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11 UNITED STATES BANKRUPTCY COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 In re

14 PACIFIC THOMAS CORPORATION
15 DBA PACIFIC THOMAS CAPITAL,

16 Debtor.

Case No. 12-46534 MEH

Chapter 11

**SUMMIT BANK'S OBJECTION
TO DEBTOR'S THIRD AMENDED
DISCLOSURE STATEMENT IN
SUPPORT OF THIRD AMENDED
PLAN OF REORGANIZATION
DATED NOVEMBER 13, 2013**

Date: December 12, 2013

Time: 1:00 p.m.

Ctrm: 215

U.S. Bankruptcy Court

1300 Clay Street

Oakland, California

17 Secured Creditor, Summit Bank ("Summit") submits the following Objections to the
18 Debtor's Third Amended Disclosure Statement in Support of Third Amended Plan of
19 Reorganization dated November 13, 2013 (the "Disclosure Statement" and "Plan") as follows.

20 **I. INTRODUCTION**

21 The Debtor's Disclosure Statement and Plan represent the third iteration of the Debtor's
22 misguided attempts at a reorganization plan. While the Debtor has had four bites at the apple,
23 little has changed during the five months since the Debtor filed its original Disclosure Statement
24 and Plan back on June 12, 2013.

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1 The Disclosure Statement continues to be deficient in many regards and continues to lack
2 “adequate information” as required by 11 U.S.C. § 1125. In addition, the Disclosure Statement
3 continues to describe a plan that is unconfirmable on its face and contains incomplete, incorrect
4 and misleading information.

5 The Debtor and Debtor’s counsels insistence upon filing what amounts to the same
6 objectionable Disclosure Statement over and over again without correcting any of the mistakes or
7 addressing the concerns raised by the Court and/or creditors, seems to violate F.R.B.P. 9011 and
8 Summit Bank reserves all rights under said rule.

9 **II. GENERAL LAW REGARDING APPROVAL OF DISCLOSURE**
10 **STATEMENTS**

11 “The primary purpose of a disclosure statement is to give creditors the information they
12 need to decide whether to accept the plan.” *In re Diversified Investors Fund XVII* 91 B.R. 559,
13 556 (Bankr. C.D.Cal.1988); *In re Monnier Bros.* 755 F 2d 1336, 1342 (8th Cir. 1985); *Century*
14 *Glove, Inc. v. First American Bank of New York* 860 F 2d 94, 100 (3rd Cir. 1988).

15 To approve a disclosure statement, the court must first determine that it contains “adequate
16 information” *In re Unichemcorp.* 72 B.R. 95, 96 (Bankr. N.D. Ill 1987); *Matter of Texas Extrusion*
17 *Corp.* 844 F 2d 1142, 1157 (5th Cir. 1988). The court’s determination in order to approve or
18 disapprove a disclosure statement is a “core proceeding” 28 U.S.C. §157 (b)(2).

19 The adequacy of information provided in a disclosure statement is judged by a hypothetical
20 investor standard. “Adequate information” means information of the kind, and in sufficient detail,
21 as far as reasonably practicable in light of the nature and history of the debtor and the condition of
22 the debtor’s books and records to enable a “hypothetical investor” typical of the holders of claims
23 and interests in the case to make an informed judgment about the plan. 11 U.S.C § 1125(a)(1).

24 Approval of a disclosure statement and the adequacy of information contained therein
25 should be determined on a case by case basis. The court should take a practical approach as to
26 what is “adequate” based on the circumstances of each case, “such as the cost of preparation of the
27 statements, the need for relative speed and solicitation and confirmation, and of course the need
28 for investor protection.” *In re Diversified Investors Fund XVII* 91 B.R. 559, 556 (Bankr.

1 C.D.Cal.1988).

2 In determining whether a disclosure statement provides adequate information, the court
3 “shall” consider the: complexity of the case; benefit of additional information to creditors and
4 other parties in interest; and cost of providing additional information. 11 U.S.C. § 1125(a)(1).

5 III. OBJECTIONS TO DISCLOSURE STATEMENT

6 A. General Objections to the Disclosure Statement

7 While plan objections are generally reserved and considered at the confirmation hearing,
8 “this approval of the adequacy of the disclosure statement may sometimes be appropriate where it
9 describes a plan of reorganization which is so fatally flawed that confirmation is impossible.” *In re*
10 *Cardinal Congregate I*, 121 B.R. 760, 764 (Bankr. S.D. Ohio 1990); *In re 266 Washington*
11 *Assocs.*, 141 B.R. 275, 288 (Bankr. E.D. NY 1992).

12 Summit asserts that the Disclosure Statement describes a plan that is “fatally flawed.” The
13 Plan and Disclosure Statement are premised upon a refinance of the Debtor’s properties in order to
14 pay off the Debtor’s creditors. The Disclosure Statement attaches to it a Conditional Commitment
15 Letter from Thorofare Capital. There is no binding commitment from Thorofare Capital upon
16 which creditors can base any analysis of the Debtor’s prospects in confirming the Plan. The
17 Debtor has been telling the Court and creditors that it has a refinance commitment the entire time
18 it has been in bankruptcy and yet nothing has ever actually been presented to the Court. The
19 Debtor has never filed a financing motion, never presented any form of actual loan commitment
20 nor present any form of loan documents. Further, the Debtor’s cash flow projections show that the
21 Debtor has insufficient cash flow through 2014. The only way the Debtor survives based upon its
22 own projections is by living off the interest reserve provided for under the alleged refinancing
23 from Thorofare Capital.

24 Further, the Debtor inexplicably continues to grossly under report the amount of
25 administrative expenses which will have to be paid on the Effective Date of the Plan. The
26 Debtor’s Disclosure Statement indicates on its fact that it will most likely have insufficient funds
27 available to pay administrative claims on the Effective Date. Notwithstanding having information
28 from the Trustee and Trustee’s counsel regarding the amount of the administrative expense claims,

1 the Debtor tries to downplay the magnitude of actual administrative expense claims and chooses to
2 footnote that fact and then use a lower number which works with the amount of money that the
3 Debtor asserts it will have available on the Effective Date. The Debtor then attempts to somehow
4 cure this huge problem by indicating that insiders will sell a certain unidentified parcel of property
5 in Hawaii and use the money to pay for the administrative expense claims. However, the Debtor
6 does not identify the property, provides no information regarding its value, provides no
7 information regarding the liens against it and no estimate of how much money will actually be
8 derived from the sale, if any, and when that money might be available. The Debtor attempts to fix
9 this problem by then saying that if the property is not sold by the Effective Date, that the insiders
10 will simply deed the property to the Debtor. Obviously, this does little to rectify the problem of
11 the Debtor not having any funds available to pay administrative expense claims.

12 In addition, the Debtor's Plan and its alleged refinance is premised on being able to
13 provide its proposed lender with first deed of trust to secure the proposed refinancing loan. The
14 Debtor's Plan also proposes to continue to allow Summit to retain its first priority deed of trust
15 which is obviously inconsistent with the requirements of the Debtor's proposed refinance lender.

16 **B. Specific Objections to Disclosure Statement**

17 The Debtor's Disclosure Statement continues to give misleading and incomplete
18 information to creditors regarding the status of the alleged lease between the Debtor and Pacific
19 Trading Ventures, Inc. The Disclosure Statement should inform creditors that the Trustee
20 successfully sought and obtained from the Court a preliminary injunction which has the effect of
21 removing Pacific Trading Ventures, Inc. and Randall Whitney from having anything to do with
22 regard to the properties and the collection of rents.

23 The Disclosure Statement continues to reference the fact that post-confirmation the Debtor
24 will hire a senior financial executive or a real estate professional to act as the Reorganized
25 Debtor's CEO. Again, after nearly five months since the filing of the original Disclosure
26 Statement and Plan, the Debtor still has not identified who this senior financial executive or real
27 estate professional will be.

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1 The Disclosure Statement contains conflicting information regarding the Effective Date of
2 the Plan. The defined term “Effective Date” of the Plan is defined to mean “the date not later than
3 ninety (90) days following the date upon which the Confirmation Order becomes a Final Order,”
4 however, other places in the Disclosure Statement define the Effective Date as January 15, 2014.

5 The Disclosure Statement continues to provide factually incorrect and misleading
6 information to creditors regarding the events leading up to Debtor’s bankruptcy filing. The Debtor
7 continues to provide factually incorrect information regarding Summit Bank’s alleged refusal to
8 honor payoff requests from the Debtor.

9 The description of the events leading to the bankruptcy filing continues to attempt to lay
10 the blame for the Debtor’s gross mismanagement of its assets and its inability to pay off its lenders
11 at the feet of Summit Bank which is simply incorrect, misleading, argumentative and has no place
12 in the Disclosure Statement

13 The Debtor’s description of events since the filing of the bankruptcy case needs to be
14 updated to provide succinct information regarding the status of the claims brought by the Trustee
15 in the adversary proceeding, as well as providing detailed information regarding the preliminary
16 injunction which the Court issued in favor of the Trustee.

17 The Disclosure Statement continues to have incomplete information regarding the Debtor’s
18 current financial condition. Notwithstanding the fact that the Disclosure Statement was filed in
19 November of 2013, the Debtor’s financial information only runs through the end of September of
20 2013.

21 The Disclosure Statement provides inaccurate information regarding the general unsecured
22 claims and now completely omits from the Disclosure Statement is any unsecured claim of
23 Summit Bank.

24 The Disclosure Statement and Plan are premised upon the alleged refinance loan from
25 Thorofare Capital. However, the letter from Thorofare Capital, which the Debtor attaches to the
26 Disclosure Statement, contains two difference financing amounts. Nowhere in the Disclosure
27 Statement does the Debtor indicate to the creditors which of the two amounts the Debtor will
28 supposedly borrow from Thorofare Capital. The exhibits indicate that loan documents will be

1 provided prior to November 13, 2013 and yet there are none.

2 The Disclosure Statement continues to provide little or no information regarding the post-
3 confirmation management and disbursing agent. The Disclosure Statement continues to state that
4 Loh Realty and the Oakland Office of Collier's International will act as the onsite manager and
5 property manager for the properties. In support for this statement, the Debtor attaches blank forms
6 from Loh Realty and Collier's International. There is still no information provided by the Debtor
7 in the Disclosure Statement that confirms that either of these entities have actually agreed to
8 provide any assistance to the Debtor.

9 The Disclosure Statement still continues to provide inadequate information regarding the
10 tax consequences of the Debtor's proposed Plan. There is no information in the Disclosure
11 Statement indicating what attempts were actually made by the Debtor's management to determine
12 the tax consequences of the Plan, perhaps that is because it's highly likely that the Plan was not
13 drafted by either the Debtor or Debtor's counsel.

14 The Debtor's liquidation analysis continues to be incomplete and suspect. In the latest
15 iteration of the Disclosure Statement, many of the debts owing to the Debtor by former insiders
16 are now mysteriously gone from the analysis.

17 IV. CONCLUSION

18 The Debtor and Debtor's counsel continue to waste the Court's time and drive up
19 administrative expenses as well as the attorneys' fees of the secured creditors in having to respond
20 to patently flawed disclosure statements that are serially filed and do little or nothing to address
21 problems pointed out by the Court and creditors. The current iteration of the Disclosure Statement
22 continues to not contain "adequate information" as required by 11 U.S.C. § 1125 and also
23 continues to describe a Plan that is unconfirmable and on that basis, the Disclosure Statement
24 should not be approved.

25 Dated: November 26, 2013

KORNFELD, NYBERG, BENDES & KUHNER, P.C.

27 By: /s/ Eric A. Nyberg

(Bar No. 131105)

28 Attorneys for Secured Creditor Summit Bank

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1 **DECLARATION OF SERVICE**

2 I, the undersigned, declare:

3 I am employed in the City of Oakland, County of Alameda, California. I am over the age
4 of 18 years and not a party to this action. My business address is 1970 Broadway, Suite 225,
5 Oakland, California 94612.

6 I am readily familiar with the business practices of my employer, Kornfield, Nyberg,
7 Bendes & Kuhner, P.C., for the collection and processing of correspondence for mailing with the
8 United States Postal Service and that correspondence is deposited with the United States Postal
9 Service that same day in the ordinary course of business.

10 On November 27, 2013, I served the following documents:

11 **SUMMIT BANK'S OBJECTION TO DEBTOR'S THIRD AMENDED**
12 **DISCLOSURE STATEMENT IN SUPPORT OF THIRD AMENDED PLAN OF**
13 **REORGANIZATION DATED NOVEMBER 13, 2013**

14 by placing copies of said documents in a sealed envelope and served in the manner described
15 below addressed as follows:

15 Lynette C. Kelly
16 U.S. Office of the U.S. Trustee
17 1301 Clay Street
18 Oakland, CA 94612

Anne-Leith Matlock
Kathrin R. Dimas
Matlock Law Group
1485 Treat Blvd, Suite 200
Walnut Creek, CA 94597

18 SEE ATTACHED SERVICE LIST

19 I placed such envelopes for collection and mailing at my employer's office following
20 ordinary business practices, addressed to the addressee designated.

21 I declare under penalty of perjury that the foregoing is true and correct. Executed this 27th
22 day of November, 2013 at Oakland, California.

23
24 /s/ Gail A. Michael
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