

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**September 26, 2019 at 11:30 a.m.**

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<b>1.</b>	<b><u>19-22566-E-11</u></b> <b><u>AF-5</u></b>  <b>1 thru 2</b>	<b>JUANITO COPERIO</b> <b>Arasto Farsad</b>	<b>CONTINUED MOTION TO APPROVE LOAN MODIFICATION 6-10-19 <a href="#">[40]</a></b>
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**Tentative Ruling:** 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on June 10, 2019. By the court's calculation, 66 days' notice was provided. 28 days' notice is required.

The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion to Approve Loan Modification is granted.</b>
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The Motion to Approve Loan Modification filed by the debtor in possession, Juanito W. Copero ("ΔIP") seeks court approval for ΔIP to make payments of \$1,617.58 to Ocwen Loan Servicing, LLC ("Creditor") pursuant to a trial loan modification.

**AUGUST 15, 2019 HEARING**

At the August 15, 2019 hearing the court approved the trial modification and continued the

hearing to allow approval of the permanent modification which Debtor's counsel reported had been approved. Civil Minutes, Dckt. 57.

## **SUPPLEMENTAL BRIEF**

On August 20, 2019, AIP filed a Supplemental Brief stating the permanent loan modification has been made, and including the following summary of the modification terms:

- a) The Debtor's current (pre modification) mortgage is \$2,052.29 per month which includes principal, interest, and escrow amounts for property taxes and insurance. The Debtor will be saving \$434.17 each month if the Court allows him to modify his mortgage with Lender.
- b) The permanent loan modification will also cure 8-9 months of past due payments, or, roughly \$20,000.00.
- c) The Property has equity in it. The Debtor only owes around \$235,000.00 (which includes the \$20,000.00 approximate arrearage) and the Property is valued at \$400,000.00.

A copy of the loan modification was attached to the Supplemental Brief as Exhibit 1. Dckt. 59 at p. 6.

## **DISCUSSION**

The Bankruptcy Code permits the obtaining of credit or incurring of debt:

(1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—

(A) the trustee is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d).

The post-petition financing here is consistent with the proposed Chapter 11 Plan in this case, reduces the monthly payment amounts, cure delinquent payments. There being no objection from parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification 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 to Approve Loan Modification filed by the debtor, Juanito W. Copero (“Debtor”) 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 granted and the court authorizes Juanito W. Copero to amend the terms of the loan with Ocwen Loan Servicing, LLC (“Creditor”), which is secured by the real property commonly known as 115 Michael Court, Vallejo, California, on such terms as stated in the Modification Agreement filed as Exhibit 1 in support of the Motion (Dckt. 59).

2. [19-22566-E-11](#) **JUANITO COPERO**  
[AF-6](#) **Arasto Farsad**

**CHAPTER 11 DISCLOSURE  
STATEMENT FILED BY  
DEBTOR JUANITO W. COPERO  
8-8-19 [52]**

**Tentative Ruling:** 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, parties requesting special notice, and Office of the United States Trustee on August 8, 2019. By the court’s calculation, 49 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b) (requiring twenty-eight days’ notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion to Approve Disclosure Statement has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion to Approve Disclosure Statement is granted.</b>
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## **REVIEW OF THE DISCLOSURE STATEMENT**

Case filed: 4/25/2019

Background:

The Debtor's business suffered after what is described as a bitter divorce in 2013 from the Debtor's ex-wife, Teresita Copero. Per the dissolution agreement between the couple, the Debtor's ex-wife was supposed to pay half of the debts owed by the couple, but, paid nothing. This resulted in the Debtor being significantly behind on taxes (the primary debt in this case) from the business, as well as other bills. Prior to the divorce, the Debtor was having a very hard time with his ex-wife which caused the couple to incur debt.

The Debtor filed a previous Chapter 13 case on June 11, 2018, under case number 18- 23639. The Debtor was able to get a plan confirmed on November 29, 2018 in that case. (A 5- year payment plan.)

However, during the prior Chapter 13, the Debtor experienced dire family issues. As a result, the Debtor fell behind on his Chapter 13 plan payments when his nephew unexpectedly passed away and the Debtor needed to fly to the Philippines to be with his family. The Debtor lost significant income as he was compelled to hire help to assist in managing his care facilities while he was out of the country.

Consequently, the Debtor was unable to complete his Chapter 13 plan. In the wake of this personal tragedy, the Debtor reviewed all of the claims filed in his Chapter 13 case after the claims' deadline had passed. The Debtor decided he would be more successful in Chapter 11 which would free him from the restrictive five-year repayment period of a Chapter 13. This would allow the Debtor to repay his debts while at the same time he would be able to continue running his care facilities.

This case was commenced with the filing of a petition under Chapter 11 on April 25, 2019. The Debtor filed the instant case to propose a reasonable payment plan that will pay off all of his secured and priority debts in full, as well as provide a reasonable dividend to unsecured general creditors under the liquidation analysis.

<b>Creditor/Class</b>	<b>Treatment</b>	
Class 1A: Mercedes Benz Financial Services LLC	<b>Claim Amount</b>	
	<b>Impairment</b>	None
	NOTE: satisfied by surrender of collateral	
Class 1B: Ocwen Loan Servicing, LLC	<b>Claim Amount</b>	
	<b>Impairment</b>	None
Class 1C: IRS	<b>Claim Amount</b>	\$123,496.79
	<b>Impairment</b>	Arrearages paid in 60 equal payments; Creditors in these class may not repossess or dispose of their collateral so long as Debtor is not in material default under the Plan

Class 1D: Ocwen Loan Servicing, LLC (current loan servicer for the beneficiary, Deutsche Bank National Trust Company, as Trustee for GSAMP Trust 2005-WMC-1)	<b>Claim Amount</b>	\$427,918.45
	<b>Impairment</b>	
	Claim paid in 360 equal payments; may not repossess or dispose of their collateral so long as Debtor is not in material default under the Plan.	
Class 1E: Ally Bank	<b>Claim Amount</b>	\$26,654.77
	<b>Impairment</b>	
	Claim paid in 60 equal payments; may not repossess or dispose of their collateral so long as Debtor is not in material default under the Plan.	
Class 2: Unsecured Claims	<b>Claim Amount</b>	\$63,809.69
	<b>Impairment</b>	Creditors will receive a pro-rata share of a fund totaling \$1,914.29, created by Debtor's payment of \$159.56 per month for a period of 12 months; creditors in this class may not take any collection action against Debtor so long as Debtor is not in material default under the Plan
Class 3a: Professional Fees	<b>Claim Amount</b>	\$15,000.00
	<b>Impairment</b>	Paid upon effective date of Plan.
Class 3b: Other Administrative Claims	<b>Claim Amount</b>	\$650.00
	<b>Impairment</b>	Paid upon effective date of Plan, except expenses incurred in the ordinary course of Debtor's business or financial affairs, which shall be paid when normally due and payable.
	<b>Claim Amount</b>	\$188,968.60

Class 3c: Tax Claims

	<b>Impairment</b>	Paid in full with interest (at the non-bankruptcy statutory interest rate) by monthly payments commencing the effective date in accordance with 11 U.S.C. § 511; tax creditors may not take any collection action against Debtor so long as Debtor is not in material default under the Plan.

#### A. C. WILLIAMS FACTORS PRESENT

- ☐ Y ☐ Incidents that led to filing Chapter 11
- ☐ Y ☐ Description of available assets and their value
- ☐ N ☐ Anticipated future of Debtor
- ☐ Y ☐ Source of information for D/S
- ☐ Y ☐ Disclaimer
- ☐ Y ☐ Present condition of Debtor in Chapter 11
- ☐ Y ☐ Listing of the scheduled claims
- ☐ Y ☐ Liquidation analysis
- ☐ N ☐ Identity of the accountant and process used
- ☐ N ☐ Future management of Debtor
- ☐ Y ☐ The Plan is attached

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

#### **OBJECTIONS**

No responsive pleadings were filed.

#### **APPLICABLE LAW**

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).

“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).

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

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. Servs., Inc.*, 39 B.R. 567 (Bank. 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. *Official Comm. of Unsecured Creditors v. Michelson*, 141 B.R. 715, 718–19 (Bankr. E.D. Cal. 1992).

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).

The court begins its analysis with the statutory requirements of 11 U.S.C. § 1125 for a disclosure statement. Solicitation of an acceptance or rejection of a plan may be made with a written disclosure statement which was approved by the court. The disclosure statement must provide "adequate information." The term "adequate information" is defined in 11 U.S.C. § 1125(a)(1) to be,

(1) "adequate information" means information of a kind, and in sufficient detail, as 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, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information;...

Determination of whether there is "adequate information" is a subjective determination made by the bankruptcy court on a case by case basis. *In re Texas Extrusion Corp.*, 844 F.2d 1142 (5th Cir. 1988), *cert. denied* 488 U.S. 926 (1988). Non-bankruptcy rules and regulations concerning disclosures do not govern the determination of whether a disclosure statement provides adequate information. 11 U.S.C. § 1125(d); *Yell Forestry Products, Inc. v. First State Bank*, 853 F.2d 582 (8th Cir. 1988).

## DISCUSSION

The Disclosure Statement is approved. The court shall issue an order approving the Disclosure Statement, which shall also set the following dates and deadlines:

- A. Juanito W. Copero, the “Plan Proponent” Debtor in Possession, shall serve the approved disclosure statement, proposed plan, notice of confirmation hearing, a copy of this order approving the disclosure statement, and ballot on or before **xxxxx, 201x**.
- B. Ballots shall be returned to counsel for the Plan Proponent on objections to confirmation, if any, filed and served on or before **xxxxx, 201x**.
- C. The Ballot Tabulation Summary, evidence in support of confirmation, and Responses to objections to confirmation, if any, shall be filed and served on or before **xxxxx, 201x**.
- D. The Confirmation Hearing shall be conducted at **11:30 a.m.** on **xxxxx, 201x**.