

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

February 13, 2025 at 11:30 a.m.

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1. <a href="#">24-24493</a> -E-11	TOWN & COUNTRY WEST LLC	MOTION TO APPROVE STIPULATIONS
	Arasto Farsad	FOR ADEQUATE PROTECTION
Items 1 thru 4		1-21-25 <a href="#">[68]</a>

**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.

**Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, creditors, and Office of the United States Trustee on January 21, 2025. By the court’s calculation, 23 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days’ notice).

The Motion for Approval of Stipulation was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

**The Motion for Approval of Stipulation Between Qualfax, Inc. C/o RTI Properties, Inc. (“Junior Lienholder”), Private Mortgage Fund, LLC (“Senior Lienholder”), Town & Country West LLC (“West Debtor”) and Town & Country Event Center LLC (“Center Debtor”) is denied.**

Qualfax, Inc. C/o RTI Properties, Inc. (“Junior Lienholder”) moves this court for authorization to enter into two separate Stipulations for adequate protection. Stips., Dockets 51, 53. The Stipulations are

between Junior Lienholder, Private Mortgage Fund, LLC (“Senior Lienholder”), Town & Country West LLC (“West Debtor”) and Town & Country Event Center LLC (“Center Debtor”).

The Motion provides a summary of the terms of the Stipulations. The Stipulations are not filed with the Motion, but the court and anyone reading the Motion are told to go back and look at the Stipulations filed in November 2024 (Dckts. 51, 52). Copies of the actual stipulations have not been filed and have been withheld from the court and other parties in interest.

Though the Movant Junior Lien Holder is represented by very experienced creditor counsel, with attorneys who regularly appear in the Eastern District of California, counsel for Junior Lienholder did not assign a Docket Control Number, as required by the Local Bankruptcy Rules, and the Motion somewhat disappears on the Docket and cannot be easily traced.

No evidence is provided in support of the Motion. No declarations from the fiduciary Debtor in Possession representatives or from Junior Lienholder or Senior Lienholder are on file. Basically, the fiduciary Debtor in Possession and Movant Junior Lien Holder have dictated the terms (which they chose to disclose) from the Stipulations and direct the court to enter an order approving the Stipulations.

From the summary of the terms of the Stipulation provided by Movant Junior Lienholder, the court has concerns, including the following:

A. The Senior Holder’s claim is determined to be (\$13,359,014.83), and is secured by First Deeds of Trust against the Marconi Property and the White Rock Property.

Motion, p. 3:7-18; Dckt. 68. The terms of the Stipulations disclosed do not state why or how the (\$13,359,014.83) amount is properly the terms of a Stipulation by the fiduciary Debtor in Possession or why or how such “determination” by the court is necessary or proper. Also, the Movant Junior Lienholder and Senior Lienholder do not stipulation to how over or under secured their claims may be.

B. The Junior Lienholder’s claim is determined to be an unstated amount.

*Id.*; p. 3:19-27. The terms of the Stipulations disclosed do not state why or how such “determination” by the court is necessary or proper. Also, the Movant Junior Lienholder and Senior Lienholder do not stipulation to how over or under secured their claims may be.

C. In the next summary provided by Movant Junior Lienholder it states that the Senior Lienholder’s Claim is (\$13,359,014.83) and the Junior Lienholder’s claim is (\$3,103,637.07).

*Id.*; p. 4:1-4. No accounting provided for how these amounts are computed or what such amounts are comprised of. No terms of the underlying obligations are disclosed.

D. There are no offsets, deductions, or “defenses of any kind” to the payment of the amounts the Junior Lienholder and the Senior Lienholder are getting the fiduciary Debtor in Possession to stipulate to in this Bankruptcy Case. All of the stipulated amounts are “deemed allowed secured claims”, and “shall not be subject to any defense, counterclaim, right of setoff, reduction, avoidance, disallowance, recharacterization, or subordination.”

*Id.*; 4:5-16. By these “simple” Stipulations, the fiduciary Debtor in Possession is giving up all rights, defenses, proper determinations, and other rights for these two Creditors’ claims - including handcuffing any future bankruptcy trustee (whether Chapter 11 or Chapter 7). No evidence is provided to support such summary disclosure of the Stipulation terms or why such stipulation by the fiduciary Debtor in Possession is proper.

E. The Stipulation then set “plan terms,” outside of the confirmation process, whereby the fiduciary Debtor in Possession binds the Bankruptcy Estate and any future Plan estate to paying the Senior Lienholder \$47,500 a month, retroactively starting November 1, 2024, or seven days after the entry of the order approving the Stipulation. These payments are to continue through April 1, 2025.

*Id.*; p. 4:17-23. While these payments are for a limited period of time, as develops below in the summary of the Stipulations provided by Movant Junior Lienholder, this Stipulation is a *de facto* Chapter 11 plan, which guts the Chapter 11 Plan confirmation process and the rights of other parties in interest, as well of the Bankruptcy Estate for which the Debtor in Possession is a fiduciary.

F. Next, the Stipulation provides for Junior Lienholder to be paid \$12,500 a month through April 2025.

*Id.*; p. 4:24 - 5:2. The same issues arise with respect to these payments as do for the Senior Lienholder’s claim discussed above.

G. The Junior Lienholder and the Senior Lienholder “have final approval of any broker to be retained by Debtors for the sale of the Property.” The “Debtor” shall not proceed with any broker not approved by both the Senior Lienholder and the Junior Lienholder. The broker shall provide weekly reports to the Senior and Junior Lienholders through April 11, 2025.

*Id.*; p. 5:3-10. By these terms, the Senior Lienholder and the Junior Lienholder move from being mere creditors to becoming FIDUCIARIES OF THE BANKRUPTCY ESTATE and can no longer act in their own self-interest with respect to the hiring of a broker and the marketing and sale of property of the Bankruptcy Estate or any Chapter 11 Plan Estate.

H. The Stipulations then set the “Plan terms,” requiring that the Fulton Property must be listed for sale:

1. No later than seven days after the entry of the order approving the Stipulations the “Debtors” will list the Property for sale;
2. The listing price must be \$16,000,000 (without regard to what real estate professionals, such as the fiduciary broker to the Bankruptcy Estate or fiduciary Debtor in Possession conclude the value to be); and
3. If the Property is not in contract by the 15<sup>th</sup> day in the month after approval of the Stipulations, then the list price shall be decreased by \$300,000 each thirty-five days thereafter through March 15, 2025.

*Id.*; p. 5:11-16. By these terms the Stipulation sets the “Plan Terms” for the liquidation of the Fulton Property, setting a deadline of April 11, 2025, for the marketing of that Property. It also provides for the arbitrary reduction in the listing price, as have now been publically disclosed in Movant Junior Lienholder’s summary in the Motion.

I. The Stipulations then set the “Plan terms,” requiring that the White Rock Property must be listed for sale:

1. No later than seven days after the entry of the order approving the Stipulations the Debtor shall list the Property for sale;
2. The listing price must be \$7,000,000 (without regard to what real estate professionals, such as the fiduciary broker to the Bankruptcy Estate or fiduciary Debtor in Possession conclude the value to be);
3. If the Property is not in contract by the 15<sup>th</sup> day in the month after approval of the Stipulations, then the list price shall be decreased by \$300,000 each thirty-five days thereafter through March 15, 2025.

*Id.*; p. 5:17-23. The same issues arise as to the propriety of such “Plan Terms” and short-term liquidation of the Property of the Bankruptcy Estate by the “Debtors” (not the fiduciary Debtor in Possession), the FIDUCIARY Senior Lienholder, and the FIDUCIARY Junior Lienholder.

J. The “Debtors” must maintain adequate insurance coverage on the Properties, which lists the two Creditors as loss payees. Additionally, the “Debtors” must remain current on all taxes for the Properties.

*Id.*; p. 24-275. These are not unreasonable terms, and likely included in the Deeds of Trust.

K. The Stipulations then set the “Plan Terms” that the Junior Lienholder and the Senior Lienholder must be paid in full on their stipulated Claims by April 15, 2025.

*Id.*; p. 5:38-6:1. By this term, the Debtors (not the fiduciary Debtor in Possession ), the FIDUCIARY Senior Lienholder, and the FIDUCIARY Junior Lienholder set the Plan term, which would end April 15, 2025 (a mere two months after the hearing on the Motion to Approve Stipulations).

L. If either of the Properties is sold, the Senior Lienholder and the Junior Lienholder shall be paid from escrow – No Further Order of the Court Required.

*Id.*; p. 6:2-4. This further shows the “Plan” that the Senior and Junior Lienholders have drafted and are “confirming” through the “Stipulation.”

M. The Senior Lienholder and Junior Lienholder may accept all payment made pursuant to the Stipulations without prejudice or waiver of any rights of the Lienholders.

*Id.*; p. 6:5-8. As opposed to the Bankruptcy Estate and other parties in interest, for which are rights are waived, the Senior and Junior Lienholders protect themselves for any other claims or theories they decided to advance.

N. If there is any default in the Stipulation Terms by the “Debtors,” notice of default can be given, and if not cured within 10 days of notice, the court will give the Lienholders orders granting relief from the stay - without notice or hearing. The “Debtors” are allowed on two notices of default, and after that after two such notices, if a further default occurs, then the Senior Lienholder and the Junior Lienholder may send over to the court orders to be signed granting relief from the stay without further notice, motion, or hearing.

*Id.*; p. 6:9-28. By these terms, the Senior Lienholder and Junior Lienholders, who have made themselves FIDUCIARIES OF THE BANKRUPTCY ESTATE, will determine whether they believe a default exists, whether they believe the “Debtors” cured the default, and will then send order granting relief from the stay for the court to rubber stamp.

O. The “Debtors,” are required to seek court approval of the Stipulations not more than two business days after the Stipulations are executed.

*Id.*; 7:7-9.

The Stipulations, Dckts. 51 an, 53, clearly show that the Senior Lienholder and the Junior Lienholder have entered into Stipulations with the two Debtors, and not the fiduciary Debtors in Possession who are in control of the properties in the Bankruptcy Estates and exercise the powers, duties, and responsibilities of a bankruptcy trustee.

The term “Debtor” is statutorily defined in 11 U.S.C. § 101(13) as:

(13)The term “debtor” means person or municipality concerning which a case under this title has been commenced.

This is the entity that files bankruptcy, not the trustee or a person who exercises the rights, powers, and duties of a trustee. The term “debtor in possession” is defined in 1101(1) as:

In this chapter—

(1) “debtor in possession” means debtor except when a person that has qualified under section 322 of this title is serving as trustee in the case;

It is then stated in 11 U.S.C. § 1107 (emphasis added) the rights, powers, and duties of the “debtor in possession:”

§ 1107. Rights, powers and duties of debtor in possession

(a) Subject to any limitations on a trustee serving in a case under this chapter [, and to such limitations or conditions as the court prescribes, **a debtor in possession shall have all the rights, other than the right to compensation under section 330 of this title, and powers, and shall perform all the functions and duties, except the duties specified in**

sections 1106(a) (2), (3), and (4) of this title, of a trustee serving in a case under this chapter.

(b) Notwithstanding section 327(a) of this title, a person is not disqualified for employment under section 327 of this title by a debtor in possession solely because of such person's employment by or representation of the debtor before the commencement of the case.

It should be noted in subparagraph (b) that merely because a professional has represented the debtor, that does not preclude that professional, such as an attorney, representing the "debtor in possession," which is the debtor serving in that capacity.

In reviewing the Stipulations, Dckts. 51 and 53, it is clear that the Motion to Approve Stipulations summary is a cut and paste of the text from the Stipulations. Thus, such "summary" appears to be an accurate recital of the terms of the Stipulations.

It is also clear that the "Stipulations" have been signed by the attorney for the two Debtors, it expressly stating that he is "Attorney for Debtors," and not as the attorney for the FIDUCIARY Debtors in Possession. The actual managing member of the Debtor has not signed the Stipulation.

It also appears that in seeking to get approvals of the Stipulations, Junior Lienholder is attempting to get Stipulations with the "Debtors" that are already in default. Terms of the Stipulations include:

¶ Q. The "Debtors" were required to take all necessary actions to seek approvals of the Stipulations within two business days after the Stipulations are signed. The signature blocks are dated December 5, 2025 and December 10, 2024. The "Debtors" did not seek approval of the Stipulations, and it is counsel for the Junior Lienholder who filed this Motion on January 21, 2025, thirty-three days after the last signature on the Stipulations.

When the Stipulations were filed in November 2024, no motion to approve was filed. Rather, proposed orders were uploaded, the Parties seeking to have the Stipulations approved "in secret."

Clearly, the court has serious concerns with various provisions of the proposed Stipulations. The Bankruptcy Code does not permit the parties to determine the amount of their secured claims, thereby deeming them allowed in full, as part of a stipulation regarding adequate protection payments.

Where the two secured creditors propose to exercise their creditor business judgment over the broker who will be employed to sell property of the estate, this type of arrangement is overreaching. The court would note that allowing the secured creditors to exercise such control amounts to creditors sharing responsibility in administering this bankruptcy estate, along with the Debtors in Possession, which would create a fiduciary relationship between the secured creditors and interested parties to the bankruptcy estate. It is more likely the secured creditors here do not wish to expose themselves to that type of liability.

This same concern applies to various provisions of the Stipulations proposing to grant authority in the secured creditors in deciding price and relevant deadlines for the sales of properties. Such determinations are to be made by a broker in their independent business judgment.

The FIDUCIARY Debtors in Possession, and their counsel, providing a court with Stipulations between the “Debtors” and the Senior Lienholder and Junior Lienholder, raises serious concerns whether they can fulfill their duties as FIDUCIARY Debtors in Possession exercising the rights, duties, powers, and responsibilities of a bankruptcy trustee. Here, the substance of these Stipulations is to turn control over these Bankruptcy Cases to the Senior Lienholder and the Junior Lienholder and have a *de facto* Chapter 11 Plan by circumventing the statutory requirements for confirmation of a Chapter 11 Plan.

It appears that the time may have arisen for the appointment of Chapter 11 trustees in the two Bankruptcy Cases. The insight from the U.S. Trustee would be most helpful for the court and the Parties in Interest.

Therefore, in light of the provisions that seek to extend authority to the secured creditors beyond what the Code permits, the Motion is denied.

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

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

The Motion to Approve Stipulation filed by Qualfax, Inc. C/o RTI Properties, Inc., 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 for Approval of Stipulation is denied..

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, attorneys of record, all creditors, and Office of the United States Trustee on December 27, 2024. By the court’s calculation, 48 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.

<p><b>The Disclosure Statement is <span style="color: red;">XXXXXXX</span>.</b></p>
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## **REVIEW OF THE DISCLOSURE STATEMENT**

Case filed: October 7, 2024

Background: This case involves the Debtor in Possession Town & Country Event Center, LLC, and Waqar Khan (hereinafter “Mr. Khan”), who is the managing member and sole owner of the Town & Country Event Center, LLC. The Debtor in Possession in the instant case owns the 40,716-square-foot property at 11354 White Rock Rd., Rancho Cordova, CA 95742 (the “Rancho Cordova” building), where the building is primarily slated for event-related activities, with a restaurant (the Al-Maidah Restaurant) and two event venues (Platinum Hall and Silver Hall). Four tenants rent a total of 23,871 sq. ft. of the Rancho Cordova building.

For the past two years, the rental income has not been sufficient to cover the mortgage payments due to a first (\$13 million first loan with Private Mortgage Fund LLC (“PMF”)) and second (\$2.5 million second loan with Qualfax Inc., c/o RTI Properties (“Qualfax/RTI”)). As a result, Debtor in Possession has been supplementing the payments through other business and personal resources, contributing \$30,000 to



\$40,000 per month to cover the lenders' mortgages. Debtor in Possession plans now to sell certain real property of the Debtor to pay off all claims in the case / this case as well as the related "West" case.

Disc. Statement 3:24-4:9, Docket 60.

<b>Creditor/Class</b>	<b>Treatment</b>	
Class 1A: Private Mortgage Fund, LLC (1st DOT)	<b>Claim Amount</b>	\$13,359,014.83
	<b>Impairment</b>	Impaired
	Debtor will refi or sell the Properties by APRIL 15, 2025, paying this Class from the proceeds of the sale. Debtor will file a motion for approval if appropriate.	
Class 1B: Qualfax, Inc. c/o RTI Properties, Inc. (2nd DOT)	<b>Claim Amount</b>	\$3,103,637.07
	<b>Impairment</b>	Impaired
	Debtor will refi or sell the Properties by APRIL 15, 2025, paying this Class from the proceeds of the sale. Debtor will file a motion for approval if appropriate.	
Class 1C: Sacramento County Tax Collector P.O. Box 508 Sacramento, CA 95812-0508	<b>Claim Amount</b>	\$40,710.00
	<b>Impairment</b>	Impaired
	Debtor will refi or sell the Properties by APRIL 15, 2025, paying this Class from the proceeds of the sale. Debtor will file a motion for approval if appropriate.	
Class 1D: Sacramento County Utilities P.O. Box 1804 Sacramento, CA 95812	<b>Claim Amount</b>	\$8,035.00 and \$1,129.00
	<b>Impairment</b>	Impaired
	Debtor will refi or sell the Properties by APRIL 15, 2025, paying this Class from the proceeds of the sale. Debtor will file a motion for approval if appropriate.	

Class 1E: El Dorado Irrigation District Utility Billing 2890 Mosquito Rd Placerville, CA 95667	<b>Claim Amount</b>	\$675.87
	<b>Impairment</b>	Impaired
	Debtor will refi or sell the Properties by APRIL 15, 2025, paying this Class from the proceeds of the sale. Debtor will file a motion for approval if appropriate.	
Class 1F: Cap Holding, LLC c/o Lawe Offices of Sid M. Rosenberg Attn: Sig M Rosenberg 725 30th Street, Suite 107 Sacramento, CA 95816	<b>Claim Amount</b>	\$107,358.00
	<b>Impairment</b>	Impaired
	Debtor will refi or sell the Properties by APRIL 15, 2025, paying this Class from the proceeds of the sale. Debtor will file a motion for approval if appropriate.	
Class 2: General unsecured claims	<b>Claim Amount</b>	\$8,295.52
	<b>Impairment</b>	Unimpaired
	Debtor will refi or sell the Properties by APRIL 15, 2025, paying this Class from the proceeds of the sale. Debtor will file a motion for approval if appropriate.	
Class 3: Waqar Khan, 100% owner		
	<b>Impairment</b>	Unimpaired
	Entitled to the net funds after Property sale	

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

☐Y ☐ Future management of Debtor

☐Y ☐ The Plan is attached

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

### **U.S. Trustee's Opposition**

Tracy Hope Davis, United States Trustee for Region 17 ("U.S. Trustee"), is objecting to Debtor's proposed combined plan of reorganization for the following reasons:

1. First, the Disclosure Statement does not address the Debtors' failure to file monthly operating reports for October, November, and December of 2024. Opp'n 2:7-8.
  - a. The court would note that, as to this item of the Opposition, Debtor in Possession has responded by filing the missing monthly operating reports. Dockets 83, 85, and 87.
2. Second, the Disclosure Statement does not disclose that as of the end of 2024 the Debtors had not filed 2023 tax returns and will potentially have large federal tax liabilities to pay in connection with this bankruptcy filing. *Id.* at 2:8-11.
  - a. Debtor in Possession filed a Status Report on February 6, 2025, acknowledging that this is the main issue and Debtor in Possession is working on the missing returns.
3. Finally, neither the Plan nor the Disclosure Statement provide for the filing of postconfirmation quarterly reports. *Id.* at 2:11-12.

### **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**

### **Adequate Information as to Case History**

Debtor in Possession has stated the reason for filing the petition, namely that Debtor in Possession had not been earning enough in rents to pay down the mortgage. Disclosure Statement 4:2-9. The court finds the Disclosure Statement provides adequate information here.

### Adequate Information as to Insiders

Debtor in Possession has clearly identified the insider, Waqar Khan. The court finds the Disclosure Statement provides adequate information here.

### Adequate Information as to Financial Projections

Debtor in Possession has clearly identified its source of funding, namely the post-petition sale or refinance with a firm date of April 15, 2025, this being a liquidation case and plan. The court finds the Disclosure Statement provides adequate information here.

### Remaining Issues

The remaining issues in the case pertain to Debtor in Possession not yet having prepared and filed the missing tax returns for 2023. According to the U.S. Trustee, the returns may result in a large liability that would affect the administration of this case. Debtor in Possession acknowledges this issue. Without the tax returns being filed, the court cannot approve this Disclosure Statement. There is not adequate information regarding the consequences of the missing tax returns.

Debtor in Possession confirming they will file their quarterly postconfirmation reports in accordance with Fed. R. Bankr. P. 2015(a)(5), at the hearing, **XXXXXXX**

The Disclosure Statement is **XXXXXXX**.

The court shall issue an 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 hearing for the Approval of the Disclosure Statement 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 Disclosure Statement is **XXXXXXX**.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, attorneys of record, all creditors, and Office of the United States Trustee on December 27, 2024. By the court's calculation, 48 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b) (requiring twenty-eight days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

<b>The Disclosure Statement is <span style="color: red;">XXXXXXX</span>.</b>
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## **REVIEW OF THE DISCLOSURE STATEMENT**

Case filed: October 7, 2024

Background: This case involves the Debtor in Possession Town & Country West, LLC, and Waqar Khan (hereinafter "Mr. Khan"), who is the managing member and sole owner of the Town & Country West, LLC. West owns the property at 2961 Fulton Ave. (strip/shopping mall) and 2510 Marconi Ave., Sacramento, CA. 95821 (the mall site parking area). The strip/shopping mall is a 120,000-square-foot building/facility, of which about 99,558 sq. ft. is rentable space. About a total of 43,800 sq. ft. of the rentable space is occupied by the Debtor's Owner's (Mr. Waqar Khan) event and hosting business. The strip/shopping mall building at 2961 Fulton Ave. features a bingo hall and three ballrooms (Platinum Room, Gold Room, and Silver Room) for events where Mr. Khan (dba Town & Country Event Center) and Platinum Party Rentals host about 250 events annually.

In addition, a combined total of about 5,999 sq. ft. is occupied by Mr. Khan's other wholly-owned businesses – i.e., California Halal Grill, LLC, The Remodeling Company, Inc., Destination Longevity, and Epona Investment Group, Inc. The properties tied to this and related Chapter 11 petition

(Case # 24-24492, in re Town & Country Event Center LLC) cover a combined total of 160,716 sq. ft. of prime commercial real estate in Sacramento and Rancho Cordova. These properties were acquired through loans taken out on April 25, 2022, which were the original \$13 million first loan with Private Mortgage Fund LLC (“PMF”) and the original \$2.5 million second loan with Qualfax Inc., c/o RTI Properties (“Qualfax/RTI”), bringing the total loan amounting to \$15.5 million. The loan transaction also included the purchase of the 11354 White Rock Road building in Rancho Cordova, which the Debtor intended to convert entirely into an event center, and for that reason, the Debtor purchased it under the Town & Country Event Center LLC name.

For the past two years, the rental income has not been sufficient to cover the mortgage payments. As a result, Debtor in Possession has been supplementing the payments through other business and personal resources, contributing \$30,000 to \$40,000 per month to cover the lenders’ mortgages. Debtor in Possession plans now to sell certain real property of the Debtor to pay off all claims in the case / this case as well as the related “Event Center” case.

Disc. Statement 3:24-5:4, Docket 64.

<b>Creditor/Class</b>	<b>Treatment</b>	
Class 1A: Private Mortgage Fund, LLC (1st DOT)	<b>Claim Amount</b>	\$13,359,014.83
	<b>Impairment</b>	Impaired
	Debtor will refi or sell the Properties by APRIL 15, 2025, paying this Class from the proceeds of the sale. Debtor will file a motion for approval if appropriate.	
Class 1B: Qualfax, Inc. c/o RTI Properties, Inc. (2nd DOT)	<b>Claim Amount</b>	\$3,103,637.07
	<b>Impairment</b>	Impaired
	Debtor will refi or sell the Properties by APRIL 15, 2025, paying this Class from the proceeds of the sale. Debtor will file a motion for approval if appropriate.	
Class 1C: Sacramento County Tax Collector P.O. Box 508 Sacramento, CA 95812-0508	<b>Claim Amount</b>	\$452,019.00 for one parcel and \$20,000.00 for another
	<b>Impairment</b>	Impaired
	Debtor will refi or sell the Properties by APRIL 15, 2025, paying this Class from the proceeds of the sale. Debtor will file a motion for approval if appropriate.	

Class 1D: Sacramento County Utilities P.O. Box 1804 Sacramento, CA 95812	<b>Claim Amount</b>	\$2,100.00
	<b>Impairment</b>	Impaired
	Debtor will refi or sell the Properties by APRIL 15, 2025, paying this Class from the proceeds of the sale. Debtor will file a motion for approval if appropriate.	
Class 2: General unsecured claims	<b>Claim Amount</b>	\$300,384.75
	<b>Impairment</b>	Unimpaired
	Debtor will refi or sell the Properties by APRIL 15, 2025, paying this Class from the proceeds of the sale. Debtor will file a motion for approval if appropriate.	
Class 3: Waqar Khan, 100% owner		
	<b>Impairment</b>	Unimpaired
	Entitled to the net funds after Property sale	

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

☐ Y ☐ Future management of Debtor

☐ Y ☐ The Plan is attached



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

## **U.S. Trustee's Opposition**

Tracy Hope Davis, United States Trustee for Region 17 ("U.S. Trustee"), is objecting to Debtor's proposed combined plan of reorganization for the following reasons:

1. First, the Disclosure Statement does not address the Debtors' failure to file monthly operating reports for October, November, and December of 2024. Opp'n 2:7-8.
  - a. The court would note that, as to this item of the Opposition, Debtor in Possession has responded by filing the missing monthly operating reports. Dockets 83, 85, and 87.
2. Second, the Disclosure Statement does not disclose that as of the end of 2024 the Debtors had not filed 2023 tax returns and will potentially have large federal tax liabilities to pay in connection with this bankruptcy filing. *Id.* at 2:8-11.
  - a. Debtor in Possession filed a Status Report on February 6, 2025, acknowledging that this is the main issue and Debtor in Possession is working on the missing returns.
3. Finally, neither the Plan nor the Disclosure Statement provide for the filing of postconfirmation quarterly reports. *Id.* at 2:11-12.

## **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**

### **Adequate Information as to Case History**

Debtor in Possession has stated the reason for filing the petition, namely that Debtor in Possession had not been earning enough in rents to pay down the mortgage. Disclosure Statement 4:27-5:4. The court finds the Disclosure Statement provides adequate information here.

### **Adequate Information as to Insiders**

Debtor in Possession has clearly identified the insider, Waqar Khan. The court finds the Disclosure Statement provides adequate information here.

### **Adequate Information as to Financial Projections**

Debtor in Possession has clearly identified its source of funding, namely the post-petition sale or refinance with a firm date of April 15, 2025, this being a liquidation case and plan. The court finds the Disclosure Statement provides adequate information here.

## Remaining Issues

The remaining issues in the case pertain to Debtor in Possession not yet having prepared and filed the missing tax returns for 2023. According to the U.S. Trustee, the returns may result in a large liability that would affect the administration of this case. Debtor in Possession acknowledges this issue. Without the tax returns being filed, the court cannot approve this Disclosure Statement. There is not adequate information regarding the consequences of the missing tax returns.

Debtor in Possession confirming they will file their quarterly postconfirmation reports in accordance with Fed. R. Bankr. P. 2015(a)(5), at the hearing, **XXXXXXX**

The Disclosure Statement is **XXXXXXX**.

The court shall issue an 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 hearing for the Approval of the Disclosure Statement 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 Disclosure Statement is **XXXXXXX**.

Debtor's Atty: Arasto Farsad

Notes:

Continued from 1/22/25 to be conducted in conjunction with the hearing on the Motion to Approve Stipulation for Adequate Protection.

U.S. Trustee Report at 341 Meeting filed: 2/3/25

Operating Report filed: 2/5/25

[AF-5] Application to Employ Commercial Real Estate Agents filed 1/30/25 [Dckt 75]; set for hearing 2/27/25 at 10:30 a.m.

**The Status Conference is XXXXXXXX**

**FEBRUARY 13, 2025 STATUS CONFERENCE  
FOR JOINTLY ADMINISTERED CASES**

On February 6, 2025, the two Debtors in Possession filed a Status Conference Statement. Dckt. 89. The information provided therein includes:

A. The "Debtor," not the FIDUCIARY Debtors in Possession, has been making adequate protection payments. (With the "Debtors" making the payments, such monies could not have been from property of the Bankruptcy Estate.)

B. The "Debtor," not the FIDUCIARY Debtors in Possession, has filed six monthly operating reports.

C. The "Debtor," not the FIDUCIARY Debtors in Possession has filed a motion to employ a real estate broker.

At the Status Conference, XXXXXXXX

**JANUARY 22, 2025 STATUS CONFERENCES FOR  
THE JOINTLY ADMINISTERED CASES**

The Town & Country West LLC Chapter 11 Case, No. 24-24493, and the Town & Country Event Center, LLC Chapter 11 Case, No. 24-24492, are being jointly administered pursuant to the orders of the court. 24-24493; Order, Dckt. 48; and 24-24492; Order, Dckt. 52.

The Town & Country West LLC is designated the lead case in which all pleadings are to be filed, with the specified exceptions stated in the Orders for Joint Administration.

Proposed Chapter 11 Plans and Disclosure Statements have been filed for both Town & Country West LLC and Town & Country Event Center, LLC. Dckts. 65, 64 and 61, 60; respectively. Hearings for approval of the Disclosure Statements have been set for February 13, 2025 at 11:30 a.m.

A Motion to Approve a Stipulation for Adequate Protection for several lien holders and the Town & Country Event Center LLC Debtor in Possession. Dckt. 68. The hearing on that Motion is set for 10:30 a.m. on February 13, 2025.

At the Status Conference, no appearance was made by counsel for the Debtor in Possession.

A review of the Docket shows that no monthly operating reports have been filed by the Debtor in Possession. The requirement to file monthly operating reports is clearly stated in the Order Re Chapter 11 Status Conference and Notice Thereof, which includes:

8. The timely filing of monthly operating reports, the establishment of debtor-in-possession bank accounts, payment of United States Trustee's fees and proof of adequate insurance.

Order Re Chapter 11 Status Conference and Notice Thereof, ¶ 8; Dckt. 7.

The Order re Chapter 11 Status Conference further provides:

This is notice that the court may, *sua sponte*, at the status conference, order the case dismissed or converted to chapter 7, or may order the appointment of a chapter 11 trustee.

*Id.*, unnumbered paragraph after ¶ 9.

It was presented to the court that this Bankruptcy Estate has assets which it leases out and from which there are significant monthly revenues for the Bankruptcy Estate.

If the Monthly Operating Reports are not filed by the continued Status Conference, the court will consider the dismissal of this case, conversion to Chapter 7, or the appointment of a Chapter 11 trustee for the proper administration of the Bankruptcy Case and assets of the Bankruptcy Estate.