UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 29, 2013 at 3:00 p.m.

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1. 12-41713-E-11 MARVIN/ARNELLE BROWN
LR-6 Stephen M. Reynolds

CONDITIONAL APPROVAL OF COMBINED AMENDED PLAN OF REORGANIZATION AND DISCLOSURE STATEMENT FILED BY DEBTORS-IN-POSSESSION
8-9-13 [68]

Local Rule 9014-1(f)(2) Motion - Opposition Filed.

Proper Notice Not Provided. The Proof of Service states that the Plan, Disclosure Statement, and supporting pleadings were served on the IRS, all creditors and the Office of the United States Trustee on August 9, 2013. By the court's calculation, 20 days' notice was provided. 42 days' notice is required.

Tentative Ruling: The Motion to Confirm the Plan was not properly set for hearing on the notice required by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1).

The court's tentative decision is to deny the motion to approve Plan and Disclosure Statement. 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:

NOTICE

Pursuant to Federal Rule of Bankruptcy Procedure 2002(b), twenty-eight day notice is required to all parties in interest for filing objections and the hearing to consider approval of a disclosure statement or for filing objections and the hearing to consider confirmation of a chapter 11 plan. By the court's calculation, only 20 days' notice has been provided in this case. This is insufficient notice and cause to deny the "Motion."

MOTION

Furthermore, there does not appear to be an actual motion filed setting forth the relief requested or seeking approval of the disclosure statement. Debtors-in-Possession filed a combined motion and disclosure statement and no motion, which has caused some confusion. It is not clear whether the Debtors-in-Possession seek to approve the disclosure statement

or confirm the plan. Under either circumstance, insufficient notice has been provided to the parties.

U.S. TRUSTEE'S OPPOSITION

The United States Trustee ("UST") opposes the Debtors-in-Possession combined plan and disclosure statement for several reasons.

First, the UST states that the small business format is confusing because this is not a small business case.

Second, the total dollar amount and the percentage to be paid to unsecured creditors is unclear.

Third, the secured debts are insufficiently described, as no information regarding the total amount of each debt, the remaining term of the loan, the interest rate or the account number are disclosed.

Fourth, the effect of adjustable rate mortgage is not addressed for Class 2 secured claim of Bank of America. The disclosure statement should address how this will impact Debtors-in-Possession ability to make the plan payment.

Fifth, the UST states that the effect of the early payoff is not addressed on the Class 1 and Class 7 claims with relatively small balances.

Sixth, the UST states that three filed Proofs of Claim have not been accounted for, including Proof of Claim No. 9 for Wells Fargo Bank, Proof of Claim No. 14 for American Express, and Proof of Claim No. 15 for the Franchise Tax Board (priority).

Seventh, the UST argues that the timing and effect of Mr. Brown's retirement is not addressed.

Eighth, the UST argues that the historical post-petition financial performance is not addressed.

Lastly, the UST states that the propriety of continuing TSP contributions should be addressed in the disclosure statement.

Based on the improper notice and improper pleadings, the Disclosure Statement is not approved.

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 for Approval of Disclosure Statement filed by Marvin and Arnelle Brown, Debtors in Possession and Debtors, 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 is denied and the Disclosure Statement (August 9, 2013) is not approved.

2. 11-25921-E-11 HENRY/CARMEN APODACA **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 3-9-11 [1]**

Debtors' Atty: Douglas A. Crowder

Notes:

Continued from 4/25/13 as a follow-up date to determine if the case may be administratively closed (if not so closed prior to that time) and what post-confirmation motions, if any, remain to be filed or heard.

Operating Reports filed: 6/3/13 [May], 8/6/13 [Jun]

[DAC-6] Order Confirming Plan filed 5/20/13 [Dckt 240]

[CAH-4] First and Final Fee Application for Allowance and Payment of Fees and Reimbursement of Costs of Attorney for Debtors in Possession filed 7/19/13 [Dckt 247], set for hearing 8/29/13 at 10:30 a.m.

[DAC-8] Debtors' Motion to Compel Disgorgement of Attorney's Fees filed 8/14/13 [Dckt 256], set for hearing 9/18/13 at 10:30 a.m.

3. 13-26159-E-11 IVAN RAVLOV
SAC-14 Scott A. CoBen

CONTINUED MOTION TO APPROVE DISCLOSURE STATEMENT FILED BY DEBTOR
5-13-13 [63]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Proper Service Not Provided. The Proof of Service states that the Plan, Disclosure Statement, and supporting pleadings were served on Debtor, all creditors, parties requesting special notice, and Office of the United States Trustee on May 13, 2013. By the court's calculation, 77 days' notice was provided. 42 days' notice is required.

Tentative Ruling: The Motion to Confirm the Plan was properly set for hearing on the notice required by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1). Deutsche Bank National Trust Company filed opposition. 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 court's tentative decision is to deny the Motion to Approve Disclosure Statement. 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:

SERVICE

Local Bankruptcy Rule 2002-1 provides that notices in adversary proceedings and contested matters that are served on the Internal Revenue Service shall be mailed to three entities at three different addresses, including the Office of the United States Attorney, unless a different address is specified:

LOCAL RULE 2002-1
Notice Requirements

(a) Listing the United States as a Creditor; Notice to the United States. When listing an indebtedness to the United States for other than taxes and when giving notice, as required by FRBP 2002(j)(4), the debtor shall list both the U.S. Attorney and the federal agency through which the debtor became indebted. The address of the notice to the U.S. Attorney shall include, in parenthesis, the name of the federal agency as follows:

For Cases filed in the Sacramento Division:
United States Attorney
(For [insert name of agency])
501 I Street, Suite 10-100
Sacramento, CA 95814

For Cases filed in the Modesto and Fresno Divisions:
United States Attorney
(For [insert name of agency])
2500 Tulare Street, Suite 4401
Fresno, CA 93721-1318

. . .

(c) Notice to the Internal Revenue Service. In addition to addresses specified on the roster of governmental agencies maintained by the Clerk, notices in adversary proceedings and contested matters relating to the Internal Revenue Service shall be sent to all of the following addresses:

(1) United States Department of Justice
Civil Trial Section, Western Region
Box 683, Ben Franklin Station
Washington, D.C. 20044

(2) United States Attorney as specified in LBR 2002-1(a) above; and,

(3) Internal Revenue Service at the addresses specified on the roster of governmental agencies maintained by the Clerk.

The proof of service lists only the following addresses as those used for service on the Internal Revenue Service:

IRS
PO BOX 7346
Philadelphia, PA 19101-7346

The proof of service states that the addresses used for service are the preferred addresses for the Internal Revenue Service specified in a Notice of Address filed by that governmental entity.

A motion is a contested matter. *See* Fed. R. Bankr. P. 9014. The proof of service in this case indicates service was not made on all three addresses, and service was therefore inadequate.

MOTION

The Motion to Approve Disclosure Statement does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The motion states,

> Debtor, IVAN RAVLOV, hereby moves the court pursuant to 11 U.S.C. Section 1125 and Rule 3016(b) to (1) approve the attached disclosure statement; (2) fix a time for filing acceptances or rejections of the plan of reorganization; and

> (3) fix a time for filing objections to confirmation of the plan of reorganization.

Dckt. 63.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the short-and-plain-statement standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot

> adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities – buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

OPPOSITION

Deutsche Bank National Trust Company, as Trustee for the IndyMac INDX Mortgage Loan Trust 2005-AR6, Mortgage Pass-Through Certificates, Series 2005-AR6 under the Pooling and Servicing Agreement dated March 1, 2005

Creditor argues that In this case the Debtor's Disclosure Statement states that Debtor states he shall obtain a discharge upon completion of the Chapter 11 Plan. This violates 11 U.S.C. Section 1141(d)(3)(C) and 11 U.S.C. Section 727(a)(9), as the Debtor may not obtain two discharges of debts within 8 years of obtaining a discharge under 11 U.S.C. Section 727(a). The Debtor has not waived the prior discharge obtained in Chapter 7 and the Disclosure Statement does not address this issue on page 26, "Effect of Confirmation of Plan."

U.S. Bank, N.A., as Trustee for the Certificateholders of the LXS 2006-2N Trust Fund

Creditor objects to the disclosure statement because Debtor fails to provide for relief upon confirmation or on th effective date of the plan to enable Creditor to exercise its rights in its surrendered collateral.

Union Bank, a National Bank, formerly known as Union Bank of California, N.A.

Creditor objects on the basis that the the terms of the Plan, Union Bank's secured claim is "impaired." The Plan contemplates that Union Bank will be paid in accordance with the terms of its Note and Deed of Trust. The Plan further indicates that any existing non-monetary defaults are waived. Creditor states that the Disclosure Statement currently does not specify how its claim is "impaired" when the Debtor will pay in accordance with the regular loan terms. Creditor asserts the Debtor is currently due for the June 1, 2013 payment, however, there are other outstanding arrearages due on the loan, such as attorneys' fees and costs.

No Stipulation or further pleading has been filed with respect to this Objection.

Deutsche Bank National Trust Company, as Trustee for Argent Securities Inc., Asset-Backed Pass-Through Certificates, Series 2004-W2

Creditor objects to the Debtor's proposed treatment of its impaired Class 10 secured claim because it is not fair and equitable. First, Creditor states the Debtor's Chapter 11 Plan is an improper attempt to cram down Creditor's interest rate to 4.75% for the property. Creditors states the interest rate proposed on a 100% loan to value, to a person with poor credit can hardly be said to provide a market rate of interest and to adequately protect the interest of objecting secured creditors.

Second, Creditor argues that confirmation is premature as the Motion to Value Collateral has not been granted to date.

Third, Creditor argues that Debtor proposes to extend the maturity date of the note by nearly 9 years, which is not fair and reasonable in that the Debtor is reducing the secured claim of $204,081.70 to only $158,800.00.

Lastly, Creditor states the Chapter 11 Plan further fails to provide for ongoing taxes and insurance on the real property. Creditor argues that the Debtor should be required to provide for the taxes and insurance to protect Secured Creditor's interest in the real property.

On August 1, 2013, this Creditor and the Debtor filed a Stipulation resolving its objection to the Disclosure Statement. Dckt. 211.

Wells Fargo Bank, N.A. as Trustee for Wamu Mortgage Pass-Through Certificates Series 2005-PR1 Trust

Creditor objects to the Confirmation of Plan for several reasons. However, on August 22, 2013, this Creditor and the Debtor in Possession filed a Stipulation for treatment of its claim under a Chapter 11 Plan in this case. Dckt. 234.

Based on the foregoing deficiencies, the motion is denied without prejudice.

4. 10-23577-E-11 GLORIA FREEMAN — **CONFIRMATION OF FIRST AMENDED PLAN OF REORGANIZATION FILED BY TRUSTEE**
WFH-34 Pro Se — **6-26-13 [809]**

Correct Notice Provided. The Proof of Service states that the Order Approving Disclosure Statement and Fixing Time, First Amended Plan and Ballot were served on Debtor (*pro se*), all creditors, parties requesting special notice, and Office of the United States Trustee on July 10, 2013. By the court's calculation, 50 days' notice was provided. 42 days' notice is required.

No Tentative Ruling: The Confirmation of First Amended Plan of Reorganization was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

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:

7/10/13	Plan, Disclosure Statement, Disc Stmt Order, and Ballots Mailed
8/12/13	Last Day for Submitting Written Acceptances or Rejections
8/12/13	Last Day to File Objections to Confirmation

8/19/13 Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

Tabulation of Ballots:
(from Declaration of Daniel Egan, Dckt. 977)

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
Class 3.01	For: 2 Against: 0	100%	100%
Class 3.02	For: 2 Against: 0	100%	100%
Class 3.03	For: 0 Against: 0		
Class 3.04	For: 0 Against: 0		

Declaration of David Flemmer, Chapter 11 Trustee filed in support of confirmation provides evidence of the 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.

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

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

Evidence: Flemmer Declaration, 2: 6-7

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.

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: Not Applicable.

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: 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 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 [11 USCS § 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: No liquidation analysis presented to the court. No § 1111(b) election by creditor.

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: Only impaired Classes 3.01 and 3.02 voted for the Plan. Impaired Classes 3.03 and 3.04 did not vote to accept the 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 so provides to the extent applicable.

(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 so provides to the extent applicable.

(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 so provides to the extent applicable.

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: Impaired Classes 3.01 and 3.02 accepted 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: Terms of Plan and declaration of Trustee.

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 of Trustee.

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 USCS § 1114], at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title [11 USCS § 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.

Evidence: 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 become payable after the date of the filing of the petition.

Evidence: 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: Terms of Plan and Declaration of Trustee.

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: Terms of Plan.

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: Declaration of Trustee and terms of Plan.

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: Terms of Plan.

(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: Terms of Plan.

(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.

OPPOSITION

Debtor Gloria Freeman

Gloria Freeman ("Debtor") objects to the plan, citing several factual issues and allegations. The court is not clear how these assertions are related to the confirmation of the proposed plan. Debtor argues that since the two trustees have "destroyed or sold several viable business of the estate" nothing remains to reorganize and that there are no monies to fund the proposed plan of reorganization. Debtor argues that a Chapter 7 would better suit this estate.

Debtor also argues that the statements regarding the Debtor's condition is inaccurate. Debtor states that much of the claim information is incorrect as well as the analysis of the Chapter 7 liquidation. Debtor also states the financial information is not correct, disclosed correctly or sufficiently. Debtor also states the risks are not disclosed. Debtor states that the bar date was not property sent out and parties were not properly noticed.

Debtor has not provided any evidence to support her numerous factual allegations. While Debtor states that several statements in the Plan are inaccurate, she does not provide any evidence showing this court that the allegations set forth in the plan are inaccurate.

Laurence Freeman

Laurence Freeman, non-filing spouse also objects to the confirmation of the plan. However, Mr. Freeman does not appear to be a creditor or party in interest in this case. Therefore, it does not appear that his objection is relevant. He has co-signed the Gloria Freeman declaration. In light of Laurence Freeman's statement to the court that he suffers from Aphasia, Gloria Freeman's prior testimony that Laurence Freeman is not mentally competent and is easily subject to undue influence, and Laurence Freeman being unable or unwilling to obtain independent legal counsel to represent his interests (after Gloria Freeman's attorney W. Austin Cooper, who was also the attorney representing the fiduciary Debtor in Possession in this case, withdrew from his purported representation of Laurence Freeman), notwithstanding Laurence Freeman representing that David Chandler of Santa Rosa would represent him, the court questions whether Laurence Freeman actually objects to the Plan or understand the "objection" that Gloria Freeman has written.

BASIC TERMS OF THE PLAN

The Chapter 11 Trustee shall continue as the Trustee to administer the estate through December 31, 2013. On December 31, 2013, the property of the estate shall be transferred into the Liquidating Trust created under the Plan. Prior to the transfer of assets in the Liquidating Trust, the Trustee

may disburse monies as provided under the Plan. After transfer into the Liquidating Trust, the Plan Administrator shall administer, liquidate, and distribute assets as provided in the Plan. The Chapter 11 Trustee shall be the Trustee for the Liquidating Trust. under the Plan to administer the Plan Assets. The Plan Administrator may, but is not required to obtain court approval in the exercising of Plan Administrator powers arising from the Plan.