

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

March 6, 2014 at 3:30 p.m.

1. [13-91588-E-12](#) MARY JO MEIRINHO MOTION TO CONFIRM CHAPTER 12
SAC-3 Scott A. CoBen PLAN
1-23-14 [78]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 12 Trustee, all creditors, and Office of the United States Trustee on January 23, 2014. By the court's calculation, 42 days' notice was provided.

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

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

On March 4, 2014, the Debtor in Possession and the Vlach Family Trust stipulated to continue the hearing on the Motion to Confirm. The Chapter 12 Trustee is not a party to the Stipulation.

AMENDED CHAPTER 12 PLAN

On January 23, 2014, the Debtor in Possession filed a First Amended Chapter 12 Plan. Dckt. 77. The basic terms of the First Amended Plan are:

A. The Plan Payments to be made by the Debtor are

1. On or before November 1, 2013, payments totaling \$41,355.00.

2. On or before June 1, 2014, payments totaling \$30,000, or such other amount as sufficient to complete the Plan.
Additional Provisions. Plan ¶ 6.02, sub-¶ 6.

March 6, 2014 at 3:30 p.m.

- B. \$10,000.00 to counsel for the Debtor in Possession from the pre-petition retainer. Plan ¶ 2.06.
- C. \$0.00 for Chapter 12 Administrative Expenses. Plan ¶ 2.07.
- D. Class 1 Secured Claim of Union Bank, N.A. - \$559.60 monthly contractual payment and \$201.59 monthly to cure \$12,096.00 arrearage. Plan ¶ 2.08.
- E. Class 2 Secured Claims - None. Plan ¶ 2.09.
- F. Class 3 Secured Claims, Surrender of Collateral - None. Plan ¶ 2.10
- G. Class 4 Secured Claims, Direct Payment Not by Trustee - None. Plan ¶ 2.11.
- H. Class 5 Priority Unsecured Claims - None. Plan ¶ 2.13.
- I. Class 6 Designated Unsecured Claims - None. Plan ¶ 2.14.
- J. Class 6 General Unsecured Claims -100% of projected \$82,711.00 in claims. Plan ¶ 2.15.
- K. Secured Claim of Kay Vlach, paid with interest computed at rate of 4.75% per annum,
 - 1. The first day of the month after the month in which the plan is confirmed, \$10,708.00, which "represents the interest on the claim from the petition date to June 1, 2014."
 - 2. On or before June 1, 2014, payment of the claim in full from the sale of the real property securing the claim. Plan ¶ 6.02, sub-¶ 1.
- L. Secured Claim of CNH Capital America LLC, paid with interest computed at the rate of 4.75% per annum,
 - 1. The first day of the month after the month in which the plan is confirmed, \$10,708.00, which "represents the interest on the claim from the petition date to June 1, 2014."
 - 2. On or before June 1, 2014, payment of the claim in full from the sale of the real property securing the Kay Vlach claim. Plan ¶ 6.02, sub-¶ 2.
- M. The Secured Claim of Union Bank, N.A. will be paid pursuant to the terms of the Stipulation attached as Exhibit A to the Plan. No Stipulation is attached to the Plan.
 - 1. The court has previously approved aa stipulation between the Debtor in Possession and Union Bank, N.A. which provides,

- a. The Debtor in Possession must tender the regular monthly contractual payments to the Chapter 12 Trustee for disbursement to Union Bank, N.A. until the outstanding balance has been paid in full.
- b. In addition, the Debtor in Possession shall tender arrearage cure payments of \$201.59 a month for 60 months, to cure a \$12,095.24 arrearage. Order, Dckt. 58.
- c. The court's findings of fact and conclusions of law clearly state that the Stipulation was not approved to the extent that it purported to state the terms of a confirmed Chapter 12 Plan. Civil Minutes, Dckt. 56.

On February 11, 2014, the Court granted the Order Employing Real Estate Professional, White House Real Estate. Dckt. 108. On February 11, 2014, the court also granted the Motion for Authorization to Disburse Funds to Creditor Kay Vlach, Trustee of the Vlach Family Trust \$19,876.25 in adequate protection payments on its claim secured by the real property commonly known as 3818 Shoemaker Avenue, Modesto, California. Dckt. 109.

The Schedules disclose that the real property to be sold, 3818 Shoemaker Avenue, is not merely the Debtor's "home," but "Home and Farm." Schedule A, Dckt. 14 at 3. The Vlach Family Trust has filed Proof of Claim No. 3, asserting a claim in the amount of \$298,143.73 which is secured by the Shoemaker Property. The arrearage for this claim is listed in the amount of \$298,143.73.

CNH Capital America, LLC has filed Proof of Claim No. 1, asserting a secured claim in the amount of \$109,265.15. This claim is identified as being secured by a Case IH Steiger 400 Tractor serial number ZBF126535. The arrearage for this claim is stated to be \$23,583.88.

On January 23, 2014, the Debtor in Possession filed a Status Report for the January 30, 2014 Status Conference. She reports that an interested buyer for in excess of \$1.3 million has been found, with an inspection of the property to occur on January 24, 2014. The Debtor in Possession projects that by the January 30, 2014 she will be in contract to sell the property and that escrow will close within 60 days.

DISCUSSION

The proposed plan, while promising to get a quick payment in full to creditors, causes the court some concerns. First, it does not disclose the "secret condition" that the Debtor in Possession/Plan Administrator will sell the Property, but retain possession of it for 90 days after the close of escrow. The Real Estate Agent offers no opinion as to how this will effect the marketability of the Property. Second, the Plan makes no provision of what will occur if the Plan Administrator defaults and fails to sell the Property. Third, for more than 180 days of the Plan the Debtor in Possession and then Plan Administrator take the monthly income and use it without disclosure or limitation. Fourth, though the Chapter 12 Trustee has

the money, the Debtor in Possession does not propose to make a distribution of interest payments to the creditors with secured claims until a month after the plan is confirmed. With a March 2014 confirmation hearing date, it is likely that any such disbursement will coincide with the promised no later than June 1, 2014 disbursement of the proceeds from the sale of the Real Property. The promise to pay interest appears to be illusory.

The Debtor in Possession can rectify these problems through the confirmation process and provide for disbursement of the interest payments prior to confirmation. The court continued the hearing to allow the Debtor in Possession to address these issues, file any proposed amendments, and file any necessary motions.

The court granted the motion authorizing the Chapter 12 Trustee to make adequate payments to the Vlach Family Trust. The first lump sum payment is for the contractual interest for the period from the commencement of this case through June 30, 2014. If a plan is not yet confirmed in this case, the Trustee shall make another adequate protection payment of three months worth of interest.

2. [11-94410-E-11](#) SAWTANTRA/ARUNA CHOPRA CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
12-30-11 [[1](#)]

Debtors' Atty: Robert S. Marticello

Notes:

Continued from 1/16/14 to be heard in conjunction with other matters on calendar.

Operating Report filed: 2/12/14

[HSM-17] Order granting motion to compromise Loanvest XI, LP filed 1/19/14 [Dckt 790]

[HSM-18] Order granting stipulation to extend deadline for the Trustee to file objections to Debtors' amended claims of exemption to 4/10/14 filed 2/18/14 [Dckt 805]

3. 11-94410-E-11 SAWTANTRA/ARUNA CHOPRA
MG-3 Evan D. Smiley

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

LUCILLE ARTERBURN, ET AL.
VS.

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

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

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

DECEMBER 19, 2013 HEARING

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

On or about December 3, 2009, Mid Valley Services Inc. ("Mid Valley") funded a \$550,000 loan to Aruna Chopra secured by a deed of trust on the Dale Road Property. Based on representations of Mrs. Chopra, the deed of trust securing the \$550,000 loan was to be in first priority on Lot

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

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

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

DEBTOR'S OPPOSITION

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

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

JANUARY 16, 2014, HEARING

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

MARCH 6, 2014 HEARING

4. [11-94410](#)-E-11 SAWTANTRA/ARUNA CHOPRA
SSA-4 Evan D. Smiley

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

JOANN BLEDSOE, ET AL. VS.

CONT. FROM 1-16-14, 12-19-13

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

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

No Tentative Ruling. The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

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

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

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

TRUSTEE'S OPPOSITION

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

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

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

DEBTOR'S OPPOSITION

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

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

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

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

MOVANT'S REPLY

Movant concedes that the Dale Road property is necessary to an effective reorganization. Movant states that it remains to be seen whether

the prospective buyer will actually perform and pay the estate \$17 million. Movant states the Agreement for Purchase and Sale of Real Property is contingent upon several conditions, including confirmation of a Chapter 11 plan, list pendens removal, recordation of a parcel map, and Trustee approval.

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

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

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

DISCUSSION

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

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

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

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

It appears equitable to continue the hearing on the Motion for Relief from Stay to the Amended Disclosure Statement hearing date to follow confirmation.

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 Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is continued to xxxx.

5. [11-94410-E-11](#) **SAWTANTRA/ARUNA CHOPRA** **CONTINUED MOTION TO COMPEL**
SSA-5 **Evan D. Smiley** **ABANDONMENT**
9-26-13 [606]

CONT. FROM 1-16-14, 12-19-13

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

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

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

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

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

TRUSTEE'S OPPOSITION

The Chapter 11 Trustee opposes the motion because the parcels are not of inconsequential value or benefit to the estate and are not burdensome. Trustee states the plan of reorganization is built around the

Dale Road Project, of which the subject parcels are a part. Trustee is also informed that the Debtors have obtained a fully executed purchase and sale agreement, pursuant to which the Dale Road Property will be sold for approximately \$17,000,000.00.

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

DEBTOR'S OPPOSITION

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

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

MOVANT'S REPLY

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

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

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

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

DISCUSSION

After notice and hearing, the court may order the Trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b), *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000). An order compelling abandonment is the exception, not the rule. *Id.* at 647.

Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset and absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered. *Id.*

Here, the court cannot find that the subject real property parcels, part of the Dale Road Property, are of inconsequential value or benefit to the estate. The Debtors First Amended Chapter 11 Plan is based on the sale of the Dale Road Property for \$17,000,000.00. While Movants may have doubts about the outcome of these activities, this doubt is not sufficient to show that the properties are of inconsequential value or benefit to the estate. Therefore, the motion is denied without prejudice.

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 to Abandon Property filed by the Creditor 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 to Compel Abandonment is denied without prejudice.

6. [11-94410-E-11](#) **SAWTANTRA/ARUNA CHOPRA** **CONTINUED MOTION TO VALUE**
WGS-3 **Evan D. Smiley** **COLLATERAL OF THE**
BLEDSON-FISCHER CREDITORS
10-3-13 [613]

CONT. FROM 1-16-14, 12-19-13, 10-31-13

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

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

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

The court's tentative decision is to grant the Motion to Value Collateral.

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

PRIOR HEARING

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

DEBTOR'S MOTION

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

CREDITOR'S RESPONSE

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

DISCUSSION

The first deed of trust secures a loan with a balance of approximately \$8,395,557.47. The parties agree that the value of the commercial real property for purposes of 11 U.S.C. § 506(a) valuation of secured claim is \$2,490,000.00. Therefore, the respondent creditor's claim is under-collateralized. The creditor's secured claim is determined to be in the amount of \$2,490,000.00. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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 Debtors having been presented to the court, and upon review

of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Joanne Irene Bledsoe, Carl R. Fischer, Jr. and Sandy Fischer, as trustees of the Carl R. Fischer, Jr., and Sandy Fischer Revocable Trust UDT dated September 25, 2000, Amy C. Sherman, formerly known as Amy C. Fischer, as trustee of the Amy C. Fischer Revocable Trust UDT dated November 14, 2005, and Robert Daniel Fisher ("Bledsoe-Fischer Creditors") secured by a deed of trust recorded against two parcels of real property located at Dale Road, Modesto, California, APN 078-015-029 and APN 078-015-030, is determined to be a secured claim in the amount of \$2,490,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$2,490,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

7. [11-94410-E-11](#) **SAWTANTRA/ARUNA CHOPRA** **CONTINUED APPROVAL OF FIRST**
WGS-4 **Evan D. Smiley** **AMENDED DISCLOSURE STATEMENT**
FILED BY DEBTORS
12-5-13 [[705](#)]

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

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

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

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

REVIEW OF THE DISCLOSURE STATEMENT

Case filed: December 30, 2011

Background:

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

Creditor/Class	Treatment	
Administrative Expenses	Claim Amount	\$46,006.75 estimation
	Impairment	
	<p>Law Offices of Peter Fear: \$46,006.75 paid in full on the later of the effective date of the date that is ten business days after the court enters final order allowing the fees</p> <p>Gary Farrar: to be provided</p> <p>Hefner Start: to be provided</p> <p>Ryan, Christie, Quinn & Horn: to be provided</p>	
Priority Tax Claims	Claim Amount	\$100,673.43
	Impairment	
	<p>The Holders of Allowed Priority Tax Claims will be paid in full the allowed amount of their Claims on the Effective Date or as soon as reasonably practicable thereafter, but, in no event, more than five (5) years from the entry of the Orders for Relief. Allowed Priority Tax Claims shall accrue interest from the Effective Date on the unpaid balance of the Allowed Priority Tax Claim at the rate required by 11 U.S.C. § 511 to provide "present value" of the Allowed Priority Tax Claim. The Debtors reserve the right to pay any Allowed Priority Tax Claim in full on the Effective Date.</p>	
Class 1: Secured claim of Bledsoe-Fischer	Claim Amount	\$2,500,000.00 allowed secured claim
	Impairment	

	<p>Bledsoe-Fischer asserts a Claim in the amount of \$7,694,997.82 secured by a first priority lien against Dale Road Properties 029 and 030. The priority of Bledsoe-Fischer's liens are subject to the Lien Priority Litigation.</p> <p>If Bledsoe-Fischer holds first-priority liens against Dale Road Properties 029 and 030, then it will have an Allowed Class 1 Secured Claim in the lesser amount of the value of Dale Road Properties 029 and 030, as determined by the Court, or the amount of its Claim. Alternatively, if Bledsoe-Fischer holds liens that are junior to the Mid Valley Assignees' liens, then it will have an Allowed Class 1 Secured Claim only if and to the extent the value of Dale Road Properties 029 and 030, as determined by the Court, exceeds the amount of the Mid Valley Assignees' Allowed Secured Claims, up to the amount of its Claim. Bledsoe-Fischer will be paid the Allowed amount of its Class 1 Secured Claim in one of three alternative ways.</p>	
Class 2:	Claim Amount	
Secured claim of New Era (Oakdale)	Impairment	

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. C. WILLIAMS FACTORS PRESENT

Y Incidents that led to filing Chapter 11

Y Description of available assets and their value

March 6, 2014 at 3:30 p.m.

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

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

OBJECTIONS:

Don Mosco

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

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

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

Bledsoe Fischer Creditors/Mid Valley Assignees

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

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

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

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

Chapter 11 Trustee, Gary Farrar

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

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

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

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

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

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

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

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

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

DEBTORS' RESPONSE

The Debtors state they are in the process of revising the Disclosure Statement¹ and the Plan to include further information and to address certain of the objections raised by creditors and the Trustee. In particular, the Debtors and Realm are close to reaching an agreement on the form of the General Unsecured Creditor Note and Deed of Trust and the Disclosure Statement and the Plan will be revised to include those documents and to summarize their terms. The Debtors are also in the process of obtaining certain financial information from Realm regarding its ability to close the proposed sale of the Dale Road Properties. The Debtors believe that, with this information, the majority of the objections relating to the Disclosure Statement will be resolved. The Debtors are also revising the Disclosure Statement to include further information concerning the Lien

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

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

DISCUSSION:

1. Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).
2. "Adequate information" means information of a kind, and in sufficient detail, so far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).
3. Courts have developed lists of relevant factors for the determination of adequate disclosure. *E.g., In re A.C. Williams, supra.*
4. There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567 (Bankr. N.D.Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. *In re Michelson*, 141 B.R. 715, 718-19 (Bankr. E.D.Cal. 1992).
5. The court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D. Pa. 1982).

As the Debtors are working on a revised disclosure statement and plan based on the opposition filed in this matter, the court grants a continuance to xxxx.

No revised disclosure statement or plan have been filed to date.

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 Approval of the Disclosure Statement filed by the Debtors having been presented to the court, and

upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion is continued to xxxx.

8. [11-94224-E-11](#) EDWARD/ROSIE ESMAILI CONFIRMATION OF AMENDED PLAN OF
RHS-1 David C. Johnston REORGANIZATION FILED BY DEBTORS
9-13-13 [[339](#)]

CONT. FROM 1-16-13

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

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

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

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

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

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

Tabulation of Ballots Filed 1/15/14:

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
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1 - IRS	For: 0 Against: 0		
2 - BBCN	For: 0 Against: 1	100% against	100% against
3 - Bank of America, N.A.	For:0 Against:0		
4 - Key Bank, N.A.	For:0 Against:0		
5- Wells Fargo Bank, N.A.	For:0 Against:1	100% against	100% against
6 - Wells Fargo Bank, N.A.	For:0 Against:1	100% against	100% against
7 - General Unsecured	For: 1 Against: 0	100% for	100% for
8 - Debtors' ownership interests	For: 0 Against: 0		

At the hearing, the Debtors in Possession advised the court that only one ballot, for a \$2,000.00 general unsecured claim was filed voting for the Plan. Four other ballots voting no were filed for classes of secured claim. One Creditor, BBCN, asserts that it also has a general unsecured claim for hundreds of thousands of dollars which would swamp the one \$2,000 claim. No ballot was returned by BBCN for the general unsecured claim.

EVIDENCE

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

OPPOSITION

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

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

Creditor also argues that it is unclear if the rental properties listed by Debtors are income generating properties. If so, Debtors need to

disclose which properties do and why Debtors should be allowed to retain and subsidize a negative cash flow property instead of surrendering it.

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

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

Wells Fargo Bank, N.A., holding a first priority deed of trust against the real property commonly known as 2281 Aldersgate, Turlock, California, objects to the plan on the basis that it fails to comply with 11 U.S.C. § 1129(a)(11). Creditor states that while Debtors address how they intend to pay post-confirmation property taxes and insurance but have failed to address if they intend to pay the post-petition, pre-confirmation tax and insurance advances made by Creditor.

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

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

BBCN Bank

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

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

secured and unsecured classes in the same class or whether this is even proper.

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

CONTINUANCE

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

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

The court continued the Confirmation Hearing to allow the Debtors in Possession and BBCN Bank (the one remaining objecting creditor) to address the true underlying economic issues for the treatment of this claim. The Debtors in Possession and Wells Fargo Bank, N.A. advised the court and parties in interest that the Wells Fargo objection had been resolved. The Debtors in Possession will propose plan amendments for the surrender of the collateral to Wells Fargo Bank, N.A.

No update on the progress with either objecting creditor has been filed to date.

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

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

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

IT IS ORDERED that the Motion is xxxxxx.

9. [11-94146-E-11](#) DOMINIC/MARIA DEPALMA
Naresh Channaveerappa

CONFIRMATION OF FIRST AMENDED
PLAN OF REORGANIZATION FILED BY
TRUSTEE
12-30-13 [[442](#)]

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor-in-Possession's Attorney, all creditors, and Office of the United States Trustee on January 17, 2014. By the court's calculation, 48 days' notice was provided.

Tentative Ruling: The Confirmation of First Amended Plan has been properly set for hearing.

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

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

<u>1/17/14</u>	Plan, Disclosure Statement, Disc Stmt Order, and Ballots Mailed
<u>2/14/14</u>	Last Day for Submitting Written Acceptances r Rejections
<u>2/14/14</u>	Last Day to File Objections to Confirmation
<u>2/20/14</u>	Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

Tabulation of Ballots:

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
2.04	For: 1 Against:0	100%	100%
2.05	For:1 Against:0	100%	100%
2.06	For:1 Against:0	100%	100%
2.08	For:1 Against:0	100%	100%
3.01	For:1	100%	100%

	Against:0		
3.03	For:0 Against:0	0%	0%

Declaration of Michael D. McGranahan 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 applicable provisions of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

Evidence: Declaration, ¶ 6, 8.

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

Evidence: Declaration, ¶ 6, 8.

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

Evidence: Declaration, ¶ 6, 8.

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: Declaration, ¶ 6, 8.; Plan, Art. 3.02.

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: Plan, Section II.D. 6, 7, 8.

6. Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

Evidence: N/A

7. 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 date 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 [11 USCS § 1111(b) (2)] 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: Declaration ¶ 4, 5, 8; Ballots.

8. 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: Ballots (Class 3.03 did not vote, deemed to reject the plan)

9. 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;

(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;

(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).

Evidence: Plan, Article 3, Section 3.02.

10. 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: Ballots.

11. 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: Declaration ¶ 3, 4.

12. 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: Declaration ¶ 7.

13. 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: N/A

14. 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: N/A

15. 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: Ballots.

16. 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: N/A

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: Declaration ¶ 8.

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: Declaration ¶ 8.

(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: Declaration ¶ 8.

(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.

The creditors whose claims were previously satisfied during the bankruptcy case were classified together, including Crop Production Services, Inc., Yosemite Land Bank, FLCA and Farmers & Merchants Bank of Central California. Trustee states these creditors were paid in full from the sale of Debtors' real property and a portion of gift proceeds from Gino DePalma. JPMorgan Chase Bank, N.A. was paid insurance proceeds from its damaged collateral and agreed to withdraw its claim. Trustee classified these creditors separately as they would not be receiving further distributions from the plan.

Based on the foregoing, the court confirms the Trustee's First Amended Plan of Reorganization dated December 20, 2013, and the Trustee shall prepare and order consistent with this ruling.

10. [11-94146-E-11](#) DOMINIC/MARIA DEPALMA

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
12-2-11 [[1](#)]

Debtors' Atty: Naresh Channaveerappa

Notes:

Continued from 12/19/13 to be heard in conjunction with confirmation of plan.

Operating Report filed: 1/15/14

[WFH-21] Order granting motion to use cash collateral filed 12/26/13
[Dckt 440]

[MDM-3] Application of Trustee to Employ Real Estate Broker to Conduct Short Sale filed 1/31/14 [Dckt 456]; Order granting filed 2/17/14 [Dckt 459]

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

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

Debtors' Atty: Mark J. Hannon

Notes:

Continued from 11/21/13

Operating Reports filed: 12/13/13 [Nov], 1/13/14 [Dec], 2/13/14 [Dec, Jan]

[MLM-1] Application for Order Authorizing Employment of Zayante (Zoey) P. Merrill of Merrill Law & Mediation as Attorney for Chapter 11 Trustee filed 11/28/13 [Dckt 280]; Order granting filed 12/3/13 [Dckt 283]

[MLM-2] Amended Application of Chapter 11 Trustee John E. Bell to Employ Kristin L. Kirchner as Accountant for the Trustee filed 12/14/13 [Dckt 287]; Order granting filed 12/19/13 [Dckt 291]

[MLM-3] Verified Application for Authorization to Employ Christine Katzakian of Katzakian Real Estate as Realtor for Trustee filed 2/5/14 [Dckt 300], set for hearing 3/13/14 at 10:30 a.m.

Amended Plan of Reorganization filed 2/12/14 [Dckt 307]

[MJH-12] Amended Disclosure Statement filed 2/12/14 [Dckt 308], set for hearing 3/27/14 at 3:30 p.m.

12. [14-90150](#)-E-11 MIGUEL/SILVIA TOSCANO

STATUS CONFERENCE RE: VOLUNTARY
PETITION
2-6-14 [[1](#)]

Debtors' Atty: Thomas O. Gillis

Notes:

Debtors' Preliminary Status Report filed 2/20/14 [Dckt 23]

MARCH 6, 2014 STATUS CONFERENCE

Status Conference Report - Filed February 20, 2014

The Debtors own and the estate is operating a "76" Gas Station. There are only two reported creditors - a \$1,042,264 debt secured by the gas station and an auto loan. The unsecured claims are stated to be \$67,856.00.

The Debtors in Possession reports that it is their intention to "cram down" treatment on the creditor having the claim secured by the gas station. Payment to the unsecured claims is projected to come from the sale of a duplex.

Schedule A lists the gas station property and a duplex (with the Debtors living in one side). The Duplex is stated as having a value of \$85,000.00. As of the commencement of the case the Debtors reported having \$6,000.00 in bank accounts and \$726.00 in accounts receivable. Schedule B.

Schedule I lists monthly income of \$7,563.00 (net income). A profit and loss statement for the business is attached to Schedule I. The Statement of Financial Affairs shows business income of \$2,145,848 in 2013 and \$2,280,573 in 2012.

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

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

Debtor's Atty: Hagop T. Bedoyan

Notes:

Continued from 12/19/13

Operating Reports filed: 12/30/13 [Aug, Sep, Oct], 1/3/14 [Nov], 1/14/14 [Amended Aug, Sep, Oct, Nov], 1/14/14 [Dec], 2/24/14 [Jan]

[KDG-2] Application by Debtor for Order Authorizing Employment of Business Consultants and Advisors filed 12/20/13 [Dckt 84]; Order granting filed 12/24/13 [Dckt 89]

[KDG-3] First Interim Application for Allowance of Attorneys' Fees and Costs Filed by Klein, Denatale, Goldner, Cooper, Rosenlieb & Kimball, LLP filed 1/15/14 [Dckt 107]; Order denying filed 2/18/14 [Dckt 150]

[KDG-4] Motion to Use Cash Collateral and Grant Adequate Protection filed 1/17/14 [Dckt 119]; Order granting filed 2/20/14 [Dckt 156]

[WJS-1] Motion for Relief from the Automatic Stay Filed by American AGCredit, PCA continued hearing set for 3/6/14 at 10:00 a.m.

Debtor's Chapter 11 Status Conference Report filed 2/25/14 [Dckt 161]

MARCH 6, 2014 STATUS CONFERENCE

Status Conference Report - Filed February 25, 2014

The Debtor in Possession reports that it is continuing in operation, with cash collateral authorized to be used through April 13, 2014. The Debtor in Possession has been working with creditors over the budget and anticipates filing a disclosure statement and plan in April 2014.

American Agcredit, PCA and the Debtor in Possession have stipulated to continue the hearing on this creditor's motion for relief from the saty to April 10, 2014. Stipulation, Dckt. 163.

14. [12-91564-E-11](#) POCH TAN AND SAMEAN CHUM CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
5-31-12 [[1](#)]

Debtors' Atty: Anthony D. Johnston

Notes:

Continued from 12/19/14

Operating Report filed: 1/31/14

Plan Confirmed, Order Dckt. 157, September 9, 2014.