

1 Victor A. Sahn (CA Bar No. 97299)
vsahn@sulmeyerlaw.com
2 Dean G. Rallis Jr. (CA Bar No. 94266)
drallis@sulmeyerlaw.com
3 Asa S. Hami (CA Bar No. 210728)
ahami@sulmeyerlaw.com
4 Tamar Kouyoumjian (CA Bar No. 254148)
tkouyoumjian@sulmeyerlaw.com
5 **SulmeyerKupetz**
A Professional Corporation
6 333 South Hope Street, Thirty-Fifth Floor
Los Angeles, California 90071-1406
7 Telephone: 213.626.2311
Facsimile: 213.629.4520

8
9 Bankruptcy Counsel for the Official
Committee of Unsecured Creditors

10 **UNITED STATES BANKRUPTCY COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **SAN FERNANDO VALLEY DIVISION**

13 In re
14
15 **MERUELO MADDUX PROPERTIES,**
INC., et al.,¹
16
17 Debtors.

Case No. 1:09-bk-13356 KT
Chapter 11
**OPPOSITION OF THE OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS TO THE DEBTORS'
SECOND AMENDED DISCLOSURE
STATEMENT**
Date: June 14, 2010
Time: 9:30 a.m.
Place: Courtroom 301
United States Bankruptcy Court
21041 Burbank Boulevard
Woodland Hills, CA 91367

22 ¹ Pursuant to an order of the Court, this case is being jointly administered with 53 chapter 11
23 cases filed by affiliated entities. The affiliated case numbers are as follows: 1:09-bk-13338-KT;
24 1:09-bk-13358-KT; 1:09-bk-13359-KT; 1:09-bk-13360-KT; 1:09-bk-13361-KT; 1:09-bk-13362-
25 KT; 1:09-bk-13363-KT; 1:09-bk-13364-KT; 1:09-bk-13365-KT; 1:09-bk-13366-KT; 1:09-bk-13367-
26 KT; 1:09-bk-13368-KT; 1:09-bk-13369-KT; 1:09-bk-3370-KT; 1:09-bk-13371-KT; 1:09-bk-
27 13372-KT; 1:09-bk-13373-KT; 1:09-bk-13374-KT; 1:09-bk-13375-KT; 1:09-bk-13376-KT; 1:09-bk-
28 13377-KT; 1:09-bk-1378-KT; 1:09-bk-13379-KT; 1:09-bk-13380-KT; 1:09-bk-13381-KT; 1:09-bk-
13382-KT; 1:09-bk-13383-KT; 1:09-bk-13384-KT; 1:09-bk-13385-KT; 1:09-bk-13386-KT; 1:09-
bk-13387-KT; 1:09-bk-13388-KT; 1:09-bk-13389-KT; 1:09-bk-13390-KT; 1:09-bk-13391-KT;
1:09-bk-13392-KT; 1:09-bk-13393-KT; 1:09-bk-13394-KT; 1:09-bk-13395-KT; 1:09-bk-13396-KT;
1:09-bk-13397-KT; 1:09-bk-13398-KT; 1:09-bk-13399-KT; 1:09-bk-13400-KT; 1:09-bk-13401-KT;
1:09-bk-13402-KT; 1:09-bk-13403-KT; 1:09-bk-13404-KT; 1:09-bk-13405-KT; 1:09-bk-13405-
KT; 1:09-bk-13406-KT; 1:09-bk-13407-KT; 1:09-bk-13434-KT; and 1:09-bk-13439-KT.

SulmeyerKupetz, A Professional Corporation
333 SOUTH HOPE STREET, THIRTY-FIFTH FLOOR
LOS ANGELES, CALIFORNIA 90071-1406
TEL. 213.626.2311 • FAX 213.629.4520

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

I. INTRODUCTION2

II. THE DISCLOSURE STATEMENT DOES NOT CONTAIN ADEQUATE INFORMATION3

 A. General Standard3

 B. The Disclosure Statement Contains Inadequate Information to Evaluate the Debtors' Forecasts and Projections.....4

 1. Introduction.....4

 2. Inadequacies Relating to Projected Corporate Costs5

 3. Inadequacies Relating to Projected Property Expenses and Cash Flow.....6

 4. Inadequacies Relating to Projected Rental Income8

 C. The Disclosure Statement Contains Inadequate Information Regarding the Means of Implementing the Plan.....9

 1. Introduction.....9

 2. The Disclosure Statement Lacks Information Regarding Contemplated Real Property Sales9

 3. The Disclosure Statement Lacks Information Regarding the Private Placement Transaction..... 12

 D. The Disclosure Statement Contains Inadequate Information in Other Areas..... 13

 1. Insider Compensation..... 13

 2. Motion to Allocate Claims 14

III. CONCLUSION..... 15

SulmeyerKupetz, A Professional Corporation
333 SOUTH HOPE STREET, THIRTY-FIFTH FLOOR
LOS ANGELES, CALIFORNIA 90071-1406
TEL. 213.626.2311 • FAX 213.629.4520

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page

CASES

Cardinal Congregate,
121 B.R. at 7654

Duff v. United States Trustee (In re California Fidelity, Inc.),
198 B.R. 567, 571 (B.A.P. 9th Cir. 1996)3

In re Cardinal Congregate I,
121 B.R. 760, 765 (Bankr. S.D. Ohio 1990)4

In re County of Orange,
219 B.R. 543, 560 (Bankr. C.D. Cal. 1997)3

In re Dakota Rail, Inc.,
104 B.R. 138, 149 (Bankr. D. Minn. 1989)5

In re Main St. AC, Inc.,
234 B.R. 771, 774-75 (Bankr. N.D. Cal. 1999).....5

In re Radco Properties, Inc.,
402 B.R. 666, 683 (Bankr. E.D.N.C. 2009)4, 11

In re Scioto Valley Mortgage Co.,
88 B.R. 168, 170-71 (Bankr. S.D. Ohio 1988).....4

Official Committee of Unsecured Creditors v. Michelson,
141 B.R. 715, 718 (Bankr. E.D. Cal. 1992)4, 11

Ryan Operations G.P. v. Santiam-Midwest Lumber Co.,
81 F.3d 355, 362 (3rd Cir. 1996).....3

STATUTES

11 U.S.C. § 1125(a).....3

11 U.S.C. § 1125(a)(1)3

11 U.S.C. § 1125(b).....3

SulmeyerKupetz, A Professional Corporation
333 SOUTH HOPE STREET, THIRTY-FIFTH FLOOR
LOS ANGELES, CALIFORNIA 90071-1406
TEL. 213.626.2311 • FAX 213.629.4520

1 The Official Committee of Unsecured Creditors in the above-captioned jointly-
2 administered cases (the "Committee"), hereby opposes the "Second Amended Joint
3 Disclosure Statement Describing Second Amended Joint Plan of Reorganization of
4 Meruelo Maddux Properties, Inc., et al." (the "Disclosure Statement"), filed by Meruelo
5 Maddux Properties, Inc., et al., (collectively, the "Debtors").

6 I.

7 INTRODUCTION

8 This is the Debtors' third attempt at formulating a plan and related disclosure
9 statement. This rendition remains deficient and cannot be approved. More specifically,
10 the Disclosure Statement is inadequate in at least the following regards:

- 11 • Like its predecessor, this Disclosure Statement fails to provide critical
- 12 information or details necessary to evaluate the accuracy of the Debtors' cash forecasts;
- 13 • The Disclosure Statement fails to provide essential information regarding the
- 14 contemplated sales or refinancing of real properties (even though the Debtors are relying
- 15 on such transactions to fund distributions to creditors) and the proposed private
- 16 placement transaction, two key sources of funding the Debtors' Second Amended Joint
- 17 Chapter 11 Plan (the "Plan"); and
- 18 • The Disclosure Statement omits certain essential information in other areas,
- 19 including information relating to matters currently pending before this Court.²

20 For these and other reasons discussed below, this Court should not approve the
21 Disclosure Statement.³

22 ///

23 _____
24 ² In its response to the prior disclosure statement, the Committee informed the Court that its
25 financial advisors, Kibel Green Inc. ("KGI"), was seeking additional information from the Debtors
26 and their financial advisors in an effort to conduct a full evaluation of the Debtors' plan and
27 disclosure statement. To date, the Debtors have failed to produce the requested documents and
28 information. As a result, the Committee reserves the right to supplement this response in any
manner prior to or at the upcoming (or any continued) hearing on the Disclosure Statement to the
extent the Debtors produce additional information as requested by the Committee.

³ On June 11, 2010, this Court will consider the certain legal issues in advance of plan
confirmation, the outcome of which will impact the Plan and Disclosure Statement. The
Committee expressly reserves all rights in this regard.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II.

THE DISCLOSURE STATEMENT DOES NOT CONTAIN ADEQUATE INFORMATION

A. General Standard

Section 1125(b) of the Bankruptcy Code provides, in part:

An acceptance or rejection of a plan may not be solicited . . . unless, at the time before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved . . . by the court as containing adequate information.

11 U.S.C. § 1125(b). Section 1125(a) defines “adequate information” as follows:

[I]nformation of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan . . . and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information[.]

11 U.S.C. § 1125(a)(1). Compliance with the disclosure requirements is “crucial to the effective functioning of the federal bankruptcy system. Because creditors and the bankruptcy court rely heavily on the debtor’s disclosure statement in determining whether to approve a proposed reorganization plan, the importance of full and honest disclosure cannot be overstated.” Ryan Operations G.P. v. Santiam-Midwest Lumber Co., 81 F.3d 355, 362 (3rd Cir. 1996) (citation omitted).

“[T]he purpose of the disclosure statement is ‘to give all creditors a source of information which allows them to make an informed choice regarding the approval or rejection of a plan.’” In re County of Orange, 219 B.R. 543, 560 (Bankr. C.D. Cal. 1997) (quoting Duff v. United States Trustee (In re California Fidelity, Inc.), 198 B.R. 567, 571 (B.A.P. 9th Cir. 1996)). Although “‘adequate information’ for making an informed judgment is a flexible concept that permits the degree of disclosure to be tailored to the

1 particular situation, there nevertheless is an irreducible minimum.” Official Committee of
2 Unsecured Creditors v. Michelson, 141 B.R. 715, 718 (Bankr. E.D. Cal. 1992).

3 That minimum generally includes “all pertinent information bearing on the success
4 or failure of the proposals in the plan of reorganization [and] . . . all material information
5 relating to the risks posed to creditors and equity interest holders under the proposed
6 plan of reorganization.” In re Cardinal Congregate I, 121 B.R. 760, 765 (Bankr. S.D. Ohio
7 1990). Some courts have outlined the following more specific categories of information
8 as representing the “yardstick against which the adequacy of disclosure may be
9 measured,” including, for example, (1) “any financial information, valuations or *pro forma*
10 projections that would be relevant to creditors’ determinations of whether to accept or
11 reject the plan;” (2) “the accounting and valuation methods used to produce the financial
12 information in the disclosure statement;” and (3) “information regarding the future
13 management of the debtor, including the amount of compensation to be paid to any
14 insiders, directors, and/or officers of the debtor.” Cardinal Congregate, 121 B.R. at 765
15 (citing In re Scioto Valley Mortgage Co., 88 B.R. 168, 170-71 (Bankr. S.D. Ohio 1988)).
16 Put more simply, “[w]hen providing creditors with information in connection with a
17 disclosure statement, more is better.” In re Radco Properties, Inc., 402 B.R. 666, 683
18 (Bankr. E.D.N.C. 2009) (emphasis added).

19 As discussed below, the Debtors’ Disclosure Statement is deficient in several of
20 the foregoing categories of information such that it cannot be deemed to contain
21 adequate information.

22 **B. The Disclosure Statement Contains Inadequate Information to Evaluate the**
23 **Debtors’ Forecasts and Projections**

24 **1. Introduction**

25 As indicated above, among the type forms of information that ought to be included
26 in a disclosure statement are “financial information, valuations or *pro forma* projections
27 that would be relevant to creditors’ determinations of whether to accept or reject the
28 plan.” Cardinal Congregate, 121 B.R. at 765 (citation omitted). The adequacy of the

SulmeyerKupetz, A Professional Corporation
333 SOUTH HOPE STREET, THIRTY-FIFTH FLOOR
LOS ANGELES, CALIFORNIA 90071-1406
TEL. 213.626.2311 • FAX 213.629.4520

1 financial information is critical to a finding that a disclosure statement contains adequate
2 information. See, e.g., In re Main St. AC, Inc., 234 B.R. 771, 774-75 (Bankr. N.D. Cal.
3 1999) (finding disclosure statement “inherently flawed” for failing to provide adequate
4 financial and valuation information) (citation omitted). “A disclosure statement is
5 misleading where it contains glowing opinions or projections, having little or no basis in
6 fact and/or contradicted by known fact.” In re Dakota Rail, Inc., 104 B.R. 138, 149
7 (Bankr. D. Minn. 1989).

8 Exhibit E to the Disclosure Statement contains the Debtors’ cash flow forecasts.
9 As detailed below, certain information necessary to evaluate the accuracy of those
10 forecasts with respect to “corporate costs,” real property sales and rental income is
11 missing.

12 **2. Inadequacies Relating to Projected Corporate Costs**

13 A primary source of revenue upon which the Debtors rely to fund the Plan is real
14 property sales. See Disclosure Statement at § VII.C. The Debtors’ cash flow forecasts,
15 which presumably account for such property sales, span seven years after an anticipated
16 Effective Date of October 1, 2010. See Exhibit E to Disclosure Statement, at p. 16.

17 Despite the contemplated sale of properties over the course of these seven years,
18 however, the “Costs at Corporate Level” line item in the projections remain flat for the first
19 five years. In particular, page 16 to Exhibit E provides the following amounts for
20 projected corporate costs:⁴

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
(10,853)	(9,153)	(9,153)	(9,153)	(9,301)	(6,643)	(6,843)

21
22
23
24
25 As the table above indicates, corporate costs do not decrease (or otherwise
26 fluctuate) during the first four years after the Effective Date and, in fact, increase slightly
27

28 ⁴ All figures are in thousands.

1 in the fifth year.⁵ It is only in Year 6 that corporate costs begin to decline, with the
2 forecast reflecting a steep almost 30% drop. Presumably, however, corporate costs
3 should decline throughout the post-Effective Date period -- not solely in the sixth year -- if
4 the Debtors truly intend to sell assets to fund plan payments as they proclaim. Yet the
5 Debtors provide nothing in the Disclosure Statement to explain this apparent oddity.

6 This peculiarity could mean any number of things, including, for example, (1) that
7 the Debtors' forecasts are inaccurate (2) that the Debtors do not expect to sell any real
8 properties during the first five years after the Effective Date;⁶ or (3) that the Debtors plan
9 on paying large bonuses to their officers.⁷ The fact is that the forecasts are not clear in
10 this regard and whatever the reason for projecting flat (instead of declining) corporate
11 costs despite asset sales, the Disclosure Statement should explain it so that creditors
12 may make an informed decision regarding the accuracy of the projections.⁸

13 **3. Inadequacies Relating to Projected Property Expenses and Cash Flow**

14 The Debtors' forecasts are further misleading in that, despite apparent real
15 property sales, revenues, operating expenses and property taxes remain unchanged.
16 For example, the Debtors project substantial sales proceeds in Years 1 through 5 as
17 follows:

18 _____
19 ⁵ Year 1 is higher than the other four years because, "[i]n addition to Corporate Costs, [it]
20 assumes payment of \$1.7M for the purchase of a D&O Insurance tail." Exhibit E to Disclosure
21 Statement, at p. 16, n.5.

22 ⁶ If the latter is true, the forecasts are further flawed in that they reflect substantial "Sales
23 Proceeds" during the first six years after the Effective Date. See Exhibit E to Disclosure
24 Statement, at p. 16, "Sale Proceeds."

25 ⁷ In fact, with respect to payment of bonuses in the future, the Disclosure Statement merely states
26 that "[t]he Debtor may pay bonuses to the officers during the Plan term as determined by the
27 Board of Directors." Disclosure Statement, at p. 155. Creditors are entitled to know whether
28 bonuses will be paid out or, at a minimum, whether the Debtors included bonuses in their
projected corporate costs.

⁸ The Committee also notes that the overall corporate costs reflected in the current forecasts are
substantially higher than those reflected in the forecasts accompanying the prior disclosure
statement. Compare "Costs at Corporate Level," p. 16 to Exhibit E to Disclosure Statement, with
"Costs at Corporate Level," p. 12 to Exhibit E to First Amended Disclosure Statement. For
example, the forecasts in the prior disclosure statement reflected corporate costs of \$3.5 million
in Year 1, whereas the forecasted corporate costs in the instant Disclosure Statement more than
tripled to \$10.8 million in Year 1. No explanation is provided regarding such large variances.

Year 1	Year 2	Year 3	Year 4	Year 5
\$23.1M	\$42.3M	\$27.3M	\$55.5M	\$23.0M

See Exhibit E to Disclosure Statement, at p. 16, "Sales Proceeds (Less Commission)."

Yet, as the following table illustrates, the Debtors project revenues, operating expenses and property taxes during those same years unaffected despite the diminishing portfolio:

	Year 1	Year 2	Year 3	Year 4	Year 5
Revenue	23,451	23,507	23,810	24,356	25,082
OpEx	(7,433)	(7,458)	(7,554)	(7,727)	(7,957)
Property Taxes	(7,624)	(6,227)	(6,352)	(6,295)	(6,383)

The Disclosure Statement provides no explanation for this phenomenon. The forecasts include the following line item adjustment entitled "Net Impact of Sales" presumably to account for the anticipated sales of assets:

Year 1	Year 2	Year 3	Year 4	Year 5
(1,066)	(930)	(613)	187	(60)

Exhibit E to Disclosure Statement, at p. 16. However, this adjustment is collapsed into a single line item. The Debtors provide no breakout of this line item to allow creditors to properly evaluate the amounts projected. More should be provided in the Disclosure Statement to explain the basis for the foregoing forecasts. Without additional information, creditors simply cannot ascertain the accuracy of the Debtors' projections.

1 Finally, it is significant to note that, perhaps with the exception of Year 1, the
 2 projected sales proceeds in the current forecasts are substantially higher than those
 3 reflected in the forecasts accompanying the prior disclosure statement as follows:⁹

	Year 1	Year 2	Year 3	Year 4	Year 5
6 First Amended Disclosure Statement	26,453	11,172	11,222	34,962	11,726
9 Second Amended Disclosure Statement	23,100	42,283	27,290	55,465	23,005

12 Compare "Sales Proceeds (Less Commission)," p. 16 to Exhibit E to Disclosure
 13 Statement, with "Sales Proceeds (Less Commission)," p. 12 to Exhibit E to First
 14 Amended Disclosure Statement (Dkt. No. 1131). No explanation is provided regarding
 15 these large variances.

17 **4. Inadequacies Relating to Projected Rental Income**

18 The Debtors' forecasts also are inadequate with respect to projected rental income
 19 (one source of Plan funding). More particularly, a comparison of the Debtors' projections
 20 with the Debtors' Monthly Operating Reports ("MOR") reflect a significant disparity in
 21 projected versus actual rental income. A few examples follow:

- 22 • Meruelo Farms LLC: The MOR for April 2010 -- the most recent MOR --
 23 reflects actual monthly rental income in the sum of \$60,000, whereas the Disclosure
 24 Statement projects \$73,000 for the first two months after the Effective Date and \$94,000
 25 for the next 10 months thereafter (see April 2010 MOR, at p. 55; Exhibit E to Disclosure
 26 Statement, at p. 62);

27 _____
 28 ⁹ Comparison of sales projections only for five years are reflected because the prior disclosure statement provided only five-year projections.

1 • 760 Hill Street: The April 2010 MOR reflects actual monthly rental
2 income in the sum of \$116,000, whereas the Disclosure Statement projects \$156,000 a
3 month for the first year after the Effective Date (see April 2010 MOR, at p. 55; Exhibit E to
4 Disclosure Statement, at p. 67); and

5 • Santa Fe Commerce Center, Inc.: The April 2010 MOR reflects actual
6 monthly rental income in the sum of \$93,000, whereas the Disclosure Statement projects
7 \$119,000 a month for the first year after the Effective Date (see April 2010 MOR, at p. 60;
8 Exhibit E to Disclosure Statement, at p. 98).

9 The Disclosure Statement should disclose: (1) that such variances exist; (2) the
10 amount of the variances; and (3) the basis for projecting amounts that vastly differ from
11 historical amounts. Creditors should not be required to sift through all of the Debtors'
12 financials and projections to uncover these variances (and then left to wonder about the
13 reasons for the variances).

14 **C. The Disclosure Statement Contains Inadequate Information Regarding the**
15 **Means of Implementing the Plan**

16 **1. Introduction**

17 Two of the key sources of cash upon which the Debtors intend to rely to fund the
18 Plan are: (1) real property sales; and (2) a \$10 million private placement transaction. See
19 Disclosure Statement at §§ VII.A., VII.C and VII.F. The Disclosure Statement fails to
20 supply certain important information regarding these two sources of revenue.

21 **2. The Disclosure Statement Lacks Information Regarding Contemplated**
22 **Real Property Sales**

23 A large portion of the revenues necessary to fund the Plan is expected to flow
24 from real property sales. See Exhibit E to Disclosure Statement, p. 16.¹⁰ Despite the
25 heavy reliance on such sales, the Disclosure Statement provides only the following
26 information regarding these transactions:

27 _____
28 ¹⁰ The Disclosure Statement also discloses the refinancing of assets as a means of
implementation of the Plan, but the cash flow forecasts appear to be based on "sale proceeds."
Cash Flow Forecast Summary (Exhibit E); Disclosure Statement at 119:5-15.

1 As of the Effective Date, the Reorganized Debtors will
2 continue to operate their businesses. In order to meet their
3 operational needs and payment obligations under the Plan,
4 the Reorganized Debtors will sell some of their assets and
5 refinance other of their assets as necessary during the term of
6 the Plan. The Debtors will determine which assets will be sold
7 or refinanced based on the then existing needs and business
8 plan of the Debtors and the condition of the real estate and
9 credit markets. The Debtors have in the past shown a
willingness and ability to sell properties to meet their cashflow
needs and they will continue to make such strategic sales as
and when they deem it necessary in order to meet their
obligations in the future. After payment of the costs of sale
and the satisfaction of any Liens fixed by this Plan against the
asset, the remaining proceeds will be available for the
payment of the costs of operating its business and funding the
Reorganized Debtors' obligations under this Plan.

10 Disclosure Statement at 119:5-15 (emphasis added). Although the Debtors also provide
11 brief descriptions of its real properties on a property by property basis and alleged
12 property valuations, none of the following information is provided (all of which are
13 required to ascertain the reasonableness of the forecasts):

- 14 • the specific properties to be sold;
- 15 • the specific properties to be refinanced;
- 16 • the specific properties the Debtors intend to hold;
- 17 • the specific criteria or strategy the Debtors will implement to determine which
18 properties to sell, which properties to refinance and which properties to hold;
- 19 • whether or not any sales are in progress and, if so, the status of negotiations;
- 20 • whether or not any refinancing is in progress and, if so, the status;
- 21 • comparable sales studies;
- 22 • the anticipated costs of the sales for each property;
- 23 • marketing efforts that will be employed;
- 24 • a timetable for the sale of any of the properties; or
- 25 • a timetable for the refinance of any of the properties.

26 This type of information is essential to a disclosure statement, without which
27 creditors will be unable to determine whether the Debtors' forecasts, or the overall means
28 for implementing the Plan, are reasonable or implausible. See Official Committee of

1 Unsecured Creditors v. Michelson, 141 B.R. 715, 718-19 (Bankr. E.D. Cal. 1992) (“An
2 informed judgment cannot be made without information about the plan and about how the
3 provisions of the plan will be put into effect [and t]hus, . . . every disclosure statement
4 needs an explanation of why the proposed means of implementation will be adequate to
5 the task.”) (emphasis added).

6 In re Radco Properties, Inc., 402 B.R. 666 (Bankr. E.D.N.C. 2009), is instructive.
7 In that case, the debtor’s primary assets consisted of various residential and commercial
8 real properties. Similar to the Debtors’ Plan, the Radco debtor filed a plan that provided
9 alternative methods of reorganization: (1) locate a capital investor or refinancing option;
10 or (2) liquidate the properties. See id. at 671. In assessing the related disclosure
11 statement, the court determined it lacked adequate information because it failed to
12 provide the same type of information the instant Disclosure Statement lacks:

13 The Second Disclosure Statement failed to provide any
14 discussion of the Debtor’s plan to market and sell the
15 commercial properties beyond listing them with the agent; any
16 comparable sales studies or market analysis within Wilson
17 County during the past year; or any population density studies
18 for the areas surrounding the stores and stations. Of great
19 concern to the Court is the Debtor’s failure to address the
20 impact of the commercial lease rejection.

21 In addition, although the Debtor filed its monthly operating
22 reports, it failed to provide any revenue projections for the
23 residential properties or any prior performance history for
24 either the commercial stores or the residential property. The
25 Debtor has even failed to provide a list of occupancy rates
26 and again, the Debtor has failed to address the impact, if any,
27 the rejection of the residential leases will have on the Debtor’s
28 ongoing business. Without this information, the Court is left
questioning whether a hypothetical investor could reasonably
be expected to evaluate the Second Disclosure Statement.

Mr. Denton stated that he thought there may be an investor
interested in the commercial properties. Even though remote,
if the principal of the Debtor believes that the possibility exists,
the creditors are entitled to know the specifics regarding the
status of the negotiations, the amounts being considered, and
the likelihood that the transaction will come to fruition prior to
voting on a plan. Though some of this information was
provided at the hearing, creditors are entitled to the
information before they cast their ballots, not after.

. . . . Neither the Disclosure Statement nor the Amended Plan
provide any specifics as to the anticipated costs of the

1 auction(s) which would impact whether or not equity may exist
2 for distribution to unsecured creditors. The Debtor requests a
3 ten percent (10%) holdback for administrative costs and
4 expenses yet fails to substantiate the basis of the holdback
5 amount. . . . Based on the Amended Plan and Second
6 Disclosure Statement, an unsecured creditor is not even able
7 to project an estimate of the cost of the sale of the
8 commercial properties. Such information is necessary for
9 creditors to make an informed judgment regarding the
10 Amended Plan.

7 Id. at 682-83 (emphasis added).

8 As discussed above, the Debtors' Disclosure Statement suffers from similar
9 inadequacies as the one presented in Radco. As a result, the Disclosure Statement
10 should not be approved.

11 **3. The Disclosure Statement Lacks Information Regarding the Private**
12 **Placement Transaction**

13 Another source of revenue for the Plan stems from the planned \$10 million private
14 placement offer. The Disclosure Statement described this program as follows:

15 To provide funding for the Plan, MMPI will sell in a private
16 placement transaction 500,000 share of MMPI common stock
17 to the Initial Investors and Eligible Investors selected by MMPI
18 for the purpose of raising capital in the amount of \$10,000,000
19 ("New Equity"). MMPI has received confirmation that the
20 Initial Investors will purchase at least 250,001 shares for an
21 aggregate amount of at least \$5,000,020. The remaining
22 shares not purchased by the Initial Investors will be purchased
23 by Eligible Investors. In the event MMPI does not sell the
24 remaining shares to Eligible Investors, other than the Initial
25 Investors, then such shares will be purchased by the Initial
26 Investors.

22 Disclosure Statement at § IV.F.a. (emphasis added). The "Initial Investors" are:

23 Richard Meruelo, or an entity controlled or designated by
24 Richard Meruelo and/or John Maddux or an entity controlled
25 or designated by John Maddux.

25 Plan at p. 11, "Initial Investors." "Eligible Investors" include:

26 one or more accredited investors as defined in Rule 501(a) of
27 Regulation D, as amended, under the Securities Act selected
28 by MMPI.

28 Plan at p. 10, "Eligible Investors."

1 Critical information is missing. First, the "Eligible Investors" are not identified
2 except to state that they will be selected by MMPI. This is necessary to allow creditors to
3 determine whether the "Eligible Investors" are, in fact, eligible to participate in the private
4 placement or are otherwise capable of purchasing the common stock. Second, nothing
5 is contained in the Disclosure Statement regarding MMPI's process for selecting the
6 "Eligible Investors." Third, there are no disclosures regarding the Initial Investors'
7 financial wherewithal to purchase the initial 250,001 shares offered exclusively to them or
8 the additional 249,999 shares apportioned to the Eligible Investors. As a major source of
9 Plan funding, this type of information regarding the private placement is essential.

10 **D. The Disclosure Statement Contains Inadequate Information in Other Areas**

11 The Disclosure Statement also lacks adequate information regarding various other
12 topics discussed below.

13 **1. Insider Compensation**

14 With respect to insider compensation, the Disclosure Statement provides the
15 following:

16 The following table sets forth the compensation paid by MMPI
17 to each of their current executive officers, for services
rendered in their respective capacities in 2009.

18 Disclosure Statement at 154:24-25. The Disclosure Statement then includes a table
19 reflecting the 2009 salaries, as well as bonuses paid in certain prior years. However, the
20 Disclosure Statement is deficient in this area in the following ways:

- 21 • The Disclosure Statement does not state the amounts the Debtors intend to
22 pay their insiders post-confirmation;
- 23 • The Disclosure Statement does not state whether any compensation amounts
24 the Debtors intend to pay the officers post-confirmation will remain fixed and unchanged
25 during the entire Plan term;
- 26 • The Disclosure Statement does not state the rate of increase of any post-
27 confirmation compensation to the extent the compensation amounts will be modified at
28 any time during the Plan term; and

1 • The Disclosure Statement does not state whether bonuses, in fact, will be paid
2 to officers in the future or the projected amounts of such bonuses.

3 **2. Motion to Allocate Claims**

4 On April 30, 2010, the Debtors filed a "Motion to Deem Certain Claims to be Filed
5 Against the Proper Debtor Pursuant to Earlier Order of the Court" (the "Claims Allocation
6 Motion"). See Dkt. No. 1330. The Disclosure Statement describes the Claims Allocation
7 Motion, including the backdrop for filing such motion, as follows:

8 Pursuant to the terms of the Debtors' Stipulation with the
9 [Committee] described above, the Debtors have reviewed
10 certain of the proofs of claim filed before the Bar Date in order
11 to identify claims filed in the wrong case or against the wrong
12 Debtor that may properly be reassigned pursuant to the Order
13 approving the Stipulation. Those determinations were based
14 on the documents attached to the proofs of claim, a review of
15 the appropriate Debtor's records and consultation with
members of the Debtors' management familiar with the claims
and creditors. On April 30, 2010, the Debtors filed their
motion asking the Court to enforce the terms of the earlier
Stipulation and Order and to deem the timely filed claims as
having been filed against the proper Debtor, regardless of the
Debtor's name and/or case number identified on the proof of
claim.

16 Disclosure Statement at § IV.A.8.e, p. 56. This description is incomplete.

17 The Disclosure Statement omits to state that the manner in which the Debtors
18 have re-allocated the claims will result in certain creditors having claims against multiple
19 Debtors in the full amount of their claim (rather than apportioning the amount of the claim
20 amongst the various Debtors), even when the claim actually was filed against a single
21 Debtor.

22 The following illustrates the significance of this omission. According to the Claims
23 Allocation Motion, Aviles Security filed one claim in the MMPI case in the amount of
24 \$32,530. The Claims Allocation Motion asserts that this claim should not have been
25 asserted against MMPI at all. Instead, the Debtors propose that the claim be deemed
26 filed against nine other estates. However, rather than apportion the \$32,530 claim
27 among those nine estates, the Claims Allocation Motion seeks to deem the Aviles
28 Security claim filed in each of the nine cases each for the full amount of \$32,530. The

1 net effect of such allocation is to increase Aviles Security's claim from an aggregate of
2 \$32,530 to an aggregate of \$292,770. This is just one example among several that are
3 similarly treated in the Debtors' Claims Allocation Motion.

4 The Disclosure Statement should inform creditors of the foregoing because it
5 results in: (1) an increase in the total amount of unsecured claims asserted against any
6 given Debtor; (2) could be viewed as a gerrymandering device; and (3) grants certain
7 creditors additional voting power in that, for example, whereas Aviles would have been
8 entitled to vote its claim in connection with the MMPI plan only in the amount of \$32,530,
9 under the Claims Allocation Motion it will be permitted to vote on nine different plans,
10 each in the amount of \$32,530.

11 III.

12 **CONCLUSION**

13 For the reasons discussed above, the Disclosure Statement fails to provide
14 adequate information. As a result, this Court should not approve the Disclosure
15 Statement in its current form. As noted above, the Committee has sought documents
16 and information from the Debtors, which the Committee has not yet received (and, at this
17 point, does not appear forthcoming). The Committee therefore reserves the right to
18 supplement or amend this response to the Disclosure Statement as is appropriate and
19 necessary based on any additional information it may receive in the course of conducting
20 its due diligence.

21 Dated: May 17, 2010

SulmeyerKupetz
A Professional Corporation

22
23
24 By: /s/ Asa S. Hami
Asa S. Hami
25 Bankruptcy Counsel for the Official
Committee of Unsecured Creditors
26
27
28

In re: MERUELO MADDUX PROPERTIES, INC., et al

CHAPTER: 11

Debtor(s).

CASE NUMBER: 1:09-bk-13356 KT

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 a 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:
333 South Hope Street, Thirty-Fifth Floor, Los Angeles, California 90071-1406

A true and correct copy of the foregoing document described as **OPPOSITION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS' SECOND 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 May 17, 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 e-mail address indicated below:

Michael C Abel on behalf of Debtor Meruelo Maddux Properties, Inc., a DE Corp
mca@dgdk.com

John J Bingham on behalf of Debtor 2640 Washington Boulevard, LLC, a CA LLC
jbingham@dgdk.com

Peter Bonfante on behalf of Interested Party Courtesy NEF
peterbonfante@bsalawfirm.com

Julia W Brand on behalf of Debtor Meruelo Maddux Properties, Inc., a DE Corp
jwb@dgdk.com

Jennifer L Braun on behalf of U.S. Trustee United States Trustee (SV)
jennifer.l.braun@usdoj.gov

Martin J Brill on behalf of Interested Party Courtesy NEF
mjb@lnbrb.com

Howard Camhi on behalf of Creditor Kennedy Funding, Inc.
hcamhi@ecjlaw.com

James E Cariberg on behalf of Creditor Woodland Farms, Inc.
jcariberg@boselaw.com

Sara Chenetz on behalf of Creditor Imperial Capital Bank
chenetz@blankrome.com

Jacquelyn H Choi on behalf of Interested Party Courtesy NEF
jchoi@swjlaw.com

Ronald R Cohn on behalf of Creditor Pacific Commerce Bank
rcohn@horganrosen.com

In re: MERUELO MADDUX PROPERTIES, INC., et al	CHAPTER: 11
Debtor(s).	CASE NUMBER: 1:09-bk-13356 KT

Enid M Colson on behalf of Debtor Meruelo Maddux Properties, Inc., a DE Corp
emc@dgd.com, ecolson@dgd.com

Michaeline H Correa on behalf of Interested Party Los Angeles County Metropolitan Transportation Authority
mcorrea@jonesday.com

Brian L Davidoff on behalf of Creditor Yoshiake Murakami
bdavidoff@rutterhobbs.com, calendar@rutterhobbs.com; jreinglass@rutterhobbs.com

Aaron De Leest on behalf of Debtor Merco Group - 2040 Camfield Avenue, LLC, a DE LLC
aed@dgd.com

Michael G Fletcher on behalf of Creditor Cathay Bank
mfletcher@frandzel.com, efiling@frandzel.com; shom@frandzel.com

Barry V Freeman on behalf of Interested Party Courtesy NEF
bvf@jmbm.com, bvf@jmbm.com

Donald L Gaffney on behalf of Creditor BANK OF AMERICA
dgaffney@swlaw.com

Thomas M Geher on behalf of Creditor Wells Fargo Bank, N.A. successor by consolidation to Wells Fargo Bank Minnesota, National Association as Trustee for the Registered Certificateholders of GMAC Commercial Mortgage Securities, Inc., etc
tmg@jmbm.com

Bernard R Given on behalf of Creditor Cathay Bank
bgiven@frandzel.com, efiling@frandzel.com; shom@frandzel.com; bgiven@frandzel.com

Barry S Glaser on behalf of Creditor County of Los Angeles Tax Collector
bqlaser@swjlaw.com

Michael I Gottfried on behalf of Interested Party Courtesy NEF
mgottfried@lgbfirm.com, msaldana@lgbfirm.com

John A Graham on behalf of Creditor Wells Fargo Bank, N.A. successor by consolidation to Wells Fargo Bank Minnesota, National Association as Trustee for the Registered Certificateholders of GMAC Commercial Mortgage Securities, Inc., etc
jag@jmbm.com

Ofer M Grossman on behalf of Interested Party Courtesy NEF
omglaw@gmail.com

Jodie M Grotins on behalf of Interested Party Courtesy NEF
jgrotins@mcquirewoods.com

Peter J Gurfein on behalf of Creditor CIM Urban RE Fund GP II, LLC, as Successor in Interest to Grand Avenue Lofts, LP
pgurfein@akingump.com

Cara J Hagan on behalf of Creditor PNL Pomona, L.P.
carahagan@haganlaw.org

Asa S Hami on behalf of Creditor Committee Creditors Committee
ahami@sulmeyerlaw.com

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

In re: MERUELO MADDUX PROPERTIES, INC., et al	Main Document Page 20 of 23	CHAPTER: 11
Debtor(s).		CASE NUMBER: 1:09-bk-13356 KT

Brian T Harvey on behalf of Creditor California Bank & Trust
bharvey@buchalter.com, IFS_filing@buchalter.com

David W Hercher on behalf of Interested Party Courtesy NEF
dave.hercher@millernash.com

William W Huckins on behalf of Interested Party Courtesy NEF
whuckins@allenmatkins.com, clynch@allenmatkins.com

Natasha L Johnson on behalf of Debtor Meruelo Maddux Properties, Inc., a DE Corp
natasha.johnson@dlapiper.com

Lance N Jurich on behalf of Creditor CanPartners Realty Holding Company IV, LLC
ljurich@loeb.com, kpresson@loeb.com

Alexandra Kazhokin on behalf of Creditor California Bank & Trust
akazhokin@buchalter.com, salarcon@buchalter.com; ifs_filing@buchalter.com

William H. Kiekhofer on behalf of Creditor Esmark, Inc.
wkiekhofer@mcquirewoods.com

Andrew F Kim on behalf of Creditor Imperial Capital Bank
kim-a@blankrome.com

Michael S Kogan on behalf of Creditor Kennedy Funding, Inc.
mkogan@ecilaw.com

Tamar Kouyoumjian on behalf of Creditor Committee Creditors Committee
tkouyoumjian@sulmeyerlaw.com

Duane Kumagai on behalf of Creditor Yoshiake Murakami
dkumagai@rutterhobbs.com, calendar@rutterhobbs.com

Lewis R Landau on behalf of Creditor Committee Creditors Committee
lew@landaunet.com

David E Leta on behalf of Creditor FNBN-CMLCOM I LLC
dleta@swlaw.com, wsmart@swlaw.com

Katherine Lien on behalf of Interested Party Courtesy NEF
katie.lien@sbcglobal.net, katielien@gmail.com

Steven K Linkon on behalf of Creditor Chinatrust Bank (USA)
slinkon@rcolegal.com

Richard Malatt on behalf of Interested Party Courtesy NEF
rmalatt@gmail.com

Elmer D Martin on behalf of Creditor East West Bank
elmermartin@msn.com

In re: MERUELO MADDUX PROPERTIES, INC., et al	Main Document Page 21 of 23	CHAPTER: 11
Debtor(s).		CASE NUMBER: 1:09-bk-13356 KT

Elissa Miller on behalf of Interested Party Courtesy NEF
emiller@sulmeyerlaw.com, asokolowski@sulmeyerlaw.com

Iain A W Nasatir on behalf of Attorney Pachulski Stang Ziehl & Jones LLP
inasatir@pszjlaw.com, jwashington@pszjlaw.com

Jennifer L Nassiri on behalf of Debtor Meruelo Maddux Properties, Inc., a DE Corp
jennifer.nassiri@dlapiper.com, bambi.clark@dlapiper.com

Lawrence Peitzman on behalf of Interested Party Courtesy NEF
lpeitzman@pwkllp.com

Eric S Pezold on behalf of Creditor BANK OF AMERICA
epezold@swlaw.com, dwlewis@swlaw.com

Christopher E Prince on behalf of Stockholder Charlestown Capital Advisors, LLC
cprince@lesnickprince.com

Michael H Raichelson on behalf of Creditor Stanford Group LP
mhr@cabkattorney.com

Dean G Rallis Jr on behalf of Creditor Committee Creditors Committee
drallis@sulmeyerlaw.com

Craig M Rankin on behalf of Interested Party Courtesy NEF
cmr@lnbrb.com

Michael B Reynolds on behalf of Creditor FNBN-CMLCON I LLC
mreynolds@swlaw.com, kcollins@swlaw.com

Kirsten A Roe on behalf of Creditor Calnex Engineering Company
kroe@wthf.com, dfunsch@wthf.com

Martha E Romero on behalf of Creditor San Bernardino County Tax Collector
Romero@mromerolawfirm.com

Victor A Sahn on behalf of Creditor Committee Creditors Committee
vsahn@sulmeyerlaw.com

Zev Shechtman on behalf of Debtor Meruelo Maddux Properties, Inc., a DE Corp
zshechtman@dgdk.com

Jeffrey S Shinbrot on behalf of Creditor Natividad Gonzales
jeffrey@shinbrotfirm.com, sandra@shinbrotfirm.com

Stephen Shiu on behalf of Creditor FNBN-CMLCOM I LLC
sshiu@swlaw.com

Daniel H Slate on behalf of Creditor California Bank & Trust
dslate@buchalter.com, rreeder@buchalter.com; ifs_filing@buchalter.com

In re: MERUELO MADDUX PROPERTIES, INC., et al Debtor(s).	Main Document Page 22 of 23 CHAPTER: 11 CASE NUMBER: 1:09-bk-13356 KT
---	---

Surjit P Soni on behalf of Creditor Legendary Investors Group No. 1, LLC
surjit@sonilaw.com, teresa@sonilaw.com

Tracie L Spies on behalf of Creditor PNL Pomona, L.P.
tracie@haganlaw.org

James Stang on behalf of Creditor East West Bank
jstang@pszilaw.com

John N Tedford on behalf of Attorney Danning Gill Diamond & Kollitz LLP
jtedford@dgdck.com

James A Timko on behalf of Interested Party Courtesy NEF
jtimko@allenmatkins.com

Alan G Tippie on behalf of Interested Party Courtesy NEF
atippie@sulmeyerlaw.com, jbartlett@sulmeyerlaw.com

United States Trustee (SV)
ustpreion16.wh.ecf@usdoj.gov

Rouben Varozian on behalf of Creditor Vahan and Anoush Chamlian
rvarozian@bzlegal.com

Jason L Weisberg on behalf of Creditor Roofcorp of CA Inc
jason@gdclawyers.com

Jasmin Yang on behalf of Creditor BANK OF AMERICA
jyang@swlaw.com

Service Information continued on attached page.

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

Main Document Page 23 of 23	
In re: MERUELO MADDUX PROPERTIES, INC., et al	CHAPTER: 11
Debtor(s).	CASE NUMBER: 1:09-bk-13356 KT

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 May 17, 2010 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 mailing to the judge will be completed no later than 24 hours after the document is filed.

The Honorable Kathleen Thompson
 U.S. Bankruptcy Court
 Bin outside of Elevators on 3rd Floor
 21041 Burbank Blvd.
 Woodland Hills, CA 91367-6606

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.

May 17, 2010

 Date

Maria R. Viramontes

 Type Name

/s/ Maria R. Viramontes

 Signature