

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

**April 19, 2018, at 11:30 a.m.**

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1. <a href="#"><u>17-22347-E-11</u></a> <b>UNITED CHARTER LLC</b> <b>Jeffrey Goodrich</b>	<b>APPROVAL OF DISCLOSURE STATEMENT FILED BY DEBTOR UNITED CHARTER, LLC 2-22-18 [<a href="#"><u>167</u></a>]</b>
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**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, creditors, parties requesting special notice, and Office of the United States Trustee on March 8, 2018. By the court's calculation, 42 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b) (requiring twenty-eight days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

<b>The Motion to Approve Disclosure Statement is granted.</b>
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**REVIEW OF THE DISCLOSURE STATEMENT**

Case filed: April 7, 2017

**April 19, 2018, at 11:30 a.m.**

Background: United Charter, LLC (“Debtor in Possession”) was originally established to operate real property, primarily an industrial warehouse located in Stockton, California (“Property”). Debtor in Possession has two members, Raymond Zhang and Cindy Zhang, who each possess a fifty percent interest.

Prior to August 2016, Debtor in Possession earned sufficient income from the Property to pay all mortgage installments to East-West Bank (“Creditor”), its primary secured creditor. In August 2016, Debtor in Possession learned that one of its tenants was operating an illegal marijuana business on the Property and when law enforcement shut down the tenant’s operations, Debtor in Possession’s operation account was also frozen. At that time, Debtor in Possession was unable to make Creditor’s mortgage payments, and the City of Stockton was requiring Debtor in Possession to make extensive repairs to the Property.

Debtor in Possession began making the City of Stockton’s required repairs and attempted to negotiate a forbearance agreement with Creditor. However, Debtor in Possession saw the terms offered by Creditor to be tantamount to surrendering all of its assets to Creditor, and so, when Creditor refused to delay its foreclosure sale, Debtor in Possession filed its Chapter 11 petition.

After filing its Chapter 11 Petition, Debtor in Possession completed making the repairs required by the City of Stockton and began efforts to lease the Property. Debtor in Possession has gained three new leases and come to hire a leasing broker to assist in finding more tenants for the Property. Additionally, the leasing broker is assisting in Debtor in Possession’s application to the City of Stockton for a lot line adjustment for the Property.

During its Chapter 11 case, Debtor in Possession has experienced issues relating to the use of cash collateral and an increase in property taxes, as well as outstanding post-petition liabilities.

<b>Creditor/Class</b>	<b>Treatment</b>	
Class 1(a):  Secured Claim of East-West Bank	<b>Claim Amount</b>	\$4,580,000.00
	<b>Impairment</b>	Impaired
	East-West Bank’s note carries a variable interest rate of 0.50% over the Wall Street Journal Prime Rate, and Debtor in Possession assumes that the rate will be 4.75% at Plan confirmation. Debtor in Possession believes the monthly payment to Creditor will start at no more than \$26,111.38.	
Class 1(b):  Unsecured Claim of Wayne Bier	<b>Claim Amount</b>	\$580,000.00
	<b>Impairment</b>	Impaired
	To the extent that Bier’s claim is not determined to be secured, or any portion thereof is not, due to senior secured claims, it shall be treated as a Class 2 Claim; if it is treated as a secured Claimant, Bier’s claim shall accrue 4.5% simple interest per annum.	

Class 2:  Unsecured Claims (including Wayne Bier's deficiency)	<b>Claim Amount</b>	\$651,171.38
	<b>Impairment</b>	Impaired
	A pro rata share shall be paid monthly to each unsecured claim. The pro rata share shall come from \$8,000.00 in Months 1–7, \$10,800.00 in Months 8–39, and \$13,800 in Months 40–60.	
Class 3:  Unsecured Claims Less than \$2,500.00	<b>Claim Amount</b>	
	<b>Impairment</b>	Impaired
	All claims shall be paid without interest, in cash, thirty days following the effective date of the Plan.	
Class 4:  Member Interests	<b>Claim Amount</b>	
	<b>Impairment</b>	Unimpaired
	Members' interest in Debtor in Possession shall be unmodified and unaffected.	

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

N Source of information for D/S

N 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).

## 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 enough of the *A.C. Williams* factors with necessary information and proposal of a plan. The Disclosure Statement sets out various classes of claims that will be paid with funds from future net disposable income. The latest Operating Report (filed on March 15, 2018) indicates that Debtor in Possession is continuing to collect rental income and generate funds for the Estate. Dckt. 200.

The Disclosure Statement provides the projection that the gross monthly rents from the property will be \$38,900.00 as of March 1, 2018. There will be 50,000 sq. ft. of additional rental space vacant, of which Debtor in Possession is reported to have entered into two additional leases for 41,500 sq. ft. of that vacant space.

The Disclosure Statement does not include any financial pro forma information. The Disclosure Statement provides that within five years the Plan Administrator/Debtor will either sell or refinance the property to pay the secured claim in full.

Substantially, this is a two-party case—Debtor in Possession and East West Bank. An individual named Wayne Bier is purported to have a secured claim of \$580,000, but he has chosen not to appear in this case, nor has he filed a proof of claim (to the extent he actually has a claim).

This being a two-party case, and East West Bank actively asserting its rights in this case, the Disclosure Statement is all but a “technical piece” getting to the real show—the confirmation hearing. Presumably, East West Bank has access to the information it deems important, relying little, if any, on the information provided by Debtor in Possession (as most banks do for most debtors in possession). It appears that East West Bank and the principals of Debtor in Possession have reached an accord, which will be documented by a confirmed plan in this case.

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. United Charter LLC, 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 May 4, 2018.
- B. Ballots shall be returned to counsel for the Plan Proponent on objections to confirmation, if any, filed and served on or before June 4, 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 June 18, 2018.
- D. The Confirmation Hearing shall be conducted at 11:30 a.m. on **June 28 / July 19, 2018**.

2. [17-25576-E-11](#)      **KEVIN KENNEDY**      **CONFIRMATION OF PLAN OF**  
**MRL-4**      **Mikalah Liviakis**      **REORGANIZATION FILED BY DEBTOR**  
                **11-21-17 [44]**

**Final Ruling:** No appearance at the April 19, 2018 hearing is required.

**The Confirmation of Plan of Reorganization is dismissed without prejudice.**

#### **UNITED STATES’S OBJECTION**

The United States, on behalf of the Internal Revenue Service and the Department of Education (“Creditor”) filed an Objection on March 12, 2018. Dckt. 61. Creditor argues that the Plan does not devote five year of projected disposable income to pay unsecured claims, that avoidable transfers exist, and that its claims are nondischargeable.

#### **DEBTOR IN POSSESSION’S MEMORANDUM**

Kevin Kennedy (“Debtor in Possession”) filed a Memorandum on March 26, 2018. Dckt. 67. He notes that only one ballot was received, Creditor’s, which included two votes rejecting the Plan. Debtor in Possession states that the Plan cannot be confirmed.

#### **RULING**

Debtor in Possession noting that the only votes it received were to reject the Plan and admitting that the Plan cannot be confirmed, the confirmation hearing is dismissed 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 Confirmation of Plan of Reorganization 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 Confirmation Hearing is dismissed without prejudice.