

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

August 1, 2024 at 11:30 a.m.

1. 23-23620 -E-11 CAE-1	ROBERT P. OBREGON DDS INC.	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 10-13-23 [1]
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Item 1 thru 2

SUBCHAPTER V

Debtor's Atty: Gabriel E. Liberman

Notes:

Continued from 7/10/24. At the Status Conference, the Parties requested that the Status Conference be continued to 11:30 a.m. on August 1, 2024, to be conducted in conjunction with the confirmation hearing in this case.

Operating Report filed: 7/15/24

AUGUST 1, 2024 STATUS CONFERENCE

On August 1, 2024, the court conducted the hearing on confirmation of the Debtor/Debtor in Possession's Second Amended Plan, to which all creditors consented. At the confirmation hearing, **XXXXXXX**

At the Status Conference, **XXXXXXX**

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 all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on June 3, 2024. By the court's calculation, 59 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)(1) 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).

<p>The Confirmation of the Second Amended Plan of Reorganization is granted.</p>

Robert P. Obregon, DDS, Inc. ("Debtor/Debtor in Possession") seeks confirmation of its Chapter 11 Subchapter V Plan filed on January 10, 2024. Docket 84. The following dates and deadlines relate to the matter now before the court:

May 15, 2024: Second Amended Plan filed.

January 11, 2024: Order Setting Confirmation Hearing for August 1, 2024, entered.
Order, Dckt. 158.

July 3, 2024: Last day for creditors and other parties in interest to vote on the Plan.
Id. at ¶ 3.

July 3, 2024: Last day to file Objections to Confirmation. *Id.* at ¶ 4.

June 24, 2024: Last day for secured creditors to make an election under 11 U.S.C. § 1111(b)(2). *Id.* at ¶ 5.

July 24, 2024: Last Day to file the Tabulation of Ballots. *Id.* at ¶ 6.

July 24, 2024: Last Day to file evidence in support of confirmation or responses to objections to confirmation, if any. *Id.* at ¶ 7.

Table of Classes

Creditor/Class	Treatment	
Class 1: Wells Fargo Bank, N.A.	Claim Amount	\$605,478.27
	Impairment	Impaired
	<p>Under this plan the Debtor shall continue to make the mortgage payments to the Class 1 claimant in accordance with the pre-petition terms of the mortgage agreement. The Class 1 claimant shall retain its lien(s) encumbering Debtor's assets until the obligation is paid in full.</p> <p>As such the Debtor shall make monthly installments payments to the claim holder. Payments shall continue as normally scheduled under the Note and Deed of Trust.</p> <p>Pre-petition arrearage claim of \$5,363.64 shall be paid in 12 equal monthly payments at \$446.97, in addition to the normal scheduled payment.</p>	
Class 2: Bankers Healthcare Group, LLC - serviced by First Montana Bank	Claim Amount	\$38,653.81
	Impairment	Impaired
	<p>The Class 2 Secured Claim of Bankers Healthcare Group, LLC - serviced by First Montana Bank is in the amount of \$38,653.81 as provided in proof of claim no. 2. Such amount shall be paid in full in equal monthly payments over 60 months until this Class is paid in full with interest at the rate of 8.5% per annum. The Class 2 claimant shall retain its lien(s) encumbering Debtor's assets until the obligation is paid in full.</p>	

Class 3: Bankers Healthcare Group, LLC - serviced by Community Bank and Trust Company	Claim Amount	\$84,258.62
	Impairment	Impaired
	<p>The Class 3 Secured Claim of Bankers Healthcare Group, LLC - serviced by Community Bank and Trust Company is in the amount of \$84,258.62 as provided in proof of claim no. 3.</p> <p>Debtor shall pay \$61,346.19 in equal monthly payments over 60 months with interest at the rate of 8.5% per annum in full satisfaction of Class 3 claimant.</p> <p>The Class 3 claimant shall retain its lien(s) for the full value of it claim or \$84,258.62, encumbering Debtor's assets until the obligation is paid in full.</p>	
Class 4: Bankers Healthcare Group, LLC - serviced by Five Star Bank	Claim Amount	\$141,723.55
	Impairment	Impaired
	<p>The Class 4 Secured Claim of Bankers Healthcare Group, LLC - serviced by Five Star Bank is in the amount of \$141,723.55 as provided in proof of claim no. 4.</p> <p>By court order entered on January 12, 2024 (Order, Docket 92), Debtor established, pursuant to section 506(a), that the value of the collateral securing this claim is \$0.00. This claim will be treated as a general unsecured claim. Promptly following the Effective Date, such claimant shall release and reconvey its lien(s) encumbering Debtor's assets.</p>	
Class 5: United States Small Business Administration	Claim Amount	\$536,632.46
	Impairment	Impaired
	<p>The Class 5 Secured Claim of United States Small Business Administration is in the amount of \$536,632.46 as provided in proof of claim no. 1.</p> <p>By court order entered on January 12, 2024 (Order, Docket 93), Debtor established, pursuant to section 506(a), that the value of the collateral securing this claim is \$0.00. This claim will be treated as a general unsecured claim. Promptly following the Effective Date, such claimant shall release and reconvey its lien(s) encumbering Debtor's assets.</p>	

Class 6: Bankers Health Group, LLC F/B/O BHG Grantor Trust 20220C	Claim Amount	\$177,169.34
	Impairment	Impaired
	<p>The Class 6 Secured Claim of Bankers Health Group, LLC F/B/O BHG Grantor Trust 20220C is in the amount of \$177,169.34 as provided in proof of claim no. 5.</p> <p>By court order entered on January 12, 2024 (Order, Docket 94), Debtor established, pursuant to section 506(a), that the value of the collateral securing this claim is \$0.00. This claim will be treated as a general unsecured claim. Promptly following the Effective Date, such claimant shall release and reconvey its lien(s) encumbering Debtor's assets.</p>	
Class 7: Regions Bank d/b/a Ascentium Capital	Claim Amount	\$13,826.03
	Impairment	Unimpaired
	<p>The Class 7 Secured Claim of Regions Bank d/b/a Ascentium Capital is in the amount of \$13,826.03 as provided in proof of claim no. 12.</p> <p>Under this plan the Debtor shall continue to make the equipment finance payments to the Class 7 claimant in accordance with the pre-petition terms of the finance agreement.</p> <p>As such the Debtor shall make monthly installments payments to the claim holder.</p>	

Class 8: Unsecured Nonpriority Claims	Claim Amount	Estimated \$975,970.78
	Impairment	Impaired
	<p>The Debtor estimates that the total amount of general unsecured claims, including the deficiency claims of Classes 4, 5, & 6 to be approximately \$975,970.78.</p> <p>The Debtor shall pay <i>pro rata</i> share of \$292,197 or 30% of allowed unsecured claims over five (5) years from the Effective Date of the Plan less administrative priority fee paid to the Subchapter V trustee.</p> <p>Additional pro-rata distribution may be determined on a quarterly basis. <i>See</i> Paragraph 7.01</p> <p>On the first day of the month following the month in which the Effective Date of the Plan occurs, the Debtor shall begin either monthly quarterly payments on the Class 8 Unsecured Nonpriority Claims.</p> <p>In the event a claimant's scheduled monthly distribution under the Plan is less than \$10.00, Debtor reserves the right to disburse the total scheduled distribution under the Plan to such claimant in one lump sum payment within the first 12 months following the Effective Date.</p>	

Class 9: Equity Holders: Robert P. Obregon	Claim Amount	Unknown
	Impairment	Impaired
	Equity Security Holders shall not receive a dividend until the payments contemplated by this Plan are completed. However, Equity Security Holders may receive payment for their services to the Debtor. In the event that an Equity Security Holder forgoes postconfirmation pay that pay shall accrue to the Equity Security Holder as a post-confirmation liability payable when cash flow permits or upon the sale or transfer of the Debtor.	

Means and Implementation of the Plan

In Section 7.01, Debtor states:

The Debtor shall fund the Plan with the proceeds and profits from operating its dental practice and servicing the general public. In addition to the specified minimum dollar amount to be disbursed to Class 8, such Class shall be entitled to potentially receive additional disbursements based upon Debtor's post-confirmation "Actual Net Income" during the first 60 months following the Effective Date. "Actual Net Income" Debtor's gross collected earnings, less ordinary and customary expenses incurred in operating the Debtor and its dental practice, including the salary of Dr. Robert P. Obregon, DDS as provided for in Paragraph 7.04 of this Plan, less the payments and disbursements to creditors provided by this Plan, less depreciation expense deducted by Debtor on its federal income tax, and less federal and state income tax and other ordinary and customary taxes and fees incurred by Debtor. All expenses shall be calculated on an average monthly basis, regardless of when such expense is incurred or paid. Actual net income shall be calculated for the first three calendar months following the Effective Date, and quarterly thereafter over the term of this Plan. In the event that Debtor has Actual Net Income for any quarter, 50% of such shall be disbursed on a pro-rata basis to Class 8 with the next monthly disbursement to such Class. The remaining 50% shall be available for distribution to either Debtor or Class 9 in such allocation as may be determined by Robert P. Obregon, DDS.

Second Am. Plan § 7.01, Docket 155.

Oppositions

Although Creditor Banker's Healthcare Group, LLC ("BHG") and the United States, on behalf of its agency the Small Business Administration ("SBA") filed Oppositions under the previous Plan, there have been no objections filed under the proposed Second Amended Plan. It appears that the Second Amended Plan is consensual.

Evidence in Support

On July 24, 2024, Debtor in Possession complied with its statutory deadlines and submitted the Tabulation of Ballots. Docket 172. 100% of the creditors in this case voted and accepted the Plan.

Debtor in Possession also submitted a Declaration of its President Robert Obregon (Docket 174) and Memorandum in support of confirmation (Docket 173). Mr. Obregon testifies that the Plan conforms with the requirements of 11 U.S.C. §§ 1190, 1191, and 1129(a). Specifically, Mr. Obregon testifies as to the authenticity of the facts alleged in the Memorandum in support, which clearly shows the Plan is in compliance with the Code.

DISCUSSION

To be an eligible debtor permitted to file under Chapter 11 Subchapter V of Title 11 of the United States Code, that person must be “engaged in commercial or business activities. . . that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than \$7,500,000. . . not less than 50 percent of which arose from the commercial or business activities of the debtor.” 11 U.S.C. § 1182(1)(A). The debtor then acts as debtor in possession “unless removed as debtor in possession under section 1185(a) of this title.” *Id.* at (2). The debtor in possession has the rights and powers a trustee would have serving under Chapter 11. 11 U.S.C. § 1184.

The debtor in a Subchapter V case has 90 days to file a plan after the order of relief under Chapter 11. 11 U.S.C. § 1189(b). 11 U.S.C. § 1190 governs the contents of a plan, stating:

A plan filed under this subchapter—

(1) shall include—

(A) a brief history of the business operations of the debtor;

(B) a liquidation analysis; and

(C) projections with respect to the ability of the debtor to make payments under the proposed plan of reorganization;

(2) shall provide for the submission of all or such portion of the future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan. . .

For a plan to be confirmable under Subchapter V, the plan must comply with the requirements of 11 U.S.C. § 1191. That section provides:

(a) Terms.—

The court shall confirm a plan under this subchapter only if all of the requirements of section 1129(a), other than paragraph (15) of that section, of this title [1] are met.

(b) Exception.—

Notwithstanding section 510(a) of this title, if all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs 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.

(c) Rule of Construction.—For purposes of this section, the condition that a plan be fair and equitable with respect to each class of claims or interests includes the following requirements:

(1) With respect to a class of secured claims, the plan meets the requirements of section 1129(b)(2)(A) of this title.

(2) As of the effective date of the plan—

(A) the plan provides that all of the projected disposable income of the debtor to be received in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or

(B) the value of the property to be distributed under the plan in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date on which the first distribution is due under the plan is not less than the projected disposable income of the debtor.

(3)

(A) The debtor will be able to make all payments under the plan; or

(B)

(i) there is a reasonable likelihood that the debtor will be able to make all payments under the plan; and

(ii) the plan provides appropriate remedies, which may include the liquidation of nonexempt assets, to protect the holders of claims or interests in the event that the payments are not made.

(d) Disposable Income.—For purposes of this section, the term “disposable income” means the income that is received by the debtor and that is not reasonably necessary to be expended—

(1) for—

(A)the maintenance or support of the debtor or a dependent of the debtor; or

(B)a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(2)for the payment of expenditures necessary for the continuation, preservation, or operation of the business of the debtor.

(e) Special Rule.—

Notwithstanding section 1129(a)(9)(A) of this title, a plan that provides for the payment through the plan of a claim of a kind specified in paragraph (2) or (3) of section 507(a) of this title may be confirmed under subsection (b) of this section.

11 U.S.C. § 1191. Therefore, 11 U.S.C. § 1129(a), other than subparagraph (15) of that section, is made applicable to a plan under Subchapter V through 11 U.S.C. § 1191. Disposable income, specifically defined in 11 U.S.C. § 1191(d), does not include debtor's maintenance and support expenses that are reasonably necessary to be expended. *See* 8 COLLIER ON BANKRUPTCY ¶ 1191.04[c]. However, there does not exist much case law in the Subchapter V context analyzing what may constitute reasonably necessary expenditures for debtor's maintenance or support. The methods for determining reasonable maintenance or support expenditures in cases under Chapter 12 or Chapter 13 can be insightful. *See In re Cesaretti*, Case no. 22-10454-nmc, 2023 WL 3676888 at *15 (Bankr. D. Nev. May 10, 2023); *In re Pearl Resources LLC*, 622 B.R. 236, 267-68 (Bankr. S.D. Tex. 2020).

Requirements of 11 U.S.C. § 1129(a)

1. The plan complies with the applicable provisions of the Bankruptcy Code Chapter 11, Subchapter V.

Mem. 2:8-14, Docket 173.

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

Mem. at 4:14-21.

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

Mem. at 4:23-5:9; Decl. 3:1-5, Docket 174.

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.

Mem. at 5:11-19.

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.

Mem. at 5: 21-6:2; Decl. 3:6-9, Docket 174.

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.

Mem. at 6:3-4; Decl. 3:10-11, Docket 174. Not applicable here.

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.

Mem. at 6:6-16; Decl. 3:12-19, Docket 174.

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.

All impaired classes have accepted the Plan here. Mem. at 6:18-20.

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;

(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;

(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).

Mem. at 6:22-7:8; Decl. 3:17-20, Docket 174.

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.

All impaired classes have accepted the Plan here. Mem. at 7:10-11.

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.

Mem. at 7:13-18; Decl. 3:21-27, Docket 174.

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.

Mem. at 7:20-23; Decl. 3:27, Docket 174.

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.

Not Applicable. Decl. 3:28, Docket 174.

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. Decl. 4:1, Docket 174.

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.

Not required pursuant to 1191(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.

Not Applicable. Decl. 4:2, Docket 174.

Review of the Plan

As evidenced above, the court determines the consensual Plan of reorganization is in compliance with 11 U.S.C. §§ 1190, 1191, and 1129(a). The Plan is confirmed.

At the hearing, **XXXXXXX**

The court shall issue an 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 Confirmation of Plan filed by Robert P. Obregon, DDS, Inc. (“Debtor/Debtor in Possession”) 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 Confirmation of the Second Amended Plan of Reorganization is granted. **Counsel for the Debtor/Debtor in Possession** shall prepare and lodge with the court a proposed order confirming the Second Amended Plan, with a copy of the Second Amended Plan attached to the proposed order.