

PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

1 James I. Stang (CA Bar No. 94435)
2 Iain A. W. Nasatir (CA Bar No. 148977)
3 Pachulski Stang Ziehl & Jones LLP
4 10100 Santa Monica Blvd., 11th Floor
5 Los Angeles, California 90067-4100
6 Telephone: 310/277-6910
7 Facsimile: 310/201-0760
8 E-mail: jstang@pszjlaw.com
9 inasatir@pszjlaw.com

8 Surjit P. Soni (CA Bar No. 127419)
9 THE SONI LAW FIRM
10 35 N. Lake Ave., Suite 720
11 Pasadena, California 91101
12 Telephone: 626/683-7600
13 Facsimile: 626/683-1199
14 E-mail: surj@sonilaw.com
15 Counsel for Legendary Investors Group No. 1, LLC

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION

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

Case No. 1:09-bk-13356-KT
Chapter 11 (Jointly Administered)

- Affects all Debtors
 Affects the following Debtor(s):

OPPOSITION TO SUBMISSION BY DEBTORS OF EXHIBIT D (FORM LOAN MODIFICATION AGREEMENT) TO DEBTORS FIRST AMENDED DISCLOSURE STATEMENT DESCRIBING DEBTORS FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION [DOCKET NO. 1183]

Date: March 29, 2010
Time: 9:30 a.m.
Place: United States Bankruptcy Court
21041 Burbank Boulevard - Courtroom 301
Woodland Hills, California

Honorable Kathleen Thompson

1 Legendary Investors Group No. 1, LLC submits this Objection (the
2 “Objection”) to *Submission Of Exhibit D (Form Loan Modification Agreement) to*
3 *Debtors First Amended Disclosure Statement Describing Debtors First Amended*
4 *Joint Chapter 11 Plan Of Reorganization* [Docket No. 1183] filed by Debtors on
5 March 12, 2010 for the reasons set forth below.

6 First, there is no reason that this formative document – the Loan Modification
7 Agreement (“LMA”) -- should not have been filed with the First Amended Disclosure
8 Statement, rather than a week before the hearing. If the LMA accurately set forth the
9 parameters disclosed in the First Amended Disclosure Statement (“FADS”), then it
10 should have been relatively easy to prepare. If the LMA changed or added material
11 terms that are at variance with the FADS, all the more reason that the LMA should
12 have been filed timely with the FADS, so that secured lenders would be able to
13 analyze it at the time their objections to the FADS were due.

14 It is all the more problematic, then, that the LMA appears at substantial
15 variance with the FADS and with prior representations made by Debtors’ counsel in
16 court. The FADS provides in relevant part:

17 The terms and conditions of the agreements or instruments between the
18 Holder and the Debtors shall be restructured and amended as of the
19 Effective Date pursuant to a Loan Modification Agreement....Except as
20 provided in this section and the Loan Modification Agreement, and
21 notwithstanding section 1141(c), or any other provision of the
22 Bankruptcy Code, all valid enforceable and perfected liens of the Holder
23 in its collateral shall survive the Effective Date and continue in
24 accordance with the contractual terms of the underlying documents whith
25 such Holder and/or applicable law until the Holder’s Allowed Secured
26 Claim is satisfied pursuant to the Plan; provided however that the Holder
27 shall be prohibited from exercising rights or remedies pursuant to such
28 underlying documents so long as the Reorganized Debtor is in

1 compliance with this Plan.

2 See P.77-78 of Redlined Amended Plan and P.56-57 of the Amended Plan. But the
3 LMA provides:

4 [L]ender hereby waives and relinquishes all rights under the Loan
5 Documents¹ or otherwise to any other interest, late charges and all other
6 amounts that may have been accrued or may have been payable by
7 Borrower, any guarantor or any other grantor of collateral under the Loan
8 Documents....”

9 P.1-2 of the LMA (Exhibit B bates nos. 0003-0004). This sounds very much as
10 if, contrary to the FADS, there is no carve out of section 1141(c) of the
11 Bankruptcy Code and the lender’s liens are surrendered and waived under the
12 LMA.

13 The Debtors’ handling of the due on sale clause appears directly contrary to
14 what they have told this Court. In Court, on January 20th, the Court asked the Debtors
15 to clarify whether all sales of property are going to be free and clear of all liens.²
16 Debtors’ counsel represented as follows: “The plan does not provide for sales free and
17 clear of liens, your Honor.” (Emphasis added, id. at 100.)

18 But the LMA provides in the same paragraph quoted above: “L]ender hereby
19 waives and relinquishes all rights under the Loan Documents³ or otherwise to any
20 other interest ... or to otherwise accelerate amounts owing, under the Loan
21 Documents on or prior to the Effective Date. Further in the LMA, it provides (at p.2,
22 Bates 004, subsection (f)):

23 _____
24 ¹ The LMA defines “Loan Documents” as: “The Note, the Deed of Trust, [Loan Agreement], and all
25 other documents and instruments, as amended from time to time, evidencing or securing the Loan
26 are referred to collectively as the ‘Loan Documents’”. P.1 of the LMA, at paragraph A. Dangerously,
27 this definition of Loan Documents would include Debtors and insider guarantees, as discussed infra.

28 ² Legendary’s counsel raised the apparent confusion in the first plan and disclosure statement
(January 20th, Transcript at 99). The Court asked Legendary’s counsel: “And how did you get free
and clear without paying it off, paying off the secured lender?” (id.), and then followed up with a
request to the Debtors to clarify.

³ See fn 1.

1 [a] Permitted Transfer (as hereinafter defined) shall not require the
2 Lender’s consent ... or otherwise permit the Lender to accelerate the debt
3 under the Note or the other Loan Documents. For purposes hereof, a
4 Permitted Transfer means a sale...or any transfer of any interest in the
5 property securing the Loan or their respective parents, affiliates and
6 subsidiaries (any of which is a “Borrowing Party”) in connection with
7 a...acquisition...or other restructuring or recapitalization transaction in
8 any way involving Borrow or a Borrower’s Party.

9 What this permits, is some Debtors’ affiliate, or subsidiary, whenever formed,
10 buying one of the Secured Lender’s properties, without paying the lien or debt,
11 and not permitting the amount to be accelerated.

12 The LMA also contains other provisions that – while not at odds with specific
13 statements in the FADS – were also never disclosed as material terms. For example,
14 the Special Purpose Entity (“SPE”) provisions in the Loan Documents are “deleted
15 from the Loan Documents.” There is no basis for not disclosing such treatment in the
16 FADS. This Court’s SARE decision did not authorize Debtors on a go-forward basis
17 to delete the SPE provisions. Indeed, in the *General Growth Properties* case, those
18 provisions were explicitly made applicable to the plan of reorganization.

19 The LMA also allows the Debtors to further encumber property without any
20 apparent limitation. *See* LMA at p.3, Bates 0005, subsection (l) (“Any provisions in
21 the Loan Documents that prohibit any Borrower Party from encumbering any of their
22 respective property or assets not granted by any such party as collateral under the
23 Loan Documents are deleted from the Loan Documents and are of no further force and
24 effect.”).

25 Legendary is also troubled by the language in the LMA that apparently
26 eliminates the rights of a lender against the guarantors (*See* Section 1, subsection (a),
27 p. of the LMA, Bates 0003) (“Lender hereby waives and relinquishes all rights under
28 the Loan Documents ...and all other amounts that may have accrued or may have

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:

PACHULSKI STANG ZIEHL & JONES LLP, 10100 Santa Monica Boulevard, Suite 1100, Los Angeles, CA 90067

A true and correct copy of the foregoing document described as **OPPOSITION TO SUBMISSION BY DEBTORS OF EXHIBIT D (FORM LOAN MODIFICATION AGREEMENT) TO DEBTORS FIRST AMENDED DISCLOSURE STATEMENT DESCRIBING DEBTORS FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION [DOCKET NO. 1183]** 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 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 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 17, 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.

JUDGE’S COURTESY COPY SERVED VIA IN-HOUSE MESSENGER SERVICE

The Honorable Kathleen Thompson
U.S. Bankruptcy Court
21041 Burbank Boulevard – Courtroom 301
Woodland Hills, CA 91367

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 _____, 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 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.

March 17, 2010
Date

Janice G. Washington
Type Name

/s/ Janice G. Washington
Signature

Service List re Notice of Electronic Filing

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

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

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

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

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

Enid M Colson on behalf of Debtor Meruelo Maddux Properties, Inc., a DE Corp
ecolson@linerlaw.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 Yoshiaki 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@dgdk.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
bvff@jmbm.com, bvff@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 Interested Party Courtesy NEF
bglaser@swjlaw.com

Michael I. Gottfried on behalf of Interested Party Courtesy NEF
mgottfried@lblawllp.com, aerskine@lblawllp.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

Peter J Gurfein on behalf of Interested Party Courtesy NEF
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

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

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

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

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

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

David E Leta on behalf of Creditor FNBN-CMLCON 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
rmaalatt@gmail.com

Elmer D Martin on behalf of Creditor United Commercial Bank
elmermartin@msn.com

Elissa Miller on behalf of Interested Party Courtesy NEF
emiller@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

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 Calex 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

Jeffrey S Shinbrot on behalf of Creditor Natividad Gonzales
shinbrot@earthlink.net

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

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

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

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

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