

Eastern District of California

Bankruptcy Judge
Modesto, California

1. [13-90323](#)-E-12 FRANCISCO/ORIANA SILVA CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
2-25-13 [[1](#)]

[PLF-9] Motion to Approve Lease Agreement filed 11/20/14 [Dckt 118], to be heard 12/18/14 at 3:30 p.m.

2. [13-90323](#)-E-12 FRANCISCO/ORIANA SILVA
PLF-9

MOTION TO APPROVE LEASE
AGREEMENT
11-20-14 [[118](#)]

Final Ruling: No appearance at the December 18, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 20, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Approve Lease Agreement has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Approve Lease Agreement is granted.

Debtors-in-Possession Francisco and Oriana Silva move for authorization to lease Debtor's dairy facilities on the property located at 300 East Barnhart Road, Ceres, California (the "Property").

Debtors state that before filing bankruptcy they sold their dairy herd and all proceeds, but still farm acreage located on the property. The court previously authorized the Debtors to rent the dairy facilities on the Property for a payment of \$5,500.00 per month. Dckt. 78. However the renter failed to make the required rent payments and the Debtors evicted him.

Debtors have received an offer from Adriana and Orlando Gomes to rent the dairy facilities for a payment of \$5,500.00 per month. The lease is for three years, beginning November 1, 2014 and automatic renewal for subsequent three year terms unless written notice of a desire not to renew the lease is provided.

DISCUSSION

The Bankruptcy Code permits the Debtor in Possession to lease property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b).

Here, the terms are set forth in the Dairy Lease Agreement, filed as Exhibit A in support of the Motion. Dckt. 121.

Based on the evidence before the court, the court determines that the proposed lease is in the best interest of the Estate. The Motion to Approve Lease Agreement is granted, subject to the court considering any additional offers from other potential purchasers at the time set for the hearing for the sale of the property.

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 Lease Agreement filed by Debtors-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 granted and Debtors-in-Possession Francisco Silva and Oriana Silva are authorized to lease the property located at 300 East Barnhart Road, Ceres, California, to Adriana and Orlando Gomes, on the terms set forth in the Dairy Lease, filed as Exhibit A, Dckt. 121.

3. [12-91736](#)-E-12 ANTONIO GOMES

STATUS CONFERENCE RE: VOLUNTARY
PETITION
6-20-12 [[1](#)]

Debtor's Atty: Thomas O. Gillis

Notes:

Continued from 2/13/14. The Debtor/Plan Administrator to file an updated status report on or before 11/14/14.

Updated status report not filed as of 12/11/14.

4. [12-93049](#)-E-11 MARK/ANGELA GARCIA
SDN-1

APPROVAL OF DISCLOSURE
STATEMENT FILED BY CREDITOR YP
WESTERN DIRECTORY, LLC
10-29-14 [[414](#)]

Tentative Ruling: The Motion for Approval of Disclosure Statement Filed by Creditor YP Western Directory, LLC has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 31, 2014. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion for Approval of Disclosure Statement Filed by Creditor YP Western Directory, LLC has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion for Approval of Disclosure Statement Filed by Creditor YP Western Directory, LLC is denied without prejudice.</p>
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REVIEW OF THE DISCLOSURE STATEMENT

Case filed: November 30, 2012

Background: Mark and Angela Garcia are the Debtors in this Chapter 11 Case. YP western Directory, LLC, a Delaware limited liability company, formerly known as Pacific Bell Directory, a California corporation ("Creditor") filed the instant Disclosure Statement because the Debtors failed to file and confirm a Plan within 300 days of the date of the petition as required by 11 U.S.C. § 1121(e)(2).

The Debtors are individuals and in 1999 commenced operating a bail bond agency in Modesto, California, under the names of Garcia Family Bail Bonds and/or Familia Garcia Bail Bonds.

The Debtors formerly operated under a corporation, Garcia Family Bail Bond, Inc., as sole owners and shareholders, but shortly before the bankruptcy was filed, the Debtors suspended the corporation and now operate as a sole proprietorship.

Concurrently, the Debtors were the sole owners and shareholders of the Most Wanted Wine Co., Inc. from April 2009 until May 20, 2014, when the court approved the sale of the Most Wanted Wine Co. name and assets. The wine company was a small business that was not a source of income for the Debtors.

The Debtors are the principals of Garcia Family Bail Bonds and were the sole shareholders of the Most Wanted Wine Company, Inc. There are no other principals or insider.

Creditor/Class	Treatment	
Administrative Expenses:	Claim Amount	\$76,950.00
	Impairment	
	Includes: (1) Expenses arising in the ordinary course of business after the petition date; (2) the value of goods received in the ordinary course of business within 20 days before the petition date; (3) professional fees, as approved by the court; (4) clerk's office fees; (5) other administrative expenses; and (6) Office of the U.S. Trustee fees.	
Priority Tax Claims	Claim Amount	\$52,028.02
	Impairment	
	Includes: (1) Internal Revenue Service (Corporate Income Tax); (2) Internal Revenue Service (Individual Income Tax); (3) Franchise Tax Board (Individual Income Tax); (4) Gordon B. Ford (Real Property Tax); and (5) Gordon B. Ford. Monthly Payment = \$1,100.31 Total Payout Amount for All Priority = \$66,018.50	
Class 1: HSBC Bank	Claim Amount	\$464,663.61
	Impairment	Impaired

	<p>The Plan will not modify this claim. The Debtors have applied for a loan modification with HSBC and with PHH Mortgage to have a forbearance of the arrearage pre and post petition. Any modification of this first deed of trust will be dependent upon the approval of HSBC and/or PHH Mortgage Services. Entry of the order confirming Debtor's Plan shall constitute an order modifying the automatic stay to allow HSBC to repossess, receive, take possession of, foreclose upon, and exercise its rights and judicial and non-judicial remedies against its collateral.</p>	
Class 2: JP Morgan Chase Bank, N.A.	Claim Amount	\$254,992.88
	Impairment	Impaired
	<p>JP Morgan Chase Bank, N.A. did not record the reconveyance of its former second deed of trust on the Debtors' residence, as JP Morgan Chase Bank, N.A. failed to file a claim and Debtors objected to the claim, there is no claim remaining of JP Morgan Chase Bank, N.A. and no provision in the Plan will be made for JP Morgan Chase Bank, N.A.</p>	
Class 3: United States Fire Insurance Company	Claim Amount	\$340,161.14
	Impairment	Impaired
	<p>United States Fire Insurance Company (USFI) is the older of a second deed of trust on the Debtors' residence located at 5672 Eleanor Road, Oakdale, California. The property is worth \$550,000.00 and subject to a first deed of trust with HSBC in the sum of \$454,563,61. The secured claim of USFI is \$340,161.14 and shall be paid at the sum of \$1,562.18 monthly beginning upon an order confirming Debtor's Plan. The term shall be 30 years with interest at 3.4%. Five years after entry of the order confirming Debtors Plan the entire sum shall be due and payable, by refinancing if necessary. Property values in California have risen in the last 2 years. Entry of the order confirming Debtors Plan shall constitute an order modifying the automatic stay; to allow USFI to repossess, receive, take possession of, foreclose upon, and exercise its rights and judicial and non judicial remedies against its collateral. Additionally USFI, filed a contingent claim of \$505,000.00 but all of these have been exonerated by Court order except one for a Miguel Rodriguez, aka Arceo. In January 2014 a California appeals court denied an appeal on a bond forfeiture, resulting in a new claim of USFI in the sum of \$177,753.00, which will be paid as unsecured.</p>	
Class 4: LSC Realty California, LLC	Claim Amount	\$700,000.00
	Impairment	Impaired

LSC Realty California, LLC, was the holder of a first deed of trust on the Debtors' Commercial Property at 900 G Street, Modesto, California. The property is worth \$700,000.00. The secured claim was filed in the sum of \$650,000.00. The Court valued the commercial Property at \$650,000.00. LSC Realty California LLC shall receive the sum of \$4,310.02 monthly, either in third party rents or payment by the Debtors as needed. This monthly sum is the secured value of \$700,000.00 amortized over 30 years at 6.25% interest. This loan shall mature 5 years after entry of the order confirming Debtors Plan and Debtors shall obtain refinancing if needed. Property values in California have risen in the last 2 years.

Debtors have previously refinanced this commercial loan three times.

LSC Realty California LLC filed an assignment of its interest on May 1, 2013, (DCN138) to G Street Investments, LLC, and the terms of transfer was filed by the transferee G Street Investments, LLC on October 22, 2014 (DCN 405). Debtors requested proper notice of the assignment from G Street Investments, LLC, and G Street Investments, LLC provided it over 1 year later. G Street Investments, LLC has not provided 1098 forms to the Debtors or the estate for interest payments made in 2013.

LSC Realty California, LLC filed unsecured claims in the sum of \$180,054.27 (Claim No. 12) and the sum of \$117,864.75 (Bifurcated amount on Claim No. 13). These unsecured sums total \$297,919.02. \$50,000.00 of this unsecured sum is to be paid as secured, leaving an unsecured claim of \$247,919.02. This unsecured sum is to be paid at 25% over a 5 year period.

If G Street Investments, LLC determines to take an 11 U.S.C. § 1111(b)(2) instead, G Street Investments, LLC would then have a fully secured claim in the sum of \$947,919.02, and G Street Investments, LLC would receive a total of payments in the aggregate that equal \$947,919.02 but whose present value is \$700,000.00.

Under an 1111(b)(2) election, G Street Investments, LLC would receive 219 monthly payments of \$4,310.02 (this uses an amortizing balance of the collateral value, \$700,000.00, and assumes a market rate of interest of 6.25%), with a balloon or final payment of \$4,024.64. This would pay G Street Investments, LLC an aggregate payment amount equal to G Street Investments, LLC's total secured claim of \$947,919.02.

Class 6: Bankers Surety Services, Inc.	Claim Amount	\$947,919.02
	Impairment	Impaired
	Bankers Surety Services, Inc. is the holder of a third deed of trust on the Debtors' Commercial Property at 900 G Street, Modesto CA. The property is worth \$650,000 and subject to a first deed of trust with G Street Investments, LLC in the sum of \$767,864.75 and a second deed of trust with G Street Investments, LLC in the sum of \$180,054.27, the total of first and second trust deeds is \$947,919.02. The Court ruled that the secured claim of Bankers Surety Services, Inc. is zero. Bankers Surety Services LLC shall retain its lien until paid or completion of the Plan.	
Class 7: Gorden B. Ford, pre-petition real property taxes on Debtors' Commercial Property at 900 G Street, Modesto, California	Claim Amount	\$16,878.16 (excluding penalties)
	Impairment	Impaired
	The claim shall be paid within 5 years with statutory interest. The sum owed is \$16,878.16 excluding penalties. This claim shall be paid within 5 years at a monthly payment of \$428.59 upon confirmation of the Debtors' Plan. Interest shall be the statutory rate currently 18%. This claim was filed as a priority claim.	
Class 8: Travis Credit Union	Claim Amount	\$7,163.57
	Impairment	Impaired
	The claim is secured by a 2000 Mercedes Benz ML55. The collateral will be surrendered and there will be no deficiency claim allowed. The claim is in the sum of \$7,163.57.	
Class 8.1: General Unsecured Claims	Claim Amount	\$618,203.93
	Impairment	Impaired

The following is a list of the filed unsecured claims in this case:

<u>Name</u>	<u>Amount</u>
CBS Outdoor	\$ 2,944.97
Capital One	148.55
Law Office of Brunn & Flynn	32,729.92
Pitney Bowes Inc	829.58
YP	150,000.00
American Express Bank, FSB	17,133.62
Pacific Bell Telephone Company	1,606.84
American Info Source Agent For DirecTv, LLC	1,236.91
Ian MacDonald Formerly DBA MacDonald & Assoc	16,270.01
LSC Realty California, LLC (G Street Investments)	247,919.02
USFI	117,753.00
Department Stores National Bank Visa	6,704.26
John Rorabaugh	22,927.25
TOTAL	\$618,203.93

USFI had contingent claim that occurred post-petition, in January 2014, in the sum of \$117,753.00, when a California Appeals Court denied an appeal over a bond forfeiture. This sum is added to the class in 8.1. Further, if USFI occurs any further losses from bond forfeitures from prior contracts with the Debtors, either before or after the Petition Date, Debtors will pay these sums as unsecured. Creditor YP's Plan proposes a 35% distribution to general unsecured creditors in Class 8.1, over a term of 4 years, to be paid equally monthly payments, commencing 1 year after confirmation.

Class 8.2: Secured Claims who did not file an unsecured claim after a 506(a) ruling determined their secured interest at zero	Claim Amount	784,447.33
	Impairment	Impaired
	The following is a list of the secured claims who did not file an unsecured claim after a 506(a) ruling determined their secured interest at zero:	
	Bankers Surety Services, Inc	\$ 83,160.62
	JP Morgan Chase Bank, N.A.	\$254,992.88
	Additionally, JP Morgan Chase Bank, N.A. recorded a deed of reconveyance of its secured claim in or about February 2013. These two creditors will not receive a distribution under the Plan, consistent with the holding and principles in <i>In Re J.H. Investment Services</i> (2011), No. 15627, 11th Cir. Court of Appeals, holding that 506(a)(1) does not automatically create an unsecured claim in a Chapter 11 case and the creditor must file an unsecured claim to receive distribution. On May 8, 2013, Debtors filed an amended Schedule F and listed the following general unsecured creditors as disputed. (See <i>Varela v. Dynamic Brokers, Inc.</i> (In re <i>Dynamic Brokers Inc.</i>), 293 B.R. 489). These creditors did not in return file or attempt to file a claim after notification of their disputed status:	
	Name	Amount
	JPMorgan Chase Bank, N.A.	\$ 254,992.88
	Accord Credit Services	381.05
	AT&T Advertising Solutions	342,412.14
Bankers Surety Services, Inc.	89,682.22	
CBE Group	1,237.00	
E. Alan Nunez	11,380.00	
ECMC	2,006.00	
GC Services Limited Partnership	2,004.54	
Law Office of Damrell, Nelson, Schrimp	1,229.88	
Law Office of Lawrence C. Beaver	9,848.62	
RCVMNG CORP	200.00	

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	Rdk Collection Services	200.00
	Stanis Contr	4,467.00
	Valley Yellow Pages	57,702.00
	Visa Dsnb	6,704.00
	William Origel et al. (not filed)	0.00
	TOTAL	784,447.33
	General unsecured creditors in Class 8.2 will not receive a distribution under the Plan.	

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

 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

 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:

Iain Macdonald's Objection

Iain Macdonald filed an objection on November 7, 2014. Dckt. 422. Mr. McDonald objects on the following grounds:

1. The Disclosure Statement does not provide sufficient information for creditors to determine whether the plan has been filed in good faith and not by any means forbidden by law, as required by § 1129(a)(3). It appears the YP Western Directory, LLC is the plan proponent in name only, and that the plan

was prepared and served upon creditors by the debtors and their counsel.

2. The Disclosure Statement does not contain sufficient information in order for it to be determined whether the value of the property to be distributed is not less than the projected disposable income of the debtors over the five-year period following the commencement of payments under the plan, as required by § 1129(15)(B).

3. The Disclosure Statement does not set forth sufficient operating income for the debtors, given that quality monthly operating reports have been prepared and filed by the Trustee since November 2013.

4. The Disclosure Statement does not discuss the tax implications of the plan. Moreover, the Disclosure Statement does not provide for payment of current and future tax liabilities of the estate and the debtors.

5. The Disclosure Statement does not provide the basis for its treatment of the G Street Investments, LLC's secured claim. It does not provide the basis for the interest rate or the value of the property subject to the claim.

6. The Disclosure Statement does not adequately explain the status of the litigation regarding forfeited bonds that would serve to reduce the claim of the United State Fire Insurance Company, nor does it give an accurate explanation as to what the amount of that claim is.

7. The Disclosure Statement does not adequately explain the status of the Inyo property, which appears to have equity even after consideration of the substantial liens there against.

YP Western Directory, LLC Response

YP Western Directory, LLC filed a reply to Mr. Macdonald's objection on November 20, 2014. Dckt. 437. YP Western Directory, LLC replied in order of objections:

1. Mr. Macdonald has failed to state with any specificity what is missing from the Disclosure Statement and the Disclosure Statement provides sufficient information for creditors to determine whether the Plan has been filed in good faith.

The Disclosure Statement is based on information from Debtors, the Debtors' accountant, the Chapter 11 Trustee, the proofs of claim filed by creditors, and the monthly operating reports.

2. Mr. Macdonald makes a blanket statement without any reference to support his claim. The Disclosure Statement show the projected payment, and the payments to be paid out. The Plan payments are not less than the projected disposable income of the Debtors over the five-year period following the commencement of Plan payments, as required by § 1129(15)(B). The objection is vague and Mr. Macdonald's objection should be overruled.

3. The objection is without merit. The monthly operating reports which have been prepared and filed by the Chapter 11 Trustee show sufficient operating income for the Debtors. The Debtors have operated their bail bond

business since the case was filed and also since the Chapter 11 Trustee was appointed. The Debtors have earned all of the business income. This objection of Mr. Macdonald should be overruled.

4. The objection lacks any specificity. The Disclosure Statement discusses tax implications of the Plan. It provides for payment of pre-petition tax debt, payment of ongoing tax debt, and payment of future tax liabilities.

5. The Disclosure Statement does provide a basis for its treatment of the G Street Investments, LLC's secured claim. It does provide the basis for the interest rate and the value of the property subject of the claim. On February 4, 2013, the court approved Debtors' motion for valuation of collateral and the claim of LSC Realty California, LLC secured by a first deed of trust against the real property commonly known as 900 G Street Modesto, California, is determined to be a secured claim in the value of \$650,000.00. LSC Realty California, LLC then filed a bifurcated secured claim in the sum of \$650,000.00 secured and a sum of \$117,864.75 unsecured. On the same date LSC Realty California, LLC filed an unsecured claim in the sum of \$180,054.27.

The Disclosure Statement provides that G Street Investments, LLC, which purchased all of the rights of LSC Realty California, LLC, shall have a secured claim in the sum of \$700,000.00, amortized over 30 years with 6.25% interest, all due and payable within five years upon entry of an order confirming plan. This treatment is actually better than the secured valuation by the court, and the interest rate is higher than the filed secured claim, which provides for 5.20% fixed.

The balance of the claim of G Street Investments LLC will be paid as unsecured, receiving a 35% dividend over a four year period, commencing one year after plan confirmation.

Some provisions were inserted in the Disclosure Statement at the suggestion of Mr. Macdonald, such as the alternative of an § 1111(b)(2) election by Mr. Macdonald.

6. The Disclosure Statement adequately explains the litigation regarding forfeited bonds against Amarpal Dosanjh that would reduce the claim of United State Fire Insurance Company in this case, and adequately explains the amount involved.

Status of that case was thoroughly explained as two bad faith Chapter 13 filings by Amarpal Dosanjh of the eve of trials, both Chapter 13 cases dismissed, so trial will be scheduled again.

7. Mr. Macdonald fails to state what additional information he believes should be included in the Disclosure Statement. The Disclosure Statement adequately explains the status of the Inyo property. The Chapter 11 Trustee determined that considerable liens existed against the Inyo property sufficient to stop the sale. The chapter 11 Trustee has indicated he may sell the Inyo property at a later date.

United States Fire Insurance Company's Opposition

United States Fire Insurance Company ("USFI") filed an opposition to the instant Disclosure Statement on December 4, 2014. Dckt. 458. USFI opposes

on the following grounds:

1. The Plan does not comply with Bankruptcy Code § 1129(a)(1) because it fails to properly classify. The Plan fails to properly classify USFI's claims by not taking into account that USFI is entitled to two claims on account of its Class 3 lien. Under the Plan, USFI's interest in the Oakdale Property is undersecured. The secured claim is the value of the collateral. The unsecured claim - which has not been classified or analyzed under the Plan - is the deficiency owed after subtracting the collateral's value from the lien amount.

Consequently, USFI has two distinct claims, is entitled to both on both claims, and is entitled to receive two distributions. The Plan needs to be amended to properly classify USFI's secured claim.

2. The Plan fails to comply with Bankruptcy Code § 1129(a)(2) because there is a conflict between the Disclosure Statement and Plan as to modifying the automatic stay to permit USFI to exercise its lien rights. The automatic stay is only modified for HSBC Bank's Class 1 secured claim, who may exercise its rights against the Oakdale property upon plan confirmation. As to USFI, there is a significant discrepancy between the Disclosure Statement and Plan as to the treatment of its Class 3 secured claim. The Disclosure Statement provides that the confirmation order will modify the automatic stay to permit USFI to exercise its lien rights against the Oakdale Property. However, the Plan omits this language modifying the stay. Because the Disclosure Statement indicates that the Plan controls as to any conflict with the Disclosure Statement, USFI is enjoined from exercising its rights and collect on its claim post-confirmation

3. The Plan also fails to comply with Bankruptcy Code § 1129(a)(2) because it ignores USFI's pending non-dischargeability adversary proceeding. YP Western's proposed Plan ignored USFI's pending non-dischargeability proceeding against the Debtors. Adversary Proceeding No. 13-ap-090029. Simply because the proceeding is on "hold" by agreement of the parties does not mean that the Plan should ignore it. Therefore the Plan must take the proceeding and non-dischargeable claim into account. The Plan calls for payment of approximately 35% of unsecured claims over four years. All classes are impaired. USFI's Class 8.1 unsecured claim, and USFI's claim subject to the pending non-dischargeability adversary proceeding are not paid in full.

4. The Plan fails the "best interests of creditors" test under Bankruptcy Code § 1129(a)(7) because it does not provide for the possibility of USFI making a § 1111(b)(2) election.

The Plan fails to consider the present value of each claimant would receive and fails to explicitly analyze the consequences of USFI making a § 1111(b)(2) election. If USFI makes the election, it will have a secured claim of \$340,161.14. To satisfy the best interests of creditors test, USFI must receive payments over the life of the Plan equal to the full amount of its secured claim. However, the present value of those payments need only equal the value of the estate's interest in the collateral securing the claim over the life of the Plan [i.e. \$95,436.39 = \$550,00 (Plan's faulty valuation of the Oakdale Property) minus \$454,563.61 (HSBC's first lien)].

In order for USFI to have a § 1111(b)(2) election properly applied under the proposed Plan, USFI must receive a lien on the Property for its total claim of \$340,161.14, and must receive a stream of payments with a present value of \$95,436.39 at an appropriate interest rate. Currently, the Plan calls for monthly payments of \$1,562.18 amortized over 30 years at an interest rate of 3.4%. This equates to aggregate payments over 30 years of \$562,384.80, but having a present value over the life of the Plan of only \$93,730.80 (i.e. less than the value of the estate's interest in the collateral securing the claim).

Like with the Debtors' proposed plan, there is also no support for this low valuation of \$550,000, which has been contradicted by appraisals already filed with the court. The significant disparity in valuations makes a substantial difference in the rights and treatment of the secured claims, the impact on the unsecured creditor body, and whether the Plan satisfies the best interests of creditors test.

5. The Plan is not feasible under Bankruptcy Code § 1129(a)(11) because it fails to account for all of the amounts owed to USFI. The Plan fails to take into account all amount owed to USFI, including (1) the bifurcated claim where USFI's lien is undersecured; (2) a potential § 1111(b)(2) election where the present value payments are insufficient; and (3) the amounts owed and potentially non-dischargeable in the pending adversary proceeding. These amounts and issues must be considered to determine whether the Plan is feasible.

6. The Plan fails to meet the additional "cramdown" requirements under Bankruptcy Code § 1129(b) to confirm a nonconsensual plan. To be fair and equitable with respect to USFI's impaired secured claim, the Plan must satisfy the § 1111(b)(2) election requirements. The Plan does not satisfy those requirements.

YP Western Directory, LLC Response to USFI Objections.

YP Western Directory, LLC filed a reply to USFI's objection on December 11, 2014. Dckt. 470. YP Western Directory, LLC replied in order of objections:

1. USFI claims in error that it is entitled to two or three claims. USFI filed a fully secured claim on March 26, 2013 in the sum of \$2,337,785.74. Proof of Claim No. 19-1. There was no amount listed as unsecured. Debtors filed objection to this claim. On May 9, 2013, USFI filed an amended claim, again fully secured, in the sum of \$340,161.14. Again there was no amount listed as unsecured. Proof of Claim No. 19-2. Even if the claim of USFI is undersecured, that does not generate two claims. The claims bar date in this case was March 28, 2013. FN.1.

FN.1. Though the parties talk about USFI having a claim secured by a junior lien and an unsecured claim, the court cannot find in the 473 documents on the Docket an order valuing the secured claim of USFI. If there is such an order, it automatically bifurcates the USFI claim into a secured claim, and the balance as an unsecured claim. 11 U.S.C. § 506(a). If no such valuation has occurred, then USFI is holding a secured claim which must be provided for the amount of such claim.

2. The Disclosure Statement provides at page 17 that the confirmation order will modify the stay to permit USFI to exercise its lien rights against the Debtors' residence and provides for payment in full of the secured claim of \$340,161.14 at 3.4% interest over 30 years. USFI secured claim will be paid in full. The Plan, however, needs to be amended to insert similar language in the Plan for the benefit of USFI.

3. The Disclosure Statement adequately discloses the pending adversary complaint by USFI on page 9.

4. In the Disclosure Statement and Plan, the only claim filed by USFI, a secured claim in the sum of \$340,161.14 is scheduled to be fully paid by monthly payments of \$1,562.18 for five years and then payment in full of any remaining sum by payment or refinance. As this claim is not impaired there is no basis for a § 1111(b)(2) election.

5. The Plan does take into account all amounts owed to USFI. In error, USFI contends there are three different debts owed to USFI, but only one claim was filed. This claim is fully provided for in the Disclosure Statement. There was no proper filing for the unsecured amount of \$117,753.00 and it was provided for in Class 8.1. YP suggests the Disclosure Statement should be amended to withdraw the \$117,753.00 amount because a claim was not properly filed.

6. The claim of USFI is properly classified and treated, and there is no basis for an election under § 1111(b)(2).

UNITED STATE TRUSTEE OBJECTION

The United States Trustee ("UST") filed an objection to the Disclosure Statement on December 4, 2014. Dckt. 461. FN.1.

FN.1. The court notes that the UST filed an original objection on December 4, 2014 as well (Dckt. 456) but the UST filed a Notice of Withdrawal of that objection on December 4, 2014. Dckt. 460.

The UST objections on the following grounds:

1. The historical earnings information set forth in Part G of the Disclosure Statement is somewhat misleading because the earning from May include approximately \$30,000.00 received on account of the one-time sale of the estate's wine business assets.

2. The Disclosure Statement underestimates the amount of administrative claims. Specifically, the Disclosure Statement estimates professional fees of \$76,000.00. However the operating report for October reflects accrued professional fees of \$85,543.00. Dckt. 426, pg 5. The operating report also reflects more than \$43,000.00 of post-petition income tax liabilities. Dckt. 426, pg. 5, lines 23-24.

3. The projections in Part O of the Disclosure Statement are inconsistent with the income projections set forth on Exhibit C to the Disclosure Statement. For instance, the Disclosure Statement projects monthly business income of \$38,862.00, while in Exhibit C the projected income for 2015 is \$483,549.00 (or \$40,295.76 per monthly). Compare Disclosure Statement at pg.

24 (lines 15-19) with Exhibit C to the Disclosure Statement (Dckt. 417).

4. The projections on Exhibit C to the Disclosure Statement include more than \$17,000.00 in expenses relating to harvesting and winery costs. The Disclosure Statement should address whether the Debtors intend to pursue the wine business post-confirmation, notwithstanding the sale of the assets of the Most Wanted Wine Co., Inc.

5. The projections on Exhibit C to the Disclosure Statement do not appear to provide for the payment of ongoing income taxes.

6. The estimated payment schedule on Exhibit A to the Disclosure Statement does not appear to provide for the Class 3 claim of USFI (\$1,562.18 per month. Compare Exhibit A to the Disclosure Statement (Dckt. 416) with Disclosure Statement at pg. 17, lines 3-17.

7. The Disclosure Statement should address 11 U.S.C. § 1129(a)(15). The reason is that the Disclosure Statement projects substantial excess income in Years Two through Five of the Plan.

8. The Disclosure Statement should address whether the proposed \$6,000.00 draw to the Debtors will be sufficient to cover their expenses.

YP Western Directory, LLC Response to UST Objection

YP Western Directory, LLC filed a reply to UST's objection on December 11, 2014. Dckt. 466. YP Western Directory, LLC replied in order of objections:

1. The inclusion or exclusion of income for the month of May 2014 does little to change the net average monthly income. YP suggests the best insight as to Debtors' ability to meet the Plan is the projection prepared by Fristen Kirchner, CPA, C.F.E.

2. The difference in the fees can be explained by fees that have already been paid. The Chapter 11 Trustee's Monthly Operating Report for October 2014 reflects accrued profession fees of \$85,543.00, but this sum includes fees already paid by order of the court to the accountant for the Chapter 11 Trustee in the sum of \$10,938.75.

The October Monthly Operating Report indicates a post-petition tax liability estimates that would be reduced if the court orders fees be paid to the Chapter 11 Trustee. Further, the Chapter 11 Trustee has previously paid substantial quarterly estimated taxes to the Internal Revenue Service and the Franchise Tax Board. Finally the Plan Payout provides for over \$60,000.00 in payment for taxes.

3. The income projections in Part O of the Disclosure Statement are not inconsistent with the income projections set forth in Exhibit C to the Disclosure statement. The income projections in Part O states that are based on the previous 12 months in the chapter 11 case whereas the projections in Exhibit C are projections made by the CPA for future years starting in 2015.

This objection is comparing income from an established post petition period because December 2012 to the present, with the further projections in 2015. The future projections are set slightly higher at \$40,295.75 per month.

4. The Disclosure Statement is clear the wine business is sold; thus that business is concluded. Debtors advise they have no intent to pursue the wine business post confirmation. They plan to grow, harvest, crush and sale the "crush" by the gallon. Debtors believe this can result in a net profit each year. The CPA has projected the expenses for such business but not income, apparently out of an abundance of caution.

This objection should be overruled as to the issue of the wine business because it was sold and the Disclosure Statement provides for such.

5. The projections prepared by the CPA do not provide for ongoing income taxes, but the Payout plan does provide for taxes. An estimate of taxes has been provided for in Exhibit A to the Disclosure Statement. It provides for \$60,000.00 in taxes over the first 4 years and the 5th year has more than sufficient excess income to pay taxes on the income.

6. The payment for USFI, which is the mortgage on Debtors' house is discussed on page 17 of the Disclosure Statement as a Class 3 claim. Furthermore, the Schedule of Payments provides this mortgage will be paid by the Debtors from their \$6,000.00 monthly draw. The Schedule of Payments states the secured creditor for the residence will be paid from by the draw.

7. The Disclosure Statement is conservative in the payout to allow for unexpected expenses, taxes and the possibility that income may not increase as projected. YP, however, is not opposed to an amendment for the provisions of 11 U.S.C. § 1129(a)(15). The Debtors excess income in Years Two through Five of the Plan can be dividend and paid to unsecured creditors.

8. The Debtors advise they have been living on a draw of \$6,000.00 per month or less since having filed for bankruptcy two years ago. They believe that sum will be sufficient to cover expenses.

DISCUSSION:

1. Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).

2. "Adequate information" means information of a kind, and in sufficient detail, so far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).

3. Courts have developed lists of relevant factors for the determination of adequate disclosure. *E.g., In re A.C. Williams, supra.*

4. There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567 (Bankr. N.D.Ga. 1984). "Adequate information" is a flexible concept that permits the degree of

disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. In re Michelson, 141 B.R. 715, 718-19 (Bankr. E.D.Cal. 1992).

5. The court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D. Pa. 1982).

Upon review of the Disclosure Statement, the objections, and the replies, the court finds that the Disclosure Statement does not provide sufficient adequate information for approval of the Disclosure statement.

While YP Western Directory, LLC attempts to meet this burden, the court finds that the Disclosure Statement either requires too much clarification outside the scope of the Disclosure Statement itself or does not have the information in the document itself.

For instance, the Disclosure Statement does not provide for income taxes. While YP Western Directory, LLC attempts to gloss over this by stating that the Plan payout does. The lack of this information in the Disclosure Statement is just an instance of where the Disclosure Statement fails to meet the adequate information burden.

Furthermore, the Disclosure Statement fails to make clear certain assumptions that YP Western Directory, LLC take for granted. For instance, the Disclosure Statement does not make clear that the Debtors will no longer be in the wine business. Additionally, the Disclosure Statement fails to explicitly state the basis for the single secured claim for USFI as well as fails to explicitly show the calculation for the administrative expenses on how those amounts were calculated.

Also, the court is also concerned with which projections the Disclosure Statement is relying on and whether those projections are actually feasible. The fact that it includes the one-time sale of the wine company's assets as well as the fact that future income is based on the "conservative" analysis of the CPA which does not appear to correlate with the past 12 months of the case is concerning.

The court is also not convinced that the Disclosure Statement does not need to account for USFI's potential 11 U.S.C. § 1111(b)(2) election. The conclusory statement by YP Western Directory, LLC that it does not need to account for the three potentially claims of USFI does not provide sufficient information as to why.

The three separate objections only highlights the insufficiencies of the Disclosure Statement and its failure to provide the necessary adequate information to make these a feasible Disclosure Statement.

Therefore, the court denies approval of the Disclosure Statement 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 YP Western Directory, LLC 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.

5. [14-91454-E-11](#) THE CIVIC PLAZA, LLC

STATUS CONFERENCE RE: VOLUNTARY
PETITION
10-22-14 [[1](#)]

Debtor's Atty: C. Anthony Huges

Notes:

Case originally filed in Fresno Division.

Operating Report filed: 11/19/14

Status Conference Statement filed 11/17/14 [Dckt 51]

Amended Petition filed 11/4/14 [Dckt 31]

Notice of Perfected Security Interest in Cash Collateral and Objection to Use of Cash Collateral by Secured Creditor Westamerica Bank filed 10/31/14 [Dckt 27]

[CAH-4] Motion for Conditional Approval of Disclosure Statement Dated August 11, 2014 filed 11/7/14 [Dckt 35], set for hearing 12/11/14 at 3:30 p.m.

[CAH-4] Disclosure Statement filed 11/7/14 [Dckt 37]

[CAH-4] Chapter 11 Plan of Reorganization filed 11/7/14 [Dckt 38]

[MMW-2] Motion for Relief from the Automatic Stay [Westamerica Bank] filed 11/20/14 [Dckt 56], set for hearing 12/18/14 at 10:00 a.m.

U.S. Trustee Report at 341 Meeting dated 11/24/14

6. [14-91454](#)-E-11 THE CIVIC PLAZA, LLC
CAH-4

MOTION FOR CONDITIONAL APPROVAL
OF DISCLOSURE STATEMENT FILED
BY DEBTOR
11-7-14 [[35](#)]

Tentative Ruling: The Motion For Approval of the Disclosure Statement has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 7, 2014. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion For Approval of the Disclosure Statement has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion For Approval of the Disclosure Statement is denied without prejudice.</p>
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REVIEW OF THE DISCLOSURE STATEMENT

Case filed: October 22, 2012

Background: Debtor is managed by John-Pierre Mendoza. Debtor manages a single asset commercial real property, located at 1727 N Street, Merced, California (the "Property") and currently no employees work under Debtor. The Property is 15,000 square feet, with 19 separate office suites and 5 restrooms throughout.

There is free parking provided by the city in an adjacent parking lot. Mendoza originally held title to the Property and financed the Property with a first mortgage at \$766,000.00 and a second mortgage of \$165,000.00 for a total debt of \$931,000.00 through County Bank of Merced. In 2009, WestAmerica purchased the notes from Country Bank of Merced. Mr. Mendoza, knowing that the notes were going to mature in 2014, unsuccessfully exhausted all measures to refinance and request for extensions for the notes. Upon the notes reaching their maturity date, WestAmerica rejected the mortgage payments and as a result seven months of arrears accrued. WestAmerica eventually filed a Notice of Default and schedule a Trustee sale for the Property which led to the voluntary filing of this chapter 11. On October 17, 2014, Mr. Mendoza transferred the Property into the Civic Plaza, LLC, a California Limited Corporation.

Creditor/Class	Treatment	
Administrative Expenses	Claim Amount	\$5,000.00
	Impairment	
	<p>Professional Fees and Expenses (subject to final fee applications and court approval)</p> <p>Known fees and expenses in this class:</p> <p>Fees and expenses incurred in representing the Debtor in Possession owed to Hughes Financial Law.</p> <p>Balance due to professionals of Debtor. Amount is merely a rough estimate as the amount of fees between now and confirmation is a large variable.</p> <p>At the time this case was filed there was \$0.00 as a post-petition retainer.</p> <p>It is estimated that the Debtor will have sufficient funds to cover the difference between the post-petition retainer and the total amount due.</p> <p>Under this Plan, Administrative Expenses shall be paid in full on the Effective Date of the Plan or upon such other terms as may be agreed upon by the holder of the claim and the Debtor</p>	
Class 1: WestAmerica Bank	Claim Amount	\$950,000.00
	Impairment	Impaired

	<p>First Mortgage on Debtors' Commercial Property located at: 1727 N Street, Merced, California</p> <p>Estimated Fair Market Value of the Property: \$1,250,000.00</p> <p>Value based on appraisal obtained June 7, 2013</p> <p>Estimated Claim Amount: \$754,955.00</p> <p>Total Claim amount including Class 2: Second Mortgage: \$919,154.00</p> <p>Debtor agrees to increase the total claim from \$919,154.00 to \$950,000.00 for purposes of this Plan.</p> <p>This claim is fully secured and no proof of claim has been filed by Claim Holder as of November 6, 2014.</p> <p>Debtor shall pay the full claim as follows:</p> <p>Secured Note Amount: \$950,000.00 Monthly Payment: \$5,692.85 Interest Rate per Annum: 5.25% Term: 300 months (25 years) Balloon Payment: Due in 36 months (3 years) from Plan confirmation date. Estimated payoff amount: \$889,229.22 (See Exhibit A-Amortization Schedule attached hereto)</p> <p>1st payment will commence the 1st day of the first month after the effective date of the confirmed plan.</p> <p>Debtor shall maintain property taxes and insurance.</p> <p>Creditors in this class may not repossess or dispose of their collateral so long as Debtor is not in material default under the Plan.</p> <p>In the event of a default, this Claimant may exercise all of its remedies available under applicable state law. Likewise, Debtors maintain all rights and protections of California Law.</p> <p>Material default is defined in Article IX, section 9.04 of Debtor's Plan.</p> <p>This secured claim is impaired and entitled to vote on confirmation of the Plan.</p>	
Class 2: WestAmerica Bank	Claim Amount	\$164,199.00
	Impairment	Impaired

	<p>Second Mortgage on Debtor's Commercial Property located at: 1727 N Street, Merced, California.</p> <p>Estimated Fair Market Value of the Property: \$1,250,000.00</p> <p>Value based on appraisal obtained on June 7, 2013</p> <p>Estimated Claim Amount: \$164,199.00</p> <p>(Claimant has not filed Proof of Claim as of November 6, 2014)</p> <p>The payment of this class is provided in Class 1.</p> <p>This secured claim is impaired and entitled to vote on confirmation of the Plan.</p>	
Class 3: Merced County Tax Collector	Claim Amount	\$9,048.40
	Impairment	Impaired

	<p>Secured Property Taxes on Debtor's Commercial Property located at 1727 N Street, Merced, California</p> <p>Estimated Fair Market Value of the Property: \$1,250,000.00.</p> <p>Secured Claim: \$9,048.40</p> <p>(Claimant has not filed Proof of Claim as of November 6, 2014)</p> <p>Claim shall be treated in a manner consistent with 11 U.S.C. § 1129(a)(9)(D).</p> <p>This claim will be paid monthly payments of \$336.55 for 36 months or until the claim is paid in full, whichever occurs first.</p> <p>This amount includes the estimated amount of interest based on the applicable nonbankruptcy law rate of interest pursuant to 11 U.S.C. § 511, estimated at 18%.</p> <p>Alternatively, Debtors may pay more than the monthly payment amount stated above toward the principle amount of this claim prior to the accrual of future interest.</p> <p>Payments to begin on the first of the month following the effective date of Debtor's Plan.</p> <p>In the event of a default, this Claimant may exercise all of its remedies available under applicable state law. Likewise, Debtors maintain all rights and protections of California Real Property and Foreclosure Law.</p> <p>Material default is defined in Article IX, section 9.04 of Debtor's Plan</p> <p>This secured claim is impaired and entitled to vote on confirmation of the Plan.</p>	
Class 4: General Unsecured Claims <i>FN.1.</i>	Claim Amount	\$19,721.79
	Impairment	Impaired

	<p>Estimated Total: \$19,721.79</p> <p>City of Merced: \$296.75</p> <p>Comcast Cable Communications, LLC: \$173.61</p> <p>Javier Dejesus: \$3,656.00</p> <p>Ornelas Property Management: \$12,634.00</p> <p>Pacific Gas and Electric: \$2,803.43</p> <p>Terray Pest Control: \$158.00</p> <p>Creditors in this class will be paid in full within 120 days from the effective date of Debtor's Plan.</p> <p>This class is impaired and entitled to vote on confirmation of the Plan.</p>	
Class 5: The interest of the Debtor in the property of the estate	Claim Amount	
	Impairment	Impaired
	Shareholders are not impaired. There are no net assets for distribution nor income to distribute to shareholders as dividends. The value of the share in debtor is zero.	

FN.1. No unsecured claims have been filed in this case. From a review of Schedule F, it appears that the unsecured claims are for current expenses which the Debtor should be paying if it is able to effectively operate its business, pay its bills, and fund a Chapter 11 Plan.

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

____Identity of the accountant and process used

____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:

WestAmerica Bank's Objection

WestAmerica Bank filed an objection to the Disclosure Statement on December 4, 2014. Dckt. 69. WestAmerica Bank makes the following objections:

1. Inaccurate address for United States Trustee. Page 5 of the Disclosure Statement requests that objections to the Disclosure Statement or to plan confirmation be sent to the United States Trustee in Oakland, California. This is incorrect.

2. Inaccurate and inadequate information in Debtor's background. The description of Debtor's background beginning on page 6 of the Disclosure Statement is inaccurate at best. First, it is misleading for Debtor to claim there is free parking provided by the City in an "adjacent" parking lot without indicating that the parking lot is two blocks from Debtor's location.

Second, it is inaccurate for Debtor to claim that Mr. Mendoza financed the property with a first loan of \$766,000.00 and a second loan at \$165,000.00 for a total debt of \$931,000.00. Instead, Debtor should indicate that on June 11, 2004, County Bank made the first loan to Mr. Mendoza in the principal amount of \$950,000.00. Subsequently, on July 18, 2007, Mr. Mendoza borrowed the second loan in the principal amount of \$185,000.00.

To put things in context for creditors, Debtor needs to include specific information about the time line and foreclosure process. Debtor should indicate that the first and second loan matured on June 11, 2014. The Disclosure Statement should also reflect that on June 25, 2014 WestAmerica Bank recorded a Notice of Default on the first loan with the Merced County Recorder's Office. That same day, WestAmerica Bank recorded a Notice of Default for the second loan with the Merced County Recorder's Office. On October 1, 2014, WestAmerica Bank recorded a Notice of Trustee's Sale for the Property relative to the second loan and set that sale for October 24, 2014.

Debtor should also be required to include more detail about the circumstances about its formation. To wit, on October 17, 2014, Mr. Mendoza, the borrower responsible for the first and second loans, formed Debtor of which Mr. Mendoza owns 100%. On October 20, 2014, Mr. Mendoza transferred the property to Debtor in default of the first and second loans and without WestAmerica Bank's consent. Two days later on October 22, 2014, Mr. Mendoza caused Debtor to file the instant chapter 11 bankruptcy to stop the foreclosure from occurring.

WestAmerica Bank requests that the statement on page 7, line 20 be stricken, which states: "Westamerica, thereafter, did not work with Mendoza,

failed to return calls, proceeding to charge the account with bogus entries and fees. Mendoza was able to reverse almost \$75,897 charge to the first note and \$3,779 charged to second note." WestAmerica Bank states that this information is inaccurate, misleading, and inflammatory.

Additionally, WestAmerica states that Debtor should be required to provide additional information regarding Mr. Mendoza's failed, personal bankruptcy, particularly since he is the party who will manage the property.

3. Inadequate and inaccurate description of treatment of claims and interest under the plan. Beginning on page 12 of the Disclosure Statement, Debtor summarizes Class 1. WestAmerica objects to the reference to the estimate fair market value of the Property at \$1,250,000.00. It is further inaccurate for Debtor to claim that the value is derived from an appraisal obtained on June 7, 2013. As revealed in Mr. Mendoza's declaration in opposition to WestAmerica's Motion for Relief from Stay, Mr. Mendoza did not obtain an actual appraisal on that date. Rather, Mr. Mendoza merely "requested an appraisal." Declaration of John-Pierre Mendoza in Support of Opposition to Motion for Relief from the Automatic Stay at paragraph 7. Indeed, there is no factual predicate or foundation for the alleged appraisal or valuation either in Mr. Mendoza's Declaration or the Disclosure Statement. No appraisal report was ever prepared. WestAmerica Bank filed a verified appraisal in connection with its Motion for Relief from Stay which showed the current as-is market value of the Property at \$944,000.00.

WestAmerica Bank also objects to the estimated claim amount at \$754,955.00. WestAmerica Bank can provide Debtor with the current amount due, which increases daily. WestAmerica Bank provides the same objections to the description of Class 2 located on page 13 of the Disclosure Statement and relative to the alleged appraisal obtained by Mr. Mendoza as well as the estimated claim amount.

4. Debtor's description of general unsecured claims is inadequate and inaccurate. WestAmerica Bank does not believe that any of the alleged general unsecured claims are actually claims against this Debtor. Rather, each of those claims, which arose pre-petition, was properly a claim against Mr. Mendoza, who held title to the Property until two days before the bad faith bankruptcy filing. It is further inaccurate for Debtor to claim that these non-claims construed as general unsecured claims will be paid in full within 120 days from the effective date of Debtor's Plan. WestAmerica Bank will not consent to the payment of any general unsecured claims, unless and until it has been paid in full.

5. The source of payments provision contains inadequate information. Beginning on page 15, Debtor references that payment distribution under the Plan will be funded by income generated by the Property and that priority claims, including attorney's fees and trustee fees, shall be paid upon confirmation of Debtor's Plan. Debtor should include a statement that WestAmerica Bank does not consent to the use of its cash collateral. All income generated by this Property is WestAmerica Bank's cash collateral.

6. The reorganization analysis contains inadequate information. As discussed, WestAmerica Bank objects to the use of \$1,250,000.00 as a value for the Property as reiterated by Debtor on page 20 of the Disclosure Statement and anywhere else that the value appears. WestAmerica Bank also objects to the

characterization of the secured claims as being in the limited amount of \$940,048.40. This is inaccurate. There is no factual support for either the value of the Property or the WestAmerica Bank's claims. WestAmerica Bank similarly objects to the use of \$19,721.79 as the value of general unsecured claims. There is no factual basis for the existence of any general unsecured claims of the Debtor. Rather, these claims are more properly claims against Mr. Mendoza, just as Mr. Mendoza is responsible for the loans due WestAmerica Bank. WestAmerica Bank's same objections apply to the descriptions following the heading "REAL PROPERTY" beginning on approximately line 18 of page 21 of the Disclosure Statement. WestAmerica Bank also objects to the characterization and value of Debtor's alleged personal property at \$7,848. Those are WestAmerica Bank cash collateral funds. In light of Debtor's incorrect figures, creditors are entitled to a new reorganization and liquidation analysis, which paints a realistic scenario for creditors.

7. Because the Plan is not confirmable, there is no need to approve the Disclosure Statement. Debtor has no actual unsecured creditors who will vote in support of a plan. The unsecured creditors described in the Disclosure Statement and proposed plan are merely pre-petition creditors of Mr. Mendoza. WestAmerica Bank finds it extremely improbable that Debtor incurred general unsecured creditors in the two days between its formation as a limited liability company and the filing of this case.

Debtor's Response

Debtor filed a response to WestAmerica Bank's objection on December 11, 2014. Dckt. 80. The Debtor responds in order of the objections in the following manner:

1. Debtor will file and amend their Disclosure Statement to provide an accurate address for the United States Trustee.

2. Debtor will amend the Disclosure Statement to provide more information, insofar as the proximity of the parking lot to Debtor's business, the financing of the first and second loans, specific information about the time line and foreclosure process and recordation of the Notice of Default for loan 1 and loan 2, and the recordation of a Notice of Trustee's sale for the property relative to loan 2. Debtor will provide more detail about the circumstances of its formation, and provide additional information regarding Mr. Mendoza's failed, personal bankruptcy.

3. Debtor will clarify information concerning the appraisal he obtained in 2013, and include an appraisal as an exhibit to Debtor's Declaration in support of the Disclosure Statement and Plan. Additionally, Debtor will seek a court order to hire an appraiser to obtain an estimate of the fair market value of Debtor's Property. Before Debtor agrees to a stipulated value for the Property, Debtor desires to have a second opinion as to the value of the Property. WestAmerica Bank postures as to the purported value and the claim amount, but has not yet filed a proof of claim, which would tend to serve as prima facie evidence of its alleged amount. Debtor seeks a second opinion as to value. Debtor does not accept WestAmerica Bank's stated value as evidence of the true market value of the Property, as WestAmerica bank has self-serving interest in low balling the property, to support its claim of lack of equity and adequate protection.

4. Any claims incurred by Mr. Mendoza in direct connection with the Property were transferred to the LLC at the time of formation, therefore the claims were classified properly, as debts of the LLC. WestAmerica Bank has provided no evidence or legal precedence to the contrary. Debtor believes the information, as reported, is accurate and adequate.

5. Debtor will include a statement that WestAmerica Bank does not consent to the use of its cash collateral in its amended Disclosure Statement.

6. Mr. Mendoza's interests in the Property were transferred with the formation of the LLC to the LLC, including debts associate with said Property. Debtor will provide a more detailed analysis of its proposed treatment of claims in its amended Disclosure Statement. WestAmerica Bank again postures about what "should" be the personal debt of Mr. Mendoza versus that of the LLC. WestAmerica Bank has offered no case precedent on the subject matter and seems to be merely putting forth its opinion as a fact of law. Debtor objects to WestAmerica Bank's posture.

7. Debtor denies that it has not actual unsecured creditors who will vote in support of a Plan. Debtor denies that the unsecured creditors described in the Disclosure Statement and Proposed Plan are merely pre-petition creditors of Mr. Mendoza, and WestAmerica Bank has offered no proof to the contrary, other than its own opinion. Debtor assumed the debts of Mr. Mendoza as part of the formation of the LLC for those debts directly tied to the LLC, and as such, there are actual unsecured creditors of Debtor to be treated under Debtor's Proposed Plan of Reorganization.

REVIEW OF NOVEMBER 2014 MONTHLY OPERATING REPORT

This Debtor, having been handed the real property which was facing foreclosure, has essentially acquired a business without pre-petition unsecured entanglements. (It also raises the specter of there being a possible fraudulent conveyance with respect to the creditors of Mr. Mendoza.) This bankruptcy case was filed on October 22, 2014.

In the November 2014 Monthly Operating Report, the Debtor in Possession states that Rents of \$1,610 were collected in November 2014. The cumulative rents collected since the start of the case were \$9,458. During the last 8 days of October 2014 the Debtor in Possession reports collecting \$7,848 in rents. Dckt. 54. Taking the average, the Debtor in Possession is reporting only \$4,729.00 a month. The Debtor in Possession is suppose to be collecting rents of \$16,039.00 a month. October 2014 Monthly Operating Report, Dckt. 54 at 5.

DISCUSSION:

1. Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).

2. "Adequate information" means information of a kind, and in sufficient detail, so far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of the holders of claims

against the estate to make a decision on the proposed plan of reorganization.
11 U.S.C. § 1125(a).

3. Courts have developed lists of relevant factors for the determination of adequate disclosure. *E.g., In re A.C. Williams, supra.*

4. There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567 (Bankr. N.D.Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. *In re Michelson*, 141 B.R. 715, 718-19 (Bankr. E.D.Cal. 1992).

5. The court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D. Pa. 1982).

A review of this case shows that this Chapter 11 case is essentially a two party case: Debtor and WestAmerica Bank. There is one asset and the entire plan and Disclosure Statement concern the treatment of WestAmerica Bank's claims.

A review of the Disclosure Statement reveals that there is information omitted that would be needed for the Disclosure Statement to meet the "adequate information" requirement. On the Debtor's own admission, information concerning the valuation of the Property is both missing and contested. Since the Chapter 11 case foundationally deals with the treatment of this Property and its value, this information on proper valuation is essential for the Disclosure Statement to properly account for the reality of the Debtor. Without the valuation being settled, the treatment of the claims and the projected business income cannot be truly representative of the Debtor's reality.

The creation of the Debtor after the failed bankruptcy of Mr. Mendoza is, in fact, the true background of this case. How the Debtor acquired these claims, including the unsecured claims, is information that is crucial to meet the adequate information requirement. Without a further discussion of the transfer of the Property and the transfer of the claims for Mr. Mendoza to the Debtor, it appears to this court that the Disclosure Statement is not sufficient.

The proposed "amendments" of the Debtor's Disclosure Statement do not provide the specifics on what the updated information will be and how it provides the necessary adequate information. For instance, the Debtor states that "Debtor will provide a more detailed analysis of its proposed treatment of claims in its amended Disclosure Statement," but fails to explain on what items the analysis will be supplemented. The fact that the Debtor does not appear to have readily available the proposed amendments to cure the objections made by WestAmerica Bank appears to mean that the Debtor may have substantial work in ensuring that the Disclosure Statement does, in fact, account for all issues in its reorganization analysis.

While some of WestAmerica Bank's objections are more objections to

confirmation, the inadequate information pointed out by WestAmerica Bank highlights the problems with the Disclosure Statement.

Therefore, 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 Debtors 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.

7. [14-91565](#)-E-11 RICHARD SINCLAIR

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
11-24-14 [[1](#)]

Debtor's Atty: Pro Se

Notes:

Chapter 11 Meeting of Creditors scheduled for 12/23/14 at 9:00 a.m. Debtor sent letter dated 12/5/14 to court requesting a continuance of Chapter 11 Meeting of Creditors [Dckt 26]

8. [12-92479](#)-E-12 DAVID/ESPERANZA AGUILAR

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
9-17-12 [[1](#)]

Debtors' Atty: Nelson F. Gomez

Notes:

Continued from 8/21/14

[NFG-2] Order Confirming Amended Chapter 12 Plan Dated July 10, 2014 filed
9/24/14 [Dckt 79]

9. [13-90888](#)-E-7 MICHAEL/ANN BADIOU
[13-9027](#)
SENTRY SELECT INSURANCE
COMPANY ET AL V. BADIOU

CONTINUED TRIAL RE: COMPLAINT
FOR NONDISCHARGEABILITY OF DEBT
8-5-13 [[1](#)]