

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

July 19, 2018, at 11:30 a.m.

1.	<u>17-22347-E-11</u>	UNITED CHARTER LLC Jeffrey Goodrich	CONFIRMATION OF FIRST AMENDED PLAN OF REORGANIZATION FILED BY DEBTOR 5-3-18 <u>[232]</u>
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Final Ruling: No appearance at the July 19, 2018 hearing is required.

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, creditors, parties requesting special notice, and Office of the United States Trustee on May 25, 2018. By the court's calculation, 55 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). Upon review of the Motion, supporting pleadings, and *ex parte* application to continue, and the files in this case, the court has determined that oral argument will not be of assistance.

**The Confirmation of Plan of Reorganization Hearing is continued to 11:30 a.m.
on August 30, 2018.**

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

May 25, 2018 Plan, Disclosure Statement, Disclosure Statement Order, and Ballot Mailed

June 25, 2018 Last Day for Submitting Written Acceptances or Rejections

June 25, 2018 Last Day to File Objections to Confirmation

July 2, 2018 Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

Creditor/Class	Treatment	
Class 1(a): Secured Claim of East-West Bank	Claim Amount	\$4,580,000.00
	Impairment	Impaired
	East-West Bank's note carries a variable interest rate of 0.50% over the Wall Street Journal Prime Rate, and Debtor in Possession assumes that the rate will be 4.75% at Plan confirmation. Debtor in Possession believes the monthly payment to Creditor will start at no more than \$26,111.38.	
Class 1(b): Unsecured Claim of Wayne Bier	Claim Amount	\$580,000.00
	Impairment	Impaired
	To the extent that Bier's claim is not determined to be secured, or any portion thereof is not, due to senior secured claims, it shall be treated as a Class 2 Claim; if it is treated as a secured Claimant, Bier's claim shall accrue 4.5% simple interest per annum.	
Class 2: Unsecured Claims (including Wayne Bier's deficiency)	Claim Amount	\$651,171.38
	Impairment	Impaired
	A pro rata share shall be paid monthly to each unsecured claim. The pro rata share shall come from \$8,000.00 in Months 1–7, \$10,800.00 in Months 8–39, and \$13,800 in Months 40–60.	
Class 3: Unsecured Claims Less than \$2,500.00	Claim Amount	
	Impairment	Impaired
	All claims shall be paid without interest, in cash, thirty days following the effective date of the Plan.	

Class 4: Member Interests	Claim Amount	
	Impairment	Unimpaired
	Members' interest in Debtor in Possession shall be unmodified and unaffected.	

Tabulation of Ballots:

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
Class 1	For: 1 Against: 0	100%	100%
Class 1(b)	For: 0 Against: 1	0%	0%
Class 2	NA		
Class 3	No ballot cast		
Class 4	NA		

No declaration has been filed in support of confirmation.

CREDITOR'S OBJECTION

Wayne Bier, holder of a secured claim, ("Creditor") filed an Opposition on June 25, 2018. Dckt. 247. Creditor argues that the proposed plan is not feasible because it does not pay his secured claim in full and because it calls for a large payment after twenty-four months, which he believes is too speculative. Creditor argues that the main problem comes from disagreeing about the value of Debtor in Possession's property.

Additionally, Creditor argues that the plan includes divisions and sales of lots with partial releases and reconveyances by East West Bank in exchange for compensation and other protections, but it does not provide any sort of protection for Creditor based upon the proposed partial sales. Creditor also objects to an interest rate on his claim of 4.5%.

Creditor states that he is trying to resolve the problems with Debtor in Possession, and in the event that the parties have not resolved any disputes by the hearing, Creditor requests a continuance and an evidentiary hearing to determine the value of property securing his claim, the proper interest rate on the claim, and the Plan's feasibility.

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.

Here, Creditor has objected, and Debtor in Possession has not filed a declaration in support of confirmation. It appears that discussions are happening between the two parties who disagree about whether the plan is confirmable, but at this time, there is no indication on the docket that they have resolved their disputes.

Creditor indicates that the problems may be resolvable by affording the parties more time to negotiate and has requested a continuance. The court concurs that the parties talking to one another and resolving this matter will be of most benefit to the Estate instead of returning to the drawing board for Debtor in Possession to craft new proposals. The hearing is continued to **11:30 a.m. on August 30, 2018**, by prior order granting *ex parte* application to continue.