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10 **UNITED STATES BANKRUPTCY COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 *In Re*) CASE NO. 1:09-bk-13356-KT
13)
14 MERUELO MADDUX PROPERTIES, INC.)
15) Chapter 11
16 Debtor.) **OBJECTION OF PNL POMONA, L.P.**
17) **TO ADEQUACY OF DEBTOR'S**
18) **DISCLOSURE STATEMENT FOR ITS**
19) **JOINT AND CONSOLIDATED PLAN OF**
20) **REORGANIZATION**
21 PNL POMONA, L.P., a Delaware limited)
22 partnership,)
23 Plaintiff,)
24 vs.) Date: March 19, 2010
25) Time: 9:30 a.m.
26 MERUELO MADDUX PROPERTIES, INC., a)
27 California corporation,)
28 Defendants.)

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I. INTRODUCTION

PNL Pomona, LP (hereinafter “PNL”) submits this objection to Meruelo Maddux Properties, Inc. (“MMPI”) First Amended Disclosure Statement. MMPI and its related debtor entities (collectively “Debtors”) request that his Court approve this amended disclosure statement even though it continues in failing to provide sufficient information as required under 11 U.S.C. §1125 and as it relates to a Chapter 11 Plan of Reorganization (“the “Plan”) which is patently unconfirmable. While this statement addresses several of the issues raised during the last hearing, it still fails to address many of the concerns raised. All relevant statutory authority and prevailing case law mandates that this Court deny approval of this First Amended Disclosure Statement. PNL therefore seeks an Order of the Court denying the approval of the Disclosure Statement.

The Disclosure Statement is the Bankruptcy Code’s tool to provide Creditors with information to decide on how to vote on the Plan. Fundamental to the Chapter 11 process is full and complete disclosure. *In re Brandon Mills Farms, Ltd.*, 37 B.R. 190, 192 (Bankr. N.D. Ga. 1984). This Debtor has failed to provide the requisite information to support the approval of the Disclosure Statement and presentation of a confirmable Plan. “Where inaccuracies are so numerous or significant that creditors or interest holders can no longer make an informed judgment about whether to accept or reject the proposed plan of reorganization, approval of the Disclosure Statement must be denied.” *In re Cardinal Congregate I*, 121 B.R. 760, 766-67 (Bankr. S.D. Ohio 1990); *see also In re Hirt*, 97 B.R. 981, 983 (Bankr. E.D. Wis. 1989).

II. FACTS RELEVANT TO PNL

A. The Loan

Debtor by and through Belinda Meruelo, the Estate of Homero Meruelo and the Meruelo Living Trust U.D.T., dated November 11, 1988, holds title to certain real property located at 1875 W. Mission Blvd., Pomona, California 91766 (the “Property”). The property consists of a vacant warehouse on a corner lot. The property has been vacant for the better part of the last decade. The Debtor has owned the property for most of this time and has sought to either redevelop the property

1 and/or sell the property. The property has no tenants and generates no income. The state of the
2 property has been unchanged since PNL's involvement in the property.

3 Creditor PNL is the successor in interest to the original lender on a Promissory Note secured by
4 a Deed of Trust on the Property in the principal sum of Nine Million Eight Hundred Thousand
5 Dollars (\$9,800,000.00) bearing a variable interest rate with a floor at 10.75% and a maximum of
6 15.75%. The total of principal, interest, loan fees and expenses were to be paid on or about April 1,
7 2009.

8 In early 2008, PNL Pomona learned that the parties had violated the terms of the loan. As a result
9 of these defaults and an agreement as to how to handle the situation, the parties entered into a
10 Reinstatement Agreement. The Agreement reaffirmed and provided incorporation of all of the
11 previous documents, including but not limited to the Continuing Guaranty of Payment and
12 Performance, dated November 11, 1998, waived all defenses to the enforcement of the documents
13 and confirmed all the appropriate parties.

14 However, not long after, on or about February 1, 2009, the Meruelos again defaulted on their
15 payments. At that time the principal balance on the Note was Eight Million Four Hundred Sixty Two
16 Thousand Nine Hundred Thirty Nine Dollars and Seventy Cents (\$8,462,939.70) with interest
17 accrued amounting to approximately One Hundred Two Thousand One Hundred Ninety Two and
18 Eighty Nine Cents (\$102,192.89) as of February 11, 2009. Both judicial and non-judicial foreclosure
19 proceedings commenced. The Note then matured on April 1, 2009 and the instant bankruptcy
20 followed.

21 To date, no payments whatsoever have been received from the Debtor for the last year, since
22 approximately February 2009.

23 **B. Status of the Property.**

24 The property is a vacant warehouse facility. In approximately April, 2009, the property suffered
25 a significant fire due to the vagrants at the site. The insurance finally paid off on that damage in the
26 approximate sum of \$900,000.00 which is currently held in a DIP account. Just a couple of months
27 later, the property again suffered a fire due to the vagrant population. Again the insurance was forced
28

1 to resolve the matter, paying just over \$1,000,000.00 on that claim. That money was received in
2 January, 2010 and deposited into the DIP account.

3
4 **III. LEGAL ARGUMENT**

5 **A. The Debtor's Disclosure Statement Fails to Provide "Adequate Information,"**
6 **as Required by Section 1125 of the Bankruptcy Code.**

7 The confirmation process is premised, in large part, upon the mandate of Section 1125 that all
8 creditors and equity holders of a debtor be provided with information regarding the debtor and any
9 proposed plan of reorganization. Specifically, Section 1125(b) of the Bankruptcy Code provides that
10 approval of the proposed plan may not be solicited unless, at or prior to such solicitation, a written
11 disclosure statement, approved by the Bankruptcy Court as containing "adequate information," has
12 been provided to such claimant or interest holder. The very purpose of a disclosure statement is to
13 give all creditors a source of information which allows them to make an informed choice regarding
14 the approval or rejection of a plan." *In re California Fidelity, Inc.*, 198 B.R. 567, 571 (9th Cir. BAP
15 1996). Therefore, the courts have found that the disclosure of information occupies a "paramount
16 position" in the confirmation process. *In re Crowthers McCall Pattern, Inc.*, 120 B.R. 279, 300
17 (Bankr. S.D.N.Y. 1990). Whether a disclosure statement contains the requisite information must be
18 decided on a case-by-case basis, upon an examination of all relevant facts. *In re Applegate Property,*
19 *Ltd.*, 133 B.R. 827, 829 (Bankr. W.D. Tex. 1991); *In re Dakota Rail, Inc.*, 104 B.R. 138, 143 (Bankr.
20 D. Minn. 1989).

21 To assist in evaluating the adequacy of disclosure, courts have developed the following non-
22 exclusive list of the type of information a disclosure statement must contain:

- 23 (a) The circumstances that gave rise to the filing of the bankruptcy petition;
24 (b) A complete description of the available assets and their value;
25 (c) The anticipated future of the debtor;
26 (d) The source of the information provided in the disclosure statement;
27 (e) A disclaimer, which typically indicates that no statement or information concerning
28 the debtor or its assets are authorized, other than those set forth in the disclosure
statement;

- 1 (f) The condition and performance of the debtor while in Chapter 11;
- 2 (g) Information regarding claims against the estate;
- 3 (h) A liquidation analysis;
- 4 (I) The accounting and valuation methods used to produce the financial information in
- 5 the disclosure statement;
- 6 (j) Information regarding the future management of the debtor, including the amount of
- 7 compensation to be paid to any insiders, directors, and/or officers of the debtor;
- 8 (k) A summary of the plan of reorganization;
- 9 (l) An estimate of all administrative expenses, including attorneys' fees and accountants'
- 10 fees;
- 11 (m) The collectability of any accounts receivable;
- 12 (n) Any financial information, valuations or pro forma projections that would be relevant
- 13 to creditors' determinations of whether to accept or reject the plan;
- 14 (o) Information relevant to the risks being taken by the creditors and interest holders;
- 15 (p) The actual or projected value that can be obtained from avoidable transfers;
- 16 (q) The existence, likelihood and possible success of non-bankruptcy litigation;
- 17 (r) The tax consequences of the plan; and
- 18 (s) The relationship of the debtor with affiliates.

19 *In re Cardinal Congregate I*, 121 B.R. 760, 765 (Bankr. S.D. Ohio 1990); *In re Dakota Rail, Inc.*,
20 104 B.R. 138, 142 (Bankr. D. Minn. 1989); *In re Scioto Valley Mortgage Co.*, 88 B.R. 168, 170-171
21 (Bankr. S.D. Ohio 1988); *In re S.E.T. Income Properties, III*, 83 B.R. 791, 792 (Bankr. N.D. Okl.
22 1988); and *In re Metrocraft Publishing Serv., Inc.*, 39 B.R. 567 (Bankr. N.D. Ga. 1984).

23 Here, the Debtor's Disclosure Statement fails to provide fundamental, accurate information
24 necessary to make an informed decision regarding whether to accept or reject the Plan and hence
25 must not be approved.

26 **1. The Valuation of the Properties is Lacking.**

27 The Disclosure Statement does not include any additional information on the value of any of the
28 relevant Properties, most specifically the property located on Mission Boulevard in Pomona. The

1 Debtor merely provides estimates of its own self-serving value of the various Properties without
2 appraisal. This is not sufficient evidence for creditors to accurately determine the value of the
3 Debtor's overall assets and make a determination as to whether the Plan is feasible. This failure
4 also raises a question as to whether there is sufficient equity in the Property to fully collateralize its
5 secured claims.

6 **2. There Is No Discussion Of Marketing or Ability To Sell**

7 The Debtor goes to great lengths to explain the company's history and specialties. In fact, the
8 Amended Disclosure Statement goes on ad nauseam about the history of the company and the
9 experience they have, yet they do not provide any information as to how the reorganized Debtor is
10 going to be any different than the original Debtor. Obviously, the Business Plan this Debtor had
11 previously employed was unsuccessful - hence this bankruptcy. There is nothing in this Amended
12 Disclosure Statement which sets forth to how this reorganized Debtor will be any different. The
13 limited marketing plan suggested appears to be exactly the same. The management team is the same.
14 The goal is the same. The only difference is PNL does not get paid under the agreed terms of the
15 Contract. This is not sufficient for a disclosure statement. Information on how they are going to
16 effectively accomplish these sales in this economy should be set forth.

17 Most troubling to PNL is that there is no analysis or discussion of the likelihood that PNL's
18 property, let alone the other properties, can be sold within the time frame contemplated under the
19 Plan. As to the Pomona property, the property has sat vacant for nearly a decade. There has been
20 no serious interest in the property even during the height of the market. There is absolutely nothing
21 in this Amended Disclosure Statement which suggests that this property has any reasonable chance
22 of sale in this down market or any time in the future. There is no discussion of the marketing efforts
23 which are to be used or what efforts **differing** from the unsuccessful efforts of the last decade will,
24 in fact, work. This goes for all the properties. This company's base business was the sale and
25 development of real estate during the height of the real estate market. Yet, they have found
26 themselves in bankruptcy with a flawed business model. Now, they are suggesting that they continue
27 on with business at status quo. What is there to allow anyone to believe that this same model, which
28 didn't work during the height of the real estate boom, is now going to be successful in the worst

1 market in history? There is nothing in this Statement which gives any discussion of the fact that
2 these Debtors' business model has been and currently is unsuccessful and that they can now turn this
3 around. This failure to disclose makes it impossible for a reasonable Creditor to evaluate their
4 intentions, the situation and the likelihood of success.

5 **3. There is No Discussion of the Placement of the Insurance Proceeds**

6 In the last couple of months nearly \$2,000,000.00 has been obtained as insurance proceeds for
7 the damage to the PNL collateral. While some of that money is to be used for demolition, there is
8 nothing as to the remaining funds. There is no discussion as to the use of these proceeds or the
9 payment to PNL for the payment of their principal. Without any discussion, the Disclosure Statement
10 is insufficient.

11 **4. \$10 Million Is Simply Not Enough Money to Satisfy All These Debts.**

12 The Amended Disclosure Statement is still providing for execution of the Plan through
13 \$10,000,000.00 new equity. It is impossible to understand how this will be enough money to pay the
14 interest on all the debt of the secured credits and pay off the unsecured creditors let alone maintain
15 sufficient operational expense. These funds are going to run out almost instantaneously; and then,
16 the Debtors will be in their exact same position - unable to pay any of their secured creditors.

17 Based upon the Budgets provided to date, the Debtor has been running at a significant short-
18 fall¹. There is no reasonable way to execute a Plan and satisfy all the Creditors with only
19 \$10,000,000.00.

20 **5. Balloon Payments.**

21 One only surmises that the balloon payments due are going to be paid from the sale of the
22 properties. However, the First Amended Disclosure Statement still fails to identify exactly how the
23 Debtor will be able to sell the properties and make any of the "balloon payments" to creditors it is
24 suggesting within the five/seven year time frame. The Disclosure Statement provides no details on
25 this issue and suggests that the creditors should simply trust the actions of this Debtor who has
26 essentially defaulted on every Note obligation it has entered into.

27

28

¹At one point this was nearly \$3,000,000.00.

1 **B. The Plan and Disclosure Statement Violates Ninth Circuit Law By Providing**
2 **For An Injunction and Discharge of Non-Debtor Parties**

3 The Amended Plan and Disclosure Statement seeks to discharge and/or stay all actions against
4 the individual Guarantors who are **not** parties to this case. Since they are not Debtors herein, this
5 court does not have the authority to grant such a request and it specifically is in violation of the Ninth
6 Circuit authority prohibiting bankruptcy courts from discharging non-debtor obligations and
7 liabilities. *See In re American Hardwoods*, 885 F.2d 621, 626 (9th Cir. 1989); *See also In re*
8 *Lowenschuss*, 67 F.3d 1394, 1401 (9th Circuit 1995)(“This court has repeatedly held, without
9 exception, that § 524(e) precludes bankruptcy courts from discharging the liabilities of non-debtors.”).

10 The permanent injunction discussed in the Amended Disclosure Statement and granted by the
11 Plan prohibits the holders of undefined “**other debt or liability**” from taking any action against the
12 Debtors’ affiliates, current or former officers, directors, agents, employees and representatives. D.S.
13 pg. 119-121. Such is simply inappropriate. There is no authority which supports allowing individual
14 guarantors who are not party to the bankruptcy from avoiding their liability. This is not fair. If these
15 individuals want the protection of the Bankruptcy Court, than they should file for bankruptcy.

16 Additionally, the Plan provides for an injunction against pursuing guarantees provided by (I)
17 John Maddux, (ii) Belinda Meruelo, (iii) The Meruelo Living Trust, (iv) Richard Meruelo, and (v)
18 the Richard Meruelo Living Trust. Although the Plan states that the injunction against the guarantors
19 is temporary, and provides a list of hypothetical events that would lift the injunction, the ultimate
20 effect is identical to a bankruptcy discharge and the Court should not be persuaded by the Debtors’
21 attempt to circumvent Ninth Circuit law through semantics. Due to these impermissible discharges
22 and injunctions the Plan cannot be confirmed, and for that reason, the Disclosure Statement should
23 not be approved.

24 **C. The Plan Is Unconfirmable and Hence The Disclosure Statement Should Not Be**
25 **Approved.**

26 The Court may consider substantive plan issues at the disclosure statement hearing and deny
27 approval to disclosure statements predicted upon facially unconfirmable plans. A court is authorized
28 at a disclosure statement hearing to address legal issues that determine whether a plan can be
confirmed. *See also In re Felicity Assocs., Inc.*, 197 B.R. 12, 14 (Bankr. D.R.I. 1996). Although

1 objections to a plan of reorganization ordinarily are reserved for the plan confirmation hearing, where
2 the plan is patently unconfirmable because it violates the requirements for conformation set forth in
3 Section 1129, the Disclosure Statement accompanying the Plan cannot be approved. *See In re Main*
4 *St. AC, Inc.*, 234 B.R. 771, 775 (Bankr. N.D. Cal. 1999); *In re Bjolmes Realty Trust*, 134 B.R. 1000,
5 1002 (Bankr. D. Mass. 1991); *In re Pecht*, 57 B.R. 137, 139 (Bankr. E.D. Va. 1986). Thus, when
6 a plan to which a disclosure statement relates is defective, the defects in the plan may be raised as
7 objections to the disclosure statement. *In re Pect*, 53 B.R. 768 (Bankr. E.D. Va. 1985). When these
8 defects render a plan unconfirmable, the disclosure statement should be dismissed as the proceeding
9 relating thereto would be a waste of judicial resources and impose an unnecessary expense on the
10 estate and its creditors. *In re Unichem Corp.*, 72 B.R. 95, aff'd, 80 B.R. 448 (Bankr. N.D. Ill. 1987);
11 *In re Weiss-Wolf, Inc.*, 59 B.R. 653, 656 (Bankr. S.D.N.Y. 1986); *Pecht*, 53 B.R. At 769-70; *In re*
12 *McCall*, 44 B.R. 242, 243 (Bankr. E.D. Pa. 1984); *In re Kehn Ranch, Inc.*, 41 B.R. 832, 832-33
13 (Bankr. D.S.D. 1984); and *In re Genesse Cement, Inc.*, 31 B.R. 442, 443-44 (Bankr. E.D. Mich.
14 1983). The Plan violates the most basic elements necessary to confirmation provisions contained in
15 the Code, thereby rendering the Plan unconfirmable.

16 The standards governing confirmation of a plan of reorganization are set forth in Section 1129
17 of the Bankruptcy Code. The proponent of a Chapter 11 plan bears the burden of proving that the
18 plan satisfies each of the statutory requirements set forth in Section 1129. *See In re Kemp*, 134 B.R.
19 413 (Bankr. E.D. Cal. 1991); *In re Revco D.S., Inc.*, 131 B.R. 615, 620 (Bankr. N.D. Ohio 1990); and
20 *In re Rusty Jones, Inc.*, 110 B.R. 362, 373 (Bankr. N.D. Ill. 1990).

21 Since the Plan cannot be confirmed as stated, it would be a waste of judicial resources and cause
22 these Creditors to expend significant funds to proceed with extended hearings on the adequacy of
23 the Disclosure Statement.

24 **1. The Plan Unfairly Discriminates Against PNL.**

25 The Plan as stated violates section 1129(b) by proposing to modify the rate of interest accruing
26 on PNL's claim post-petition, and extend the term of the Debtor's obligation to PNL, and modify
27 other terms of the Loan Documents. The PNL loan has fully matured. PNL's appraisal on the
28 property shows the collateral is not worth that suggested by the Debtor and arguably continues to lose

1 value daily. The Debtor purposes to modify the secured obligation by extending the maturity and
2 reducing the interest rates. Moreover, this Plan suggests to provide similar modifications to all the
3 secured creditors regardless of whether they are under secured or over secured. Such is simply
4 inappropriate. This treatment fails to recognize, among other things, the difference in each of these
5 secured creditors positions with this Debtor and specifically fails to address the rights of PNL with
6 this Debtor.

7 **2. The Plan Violates the Absolute Priority Rule.**

8 A non-consensual plan of reorganization can be confirmed over the dissent of impaired classes
9 of creditors or interest holders if the treatment of the impaired class is “fair and equitable.” 11 U.S.C.
10 § 1129(b). With respect to a class of unsecured claims, Subsection 1129(b)(2)(B) provides that a plan
11 is not fair and equitable and may not be confirmed over the objection of a non-accepting unsecured
12 creditor class that will receive less than full payment if the holder of any claim or interest that is
13 junior to the claims of the unsecured creditor class, including an equity holder, receives or retains any
14 property under the Plan. 11 U.S.C. § 1129(b)(2)(B); *see In re Armstrong World Indus., Inc.*, 432
15 F.3d 507 (3d Cir. 2005). Subsection 1129(b)(2)(B)(ii) sets forth what is commonly referred to as the
16 “absolute priority rule.”

17 Assuming the Debtor can actually overcome the Plan’s defects, the Debtor nevertheless cannot
18 confirm the Plan under the “cram down” provisions contained in Section 1129(b) of the Bankruptcy
19 Code. Pursuant to the Plan, the New Value investors which it appears will ultimately end up being
20 the prior management team, still are retaining the full value of their Interests, while PNL is impaired
21 and receiving less than a full distribution on account of its secured claim. Therefore, the Plan clearly
22 violates Section 1129(b)(2)(C) on its face. If the holders of general unsecured claims vote to reject
23 the Plan, the Plan cannot be confirmed unless the equity holders provide “new value” in exchange
24 for the retention of their interests. *Bonner Mall Partnership v. U.S. Bancorp Mortgage Co.*, (*In re*
25 *Bonner Mall Partnership*), 2 F.3d 899 (9th Cir. 1993). This is the “new value” exception to the
26 absolute priority rule.

27 It appears that the Interest Holders are attempting to avail themselves of this “new value”
28 exception to the absolute priority rule. However, such a stand fails. In order to prevail, the Debtor

1 must demonstrate to this Court the validity of a new value exception to the absolute priority rule.
2 Debtor has failed to do so. Further, even assuming that the Debtor can overcome this burden, the
3 Debtor must then prove that the Plan, which provides for vesting equity in the reorganized Debtor
4 in the Interest Holders, properly extended an opportunity to other parties to either compete for the
5 new equity or to propose a competing reorganization plan. *Bank of America National Trust &*
6 *Savings Ass'n v. 203 North LaSalle Street Partnership*, 526 U.S. 434, 119 S.Ct. 1411, 143 L. Ed.2d
7 607 (1999). This is not occurring.

8 **THE NEW VALUE**

9 The Amended Disclosure Statement provides that each Record Date Holder shall have the right
10 to subscribe for and purchase not less than \$50,000.00 and at least its Pro Rate Share of the Offered
11 New Equity Interest, however provided that, in the event that more than 200 Record Date Holders
12 subscribe for the NE Interest Rights, only the Top 200 Holders will be eligible and permitted to
13 subscribe for NE Interest Rights. [D.S., pg 107.] Who are these "Top 200" Holders and are they not
14 just the same individuals as were previously suggested as the New Value Investors?

15 This new rights offering will have no different effect than the original contention of the First
16 Disclosure Statement which left all the rights in the original management team. Given that the New
17 Equity rights are limited to the "Top 200 Holders," the management team will, no doubt, be the first
18 in line to purchase those rights. Keeping the rights in the hands of the management team and leaving
19 the Creditors with no interests. This is hardly an open "bidding" process.

20 Furthermore, the Amended Disclosure Statement refers to the "New Equity Interest Agreement,
21 a copy of which will be filed separately in the Plan Supplement," as well as "Additional Subscription
22 Rights," and the "Backstop Purchase Agreement." [D.S., pg. 107, et seq.] However, PNL is unaware
23 of any such Plan Supplement having been filed and thus has had no opportunity to read, review, and
24 evaluate these documents. These are integral in understanding how this New Value procedure is to
25 work and who will be entitled to purchase such interests. How can any informed decision in this
26 regard be made without all of the necessary information present as a part of this First Amended
27 Disclosure Statement?

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1 The Supreme Court in *LaSalle* did not rule on whether, in fact, the Bankruptcy Code includes
2 a new value exception to the absolute priority rule. While reserving that issue, the Supreme Court
3 limited any new value exception and established certain requirements equity interest holders must
4 meet in order to retain their interests. The Court was particularly concerned by the debtor's retention
5 of the exclusive right to propose a plan, thereby precluding others (including the objecting creditor)
6 from proposing a plan "selling" the equity to another. 526 U.S. at 456. The Court specifically stated:

7 Hence it is that the exclusiveness of the opportunity, with its protection against
8 the market's scrutiny of the purchase price by means of competing plan
9 proposals, renders the partners' right a property interest extended 'on account
of' the old equity position and therefore subject to an unpaid senior creditor's
class's objection.

10 *Id.*

11 *LaSalle* is entirely on point. As proposed, it appears that the Interest Holders will continue to
12 hold their control of the Debtor by way of the "NE" Interest and will have retained their exclusive
13 right to determine who will be the owner of the reorganized Debtor. This control of the Debtor is
14 a right which they hold solely due to their current position as controlling shareholders of the Debtor.
15 Therefore, it violates the absolute priority rule. While this New Equity concept attempts to solicit
16 outside parties, it really is just a smoke-screen of these parties maintaining control of this business.
17 There is simply no public auction or competing plans or the ability of anyone else to intervene.

18 To avoid this result, the Debtor must subject the "exclusive opportunity" to determine ownership
19 of the reorganized Debtor to the marketplace test. *LaSalle*, 526 U.S. at 457. This can be achieved
20 by either terminating exclusivity and allowing others to file a competing plan, or allowing others to
21 **bid** for the equity (or the right to designate who will own the equity) within the confines of the
22 Debtor's Proposed Plan. *Id.* at 458. *See also In re Global Ocean Carriers Ltd.*, 251 B.R. 31 (Bankr.
23 D. Del. 2000). This is no "bid" procedure. This is first come, first served. Since they control the
24 property, they will undoubtedly be the "Top 200" and hence gain control. This is not the "bidding"
25 procedure intended.

26 This continues to be exactly what the Supreme Court prohibited in *LaSalle*. The Plan was filed
27 within the Debtors' exclusivity period, and does not allow for the "benefit of market valuations."

28 Unless the Debtor can satisfy the Supreme Court's requirements in *LaSalle*, the Plan cannot be
confirmed. Hence, the Disclosure Statement cannot be approved in its current form.

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IV. CONCLUSION.

For the foregoing reasons, PNL respectfully requests that the Court deny approval of the Amended Disclosure Statement, and grant PNL such other relief as the Court deems just and appropriate.

DATED: March 12, 2010

HAGAN & ASSOCIATES

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