



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
June 23, 2020

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:) Case No.: BK-S-19-17870-MKN
) Chapter 11
JONATHAN R. SORELLE, M.D., PLLC,)
) **LEAD CASE**
 Affects this Debtor.)

_____) **Jointly Administered with:**
In re:) Case No.: BK-S-19-17871-MKN
) Chapter 11
The Minimally Invasive Hand Institute, LLC,)
)
 Affects this Debtor.)

_____) Case No.: BK-S-19-17872-MKN
In re:) Chapter 11
)
Jonathan R. Sorelle,) Date: June 16, 2020
) Time: 1:30 p.m.
 Affects this Debtor.)

ORDER ON DEBTORS' MOTION PURSUANT TO BANKRUPTCY RULE 9019 TO APPROVE SETTLEMENT WITH STEPHEN ROHRBACHER¹

¹ In this Order, all references to "PLLC ECF No." are to the numbers assigned to the documents filed in Case No. 19-17870. All references to "Institute ECF No." are to the numbers assigned to the documents filed in Case No. 19-17871. All references to "Sorelle ECF No." are to the numbers assigned to the documents filed in Case No. 19-17872. All references to "Section" are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to "FRE" are to the Federal Rules of Evidence. All references to "FRBP" are to the Federal Rules of Bankruptcy Procedure.

1 On June 16, 2020, the court heard the Debtors' Motion Pursuant to Bankruptcy Rule
2 9019 to Approve Settlement ("Rohrbacher Settlement Motion") with Stephen Rohrbacher
3 ("Rohrbacher"), brought by Jonathan R. Sorelle, M.D., PLLC ("PLLC"), The Minimally
4 Invasive Hand Institute, LLC ("Institute"), and Jonathan R. Sorelle ("Dr. Sorelle," and together
5 with PLLC and Institute, "Debtors"). The appearances of counsel were noted on the record.
6 After arguments were presented, the matter was taken under submission.

7 **BACKGROUND²**

8 On December 12, 2019 ("Petition Date"), Debtors filed three separate voluntary Chapter
9 11 petitions. (PLLC ECF Nos. 1, 198; Institute ECF Nos. 1, 29; Sorelle ECF No. 1, 32). The
10 voluntary petitions for PLLC and Institute were electronically signed by Dr. Sorelle in his role as
11 manager. On the same date, notices of the bankruptcy filings were entered establishing, inter
12 alia, a deadline of April 15, 2020, for creditors to file proofs of claim. (PLLC ECF No. 3;
13 Institute ECF No. 3; Sorelle ECF No. 5). The notice in Dr. Sorelle's case also established a
14 deadline of March 16, 2020, for creditors to file complaints to determine if their claims are
15 nondischargeable under Section 523(a)(2), (4), or (6).

16 On December 13, 2019, Debtors filed a motion which, as subsequently amended,
17 requested joint administration of the bankruptcy cases. (PLLC ECF Nos. 9, 37; Institute ECF
18 Nos. 9, 16; Sorelle ECF Nos. 11, 17).

19 On December 20, 2019, an order was entered granting joint administration of the
20 bankruptcy cases. (PLLC ECF No. 84).

21 On January 27, 2020, Debtors filed their schedules of assets and liabilities ("Schedules")
22 as well as their statements of financial affairs. (PLLC ECF No. 196; Institute ECF No. 27;
23 Sorelle ECF No. 29). On his Schedule "A/B," Sorelle indicates that he holds one hundred
24

25 ² Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the
26 dockets in Case Nos. 19-17870, 19-17871, and 19-17872. See U.S. v. Wilson, 631 F.2d 118, 119
27 (9th Cir. 1980). See also Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank, 136
28 F.3d 1360, 1364 (9th Cir. 1998) (taking judicial notice of court filings in a state court case where
the same plaintiff asserted similar claims); 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.").

1 percent of the interests in PLLC and Institute. On their secured creditor Schedules “D,” PLLC
2 and Dr. Sorelle listed Zions Bancorporation, N.A., dba Nevada State Bank (“NSB”) as having
3 secured claims in various amounts, secured by various collateral, and none of the claims were
4 designated as contingent, unliquidated, or disputed.³

5 On February 11, 2020, a proof of claim in the non-priority unsecured amount of
6 \$7,463,712.79 was filed by Rohrbacher in the PLLC proceeding, based on a medical malpractice
7 judgment in the amount of \$10,404,423.30 against Dr. Sorelle, PLLC, and Institute
8 (“Malpractice Judgment”) entered by the Eighth Judicial District Court, Clark County, Nevada
9 (“State Court”). The Malpractice Judgment is the subject of an appeal that is pending before the
10 Nevada Supreme Court.

11 On February 11, 2020, a proof of claim in the non-priority unsecured amount of
12 \$7,463,712.79 was filed by Rohrbacher in the Institute proceeding, based on the Malpractice
13 Judgment.

14 On February 11, 2020, a proof of claim in the non-priority unsecured amount of
15 \$5,463,712.79 was separately filed by Rohrbacher in the Dr. Sorelle proceeding, based on the
16 Malpractice Judgment.

17 On February 14, 2020, Debtors filed a motion authorizing them to guaranty certain post-
18 petition financing for the benefit of the Debtors operations (“DIP Financing Motion”). (PLLC
19 ECF No. 219). Pursuant to an order shortening time, the motion was heard on February 20,
20 2020. (PLLC ECF No. 224).

21 On February 25, 2020, an order was entered denying without prejudice the DIP Financing
22 Motion. (PLLC ECF No. 242). The order authorized the Debtors to file a new motion for such
23 financing for which an evidentiary hearing would be conducted on March 19, 2020.

24 On February 28, 2020, a motion to appoint a Chapter 11 trustee (“Trustee Motion”) was
25 filed by the Office of the United States Trustee (“UST”). (PLLC ECF No. 252). Pursuant to an
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27 ³ Because none of NSB’s claims were scheduled as contingent, unliquidated, or disputed,
28 NSB was not required to file proofs of claim. See FED.R.BANKR.P. 3003(b)(1).

1 order shortening time, the Trustee Motion was scheduled to be heard on March 19, 2020, along
2 with the new motion for financing scheduled for the Debtors. (PLLC ECF No. 265).⁴

3 On March 11, 2020, Rohrbacher filed a joinder in the Trustee Motion. (PLLC ECF No.
4 285).

5 On March 16, 2020, Adversary Proceeding No. 20-01039 was commenced against Dr.
6 Sorelle by Kirk Schoeb (“Schoeb”), alleging that his claim under a medical malpractice lawsuit
7 pending in State Court is nondischargeable under Section 523(a)(6).

8 On March 18, 2020, a proof of claim in the non-priority unsecured amount of
9 \$15,000,000 was filed by Robert D. Harding, Jr. (“Harding”) in the Dr. Sorelle proceeding,
10 based on a medical malpractice theory under Nevada law.

11 On March 21, 2020, Adversary Proceeding No. 20-01042 was commenced against Dr.
12 Sorelle by Rohrbacher, alleging that certain prepetition transfers of real property interests are
13 avoidable under Sections 544, 548, and 550 (“Avoidance Adversary”).

14 On April 8, 2020, Adversary Proceeding No. 20-01047 was commenced against Dr.
15 Sorelle by Rohrbacher, alleging that the amount awarded by the Malpractice Judgment is
16 nondischargeable under Sections 523(a)(2) and 523(a)(6) (“523 Adversary”).

17 On April 8, 2020, a proof of claim in the non-priority unsecured amount of \$350,000 was
18 filed by Rosa Sedo (“Sedo”) in the PLLC proceeding, based on a medical malpractice lawsuit
19 pending in State Court.

20 On April 8, 2020, a proof of claim in the non-priority unsecured amount of \$350,000 was
21 filed by Sedo in the Institute proceeding, based on the medical malpractice lawsuit.

22 On April 8, 2020, a proof of claim in the non-priority unsecured amount of \$350,000 was
23 filed by Sedo in the Dr. Sorelle proceeding, based on the medical malpractice lawsuit.

24 On April 8, 2020, a proof of claim in the non-priority unsecured amount of \$350,000 was
25 filed by Elena Smith (“Smith”) in the PLLC proceeding, based on a medical malpractice lawsuit
26 pending in State Court.

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28 ⁴ On March 16, 2020, Administrative Order 2020-04 was entered vacating the March 19,
2020, hearings as a result of the COVID-19 pandemic.

1 On April 8, 2020, a proof of claim in the non-priority unsecured amount of \$350,000 was
2 filed by Smith in the Dr. Sorelle proceeding, based on the medical malpractice lawsuit.

3 On April 14, 2020, a proof of claim in the non-priority unsecured amount of \$1,000,000
4 was filed by Schoeb in the PLLC proceeding, based on his medical malpractice lawsuit.

5 On April 14, 2020, a proof of claim in the non-priority unsecured amount of \$1,000,000
6 was filed by Schoeb in the Institute proceeding, based on his medical malpractice lawsuit.

7 On April 14, 2020, a proof of claim in the non-priority unsecured amount of \$1,000,000
8 was filed by Schoeb in the Dr. Sorelle proceeding, based on his medical malpractice lawsuit.

9 On May 15, 2020, the instant Rohrbacher Settlement Motion was filed and accompanied
10 by a supporting declaration of Dr. Sorelle (“Sorelle Declaration”) and a Notice of Hearing.
11 (PLLC ECF Nos. 388, 389, and 394).⁵

12 On June 2, 2020, an objection to the Rohrbacher Settlement Motion was filed by the UST
13 (“UST Objection”). (PLLC ECF No. 415). Attached to the UST Objection is a declaration of
14 Kristine Kinne (“Kinne Declaration”) in support thereof.

15 On June 9, 2020, a reply to the UST’s Objection was filed by the Debtors (“Reply”).
16 (PLLC ECF No. 419). Attached to the Reply is a further declaration from Dr. Sorelle (“Second
17 Sorelle Declaration”) as well as a declaration of Fraser E. Inouye, CPA (“Inouye Declaration”).

18 On June 10, 2020, a joinder to the Reply was filed by Rohrbacher. (PLLC ECF No. 421).

19 **APPLICABLE LEGAL STANDARDS**

20 A Chapter 11 debtor in possession has a fiduciary obligation to all creditors of the
21 bankruptcy estate, not to the individual principals of the pre-bankruptcy debtor. See Woodson v.
22 Fireman’s Fund Ins. Co. (In re Woodson), 839 F.2d 610, 614 (9th Cir. 1988); In re Rosenblum,
23 2019 WL 5782589, at *5 n.17 (Bankr. D. Nev. Jul 15, 2019). A debtor in possession has both
24 the rights and duties of a bankruptcy trustee. See 11 U.S.C. § 1107(a); FRBP 9001(11). FRBP
25 9019(a) authorizes a bankruptcy trustee to seek court approval of a compromise or settlement
26 after notice and a hearing. The trustee bears the burden of proving that the proposed

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28 ⁵ On the same date, separate settlement motions were filed with respect to the Sedo and
Smith claims. (ECF Nos. 390 and 392). All three motions were heard on June 16, 2020. The
Sedo and Smith motions are the subject of separate orders entered contemporaneously herewith.

1 compromise or settlement is in the best interests of the estate. Appropriate weight is given to a
2 trustee’s business judgment, but the requirement of notice and a hearing assures that decisions of
3 a trustee are not simply rubber stamped. See, e.g., In re Hyloft, Inc., 451 B.R. 104, 109 (Bankr.
4 D.Nev. 2011). In determining whether a proposed compromise or settlement is in the best
5 interests of the estate, a bankruptcy court is directed to consider four factors:

- 6 (a)The probability of success in the litigation; (b) the difficulties, if
7 any, to be encountered in the matter of collection; (c) the complexity
8 of the litigation involved, and the expense, inconvenience and delay
necessarily attending it; (d) the paramount interest of the creditors
and a proper deference to their reasonable views in the premises.

9 Martin v. Kane (In re A&C Properties), 784 F.2d 1377, 1381 (9th Cir. 1986), quoting In re Flight
10 Transportation Corporation Securities Litigation, 730 F.2d 1128, 1135 (8th Cir. 1984), cert.
11 denied, 469 U.S. 1207 (1985) (“A&C Factors”). See Tieni v. Mastan (In re Bondanelli), 2020
12 WL 1304140, at *2 (B.A.P. 9th Cir. Mar. 18, 2020).

13 **DISCUSSION**

14 Attached as Exhibit “1” to the Sorelle Declaration is a copy of a Settlement Agreement
15 that is the subject of the Rohrbach Settlement Motion. Several documents are attached as
16 exhibits to the Settlement Agreement, including: (A) a non-dischargeable judgment in the 523
17 Adversary in the amount of \$3,400,000, with a stay of enforcement under the terms of the
18 Settlement Agreement; (B) a schedule of installments payments commencing January 1, 2021 for
19 the balance of the settlement amount; (C) and (D) second deeds of trust against two separate
20 parcels of real property to secure payments under the Settlement Agreement; and (E) (F) (G) (H)
21 and (I) confessions of judgment to be entered in the State Court against Dr. Sorelle, PLLC, JRS
22 Real Estate LLC Series Cimarron, JRS Real Estate LLC Series Post, and Institute in the event of
23 default under the Settlement Agreement.

24 Under the primary provisions of the proposed Settlement Agreement, Rohrbacher will
25 release his claims against the Debtors under the Malpractice Judgment as reflected by the proofs
26 of claims filed in each Chapter 11 case. As previously discussed, the total amount of the
27 Malpractice Judgment is \$10,404,423.30. Additionally, Rohrbacher will dismiss the Avoidance
28 Adversary and the 523 Adversary. Moreover, Rohrbacher will withdraw his joinder in the

1 Trustee Motion and will, if appropriate, support a refinancing of a surgery center being
2 constructed in connection with the Debtors' business. Rohrbacher also will vote in favor of
3 confirmation of the Debtors' plan of reorganization as long as it is consistent with the Settlement
4 Agreement.

5 In exchange, Rohrbacher will receive a stipulated, nondischargeable judgment in the
6 amount of \$3,400,000, secured by deeds of trust against real property titled in separate entities
7 identified as JRS Real Estate LLC Series Cimarron and JRS Real Estate LLC Series Post. As
8 additional security, shares in a Costa Rican entity identified as Pacific Horizon Investments PHI,
9 Sociedad Anonima, which shares are owned by an entitled identified as SCR Ventures, will be
10 placed into a trust created by Rohrbacher's counsel. The Costa Rican entity holds title to certain
11 real estate located in Costa Rica. Upon completion of payments under the Settlement
12 Agreement, the shares will be returned to SCR Ventures. Moreover, PLLC and Institute will
13 provide a \$1 million "key-man" insurance policy in favor of Rohrbach in the event of death or
14 disability of Dr. Sorelle. Debtors' appeal of the Malpractice Judgment will be dismissed.⁶ In the
15 event the Debtors default on their obligations under the Settlement Agreement, the confessions
16 of judgment in the amount of \$3,400,000 may be entered in State Court against each of the
17 Debtors as well as JRS Real Estate LLC Series Cimarron and JRS Real Estate LLC Series Post.
18 Payment of the \$3,400,000 settlement amount over a period of approximately seven years will
19 commence with an initial payment of \$650,000 upon court approval of the Settlement
20 Agreement. The initial payment will be made from cash on hand and Dr. Sorelle's exempt
21 retirement accounts.⁷ Thereafter, periodic payments will commence on January 1, 2021, in
22 monthly and one-time payment amounts, with a final payment in the eighty-fifth month.

23
24 ⁶ The releases provided by Rohrbacher also include the Costa Rican entity and SCR
25 Ventures. The Settlement Agreement also includes the Debtors' release of any claims against
26 Rohrbacher, but no claims against Rohrbacher having any known value were listed in the
Schedules filed by the Debtors.

27 ⁷ On April 9, 2020, Dr. Sorelle filed an amended property Schedule "A/B" listing two
28 additional retirement accounts. (Sorelle ECF No. 42). On June 8, 2020, Dr. Sorelle filed an
amendment to his Schedule "C" with respect to the additional retirement accounts. (Sorelle ECF
No. 46). Under FRBP 4003((a), the deadline to object to the amended exemption expires on or

1 The objection filed by the UST focuses solely on the fourth A&C Factor, i.e., “the
2 paramount interest of the creditors and a proper deference to their reasonable views in the
3 premises.” See UST Objection at ¶ 30. In connection with that focus, the UST argues that there
4 is insufficient information going to the feasibility of completing the Settlement Agreement. Id.
5 at ¶ 32.⁸ At the hearing, the UST argued that the Settlement Agreement should be considered in
6 connection with confirmation of the Debtors’ proposed Chapter 11 plan of reorganization.⁹

7 In response to the UST’s concerns, Debtors offer a cash flow projection indicating that
8 the installment payment schedule can be met. See Exhibit “1” to Second Sorelle Declaration.
9 Additionally, Debtors’ accountant attests that there are sufficient funds in Dr. Sorelle’s current
10 exempt retirement accounts to make his portion of the initial settlement payments. See Inouye
11 Declaration at ¶¶ 5-6. Moreover, Debtors maintain that no parties in interest having actual
12 claims against the Debtors, have objected to the proposed Settlement Agreement.

13 Having considered the concerns raised by the UST, the court concludes that the Debtors
14 have met their burden of demonstrating that the proposed settlement is in the best interests of the
15 estate.

16 First, the absence of objections by any actual creditors is telling, but not dispositive.
17 Notice of the Settlement Motion was given and none of the primary creditors, including the other
18 individuals who have alleged medical malpractice claims in these cases, have objected to this
19 resolution of Rohrbach’s claim.¹⁰ As discussed at note 6, supra, the settlement reduces his

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21 about July 8, 2020. Absent an objection, property claimed as exempt is exempt under Section
22 522(1).

23 ⁸ As a result of the Settlement Agreement, Rohrbach apparently will receive a 32.5%
24 distribution of his Malpractice Judgment amount. See Kinne Declaration at ¶ 16. Stated in
25 reverse, the proposed settlement results in a 67.5% reduction in payment of an unsecured claim
26 that is based on a final judgment entered by the State Court.

27 ⁹ The UST suggests that the proposed settlement might impact the secured claim of NSB.
28 See UST Objection at ¶¶ 32-33 and Kenne Declaration at ¶¶ 4-8. NSB, however, did not object
to the settlement and its counsel appeared at the hearing on the Debtors’ settlement motions.
Counsel also did not object to the settlement at the hearing.

¹⁰ There is no question that the UST has carried out its statutory charge in raising its
concerns. This is especially important inasmuch as no unsecured creditor committees were

1 allowed claim that is based on a fully litigated final judgment, by 67.5%. Moreover, no secured
2 creditors, including NSB, have voiced concern that payment of their claims are jeopardized by
3 the settlement.

4 Second, the feasibility of completing a settlement is not cabined by the feasibility of a
5 proposed Chapter 11 plan. The UST correctly suggests that settlement of creditor claims may be
6 considered in connection with plan confirmation. See, e.g., Protective Comm. for Indep.
7 Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968). Indeed, the
8 Chapter 11 process itself contemplates that a debtor in possession will propose specific
9 treatments of claims and the claim holders are given the opportunity to accept or object.
10 Objections can be made on a variety of grounds, including whether a plan is proposed in good
11 faith or whether the treatment of a claim is fair and equitable. See 11 U.S.C. § 1129(a)(3) and §
12 1129(b). Confirmation of a Chapter 11 plan requires a finding that confirmation is not likely to
13 be followed by liquidation or a need for further reorganization, see 11 U.S.C. § 1129(a)(11), but
14 success of a proposed plan need not be guaranteed. See Kane v. Johns-Manville Corp., 843 F.2d
15 636, 649 (2nd Cir. 1988). In this instance, even if the court were to apply a Chapter 11 plan
16 feasibility test to the proposed settlement, it appears that the Debtors' cash flow projections and
17 retirement fund amounts are sufficient.

18 Third, the balance of the applicable A&C Factors militates in favor of the proposed
19 settlement. Debtors' probability of success with respect to the Rohrbacher claims is low
20 inasmuch as the claims are based on the Malpractice Judgment entered after a completed jury
21 trial in State Court. Because the Rohrbacher claims are not contingent or unliquidated, they
22 would not be subject to estimation under Section 502(c). Difficulties of collection are not of
23 concern in this instance because the disputes do not involve affirmative claims of the bankruptcy
24 estate. The complexity of litigation, as well as the expense, inconvenience and delay attendant
25 with continued litigation is significant. Objections to the Rohrbacher claims likely would require
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27 appointed in any of the cases. There also is no question that claimants Schoeb and Harding, who
28 appeared in these proceedings by filing proofs of claim, are represented by experienced
bankruptcy counsel. There also is no question that proper notice of the proposed settlements was
given to such counsel.

1 the Debtors to pursue the appeal of the Malpractice Judgment pending before the Nevada
2 Supreme Court. That appeal would have greater legal expense in the instant case because the
3 Debtors' counsel that appeared in the State Court is not representing the Debtors on the appeal.¹¹
4 The inconvenience and resulting delay also would be substantial.

5 For these reasons, the court concludes that consideration of the A&C Factors supports
6 approval of the Settlement Agreement in the interests of the estate.

7 The court also has considered whether approval of the Settlement Agreement unduly
8 impacts the Chapter 11 plan confirmation process. The fundamental policy behind allowing
9 businesses to reorganize in Chapter 11 is to preserve jobs, pay creditors at least what they would
10 receive through a liquidation, and encourage business investment. See U.S. v. Whiting Pools,
11 Inc. (In re Whiting Pools), 462 U.S. 198, 203 (1983) ("By permitting reorganization, Congress
12 anticipated that the business would continue to provide jobs, to satisfy creditors' claims, and to
13 produce a return for its owners."). Under the proposed settlement, Rohrbacher is required to vote
14 his unsecured claims in support of plan confirmation. There is no real dispute that Rohrbacher's
15 unsecured claims against each Debtor are substantial and would be impaired under Section
16 1124(1) in any proposed Chapter 11 plan. Having impaired unsecured claims of \$7,463,712.79
17 in the PLLC and Institute proceedings, and \$5,463,712.79 in the Dr. Sorelle proceeding, likely
18 gives Rohrbacher the opportunity to control acceptance by at least one unsecured class in all
19 three Chapter 11 cases. See 11 U.S.C. §1126(c). To confirm a plan over the objections of a
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21 ¹¹ The settlement also includes dismissal of the 523 Adversary against Dr. Sorelle. The
22 court has no doubt that Dr. Sorelle might incur significant attorney's fees in defending a
23 nondischargeability proceeding predicated on theories of fraud under Section 523(a)(2) as well
24 as willful and malicious conduct under Section 523(a)(6). Because the defense of a
25 nondischargeability action benefits primarily the individual debtor rather than the bankruptcy
26 estate, the attorney's fees incurred by the individual debtor might not be compensable as an
27 administrative expense of the estate. Compare In re Robbins, 151 B.R. 364 (Bankr. W.D. Va.
28 1993) (attorney's fees to defend nondischargeability action against individual Chapter 11 debtor
denied) with In re Johnson, 580 B.R. 742 (Bankr. S.D. Ohio 2017) (attorney's fees allowed in
individual Chapter 11 proceeding where defense of nondischargeability action necessarily
included objection to creditor's claims). See also In re Daniel H. Rosenblum, Case No. 18-
17155-MKN, Order on Motion to Extend Exclusivity Period, at 10 n.15, Docket No. 180 (May
10, 2019).

1 dissenting unsecured creditor class, each of the Debtors would be required to seek “cramdown”
2 under Section 1129(b) and to satisfy the so-called “absolute priority rule.” See 11 U.S.C.
3 §1129(b)(2)(B)(i and ii) (requiring dissenting unsecured class to be paid in full, or, prohibiting
4 debtor from retaining any property).¹² These requirements apply in both individual and non-
5 individual Chapter 11 proceedings. See Zachary v. Cal. Bank & Trust (In re Zachary), 811 F.3d
6 1191 (9th Cir. 2016) (individual Chapter 11 debtor); Liberty Nat’l Enter. v. Ambanc La Mesa
7 Ltd. P’ship (In re Ambanc La Mesa Ltd. P’ship), 115 F.3d 650 (9th Cir. 1997) (non-individual
8 Chapter 11 debtor).

9 For Dr. Sorelle, if the holder of an allowed unsecured claim in his individual Chapter 11
10 case objects to plan confirmation, he may be required to either pay the allowed unsecured claim
11 in full, see 11 U.S.C. §1129(a)(15)(A), or, pay his projected disposable income over a period of
12 five years. See 11 U.S.C. §1129(a)(15)(B). If Dr. Sorelle also is faced with a dissenting
13 unsecured class, Dr. Sorelle may be subjected to the so-called “double whammy” where his post-
14 bankruptcy earnings must be paid into his plan, and he cannot retain any non-exempt pre-
15 bankruptcy assets. See Zachary, 811 F.3d at 1199. For PLLC and Institute, there is no double-
16 whammy but under the absolute priority rule, Dr. Sorelle likely would not be able retain his
17 interest in either PLLC or Institute over the objection of a dissenting unsecured class unless he
18 satisfies a “new value corollary” to the absolute priority rule. See generally Todeschi v. Juarez
19 (In re Juarez), 603 B.R. 610, 622 (B.A.P. 9th Cir. 2019) (shareholders may retain an interest in
20 the reorganizing entity through contribution of a reasonably equivalent amount of new money or
21 money’s worth). To retain the value of any interest in PLLC or Institute, Dr. Sorelle likely
22 would have to rely on any exempt pre-bankruptcy assets to make his new value contribution.

23 The proposed Settlement Agreement helps avoid these issues, including the cost and
24 expense of resolving them, through Rohrbacher’s agreement to cast an accepting ballot in each

25 ¹² A simple statement of the absolute priority rule is that the owners of a reorganizing
26 entity cannot retain their ownership interest in the entity unless the objecting class of unsecured
27 creditors is paid in full. See Everett v. Perez (In re Perez), 30 F.3d 1209, 1214 (9th Cir. 1994)
28 (“Because claims of equity holders are always junior to claim of creditors, this means that a
bankruptcy court may not approve a plan that gives the debtor any interest in the reorganized
estate unless the plan provides for full payment of claims of creditors in the objecting class.”).

1 of the Chapter 11 proceedings. Rohrbacher's agreement to do so is not dispositive of whether
2 any other creditor or party in interest could successfully object to plan confirmation, or whether
3 the Debtors can meet their burden of proof on the requirements imposed by Section 1129. The
4 settlement does, however, facilitate the Chapter 11 process and the ultimate objectives of
5 bankruptcy reorganization.

6 Based on the foregoing, the court concludes that the proposed Settlement Agreement is in
7 the bests interest of the bankruptcy estates and their creditors.

8 **IT IS THEREFORE ORDERED** that the Debtors' Motion Pursuant to Bankruptcy
9 Rule 9019 to Approve Settlement with Stephen Rohrbacher, Docket No. 388, be, and the same
10 hereby is, **GRANTED**.

11
12 Copies sent via BNC to all parties and via CM/ECF ELECTRONIC FILING

13 Copies sent via BNC to:
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23 # # #
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