

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

April 3, 2014 at 3:00 p.m.

1. [12-41713](#)-E-11 MARVIN/ARNELLE BROWN

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
12-20-12 [[1](#)]

Debtors' Atty: Stephen M. Reynolds

Notes:

Continued from 2/19/14 to be conducted in conjunction with the hearing on confirmation of the proposed Chapter 11 Plan.

Operating Reports filed: 3/24/14 [Jan, Feb]; 3/25/14 [Nov, Dec]

[RLC-3] Limited Opposition to Debtors' Motion for Order Valuing Collateral (2000 Day Break Court, Fairfield, CA 94534) First Priority Lien Only filed 2/27/14 [Dckt 150]; Order granting filed 3/17/14 [Dckt 156]

2. [12-41713](#)-E-11 MARVIN/ARNELLE BROWN
RLC-4 Stephen M. Reynolds

CONFIRMATION OF AMENDED PLAN OF
REORGANIZATION FILED BY DEBTORS
2-13-14 [[141](#)]

Correct Notice Provided. The Proof of Service states that the Plan and supporting pleadings were served on all creditors and Office of the United States Trustee on February 13, 2014. By the court's calculation, 49 days' notice was provided.

Tentative Ruling: The court's tentative decision is to confirm the Amended Plan of Reorganization Filed By Debtors. 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>2-13-14</u>	Plan, Disclosure Statement, Disc Stmt Order, and Ballots Mailed
<u>3-10-14</u>	Last Day for Submitting Written Acceptances or Rejections
<u>3-10-14</u>	Last Day to File Objections to Confirmation
<u>3-24-14</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 unimpaired	For: 0 Against: 0	0%	0%
Class 2 unimpaired	For: 0 Against: 0	0%	0%
Class 3 unimpaired	For: 0 Against: 0	0%	0%
Class 4 impaired	For: 0 Against: 0	0%	0%
Class 5	For: 0	0%	0%

impaired	Against: 0		
Class 6 unimpaired	For: 0 Against: 0	0%	0%
Class 7 unimpaired	For: 0 Against: 0	0%	0%
Class 7.5 impaired	For: 0 Against: 0	0%	0%
Class 8 impaired	For: 1 Against: 0	100% for	100% for

Declaration of Marvin Brown, 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.

CHAPTER 11 CONFIRMATION STANDARDS

Confirmation of a Chapter 11 Plan is governed by 11 U.S.C. § 1129. The court begins its confirmation analysis of the proposed Chapter 11 Plan with the requirements of 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: Declaration, Dckt. 165, ("Declaration") ¶ 3.

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

Evidence: Declaration ¶ 3.

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

Evidence: Declaration ¶ 3.

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: N/A – Declaration ¶ 4.

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: Declaration ¶ 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: N/A - Declaration ¶ 6.

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 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: Declaration ¶ 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: Declaration ¶ 8.

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: Declaration ¶ 9.

(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: Declaration ¶ 9.

(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: Declaration ¶ 9.

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: Ballots - Class 8 voted against the plan. Counsel for Debtor testifies that he is in contact with the Creditor who rejected the plan in Class 8 and that he expects an amended ballot to be filed accepting the plan. Declaration of Stephen M. Reynolds ¶ 1, Dckt. 166. Debtor filed the amended ballot on March 28, 2014, with Class 8 voting for the plan.

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: Declaration ¶ 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: Declaration ¶ 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: N/A - Declaration ¶ 13.

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: N/A - Declaration ¶ 14.

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

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such

claim is not less than the amount of such claim; or

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

Evidence: Declaration ¶ 15, no objection on this ground filed.

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: N/A.

11 U.S.C. § 1129(b) - "Cramdown"

The court notes that the following impaired Classes of Claims have not voted for the Plan: Class 4, Class 5, and Class 7.5.

The impaired Classes of Claims voting for confirmation of the Plan are: Class 8.

Therefore, confirmation must proceed by "cram down."

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. (Thereby "cramming down the throats" of the non-accepting creditors confirmation of the plan.)

To be "fair and equitable" the plan must satisfy, with respect to secured claims, one of the following three tests:

- (1) The creditor is to retain the lien securing its claim and is to receive deferred cash payments with a present value at least equal to the claim;
- (2) The property securing the claim is to be sold and the lien is to attach to the proceeds of the sale; the lien on the proceeds is then to be treated as described in test (1) or (3);
- (3) The creditor is to realize the indubitable equivalent of its secured claim.

See 11 U.S.C. § 1129(b)(2)(A). Section 1129(b)(2)(A)(iii) does not require that a creditor receive the indubitable equivalent of its entire claim, but

only of its secured claim. See *Arnold & Baker Farms v. United States ex rel. United States Farmers Home Admin. (In re Arnold & Baker Farms)*, 85 F.3d 1415 (9th Cir. 1996), cert. denied, 519 U.S. 1054 (1997) quoting *In re Sandy Ridge Dev. Corp.*, 881 F.2d 1346, 1350 (5th Cir. La. 1989) ("With respect to a class of secured claims, the plan provides . . . (iii) for the realization by such holders of the indubitable equivalent of such claims.") (emphasis added). In the case of an creditor with an undersecured claim,

section 506(a) of the Bankruptcy Code bifurcates . . . [the] total claim into secured and unsecured portions. . . . In situations involving only one creditor and one debtor, the value of the undersecured creditor's secured claim is simply the value of the underlying collateral. The difference between the collateral's value and the amount of the debt becomes an unsecured claim and is added to the existing pool of unsecured claims.

In re Arnold & Baker Farms, 85 F.3d at 1422. The court further explained that "the value of the secured portion of an undersecured creditor's total claim is by definition equal to the value of the collateral securing it. Therefore, a creditor necessarily receives the indubitable equivalent of its secured claim when it receives the collateral securing that claim, regardless of how the court values the collateral." *Id.*

Debtor-in-Possession argues that the plan is fair and equitable because the impaired classes are receiving allowed general unsecured claims (as they are impaired because the value of their collateral has been determined to be less than senior secured claims) which is the indubitable equivalent required by 11 U.S.C. § 1129(b) (2).

The Debtors funding of the Plan includes the payment by them of \$5,093.00 a month (which includes the payments on the secured claims). The Debtors will be funding a substantial part of the plan payment from their post-confirmation employment and retirement benefits. This is sufficient "new value," with no objection thereto having been filed by any creditor, to satisfy the requirements of 11 U.S.C. § 1129(b) (2) (B) (ii).

Based on the foregoing the cram down provisions appear to have been met by Debtor-in-Possession.

CONCLUSION

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

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