Honorable Mike K. Nakagawa
United States Bankruptcy Judge

Entered on Docket
July 15, 2019

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

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In re:	)	Case No.: 18-17155-MKN
	)	Chapter 11
DANIEL H. ROSENBLUM,	)	
	)	Date: July 10, 2019
Debtor.	)	Time: 10:30 a.m.
	)	

ORDER ON [PROPOSED] FIRSTAMENDED DISCLOSURE STATEMENT TO ACCOMPANY SECURED CREDITOR SHEILA ROSENBLUM'S COMPETING CHAPTER 11 PLAN OF LIQUIDATION[1]

On July 10, 2019, the court conducted a hearing on the [Proposed] First Amended Disclosure Statement to Accompany Secured Creditor Sheila Rosenblum's Competing Chapter 11 Plan of Liquidation. The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On December 1, 2018, Daniel H. Rosenblum ("Debtor") filed a voluntary Chapter 11 petition for reorganization. (ECF No. 1).[2] He has filed schedules of assets and liabilities as well as a statement of financial affairs, as well as various amendments to those documents during this

[1] In this Order, all references to "ECF No." are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court. All references to "Section" are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to "FRBP" are to the Federal Rules of Bankruptcy Procedure.

[2] Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the docket in the above-captioned Chapter 11 proceeding. See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980); see also Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC Trustee Corps.), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015) ("The Court may consider the records in this case, the underlying bankruptcy case and public records.").

proceeding. (ECF Nos. 1, 47, 110, and 230). All of the documents are executed under penalty of perjury.[3]

On December 21, 2018, Debtor filed an amended property Schedule A/B, in which he attested that he has an ownership interest in approximately 11,827,919 shares of stock in EDF Man Group PLC ("ED&F Man")[4] having a value of $47,311,676. (ECF No. 47). On the same date, Debtor's former spouse, Sheila Rosenblum, filed proof of claim number 3 in the amount of $190,787,212.18 ("POC 3"), of which she alleges that $65,038,695.31 is secured by the shares of stock in ED&F Man.[5] Also on the same date, Sheila Rosenblum filed an initial motion seeking various relief, including dismissal of the Chapter 11 proceeding. (ECF No. 42).[6]

On January 29, 2019, Debtor's son, Russell Rosenblum, who also is the former step-son of Sheila Rosenblum, filed proof of claim number 10 in the amount of $4,261,512.16 ("POC 10"), all of which is alleged to be secured by shares of stock in ED&F Man.

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[3] On December 1, 2018, a Notice of Chapter 11 Bankruptcy Case was filed ("Bankruptcy Notice"). (ECF No. 3). It was served on all scheduled creditors. (ECF No. 10). The Bankruptcy Notice sets a meeting of creditors under Section 341(a) for January 3, 2019. It also sets forth a bar date of March 4, 2019, for parties to file complaints to determine the dischargeability of certain debts under Sections 523(a)(2), (4) and (6). The Bankruptcy Notice is consistent with FRBP 4007(c) ("[A] complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a)"). The Bankruptcy Notice also references complaints to deny discharge under Section 1141(d)(3) and advises that the court will provide notice of the first date set for hearing on confirmation of a plan. The Bankruptcy Notice is consistent with FRBP 4004(a) ("In a chapter 11 case, the complaint [objecting to the debtor's discharge] shall be filed no later than the first date set for the hearing on [plan] confirmation.").

[4] During this Chapter 11 proceeding, the stock at issue has been described by the parties and the court as being stock or interests in EDF Man Group PLC, ED&F Man Holdings Limited, EDF, Man Limited, and occasionally just Man. For the instant order, and perhaps subsequent orders, the court will use the reference ED&F Man.

[5] Debtor and Sheila Rosenblum are the subject of a marital dissolution proceeding that was commenced on September 27, 2013, in the Supreme Court of the State of New York, County of New York ("New York State Court"), denominated Case No. 350086/2013.

[6] In support of her initial motion, Sheila Rosenblum submitted the Declaration of Daniel Hemming, Esq. ("Hemming Declaration"). (ECF No. 45).

On January 30, 2019, an order was entered terminating the automatic stay to permit Sheila Rosenblum and Russell Rosenblum to complete litigation pending in the High Court of Justice, Business and Property Courts of England and Wales, Business List (Chancery Division) ("London Court"), Claim No. HC-2017-991678, in London, England ("London Action"),[7] with respect to their claims of priority to the shares of stock in ED&F Man. (ECF No. 102). That order specifically provides that the determination of the lien priority dispute would not include any disposition or sale of the subject stock absent an order from the bankruptcy court or a stipulation approved by the bankruptcy court.

On March 15, 2019, an order was entered denying Sheila Rosenblum's initial motion requesting, *inter alia*, dismissal of the Chapter 11 proceeding. (ECF No. 130).

On March 26, 2019, Debtor filed a motion to extend the exclusivity period under Section 1121(b) for the Debtor to file a proposed plan of reorganization ("Exclusivity Motion"). (ECF No. 137).

On April 1, 2019, Debtor's 120-day exclusivity period under Section 1121(b) expired.

On April 2, 2019, Sheila Rosenblum filed a proposed Chapter 11 plan of liquidation (ECF No. 144) along with an accompanying disclosure statement. (ECF No. 143).

On May 10, 2019, an order was entered denying the Exclusivity Motion ("Exclusivity Order"). (ECF No. 180). In addition to denying relief, the order set a deadline of June 3, 2019, for the Debtor to file a proposed plan of reorganization and accompanying disclosure statement. The same order scheduled a hearing for July 10, 2019, for the court to consider approval of the disclosure statement filed by Sheila Rosenblum as well as the disclosure statement to be filed by the Debtor.[8] The order also directed that a hearing on confirmation of Sheila's proposed plan of

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[7] The London Action was commenced by Sheila Rosenblum to enforce the various judgments she obtained against the Debtor from the New York State Court. One of the claims in that London Action will resolve the priority dispute between Sheila Rosenblum and Russell Rosenblum as to their interest in the same shares of stock in ED&F Man.

[8] In addition to the two competing disclosure statements, on the same date the court heard two separate motions brought by Sheila Rosenblum: a motion confirming an exception to the automatic stay under Sections 362(b)(2)(B) and (C) and 362(b)(4), and another motion to dismiss the Chapter 11 proceeding under Section 1112(b)(4)(P). (ECF Nos. 191 and 193). On June 19,

liquidation, as well as the Debtor's proposed plan of reorganization, would commence no later than August 26, 2019.

On April 15, 2019, Debtor filed "preliminary objections" to the plan and disclosure statement filed by Sheila Rosenblum ("Debtor Initial Objections"). (ECF No. 160).

On June 3, 2019, Debtor filed his proposed plan of reorganization ("Debtor Plan") and proposed disclosure statement ("Debtor Disclosure Statement"). (ECF Nos. 200 and 201).

On June 14, 2019, Sheila Rosenblum filed redlined, first amendments to both her proposed plan ("Sheila Plan") and proposed disclosure statement ("Sheila Disclosure Statement").[9] (ECF Nos. 209 and 210).

On June 20, 2019, an order was entered denying Sheila's ex parte request to advance the disclosure statement approval hearing to the week of June 24, 2019 ("Sheila Advancement Order"). (ECF No. 215).[10]

On July 2, 2019, the Office of the United States Trustee ("UST") filed an objection to approval of the Sheila Disclosure Statement ("UST Objection"). (ECF No. 228).

On July 3, 2019, Debtor filed an objection to the Sheila Disclosure Statement ("Debtor Objection").[11] (ECF No. 231). On the same date, an objection to the Sheila Disclosure Statement also was filed by Russell Rosenblum ("Russell Objection"). (ECF No. 233). Additionally, on the same date, an omnibus objection to both the Debtor Disclosure Statement

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2019, a separate motion to convert the case to Chapter 7 under Section 1112(b)(4)(I) was filed by the Internal Revenue Service ("IRS"). (ECF No. 214). That motion was noticed to be heard on July 31, 2019. (ECF No. 224). Separate orders will be entered regarding approval of the competing disclosure statements as well as the two separate motions filed by Sheila Rosenblum.

[9] In this Order, the court's references to pages of the Sheila Disclosure Statement is to the redlined version at Docket No. 209.

[10] On October 15, 2018, Sheila Rosenblum and ED&F Man entered into a confidential acquisition agreement ("Acquisition Agreement") for ED&F Man to purchase the subject shares on the condition that the purchase be completed no later than September 30, 2019. See Sheila Advancement Order at 3.

[11] The Debtor Objection incorporates by reference the arguments raised in the Debtor Initial Objections.

and the Sheila Disclosure Statement was filed on behalf of the IRS ("IRS Objection"). (ECF No. 232).

On July 8, 2019, Sheila Rosenblum filed an omnibus reply to the various objections to her proposed disclosure statement ("Sheila Disclosure Statement Reply"). (ECF No. 237).

LEGAL STANDARD

Section 1125 requires the disclosure statement to provide "adequate information" to the creditors in order for them to make an "informed judgement about the plan." 11 U.S.C. § 1125(a)(1).[12] The adequacy of disclosure statement information has been evaluated using numerous factors, including the present condition of the debtor while in Chapter 11, the classes and claims within the reorganization plan, the estimated administrative expenses (including attorneys' fees), financial information and projections relevant to the decision to accept or reject the debtor's plan, and information relevant to the risks posed to creditors under the debtor's plan. See In re Reilly, 71 B.R. 132, 134-35 (Bankr. D. Mont. 1987). See generally 7 COLLIER ON BANKRUPTCY, ¶ 1125.02[2] (Richard Levin & Henry J. Sommer eds., 16th ed.). Even if a disclosure statement previously has been approved, the adequacy of disclosure may be revisited at plan confirmation. See Official Comm. of Unsecured Creditors v. Michelson (In re Michelson), 141 B.R. 715 (Bankr. E.D. Cal. 1992). As the Michelson court observed:

> Compliance with the disclosure and solicitation requirements is the paradigmatic example of what the Congress had in mind when it enacted section 1129(a)(2). According to both the House and Senate Reports, that section "requires that the proponent of the plan comply with the applicable provisions of title 11, such as section 1125 regarding disclosure." H.R.Rep. No. 595, 95th Cong., 1st Sess. 412

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[12] In full, Section 1125(a)(1) states: "'adequate information' means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information."

> (1977); S.Rep. No. 989, 95th Cong., 2d Sess. 126 (1978); 1978 U.S.Code Cong. & Ad.News 5787 at 5912, 6368.
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> Reassessing the adequacy of disclosure from the vantage of the confirmation hearing is an efficient safeguard of the integrity of the reorganization process. When the adequacy of information is initially determined during the presolicitation phase, the court is acting in a context in which information may be sketchy and preliminary. The court does not conduct an independent investigation and relies upon its reading of the document for apparent completeness and intelligibility, as well as objections raised by parties in interest.

141 B.R. at 719. See, e.g., In re Samuel, 2018 WL 4739937, at *9 (Bankr. E.D. Cal. Sep. 27, 2018) (re-examining adequacy of disclosure at plan confirmation).

The plan proponent has the burden to show that its proposed disclosure statement contains adequate information. See Michelson), 141 B.R. at 719. "[T]he determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court." Computer Task Group, Inc. v. Brotby (In re Brotby), 303 B.R. 177, 193 (B.A.P. 9th Cir. 2003) (quotations and citations omitted).

DISCUSSION

The court having reviewed the Sheila Disclosure Statement as well as the written and oral arguments presented, overrules the objections raised by the UST, the IRS, the Debtor, and Russell Rosenblum, and conditionally approves the disclosure statement subject to the inclusion of certain language.

A. The UST.

With respect to the UST Objection regarding quarterly fees, the language in the Sheila Disclosure Statement Reply, at page 6, lines 13 through 17, must be included in a final disclosure statement.[13]

B. The IRS.

With respect to the IRS Objection regarding the sale of the shares of ED&F Man and possible tax implications, the language in the Sheila Disclosure Statement Reply, from page 7, line 2 through page 9, line 25, must be included in the final disclosure statement. The language

[13] At the approval hearing, the UST indicated that she was satisfied with the suggested revisions, without prejudice to plan confirmation objections that may be offered.

must be identified, however, as being specifically in response to an objection raised by the IRS.[14] Additionally, the language in the full sentence at page 8, lines 18 through 19, must be corrected to read as follows: "Ms. Rosenblum maintains that this property was awarded to a non-debtor spouse pursuant to a divorce decree finalized prior to the debtor spouse's bankruptcy and, therefore, she maintains is not part of the debtor's estate." Moreover, the language on page 9, line 10, must be corrected to read as follows: "Ms. Rosenblum proposes to pay the IRS out of assets that she maintains are not property of the…." A final disclosure statement accompanying the Sheila Plan must incorporate this language, including the corrections indicated.

C. The Debtor.

With respect to the various matters raised in the Debtor Objection, the court concludes that most, if not all, of the issues raised by the Debtor go to the question of plan confirmation under Section 1129(a), rather than adequacy of disclosure under Section 1125(a).[15] Several of the issues raised by the Debtor are simply ill-informed regardless of whether they pertain to plan confirmation or adequacy of disclosure. For example, Debtor asserts that the Sheila Plan violates the "best interest of creditors" test under Section 1129(a)(7) because creditors "get less than $.02 cents on the dollar and Sheila gets paid in full." See Debtor Initial Objection at ¶ 54; Debtor

[14] At the approval hearing, the IRS indicated that it was satisfied with the suggested revisions, without prejudice to plan confirmation objections being offered, as well as future disputes as to the determination of the tax consequences from the sale of the shares in ED&F Man.

[15] Virtually all of the arguments raised in the Debtor Initial Objection concern plan confirmation. In connection with the requirements of Section 1125, Debtor argued that Sheila Rosenblum filed her initial plan and disclosure statement in violation of the plan exclusivity language of Section 1121(b). See Debtor Initial Objection at ¶¶ 42 through 46. Debtor also argued that Sheila Rosenblum's initial disclosure statement did not include sufficient information regarding her arrangement to sell the shares of ED&F Man, the tax consequences of the sale, nor the tax attributes of the Debtor. Id. at ¶¶ 47 to 50. As to the former argument, the Exclusivity Order specifically authorized Sheila Rosenblum to seek approval of her proposed disclosure statement and to seek confirmation of her proposed Chapter 11 liquidating plan. Any objection by the Debtor that plan exclusivity under Section 1121(b) has been violated was effectively overruled by the Exclusivity Order and, if necessary, is now specifically overruled. As to the latter concerns, the disclosure statement revisions required to satisfy the IRS Objection are sufficient.

Objection at ¶ 7. The best interests test only requires that a proposed Chapter 11 plan pay creditors on account of their claims an amount that is "not less than the amount" the claimant would receive in a Chapter 7 liquidation. See 11 U.S.C. § 1129(a)(7)(A)(ii). Under this language, claimants that would receive nothing in a Chapter 7 liquidation typically have no basis to raise a best interests objection to a proposed Chapter 11 plan that also provides nothing. Similarly, Debtor argues that Sheila Rosenblum cannot vote on her own proposed Chapter 11 plan but can only vote on the Debtor's proposed plan. See Debtor Objection at ¶ 9(a). The argument ignores more than 25 years of precedent in this circuit: a secured creditor can propose its own Chapter 11 plan that impairs its own claim to which it is entitled to cast its own vote. See L&J Anaheim Assocs. v. Kawasaki Leasing Int'l, Inc. (In re L&J Anaheim Assocs.), 995 F.2d 940, 943 (9th Cir. 1993).[16] Additionally, Debtor suggests that the Sheila Plan somehow provides for relief from stay with respect to the Debtor's only vehicle. See Debtor Objection at ¶ 6(b). In her disclosure statement, however, Sheila Rosenblum merely identifies, correctly, a legal consequence with respect to personal property collateral under Section 362(h)(1)(A) that arose from the Debtor's failure to timely file a statement of intention under Section 521(a)(2)(A). See Sheila Disclosure Statement at 27:8-13. Compare Samson v. W. Capital Partners, LLC (In re Blixseth), 684 F.3d 865, 871 (9th Cir. 2012) (automatic stay terminates with respect to personal property securing a claim and it is no longer property of the bankruptcy estate).[17]

[16] Moreover, the creditor plan confirmed in L&J Anaheim also provided for the creditor to act as "Estate Representative, with all the powers of a bankruptcy trustee, in order to bring lawsuits against [the debtor's] general partners, and so to pay any remaining claims against the partnership." 995 F.2d at 941.

[17] Debtor voluntarily availed himself of the protections of bankruptcy law and voluntarily subjected himself to the demands and consequences of seeking Chapter 11 bankruptcy relief. As a Chapter 11 debtor in possession, Debtor has a fiduciary duty to all creditors of the estate. See Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 614 (9th Cir. 1988) ("As a debtor in possession he is the trustee of his own estate and therefore stands in a fiduciary relationship to his creditors."). All of the Debtor's legal and equitable interests in property at the time he filed his bankruptcy petition, as well as any property that might be recovered through the avoiding powers in bankruptcy, became property of the Chapter 11 bankruptcy estate. See 11 U.S.C. § 541(a)(1 and 3). Unlike a Chapter 7 proceeding, see 11 U.S.C. § 541(a)(6), property of the Chapter 11 estate includes the Debtor's post-bankruptcy earnings. See 11 U.S.C. § 1115. Because the Debtor failed to obtain an extension of the plan exclusivity period under Section

The more recent objections filed by the Debtor again raise primarily plan confirmation issues. See, e.g., Debtor Objection at ¶¶ 6(a) and 12 [good faith], ¶¶ 8, 9, 10, 11, 13, 14, 15 and 17 [classification, feasibility and cramdown], and, ¶ 16 [allowed unsecured claim objection]. With respect to disclosure issues, the more recent objections again suggest that the Sheila Disclosure Statement does not contain sufficient information as to the Acquisition Agreement between Sheila Rosenblum and ED&F Man. See Debtor Objection at ¶ 6(d) and (e). See also discussion at note 10, supra. Although the court previously expressed concern as to the existence of specific conditions required to complete a timely sale, see Sheila Advancement Order at 3:19 to 5:3, supra, Sheila Rosenblum, as plan proponent, has provided information of the necessity to complete an expeditious sale,[18] sufficient to permit eligible claimants to decide whether to accept

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1121(b), any other party in interest, including Sheila Rosenblum, can propose and seek confirmation of a Chapter 11 plan to administer property of the bankruptcy estate. Unlike a purely voluntary Chapter 13 proceeding that an eligible individual can commence and voluntarily dismiss at virtually any time, see 11 U.S.C. § 1307(b), an individual Chapter 11 debtor faces the nightmarish possibility of his or her most aggressive and troublesome creditor confirming its own Chapter 11 plan that is not to the individual's liking. The nightmare may be even worse for the individual Chapter 11 debtor when the same creditor holds claims that are not subject to discharge in bankruptcy, e.g., domestic support obligations under Section 523(a)(5) and non-domestic support obligations under Section 523(a)(15). Additionally, the individual Chapter 11 debtor faces the possibility that a Chapter 11 trustee will be appointed under Section 1104, or that the Chapter 11 case will be dismissed or converted to Chapter 7, pursuant to Section 1112.

[18] Sheila Rosenblum maintains that an expeditious sale under her plan of liquidation is required under the September 30, 2019, deadline imposed by ED&F Man under the Acquisition Agreement. Debtor represents that his own plan of reorganization will be implemented by sale of the ED&F Man stock prior to September 30, 2019. See Debtor Disclosure Statement, § 5.4, at 23:3-5 ("Payments and distributions under the Plan will be funded by the sale of the Debtor's ED&F Stock which is scheduled to occur prior to September 30, 2019."); Debtor Plan, Art. 8.1, at 24:16-18 ("Unless otherwise provided in the Plan, payments required by the Plan on and after the Effective Date will be satisfied from: (a) the sale of the Debtor's ED&F Man Stock….") Because both parties agree that the shares in ED&F Man must be sold before September 30, 2019, the court has inquired as to why the Debtor and Sheila Rosenblum cannot stipulate to allow the shares to be sold immediately, with the proceeds held in escrow pending resolution of all other matters, including the priority dispute between Russell Rosenblum and his former step-mother. At the hearing on disclosure statement approval, and at a prior hearing, Sheila Rosenblum offered on the record to stipulate to such as sale, but the Debtor declined.

or reject her proposed plan.[19]

Debtor also objects to the statement that the "Debtor is liquidating and therefore shall not receive a discharge." Sheila Disclosure Statement at 20:27. See also Sheila Disclosure Statement at 1:21-22 ("Because this is a liquidating plan, the Debtor will not be discharged."). This is mirrored in Sheila Rosenblum's proposed plan of liquidation. See Sheila Plan, § 9.1. Debtor maintains that this disclosure is an "incorrect statement of the law" in light of the discharge language for individual Chapter 11 debtors found in Section 1141(d)(5). See Debtor Objection at ¶ 6(c). It is possible, however, that neither Sheila Rosenblum nor the Debtor are correct. A leading bankruptcy treatise avoids the categorical statement that an individual Chapter 11 debtor is denied a discharge under Section 1141(d)(3) if he or she no longer continues in business and liquidates substantially all of his or her assets:

> In the case of an individual who does not continue in a business and whose property is liquidated in a chapter 11 case, the absolute bar to discharge of a corporation in section 727(a)(1) does not apply, but the other grounds for objecting to discharge continue to apply.

See 8 COLLIER ON BANKRUPTCY, ¶ 1141.05[4] & n. 61 (Richard Levin & Henry J. Sommer eds. 16th ed.). In the instant case, the Bankruptcy Notice correctly sets forth a deadline for creditors to object to the Debtor's discharge under Section 1141(d)(3) as the first date set for a hearing on plan confirmation. See note 3, supra. That deadline has not yet expired and is dependent on whether a liquidating plan is actually confirmed. As of this time, no party in interest, including Sheila, has filed a complaint raising that objection under Section 1141(d)(3). Thus, whether a debtor whose property is liquidated under a creditor's plan will also be denied a Chapter 11

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[19] Whether the Debtor can prevent Sheila Rosenblum from completing the sale of the shares of ED&F Man under the Acquisition Agreement, see Debtor Objection at ¶¶ 10 and 14, is best addressed as a matter of plan feasibility. Debtor has suggested that various charging orders obtained by Sheila Rosenblum in the London Action are "currently being disputed in England." Id. at ¶ 14(a)(ix). The record indicates that the last charging order was entered on October 19, 2018, see Hemming Declaration at ¶ 18, and that a maximum of 28 days applied to seek relief from such orders. See Sheila Disclosure Statement Reply at 14 n.9. The 28th day after October 19, 2018, was November 16, 2018. Debtor filed his voluntary Chapter 11 petition on December 1, 2018. It therefore appears that the deadline for the Debtor to seek relief from the charging orders expired before the Chapter 11 petition was filed.

discharge is not currently before this court and is not decided now.[20] Any categorical statement to the effect that the Debtor will be denied a discharge is inappropriate at this time. The court, therefore, agrees with the Debtor that any such statement should not be included in Sheila's proposed disclosure statement or proposed plan.

D. Russell Rosenblum.

Russell Rosenblum primarily raises objections to plan confirmation, rather than the adequacy of disclosure, as a basis to deny approval of the Sheila Disclosure Statement. See Russell Objection at 6:4-15. Like the Debtor, several of the confirmation issues raised by Russell Rosenblum are simply ill-informed. For example, he apparently suggests that the Sheila Plan cannot be confirmed because his secured claim and Sheila's secured claim are included in the same Class 1. See Russell Objection at 6:21-22. He ignores that creditors having claims secured by the same property of the estate may be included in the same class under Section 1122(a) because they are substantially similar. See Brady v. Andrew (In re Commercial Western Finance Corp.), 761 F.2d 1329, 1338 (9th Cir. 1985). See generally 7 COLLIER ON BANKRUPTCY, ¶ 1122.03[3][c][i] (Alan N. Resnick and Henry J. Sommer eds., 16th ed.)[21] Sheila Rosenblum apparently will not be able to obtain acceptance by impaired Class 1 because she and her former

[20] Sheila Rosenblum argues that an objection under Section 1141(d)(3) can be raised informally through a written memorandum filed prior to confirmation of a liquidating Chapter 11 plan, without the commencement of an adversary proceeding under FRBP 7001(4). See Sheila Disclosure Statement Reply at 17:11-28, citing Miller v. Dominguez (In re Dominguez), 51 F.3d 1502 (9th Cir. 1995). Whether Sheila Rosenblum, or any other creditor, will file an adversary complaint prior to the first date set for plan confirmation as a matter of caution, is unknown.

[21] Because the priority in the ED&F Man shares has not been determined, the competing claims of Sheila Rosenblum and Russell Rosenblum remain substantially similar. Compare In re Buttonwood Partners, Ltd., 111 B.R. 57 (Bankr. S.D. N.Y. 1990) (holders of first, second and third mortgages in same real property placed in separate classes).

stepson are the only members of the class.[22] See 11 U.S.C. § 1126(c).[23] She may still be able to seek cramdown over Russell Rosenblum's objection to Class 1 treatment, however, by obtaining acceptance from the only other impaired class under her proposed plan: the general unsecured creditors encompassed by Class 3. See Sheila Plan, § 3.5. Because it appears that Sheila Rosenblum's unsecured claim far exceed two-thirds of the dollar amount of all claims in Class 3, acceptance by a majority of the creditors who cast ballots in impaired Class 3 will be all that is necessary for Sheila Rosenblum to request cramdown of her proposed plan, assuming that all other requirements of Section 1129(a) have been met. See 11 U.S.C. § 1129(a)(10) and § 1129(b).[24]

Additionally, Russell Rosenblum asserts that his former step-mother, or her company, cannot be a plan agent to administer her proposed plan "since she is not a disinterested person under 11 USC § 327." Russell Objection at 3:25-26 and 6:16-20. Section 327 requires court

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[22] With respect to Class 1, Sheila Rosenblum states that "each holder of an Allowed Secured Claim shall be considered to be in its own separate subclass within Class 1 and each such subclass shall be deemed a separate Class for purposes of the Plan." Sheila Plan, § 3.3.2. Sheila Rosenblum's POC 3 and Russell Rosenblum's POC 10 are presently allowed as defined in the proposed plan. See Sheila Plan, § 1.1.3. Because a creditor's claim is deemed allowed unless a party in interest objects to the creditor's proof of claim, see 11 U.S.C. § 502(a), it is unclear whether one, both, or neither of the creditors in Class 1 will have an "Allowed Secured Claim" at the time ballots are filed. Claims may be temporarily allowed for voting purposes under FRBP 3018(a), but no such requests have been made in this case. Under the circumstances, there may be obstacles for Sheila Rosenblum to obtain acceptance in impaired Class 1.

[23] "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." (Emphasis added.)

[24] Sheila Rosenblum identifies a separate claim held by RMR Capital in the amount of $45,000 secured by the Debtor's only automobile. See Sheila Disclosure Statement at 8:10-13. As previously discussed at 8, supra, that automobile is no longer property of the estate under Section 362(h)(1) because the Debtor failed to file a statement of intention. As a result, whatever claim is held by RMR Capital might not be an allowed claim under Section 506(a) because it is no longer secured by property in which the estate has an interest. Thus, it appears that the claim is not and does not need to be included in Class 1 of the Sheila Plan.

approval for a trustee or debtor in possession to employ "attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a).[25] Section 1129(a)(5) requires a Chapter 11 plan proponent to disclose "the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee…" as well as the "identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider." 11 U.S.C. § 1125(a)(5)(A)(i) and (a)(5)(B). Russell Rosenblum does not explain how Section 327 applies at all to entities formed under a creditor's Chapter 11 plan, nor does he discuss how the identification requirements of Section 1129(a)(5) are either applicable to a plan agent, or why they have not been met.[26]

With respect to the adequacy of disclosure, Russell Rosenblum identifies seven separate items, but three of them are, at best, plan confirmation objections. See Russell Objection at 5:13-17. As to the remaining four items, the existing information in the disclosure statement submitted by Sheila Rosenblum is sufficient to enable an eligible creditor to determine whether to accept or reject her proposed plan. See Sheila Disclosure Statement at 1:16-23 and 12:16-23 (discussing Sheila Rosenblum's secured claim encumbering the entire value of the ED&F Man shares); at 10:16-18 (discussing indemnification for potential capital gains tax liability from sale of the ED&F Man shares); at 15:21 to 16:11, 26:28 to 27:5, and 29:2-5 (discussing ability to sell all shares under the Acquisition Agreement and other limited ability to sell shares on an annual

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[25] A "disinterested person" means a person that is not "a creditor…or an insider" and that "does not have an interest materially adverse" to the estate or any creditors "by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason." 11 U.S.C. § 101(14)(A) and (C).

[26] According to the disclosure statement, SheilaCo, or its nominee, shall be formed as a limited liability company wholly owned by Sheila Rosenblum. See Sheila Disclosure Statement at 18:26-27. Additionally, SheilaCo will be the plan agent to carry out the terms of the Sheila Plan. Id. at 17:24-26. Creditors entitled to vote on Sheila Rosenblum's proposed plan of liquidation may not be satisfied with the Debtor's former wife having such authority. Nothing prevents such creditors from simply rejecting the Sheila Plan.

basis)[27]; at 26:20-23 (discussing formation of a limited liability company to loan funds for distribution to priority tax claims and general unsecured creditors).[28]

Based on the foregoing, the court approves the Sheila Disclosure Statement as including adequate information within the meaning of Section 1125(a). Approval is conditioned on Sheila Rosenblum, as plan proponent, revising her disclosure statement to include the revisions, modifications, and language set forth in this order.

By separate order entered contemporaneously herewith, the court denies approval of the Debtor Disclosure Statement for the reasons set forth therein. A hearing on confirmation of the Debtor Plan, therefore, will not be scheduled. Denial of approval of the Debtor Disclosure Statement, however, is without prejudice to the Debtor filing an amended plan of reorganization accompanied by an amended disclosure statement.[29]

Inasmuch as a disclosure statement has been approved for plan proponent Sheila Rosenblum, she will be permitted under Section 1125(b) to solicit acceptance of her proposed plan of liquidation, which also must include revisions, modifications, and language consistent with this order.

As the court previously has observed, none of the parties to this proceeding has disputed the September 30, 2019, deadline for completion of a sale of all the subject shares to ED&F Man. See Sheila Advancement Order at 4. Under these circumstances, the court concludes that

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[27] The undisputed, September 30, 2019, deadline to complete the sale under the Acquisition Agreement, however, is not confidential. That deadline, therefore, must be included in the disclosure statement.

[28] At the hearing, Russell Rosenblum emphasized two points: (1) that greater detail must be included concerning the Acquisition Agreement, and, (2) that a plan agent under a confirmed plan cannot be a creditor with an obvious conflict. As to the former, the court already has concluded that sufficient disclosure has been made to enable all creditors, not just Russell Rosenblum, to vote on whether to accept or reject the Sheila Plan. As to the latter, the established caselaw in this circuit has specifically permitted a creditor to act as the plan agent under its own confirmed Chapter 11 plan. See note 16, supra.

[29] As acknowledged at the disclosure statement approval hearing, only one Chapter 11 plan may be confirmed in a given case. See 11 U.S.C. § 1129(c). In the event confirmation of the Sheila Plan is denied, Debtor may take additional steps to confirm an amended plan of reorganization, assuming the case is not converted or dismissed.

cause exists under FRBP 9006(c) to reduce the notice deadlines set forth in FRBP 2002(b) for filing objections and the hearing on confirmation of the Sheila Plan. The deadlines for holders of claims and interests to accept or reject the plan, as well as the date for the hearing on plan confirmation, are affixed by this order pursuant to FRBP 3017(c).

IT IS THEREFORE ORDERED that the [Proposed] First Amended Disclosure Statement to Accompany Secured Creditor Sheila's Competing Chapter 11 Plan of Liquidation, Docket No. 209, be, and the same hereby is, **APPROVED AS PROVIDED IN THIS ORDER**.

IT IS FURTHER ORDERED that Sheila Rosenblum, plan proponent, must file and serve an amended disclosure statement that conforms to the requirements set forth in this order.

IT IS FURTHER ORDERED that a hearing on confirmation of the amended plan of liquidation of Sheila Rosenblum, as amended in conformance with this order, will be held on **August 26, 2019, commencing at 9:30 a.m.,** in Courtroom 2 of this court.

IT IS FURTHER ORDERED that a copy of the amended disclosure statement and amended plan of liquidation, along with ballots to accept or reject, and a notice of hearing on plan confirmation, must be served on all creditors and parties in interest no later than **July 19, 2019.** The notice of hearing must recite the deadlines and requirements set forth below.

IT IS FURTHER ORDERED that the deadline for holders of claims and interests to accept or reject the proposed plan of liquidation is set at **August 9, 2019**, and that the deadline for holders of claims and interests to object to confirmation of the plan of liquidation is set at **August 12, 2019.**

IT IS FURTHER ORDERED any objection to confirmation of the proposed plan of liquidation must be accompanied by a legal memorandum in support of the objection, filed and served at the same time as the objection.

IT IS FURTHER ORDERED that any response by Sheila Rosenblum to any objection must be filed and served no later than **August 19, 2019.**

IT IS FURTHER ORDERED that a declaration of counsel for Sheila Rosenblum, as plan proponent, that includes a tabulation of all ballots received, must be filed and served no later than **August 21, 2019.** Copies of all ballots received must be attached to the declaration.

IT IS FURTHER ORDERED that any legal memorandum in support of plan confirmation, if any, must be filed and served no later than **August 21, 2019.**

IT IS FURTHER ORDERED that the alternate direct testimony procedure under Local Rule 9017 shall apply with respect to any witnesses whose direct testimony will be offered at the plan confirmation hearing. Failure to timely submit a declaration or affidavit required by the alternate direct testimony procedure will result in a proposed witness being barred from offering direct testimony at the plan confirmation hearing.

IT IS FURTHER ORDERED that the alternate direct testimony deadlines and procedures under Local Rule 9017(d) are modified only as follows:

(1) Sheila Rosenblum, as plan proponent, must submit to counsel for the Office of the United States Trustee, the United States of America on behalf of the Internal Revenue Service, Daniel H. Rosenblum, and Russell Rosenblum, copies of all alternate direct testimony declarations and exhibits no later than **August 19, 2019.**

(2) All parties objecting to plan confirmation must submit to counsel for Sheila Rosenblum, copies of all alternate direct testimony declarations and exhibits no later than **August 21, 2019.**

(3) No later than **August 23, 2019**, the parties shall comply with the provisions of Local Rule 9017(d)(3).

IT IS FURTHER ORDERED that all other requirements of Local Rule 9017(d)(4) and 9017(e) shall apply.

Copies sent via CM/ECF ELECTRONIC FILING

Copies sent via BNC to all parties

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