

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

August 30, 2018 at 11:30 a.m.

1. [17-22347](#)-E-11 **UNITED CHARTER LLC** **CONTINUED STATUS CONFERENCE**
 Jeffrey Goodrich **RE: VOLUNTARY PETITION4-7-17 [1]**

Debtor's Atty: Jeffrey Goodrich

Notes:

Continued from 7/19/18 to be heard in conjunction with the confirmation hearing.

Operating Report filed: 7/26/18

[JJG-9] Motion for Order Authorizing Employment of Special Lease Litigation Counsel for Debtor in Possession filed 8/2/18; Order denying filed 8/17/18 [Dckt 268]

AUGUST 30, 2018 STATUS CONFERENCE

This voluntary Chapter 11 case was filed on April 8, 2017. A Chapter 11 Plan and proposed disclosure statement were filed on February 22, 2018. Dckts. 166, 167. An amended plan and proposed amended disclosure statement were filed on May 3, 2018, with the court issuing an order approving the May 3, 2018, Amended Disclosure Statement. Order, Dckt. 237.

The Monthly Operating Report for June 2018 (none has been filed for August, 2018, the filing of which is past due), provides the following information:

Revenues

Gross Sales.....	\$296,822
Costs of Goods Sold.....	\$ 0
Deposit.....	\$ 24,974
Reimbursement for ISF.....	\$ 16
Prepaid Rent.....	\$ 8,600

Total Revenue.....\$330,412

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Expenses

Commissions.....	(\$ 9,556)
Contract Labor.....	(\$ 19,617)
Insurance.....	(\$ 16,477)
Real Property Taxes.....	(\$136,485)
Other Taxes.....	(\$ 2,173)
Administrative.....	(\$ 146)
Interest.....	(\$ 83,297)
Water.....	(\$ 2,066)
Maintenance.....	(\$ 1,959)
Fencing.....	(\$ 8,700)
Sheriff's Eviction Fee.....	(\$ 145)
Water Testing.....	(\$ 50)
Stockton Fines.....	(\$ 1,234)
Accountant.....	(\$ 3,250)
Appraisal.....	(\$ 3,700)
Security.....	(\$ 297)
PGE.....	(\$ 7,721)

Total Expenses.....(\$296,810)

Profit/(Loss) From Operations.....\$33,602

Professional Fees.....(\$39,594)

Us Trustee Quarterly Fees.....(\$ 1,575)

At the Status Conference **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**

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No 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, 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 XXXXXXXXXXXX

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
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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:

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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.

JULY 19, 2018, HEARING

As of the hearing, Creditor had objected and Debtor in Possession had not filed a declaration in support of confirmation as required by Federal Rule of Bankruptcy Procedure 3020(b)(2).

The court continued the hearing to August 30, 2018, at 11:30 a.m. after Creditor's representation that more time might allow the parties to resolve their disputes.

STATUS REPORT

Debtor in Possession filed a Status Report on August 27, 2018. Dckt. 269. Debtor in Possession states that disputes with Creditor are not resolved. Debtor in Possession and Creditor are meeting August

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27, 2018, in an attempt to reach resolution. However, Debtor in Possession stresses it is not prepared to present evidence in support of confirmation in the event a settlement is not reached.

Debtor in Possession believes the following issues are still contested:

1. The principle amount of Creditor's claim.
2. The allowance of post-petition interest and attorneys fees.
3. The value of Creditor's collateral at the time of confirmation.
4. The appropriate interest rate for determining the present value of plan payments to Creditor; and
5. The feasibility of plan payments given any adjustments to Creditor's claim arising from resolution of the above four issues

Debtor in Possession indicates it will file an objection to Creditor's late-filed proof of claim, set for hearing October 4, 2018, in the event settlement is not achieved. Debtor in Possession requests the court continue this Motion to the same hearing date.

At the hearing, **XXXXXXXXXXXXXXXXXXXXXXX**