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9 Official Committee of Unsecured Creditors
of South Lakes Dairy Farm

10 UNITED STATES BANKRUPTCY COURT
11 EASTERN DISTRICT OF CALIFORNIA
12 FRESNO DIVISION

13
14 In re:

15 SOUTH LAKES DAIRY FARM,

16 Debtor and Debtor-in-
17 Possession.

Case No.: 12-17458-B-11

Chapter 11

DCN: KDG-17

**OPPOSITION OF THE OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS TO DEBTOR'S
DISCLOSURE STATEMENT DATED
MARCH 20, 2013**

Hearing Date and Place

Date: May 8, 2013

Time: 9:00 a.m.

Place: 2500 Tulare Street

Fresno, CA 93721

Courtroom 11

Judge: Honorable W. Richard Lee

1 The Official Committee of Unsecured Creditors (the “Committee”) of South Lakes Dairy Farm
2 (the “Debtor”), by and through its undersigned counsel, hereby files its objection to Debtor’s
3 Disclosure Statement Dated March 20, 2013 (the “Disclosure Statement”), stating as follows:

4 **PRELIMINARY STATEMENT**

5 1. The Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on
6 August 30, 2012. On March 21, 2013, the Debtor filed the Disclosure Statement.

7 2. For the reasons *infra*, the Committee submits that the Disclosure Statement lacks adequate
8 information as required under the Bankruptcy Code, and should therefore not be approved by the
9 Court. The Committee reserves any and all rights to amend this Opposition or to raise further
10 opposition prior to or at the hearing on the Disclosure Statement.

11 **ARGUMENT**

12 3. To approve the Disclosure Statement, this Court must determine that it contains adequate
13 information. *In re Unichem Corp.*, 72 B.R. 95, 96 (N.D. IL 1987). Adequate information means
14 information of a kind, and in sufficient detail, as far as reasonably practicable in light of the nature and
15 history of the debtor and the condition of the debtor’s books and records to enable a “hypothetical
16 investor” typical of the holders of claims and interests in the case to make an informed judgment about
17 the plan. Courts take a practical approach as to what is “adequate” based on the circumstances of each
18 case. *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (C.D. CA 1988).

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1 **A. The Disclosure Statement Does Not Adequately Disclose Issues Regarding the Debtor’s Real**
2 **Property Lease**

3 4. The Committee believes that the insiders of the Debtor have not reached an agreement
4 with their secured lender regarding the servicing of the underlying debt on that parcel of real property
5 that the Debtor operates its dairy and farming operations upon. The Disclosure Statement asserts that
6 “[t]he amount of rent that Debtor pays to Landlord is no more than the Landlord’s obligations to
7 maintain the real property that it leases to Debtor including debt service on debts that are secured by
8 the real property...” Disclosure Statement, p. 14, lines 26-28. The Disclosure Statement further asserts
9 that the “Debtor believes that Landlord and Debtor will agree to a modification of the lease that will
10 allow Debtor to continue to lease the real property.” *Id.* at p. 15, lines 2-3. The Disclosure Statement’s
11 income and expense projections show a monthly rent of \$105,500 through May 2013, increasing to
12 \$140,000 per month through the end of the life of the Plan. *See* Disclosure Statement, Exhibit B.

13 5. The Disclosure Statement does not explain the sudden increase in the rent payment.
14 Nor does the Disclosure Statement provide the terms of any new lease. Although the insiders are not
15 debtors in the instant case, creditors should be made comfortable that the real property being leased
16 from them is not subject to being foreclosed upon by their lender before any further time and effort is
17 spent on the Disclosure Statement.

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1 **B. The Debtor Does Not Disclose How It Intends On Paying Wells Fargo In Full Thirty-Six**
2 **Months From The Effective Date**

3 6. The Disclosure Statement provides that the full amounts owed to Wells Fargo “will be
4 all due and payable three years from the Effective Date of the Plan.” Disclosure Statement, p. 16, lines
5 11-12. The Disclosure Statement’s income and expense projections show the Debtor owing roughly
6 \$10 million on a date that is thirty-six months from the effective date of the Plan. What is also clear
7 from the income and expense projections of the Disclosure Statement is that the Debtor is projected to
8 run cash balances between \$374,000 and \$670,000 in the years 2015 and 2016. Thus, the Debtor will
9 not have the cash to pay the Wells Fargo liens in full. This means there must either be a liquidation, or
10 a refinancing of the debt to Wells Fargo. The Disclosure Statement does not describe what either
11 scenario would entail, and what unsecured creditors would stand to see in either scenario. In terms of a
12 liquidation, creditors should know what they would stand to see in a liquidation three (3) years from
13 now as opposed to an instant liquidation. The Disclosure Statement also does not establish that a
14 refinance would be feasible at that point. Creditors are left to guess what the state of the Debtor will
15 be three (3) years from the effective date, which, if history tells a story, would not be good.

16 **C. The Assumptions In The Liquidation Analysis Are Not Disclosed**

17 7. The Disclosure Statement’s liquidation analysis provides several liquidation values and
18 expenses without any basis, or an explanation of the underlying assumptions. *See generally* Disclosure
19 Statement, Exhibit A. For instance, the cash on deposit in the analysis is estimated at \$1 million as of
20 June 2013. However, the income and expense projections show the Debtor with cash of \$1,145,731 on
21 June 1, 2013, and ending with \$1,242,330 on June 30, 2013. There is no less than a \$145,731
22 difference in the cash estimated to be on hand. What is more, the payments from the administrative
23 fund would not be made, and so there would be an increase in the cash for the \$351,580.79
24 administrative expense set aside (the liquidation analysis lists the full amount of the chapter 11
25 administrative expense claims, so one must also assume no pay downs from the set-aside). Therefore,
26 in cash alone, the Debtor would have \$1,497,311.70 on June 1, 2013, \$497,311.70 more than listed in
27 the liquidation scenario.

1 8. The liquidation analysis also includes costs of the sale of property that totals 13% of the
2 assets to be sold with no explanation as to how such high cost estimates were reached.

3 9. The Committee would submit that the costs of liquidation would be half that amount.
4 The Committee believes this to be an important point in that it believes that there is a chance that the
5 liquidation value provides a greater return to unsecured creditors than that provided through an earn-
6 out plan. The Debtor must provide more detail to the liquidation analysis supporting its accuracy.

7 **D. The Disclosure Statement Does Not Account For Unanticipated Profits**

8 10. The Disclosure Statement does not disclose what the Debtor plans on doing with profits
9 should the dairy industry turn the proverbial corner. Whether these profits simply flow to equity, or
10 are used to pay unsecured creditors is not disclosed.

11 **E. The Plan Is Clearly Not Confirmable As Filed As It Violates The Absolute Priority Rule**

12 11. “Disapproval of the adequacy of a disclosure statement may sometimes be appropriate
13 where it describes a plan of reorganization which is so fatally flawed that confirmation is impossible.”
14 *Id.* at 764. Where a plan is clearly non-confirmable, it is a waste of time and resources to go through
15 the confirmation process. *In re Valrico Square Ltd. Partnership*, 113 B.R. 794, 795-796 (BC SD FL
16 1990).

17 12. Courts have held that unsecured creditors must be paid in full prior to any junior class
18 receiving or retaining any property under a plan of reorganization. *See In re Tucson Self-Storage, Inc.*,
19 166 B.R. 892, 900 (9th Cir. BAP 1994); *Norwest Bank Worthington*, 485 U.S. 197, 2002 (1988). This
20 concept is termed the absolute priority rule. It is important to take note of the timing of the triggering
21 of the absolute priority rule. The general nonpriority unsecured creditors must be provided for in full
22 *before* any junior class can receive or retain any property under a plan. *Norwest*, 485 U.S. at 202.

23 13. Courts in the “Ninth Circuit now recognize the new value exception to the absolute
24 priority rule.” *In re Tucson Self-Storage, Inc.* at 899. In short, “[t]he new value exception allows the
25 equity owners of a debtor in bankruptcy to obtain an interest in the reorganized debtor in exchange for
26 new capital contributions over the objections of a class of creditors that have not received full payment
27 on [their] claims.” *Id.*

1 14. The Disclosure Statement does not disclose the new value the insiders are paying for
2 what appears to be retention of their equity interests in the Debtor. The Disclosure Statement shows
3 equity of \$7,120,000 in the Debtor as a going concern, which equity appears to flow to the insiders as
4 equity holders, without the payment of any new value by the equity holders, much less sufficient value,
5 and without the unsecured creditors being paid in full for the estimated \$8.8 million they are owed. To
6 add insult to injury, the insiders are provided with \$1.6 million in “draws” over the life of the Plan,
7 while unsecured creditors are provided \$1.2 million. The Plan cannot be confirmed as drafted as the
8 Committee intends on opposing the Plan on this point.

9 **WHEREFORE**, unless the issues in this Objection are addressed by the Debtor, the
10 Committee respectfully requests that this Court enter an order finding that the Disclosure Statement
11 lacks adequate information as required by the Bankruptcy Code and such other relief as the Court
12 deems just and appropriate.

13 Dated: April 24, 2013

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15 By: /s/Ronald A. Clifford
16 Scott E. Blakeley
17 Ronald A. Clifford
18 Attorney for the Official Committee of Unsecured
19 Creditors of South Lakes Dairy Farm
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