

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

April 9, 2015 at 3:00 p.m.

1. [14-20352](#)-E-11 PATRICK GREENWELL
PBG-5

CONFIRMATION OF CHAPTER 11 PLAN
OF REORGANIZATION FILED BY
DEBTOR
1-22-15 [[99](#)]

No Tentative Ruling: The hearing on confirmation of the Chapter 11 Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

The court's decision is to ~~xxxxxxxxxxxxxxxxxxxxxx~~.

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

February 17, 2015	Plan, Disclosure Statement, Disc Stmt Ord, and Ballot Mailed
March 17, 2015	Last Day for Submitting Written Acceptances or Rejections
March 17, 2015	Last Day to File Objections to Confirmation
March 27, 2015	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: Secured Tax Claims	For: 0 Against: 0	N/A	N/A
Class 2: All Other Secured Claims	For: 1 Against: 0	100%	100%
Class 3: Priority Claims	For: 0 Against: 0	N/A	N/A
Class 4: General Unsecured Claims	For: 0 Against: 0	N/A	N/A

Declaration of Patrick Greenwell and the Memorandum in Support of Confirmation of Plan of Reorganization by Debtor filed in support of confirmation provides evidence of the compliance with the necessary elements for confirmation in 11 U.S.C. § 1129:

PROPOSED PLAN TREATMENT

Creditor/Class	Treatment	
Unclassified Claims:	Claim Amount	
	Impairment	
	<p>Unclassified claims, such as costs of administering this bankruptcy case, generally are entitled to be paid in full on the Plan's Effective Date, which is defined in the Plan and should be a short time after the Plan is confirmed.</p> <p>The only obligation that falls into this category is the quarterly fee paid to the US Trustee. Debtor-in-Possession is current on that fee and will remain so.</p>	
Class 1: Secured Tax Claims	Claim Amount	\$47,331.00
	Impairment	Impaired

	<p>Internal Revenue Services (Claim #1)</p> <p>These claims will be bifurcated into: (1) a secured claim equal to the value of the property (in this Class 1) and (2) an unsecured claim for the remainder, sometimes called the "deficiency" claim will be treated as a General Unsecured claim (class 4).</p> <p>The Class 1 portion of this single claim will be paid the full liquidation value of the estate as detailed in Part3.F. That amounts of \$37,319. It will be paid monthly over 84 months at 3% interest or \$493.11 per month.</p>	
Class 2: All other Secured Claims	Claim Amount	\$16,934.64
	Impairment	Impaired
	<p>Steve & Gina Oliveria (Claim #5)</p> <p>This claim is currently paid monthly with 3.5 years remaining at 18% interest. It will be paid over 5 years with the interest rate reduced to 8% or \$283.87 per month. It will be paid from rental income through an arrangement with Springfield Flying Service.</p>	
Class 3: Priority Claims	Claim Amount	\$10,630.22
	Impairment	Impaired
	<p>Internal Revenue Service (Claim #1)</p> <p>This claim will be paid in full over the 7 years of the plan with a 3% interest rate. Monthly payments of \$140.46.</p>	
Class 4: General Unsecured Claims	Claim Amount	\$473,409.99
	Impairment	

	<p>Consists of "general" unsecured claims (claims that are not entitled to "priority" under the Bankruptcy Code and that are not secured by Collateral), which will receive, over time, the following estimated percentage of their claims: 0.00%</p> <p>Internal Revenue Service-Claim #1, Amount: \$306,273.32</p> <p>Internal Revenue Service(Deficiency)-Claim #1, Amount:\$10,012.00</p> <p>Franchise Tax Board- Claim #2, Amount: \$108,223.08</p> <p>Capital One Bank- Claim #3, Amount: \$286.75</p> <p>Capital One Bank- Claim #4, Amount: \$415.40</p> <p>Pacific Bell Telephone- Claim #6, Amount: \$240.22</p> <p>These claims will receive nothing under the plan. This class will receive no distribution and is presumed to reject the plan; this class is not entitled to vote on Debtor's Plan</p>
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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: Memorandum, Dckt. 122, pgs. 4-6

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

Evidence: Memorandum, Dckt. 122, pg. 6

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

Evidence: Memorandum, Dckt. 122, pgs. 6-7

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: Memorandum, Dckt. 122, pgs. 7

5. (A)(I) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation

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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: Memorandum, Dckt. 122, pgs. 7

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: Memorandum, Dckt. 122, pgs. 7

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 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: Memorandum, Dckt. 122, pgs. 7

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: Memorandum, Dckt. 122, pgs. 7

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: Memorandum, Dckt. 122, pgs. 8

(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: Memorandum, Dckt. 122, pgs. 8

(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 which 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: Memorandum, Dckt. 122, pgs. 8

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: Memorandum, Dckt. 122, pgs. 8

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: Memorandum, Dckt. 122, pgs. 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: Memorandum, Dckt. 122, pgs. 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, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title, 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: Memorandum, Dckt. 122, pgs. 9

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 become payable after the date of the filing of the petition.

Evidence: Memorandum, Dckt. 122, pgs. 9

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: Memorandum, Dckt. 122, pgs. 9

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: Memorandum, Dckt. 122, pgs. 9

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: Memorandum, Dckt. 122, pgs. 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: Memorandum, Dckt. 122, pgs. 10

(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: Memorandum, Dckt. 122, pgs. 10

(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.

INTERNAL REVENUE SERVICE'S OBJECTION

The Internal Revenue Service filed an objection to confirmation on March 17, 2015. Dckt. 117. FN.1. The Internal Revenue Service states that the Debtor-in-Possession proposes to pay the secured claim of the Internal Revenue Service but only to the extent of the liquidation value of the estate, which the Debtor-in-Possession alleges to be \$37,319.00. However, the Internal Revenue Service has filed a secured claim in the amount of \$47,331.00. At the time of the opposition, there was a Motion to Value the Secured Claim of the Internal Revenue Service set for hearing on March 19, 2015. The court granted the motion and the secured claim of the Internal Revenue Service was determined to be \$43,181.67. Dckt. 119.

The Internal Revenue Service also objects to the Debtor-in-Possession's proposed treatment of its priority claim. The amended plan proposes to pay the claim over seven years. The Internal Revenue Service argues that pursuant to 11 U.S.C. § 1129(a)(9)(C), the Internal Revenue Service's priority claim must be paid within five years from the date of the filing of the petition.

DEBTOR-IN-POSSESSION'S RESPONSE

The Debtor-in-Possession responded to the Internal Revenue Service's opposition in the Memorandum. Dckt. 122. The Debtor-in-Possession states that the concerns of the Internal Revenue Service can be resolved in the order confirming.

The court has valued the secured claim at \$43,181.67. The Debtor-in-Possession states that this amount is to be paid at 3% interest over seven years. The priority lien of the Internal Revenue Service is \$10,630.22, which is combined \$53,811.89. The Debtor-in-Possession argues that the two claims at issue are both Internal Revenue Service claims. By combining the two approved

claims together into one payment, the priority claim is paid off in 19 months which is under the 5 years under 11 U.S.C. § 1129(a)(9)(C).

Debtor-in-Possession states that he will make one payment of \$711.00 per month for seven years at an interest of 3%. The priority claim will be paid off in 19 months and the secured claim paid after that. This is less than \$100 per month more than originally proposed and can be accomplished through savings in other areas.

Debtor-in-Possession states that if the Internal Revenue Service prefers, Debtor-in-Possession can make \$200.00 per month payments on the secured claim and the balance on the priority. This would pay the priority claim within 28 months. The payment on the secured claim would terminate at 7 years.

DISCUSSION

The Internal Revenue Service's objection is well-taken. As the Amended Plan currently stands, the payment of the priority claim would take longer than the five years required by 11 U.S.C. § 1129(a)(9)(C).

At the hearing, xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

The proposed Amended Chapter 11 Plan of Reorganization filed on January 22, 2015 (Dckt. 99), does [not/]complies with the requirements of 11 U.S.C. §§ 1129 and 1123. All classes of claims have voted at least more than 50% in number and 2/3 in dollar amount of the voting creditors to accept the Chapter 11 Plan. The proposed Amended Chapter 11 Plan is [not] confirmed.

[Debtor-in-Possession shall prepare and lodge the court an order confirming the Chapter 11 Plan, with a copy of such confirmed plan attached as an exhibit to the proposed order.]

2. [12-28879](#)-E-11 ANNETTE HORNSBY
SK-5

CONFIRMATION OF AMENDED PLAN OF
REORGANIZATION FILED BY DEBTOR
12-31-14 [[332](#)]

No Tentative Ruling: The hearing on confirmation of the Chapter 11 Plan has been set on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

The Court's decision is to ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

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

January 14, 2015	Plan, Disclosure Statement, Disc Stmt Ord, and Ballot Mailed
February 13, 2015	Last Day for Submitting Written Acceptances or Rejections
February 13, 2015	Last Day to File Objections to Confirmation
March 10, 2015	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: Allowed Secured Claim of Wells Fargo Bank	For: 1 Against: 0	100%	100%
Class 2: Allowed Secured Claim of Stan Shore Trust	For: 1 Against: 0	100%	100%
Class 3: Franchise Tax Board	For: 0 Against: 0	N/A	N/A
Class 4: Allowed Secured Claim of Wells Fargo Bank	For: 0 Against: 0	N/A	N/A
Class 5: Allowed Secured Claim of Wells Fargo Bank	For: 0 Against: 0	N/A	N/A
Class 6: Allowed General Unsecured Claims	For: 0 Against: 0	N/A	N/A
Class 7: Equity	For: 0 Against: 0	N/A	N/A

Declaration of Sunita Kapoor and Brief in Support of Debtors' Amended Chapter 11 Plan of Reorganization filed in support of confirmation provides evidence of the compliance with the necessary elements for confirmation in 11 U.S.C. § 1129:

PROPOSED PLAN TREATMENT OF CLAIMS

Creditor/Class	Treatment	
Administrative Fees	Claim Amount	\$650.00
	Impairment	Impaired
	Under this plan, Administrative Expenses shall be paid in full on the effective date of the Plan.	
Attorney's Fees and Expenses not including retainer that are outstanding	Claim Amount	\$5,800.00
	Impairment	Impaired
	Under this Plan, Administrative expenses shall be paid in full on the effective date of the Plan. Debtor has provided a retainer of \$7,500.00.	

Priority Tax Claim, Internal Revenue Service	Claim Amount	\$6,359.92
	Impairment	Impaired
	The Plan provides for this claim to be paid with interest computed at 3% per annum, with monthly payments of \$120.27 (five year amortization).	
Class 1: Wells Fargo Bank, N.A.	Claim Amount	\$462,000.00
	Impairment	Impaired
	<p>Under the proposed plan, the Debtor will retain this property secured by Class 1 claimant.</p> <p>Debtor has obtained a loan modification. The new principal value of the note will be \$467,807.28, \$5,807.28 of the new principal shall be deferred and treated as a non interest bearing principal forbearance. The new principal balance less the deferred principal balance is \$462,000.00.</p> <p>The new interest rate is 4.125%. Under the plan, Debtor shall pay Wells Fargo Bank a monthly principal and interest payment of \$1,966.95 plus an escrow payment for taxes of \$1,006.19, which may adjust periodically. Debtor has also an insurance payment of \$120.00.</p> <p>The Debtor and Wells Fargo have entered into a stipulation allowing the Debtor in possession to use Wells Fargo's cash collateral for debt service and to pay towards the monthly mortgage installment. The docket entry for the stipulation is Dckt. 250.</p> <p>Claimant shall retain its lien on the collateral until the payment proposed under this plan is complete.</p> <p>In the event of a default, this Claimant may exercise all of its remedies available under applicable state law. Likewise, Debtor maintains all rights and protections of California Real Property and Foreclosure Law.</p>	
Class 2: Stan Shore Trust	Claim Amount	\$115,000.00
	Impairment	

	<p>Stan Shore Trust, Stan Shore Trustee ("Shore") claim is secured against the real property commonly known as 2319 Bennington Drive, Vallejo, California in the amount of \$115,000.00. On July 28, 2014, Shore made an election pursuant to 11 U.S.C. § 1111(b) (Dckt. 260.)</p> <p>Interest rate is 5.5% with payments amortized over 20 years for payments of principal and interest of \$791.07 per month. The balance of the Loan will be due in 10 years or upon sale or refinance of the property. Payments are due on the 1st and late after the 10th. If payments are late, the late fee is 6% - \$47.46. If there is more than one late payment in any consecutive six month period, the interest rate on the loan shall increase to 6.5%. There shall be no pre-payment penalty. Debtor will send the previous monthly statements from the senior to Shore every month. If the first is ever more than two months in arrear, Shore can bring the senior current and immediately proceed with a foreclosure action.</p>	
Class 3: Franchise Tax Board	Claim Amount	\$6,642.49
	Impairment	Impaired
	<p>A secured claim has been filed by the Franchise Tax Board in the amount of \$6,642.49. The Franchise Tax Board has agreed to Debtor making a monthly payment of \$125.60 including 3% interest, starting ten (10) days from the effective date of the plan.</p> <p>Claimant shall retain its lien on the collateral until the payment proposed under this plan is complete.</p> <p>In the event of a default, this Claimant may exercise all of its remedies available under applicable state law. Likewise, Debtor maintains all rights and protections of California Real Property and Foreclosure Law.</p>	

Class 4: Wells Fargo Bank, N.A.	Claim Amount	\$310,577.37
	Impairment	Impaired
	<p>The Moonraker Drive property has a value of \$212,000.00, pursuant to a stipulation with Wells Fargo, N.A. Dckt. 163.</p> <p>Wells Fargo Bank, N.A.'s first secured claim against this property is limited to \$212,000.00. The remaining portions of Wells Fargo Bank, N.A.'s first secured claim and second secured claim are now unsecured and shall receive the treatment of other general unsecured claims as described below in class 7.</p> <p>Under the Plan, Debtor shall pay Wells Fargo Bank, N.A. the full amount of its secured claim as follows:</p> <p>Monthly Payments of: \$1,057.61 for P&I and property taxes (\$456.67) for a total monthly payment of \$1,514.28.</p> <p>Calculated at 5.25% interest for a period of 40 years.</p> <p>Material default of either treatment includes missing a payment, as well as failure to maintain taxes and insurance post-confirmation. This default can be cured if, within 10 days of receiving notice of such default, Debtor makes the payment.</p> <p>Claimant shall retain its lien on the collateral until the payment proposed under this plan is complete.</p> <p>Material default of either treatment includes missing a payment, as well as failure to maintain taxes and insurance post-confirmation. This default can be cured if, within 10 days of receiving notice of such default, Debtor makes the payment.</p> <p>Payments begin on the 1st of the month, following the effective date of Debtor's Plan.</p> <p>In the event of a default, this Claimant may exercise all of its remedies available under applicable state law. Likewise, Debtor maintains all rights and protections of California Real Property and Foreclosure Law.</p>	
Class 5: Wells Fargo Bank, N.A.	Claim Amount	\$310,577.37
	Impairment	Impaired
	<p>Wells Fargo Bank, N.A. second Deed of Trust secured against the real property commonly known as 2319 Bennington Drive, Vallejo, California is determined to</p>	

Class 6: General Unsecured Class (including unsecured portions of claims by secured creditors)	Claim Amount	\$256,277.23
	Impairment	Impaired
	<p>Debtor shall make sixty (60) monthly payments to the general unsecured class. Each participating member of the unsecured call shall receive a pro rata share of these monthly payments in accordance with the ration in the amount of their claim against the Debtor and the total overall amount of the general unsecured claims against the Debtor.</p> <p>Unsecured creditors will receive a <i>pro rate</i> share of all of Debtor's disposable income left over after payment of Debtor's personal expenses and plan payments.</p> <p>Payments to begin on the 1st of the month following the effective date of Debtor's Plan.</p>	
Class 7: the interest of the individual Debtor in the Property of the Estate	Claim Amount	
	Impairment	
	<p>Debtor shall retain all property of the estate and any other property to which the Debtor had a right to prior to filing Bankruptcy and to which Debtor's may obtain rights to receive in the future.</p> <p>Application to Absolute Priority</p> <p>Rule: Debtor submits that the absolute priority rule does not bar the viability of this Plan under the particular circumstances of the case.</p> <p>Pursuant to 11 U.S.C. § 1129(b)(2)(B)(ii): "The Absolute priority rule does not apply to an individual Chapter 11 Debtor, provided the plan allocates at least 5 years worth of the Debtor's projected disposable income to fund plan payments to unsecured creditors" March & Ahart, CAL. PRAC. GUID: BANKRUPTCY, § 11:1634.1; (The Rutter Group 2010).</p> <p>Debtor filed Chapter 11 in her individual capacity. As discussed below, Debtor proposes to apply all of her disposable income for the five year duration of the plan to make payments to unsecured creditors. Therefore, the restrictions of the absolute priority rule should not limit the plan.</p>	

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: Brief, Dckt. 342, pg. 4-8

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

Evidence: Brief, Dckt. 342, pg. 8

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

Evidence: Brief, Dckt. 342, pg. 8

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: Brief, Dckt. 342, pg. 9

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: Brief, Dckt. 342, pg. 9

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: Brief, Dckt. 342, pg. 9

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 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: Brief, Dckt. 342, pg. 9-10

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: Brief, Dckt. 342, pg. 10

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: N/A

(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: N/A

(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 which 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: Brief, Dckt. 342, pg. 10

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 y any insider.

Evidence: Brief, Dckt. 342, pg. 10

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: Brief, Dckt. 342, pg. 10-11

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: Brief, Dckt. 342, pg. 12

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, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title, 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: Brief, Dckt. 342, pg. 12

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

Evidence: Brief, Dckt. 342, pg. 12

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: Brief, Dckt. 342, pg. 12

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: Brief, Dckt. 342, pg. 12

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: Brief, Dckt. 342, pg. 10

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: Brief, Dckt. 342, pg. 12

(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: Brief, Dckt. 342, pg. 12

(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.

DISCUSSION

The proposed Amended Chapter 11 Plan of Reorganization filed on December 31, 2014 (Dckt. 332), complies with the requirements of 11 U.S.C. §§ 1129 and 1123. All voting classes of claims have voted at least more than

50% in number and 2/3 in dollar amount of the voting creditors to accept the Chapter 11 Plan. The proposed Amended Chapter 11 Plan is confirmed.

Debtor-in-Possession's counsel shall prepare and lodge the court an order confirming the Chapter 11 Plan, with a copy of such confirmed plan attached as an exhibit to the proposed order.