

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Sacramento, California

**September 18, 2013 at 3:00 p.m.**

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1. [12-41713](#)-E-11 MARVIN/ARNELLE BROWN CONTINUED CONDITIONAL APPROVAL  
LR-6 Stephen M. Reynolds OF COMBINED AMENDED PLAN OF  
REORGANIZATION AND DISCLOSURE  
STATEMENT FILED BY  
DEBTORS-IN-POSSESSION  
8-9-13 [[68](#)]

**CONT. FROM 8-29-13**

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

Proper Notice Not Provided. The Proof of Service states that the Plan, Disclosure Statement, and supporting pleadings were served on the IRS, all creditors and the Office of the United States Trustee on August 9, 2013. By the court's calculation, 20 days' notice was provided. 42 days' notice is required.

**Tentative Ruling:** The Motion to Confirm the Plan was not properly set for hearing on the notice required by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1).

**The court's tentative decision is to deny the motion to approve Plan and Disclosure Statement.** 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:

**NOTICE**

Pursuant to Federal Rule of Bankruptcy Procedure 2002(b), twenty-eight day notice is required to all parties in interest for filing objections and the hearing to consider approval of a disclosure statement or for filing objections and the hearing to consider confirmation of a chapter 11 plan. The court continued the hearing, correcting the notice issue.

**MOTION**

There does not appear to be an actual motion filed setting forth the relief requested or seeking approval of the disclosure statement. Debtors-in-Possession filed a combined motion and disclosure statement and no motion, which has caused some confusion. It is not clear whether the Debtors-in-Possession seek to approve the disclosure statement or confirm

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the plan. Under either circumstance, insufficient notice has been provided to the parties.

The court has treated this as preliminary approval of the disclosure statement.

#### **PROPOSED AMENDMENTS NOT FILED**

At the August 29, 2013 hearing, the Debtors in Possession stated that they could address the U.S. Trustee's objections set forth below in amendments to the plan. The court ordered that any proposed amendments had to be filed and served on or before September 9, 2013 and objections filed and served on or before September 16, 2013.

No proposed amendments have been filed by the Debtors in Possession.

#### **U.S. TRUSTEE'S OPPOSITION**

The United States Trustee ("UST") opposes the Debtors-in-Possession combined plan and disclosure statement for several reasons.

First, the UST states that the small business format is confusing because this is not a small business case.

Second, the total dollar amount and the percentage to be paid to unsecured creditors is unclear.

Third, the secured debts are insufficiently described, as no information regarding the total amount of each debt, the remaining term of the loan, the interest rate or the account number are disclosed.

Fourth, the effect of adjustable rate mortgage is not addressed for Class 2 secured claim of Bank of America. The disclosure statement should address how this will impact Debtors-in-Possession ability to make the plan payment.

Fifth, the UST states that the effect of the early payoff is not addressed on the Class 1 and Class 7 claims with relatively small balances.

Sixth, the UST states that three filed Proofs of Claim have not been accounted for, including Proof of Claim No. 9 for Wells Fargo Bank, Proof of Claim No. 14 for American Express, and Proof of Claim No. 15 for the Franchise Tax Board (priority).

Seventh, the UST argues that the timing and effect of Mr. Brown's retirement is not addressed.

Eighth, the UST argues that the historical post-petition financial performance is not addressed.

Lastly, the UST states that the propriety of continuing TSP contributions should be addressed in the disclosure statement.

#### **CONTINUANCE**

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The court continued the hearing, stating the Debtors-in-Possession should file the proposed amended disclosure statement and plan on or before September 9, 2013, and any objections should be filed on or before September 16, 2013.

No proposed amended disclosure statement or plan have been filed to date. Not having a proposed amended disclosure statement to consider for the continued hearing, the Motion is denied.

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 Disclosure Statement filed by Marvin and Arnelle Brown, Debtors in Possession and Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied and the Disclosure Statement (August 9, 2013) is not approved.

2. [12-39515](#)-E-11 WATSON COMPANIES, INC. CONFIRMATION OF AMENDED PLAN OF  
RHS-1 W. Steven Shumway REORGANIZATION FILED BY DEBTOR  
6-10-13 [[77](#)]

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, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on August 21, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion to Confirm has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(b).

**The Motion to Confirm Amended Plan of Reorganization Filed by Debtor is granted.** 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:

June 26, 2013 Plan, Disclosure Statement, Disc Stmt Order, and  
Ballots Mailed

July 25, 2013 Last Day for Submitting Written Acceptances or Rejections

July 25, 2013 Last Day to File Objections to Confirmation

August 15, 2013 Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

Tabulation of Ballots:

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
Priority	For: 0 Against: 0		
1	For: 1 Against: 0	100%	100%
2	For: 0 Against: 0		
3	For: 0 Against: 0		
4	For: 0 Against: 0		
5	For: 0 Against: 0		
6	For: 0 Against: 0		
7	For: 0 Against: 0		
8	For: 0 Against: 0		
9	For: 2 Against: 0	100%	100%
10	For: 1 Against: 0	100%	100%

Declarations of Greg Watson filed in support of confirmation provides evidence of the compliance with the necessary elements for confirmation in 11 U.S.C. §1129: (Dckts. 124, 149)

**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:** Plan, Disclosure Statement, Files in this Case.

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

**Evidence:** Plan, Disclosure Statement, Files in this Case.

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

**Evidence:** Plan, Disclosure Statement, Files in this Case.

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:** Not Applicable.

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

i. 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

ii. 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:** Declaration, 2:12-13, Dckt. 124.

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:** Not Applicable

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

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

(1) has accepted the plan; or

(2) 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

- ii. (B) if section 1111(b)(2) of this title [11 U.S.C. § 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, 2:15-22, Dckt. 124. No 1111(b) elections.

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

- i. (A) such class has accepted the plan; or
- ii. (B) such class is not impaired under the plan.

**Evidence:** Not all impaired classes have accepted 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--

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

**Evidence:** Plan terms.

- ii. (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--

- (1) (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

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

**Evidence:** Plan terms.

- iii. (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--

- (1) (I) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;
  - (2) (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
  - (3) (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
- iv. (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 terms.

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:** Declaration, 2:18-19, Dckt. 124.

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, Dckt. 124.

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, 2:23, Dckt. 124.

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 U.S.C. § 1114], at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title [11 U.S.C. § 1114], at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

**Evidence:** Not applicable.

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:** Not applicable.

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

**Evidence:** Not Applicable.

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:** Declaration, 2:25, Dckt. 124.

**11 U.S.C. § 1129(b)**

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

**Evidence:** The Plan, Disclosure Statement, Files in this Case and Declarations of Greg Watson.

**Stipulation with Small Business Administration for Plan Amendment**

On August 21, 2013, the Debtor in Possession filed a Stipulation for the following modification to the proposed plan:

The monthly payment on the Class 9, general unsecured claim dividend payment shall be increased from \$500.00 a month to \$4,000.00 a month upon payment of the Class 3-8 secured claims. The \$4,000.00 a month payments shall commence with month 32 of the Plan and continue through month 60 of the Plan.

The proposed amendment is set forth in the First Amendment, Dckt. 123.

No opposition has been filed to confirmation.

The court finds that the requirements for confirmation pursuant to 11 U.S.C. § 1129(a) and (b) have been satisfied and the Plan, as amended, is confirmed.

The court confirms the Plan as amended. Counsel for the Debtor-in-Possession shall prepare a proposed order confirming the plan, which states the amendment providing for the increased payment for the Class 9 general unsecured claims for months 32 through 60 of the Plan, to which a copy of the plan is attached as an exhibit and lodge the proposed order with the court.

3. [12-36419-E-11](#) KFP-LODI, LLC

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
9-10-12 [[1](#)]

Debtor's Atty: Scott A. CoBen

Notes:

Continued from 8/29/13 to be heard in conjunction with other related matters.

[SAC-3] Motion to Value Collateral of SGB1, LLC filed 4/11/13 [Dckt 165]; Stipulation to continue hearing [~~from 9/18/13 at 10:30 a.m. to 9/18/13 at 3:00 p.m.~~] filed 8/29/13 [Dckt 301], **order pending**; Stipulation to Extend Response Dates filed 9/5/13 [Dckt 312]

4. [12-36419-E-11](#) KFP-LODI, LLC  
SAC-7 Scott A. CoBen

MOTION TO APPROVE SECOND  
AMENDED DISCLOSURE STATEMENT  
FILED BY DEBTOR  
8-9-13 [[287](#)]

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

Proper Notice NOT Provided. The Proof of Service states that the Notice of Hearing, Plan, Disclosure Statement, and supporting pleadings were served on the Office of the United States Trustee and all creditors on August 9, 2013. By the court's calculation, 40 days' notice was provided. 42 days' notice is required.

**Tentative Ruling:** The Motion to Approve the Disclosure Statement was NOT properly set for hearing on the notice required by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1).

**The court's tentative decision is to deny the Motion to Approve the Disclosure Statement.** 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:

#### **NOTICE**

In order to comply with the notice of Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1), the Disclosure Statement must be served with 42 days notice. Here, only 40 days' notice was provided. This is insufficient.

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

Case filed: September 10, 2012

Background: The debtor is a California LLC that owns and operates hotels in San Joaquin County, California. In particular, the debtor has an ownership interest in two hotels located at 16855 South Harlan Road, Lathrop, California (the "Lathrop Property") and 5045 Kinglsey Road, Stockton, California (the "Stockton Property"). The debtor's business encountered difficulties during the recession. Revenues of the Lathrop Property, which was operating under a franchise agreement with Holiday Inn, dropped by half when Holiday Inn elected not to renew the franchise agreement after 2010. The debtor's financial problems were exacerbated in August 2012 when California Bank and Trust Company, which held the first deed of trust on the Lathrop Property, sold its interest in the debtor's obligation to TerraCotta Realty Fund, LLC. TerraCotta declared a non-monetary default on the debtor's loan and attempted to collect from the debtor pursuant to the default rate of interest. This chapter 11 case ensued.

Summary of Plan:

Creditor/Class	Treatment	
Administrative Claims (unclassified)	<b>Claim Amount</b>	\$13,900 (estimated)
	<b>Impairment</b>	Unimpaired
	On the Effective Date of the Plan, Debtors will pay in full fees to the U.S. Trustee in the amount of \$3,900. Debtor's attorney's fees, estimated to be \$10,000, will be paid in full on the Effective Date of the Plan, unless a separate written agreement or court order indicate otherwise.	
Priority Tax Claim  City of Lathrop Transient Occupancy Tax	<b>Claim Amount</b>	Debtor states that County has a claim of \$14,658.26.  Creditor has filed a proof of claim in the amount of \$24,537.77, indicating that \$14,658.51 is entitled to priority under 11 U.S.C. § 507(a)(8).
	<b>Impairment</b>	Impaired
	Allowed priority claim of the County of Lathrop will be paid in equal monthly installments of \$274.94 over a period of five years from the date of the filing of the petition.  The claim will earn interest at the rate of 4\$ per annum.	
Class 1: County of San Joaquin  Unpaid property taxes on 16855 South Harlan Road, Lathrop, CA 95330	<b>Claim Amount</b>	\$17,276.49
	<b>Impairment</b>	Impaired
	The claim shall be deemed fully secured and the County shall retain its lien.  Amortized over 5 years at 4.000% interest. Monthly payment of \$324.05.	
Class 2: TerraCotta Realty Fund, LLC  First DOT on 16855 South Harlan Road, Lathrop, CA 95330	<b>Claim Amount</b>	Debtor states that creditor has a \$1,558,878 and that, to the extent that creditor claims a larger amount due, the larger amount will receive the same treatment.
	<b>Impairment</b>	Impaired

	<p>The claim shall be deemed fully secured and the creditor shall retain its lien.</p> <p>The claim shall be paid and earn interest at the non-default contract rate. The outstanding balance of the secured claim will be paid in full on or before the five (5) year anniversary of the effective date of the plan.</p> <p>Any monetary or non-monetary defaults in existence under the loan documents as of the commencement of the case shall be deemed waived from and after the Effective Date of the Plan.</p> <p>TerraCotta claims to have incurred \$80,000.00 in attorneys fees in connection with the bankruptcy and Debtor shall repay such amount to TerraCotta in sixty (60) monthly installments of \$1,333.33 per month beginning on the 10<sup>th</sup> day of the month immediately the month in which the effective date of the plan occurs and shall not accrue interest. Debtor reserves the right to object to these fees.</p>	
<p>Class 3: SGB I, LLC</p> <p>Second DOT on 16855 South Harlan Road, Lathrop, CA 95330</p>	<p><b>Claim Amount</b></p>	<p>Debtor states that creditor has a \$2,417,868.00 allowed secured claim and \$342,754.00 unsecured claim</p>
	<p><b>Impairment</b></p>	<p>Impaired</p>

SGB1's Allowed Secured Claim shall be reduced by each monthly payment of \$5,833.34 made by the Debtor to SGB 1 prior to Plan confirmation.

Effective May 1, 2013, the secured loan balance began earning interest at the rate of 4.00% per annum and shall be amortized over thirty years. On the tenth (10th) day of the month following the month in which the Effective Date of the Plan occurs, Debtor shall commence interest only payments to SGB in equal monthly installments of \$8,059.56. Such interest-only payments shall continue for one year and Debtor shall commence payments of principal and interest in the amount of \$11,543.28 per month to SGB 1 after the expiration of the initial one year period following the Effective Date of the Plan. The remaining outstanding balance of SGB 1's Class 3 Secured Claim shall be paid in full on or before the five year anniversary of the Effective Date of the Plan.

In addition to the payments of principal and interest described above, Debtor shall also make the following payments to SOB 1: (1) \$20,000.00 on the Effective Date of the Plan, (2) \$20,000.00 on May 15, 2014, (3) \$20,000.00 on October 14, 2014 and (4) \$20,000.00 on May 15, 2015. Such payments shall be first applied to any outstanding late fees, default interest and then to the principal balance of SGB1's Allowed Secured Claim.

Beginning May 1, 2013, no nonpayment penalties shall be applied to Debtor by SGB1. SGB1 claims to have incurred approximately \$35,000 in attorneys' fees in connection with Debtor's bankruptcy proceeding. Debtor shall repay such amount to SGB1 as follows: (1) \$5,000.00 shall be paid on the Effective Date of the Plan and (2) the remaining \$30,000.00 shall be paid in equal monthly installments of \$625.00 per month over the forty-eight (48) months following the Effective Date of the Plan.

Upon confirmation of the plan, the lien of SGB on the Lathrop Hotel Property shall be reduced to the amount of its allowed secured claim.

SGB1 shall retain all of its rights, claims and remedies set forth in the pre-petition loan documents, except to the extent expressly modified hereunder.

<p>Class 4: Navin Patel</p> <p>Third DOT on 16855 South Harlan Road, Lathrop, CA 95330</p>	<b>Claim Amount</b>	\$100,000
	<b>Impairment</b>	Impaired
	<p>Fully under-secured to be paid pro rata with unsecured claims.</p> <p>Upon plan confirmation, creditor's lien shall be reduced to \$0.00.</p>	
<p>Class 5: Zions First National Bank</p> <p>First DOT on 5045 Kingsley Road, Stockton, CA</p>	<b>Claim Amount</b>	\$3,899,458
	<b>Impairment</b>	Impaired
	<p>The creditor shall retain its lien.</p> <p>The terms and conditions of the note and security agreement will not be modified by the Plan. The debtor will continue to make its regular payment of \$26,679.87 per month to creditor at the non-default contract rate.</p> <p>Creditor's attorney's fees in the amount of \$25,000 will be paid in twelve monthly installments of \$2,083.33 following the Effective Date of the Plan. No interest shall accrue.</p>	
<p>Class 6: CRF</p> <p>Second DOT on 5045 Kingsley Road, Stockton, CA</p>	<b>Claim Amount</b>	\$1,958,600
	<b>Impairment</b>	Impaired
	<p>The creditor shall retain its lien.</p> <p>Regular monthly payments of principal and interest at the non-default contract rate to CRF will resume on September 10, 2013.</p> <p>Accumulated arrearage on the loan shall be payable upon maturity.</p>	
<p>Class 7: Navin Patel</p> <p>Third DOT on 5045 Kingsley Road, Stockton, CA</p>	<b>Claim Amount</b>	\$95,000
	<b>Impairment</b>	Impaired
	<p>The creditor shall retain its lien.</p> <p>The terms and conditions of the note and security agreement will not be modified by the Plan, except that payments to creditor at the contract rate of \$633 per month shall resume on June 1, 2013, and such claim shall be paid in full on the five-year anniversary of the Effective Date of the Plan.</p>	

Class 8: General Unsecured	<b>Claim Amount</b>	\$452,092.58 estimate
	<b>Impairment</b>	Impaired
	Creditors shall be paid in full on the 5 <sup>th</sup> anniversary of the effective date of the plan. Claims shall not accrue interest.	
Class 9: Equity Interests	The debtor's equity holders will retain their interest in the debtor.	

A. C. WILLIAMS FACTORS PRESENT

- Y Incidents that led to filing Chapter 11
- Y Description of available assets and their value
- Y Anticipated future of the Debtor
- Y Source of information for D/S
- Y Disclaimer
- Y Present condition of Debtor in Chapter 11
- 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:**

TerraCotta Realty Fund, LLC:

1. Because the Plan seeks to reorganize the debtor by using only the revenues and net income of the Lathrop Property and the Stockton Property, the debtor should have included actual historical financial information for each of the properties (separate from the other) for 2011 and 2013 year to date, as well as the debtor's actual performance during its chapter 11 case.
2. Each hotel is operated under a franchise and all hotel franchisors have "Property Improvement Plans" ("PIP"), Debtor has failed to inform creditors if the subject hotels have any upcoming "PIP" requirements and the costs of compliance of any "PIP."

3. Debtor operates two hotels on the Properties under two separate and distinct franchise agreements from two separate franchisors, the Disclosure Statement should provide a real description of Debtor's franchise agreements, including the date each expires, the monetary obligations of the debtor under each, and the requirements for the improvement of the hotels under each franchisor's property improvement plan. Moreover, since the debtor intends to assume these franchise agreements, the disclosure statement should state whether or not defaults exist thereunder, the "cure" amounts, if any, required to be paid on assumption, and all non-monetary defaults as well.
4. The projections provided by Debtor and attached to the Disclosure Statement (see, Exhibit "F" to Disclosure Statement) do not disclose any assumptions or the basis and information used for the preparation of the projections. The projections appear to be unsubstantiated and simply Debtor's "hope" for a better future. Debtor should describe what steps, if any, it will undertake to improve the performance of the Properties and the hotels operated thereon.
5. The projections, as they concern the Stockton Property, do not include the payment of real estate taxes.
6. The projections with respect to the Lathrop Property contain a line item for "real estate taxes" and show that real estate taxes are decreasing each year but does not provide an explanation as to why.
7. The projections do not include any payments due under the Plan to unsecured creditors or the holders of claims that will receive money/distributions on the Effective Date of the Plan.
8. The disclosure statement provides that the debtor will not receive a discharge until completion of all payments under the Plan, whereas the Plan itself provides that the debtor will receive a discharge on the Effective Date of the Plan.
9. The plan is patently unconfirmable as a matter of law.

#### BACKGROUND

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).

#### **ANALYSIS**

The Debtor has not provided sufficient information to warrant granting the motion to approve the disclosure statement. TerraCotta has objected to numerous aspects of the disclosure statement, which the Debtor has not addressed through this amended plan and disclosure statement.

Furthermore, Debtor has not provided sufficient notice of the proposed Disclosure Statement to all parties.

For the reasons stated, the court will not grant approval of the disclosure statement.

5. [12-36419](#)-E-11 KFP-LODI, LLC  
RPG-1 Scott A. CoBen

CONTINUED AMENDED MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
6-24-13 [[245](#)]

SGB1, LLC VS.

CONT. FROM 8-29-13 8-8-13, 7-25-13

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, creditors holding the 20 largest unsecured claims, and Office of the United States Trustee on June 12, 2013. By the court's calculation, 43 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). Debtor having filed an opposition, the court will address the merits of the motion at the hearing.

**The court's tentative decision is 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:

#### **PRIOR HEARINGS**

SGB1, LLC seeks relief from the automatic stay with respect to the real property commonly known as 16855 Old Harlan Road, Lathrop, California. The moving party has provided the Declaration of Timothy R. Ault to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Ault Declaration states that the Debtor has not made 9 post-petition payments, with a total of \$142,093.35 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$5,447,821.74 (including \$3,682,293.83 secured by movant's second trust deed), as stated in the Ault Declaration, while the value of the property is determined to be \$2,360,000.00, as stated in Schedules A and D filed by Debtor.

Additionally, Creditor argues that the Debtor's proposed plan is unrealistic, violative of priority rules, and that the proposed interest rate is too low. Here, Creditor objects to Debtor's plan to pay the unsecured part of the claim over 40 years without interest, and to pay the secured part of the claim over 30 years at 4.75% interest rate. Creditor argues that they will not accept such a plan and will object to

confirmation, and because no confirmable plan is proposed, the property in question is not necessary for reorganization.

**Debtor's Response**

Debtor argues that the Ault Declaration is faulty, in violation of Rule 602 of the Federal Rules of Evidence because Mr. Ault has no basis of personal knowledge for what he declares, regarding the case, the sales and assignments, the notice of default filed by Creditor itself. FN.1.

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FN.1. The Declaration states that Timothy R. Ault is "[t]he authorized representative of SGB1, LLC. I have personal knowledge of the facts set forth in this declaration and if called upon as a witness I could and would competently testify thereto." Declaration ¶ 2. Mr. Ault does not state in what capacity he is the "authorized representative" of SGB1, LLC. Possibly he could be the managing member and responsible for all operational and financial matters for Movant. Alternatively, he could be a property manager or third-party contractor who is engaged merely to deal with assisting counsel in the litigation and have no personal knowledge concerning SGB1, LLC. From the Declaration the court has no way to determine how Mr. Ault could have such knowledge and give significant credibility to his testimony concerning his "personal knowledge" factual statements.  
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Furthermore, Debtor argues that the declaration was not made under penalty of perjury. An examination of the final page of the Ault Declaration reveals that it was in fact under penalty of perjury. Dckt. 238.

Additionally, Debtor argues that the Creditor has failed to correctly file their Motion separate from the points and authorities. However, a review of the amended motion, Dckt. 245, reveals that the Creditor has provided a motion separate from the Memorandum of Points and Authorities. FN.2.

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FN.2. While the Debtor is correct that the original "motion" was a combined motion/points and authorities (a "Mothorities"), creditor filed an amended motion, Dckt. 245, on June 24, 2013, three days after filing the Mothorities. The Amended Motion clearly states the grounds upon which Movant asserts that relief is proper, unencumbered by extensive citations, quotations, legal arguments, factual arguments, evidentiary arguments, and economic arguments.  
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Finally, the Debtor argues that the Creditor's contention that the mere lack of equity is "cause," as set forth in 11 U.S.C. § 362(d)(1) is without merit. Debtor argues that while there is no equity in the subject property, lack of equity alone is not grounds for relief from stay under 11 U.S.C. § 362(d)(1).

Lastly, Debtor argues that the second element of 11 U.S.C. § 362(d)(2), whether the property is necessary for reorganization, is not met. Debtor states that the properties are necessary for their reorganization, namely operating hotel properties. Debtor states the plan and disclosure statement have been filed and set for August 8, 2013. Debtor argues that the issue is not whether any specific plan is confirmable, but

rather that the property is necessary for reorganization, and that the Debtor is able to reorganize. Debtor argues against Creditor's contentions that their plan is not confirmable, and states that it is in fact attempting to negotiate with the Creditors to reach an amicable conclusion.

### **Creditor's Reply**

Creditor confirms correspondence with Debtor, stating that it would respectfully request that both this Motion and Terra Cotta's stay motion be continued to August 8, 2013 hearing to track plan confirmation as suggested by Debtor. Creditor states that Debtor will either be able to resolve issues with Terra Cotta or seek a cramdown.

Creditor also states that Debtor sent two \$5,800 adequate protection payments which have been held, as there is no adequate protection order in place. Creditor seeks authority to cash these checks as well as any future checks as adequate protection payments.

### **Prior 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).

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).

There must be a "reasonable possibility of a successful reorganization with a reasonable time." *Id.* The debtor fails to show necessity of the property for an effective reorganization if the debtor's plan is unsupported by credible assumptions and projections that offer some basis for confidence that the plan could succeed. *In re Pegasus Agency, Inc.*, 101 F. 3d 882 (2d Cir. 1996). Courts usually require the debtor to do more than manifest unsubstantiated hopes for a successful reorganization. A debtor must do more than merely assert that it can reorganize if only given the opportunity to do so. *Sun Valley Newspapers v. Sun World Corp. (In re Sun Valley Newspapers)*, 171 B.R. 71 (B.A.P. 9th Cir. Ariz. 1994).

Here, Debtor has filed a proposed plan and a disclosure statement, which is set for hearing on August 8, 2013. Debtor has shown that meaningful negotiations have taken place since the prior motions for relief.

### **CONTINUANCES**

As negotiations were still ongoing, and the plan's confirmation was pending on hearings, the court's continued the hearing on the Motion for Relief from the Automatic Stay.

On September 13, 2013, the Parties filed a Stipulation that the parties are negotiating a resolution of the Debtor's in Possession motion to

value the SBF1, LLC secured claim, and that the time for this creditor to file an opposition to the Motion was extended to September 16, 2013. A review of the court's docket on September 17, 2013, does not reflect an opposition being filed. From this, the court infers that the parties have resolved this dispute.

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, the consent of the Movant to continue the hearing to August 8, 2013 to be conducted in conjunction with a hearing on a motion for approval of a disclosure statement in this case, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion for Relief from the Automatic Stay is xxxx.

6. [12-36419](#)-E-11 KFP-LODI, LLC  
TMG-2 Scott A. CoBen

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
6-27-13 [[249](#)]

TERRACOTTA REALTY FUND, LLC  
VS.

CONT. FROM 8-29-13 8-8-13, 7-25-13

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, creditors holding the 20 largest unsecured claims, and Office of the United States Trustee on June 27, 2013. By the court's calculation, 28 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). Debtor having filed an opposition, the court will address the merits of the motion at the hearing.

**The court's tentative decision is 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:

#### **PRIOR HEARING**

TerraCotta Realty Fund, LLC seeks relief from the automatic stay with respect to the real property commonly known as 16855 Old Harlan Road, Lathrop, California. The moving party has provided the Declaration of TingTing Zhang to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Zhang Declaration states that the Debtor has not made 2 post-petition payments, with a total of \$12,246.25 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$4,431,967.90 (including \$1,558,878.49 secured by movant's first trust deed), as stated in the Zhang Declaration, while the value of the property is determined to be \$2,360,000.00, as stated in Schedules A and D filed by Debtor.

Creditor argues that the property in question meets the requirements under 11 U.S.C. §362 (d)(2), that there is no equity in the property in question, and that the property is not necessary for reorganization, as the plan is patently faulty and "debtor has no hope of reorganizing". Dckt 252. Primarily, the Creditor's object to the interest rate paid under the

proposed plan and state that Creditors will object to confirmation of such a plan, thus stating that the plan is unconfirmable.

**Debtor's Response**

First, Debtor argues that the Creditor does in fact have adequate protection, as it is properly protected by the equity cushion between the valuation at \$2,260,00.00 and the total debt owed at \$1,781,967.00.

Debtor argues that they have engaged in meaningful negotiations with Creditors and that the confirmation of the plan is pending on hearings continued to August 8, 2013. Debtor responds that if the negotiations fall through or are not completed in a reasonable amount of time the Creditor can file another relief from stay.

**Creditor's Reply**

Creditor states that it is currently investigating two payments made to the Creditor, which Debtor states were not accounted for. Creditor requests that this Motion be continued.

**CONTINUANCES**

The court continued the hearing to track plan confirmation and to allow Creditor to investigate the two pending payments.

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, the consent of the Movant to continue the hearing to August 8, 2013 to be conducted in conjunction with a hearing on a motion for approval of a disclosure statement in this case, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is xxxx.