 case and the creditor must file an unsecured claim to receive distribution. On May 8, 2013, Debtors filed an amended Schedule F and listed the following general unsecured creditors as disputed. (See <i>Varela v. Dynamic Brokers, Inc.</i> (In re Dynamic Brokers Inc.), 293 B.R. 489). These creditors did not in return file or attempt to file a claim after notification of their disputed status:</p> <table> <thead> <tr> <th>Name</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>JPMorgan Chase Bank, N.A.</td> <td style="text-align: right;">\$ 254,992.88</td> </tr> <tr> <td>Accord Credit Services</td> <td style="text-align: right;">381.05</td> </tr> <tr> <td>AT&amp;T Advertising Solutions</td> <td style="text-align: right;">342,412.14</td> </tr> <tr> <td>Bankers Surety Services, Inc.</td> <td style="text-align: right;">89,682.22</td> </tr> <tr> <td>CBE Group</td> <td style="text-align: right;">1,237.00</td> </tr> <tr> <td>E. Alan Nunez</td> <td style="text-align: right;">11,380.00</td> </tr> <tr> <td>ECMC</td> <td style="text-align: right;">2,006.00</td> </tr> <tr> <td>GC Services Limited Partnership</td> <td style="text-align: right;">2,004.54</td> </tr> <tr> <td>Law Office of Damrell, Nelson, Schrimp</td> <td style="text-align: right;">1,229.88</td> </tr> <tr> <td>Law Office of Lawrence C. Beaver</td> <td style="text-align: right;">9,848.62</td> </tr> <tr> <td>RCVMNG CORP - Page 9 of 32 -</td> <td style="text-align: right;">200.00</td> </tr> </tbody> </table>		Bankers Surety Services, Inc	\$ 83,160.62	JP Morgan Chase Bank, N.A.	\$254,992.88	Name	Amount	JPMorgan Chase Bank, N.A.	\$ 254,992.88	Accord Credit Services	381.05	AT&T Advertising Solutions	342,412.14	Bankers Surety Services, Inc.	89,682.22	CBE Group	1,237.00	E. Alan Nunez	11,380.00	ECMC	2,006.00	GC Services Limited Partnership	2,004.54	Law Office of Damrell, Nelson, Schrimp	1,229.88	Law Office of Lawrence C. Beaver	9,848.62	RCVMNG CORP - Page 9 of 32 -
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	Rdk Collection Services	200.00
	Stanis Contr	4,467.00
	Valley Yellow Pages	57,702.00
	Visa Dsnb	6,704.00
	William Origel et al. (not filed)	0.00
	<b>TOTAL</b>	<b>784,447.33</b>
	General unsecured creditors in Class 8.2 will not receive a distribution under the Plan.	

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

     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

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:**

Iain Macdonald's Objection

Iain Macdonald filed an objection on November 7, 2014. Dckt. 422. Mr. MacDonald objects on the following grounds:

1. The Disclosure Statement does not provide sufficient information for creditors to determine whether the plan has been filed in good faith and not by any means forbidden by law, as required by § 1129(a)(3). It appears the YP Western

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Directory, LLC is the plan proponent in name only, and that the plan was prepared and served upon creditors by the debtors and their counsel.

2. The Disclosure Statement does not contain sufficient information in order for it to be determined whether the value of the property to be distributed is not less than the projected disposable income of the debtors over the five-year period following the commencement of payments under the plan, as required by § 1129(15)(B).
3. The Disclosure Statement does not set forth sufficient operating income for the debtors, given that quality monthly operating reports have been prepared and filed by the Trustee since November 2013.
4. The Disclosure Statement does not discuss the tax implications of the plan. Moreover, the Disclosure Statement does not provide for payment of current and future tax liabilities of the estate and the debtors.
5. The Disclosure Statement does not provide the basis for its treatment of the G Street Investments, LLC's secured claim. It does not provide the basis for the interest rate or the value of the property subject to the claim.
6. The Disclosure Statement does not adequately explain the status of the litigation regarding forfeited bonds that would serve to reduce the claim of the United State Fire Insurance Company, nor does it give an accurate explanation as to what the amount of that claim is.
7. The Disclosure Statement does not adequately explain the status of the Inyo property, which appears to have equity even after consideration of the substantial liens there against.

#### **YP Western Directory, LLC Response**

YP Western Directory, LLC filed a reply to Mr. Macdonald's objection on November 20, 2014. Dckt. 437. YP Western Directory, LLC replied in order of objections:

1. Mr. Macdonald has failed to state with any specificity what is missing from the Disclosure Statement and the Disclosure Statement provides sufficient information for creditors to determine whether the Plan has been filed in good faith.

The Disclosure Statement is based on information from Debtors, the Debtors' accountant, the Chapter 11 Trustee, the proofs of claim filed by creditors, and the monthly operating reports.

2. Mr. Macdonald makes a blanket statement without any reference to support his claim. The Disclosure Statement show the projected payment, and the payments to be paid out. The

Plan payments are not less than the projected disposable income of the Debtors over the five-year period following the commencement of Plan payments, as required by § 1129(15)(B). The objection is vague and Mr. Macdonald's objection should be overruled.

3. The objection is without merit. The monthly operating reports which have been prepared and filed by the Chapter 11 Trustee show sufficient operating income for the Debtors. The Debtors have operated their bail bond business since the case was filed and also since the Chapter 11 Trustee was appointed. The Debtors have earned all of the business income. This objection of Mr. Macdonald should be overruled.
4. The objection lacks any specificity. The Disclosure Statement discusses tax implications of the Plan. It provides for payment of pre-petition tax debt, payment of ongoing tax debt, and payment of future tax liabilities.
5. The Disclosure Statement does provide a basis for its treatment of the G Street Investments, LLC's secured claim. It does provide the basis for the interest rate and the value of the property subject of the claim. On February 4, 2013, the court approved Debtors' motion for valuation of collateral and the claim of LSC Realty California, LLC secured by a first deed of trust against the real property commonly known as 900 G Street Modesto, California, is determined to be a secured claim in the value of \$650,000.00. LSC Realty California, LLC then filed a bifurcated secured claim in the sum of \$650,000.00 secured and a sum of \$117,864.75 unsecured. On the same date LSC Realty California, LLC filed an unsecured claim in the sum of \$180,054.27.

The Disclosure Statement provides that G Street Investments, LLC, which purchased all of the rights of LSC Realty California, LLC, shall have a secured claim in the sum of \$700,000.00, amortized over 30 years with 6.25% interest, all due and payable within five years upon entry of an order confirming plan. This treatment is actually better than the secured valuation by the court, and the interest rate is higher than the filed secured claim, which provides for 5.20% fixed.

The balance of the claim of G Street Investments LLC will be paid as unsecured, receiving a 35% dividend over a four year period, commencing one year after plan confirmation.

Some provisions were inserted in the Disclosure Statement at the suggestion of Mr. Macdonald, such as the alternative of an § 1111(b)(2) election by Mr. Macdonald.

6. The Disclosure Statement adequately explains the litigation regarding forfeited bonds against Amarpal Dosanjh that would reduce the claim of United State Fire Insurance Company in this case, and adequately explains the amount involved.

Status of that case was thoroughly explained as two bad faith Chapter 13 filings by Amarpal Dosanjh of the eve of trials, both Chapter 13 cases dismissed, so trial will be scheduled again.

7. Mr. Macdonald fails to state what additional information he believes should be included in the Disclosure Statement. The Disclosure Statement adequately explains the status of the Inyo property. The Chapter 11 Trustee determined that considerable liens existed against the Inyo property sufficient to stop the sale. The chapter 11 Trustee has indicated he may sell the Inyo property at a later date.

### **United States Fire Insurance Company's Opposition**

United States Fire Insurance Company ("USFI") filed an opposition to the instant Disclosure Statement on December 4, 2014. Dckt. 458. USFI opposes on the following grounds:

1. The Plan does not comply with Bankruptcy Code § 1129(a)(1) because it fails to properly classify. The Plan fails to properly classify USFI's claims by not taking into account that USFI is entitled to two claims on account of its Class 3 lien. Under the Plan, USFI's interest in the Oakdale Property is undersecured. The secured claim is the value of the collateral. The unsecured claim - which has not been classified or analyzed under the Plan - is the deficiency owed after subtracting the collateral's value from the lien amount.

Consequently, USFI has two distinct claims, is entitled to both on both claims, and is entitled to receive two distributions. The Plan needs to be amended to properly classify USFI's secured claim.

2. The Plan fails to comply with Bankruptcy Code § 1129(a)(2) because there is a conflict between the Disclosure Statement and Plan as to modifying the automatic stay to permit USFI to exercise its lien rights. The automatic stay is only modified for HSBC Bank's Class 1 secured claim, who may exercise its rights against the Oakdale property upon plan confirmation. As to USFI, there is a significant discrepancy between the Disclosure Statement and Plan as to the treatment of its Class 3 secured claim. The Disclosure Statement provides that the confirmation order will modify the automatic stay to permit USFI to exercise its lien rights against the Oakdale Property. However, the Plan omits this language modifying the stay. Because the Disclosure Statement indicates that the Plan controls as to any conflict with the Disclosure Statement, USFI is enjoined from exercising its rights and collect on its claim post-confirmation

3. The Plan also fails to comply with Bankruptcy Code § 1129(a)(2) because it ignores USFI's pending non-dischargeability adversary proceeding. YP Western's proposed Plan ignored USFI's pending non-dischargeability proceeding against the Debtors. Adversary Proceeding No. 13-ap-090029.

Simply because the proceeding is on "hold" by agreement of the parties does not mean that the Plan should ignore it. Therefore the Plan must take the proceeding and non-dischargeable claim into account. The Plan calls for payment of approximately 35% of unsecured claims over four years. All classes are impaired. USFI's Class 8.1 unsecured claim, and USFI's claim subject to the pending non-dischargeability adversary proceeding are not paid in full.

4. The Plan fails the "best interests of creditors" test under Bankruptcy Code § 1129(a)(7) because it does not provide for the possibility of USFI making a § 1111(b)(2) election.

The Plan fails to consider the present value of each claimant would receive and fails to explicitly analyze the consequences of USFI making a § 1111(b)(2) election. If USFI makes the election, it will have a secured claim of \$340,161.14. To satisfy the best interests of creditors test, USFI must receive payments over the life of the Plan equal to the full amount of its secured claim. However, the present value of those payments need only equal the value of the estate's interest in the collateral securing the claim over the life of the Plan [i.e.  $\$95,436.39 = \$550,00$  (Plan's faulty valuation of the Oakdale Property) minus  $\$454,563.61$  (HSBC's firstlien)].

In order for USFI to have a § 1111(b)(2) election properly applied under the proposed Plan, USFI must receive a lien on the Property for its total claim of \$340,161.14, and must receive a stream of payments with a present value of \$95,436.39 at an appropriate interest rate. Currently, the Plan calls for monthly payments of \$1,562.18 amortized over 30 years at an interest rate of 3.4%. This equates to aggregate payments over 30 years of \$562,384.80, but having a present value over the life of the Plan of only \$93,730.80 (i.e. less than the value of the estate's interest in the collateral securing the claim).

Like with the Debtors' proposed plan, there is also no support for this low valuation of \$550,000, which has been contradicted by appraisals already filed with the court. The significant disparity in valuations makes a substantial difference in the rights and treatment of the secured claims, the impact on the unsecured creditor body, and whether the Plan satisfies the best interests of creditors test.

5. The Plan is not feasible under Bankruptcy Code § 1129(a)(11) because it fails to account for all of the amounts owed to USFI. The Plan fails to take into account all amount owed to USFI, including (1) the bifurcated claim where USFI's lien is undersecured; (2) a potential § 1111(b)(2) election where the present value payments are insufficient; and (3) the amounts owed and potentially non-dischargeable in the pending adversary proceeding. These amounts and issues must be considered to determine whether the Plan is feasible.
6. The Plan fails to meet the additional "cramdown" requirements under Bankruptcy Code § 1129(b) to confirm a nonconsensual plan. To be fair and equitable with respect to USFI's impaired secured claim, the Plan must satisfy the § 1111(b)(2) election requirements. The Plan does not satisfy those requirements.

**YP Western Directory, LLC Response to USFI Objections.**

YP Western Directory, LLC filed a reply to USFI's objection on December 11, 2014. Dckt. 470. YP Western Directory, LLC replied in order of objections:

1. USFI claims in error that it is entitled to two or three claims. USFI filed a fully secured claim on March 26, 2013 in the sum of \$2,337,785.74. Proof of Claim No. 19-1. There was no amount listed as unsecured. Debtors filed objection to this claim. On May 9, 2013, USFI filed an amended claim, again fully secured, in the sum of \$340,161.14. Again there was no amount listed as unsecured. Proof of Claim No. 19-2. Even if the claim of USFI is undersecured, that does not generate two claims. The claims bar date in this case was March 28, 2013. FN.1.

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FN.1. Though the parties talk about USFI having a claim secured by a junior lien and an unsecured claim, the court cannot find in the 473 documents on the Docket an order valuing the secured claim of USFI. If there is such an order, it automatically bifurcates the USFI claim into a secured claim, and the balance as an unsecured claim. 11 U.S.C. § 506(a). If no such valuation has occurred, then USFI is holding a secured claim which must be provided for the amount of such claim.  
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2. The Disclosure Statement provides at page 17 that the confirmation order will modify the stay to permit USFI to exercise its lien rights against the Debtors' residence and provides for payment in full of the secured claim of \$340,161.14 at 3.4% interest over 30 years. USFI secured claim will be paid in full. The Plan, however, needs to be amended to insert similar language in the Plan for the benefit of USFI.
3. The Disclosure Statement adequately discloses the pending adversary complaint by USFI on page 9.
4. In the Disclosure Statement and Plan, the only claim filed by USFI, a secured claim in the sum of \$340,161.14 is scheduled to be fully paid by monthly payments of \$1,562.18 for five years and then payment in full of any remaining sum by payment or refinance. As this claim is not impaired there is no basis for a § 1111(b)(2) election.
5. The Plan does take into account all amounts owed to USFI. In error, USFI contends there are three different debts owed to USFI, but only one claim was filed. This claim is fully provided for in the Disclosure Statement. There was no proper filing for the unsecured amount of \$117,753.00 and it was provided for in Class 8.1. YP suggests the Disclosure Statement should be amended to withdraw the \$117,753.00 amount because a claim was not properly filed.
6. The claim of USFI is properly classified and treated, and there is no basis for an election under § 1111(b)(2).

UNITED STATE TRUSTEE OBJECTION

The United States Trustee ("UST") filed an objection to the Disclosure Statement on December 4, 2014. Dckt. 461. FN.1.

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FN.1. The court notes that the UST filed an original objection on December 4, 2014 as well (Dckt. 456) but the UST filed a Notice of Withdrawal of that objection on December 4, 2014. Dckt. 460.  
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The UST objections on the following grounds:

1. The historical earnings information set forth in Part G of the Disclosure Statement is somewhat misleading because the earning from May include approximately \$30,000.00 received on account of the one-time sale of the estate's wine business assets.
2. The Disclosure Statement underestimates the amount of administrative claims. Specifically, the Disclosure Statement estimates professional fees of \$76,000.00. However the operating report for October reflects accrued professional fees of \$85,543.00. Dckt. 426, pg 5. The operating report also reflects more than \$43,000.00 of post-petition income tax liabilities. Dckt. 426, pg. 5, lines 23-24.
3. The projections in Part O of the Disclosure Statement are inconsistent with the income projections set forth on Exhibit C to the Disclosure Statement. For instance, the Disclosure Statement projects monthly business income of \$38,862.00, while in Exhibit C the projected income for 2015 is \$483,549.00 (or \$40,295.76 per monthly). Compare Disclosure Statement at pg. 24 (lines 15-19) with Exhibit C to the Disclosure Statement (Dckt. 417).
4. The projections on Exhibit C to the Disclosure Statement include more than \$17,000.00 in expenses relating to harvesting and winery costs. The Disclosure Statement should address whether the Debtors intend to pursue the wine business post-confirmation, notwithstanding the sale of the assets of the Most Wanted Wine Co., Inc.
5. The projections on Exhibit C to the Disclosure Statement do not appear to provide for the payment of ongoing income taxes.
6. The estimated payment schedule on Exhibit A to the Disclosure Statement does not appear to provide for the Class 3 claim of USFI (\$1,562.18 per month. Compare Exhibit A to the Disclosure Statement (Dckt. 416) with Disclosure Statement at pg. 17, lines 3-17.
7. The Disclosure Statement should address 11 U.S.C. § 1129(a)(15). The reason is that the Disclosure Statement projects substantial excess income in Years Two through Five of

the Plan.

8. The Disclosure Statement should address whether the proposed \$6,000.00 draw to the Debtors will be sufficient to cover their expenses.

#### **YP Western Directory, LLC Response to UST Objection**

YP Western Directory, LLC filed a reply to UST's objection on December 11, 2014. Dckt. 466. YP Western Directory, LLC replied in order of objections:

1. The inclusion or exclusion of income for the month of May 2014 does little to change the net average monthly income. YP suggests the best insight as to Debtors' ability to meet the Plan is the projection prepared by Fristen Kirchner, CPA, C.F.E.
2. The difference in the fees can be explained by fees that have already been paid. The Chapter 11 Trustee's Monthly Operating Report for October 2014 reflects accrued profession fees of \$85,543.00, but this sum includes fees already paid by order of the court to the accountant for the Chapter 11 Trustee in the sum of \$10,938.75.

The October Monthly Operating Report indicates a post-petition tax liability estimates that would be reduced if the court orders fees be paid to the Chapter 11 Trustee. Further, the Chapter 11 Trustee has previously paid substantial quarterly estimated taxes to the Internal Revenue Service and the Franchise Tax Board. Finally the Plan Payout provides for over \$60,000.00 in payment for taxes.

3. The income projections in Part O of the Disclosure Statement are not inconsistent with the income projections set forth in Exhibit C to the Disclosure statement. The income projections in Part O states that are based on the previous 12 months in the chapter 11 case whereas the projections in Exhibit C are projections made by the CPA for future years starting in 2015.

This objection is comparing income from an established post petition period because December 2012 to the present, with the further projections in 2015. The future projections are set sightly higher at \$40,295.75 per month.

4. The Disclosure Statement is clear the wine business is sold; thus that business is concluded. Debtors advise they have no intent to pursue the wine business post confirmation. They plan to grow, harvest, crush and sale the "crush" by the gallon. Debtors believe this can result in a net profit each year. The CPA has projected the expenses for such business but not income, apparently out of an abundance of caution.

This objection should be overruled as to the issue of the wine business because it was sold and the Disclosure Statement provides for such.

5. The projections prepared by the CPA do not provide for

ongoing income taxes, but the Payout plan does provide for taxes. An estimate of taxes has been provided for in Exhibit A to the Disclosure Statement. It provides for \$60,000.00 in taxes over the first 4 years and the 5<sup>th</sup> year has more than sufficient excess income to pay taxes on the income.

6. The payment for USFI, which is the mortgage on Debtors' house is discussed on page 17 of the Disclosure Statement as a Class 3 claim. Furthermore, the Schedule of Payments provides this mortgage will be paid by the Debtors from their \$6,000.00 monthly draw. The Schedule of Payments states the secured creditor for the residence will be paid from by the draw.
7. The Disclosure Statement is conservative in the payout to allow for unexpected expenses, taxes and the possibility that income may not increase as projected. YP, however, is not opposed to an amendment for the provisions of 11 U.S.C. § 1129(a)(15). The Debtors excess income in Years Two through Five of the Plan can be dividend and paid to unsecured creditors.
8. The Debtors advise they have been living on a draw of \$6,000.00 per month or less since having filed for bankruptcy two years ago. They believe that sum will be sufficient to cover expenses.

#### **DECEMBER 18, 2014 HEARING**

At the December 18, 2014 hearing, the court continued the hearing to 3:00 p.m. on February 12, 2015 to allow YP Western Directory, LLC to file a redline version of any proposed Disclosure Statement. Dckt. 479. The court ordered that any amended Disclosure Statement shall be filed and served on or before January 23, 2015. The court further ordered that any responses to the proposed final amended Disclosure Statement shall be filed and served on or before February 6, 2015.

#### **REVIEW OF THE AMENDED DISCLOSURE STATEMENT**

Creditor filed an amended Disclosure Statement on January 23, 2015. Dckt. 491.

Case filed: November 30, 2012

Background: Mark and Angela Garcia are the Debtors in this Chapter 11 Case. YP western Directory, LLC, a Delaware limited liability company, formerly known as Pacific Bell Directory, a California corporation ("Creditor") filed the instant Disclosure Statement because the Debtors failed to file and confirm a Plan within 300 days of the date of the petition as required by 11 U.S.C. § 1121(e)(2).

The Debtors are individuals and in 1999 commenced operating a bail bond agency in Modesto, California, under the names of Garcia Family Bail Bonds and/or Familia Garcia Bail Bonds.

The Debtors formerly operated under a corporation, Garcia Family Bail

Bond, Inc., as sole owners and shareholders, but shortly before the bankruptcy was filed, the Debtors suspended the corporation and now operate as a sole proprietorship.

Concurrently, the Debtors were the sole owners and shareholders of the Most Wanted Wine Co., Inc. from April 2009 until May 20, 2014, when the court approved the sale of the Most Wanted Wine Co. name and assets. The wine company was a small business that was not a source of income for the Debtors.

The Debtors are the principals of Garcia Family Bail Bonds and were the sole shareholders of the Most Wanted Wine Company, Inc. There are no other principals or insider.

Creditor/Class	Treatment	
Administrative Expenses:	<b>Claim Amount</b>	\$96,950.00
	<b>Impairment</b>	
	<p>Includes:</p> <p>(1) Expenses arising in the ordinary course of business after the petition date - Estimated amount owed = \$0.00, paid in full on the Effective Date of the Plan, or according to terms of obligations if later;</p> <p>(2) the value of goods received in the ordinary course of business within 20 days before the petition date - Estimated amount owed = \$0.00, paid in full on the Effective Date of the Plan, or according to terms of obligations if later;</p> <p>(3) professional fees, as approved by the court - Estimated amount owed: Attorney for the Debtors (\$32,000.00)(Paid in full upon confirmation), Chapter 11 Trustee (\$24,270.39 was paid pursuant to Court order), Attorney for Chapter 11 Trustee (\$15,000.00)(claim not submitted), Successor Attorney for Chapter 11 Trustee (\$15,000.00)(estimate by Attorney), Accountant for Chapter 11 Trustee (\$34,500.00)(\$10,938.71 was paid pursuant to Court order): Total = \$96,500.00;</p> <p>(4) clerk's office fees - Estimated amount owed = \$0.00, Paid in full on the Effective Date of the Plan;</p> <p>(5) other administrative expenses - Estimated amount owed = \$0.00, Paid in full on the Effective Date of the Plan; and</p> <p>(6) Office of the U.S. Trustee fees, Estimated amount owed = \$975.00 quarterly (estimated), Paid in full as incurred.</p>	

Priority Tax Claims	<b>Claim Amount</b>	\$51,182.59
	<b>Impairment</b>	
	<p>Includes:</p> <p>(1) Internal Revenue Service (Individual Income Tax) - Estimated Amount Owed = \$16,301.12, Claim 25 filed 8/13/13, Pmt Interval = 5 years, Monthly payment = \$292.91, Begin date = Petition date, Interest Rate = statutory, Total payout amount = \$17,574.59;</p> <p>(2) Franchise Tax Board (Individual Income Tax)- Estimated Amount Owed = \$6,600.04, Claim 2 filed 12/17/12, Pmt Interval = 5 years, Monthly payment = \$118.59, Begin date = Petition date, Interest Rate = statutory, Total payout amount = \$7,115.60;</p> <p>(3) Gordon B. Ford (Real Property Tax) - Estimated Amount Owed = \$22,878.60, Claim 24.2 filed 8/20/13, Pmt Interval = 5 years, Monthly payment = \$580.95, Begin date = Petition date, Interest Rate = statutory, Total payout amount = \$34,665.65;</p> <p>(4) Gordon B. Ford - Estimated Amount Owed = \$5,402.83, Claim 7,8,9 filed 3/15/11, Pmt Interval = 5 years, Monthly payment = \$137.20, Begin date = Petition date, Interest Rate = statutory, Total payout amount = \$8,231.78;</p> <p>(5) Personal Income Taxes - CPA believes 2012 and 2013 personal income taxes have been paid</p> <p>Monthly Payment = \$1,129.65 (\$13,555.80 annually for 5 years.)  Total Payout Amount for All Priority = \$67,779.00</p>	
Class 1: HSBC Bank	<b>Claim Amount</b>	\$464,663.61
	<b>Impairment</b>	Impaired
	<p>The Plan will not modify this claim. The Debtors have applied for a loan modification with HSBC and with PHH Mortgage to have a forbearance of the arrearage pre and post petition. Any modification of this first deed of trust will be dependent upon the approval of HSBC and/or PHH Mortgage Services. Entry of the order confirming Debtor's Plan shall constitute an order modifying the automatic stay to allow HSBC to repossess, receive, take possession of, foreclose upon, and exercise its rights and judicial and non-judicial remedies against its collateral.</p>	
Class 2: JP Morgan Chase Bank, N.A.	<b>Claim Amount</b>	\$254,992.88

	<b>Impairment</b>	Impaired
	JP Morgan Chase Bank, N.A. did not record the reconveyance of its former second deed of trust on the Debtors' residence, as JP Morgan Chase Bank, N.A. failed to file a claim and Debtors objected to the claim, there is no claim remaining of JP Morgan Chase Bank, N.A. and no provision in the Plan will be made for JP Morgan Chase Bank, N.A.	
Class 3: United States Fire Insurance Company	<b>Claim Amount</b>	\$340,161.14
	<b>Impairment</b>	Impaired

United States Fire Insurance Company (USFI) is the older of a second deed of trust on the Debtors' residence located at 5672 Eleanor Road, Oakdale, California. The property is worth \$550,000.00 and subject to a first deed of trust with HSBC in the sum of \$454,563.61, leaving an equity of \$95,436.39 for junior lien holders. The secured claim of USFI is \$340,161.14 and shall be paid at the sum of \$1,604.43 monthly beginning upon an order confirming Debtor's Plan. The term shall be 30 years with interest at 3.9%. Entry of the order confirming Debtors Plan shall constitute an order modifying the automatic stay; to allow USFI to repossess, receive, take possession of, foreclose upon, and exercise its rights and judicial and non judicial remedies against its collateral upon default of the payment terms by Debtors.

If USFI chooses to take an 11 U.S.C. § 1111(b)(2) instead, then USFI would have a secured claim in the sum of \$342,161.14. USFI would receive total payments in the aggregate that equals \$342,161.14, but its present value is \$95,436.39. (The amount of the senior lender HDBC less the value of the property: \$550,000.00 - \$454,563.61 = \$95,436.39.)

Under such election, USFI would receive a lien on the property for its total claim of \$342,161.14 and would receive a stream of payments with a present value of \$95,436.39 at an appropriate interest rate. The Plan calls for monthly payments of \$1,604.43 amortized over 30 years at an interest rate of 3.9%. This equates to aggregate payments over 30 years of \$577,594.80 with a present value over the life of the Plan of \$96,265.80.

USFI filed a contingent claim of \$505,000.00 but all were exonerated by the Court order, except one for a Miguel Rodriguez, aka Arceo. In January 2014 a California appeals court denied an appeal on a bond forfeiture, resulting in a new claim of USFI in the sum of \$177,753.00, which is scheduled to be paid as unsecured. If USFI prevailed on its adversary complaint, the sum of \$177,753.00 would be payable in full over the life of the plan at \$2,962.55 per month, reducing the amount payable to unsecured creditors. The Plan currently provides for 32% to be paid to unsecured creditors and it would be reduced to 1%.

USFI obtained a new appraisal and claimed the residential property has a current value of \$875,000.00 after counsel for USFI advised USFI would be filing an amended creditors claim and motion for relief from stay. Debtors intent to convey the property to the secured creditor for full satisfaction of the debt. In such event, remaining unsecured

<p>Class 4: LSC Realty California, LLC</p>	<b>Claim Amount</b>	\$700,000.00
	<b>Impairment</b>	Impaired
		<p>LSC Realty California, LLC, was the holder of a first deed of trust on the Debtors' Commercial Property at 900 G Street, Modesto, California. The property is worth \$700,000.00. The secured claim was filed in the sum of \$650,000.00. The Court valued the commercial Property at \$650,000.00. LSC Realty California LLC shall receive principal and interests in the sum of \$4,310.02 monthly, either in third party rents or payment by the Debtors as needed. This monthly sum is the secured value of \$700,000.00 amortized over 30 years at 6.25% interest. If paid over 30 years, this would include \$851,607.35 of interest. This loan shall mature 5 years after entry of the order confirming Debtors Plan and Debtors shall obtain refinancing if needed. Property values in California have risen in the last 2 years.</p> <p>LSC Realty California LLC filed an assignment of its interest on May 1, 2013, (DCN138) to G Street Investments, LLC, and the terms of transfer was filed by the transferee G Street Investments, LLC on October 22, 2014 (DCN 405). Debtors requested proper notice of the assignment from G Street Investments, LLC, and G Street Investments, LLC provided it over 1 year later. G Street Investments, LLC has not provided 1098 forms to the Debtors or the estate for interest payments made in 2013.</p>

	<p>The G Street Investments, LLC is either owned by Iain Macdonald or he leads a group of investors. Iain Macdonald was a former attorney for the Debtors in this case. While LSC Realty was still the mortgage holder, LSC Realty California LLC had agreed to forgive the second mortgage of \$180,054.27 and discussions were underway regarding the unsecured sum of \$117,864.75 when Iain Macdonald, through G Street Investments LLC, purchased the notes held by LSC Realty California LLC in the total sum of \$947,919.02 for the significantly reduced sum of \$495,000.00.</p> <p>LSC Realty California, LLC filed unsecured claims in the sum of \$180,054.27 (Claim No. 12) and the sum of \$117,864.75 (Bifurcated amount on Claim No. 13). These unsecured sums total \$297,919.02. \$50,000.00 of this unsecured sum is to be paid as secured, leaving an unsecured claim of \$247,919.02. This unsecured sum is to be paid at 32% over a 4 year period, commencing 1 year after the date the plan is confirmed.</p> <p>If G Street Investments, LLC determines to take an 11 U.S.C. § 1111(b)(2) instead, G Street Investments, LLC would then have a fully secured claim in the sum of \$947,919.02, and G Street Investments, LLC would receive a total of payments in the aggregate that equal \$947,919.02 but whose present value is \$700,000.00.</p> <p>Under an 1111(b)(2) election, G Street Investments, LLC would receive 219 monthly payments of \$4,310.02 (this uses an amortizing balance of the collateral value, \$700,000.00, and assumes a market rate of interest of 6.25%), with a balloon or final payment of \$4,024.64. This would pay G Street Investments, LLC an aggregate payment amount equal to G Street Investments, LLC's total secured claim of \$947,919.02.</p>	
<p>Class 6: Bankers Surety Services, Inc.</p>	<p><b>Claim Amount</b></p>	<p>\$947,919.02</p>
	<p><b>Impairment</b></p>	<p>Impaired</p>
	<p>Bankers Surety Services, Inc. is the holder of a third deed of trust on the Debtors' Commercial Property at 900 G Street, Modesto CA. The property is worth \$650,000 and subject to a first deed of trust with G Street Investments, LLC in the sum of \$767,864.75 and a second deed of trust with G Street Investments, LLC in the sum of \$180,054.27, the total of first and second trust deeds is \$947,919.02. The Court ruled that the secured claim of Bankers Surety Services, Inc. is zero. Bankers Surety Services LLC shall retain its lien until paid or completion of the Plan.</p>	

Class 7: Gorden B. Ford, pre-petition real property taxes on Debtors' Commercial Property at 900 G Street, Modesto, California	<b>Claim Amount</b>	\$22,878.60 (excluding penalties)
	<b>Impairment</b>	Impaired
	The claim shall be paid within 5 years with statutory interest. The sum owed is \$16,878.16 excluding penalties. This claim shall be paid within 5 years at a monthly payment of \$428.59 upon confirmation of the Debtors' Plan. Interest shall be the statutory rate currently 18%. This claim was filed as a priority claim.	
Class 8: Travis Credit Union	<b>Claim Amount</b>	\$7,163.57
	<b>Impairment</b>	Impaired
	The claim is secured by a 2000 Mercedes Benz ML55. The collateral will be surrendered and there will be no deficiency claim allowed. The claim is in the sum of \$7,163.57.	
Class 8.1: General Unsecured Claims	<b>Claim Amount</b>	\$618,203.93
	<b>Impairment</b>	Impaired

The following is a list of the filed unsecured claims in this case:

<u>Name</u>	<u>Amount</u>
CBS Outdoor	\$ 2,944.97
Capital One	148.55
Law Office of Brunn & Flynn	32,729.92
Pitney Bowes Inc	829.58
YP	150,000.00
American Express Bank, FSB	17,133.62
Pacific Bell Telephone Company	1,606.84
American Info Source Agent For DirecTv, LLC	1,236.91
Ian MacDonald Formerly DBA MacDonald & Assoc	16,270.01
LSC Realty California, LLC (G Street Investments)	247,919.02
USFI	117,753.00
Department Stores National Bank Visa	6,704.26
John Rorabaugh	22,927.25
<b>TOTAL</b>	<b>\$618,203.93</b>

USFI had contingent claim that occurred post-petition, in January 2014, in the sum of \$117,753.00, when a California Appeals Court denied an appeal over a bond forfeiture. This sum is added to the class in 8.1. Further, if USFI occurs any further losses from bond forfeitures from prior contracts with the Debtors, either before or after the Petition Date, Debtors will pay these sums as unsecured. Creditor YP's Plan proposes a 35% distribution to general unsecured creditors in Class 8.1, over a term of 4 years, to be paid equally monthly payments, commencing 1 year after confirmation.

<p>Class 8.2: Secured Claims who did not file an unsecured claim after a 506(a) ruling determined their secured interest at zero</p>	<b>Claim Amount</b>	784,447.33																											
	<b>Impairment</b>	Impaired																											
	<p>The following is a list of the secured claims who did not file an unsecured claim after a 506(a) ruling determined their secured interest at zero:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">Bankers Surety Services, Inc</td> <td style="text-align: right;">\$ 83,160.62</td> </tr> <tr> <td>JP Morgan Chase Bank, N.A.</td> <td style="text-align: right;">\$254,992.88</td> </tr> </table> <p>Additionally, JP Morgan Chase Bank, N.A. recorded a deed of reconveyance of its secured claim in or about February 2013. These two creditors will not receive a distribution under the Plan, consistent with the holding and principles in <i>In Re J.H. Investment Services</i> (2011), No. 15627, 11th Cir. Court of Appeals, holding that 506(a)(1) does not automatically create an unsecured claim in a Chapter 11 case and the creditor must file an unsecured claim to receive distribution. On May 8, 2013, Debtors filed an amended Schedule F and listed the following general unsecured creditors as disputed. (See <i>Varela v. Dynamic Brokers, Inc.</i> (In re Dynamic Brokers Inc.), 293 B.R. 489). These creditors did not in return file or attempt to file a claim after notification of their disputed status:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Name</th> <th style="text-align: right;">Amount</th> </tr> </thead> <tbody> <tr> <td>JPMorgan Chase Bank, N.A.</td> <td style="text-align: right;">\$ 254,992.88</td> </tr> <tr> <td>Accord Credit Services</td> <td style="text-align: right;">381.05</td> </tr> <tr> <td>AT&amp;T Advertising Solutions</td> <td style="text-align: right;">342,412.14</td> </tr> <tr> <td>Bankers Surety Services, Inc.</td> <td style="text-align: right;">89,682.22</td> </tr> <tr> <td>CBE Group</td> <td style="text-align: right;">1,237.00</td> </tr> <tr> <td>E. Alan Nunez</td> <td style="text-align: right;">11,380.00</td> </tr> <tr> <td>ECMC</td> <td style="text-align: right;">2,006.00</td> </tr> <tr> <td>GC Services Limited Partnership</td> <td style="text-align: right;">2,004.54</td> </tr> <tr> <td>Law Office of Damrell, Nelson, Schrimp</td> <td style="text-align: right;">1,229.88</td> </tr> <tr> <td>Law Office of Lawrence C. Beaver</td> <td style="text-align: right;">9,848.62</td> </tr> <tr> <td>RCVMNG CORP - Page 27 of 32 -</td> <td style="text-align: right;">200.00</td> </tr> </tbody> </table>		Bankers Surety Services, Inc	\$ 83,160.62	JP Morgan Chase Bank, N.A.	\$254,992.88	Name	Amount	JPMorgan Chase Bank, N.A.	\$ 254,992.88	Accord Credit Services	381.05	AT&T Advertising Solutions	342,412.14	Bankers Surety Services, Inc.	89,682.22	CBE Group	1,237.00	E. Alan Nunez	11,380.00	ECMC	2,006.00	GC Services Limited Partnership	2,004.54	Law Office of Damrell, Nelson, Schrimp	1,229.88	Law Office of Lawrence C. Beaver	9,848.62	RCVMNG CORP - Page 27 of 32 -
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RCVMNG CORP - Page 27 of 32 -	200.00																												

	Rdk Collection Services	200.00
	Stanis Contr	4,467.00
	Valley Yellow Pages	57,702.00
	Visa Dsnb	6,704.00
	William Origel et al. (not filed)	0.00
	<b>TOTAL</b>	<b>784,447.33</b>
	General unsecured creditors in Class 8.2 will not receive a distribution under the Plan.	

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
- 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
- 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).

**UNITED STATES FIRE INSURANCE COMPANY'S RESPONSE**

United States Fire Insurance Company ("USFIC") filed a response to the supplemental Disclosure Statement on February 6, 2015. Dckt. 504. USFIC responded as follows:

1. The supplemental Disclosure Statement describes a plan of reorganization but that plan of reorganization does not (1) refer to the recently completed appraisal of the Oakdale Property or (2) address the multiple legal defects in the

proposed Plan as set out in USFI's Opposition filed on December 4, 2015.

2. As to the USFIC claim, the Proposed Plan of Reorganization proposes to pay USFIC on a putative secured claim of \$340,161.00 at the rate of \$1,604.43 per month for 30 years, with interest at 3.9%. Alternatively, Debtors have offered to convey to USFIC the Oakdale Property in full satisfaction of its debts.
3. USFIC does not support the treatment of its claim as set forth in the proposed supplemental Disclosure Statement and Plan of Reorganization
4. USFIC has submitted a counterproposal to the Debtors and Plan Proponent on January 30, 2015 but has not received any response to that proposal; USFIC therefore has assumed that the Debtors are not interested at this time in making a serious offer to satisfy USFIC's indebtedness.
5. USFIC continues to maintain that the Plan of Reorganization described in the supplemental Disclosure Statement is fatally flawed and cannot be confirmed over the objections of USFIC.

#### **G STREET INVESTMENTS, LLC'S RESPONSE**

G Street Investments, LLC ("G Street") filed a response to the supplemental Disclosure Statement on February 6, 2015. Dckt. 506. G Street objects to the Disclosure Statement on the following grounds:

1. The feasibility analysis double counts approximately \$50,000 per year of rental income from the G Street Property (compare Dckt. 492, Exhibit C with Exhibit A. This \$50,000 swing changes the projected excess income shown on Exhibit A from a range of \$242.20 to \$5,159.70 to between a -\$50,000 for 2015 to a -\$40,000 for 2019.
2. The projected expenditures in Exhibit C makes no provision for individual income taxes, despite showing gross income of approximately \$300,000 per year
3. The feasibility analysis in Exhibit A does not account for all disbursements required by the plan. For example, the Disclosure Statement proposed to pay \$1,604.43 monthly to the USFIC, Class 3 but does not report this disbursement on Exhibit A, instead offering to "waive collateral in exchange for full satisfaction"
4. Operating history is misstated by Exhibit C. While the average gross monthly income may be \$35,550, the average monthly net, based on the following monthly income reflected in the reliable operating reports filed since the Trustee's appointment, is less than zero:

November 2013	<\$5,478.00>
December 2013	\$10,575.00
January 2014	\$10,471.00
February 2014	<\$2,153.00>
March 2014	\$6,593.00
April 2014	<\$22,591.00>
May 2014	\$36,276.00
June 2014	\$10,816.00
July 2014	\$4,073.00
August 2014	<\$23,892.00>
September 2014	\$40,207.00
October 2014	<\$11,070.00>
November 2014	<\$49,803.00>
December 2014	<\$11,120.98>
<b>TOTAL</b>	<b>&lt;\$7,026.00&gt;</b>

5. Monthly payments to G Street in the event of an 1111(b) election is miscalculated. The Plan provided in Class 4 that G Street will receive payments in the amount of \$4,310.02, but this is calculated by amortizing not the full amount of the claim of \$947,919.02, but the Debtors' opinion of the value of the collateral, \$700,000. In fact, the former amount must be amortized in the event of the section 1111(b) election. Using the Debtors' interest rate of 6.25% the monthly payment is \$5,837. The Plan, by contrast, appears to correctly apply the section 1111(b) election to the claim of the USFIC.
6. The Disclosure Statement misstates the law regarding the Absolute Priority Rule. Creditor declares in the Disclosure Statement that the absolute priority rule was abolished in the Ninth Circuit in 2012 as to individual debtors, based on its sole citation to *In re Friedman*, 466 B.R. 471 (B.A.P. 9th Cir. 2012). G Street states Creditor is wrong. A plurality BAP opinion is not ninth Circuit law or binding. Presently, the Ninth Circuit has under submission the precise issue which Creditor has been decided. G Street states that the absolute priority rule applies in individual Chapter 11 case.
7. The Debtors' collateral value of \$700,000.00 is understated. G Street plans to present evidence at the confirmation hearing indicating that the property is worth at least \$800,000.00
8. The Debtors' interest rate of 6.38% is below given the distress

nature of the property and the serious feasibility problems

9. Creditor should disclose which claims it or the Debtors intend to object to, and the anticipated expenses to prosecute such objections. Creditors are entitled to know if the plan proponents believe that claims are objectionable, and the anticipated expenses impact on feasibility.
10. Creditor should disclose why the Debtors withdrew their objections to its claim noted in the Disclosure Statement at page 13: 22-24.
11. The gratuitous text in the Disclosure Statement at page 20:7-13 regarding G Street's acquisition of the secured claim does not provide meaningful information to help determine whether or not to vote in favor of any plan.

#### **JOINDER OF IAIN MACDONALD**

Iain Macdonald, Judgment Creditor, filed a joinder to the objections of other parties on February 9, 2015. Dckt. 515.

#### **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).

4. [13-91459](#)-E-11 LIMA BROTHERS DAIRY

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
8-7-13 [[1](#)]

Final Ruling: No appearance at the February 12, 2015 Status Conference is required.  
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<p>The Court having ordered the case closed, the Status Conference is removed from the Calendar.</p>
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5. [13-91189](#)-E-11 MICHAEL/JUDY HOUSE

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
6-25-13 [[1](#)]

Debtor's Atty: Robert M. Yaspan

Notes:

Continued from 10/2/14

Operating Reports filed: 10/14/14; 12/8/14; 12/22/14; 1/14/15

[RMY-11] Scheduling Order filed 10/6/14 [Dckt 225], pretrial conference set for 7/23/15 at 2:30 p.m.

[RMY-13] Order denying Motion to Extend the Time to File Amended Plan of Reorganization and Amended Disclosure Statement filed 10/6/14 [Dckt 229]

[RMY-14] Order granting extension of order to use cash collateral filed 10/6/14 [Dckt 231]

[RMY-14] Order granting extension of order to use cash collateral filed 1/7/15 [Dckt 251]