

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 07, 2016

Hearing Room 1568

10:00 AM

2:11-20643 Dirk Johan Beer and Irmgard Quint Beer

Chapter 7

#1.00 APPLICANT: DIANE C. WEIL, Attorney for Trustee

Hearing re [55] Applications for chapter 7 fees and administrative expenses

Docket No: 0

Tentative Ruling:

12/6/2016

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$12,000.00

Expenses: \$589.06

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Dirk Johan Beer

Represented By
Krystina T Tran

Joint Debtor(s):

Irmgard Quint Beer

Represented By
Krystina T Tran

Trustee(s):

Timothy Yoo (TR)

Represented By
Diane C Weil

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#2.00 APPLICANT: TIMOTHY J. YOO, CHAPTER 7 TRUSTEE

Hearing re [55] Applications for chapter 7 fees and administrative expenses

Docket No: 0

Tentative Ruling:

12/6/2016

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$3,278.01

Total Expenses: \$28.99

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Dirk Johan Beer

Represented By
Krystina T Tran

Joint Debtor(s):

Irmgard Quint Beer

Represented By
Krystina T Tran

Trustee(s):

Timothy Yoo (TR)

Represented By
Diane C Weil

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2:16-20624 Hector Alejandro Suarez

Chapter 7

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#3.00 Hearing re [22] *Chapter 7 Trustee's Notice of Motion and Motion Objecting to Debtor's Claimed Homestead Exemption;*

Docket No: 0

Tentative Ruling:

12/6/2016

For the reasons stated below, the Trustee's objection to the Debtor's homestead exemption is OVERRULED, and the claimed exemption is allowed in its entirety.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Notice of Motion and Motion Objecting to Debtor's Claimed Homestead Exemption ("Motion") [Doc. No. 22]
- 2) Debtor's Opposition to Trustee's Notice of Motion and Motion Objecting to Debtor's Claimed Homestead Exemption [Doc. No. 28]
- 3) Party in Interest's Opposition to Trustee's Notice of Motion and Motion Objecting to Debtor's Claimed Homestead Exemption [Doc. No. 29]
- 4) Chapter 7 Trustee's Reply to Debtor's Opposition to Trustee's Motion Objecting to Debtor's Claimed Homestead Exemption [Doc. No. 34]
- 5) Chapter 7 Trustee's Reply to Stephanie Suarez's Opposition to Trustee's Motion Objecting to Debtor's Claimed Homestead Exemption [Doc. No. 35]
- 6) Other relevant papers:
 - a) Chapter 7 Voluntary Petition [Doc. No. 1]
 - b) Declaration of Hector Alejandro Suarez, Debtor [Doc. No. 12]
 - c) Summary of Amended Schedules [Doc. No. 13]

I. Facts and Summary of Pleadings

Hector Alejandro Suarez ("Debtor") commenced a voluntary Chapter 7 petition on August 10, 2016. Debtor claimed a homestead exemption in "100% of fair market value, up to any applicable statutory limit" on real property located at 8445 San Juan Avenue, South Gate, CA 90280 (the "Property"). Debtor's *Schedule A/B: Property*

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CONT... **Hector Alejandro Suarez**

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states that the value of the portion of the Property that he owns is \$195,000, and that the value of the entire Property is \$390,000—indicating that Debtor holds a 50% interest in the Property. Debtor left blank the question asking him to describe the nature of his ownership interest in the Property.

Debtor claimed the exemption under California Code of Civil Procedure ("Cal. CCP") §704.950. According to Debtor's schedules, Debtor lives at a different address—8407 Manzanar Avenue, Pico Rivera, CA 90660. *See* Official Form 101, Question No. 5. The Chapter 7 Trustee ("Trustee") objects to the claimed exemption on the grounds that the Debtor does not live at the Property.

Debtor's and Debtor's Wife's Opposition to the Trustee's Objection

Debtor asserts that he is entitled to the claimed exemption, based on the fact that he now lives at the Property. Debtor states that prior to filing the petition, he had separated from his wife, Stephanie Suarez, who lives at the Property. Debtor states that he moved back to the Property after the Trustee objected to the homestead exemption:

On August 10, 2016, I filed my Petition for Bankruptcy, at the time of said filing I was trial-separated from my wife Stephanie Suarez.

I have consulted with my wife about filing for bankruptcy as my situation has gotten harsh in reference to my finances, I have been unemployed for some time and difficulties with money became an issue between my wife and I, this precipitated the trial separation.

I went to live with my parents while trying to obtain employment so then I could cover expenses and help my wife and in return she promised to wait and see if this would help our relationship.

My wife agreed that she will make the mortgage payments while we were living at different addresses but at the same time we should work on our relationship as we both agree that us together under the same roof is best for us and our child, although it will take work from both [of] us, a reconciliation has always been our goal.

During this bankruptcy process my wife and I have gotten closer, but when all the motions from the Trustee started coming, we felt threaten[ed] by Mr. Menchaca as [it] is obvious to us that he would rather break a home and leave my family homeless rather than work through it.

My wife and I decided that it was best that I go back home.

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I moved back home and have been living together with my wife as the family we have always been.

Hector Suarez Decl. at ¶¶ 3–9.

Stephanie Suarez, the Debtor's spouse, submitted a declaration corroborating that the Debtor has moved back to the Property.

Debtor's initial Statement of Financial Affairs states that he is not married. However, on November 30, 2016, Debtor filed an Amended Statement of Financial Affairs stating that he is married. Before the Trustee filed the instant Motion, Debtor filed a declaration stating "I am legally married to Stephanie Suarez." *See* Declaration of Hector Alejandro Suarez, Debtor [Doc. No. 12]. Debtor also filed an amended Schedule I which includes Suarez's earnings as a "non-filing spouse." *See* Doc. No. 13. The amended Schedule I was also filed prior to the Trustee's objection to the Debtor's exemption.

Trustee's Replies to the Oppositions Filed by the Debtor and the Debtor's Wife

In reply to the Debtor's Opposition, the Trustee emphasizes that the Debtor does not dispute that he did not live at the Property when the petition was filed. The Trustee also notes that the Debtor's Statement of Financial Affairs provides that the Debtor did not live at the Property during the past three years and states that the Debtor is not married. Pointing to the Debtor's statement that he moved back to the Property only after "all the motions from the Trustee started coming," the Trustee argues that the Debtor's decision to move back is nothing more than an attempt to circumvent the Trustee's administration of the Property. Finally, the Trustee argues that the Opposition should be disregarded because it was not properly served and did not properly advise the Trustee of the due date for filing a reply.

In reply to Stephanie Suarez's Opposition, the Trustee argues that Suarez lacks standing, because she is not a debtor, co-debtor, or creditor. The Trustee further argues that Suarez's Opposition should be disregarded because it was not properly served and did not properly advise the Trustee of the due date for filing a reply.

II. Findings and Conclusions

At the outset, the Court declines to disregard the Oppositions filed by the Debtor and Suarez based on lack of proper service. Although the Trustee's counsel was not served, the Trustee was served, and the Trustee's counsel received notice of the Oppositions in time to file Replies. The Court also declines the Trustee's request to disregard Suarez's Opposition based on Suarez's lack of standing. While it is true that

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Suarez lacks standing to oppose the Trustee's objection to the Debtor's exemption, the Court construes Suarez's Opposition as though it were a declaration filed in support of the Debtor's Opposition. Suarez's Opposition does not advance arguments separate from those contained in the Debtor's Opposition; instead, the Suarez Opposition merely corroborates the Debtor's testimony that Suarez and the Debtor are married.

Turning to the merits, on Schedule C, Debtor claimed a homestead exemption pursuant to Cal. CCP §704.950. Debtor did not reference the correct section of the exemption statute. Cal. CCP §704.950 does not provide for a homestead exemption; it sets forth the circumstances under which a judgment lien attaches to a declared homestead exemption.

Two types of homestead exemptions exist in California: the declared homestead exemption, governed by Article 5 of California's exemption statute (codified at Cal. CCP §704.910 et seq.), and the automatic homestead exemption, governed by Article 4 of the exemption statute (codified at Cal. CCP §704.730 et seq.). The protections of an Article 5 exemption are not available in bankruptcy. *See Weil v. Elliott (In re Elliott)*, 523 B.R. 188, 195 (B.A.P. 9th Cir. 2014) ("The protections of an Article 5 declared homestead exemption apply only in the context of voluntary sales.... [A]n effective Article 5 exemption does not protect [an interest in property] in the forced sale context of [a] chapter 7 bankruptcy."). Because an Article 5 exemption is unavailable in bankruptcy, the Court will construe the Debtor's exemption as though it had been claimed under Article 4 (codified at Cal. CCP §704.710 et seq.). The Court notes that the Trustee's objection to the exemption treats the exemption as though it had been claimed under Article 4.

Under California law, the filing of a bankruptcy petition constitutes a "forced sale" which triggers the protections afforded by the Article 4 automatic homestead exemption provided for in Cal. CCP §704.730. *See Elliot, supra*, 523 B.R. at 195 ("The Article 4 protections for automatic homestead exemptions are applicable in a forced sale context.... The filing of a bankruptcy petition constitutes such a 'forced sale' to trigger the application of the automatic homestead exemption.").

Cal. CCP §704.710(c) defines a homestead as "the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead." In the bankruptcy context, the date on which the judgment creditor's lien attached to the dwelling is the date of the filing of the petition. *See In re Dodge*, 138 B.R. 602, 606 (Bankr. E.D. Cal. 1992) (stating

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that in the context of a bankruptcy proceeding, “the filing of the petition is tantamount to a levy on the debtor’s property”).

Both parties focus their briefing on when the Debtor moved back into the Property, and whether the Debtor intends to continue living at the Property. This focus ignores the fact that a homestead exemption may also be claimed if the judgment debtor’s spouse lived at the Property when the petition was filed. *See* Cal. CCP § 704.710(c) (defining a homestead as “the principal dwelling in which the judgment debtor *or the judgment debtor’s spouse* resided on the date the judgment creditor’s lien attached to the dwelling”) (emphasis added); *Dodge*, 138 B.R. at 606 (stating that “the debtor *or the debtor’s spouse* must reside in the dwelling when the petition is filed to be entitled to a homestead exemption whether the homestead is claimed under either Article 4 or Article 5”) (emphasis added). There is no dispute that Stephanie Suarez lived at the Property when the petition was filed and has lived at the Property continuously thereafter. The only issue is whether Suarez is the Debtor’s spouse.

When Debtor first filed his schedules, he stated that he was not married. However, Debtor subsequently filed a declaration stating that he was married to Suarez, and filed amended schedules listing Suarez’s earnings as income from a non-filing spouse. In connection with this matter, Debtor and Suarez also filed declarations attesting that they are married. Debtor also filed an Amended Statement of Financial Affairs stating that he is married. Based on the subsequent declarations and amended schedules, the Court finds that the Debtor’s statement on his schedules that he was not married was an error, and that the Debtor and Suarez are married.

As a result of his marriage to Suarez, the Debtor is entitled to claim a homestead exemption in the Property even though he did not live there when the petition was filed. Accordingly, the Trustee’s objection to the claimed exemption on the grounds that the Debtor did not live at the Property is overruled. Since this was the only basis for the Trustee’s objection, the claimed exemption is allowed in its entirety.

The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Nathaniel Reinhardt or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will

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determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Hector Alejandro Suarez

Represented By
Vincent W Davis

Trustee(s):

John J Menchaca (TR)

Represented By
Toan B Chung

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2:16-24024 Micr Toner International LLC (Nevada)

Chapter 7

#4.00 Status Hearing

RE: [1] Chapter 7 Involuntary Petition Against a Non-Individual. Sarena Fuller (attorney David R Haberbush) . (Serrano, Vera) Additional attachment(s) added on 10/25/2016 (Serrano, Vera).

Docket No: 1

***** VACATED *** REASON: CONTINUED 1-25-17 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Micr Toner International LLC (Nevada Pro Se

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2:12-31372 First Regional Bancorp

Chapter 11

#5.00 Hearing RE [257] Post-Confirmation Status Conference

FR. 5-23-14; 4-10-14; 10-22-14; 4-22-15; 6-16-15; 1-6-16; 7-13-16

Docket No: 0

Tentative Ruling:

12/6/2016

No appearances required.

This is the sixth post-confirmation status conference. Upon review of the Status Report, the Court CONTINUES the status conference to June 6, 2017 at 10:00 a.m.. A post-confirmation status report is due 14 days prior to the hearing.

Party Information

Debtor(s):

First Regional Bancorp

Represented By
Jon L Dalberg
Ivan L Kallick
Todd Meyers
Roye Zur

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2:14-24253 Jack Shnorhavorian

Chapter 11

#6.00 Hearing
RE: [94] Application for Compensation First and Final and Proof of Service for Vahe Khojayan, Debtor's Attorney, Period: 7/25/2014 to 10/31/2016, Fee: \$28225.00, Expenses: \$2479.50. (Khojayan, Vahe)

Docket No: 94

Tentative Ruling:

12/6/2016

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$28,225.00 (subject to a \$6,000 retainer of which \$4,283.00 remains)[FN 1]

Expenses: \$2,479.50

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks, at 213-894-1522.

Note 1: The Applicant states that \$3,183.00 plus \$1,100.00 remain. This equals \$4,283.00. This makes sense because Applicant states that the original retainer paid for the cost of the filing fee, i.e. \$6,000.00 - \$1717.00 = \$4,283.00.

Party Information

Debtor(s):

Jack Shnorhavorian

Represented By
Vahe Khojayan

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2:14-25758 Wesley Brian Ferris

Chapter 11

#7.00 Hearing re Confirmation of Debtor's Chapter 11 Plan

fr. 7-6-16; 10-4-16; 11-9-16

Docket No: 109

Tentative Ruling:

12/6/2016: For the reasons set forth below, GRANT Motion.

Pleadings Filed and Reviewed

- Disclosure Statement:
 - Chapter 11 Disclosure Statement in Support of Plan of Reorganization Dated March 4, 2016 ("Disclosure Statement") [Doc. No. 109]
 - Order Approving Disclosure Statement [Doc. No. 109]; Setting Date for Confirmation Hearing and Establishing Deadlines for Voting and Filing Objections to Confirmation of Plan [Doc. No. 128]
 - Redline of First Amended Disclosure Statement Marked to Show Changes [Doc. No. 132]
 - First Amended Chapter 11 Disclosure Statement in Support of First Amended Plan of Reorganization Dated July 25, 2016 ("First Amended Disclosure Statement" or "DS") [Doc. No. 133]
- Plan Confirmation:
 - Debtor's Chapter 11 Plan of Reorganization Dated March 4, 2016 ("Plan") [Doc. No. 108]
 - Redline of First Amended Plan of Reorganization Marked to Show Changes with Proof of Service [Doc. No. 130]
 - Debtor's First Amended Chapter 11 Plan of Reorganization Dated July 25, 2016, with Proof of Service ("First Amended Plan") [Doc. No. 131]
 - Objection to Confirmation of Chapter 11 Plan ("Opposition") [Doc. No. 138]
 - Debtor's Motion for Order (1) Modifying First Amended Chapter 11 Plan of Reorganization, Dated July 26, 2016; and (2) Confirming First

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Wesley Brian Ferris

Chapter 11

Amended Chapter 11 Plan of Reorganization, Date July 25, 2016, as Modified ("Motion") [Doc. No. 166]

§ Declaration of Diane C. Weil Re: Certification of Ballot Tabulation with Respect to the Votes for the Debtor's First Amended Chapter 11 Plan of Reorganization Dated July 25, 2016 [Doc. No. 168]

§ Declaration of Wesley Brian Ferris in Support of Debtor's Motion [Doc. No. 169]

§ Declaration of David S. Serber in Support of Debtor's Motion [Doc. No. 170]

§ Declaration of Diane C. Weil in Support of Debtor's Motion [Doc. No. 172]

- Plan Ballot Summary with Proof of Service [Doc. No. 167]

§ Supplemental Declaration of Diane C. Weil Re: Receipt of Additional Ballot Accepting Debtor's First Amended Chapter 11 Plan of Reorganization Date July 25, 2016 [Doc. No. 178]

- Debtor's First Amended Chapter 11 Plan of Reorganization as Modified November 4, 2016 ("Modified First Amended Plan") [Doc. No. 171]

Stipulations

- Stipulation Regarding Date for Filing Amended Disclosure Statement and Plan; Setting Date for Confirmation Hearing and Establishing Deadlines for Voting and filing Objections to Confirmation of Plan [Doc. No. 123]

§ Order Approving Stipulation [Doc. No. 126]

- Stipulation to Extend Dates for Filing Brief in Support of Confirmation of Plan and Objection to Confirmation of Plan [Doc. No. 150]

§ Order Approving Stipulation to Extend Dates for Filing Brief in Support of Confirmation of Plan and Objections to Confirmation of Plan [Doc. No. 151]

- Stipulation to (1) Continue Hearing on Confirmation of Plan; (2) Extend Dates for Filing Brief in Support of Confirmation of Plan; and (3) Extend Dates for Filing Objections to Confirmation of Plan [Doc. No. 154]

§ Order Approving Stipulation to (1) Continue Hearing on Confirmation of Plan; (2) Extend Dates for Filing Brief in

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Wesley Brian Ferris

Chapter 11

- Support of Confirmation of Plan; and (3) Extend Dates for Filing Objections to Confirmation of Plan [Doc. No. 157]
- Stipulation for Plan Treatment of Class 2 Claim Secured by First Lien on Real Property Located at 443 East Greystone Avenue, Monrovia, CA 91016 [Doc. No. 161]
- Stipulation for Plan Treatment of Class 3A Claim Secured by First Lien on Real Property Located at 444 North Myrtle Avenue, Monrovia, CA 91016 [Doc. No. 163]
 - § Order on Stipulation for Plan Treatment of Class 3A Claim Secured by First Lien on Real Property Located at 444 North Myrtle Avenue, Monrovia, CA 91016 [Doc. No. 175]
- Stipulation Re: Chapter 11 Plan treatment of Class 1A Claim and Withdrawal of Objection to Confirmation of Chapter 11 Plan [Doc. No. 179]

Facts and Summary of Pleadings

On August 15, 2014, Chapter 11 debtor and debtor-in-possession Wesley Brian Ferris ("Debtor") filed the instant Motion, seeking an Order to Modify the First Amended Chapter 11 Plan of Reorganization and Confirm the First Amended Chapter 11 Plan of Reorganization as Modified ("Motion"). Doc. No. 166. For the reasons set forth below, the Motion is GRANTED.

Background

The Debtor is a certified public accountant. The Debtor invested in real estate as part of his retirement plan. At the time of the Southern California real estate market crash, the Debtor owned six (6) homes and other investment properties. In July 2008, the Debtor was laid off, leading to the sale at a loss or foreclosure on three (3) of the properties. The primary assets of the estate are the remaining three (3) properties (referred to as "Alta Vista," "Myrtle," and "Greystone," or collectively, "Properties"). The Debtor became seriously delinquent on Alta Vista and Myrtle but regained employment in April 2010 and was able to cure the deficiency on Myrtle in 2012. The Debtor filed the Petition to restructure the debts secured by the Properties. The Debtor was laid off in July 2015, but is once again employed and has a regular source of income which he contends will enable him to fund the Plan.

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Disclosure Statement and Plan

On March 4, 2016, the Debtor filed the original Disclosure Statement and Plan. Doc. Nos. 108-09. On July 21, 2016, the Court entered an order approving the Disclosure Statement, provided that the Debtor provide "information pertaining to current lease agreements, payment history of current tenants, scheduled rent increases and necessary or expected repairs relating to the rental properties..." Doc. No. 128. Additionally, the Court imposed the following pertinent deadlines: (1) the Debtor must file and serve an amended disclosure statement by no later than July 26, 2016, and (2) set a hearing on the Debtor's Plan for November 9, 2016. *Id.*

On July 26, 2016, the Debtor filed the First Amended Disclosure Statement, a redlined version of the First Amended Disclosure Statement, the First Amended Plan, and a redlined version of the First Amended Plan. Doc. Nos. 130-33. The First Amended Disclosure Statement includes new information pertaining to the Debtor's historical information relating to the operation of the Debtor's rental properties. Doc. No. 132. First, the Debtor states that the real property located at 515 North Alta Vista Avenue, Monrovia, CA 91016 ("Alta Vista") is subject to a first deed of trust ("DOT") held by Structured Assets Mortgage Investments II, Inc., Bear Stearns Arms Trust, Mortgage Pass-Through Certificates, Series 2004-3, U.S. Bank National Association as Trustee, serviced by Specialized Loan Servicing, LLC ("Specialized") in the amount of approximately \$800,000, and a second DOT held by the Bank of New York Mellon, as trustee for CWHEQ Revolving Home Equity Loan Trust 2005-H, Revolving Home Equity Loan Asset Backed Notes, Series 2005-H by Green Tree Servicing, LLC ("Green Tree Servicing") in the approximate amount of \$51,271.01. First Amended DS at 6. The Debtor states that Alta Vista has remained vacant for about a year, except for a three day period surrounding the 2015 Rose Bowl, which necessitated some plumbing repairs. *Id.* The Debtor made additional repairs in October 2015 and finally found tenants to rent to in May 2016 at \$3,000 per month. *Id.* The tenants have paid the rent on time, but the Debtor admits that Alta Vista needs more repairs in the approximate amount of \$130,000. *Id.*

Second, the Debtor represents that the real property located at 443 East Greystone Avenue, Monrovia, CA 91016 ("Greystone") is subject to a first DOT held by the Bank of New York Mellon, f/k/a the Bank of New York, as trustee, on behalf

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of the holder of the Alternative Loan Truste 2006-OA17, Mortgage Pass Through Certificates Series 006-OA17, serviced by Select Portfolio Servicing, Inc. ("Mellon") in the estimated amount of \$560,000. *Id.* The Debtor currently rents Greystone on a one year term starting on July 15, 2016 at \$3,100 per month. *Id.* The Debtor contends that tenants historically stay at Greystone between two and four years, with an average of forty-five days in between tenants. *Id.* The Debtor explains that the cost of repairs rarely exceeds the security deposit. *Id.* at 7.

Finally, the Debtor represents that the real Property located at 444 North Myrtle Avenue, Monrovia, California 91606 ("Myrtle") is subject to a DOT held by Bank of America, N.A. ("BoA") with an approximate balance of \$400,000. *Id.* Currently, the Debtor rents Myrtle on a one-year term beginning on July 1, 2016, at \$2,800 per month. *Id.* Tenants usually stay at Myrtle between two and four years, with a forty-five day turnaround time between tenants. *Id.*

Stipulations and Continued Dates

On August 1, 2016, Specialized filed the Opposition to the Plan. Doc. No. 138. Specialized disputes the value of the Alta Vista property, asserting that its own appraisal report indicates a fair market value ("FMV") of \$961,000, instead of the Debtor's FMV of \$750,000. Opposition at 2. Specialized contends that the FMV impacts not only the treatment of Specialized and all other secured creditors, but also impacts the liquidation analysis and the feasibility of the Plan. *Id.*

On October 14, 2016, the Debtor filed a stipulation to continue the hearing on the Plan's confirmation, extend the deadlines for the Debtor to file a motion in support of confirming the Plan, and extend the deadline for objections to the Plan ("Continued Hearing Stipulation"). Doc. No. 154. On October 18, 2016 the Court entered an order approving of the Continued Hearing Stipulation and set the following dates: (1) December 7, 2016, as the continued date for the confirmation hearing on the Plan, (2) November 4, 2016, as the deadline for the Debtor to file a motion for an order in support of confirming the Plan, (3) November 16, 2016, as the last day for parties in interest to file an objection, and (4) November 28, 2016, as the last day for the Debtor to file a reply in response to any filed objections. Doc. No. 157.

On November 3, 2016, Mellon filed a stipulation ("Mellon Stipulation"). Doc.

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No. 161. The Mellon Stipulation states that Mellon's total claim will be \$557,651.00 and the Debtor will pay the claim at 4.75% amortized interest, calculated on a 360 month schedule. Mellon Stipulation at 3. The maturity date of the loan will occur on September 1, 2046, with all amounts outstanding due. *Id.* On November 4, 2016, BoA filed a stipulation ("BoA Stipulation"). Doc. No. 163. The BoA Stipulation states that BoA's total claim will be \$396,009.66 and the Debtor will pay the claim at 5% amortized interest, calculated on a 360 month schedule. BoA Stipulation at 2. Subsequently, the Court entered an order approving the BoA Stipulation on November 14, 2016. Doc. No. 175. On December 5, 2016, Specialized filed a stipulation ("Specialized Stipulation"). Doc. No. 179. The Specialized Stipulation states that Specialized's total claim will be \$818,227.41 and the Debtor will pay the claim at 4.5% amortized interest, calculated on a 360 month schedule. *Id.*

Description of Modified First Amended Plan

On November 4, 2016, the Debtor filed the Modified First Amended Plan, incorporating the Mellon and BoA Stipulations, and the Motion for an order to confirm the Modified First Amended Plan. Doc. Nos. 166, 171. The Modified First Amended Plan becomes effective on the 30th day following the entry of an order of the Court confirming the Plan ("Effective Date"). The Modified First Amended Plan classifies claims asserted against the estate into following groups. Modified First Amended Plan, Ex. A.

Class 1: Claims secured by Alta Vista: Claim 1A is comprised of the secured claim of Specialized's first DOT on Alta Vista. Specialized's claim, estimated to be \$815,000, will be payable over thirty (30) years[FN 1] at a fixed rate of 4.5%, fully amortized with no penalty. Modified First Amended Plan at 2. The Debtor and Specialized have entered into a stipulation which will be submitted as soon as the stipulation is complete. Motion, ¶ 10. Class 1B is comprised of the claim of Green Tree Servicing filed as Claim No. 3, in the amount of \$51,271.01, based on a "Charged off Second Mortgage." *Id.* at 3. Green Tree Servicing will be treated as a class 5 claim. *Id.*

Class 2: Claim secured by Greystone: Class 2 is comprised of Mellon's first DOT on Greystone. The Debtor's obligation to Mellon is current. The balance of the Class 2 claim as of the Effective Date, calculated to be approximately \$560,000, will

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be payable over thirty (30) years from the Effective Date at a fixed interest rate of 4.75%, fully amortized, with no prepayment penalty, calculated on a 360 month schedule. Modified First Amended Plan at 3. The Mellon Stipulation is fully incorporated into the Plan. *Id.*

Class 3: Claims secured by Myrtle: Class 3A is comprised of BoA's first DOT on Myrtle. The Debtor's obligation to BoA is current. The balance of the Class 3 claim as of the Effective Date, calculated to be approximately \$400,000, will be payable over thirty (30) years from the Effective Date, at a fixed interest rate of 5.0%, fully amortized, with no prepayment penalty. The BoA Stipulation is fully incorporated into the Plan. Class 3B is comprised of the claim of the City of Monrovia filed as Claim No. 6 in the amount of \$8,500. The Debtor disputes the amount of Monrovia's claim and the validity of its security interest. The Plan is a compromise to avoid the cost of litigation. Class 3B will be paid \$7,500 on the Effective Date as payment in full of Class 3B's claim.

Class 4: Priority Claims: To the Debtor's knowledge, there are no priority claims entitled to special treatment under 11 U.S.C. § 507.

Class 5: General Unsecured Claims: Class 5 contains all general unsecured claims. Holders of Class 5 claims will receive a one-time pro rata distribution of the estimated available cash within thirty (30) days following the Effective Date, estimated to be \$100,000. In addition, the Debtor will add "new value" to the Plan by contributing \$500 per month for twenty-four (24) months into a "second distribution" fund, from which a second distribution will be made on a pro rata basis to Class 5 within thirty (30) days following the final payment into the "second distribution" fund. Class 5 consists of only of JP Morgan Chase's wholly unsecured claim in the amount of \$152,429.42. A proposed treatment of Class 5 claims is detailed in Exhibit "F" to the Disclosure Statement. The Court notes that Green Tree Servicing's claim of \$51,271.01 will be treated as a class 5 claim, even though the Debtor designates its claim in class 1B.

Class 6: Debtor's Interest: As of the Effective Date, the Debtor will be re-vested with all of his interest in the Properties, subject to the payments required by the Plan.

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Means of Implementation

As of February 29, 2016, there was approximately \$109,000 in cash in the debtor-in-possession bank account. Modified First Amended Plan at 5. Available Cash will be the cash remaining in the DIP bank account after the payment of Class 3B held by City of Monrovia and a reserve of \$20,000 for professional fees. It is not anticipated that Available Cash will be less than \$100,000, but in the event that Available Cash on the initial distribution date is less than \$100,000, counsel for the DIP agrees to defer payment of a sufficient portion of her fees to allow an initial distribution of \$100,000, provided the reorganized Debtor provides assurance of payment. Holders of Class 5 claims will receive a pro rata share of Available Cash within thirty (30) days following the Effective Date. According to Debtor's liquidation analysis, unsecured creditors will be paid approximately 65% of their claims in a chapter 7 liquidation proceeding. Disclosure Statement, Ex. "G."

The Debtor's projected revenues and expenses, and proposed payments to creditors under the Plan ("Projected Financials") are specified in Exhibit "C" to the First Amended Disclosure Statement. The Projected Financials also include cash flow projections for each of the Properties. The Debtor has no pre-petition executory contracts. Subsequent to the petition date, the Debtor has entered into leases for Myrtle and Greystone. Those leases, to the extent applicable, will be assumed. Modified First Amended Plan, Ex. B.

Additionally, holders of claims in classes 1A, 2, and 3A will receive a new promissory note in the amount specified in the Plan. *Id.* at 5. Specifically, the Debtor will deliver the following: (1) a promissory note to Specialized on or within thirty (30) days from the Effective Date in the amount of \$818,227.41 at a 4.5% per annum, amortized over thirty years; (2) a promissory note to Mellon on or within thirty (30) days from the Effective Date in the amount of \$560,000.00 at a 4.75% per annum, amortized over thirty years; and (3) a promissory note to BoA on or within thirty (30) days from the Effective Date in the amount of \$392,000.00 at a 5.0% per annum, amortized over thirty years. *Id.*

On November 4, 2016, the Debtor filed a plan ballot summary ("Plant Ballot Summary"). Doc. No. 167. The breakdown of the ballot is as follows:

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- Accepting Class 1 creditors:
 - § 1A Specialized, \$818,407.80[FN 2]
- Accepting Class 2 creditor:
 - § Mellon, Claim No. 13-1, \$595,840.91;
- Accepting Class 3 creditors:
 - § 3A BoA, \$408,061.01
 - § 3B City of Monrovia, \$8,500.00

On December 1, 2016, the Debtor filed a declaration attesting to an additional ballot acceptance by Class 5 creditor J.P. Morgan Chase related to the amount of \$152,429.42. Doc. No. 178.

Findings of Fact and Conclusions of Law

As set forth below, the Court finds that the Plan complies with all applicable provisions of § 1129, and the Court hereby confirms the Modified First Amended Plan. The objection lodged by Specialized appears resolved, evidenced by the Specialized Stipulation. The Court treats the lack of additional objections as consent to confirmation of the Modified First Amended Plan. LBR 9013-1(h).

SECTION 1129(A)(1)

Section 1129(a)(1) requires that the "plan compl[y] with the applicable provisions of this title." According to the leading treatise, the "legislative history suggests that the applicable provisions are those governing the plan's internal structure and drafting: 'Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of a plan.'" *Collier on Bankruptcy* ¶ 1129.01[1] (16th rev'd ed.) (citing S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978)).

1. Section 1122(a)

Section 1122(a) provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class." Whether claims are "substantially similar" is a question of fact, reviewable under a clearly erroneous standard. *In re Johnston*, 21 F.3d 323 (9th

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Cir. 1994). In such context, the reasons for different treatment and separate classification must be closely scrutinized. *In re Acequia*, 787 F.2d 1352, 1364 (9th Cir. 1986). Factors guiding the factual review include whether the discrimination is reasonably based, whether the debtor can reorganize without it, whether the discrimination is fair and proposed in good faith, or whether the degree of discrimination is directly related to the basis or rationale for the discrimination. *In re Tucson Self-Storage, Inc.*, 166 B.R. 892, 897 (B.A.P. 9th Cir. 1994) (quoting *In re Wolff*, 22 B.R. 510, 512 (B.A.P. 9th Cir. 1982).

The Modified First Amended Plan designates six classes of claims. Class 1 consists of Specialized's impaired claim, a secured first priority claim on the Alta Vista Property, and Green Tree Servicing's impaired claim, a fully unsecured claim on the Alta Vista property; Class 2 consists of Mellon's impaired claim, a secured lien on the Greystone property; Class 3 consists of BoA's impaired claim, a secured lien on the Myrtle property; Class 5 contains the general unsecured claim of J.P. Morgan Chase; and Class 6 consists of Debtor's re-vested interest in the three different properties. Based on review of the pleadings, the Court finds sufficient evidence that the separation of Classes 1, 2, 3, 5, and 6 is reasonably based and in good faith. Thus, the Modified First Amended Plan satisfies § 1122(a).

2. Section 1122(b)

Section 1122(b) provides that "a plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience." Section 1122(b) does not apply to the Modified First Amended Plan.

3. Section 1123(a)(1)

Section 1123(a)(1) requires that a plan "designate ... classes of claims, other than claims of a kind specified in section 507(a)(2) [administrative expense claims], 507(a)(3) [claims arising during the gap period in an involuntary case], or 507(a)(8) [priority tax claims], and classes of interests." The Modified First Amended Plan classifies all claims and interests other than the specified priority claims in a manner consistent with § 1122. Thus, the Modified First Amended Plan satisfies § 1123(a)(1).

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4. Section 1123(a)(2)

Section 1123(a)(2) requires that a plan "specify any class of claims or interests that is not impaired under the Plan." The Debtor designates class 4, priority claims, as unimpaired. Thus, the Modified First Amended Plan satisfies § 1123(a)(2).

5. Section 1123(a)(3)

Section 1123(a)(3) requires that the Plan "specify the treatment of any class of claims or interests that is impaired under the Plan." Classes 1A, 1B 2, 3A, 3B, 5, and 6 are specified as impaired classes. Thus, the Modified First Amended Plan satisfies § 1123(a)(3).

6. Section 1123(a)(4)

Section 1123(a)(4) requires that the Plan "provide the same treatment for each claim or interest of a particular class unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." The Modified First Amended Plan provides the same treatment for each claim in a particular class. Thus, the Modified First Amended Plan satisfies § 1123(a)(4).

7. Section 1123(a)(5)

Section 1123(a)(5) requires that the Modified First Amended Plan "provide adequate means for the plan's implementation." The Projected Financials show that the Debtor intends to fund the Modified First Amended Plan with rental income from the three real properties and the Debtor's available cash on hand of \$107,500. Additionally, the Debtor's counsel represents that she will defer a portion of her fees if there is less than \$100,000, plus enough to cover the counsel's allowed fees, to cover the initial distribution, which she will not do in a chapter 7 liquidation. Doc. No. 172. The Court finds that the Modified First Amended Plan provides sufficient evidence to show adequate means of implementation. Thus, the Plan does satisfies § 1123(a)(5).

8. Section 1123(a)(6)

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Section 1123(a)(6) provides: "[A] plan shall provide for the inclusion in the charter of the debtor, if the debtor is a corporation ..., of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends." The Debtor is an individual, thus, § 1123 (a)(6) does not apply.

9. Section 1123(a)(7)

Section 1123(a)(7) requires that the Modified First Amended Plan's provisions with respect to the selection of officers and directors be consistent with public policy and the interests of creditors and equity security holders. The Debtor is an individual. This section does not apply.

10. Section 1123(b)

Section 1123(b) sets forth six specific provisions that are permitted, but not required, in a plan of reorganization. Five of the specified six provisions are contained in the Plan.

The Modified First Amended Plan impairs Class 1A, 1B, 2, 3A, 3B, 5, and 6. *See* 11 U.S.C. § 1123(b)(1).

The Modified First Amended Plan will assume the prepetition leases related to the Myrtle and Greystone properties. *See* 11 U.S.C. § 1123(b)(2).

The Modified First Amended Plan provides that the Debtor will have the power and authority to settle or compromise any claim by or against the Debtor, except regarding any claims against the Debtor. For these claims, no notice or court approval is necessary if the allowed amount of such claim is less than \$10,000. *See* 11 U.S.C. § 1123(b)(3).

The Modified First Amended Plan modifies the rights of the secured claims of Specialized, Mellon, and BoA. *See* 11 U.S.C. § 1123(b)(5).

The Modified First Amended Plan does contain other provisions not expressly referred to in 11 U.S.C. § 1123(b), not inconsistent with the applicable provisions of the Bankruptcy Code. *See* 11 U.S.C. 1123(b)(6).

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In sum, the Modified First Amended Plan is consistent with § 1123(b).

SECTION 1129(A)(2)

Section 1129(a)(2) requires that the "proponent of the plan compl[y] with the applicable provisions of this title." The Court finds that Debtor as plan proponent has obtained Court approval of the employment of a professional person. *See* Doc. No. 22 (order authorizing Diane C. Weil as general bankruptcy counsel). Additionally, the Court finds that the Debtor has satisfied the Court's conditional grant requiring an amended Disclosure Statement. *See* Doc. No. 128. The First Amended Disclosure Statement contains sufficient information as to the Debtor's current lease agreements, the payment history of the current tenants, scheduled rent increases and the costs of repairs. *Id.* Thus, the Debtor satisfies the requirements of § 1129(a)(2).

SECTION 1129(A)(3)

Section 1129(a)(3) requires that the "plan has been proposed in good faith and not by any means forbidden by law." As one court has explained:

The term 'good faith' in the context of 11 U.S.C. § 1129(a)(3) is not statutorily defined but has been interpreted by case law as referring to a plan that 'achieves a result consistent with the objectives and purposes of the Code.' 'The requisite good faith determination is based on the totality of the circumstances.'

In re Melcher, 329 B.R. 865, 876 (Bankr. N.D. Cal. 2005) (internal citations omitted). Under Fed. R. Bankr. P. 3015(f), the Court is not required to receive evidence as to good faith if no party objects to confirmation. Here, there is no evidence indicating bad faith by the Debtor or a purpose inconsistent with resolving the Debtor's obligations to her creditors in accordance with the Bankruptcy Code. Thus, the Modified First Amended Plan satisfies § 1129(a)(3).

SECTION 1129(A)(4)

Section 1129(a)(4) requires that "[a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under

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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." The Modified First Amended Plan provides for Court approval of all professional fees. *See* Modified First Amended Plan at 2. Thus, the Modified First Amended Plan satisfies § 1129(a)(4).

SECTION 1129(A)(5)

Section 1129(a)(5) requires that a plan discloses "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." Section 1129(a)(5)(A)(ii) requires that the appointment to or continuation in office of an director or officer be consistent with the interests of creditors, equity security holders, and public policy. Section 1129(a)(5)(B) requires the Plan proponent to disclose the identity of any insider to be employed by the reorganized debtor. The Modified First Amended Plan does not contemplate employment of any individuals in the context of § 1129(a)(5). Thus, § 1129(a)(5) does not apply.

SECTION 1129(A)(6)

Section 1129(a)(6) requires that a governmental regulatory commission with jurisdiction over rates charged by a debtor approve any rate changes provided for in the plan. The Debtor is not subject to the jurisdiction of any regulatory commission regarding rates leaving this section inapplicable to the Modified First Amended Plan. Thus, the Modified First Amended Plan is consistent with § 1129(a)(6).

SECTION 1129(A)(7)

Section 1129(a)(7), known as the "best interests of creditors test," provides in relevant part: "With respect to each impaired class of claims or interests, each holder of a claim or interest of such class has accepted the plan; or 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 this title on such date." Here, each impaired creditor that voted accepted the plan. Thus, the Plan

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satisfies § 1129(a)(7).

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SECTION 1129(A)(8)

Section 1129(a)(8) requires each class to accept the Plan, unless the class is not impaired. "The holder of a claim or interest allowed . . . may accept or reject a plan." 11 U.S.C. § 1126(a). An "allowed" claim or interest must actually be filed or be deemed filed. For a claim be deemed filed, the claim or interest must be listed in the debtor's chapter 11 schedules, but not specified as disputed, contingent, or unliquidated. 11 U.S.C. § 1111(a). If there has been an objection to a claim, the claim holder will not be able to vote on the plan unless the court has settled the claim in the claimholder's favor. *In re M. Long Arabians*, 103 B.R. 211, 215 (B.A.P. 9th Cir. 1989). However, FRBP 3018(b) allows the court to temporarily allow the claim or interest in an amount which the court deemed proper for the purpose of accepting or rejecting a plan. Pursuant to § 1126(c), "A class of claims has accepted a plan if such plan has been accepted by creditors . . . that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors . . . that have accepted or rejected such plan." 11 U.S.C. § 1126(c). The holder of a claim must affirmatively accept the plan. *In re M. Long Arabians*, 103 B.R. at 216. Here, each impaired class that voted accepted the plan. Therefore, the Plan satisfies § 1129(a)(8).

SECTION 1129(A)(9)

Section 1129(a)(9) requires that holders of certain administrative and priority claims receive cash equal to the allowed claim amount on the effective date of the plan, unless the claimant agrees to different treatment. Holders of administrative and priority claims are treated pursuant to § 1129(a)(9). Here, the Debtor's counsel is the only professional of the estate and will receive compensation pursuant to Court approval. Thus, the Modified First Amended Plan satisfies § 1129(a)(9).

SECTION 1129(A)(10)

Section 1129(a)(10) requires that at least one class of impaired claims accept the plan, determined without including any acceptance of the plan by any insider. Here, impaired classes 1A, 1B, 2, 3A, 3B, 5, and 6 accepted the Modified First

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Amended Plan. Thus, the Modified First Amended Plan satisfies § 1129(a)(10).

SECTION 1129(A)(11)

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to find that "[c]onfirmation 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." Based upon its review of the Modified First Amended Plan, the Court finds that the Modified First Amended Plan is sufficient to satisfy the feasibility requirement. The Debtor intends to fund the proposed plan with the Debtor's cash on hand, in the amount of \$107,500, and the monthly rental income from the Properties. The Court finds sufficient evidence to show that the Modified First Amended Plan is not likely to be followed by liquidation or further financial reorganization by the Debtor. Thus, the Modified First Amended Plan satisfies § 1129(a)(11).

SECTION 1129(A)(12)

Section 1129(a)(12) requires that the Debtor pay all United States Trustee fees prior to confirmation or provide for payment of those fees on the effective date. The Modified First Amended Plan proposes to pay UST fees quarterly as required by 11 U.S.C. § 1930(a)(6), until a final decree is entered, the case is dismissed, or the case is converted. Thus, the Plan satisfies § 1129(a)(12).

SECTION 1129(A)(13)

Section 1129(a)(13) contains requirements pertaining to the payment of retirement benefits. This case does not require payment of retirement benefits, thus, § 1129(a)(13) does not apply.

SECTION 1129(A)(14)

Section 1129(a)(14) contains requirements pertaining to the payment of domestic support obligations. The Debtor is not required by a judicial or administrative order, or by a statute, to pay a domestic support obligation, thus, § 1129(a)(14) does not apply.

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SECTION 1129(A)(15)

Section 1129(a)(15) imposes certain requirements upon individual debtors if the holder of an unsecured claim objects to confirmation of the plan. The Debtor must either pay the present value of the unsecured creditors' claims or distribute property equal to the Debtor's projected monthly disposable income. Here, the Court set a deadline of November 16, 2016 to file an objection. As of the date of this tentative ruling, no holders of any unsecured claims filed an objection. Thus, § 1129 (a)(15) is satisfied.

SECTION 1129(A)(16)

Section 1129(a)(16) provides: "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." The requirement does not apply to the Debtor. The Modified First Amended Plan satisfies § 1129(a)(16).

SECTION 1129(D)

Section 1129(d) provides: "Notwithstanding any other provisions of this section, on request of a party-in-interest that is a governmental unit, the court may not confirm a Plan if the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933." No governmental unit has requested that the Court not confirm the Modified First Amended Plan on the grounds that its purpose is the avoidance of taxes. No securities are issued under the Modified First Amended Plan. Thus, the Modified First Amended Plan satisfies § 1129(d).

Based on the foregoing, the Motion is HEREBY GRANTED and the Modified First Amended Plan is CONFIRMED. The Court will hold a post-confirmation status conference on April 11, 2017 at 10:00 a.m.. The Debtor is ordered to file a status report no later than fourteen (14) days prior to the conference.

The Debtor shall upload a conforming order with 7 days of the hearing.

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Nathaniel Reinhardt or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Modified First Amended Plan does not state whether payments to Specialized will be payable from the Effective Date. Modified First Amended Plan at 1.

Note 2: The Court notes that the acceptance by Specialized is conditional on the execution of a contemplated stipulation between the Debtor and Specialized. *See* Doc. No. 168. The Court notes that Specialized filed the Specialized Stipulation on December 5, 2016. Doc. No. 179.

Party Information

Debtor(s):

Wesley Brian Ferris

Represented By
Diane C Weil

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2:15-27769 Crystal Waterfalls LLC

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#8.00 Hearing

RE: [244] Motion to vacate order "B3 Capital Venture, LLC's Motion To Vacate Portion Of 'Order Granting Relief From Stay Pursuant To §362(D)(2), With The Order's Effect To Be Stayed Pending Further Order Of The Court,' Staying Effect Of That Order; Memorandum Of Points And Authorities; Declaration Of Raymond H. Aver And Exhibits In Support Thereof"

Docket No: 244

*** VACATED *** REASON: PER ORDER ENTERED 12-6-16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

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2:16-14368 Jacqueline W Hyland

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#9.00 Show Cause Hearing re [93] Order Requiring Debtor To Appear And Show Cause Why The Court Should Not Dismiss The Debtor's Case

Docket No: 0

Tentative Ruling:

12/6/2016: For the reasons set forth below, the case is DISMISSED.

Pleadings Filed and Reviewed:

- 1) Order Requiring Debtor to Appear and Show Cause Why the Court Should Not Dismiss the Debtor's Case ("OSC") [Doc. No. 93]
- 2) Debtor's Response to Court's Order to Show Cause Why Could Should Not Dismiss Debtor's Case [Doc. No. 113]
- 3) Reply of the United States of America (on Behalf of the IRS) to Debtor's Response to the Court's Order to Appear and Show Cause Why the Court Should Not Dismiss the Debtor's Case [Doc. No. 117]
- 4) Platinum Loan Servicing, Inc.'s Response to the Court's Order to Show Cause Why the Court Should Not Dismiss the Debtor's Case [Doc. No. 116]

I. Facts and Summary of Pleadings

Debtor commenced this case as a voluntary Chapter 7 petition on April 5, 2016. On August 5, 2016, the case was converted to Chapter 11 upon the Debtor's motion. Debtor owns real property located at 11323 Berwick Street, Los Angeles, CA 90049 (the "Property"). On August 1, 2016, the Court approved a stipulation ("Stipulation") between the Debtor and Platinum Loan Servicing, Inc. ("Platinum"), under which Platinum was granted stay-relief as to the Property but was not permitted to conduct a foreclosure sale until September 30, 2016. The purpose of the Stipulation was to provide Debtor time to sell the Property through her Chapter 11 case.

On September 13, 2016, the Court entered an order approving the sale of the Property, free and clear of liens, to Andrew and Daniella Friedman (the "Sale Order"). On September 26, 2016, the Debtor filed a motion to modify the Sale Order (the "Motion to Modify"). The Motion to Modify was necessary because the Debtor had failed to serve the Sale Motion upon the Internal Revenue Service ("IRS"), which held

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a tax lien against the Property. In the Motion to Modify, Debtor sought to sell the Property free of the IRS's tax lien pursuant to §363(f)(4), on the grounds that the tax lien was in bona fide dispute. In connection with the Motion to Modify, the Court approved a stipulation between the Debtor and Platinum continuing Platinum's foreclosure sale from September 30, 2016 to October 31, 2016, and requiring the Debtor to turnover the Property to Platinum on or before November 30, 2016.

On October 28, 2016, the Court denied the Motion to Modify. The Court noted that the only dispute asserted by the Debtor as to the IRS tax lien related to the lien's priority. The Court found that a dispute as to lien priority did not constitute a bona fide dispute within the meaning of §363(f)(4). The Court stayed the effect of the previously entered Sale Order, pending further order of the Court.

Subsequent to denying the Motion to Modify, the Court issued an order requiring the Debtor to appear and show cause why her Chapter 11 petition should not be dismissed (the "OSC"). The OSC was issued based on the fact that after taking into account the IRS's tax lien, there was no equity in the Property.

On November 14, 2016, Platinum attempted to conduct a foreclosure sale. Unspecified complications arose and Platinum was unable to obtain title to the Property through foreclosure. Platinum has renoticed the foreclosure sale for December 20, 2016.

Summary of Platinum and the Debtor's Response to the OSC

Both the Debtor and Platinum request that the case remain in Chapter 11 for a short time in order to allow the parties to determine whether the Property can be sold in the Debtor's bankruptcy. The Debtor and Platinum argue that a sale is viable, because the IRS's tax lien has been reduced from \$1.8 million to approximately \$842,000. Debtor states that upon receiving an offer satisfactory to Platinum, Debtor will seek mediation to negotiate a settlement with the IRS and Platinum so that the Debtor, the IRS, and Platinum can present to the Court a stipulated order providing for the sale of the Property free and clear of liens.

In addition, Platinum wants the case to remain in Chapter 11 so that it can obtain a new stipulation and order regarding the date when the Debtor must turnover the Property to it. Platinum asserts that it would be prejudiced if it is not able to obtain a new stipulated order, because it previously agreed to continue its foreclosure sale only because it was not aware that the IRS asserted a lien against the Property.

Summary of the IRS's Reply to the Debtor's Response to the OSC

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10:00 AM

CONT... **Jacqueline W Hyland**

Chapter 11

The IRS timely filed a reply to the Debtor's response to the OSC. The IRS asserts that the case should be dismissed, and advances the following arguments in support of its position:

- 1) The Debtor's tax liability, which gives rise to the tax lien against the Property, is \$851,401.80. According to the Motion to Modify, Platinum holds a lien of \$1,270,663.64 and Nancy Apps holds a lien of \$37,500.00. Total encumbrances against the Property equal \$2,159,565.44. According to the Debtor's schedules, the Property's value is \$2,000,000. Therefore, there is no equity in the Property to fund any plan of reorganization. Further, the Debtor has no other meaningful assets or cash flow in order to fund a plan.
- 2) The IRS will be prejudiced if the Debtor remains in Chapter 11. The IRS's estate tax lien, which arises under Internal Revenue Code ("I.R.C.") §6324, lasts only ten years from the date of death and cannot be extended or suspended. Here, the statute of limitations expires on April 25, 2018. The IRS must file a suit to foreclose in the United States District Court, and obtain a judgment, prior to April 25, 2018 in order to protect its interests.
- 3) The Debtor's case was filed in bad faith, which provides an additional reason for dismissal. Prior to filing for bankruptcy, the Debtor, as the executor of her mother's estate, falsely represented to the Probate Court that no federal taxes were owed on the Property. Debtor knew that this representation was false, as Debtor had previously filed a tax return showing that estates taxes of \$1,155,312.00 were due. Debtor did not list the IRS as a secured creditor in her schedules, despite her awareness of the tax lien. Debtor further attempted to sell the Property without properly serving the Sale Motion upon the IRS. Finally, the lack of equity in the Property and the inability of the Debtor to effectuate any plan of reorganization further demonstrates that the petition was filed in bad faith.

II. Findings of Fact and Conclusions of Law

Simply put, no legitimate bankruptcy purpose is advanced by keeping this matter in chapter 11. Creditor convenience does not outweigh the fact that this was a petition filed in bad faith.

Section 1112(b) provides that "the Court may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interests of the creditors and the estate, for cause." Section 1112(b)(4)

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Chapter 11

contains a nonexclusive list of factors that constitute cause for dismissal or conversion. The factors set forth in §1112(b)(4) "are not exhaustive, and 'the court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.'"

Pioneer Liquidating Corp. v. United States Trustee (In re Consol. Pioneer Mortg. Entities), 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000), *aff'd*, 264 F.3d 803 (9th Cir. 2001). Dismissal or conversion is justified if (1) the debtor lacks the ability to effectuate a plan of reorganization and further delay would prejudice creditors, *Johnston v. JEM Development Co. (In re Johnston)*, 149 B.R. 158, 162 (B.A.P. 9th Cir. 1992) or if (2) the petition was filed in bad faith, *In re S. California Sound Sys., Inc.*, 69 B.R. 893, 899 (Bankr. S.D. Cal. 1987).

The Court finds that cause exists to dismiss the petition. First, the Debtor lacks the ability to effectuate a plan of reorganization. Under the most generous assumptions, there is no equity in the Property, which is the estate's primary asset. The Property is encumbered by liens of approximately \$2.159 million. The previous sale, which the Court has stayed, was for only \$1.65 million. Even an offer several hundred thousand dollars higher than the previous offer would leave the Property underwater. In short, there is no equity in the Property to fund a plan of reorganization. Further, the Debtor lacks the cash flow to fund a plan. According to her schedules, the Debtor is unemployed and has monthly income of \$1,000 on account of interest and dividends, yet incurs monthly expenses of \$18,416. Even if the Court were to disregard funds spent on account of the Property, the Debtor's monthly cash flow would still be negative.

Allowing the Debtor to remain in Chapter 11 would prejudice the IRS, by delaying its ability to enforce its tax lien. The Court finds that Platinum would not be prejudiced by dismissal of the case, notwithstanding Platinum's desire to see the Property sold in Chapter 11. The Court notes that Platinum has already obtained stay-relief as to the Property. While the Court understands Platinum's tactical reasons for wanting to have the option to either sell the Property through Chapter 11 or conduct a foreclosure sale—a situation that provides Platinum the best of both worlds—it cannot be seriously argued that Platinum will be prejudiced by losing the option to sell the Property in Chapter 11.

Second, the petition was filed in bad faith. As evidenced by a tax return that she filed in 2009, the Debtor was clearly aware that she owed substantial estate taxes, yet the Debtor did not list the IRS as a secured creditor. Even more egregiously, the Debtor did not inform the Court of the tax lien when seeking to sell the Property. This

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Chapter 11

omission was made in spite of the fact that in a declaration opposing Platinum's stay-relief motion, the Debtor acknowledged that she was challenging the IRS's assessment of estate taxes. *See* Decl. of Jacqueline W. Hyland [Doc. No. 30] at ¶3 (stating that the loan from Platinum was necessary to "pay for attorneys challenging an IRS assessment of taxes against the Estate of Jeanette Hyland"). The Debtor cannot credibly claim that she knew of the estate tax dispute yet was somehow unaware that the IRS's tax lien attached to the Property. The Court's finding of bad faith is further corroborated by the fact that, prior to filing for bankruptcy, the Debtor obtained an order from the Probate Court stating that no estate taxes were due, when clearly that was not the case.

The Court finds that dismissal of the case, as opposed to conversion, is in the best interests of creditors because there are no significant assets to be liquidated on behalf of creditors. The Court's ruling makes moot the December 12 hearing on the IRS's motion for stay relief and the December 13 hearing on the United States Trustee's motion to dismiss the case. The hearings on those matters are vacated. The Court will prepare an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Nathaniel Reinhardt or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jacqueline W Hyland

Represented By
Michael A Cisneros

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Central District of California
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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

#10.00 Status conference to review the status of the sale re [92]

fr. 6-21-16; 7-13-16; 7-18-16; 7-26-16; 10-11-16

Docket No: 0

Tentative Ruling:

12/6/2016: Hearing vacated. No appearances required.

Pleadings Filed and Reviewed:

- 1) Debtor's Status Report [Doc. No. 553]
- 2) Response of Le' Summit Healthcare, LLC to the Debtor's Status Report [Doc. No. 561]
- 3) First Interim Report of Patient Care Ombudsman [Doc. No. 556]

The purpose of the status hearing and debtor-in-possession ("Debtor") status report is to provide the court with an update on the Debtor's efforts to close the sale in a way which will not constitute an ex parte communication. Other parties may at times take issue with the Debtor's status report and they may file a reply to the status report. But unless there is a motion upon which the Court must rule, the court will take no action on the status report itself.

The court, having been apprised of relevant developments via the Debtor's status report, ORDERS that a further status hearing will be set for February 21, 2017 at 10:00 a.m., with a further status report to be filed by the Debtor no later than February 10, 2017. The court will prepare the order.

The court has received and reviewed that Patient Care Ombudsman's report and it appears that the Debtor has made significant steps in improving patient care in significant areas. A further Ombudsman's report shall be filed and served no later than February 10, 2017.

Party Information

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CONT... Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Debtor(s):

Gardens Regional Hospital and Medica

Represented By
Samuel R Maizel
John A Moe

**United States Bankruptcy Court
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11:00 AM

2:12-45067 #1 State Plumbing, Inc.

Chapter 7

#100.00 CHARGES: U.S. Bankruptcy Court

Hearing re [81] Applications for chapter 7 fees and administrative expenses

Docket No: 0

Tentative Ruling:

12/6/2016

Incorporated by reference at calendar number 104.

Party Information

Debtor(s):

#1 State Plumbing, Inc.

Represented By
Glenn Ward Calsada

Trustee(s):

Wesley H Avery (TR)

Represented By
Tamar Terzian

**United States Bankruptcy Court
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2:12-45067 #1 State Plumbing, Inc.

Chapter 7

#101.00 BOND PAYMENTS: INTERNATIONAL SURETIES

Hearing re [81] Applications for chapter 7 fees and administrative expenses

Docket No: 0

Tentative Ruling:

12/6/2016

Incorporated by reference at calendar number 104.

Party Information

Debtor(s):

#1 State Plumbing, Inc.

Represented By
Glenn Ward Calsada

Trustee(s):

Wesley H Avery (TR)

Represented By
Tamar Terzian

**United States Bankruptcy Court
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2:12-45067 #1 State Plumbing, Inc.

Chapter 7

#102.00 APPLICANT: TAMARA TERZIAN, ATTORNEY

Hearing re [81] Applications for chapter 7 fees and administrative expenses

Docket No: 0

Tentative Ruling:

12/6/2016

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$13,991.25

Expenses: \$1,686.99

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

#1 State Plumbing, Inc.

Represented By
Glenn Ward Calsada

Trustee(s):

Wesley H Avery (TR)

Represented By
Tamar Terzian

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2:12-45067 #1 State Plumbing, Inc.

Chapter 7

#103.00 APPLICANT: JEFFREY L SUMPTER, ACCOUNTANT

Hearing re [81] Applications for chapter 7 fees and administrative expenses

Docket No: 0

Tentative Ruling:

12/6/2016

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$13,324.00

Expenses: \$0

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

#1 State Plumbing, Inc.

Represented By
Glenn Ward Calsada

Trustee(s):

Wesley H Avery (TR)

Represented By
Tamar Terzian

**United States Bankruptcy Court
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2:12-45067 #1 State Plumbing, Inc.

Chapter 7

#104.00 APPLICANT: WESLEY AVERY, CHAPTER 7 TRUSTEE

Hearing re [81] Applications for chapter 7 fees and administrative expenses

Docket No: 0

Tentative Ruling:

12/6/2016

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$4,545.58

Total Expenses: \$204.80

U.S. Bankruptcy Court charges: \$1,400.00

Bond Payments (International Sureties) – \$39.53 (\$39.53 already paid)

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

#1 State Plumbing, Inc.

Represented By
Glenn Ward Calsada

Trustee(s):

Wesley H Avery (TR)

Represented By
Tamar Terzian

**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

2:15-21624 Harry Roussos

Chapter 7

#105.00 Hearing
RE: [620] Application to Employ Newmark of Southern California, Inc. dba ARA, Newmark as Real Estate Broker Chapter 7 Trustee's Application for Authority to Employ Newmark of Southern California, Inc. dba ARA Newmark as Real Estate Broker; Statement of Disinterestedness in Support Thereof (Lev, Daniel)

Docket No: 620

***** VACATED *** REASON: ORDER GRANTING EMPLOYMENT
ENTERED 11-29-16**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Harry Roussos

Represented By

David Burkenroad - DISBARRED -
Jonathan Shenson

Trustee(s):

Howard M Ehrenberg (TR)

Represented By

Daniel A Lev
Steven Werth
Ira Benjamin Katz
Robert A Weinberg
Asa S Hami

**United States Bankruptcy Court
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Wednesday, December 07, 2016

Hearing Room 1568

11:00 AM

2:16-22581 Michael Barnhart

Chapter 7

#106.00 Hearing
RE: [39] Motion For Sanctions/Disgorgement (Guiab, Olen-Keith)

Docket No: 39

*** VACATED *** REASON: PER ORDER ENTERED 11-18-16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Barnhart

Represented By
Robert A Brown

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

2:16-17549 Ronnie David Yona and Caroline Yona

Chapter 7

#107.00 Hearing
RE: [65] Application -- Trustee's Application for Authority to Employ Real Estate Broker; Declarations of Wesley H. Avery and Jan Neiman, with Proof of Service (Weinstein, David)

Docket No: 65

***** VACATED *** REASON: PER ORDER ENTERED 12-6-16**

Tentative Ruling:

12/6/2016

Denied as moot in light of the Court's grant of Dayco's relief from stay. The Court will file a separate order.

Party Information

Debtor(s):

Ronnie David Yona

Represented By
Keith S Dobbins

Joint Debtor(s):

Caroline Yona

Represented By
Keith S Dobbins

Trustee(s):

Wesley H Avery (TR)

Represented By
David R. Weinstein