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14 **UNITED STATES BANKRUPTCY COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **SAN FERNANDO VALLEY DIVISION**

17 In re
18 Meruelo Maddux Properties, Inc., et al.,
19 Debtors in Possession.

Case No. 1:09-13356-KT

Chapter: 11

**CALIFORNIA BANK & TRUST'S
OPPOSITION TO APPROVAL OF THE
DEBTORS' FIRST AMENDED
DISCLOSURE STATEMENT**

Date: March 19, 2010
Time: 9:30 a.m.
Place: Courtroom 301
21041 Burbank Blvd.
Woodland Hills, CA

20 Affects all Debtors

21 California Bank & Trust, a California banking corporation ("CB&T") hereby respectfully
22 submits its Opposition to the Debtors' First Amended Disclosure Statement (the "Amended
23 Disclosure Statement"). CB&T joins in the oppositions filed by the Debtors' other secured
24 creditors (collectively, the "Oppositions") and asserts the following additional grounds for
25 disapproval of the Amended Disclosure Statement:

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I.

INTRODUCTION

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3 A disclosure statement is to provide creditors of the debtor with information sufficient to
4 enable the creditors to understand and analyze the treatment of their claims under the debtor's
5 proposed plan of reorganization. The disclosure statement must be based upon substantiated facts
6 and describe a plan that conforms to the requirements of the Bankruptcy Code in order for the
7 creditors to conduct this analysis. The Amended Disclosure Statement filed by Meruelo Maddux
8 Properties, Inc. ("MMPI") and the related debtors (together with MMPI, the "Debtors") still
9 contains a fundamental flaw that prevents approval: the First Amended Joint Chapter 11 Plan of
10 Meruelo Maddux Properties, Inc., et al. (the "Amended Plan") it purports to describe cannot be
11 confirmed as a matter of law.

12 The extent to which the Debtors, through the Amended Plan, improperly classify claims in
13 an attempt to gerrymander classes of impaired consenting creditors is truly remarkable. The
14 Debtors transfer unsecured claims from one debtor entity to another with impunity, and solely to
15 increase the likelihood that the fabricated classes will fall in line with the Debtors' wishes and
16 vote in favor of the Amended Plan. Furthermore, despite the revisions, the Amended Plan still
17 violates the absolute priority rule by proposing to pay unsecured creditors less than the full value
18 of their claims while at the same time channeling substantial value to the Debtors' equity holders
19 through a "sale" available only to those equity holders. The Amended Plan ignores the
20 requirements of the Supreme Court's ruling in *203 N. LaSalle* restricting the new value
21 exception.¹ Additionally, the Amended Plan provides for an injunction and discharge in favor of
22 nondebtor third parties in direct violation of controlling Ninth Circuit law. "Where it is clear that
23 a plan of reorganization is not capable of confirmation, it is appropriate to refuse the approval of
24 the disclosure statement." *In re Market Square Inn, Inc.*, 163 B.R. 64, 68 (Bankr. W.D. Pa.
25 1994).

26 Furthermore, the Amended Disclosure Statement still does not contain "adequate
27

28 ¹ See *Bank of America National Trust & Savings Association v. 203 N. LaSalle Street Partnership*, 526 U.S. 434
(1999)(hereinafter "203 N. LaSalle").
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1 information” as required by Section 1125 of the Bankruptcy Code,² and for that reason, cannot be
2 approved. The Amended Disclosure Statement is deficient in the following ways:

- 3
- 4 • The Amended Disclosure Statement fails to discuss the factors used to
5 determine an appropriate interest rate to be applied to the debt owed CB&T in
6 light of the risks associated with the Amended Plan.
 - 7 • The feasibility analysis contained in the Amended Disclosure Statement is
8 utterly deficient. It is surprising, for example, that the Amended Disclosure
9 Statement fails to adequately disclose that the feasibility of the Amended Plan
10 is dependant upon the receipt of \$26.4 million in proceeds from the sale of the
11 845 S. Flower property, despite the fact that the 845 S. Flower property is
12 governed by a separately administered bankruptcy case in which a plan has yet
13 to be confirmed. Additionally, the Amended Plan proposes to make interest
14 only payments to secured creditors over a period of 7 years, yet the Amended
15 Disclosure Statement only provides a cash flow forecast for 5 years.
16 Furthermore, the Amended Disclosure Statement fails to provide any
17 information on how the Debtors intend to make substantial balloon payments
18 to all of their secured creditors when the secured obligations mature on the
19 same date.
 - 20 • The Amended Disclosure Statement fails to provide a liquidation analysis for
21 each individual debtor as ordered by the Court. Indeed, the Amended
22 Disclosure Statement does not provide a liquidation analysis at all.
 - 23 • The amount of CB&T’s secured claim has been incorrectly listed in the
24 Amended Disclosure Statement as only \$7,153,799. As of December 16,
25 2009, CB&T’s secured claim was no less than \$7,872,298.54 and the amount
26 of the claim has continued to increase due to accruing interest, fees and costs.

27 For each of these reasons, as well as those set forth in the Joint Oppositions, the Amended

28 ² All statutory references are to title 11 of the United States Code (the “Bankruptcy Code”) unless otherwise noted.
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1 Disclosure Statement should not be approved.

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3 **II.**

4 **FACTUAL BACKGROUND**

5 CB&T's borrower, 788 South Alameda, LLC ("788 Alameda"), entered into a loan
6 agreement (the "Loan Agreement") dated March 27, 2008 for credit in the original principal
7 amount of \$7.25 million (the "Loan"). 788 Alameda is a special purpose entity formed by MMPI
8 for the purpose of taking title to the real property located at 788 South Alameda, Los Angeles,
9 California (the "Property"). The Property is improved with a refrigerated storage facility,
10 including 32 refrigerated storage units, each of which is leased to tenants and used to store fresh
11 produce.

12 The obligations of 788 Alameda under the Loan Agreement were secured by a deed of
13 trust, assignment of rents, security agreement and fixture filing (the "Deed of Trust"). The Deed
14 of Trust grants CB&T a lien over the Property to secure repayment, among other things, of the
15 obligations evidenced by the Loan Agreement. The Loan Agreement and the Deed of Trust,
16 together with such other documents executed by 788 Alameda and CB&T concerning the Loan
17 are referred to as the "Loan Documents."³

18 The Debtors and CB&T agreed, for cash collateral purposes, that the Property had a value
19 of \$9,333,333. CB&T asserts that as of December 16, 2009, the debt secured with the Deed of
20 Trust was no less than \$7,872,298.54.

21 **III.**

22 **ARGUMENT**

23 The disclosure statement is the Bankruptcy Code's tool to provide creditors with
24 information to decide how to vote on, and information to decide whether to object to, a plan of
25 reorganization. *See In re California Fidelity, Inc.*, 198 B.R. 567, 571 (9th Cir. BAP 1996).
26 Fundamental to the chapter 11 process is full and complete disclosure. *In re Brandon Mills*
27 *Farms, Ltd.*, 37 B.R. 190, 192 (Bankr. N.D. Ga. 1984)(stating that the purpose of the disclosure

28 ³ True copies of the Loan Agreement and the Deed of Trust are attached as exhibits to the declaration of Robert
Stockwell (the "Stockwell Declaration"), filed with the Court on April 30, 2009.

1 statement is to inform creditors as fully as possible). In order for creditors to be able to exercise
2 their rights, a disclosure statement must be clear and comprehensible before it can be approved by
3 a court. *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991). “Where inaccuracies are so
4 numerous or significant that creditors or interest holders can no longer make an informed
5 judgment about whether to accept or reject the proposed plan of reorganization, approval of the
6 Disclosure Statement must be denied.” *In re Cardinal Congregate I*, 121 B.R. 760, 766-67
7 (Bankr. S.D. Ohio 1990); *see also In re Hirt*, 97 B.R. 981, 983 (Bankr. E.D. Wis. 1989)(denying
8 the approval of a disclosure statement where the document contained numerous inaccuracies and
9 because the debtor failed to provide detailed financial information). Without full disclosure of
10 adequate information, creditors are unable to exercise their voting rights and their rights to object
11 to confirmation of the Amended Plan.

12 **A. The Court Should Not Approve The Amended Disclosure Statement Because The**
13 **Amended Plan Itself Cannot be Confirmed.**

14 Since the Amended Plan cannot be confirmed, the Amended Disclosure Statement should
15 not be approved, as it would be futile. *See In re Atlanta West VI*, 91 B.R. 620, 622 (Bankr. N.D.
16 Ga. 1988) (denying approval of disclosure statement describing unconfirmable plan “to avoid . . .
17 a wasteful and fruitless exercise” that would “further delay a debtor’s attempts to reorganize”).

18 CB&T is mindful of the distinction between issues that are appropriately addressed at the
19 time of the hearing on the disclosure statement and those more typically reserved for
20 confirmation. However, it is well established that courts may consider substantive plan issues at
21 the disclosure statement hearing and deny approval to disclosure statements predicated upon
22 plans that, on their face, cannot be confirmed. A court is authorized at a disclosure statement
23 hearing to address legal issues that determine whether a plan can be confirmed. *See In re*
24 *Moorpark Adventure*, 161 B.R. 254, 256-58 (Bankr. C.D. Cal. 1993); *see also In re Felicity*
25 *Assocs., Inc.*, 197 B.R. 12, 14 (Bankr. D.R.I. 1996)(“It has become standard Chapter 11 practice
26 that when an objection raises substantive plan issues that are normally addressed at confirmation,
27 it is proper to consider and rule upon such issues prior to confirmation, where the proposed plan
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1 is arguably unconfirmable on its face.”) (internal quotation omitted); *In re Market Square Inn,*
2 *Inc.*, 163 B.R. 64, 68 (Bankr. W.D. Pa. 1994)(“Where it is clear that a plan of reorganization is
3 not capable of confirmation, it is appropriate to refuse the approval of the disclosure statement.”).

4 Denial of approval of the Amended Disclosure Statement at this stage will avoid the
5 further, futile proceedings at confirmation. For the reasons set forth below, the Amended
6 Disclosure Statement should not be approved:

7 **1. The Amended Plan Improperly Classifies Claims In An Attempt To**
8 **Gerrymander Consenting Classes Of Impaired Creditors.**

9 Because the Amended Plan improperly classifies claims in an attempt to gerrymander
10 classes of impaired consenting creditors, the Amended Plan has been proposed in bad faith. In
11 order to facilitate the cram down of the secured creditors, the Amended Plan shuffles claims from
12 one debtor to another, even though the shuffled claims arise from obligations owed by MMPI and
13 not by the property-owning debtors. For example, in the case of CB&T’s particular debtor 788
14 Alameda, the Debtors have reassigned to 788 Alameda portions of claims filed by L.P. Carreras
15 & Associates, Inc. and Innerscity Crime Prevention Group, Inc. against MMPI. The debts owed to
16 these creditors are not obligations of 788 Alameda and the claims cannot be simply reassigned to
17 CB&T’s debtor in order to confirm the Amended Plan. At best, the unsecured claims asserted
18 against MMPI give rise to potential insider claims that MMPI could assert against the property
19 level debtors. Such unwarranted reclassification of claims evidences that the Debtors’ Amended
20 Disclosure Statement and Plan have been proposed in bad faith. Considering that these unsecured
21 claims are negligible in comparison to the multi-million dollar claims of the secured creditors, the
22 Court should not allow the Debtors’ bad faith attempt to gerrymander the votes of minor creditors
23 to override the significant interests of the secured creditors. Remarkably, the Amended
24 Disclosure Statement fails even to discuss that certain claims have been reassigned and the basis
25 for doing so.

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2. **The Amended Plan Does Not Meet The Fair And Equitable Cram Down Requirements Under Subsection 1129(b).**

A plan of reorganization can be confirmed over the dissent of impaired classes of creditors or interest holders only if the treatment of the impaired class is “fair and equitable.” 11 U.S.C. § 1129(b). With respect to a class of unsecured claims, Subsection 1129(b)(2)(B) provides that a plan is not fair and equitable and may not be confirmed over the objection of a non-accepting unsecured creditor class that will receive less than the full value of their claims as of the effective date of the plan, if the holder of any claim or interest that is junior to the claims of the unsecured creditor class, including an equity holder, receives or retains any property under the Plan. 11 U.S.C. § 1129(b)(2)(B); see *In re Armstrong World Indus., Inc.*, 432 F.3d 507 (3d Cir. 2005). Subsection 1129(b)(2)(B)(ii) sets forth what is commonly referred to as the “absolute priority rule.”

Here, the Debtors propose to pay general unsecured creditors less than the full value of their claims as of the effective date, while at the same time permitting its equity interest holders to retain interests in the reorganized Debtors. If the holders of general unsecured claims vote to reject the Amended Plan, the Amended Plan cannot be confirmed unless the equity holders provide “new value” in exchange for the retention of their interests. *Bonner Mall Partnership v. U.S. Bancorp Mortgage Co.*, (In re *Bonner Mall Partnership*), 2 F.3d 899 (9th Cir. 1993). This is the “new value” exception to the absolute priority rule.

The Supreme Court in *203 N. LaSalle* did not rule on whether, in fact, the Bankruptcy Code includes a new value exception to the absolute priority rule. While reserving that issue, the Supreme Court limited any new value exception and established certain requirements equity interest holders must meet in order to retain their interests. The Supreme Court held that “old equity holders are disqualified from participating” in a “new value” plan when the old equity holders retain the exclusive opportunity without consideration of alternatives. *203 N. LaSalle*, 526 U.S. at 434. The Supreme Court reacted to the fact that in the case before the Court, the debtor’s partners “enjoyed an exclusive opportunity” akin to an option. *Id.* at 455. According to

1 the Supreme Court, it is “the exclusiveness of the opportunity, with its protection against the
2 market’s scrutiny of the purchase price by means of competing bids” that renders the plan subject
3 to objection. *Id.* at 456. The Court ruled that “plans providing junior interest holders with
4 exclusive opportunities free from competition and without benefit of market valuation fall within
5 the prohibition of § 1129(b)(2)(B)(ii).” *Id.* at 458.

6 The Debtors’ Amended Plan is exactly what the Supreme Court prohibited in *203 N.*
7 *LaSalle*. The first Disclosure Statement provided that the unidentified “New Value Investors”
8 would contribute \$10 million to retain their equity interests. A number of creditors objected on
9 the grounds that the Plan violated the ruling of *203 N. LaSalle*. The Amended Plan, which has
10 still been filed within the Debtors’ exclusivity period, now offers to existing equity holders the
11 exclusive right to purchase up to 500,000 equity shares in the reorganized Debtors for the price of
12 \$20 a share. As with the first Disclosure Statement, there is no discussion in the Amended
13 Disclosure Statement of the value of the equity interests being offered; the total sales price of the
14 shares simply equals the same \$10 million that was originally proposed to be contributed by the
15 New Value Investors under the first Plan. Furthermore, the Amended Plan does not provide a
16 procedure for soliciting competing bids on the equity interests being purchased. The proposed
17 Amended Plan provides the existing equity holders with precisely the type of exclusive
18 opportunity that the Supreme Court proscribed with its ruling in *203 N. LaSalle*. Thus, the
19 Amended Plan cannot be confirmed because the Debtors fail to subject the proposed purchase
20 price of the shares to market scrutiny, as required under *203 N. LaSalle*.

21 **3. The Amended Plan Violates Ninth Circuit Law By Providing For An**
22 **Injunction And Discharge Of Non-Debtor Third Parties.**

23 The discharges and injunctions of the non-debtor parties and guarantors provided by the
24 terms of the Amended Plan violate Ninth Circuit authority prohibiting bankruptcy courts from
25 discharging non-debtor obligations and liabilities. *See In re American Hardwoods*, 885 F.2d 621,
26 626 (9th Cir. 1989); *See also In re Lowenschuss*, 67 F.3d 1394, 1401 (9th Circuit 1995)(“This
27 court has repeatedly held, without exception, that § 524(e) precludes bankruptcy courts from
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1 discharging the liabilities of non-debtors.”).

2 The permanent injunction granted by the Amended Plan prohibits the holders of undefined
3 “**other debt or liability**” from taking any action against the Debtors’ affiliates, current or former
4 officers, directors, agents, employees and representatives.⁴ Additionally, the Amended Plan
5 provides for an injunction against pursuing guarantees provided by (i) John Maddux, (ii) Belinda
6 Meruelo, (iii) The Meruelo Living Trust, (iv) Richard Meruelo, and (v) the Richard Meruelo
7 Living Trust. Although the Amended Plan states that the injunction against the guarantors is
8 temporary, and provides a list of hypothetical events that would lift the injunction, the ultimate
9 effect is identical to a bankruptcy discharge and the Court should not be persuaded by the
10 Debtors’ attempt to circumvent Ninth Circuit law through semantics. Indeed, the very case the
11 Debtors cite in support of such an injunction, *In re Regatta Bay, LLC*, was overturned on the
12 grounds that such injunctions are clearly impermissible under the Bankruptcy Code, a fact the
13 Debtors should have known given that the appellate decision was published in October of 2009.
14 *See Coronado City Views, LLC, v. Regatta Bay, LLC*, 2009 WL 5730501 (D.Ariz. 2009). Due to
15 the impermissible discharges and injunctions, the Plan cannot be confirmed, and for that reason,
16 the Amended Disclosure Statement should not be approved.

17 **B. The Amended Disclosure Statement Does Not Contain “Adequate Information” As**
18 **Required By Section 1125.**

19 Section 1125 requires that prior to the solicitation of acceptances of a plan of
20 reorganization, each impaired claimant and interest holder must receive a disclosure statement
21 that has been previously approved by the court as containing “adequate information.” 11 U.S.C.
22 § 1125(b). “Adequate information” is defined as:

23 [I]nformation of a kind, and in sufficient detail, as far as is
24 reasonably practicable in light of the nature and history of the
25 debtor and the condition of the debtor’s books and records, that
26 would enable a hypothetical reasonable investor typical of holders
of claims or interests of the relevant class to make an informed
judgment about the plan

27 11 U.S.C. § 1125(a)(1). The purpose of a disclosure statement is to provide sufficient

28 ⁴ Amended Plan, p. 145, lines 10-28.
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1 information so that a typical investor can make an informed judgment whether to vote for or
2 against the plan. *In re Unichem Corp.*, 72 B.R. 95, 97 (Bankr. N.D. Ill. 1987). “Because
3 creditors and the bankruptcy court rely heavily on the debtor’s disclosure statement in
4 determining whether to approve a proposed reorganization plan, the importance of full and honest
5 disclosure cannot be overstated.” *Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81
6 F.3d 355, 362 (3d Cir. 1996).

7 As set forth in the seminal case of *Metrocraft Publishing*, the adequacy of a disclosure
8 statement is measured by the inclusion of the following information:

- 9 (1) the events which led to the bankruptcy filing;
- 10 (2) a description of the available assets and their value;
- 11 (3) the anticipated future of the company;
- 12 (4) the source of information stated in the disclosure statement;
- 13 (5) a disclaimer;
- 14 (6) the present condition of the debtor;
- 15 (7) the scheduled claims;
- 16 (8) the estimated return to creditors under a chapter 7 liquidation;
- 17 (9) the accounting method used to produce financial information and the name
18 of the accountant(s) responsible for the analyses;
- 19 (10) the future management of the debtor;
- 20 (11) the chapter 11 plan or a summary thereof;
- 21 (12) the estimated administrative expenses;
- 22 (13) the collectability of accounts receivable;
- 23 (14) financial information, date, valuations or projections relevant to voting;
- 24 (15) information regarding the risks of the plan;
- 25 (16) the actual or projected realizable value from avoidances actions;
- 26 (17) litigation likely to arise in a nonbankruptcy context;
- 27 (18) debtor’s tax attributes; and

1 (19) relationship of the debtor with affiliates.

2 *In re Metrocraft Publishing.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984). These factors are
3 not intended to be exclusive as other factors may be relevant depending on the nature of the case.
4 *Id.* In addition to all of the reasons set forth in the Joint Oppositions, the following deficiencies
5 demonstrate that the Debtors' Amended Disclosure Statement fails to meet the requirements of
6 Section 1125.

7 **1. The Amended Disclosure Statement Fails To Provide Sufficient Information**
8 **On The Determination Of The Interest Rate To Be Applied To CB&T's**
9 **Claim.**

10 A debtor seeking to confirm a plan over the objection of a dissenting class of creditors
11 must satisfy Subsection 1129(b)(2). Under this subsection, deferred cash payments due a secured
12 creditor must total "a value, as of the effective date of the plan, of at least the value" of the
13 secured creditor's interest in the collateral. 11 U.S.C. § 1129(b)(2)(A)(i)(II). A plan distribution
14 based on present value is intended to place the holder of an allowed claim, to be paid in the
15 future, in the same economic position as if the debtor had paid the claim or surrendered the
16 collateral on the plan's effective date.

17 The Amended Disclosure Statement does not provide adequate information⁵ on how the
18 Debtors selected 4% as the interest rate for calculating the Amended Plan payments to CB&T.⁶
19 The Amended Disclosure Statement must provide information as to how the Debtors arrived at
20 the 4% rate and under what approach in order for CB&T to determine whether it is the
21 appropriate interest rate to compensate CB&T for the risks associated with the Debtors' Amended
22 Plan. Furthermore, the appropriate interest rate required under the Supreme Court's ruling in *Till*
23 *v. SCS Credit Corp.*⁷ should be determined prior to the ballot submission deadline so creditors can
24 make an informed decision regarding the feasibility of the Amended Plan. Such a determination
25 could potentially avoid the need for a protracted and costly confirmation hearing.

26 _____
27 ⁵ Frankly, the Disclosure Statement provides no such information.

⁶ CB&T believes that a rate of 4% does not compensate for the risks associated with payments under the
circumstances proposed in the Amended Plan.

⁷ 541 U.S. 465 (2004).
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1 2. **The Feasibility Analysis Contained In The Amended Disclosure Statement Is**
2 **Inadequate.**

3 For the following reasons, the Amended Disclosure Statement fails to provide sufficient
4 information for a creditor to properly evaluate the feasibility of the Amended Plan:

- 5 • The Amended Disclosure Statement fails to adequately disclose the feasibility of
6 the Amended Plan is dependant upon the receipt of \$26.4 million in proceeds from
7 the sale of the 845 S. Flower property, despite the fact that the 845 S. Flower
8 property is governed by a separately administered bankruptcy case in which a plan
9 has yet to be confirmed. The Amended Disclosure Statement fails to provide any
10 information on the significant obstacles facing the debtor in that particular case
11 and the probability of the Debtors actually receiving the required sale revenue.
- 12 • The cash flow forecasts included with the Amended Disclosure Statement are
13 inadequate and fail to provide creditors with information sufficient to evaluate the
14 Amended Plan. The Amended Plan proposes to make interest only payments to
15 the objecting secured creditors over a period of 7 years, yet the Amended
16 Disclosure Statement only provides a cash flow forecast for 5 years. Without
17 providing projections over seven years, creditors will not be able to evaluate the
18 feasibility of the Amended Plan
- 19 • Additionally, the Amended Disclosure Statement fails to provide any information
20 on how the Debtors intend to make the substantial balloon payments to all of their
21 secured creditors at the end of the seven year Amended Plan. The Amended Plan
22 proposes payments in excess of \$300 million dollars on or about the seventh
23 anniversary of confirmation. The Amended Disclosure Statement should reference
24 that fact, and provide what information the Debtors have to indicate that such
25 refinancing is likely to be available. Without an explanation of the source of funds
26 to make the substantial balloon payments, the creditors and the Court will be
27 unable to evaluate the feasibility of the Amended Plan. If the Debtors’
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1 reorganization is dependent upon winning the lottery, then the Amended
2 Disclosure Statement must disclose the odds of picking the winning ticket.

3 **3. The Amended Disclosure Statement Fails To Provide A Liquidation Analysis.**

4 The Amended Disclosure Statement does not contain an adequate liquidation analysis as
5 required under Subsection 1129(a)(7)(A)(ii). At the initial disclosure statement hearing held on
6 January 20, 2010, the Court ordered the Debtors to provide a liquidation analysis for each
7 individual debtor. The Amended Disclosure Statement fails to provide a liquidation analysis for
8 each debtor, indeed, the Amended Disclosure Statement does not provide a liquidation analysis at
9 all.

10 **4. CB&T's Claim Has Been Incorrectly Listed In The Amended Disclosure**
11 **Statement.**

12 The amount of CB&T's secured claim has been incorrectly listed in the Amended
13 Disclosure Statement as only \$7,153,799. As of December 16, 2009, CB&T's secured claim was
14 no less than \$7,872,298.54 and the amount of the claim has continued to increase due to accruing
15 interest, fees and costs.

16 **5. The Amended Plan Cannot Be Confirmed Under Section 1129(a)(2) Because**
17 **the Amended Disclosure Statement Fails To Satisfy The Requirements Of**
18 **Section 1125.**

19 Subsection 1129(a)(2) requires that the proponent of a plan comply with the applicable
20 provisions of the Bankruptcy Code. The principal purpose of this section is to ensure compliance
21 with the disclosure and solicitation requirements set forth in Section 1125. *In re Butler, 42 B.R.*
22 *777, 782 (Bankr. E.D. Ark. 1984)*. For all the reasons set forth herein, the disclosure requirement
23 of Section 1125 has clearly not been met and, therefore, the Amended Plan cannot be confirmed
24 unless the Amended Disclosure Statement is further modified to rectify the numerous
25 deficiencies.

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IV.

CONCLUSION

Accordingly, CB&T respectfully requests that based upon the foregoing concerns, the Court deny approval of the proposed Amended Disclosure Statement, and grant such other relief that is just and proper.

DATED: March 12, 2009

BUCHALTER NEMER
A Professional Corporation

By: /s/ Brian Harvey

BRIAN T. HARVEY
Attorneys for Creditor
California Bank & Trust

In re: MERUELO MADDUX PROPERTIES, INC., et al. Debtor(s).	CHAPTER 11 CASE NUMBER 1:09-bk-13356-KT
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NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
Buchalter Nemer, 1000 Wilshire Boulevard, Suite 1500, Los Angeles, CA 90017

The foregoing document described CALIFORNIA BANK & TRUST'S OPPOSITION TO APPROVAL OF THE DEBTORS' FIRST AMENDED DISCLOSURE STATEMENT will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On March 12, 2010, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL(indicate method for each person or entity served):

On March 12, 2010 I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. *Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.*

Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____ I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. *Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.*

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

<u>March 12, 2010</u> Date	<u>Terrine Pearsall</u> Type Name	<u>/s/ Terrine Pearsall</u> Signature
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In re: MERUELO MADDUX PROPERTIES, INC., et al.	Debtor(s).	CHAPTER 11 CASE NUMBER 1:09-bk-13356-KT
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In re: MERUELO MADDUX PROPERTIES, INC., et al.	Debtor(s).	CHAPTER 11 CASE NUMBER 1:09-bk-13356-KT
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