

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

February 16, 2017, at 11:30 a.m.

1.	<u>16-90002</u>-E-11	1263 INVESTORS LLC Stephen Reynolds	CONFIRMATION OF AMENDED PLAN OF REORGANIZATION FILED BY DEBTOR 10-9-16 [71]
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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.

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

Correct Notice Not Provided. No Proof of Service for the Plan, Disclosure Statement, Disclosure Statement Order, and Ballot has been filed with the court. The court required that service of those documents be provided by January 11, 2017. Dckt. 100.

The Confirmation of Plan of Reorganization has not been properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Confirmation of Plan of Reorganization is denied without prejudice.
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NO PROOF OF SERVICE FILED

Debtor in Possession has not filed a Proof of Service indicating that the Plan, Disclosure Statement, Disclosure Statement Order, and Ballot were served by January 11, 2017, as the court required. Dckt. 100. Without proof that all required parties were served properly and timely, the court cannot confirm the Plan. Confirmation of the Plan of Reorganization is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

Confirmation of Plan of Reorganization filed by the Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Confirmation is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF DEBTOR IN POSSESSION PROVIDES PROOF THAT SERVICE WAS GIVEN TO ALL NECESSARY PARTIES ON OR BEFORE JANUARY 11, 2017

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

<u>January 11, 2017</u>	Plan, Disclosure Statement, Disclosure Statement Order, and Ballot Mailed
<u>February 10, 2017</u>	Last Day for Submitting Written Acceptances or Rejections
<u>February 10, 2017</u>	Last Day to File Objections to Confirmation
<u>February 13, 2017</u>	Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

Summary of Plan Terms

Creditor/Class	Treatment	
Unclassified Claim	Claim Amount	\$11,000.00
	Impairment	Unimpaired
	Expenses arising in the ordinary course of business—estimated current at confirmation paid in full on the Effective Date or according to terms of obligation if later	
	Professional Fees, as approved by the Court—estimated to be \$10,000.00 or less paid in full on Effective Date or according to separate written agreement or according to court order if such have not been approved by the court on the Effective Date	
Administrative Expenses	U.S. Trustee fees: estimated \$1,000.00 or less paid in full on Effective Date	

Unclassified Claim Priority Tax Claims	Claim Amount	\$0.00
	Impairment	Unimpaired
	<u>Internal Revenue Service</u> : Nothing due	
Class 1: The Bank of New York Mellon f/k/a The Bank of New York as successor in interest to JP Morgan Chase Bank, N.A. as Trustee for Structured Asset Mortgage Investment II Inc. Mortgage Pass-Through Certificates Series 2004-AR7. This claim is serviced by Nationstar Mortgage LLC	Secured Claim Amount	\$601,299.13
	Impairment	Impaired
	<p>Claim No. 2 was filed on May 11, 2016, in the amount of \$601,299.13 and is secured by a first priority deed of trust against real property commonly known as 7318 Crane Road, Oakdale, California.</p> <p>The property's value was determined to be \$486,500.00. Dckt. 56.</p> <p>Debtor in Possession plans to sell the property and use the proceeds to pay less than the amount of the Class 1 claim, which will require permission from the claim holder.</p> <p>Debtor in Possession anticipates that Class 1 will waive any unsecured portion of its claim and will receive more than it would if it were to exercise its foreclosure rights under the senior deed of trust.</p>	

Class 2: The Bank of New York Mellon f/k/a The Bank of New York as successor trustee to JP Morgan Chase Bank, N.A. as Trustee for the certificateholders of SWABS Master Trust, revolving home equity loan asset backed notes, series 2004-Q by assignment recorded July 26, 2012	Secured Claim Amount	\$0.00, 11 U.S.C. § 506(a) Valuation
	Impairment	Impaired
	<p>The property's value was determined to be \$486,500.00. Dckt. 56.</p> <p>Class 1, as senior lien, exceeds the property's value.</p> <p>There will be no distribution to Class 2, unless Class 2 files a proof of claim and shows an allowed claim.</p>	
Class 3: Bellavista Capital a/k/a Bella Vista Capital	Claim Amount	\$250,000.00
	Impairment	Impaired
	<p>The original claim amount is \$250,000.00 and is secured by a first priority deed of trust against property commonly known as 7348 Crane Road, Oakdale, California.</p> <p>Debtor in Possession anticipates selling the property to satisfy the Class 3 claim.</p> <p>Debtor in Possession believes that the value of the property is greater than the Class 3 claim.</p>	
Class 4: General Unsecured Claim	Claim Amount	\$96,163.00
	Impairment	Impaired
	<p>General unsecured claim holders will receive pro rata payment from the net proceeds of the sale of the 7348 Crane Road property.</p> <p>The sale is not expected to generate net proceeds to pay Class 4.</p>	
Class 5: Equity Security Holders	Claim Amount	
	Impairment	Unimpaired
	The equity security holders shall receive a distribution only in the event that Classes 3 & 4 are paid in full.	

Tabulation of Ballots:

The computation of voting for confirmation of a Chapter 11 plan is provided for in 11 U.S.C. § 1126, which provides in pertinent part provides (emphasis added):

“(c) A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, **that have accepted or rejected such plan.**”

Determining whether there are sufficient votes for a class of impaired creditors accepting a plan is based on those who have actually voted, not the total number of creditors in the class. COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 1126.04, provides the following summary of this section:

“P 1126.04 Acceptance by a Class of Creditors; § 1126(c)

Under section 1126(c), a class of claims accepts the plan if the plan is accepted by creditors holding at least two-thirds in amount and a majority in number of the allowed claims of the class that accept or reject the plan, other than claims disqualified under section 1126(e). Thus, only creditors that actually voted count in determining whether the requisite majorities in number and amount are met.”

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
Class 1 (Impaired)	For: 0 Against: 1	100%	100%
Class 2 (Impaired)	For: 0 Against: 0		
Class 3 (Impaired)	For: 1 Against: 0	100%	100%
Class 4 (Impaired)	For: 5 Against: 0	100%	100%
Class 5 (Impaired)	For: 1 Against: 0	100%	100%

CREDITOR'S OBJECTION

The Bank of New York Mellon f/k/a the Bank of New York as successor in interest to JP Morgan Chase Bank, N.A. as Trustee for Structured Asset Mortgage Investments II Inc. Mortgage Pass-Through Certificates Series 2004-AR7 (“Creditor”) filed an Objection on February

10, 2017. Dckt. 114. Creditor (listed in Class 1) argues that its treatment is not fair and equitable under 11 U.S.C. § 1129(b)(2)(A) because the Plan calls for a short sale of property within five years but without paying Creditor or property taxes and insurance during that time. Creditor objects that the Plan does not provide any redress for Creditor should a short sale not be pursued diligently.

Creditor also argues that the Plan is not feasible because of the five-year window to conduct a short sale. Creditor expects the amount received from a short sale to be less than its claim of \$601,299.13 and claims that the Plan terms are too vague and speculative about how Creditor is treated until a potential short sale. Additionally, Creditor objects to the Plan not providing for post-petition escrow advances, real property taxes, and real property hazard insurance.

PLAN PROPONENT'S DECLARATION

The Declaration of Daniel Shaw filed in support of confirmation provides evidence 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 application provisions of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

Evidence: Dckt. 116, pg. 1

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

Evidence: Dckt. 116, pg. 1–2

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

Evidence: Dckt. 116, pg. 2

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. 116, pg. 2

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. 117, pg. 5

6. Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

Evidence: Dckt. 116, pg. 2

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 [11U.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.116, pg. 2

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. 116, pg. 2

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. 116, pg. 2

(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. 116, pg. 2

(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. 116, pg. 2

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. 116, pg. 2

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. 116, pg. 2

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. 116, pg. 3

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. 116, pg. 3

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. 116, pg. 3

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. 116, pg. 3

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. xx, pg. x

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. xx, pg. x

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. xx, pg. x

(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. xx, pg. x

(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. xx, pg. x

DISCUSSION

Federal Rule of Bankruptcy Procedure 3020(b)(2) states:

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.

Here, Debtor in Possession has presented evidence in support of confirmation, but Creditor has objected. The Plan Proponent's Declaration states that Creditor's Objection can be addressed satisfactorily in the order confirming plan by placing a more stringent time limitation on the proposed short sale. No actual limitation has been proposed yet, however.

At the hearing, the parties proposed limiting the time for a short sale from five years down to **xxxx**. Creditor **accepted/rejected** the modification, and the Plan is **confirmed/not confirmed**.

2. **16-20852-E-11** **MATHIOPOULOS 3M FAMILY** **CONTINUED STATUS CONFERENCE**
 LIMITED PARTNERSHIP **RE: VOLUNTARY PETITION**
 Luke Hendrix **2-16-16 [1]**

Debtor's Atty: Luke Hendrix

The Status Conference is continued to 11:30 a.m. on xxxxxxxx, 2017.

Notes:

Continued from 2/2/17 to be heard in conjunction with the continued confirmation hearing.

FEBRUARY 16, 2017 STATUS CONFERENCE

The court having confirmed the Chapter 11 Plan in this case, the Status Conference is continued to allow time for the parties to address post-confirmation issues, including the filing of final fee applications.

3. [16-20852-E-11](#) **MATHIOPOULOS 3M FAMILY** **CONTINUED CONFIRMATION OF**
DNL-7 **LIMITED PARTNERSHIP** **PLAN OF REORGANIZATION FILED**
Luke Hendrix **BY DEBTOR-IN-POSSESSION**
11-9-16 [\[137\]](#)

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, creditors, parties requesting special notice, and Office of the United States Trustee on December 15, 2016. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

The Confirmation of Plan of Reorganization has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Confirmation of Plan of Reorganization is granted.

FEBRUARY 2, 2017 HEARING

At the hearing, the court continued the matter to 11:30 a.m. on February 16, 2017. Dckt. 190. Counsel for Debtor in Possession and Counsel for Wells Fargo Bank, N.A., discussed a proposed *in rem* order preventing the automatic stay from going into effect in any future bankruptcy case filed by or against the Debtor, or by any person who acquires an interest in the property after the *in rem* order is recorded.

The court requested that Wells Fargo Bank, N.A., file and serve on counsel for Debtor in Possession and the U.S. Trustee on or before February 10, 2017, a supplemental points and authorities presenting the legal basis for issuing such an *in rem* order that would be effective in subsequent bankruptcy cases and against persons who are not now before the court.

STIPULATION

Debtor in Possession and Wells Fargo Bank, N.A., filed a Stipulation on February 9, 2017. Dckt. 191. The Plan in Section 4.01 calls for in rem relief from the automatic stay be granted to Wells Fargo Bank, N.A., in this case and in any other bankruptcy case. The parties seek to modify Section 4.01 to remove reference of both the in rem order and also the binding effect in other cases and potentially against other parties not now before the court. The proposed section would now read as follows:

Wells Fargo shall be granted relief from the automatic stay as to the Penryn Property which will be binding in this bankruptcy case, including if the case is closed and reopened. An order, in the form attached hereto as Exhibit 1, will be entered at the same time as the Confirmation Order.

Stipulation, Dckt. 191.

The proposed order attached as Exhibit 1 (FN.1) prays for the court to grant the following relief:

- A. The automatic stay of 11 U.S.C. § 362 is hereby vacated as to Wells Fargo Bank, N.A. and any assignee, to permit Wells Fargo Bank, N.A. or any assignee to exercise any and all of their lawful remedies, lien rights and setoff rights under applicable non-bankruptcy law, as they apply to the Penryn Property, and any rents, issues and profits of the Penryn Property, and all personal property connected to, attached to or located on the Penryn Property.
- B. This order is binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy Code.

Exhibit 1, Dckt. 191.

DISCUSSION REGARDING STIPULATION

The Stipulation and proposed order are a standard order for relief from the stay in a bankruptcy case. The Parties are not attempting to have this court issue an order vacating the provisions of 11 U.S.C. § 362(a) as enacted by Congress with respect to a future bankruptcy case and the various parties in interest in the potential future bankruptcy case.

This Stipulation is consistent with the Plan terms and the good faith prosecution of this case by the Debtor in Possession and Wells Fargo Bank, N.A.

The proposed order does contain some surplusage language which the court is not inclined to include in the order terminating the automatic stay *in this bankruptcy case*. Debtor in Possession and Wells Fargo Bank, N.A. want to include the following additional language which apparently they believe is necessary in an order for relief from the automatic stay:

“2. This order is binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy Code.”

Proposed Order, Exhibit 1, Dckt. 191.

It appears that from this proposed *necessary* language Wells Fargo Bank, N.A. would be admitting that for all of the orders for relief from the automatic stay that it has obtained since October 1979 when the Bankruptcy Code went into effect, unless such language was used, if the case was converted then the automatic stay went back into effect as to Wells Fargo Bank, N.A. If so, then for the hundreds, thousands, or tens of thousands post-conversion foreclosures conducted by Wells Fargo Bank, N.A., such foreclosure sales are void, and the bank has violated the automatic stay.

The parties appear to imply that a stealth stay continues in existence after the stay is terminated by order of the court, waiting to spring to life and render a prior order of the court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

Fortunately for the **Bank**, this is not necessary language, and such violations did not occur. The automatic stay arises upon the filing of a petition in a bankruptcy case. 11 U.S.C. § 362(a). When a bankruptcy case is converted, the conversion constitutes an “order for relief” under the bankruptcy chapter for that case,”but, except as provided in subsections (b) and (c) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.” 11 U.S.C. § 348(a). FN.1.

FN.1. 11 U.S.C. § 348(b) relates to the “order for relief date,” not the filing of a petition. 11 U.S.C. § 348(c) addresses the application of 11 U.S.C. §§ 342 and 365(d), not the automatic stay, and again, only as they relate to the “order for relief,” not the filing of a petition.

This issue is addressed in COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 362.02, stating (emphasis added):

The stay is effective automatically and immediately upon the filing of a bankruptcy petition, whether voluntary, joint or involuntary. 1

Footnote 1. The stay does not arise automatically in a chapter 15 case commenced by the filing of a petition for recognition of a foreign proceeding under 11 U.S.C. § 1503, although section 1519 authorizes the court to issue a broad stay. See ch. 1519 *infra*. **In addition, conversion of a case from one chapter to another does not trigger a new automatic stay.** E.g., *In re State Airlines, Inc.*, 873 F.2d 264 (11th Cir. 1989) .

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court’s termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one’s pattern of making such requests as that lawyer’s concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

The request for an order that would be deemed binding upon any conversion of this case is not granted. FN.2.

FN.2. The court notes that this request for unnecessary relief appears to have a common thread in connection with other cases—Wells Fargo Bank, N.A. It would appear that some central clearing house is preparing documents for the bank’s attorneys and shipping it out to be used, without regard to whether there is a legal basis for the relief requested.

REQUIREMENTS FOR CONFIRMATION

The Mathiopoulos 3M Family Limited Partnership, the Debtor in Possession (“ΔIP”), and Plan Proponent has complied with the Service and Filing Requirements for Confirmation:

December 16, 2016 Plan, Disclosure Statement, Disclosure Statement Order, and Ballot Mailed

January 17, 2017 Last Day for Submitting Written Acceptances or Rejections

January 17, 2017 Last Day to File Objections to Confirmation

January 25, 2017 Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

Tabulation of Ballots:

The computation of voting for confirmation of a Chapter 11 plan is provided for in 11 U.S.C. § 1126, which provides in pertinent part provides (emphasis added):

“(c) A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, **that have accepted or rejected such plan.**”

Determining whether there are sufficient votes for a class of impaired creditors accepting a plan is based on those who have actually voted, not the total number of creditors in the class. COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 1126.04, provides the following summary of this section:

“P 1126.04 Acceptance by a Class of Creditors; § 1126(c)

Under section 1126(c), a class of claims accepts the plan if the plan is accepted by creditors holding at least two-thirds in amount and a majority in number of the allowed claims of the class that accept or reject the plan, other than claims disqualified under section 1126(e). Thus, only creditors that actually voted count in determining whether the requisite majorities in number and amount are met.”

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
Class 1 (Unimpaired)	For: 0 Against: 0		
Class 2 (Impaired)	For: 1 Against: 0	100%	100%
Class 3 (Impaired)	For: 1 Against: 0	100%	100%
Class 4 (Impaired)	For: 1 Against: 0	100%	100%
Class 5 (Impaired)	For: 1 Against: 0	100%	100% FN.1.
Class 6 (Impaired)	For: 1 Against: 0	100%	100%
Class 7 (Impaired)	For: 5 Against: 0	100%	100%
Class 8 (Unimpaired)	For: 0 Against: 0		

FN.1. On the Tabulation of Ballots filed by the ΔIP, there is one ballot listed in Class 5, with that one ballot voting for confirmation of the Plan. Dckt. 184. Though there was only one ballot, the ΔIP listed the dollar

amount voting for the plan to be only 50.92% and only 20% of the ballots in Class 5. If there was only one ballot, such percentages could not exist. Reviewing the Disclosure Statement, Dckt. 138, it indicates that there are five creditors in Class 5 and their claims total \$12,765.00. It appears that the DIP based the calculation on all creditors and claims in the class, not the creditors that have voted to accept (all) or reject (none) the plan.

The Declaration of Diane Mathiopoulos filed in support of confirmation provides evidence 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. 183, pg. 4

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

Evidence: Dckt. 183, pg. 4

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

Evidence: Dckt. 183, pg. 4–5

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. 183, pg. 5

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. 183, pg. 5

6. Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

Evidence: Dckt. 183, pg. 5

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 [11U.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. 183, pg. 5–6

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. 183, pg. 6

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. 183, pg. 6

(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. 183, pg. 6

(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. 183, pg. 7

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. 183, pg. 7

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. 183, pg. 7–8

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. 183, pg. 8

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. 183, pg. 8

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. 183, pg. 8

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. 183, pg. 8

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. 183, pg. 8

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. 183, pg. 8–9

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) 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:

(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. 183, pg. 9

(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:

DISCUSSION REGARDING CONFIRMATION

With respect to a hearing on confirmation of a Chapter 11 Plan, Federal Rule of Bankruptcy Procedure 3020(b)(2) states:

“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.”

No creditor has objected to the Plan of Reorganization, and Debtor in Possession has presented evidence in support of confirmation.

The Debtor in Possession has satisfied the requirements for confirmation, and the Chapter 11 Plan is confirmed.

Counsel for the Debtor in Possession shall prepare an order confirming the Chapter 11 Plan, with a copy of the confirmed Plan attached as an exhibit, and also lodge with the court the separate order granting relief from the automatic stay as provided in the Stipulation (excluding the request for a declaration that the stay will also be terminated if the case is converted), and lodge the two proposed orders with the court.