

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Friday, December 18, 2020

Hearing Room 302

9:00 AM
1:00-00000

Chapter

#0.00 All hearings on this calendar will be conducted remotely, using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

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Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address: <https://cacb.zoomgov.com/j/1616159437>

Meeting ID: 161 615 9437

Video Password: 1812855MT

Dial by your location: 1 -669-254-5252 OR 1-646-828-7666

Meeting ID: 161 615 9437

Telephone Password: 566173727

Docket 0

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Friday, December 18, 2020

Hearing Room 302

10:00 AM

1:18-12855 PB-1, LLC

Chapter 11

#1.00 Post-Confirmation Status Conference and
Scheduling and Case Management Conference

fr. 2/6/19, 3/13/19; 4/3/19; 6/17/19; 6/24/19, 7/18/19
12/11/19, 3/11/20, 8/26/20, 8/27/20; 10/7/20

Docket 1

*** VACATED *** REASON: Cont'd to 1/13/21 at 11 a.m. - hm

Tentative Ruling:

NO APPEARANCE REQUIRED.

Party Information

Debtor(s):

PB-1, LLC

Represented By
Jeffrey S Shinbrot

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1:00 PM

1:19-11935 Maria Estela San Vicente

Chapter 11

**#2.00 Disclosure Statement Describing First Amended
Chapter 11 Plan of Reorganization**

fr. 12/16/20

Docket 104

Tentative Ruling:

The Court entered an order allowing the Debtor to file an amended plan and disclosure statement to provide for avoidance of the JPMorgan Chase claim, to clarify plan treatment for general unsecured creditors, and to provide updated financial information. Docket No. 106. The order also set forth the deadlines for plan confirmation and the Court set the matter to be heard on December 16, 2020 at 11:00 am

The court will only confirm a plan if it “complies with the applicable provisions of this title.” 11 U.S.C. §1129(a)(1). A plan complies with the applicable provisions of chapter 11 when it properly classifies the claims or interests and contains all mandatory provisions. See 11 U.S.C. §§1122, 1123; See also, *Acequia, Inc., v. Clinton*, (In re *Acequia, Inc.*), 787 F.2d 1352 (9th Cir. 1986); *Technical Knockout*, 833 F.2d 797, 803 (9th Cir. 1987). Accordingly, the first question is whether the plan properly classifies claims and interests as provided in §1122. The plan satisfies this requirement.

The second question is whether the plan contains all mandatory provisions of §1123. Section 1123 designates the required contents of the plan, as well as other provisions which are not required but may be included in the plan. Section 1123(a)(1) requires the plan to classify claims other than administrative priority claims and priority tax claims. The plan satisfies this requirement.

Section 1123(a)(2) requires the plan to specify any class of claims or interests that is unimpaired under the plan. The plan satisfies this requirement.

Section 1123(a)(3) requires the plan to specify the treatment of any class of

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claims or interests that is impaired under the plan. The plan satisfies this requirement.

Section 1123(a)(4) requires that the plan provide the same treatment for each claim or interest in a particular class, except where a member of a particular class agrees to less favorable treatment. The plan satisfies this requirement.

Section 1123(a)(5) requires that the plan provide “adequate means for the plan’s implementation” 11 U.S.C. §1123(a)(5). The plan satisfies this requirement.

Section 1123(a)(8) applies only where the debtor is an individual. In such cases, the plan must provide for the payment to creditors under the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as necessary to perform under the plan. 11 U.S.C. §1123(a)(8). The plan satisfies this requirement.

11 U.S.C. §1129(a)(2)

The court will only confirm a plan if the “proponent of the plan complies with the applicable provisions of this title.” 11 U.S.C. §1129(a)(2). This requirement is designed to ensure that the plan proponent has made the appropriate disclosures and complied with the solicitation requirements set forth in §1125. *Andrew v. Coppersmith (In re Downtown Inv. Club III)*, 89 B.R. 59, 65 (B.A.P. 9th Cir. 1988). This requirement has been satisfied according to the Court's order at Docket No. 106

11 U.S.C. §1129(a)(3)

The plan must be proposed in good faith and not by any means forbidden by law. 11 U.S.C. §1129(a)(3); see *In re Stolrow's Inc.*, 84 B.R. 167 (Bankr. 9th Cir. 1988). There is a presumption that a plan was filed in good faith if no objections are filed. Fed. R. Bankr. P. 3020(b). If the presumption in Rule 3020(b) arises, then the court need receive evidence on the issue of good faith. *Id.* The § 1129(a)(3) good faith question is determined on a case-by-case basis taking into account the totality of the circumstances with a view to

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whether the plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code. *Platinum Capital, Inc. v. Sylmar Plaza, Ltd. P'ship* (In re Sylmar Plaza, Ltd. P'ship), 314 F.3d 1070, 1074- 75 (9th Cir. 2002)

The UST opposes the Debtor's first amended plan because the plan is not filed in good faith. The UST asserts the Debtor has more disposable income than she is proposing to pay to general creditors. According to the Disclosure Statement, the Debtor's projected income will be \$5,000.00 per month. The monthly operating reports for the last year have reveal that the Debtor has averaged monthly income of \$6,745.00. The UST argues that the plan is not being put forth in good faith because the Debtor has proposed paying unsecured creditors a 0% return and has approximately \$2,000.00 in income surplus that could be devoted to these creditors.

The Debtor's sources of income are:

- 1) Income from IHSS
- 2) Income from Husband's self-employment
- 3) Husband's Social Security
- 4) Contributions from son

The monthly operating reports includes the husband's social security, which is approximately \$1,945.00. Social Security Income is not included as disposable income. See 11 U.S.C. § 1129(a)(15)(B). If the Court reduces the income stated in Monthly Operating reports by the Debtor's husband's Social Security Income, then the Debtor's projected income per month is around \$5,000.00. The plan states that the Debtor is proposing to use her husband's Social Security revenue in order to fund the plan. In essence, the Debtor is proposing to use funds which she is not required to use in order to fund the plan. Just because the Debtor will not contribute the entirety of the exempt funds towards the plan does not support the notion that the plan lacks good faith. Accordingly, the Court finds that the plan has been filed in good faith.

11 U.S.C. §1129(a)(4)

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Any payment to be made by a plan proponent, debtor, or person issuing securities or acquiring property under the plan, for services or costs in connection with the case or in connection with the plan and incident to the case, must be approved by the court as reasonable. 11 U.S.C. §1129(a)(4). The plan satisfies this requirement.

11 U.S.C. §1129(a)(7)

The plan proponent must demonstrate that either each member of impaired class has either accepted plan or will receive as much if debtor liquidated in a chapter 7. 11 U.S.C. §1129(a)(7). This is known as the "best interests" of the creditors test. The plan satisfies this requirement.

11 U.S.C. §1129(a)(8)

The plan proponent must show that each class has either accepted the plan or is unimpaired. 11 U.S.C. 1129(a)(8). Otherwise, the plan proponent must "Cram Down" the rejecting class. 11 U.S.C. §1129(b); see infra, "Cram Down;" see also, In re M. Long Arabians, 103 B.R. 211, 215 (B.A.P. 9th Cir. 1989). Failure to vote does not constitute acceptance of the plan. A class must affirmatively vote to accept the plan. In re Townco Realty Inc., 81 B.R. 707, 708 (Bankr. S.D.Fla. 1987). A class of claims has accepted a plan if it 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. 11 U.S.C. §1126(c). Class 1(a) voted to approve the plan; however, the Class 3 rejected the plan unanimously. Therefore, this requirement is not satisfied, and the plan can only be confirmed if the provisions in §1129(b) apply.

11 U.S.C. §1129(a)(9)

The plan can only be confirmed if administrative claimants are paid in full on the effective date unless otherwise agreed. 11 U.S.C. §1129(a)(9)(A). The plan may make deferred cash payments to accepting holders of non-priority tax claims, while rejecting holders of such claims must be paid the amount of their allowed claim on the effective date. Id. at §1129(a)(9)(B)(i)-(ii).

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However, the plan may make deferred cash payments to holders of allowed priority tax claims so long as the claimants will receive an amount equal to the allowed amount of the claim as of the effective date, over a period of not more than five years from the petition date. *Id.* at §1129(a)(9)(C). The plan satisfies this requirement. See Plan, Article III.

11 U.S.C. §1129(a)(10)

At least one class of claims that is impaired under the plan must accept the plan, exclusive of any acceptance by a plan insider. 11 U.S.C. 1129(a)(10). Class 1 (a) voted to accept the plan; therefore, this requirement has been satisfied.

11 U.S.C. §1129(a)(11)

The court may only confirm a plan if it is feasible, meaning that confirmation is not likely to be followed by the liquidation, or need for further financial reorganization, of the debtor” 11 U.S.C. §1129(a)(11); *Pizza of Hawaii, Inc. v. Shakey's, Inc.*, (In re *Pizza of Hawaii, Inc.*), 761 F.2d 1374 (9th Cir. 1985). Feasibility is demonstrated where the plan has a “reasonable probability of success.” *In re Acequia, Inc.*, 787 F.2d at 1364. Debtor appears to have enough cash on hand and the historical financial information suggests that the Debtor will have a consistent stream of revenue coming in in order to properly fund the plan. This requirement has been satisfied.

11 U.S.C. §1129(a)(12)

Section 1129(a)(12) requires that all fees payable under 28 U.S.C. §1930 are paid or will be paid on effective date. The plan satisfies this requirement.

11 U.S.C. §1129(a)(15)

Where the debtor is an individual and a holder of an unsecured claim objects to confirmation, section 1129(a)(15) requires that “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 “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

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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." 11 U.S.C. §1129(a)(15). Having reviewed the Debtor's projected net monthly income and expenses, it appears that there is disposable income at the end of each month after paying for Debtor's expenses and funding the plan as it currently is. While the Debtor disputes much of the general unsecured claims - Debtor has not objected to claims but reserves right to do so if funds become available - the fact remains that there is disposable income not going to pay creditors. Debtor should be prepared to address how this requirement has been satisfied.

Cram Down:

If all the other requirements for confirmation are met, except acceptances as provided in section 1129(a)(8), the court shall confirm the plan if the plan does not discriminate unfairly and is fair and equitable with respect to each class of claims and interests that is impaired under and has not accepted the plan. 11 U.S.C. §1129(b).

The terms "does not discriminate unfairly" and "fair and equitable" connote definite meanings within reorganization cases [t]his provision requires that a plan "allocate [] value to the class in a manner consistent with the treatment afforded to other classes with similar legal claims against the debtor (citations omitted). In re Acequia, Inc., 787 F.2d 1352, 1364 (9th Cir. 1986). The plan proponent must show that the plan does not "unfairly discriminate" and is "fair and equitable" by a clear and convincing burden of proof. In re Stoffel, 41 B.R. 390 (Bankr. D. Minn. 1984); In re Sloan, 57 B.R. 91 (Bankr. D. S.C. 1985); In re Agawam Creative Marketing Associates Inc., 63 B.R. 612 (Bankr. D. Mass. 1986).

A debtor may cramdown a plan only if it complies with the absolute priority rule in § 1129(b)(2)(B)(ii). Put another way, a bankruptcy judge may find that a debtor's plan is "fair and equitable" to an objecting creditor only if the plan complies with the absolute priority rule. The rule "provides that a dissenting class of unsecured creditors must be provided for in full before any junior class can receive or retain any property under a reorganization plan." *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 202 (1988).

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Here, Class 3 has rejected the ballot, so the plan must be crammed down. Class 3 is the general unsecured claims class and, according to the plan, are not entitled to any payment. Class 3 is the most junior class of claims and each claim holder in this class is being treated the same. It appears that there is no issue with the absolute priority rule here; however, Debtor should come prepared to discuss whether the requirements of cram down have been satisfied.

Appearance Required.

Party Information

Debtor(s):

Maria Estela San Vicente

Represented By
Thomas B Ure

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1:19-11935 Maria Estela San Vicente

Chapter 11

**#3.00 Scheduling and Case Management Conference
and Filing of Monthly Reports**

fr. 11/6/19; 6/24/20, 10/28/20, 12/16/20

Docket 31

Tentative Ruling:

Appearance Required

Party Information

Debtor(s):

Maria Estela San Vicente

Represented By
Thomas B Ure

**United States Bankruptcy Court
Central District of California
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Friday, December 18, 2020

Hearing Room 302

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1:20-11215 David Mor

Chapter 7

Adv#: 1:20-01084 First Data Merchant Services, LLC v. Mor

#4.00 Status Conference Re:
Complaint to Determine Debt to be
Non-Dischargeable

fr. 12/16/20

Docket 1

Tentative Ruling:

Plaintiff filed this § 523(a) action on October 9, 2020. Answer filed November 11, 2020. Plaintiff does not want to mediate but Defendant does. Parties indicate that trial should be ready by June 2021 and take no longer than a day.

Dates :

Discovery cut-off (all discovery to be completed*): May 31, 2021

Expert witness designation deadline (if necessary): per rule

Case dispositive motion filing deadline (MSJ; 12(c)): June 25, 2021

Pretrial conference: July 7, 2021 at 10:00am

Deadline for filing pretrial stipulation under LBR 7016-1(b)(1)(A) (14 days before pretrial conference)

*Completed means that all discovery under Fed. R. Civ. P. 30-36, and discovery subpoenas under Rule 45, must be initiated a sufficient period of time in advance of the cutoff date, so that it will be completed by the cut-off date, taking into account time for service, notice and response as set forth in the Federal Rules of Civil Procedure.

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CONT... **David Mor**
Meet and Confer

Chapter 7

Counsel must promptly and in good faith meet and confer with regard to all discovery disputes in compliance with Local Rule 26

Discovery Motion Practice:

All discovery motions must be filed within 30 days of the service of an objection, answer, or response which becomes the subject of dispute or the passing of a discovery due date without response or production, and only after counsel have met and conferred and have reached an impasse with regard to the particular issue.

A failure to comply in this regard will result in a waiver of a party's discovery issue. Absent an order of the Court, no stipulation continuing or altering this requirement will be recognized by the Court.

Appearance
Required.

Party Information

Debtor(s):

David Mor

Represented By
Stephen S Smyth
William J Smyth

Defendant(s):

David Mor

Pro Se

Plaintiff(s):

First Data Merchant Services, LLC

Represented By
Allan Herzlich

Trustee(s):

Diane C Weil (TR)

Pro Se