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APR 20 2012

CLERK U.S. BANKRUPTCY COURT
Central District of California
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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

Mini-Mailers, a California Corporation,

Debtor.

Case No.: 2:11-bk-40578-TD

CHAPTER 11

**MEMORANDUM OF DECISION RE
DEBTOR'S MOTION FOR ORDER
CONFIRMING PLAN OF REORGANIZATION**

Date: April 18, 2012
Time: 10:00
Courtroom: 1345

Debtor filed for chapter 11 on July 18, 2011. Debtor filed an initial Disclosure Statement and Plan of Reorganization on November 15, 2011. Following a hearing on December 21, 2011, Debtor filed an Amended Disclosure Statement and Amended Plan of Reorganization (Plan) on January 20, 2012. An order approving Debtor's Amended Disclosure Statement was entered on February 14, 2012, with hearing on confirmation of the Plan set for April 4, 2012, and then continued to April 18, 2012.

NOTICE

Debtor gave proper notice of the hearing on confirmation to creditors, with the exception of CDC Small Business Finance (CDC). CDC is not included on the Debtor's

1 schedules, nor on the proof of service for the Notice of Confirmation Hearing filed on
2 February 22, 2012. CDC filed a proof of claim on March 12, 2012 demonstrating that
3 Debtor is a guarantor on a loan with a principal balance of \$339,858.51 borrowed by
4 WJR Communications, LLC, a company owned by the Debtor's president, William
5 Rivera. CDC does not allege bad faith in the Debtor's failure to include CDC, indicating
6 only that it is "unclear why CDC's claim was omitted from the bankruptcy petition."

7 **MOTION FOR ORDER CONFIRMING THE PLAN**

8 Debtor has filed evidence of returned ballots, which demonstrate that one of the
9 two impaired classes, Class 1, has voted in favor of the Plan. However, the other
10 impaired class, Class 4, has rejected the Plan. Although the majority in number of
11 ballots accepted the plan, those ballots accounted for only 48% of the monetary amount
12 of claims voting. Debtor nevertheless seeks to cramdown the Plan on the grounds that
13 all other requirements in 11 U.S.C. § 1129 have been met, including the requirement
14 that all holders of claims or interests in the impaired classes will receive at least as
15 much property as they would if Debtor were liquidated under chapter 7.

16 Creditors CDC, Blooma, LLC (Blooma), and the United States Postal Service
17 (USPS) oppose confirmation of the Plan on three grounds. First, they argue that Debtor
18 has not demonstrated that the Plan is feasible. Debtor has not yet merged with AMC to
19 form the New Company, as was proposed in the Plan, and so there is no evidence that
20 the combined company can operate on a net positive basis. To the contrary, in four of
21 the past six months, Debtor has operated at a loss. Second, the creditors oppose
22 confirmation on the grounds that Debtor has not fulfilled the requirements of
23 § 1129(a)(15). Third, the creditors object to Rivera's 50% equity allowance in the New
24 Company as a violation of the absolute priority rule.

25 Debtor has filed a reply indicating that substantial merger with AMC has already
26 taken place, and the New Company is in the process of registering with the California
27 Secretary of State. Debtor anticipates the merger will be finalized May 1, 2012, and that
28 the merger will substantially reduce expenses, allowing Debtor to make payments over

1 the life of the Plan. Debtor also notes that the Plan is sufficient in its distribution
2 because the 11% payout to unsecured creditors is greater than what they would have
3 been paid in a chapter 7 liquidation, which based on an auctioneer's valuation of
4 Debtor's assets would be 10.42% of claims. Finally, Debtor notes that although Rivera
5 will get equity in the New Company, it will be based on Rivera's contribution of \$10,000
6 in new value, to cover organizational costs necessary to operate the New Company.

7 ANALYSIS

8 The court has repeatedly requested additional information from the Debtor, such
9 as a term sheet and formal agreement, regarding the merger with AMC. In response,
10 on January 20, 2012, Debtor filed a declaration by Eric Celaya, Debtor's CFO, in the
11 form of a memorandum, with the stated intent to demonstrate that the merger is "far
12 from being hypothetical or uncertain." However, the court has yet to receive a signed
13 term sheet or any solid evidence of the settled terms of the proposed merger. Rather,
14 the only evidence of the settled terms of this merger is in the form of declarations by the
15 Debtor including spreadsheets of financials and statements of Debtor's intent. These
16 declarations, taken at face value, suggest that the proposed Plan is feasible. However,
17 Debtor has not yet produced adequate evidence to show that the merger will take place
18 as proposed, or that the merged entity is capable of fulfilling the Debtor's obligations
19 under its Plan of Reorganization.

20 Debtor is not subject to the requirements of § 1129(a)(15) because Debtor is not
21 an individual. The court is at a loss why CDC, Blooma, and the USPS would each
22 object expressly on this ground. It would appear that each of these creditors has failed
23 to read the statute closely, or else they all grossly misunderstand Debtor's corporate
24 status.

25 The requirements of the new value exception to the absolute priority rule are that
26 the former equity holders offer value under the plan of reorganization that is (1) new, (2)
27 substantial, (3) in money, (4) necessary for successful reorganization, and (5)
28 reasonably equivalent to the value or interest received. *Liberty Nat'l Enters. v. Ambanc*

1 *La Mesta Ltd. Pship. (In re Ambanc La Mesa Ltd. Pship.)*, 115 F.3d 650, 654 (9th Cir.
2 1997). Rivera's intended contribution of \$10,000 is new and in money. However,
3 Debtor has not demonstrated that Rivera's contribution is substantial, necessary for a
4 successful reorganization, or reasonably equivalent to the value or interest received.

5 Debtor has demonstrated that there are costs necessary to establishing the new
6 business that are at least in part to blame for Debtor's recent months of operating at a
7 net loss. However, Debtor has not shown any evidence that Rivera's \$10,000 is
8 necessary to pay those costs. The evidence would suggest otherwise, particularly as
9 Debtor appears to have footed the bill for those costs thus far, as demonstrated by the
10 extraordinary expense schedule presented in Exhibit 2 of Debtor's Reply. Further,
11 \$10,000 is a fairly minor amount in comparison with the sum of those expenses (roughly
12 \$284,500). Finally, \$10,000 does not seem a reasonable exchange for the 50% interest
13 Rivera will receive in exchange for his "new value," when compared with Debtor's
14 portion of the projected 2012 profit of the New Company (\$295,116 after Plan
15 payments). See Debtor's Amended Disclosure Statement, Docket 82, page 38.

16 For the reasons explained above, creditors' objections regarding feasibility and
17 the absolute priority rule are sustained. Creditors' objections regarding § 1129(a)(15)
18 are overruled. Debtor's Motion for an Order Confirming its Chapter 11 Plan of
19 Reorganization is denied.

20 The hearing on plan confirmation will be continued, at Debtor's request, to permit
21 the filing of additional evidence and new pleadings not later than May 5, 2012.
22 Creditors may respond to such evidence and pleadings at or before the hearing, either
23 orally or in writing.

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4 In the absence of additional evidence satisfactory to the court, this case may be
5 dismissed by the court at the conclusion of the May 5 hearing with a 180-day bar
6 against any refilling.

7 **IT IS SO ORDERED.**
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24 DATED: April 20, 2012
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United States Bankruptcy Judge

NOTE TO USERS OF THIS FORM:

- 1) Attach this form to the last page of a proposed Order or Judgment. Do not file as a separate document.
- 2) The title of the judgment or order and all service information must be filled in by the party lodging the order.
- 3) **Category I.** below: The United States trustee and case trustee (if any) will always be in this category.
- 4) **Category II.** below: List ONLY addresses for debtor (and attorney), movant (or attorney) and person/entity (or attorney) who filed an opposition to the requested relief. DO NOT list an address if person/entity is listed in category I.

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*) **MEMORANDUM OF DECISION RE DEBTOR'S MOTION FOR ORDER CONFIRMING PLAN OF REORGANIZATION** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of **April 20, 2012**, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below.

☒ Service information continued on attached page

II. SERVED BY THE COURT VIA U.S. MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

Debtor

Mini-Mailers a California Corporation
6259 Bandini Blvd
Los Angeles, CA 90040

☐ Service information continued on attached page

III. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s), and/or email address(es) indicated below:

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SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of **April 16, 2012**, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below.

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