

Class 4: Secured claim of Stainslaus County Tax Collector	For: 0 Against: 0		
Class 5: Secured claim of Westamerica Bank	For: 1 Against: 0	100%	100%
Class 6: General unsecured	For: 0 Against: 0		
Class 7: Debtor's equity interest	For: 0 Against: 0		

Declaration of Joseph Tedesco 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 application provisions of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

Evidence: Dckt. 133, ¶ 4.

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

Evidence: Dckt. 133, ¶ 3.

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

Evidence: Dckt. 133, ¶ 5.

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. 133, ¶ 6.

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. 133, ¶ 7, 8.

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: Dckt. 133, ¶ 9.

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 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. 133, ¶ 10.

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. 133, ¶ 10.

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. 133, ¶ 11 and 12.

(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. 133, ¶ 11 and 12.

(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: Dckt. 133, ¶ 13.

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. 133, ¶ 18.

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. 133, ¶ 14.

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. 133, ¶ 15.

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: Dckt. 133, ¶ 16.

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:

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. 133, ¶ 19.

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: Dckt. 133, ¶ 20.

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. 133, ¶ 19.

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. 133, ¶ 19.

(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. 133, ¶ 18.

(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. 133, ¶ 18.

STIPULATION

On November 9, 2015, Debtor-in-Possession and Westamerica Bank filed a Stipulation for Clarification of Amended Plan of Reorganization. Dckt. 130. The Stipulation provides that Westamerica Bank "is receptive to the treatment of its claim in the Plan" under the following clarification and provisions:

1. The Debtor-in-Possession will fully cooperate with Westamerica Bank in order to document the modification of the existing loan created by the Plan, and will sign all documents necessary of the existing loan created by the Plan, and will sign all documents necessary or convenient relating to the change in terms. The purpose of this provision is to permit Westamerica Bank to have all terms, including the modifications, in one set of loan documents rather than referring to the original documents, the Plan, and the order confirming the Plan. However, Westamerica shall be required to have another document executed and may instead choose to rely on the Plan and the order confirming it.
2. Despite the language in Part III, Class 5, which states that the monthly payments to Westamerica will be due on the first day of the month, the payment instead will be due on the 11th day of the month, the due date under the current loan documents.
3. Westamerica Bank is not required to advance funds to the Stanislaus County Tax Collector on account of unpaid real property taxes on the Shopping Center, but shall be allowed to do so in order to protect its interests.
4. If the Debtor fails to make payments to the Tax Collector pursuant to the Plan, such failure to pay will be deemed a default in his obligations to Westamerica Bank under the Plan.
5. The amount of the claim of Westamerica Bank is not modified by the Plan. The only modifications to the Westamerica Bank claim are the interest rate, the monthly payment amount, and the maturity date of the loan.

November 19, 2015 at 3:00 p.m.

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6. Westamerica Bank will timely transmit a "yes" ballot on the Plan. However, if the court does not incorporate the foregoing provisions in the order confirming the Plan, Westamerica Bank reserve its right to change its vote to a "no" and the Debtor-in-Possession agrees that the "no" ballot will be deemed to have been timely cast and Westamerica Bank may submit objections to the Plan which shall be deemed timely.

CONCLUSION

The proposed Chapter 11 Plan of Reorganization filed on October 1, 2015 (Dckt. 119), complies with the requirements of 11 U.S.C. §§ 1129 and 1123. All classes of claims have voted at least more than 50% in number and 2/3 in dollar amount of the voting creditors to accept the Chapter 11 Plan.

Furthermore, the terms of the stipulation between the Debtor-in-Possession and Westamerica Bank, the Debtor-in-Possession's largest creditor in the instant case, are fair, equitable, and merely provides further affirmations for Westamerica Bank as to the specifics of the Plan as to its treatment. The terms of the stipulation do not run afoul any other terms of the Plan and also provides for the support of Westamerica Bank as to the Plan. In light of Westamerica Bank being the Debtor-in-Possession's largest creditor, the terms of the stipulation and incorporation of them into the order confirming is in the best interest of all parties in interest.

The proposed Chapter 11 Plan is confirmed. Counsel for the Debtor in Possession shall prepare and lodge with the court an order confirming the Chapter 11 Plan, incorporating the stipulation between Debtor-in-Possession and Westamerica Bank, with a copy of such confirmed plan attached as an exhibit to the proposed order.

2. [14-91023](#)-E-11 JOSEPH TEDESCO
David C. Johnston

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
7-16-14 [[1](#)]

Debtor's Atty: David C. Johnston

The Status Conference is XXXXXXXXXXXXXXXXXXXX.
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Notes:

Continued from 8/20/15

Operating Report filed: 9/14/15 [Amd. Jul]; 9/14/15; 10/13/15; 11/11/15

Amended Plan of Reorganization (October 1, 2015) filed 10/1/15 [Dckt 119];
Order Approving Disclosure Statement filed 10/9/15 [Dckt 121]

Order Authorizing Application of Payment to Secured Claim of Stanislaus County
Tax Collector filed 10/27/15 [Dckt 127]

Debtor's Updated Chapter 11 Status Report filed 11/5/15 [Dckt 128]

Stipulation for Clarification of Amended Plan of Reorganization filed 11/9/15
[Dckt 130], set for hearing 11/19/15 at 3:00 p.m.