

Eastern District of California

February 6, 2014 at 3:00 p.m.

- February 6, 2014 at 3:00 p.m.**
- Page 1 of 36 -

effort made to send the notice to any office for that entity in which there could be an officer, partner, managing member, or agent for service of process. Examples include:

- (1) Dell Financial Services - mailed to a post office box.
- (2) Wells Fargo Bank, N.A. - mailed to post=office boxes and to a law firm. Nothing sent by certified mail and not sent to the address provided by either the FDIC or the California Secretary of State for this federally insured financial institution.
- (3) Navy Federal Credit Union - mailed to a post office box.
- (4) GE Capital Retail Bank - not certified mail and mailed to a post office box.

Service upon a post office box is deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); see also *Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

REVIEW OF THE DISCLOSURE STATEMENT

Case filed: December 20, 2012

Background: Debtors-in-Possession are individuals. Mr. Brown is employed full time as a federal law enforcement officer while Mrs. Brown is not employed outside of the home. Debtors in Possession have two residential rentals. Mr. Brown will be eligible for retirement during the term of the plan. Debtors in Possession anticipate that Mr. Brown's retirement earnings and rental income will be adequate to fund the proposed plan. This case was precipitated by significant loss in equity in the residential rental home while expenses for the rentals exceeded projections. Debtors in Possession state that this resulted in unsecured borrowing to maintain the rentals as well as the family residence.

Summary of Plan:

Creditor/Class	Treatment	
Class 1 Ally Bank Secured by Chevy Cruz	Claim Amount	
	Impairment	Unimpaired
	Monthly payments in the contract amount of \$220.	

Class 2 Bank of America, N.A. Secured by first deed of trust on 2000 Daybreak Court, Fairfield, California (Debtors' residence)	Claim Amount	
	Impairment	Unimpaired
	Monthly payments in the contract amount of \$2,469.89.	
Class 3 Nationstar Secured by first deed of trust on 1943 Northwood Drive, No. 1, Vacaville, California	Claim Amount	
	Impairment	Unimpaired
	Monthly payments in the contract amount of \$399.20.	
Class 4 Pentagon Federal Credit Union Secured by third deed of trust on 2000 Daybreak Court, Fairfield, California (Debtors' residence)	Claim Amount	
	Impairment	Impaired
	Secured portion of the claim was determined to be zero by order of this court entered January 24, 2013. The unsecured portion will be treated as a Class 7 general unsecured claim.	
Class 5 Self Help Federal Credit Union Secured by second deed of trust on 2000 Daybreak Court, Fairfield, California (Debtors' residence)	Claim Amount	
	Impairment	Impaired
	The secured portion of the claim was determined to be zero by order of this Court entered January 24, 2013. The unsecured portion shall be treated as a Class 7 general unsecured claim.	

Class 6 Acura Financial Services secured by 2012 Acura MDX	Claim Amount	
	Impairment	Unimpaired
	Secured claim to receive monthly payments in contract amount of \$828.00.	
Class 7 Redwood Credit Union Secured by Honda Odyssey	Claim Amount	
	Impairment	Unimpaired
	Secured claim to receive monthly payments in the contract amount of \$176.00.	
Class 8 General Unsecured Creditors	Claim Amount	
	Impairment	Impaired
	To receive monthly distributions from income of Debtor for 60 months following Effective Date of the Plan. Debtor to pay no less than \$750.00 per month. First administrative priority claims will be paid first, then pro rata to general unsecured creditors.	

A. C. WILLIAMS FACTORS PRESENT

- Y Incidents that led to filing Chapter 11
- Y Description of available assets and their value
- Y Anticipated future of the Debtor
- N Source of information for D/S
- Y Disclaimer
- Y Present condition of Debtor in Chapter 11
- Y Listing of the scheduled claims
- Y Liquidation analysis
- N Identity of the accountant and process used
- Y Future management of the Debtor
- Y The Plan is attached

In re A.C. Williams, 25 B.R. 173 (Bankr. N.D. Ohio 1982); see also *In re Metrocraft*, 39 B.R. 567 (Bankr. N.D. Ga. 1984).

BACKGROUND

1. Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).
2. "Adequate information" means information of a kind, and in sufficient detail, so far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).
3. Courts have developed lists of relevant factors for the determination of adequate disclosure. *E.g., In re A.C. Williams, supra.*
4. There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567 (Bankr. N.D.Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. *In re Michelson*, 141 B.R. 715, 718-19 (Bankr. E.D.Cal. 1992).
5. The court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D.Pa. 1982).

ANALYSIS

Though no creditor has filed an opposition, the court has identified several items which must be addressed by the Debtors in Possession.

Treatment of Administrative Expenses and Priority Claims

Debtors-in-Possession do not address the administrative expenses, such as professional fees, including attorney fees and how these are to be treated in the plan. Taken on its face, the combined disclosure statement and plan provide that no administrative expenses have been paid and that counsel has worked pro bono for the benefit of his client and creditors. Clearly, this is not a pro bono case for this counsel and he should not be expected to work for free.

Treatment of Secured Claims

Second, it is unclear whether Debtors in Possession have provided for all scheduled claims. The court's review of the Claims Register indicates that there are secured claims (such as that of Wells Fargo Bank, N.A., Claim No. 9) which are not discussed in the Plan or Disclosure Statement:

(1) Proof of Claim No. 16 - Wells Fargo Bank, N.A., secured claim in the amount of \$372,834.22. The collateral is stated to be the real property commonly known as 2000 Day Break Court, Fairfield, California. This appears to be the Class 2 claim for which Bank of America, N.A. is identified as the creditor.

(2) Proof of Claim No. 9 - Wells Fargo Bank, N.A., secured claim in the amount of \$6,605.87. The collateral is stated to be "QUALITY FIRST HOME IMPROVE," with the nature of the property checked to be "other." The basis of perfection is stated to be "sales contract." The attachment to Proof of Claim No. 9 states that the lien is a Purchase Money Security Interest for unidentified items purchased from Quality First Home Improve.

(3) The Class 1 creditor is identified as Ally Bank. However, Proof of Claim No. 3 has been filed by an entity identified as Ally Financial, Inc. The FDIC on-line directory for federally insured financial institution lists Ally Bank and Ally Financial, Inc. as a related entity thereto. It appears that the Plan and Disclosure Statement make provision for payment to a non-creditor in this case.

PROPOSED AMENDMENTS AT THE HEARING

At the hearing, the Debtor in Possession proposed the following Amendments:

Class 1: Will amend to identify, and properly serve, the creditor - Ally Financial, Inc.

Class 2: Will amend to identify creditor as Wells Fargo Bank, Trustee, as successor to Bank of America N.A.

For Proof of Claim Number 9, which is for home improvement on the property. The Debtor shall amend the plan and disclosure statement to provide for this as a disputed claim, and shall file an objection to the secured claim.

AMENDED DISCLOSURE STATEMENT

The Debtor filed an amended disclosure statement on January 17, 2014, with the proposed amendments as stated at the prior hearing. Dckt. 126.

The Disclosure Statement provides adequate information for creditors to determine whether they should approve or reject the proposed plan and the Disclosure Statement is approved.

A. Marvin and Arnelle Brown, the "Plan Proponent," shall serve the approved disclosure statement, proposed plan, notice of confirmation hearing, a copy of this order approving the disclosure statement, and ballot on or before **xxxxx, 2014**.

B. Ballots shall be returned to counsel for the Plan Proponent on objections to confirmation, if any, filed and served on or before

xxxxxx, 2014.

C. The Ballot Tabulation Summary, evidence in support of confirmation, and Responses to objections to confirmation, if any, shall be filed and served on or before xxxxxx, 2014.

D. The Confirmation Hearing shall be conducted at 3:xx p.m. on xxxxxx, 2014.

A. The [name of plan proponent], the "Plan Proponent," shall serve the approved disclosure statement, proposed plan, notice of confirmation hearing, a copy of this order approving the disclosure statement, and ballot on or before xxxxxx, 2014.

B. Ballots shall be returned to counsel for the Plan Proponent on objections to confirmation, if any, filed and served on or before xxxxxx, 2014.

C. The Ballot Tabulation Summary, evidence in support of confirmation, and Responses to objections to confirmation, if any, shall be filed and served on or before xxxxxx, 2014.

D. The Confirmation Hearing shall be conducted at 3:xx p.m. on xxxxxx, 2014.

2. [12-39515](#)-E-11 WATSON COMPANIES, INC.

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
11-5-12 [[1](#)]

Debtor's Atty: W. Steven Shumway

Notes:

Final Ruling: The Plan Administrator under the Confirmed Chapter 11 Plan having filed a motion to administratively consolidate this case, **the Status Conference is continued to 10:30 a.m. on February 27, 2014.** No appearance at the February 6, 2014 Status Conference is required.

Continued from 11/13/13

Operating Report filed: 11/21/13, 1/15/14

[JHK-1] Motion to Approve Stipulation Between Ford Motor Credit Company, LLC and Watson Companies, Inc. for Relief from the Automatic Stay and Annulment of the Automatic Stay filed 10/15/13 [Dckt 158]; Order granting filed 11/23/13 [Dckt 173]

[WSS-3] Motion for Interim Compensation to Counsel for Debtor filed 11/19/13 [Dckt 165]; Order granting filed 1/11/14 [Dckt 179]

[RHS-1] Amended Order Approving Plan of Reorganization filed 1/9/14 [Dckt 178]

[WSS-4] Motion for Final Decree Closing Case filed 1/14/14 [Dckt 181], set for hearing 2/27/14 at 10:30 a.m.

3. [12-36419](#)-E-11 KFP-LODI, LLC

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
9-10-12 [[1](#)]

Debtor's Atty: Scott A. CoBen

Notes:

Continued from 11/7/13 to be conducted in conjunction with the confirmation hearing on the Chapter 11 Plan.

Operating Reports filed: 11/14/13, 12/17/13, 1/17/14

Amended Plan filed 11/15/13 [Dckt 349]
Disclosure Statement filed 11/15/13 [Dckt 350]

Amended Plan filed 11/22/13 [Dckt 357]
Disclosure Statement filed 11/22/13 [Dckt 358]

Order Approving Disclosure Statement filed 12/2/13 [Dckt 361], set for hearing 2/6/14 at 3:00 p.m.

4. [12-36419](#)-E-11 KFP-LODI, LLC
Scott A. CoBen

CONFIRMATION OF THIRD AMENDED
PLAN OF REORGANIZATION BY
DEBTOR
11-22-13 [[357](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, all creditors, and Office of the United States Trustee on January 21, 2013.

Tentative Ruling: The Motion to Confirm has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

The court's tentative decision is to xxxx the Motion to Confirm. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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

<u>12-6-13</u>	Plan, Disclosure Statement, Disc Stmt Order, and Ballots Mailed
<u>1-6-14</u>	Last Day for Submitting Written Acceptances or Rejections
<u>1-6-14</u>	Last Day to File Objections to Confirmation
<u>1-21-14</u>	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 County of San Joaquin - Secured	For: 1 Against: 0	100%	100%
Class 2 Terra Cotta Realty Fund, LLC - Secured	For: 1 Against: 0	100%	100%
Class 3 SGB I, LLC - Secured	For: 1 Against: 0	100%	100%

Class 4 Navin Patel - Secured	For: 1 Against: 0	100%	100%
Class 5 Zions First National Bank - Secured	For: 1 Against: 0	100%	100%
Class 6 Community Reinvestment Fund - Secured	For: 1 Against: 0	100%	100%
Class 7 Navin Patel - Secured	For:1 Against: 0	100%	100%
Class 8 General Unsecured	For: 0 Against: 0	0%	0%
Class 9 Interest of Debtor	For: 0 Against: 0	0%	0%

Declaration of Kyu Kim, representative of Debtor-in-Possession, filed in support of confirmation provides evidence of the 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:

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

Evidence:

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

Evidence:

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:

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:

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:

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 date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 701 et seq., on such date; or

(B) if section 1111(b)(2) of this title [11 USCS § 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:

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:

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:

(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:

(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:

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:

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:

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:

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 USCS § 1114], at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title [11 USCS § 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:

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.
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:

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:

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:

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:

(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.

CRAMDOWN

The court notes that all classes of creditors have voted for the plan with the exception of the unsecured creditors in Class 8. Debtor-in-Possession asserts that the plan provides the following treatment for the \$100,000 Class 4 of Navin Patel: "this claim is a fully under secured claim and shall be treated as a regular Class 8 unsecured claim." Further, Debtor believes Pacific Gas and Electric Company ("PG&E") will withdraw its claim and Choice Hotels International, Inc. will reduce its claim and belatedly vote for the plan. Debtor states if these things occur, Class 8 will also have accepted the plan and cram down will not be required.

However, from a review of the docket, it does not appear that PG&E has withdrawn its claim or that Choice Hotels International, Inc. has reduced its claim or belatedly vote for the plan. Therefore, confirmation will proceed by "cram down."

The Class 8 creditors holding general unsecured claims have voted not to accept the plan. The Bankruptcy Code provides in 11 U.S.C. § 1129(b) [emphasis added],

(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.**

(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:

...

(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.

This commonly referred to as a "cramdown" on the non-accepting classes. After a specific request for nonconsensual confirmation, and a showing that all other confirmation requirements of section 1129(a) are met, section 1129(b)(1) requires that the plan proponent prove, as to the dissenting class, that the plan is both fair and equitable and not unfairly discriminatory. 11 U.S.C. § 1129(b)(2) assists in this determination by providing specific examples of possible fair and equitable treatment. The Ninth Circuit has adopted the following test: after looking at all the facts and circumstances, the court examines (1) whether the discrimination is supported by a reasonable basis; (2) whether the debtor can confirm and consummate a plan without the discrimination; (3) whether the discrimination is proposed in good faith; and (4) the treatment of the classes discriminated against. *Liberty Nat'l Enters. v. Ambanc La Mesa Ltd. Pshp.* (*In re Ambanc La Mesa Ltd. Pshp.*), 115 F.3d 650 (9th Cir. Ariz. 1997).

The Plan provides for these Class 8 General Unsecured Claims to receive no distribution under the plan.

CONCLUSION

The court's decision is to ----- the Chapter 11 Plan of Reorganization.

5. [12-36419](#)-E-11 KFP-LODI, LLC
RPG-1 Scott A. CoBen

CONTINUED AMENDED MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-24-13 [[245](#)]

SGB1, LLC VS.

CONT. FROM 11-7-13, 9-18-13, 8-29-13, 8-8-13, 7-25-13

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the 20 largest unsecured claims, and Office of the United States Trustee on June 12, 2013. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

No Tentative Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor having filed an opposition, the court will address the merits of the motion at the hearing.

The court's tentative decision is to xxxx. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

PRIOR HEARINGS

SGB1, LLC seeks relief from the automatic stay with respect to the real property commonly known as 16855 Old Harlan Road, Lathrop, California. The moving party has provided the Declaration of Timothy R. Ault to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Ault Declaration states that the Debtor has not made 9 post-petition payments, with a total of \$142,093.35 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$5,447,821.74 (including \$3,682,293.83 secured by movant's second trust deed), as stated in the Ault Declaration, while the value of the property is determined to be \$2,360,000.00, as stated in Schedules A and D filed by Debtor.

Additionally, Creditor argues that the Debtor's proposed plan is unrealistic, violative of priority rules, and that the proposed interest rate is too low. Here, Creditor objects to Debtor's plan to pay the unsecured part of the claim over 40 years without interest, and to pay the secured part of the claim over 30 years at 4.75% interest rate. Creditor argues that they will not accept such a plan and will object to confirmation, and because no confirmable plan is proposed, the property in question is not necessary for reorganization.

Debtor's Response

Debtor argues that the Ault Declaration is faulty, in violation of Rule 602 of the Federal Rules of Evidence because Mr. Ault has no basis of personal knowledge for what he declares, regarding the case, the sales and assignments, the notice of default filed by Creditor itself. FN.1.

FN.1. The Declaration states that Timothy R. Ault is "[t]he authorized representative of SGB1, LLC. I have personal knowledge of the facts set forth in this declaration and if called upon as a witness I could and would competently testify thereto." Declaration ¶ 2. Mr. Ault does not state in what capacity he is the "authorized representative" of SGB1, LLC. Possibly he could be the managing member and responsible for all operational and financial matters for Movant. Alternatively, he could be a property manager or third-party contractor who is engaged merely to deal with assisting counsel in the litigation and have no personal knowledge concerning SGB1, LLC. From the Declaration the court has no way to determine how Mr. Ault could have such knowledge and give significant credibility to his testimony concerning his "personal knowledge" factual statements.

Furthermore, Debtor argues that the declaration was not made under penalty of perjury. An examination of the final page of the Ault Declaration reveals that it was in fact under penalty of perjury. Dckt. 238.

Additionally, Debtor argues that the Creditor has failed to correctly file their Motion separate from the points and authorities. However, a review of the amended motion, Dckt. 245, reveals that the Creditor has provided a motion separate from the Memorandum of Points and Authorities. FN.2.

FN.2. While the Debtor is correct that the original "motion" was a combined motion/points and authorities (a "Mothorities"), creditor filed an amended motion, Dckt. 245, on June 24, 2013, three days after filing the Mothorities. The Amended Motion clearly states the grounds upon which Movant asserts that relief is proper, unencumbered by extensive citations, quotations, legal arguments, factual arguments, evidentiary arguments, and economic arguments.

Finally, the Debtor argues that the Creditor's contention that the mere lack of equity is "cause," as set forth in 11 U.S.C. § 362(d)(1) is without merit. Debtor argues that while there is no equity in the subject property, lack of equity alone is not grounds for relief from stay under 11 U.S.C. § 362(d)(1).

Lastly, Debtor argues that the second element of 11 U.S.C. § 362(d)(2), whether the property is necessary for reorganization, is not met. Debtor states that the properties are necessary for their reorganization, namely operating hotel properties. Debtor states the plan and disclosure statement have been filed and set for August 8, 2013. Debtor argues that the issue is not whether any specific plan is confirmable, but rather that the property is necessary for reorganization, and that the Debtor is able to reorganize. Debtor argues against Creditor's contentions

that their plan is not confirmable, and states that it is in fact attempting to negotiate with the Creditors to reach an amicable conclusion.

Creditor's Reply

Creditor confirms correspondence with Debtor, stating that it would respectfully request that both this Motion and Terra Cotta's stay motion be continued to August 8, 2013 hearing to track plan confirmation as suggested by Debtor. Creditor states that Debtor will either be able to resolve issues with Terra Cotta or seek a cramdown.

Creditor also states that Debtor sent two \$5,800 adequate protection payments which have been held, as there is no adequate protection order in place. Creditor seeks authority to cash these checks as well as any future checks as adequate protection payments.

Prior Discussion

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2).

There must be a "reasonable possibility of a successful reorganization with a reasonable time." *Id.* The debtor fails to show necessity of the property for an effective reorganization if the debtor's plan is unsupported by credible assumptions and projections that offer some basis for confidence that the plan could succeed. *In re Pegasus Agency, Inc.*, 101 F. 3d 882 (2d Cir. 1996). Courts usually require the debtor to do more than manifest unsubstantiated hopes for a successful reorganization. A debtor must do more than merely assert that it can reorganize if only given the opportunity to do so. *Sun Valley Newspapers v. Sun World Corp. (In re Sun Valley Newspapers)*, 171 B.R. 71 (B.A.P. 9th Cir. Ariz. 1994).

Here, Debtor has filed a proposed plan and a disclosure statement, which is set for hearing on August 8, 2013. Debtor has shown that meaningful negotiations have taken place since the prior motions for relief.

CONTINUANCES

As negotiations were still ongoing, and the plan's confirmation was pending on hearings, the court's continued the hearing on the Motion for Relief from the Automatic Stay.

On September 13, 2013, the Parties filed a Stipulation that the parties are negotiating a resolution of the Debtor's in Possession motion to value the SBF1, LLC secured claim, and that the time for this creditor to

file an opposition to the Motion was extended to September 16, 2013. A review of the court's docket on September 17, 2013, does not reflect an opposition being filed. From this, the court infers that the parties have resolved this dispute.

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.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, the consent of the Movant to continue the hearing to August 8, 2013 to be conducted in conjunction with a hearing on a motion for approval of a disclosure statement in this case, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion for Relief from the Automatic Stay is xxxx.

6. 12-36419-E-11 KFP-LODI, LLC CONTINUED MOTION FOR RELIEF
TMG-2 Scott A. CoBen FROM AUTOMATIC STAY
6-27-13 [[249](#)]
TERRACOTTA REALTY FUND, LLC
VS.

CONT. FROM 11-7-13, 9-18-13, 8-29-13, 8-8-13, 7-25-13

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the 20 largest unsecured claims, and Office of the United States Trustee on June 27, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

No Tentative Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor having filed an opposition, the court will address the merits of the motion at the hearing.

The court's tentative decision is to xxxx. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

PRIOR HEARING

TerraCotta Realty Fund, LLC seeks relief from the automatic stay with respect to the real property commonly known as 16855 Old Harlan Road, Lathrop, California. The moving party has provided the Declaration of TingTing Zhang to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Zhang Declaration states that the Debtor has not made 2 post-petition payments, with a total of \$12,246.25 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$4,431,967.90 (including \$1,558,878.49 secured by movant's first trust deed), as stated in the Zhang Declaration, while the value of the property is determined to be \$2,360,000.00, as stated in Schedules A and D filed by Debtor.

Creditor argues that the property in question meets the requirements under 11 U.S.C. §362 (d) (2), that there is no equity in the property in question, and that the property is not necessary for reorganization, as the plan is patently faulty and "debtor has no hope of reorganizing". Dckt 252. Primarily, the Creditor's object to the interest rate paid under the proposed plan and state that Creditors will object to confirmation of such a plan, thus stating that the plan is unconfirmable.

Debtor's Response

First, Debtor argues that the Creditor does in fact have adequate protection, as it is properly protected by the equity cushion between the valuation at \$2,260,00.00 and the total debt owed at \$1,781,967.00.

Debtor argues that they have engaged in meaningful negotiations with Creditors and that the confirmation of the plan is pending on hearings continued to August 8, 2013. Debtor responds that if the negotiations fall through or are not completed in a reasonable amount of time the Creditor can file another relief from stay.

Creditor's Reply

Creditor states that it is currently investigating two payments made to the Creditor, which Debtor states were not accounted for. Creditor requests that this Motion be continued.

CONTINUANCES

The court continued the hearing to track plan confirmation and to allow Creditor to investigate the two pending payments.

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.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, the consent of the Movant to continue the hearing to August 8, 2013 to be conducted in conjunction with a hearing on a motion for approval of a disclosure statement in this case, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is xxxx.

7. [13-26159](#)-E-11 IVAN RAVLOV

**CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
5-3-13 [[1](#)]**

Debtor's Atty: Scott A. CoBen

Notes:

Continued from 11/7/13 to be heard in conjunction with the hearing on the confirmation of the proposed Chapter 13 Plan.

Operating Report filed: 11/13/13, 12/16/13, 1/14/14

Amended Plan filed 11/12/13 [Dckt 289]
[SAC-24] Disclosure Statement filed 11/12/13 [Dckt 290]

8. [13-26159](#)-E-11 IVAN RAVLOV
Scott A. CoBen

**CONFIRMATION OF AMENDED PLAN OF
REORGANIZATION FILED BY DEBTOR
11-12-13 [[289](#)]**

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, all creditors, and Office of the United States Trustee on January 21, 2013.

Tentative Ruling: The Motion to Confirm has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

The court's tentative decision is to xxxx the Motion to Confirm. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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

<u>12-6-13</u>	Plan, Disclosure Statement, Disc Stmt Order, and Ballots Mailed
<u>1-6-14</u>	Last Day for Submitting Written Acceptances or Rejections
<u>1-6-14</u>	Last Day to File Objections to Confirmation
<u>1-21-14</u>	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 1 507(a) (8) Priority	For: 0 Against: 0	0%	0%
Class 2 City of West Sacramento - Secured	For: 0 Against: 0	0%	0%
Class 3 Deutsche Bank National Trust Co, As Trustee - Secured	For: 0 Against: 1	0%	0%
Class 4 Chase - Secured	For: 0 Against: 0	0%	0%
Class 5 Bank of America, N.A. - Secured	For: 0 Against: 0	0%	0%
Class 6 Wells Fargo Bank, N.A. - Secured	For: 0 Against: 0	0%	0%
Class 7 Sacramento County Utilities - Secured	For: 0 Against: 0	0%	0%

Class 8 Allied Water Company - Secured	For: 0 Against: 0	0%	0%
Class 9 Citrus Heights Water District - Secured	For: 0 Against: 0	0%	0%
Class 10 Deutsche Bank National Trust Co, as Trustee - Secured	For: 0 Against: 0	0%	0%
Class 11 Deutsche Bank National Trust Co, as Trustee - Secured	For: 1 Against: 0	100%	100%
Class 12 Chase - Secured	For: 0 Against: 0	0%	0%
Class 13 Golden One Credit Union - Secured	For: 1 Against: 0	100%	100%
Class 14 Sacramento County Utility District - Secured	For: 0 Against: 0	0%	0%
Class 15 Allied Water Company - Secured	For: 0 Against: 0	0%	0%
Class 16 Citrus Heights Water District - Secured	For: 0 Against: 0	0%	0%
Class 17 Wells Fargo Bank, N.A. - Secured	For: 1 Against: 0	100%	100%

Class 18 Sacramento County Utility District - Secured	For: 0 Against: 0	0%	0%
Class 19 Allied Water Company - Secured	For: 0 Against: 0	0%	0%
Class 20 California American Water Company - Secured	For: 0 Against: 0	0%	0%
Class 21 Union Bank - Secured	For: 1 Against: 0	100%	100%
Class 22 U.S. Bank, N.A. - Secured	For: 1 Against: 0	0%	0%
Class 23 General Unsecured Claims	For: 0 Against: 0	0%	0%
Class 24 Debtor's Equity Interest	For: 0 Against: 0	0%	0%

Declaration of Ivan Ravlov, Debtor-in-Possession, filed in support of confirmation provides evidence of the 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:

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

Evidence:

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

Evidence:

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:

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:

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:

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 date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 701 et seq., on such date; or
- (B) if section 1111(b)(2) of this title [11 USCS § 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:

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:

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:

(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:

(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:

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:

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:

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:

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 USCS § 1114], at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title [11 USCS § 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:

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.
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:

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:

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:

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:

(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.

CRAMDOWN

The court notes that most of the creditors have not voted for the plan. Of the impaired classes, Class 1, Class 2, Class 4, Class 5, Class 6, Class 7, Class 8, Class 9, Class 10, Class 12, Class 14, Class 14, Class 15, Class 16, Class 18, Class 19, Class 20, Class 23 and Class 24 have not voted and Class 3 has rejected the plan. Therefore, confirmation must proceed by "cram down."

The Bankruptcy Code provides in 11 U.S.C. § 1129(b) [emphasis added],

(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.**

(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:

...

(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.

This commonly referred to as a "cramdown" on the non-accepting classes. After a specific request for nonconsensual confirmation, and a showing that all other confirmation requirements of section 1129(a) are met, section 1129(b)(1) requires that the plan proponent prove, as to the dissenting class, that the plan is both fair and equitable and not unfairly discriminatory. 11 U.S.C. § 1129(b)(2) assists in this determination by providing specific examples of possible fair and equitable treatment. The Ninth Circuit has adopted the following test: after looking at all the facts and circumstances, the court examines (1) whether the discrimination is supported by a reasonable basis; (2) whether the debtor can confirm and consummate a plan without the discrimination; (3) whether the discrimination is proposed in good faith; and (4) the treatment of the classes discriminated against. *Liberty Nat'l Enters. v. Ambanc La Mesa Ltd. Pshp.* (*In re Ambanc La Mesa Ltd. Pshp.*), 115 F.3d 650 (9th Cir. Ariz. 1997).

The Plan provides the following for the following non-voting impaired classes:

Class 1: Priority Claims	Claim Amount	
	Impairment	Impaired
	Class 1 is unimpaired by this Plan, and each holder of a Class 1 Priority Claim will be paid in full, in cash, on the tenth day of the month following confirmation of the plan. It is not anticipated that any such claims will exist.	
Class 2: City of West Sacramento 3490 Lewiston Road, West Sacramento, CA	Claim Amount	
	Impairment	Impaired
	The secured claim shall be paid in full with interest at the rate of 4.75 percent by monthly payments of \$19 over 5 years. Payments shall commence on the tenth day of the month following confirmation of the plan.	
Class 3: Deutsche Bank National Trust Company, Trustee of the IndyMac INDX Mortgage Loan Trust 2005-AR6, Mortgage Pass-Through Certificates, Series 2005-AR6 Under the Pooling and Servicing Agreement dated March 1, 2005 3490 Lewiston Road, West Sacramento, CA	Claim Amount	\$398,750 secured
	Impairment	Impaired
	Upon confirmation of the plan, the secured claim of Deutsche Bank National Trust Company, as Trustee of the IndyMac INDX Mortgage Loan Trust 2005-AR6, Mortgage Pass-Through Certificates, Series 2005-AR6 under the Pooling and Servicing Agreement dated March 1, 2005 shall be reduced to \$398,750 and lien on the real property located at 3490 Lewiston Road, West Sacramento, CA 95691 reduced to this same amount. The secured claim shall be paid in full with interest at the rate of 4.75 percent by monthly payments of \$2,081 over 30 years. Payments shall commence on the tenth day of the month following confirmation of the plan. The undersecured portion of this claim shall be paid as set forth in class 23.	
Class 4: Chase 3490 Lewiston Road, West Sacramento, CA	Claim Amount	\$0 secured
	Impairment	Impaired

	Upon confirmation of the plan, the secured claim of Chase shall be reduced to \$0 and its lien removed from the real property located at 3490 Lewiston Road, West Sacramento, CA 95691. The undersecured portion of this claim shall be paid as set forth in class 23.	
Class 5: Bank of America 3490 Lewiston Road, West Sacramento, CA	Claim Amount	\$0 secured
	Impairment	Impaired
	Upon confirmation of the plan, the secured claim of Bank of America shall be reduced to \$0 and its lien removed from the real property located at 3490 Lewiston Road, West Sacramento, CA 95691. The undersecured portion of this claim shall be paid as set forth in class 23.	
Class 6: Wells Fargo Bank First DOT on 5045 Kingsley Road, Stockton, CA	Claim Amount	\$0 secured
	Impairment	Impaired
	Upon confirmation of the plan, the secured claim of Wells Fargo shall be reduced to \$0 and its lien removed from the real property located at 3490 Lewiston Road, West Sacramento, CA 95691. The undersecured portion of this claim shall be paid as set forth in class 23.	
Class 7: Sacramento Utilities 6035 Cheshire Way, Citrus Heights, CA	Claim Amount	
	Impairment	Impaired
	The secured claim shall be paid in full with interest at the rate of 4.75 percent by monthly payments of \$13 over 5 years. Debtor reserves the right to pay this debt sooner. Payments shall commence on the tenth day of the month following confirmation of the plan.	
Class 8: Allied Water Company 6035 Cheshire Way, Citrus Heights, CA	Claim Amount	
	Impairment	Impaired
	The secured claim shall be paid in full with interest at the rate of 4.75 percent by monthly payments of \$9 over 5 years. Debtor reserves the right to pay this debt sooner. Payments shall commence on the tenth day of the month following confirmation of the plan.	

<p>Class 9: Citrus Heights Water District</p> <p>6035 Cheshire Way, Citrus Heights, CA</p>	Claim Amount	
	Impairment	Impaired
	<p>The secured claim shall be paid in full with interest at the rate of 4.75 percent by monthly payments of \$2 over 5 years. Debtor reserves the right to pay this debt sooner. Payments shall commence on the tenth day of the month following confirmation of the plan.</p>	
<p>Class 10: Deutsche Bank National Trust Company, as Trustee for Argent Securities Inc., Asset- Backed Pass- Through Certificates, Series 2004</p> <p>6035 Cheshire Way, Citrus Heights, CA</p>	Claim Amount	
	Impairment	Impaired
	<p>Upon confirmation of the plan, and by stipulation with the creditor, the secured claim of Deutsche Bank National Trust Company, as Trustee for Argent Securities Inc., Asset- Backed Pass-Through Certificates, Series 2004 shall be reduced to \$182,500 and lien on the real property located at 6035 Cheshire Way, Citrus Heights, CA 95610 reduced to this same amount. The secured claim shall be paid in full with annual interest at the rate of 5.00 percent by monthly payments of \$980 over 30 years. Payments shall commence on the tenth day of the month following confirmation of the plan. The undersecured portion of this claim shall be paid as set forth in class 23.</p>	
<p>Class 12: Chase</p> <p>7716 Belle Rose Circle, Roseville, CA</p>	Claim Amount	
	Impairment	Impaired
	<p>Upon confirmation of the plan, the secured claim of Chase shall be reduced to \$0 and its lien removed from the real property located at 7716 Belle Rose Circle, Roseville, CA 95678. The undersecured portion of this claim shall be paid as set forth in class 23.</p>	
<p>Class 14: Sacramento County Utilities</p> <p>7513 Johanne Court, Citrus Heights, CA</p>	Claim Amount	
	Impairment	Impaired
	<p>The secured claim shall be paid in full with interest at the rate of 4.75 percent by monthly payments of \$57 over 5 years. Debtor reserves the right to pay this debt sooner. Payments shall commence on the tenth day of the month following confirmation of the plan.</p>	

Class 15: Allied Water Company 7513 Johanne Court, Citrus Heights, CA	Claim Amount	
	Impairment	Impaired
	The secured claim shall be paid in full with interest at the rate of 4.75 percent by monthly payments of \$9 over 5 years. Debtor reserves the right to pay this debt sooner. Payments shall commence on the tenth day of the month following confirmation of the plan.	
Class 16: Citrus Heights Water District 7513 Johanne Court, Citrus Heights, CA	Claim Amount	
	Impairment	Impaired
	The secured claim shall be paid in full with interest at the rate of 4.75 percent by monthly payments of \$3 over 5 years. Payments shall commence on the tenth day of the month following confirmation of the plan.	
Class 18: Sacramento County Utilities 6821 Barbara Lee Court, Sacramento, CA	Claim Amount	
	Impairment	Impaired
	The secured claim shall be paid in full with interest at the rate of 4.75 percent by monthly payments of \$30 over 5 years. Debtor reserves the right to pay this debt sooner. Payments shall commence on the tenth day of the month following confirmation of the plan.	
Class 19: Allied Water Company 6821 Barbara Lee Court, Sacramento, CA	Claim Amount	
	Impairment	Impaired
	The secured claim shall be paid in full with interest at the rate of 4.75 percent by monthly payments of \$9 over 5 years. Debtor reserves the right to pay this debt sooner. Payments shall commence on the tenth day of the month following confirmation of the plan.	
Class 20: California American Water 6821 Barbara Lee Court, Sacramento, CA	Claim Amount	
	Impairment	Impaired
	The secured claim shall be paid in full with interest at the rate of 4.75 percent by monthly payments of \$3 over 5 years. Payments shall commence on the tenth day of the month following confirmation of the plan.	
Class 23: General Unsecured	Claim Amount	

	Impairment	Impaired
	All unsecured creditors and the undersecured portions of secured claims shall be paid \$200 per month for 60 months to be distributed on a pro rata basis. Debtor reserves the right to pay this Class sooner. Payments shall commence on the tenth day of the month following confirmation of the plan.	
Class 24: Equity Interests	Debtor shall retain his interests in property of the estate.	

CONCLUSION

The court's decision is to ----- the Chapter 11 Plan of Reorganization.