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| --- | --- |
| Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address      | FOR COURT USE ONLY  |
| [ ]  *Individual appearing without attorney*[ ]  *Attorney for:*       |
| **UNITED STATES BANKRUPTCY COURT****CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION** |
| In re:      | CASE NO.:       CHAPTER: 11 |
| **NOTICE OF MOTION AND MOTION TO CONFIRM SUBCHAPTER V PLAN OF REORGANIZATION** [11 U.S.C. § 1191; FRBP 3020(b)] |
| **Hearing Information**DATE:      TIME:      COURTROOM: 1368, Roybal Federal BuildingADDRESS: 255 E. Temple Street, Los Angeles, CA 90012 |
| Debtor(s). |

1. Plan of Reorganization. Pursuant to 11 U.S.C. § 1191., the Debtor filed a Plan of Reorganization (the “**Plan**”, docket

entry #     ), together with Exhibits and Declarations in Support of Subchapter V Plan of Reorganization (“Plan Exhibits and Declarations”, docket entry #     ). The Debtor makes disclosures in the Plan Exhibits and Declarations and in Sections I – VII of the Plan. Sections VIII - X of the Plancontain treatment of claims and interests and Debtor’s statements regarding whether Debtor will seek a discharge under 11 U.S.C. § 1192.

2. Motion to Confirm Plan. Pursuant to FRBP 9014(a), the Debtor filed this motion requesting the court to confirm the

 Plan (“Motion to Confirm Plan”). The Motion to Confirm Plan is being served only on the U.S. trustee as required by

 FRBP 9034(i), the Subchapter V trustee, and on parties in interest who filed a preliminary objection to confirmation of

 the Plan.

3. Hearing on Motion to Confirm Plan. 11 U.S.C. § 1128 requires a hearing on the Motion to Confirm Plan to determine if the Plan meets the legal requirements for confirmation including 11 U.S.C. §§ 1191 and 1129(a)(1)-(14) and (16). A hearing on the Motion to Confirm Plan is set on 21 days of notice [LBR 9013-1(d)]. On (*date*)       , the Plan and Plan Exhibits and Declarations were served on at least 42 days of notice on the U.S. trustee, the Subchapter V trustee and all creditors and interest holders. A Notice of Dates Related to Confirmation and Deadlines to (A) Submit Ballots, (B) File Preliminary Objection to Plan Confirmation, and (C) File Response to Motion to Confirm Plan (the “Notice of Deadlines”) was served with the Plan and Plan Exhibits and Declarations.

4. Filing and Serving a Response. All parties in interest may file a response to the Motion to Confirm Plan. If you wish to oppose the Motion to Confirm Plan, you must file and serve a written response no later than 14 days before the hearing and appear at the hearing. When serving a response, serve it on the Debtor and attorney for the Debtor. If you fail to file a written response or fail to appear at the hearing, the court may treat such failure as a waiver of your right to oppose the Motion to Confirm Plan and may grant the Motion to Confirm Plan.

1. **DEADLINE** (*date*)**:**
2. **DEBTOR’S ADDRESS:**
3. **DEBTOR’S ATTORNEY’S ADDRESS:**

[ ]  Do not mail the response. The Debtor’s attorney will be served by Notice of Electronic Filing; **or**

[ ]  Mailing Address:

 Date:

Signature of Debtor/Attorney for Debtor

Printed name of Debtor/Attorney for Debtor

**MOTION TO CONFIRM PLAN OF REORGANIZATION**

Section 1191 of the Bankruptcy Code sets forth the requirements that must be complied with before a plan of reorganization will be confirmed. The declarations and other evidence attached to this Motion demonstrate that as to each of these requirements, the Plan~~,~~ or the Debtor, have either satisfied the requirement or the requirement is inapplicable in this case.

1. **COMPLIANCE WITH 11 U.S.C. §§ 1191(a) and 1129(a)(1)-(7)**

Pursuant to 11 U.S.C. § 1191(a), the court shall confirm a Subchapter V Plan only if all the requirements of section 1129(a)(1)-(14) and (16) are met. For the reasons stated in the following paragraphs, the Plan complies with § 1191(a) or is excepted from complying with § 1191(a) pursuant to § 1191(b).

1. The Plan Complies with Applicable Provisions of Chapter 11. **11 U.S.C. §1129(a)(1)** requires that the Plan comply with the applicable provisions of title 11, generally 11 U.S.C. §§ 1122 and 1123, for a plan to be confirmed. 11 U.S.C. § 1122 governs the classification of claims while 11 U.S.C. § 1123 governs which plan provisions are mandatory and those that are permitted to be included.
2. All claims and interests, if any, have been classified in compliance with 11 U.S.C. § 1122 as follows:

1. For the reasons stated in the following paragraph(s), the Plan contains all provisions required pursuant to 11 U.S.C. § 1123, including but not limited to the designation of classes of claims and the specification of which claims are impaired and which are unimpaired.

1. Debtor has Complied with Applicable Provisions of Title 11. **11 U.S.C. § 1129(a)(2)** requires that the Debtor complies with applicable provisions of Title 11, generally 11 U.S.C. § 1125(e), which governs the good-faith solicitation of acceptances of a plan, for a plan to be confirmed. For the reasons stated in the following paragraph, the Plan complies with 11 U.S.C. § 1125(e).

1. The Plan has Been Proposed in Good faith and Not by Any Means Forbidden by Law. **11 U.S.C. § 1129(a)(3)** requires that a plan be proposed in good faith and not by any means forbidden by law. For the reasons stated in the following paragraph, the Plan complies with 11 U.S.C. § 1129(a)(3).

1. Payment Disclosure. **11 U.S.C. § 1129(a)(4)** requires that, “Any payment made or to be made by 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.” For the reasons stated in the following paragraph, the Plan complies with 11 U.S.C. § 1129(a)(~~4~~).

1. Insider Employment or Retention Disclosure. **11 U.S.C. § 1129(a)(5)** requires that (a) the Debtor disclose the identity and affiliations of any individual proposed to serve after confirmation 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 of the Debtor under the Plan, (b) the appointment or continuance of the individual be consistent with the interest of creditors, equity security holders and with public policy and (c) the Debtor disclose the compensation to be paid to such individual. In this Case:

[ ]  11 U.S.C. § 1129(a)(5) is inapplicable because there are no individuals proposed to serve after confirmation as a director, officer or voting trustee of the Debtor, and there are no affiliates of the Debtor participating in the Plan, or

[ ]  For the reasons stated in the following paragraph, the Plan complies with § 1129(a)(5).

1. Rate Changes Requiring Regulatory Approval. **11 U.S.C. § 1129(a)(6)** requires that, after confirmation of the Plan, any governmental regulatory entity with jurisdiction over the rates of the Debtor has approved any rate change provided for in the Plan, or such rate change is expressly conditioned on such approval. In this Case:

[ ]  11 U.S.C. § 1129(a)(6) is inapplicable because Debtor is not in a business where a regulatory commission has jurisdiction over the rates charged, or

[ ]  For the reasons discussed in the following paragraph, the Plan complies with 11 U.S.C. § 1129(a)(6).

1. Best Interest of Creditors Test. **11 U.S.C. § 1129(a)(7)** requires that 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 property of a value, as of the Effective Date, not less than the amount that such holder would receive or retain if the Debtor were liquidated under chapter 7 on such date. Section VII of the Plan contains the liquidation analysis in this case, which is supported by the Plan Exhibits and Declarations. For the reasons discussed in the following paragraph and in other evidence offered in support of this Motion, the Plan complies with 11 U.S.C. § 1129(a)(7):

1. **THE PLAN COMPLIES WITH 11 U.S.C. §** **1129(a)(8)-(10) OR IS EXCEPTED FROM COMPLIANCE**

**BY 11 U.S.C. §** **1191(b)**

**11 U.S.C. § 1191(b)** provides that where § 1129(a)(8) or 1129(a)(10) are not satisfied, the court may nonetheless confirm the Plan under § 1191(b) if the Plan does not discriminate unfairly and is fair and equitable with respect to each class of claims or interest.

**11 U.S.C. § 1191(e)** provides that where § 1129(a)(9)(A) is not satisfied, the court may nonetheless confirm the Plan under § 1191(b) if the Plan does not discriminate unfairly and is fair and equitable with respect to one or more claims described in 11 U.S.C. §§ 507(a)(2) or 507(a)(3).

[ ]  §1129(a)(8)-10 Satisfied. As established in part II.A. below, the following sections of § 1129(a) are satisfied.

[ ]  § 1129(a)(8) [ ]  § 1129(a)(9)(A) [ ]  § 1129(a)(10)

[ ]  § 1129(a)(8)-10 Not Satisfied. As established in part II.B. below, the following sections of § 1129(a) are not

 satisfied; however, the Plan may still be confirmed because the elements of § 1191(b) are met.

[ ]  § 1129(a)(8) [ ]  § 1129(a)(9)(A) [ ]  § 1129(a)(10)

1. Compliance with **11 U.S.C. §** **1191(a)**
2. Degree of Plan Acceptance. **11 U.S.C. § 1129(a)(8)** requires that each class of claims either accepts the Plan or is not impaired under the Plan.
	1. **Evidence**. The Plan Ballot Summary is attached as ~~(~~Exhibit A~~)~~ to this motion. The declaration of

       is filed in support of the Motion and it establishes the level to which the Plan is accepted, including:

1. Acceptance by Ballots: By claimants who were entitled to vote and who voted to accept the Plan.

ii. Deemed Acceptance: By claimants who were not impaired and therefore not entitled to vote [11

 U.S.C. § 1126(f)], who were entitled to vote but did not vote [LBR 9013-1(h)], or who were members of

an impaired class and at least two-thirds (2/3) in amount and more than one-half (1/2) in number of all

allowed claims class members who actually voted, voted in favor of the Plan [11 U.S.C. § 1126(c)-(d)].

iii. Non-Acceptance: By claimants who were entitled to vote, and voted to not accept the Plan, but

 whose claims receive treatment specified in 11 U.S.C. § 1129(a)(7), (9) or (10).

* 1. **Argument**.

[ ]  For the reasons stated in the following paragraph, the Plan complies with 11 U.S.C. § 1129(a)(8).

or,

[ ]  11 U.S.C. § 1129(a)(8) has not been satisfied. However, as stated in part II.B. below, the court

 may still confirm the Plan because the Plan complies with 11 U.S.C. § 1191(b).

1. Administrative and Priority Claim Treatment. **11 U.S.C. § 1129(a)(9)** requires that the Plan treat all priority claims consistent with the requirements of 11 U.S.C. §§ 507(a) which generally means that administrative claimants who have not agreed to accept other treatment and holders of non-priority tax claims that have rejected the Plan must be paid in full on the effective date; and, 11 U.S.C. § 507(a)(8) tax claims must be paid over a period not exceeding 5 years after the date of the order for relief and on terms that are not less favorable than the most favored nonpriority unsecured claim.

[ ]  For the reasons stated in the following paragraph, the Plan complies with 11 U.S.C. § 1129(a)(9).

[ ]  For each administrative claimant(s) who are entitled to be paid in full on the effective date, but are not being paid in full on the effective date, the court may still confirm the Plan because:

[ ]  11 U.S.C. § 1129(a)(9) has been satisfied because the affected administrative claimant(s)

have agreed to accept other treatment. Evidence of agreement(s) is attached in Exhibit     .; or

[ ]  11 U.S.C. § 1129(a)(9)(A) has not been satisfied. However, pursuant to 11 U.S.C. § 1191(e)

and as discussed in part II.B. below, the court may still confirm the Plan because the Plan complies

with 11 U.S.C. § 1191(b).

1. Minimum Acceptance Required for Plan Confirmation. **11 U.S.C. § 1129(a)(10)** requires that if a class of claims is impaired under the Plan, at least one class of claims that is impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by any insider. In this Case:

[ ]  11 U.S.C. § 1129(a)(10) is inapplicable because there are no impaired classes of claims;

[ ]  For the reasons stated in the following paragraph, the Plan complies with 11 U.S.C. § 1129(a)(10).

[ ]  The Plan does not comply with 11 U.S.C. § 1129(a)(10). However, as discussed below in section II, the court may still confirm the Plan because the Plan complies with § 1191(b).

1. Compliance with **11 U.S.C. §** **1191(b)**

As described in part II.A. above, one or more of sections (a)(8), (a)(9)(A) or (a)10 of 11 U.S.C. § 1129 are not satisfied.Despite this lack of compliance, the Court may confirm the Plan because both elements of 11 U.S.C. § 1191(b) are met.

1. **No Unfair Discrimination**. For the reasons discussed in the following paragraph and supported by the Declaration of       ,the Plan does not discriminate unfairly with respect to each class of claims or interests that is impaired under the Plan and did not accept the Plan.

1. **Fair and Equitable**. As indicated below and supported by the Declaration of       , the Plan is fair and equitable with respect to each class of claims or interests that is impaired under the Plan and did not accept the Plan.

a. Impaired Secured Claim(s)

 [ ]  There are no classes of impaired secured claims.

 [ ]  There is a class(es) of secured claims. With respect to a class of secured claims, the plan

 complies with § 1129(b)(2)(A), which provides—

1. (A) that the holders of such claims retain the liens securing such claims, whether the property

subject to such liens is retained by the debtor or transferred to another entity, to the extent of

the allowed amount of such claims; and

 (B) that each holder of a claim of such class receive on account of such claim deferred cash

 payments totaling at least the allowed amount of such claim, of a value, as of the effective

 date of the plan, of at least the value of such holder’s interest in the estate’s interest in such

 property;

1. for the sale, subject to [section 363(k)](https://www.usbankruptcycode.org/chapter-3/subchapter-iv-administrative-powers/section-363-use-sale-or-lease-of-property/) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; **or**
2. for the realization by such holders of the indubitable equivalent of such claims.

b.Disposable Income of the Debtor. Pursuant to **11 U.S.C. § 1191(c)**, disposable income means

 income received by the Debtor that is not reasonably necessary to pay for maintenance or support of

 the debtor or dependent of the debtor, or a domestic support obligation that first becomes payable

 after the date the bankruptcy case was filed.

 As of the effective date of the Plan:

1. [ ]  the Plan provides that all of the projected disposable income of the Debtor to be received in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; **or**

1. [ ]  the value of the property to be distributed under the Plan in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date on which the first distribution is due under the plan is not less than the projected disposable income of the Debtor.

**c.** Plan Payments.

1. **Timely Payment**.

[ ] The Debtor will be able to make all payments under the plan; or

[ ]  There is a reasonable likelihood that the Debtor will be able to make all payments under

 the plan;

1. **Remedies to Protect Against Untimely Payment**. The plan provides appropriate remedies, which may include the liquidation of nonexempt assets, to protect the holders of claims or interests in the event that the payments are not made.
2. **COMPLIANCE WITH 11 U.S.C. §§ 1191(a) and 1129(a)(11)-(14) and (16)**
3. Feasibility of Plan. **11 U.S.C. § 1129(a)(11)** requires that the Plan is feasible and not likely to be followed by a liquidation or need for further reorganization, unless such liquidation or reorganization is proposed in the plan.

Support for feasibility of the Plan is found in Exhibit D in the Plan Exhibits and Declarations and in the Declaration of        and other evidence offered in support of this Motion. For the reasons discussed in the following paragraph, the Plan complies with 11 U.S.C. § 1129(a)(11):

1. Payment of Fees. **11 U.S.C. § 1129(a)(12)** requires that all fees payable under section 1930 of title 28, as determined by the Court at the hearing on confirmation of the Plan, have been paid or the Plan provides for the payment of all such fees on the effective date of the Plan. For the reasons discussed in the following paragraph, the Plan complies with 11 U.S.C. § 1129(a)(12).

1. Continuance of Retiree Benefits. **11 U.S.C. § 1129(a)(13)** requires that the Plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in 11 U.S.C. § 1114, at the level established pursuant to [subsection (e)(1)(B)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=11USCAS1114&originatingDoc=N4D4F15E02A2511E09714F4475B4D179A&refType=RB&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_f570000012452) or (g) of 11 U.S.C. § 1114, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

[ ]  11 U.S.C. § 1129(a)(4) is inapplicable because Debtor is not obligated to provide any retiree benefits as

 that term is defined in 11 U.S.C. § 1114, or

[ ]  For the reasons discussed in the following paragraph, the Plan complies with 11 U.S.C. § 1129(a)(13).

1. Domestic Support Obligations. **11 U.S.C. § 1129(a)(14)** provides that if the Debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the Debtor has paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition. In this Case:

[ ]  11 U.S.C. § 1129(a)(14) is inapplicable because Debtor has not domestic support obligation(s), or

[ ]  For the reasons discussed in the following paragraph, the Plan complies with 11 U.S.C. § 1129(a)(14).

1. Debtor’s Prospective Income. **11 U.S.C. § 1129(a)(15)** does not apply in Subchapter V plans, pursuant to 11 U.S.C. §§ 1181(a) and 1191(a).
2. Corporate or Trust Transfers of Property. **11 U.S.C. § 1129(a)(16)** requires that all transfers of property under the Plan 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. In this case:

[ ]  11 U.S.C. § 1129(a)(16) is inapplicable because Debtor is not a corporation or trust that is not a moneyed,

business, or commercial corporation or trust, or

[ ]  For the reasons stated in the following paragraph, the Plan complies with 11 U.S.C. § 1129(a)(16).

 **IV. EVIDENCE IN SUPPORT OF MOTION**

 The following declarations and exhibits are filed as evidence to support this Motion to Confirm Plan.

1. Declarations: Signed under Penalty of Perjury [LBR 9013-1(i)]

 [ ]  Debtor or Principal of the Debtor (Declaration must be attached to this Motion)

 [ ]  Person who completed service of the Notice of Deadlines

 [ ]  Person who received and tabulated ballots

 [ ]  Person who testifies that the Plan does not discriminate unfairly

 [ ]  Person who testifies that the Plan is fair and equitable

 [ ]  Other(s):

1. Exhibits: Documents Authenticated by Declarations [LBR 9013-1(c)(3)(A)]

[ ]  Exhibit 1: Plan Ballot Summary and Ballots (must be attached to this Motion)

[ ]  Exhibit 2:

[ ]  Exhibit 3:

[ ]  Exhibit 4:

[ ]  Exhibit 5:

**V. RELIEF SOUGHT**. Based on the foregoing, the Debtor requests that the court confirm the Plan and enter an order granting the Motion to Confirm Plan.

Date:

Signature of Debtor/Attorney for Debtor

Printed Name of Debtor/Attorney for Debtor

**DECLARATION OF        IN SUPPORT OF MOTION TO CONFIRM PLAN**

1. I,       declare under penalty of perjury under the laws of the United States of America that the following statements are true and based upon personal knowledge.
2. With respect to this bankruptcy case, Case No.:       , I am

[ ]  the Debtor.

[ ]  A principal of the Debtor (if Debtor is not an individual):

1. Debtor has proposed a Plan that is [ ]  Operating plan, or [ ]  Liquidating plan
2. The Plan has a term of       year(s), or       months.
3. The effective date of the Plan is [ ]  14 days after order confirming Plan or [ ]  other date:       .
4. The Plan has been proposed in good faith and not by any means forbidden by law.
5. I have personally reviewed **Section V of the Plan** (which contains assertions about sources of money to satisfy claims and interests) and the **Exhibit D of the Plan Exhibits and Declarations** (which contains projected income, expenses and plan payments). All information contained therein is true and correct and the information establishes that the Plan is feasible.

[ ]  Additional facts supporting the feasibility of the Plan are as follows:

[ ]  Additional evidence supporting the feasibility of the Plan is attached as Exhibit      to this Motion.

1. I have personally reviewed **Section VII of the Plan** (which contains a “liquidation analysis”) and **Exhibit C of the Plan Exhibits and Declarations** (which contains assertions about valuation of estate property on a liquidation vs. going concern analysis). All information contained therein is true and correct, including the identity and valuation of the estate property listed, and the methodology of the valuations.

[ ]  Additional evidence demonstrating that impaired creditors will not receive less under the Plan than in liquidation under chapter 7 is attached as Exhibit      to this Motion

[ ]  Additional facts demonstrating that impaired creditors will not receive less under the Plan than in liquidation under chapter 7 are as follows:

Date:

Signature of Declarant

Printed name of Declarant

**PROOF OF SERVICE OF DOCUMENT**

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled: **NOTICE OF MOTION AND MOTION TO CONFIRM SUBCHAPTER V PLAN OF REORGANIZATION** [11 U.S.C. § 1191, FRBP 3020(b)]will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1**. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*)

      , I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

 [ ]  Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL**:
On (*date*)       , I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

 [ ]  Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*)       , I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

 [ ]  Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

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| --- | --- | --- |
|        |        |        |
| *Date Printed Name* | *Printed Name* | *Signature* |