Ohana Group, LLC responds as follows:

1. **Cash v. Accrual.** The Debtor does not believe that the Court indicated that a cash v. accrual comparison was to be added to the disclosure statement for any particular 90-day period. According to the undersigned’s notes, the Court did indicate that – for purposes of plan confirmation – the Debtor’s operating performance during the preceding 90 days would be important for the Court in connection with a determination of feasibility. The undersigned further understood this to anticipate testimony and other evidence that would be presented at a confirmation hearing, as this is plainly a feasibility issue.

   The redline of the First Amended Disclosure Statement accurately corrected two misstatements. First, accrued income had been overstated, in that it was based upon a monthly lease...
rate owing from Fremont Health Club (“FHC”) that was higher than required for this period of time based on the Second Amendment to FHC’s lease. This had the effect of overstating accrued income by approximately $7,500 per month, as a lease rate of $17,875 was used rather than the correct rate of $10,364. Second, the Debtor correctly identified in the revised disclosure statement that the monthly financial statements were accrual rather than cash-based (as each profit and loss statement indicates) and correctly identified actual cash collections.

The lender again continues to offer confirmation objections in connection with seeking to re-write the Debtor’s disclosure statement. It will certainly have a full opportunity to contest confirmation at the appropriate time.

2. **Health Club Rental Income.** Again, the undersigned’s notes do not reflect that the Court directed that a detail of the arrearage owed by FHC be added to the disclosure statement. If the Court directs that such be added, the Debtor will of course do so. Also, FHC commenced making full lease payments with its October payment, which the Debtor will clarify in the disclosure statement. The Debtor expects continued full payments from FHC going forward, including payments starting in January 2014 at the increased rate of $18,885 plus NNN.

3. **Health Club’s Impact of Feasibility.** The undersigned believes this contention is incorrect as well. The Court did require that the Debtor add a sentence advising creditors that one risk in a case such as this is that one or more tenants might default on their lease obligations following plan confirmation. The Court indicated that the additional language was to be of a general nature and would amount to an additional sentence. The additional disclosure appears at page 16 of the redline and complies with the Court’s direction.

4. **Avoidable Transfers.** The lender has escalated this set of issues by now, incredibly, suggesting that pre-petition amendments to the FHC lease are avoidable on the basis that (i) they were
done to “hinder, delay, or defraud” creditors for purposes of § 548(a)(1)(A), or (ii) there is “also a 
reasonably possibility that the Alleged Amendment may have been entered into long after the stated 
July 2012 date.” Supp. Obj. at 6. There is, of course, not the smallest scrap of evidence to support 
this reckless innuendo, but sometimes the making of unsupported allegations is seen by some creditors 
as the equivalent of proving them. The lender then attempts to bolster these allegations by asserting 
that “the Health Club’s failure to pay rent was a major contributing factor of the Debtor’s need to 
commence this bankruptcy case,” Supp. Obj. at 6:13-14, a false statement made up presumably 
because it conveniently supports the underlying allegations.

The Debtor does not believe that there is a viable avoidance claim associated with the July 
2012 amendment to the FHC lease. Because the Lender has not remotely articulated a basis to avoid 
the amendment that would, for example, even survive a Rule 11 inquiry, it is difficult to add any 
additional disclosure that would useful. The Debtor, however, proposes to resolve this issue by 
adding a footnote at the end of the first sentence of the first full paragraph on page 5 of the redline that 
reads as follows:

The Lender contends that the July 2012 amendment constituted an avoidable transfer. It has not yet supported each of the elements of that contention with evidence. The Debtor disagrees that the July 2012 amendment constituted an avoidable transfer. However, to the extent this or any other claim against a third party exists, all such claims are retained under the Plan.

DATED this 24th day of October, 2013.

BUSH STROUT & KORNFELD LLP

By /s/ James L. Day
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