

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

Wednesday, June 21, 2023

Hearing Room 1568

10:00 AM

2:23-12033 Anthony M Grady

Chapter 7

#1.00 Status HearingRE: [1] Chapter 7 Involuntary Petition Against an Individual. Lena M Reno, Ferdinand Lontajo . (KC2) Additional attachment(s) added on 4/4/2023 (KC2).

Docket 1

Tentative Ruling:

6/20/2023

Note: Parties may appear at the hearing either in-person or by telephone. The use of face masks in the courtroom is optional. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.

The involuntary petition is **DISMISSED** for the reasons set forth below.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Involuntary Petition Against an Individual [Doc. No. 1]
- 2) Summons and Notice of Status Conference in an Involuntary Bankruptcy Case [Doc. No. 2]
 - a) Certificate of Service [Doc. No. 4]

The Petitioning Creditors have failed to file a proof of service establishing that the Summons, Notice of Status Conference, and Involuntary Petition were served upon the Alleged Debtor. The Summons issued to the Petitioning Creditors clearly informs the Petitioning Creditors of the obligation to serve the Summons, Notice of Status Conference, and Involuntary Petition upon the Alleged Debtor. The Summons further advises the Petitioning Creditors that failure to properly effectuate service may result in dismissal of the involuntary petition.

Local Bankruptcy Rule 1010-1 provides in relevant part: "The court may dismiss an involuntary petition without further notice and hearing if the petitioner fails to ... (c) serve the summons and petition within the time allowed by FRBP 7004; (d) file a proof of service of the summons and petition with the court; or (e) appear at the status conference set by the court."

Based upon the foregoing, the involuntary petition is **DISMISSED**. The Court

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Chapter 7

will prepare and enter an order dismissing the case.

Party Information

Debtor(s):

Anthony M Grady

Pro Se

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2:21-16033 Orion Bay Estates III LLC

Chapter 11

#2.00 Post-Confirmation Status Conference re [69]

fr. 2-15-23

Docket 69

***** VACATED *** REASON: CONTINUED 7-19-23 AT 10:00 AM**

Tentative Ruling:

6/20/2023

Order entered. Postconfirmation Status Conference **CONTINUED** to **July 19, 2023**
at **10:00 a.m.**

Party Information

Debtor(s):

Orion Bay Estates III LLC

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

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2:21-16674 JINZHENG GROUP (USA) LLC

Chapter 11

#3.00 Hearing

RE: [407] Application for Compensation /First Application for Interim Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Official Committee of Unsecured Creditors for the Period January 25, 2022 Through September 30, 2022; Declaration of Teddy M. Kapur in Support Thereof for Pachulski Stang Ziehl & Jones, Creditor Comm. Aty, Period: 1/25/2022 to 9/30/2022, Fee: \$371,255.40, Expenses: \$4,042.16.

FR. 11-9-22; 12-7-22; 2-8-23; 3-15-23

Docket 407

***** VACATED *** REASON: CONTINUED 8-23-23 AT 10:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JINZHENG GROUP (USA) LLC

Represented By

Zev Shechtman

Alphamorlai Lamine Kebeh

Danielle R Gabai

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2:21-16674 JINZHENG GROUP (USA) LLC

Chapter 11

#4.00 Hearing
RE: [403] Application for Compensation -First Interim Application for Compensation and Reimbursement of Expenses by Danning, Gill, Israel & Krasnoff, LLP as General Bankruptcy Counsel to Chapter 11 Debtor and Debtor in Possession; Declarations of Zev Shechtman and Zhou Pu Yang in Support Thereof; proof of service for DANNING, GILL, ISRAEL & KRASNOFF, LLP, Debtor's Attorney, Period: 5/31/2022 to 9/30/2022, Fee: \$159,038.55, Expenses: \$4,330.48.

FR. 11-9-22; 12-7-22; 2-8-23; 3-15-23

Docket 403

***** VACATED *** REASON: CONTINUED 8-23-23 AT 10:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JINZHENG GROUP (USA) LLC

Represented By
Zev Shechtman
Alphamorlai Lamine Kebeh
Danielle R Gabai

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2:21-16674 JINZHENG GROUP (USA) LLC

Chapter 11

#5.00 Hearing
RE: [411] Application for Compensation First and Final Application for
Compensation and Reimbursement of Expenses for Shioda Langley and Chang
LLP, Debtor's Attorney, Period: 11/21/2021 to 10/19/2022, Fee: \$292159,
Expenses: \$5806.78.

FR. 11-9-22; 12-7-22; 2-8-23; 3-15-23

Docket 411

***** VACATED *** REASON: CONTINUED 8-23-23 AT 10:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JINZHENG GROUP (USA) LLC

Represented By
Zev Shechtman
Alphamorlai Lamine Kebeh
Danielle R Gabai

**United States Bankruptcy Court
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2:22-12633 Indie Brewing, LLC and 2301 East 7th Street, LLC

Chapter 11

#6.00 Hearing
RE: [213] Motion for order confirming chapter 11 plan Motion for Approval of Plan of Reorganization and Confirmation Hearing Memorandum Re Plan of Reorganization

Docket 213

Tentative Ruling:

6/20/2023

Note: Parties may appear at the hearing either in-person or by telephone. The use of face masks in the courtroom is optional. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.

For the reasons set forth below, the Confirmation Motion is **GRANTED**.

Pleadings Filed and Reviewed:

- 1) Motion for Approval of Plan of Reorganization and Confirmation Hearing Memorandum re Plan of Reorganization [Doc. No. 213] (the "Confirmation Motion")
 - a) Notice of Hearing on the Confirmation Motion [Doc. No. 211]
 - b) Declaration of Kevin O'Malley in Support of the Confirmation Motion [Doc. No. 209]
 - c) Notice of (1) Plan Confirmation Hearing, (2) Voting and Objection Deadlines, (3) Ballot for Accepting or Rejecting the Plan [Doc. No. 204]
 - d) Analysis of Ballots for Accepting or Rejecting the Plan [Doc. No. 210]
 - e) Plan of Reorganization [Doc. No. 203] (the "Plan")
 - f) Disclosure Statement Describing the Plan [Doc. No. 202] (the "Disclosure Statement")
 - g) Order: (1) Finding that the Disclosure Statement Contains Adequate Information and (2) Setting Dates Pertaining to Plan Confirmation [Doc. No. 200] (the "Order")
- 2) No opposition to the Confirmation Motion is on file

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CONT... Indie Brewing, LLC and 2301 East 7th Street, LLC

Chapter 11

I. Facts and Summary of Pleadings

Debtor and Debtor-in-Possession Indie Brewing, LLC (the "Debtor") filed a voluntary Chapter 11 petition on May 9, 2022 (the "Petition Date"). The Debtor now seeks confirmation of the Plan. No opposition to the Confirmation Motion is on file.

The Debtor operated a craft brewery and tasting room at 2301 East 7th Street, # 100C (the "Property"). Due to COVID, from March 2020 through February 2022, the Debtor struggled to operate its business. The Debtor has had several disputes with its landlord, 2301 East 7th Street, LLC (the "Landlord"), with respect to the Property and the related lease (the "Lease").

The Debtor has actively marketed its business and related assets in hopes of entering into a sale with a potential buyer. There have been a number of prospective buyers; however, the Landlord consistently refused to consent to any potential sale or modification or assignment of the Lease. Thus, according to the Debtor, all efforts to sell the business have been thwarted by the Landlord.

On March 25, 2021, the Landlord filed an action against the Debtor and Kevin O'Malley and Morgan Keller, as guarantors on the Lease, in the California Superior Court, County of Los Angeles entitled *2301 East 7th Street, LLC v Indie Brewing, LLC, Kevin O'Malley and Morgan Keller* (Case No. 20SMCV01190) (the "Litigation"). The Debtor filed a cross-complaint, in which the Debtor claims damages of at least \$600,000.00 primarily based upon (i) the Landlord's bad faith actions in not consenting and interfering with the sale of the business, and (ii) the Landlord violating the moratorium imposed by the County of Los Angeles by demanding rent to be paid that was not yet due (the "Cross-Complaint").

The Debtor intends to fund the Plan from the proceeds that may result from the Litigation and the Cross-Complaint. If the Debtor is successful, it is expected to obtain a judgment of at least \$600,000.00, which should enable it to pay its creditors in full.

Summary of the Plan

The following table sets forth the Plan's classification structure and the treatment of each class:

Class	Description of Class	Impaired?	Treatment
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1	Secured Claim of U.S. Bank National Association ("US Bank")	No	US Bank holds a secured claim that has been compromised and paid in full pursuant to the <i>Order on Motion for Approval of Agreement of Compromise, Settlement and Release</i> [Doc. No. 179] (the "US Bank Order"). Per the US Bank Order, any secured or unsecured claim of US Bank is deemed satisfied in full. Thus, US Bank will not be paid any further amounts under the Plan.
2	Secured Claim of Small Business Association (the "SBA Claim")	Yes	The SBA Claim, in the amount of \$160,741.00, will be paid in full from the proceeds of the Litigation within 30 days of the Debtor receiving such proceeds, if the Debtor is successful.
3	Secured Claim of U.S. Bank dba U.S. Bank Equipment Finance ("US Bank Equipment Finance")	No	US Bank Equipment Finance holds a secured claim, in the amount of \$89,963.00, that has been reduced to \$0.00 per the sale to Tortugo Brewing Company, LLC ("Tortugo") in which the Court authorized the assumption and assignment of the obligations of the Debtor to US Bank Equipment Finance [Doc. No. 65]. US Bank Equipment Finance holds a secured 1 st priority interest on the equipment sold and assigned to Tortugo. Thus, US Bank Equipment Finance will not be paid any further amounts under the Plan.
4	Secured Claim of Internal Revenue Service (the "IRS Claim")	Yes	The IRS Claim, in the amount of \$37,864.00, will be paid in full from the proceeds of the Litigation within 30 days of the Debtor receiving such proceeds, if the Debtor is successful.

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5	General Unsecured Claims	Yes	The Debtor estimates that general unsecured claims total approximately \$160,741.00. Class 5 will be paid in full from the proceeds of the Litigation within 30 days of the Debtor receiving such funds, if the Debtor is successful.
7	Interest Holder	Yes	The Debtor's equity interests will retain equal interests in the Reorganized Debtor.

Class 5 voted to accept the Plan. Classes 2 and 4, which are impaired, did not cast any ballots.

II. Findings of Fact and Conclusions of Law

As set forth below, the Court finds that the Plan satisfies all applicable provisions of § 1129. Therefore, the Court confirms the Plan.

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." "A claim that is substantially similar to other claims may be classified separately from those claims, even though section 1122(a) does not say so expressly." *In re Rexford Props., LLC*, 558 B.R. 352, 361 (Bankr. C.D. Cal. 2016).

The Plan's classification structure complies with § 1122(a). Claims are placed in different classes based upon differences in the legal or factual nature of those claims, and each of the claims in a particular class is substantially similar to the other claims in that class.

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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."

The Plan does not contain any convenience classes. Section 1122(b) does not apply.

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 interest." There are no involuntary gap claims because this is a voluntary Chapter 11 case. The Plan expressly classifies all claims and interests other than administrative expense claims and priority tax claims. The Plan satisfies § 1123(a)(1).

4. Section 1123(a)(2)

Section 1123(a)(2) requires that the Plan "specify any class of claims or interests that is not impaired under the Plan." The Plan indicates which classes are not impaired. The 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." The Plan indicates which classes are impaired and specifies their treatment. The 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 Plan provides the same treatment to claims of the same class. The Plan satisfies § 1123(a)(4).

7. Section 1123(a)(5)

Section 1123(a)(5) requires that the Plan "provide adequate means for the plan's implementation." If successful in the Litigation, the resulting funds will be distributed

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in accordance with the Plan. The Plan satisfies § 1123(a)(5).

8. Section 1123(a)(6)

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 ordered to include in the Confirmation Order, as well as its amended charter, language prohibiting the issuance of nonvoting equity securities.

9. Section 1123(a)(7)

Section 1123(a)(7) requires that the 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. Section 1123(a)(7) is inapplicable.

10. Section 1123(a)(8)

Section 1123(a)(8) requires that in a case in which the debtor is an individual, the Plan "provide for the payment to creditors ... 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 is necessary for the execution of the plan."

Because the Debtor is not an individual, § 1123(a)(8) is inapplicable.

11. Section 1123(b)

Section 1123(b) sets forth provisions that are permitted, but not required, in a plan. The Plan contains certain of § 1123(b)'s optional provisions. The 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." Pursuant to the Order, the Court approved the Disclosure Statement as containing adequate information within the meaning of § 1125 of the Bankruptcy Code. The Order further authorized the Debtor to serve the

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Court-approved Disclosure Statement, the Plan, and the appropriate ballots on its known creditors and interest holders. The Debtor complied with these Court-approved procedures and, through its counsel, served the applicable solicitation materials on all of its known creditors, interest holders, and parties in interest. The Debtor has satisfied 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).

Where, as here, no objections to a plan have been timely filed, the Court "may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues." Bankruptcy Rule 3020(b).

The Plan is the product of arms-length negotiation with creditors. The Plan has been proposed in good faith and not by any means forbidden by law.

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 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 Plan provides for the allowance and treatment of administrative expenses. The Plan contemplates that payment to holders of allowed administrative claims, which include payment of compensation and reimbursement of expenses to professionals, shall be made only after entry of an order by the Court, following notice and a hearing. Fees required to be paid to the Office of the United States Trustee and the Clerk's Office will be paid on the Effective Date.

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The Plan satisfies § 1129(a)(4).

SECTION 1129(A)(5)

Section 1129(a)(5) requires that the Plan disclose "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 management of the Debtor will remain the same post-confirmation. The Plan satisfies § 1129(a)(5).

SECTION 1129(A)(6)

Section 1129(a)(6) requires that any regulatory commission with jurisdiction over the rates of a debtor approve any rate changes provided in a plan. Because the Debtor is not subject to any such regulatory commission and no rate changes are proposed in the Plan, § 1129(a)(6) is inapplicable.

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."

The Debtor will distribute the funds received from the Litigation, if successful, in accordance with the Plan. Creditors will receive at least as much as they would in a Chapter 7 case, which would necessitate significant administrative expenses. Moreover, non-debtor guarantors are funding the Litigation under the Plan. The Plan satisfies § 1129(a)(7).

SECTION 1129(A)(8)

Section 1129(a)(8) requires each class to accept the Plan, unless the class

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is not impaired. Class 5, which is impaired, accepted the Plan based on the ballots received by the deadline. Classes 2 and 4, which are impaired, failed to vote for or against the Plan.

In *Heins v. Ruti-Sweetwater, Inc. (In re Ruti-Sweetwater, Inc.)*, 863 F.2d 1263 (10th Cir. 1988), the court concluded that a non-voting, non-objecting class could be deemed to accept the plan. The *Ruti-Sweetwater* court did not rely upon language in the Plan or Disclosure Statement indicating that a creditor's failure to vote would be deemed an acceptance of the Plan. The court reasoned as follows: "We hold that the district court correctly affirmed the bankruptcy court's ruling that Heins' [the non-voting class] inaction constituted an acceptance of the Plan. To hold otherwise would be to endorse the proposition that a creditor may sit idly by, not participate in any manner in the formulation and adoption of a plan in reorganization and thereafter, subsequent to the adoption of the plan, raise a challenge to the plan for the first time. Adoption of the Heins' approach would effectively place all reorganization plans at risk in terms of reliance and finality." *Id.* at 1266-67.

Here, Classes 2 and 4 have not voted on the Plan and have not raised any objections to confirmation of the Plan. Consistent with *Ruti-Sweetwater*, the Court finds that Classes 2 and 4 may be deemed to have 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 of their claims on the effective date of the Plan, unless the claimant agrees to different treatment.

The Debtor is paying these claims as required. Priority tax claimants neither filed objections to the Plan nor submitted any ballots voting for or against the Plan. The Court deems such an absence as priority tax claimants' acceptance of their treatment under the Plan. Although the Plan is structured as such without any explicit statement, to resolve any ambiguity, the Court notes that, if any funds are generated from the Litigation, priority tax claims will be paid before general unsecured claims. The Plan satisfies § 1129(a)(9).

SECTION 1129(A)(10)

Section 1129(a)(10) requires that "at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of

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the plan by any insider." Class 5, which is impaired, voted in favor of the Plan. Section 1129(a)(10) has been satisfied.

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."

The Debtor will distribute the funds received from the Litigation, if successful, in accordance with the Plan and the Bankruptcy Code. The Plan is feasible and 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 Plan provides for the payment of all required fees. The Plan satisfies § 1129(a)(12).

SECTION 1129(A)(13)

Section 1129(a)(13), which contains requirements pertaining to the payment of retirement benefits, does not apply.

SECTION 1129(A)(14)

Section 1129(a)(14), which contains requirements pertaining to the payment of domestic support obligations, does not apply.

SECTION 1129(A)(15)

Section 1129(a)(15), which imposes certain requirements upon individual debtors, does not apply.

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."

Because the Debtor is not a non-profit entity, § 1129(a)(16) does not apply.

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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 Plan on the grounds that the Plan's purpose is the avoidance of taxes. No securities are issued under the Plan. The Plan satisfies § 1129(d).

III. Conclusion

Based upon the foregoing, the Plan is **CONFIRMED**. The Judge will be retiring from the bench on September 30, 2023. As a result, the Court will not set a date for the Post-Confirmation Status Conference at this time. Once the case is reassigned, the presiding judge will set an appropriate date.

No appearance is required if submitting on the Court's tentative ruling. If you intend to submit on the tentative ruling, please contact Evan Hacker 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):

Indie Brewing, LLC

Represented By
Michael S Kogan