

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

December 7, 2016, at 3:00 p.m.

1.	16-20852-E-11	MATHIOPOULOS 3M FAMILY LIMITED PARTNERSHIP Luke Hendrix	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 2-16-16 [1]
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Debtor's Atty: J. Luke Hendrix

Notes:

Continued from 11/16/16 to be heard in conjunction with the hearing on the approval of the disclosure statement.

2. [16-20852-E-11](#) **MATHIOPOULOS 3M FAMILY** **APPROVAL OF DISCLOSURE**
DNL-7 **LIMITED PARTNERSHIP** **STATEMENT FILED BY DEBTOR**
 Luke Hendrix **11-9-16 [138]**

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.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, parties requesting special notice, and Office of the United States Trustee on November 10, 2016. By the court's calculation, 27 days' notice was provided. 28 days' notice is required. Federal Rule of Bankruptcy Procedure 2002(b) (requiring twenty-eight days' notice).

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.

<p>The Motion to Approve Disclosure Statement is denied without prejudice.</p>

INSUFFICIENT NOTICE PROVIDED

Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1) require twenty-eight days' notice for this Motion. Twenty-seven days' notice was provided. Accordingly, the Motion is denied without prejudice.

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

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

The Motion for Approval of the Disclosure Statement filed by the Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

**THE COURT HAS PREPARED THE FOLLOWING
ALTERNATIVE RULING IF MOVANT REQUESTS
THAT THE COURT SHORTEN THE NOTICE PERIOD**

REVIEW OF THE DISCLOSURE STATEMENT

Case filed: February 16, 2016

Background: Mathiopoulos 3M Family Limited Partnership (“Debtor in Possession”) business consists of managing commercial real estate property in Penryn, California. The real estate property consists of a shopping and business center of 30,700 square feet that Debtor in Possession rents out to commercial tenants.

Creditor/Class	Treatment	
Administrative Expenses for Professional Fees and Expenses:	Claim Amount	\$40,000.00 to Desmond, Nolan, Livaich & Cunningham \$1,500.00 to Bacheki, Crom & Co., LLP
	Impairment	
	<p>\$40,000 estimated to be due to the Debtor in Possession’s bankruptcy counsel, Desmond, Nolan, Livaich & Cunningham, less a retainer of approximately \$10,000.</p> <p>\$1,500 due to Debtor in Possession’s accountant, Bacheki, Crom & Co., LLP</p> <p>Paid in full on Effective Date of the Plan, or according to separate agreement, or according to court order if such fees and expenses have not been approved by the court on the Effective Date</p>	
Priority Tax Claim for IRS and FTB	Claim Amount	\$6,040.84 to IRS \$1,600.00 to FTB
	Impairment	

	<p>IRS filed Proof of Claim 2-2 in the amount of \$6,040.84, with \$3,038.56 identified as priority taxes and the balance (\$3,002.28) identified as general unsecured taxes.</p> <p>FTB filed Proof of Claim 1 in the amount of \$1,600.00, all identified as priority taxes.</p> <p>Claim will be paid in full in regular monthly payments over a period of no more than five years from the petition date, and otherwise in accordance with 11 U.S.C. § 1129(a)(9)(C).</p> <p>Debtor shall make equal monthly payments beginning the first date of the month of the first calendar quarter post-confirmation at the statutory rate of interest until paid in full.</p>	
<p>Class 2: Wells Fargo Bank, N.A.</p> <p>Claim Secured by Penryn Property</p>	<p>Claim Amount</p>	<p>\$2,880,749.65</p>
	<p>Impairment</p>	<p>Impaired</p>

	<p>Claim shall be allowed in the amount of \$2,880,749.65.</p> <p>Interest shall accrue on the claim at the fixed rate of 5.0%, starting on the due date of the first payment under the Plan.</p> <p>Payments shall be made on a thirty-year amortization schedule, with the payments due on the fifteenth day of each month, starting in the month after the Effective Date of the Plan.</p> <p>The total amount of the monthly payment under the Plan shall be \$15,464.49.</p> <p>In addition to paying the \$15,464.49 as the first monthly payment, the Debtor must along with the first monthly payment pay any interest that has accrued post-petition under the loan documents that has not been paid.</p> <p>All amounts owing on the claim will become due and payable on February 16, 2021.</p> <p>There will be no prepayment penalties or fees.</p> <p>The loan documents underlying the claim will remain enforceable except as modified under the Plan.</p> <p>Any default under the loan documents, as modified by the Plan, other than a default caused by the bankruptcy filing, will also be a default under the Plan.</p> <p>Confirmation of the Plan will not impair or affect Wells Fargo's security interest against the Penryn Property.</p> <p>Notwithstanding those remedies provided in Article X of the Plan, should the Debtor fail to timely make any payment required to Wells Fargo under the Plan or otherwise default, after written notice of default by U.S. Mail to the Debtor at 7945 King Road, Loomis, CA 95650, and the Debtor's counsel, Desmond, Nolan, Livaich & Cunningham, at 1830 15th Street, Sacramento, CA 95811, or any substitute address provided by the Debtor to Wells Fargo in writing, and after the Debtor's subsequent failure to cure the default within fourteen calendar days after the notice is mailed, Wells Fargo shall have relief from the automatic stay, without further notice or hearing, to exercise all of its rights and remedies under its loan documents, security interest, and applicable state law.</p>
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<p>Class 2: Wells Fargo, continued</p>	<p>In the event the Debtor defaults for a third time, Wells Fargo can immediately exercise all of its rights and remedies under its loan documents, security interest, and applicable state law without further notice to the Debtor.</p> <p>Wells Fargo shall be granted in rem relief from the automatic stay as to the Penryn Property, which will be binding in this bankruptcy case, including if the case is closed and reopened, and in any other bankruptcy case.</p> <p>A recordable in rem order, in the form attached hereto as Exhibit A, will be entered at the same time as the Confirmation Order.</p> <p>Upon the Effective Date of the Plan, the Debtor releases and discharges Wells Fargo, and its respective agents, directors, shareholders, principals, predecessors, successors, assigns, parent and subsidiary entities and affiliated entities, from any and all actions, causes of action, obligations, costs, expenses, attorney fees, damages, losses, claims, debts, liabilities and demands of whatsoever character, nature and kind, known or unknown, suspect or unsuspected.</p> <p>In furtherance of this intention, upon the Effective Date of the Plan, the Debtor expressly waives any and all rights and benefits conferred upon it by the provisions of Section 1542 of the California Civil Code.</p> <p>The Debtor assumes the risk of discovery or understanding of any matter, fact, or law which if known or understood would in any respect have affected the releases herein.</p>	
<p>Class 3: Placer County Tax Collector</p> <p>Claim Secured by Penryn Property</p>	<p>Claim Amount</p>	<p>\$47,557.00</p>
	<p>Impairment</p>	<p>Impaired</p>

	<p>The portion of the Class 3 claimant's secured claim that is on account of unpaid pre-petition property taxes, interest, and penalties for 2009 and 2012 (\$47,557.00), shall be paid in full no later than five years from the first month after the Effective Date of the Plan.</p> <p>Claimant shall be paid amortized monthly payments of at least \$1,162.00, beginning on the twenty-fifth day of the first month after the Effective Date of the Plan.</p> <p>The claim shall accrue and be paid interest post-confirmation at the rate provided by applicable non-bankruptcy law, except as may be agreed otherwise, until paid in full.</p> <p>The claimant will retain its lien against the Penryn Property.</p> <p>The Debtor reserves the right to pay the claim in full sooner than five years from the first month after the Effective Date of the Plan if it is feasible for the Debtor to do so.</p> <p>The Debtor disputes that the portion of the claimant's claim that is on account of property taxes for 2016 is payable under this plan as a pre-petition claim.</p> <p>The Debtor will, however, pay the 2016 property taxes in full as they come due, along with all other property taxes that come due after the Confirmation Order.</p> <p>The portion of the claimant's secured claim that is on account of 2015 unpaid amounts due to South Placer Municipal Utility District ("SPMUD") in the amount of \$6,674.98, which is included as part of Placer County's Proof of Claim No. 5, will be paid to SPMUD on account of its Class 4 claim and as provided below.</p>	
<p>Class 4: South Placer Municipal Utility District ("SPMUD")</p> <p>Claim Secured by Penryn Property</p>	<p>Claim Amount</p>	<p>\$6,674.98</p>
	<p>Impairment</p>	<p>Impaired</p>

	<p>The Class 4 claim shall be allowed in the amount of \$6,674.98, on account of 2015 unpaid amounts due to SPMUD.</p> <p>The claim shall be paid in full no later than five years from the first month after the Effective Date of the Plan.</p> <p>Claimant shall be paid amortized monthly payments, beginning on the twenty-fifth day of the first month after the Effective Date of the Plan.</p> <p>The claim shall accrue and be paid interest post-confirmation at the rate provided by applicable non-bankruptcy law, except as may be agreed otherwise, until paid in full.</p> <p>The claimant will retain its lien against the Penryn Property.</p> <p>The Debtor reserves the right to pay the claim in full sooner than five years from the first month after the Effective Date of the Plan if it is feasible for the Debtor to do so.</p>
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<p>Class 5: General Unsecured Claims</p> <p>This class includes all of the allowed claims of general unsecured creditors, any allowed secured claim that as a result of a valuation of the secured claimant's collateral the claim is unsecured in whole or in part pursuant to the terms of this Plan, and allowed claims that result from rejection of a lease or executory contract, estimated at \$12,765.00, and more particularly described below:</p> <p>BiRite Foodservice (\$1,185.26)</p> <p>Stanley Klemeston Engineering (\$6,500.00)</p> <p>Recology Auburn Placer (\$1,090.20)</p> <p>Placer County Water Agency (\$987.09)</p> <p>Internal Revenue Service (\$3,002.28)</p>	<p>Claim Amount</p>	
	<p>Impairment</p>	<p>Impaired</p>

	<p>The Debtor shall make payments as follows:</p> <p>Allowed Class 5 claims shall be paid up to 100% of their claims over a period of as much as sixty months following the Effective Date of the Plan.</p> <p>Interest shall accrue on the claim at the fixed rate of 4.0% per annum, starting on the due date of the first payment under the Plan.</p> <p>The total return on Class 5 allowed claims will depend on the total amount of allowed Class 5 claims.</p> <p>Each allowed Class 5 creditor will receive a pro rata portion of \$500.00 each month.</p> <p>Payments will be made on a monthly basis, beginning on the twenty-fifth day of the first month after the Effective Date of the Plan and continuing until payments are complete.</p> <p>Based on the estimated amount of Class 5 claims, full payment is expected within twenty-eight months from the Effective Date of the Plan.</p>	
<p>Class 6: This class includes the general unsecured claim of Ron Texeira and Mary Arbegast, dba Anytime Fitness of Penryn ("Anytime Fitness"), Proof of Claim No. 4 in the amount of \$32,000.</p>	Claim Amount	Disputed
	Impairment	Impaired

	<p>The Debtor disputes the claim of Anytime Fitness in its entirety, and a determination of the allowed amount of this claim, if any, is contingent on the outcome of litigation or settlement.</p> <p>The claimant shall be paid the amount allowed by the Court, if any, after adjudication of the claim or Court approval of a settlement of the claim under Federal Rule of Bankruptcy Procedure 9019.</p> <p>Any allowed Class 6 claim shall be included in the pro rata payments to Class 5 creditors and paid in accordance with the payment provisions for Class 5 claimants, or pursuant to the terms of a settlement approved by the Court.</p> <p>Subject to Bankruptcy Court approval, the Debtor has a signed settlement agreement with Anytime Fitness resolving its claim.</p> <p>The Debtor will be seeking court approval of the settlement.</p> <p>Under the settlement, 3M shall pay Anytime Fitness \$12,200 in full satisfaction of any claims asserted by Anytime Fitness, payable by way of rent deductions under Anytime Fitness's lease with the Debtor for twelve consecutive months such that beginning March 2017, Anytime Fitness shall withhold \$1,000 each month from the amount otherwise due to 3M under the lease, continuing each month thereafter through February 2018.</p>	
Class 7: Subordinated General Unsecured Claims	Claim Amount	\$50,000.00
	Impairment	Impaired
	<p>Claimants shall receive no payments through this Plan until such time as all other allowed claims are paid all amounts due under the Plan, at which time the Debtor shall pay all Class 5 claimants on terms then agreed upon between the Debtor and the respective claimants.</p>	

Class 8: Debtor's Equity Security Holders Mathiopoulos Family Trust (general partner); Alexander Mathiopoulos (limited partner); Sotirios Mathiopoulos (limited partner); and Dimitri Mathiopoulos Irrevocable Special Needs Trust for Gifting (limited partner)	Claim Amount	
	Impairment	Unimpaired
	Class 8 claimants are unimpaired and shall retain all interests in the Debtor notwithstanding confirmation of the Plan and/or the Debtor's discharge, but shall receive no distribution on their respective equity interests except after full payment of all Class 5, 6, and 7 claims.	

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

Y Listing of the scheduled claims

Y Liquidation analysis

Y&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).

OBJECTIONS:

No objections filed.

DISCUSSION:

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. Services, 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. *In re 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).

No parties in interest have asserted that the proposed Disclosure Statement is inadequate. The Disclosure Statement provides sufficient adequate information for creditors to determine how to vote their respective claims in this case. The Debtor in Possession provides not only conclusions drawn, but the underlying facts and information from which financial and business conclusions are drawn. Creditors can make their own determinations or ascertain what additional special information they may require.

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

- A. The [name of plan proponent], the “Plan Proponent,” 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, 2017**.
- B. Ballots shall be returned to counsel for the Plan Proponent on objections to confirmation, if any, filed and served on or before **xxxxx, 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 **xxxxx, 2017**.
- D. The Confirmation Hearing shall be conducted at **3:xx** p.m. on **xxxxx, 2017**.