

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

April 24, 2014 at 3:00 p.m.

1. [12-30992](#)-E-11 MACHELLE HOLLOWAY

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
6-8-12 [[1](#)]

Debtor's Atty: Scott D. Schwartz

Notes:

Continued from 1/23/14 to be conducted in conjunction with the confirmation hearing.

Tentative Ruling: The Status Conference is continued to 3:00 p.m. on June 19, 2014, to allow the Debtor and Plan Administrator to file and have hear post-confirmation motions before the close of the current calendar quarter.

2. [12-30992](#)-E-11 MACHELLE HOLLOWAY
Scott D. Schwartz

CONFIRMATION OF PLAN OF
REORGANIZATION FILED BY DEBTOR
1-21-14 [[322](#)]

Correct Notice Provided. The Proof of Service states that the pleadings were served on Debtor-in-Possession, 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 proper notice.

The court's tentative decision is to confirm the Chapter 11 Plan filed January 29, 2014. 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:

2-10-14

Plan, Disclosure Statement, Disc Stmt Order, and
Ballots Mailed

3-17-14

Last Day for Submitting Written Acceptances or
Rejections

April 24, 2014 at 3:00 p.m.

3-17-14

Last Day to File Objections to Confirmation

3-31-14

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: 1 Against: 0	100%	100%
Class 2.1 Wells Fargo Bank	For: 1 Against: 0	100%	100%
Class 2.3 IndyMac/OneWest	For: 1 Against: 0	100%	100%
Class 2.6 Wells Fargo Bank	For: 1 Against: 0	100%	100%
Class 2.7 Wells Fargo Bank	For: 1 Against: 0	100%	100%
Class 3 General Unsecured	For: 7 Against: 4	63.63%	97.37%
Class 4 Individual Interest	For: 1 Against: 0	100%	100%

11 U.S.C. § 1126(c) states that a class of claims has accepted a plan if such plan has been accepted by creditors that hold at least 2/3 in amount and more than ½ in number of the allowed claims of such class held by creditors that have accepted or rejected such plan.

Declaration of Machelles Holloway, 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. Dckt. 339.

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. 339, ("Declaration") ¶ 2-3

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

Evidence: Declaration ¶ 2-3

April 24, 2014 at 3:00 p.m.

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

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 ¶ 4

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

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 ¶ 5-6, Tabulation of Ballots. All Impaired Classes have voted to confirm the Chapter 11 Plan.

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 ¶ 5-6, Tabulation of Ballots. All Impaired Classes have voted to confirm the Chapter 11 Plan.

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: Plan, Sections II and III.

(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: Plan, Sections II and III.

(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: Plan, Sections II and III.

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: Declaration ¶ 5-6, Tabulation of Ballots. All Impaired Classes have voted to confirm the Chapter 11 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 ¶ 5-6.

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 ¶ 7.

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

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

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: N/A

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

CONCLUSION

The proposed Chapter 11 Plan of Reorganization filed on January 29, 2013 (Dckt. 332), complies with the requirements of 11 U.S.C. §§ 1129 and 1123. All classes of claims have voted at least more than 50% in number and 2/3 in dollar amount of the voting creditors to accept the Chapter 11 Plan. The proposed Chapter 11 Plan is confirmed.

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.