Doc 34 Filed 09/06/17 Entered 09/06/17 05:47:00

Desc

Case 8:17-bk-12704-ES

10 11

12

13 14

15

16

17

18 19

20

21

22

23 24

25

26 27

28

TO THE HONORABLE ERITHE SMITH, U.S. TRUSTEE AND ALL OTHER PARTIES IN INTEREST:

PLEASE TAKE NOTICE that on 10/19/2017 at 10:30 AM or as soon thereafter as can be heard, in Courtroom 5A of the U.S. Bankruptcy Court, Central District of California, Santa Ana Division, located at 411 West Fourth Street, Santa Ana, California, the Debtors and Plan Proponent moves this Court for the entry of an Order: (a) approving the Disclosure Statement for Debtor, MAKENA PACIFIC, INC.. Approval is sought that the Disclosure Statement contains adequate information pursuant to Bankruptcy Code Section 1125.

PLEASE TAKE FURTHER NOTICE that the Disclosure Statement may be amended prior to the conclusion of or as a result of the hearing thereon and the Debtor reserves the right to seek continuance of this hearing date and all other confirmation related dates in the event that it becomes necessary to amend the Disclosure Statement, either as a result of the hearing to approve the Disclosure Statement as containing adequate information or prior to such hearing, with leave to the Court.

PLEASE TAKE FURTHER NOTICE that the Debtor also seeks an Order (a) approving ballot tabulation procedures to assess and tally votes for and against the Plan; and (b) fixing related procedures and deadlines.

PLEASE TAKE FURTHER NOTICE that this Motion is based upon these moving papers, the accompanying Memorandum of Points and Authorities, the Disclosure Statement and Proposed Plan of Reorganization for Makena Pacific, Inc., and Declarations attached thereto on file with the Court, the record in this case, the arguments, and representations of counsel, and any evidence that may be presented to the Court at or prior to the hearing on the Motion.

Main Document Page 3 of 19 WHEREFORE, the Debtor respectfully requests that the Court enter an order (a) approving the Disclosure Statement as containing adequate information; (b) approving the proposed ballot tabulation procedures pertaining to the Plan; (c) fixing related procedures and deadlines; and (d) granting any and all other relief the Court deemed just and necessary. Respectfully submitted. Dated this 6 September 2017. M Jones and Associates, PC Attorneys for Debtor . chad Jones Michael Jones

Case 8:17-bk-12704-ES

Doc 34

Filed 09/06/17

Entered 09/06/17 05:47:00

10 11

12

13

14

15 16

> 17 18

19

20

21 22

23 24

25

27

26

28

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS I.

Petition Date and Jurisdiction Α.

The Debtor Makena Pacific, Inc. (hereinafter "Debtor" or "Proponent") filed a voluntary Chapter 11 Petition on 7/7/2017.

Debtors filed their Disclosure Statement and Plan of Reorganization on or about 9/6/2017. For the reasons set forth herein, Debtor respectfully requests that the Court find that the Disclosure Statement and Proposed Chapter 11 Plan contains adequate information.

The Court has jurisdiction over these matters pursuant to 28 U.S.C. 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2). Venue is proper pursuant to 28 U.S.C. 1408 and 1409. The statutory predicates for the relief requested herein are section 331 of the Bankruptcy, Code, Bankruptcy Rules 2016(a), and Local Bankruptcy Rule 2016-1.

В. The Disclosure Statement

1. Adequacy of Information in the Disclosure Statement

The Debtor believes that the information in the Disclosure Statement is complete and accurate. The Disclosure Statement has been filed along with a Proposed Chapter 11Plan of Reorganization, and sets forth provisions including the intended treatment of various classes of creditors, the proposed course of action regarding executory contracts and unexpired leases, the means for execution and implementation of the Plan of Reorganization, the federal tax consequences of plan confirmation, and plan voting and confirmation standards. The Disclosure Statement also sets forth the Debtor's historical financial performance, cash projections

1

6 7

8 9

10 11

12 13

14 15

16

17 18

19

20 21

2.2 23

24

25

26 27

28

throughout the period of distributions contemplated in the plan of reorganization, and projections for the Debtor's future financial performance. The information in the Disclosure Statement provides creditors entitled to vote on the Debtor's plan of reorganization adequate information to make an informed judgment regarding whether to vote to accept or reject the Plan. Accordingly, the Debtor requests that the Court approve the Disclosure Statement as containing adequate information, as that term is defined in Bankruptcy Code Section 1125(a)(1).

2. **Proposed Solicitation and Confirmation Procedures**

The Debtor proposes the following procedures to ensure that the solicitation of votes to accept or reject the Debtor's plan of reorganization proceeds in an orderly fashion:

- Solicitation Packages: The Debtor will serve: (a) a copy of the Disclosure Statement and Chapter 11 Plan, (b) a Notice of the Plan confirmation hearing and related deadlines and procedures (the Confirmation Notice), and (c) a Ballot, a copy of which is attached to the Disclosure Statement, on the parties described below.
- Solicitation Parties: The Debtor will serve a Solicitation Package on each of the following parties: (1) each creditor who filed a proof of claim that has not been disallowed, expunged, or satisfied in full; and (2) each creditor listed who is listed in the Debtor's Schedules of Assets and Liabilities (as amended from time to time prior to the date hereof) as holding a liquidated, undisputed and non-contingent claim and who is entitled to vote on the Plan.
- **Non-Solicitation Parties:** The Debtor will also serve a courtesy copy of the Solicitation Package on all parties or their counsel who have filed and served a request for special notice in the Debtor's Chapter 11 case, as well as those parties that are included in the plan, but who are not entitled to vote.

7 8

6

9 10

12

11

13 14

16

15

17 18

19

20 21

2.2

23

24 25

26

27

28

3. **Proposed Form of Ballot**

The Debtor proposes to use the sample Ballot attached to the Disclosure Statement, as the Ballot that will be included in the Solicitation Package. For convenience to the Court, a copy is also attached to this motion.

4. **Proposed Vote Tabulation Procedures**

In order to accurately and efficiently calculate all votes cast to accept or reject the Debtor's plan of reorganization, the Debtor proposes that the following vote tabulation procedures be approved:

- Voting Deadline: As set forth below, the Debtor requests that the Court establish the deadline for voting on the plan.
- Non-Filing Parties: Pursuant to Bankruptcy Rule 3003(c)(2), any party who has not filed timely a proof of claim on or prior to the general claims bar date or such other applicable bar date, will not be eligible to vote to accept or reject the Debtor's Plan unless the Schedules list such party as holding a claim of interest that is liquidated, undisputed, and not contingent, unless otherwise ordered by the Court.
- **Amount of Claim Voted:** Solely for tabulation purposes, the amount of an eligible claim voted to accept or reject the plan of reorganization will be, as applicable; (1) the amount listed in the Schedules, if (a) the Scheduled Amount is listed as liquidated, undisputed, and not contingent, and (b) the creditor has not filed a proof of claim on or before the Bar Date; (2) the fixed liquidated amount set forth in a proof of claim, which proof of claim was filed on or before the applicable claims bar date, and (b) is not subject to a pending objection or request for estimation filed on or before the Voting Deadline; or (3) the amount estimated for voting purposes by order of the

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

Court. The Claim amount set forth in a Ballot will not prejudice the rights of the Debtor or any other party in interest from objecting to the amount of such claim for allowance and distribution purposes.

- *No Proof of Claim Filed:* If a creditor submits a Ballot for a claim for which no proof of claim has been filed by the Bar Date, or the amount of the proof of claim is not a specified liquidated amount, or which is not listed on the Schedules or is listed therein as unknown, unliquidated, contingent, or disputed, then the Ballot will not be counted unless otherwise ordered by this Court.
- Amount of Claim on Ballot is Incorrect: If a creditor submits a Ballot that asserts a claim in an amount that is different from the Scheduled Amount of the Claim amount, then the amount of such claim, for voting purposes shall be: (1) the Scheduled Amount, if there is no Claim Amount; or (2) the Claim amount, if one exists.
- *Numerosity Requirement:* The Ballots cast by creditors who have filed proofs of claim in unliquidated, unknown, or unstated amounts that are not subject of an objection and for which are no Scheduled Amounts will be counted for the purpose of satisfying the numerosity requirement of Bankruptcy Code Section 1126(c), but will not be counted toward satisfying the aggregate amount provisions of that section.
- Claims in More Than One Class: If a creditor has claims in more than one class, such creditor must submit a separate Ballot for voting its claims in each class. If a creditor requires additional copies of the Ballot, such creditor may either photocopy the original Ballot or obtain additional Ballots by written request to the Debtor s

5

6 7

8

9

10

11

12 13

14

15

16

17 18

19

20

21

2.2

23

24

25

26 27

28

counsel, at the address set forth herein. If a creditor uses one Ballot to vote claims in more than one class, such Ballot will not be counted.

- *Invalid Ballots:* The following types of Ballots will be disregarded for purposes of tabulating votes to accept or reject the Plan; (1) Ballots that are incomplete; (2) Ballots that are not received by the Voting Deadline; and (3) Ballots purporting to vote one or more claims that are unclassified or not otherwise entitled to vote under the Plan.
- **Voting Agent:** Michael Jones, attorney for the Debtor, will serve as the Debtor's voting agent to receive and tabulate the Ballots for the Plan and prepare the Ballot tabulation analysis. Mr. Jones may be contacted at M Jones & Associates, PC, 505 N Tustin Ave, Ste 105, Santa Ana, CA 92705, or by phone to 714-795-2346, or by email to mike@mjonesoc.com.

ARGUMENT II.

The Court Should Approve the Disclosure Statement/Plan Α. **Because It Contains Adequate Information for Voters in Impaired** Classes to Make an Informed Judgment on the Debtor's Plan of Reorganization

The Disclosure Statement contains adequate information as defined by Bankruptcy Code Section 1125. Subsection (b) of that section provides, in pertinent part, as follows:

> An acceptance or rejection of a Plan may not be solicited after the commencement of the case under this title from a holder of a claim or interest unless, at the time of or before such solicitations, there is transmitted to such holder, a written disclosure statement approved, after notice and a hearing, by the Court as containing adequate information.

2 3

5

6

7

8

9

10

11

12

13 14

15

16 17

18

19

20

21 2.2

23

24

25

26 27

28

11 U.S.C. §1125(b).

Bankruptcy Code Section 1125(a)(1) defines adequate information as:

Information 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, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan.

11 U.S.C. §1125(a)(1).

The determination of whether a disclosure statement contains adequate information is made on a case-by-case basis and is largely within the discretion of the Court. Generally, the disclosure statement should contain pertinent information bearing on the likelihood of success or failure of the proposed plan.

The Disclosure Statement satisfies the requirement of Section 1125 of the Bankruptcy Code. The Disclosure Statement: describes the Debtor's Plan of Reorganization, the classification of claims and their treatment therein, communicates the Debtor's financial status and projected future earnings, describes the funding for the Debtor's plan, discloses the general and financial background of the Debtor, contained a tax disclosure section, and explains why the Plan of Reorganization is superior to a liquidation under Chapter 7 of the Bankruptcy Code. In short, the Disclosure Statement provides all of the information a hypothetical, reasonable investor would want and need to know before voting on the Plan.

The Court Should Approve The Proposed Plan Form of Ballot В.

Bankruptcy Rule 3017(d) provides that ballots for accepting or rejecting the Plan should conform to the applicable official form. As set forth above, the Debtor proposes to use the sample ballot attached hereto. This Ballot substantially conforms to the applicable official form.

6 7

8 9

10

11

12 13

14

15 16

17

18

19 20

21

22 23

24

25

26

27 28

C. The Court Should Approve the Proposed Procedures for Soliciting and Tabulating Votes as Being in Accordance with Applicable Provisions of the Bankruptcy Code and the **Bankruptcy Rules**

Bankruptcy Rule 2002(b) requires that notice of confirmation be given to all creditors. Bankruptcy Rule 2002(g) generally provides that notices must be addressed as requested by certain parties in their last request filed in a case, and that a proof of claim that designates a mailing address constitutes a filed request to mail notices to such address. Bankruptcy Rule 3017(d) sets forth the contents of the Notice that must be given in connection with the solicitation of votes to accept or reject a Chapter 11 plan. Bankruptcy Rule 3017(d) gives the court discretion to order that unimpaired creditors need not be served with a copy of the plan and disclosure statement. Rule 3017(d) also requires that a form of ballot be mailed to creditors and equity security holders entitled to vote on a plan.

Bankruptcy Rule 3018(a) authorizes the Court, after notice and a hearing, to set a record date for purposes of voting to accept or reject a plan. Bankruptcy Rule 3003(c)(2) provides that any creditor whose claim or interest is not scheduled, or is scheduled as disputed, contingent, or unliquidated, must file a proof of claim or interest within such time as set by the Court, and that any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution. Fed.R.Bankr.P. 3003(c)(2).

The proposed procedures set forth above for soliciting and tabulating votes to accept or reject the Disclosure Statement and Chapter 11 Plan conform with the applicable Bankruptcy Rules and the Bankruptcy Code. The Debtor will cause the Confirmation Notice, which will set forth the time fixed for filing objections to the Disclosure Statement and Chapter 11 Plan and the date, time, and place of the Confirmation Hearing, to be mailed to all creditors. The Debtor will send solicitation packages to all creditors entitled to vote on the Plan. The Debtor will mail the

5

6 7

8

10 11

12

13

14 15

16

17 18

19

20 21

22

23 24

25

26 27

28

solicitation package and confirmation notice to the address set forth in the most recently filed proof of claim for each creditor, or to the address listed in the Schedules if no Proof of Claim was filed.

Accordingly, the Court should approve the proposed procedures for soliciting and tabulating votes to accept or reject the Disclosure Statement and Chapter 11 Plan. The Debtor reserves the right to seek continuance of this hearing date and all other confirmation related dates in the event that it becomes necessary to amend the Disclosure Statement and/or Chapter 11Plan, either as a result of the hearing to approve the Disclosure Statement and Chapter 11 Plan as containing adequate information or prior to such hearing, with leave of Court.

D. The Court Should Schedule The Confirmation Hearing and Fix Related Time Periods for Filing Objections and Voting To Accept or Reject the Plan So That Confirmation Can Proceed Efficiently.

Bankruptcy Rule 3017(c) provides that, [o]n or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation. Pursuant to Bankruptcy Rules 2002(b) and 3020(b)(2), at least 28 days notice must be given by mail to all creditors and equity security holders of the time fixed for filing objections to, and the hearing to consider confirmation of, a plan of reorganization. Finally, Bankruptcy Rule 3020(b) provides that, within a time specified by the Court, objections to plan confirmation must be filed with the Court and served on the Debtor, the official committee of unsecure creditors, if any, and any other entity designated by the Bankruptcy Court.

The Debtor will mail the Solicitation Package, including the Confirmation Notice, at least 36 days before the Confirmation Hearing and at least twenty-eight (28) days before the deadline to

1

6

10 11

12 13

14

15 16

17

18 19

20

21 2.2

23 24

25

26 27

28

vote on and file objections to the Plan, which satisfies the requirements of Bankruptcy Rules 2002(b) and 3020(b)(2).

The Debtor proposes that it file its evidence in support of confirmation, together with a memorandum in support of confirmation, any creditor opposing confirmation file its evidence and opposition in writing, together with all evidence in support thereof, and the Debtor then file reply papers. The Debtor proposes that all testimony, including without limitation, expert testimony, be submitted by declaration, with each declarant subject to cross-examination at the confirmation hearing.

The Debtor requests that this Court adopt the following procedural rules: (a) all direct testimony of each witness and all experts reports must be filed by the dates set forth above; (b) no direct testimony will be permitted at the Confirmation Hearing; (c) cross-examination of witnesses, the declarations of whom have been filed by any party, will be conducted at the Confirmation Hearing; and (d) each party shall produce documents properly requested by the opposing party and produce any witnesses whose declarations a party has filed for examination at a deposition in advance of the other party s time to file pleadings. Nothing in this proposed procedure will preclude the limitation of discovery by any party at any time after the filing of this Motion.

The Debtor's proposed confirmation procedures are also appropriate. The procedures ensure that interested parties will receive pleadings filed in support of, and in opposition to confirmation, and that the presentation at the Confirmation Hearing of any documentary evidence and testimony will have a proper substantive and evidentiary foundation. Accordingly, the court should fix the proposed deadlines, and approve the proposed procedures, for confirmation of the Disclosure Statement/Plan.

III. CONCLUSION

WHEREFORE, the Debtor respectfully request that the Court enter an order (a) approving the Disclosure Statement and Chapter 11 Plan as containing adequate information as required by Bankruptcy Code Section 1125(a)(1); (b) approving ballot tabulation procedures to assess and tally votes for and against the Disclosure Statement/Plan; (c) fixing related procedures and deadlines; and (d) granting any and all other relief as the Court deems just and proper.

Dated this 6 September 2017.

M Jones and Associates, PC Attorneys for Debtor

had Jones

Michael Jones

Filed 09/06/17 Entered 09/06/17 05:47:00

Desc

Case 8:17-bk-12704-ES

Doc 34

Case		4 Filed 09/06 Document F		Entered 09 16 of 19	/06/17 05:47	:00 Des	С
1	obtain a copy from M. Jones & Associates, PC, 505 N. Tustin Ave, Ste 105, Santa Ana, CA 92705. Court approval of the disclosure statement does not indicate approval of the Plan by th						
2	Court.	disclosure states	mem d	oes not man	ate approvar	or the rith	by the
3	You should review t						
4	wish to seek legal advice co the Plan. Your Claim has b	O		•			
5 6	hold claims or equity interests in more than one class, you will receive a ballot for each class in which you are entitled to vote.						
7	If your ballot is not	received by Attı	n. Mic	hael Jones,	M. Jones & A	Associates,	PC, 505
8	N. Tustin Ave, Ste 105, Santa Ana, CA 92705 on or before [Ballot_deadline], and such deadline is not extended, your vote will not count as either an acceptance or rejection of the						
9	Plan.						
10	If the Plan is confirm or not you vote.	ned by the Banl	krupto	ey Court it v	vill be bindin	g on you w	hether
11							
12	ACCEPT	ANCE OR R	EJE(CTION OI	THE PLA	N	
13	The undersigned, the holder of a Class [Class_Number] claim against the Debtor in the unpaid amount of [claim_amount_written_out] [claim_amount_in_dollars])						
14							
15							
16	(Check one box on ☐ ACCEPTS TH				☐ REJECTS	THE PLAN	Ī
17							
18	Dated:	_					
19		Print or type name Signature:	e: _				
20		Title (if corporation Address:	on or pa	rtnership)			
21		radiess.	-	,			
22	DETUDNITHIS DALLOT TO		-				
23	RETURN THIS BALLOT TO: Michael Jones 271574						
24	505 N Tustin Ave, Ste 105 Santa Ana, CA 92705						
25	Santa Ana, CA 92705-0000						
26							
27							
28							
		36.1	ъ.	1 0			

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: 505 N Tustin Ave, Ste 105, Santa Ana, CA 92705

A true and correct copy of the foregoing document entitled (specify): MOTION FOR ORDER APPROVING DISCLOSURE STATEMENT AS CONTAINING ADEQUATE INFORMATION PURSUANT TO BANKRUPTCY CODE §1125(A)(1)(B) 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 stated below: 1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 6 September 2017. I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below: Service information continued on attached page 2. SERVED BY UNITED STATES MAIL: On (date) 6 September 2017 I served the following persons and/or entities at the last known addresses 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 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. Service information continued on attached page 3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) 6 September 2017. I served the following persons and/or entities by personal delivery, overnight mail service, 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, or overnight mail to, 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 that the foregoing is true and correct. 6 September 2017 Michael Jones /s/ Michael Jones Date Printed Name Signature

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

ECF Mailing List

- Michael J Hauser michael.hauser@usdoj.gov
- Michael Jones mike@mjthelawyer.com, michaeljonesmyecfmail@gmail.com
- Steven N Kurtz nlessard@laklawyers.com, rfeldon@laklawyers.com;lkaplan@laklawyers.com;smcfadden@laklawyers.com
- Anne C Manalili acmecf@laklawyers.com
- Sara Tidd sara@mjonesandassociates.com, michaeljonesmyecfmail@gmail.com
- United States Trustee (SA) ustpregion16.sa.ecf@usdoj.gov

Label Matrix for Case 8:17-bk-12704-ES 0973-8 Case 8:17-bk-12704-ES Central District of California

Laguna Niguel, CA 92677-4007

Page 19 of 19

Filed 09/06/17 Entered 09/06/17 05:47:00 411 West Fourth Street, Suite 2030, Santa Ana, CA 92701-4500

Desc

Association of Apartment Owners of Hale Ono Loa c/o TOUCHSTONE PROPERTIES, LTD 680 IWILEI RD #777 Honolulu, HI 96817-5317

Wed Sep 6 05:42:18 PDT 2017

Santa Ana

Chuck C. Choi, Esq. 745 Fort Street, Ste 1900 Honolulu, HI 96813-3820

County of Maui Dept of Finance, Treasury Divison 70 East Kaahumanu Ave Ste A-18 Kahului, HI 96732-2195

David Butler 16459 Harbor Lane Huntington Beach, CA 92649-2103 David Butler 16521 Harbor Lane Huntington Beach, CA 92649-2105 Shirley Ann Hall 3819 W. Melinda Lane Glendale, AZ 85308-2055

United States Trustee (SA) 411 W Fourth St., Suite 7160 Santa Ana, CA 92701-4500

Michael Jones M Jones & Assoicates, PC 505 N Tustin Ave Ste 105 Santa Ana, CA 92705-3735 Sara Tidd M. Jones & Associates, PC 505 N. Tustin Ave., Suite 105 Santa Ana, CA 92705-3735

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Association of Apartment Owners of Hale On

(u)Courtesy NEF

End of Label Matrix Mailable recipients 11 Bypassed recipients 2 Total 13