

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

May 27, 20201 at 11:30 a.m.

1. [20-24123](#)-E-11 **RUSSELL LESTER**
[FWP](#)-23
1 thru 3

**MOTION TO COMPROMISE
CONTROVERSY/APPROVE
SETTLEMENT AGREEMENT WITH
THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA
5-21-21 [\[618\]](#)**

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Receiver, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on May 21, 2021. By the court's calculation, 6 days' notice was provided. The court set the hearing for May 27, 2021. Dckt. xx.

The Motion for Approval of Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 11 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----
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The Motion for Approval of Compromise is granted.
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Russell Wayne Lester, the Debtor in Possession ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with The Prudential Insurance Company of

America (“Prudential”). The claims and disputes to be resolved by the proposed settlement are the Debtor in Possession’s disputes with Prudential regarding the treatment of Prudential’s secured claim in the Debtor in Possession’s Amended Plan (dated May 18, 2021).

Movant and Prudential have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized as follows (the full terms of the Settlement are set forth in the Amended Plan dated May 18, 2021, Dckt. 605):

- A. The Prudential Loan Documents and all rights and obligations thereunder remaining in full force and effect, except as specifically modified in the Amended Plan (Dated May 18, 2021);
- B. The SPE and/or the Reorganized Debtor being allowed to pay down Prudential’s Missed Payments and Costs at any time without incurring a Prudential Prepayment Premium;
- C. Any Plan default after the Prudential Cure Date bearing interest at the Prudential Allowed Default Rate (12%);
- D. Prudential reducing the Prudential Prepayment Premium for all sales or refinancing of the SPE Designated Properties and the Conservation Easement that result in principal paydowns related thereto to 50% of the formula value contained in the Prudential Loan Documents through December 31, 2022;
- E. The Debtor in Possession or the Reorganized Debtor creating the SPE, which shall be a bankruptcy remote entity, the terms of which shall be acceptable to Prudential;
- F. Prudential cooperating in the sale of the Conservation Easement and subordinating the lien of its deed of trust to the Conservation Easement as long as the easement is restricting the use of the McCune Ranch and Carrion Ranch to agriculture and related activities and the terms of such subordination are acceptable to Prudential; and
- G. The Reorganized Debtor and the SPE executing one or more triple net leases regarding the Reorganized Debtor’s ongoing farming operations on the SPE Designated Properties, the lease documents for which will be subject to Prudential’s approval, and shall contain certain terms and limitations as set forth in the Amended Plan (dated May 18, 2021).

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat’l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S’holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the factors have been met.

Probability of Success of Litigation

Continued litigation in this matter would be extensive, complex, and uncertain, with several contentious issues. Litigation of the issues will undoubtedly be time-consuming and expensive, as they are numerous and complex, involving both California and Federal law, and would require the hiring of experts (and a potential battle of experts) regarding opinions as to value, the proper interest rate during the pendency period and in a plan, and the propriety and proper amount of the prepayment premiums.

Difficulties in Collection

This factor is not discussed by Movant.

Expense, Inconvenience, and Delay of Continued Litigation

Prudential holds the largest secured claim in this case and the senior secured claim on the real property to be liquidated. But for the Prudential Settlement, the Bankruptcy Estate would face significant, continuing expenditures of considerable time and legal expense.

Paramount Interest of Creditors

The Prudential Settlement reduces the asserted default interest rate from 18% to 12%, which is a clear benefit to the estate and creditors. In addition, the prepayment premiums will be reduced by 50% through December 31, 2022, which also is a benefit to the estate and creditors as the Debtor in Possession sells property to fund the Amended Plan (dated May 18, 2021). Also, the Prudential Settlement will cap Prudential's continuing attorneys' fees at \$800,000.00.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the settlement will assist the Debtor in Possession to move forward, reorganize his business, and pay all creditors in full. The Motion is granted.

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 to Approve Compromise filed by Russell Wayne Lester, the Debtor in Possession, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and The Prudential Insurance Company of America ("Prudential") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the Amended Plan dated May 18, 2021 (Dckt. 605).

2. [20-24123-E-11](#) **RUSSELL LESTER**
[FWP-24](#)

**MOTION TO COMPROMISE
CONTROVERSY/APPROVE
SETTLEMENT AGREEMENT WITH
FIRST NORTHERN BANK OF DIXON
AND KATHLEEN LESTER
5-21-21 [[623](#)]**

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.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Receiver, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on May 21, 2021. By the court’s calculation, 6 days’ notice was provided. The court set the hearing for May 27, 2021. Dckt. **xx.**

The Motion for Approval of Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 11 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----

The Motion for Approval of Compromise is granted.
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Russell Wayne Lester, the Debtor in Possession, (“Movant”) requests that the court approve a

compromise and settle competing claims and defenses between First Northern Bank (“FNB”) and Kathleen Lester (“Ms. Lester”). The claims and disputes to be resolved by the proposed settlement are the Debtor in Possession’s disputes with FNB regarding the treatment of FNB’s secured claim in the Debtor in Possession’s Amended Plan (Dated May 18, 2021) (the “Amended Plan (dated May 18, 2021)”) and also with Ms. Lester respecting certain terms in the Amended Plan (dated May 18, 2021), which require her to execute certain documents including but not limited to FNB’s new junior deed of trust on the Putah Creek Ranch.

Movant, FNB and Ms. Lester have resolved these claims and disputes, subject to approval by the court. The following summarizes certain important settlement provisions of the FNB and Lester Settlement but is not intended to be a complete discussion of all settlement provisions of the FNB and Lester Settlement (the full terms of the Settlement are set forth in the Amended Plan dated May 18, 2021, Dckt. 605):

- A. The FNB Loans all shall be an Allowed Secured Claim in the full amount of each one’s respective claim, plus all unpaid post-petition interest thereon at the rate of 6.75% per annum compounded monthly and the FNB Pro Rated Attorneys’ Fees and Costs allocable to each respective FNB Loan, provided that the total of FNB’s Attorneys’ fees and costs shall not exceed \$500,000 through the Effective Date.
- B. FNB shall receive a release from the Debtor in Possession and Ms. Lester of all claims, including but not limited to the claim for fraud the Debtor in Possession filed against FNB prior to the Petition Date.
- C. Both the Debtor in Possession and Ms. Lester must execute a new deed of trust on the Putah Creek Ranch, which shall subordinate Ms. Lester’s and the Debtor in Possession’s homestead rights to this new deed of trust. Ms. Lester shall also assume all the other obligations and duties to creditors as set forth in the Amended Plan (dated May 18, 2021).
- D. The Reorganized Debtor shall release any and all Avoidance Actions against the children of Russell Wayne Lester and Ms. Lester effective upon the later of the recordation of the FNB AG Production Loan Junior Deed of Trust or the Effective Date.
- E. The Debtor in Possession will receive the right under the Amended Plan (dated May 18, 2021) to expend all of FNB’s liquid collateral including cash, inventory, and accounts receivable over the plan term.
- F. The SPE will be created on or before the Effective Date, and the Amended Plan (Dated May 18, 2021) shall be funded through the sales of real property, the Conservation Easement Sale, other income or capitalization sources, and the continued operation of the Debtor in Possession’s business under the oversight of the SPE.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat’l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve

compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the factors have been met.

Probability of Success

The Amended Plan (dated May 18, 2021) is basically a trade; FNB receives new collateral, including a new Deed of Trust on Putah Creek, for the \$3.6 million in equity in Putah Creek (according to FNB's appraiser) as well as a pledge on distributions from sales of the SPE Designated Properties that assures FNB and the General Unsecured Creditors of repayment whether or not the reorganization succeeds. If the reorganization succeeds, the Plan provides for the full payment of all creditors. If the reorganization does not succeed, the sale of the McCune and Carrion properties by the SPE Independent Manager will result in sufficient proceeds to be distributed down to the Lester Family trust from those sale proceeds to pay the FNB Ag Based LOC and the General Unsecured Creditors in full.

Difficulties in Collection

This factor is not discussed by Movant.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that the attorneys' fees and costs in litigating Plan Confirmation and all the other issues with FNB are essentially not compatible with the continued operation and reorganization of the Debtor in Possession's business. Thus, Movant asserts that the reorganization option is far preferable for the Bankruptcy Estate, the employees of the Debtor in Possession, the customers of the Debtor in Possession, and importantly, the General Unsecured Creditors who will be paid over time in full under the terms of the Amended Plan (dated May 18, 2021) and who on the Effective Date of the plan will also receive a pledge of distributions from the new Special Purpose Entity that will hold the multiple parcels of extremely valuable farm and orchard land.

Paramount Interest of Creditors

Movant asserts that the Amended Plan (dated May 18, 2021) provides for the 100% payment with interest to all creditors, including the General Unsecured Creditors, and as described above, on the

Effective Date, the General Unsecured Creditors will also receive a pledge of the future distributions from the Special Purpose Entity, which independently should be sufficient to provide for the full payment of all Allowed Claims of the General Unsecured Creditors even if the Reorganization Plan fails.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it avoids costly litigation and further allows Debtor in Possession to pay claims in full. The Motion is granted.

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 to Approve Compromise filed by Russell Wayne Lester, the Debtor in Possession, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Debtor in Possession, First Northern Bank (“FNB”) and Kathleen Lester (“Ms. Lester”) is granted, and the respective rights and interests of the parties are settled on the terms set forth in the Amended Plan dated May 18, 2021 (Dckt. 605).

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.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 5, 2021. By the court's calculation, 52 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 XXXXX.
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The Plan Proponent has complied with the Service and Filing Requirements for Confirmation:

May 18, 2021 Plan, Disclosure Statement, Disclosure Statement Order, and Ballot Mailed

May 24, 2021 Last Day for Submitting Written Acceptances or Rejections

May 27, 2021 Last Day to File Objections to Confirmation

May 24, 2021 Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

Creditor Class	Est. Principal & Collateral-if any	Plan Obligor	Fixed Int. Rate	Payment Terms Maturity Date
Prudential (Loans 1 & 2) Class 1	\$14,000,000 1 st dt on SPE Designated Properties	SPE	4.03%	Quarterly Principal (starts 2023) and Interest (P&I) Maturity: 1/1/29 Amor. 40 years
FNB RE Loan Class 2A	\$1,500,000 1 st dt on Putah Creek	Reorg. Debtor	4.00%	Monthly P&I Maturity: 1/1/29 Amor. 20 years
FNB HELOC Loan Class 2B	\$500,000 2d dt on Putah Creek	Reorg. Debtor	4.25%	Monthly P&I Maturity: 1/1/29 Amor. 20 years
FNB AG Loans Class 2C (FNB NEW RE Loan)	\$2,000,000 3d dt on Putah Creek	Reorg. Debtor	6.00%	Monthly P&I Maturity: 1/1/29 Amor. 20 years
FNB AG Loans Class 2C (FNB NEW Lester Family Trust Loan)	\$4,000,000 Pledge on SPE Ownership Interest	Trust	6.00%	Quarterly Interest, Principal from sales Maturity: 4/30/2023 Amor. 20 years
Ford Class 3	\$22,000 Vehicle 1 st Lien	Reorg. Debtor	Contract Rate	Monthly P&I Maturity: Contract Amor. Term of Loan
John Deere Class 4	\$138,000 Equip. 1 st Lien	Reorg. Debtor	Contract Rate	Monthly P&I Maturity: Contract Amor. Term of Loan
Yolo County Class 5	\$50,000. Yolo County Real Property Taxes	SPE	Statutory Rate	Annual Interest Maturity: 5 Years Amor. None, Prin. Paid from sales.
Solano County Class 6	\$125,000 Solano County Real and Personal Property Taxes	SPE and Reorg. Debtor	Statutory Rate	Annual Interest Prin. From Sales Maturity: 5 Years Amor. None, Prin. Paid from sales.
2019 Growers Class 7	\$0 Disputed	Reorg. Debtor	N/A	Disputed, any allowed will be in Class 9 or Class 11
SBA Class 8	\$150,000 AR, Eq. & Inv. 2d	Reorg. Debtor	Contract Terms	Monthly P&I Contract Term. Amor. Term of Loan
Other Secured Class 9	\$0 Contract Collateral if any	Reorg. Debtor	None	None anticipated; relief v. collateral or Contract Terms
Convenience Class 10	25% of Allowed No Collateral	Reorg. Debtor	N/A	On or before 12/31/2021
Unsecured Creditors Class 11(Includes est. 2M of the FNB AG Loans)	\$2,500,000	Trust	Fed Rate .13%	Annual P&I Maturity: -5 years. Amor. 5% per year.

Tabulation of Ballots:

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
Class 1 (Impaired): Prudential Secured Claim	For: 1 Against: 0	100%	100%
Class 2A (Impaired): FNB for its FNB RE Loan	For: 1 Against: 0	100%	100%
Class 2B (Impaired): FNB HELOC Loan	For: 1 Against: 0	100%	100%
Class 2C (Impaired): FNB AG Production Loan	For: 1 Against: 0	100%	100%
Class 2D (Impaired): FNB AG Asset Based LOC	For: 1 Against: 0	100%	100%
Class 3 (Impaired): FMCC for its FMCC Vehicle(s) Loan	For: 1 Against: 0	100%	100%
Class 4 (Impaired): Cross-collateralized Secured Claim of John Deere	For: 0 Against: 0		
Class 5 (Impaired): Yolo County Property Tax Claim	For: 0 Against: 0		
Class 6 (Impaired): Solano County Property Tax Claim	For: 1 Against: 0	100%	100%
Class 7 (Impaired): Disputed Secured Claim of the 2019 Growers	For: 14 Against: 8	63.63%	74.19% * In Class 7, Debtor could not use the Allowed amount as none of the voting creditors had filed a proof of claim and all were listed as disputed in the Schedules. Thus, Debtor used the asserted amount in each ballot for the purposes of calculating acceptances or rejections in this class.
Class 8 (Impaired): SBA's EIDL Secured Claim	For: 0 Against: 0		
Class 9 (Impaired): Secured Claims of Other Secured Creditors	For: 0 Against: 0		

Class 10 (Impaired): GUC Convenience Class	For: 2 Against: 0	100%	100%
Class 11 (Impaired): General Unsecured Creditors	For: 7 Against: 1	87.5%	89.45%
Class 12 (Impaired): Ownership Interests of Russell Wayne Lester and Kathleen Lester	For: 1 Against: 0	100%	100%

The Declaration of Russell W. Lester 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. 638, pg. 2

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

Evidence: Dckt. 638, pg. 2

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

Evidence: Dckt. 638, pg. 4

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. 638, pg. 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: Dckt. 638, 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.

Not Applicable

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 [11 U.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. 638, pg. 5

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. 638, pgs. 5-6

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. 638, 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. 638, 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. 638, 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. 638, 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. 638, pg. 7

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. 638, 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.

Not Applicable

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.

Not Applicable

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. 638, pg. 9

16. All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

Not Applicable

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. 638, pg. 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: Dckt. 638, pg. 10

(B) With respect to a class of unsecured claims—

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class, will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

Evidence: Dckt. 638, pg. 10

(C) With respect to a class of interests—

(i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

Evidence: Dckt. 638, pg. 10

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.

There were two timely filed objections. Creditor Oliveira Enterprises, Inc. filed an Objection on April 5, 2021. Dckt. 530. However, their objection was withdrawn on April 8, 2021. Dckt. 559. On May 11, 2021 Creditor United States Small Business Administration filed an Opposition to the Plan. Dckt. 600. The Opposition was withdrawn on May 21, 2021 after Debtor in Possession addressed their concerns regarding a reference to attorney's fees within the treatment of Class 8 which was deleted as requested. Dckt. 615.

No other creditor has objected to the Plan of Reorganization. Debtor in Possession has presented evidence in support of confirmation. The Plan of Reorganization is confirmed.