

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

January 25, 2018, at 11:30 a.m.

1. **17-25576-E-11** **KEVIN KENNEDY**
MRL-4 **Mikalah Liviakis**

**APPROVAL OF DISCLOSURE
STATEMENT FILED BY DEBTOR
11-21-17 [\[45\]](#)**

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 Debtor in Possession, Debtor in Possession's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 22, 2017. By the court's calculation, 64 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.

REVIEW OF THE DISCLOSURE STATEMENT

Case filed: August 23, 2017

Background: This bankruptcy case was caused by the culmination of several events. By the end of 2011, Debtor in Possession's spouse lost her job, and the family lost that income to pay debts, and since 2010, Debtor in Possession has changed jobs three times, for less income. During the past decade, Debtor in

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Possession and his spouse were also divorced, which caused a loss of their home, and Debtor in Possession incurred significant tax debt as well. Debtor in Possession has not been able to lower the accrual of interest on student loan payments, and he has provided financial assistance to his daughters.

ADMINISTRATIVE CLAIMS

CLAIMANT	IMPAIRMENT	TREATMENT	LIQUIDATION ANALYSIS
U.S. Trustee (\$1,000.00)	Unimpaired	Under the Plan, past due U.S. Trustee fees imposed under 28 U.S.C. § 1930(a)(6) shall be paid in full on the effective date of the Plan. After the effective date of the Plan, Debtor shall timely file quarterly reports in the form prescribed by the U.S. Trustee; such reports shall be filed within thirty days following the end of each calendar quarter (including any fraction thereof) until the case has been converted, dismissed, or closed by entry of a final decree. Debtor shall pay in full when due the U.S. Trustee fees imposed for each quarter (including any fraction thereof) until this Chapter 11 case is converted, dismissed, or closed by entry of a final decree.	In a liquidation scheme, this claimant would likely receive nothing. Under the proposed Plan, Debtor will pay the U.S. Trustee fees in full. Therefore, under this Plan, the U.S. Trustee is likely to receive at least the same, if not a greater benefit than under liquidation.

Mikalah Liviakis (\$11,000.00)	Unimpaired	Under the Plan, Administrative Expenses shall be paid in full on the effective date of the Plan (subject to court approval of the fees). Alternatively, Attorney may agree to accept all or part of the payment over time.	<p>In a liquidation scheme, this claimant would likely receive nothing.</p> <p>Under the Proposed Plan, Debtor will pay attorney's fees in full.</p> <p>Therefore, under the Plan, the attorney is likely to receive at least the same, if not a greater benefit.</p>
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PRIORITY TAX CLAIMS

CLAIMANT	IMPAIRMENT	TREATMENT	LIQUIDATION ANALYSIS
Internal Revenue Service (\$10,000.00)	Impaired	Debtor shall pay to IRS \$1,250 per month during months 30–37 of the Plan, or until this priority claim is paid in full. The claim shall accrue interest at the statutory rate (approximately 4%) until paid in full.	<p>In a liquidation scheme, this claimant would likely receive nothing.</p> <p>Under the Plan, Debtor will pay the claim in full.</p> <p>Therefore, under the Plan, this claimant is likely to receive at least the same benefit as would be received through liquidation.</p>

Franchise Tax Board (\$5,000.00)	Impaired	Debtor shall pay to FTB \$625 per month during months 30–37 of the Plan, or until this priority claim is paid in full. The claim shall accrue interest at the statutory rate (approximately 4%) until paid in full.	<p>In a liquidation scheme, this claimant would likely receive nothing.</p> <p>Under the Plan, Debtor will pay the claim in full.</p> <p>Therefore, under the Plan, this claimant is likely to receive at least the same benefit as would be received through liquidation.</p>
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UNSECURED CLAIMS

Creditor/Class	Treatment	
Class 0: Stacey MacDonald This class includes all of Debtor's property settlement obligations due pursuant to Debtor's Divorce.	Claim Amount	\$53,278.50
	Impairment	Impaired
	Debtor shall pay \$1,875 per month during months 1–29 of the Plan, or until this claim is paid in full, but payments shall not exceed the full claim amount. Interest rate: 0.00%	
Class 1: General Unsecured Claims	Claim Amount	\$440,000.00
	Impairment	Impaired

	<p>Debtor shall make payments as follows:</p> <p>Each qualifying Class 1 Creditor will receive a pro rata portion of \$5,625 at the end of every three-month period during months 38–58 of the Plan, and \$3,750 at the end of every two-month period during months 59–60 of the Plan. Payments will be made as follows:</p> <p>\$5,625 by the end of month 40; \$5,625 by the end of month 43; \$5,625 by the end of month 46; \$5,625 by the end of month 49; \$5,625 by the end of month 52; \$5,625 by the end of month 55; \$5,625 by the end of month 58; \$3,750 by the end of month 60.</p> <p>Interest rate: 0.00% Total payments : \$43,125.00</p> <p>Payments to begin on last day of the month, during month 36.</p>	
Class 2: The interests of Debtor (as an individual Debtor in the property of the estate).	Claim Amount	
	Impairment	Unimpaired
	Debtor shall retain all property of the estate and any other property to which Debtor had a right to prior to filing bankruptcy and to which Debtor may obtain rights to receive in the future.	

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 Debtor

Y Source of information for D/S

Y Disclaimer

Y Present condition of Debtor in Chapter 11

Y Listing of the scheduled claims

Y Liquidation analysis

N Identity of the accountant and process used

N Future management of Debtor

Y The Plan is attached

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

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

No parties in interest have objected to this Disclosure Statement, and Debtor in Possession has satisfied the *A.C. Williams* factors with necessary information and proposal of a confirmable plan. The Disclosure Statement sets out various classes of claim that will be paid with funds from future net disposable income. The latest Operating Report (filed on January 15, 2018) indicates that \$6,903.00 is available as a cash balance. Dckt. 52.

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

- A. Kevin Kennedy, the “Plan Proponent” Debtor in Possession, shall serve the approved disclosure statement, proposed plan, notice of confirmation hearing, a copy of this order approving the disclosure statement, and ballot on or before **xxxxx, 2018**.
- B. Ballots shall be returned to counsel for the Plan Proponent on objections to confirmation, if any, filed and served on or before **xxxxx, 2018**.
- 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, 2018**.
- D. The Confirmation Hearing shall be conducted at **11:30 a.m.** on **xxxxx, 2018**.