

United States Bankruptcy Court Northern District of California

In re Casa De Montgomery, Inc. Debtor

Case No.17-53037-SLJ

CASA DE MONTGOMERY, INC. DISCLOSURE STATEMENT DATED FEB. 2, 2018

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I. INTRODUCTION

This is the disclosure statement (the “Disclosure Statement”) in the single asset chapter 11 case of Casa de Montgomery, Inc. (the Debtor). This Disclosure Statement contains information about the Debtor and describes the Plan dated Dec. 28, 2017 (the “Plan”) filed by the Debtor on Dec. 28, 2017. A full copy of the Plan is attached to this Disclosure Statement as Exhibit A. ***Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.***

. The proposed distributions under the Plan are discussed at pages 7-8 of this Disclosure Statement. General unsecured creditors are Classified in Class 3 and will be paid in full together with interest at 1.75% per annum

A. Purpose of This Document

This Disclosure Statement describes:

1. The Debtor and significant events during the bankruptcy case,
2. How the Plan proposes to treat claims or equity interests of the type you hold (*i.e.*, what you will receive on your claim or equity interest if the plan is confirmed),
3. Who can vote on or object to the Plan,
4. What factors the Bankruptcy Court (the “Court”) will consider when deciding whether to confirm the Plan,
5. Why the Proponent believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and
6. The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

1. *A hearing on the approval of this Disclosure Statement was held on Feb. 1, 2018 at 1:30 p.m. at the United States Bankruptcy Court, Northern District of California, San Jose Division at 280 So. First St., San Jose, CA 95113 in Courtroom 3099.*

2. *Deadline For Voting to Accept or Reject the Plan*

If you are entitled to vote to accept or reject the plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to The Fuller Law Firm, P.C., 60 No. Keeble Ave. San Jose, CA 95126. See section IV.A. below for a discussion of voting eligibility requirements.

Your ballot must be received by Feb. 22, 2018 or it will not be counted.

3. *Deadline For Objecting to the Confirmation of the Plan*

Objections to this Disclosure Statement must be filed with the Court and served upon debtor, debtor's counsel, the Office of the United States Trustee and all parties requesting special notice by Feb. 22, 2018.

4. *Identity of Person to Contact for More Information*

If you want additional information about the Plan, you should contact The Fuller Law Firm, P.C. 60 No. Keeble Ave. San Jose, CA 95126 at 408 295-5595.

C. **Disclaimer**

This Disclosure Statement, if approved, does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted.

II. **BACKGROUND**

A. **Description and History of the Debtor's Business**

Debtor was formed on March 30, 1984 as a Nevada Corporation and acquired title to the property at 4573 Branciforte Drive Santa Cruz, CA ["Property"] in 1984. The Property consists of approximately 12.68 acres with a 6,000 square foot residential building and a 10,000 square foot commercial building and some outbuildings. Other than nominal cash, this is Debtor's only asset.

An outbuilding is leased to Gerta Grindstaff for storage for \$585.00/month. Further, debtor has entered into a lease with Firefarms, Inc. for \$19,000/month plus utilities.

Based on an appraisal dated August 2017, the Property has a value of \$3,200,000. See Exhibit H. It is encumbered as follows:

Delinquent property taxes (2016-2018)	\$ 13,512	
1 st T.D. – Sequoia Mortgage Capital	\$2,225,361.70 ¹	
2 nd T.D. Gerardo Soto	\$ 60,000.00	
Total Encumbrances		\$2,298,873.70

On August 29, 2017, Debtor, represented by David Syme, filed a prior Chapter 11 petition. Per filings by the Office of the United States Trustee, this was Mr. Syme's first Chapter 11 petition. Because he was debtor's corporate counsel and was owed fees, his application for employment was declined and he had to withdraw as counsel from the case. Debtor had difficulty finding counsel willing to substitute into

¹ Per payoff statement dated Feb. 1, 2018.

the case because more than 3 months had already run and no plan had been proposed. At an Order to Show Cause hearing, the prior case was dismissed.

A foreclosure sale was set for Dec. 20, 2017. The herein petition was filed to stay the sale to allow for more time to complete financing.

Debtor has 3 loan applications pending to refinance the property:

1. Michael Halton, Broker

Funding available and debtor approved for \$2,000,000. However this is insufficient. Sequoia Mortgage Capital, Inc. has not yet filed a claim but the balance due per payoff statement dated Feb. 1, 2018 is \$2,225,361.70 (before legal fees). Interest continues to accrue at 22.00% per annum of \$1,221.34 per day. Cash collateral payments of approximately \$17,370/mo. are expected to be disbursed to Sequoia beginning March 2018, subject to approval of the Court.

In addition debtor owes property taxes of approximately \$13,512 and a 2nd loan, which may take deferred payments of \$60,000.

2. Teresa Paradise, Broker

She is evaluating the appraisal

3. Jodie Martorell, Broker

She is evaluating application.

B. Insiders of the Debtor

The stockholders are:

Frank Podesta	48%
Johnny Podesta	46%
Chris Zocctelli	2%
Jake Ryan Lapp	2%
Micah M. Vandersteen	2%

C. Management of the Debtor Before and During the Bankruptcy

Frank Podesta is the Chairman of the Board and manages the Debtor. Frank Rosata is the treasurer.

After the effective date of the order confirming the Plan, the directors, officers, (collectively the “Post Confirmation Managers”), will remain unchanged.

D. Events Leading to Chapter 11 Filing

Sequoia Capital, the holder of the 1st trust deed, when initiating the loan, withheld six month of pre-paid interest. Misunderstandings arose as to among other things, advances for construction on withheld funds. Sequoia Capital initiated foreclosure proceedings precipitating the need for the bankruptcy filing.

E. Significant Events During the Bankruptcy Case

The case was just filed so few events have transpired.

F. Projected Recovery of Avoidable Transfers

The Debtor does not intend to pursue preference, fraudulent conveyance, or other avoidance actions.

G. Claims Objections

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The procedures for resolving disputed claims are set forth in Article V of the Plan.

H. Current and Historical Financial Conditions

The identity and fair market value of the estate's assets are listed in Exhibit B.

Debtor attaches the Dec. 2017 operating report marked as Exhibit C.

III. SUMMARY OF THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. What is the Purpose of the Plan of Reorganization?

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

B. Unclassified Claims

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan Proponent has *not* placed the following claims in any class:

1. *Administrative Expenses*

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

The following chart lists the Debtor's estimated administrative expenses, and their proposed treatment under the Plan:

Type	Estimated Amount Owed	Proposed Treatment
Professional Fees, as approved by the Court.	\$20,000	Payable on the Effective Date but subject to an accounting and approval of an Application for Compensation
Office of the U.S. Trustee Fees	325	Paid in full on the effective date of the Plan
TOTAL	20,325	

2. *Priority Tax Claims*

Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding 5 years from the order of relief.

The following chart lists the Debtor's estimated § 507(a)(8) priority tax claims and their proposed treatment under the Plan:

Description (name and type of tax)	Estimated Amount Owed	Date of Assessment	Treatment
IRS	300.00	NA	Payable in full together with interest at 4.00% per annum, on the Effective Date.
FTB	2,798.40	NA	Payable in full together with interest at 4.00% per annum, on the Effective Date.

C. Classes of Claims and Equity Interests

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

1. *Classes of Secured Claims*

Allowed Secured Claims are claims secured by property of the Debtor's bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under § 506 of the Code. If the value of the collateral or setoffs securing the creditor's claim is less than the amount of the creditor's allowed claim, the deficiency will be classified as a general unsecured claim.

The following chart lists all classes containing Debtor's secured prepetition claims and their proposed treatment under the Plan:

Class #	Description	Insider? (Yes or No)	Impairment	Treatment
1	Secured claim of: Name = Santa Cruz Co. Tax Collector Collateral description = Property at 4573 Branciforte Dr. Santa Cruz, CA Allowed Secured Amount = \$ 13,512.00 Priority of lien: Senior to 1 st trust deed	No	impaired	Payable in full together with interest at 18% per annum on close of escrow on the refinance of the Property, but not later than 6 months from the Effective Date
2	Secured claim of: Name = Sequoia Mortgage Capital Collateral description = Property at 4573 Branciforte Dr. Santa Cruz, CA Secured Amount per Payoff dated Feb. 1, 2018 = \$2,225,361.70. ²	No	impaired	Allowed Claim payable in full together with pre-petition and post-petition default note interest , costs and fees on refinance of the Property but not later than 6 months from the Effective Date. In addition, this Class 2 claimant shall be paid cash collateral payments in the estimated amount of \$17,370 commencing March 2018 subject to approval of the Court, which is to be credited against post-petition interest. The plan does not seek to modify the loan documents.

² Debtor reserves right to object to any claim that is filed

3	Secured claim of: Name = Gerardo Soto Collateral description = Property at 4573 Branciforte Dr. Santa Cruz, CA Allowed Secured Amount = \$ 60,000.00	No	Impaired	Allowed Claim payable in full together with post-petition note interest, costs and fees on refinance of the Property but not later than within 6 months from the Effective Date.
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2. *Classes of Priority Unsecured Claims*

Certain priority claims that are referred to in §§ 507(a)(1), (4), (5), (6), and (7) of the Code are required to be placed in classes. The Code requires that each holder of such a claim receive cash on the effective date of the Plan equal to the allowed amount of such claim. However, a class of holders of such claims may vote to accept different treatment.

The following chart lists all classes containing claims under §§ 507(a)(1), (4), (5), (6), and (a)(7) of the Code and their proposed treatment under the Plan:

Class #	Description	Impairment	Treatment
	None		

3. *Class of General Unsecured Claims*

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code.

The following chart identifies the Plan's proposed treatment of Class 3 which contain general unsecured claims against the Debtor:

Class #	Description	Impairment	Treatment
4	General Unsecured Class	Impaired	Payable in full together with interest at 1.75% per annum in equal monthly payments amortized over 5 years from the Effective Date. Payments shall be paid pro-rata as set forth in Exhibit "G".

4. *Class of Equity Interest Holders*

Equity interest holders are parties who hold an ownership interest (*i.e.*, equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest holders. In a partnership, equity interest holders include both general and limited partners. In a limited liability company ("LLC"), the equity interest holders are the members. Finally, with respect to an individual who is a debtor, the Debtor is the equity interest holder.

The following chart sets forth the Plan's proposed treatment of the class of equity interest holders:

Class #	Description	Impairment	Treatment
5	Equity interest holders	Unimpaired	Retain stock; No payment of dividends before General Unsecured Creditors are paid

D. Means of Implementing the Plan

1. Source of Payments

Summarily, payments and distributions under the Plan will be funded by (1) refinance of the Property; (2) Rental income; (3) Frank Podesta's retirement earnings; (4) Frank Podesta's earnings from un-related business ventures

1. Refinance. Debtor has received a term sheet from Michael Halton, Broker who is prepared to extend a loan for \$2,000,000.. Such amount is the maximum that this lender will lend on any project. However, it is insufficient to pay off the secured indebtedness. Applications are pending with other brokers.

2. Rental Income. Firefarms, Inc. has entered into a lease for the 10,000 square foot mixed use building. Because it is replacing the roof at its expense, rent of \$19,000 does not commence until March 2018. Gerta Grindstaff also rents a storage room for \$585.00/month.

3. Frank Podesta's earnings. Frank Podesta, the major shareholder, receives social security income of about \$1,500/month and pension income from AuCopia International Capital, Inc. of \$150,000/year and is able to contribute to any negative cash flow for a new loan.

4. Frank Podesta's other earnings. Frank Podesta is a 24% shareholder of Aucopia International Cambodia which is in the online

2018 with initial revenue in QIII 2018. But revenue from this source is not certain.

2. *Post-confirmation Management*

The Post-Confirmation Managers of the Debtor, and their compensation, shall be as follows:

Name	Affiliations	Insider (yes or no)?	Position	Compensation
Frank Podesta	None	Yes	Chairman of the Board	None

E. **Risk Factors**

The proposed Plan has the following risks:

The primary risk is that a lender will not close on the loan.

If Debtor is unable to refinance within 6 months of the Effective Date, this shall constitute a breach of the plan. In such event, creditors are left to their remedies specified in Section 8.07 of the Plan.

Another risk is that Firefarms, Inc. will not renew the lease in one year. Debtor believes that this risk is mitigated because it is expending approximately \$30,000 on a new roof for the building it will occupy. If however Firefarms, Inc. vacates, debtor will need to find a new tenant which could take some time.

F. **Executory Contracts and Unexpired Leases**

Firefarms, Inc. has a one year lease effective as of Jan. 1, 2018 and continuing for one year, subject to annual renewals for a maximum term of 5 years.

All executory contracts and unexpired leases that are not identified will be rejected under the Plan. Consult your adviser or attorney for more specific information about particular contracts or leases.

G. Tax Consequences of Plan

Creditors and Equity Interest Holders Concerned with How the Plan May Affect Their Tax Liability Should Consult with Their Own Accountants, Attorneys, And/Or Advisors.

None

IV. CONFIRMATION REQUIREMENTS AND PROCEDURES

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Code. These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

A. Who May Vote or Object

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Plan Proponent believes that classes 1-3 are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan.

1. *What Is an Allowed Claim or an Allowed Equity Interest?*

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest. When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

The non-governmental deadline for filing a proof of claim in this case 04/16/2018.

2. *What Is an Impaired Claim or Impaired Equity Interest?*

As noted above, the holder of an allowed claim or equity interest has the right to vote only if it is in a class that is *impaired* under the Plan. As provided in § 1124 of the Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

3. *Who is **Not** Entitled to Vote*

The holders of the following five types of claims and equity interests are *not* entitled to vote:

- holders of claims and equity interests that have been disallowed by an order of the Court;
- holders of other claims or equity interests that are not “allowed claims” or “allowed equity interests” (as discussed above), unless they have been “allowed” for voting purposes.
- holders of claims or equity interests in unimpaired classes;

- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code; and
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan;
- administrative expenses.

Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation of the Plan [and to the Adequacy of the Disclosure Statement].

4. *Who Can Vote in More Than One Class*

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

B. Votes Necessary to Confirm the Plan

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by cram down on non-accepting classes, as discussed later in Section [B.2.].

1. *Votes Necessary for a Class to Accept the Plan*

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least two-thirds (2/3) in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

2. *Treatment of Nonaccepting Classes*

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds nonaccepting classes is commonly referred to as a "cram down" plan. The Code allows the Plan to bind nonaccepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not "discriminate unfairly," and is "fair and equitable" toward each impaired class that has not voted to accept the Plan.

You should consult your own attorney if a "cramdown" confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.

C. Liquidation Analysis

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. A liquidation analysis is attached to this Disclosure Statement as Exhibit D.

D. Feasibility

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan.

1. *Ability to Initially Fund Plan*

The Plan Proponent believes that the Debtor will have enough cash on hand on the effective date of the Plan to pay all the claims and expenses that are entitled to be paid on that date. Tables showing the amount of cash on hand on the effective date of the Plan, and the sources of that cash are attached to this disclosure statement as Exhibit E.

2. *Ability to Make Future Plan Payments And Operate Without Further Reorganization*

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments.

The Plan will be funded from three sources:

1. refinance of the Property
2. Rental income of the Property
3. Contributions from Frank Podesta from his retirement earnings or unrelated business ventures.

You Should Consult with Your Accountant or other Financial Advisor If You Have Any Questions Pertaining to These Projections.

V. EFFECT OF CONFIRMATION OF PLAN

A. DISCHARGE OF DEBTOR

Discharge. On the effective date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor shall not be discharged of any debt (i) imposed by the Plan, (ii) of a kind specified in § 1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure, or (iii) of a kind specified in § 1141(d)(6)(B). After the effective date of the Plan your claims against the Debtor will be limited to the debts described in clauses (i) through (iii) of the preceding sentence.

B. Modification of Plan

The Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or revoting on the Plan.

The Plan Proponent may also seek to modify the Plan at any time after confirmation only if (1) the Plan has not been substantially consummated *and* (2) the Court authorizes the proposed modifications after notice and a hearing.

C. Final Decree

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Plan Proponent, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion.

VI. OTHER PLAN PROVISIONS

None

Dated: 2/2/2018

/s/Frank Podesta

/s/Lars T. Fuller
