

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

October 26, 2017, at 11:30 a.m.

1. **16-27854-E-11** **GARY STEINGROOT**
TBG-8 **Stephan Brown**

**MOTION FOR ORDER APPROVING
ADEQUACY OF AMENDED
DISCLOSURE STATEMENT;
APPROVING FORM BALLOTS; SETTING
DEADLINES FOR BALLOTING AND
OPPOSING CONFIRMATION OF PLAN
AND SETTING CONFIRMATION
HEARING FILED BY DEBTOR
9-14-17 [[103](#)]**

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.

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 September 14, 2017. By the court's calculation, 42 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.

The Motion to Approve Disclosure Statement is granted.

October 26, 2017, at 11:30 a.m.

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REVIEW OF THE DISCLOSURE STATEMENT

Case filed: November 29, 2016

Background: Gary Steingroot (“Debtor in Possession”) is a sole proprietorship and has operating a tanning salon in Citrus Heights, California, since 1990. His income has decreased steadily in recent years, and after a property sale fell through recently, this case was filed to prevent foreclosure.

Administrative Expenses	Estimated Amount Owed	Treatment
Expenses arising in the ordinary course of business after petition date	Estimated current at confirmation	Paid in full on the effective date of the Plan, or according to terms of obligation if later
Broker’s professional fees, as approved by the court	Estimated to be 5% of the fair market value of the 1055 Hutley Way, Granite Bay, California, property sale, or \$37,500.00	Paid in full after the sale of 1055 Hutley Way, subject to court approval. Creditors may object to motion to approve interim or final fees
Debtor in Possession’s attorney’s fees, as approved by the court	Estimated to be \$35,000.00	Paid in full after the sale of 1055 Hutley Way, subject to court approval. Creditors may object to motion to approve interim or final fees
Other administrative expenses	Estimated current at confirmation	Paid in full on the effective date of the Plan, or according to terms of obligation if later, subject to court approval
Clerk’s office fees	Estimated current at confirmation	Paid in full on the effective date of the Plan
Office of the U.S. Trustee fees	Estimated current at confirmation	Paid in full on the effective date of the Plan
TOTAL	\$72,500.00	

Creditor/Class	Treatment	
Class 1: Secured Claim of SunTrust Mortgage, Inc.	Claim Amount	\$455,042.01
	Impairment	Impaired

	<p>Claim No. 1 filed on December 14, 2016. The claim was filed in the amount of \$455,042.01 and is secured by a first priority deed of trust against 1055 Hutley Way. This class is impaired due to receiving deferred payment under the proposed Plan. Post-petition interest shall accrue pursuant to the underlying loan documents filed. Proof of Claim 1, pp. 2, 48. The value of 1055 Hutley Way is estimated at \$750,000.00 per Debtor in Possession's amended schedules. Dckt. 16, p.12. Debtor in Possession anticipates selling 1055 Hutley Way within six months of the effective date of the Plan. The Class 1 secured claim will be paid through escrow upon court approval of a motion to sell 1055 Hutley Way.</p> <p>To provide adequate protection, Debtor in Possession will make monthly interest payments to the Class 1 secured claim at the contract rate of 4.5%. Payments will commence on the first of the month following the effective date of the Plan.</p>	
Class 2: Secured Claim of Capital One	Claim Amount	\$5,603.00
	Impairment	Impaired
	<p>No claim has been filed. This claim was scheduled as claim 2.1 in Debtor in Possession's amended petition. This claim is valued in the amount of \$5,603.00 secured by a judgment lien against 1055 Hutley Way. This class is impaired due to receiving deferred payment under the proposed Plan. Post-judgment interest, from before and after Debtor's petition filing date, will continue to accrue pursuant to applicable nonbankruptcy law, California Code of Civil Procedure § 685.010. The Class 2 secured claim of Capital One is junior to Class 1. Debtor in Possession anticipates selling 1055 Hutley Way within six months of the effective date of the Plan. Each holder of a Class 2 secured claim will be paid in full through escrow upon court approval of a motion to sell 1055 Hutley Way.</p>	
Class 3: General Unsecured Claim of CACH, LLC (Allowed)	Claim Amount	\$9,874.79
	Impairment	Unimpaired
	<p>No claim has been filed. This claim is scheduled as claim 4.3 in Debtor in Possession's amended Schedule E, filed January 19, 2017. Dckt. 30. Allowed Class 3 claims total \$9,874.79. Each holder of a Class 3 claim will be paid in full on the effective date of the Plan out of the funds available in Debtor in Possession's bank account.</p>	

Class 4: General Unsecured Claims (Not Allowed)	Claim Amount	
	Impairment	Unimpaired
	No claims have been filed. These claims schedules as claims 4.1, 4.2, and 4.4 through 4.11 in Debtor in Possession's amended Schedule E, filed January 19, 2017. Dckt. 30. Each holder of a Class 4 general unsecured claim is not an allowed claim under 11 U.S.C. § 502(b)(1) because these claims are time-barred pursuant to applicable non-bankruptcy law, California Code of Civil Procedure § 337.	
Class 5: Interest of the individual Debtor in property of the Estate	Claim Amount	
	Impairment	Unimpaired
	To be distributed upon successful completion of the Plan.	

A. C. WILLIAMS FACTORS PRESENT

Y Incidents that led to filing Chapter 11

Y Description of available assets and their value

 Anticipated future of Debtor

 Source of information for D/S

Y Disclaimer

Y Present condition of Debtor in Chapter 11

Y Listing of the scheduled claims

Y Liquidation analysis

 Identity of the accountant and process used

Y Future management of 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

Citizens Bank, N.A. FKA RBS Citizens (“Creditor”) filed an Objection on October 12, 2017. Dckt. 109. FN.1. Creditor argues that it holds a first deed of trust on real property commonly known as 1055 Hutley Way, Granite Bay, California. Creditor argues that the Disclosure Statement fails to provide enough information to allow creditors to make an informed decision about the Plan.

FN.1. Creditor filed the Objection with DCN ASW-1 and then filed a Notice of Errata on October 13, 2017, to identify the Objection correctly as being related to TBG-8. Dckt. 114.

Creditor argues that no information is provided about the potential property sale that was cancelled a few days before this case was filed. Creditor also argues that there is no explanation why six months passed before Debtor obtained approval to employ a real estate broker. Additionally, Creditor is concerned that Debtor in Possession has not described why two months passed between court approval to sell property and the actual listing and why the property is being listed at \$890,000.00 when the property is valued at \$750,000.00. Finally, Creditor notes that language about a current potential sale does not discuss when any escrow was opened, what the sale price is, when the sale will close, and who may be the buyer.

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 sets out various classes of claims that will be paid either with funds on hand or from proceeds from a prospective sale of property. Creditor, whose filed Claim No. 1 is provided for in Class 1, opposes approval of the Disclosure Statement on the grounds that not enough information has been provided about this case’s history and about a potential upcoming sale.

Debtor in Possession’s latest Operating Report, filed on October 14, 2017, indicates that \$59,112.00 is available as a cash balance, which is an increase in September 2017 of \$1,554. Dckt. 112. That amount is sufficient to pay Class 1 ongoing payments, Class 3, and the administrative expenses that will be due upon plan confirmation. The remaining classes and expenses will be paid from a proposed sale of property. The court has not yet been presented with a motion to approve a particular sale, but the court has approved the employment of a real estate broker. *See* Dckt. 56.

The Disclosure Statement discloses that property was listed on August 28, 2017, and that escrow has been opened for a potential buyer. No information is provided about the details of the sale, but those terms may not be finalized yet. What the Disclosure Statement anticipates clearly is that a sale should occur within six months of confirmation, and based upon what has been reported to the court, Debtor in Possession appears to be seeking that sale actively to satisfy the Plan.

The concerns raised by Creditor go to confirmation of the Plan. Whether the Plan is feasible. Whether Debtor in Possession has proposed the Plan in good faith, is prosecuting the Plan in good faith, is prosecuting the case in good faith. Those issues are alive and likely will be litigated at the confirmation hearing if the Debtor in Possession cannot reasonably resolve Creditor's concerns. One should not presume that merely because a disclosure statement is approved, the confirmation is a mere formality.

The Disclosure Statement is approved. The court shall issue an order approving the Disclosure Statement (Dckt. 102), which shall also set the following dates and deadlines:

- A. Gary Steingroot, 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 **xxxxxx, 2017**.
- B. Ballots shall be returned to counsel for the Plan Proponent on objections to confirmation, if any, filed and served on or before **xxxxxx, 2017**.
- 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 **xxxxxx, 2017**.
- D. The Confirmation Hearing shall be conducted at **x:xx p.m. on xxxxxx, 2017**.