

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

January 20, 2022 at 11:30 a.m.

1. [20-25398-E-11](#) **ALEJANDRO ALEJANDRO AND
GRISELDA GONZALEZ** **CONFIRMATION OF CHAPTER 11
PLAN OF REORGANIZATION**
Eric Wood **7-19-21 [63]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Amended Plan, the Disclosure Statement, the Order Approving the Disclosure Statement, and a ballot were served on Debtors, Debtors' Attorney, Trustee, Creditors, Parties in Interest, and Office of the United States Trustee on November 12, 2021, Dckt. 92. The court issued an Order setting the hearing date for January 20, 2022. Order, Dckt. 91.

The Hearing for Confirmation of the Chapter 11 Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor in Possession, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. All opposition was resolved at the hearing.

The Motion to Confirm the Chapter 11 Plan of Reorganization is granted.

The Plan Proponent has complied with the Service and Filing Requirements for Confirmation:

November 12, 2021 Plan, Disclosure Statement, Disclosure Statement Order, and Ballot Mailed

December 10, 2021 Last Day for Submitting Written Acceptances or Rejections

December 10, 2021 Last Day to File Objections to Confirmation

January 6, 2022 Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

Tabulation of Ballots:

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
Class 1(a) (Impaired)	For: 1 Against: 0	100%	100%
Class 1(b) (Impaired)	For: 1 Against: 0	100%	100%
Class 2(b) (Impaired)	For: 0 Against: 0	0%	0%

The Declaration of Alejandro C. Alejandro and Griselda Gonzalez filed in support of confirmation provides some evidence (and as discussed below legal conclusion opinion testimony) of compliance with the necessary elements for confirmation in 11 U.S.C. § 1129:

11 U.S.C. § 1129(a)

1. The plan complies with the applicable provisions of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

Evidence: Dckt. 110, pg. 3-9

2. The proponent of the plan complies with the applicable provisions of the Bankruptcy Code.

Evidence: Dckt. 110, pg. 9

3. The plan has been proposed in good faith and not by any means forbidden by law.

Evidence: Dckt. 110, pg. 10

4. Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

Evidence: Dckt. 110, pg. 10

5. (A)(i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and
- (ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and
- (B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

Evidence: Dckt. 110, pg. 10-11

7. With respect to each impaired class of claims or interests—
- (A) each holder of a claim or interest of such class—
- (i) has accepted the plan; or
- (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective dates of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 701 et seq., on such date; or
- (B) if section 1111(b)(2) of this title [11 U.S.C. § 1111(b)(2)] applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan an account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

Evidence: Dckt. 110, pg. 11

8. With respect to each class of claims or interests—
- (A) such class has accepted the plan; or
- (B) such class is not impaired under the plan.

Evidence: Dckt. 110, pg. 12

9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—
- (A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of

the Bankruptcy Code, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

Evidence: Dckt. 110, pg. 12

(B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code, each holder of a claim of such class will receive—

(I) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;

Evidence: Dckt. 110, pg. 12-13

(C) with respect to a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, the holder of such claim will receive on account of such claim regular installment payments in cash—

(I) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b); and

(D) with respect to a secured claim that would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

Evidence: Dckt. 110, pg. 13

10. If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

Evidence: Dckt. 110, pg. 13

11. 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 under the plan, unless

such liquidation or reorganization is proposed in the plan.

Evidence: Dckt. 110, pg. 13

12. All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

Evidence: Dckt. 110, pg. 14

13. The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title [11 U.S.C. § 1114], at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title [11 U.S.C. § 1114], at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

Evidence: Dckt. 110, pg. 14

14. If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first becomes payable after the date of the filing of the petition.

Evidence: Dckt. 110, pg. 14

15. In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim;
or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

Evidence: Dckt. 110, pg. 14-15

16. All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

Evidence: Dckt. 110, pg. 15

11 U.S.C. § 1129(b)

1. Notwithstanding section 510(a) of this title, if all of the applicable requirements of

subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

Evidence: Dckt. 110, pg. 15

2. For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides—

- (I) (I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and
- (II) (II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (I) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

Evidence: Dckt. 110, pg. 15-16

(B) With respect to a class of unsecured claims—

(I) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class, will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

Evidence: Dckt. 110, pg. 16

(C) With respect to a class of interests—

(I) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

Evidence: Dckt. 110, pg. 16-17

DISCUSSION

Federal Rule of Bankruptcy Procedure 3020(b)(2) provides the basic procedural framework for confirmation of Chapter 11 plan proceedings, stating:

The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

Creditor's Objection

On September 8, 2021, Creditor, Bosco Credit LLC filed an Objection to the approval of the Debtor in Possessions' Chapter 11 Plan of Reorganization. Dckt. 70. Creditor is the holder of the Second Deed of Trust on the real property located at 1016 Doc Day Court, Folsom, CA 95630 ("Property"). Creditor argues the Plan is lacking adequate information because the Plan does not provide for the Creditor's claim. Additionally, the Debtors have failed to remit a payment to Creditor since June 2008 and the Plan fails to cure the default.

It is asserted that the Plan does provide for a new thirty year loan without adequate interest. The new loan assumes the amount owed in arrears without adequate explanation regarding how the Debtors can now remain current on the proposed payments and why the proposed interest rate and extended maturity date is fair and equitable. Further, Debtor in Possession has failed to account for post-petition payments and accrued interest on the loan since the filing date.

The Creditor further argues Debtor in Possession's Plan does not propose a fair and equitable treatment of Creditor's claim because the Debtors have severely understated the fair market interest rate. The Debtor in Possession proposed a fixed interest rate of 4.25% when the current interest rate set forth on Creditor's Proof of Claim is 9.25%. Debtor in Possession has not provided any evidence as to why a fixed interest rate of 4.25% is fair and equitable or any evidence that this is the current rate for other similar loans in the geographic area. Additionally, Debtor in Possession has failed to provide adequate

evidence regarding a rental agreement and reliable rental income, making the risk of defaulting likely.

This objection goes to the proper treatment of Creditor's claim. Creditor objects that in light of the current real property loan interest rates, a 4.25% is not proper and Creditor's 9.26% interest rate complies with the standards set by the Supreme Court in *Till*. From the court's experience, interest rates of 9% are not what have been presented and determined under *Till*.

Creditor also raises a feasibility issue concerning the rental of the Property and net income to be generated therefrom.

In filing the Ballot Tabulation, Memorandum in Support of Confirmation, and evidence in support thereof, Debtor in Possession has not complied with the requirements of Local Bankruptcy Rules 9004-2 and 9014-1 and has combined the Memorandum and three Declarations into one monster document. Dckt. 110.

The Memorandum does address Debtor in Possession having resolved the opposition of Creditor, stating that a Stipulation has been filed. Exhibit. A; Dckt. 99. This resolves the treatment of Creditor's claim, the basic terms of the Stipulation being:

- A. The Secured Claim is \$171,576.84, which will be paid over 30 years at 5% interest, with monthly payments of \$900.64. (Using the Microsoft Excel Simple Loan Calculator, a \$171,567.84 obligation paid over thirty years in 360 monthly payments would require a payment of \$921.06.)
- B. Debtor in Possession will make a lump sum payment of \$2,500 on or before November 1, 2021. (Applying this \$2,500 to the obligation of \$171,576.84 and then amortizing the balance over 360 months at 5% interest yields a monthly payment of \$907.64.)
- C. With respect to post-confirmation defaults:
 - 1. The automatic stay shall terminate upon confirmation of the Plan and the pre-confirmation default remedies shall have no force and effect.
 - 2. In the event the bankruptcy case should be dismissed or converted:
 - a. Creditor shall retain its lien for the full unmodified amount due under the Note and as secured by the Deed of Trust.

Feasibility of Plan

In the Combined Amended Plan and Disclosure Statement, the Debtor in Possession states that attached to the Combined Amended Plan and Disclosure Statement is financial information relevant to the ability of the post-confirmation Debtor performing the Plan. These include:

- A. Exhibit 3, Monthly Expenses; Dckt. 90 at 15.
 - 1. Gross Monthly Income is stated to be \$14,300, all from employment

income.

2. Monthly Expenses, with includes the plan payments on secured claim for residence and car, are stated to be (\$9,128.54), comprised of:
 - a. Payroll taxes and withholding.....(\$5,240)
 - b. Shelter Expenses, identified as
“(rent/mortgage, insurance, taxes,
utilities).....(\$ 464)
 - c. Household (Food).....(\$ 900)
 - d. Transportation (car payments,
insurance, fuel).....(\$ 526.64)
 - e. Personal Expenses (recreation,
clothing, laundry, medical).....(\$1,095)
 - f. Other Expenses.....(\$ 250)
 - g. Negative Cash Flow on
investment property.....(\$652.90)
(Referencing Exhibit 5, Line B)
3. Exhibit C for Plan Payments not included
in the are stated to be.....\$0.00

B. Exhibit 5 states that there are no properties with a positive cash flow, and the Docday Court Property has a monthly negative cash flow of(\$652.90)

1. The expenses shown for the Investment Property are stated to be:
 - a. 1st Mortgage.....(\$1,656.79)
 - b. 2nd Mortgage.....(\$ 900.64)
 - c. Insurance.....(\$ 171.53)
 - d. Property Taxes.....(\$ 423.95)
2. It is then expressly stated that there are no other expenses for the Rental Income Investment Property. Some expenses that come to mind include repairs and maintenance

during the life of the plan.

In their Declaration, Dckt. 110, the Debtor do not provide any financial testimony, but direct the court to read Exhibit 3. In looking at Amended Schedule J; Dckt. 30 at 4-5; for Debtor's family unit of three adults, the monthly expenses are only (\$2,140) a month. These do not include any mortgage expenses or car payments.

Claims Filed in Case

There are only two claims filed in this case. Proof of Claim No. 1-1, for the first deed of trust, and Proof of Claim 2-1, for the second deed of trust, both on the Investment Property.

Legal Opinion "Testimony"

In looking at the Declarations, some serious concerns arise for the court. In the Declaration of Alejandro Alejandro appended to the Memorandum (Dckt. 110 at 19-20), Mr. Alejandro appears to not be testifying as to personal knowledge facts as required by Federal Rule of Evidence 601 and 602, but instead advises the court of his personal, professional, legal conclusions, including that: (1) his disclosure statement and plan comply with all provisions of the Bankruptcy Code; (2) he has done everything possible to comply with his duties under the Bankruptcy Code; (3) he has proposed the plan in good faith; and (4) no means forbidden by law have been used in seeking confirmation. It appears that the Declaration of Griselda Gonzalez (*Id.* at 21-22) is merely a cut and paste of Mr. Alejandro's declaration, providing the court with Ms. Gonzalez's personal conclusions of law.

When the court sees such declarations, purporting to provide "testimony" of non-attorneys, the court wonders whether the declarations were ever read by the declarants. Here, both Mr. Alejandro and Ms. Gonzalez do not provide the court with their legal educations and ability to provide such legal conclusion testimony to the court (and why they believe that such legal conclusion testimony is proper in Federal Court).

At the hearing, **XXXXXXX**

~~—————The Proposed First Amended Chapter 11 Plan complies with the provisions of 11 U.S.C. § 1129 and is confirmed.~~

~~—————Counsel for the Debtor in Possession shall prepare a proposed order confirming the Plan, which states all amendments to the Amended Plan stated in the Stipulation (Exhibit A, Dckt. 99) and as stated on the record at the confirmation hearing, with the Amended Plan (Dckt. 90) attached as an addendum thereto, and lodge the proposed order with the court.~~