

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Sacramento, California

November 7, 2013 at 3:00 p.m.

-
1. [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 10/24/13 to be heard in conjunction with other continued matters on the calendar.

2. [12-36419-E-11](#) KFP-LODI, LLC CONTINUED MOTION TO APPROVE
SAC-7 Scott A. CoBen SECOND AMENDED DISCLOSURE
STATEMENT FILED BY DEBTOR
8-9-13 [[287](#)]

CONT. FROM 9-18-13

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.

No 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 xxxx 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:

PRIOR HEARING

November 7, 2013 at 3:00 p.m.

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)	Claim Amount	\$13,900 (estimated)
	Impairment	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	Claim Amount	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).
	Impairment	Impaired

	<p>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.</p> <p>The claim will earn interest at the rate of 4\$ per annum.</p>	
<p>Class 1: County of San Joaquin</p> <p>Unpaid property taxes on 16855 South Harlan Road, Lathrop, CA 95330</p>	<p>Claim Amount</p>	<p>\$17,276.49</p>
	<p>Impairment</p>	<p>Impaired</p>
	<p>The claim shall be deemed fully secured and the County shall retain its lien.</p> <p>Amortized over 5 years at 4.000% interest. Monthly payment of \$324.05.</p>	
<p>Class 2:</p> <p>TerraCotta Realty Fund, LLC</p> <p>First DOT on 16855 South Harlan Road, Lathrop, CA 95330</p>	<p>Claim Amount</p>	<p>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.</p>
	<p>Impairment</p>	<p>Impaired</p>
	<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 10th 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>	

Class 3: SGB I, LLC	Claim Amount	Debtor states that creditor has a \$2,417,868.00 allowed secured claim and \$342,754.00 unsecured claim
Second DOT on 16855 South Harlan Road, Lathrop, CA 95330	Impairment	Impaired

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>	Claim Amount	\$100,000
	Impairment	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>	Claim Amount	\$3,899,458
	Impairment	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>	Claim Amount	\$1,958,600
	Impairment	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>	Claim Amount	\$95,000
	Impairment	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	Claim Amount	\$452,092.58 estimate
	Impairment	Impaired
	Creditors shall be paid in full on the 5 th 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.

SUPPLEMENTAL EXHIBITS

Debtor-in-Possession filed supplemental exhibits, including the unsigned proposed plan and the unsigned proposed disclosure statement, both which attach and incorporate the unsigned agreed upon loan modification/forbearance agreements with both TerraCotta and SBG1. Debtor-in-Possession states the agreements are being circulated for signatures.

Counsel for Debtor-in-Possession states that both TerraCotta and dSBG1 (1) consent to the treatment in the attached upon loan

modification/forbearance agreements as incorporated into the proposed plan, (2) will withdraw any objects to the disclosure statement and (3) will vote in favor of the proposed plan.

Debtor-in-Possession filed a corrected version of the exhibits on October 29, 2013. The agreement with SGB1 was an earlier version and Counsel has now provided the most current version. Further, Article IV, page 6 of the plan correctly provides that unsecured creditors shall receive no distribution under the plan; however, page one of the plan mistakenly states that "General unsecured creditors in Class 8 holding allowed claims shall be paid in full on or before the five (5) year anniversary of the Effective Date of the Plan." Debtor-in-Possession states this section of the plan shall be deleted and replaced with the following: "General unsecured creditors in Class 8 shall receive no distribution." Additionally, Debtor-in-Possession also attaches the Liquidation Analysis for the proposed Disclosure Statement, which has been corrected.

SGB1, LLC'S RESPONSE

Creditor SGB1, LLC supports the Plan, pursuant to the Forbearance and Loan Modification Agreement that Debtor-in-Possession attached to the errata. However, as a junior lienholder, it needs clarification concerning the Loan Modification and Forbearance Agreement between Debtor-in-Possession and the first lienholder, TerraCotta Realty Fund, LLC.

SGB requests the following clarifications:

- 1) The TC Agreement shall have no effect on the August 27, 2008 Three Party Lender Agreement ("Lender Agreement") entered between SGB's and TerraCotta's predecessors, which remains in full force and effect, and requires, among other things, thirty (30) days written notice of any default by Debtor and sixty (60) days written notice of any effort by TerraCotta to foreclose;
- 2) That no costs or default interest have been rolled into the TC Agreement, which would be subordinated to SGB pursuant to the Lender Agreement;
- 3) An accounting of how Debtor and TerraCotta arrived in the TC Agreement (page 2, paragraph 1) of an unpaid principal balance of \$1,524,330.31 (including the application of post-petition adequate protection payments);
- 4) A breakdown between principal and interest of the monthly payment of \$10,503.74 (TC Agreement, page 3, paragraph 1), including the current interest rate and how it is calculated.

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

A review of the docket shows that objecting Creditor TerraCotta has not withdrawn the objection or signed the proposed loan modification and forbearance agreement with Debtor-in-Possession. Creditor SGB1 appears to agree to their treatment, conditioned on clarifications of the treatment with TerraCotta. TerraCotta has not responded to the motion or withdrawn the objection to the original disclosure statement. Without clarification of the treatment of TerraCotta's claim, the disclosure statement cannot be approved.

3. [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 9-18-13, 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.

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.

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.

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.

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.

4. [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 9-18-13, 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.

5. [13-26159-E-11](#) IVAN RAVLOV

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
5-3-13 [[1](#)]

Debtor's Atty: Scott A. CoBen

Notes:

Continued from 10/2/13 to be heard in conjunction with the motion to approve disclosure statement.

Operating Reports filed: 10/11/13 [Sep]; 10/23/13 [Aug]

6. [13-26159-E-11](#) IVAN RAVLOV
SAC-24 Scott A. CoBen

MOTION TO APPROVE DISCLOSURE
STATEMENT FILED BY DEBTOR
9-23-13 [[275](#)]

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

Proper Service Provided. The Proof of Service states that the Plan, Disclosure Statement, and supporting pleadings were served on Debtor, all creditors, parties requesting special notice, and Office of the United States Trustee on September 23, 2013. By the court's calculation, 45 days' notice was provided. 42 days' notice is required.

No Tentative Ruling: The Motion to Confirm the Plan was 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 xxxx the Motion to Approve 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:

SERVICE

Local Bankruptcy Rule 2002-1 provides that notices in adversary proceedings and contested matters that are served on the Internal Revenue Service shall be mailed to three entities at three different addresses, including the Office of the United States Attorney, unless a different address is specified:

**LOCAL RULE 2002-1
Notice Requirements**

(a) Listing the United States as a Creditor; Notice to the United States. When listing an indebtedness to the United States for other than taxes and when giving notice, as required by FRBP 2002(j)(4), the debtor shall list both the U.S. Attorney and the federal agency through which the debtor became indebted. The address of the notice to the U.S. Attorney shall include, in parenthesis, the name of the federal agency as follows:

For Cases filed in the Sacramento Division:

United States Attorney
(For [insert name of agency])
501 I Street, Suite 10-100
Sacramento, CA 95814

For Cases filed in the Modesto and Fresno Divisions:

United States Attorney
(For [insert name of agency])
2500 Tulare Street, Suite 4401
Fresno, CA 93721-1318

. . .

(c) Notice to the Internal Revenue Service. In addition to addresses specified on the roster of governmental agencies maintained by the Clerk, notices in adversary proceedings and contested matters relating to the Internal Revenue Service shall be sent to all of the following addresses:

- (1) United States Department of Justice
Civil Trial Section, Western Region
Box 683, Ben Franklin Station
Washington, D.C. 20044
- (2) United States Attorney as specified in LBR 2002-1(a) above; and,
- (3) Internal Revenue Service at the addresses specified on the roster of governmental agencies maintained by the Clerk.

The proof of service lists only the following addresses as those used for service on the Internal Revenue Service:

IRS
PO BOX 7346
Philadelphia, PA 19101-7346

Internal Revenue Service
30 Watt Avenue, SA-5210
Sacramento, CA 95821-7000

A motion is a contested matter. See Fed. R. Bankr. P. 9014. The proof of service in this case indicates service was not made on all three addresses, and service was therefore inadequate.

However, on June 10, 2013, the Internal Revenue Service filed an amended proof of claim in the amount of \$0.00. The Service having affirmatively stated it has no claim, the court waives the defect in service.

MOTION

The Motion to Approve Disclosure Statement does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The motion states,

Debtor, IVAN RAVLOV, hereby move the court pursuant to 11 U.S.C. Section 1125 and Rule 3016(b) to (1) approve the attached disclosure statement; (2) fix a time for filing acceptances or rejections of the first amended plan of reorganization; and (3) fix a time for filing objections to confirmation of the first amended plan of reorganization.

Dckt. 275.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-

based standard for motions rather than the short-and-plain-statement standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities - buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

STIPULATION

Debtor-in-Possession filed a Stipulation regarding Approval of Disclosure Statement and Confirmation of Plan with Union Bank, N.A. The Stipulation provides:

1. The treatment of Union Bank set forth in Class 21 of the plan and disclosure statement shall be deleted and replaced with the following to be memorialized in the order confirming the plan: The claim of Union Bank secured by certain real property located at 6821 Barbara Lee Court, Sacramento, CA 95842 shall be paid in full pursuant to the terms of the note and deed of trust with the exception of the attorney fees and costs totaling \$19,738 which shall be paid in full without interest on a monthly basis over 60 months with a monthly payment of \$329. Payments shall commence on the tenth day of the month following confirmation of the plan. All non monetary defaults are waived.
2. Counsel for Union Bank shall sign the order confirming the plan approving it as to form and substance.
3. Union Bank shall vote in favor of the plan subject to this preconfirmation modification.

REVIEW OF DISCLOSURE STATEMENT

Case filed: May 3, 2013

Background: The debtor is a real estate broker and investor who owns five residential real properties. As a result of the decline in the housing market, Debtor filed bankruptcy to reorganize his debts.

Summary of Plan:

Creditor/Class	Treatment
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Administrative Claims (unclassified)	Claim Amount	\$20,000 (estimated)
	Impairment	Unimpaired
	Professional Fees. Each holder of an administrative expense claim allowed under § 503 of the Code will be paid in full on the effective date of this Plan, in cash, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor.	
Class 1: Priority Claims	Claim Amount	
	Impairment	Impaired
	Class 1 is unimpaired by this Plan, and each holder of a Class 1 Priority Claim will be paid in full, in cash, on the tenth day of the month following confirmation of the plan. It is not anticipated that any such claims will exist.	
Class 2: City of West Sacramento 3490 Lewiston Road, West Sacramento, CA	Claim Amount	
	Impairment	Impaired
	The secured claim shall be paid in full with interest at the rate of 4.75 percent by monthly payments of \$19 over 5 years. Payments shall commence on the tenth day of the month following confirmation of the plan.	
Class 3: Deutsche Bank National Trust Company, Trustee of the IndyMac INDX Mortgage Loan Trust 2005-AR6, Mortgage Pass-Through Certificates, Series 2005-AR6 Under the Pooling and Servicing Agreement dated March 1, 2005	Claim Amount	\$398,750 secured
	Impairment	Impaired

3490 Lewiston
Road, West
Sacramento, CA

	<p>Upon confirmation of the plan, the secured claim of Deutsche Bank National Trust Company, as Trustee of the IndyMac INDX Mortgage Loan Trust 2005-AR6, Mortgage Pass-Through Certificates, Series 2005-AR6 under the Pooling and Servicing Agreement dated March 1, 2005 shall be reduced to \$398,750 and lien on the real property located at 3490 Lewiston Road, West Sacramento, CA 95691 reduced to this same amount. The secured claim shall be paid in full with interest at the rate of 4.75 percent by monthly payments of \$2,081 over 30 years. Payments shall commence on the tenth day of the month following confirmation of the plan. The undersecured portion of this claim shall be paid as set forth in class 23.</p>	
<p>Class 4: Chase 3490 Lewiston Road, West Sacramento, CA</p>	<p>Claim Amount</p>	<p>\$0 secured</p>
	<p>Impairment</p>	<p>Impaired</p>
	<p>Upon confirmation of the plan, the secured claim of Chase shall be reduced to \$0 and its lien removed from the real property located at 3490 Lewiston Road, West Sacramento, CA 95691. The undersecured portion of this claim shall be paid as set forth in class 23.</p>	
<p>Class 5: Bank of America 3490 Lewiston Road, West Sacramento, CA</p>	<p>Claim Amount</p>	<p>\$0 secured</p>
	<p>Impairment</p>	<p>Impaired</p>
	<p>Upon confirmation of the plan, the secured claim of Bank of America shall be reduced to \$0 and its lien removed from the real property located at 3490 Lewiston Road, West Sacramento, CA 95691. The undersecured portion of this claim shall be paid as set forth in class 23.</p>	
<p>Class 6: Wells Fargo Bank First DOT on 5045 Kingsley Road, Stockton, CA</p>	<p>Claim Amount</p>	<p>\$0 secured</p>
	<p>Impairment</p>	<p>Impaired</p>
	<p>Upon confirmation of the plan, the secured claim of Wells Fargo shall be reduced to \$0 and its lien removed from the real property located at 3490 Lewiston Road, West Sacramento, CA 95691. The undersecured portion of this claim shall be paid as set forth in class 23.</p>	

<p>Class 7: Sacramento Utilities</p> <p>6035 Cheshire Way, Citrus Heights, CA</p>	Claim Amount	
	Impairment	Impaired
	<p>The secured claim shall be paid in full with interest at the rate of 4.75 percent by monthly payments of \$13 over 5 years. Debtor reserves the right to pay this debt sooner. Payments shall commence on the tenth day of the month following confirmation of the plan.</p>	
<p>Class 8: Allied Water Company</p> <p>6035 Cheshire Way, Citrus Heights, CA</p>	Claim Amount	
	Impairment	Impaired
	<p>The secured claim shall be paid in full with interest at the rate of 4.75 percent by monthly payments of \$9 over 5 years. Debtor reserves the right to pay this debt sooner. Payments shall commence on the tenth day of the month following confirmation of the plan.</p>	
<p>Class 9: Citrus Heights Water District</p> <p>6035 Cheshire Way, Citrus Heights, CA</p>	Claim Amount	
	Impairment	Impaired
	<p>The secured claim shall be paid in full with interest at the rate of 4.75 percent by monthly payments of \$2 over 5 years. Debtor reserves the right to pay this debt sooner. Payments shall commence on the tenth day of the month following confirmation of the plan.</p>	
<p>Class 10: Deutsche Bank National Trust Company, as Trustee for Argent Securities Inc., Asset- Backed Pass- Through Certificates, Series 2004</p> <p>6035 Cheshire Way, Citrus Heights, CA</p>	Claim Amount	
	Impairment	Impaired
	<p>Upon confirmation of the plan, and by stipulation with the creditor, the secured claim of Deutsche Bank National Trust Company, as Trustee for Argent Securities Inc., Asset- Backed Pass-Through Certificates, Series 2004 shall be reduced to \$182,500 and lien on the real property located at 6035 Cheshire Way, Citrus Heights, CA 95610 reduced to this same amount. The secured claim shall be paid in full with annual interest at the rate of 5.00 percent by monthly payments of \$980 over 30 years. Payments shall commence on the tenth day of the month following confirmation of the plan. The undersecured portion of this claim shall be paid as set forth in class 23.</p>	

Class 11: Deutsche Bank National Trust Company, as trustee, for Washington Mutual Mortgage Pass-Through Certificates, Series 2005- AR1	Claim Amount	
	Impairment	Impaired

7716 Belle Rose
Circle, Roseville,
CA

	<p>1. The Belle Rose Property will be valued at \$407,000.00 for the purposes of this Chapter 11 case, the Disclosure Statement, and Plan;</p> <p>2. SPS's secured claim of \$407,000.00 shall be paid over the original term of the promissory note at a fixed rate of 5% with payments amortized over a 30 year term.</p> <p>3. The maturity date with regard to the promissory note will remain December 1, 2034.</p> <p>4. Debtor's first payment under this plan treatment agreement in the amount of \$2,148.86 (principal and interest) will be December 1, 2014.</p> <p>5. Payments shall be made directly to SPS at Select Portfolio Servicing, Inc., PO Box 65450, Salt Lake City, UT 84165-0450, with reference to the last four digits of the Loan Number 5209, or as otherwise directed.</p> <p>6. Debtor is responsible for maintaining property taxes and insurance as required under the terms of the Deed of Trust. A default on taxes and /or insurance is a default under the plan terms.</p> <p>7. All other terms of the Deed of Trust and Note will remain in full force and effect.</p> <p>8. SPS has relief from the automatic stay as to the Belle Rose Property upon confirmation of Debtor's chapter 11 Plan.</p> <p>9. Debtor agrees to incorporate the above agreed terms of lien treatment into any and all future proposed Chapter 11 Plans and, if any terms in Debtor's Chapter 11 plan are conflicting with the terms of this stipulation, the stipulation terms, or modification terms in the event that the modification agreement has been executed and signed by Debtor, will control.</p> <p>10. SPS agrees to vote for Debtor's Chapter 11 Plan provided it reflects the agreed plan treatment contained in this stipulation.</p> <p>11. If this Chapter 11 bankruptcy is dismissed or converted to another chapter under title 11, SPS's first lien shall remain a valid secured lien for the full amount due under the original Promissory Note and all payments received under this agreement will be applied contractually under the original terms of the Deed of Trust and original Promissory Note, unless Debtor has signed an additional loan modification agreement permanently modify the loan.</p>	
Class 12: Chase	Claim Amount	
7716 Belle Rose Circle, Roseville, CA	Impairment	Impaired

	Upon confirmation of the plan, the secured claim of Chase shall be reduced to \$0 and its lien removed from the real property located at 7716 Belle Rose Circle, Roseville, CA 95678. The undersecured portion of this claim shall be paid as set forth in class 23.	
Class 13: Golden One Credit Union 7716 Belle Rose Circle, Roseville, CA	Claim Amount	
	Impairment	Impaired
	The claim of Golden One Credit Union shall be allowed only a secured claim in the amount of \$15,000. All rent collected on the property located at 7716 Belle Rose Circle in Roseville California from the filing date through until the \$15,000 is paid, less expenses approved by the court, shall be immediately turned over to Golden One Credit Union which shall be credited against the secured claim of Golden One Credit Union which shall not bear interest. In the event of default, Golden One Credit Union shall be entitled to judgment against Debtor for the unpaid balance of the entire claim. In the event of default the automatic stay shall terminate immediately and Golden One Credit Union shall be entitled to collect the entire unpaid balance of the claim including post petition fees and costs pursuant to state law which shall be nondischargable. Golden One Credit Union shall vote for this plan or any future plan that contains the above treatment.	
Class 14: Sacramento County Utilities 7513 Johanne Court, Citrus Heights, CA	Claim Amount	
	Impairment	Impaired
	The secured claim shall be paid in full with interest at the rate of 4.75 percent by monthly payments of \$57 over 5 years. Debtor reserves the right to pay this debt sooner. Payments shall commence on the tenth day of the month following confirmation of the plan.	
Class 15: Allied Water Company 7513 Johanne Court, Citrus Heights, CA	Claim Amount	
	Impairment	Impaired
	The secured claim shall be paid in full with interest at the rate of 4.75 percent by monthly payments of \$9 over 5 years. Debtor reserves the right to pay this debt sooner. Payments shall commence on the tenth day of the month following confirmation of the plan.	

Class 16: Citrus Heights Water District 7513 Johanne Court, Citrus Heights, CA	Claim Amount	
	Impairment	Impaired
	The secured claim shall be paid in full with interest at the rate of 4.75 percent by monthly payments of \$3 over 5 years. Payments shall commence on the tenth day of the month following confirmation of the plan.	
Class 17: Wells Fargo Bank, N.A., as Trustee for Wamu Mortgage Pass- Through Certificates Series 2005- PR1 Trust	Claim Amount	
	Impairment	Impaired

7513 Johanne
Court, Citrus
Heights, CA

(1) Wells Fargo shall have a secured claim in the amount of \$185,000.00 (the "Secured Claim") amortized over thirty (30) years at 5.50% interest per annum.

(2) Wells Fargo shall have an unsecured claim, plus Wells Fargo's attorneys' fees and costs (the "Unsecured Claim"). Wells Fargo shall receive, in full and final satisfaction of its Unsecured Claim, its pro rata share of the dividend available to general unsecured creditors, which shall be not less than the Debtor's projected disposable income (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, whichever is longer. Wells Fargo's lien related to its Unsecured Claim shall only be avoided if: (1) Debtor's Plan is confirmed; (2) Debtor substantially consummates his Plan; and (3) the court enters a final decree. In the event Debtor proceeds with a post-confirmation sale or refinance of the Property, Wells Fargo shall not be required to release its lien until the Debtor has paid Wells Fargo's Secured and Unsecured Claims in accordance with this Stipulation, substantially consummates his Plan, and the court enters a final decree. (3) Debtor shall tender regular monthly principal and interest payments in the sum of \$1,050.41 to Wells Fargo for the Secured Claim commencing September 1, 2013, and continuing on the first day of each month thereafter until all such outstanding amounts under the Secured Claim are paid in full. (4) In addition to principal and interest payments, Debtor shall tender monthly escrow payments to Wells Fargo for real property tax advances and real property hazard insurance advances for the Property. This amount is subject to change pursuant to the terms of the Note and Deed of Trust. (5) Except as otherwise expressly provided herein, all remaining terms of the Note and Deed of Trust shall govern the treatment of Wells Fargo's Secured Claim. (6) In the event of any future default on any of the above-described provisions, inclusive of this Stipulation, Wells Fargo shall provide written notice via first class mail to Debtor at P.O. Box 163778, Sacramento, CA 95816 and Debtor's attorney of record, Scott CoBen at 1214 F Street, Sacramento, CA 95814, indicating the nature of default. If Debtor fails to cure the default with certified funds after passage of thirty (30) calendar days from the date said written notice is placed in the mail, then Wells Fargo shall file a Motion for Relief and Declaration of Default seeking termination of the automatic stay. (7) The acceptance by Wells Fargo of a late or partial payment shall not act as a waiver of Wells Fargo's right to proceed hereunder. (8) In the event that Wells Fargo is granted relief

(9) In the event the Debtor defaults under this Stipulation and Wells Fargo forwards a 30-day letter to Debtor, he shall be required to tender \$100.00 for each default letter submitted in order to cure the default. (10) At the request of Wells Fargo, the Debtor shall execute such documents and instruments as are necessary to reflect the Debtor as the borrower of the Secured Claim, and to modify the terms of the obligation to conform with the provisions of the this Stipulation. (11) The terms of this Stipulation are contingent upon the substantial consummation of the Debtor's confirmed Plan and the entry of a final decree. The terms of this Stipulation may not be modified, altered, or changed by the Plan, any confirmation order thereon, any subsequently filed Amended Chapter 11 Plan of Reorganization and confirmation order thereon without the express written consent of the Wells Fargo. The terms of this Stipulation shall be incorporated into the Plan and/or any subsequently filed Amended Chapter 11 Plan of Reorganization. In the event of a discrepancy between the terms of the Debtor's Plan and this Stipulation, the provisions of this Stipulation shall control. (12) The Debtor shall file an amended Chapter 11 Plan that incorporates the terms of this Stipulation and attach a copy of this Stipulation as an exhibit to the Amended Plan. The Debtor's failure to comply with this provision shall constitute a default under the terms of the Stipulation. (13) In the event the Debtor's case is dismissed or converted to any other chapter under Title 11 of the United States Bankruptcy Code, Wells Fargo shall retain its lien in the full amount due under the Note. (14) Wells Fargo must consent to any sale of the Property prior to the substantial consummation of the Debtor's confirmed Chapter 11 Plan. In the event the Debtor sells the Property or seeks to prepay Wells Fargo's Secured Claim prior to the substantial consummation of the Debtor's confirmed Chapter 11 Plan, Wells Fargo shall retain its lien in the full amount due under the Note. (15) In the event the Debtor asserts that Wells Fargo has failed to properly update its internal system to comply with the terms of this Stipulation within a reasonable period of time after an order is entered confirming the Debtor's Chapter 11 Plan of Reorganization, which shall be no less than ninety (90) days, the Debtor shall be required to provide written notice of the alleged lack of compliance to Wells Fargo and Wells Fargo's counsel of record, Pite Duncan, indicting the nature of the alleged lack of compliance. If Wells Fargo fails to either remedy the alleged lack of compliance and/or provide an explanation refuting the Debtor's allegation after the passage of ninety (90)

	<p>bankruptcy court seeking Wells Fargo's compliance. However, provided Wells Fargo has in good faith sought to remedy Debtor's grievance during the Meet and Confer Period, Debtor shall not request an award of his/her attorneys' fees and costs nor sanctions as a result of filing said motion.</p>	
<p>Class 18: Sacramento County Utilities</p> <p>6821 Barbara Lee Court, Sacramento, CA</p>	Claim Amount	
	Impairment	Impaired
	<p>The secured claim shall be paid in full with interest at the rate of 4.75 percent by monthly payments of \$30 over 5 years. Debtor reserves the right to pay this debt sooner. Payments shall commence on the tenth day of the month following confirmation of the plan.</p>	
<p>Class 19: Allied Water Company</p> <p>6821 Barbara Lee Court, Sacramento, CA</p>	Claim Amount	
	Impairment	Impaired
	<p>The secured claim shall be paid in full with interest at the rate of 4.75 percent by monthly payments of \$9 over 5 years. Debtor reserves the right to pay this debt sooner. Payments shall commence on the tenth day of the month following confirmation of the plan.</p>	
<p>Class 20: California American Water</p> <p>6821 Barbara Lee Court, Sacramento, CA</p>	Claim Amount	
	Impairment	Impaired
	<p>The secured claim shall be paid in full with interest at the rate of 4.75 percent by monthly payments of \$3 over 5 years. Payments shall commence on the tenth day of the month following confirmation of the plan.</p>	
<p>Class 21: Union Bank</p> <p>6821 Barbara Lee Court, Sacramento, CA</p>	Claim Amount	
	Impairment	Impaired
	<p>The claim of Union Bank secured by certain real property located at 6821 Barbara Lee Court, Sacramento, CA 95842 shall be paid in full pursuant to the terms of the note and deed of trust with the exception of any reasonable attorney fees which shall be paid in full without interest on a monthly basis over 60 months. Payments shall commence on the tenth day of the month following confirmation of the plan. All non monetary defaults are waived. This creditor shall retain its lien. Debtor reserves the right to object to the attorney fees.</p>	

Class 22: U.S. Bank National Association, as trustee for certificate holders of the LXS 2006-2N Trust Fund 820 Wedge Wood Court, West Sacramento, CA	Claim Amount	
	Impairment	Impaired
	The claim of U.S. Bank National Association, as trustee for certificate holders of the LXS 2006-2N Trust Fund secured by certain real property located at 820 Wedge Wood Court, West Sacramento, CA 95605 shall be deemed fully satisfied by the surrender of the property. This creditor shall retain its lien. Upon confirmation of the plan, the automatic stay shall be vacated for this creditor for all purposes so that it can exercise all of its rights under nonbankruptcy law to foreclose and seek possession of the property. Provided the plan contains the above language, U.S. Bank National Association, as trustee for certificate holders of the LXS 2006-2N Trust Fund shall vote in favor of the plan.	
Class 23: General Unsecured	Claim Amount	
	Impairment	Impaired
	All unsecured creditors and the undersecured portions of secured claims shall be paid \$200 per month for 60 months to be distributed on a pro rata basis. Debtor reserves the right to pay this Class sooner. Payments shall commence on the tenth day of the month following confirmation of the plan.	
Class 24: Equity Interests	Debtor shall retain his interests in property of the estate.	

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
- N 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

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).

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).

Based on the foregoing procedural deficiencies, the motion is denied without prejudice.

Additionally, the Stipulation with Union Bank states that the proposed amended plan term will be set forth in the order confirming the plan. It appears that the Debtor in Possession and Union Bank are not intending to disclose this plan treatment to other creditors until after the fact.

The Disclosure Statement now before the court does not exactly state the terms as in the Stipulation, but the court infers from the Stipulation

that the terms are more advantageous to the Debtor in Possession (a portion of the claim being paid without interest).