

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

February 2, 2017, at 11:30 a.m.

1.	<u>16-20852</u>-E-11	MATHIOPOULOS 3M FAMILY LIMITED PARTNERSHIP Luke Hendrix	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 2-16-16 [1]
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Debtor's Atty: J. Luke Hendrix

Notes:

Continued from 12/7/16 to be heard in conjunction with the confirmation hearing.

Operating Report filed: 12/16/16; 1/17/17

[DNL-1] Order granting use of cash collateral through 3/31/17 and setting 3/9/17 continued hearing filed 1/13/17 [Dckt 174]

[DNL-8] Order granting motion to approve compromise with Ron Texeira and Mary Arbegast filed 1/17/17 [Dckt 177]

2. [16-20852-E-11](#) **MATHIOPOULOS 3M FAMILY** **CONFIRMATION OF PLAN OF**
 DNL-7 **LIMITED PARTNERSHIP** **REORGANIZATION FILED BY**
 Luke Hendrix **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.

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 ΔIP 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

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 Plan or Reorganization is confirmed.