# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Wednesday, October 26, 2016** **Hearing Room 1568**

10:00 AM
**2:16-17463 Gardens Regional Hospital and Medical Center, Inc.** **Chapter 11**

**#1.00** **EVIDENTIARY** Hearing re [92] to approve the Sale and authorize the assumption and assignment of Assumed Executory Contracts.

fr. 6-21-16; 7-13-16; 7-18-16; 7-26-16

Docket No: 0

**Tentative Ruling:**

10/25/2016

See Cal. No. 3, below, incorporated in full by reference.

**Party Information**

**Debtor(s):**

Gardens Regional Hospital and Medica Represented By
Samuel R Maizel
John A Moe

# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Wednesday, October 26, 2016** **Hearing Room 1568**

10:00 AM

**2:16-17463 Gardens Regional Hospital and Medical Center, Inc.** **Chapter 11**

▪

**#2.00** Hearing re [395] Debtors Motion To Reject Executory Contract With J.S.E. Emergency Medical Group, Inc., Pursuant To 11 U.S.C. § 365(A).

Docket No: 0

***** VACATED *** REASON: CONTINUED 10-31-2016 AT 10:00 AM.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Gardens Regional Hospital and Medica Represented By
Samuel R Maizel
John A Moe
Steven J. Katzman

10:00 AM
**2:16-17463 Gardens Regional Hospital and Medical Center, Inc.** **Chapter 11**

**#3.00** Hearing RE [422] snf [432] *Amended* Notice Of Contracts Being Assumed By Gardens Regional Hospital And Medical Center, Inc., And Assigned To Strategic Global Alliance In Accordance With Order Authorizing Sale Of Substantially All Of The Debtor's Assets Entered July 28, 2016

Docket No: 0

**Tentative Ruling:**

10/25/2016: For the reasons set forth below, the Court approves the Debtor's assumption of certain executory contracts and unexpired leases. By way of the Sale Order, the Court has already approved the assignment of the assumed contracts and leases to Strategic.

**Pleadings Filed and Reviewed:**

1) Errata Amended Notice of Contracts Being Assumed by Gardens Regional Hospital and Medical Center, Inc., and Assigned to Strategic Global Alliance in Accordance with Order Authorizing Sale of Substantially All of the Debtor's Assets Entered July 28, 2016 ("Motion") [Doc. No. 432]
   a) Amended Notice of Contracts Being Assumed by Gardens Regional Hospital and Medical Center, Inc., and Assigned to Strategic Global Alliance in Accordance with Order Authorizing Sale of Substantially All of the Debtor's Assets Entered July 28, 2016 [Doc. No. 422]
   b) Notice of Contracts Being Assumed by Gardens Regional Hospital and Medical Center, Inc., and Assigned to Strategic Global Alliance in Accordance with Order Authorizing Sale of Substantially All of the Debtor's Assets Entered July 28, 2016 [Doc. No. 419]
2) Stipulation Between Gardens Regional Hospital and Medical Center, Inc., Cerritos Gardens General Hospital Company and the Irving I. Moskowitz Foundation Correcting the Cure Amounts Due on the Leased Properties at the Closing of the Sale ("Stipulation") [Doc. No. 453]
3) Order (A) Authorizing the Sale of Substantially All of the Debtor's Assets Pursuant to Sections 105(a), 363, and 365 of the Bankruptcy Code to Strategic Global Management, Inc., Free and Clear of Liens, Claims, Encumbrances, and

10:00 AM
**CONT... Gardens Regional Hospital and Medical Center, Inc.** **Chapter 11**

Other Interests; (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; and (C) Granting Related Relief ("Sale Order") [Doc. No. 256]

a) Declaration of Samuel R. Maizel Regarding Filing of Asset Purchase Agreement Between the Debtor and Strategic Global Management Inc. [Doc. No. 223]
   i) Asset Purchase Agreement By and Among Gardens Regional Hospital and Medical Center, Inc. and Strategic Global Management, Inc. Dated July 25, 2016 ("APA") [Doc. No. 223, Ex. A]

## I. Facts and Summary of Pleadings

Gardens Regional Hospital and Medical Center ("Debtor") commenced this voluntary Chapter 11 petition on June 6, 2016. Doc. No. 1. On July 28, 2016, the Court approved the sale of the Debtor's primary assets to Strategic Global Management, Inc. ("Strategic"). *See generally* Sale Order. The Court also approved procedures under which the Debtor could assume certain executory contracts and unexpired leases, and assign the contracts and leases to Strategic. Pursuant to those procedures, the Debtor filed upon each counterparty to an assumed executory contract or unexpired lease a Cure Notice. The Cure Notice identifies the amounts that the Debtor believes are owed to each counterparty to cure any defaults that exist under each assumed contract or lease, and states the date by which each counterparty must file an objection to the assumption and assignment of its executory contract or unexpired lease (an "Assumption Objection"). Pursuant to the Sale Order, Strategic will pay the cure costs associated with the contracts and leases that the Debtor assigns to it. APA at ¶1.1(c).

The Debtor entered into a stipulation with Cerritos Gardens General Hospital Company ("Cerritos") and the Irving Moskowitz Foundation resolving the cure amounts with respect to the unexpired leases that will be assumed and assigned. The stipulated cure amounts are as follows:

1) Lease agreement between the Debtor and Cerritos for the premises located at 21530 South Pioneer Blvd., Hawaiian Gardens, CA 90716 (the "Hospital Lease"). Cure amount: $203,778.63.
2) Lease agreement between the Debtor and Cerritos for the premises located at 21520 S. Pioneer Blvd., Suite 208, Hawaiian Gardens, CA 90716 (the "MOB 208 Lease"). Cure amount: $12,504.97.
3) Lease agreement between the Debtor and Cerritos for the premises located at

21520 S. Pioneer Blvd., Suite 209, Hawaiian Gardens, CA 90716 (the "MOB 208 Lease"). Cure amount: $7,994.13

4) Lease agreement between the Debtor and the Irving Moskowitz Foundation for the premises located at 22101 Norwalk Blvd., Hawaiian Gardens, CA 90716 (the "Office Lease"). Cure amount: $10,390.18.

The only other contract which the Debtor intends to assume and assign is with the College of American Pathologists. The Debtor's proposed cure amount is $12,370.44. The College of American Pathologists has not stipulated to the cure amount, but has not filed a timely Assumption Objection.

## II. Findings and Conclusions

Section 365(a) permits the Debtor to assume or reject any executory contract or unexpired lease. To assume an unexpired lease or executory contract that is in default, the Debtor must (1) cure the default (or provide adequate assurance that the default will promptly be cured), §365(b)(1)(A); (2) compensate the counterparty for any actual pecuniary loss resulting from the default (or provide adequate assurance that compensation will be promptly provided), §365(b)(1)(B); and (3) provide adequate assurance of future performance, §365(b)(1)(C).

The Debtor has entered into a stipulation with its lessors specifying the amounts necessary to cure the defaults on its real property leases. The Debtor has not entered into a stipulation specifying the cure amount with the College of American Pathologists, but the College of American Pathologists has not objected to the amount set forth in the Cure Notice. The Sale Order provides that "[a]ny counterparty to an Assumed Contracts/Leases that fails to timely file and serve an objection to the Cure Amounts shall be forever barred from asserting that a Cure Amount is owed in an amount in excess of that set forth in the Cure Notice." Sale Order at ¶13. Accordingly, the College of American Pathologists has waived its right to contest that the $12,370.44 cure amount set forth in the Cure Notice is sufficient to cure the default on its contract.

Strategic will pay the cure costs. APA at ¶1.1(c). Payment of the cure costs will occur at or before the closing of the sale. *Id.* at ¶1.5.2 ("At or before the Closing, Purchaser [Strategic] shall deliver or cause to be delivered to Seller [Debtor] evidence of … payment of all Cure Costs required hereunder to be paid by Purchaser"). The Court finds that Strategic's obligation to pay the cure costs pursuant to the APA constitutes adequate assurance that the defaults in the executory contracts and unexpired leases will promptly be cured. There is no evidence before the Court that

10:00 AM
**CONT... Gardens Regional Hospital and Medical Center, Inc.** **Chapter 11**

the counterparties have sustained any actual pecuniary loss that will not be compensated by the cure amounts. Therefore, the Debtor has satisfied the requirements of §365(b)(1)(A) and (B).

The Sale Order provides that Strategic "shall be responsible for satisfying any requirements regarding adequate assurance of future performance that may be imposed under section 365(b) of the Bankruptcy Code in connection with the proposed assignment of any Assumed Contracts/Leases." Sale Order at ¶16. No counterparty has contested Strategic's ability to adequately perform under the leases and contracts it will be assigned. The Sale Order and APA require the Debtor to assign the assumed leases and contracts to Strategic. By agreeing to assign the assumed leases and contracts to Strategic, the Debtor has provided adequate assurance of future performance under those leases and contracts within the meaning of §365(b)(1)(C).

Based upon the foregoing, the Court approves the Debtor's assumption of the executory contracts and unexpired leases specified in the Cure Notice. The Court has already approved the assignment of the assumed contracts and leases to Strategic by way of the Sale Order. The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

**Party Information**

**Debtor(s):**

Gardens Regional Hospital and Medica — Represented By
Samuel R Maizel
John A Moe
Steven J. Katzman

10:00 AM
**2:15-22727 220 Adams Ranch Road, LLC** **Chapter 11**

**#4.00** HearingRE: [66] Motion for approval of chapter 11 disclosure statement (Altman, Anerio)

Docket No: 66

**Tentative Ruling:**

10/25/2016: For the reasons set forth below, Motion DENIED.

**Pleadings Filed and Reviewed**

- Disclosure Statement:
  - Notice of Motion for Hearing on Debtor's Disclosure Statement [Doc. No.66]
    - Debtor's First Disclosure Statement and Motion for Approval of First Disclosure Statement ("Disclosure Statement" or "DS") [Doc. No. 66]
    - Chapter 11 Plan ("Plan") [Doc. No. 66-1]
    - Objection to Proposed Disclosure Statement ("UST Objection") [Doc. No. 68]
    - Objection to Debtor's Chapter 11 Disclosure Statement in Support of Chapter 11 Plan ("Secured Creditor Objection") [Doc. No. 69]
    - Debtor's Reply to the Objection of the United States Trustee ("Reply to UST") [Doc. No. 73]
    - Debtor's Reply to the Objection of JP Morgan Chase Bank ("Reply to Secured Creditor") [Doc. No. 72]
    - Request for the Court to Take Judicial Notice of Certain Documents ("Debtor's RJN")
  - Notice of Bar Dates for Filing Proofs of claim or Interests and Requests for Payment of Administrative Expenses [Doc. No. 34]
    - Order (1) Granting Debtor's Motion for Order Establishing Bar Date for Filing Proofs of Claim [Doc. No. 26]; and (2) Vacating
  - Order on Stipulation Re: Value of Real Property [Doc. No. 63]

10:00 AM
**CONT...** **220 Adams Ranch Road, LLC** **Chapter 11**

- Monthly Operating Reports:
  - Monthly Operating Report Number 13 for the Month Ending June 30, 2016 [Doc. No. 58]
  - Monthly Operating Report Number 13 for the Month Ending July 31, 2016 [Doc. No. 60]
  - Monthly Operating Report Number 13 for the Month Ending August 31, 2016 [Doc. No. 65]
  - Monthly Operating Report Number 14 for the Month Ending September 30, 2016 [Doc. No. 70]

**Facts and Summary of Pleadings**

220 Adams Ranch Road, LLC ("Debtor"), filed the instant motion for approval of its First Disclosure Statement ("Motion"). Doc. No. 66. For the reasons set forth below, the Court DENIES the Disclosure Statement as not containing "adequate information" within the meaning of 11 U.S.C. § 1125.

Background and Procedural History

Chapter 11 debtor and debtor-in-possession 220 Adams Ranch Road, LLC ("Debtor"), filed a voluntary petition on August 13, 2015, as a single asset real estate case as defined under 11 U.S.C. § 101(51B) ("Petition"). Doc. No. 1. John David Thomas, a real estate developer in Southern California, previously purchased real property located at 220 Adams Ranch Road, Mountain Village, Colorado 81435 ("Property") in the early 2000s, and, shortly thereafter, deeded the Property to a testamentary trust entitled 220 Adams Ranch Road Trust ("Trust"), of which Mr. Thomas was the sole trustee. Doc. No. 66 at 5. Eventually, the Trust formed the Debtor, with Mr. Thomas as the sole member of the entity-Debtor. *Id.* at 6. According to the Debtor's Schedule D, filed on August, 19, 2015, the following two liens, in order of priority, encumber the Property: (1) JPMorgan Chase Bank ("Secured Creditor") in the estimated amount of $2,573,016 and (2) Val Alahan in the amount of $175,000. Doc. No. 13.

On July 20, 2016, the Court held a hearing on the Debtor's previously filed motion to set the value of the Property ("Motion to Value"). Doc. No. 59. The Court ordered the Debtor to reasonably cooperate with the Secured Creditor and its appraiser

in providing access to the Property to conduct a full inspection. *Id.* Further, in light of the relative complexity of the case and the lack of progress made, the Court imposed the following deadlines: (1) the Debtor shall file and receive approval of a disclosure statement by no later than October 27, 2016, and (2) must confirm a chapter 11 plan of reorganization by no later than January 31, 2017, with failure possibly resulting in cause for the Court to convert or dismiss the case under 11 U.S.C. § 1112(b), without further notice or hearing. *Id.* On August 30, 2016, the Court entered an order approving a subsequent stipulation between the Secured Creditor and the Debtor, which set the value of the Property for purposes of the Debtor's Chapter 11 bankruptcy proceedings at $2,025,000. Doc. No. 63.

Disclosure Statement

On September 21, 2016, the Debtor filed the Motion. Doc. No. 66. Unless thre is a stay, the Effective Date of the Plan will be fourteen days following the entry of the order confirming the Plan.

The Debtor lists Lake Forest Bankruptcy ("Lake") as the only administrative claim in the estimated amount of $15,000. DS at 3. Lake's claim will be paid in full or as soon as practicable after the Effective Date or upon allowance of such claim, whichever is later. *Id.*

The Debtor lists the California Franchise Tax Board ("FTB") as the only priority unsecured creditor in the amount of $800. DS at 4. FTB's claim will receive monthly payments in full over a five year peiord with 0% interest. The FTB claim is impaired and if the FTB does not accept the Plan, then the Plan will pay the FTB in full on the Effective Date or as soon as practicable after.

The Debtor lists the following classes of claims that are secured against the Property:

- **Class 1: Mr. Alahan, as a junior secured creditor, in the amount of $120,000**:
  - It is unclear whether Mr. Alahan's claim is impaired or counts as a vote as the Disclosure Statement confusingly refers to creditors in Class 1 as having "already supplied a stipulation voting in favor of the Plan or

unimpaired and are not voting in the Plan;"

- Mr. Thomas plans to pay Mr. Alahan directly in conformity with a payment schedule between Mr. Thomas and Mr. Alahan already in force

- **Class 2: Secured Creditor, as a secured lender, in the amount of $2,020,000:**
  - The Plan will bifurcate the Secured Creditor's total claim of $2,833,236.52 into the following: (1) Class 2 in the amount of $2,020,000 and (2) Class 3 in the amount of $813,236.
  - The $2,020,000 will be rewritten into the name of "220 Adams Ranch Road, LLC", with Mr. Thomas remaining as an additional obligor / guarantor;
  - The Secured Creditor's claim in this class will receive payment at an interest rate of 4.5% for 10 years and a balloon payment for the remainder of the obligation at the end of the 10 years.

**Class 3 constitutes the Secured Creditor's remaining lien in the amount of approximately $813,236.** DS at 5. The Plan states that claimants in Class 3 will receive a payment of $50,000 to settle all claims against the Debtor and Mr. Thomas.

The Debtor intends to fund the plan with $100,000 contributed by Mr. Thomas, or a business entity designated by Mr. Thomas, to the Debtor on the Effective Date. DS at 7. Further contributions will be made as necessary and will make up the estimated payments, totaling $900,000 outside of administrative expenses and priority claims. A final payment of $2,020,000 may be made by a further loan or refinance. Mr. Thomas will act as the disbursing agent for distributions to holders of allowed claims.

The Disclosure Statement represents that there are no known risk factors except from Mr. Thomas' possible loss in employment or employment income. The Plan states that it meets the liquidation analysis because the Property is over-encumbered by nearly $1,000,000, leaving nothing to distribute to any unsecured creditors in a chapter 7 liquidation.

Regarding feasibility, the Debtor proposes to fund the plan through one payment of $50,000 to Class 3 creditors and 120 payments of $7,500, with a final

balloon payment of $2,020,000, to Class 2 claimants. DS at 8.

Objections to Disclosure Statement

On October 5, 2016, the United States Trustee ("UST") filed the UST Objection. Doc. No. 68. The UST argues that the Disclosure Statement does not contain adequate information under 11 U.S.C. § 1125. First, the Debtor fails to provide any information regarding the cash on hand and the amount of money required by the Effective Date, especially in light of the fact that the Lake's administrative claim amounts to $15,000 and the August Monthly Operating Report ("MOR") shows that the Debtor only has $124 of cash on hand. Second, the lack of information concerning the financials of Mr. Thomas or the business entity that Mr. Thomas elects to designate in order to effectuate the $100,000 promised in the Disclosure Statement. Moreover the UST contends that there is a lack of clarity regarding the estimated Plan payments of $900,000, as the claims of the Lakes, the Secured Creditor, and FTB total $829,036, especially considering that the Plan proposes to settle the Secured Creditor's Class 3 claim of $813,236 for only $50,000 or 0.06% of the amount owed. Third, the Plan seeks an impermissible release of the Secured Creditor's claims against Mr. Thomas, a non-debtor, proposing to discharge $813,236 against Mr. Thomas and shield him from liability with respect to the claims asserted against by the Secured Creditor. Fourth, the UST represents that the Plan was not proposed in good faith because Mr. Thomas is seeking confirmation to obtain a collateral benefit for himself. Finally, the UST submits that the MORs evince the lack of income generated by the Debtor. Mr. Thomas' attempt to obtain a release of liability for money over and above the $2,020,000 of the Property while stripping down the liens of the Property and merely pay the Secured Creditor 0.06% of its deficiency illustrate the bad faith of the Plan's proposal. The UST submits that the Debtor cannot confirm the Plan without the Secured Creditor's consent.

On October 12, 2016, the Secured Creditor filed its objection. Doc. No. 69. The Secured Creditor disputes its provided amount of $2,020,000 under the Plan because the Motion to Value agreed to $2,025,000, making the Plan patently unconfirmable. Secured Creditor Objection at 6, 14. Additionally, the Plan is infeasible because a monthly allocation for property taxes and insurance is at least $1,548.76 [*See* Claim No. 3-1 (escrow analysis)], which does not include utilities and maintenance. *Id.* at 7. The Debtor's MORs show an average monthly income of only

$1,391.65, including an August MOR that indicates the Debtor has only $192.34 in available cash. *Id.* at 15. Therefore, the Secured Creditor contends that the Debtor has insufficient cash to meet the administrative expenses under the Plan.

Further, the Debtor generates little income and, at present, does not have sufficient funds to pay the Lake's administrative claim, making the Plan infeasible. *Id.* at 16. Moreover, the Secured Creditor submits that the additional payments of $7,500 are not sufficient to cover the monthly principal and interest under the Plan and the $50,000 balloon payment is speculative and unsubstantiated.

There is no evidence as to how the Debtor will pay the Secured Creditor's anticipated unsecured claim of $808,236.52 in full. *Id.* at 8. The Secured Creditor contends that the Disclosure Statement requires more information as to the treatment of Class 1, including whether Class 1 is impaired or not and how much the Class 1 creditor is being paid on an agreement already in force.

The Secured Creditor believes that the Debtor, Mr. Thomas, and Mr. Alahan may have colluded and the Disclosure Statement requires additional information to better understand the classification of Mr. Alahan's claim, so as to avoid an attempt to gerrymander votes under the Plan. For instance, the Plan treats Mr. Alahan's claim in a separate class than the Secured Creditor's bifurcated unsecured general claim, without any substantive difference. *Id.* 9-10, 20. Moreover, if Mr. Alahan's claim receives more compensation than the Secured Creditor's claim, the discriminatory treatment violates § 1129(b)(1) ("Absolute Priority Rule"). Furthermore, the Secured Creditor contends that the Plan treats the Secured Creditor's claim substantively different than the original terms of the loan executed by Mr. Thomas, even though Mr. Thomas is personally liable on the loan and the Debtor is not. *Id.* at 13. The Secured Creditor argues that the Plan seeks to discharge Mr. Thomas, a non-debtor individual, from liability in violation of § 524(e). *Id.* The Secured Creditor argues that the Plan has not been proposed in good faith because the Plan provides for an inadequate means of implementation and seeks to impermissibly discharge Mr. Thomas, especially in light of the circumstances surrounding the Debtor's formation and lack of operating history. *Id.* at 18.

Response to Objections

On October 19, 2016, the Debtor filed a reply to the UST. Doc. No. 73. The Debtor waives any language that attempts to obviate Mr. Thomas from financial liability, stating there was never an effort to propose a plan in bad faith. Reply to UST

at 2. Additionally, the Debtor represents that the September MOR shows a deposit of approximately $100,000. *See* Doc. No. 70. The Debtor disputes the UST's contention that the proposed disbursements were confusing, but states as follows: (1) administrative claims are estimated at $15,000, (2) priority tax claims are $800, (3) Mr. Alahan's claim will be paid separately by Mr. Thomas and the lien will be released from the Property, in an attempt to provide new value to the Debtor, (4) Class 2 claims will receive $7,500 per month for 120 months for a total of $900,000 and a final payment of $2,000,000 after ten years, and (5) the $50,000 will be paid by the Debtor from funds on hand toward unsecured obligations. Further, the Debtor requests forty-five days to resolve issues with the UST.

On October 19, 2016, the Debtor filed a reply to the Secured Creditor. Doc. No. 72. The Debtor disputes the Secured Creditor's contention that the Disclosure Statement contains inadequate information, reiterating parts of the Disclosure Statement in the context of the *Metrocraft* factors. *See In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567, 568 (Bankr. Ga. 1984).

The Debtor admits that the Secured Creditor's claim should be $2,025,000 and not $2,020,000, stating that this was a mistake. Reply to Secured Creditor at 4. The Debtor states that the Property's taxes and insurance of $1,568.76 will be paid outside of the $7,500 allocated towards the interest on the Secured Creditor's claim. *Id.* The Debtor clarifies that $7,500 monthly payments are towards the interest only, not including the principle.

The Debtor contends that the Secured Creditor's objection to the Absolute Priority Rule is more appropriately addressed at a plan confirmation hearing and, moreover, the Plan intends contribution from Mr. Thomas to be "new value" in exchange for continued ownership of the Property. *Id.* at 5. The Debtor argues that there is a fundamental difference between Mr. Valahan's Class 1 claim and the Secured Creditor's Class 3 claim, stating that Mr. Alahan's claim is the result of a state court judgment and settlement "that, if paid, reduces the total amount of the judgment owed," entirely different from the Secured Creditor's consensual lien. *Id.* at 5. The proposed treatment takes into account potential future litigation between Mr. Alahan, Mr. Thomas, and the Debtor. *Id.* Again, as previously mentioned, the Debtor waives any language that attempts to resolve Mr. Thomas' financial liability to the Secured Creditor and repeats that the September MOR shows a $100,000 deposit as evidence of the Plan's funding. *Id.* at 6. Finally, the Debtor requests an extension of forty-five days to resolve the issues with the Secured Creditor, stating that the Debtor

could "not really begin negotiations" with the Secured Creditor until the filing of the Disclosure Statement. *Id.* at 7.

**Findings of Fact and Conclusions of Law**

Section 1125 requires a disclosure statement to contain "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 . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan." 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." 11 U.S.C. § 1125(a). Courts interpreting § 1125 (a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros*., 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). "Adequate information will be determined by the facts and circumstances of each case." *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

> Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data,

> valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

*In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567, 568 (Bankr. Ga. 1984). However, "[d]isclosure of all factors is not necessary in every case." *Id.*

Notwithstanding, "[a] disclosure statement is not intended to be the primary focus of litigation in a contested chapter 11 proceeding, and care must be taken to ensure that the hearing on the disclosure statement does not turn into a confirmation hearing." *In re Broad Assocs. Ltd. P'ship*, 1989 Bankr. LEXIS 2248, at * 6-7 (Bankr. D. Conn. Dec. 29, 1989); *see also In re Copy Crafter Quickprint, Inc.*, 92 B.R. 973, 980 (Bankr. N.D.N.Y. 1988) ("[C]are must be taken to ensure that the hearing on the disclosure statement does not turn into a confirmation hearing, due process considerations are protected and objections are restricted to those deficits that could not be cured by voting."). As a general practice, the Court does not consider objections to a plan before confirmation. Only in extraordinary cases where the plan is obviously and patently unconfirmable will the Court deny approval of an associated disclosure statement. *See In re Phoenix Petroleum, Co.*, 278 B.R. 385, 394 (Bankr. E.D. Pa. 2001) ("[T]he disclosure statement should be disapproved at the … [disclosure statement hearing] only where the plan it describes displays fatal facial deficiencies or the stark absence of good faith.").

In order to give the disclosure statement and plan some context the Court must take into account the events which lead to the bankruptcy filing, including the Debtor's formation, the lack of operating history, and the Debtor's anticipated future. The Debtor filed for bankruptcy on August 13, 2015 [Doc. No. 1], and the Debtor filed for corporate formation on December 15, 2015. *See* sos.ca.gov. Notwithstanding the Debtor's formation, there is a considerable lack of information relating to Mr. Thomas and his proposed contributions. For instance, the Disclosure Statement proposes to fund the Plan by contributions from Mr. Thomas, including $100,000 by the Effective Date of the Plan. DS at 7. While the September MOR indicates a

$103,000 deposit on October 11, 2016 [*See* Doc. No. 70], the Disclosure Statement estimates $900,000 in payments outside of administrative expenses and priority claims over a ten year period. DS at 7. In order for creditors to make an informed decision, the Court finds it appropriate that the Debtor provide disclosures or evidence of Mr. Thomas' financials. The lack of information surrounding the financials of Mr. Thomas is especially concerning, in light of the fact that the Debtor restates financing the balloon payment of $2,000,000, after ten years, from either Mr. Thomas' contributions or contributions by the Debtor. *See* Reply to the Secured Creditor at 3. Finally, the MORs indicate little revenue generated by the Debtor. *See* Doc. No. 58 ($4,050 for June), Doc. No. 60 ($200 for July), Doc. No. 65 ($1,800 for August), Doc. No. 70 ($3,900 for September). Consequently, the Plan will rely more heavily on contributions from Mr. Thomas, furthering the need for disclosures.

Additionally, as the Debtor admits, the correct claim for the Secured Creditor's Class 2 Claim should state $2,025,000 and not $2,020,000. Moreover, the Plan cannot absolve Mr. Thomas of liability to the Secured Creditor's claim as Mr. Thomas is a non-debtor, third-party individual. *See* 11 U.S.C. 524(e). Finally, the Plan's differential treatment of the Secured Creditor's claim and Mr. Alahan's claim is without clear factual support. The lack of information regarding Mr. Alahan's claim, other than that the claim is already in force and the result of a settlement stemming from a state court judgment, fails to inform creditors as to how Mr. Alahan's claim might affect the Plan, including whether Class 1 is impaired and how much does Class 1 receive pursuant to the settlement. DS at 4, Reply to the Secured Creditor at 5. Further, the Debtor's stated reason for the separation of Mr. Alahan's claim and the Secured Creditor's claim as stemming from future dispute between Mr. Alahan, Mr. Thomas, and the Debtor is insufficient to substantiate differential treatment in order to confirm a plan.

Based on the foregoing, the Court DENIES the Disclosure Statement as containing "adequate information" within the meaning of 11 U.S.C. § 1125. The Court will extend the deadline for the Debtor to file and receive an approval of a disclosure statement by no later than **December 6, 2016,** in order to allow the parties an opportunity to negotiate prior to the Debtor filing an Amended Disclosure Statement. The Debtor must file and confirm a chapter 11 plan of reorganization by no later than March 3, 2017. No further extensions will be enteretained by the court. Failure to receive approval of the disclosure statement or confirmation of a plan within these

10:00 AM
**CONT... 220 Adams Ranch Road, LLC** **Chapter 11**

deadlines may constitute cause for the court to convert or dismiss the case under 11 U.S.C. § 1112(b) without further notice of hearing.

The Secured Creditor shall lodge a conforming proposed order within 7 days of the hearing.

**Party Information**

**Debtor(s):**

220 Adams Ranch Road, LLC Represented By
Anerio V Altman

# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Wednesday, October 26, 2016** **Hearing Room 1568**

11:00 AM

**2:15-29494 Group 6842, LLC, a California Limited Liability Co** **Chapter 11**

▪

**#100.00** Hearing
RE: [128] Motion to Disallow Claims Debtors Motion For Order Disallowing Claim No. 7-1 Filed By The Los Angeles County Treasurer And Tax Collector; Memorandum Of Points And Authorities; Declaration Of Derek Folk In Support Thereof [Proof of Claim No.: 7-1]

FR. 5-17-16; 6-7-16

fr. 6-21-16; 7-26-16

Docket No: 128

***** VACATED *** REASON: CONTINUED 2/22/17 AT 11:00 A.M.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Group 6842, LLC, a California Limited — Represented By
Garrick A Hollander
Andrew B Levin

# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Wednesday, October 26, 2016** **Hearing Room 1568**

11:00 AM

**2:15-29494 Group 6842, LLC, a California Limited Liability Co** **Chapter 11**

▪

**#101.00** Hearing
RE: [134] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 6842 Van Nuys Blvd., Van Nuys, CA with proof of service.

FR. 5-16-16; 6-7-16; fr. 6-21-16; 9-20-16; 10-11-16

Docket No: 134

***** VACATED *** REASON: ORDER GRANTING RELIEF FROM STAY ENTERED 10-25-16**

**Tentative Ruling:**

On October 25, 2016, D&A Semi Annual Mortgage Fund III, L.P. ("Movant") filed a stipulation between the Debtor and the Movant ("Stipulation") [Doc. No. 269], resolving the motion for relief from stay filed by the Movant. *See* Doc. No. 134. The Stipulation renders the stay-relief hearing moot. The stay-relief hearing is vacated.

**Party Information**

**Debtor(s):**

Group 6842, LLC, a California Limited — Represented By
Garrick A Hollander
Andrew B Levin