



1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **LOS ANGELES DIVISION**  
11

12  
13 In re:  
14 Exo-Grey Corporation,

15  
16  
17  
18 Debtor.

Case No.: 2:14-bk-15874-TD

CHAPTER 11

**MEMORANDUM DECISION DENYING  
DEBTOR'S MOTION TO APPROVE  
DISCLOSURE STATEMENT**

Date: August 20, 2014  
Time: 10:00 AM  
Courtroom: 1345

19  
20  
21 On July 21, 2014, Debtor filed a proposed Chapter 11 Disclosure Statement  
22 describing a proposed Chapter 11 Plan filed on the same date. On July 21, 2014,  
23 Debtor filed a Motion to Approve the Disclosure Statement (Motion). No opposition was  
24 filed.

25 On August 20, 2014, the court held a hearing on the Motion. The court  
26 considered the Disclosure Statement and Motion. After consideration of the foregoing,  
27 approval of the Disclosure Statement is denied.  
28

1            Notice

2            Debtor served all creditors with the proposed Disclosure Statement. A proposed  
3 disclosure statement should be served only on the United States Trustee (UST), any  
4 committee, and any party requesting a copy. FRBP 3017(a).

5            The alleged noteholders of the first and second deeds of trust, Wilfredo Ruiz &  
6 Diane Bailey, as trustees, and Bank of America, the servicing agent, were not served  
7 with notice of the hearing on the Motion. See FRBP 3017(a) & 2002(b).

8  
9            Description of the Property

10           Debtor's sole asset is rental property located at 860 Turquoise Street #122, San  
11 Diego, California. Debtor alleges the fair market value of the property is \$135,000.  
12 Debtor provides no evidence regarding the fair market value of the property. Debtor  
13 should amend the Disclosure Statement and Plan to include evidence supporting  
14 Debtor's fair market value claim or, at least, an explanation for D's valuation.

15           Debtor alleges that the property is encumbered by the following liens:

16

17           Wilfredo Ruiz & Diane Bailey (1 <sup>st</sup> DOT)	\$219,920.00
18           Wilfredo Ruiz & Diane Bailey (2 <sup>nd</sup> DOT)	\$27,490.00
19           National Investors Mortgage (Broker's Fee)	\$4,500.00
20           Pacific Shores Maintenance Corp. (HOA Lien)	\$2,668.64

21  
22           Debtor alleges that the claim related to the second deed of trust is not impaired.  
23 D.S. at 12:16-17. Debtor treats the claim as unsecured. Debtor should amend the  
24 Disclosure Statement to reflect the impaired status of the claim.

25           On July 22, 2014, the San Diego Treasurer/Tax Collector filed Proof of Claim  
26 (POC) #3, indicating a secured, non-priority claim in the amount of \$243.43. Debtor  
27 does not include the San Diego Treasurer/Tax Collector claim in the Disclosure  
28 Statement section describing secured claims against the property. Debtor should

1 amend the Disclosure Statement to reflect the secured status of the claim.

2 On July 25, 2014, Pacific Shores Maintenance Corporation filed POC #4,  
3 indicating a secured home owners' association lien in the amount of \$6,439.32. Debtor  
4 only lists an outstanding claim in the amount of \$2,668.64. D.S. at 13:12. Debtor  
5 should amend the Disclosure Statement to reflect the full amount of the claim.

6 Debtor provides no evidence of the present amounts owing on the liens.

7  
8 Treatment of Tax Debt

9 On July 22, 2014, the California Franchise Tax Board filed POC #2, asserting a  
10 claim in the total amount of \$1,644.86, \$1,600.86 of which is entitled to priority. The  
11 Disclosure Statement does not identify this claim or discuss treatment of the claim.

12 The Disclosure Statement indicates that the San Diego Treasurer/Tax Collector's  
13 lien is \$111.00. D.S. at 9:16. On July 22, 2014, the San Diego Treasurer/Tax Collector  
14 filed POC #3, indicating a secured claim in the amount of \$243.43. Debtor should  
15 amend the Disclosure Statement to reflect the total amount of the claim.

16  
17 Funding the Plan

18 Debtor alleges that all of the foregoing secured and undersecured claims will be  
19 paid in full; however, Debtor does not clearly explain the means by which that will  
20 happen.

21 Debtor does not propose a sale of the property.

22 Debtor alleges that the plan will be funded by net income from the rental of the  
23 property. D.S. at 14:4. Debtor does not appear to be currently renting the property and  
24 does not explain the timing or expected amounts of rental income. Debtor's July 2014  
25 Monthly Operating Report, filed August 15, 2014, indicates gross receipts in the amount  
26 of \$561 and a net ending balance of negative \$221.

27 Debtor alleges that Kevin Tucker, Debtor's principal and sole shareholder, will  
28 make capital contributions. D.S. at 14:5-6. Debtor does not explain the amount of

1 expected contributions or describe Tucker's ability, or resources available, to make such  
2 contributions.

3 Debtor alleges that Debtor will obtain a loan secured by the property to make  
4 additional plan payments. D.S. at 14:6-7. Debtor does not explain how this will work  
5 when the property is already over-encumbered. Debtor's proposal to fund the plan  
6 appears, on its face, unconfirmable. These issues might be the grounds for dismissal of  
7 the case.

#### 8 9 Treatment of Equity Interestholder

10 Debtor's allegations regarding funding the plan are grossly inadequate. Debtor  
11 believes that all creditors will be paid in full, and, therefore, that Tucker will be able to  
12 retain his equity interest without violating the absolute priority rule. Even if this is true  
13 (which it does not appear to be), Debtor does not propose that Tucker will offer any new  
14 value, in the way of cash or cash equivalents, in exchange for the retention of his equity  
15 interest in the reorganized debtor.

#### 16 17 Conclusion

18 For the foregoing reasons, the court has serious concerns about whether there is  
19 a reasonable likelihood that a plan will be confirmed within a reasonable period of time.  
20 If Debtor's proposed First Amended Disclosure Statement and Plan (FADS and FAP) do  
21 not adequately address the court's concerns not later than September 17, 2014, then  
22 this bankruptcy case may be dismissed.

23 Debtor must file a proposed FADS and FAP not later than September 17, 2014.

24 Objections to approval of the FADS, if any, must be filed not later than October 8,  
25 2014.

26 The court will hold a hearing on approval of the FADS on October 22, 2014 at  
27 10:00 a.m.

28 Debtor must serve the appropriate parties with the proposed FADS and FAP and

1 a notice of the hearing seeking approval of the FADS.

2 The status conference scheduled in this case for August 20, 2014 at 10:00 a.m.  
3 is continued to October 22, 2014 at 10:00 a.m. Debtor must file an updated status  
4 conference report not later than October 8, 2014.

5 IT IS SO ORDERED.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

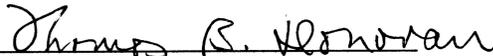
Date: August 22, 2014

25

26

27

28

  
Thomas B. Donovan  
United States Bankruptcy Judge