



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
December 20, 2022

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:

QUICKER LIQUOR LLC,

Debtor.

Case No. 22-10331-mkn

(Jointly administered)
Case No. 22-10332-mkn

Chapter 11

In re:

NEVADA WINE CELLARS, INC.,

Jointly Administered Debtor.

Date: December 5, 6 and 8, 2022
Time: 9:30 a.m.

**MEMORANDUM DECISION ON CONFIRMATION OF
DEBTORS' AMENDED JOINT CHAPTER 11
PLAN OF REORGANIZATION¹**

On December 5, 2022, a confirmation hearing was commenced in the above-captioned, jointly administered Chapter 11 proceedings regarding Debtors' Second Amended Joint Chapter 11 Plan of Reorganization (ECF No. 367) which was further amended on September 30, 2022, and entitled Debtors' Third Amended Joint Chapter 11 Plan of Reorganization (ECF No. 416). The appearances of counsel were noted on the record. After arguments were presented, the

¹ In this Memorandum Decision, all references to "ECF No." are to the numbers assigned to the documents filed in the above-captioned case as they appear on the docket maintained by the clerk of the court. All references to "Section" are to provisions of the Bankruptcy Code, 11 U.S.C. §101, et seq. All references to "Bankruptcy Rule" are to the provisions of the Federal Rules of Bankruptcy Procedure. All references to "Civil Rule" are to the provisions of the Federal Rules of Civil Procedure. All references to "Local Rule" are to the Bankruptcy Local Rules of Practice for the District of Nevada. All references to "FRE" are to the Federal Rules of Evidence.

1 matter was taken under submission. Pursuant to Bankruptcy Rules 9014 and 7052, and Civil
 2 Rule 52, this Memorandum Decision constitutes the court's findings of fact and conclusions of
 3 law with respect to plan confirmation.

4 **BACKGROUND²**

5 On January 31, 2022, Quicker Liquor LLC ("QL") and Nevada Wine Cellars, Inc.
 6 ("NWC"), filed separate "skeleton" Chapter 11 petitions. (QL ECF No. 1; NWC ECF No. 1).
 7 QL's sole property consists of its ownership of all of the corporate shares in NWC. NWC owns
 8 and operates a winery and restaurant located in Pahrump, Nevada. Both Chapter 11 petitions
 9 were filed by the law firm of Larson & Zirzow, LLC ("L&Z Firm"). On the same date the
 10 Chapter 11 petitions were filed, a Notice of Chapter 11 Bankruptcy Case was entered informing
 11 parties in interest of the QL and NWC Chapter 11 bankruptcy proceedings; the deadline of June
 12 1, 2022, for creditors to file a proof of claim and August 1, 2022, for any governmental unit to
 13 file a proof of claim; and set a meeting of creditors required by Section 341 ("341 Meeting") for
 14 March 3, 2022. The 341 Meeting was conducted by the Office of the United States Trustee
 15 ("UST").

16 On February 3, 2022, QL and NWC filed separate emergency motions for order directing
 17 joint administration of their respective Chapter 11 cases for "procedural convenience and cost
 18 efficiencies" ("Joint Admin Motion"). (QL ECF No. 7; NWC ECF No. 7).

19 On February 4, 2022, an order was entered shortening time for the Joint Admin Motion to
 20 be heard on February 9, 2022, along with other motions. (QL ECF No. 16; NWC ECF No. 18).
 21 The other motions consisted of additional requests ("First Day Motions") by QL and NWC.
 22 Those additional matters included the following: (1) First Day Motion Authorizing Debtors to
 23 Pay Employee Wages, etc. ("Employee Wages Motion")³; (2) First Day Motion Authorization

24 ² Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the
 25 docket in the above-captioned bankruptcy case. See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir.
 26 1980). See also Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC Trustee
 27 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.").

28 ³ The Employee Wages Motion sought authorization for NWC to pay its 31 full-time
 employees a total of approximately \$23,311.68 of wages that had not been paid as of the filing

1 to: (i) Continue Using Existing Cash Management System..., (ii) to Honor Certain Prepetition
 2 Obligations Related to the Use of Cash Management System, and (iii) Maintain Existing Bank
 3 Accounts (“Cash Management System Motion”); (3) First Day Motion to Approve Kathy Trout
 4 as the Designated Responsible Person in Their Chapter 11 Cases (“Designated Person Motion”);
 5 and (4) First Day Motion for Continuation of Utility Service and Approval of Adequate
 6 Assurance of Payment to Utility Company (“Utilities Motion”). (QL ECF Nos. 8-11; NWC ECF
 7 Nos. 8-11). The Joint Admin Motion and the First Day Motions were all scheduled to be heard
 8 on February 9, 2022.

9 On February 4, 2022, an omnibus declaration of Kathy Trout (“Trout”) was filed in
 10 support of the First Day Motions (“First Trout Declaration”). (QL ECF No. 17; NWC ECF No.
 11 14). QL is the holder of 100% of the shares in NWC, while NWC is the owner and operator of
 12 Pahrump Valley Winery (“PVW”). See First Trout Declaration at ¶ 2.

13 On February 8, 2022, an order was entered authorizing The Ernest W. Moody Revocable
 14 Trust (“The Moody Trust”) to conduct an examination under Civil Rule 2004 (“2004
 15 Examination”) of the person most knowledgeable for QL (“QL 2004 Examination Order”). (QL
 16 ECF No. 22).

17 On February 8, 2022, an order was entered authorizing The Moody Trust to conduct a
 18 2004 Examination of the person most knowledgeable for NWC (“NWC 2004 Examination
 19 Order”). (NWC ECF No. 22).

20 On February 9, 2022, an order was entered granting joint administration of the cases and
 21 QL was designated as the lead debtor in possession (collectively “Debtors”). (QL ECF No. 24;
 22 NWC ECF No. 23). A Notice of Deadline to File Combined Matrix was also filed. (QL ECF
 23 No. 25). On this same date, interim orders were entered granting the Cash Management System
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27 date of the Chapter 11 petition. Another \$9,173.28 in withholding taxes were due along with
 28 less than \$500 reimbursable business expenses. See Employee Wages Motion at ¶¶ 5, 6, and 7.
 All of the prepetition unsecured amounts were well within the payment priorities for each
 employee provided under Section 507(a)(4).

1 Motion, the Employee Wages Motion,⁴ the Utilities Motion, and Designated Person Motion.
 2 (QL ECF Nos. 26, 27, 29, and 32).

3 On February 11, 2022, Debtors filed their consolidated matrix for the jointly administered
 4 cases. (QL ECF No. 34).

5 On February 14, 2022, Debtors filed an application for authorization to employ the L&Z
 6 Firm as bankruptcy counsel for both Chapter 11 debtors in possession, supported by the
 7 Declaration of Matthew Zirzow. (QL ECF Nos. 38 and 39). On February 14, 2022, Debtors
 8 filed their schedules of assets and liabilities (“Schedules”)⁵ along with, *inter alia*, their
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11 ⁴ The interim order granting the Employee Wages Motion authorized NWC to pay the
 12 wages, withholding taxes, and expense reimbursement obligations of its employees.

13 ⁵ QL’s real and personal property Schedule “A/B” indicates at Item 15 that it owns 100%
 14 of the common stock in NWC as a wholly-owned subsidiary, and at Item 70 that it does not own
 15 any other assets that have not been reported. QL Schedule “D” lists one secured creditor, The
 16 Moody Trust, as having a claim in the amount of \$7,978,266.66, secured by “100% of the
 17 common stock of Nevada Wine Cellars, Inc.” QL Schedule “E/F” lists zero priority unsecured
 18 creditors, and three nonpriority unsecured claims in unknown amounts owed to three creditors:
 19 JEH Investments, Inc. (“JEH”), John Hobbs (“Hobbs”), and PCC Holdings, LLC. JEH and
 20 Hobbs appear to be insiders of QL. None of the unsecured claims scheduled by QL are
 21 designated as contingent, unliquidated or disputed, and therefore no timely proofs of claim are
 22 required. See FED.R.BANKR.P. 3003(b)(1). None of the claims scheduled by QL are owed to
 23 NWC.

24 NWC real and personal property Schedule “A/B” listed checking accounts, accounts
 25 receivable, finished goods and inventory associates with a winery and restaurant, various
 26 equipment, and various contingent and unliquidated claims. Item 75 described the latter as
 27 “potential claims” of unknown value against The Moody Trust, as well as separate claims against
 28 “Nye County and others acting in concert with them regarding interference with business and
 economic relations...” NWC also listed parcels of real property described as a winery building
 and facilities, and 10.64 acre vacant lot used for parking. The value of the two parcels is listed as
 unknown. NWC Schedule “D” lists four secured creditors having claims totaling \$226,771.14.
 NWC Schedule “E/F” lists thirty-one priority unsecured claims totaling \$43,663.98, thirty of
 which are for unpaid employee wages, in addition to five nonpriority unsecured claims totaling
 \$243,540.62 (the majority of which is owed to the Debtors’ principal). None of the claims
 scheduled by NWC are designated as contingent, unliquidated or disputed, and therefore no
 timely proofs of claim were required. None of the claims scheduled by NWC are owed to QL.
 None of the claims scheduled by NWC includes any amount owed to The Moody Trust. NWC’s
 SOFA at Item 7 does not list any legal actions pending on its possible claim against Ernie
 Moody.

1 statements of financial affairs (“SOFA”).⁶ (QL ECF No. 40; NWC ECF No. 28).⁷ The
 2 Schedules and SOFA for both Debtors are signed under penalty of perjury by Trout on behalf of
 3 the managing member of QL and as secretary/treasurer of NWC.

4 On February 17, 2022, Debtors filed a motion to employ the law offices of Timothy
 5 Elson (“Elson”) as special counsel, accompanied by the Declaration of Timothy Elson. (ECF
 6 Nos. 42 and 43). On the same date, Debtors filed a notice of hearing setting the motions to
 7 employ the L&Z Firm and Elson to be heard on March 23, 2022. (ECF No. 44).

8 On March 3, 2022, the 341 Meeting was concluded. (ECF No. 60).

9 On March 25, 2022, QL filed its monthly operating report for the period ending February
 10 28, 2022. (ECF No. 75).

11 On March 28, 2022, a final order was entered granting the Employee Wages Motion.
 12 (ECF No. 76).

13 On March 29, 2022, The Moody Trust filed in the QL case a proof of claim in the amount
 14 of \$8,602,810.32. On the same date, The Moody Trust filed in the NWC case a proof of claim in
 15 the same amount.

16 On March 30, 2022, The Moody Trust filed a motion to prohibit the Debtors’ use of cash
 17 collateral (“Cash Collateral Prohibition Motion”), supported by the Declaration of David Keys.
 18 (ECF Nos. 81 and 82). The motion was noticed to be heard on April 27, 2022. (ECF No. 84).

21 ⁶ QL attests that it had one legal action pending within one year of the commencement of
 22 the Chapter 11 proceeding involving the liquor license for the restaurant at PVW which action
 23 had been concluded and was not on appeal. See QL SOFA at Item 7. NWC attests that it had
 24 two legal proceedings pending within one year of the commencement of the Chapter 11
 25 proceeding involving the same liquor license matter and an employee theft incident, both of
 26 which actions had been concluded and were not on appeal. See NWC SOFA at Item 7. NWC
 27 also attests that its assets include potential claims and causes of action against The Moody Trust,
 28 Nye County, and others of unknown value that are subject to investigation. See NWC Schedule
 “A/B” at Item 75.

⁷ Hereafter, all references in this Memorandum to “ECF No.” are to the documents
 appearing on the docket of the QL proceeding which has been designated as the lead case in
 these jointly administered Chapter 11 cases.

1 On April 11, 2022, an order was entered authorizing the Debtors' employment of the
2 L&Z Firm. (ECF No. 91).

3 On April 11, 2022, an order was entered denying authorization for the Debtors to employ
4 Elson. (ECF No. 92).

5 On April 22, 2022, QL filed its monthly operating report for the period ending March 31,
6 2022. (ECF No. 111).

7 On April 25, 2022, Debtors objected to the proof of claim filed by The Moody Trust in
8 the NWC estate. (ECF No. 115).

9 On April 27, 2022, an order was entered denying the Cash Collateral Prohibition Motion.
10 (ECF No. 121).

11 On May 3, 2022, The Moody Trust filed a notice of issuance of subpoena for inspection
12 of the premises of NWC. (ECF No. 127).

13 On May 4, 2022, an order was entered approving The Moody Trust's withdrawal without
14 prejudice of its proof of claim filed against NWC and vacating the hearing scheduled on the
15 claim objection. (ECF No. 129).

16 On May 5, 2022, The Moody Trust filed a notice of withdrawal without prejudice of the
17 proof of claim it had filed in the NWC proceeding. (ECF No. 36).

18 On May 17, 2022, the L&Z Firm filed a motion to withdraw as counsel for the Debtors
19 ("L&Z Withdrawal Motion"), supported by another Declaration of Matthew C. Zirzow. (ECF
20 Nos. 133 and 134).

21 On May 23, 2022, an order shortening time was entered authorizing the L&Z Withdrawal
22 Motion to be heard on June 1, 2022. (ECF No. 143).

23 On May 23, 2022, proof of claim number 5-1 ("POC-5") was filed in the NWC
24 proceeding by R.N.G., Inc. ("RNG") in the unsecured amount of \$80,000. POC-5 is based on an
25 agreement in August 2018, for NWC to purchase grapes grown by RNG.

26 On May 23, 2022, proof of claim number 6 ("POC-6") was filed in the NWC proceedings
27 by Giacomo Minella and Claudia Luppi (jointly "Minella & Luppi") in the unsecured amount of
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1 \$4,900,034.59. POC-6 is based on an affidavit of confession of judgment signed by Trout on
2 December 12, 2014, on behalf of herself as well as on behalf of MagPly, Inc.⁸

3 On May 25, 2022, QL filed its monthly operating report for the period ending April 30,
4 2022. (ECF No. 145).

5 On May 25, 2022, Debtor's Motion to Extend Exclusivity (First Request) ("Exclusivity
6 Extension") was filed by NWC, along with another supporting declaration of Trout. (ECF Nos.
7 149 and 150).

8 On May 25, 2022, a Motion for Entry of an Order of Debtors' Contempt of Rule 2004
9 Orders and Subpoenas for Debtors' Production of Documents and Inspection of Equipment by
10 Todd Shirey, Motion to Compel Production and for Sanctions, was also filed by The Moody
11 Trust ("Contempt and Compel Motion"), along with supporting declarations of Ogonna M.
12 Brown, Esq. and Todd Shirey. (ECF Nos. 154, 155, and 157).

13 On May 25, 2022, NWC filed an objection to POC-6 filed by Minella & Luppi,
14 accompanied by the declaration of Kathy Trout ("POC-6 Claim Objection"). (ECF Nos. 156 and
15 158). A hearing was scheduled for July 13, 2022. (ECF No. 159).

16 On May 25, 2022, The Moody Trust filed a motion to dismiss the Chapter 11 proceedings
17 ("Dismissal Motion"), along with separate supporting declarations of David Keys, Derek Groff,
18 Glenn J. Rigdon, MA, IFAS, ASA, and Ogonna M. Brown. (ECF Nos. 165-169).

19 On May 26, 2022, a Notice of Hearing and Notice of Entry of Order Granting Ex Parte
20 Application for Order Shortening Time to Hear Debtor's Motion to Extend Exclusivity was filed
21 setting the hearing for June 1, 2022. (ECF No. 177).

22 On May 27, 2022, an order shortening time was entered authorizing both the Dismissal
23 Motion, as well as the Contempt and Compel Motion to be heard on June 15, 2022. (ECF No.
24 180).

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27 ⁸ The Minella & Luppi claim is based on a "reverse alter ego" theory that Trout is the
28 actual owner of NWC rather than Hobbs or JEH, and that the corporate veil of NWC should be
pierced to make NWC liable for the claimants' judgment against Trout. The effect of their claim
is to prime the interests of all other creditors of the corporation.

1 On May 31, 2022, a joinder to the Exclusivity Extension was filed by QL. (ECF No.
2 188).

3 On May 31, 2022, a stipulation was filed for the law firm of Kung & Brown (“K&B
4 Firm”) to substitute as Chapter 11 counsel for QL in place of the L&Z Firm. (ECF No. 187).

5 On May 31, 2022, an opposition to the Exclusivity Extension was filed by The Moody
6 Trust, along with another supporting declaration of Ogonna M. Brown. (ECF Nos. 189 and 190).

7 On May 31, 2022, a proposed joint Chapter 11 plan of reorganization was filed on behalf
8 of QL and NWC. (ECF No. 192).

9 On June 1, 2022, an order was entered granting the L&Z Withdrawal Motion. (ECF No.
10 199). On the same date, the K&B Firm filed an application for authorization to be employed as
11 Chapter 11 counsel for QL, along with a supporting Declaration of A.J. Kung, Esq. (ECF No.
12 197). The application was noticed to be heard on July 13, 2022. (ECF No. 198).

13 On June 1, 2022, a proof of claim in the amount of \$249,654.00 was filed by JEH NV
14 Investments, Inc., in the QL case.⁹

15 On June 1, 2022, the hearing on the Exclusivity Extension was continued to June 16,
16 2022. (ECF No. 202).

17 On June 10, 2022, a joint opposition to the Contempt and Compel Motion, including a
18 Countermotion for Protective Order (“Protective Countermotion”) was filed by the Debtors,
19 along with separate supporting declarations of Trout and Tracy M. O’Steen, Esq. (ECF Nos.
20 213-215).

21 On June 10, 2022, an opposition to the Dismissal Motion was filed by the Debtors, along
22 with separate supporting declarations of Trout and Tracy M. O’Steen. (ECF Nos. 220-222).

23 On June 12, 2022, Debtors filed a disclosure statement to accompany joint plan of
24 reorganization (“Disclosure Statement”). (ECF No. 223). A hearing to approve the Disclosure
25 Statement was noticed to be heard on July 13, 2022. (ECF No. 224).

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27 ⁹ The following day, the proof of claim was amended to identify the creditor as JEH NV
28 Investments, Inc. (and/or John Hobbs) with the other name used by the creditor as “JEH
Investments, Inc.”

1 On June 13, 2022, an order was entered shortening time to allow the Protective
2 Countermotion to be heard on June 16, 2022, in conjunction with the Contempt and Compel
3 Motion. (ECF No. 231).

4 On June 13, 2022, an order was entered granting Debtors' request to file a certain
5 document marked as Exhibit "H" under seal. (ECF No. 232).

6 On June 13, 2022, a reply in support of the Contempt and Compel Motion was filed,
7 along with a separate declaration of Ogonna M. Brown in support thereof. (ECF Nos. 235 and
8 236).

9 On June 13, 2022, a reply in support of the Dismissal Motion was filed along with
10 separate supporting declarations of David Keys and Ogonna M. Brown. (ECF Nos. 238-240).

11 On June 14, 2022, Debtors filed an errata to the Disclosure Statement to include Exhibit 3
12 – "Debtors' Pro Forma Projection" and Exhibit 4 – Debtors' "Joint Liquidation Analysis" to the
13 Disclosure Statement. (ECF No. 243).

14 On June 14, 2022, a stipulated order was entered approving the stipulation for protective
15 order. (ECF No. 244).

16 On June 15, 2022, an opposition to Protective Countermotion was filed by The Moody
17 Trust, along with a supporting declaration of Ogonna M. Brown, Esq. (ECF Nos. 248 and 249).

18 On June 15, 2022, a supplemental declaration of Ogonna M. Brown was filed in support
19 of the Dismissal Motion. (ECF No. 250).

20 On June 16, 2022, a concurrent expedited hearing was held on the Dismissal Motion,
21 Exclusivity Extension, Contempt and Compel Motion, and Protective Countermotion.

22 On June 21, 2022, NWC and QL filed their monthly operating reports for the period
23 ending May 31, 2022. (ECF Nos. 254 and 255).

24 On June 22, 2022, an order was entered granting in part and denying in part the Contempt
25 and Compel Motion. (ECF 256). As a result, Debtors were subject to a continuing duty to
26 supplement their prior responses to document subpoenas issued by The Moody Trust and were
27 required to pay attorney's fees attributable to the Debtors' interference with an equipment
28 inspection.

1 On June 22, 2022, an order was entered denying the Dismissal Motion. (ECF 258).

2 On June 22, 2022, an order was entered granting the Exclusivity Motion. (ECF 260). As
3 a result, the Debtors' exclusive period to confirm a joint Chapter 11 plan was extended to
4 November 30, 2022.

5 On June 22, 2022, an order was entered denying the Protective Countermotion. (ECF
6 262).

7 On June 27, 2022, an order shortening time was entered scheduling a hearing on approval
8 of the Disclosure Statement for July 13, 2022. (ECF No. 277).

9 On June 29, 2022, Minella & Luppi filed a response to the POC-6 Claim Objection.
10 (ECF No. 287).¹⁰

11 On June 30, 2022, an objection to approval of the Disclosure Statement was filed by
12 Minella & Luppi. (ECF No. 288).

13 On June 30, 2022, an objection to approval of the Disclosure Statement was filed by The
14 Moody Trust, accompanied by another supporting declaration of Ogonna Brown. (ECF Nos. 289
15 and 292).

16 On July 6, 2022, NWC filed a reply in support of the POC-6 Claim Objection. (ECF No.
17 298).

18 On July 13, 2022, the hearing on approval of the Disclosure Statement, as well as other
19 pending matters, was continued to September 7, 2022. On the same date, the hearing on the
20 POC-6 Claim Objection was continued to August 10, 2022.

21 On July 18, 2022, an order was entered scheduling a settlement conference to be
22 conducted on August 15, 2022, between the Debtors and The Moody Trust. (ECF No. 331). The
23 settlement conference would be conducted by the Honorable Gregg W. Zive, United States
24 Bankruptcy Judge.

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27 ¹⁰ Included in that response is a document entitled "Affirmation of Norman M. Friedland"
28 that is signed under penalty of perjury and dated June 29, 2022. There is no similar document
from claimants Minella or Luppi.

1 On July 20, 2022, QL filed its monthly operating report for the period ending June 30,
2 2022. (ECF Nos. 334).

3 On July 21, 2022, NWC filed its monthly operating report for the period ending June 30,
4 2022. (ECF No. 335).

5 On July 22, 2022, NWC filed an amended monthly operating report for the period ending
6 June 30, 2022. (ECF No. 336).

7 On August 10, 2022, a status hearing on POC-6 Claim Objection was conducted and an
8 evidentiary hearing was scheduled.

9 On August 11, 2022, an order was entered setting an evidentiary hearing on the POC-6
10 Claim Objection. (ECF No. 347). The evidentiary hearing was scheduled to be held on
11 February 27 and 28, 2023, as well as March 2, 2023. The order provided the alternative direct
12 testimony (“ADT”) procedure to be followed under Local Rule 9017.¹¹

13 On August 12, 2022, NWC filed amended property Schedules “A/B” and amended
14 unsecured creditor Schedules “E/F.” (ECF No. 350). Amended Schedule “A/B” at Item 75 adds
15 the following: “Potential claim against R.N.G., Inc. and Roger Gehring Jr. Unknown Nature of
16 claim: conversion and intentional interference with economic advantage, conspiracy.” It also
17 changes the description of the claim against The Moody Trust parties as follows: “Potential
18 claims against Ernest W. Moody Revocable Trust and related parties, including Ernest Moody
19 and Izaac Villalobos amount Unknown Nature of claim libel, slander, interference with
20 economic advantage, conspiracy, fraudulent transfer.”¹² Amended Schedule “E/F” deletes the
21 priority unsecured claims previously listed for NWC’s full-time employees, presumably because
22 those claims were paid in full as a result of the Employee Wages Motion. Amended Schedule
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24 ¹¹ Local Rule 9017 also provides that if deposition testimony is offered in lieu of or in
25 addition to ADT declarations, that Local Rule 7032 be followed for statements designating
26 deposition transcripts. Among other things, Local Rule 7032 requires designation statements to
be provided to opposing counsel no later than 14 days before trial or any evidentiary hearing.

27 ¹² NWC did not amend its SOFA at Item 7 to list any pending actions against RNG,
28 Roger Gehring, Jr., or The Moody Trust.

1 “E/F” listed a total of eight, non-priority unsecured creditors of NWC, including RNG for an
2 unknown amount, totaling \$609,937.41.¹³

3 On August 15, 2022, the Settlement Conference between the Debtors and The Moody
4 Trust was conducted before Judge Zive. A settlement was reached and placed on the record.

5 On August 18, 2022, The Moody Trust filed a notice vacating several depositions it had
6 scheduled in connection with its various objections. (ECF No. 355).

7 On August 19, 2022, NWC filed its monthly operating report for the period ending July
8 31, 2022. (ECF No. 356).

9 On August 22, 2022, QL filed its monthly operating report for the period ending July 31,
10 2022. (ECF No. 358).

11 On August 23, 2022, the Debtors filed a Motion to Approve Settlement with the Ernest
12 W. Moody Revocable Trust Pursuant to Federal Rule of Bankruptcy Procedure 9019 (“Moody
13 Settlement Motion”), along with supporting declarations of Candace C. Carlyon, Ernest W.
14 Moody, Trout, and Hobbs. (ECF Nos. 359, 361, 363, 364 and 365).

15 On August 24, 2022, an order was entered shortening time so that the Moody Settlement
16 Motion could be heard on September 7, 2022. (ECF No. 366).

17 On August 24, 2022, Debtors filed a proposed second amended joint Chapter 11 plan of
18 reorganization (“Second Amended Chapter 11 Plan”) along with a second amended disclosure
19 (“Second Amended Disclosure Statement”). (ECF Nos. 367 and 368).

20 On September 2, 2022, Minella & Luppi filed an objection to approval of the Second
21 Amended Disclosure Statement. (ECF No. 378).

22 On September 6, 2022, Minella & Luppi filed an opposition to the Moody Settlement
23 Motion. (ECF No. 379).

24 On September 6, 2022, Debtors filed a reply in support of approval of the Second
25 Amended Disclosure Statement. (ECF No. 380).

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28 ¹³ Included in the list of additional creditors is U.S. Bank with a disputed claim in the
amount of \$246,397, based on a “PPP Loan.”

1 On September 6, 2022, Debtors filed a reply in support of approval of the Settlement
2 Motion. (ECF No. 381).

3 On September 7, 2022, Debtors filed a supplement to the Moody Settlement Motion
4 consisting of a signed copy of the Settlement Agreement (“Moody Settlement Agreement”).
5 (ECF No. 382).

6 On September 16, 2022, an order was entered on the Disclosure Statement requiring
7 certain amendments to include additional information (“Disclosure Statement Order”). (ECF
8 No. 389).

9 On September 16, 2022, an order was entered granting the Moody Settlement Motion
10 (“Moody Settlement Approval Order”).¹⁴ (ECF No. 391)¹⁵

11 On September 21, 2022, NWC and QL filed their monthly operating reports for the
12 period ending August 31, 2022. (ECF Nos. 400 and 402).

13 On September 22, 2022, an order was entered approving a stipulation between the
14 Debtors and Minella & Luppi to advance the evidentiary hearing on the POC-6 Claim Objection
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16 ¹⁴ The Moody Trust had filed a proof of claim in the QL proceeding in the secured
17 amount of \$8,602,810.32. The claim was secured by QL’s interest in NWC. After a judicially
18 supervised mediation, The Moody Trust agreed to accept \$6,091,000 in cash, or, to purchase the
19 operations of NWC through a confirmed Chapter 11 plan. If neither alternative was
accomplished, the settlement was ineffective and The Moody Trust claim returned to the prior
\$8,602,810.32 amount. See Moody Settlement Approval Order at 12:14 to 13:12 & n.5.

20 ¹⁵ The Moody Settlement provides for the payment of claims through one of two
21 alternatives: (1) payment to The Moody Trust on \$6,091,000 in full satisfaction of its claims,
22 i.e., a “Moody Payoff,” or (2) a sale of the majority of the assets of NWC to The Moody Trust
23 under a Chapter 11 plan, i.e., a “Moody Purchase” that would provide the means for payment of
24 all allowed secured and allowed unsecured claims. See Moody Settlement Approval Order at
25 13:14 to 13:12. In addition to having The Moody Trust acquire most but not all of the operating
26 assets of NWC, The Moody Purchase alternative requires The Moody Trust or its designee to
27 assume responsibility for payment of all of the secured claims of NWC (not exceeding a total of
28 \$150,000), but none of the allowed unsecured claims asserted against the Debtors’ bankruptcy
estates. Specifically excluded from the sale are any interest in the common stock of NWC and
any equity interest in QL. Also excluded are two vehicles owned by JEH and any awards won
by the Debtors’ business prior to closing of the sale. The purchaser also agrees not to use the
same business name. Releases of claims between and among the settling parties also are
included. The first alternative required the Moody Payoff to be made within 60 days after entry
of the order approving the settlement, i.e., approximately November 15, 2022. Under these
circumstances, it appears that only the Moody Purchase alternative is available.

1 from February and March 2023, so that it could be conducted concurrently with confirmation of
2 the proposed Second Amended Chapter 11 Plan. (ECF No. 404).

3 On September 30, 2022, Debtors filed a notice of submission of a redlined version of
4 their amendments to the Disclosure Statement to comply with the Disclosure Statement Order.
5 (ECF No. 414).

6 On September 30, 2022, Debtors filed their Third Amended Disclosure Statement to
7 accompany their joint proposed Chapter 11 plan. (ECF No. 415)

8 On September 30, 2022, Debtors filed their Third Amended Joint Chapter 11 Plan of
9 Reorganization (“Third Amended Plan”). (ECF No. 416).

10 On September 30, 2022, a stipulation between the Debtors and Minella & Luppi was filed
11 extending the plan exclusivity period to December 9, 2022, and confirming that the evidentiary
12 hearing on plan confirmation as well as the POC-6 Claim Objection would commence on
13 December 5, 2022 (“Scheduling Stipulation”). (ECF No. 417). The same stipulation confirmed
14 that the parties would comply with the alternate direct testimony procedure set forth in Local
15 Rule 9017 for both matters, and prescribed the deadlines for submission of alternate direct
16 testimony declarations, proposed exhibits, and witness lists.

17 On October 4, 2022, an order was entered approving the Scheduling Stipulation
18 (“Stipulated Scheduling Order”). (ECF No. 418).

19 On October 5, 2022, notice of entry of the Stipulated Scheduling Order was filed. (ECF
20 No. 419).

21 On October 17, 2022, a certificate of service was filed attesting that on October 14, 2022,
22 a copy of the Third Amended Disclosure Statement, proposed Third Amended Plan, and the
23 Stipulated Scheduling Order was served on all creditors and parties in interest. (ECF No. 420).

24 On October 19, 2022, QL filed its monthly operating report for the period ending
25 September 30, 2022. (ECF No. 421).

26 On October 20, 2022, NWC filed its monthly operating report for the period ending
27 September 30, 2022. (ECF No. 422).

1 On October 24, 2022, NWC filed a notice to take the deposition of claimant Luppi. (ECF
2 No. 423).

3 On October 25, 2022, Minella & Luppi filed a notice to take the deposition of David
4 Keys in connection with the POC-6 Claim Objection. (ECF No. 424).

5 On November 3, 2022, NWC filed a notice to take the deposition of claimant Minella.
6 (ECF No. 426).

7 On November 16, 2022, Minella & Luppi filed a notice to take and reschedule for
8 December 2, 2022, the deposition of David Keys. (ECF No. 431).

9 On November 16, 2022, Minella & Luppi filed a notice to take the deposition of Ernest
10 Moody. (ECF No. 432).

11 On November 16, 2022, Minella & Luppi filed a notice of intent to issue a subpoena for
12 The Moody Trust to produce documents. (ECF No. 433).

13 On November 16, 2022, Minella & Luppi filed a notice of intent to take the deposition of
14 Trout in connection with the POC-6 Claim Objection. (ECF No. 434).

15 On November 17, 2022, NWC filed a motion for protective order to quash the subpoenas
16 issued by Minella & Luppi inasmuch as the compliance deadlines were beyond the deadlines for
17 submission of declarations and exhibits imposed by the Stipulated Scheduling Order. (ECF No.
18 435). On the same date, an order was entered shortening time so that the motion could be heard
19 on November 22, 2022. (ECF No. 440). On the same date, a joinder in the motion was filed by
20 The Moody Trust. (ECF No. 449).

21 On November 17, 2022, NWC filed a separate motion to compel Minella & Luppi to
22 provide testimony at their depositions and for sanctions. (ECF No. 441). On the same date, an
23 order was entered shortening time so that the motion could be heard on November 22, 2022.
24 (ECF No. 446).

25 On November 21, 2022, QL and NWC filed their monthly operating reports for the
26 period ending October 31, 2022. (ECF No. 452 and 458).

1 On November 21, 2022, Minella & Luppi filed a response to the motion for protective
2 order and motion to compel, along with an affidavit of Marie Icard Minella. (ECF Nos. 450 and
3 451).

4 On November 21, 2022, NWC filed separate replies in support of its motion for
5 protective order and motion to compel. (ECF Nos. 454 and 455). On the same date, The Moody
6 Trust filed a joinder in the reply in support of the motion for protective order. (ECF No. 467).

7 On November 21, 2022, Debtors filed a brief in support of plan confirmation. (ECF No.
8 457).

9 On November 21, 2022, NWC filed a supplement to its motion to compel. (ECF No.
10 459).

11 On November 21, 2022, Debtors filed in support of plan confirmation the alternate direct
12 testimony declarations of Glenn J. Rigdon (“Rigdon ADT Declaration”),¹⁶ Derek Goff (“Goff
13 ADT Declaration”),¹⁷ David Keys (“Keys ADT Declaration”),¹⁸ John Hobbs (“Hobbs ADT
14 Declaration”),¹⁹ and Tracy M. O’Steen (“O’Steen ADT Declaration”).²⁰ (ECF Nos. 460, 461,
15
16

17 ¹⁶ Rigdon is a real estate appraiser who offered expert testimony that the two parcels of
18 real property held by NWC have values of \$3,300,00 and \$270,000 as of January 31, 2022.

19 ¹⁷ Groff is a business valuation analyst who offered expert testimony that the fair market
20 value of NWC’s winery operation is \$6,091,000 as of January 31, 2022.

21 ¹⁸ Keys is the representative of The Moody Trust who testifies that the Moody Payoff
22 alternative is no longer available and that the Moody Purchase is being pursued under the Moody
23 Settlement Agreement. Keys also attests that The Moody Trust has the financial ability to
24 provide the cash payments required under the Moody Settlement Agreement and the ability to
satisfy the secured claims being assumed. He also attests that The Moody Trust has the
experience and ability to continue the winery, restaurant, and related operations acquired under
the Third Amended Plan.

25 ¹⁹ Hobbs testified that the Plan has been proposed in good faith to maximize the
26 distribution to creditors and to retain employees. He also testified that the Debtors do not have
27 rates that are subject to governmental regulation and that they are not responsible for any retiree
benefits.

28 ²⁰ O’Steen is one of counsel for NWC and testified as to the discovery responses received
from Minella & Luppi.

1 462, 463, and 464). On the same date, Debtors filed their exhibit and witness list in connection
2 with both plan confirmation and the POC-6 Claim Objection. (ECF No. 465).

3 On November 21, 2022, a limited objection to plan confirmation was filed by the L&Z
4 Firm. (ECF No. 466).

5 On November 22, 2022, Minella & Luppi filed their exhibit and witness list in connection
6 with plan confirmation and the POC-6 Claim Objection. (ECF No. 468).

7 On November 22, 2022, Debtors, Minella & Luppi, and The Moody Trust filed a
8 stipulation waiving further discovery in connection with plan confirmation and the POC-6 Claim
9 Objection, and withdrawing the pending discovery motions. (ECF No. 469). The stipulation
10 further provided that Minella & Luppi do not object to plan confirmation, and that the Debtors'
11 request for admissions included in the motion to quash are admitted. On the same date, an order
12 was entered approving the stipulation. (ECF No. 470).

13 On November 28, 2022, Debtors filed a ballot summary and amended ballot summary in
14 support of plan confirmation. (ECF Nos. 479 and 480).

15 On November 28, 2022, Debtors filed a proposed Modification #1 to the proposed Third
16 Amended Plan.²¹ (ECF No. 481).

17 On November 28, 2022, Debtors filed an objection to the Minella & Luppi's proposed
18 exhibits. (ECF No. 482).

19 On November 28, 2022, Debtors filed a reply in support of plan confirmation responding
20 to the limited objection of the L&Z Firm ("Debtors' L&Z Reply"). (ECF No. 483).

21 On November 28, 2022, Debtors filed an amended exhibit and witness list in support of
22 plan confirmation and the POC-6 Claim Objection. (ECF No. 484).

23 On November 29, 2022, Debtors filed a proposed First Modification to the proposed
24 Third Amended Plan.²² (ECF No. 485).

25 ²¹ Modification #1 revises Sections 3.1 and 5.6.3.1 of the proposed Third Amended Plan.
26 Section 3.1 is modified to address the payment of any allowed professional compensation in the
27 QL case. Section 5.6.3.1 is modified to address the payment of the L&Z Firm's previously
28 allowed professional compensation.

²² The First Modification is a redline of the revisions reflected in Modification #1.

1 On December 2, 2022, Debtors filed a proposed Modification #2 to the proposed Third
2 Amended Plan.²³ (ECF No. 486).

3 On December 2, 2022, Minella & Luppi filed an amendment to their exhibit and witness
4 list to mark their proposed exhibits by letters rather than numbers. (ECF No. 487).

5 On December 4, 2022, Minella & Luppi filed an application to approve Norman M.
6 Friedland to appear as their counsel pro hac vice. (ECF No. 488). On the same date, Minella &
7 Luppi filed a designation of Whitney C. Wilcher to appear as their local counsel. (ECF No.
8 489).

9 DISCUSSION

10 The evidentiary hearing on plan confirmation and the POC-6 Claim Objection proceeded
11 on December 5, 2022, as required by the Stipulated Scheduling Order. On that date, the hearing
12 was concluded as to both matters and post-hearing briefs were permitted with respect to the
13 POC-6 Claim Objection. A separate order will be entered with respect to the latter. Only one
14 limited objection to confirmation of the Third Amended Plan was filed, but that objection was
15 withdrawn at the hearing.²⁴ As a result, there are no objections to confirmation of the proposed
16 Third Amended Plan. The court independently examines, however, whether the applicable
17 requirements to confirm the proposed Chapter 11 plan have been met.

18 There are sixteen requirements for confirmation of a Chapter 11 plan, see 11 U.S.C. §
19 1129(a)(1) to (a)(16), some of which do not apply in this proceeding. There are nine classes of
20 claims or interests under the proposed Third Amended Plan, all of which are identified as being
21

22 ²³ Modification #2 revises Section 2.26 of the proposed Third Amended Plan. The
23 modification is reflected by a redline to the proposed Third Amended Plan and addresses the
24 timing of the payment of the professional compensation previously allowed to the L&Z Firm.

25 ²⁴ Modification #1 and Modification #2 to the Third Amended Plan, see notes 21 and 22,
26 supra, permits the balance of the allowed professional fees of the L&Z Firm to be paid directly
27 by the purchaser upon completion of the Moody Purchase. See Debtors' L&Z Reply at 4:1-19.
28 The modifications permit the L&Z Firm to be paid their allowed compensation without
interfering with the Debtors' compliance with Section 1129(a)(9). Because payment of the
allowed compensation effectively depends on the completion of the Moody Purchase through
plan confirmation, the L&Z Firm withdrew its limited objection.

impaired within the meaning of Section 1124(1). Of the nine impaired classes, Classes 6 and 7 have submitted ballots accepting the plan, and no other ballots have been cast. Class 6 consists of the secured claim of the Debtors' primary creditor, The Moody Trust, which accepted plan treatment consistent with its obligations under the approved Moody Settlement Agreement. Class 7 consists of the holders of any unsecured claims against NWC and the only ballot cast was an acceptance by unsecured creditor RNG.²⁵ As a result, impaired Classes 1 through 5, and Classes 8 and 9, do not accept plan treatment, and Section 1129(a)(8) has not been met. Because Classes 6 and 7 have accepted, Section 1129(a)(10) has been met. Because there is at least one impaired class acceptance, however, cramdown of the dissenting impaired classes is permissible under Section 1129(b) as long as the other applicable requirements under Section 1129(a) are satisfied. All of these requirements are discussed below.

1. Section 1129(a)(1): Plan Compliance with Applicable Provisions of the Code.

Under Section 1129(a)(1), the court may not confirm a plan unless “[t]he plan complies with the applicable provisions of this title.” 11 U.S.C. § 1129(a)(1). Those applicable provisions generally concern whether the proposed plan contains the terms both required or permitted by Section 1123, and that the designation of classes included in the proposed plan complies with Section 1122. See 7 COLLIER ON BANKRUPTCY & 1129.02[1] (Alan N. Resnick & Henry J. Sommer, eds. 16th ed. 2022).

The proposed Third Amended Plan includes the provisions of a Chapter 11 plan required by Section 1123(a) as well as the provisions permitted by Section 1123(b). Only substantially

²⁵ Although creditors Minella & Luppi filed an unsecured claim in the NWC proceeding in excess of \$4.9 million, they never filed a ballot rejecting the proposed Third Amended Plan. Moreover, they never sought temporary allowance of their claim for purposes of voting on the Third Amended Plan pursuant to Bankruptcy Rule 3018(a) (“Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.”). If Minella & Luppi had filed a ballot rejecting treatment in unsecured Class 7, there would not have been a majority of accepting ballots under Section 1126(c) and cramdown of Class 7 under Section 1129(b)(2)(B) would have been required to confirm the proposed Third Amended Plan. Non-dissenting Class 7 provides for pro rata payment of allowed unsecured claims. If Minella & Luppi prevail on the POC-6 Claim Objection, the allowed amount of their unsecured claim, if any, would be paid pro rata.

1 similar claims are included in the nine separate classes designated by the proposed Third
 2 Amended Plan, thereby complying with Section 1122(a). There is no proposed administrative
 3 convenience class permitted by Section 1122(b).

4 Under these circumstances, the court concludes that Section 1129(a)(1) has been met.

5 **2. Section 1129(a)(2): Plan Proponent's Compliance with Applicable Provisions of**
 6 **the Code.**

7 Pursuant to Section 1129(a)(2), the court may not confirm a plan unless "[t]he proponent
 8 of the plan complies with the applicable provisions of this title." 11 U.S.C. § 1129(a)(2). "The
 9 legislative history of the section indicates that Congress was concerned 'that the proponent of the
 10 plan comply with the applicable provisions of title 11, such as . . . the disclosure and solicitation
 11 requirements of [S]ections 1125 and 1126.'" 7 COLLIER ON BANKRUPTCY & 1129.02[2] (Richard
 12 Levin & Henry J. Sommer eds 16th ed. 2022). See also In re Idearc, Inc., 423 B.R. 138, 163
 13 (Bankr. N.D. Tex. 2009).

14 **A. Disclosure.**

15 The Third Amended Disclosure Statement previously was approved as containing
 16 adequate information within the meaning of Section 1125. Even if a Chapter 11 disclosure
 17 statement is approved, the adequacy of disclosure may be revisited at the time of plan
 18 confirmation. See In re Michelson, 141 B.R. 715, 719 (Bankr. E.D. Cal. 1992). The Disclosure
 19 Statement Approval Order specifically required certain additional information to be included in
 20 the Disclosure Statement and the Debtors complied. No further objections were raised at the
 21 plan confirmation hearing and the court finds on a final basis that the Third Amended Disclosure
 22 Statement complies with Section 1125(a).

23 **B. Solicitation.**

24 The approved Third Amended Disclosure Statement was served on all parties in interest
 25 in soliciting acceptance or rejection of the proposed Third Amended Plan under Section 1125(b).
 26 The Third Amended Disclosure Statement, proposed Third Amended Plan, and Stipulated
 27 Scheduling Order were served on all creditors and parties in interest. The Stipulated Scheduling
 28 Order provided the scheduled hearing dates for plan confirmation as well as the hearing on the

POC-6 Claim Objection. The same order established deadlines for the submission of ballots accepting or rejecting the proposed Third Amended Plan, for submitting objections to plan confirmation, for submitting alternate direct testimony declarations and exhibits in connection with plan confirmation, for submitting objections to any declarations or exhibits, and for submitting a replies. Based on this record, the court concludes that the solicitation requirements under Section 1125(b) and Section 1126(b)(1) have been met.

Because both the disclosure and solicitation requirements have been met, the court further concludes that the requirements of Section 1129(a)(2) have been met.

3. Section 1129(a)(3): Plan Proposed in Good Faith and Not By Any Means Forbidden By Law.

Section 1129(a)(3) requires a determination that “[t]he plan has been proposed in good faith and not by any means forbidden by law.” 11 U.S.C. § 1129(a)(3). Section 1129(a)(3) does not define good faith. See Platinum Capital, Inc. v. Sylmar Plaza, L.P. (In re Sylmar Plaza), 314 F.3d 1070, 1074 (9th Cir. 2002), cert. denied, 538 U.S. 1035 (2003); Beal Bank USA v. Windmill Durango Office, LLC (In re Windmill Durango), 481 B.R. 51, 68 (B.A.P. 9th Cir. 2012). A plan is proposed in good faith where it achieves a result consistent with the objectives and purposes of the Code. See In re Sylmar Plaza, 314 F.3d at 1074; In re Windmill Durango, 481 B.R. at 68. “Good faith” under Section 1129(a)(3) is determined on a case-by-case basis, taking into account the totality of the circumstances of the case. See In re Sylmar Plaza, 314 F.3d at 1074-75; In re Windmill Durango, 481 B.R. at 68.

In this instance, the proposed Third Amended Plan includes a likely sale of the Debtors’ business operations to the primary secured creditor and a continuation of business operations by the purchaser. Allowed secured and unsecured claims are paid in full or pro rata, and the continued employment of existing employees is initially provided. The Third Amended Plan is proposed through the Chapter 11 process, subject to the requirements of notice and an opportunity to be heard. The Debtors’ principal creditor has extensively participated in the proceeding and negotiated an arms-length settlement of its claim that previously was approved by the court after notice and a hearing. Inasmuch as a primary purpose of Chapter 11 is to pay

creditors at least what they would receive in a Chapter 7 liquidation, to preserve jobs for existing employees, and to preserve investment capital to the extent possible, see United States v. Whiting Pools (In re Whiting Pools), 462 U.S. 198, 203 (1983), the court finds that the proposed Third Amended Plan achieves a result consistent with the purposes of Chapter 11.

The court therefore concludes that the Third Amended Plan was proposed in good faith in compliance with Section 1129(a)(3). Compare Garvin v. Cook Invs. NW, SPNWX, LLC, 922 F.3d 1031 (9th Cir. 2019) (negotiated Chapter 11 plan that included a lease to a marijuana operation permitted under Washington state law was not proposed by any means forbidden by law).²⁶

4. Section 1129(a)(4): Payments to Professionals and Others.

Section 1129(a)(4) requires that fees for those working on a debtor's case be submitted to the court and be approved as reasonable. See 11 U.S.C. § 1129(a)(4). To date, the professional fee application of the Debtors' former counsel was duly noticed for hearing to all parties and approved by the court. (ECF Nos. 136 and 264). Any compensation approved on an interim basis is subject to approval on a final basis. The proposed Third Amended Plan requires that all administrative claims be paid as allowed by the court. See Third Amended Plan at Art. 3.1. It further provides that final approval of professional fees must be sought no later than 30 days after plan confirmation. See Plan at Art. 9.1. It therefore provides a mechanism for objections to final fee claims and for professionals to be paid after plan confirmation. Section 1129(a)(4) has been met.

5. Section 1129(a)(5): Debtor's Future Officers and Directors.

A Chapter 11 plan may not be confirmed if the continuation in management of the persons proposed to serve as officers or managers of debtor is not in the interests of creditors and public policy. See 11 U.S.C. § 1129(a)(5)(A)(ii). Continued service by prior management may be inconsistent with the interests of creditors and public policy if it "directly or indirectly

²⁶ Because there are no pending objections to plan confirmation, Debtors are not otherwise required to introduce evidence that their plan is proposed in good faith. See FED.R.BANK.P. 3015(f). The court's conclusion that the Third Amended Plan was filed in good faith also is supported by the testimony of the Debtors' principal. See note 19, supra.

perpetuates incompetence, lack of discretion, inexperience or affiliations with groups inimical to the best interests of the debtor.” In re Linda Vista Cinemas, L.L.C., 442 B.R. 724, 735-36 (Bankr. D. Ariz. 2010), citing In re Beyond.com Corp., 289 B.R. at 145.

As previously mentioned, the Third Amended Plan as proposed provides for NWC’s operations to be purchased by their principal secured creditor, and current officers and directors will not continue in place. Under these circumstances, the court finds that the Debtors have satisfied the requirements of Section 1129(a)(5).

6. Section 1129(a)(6): Regulatory Bodies.

Section 1129(a)(6) requires governmental approval of any rates charged by a debtor that are subject to regulation. Although any business, liquor or operating licenses may be required of the purchaser of the Debtors’ assets, there is no indication that there are any rates to be charged by the purchaser that are subject to governmental approval. Debtors represent that there are none and no evidence has been presented to the contrary. See note 19, supra. Thus, the court concludes that this provision does not apply.

7. Section 1129(a)(7): Best Interests of Creditors.

Under Section 1129(a)(7), creditors with impaired claims must either accept the proposed plan of reorganization or receive as much from the proposed plan as they would under a Chapter 7 liquidation. Specifically, Section 1129(a)(7) provides in part:

The court shall confirm a plan only if all of the following requirements are met: . . . (7) With respect to each impaired class of claims or interestsB(A) each holder of a claim or interest of such classB(i) has accepted the plan; or (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is **not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date**

(Emphasis added). As previously discussed, the proposed Third Amended Plan designates nine classes of claims or interest, and all of which are identified as impaired. Unsecured Classes 6 and 7 have accepted. Non-accepting secured Classes 1, 2, 3, 4 and 5, will be paid in full assuming that there treatment is fair and equitable under Section 1129(b)(2)(A). Non-accepting interest holders in Classes 8 and 9 will receive no less than what they would receive under

1 Section 726(a)(6) in a Chapter 7 liquidation. Under the circumstances, the court concludes that
2 Section 1129(a)(7) has been met.

3 **8. Section 1129(a)(8): Impairment and Acceptance.**

4 Under Section 1129(a)(8), for a plan to be confirmed, each class of claims or interests
5 must either be unimpaired by the proposed plan, or it must accept the treatment proposed by the
6 plan. As previously discussed, all nine classes in the Third Amended Plan are impaired and only
7 two classes have accepted. Accordingly, Section 1129(a)(8) has not been met.

8 **9. Section 1129(a)(9): Priority Claims.**

9 Section 1129(a)(9) generally requires the payment of priority claims under Section 507(a)
10 on the effective date of the proposed Chapter 11 plan unless the holder of the claim agrees to a
11 different treatment. In this instance, the postpetition administrative expense claims, including
12 claims for professional compensation, as well as priority tax claims, are provided for in the
13 proposed plan. See Third Amended Plan at Art. 3.1, 3.2, and 3.3. The treatment of such claims
14 also has been adequately disclosed by the Debtors. See Third Amended Disclosure Statement at
15 Section 4.1.1 and 4.1.2. The plan modifications provide for the administrative claim of the
16 Debtors' prior counsel to be satisfied by the purchaser of the Debtors' operations.²⁷ Such
17 payment does not affect the manner of payment for any other priority claims. Accordingly,
18 Section 1129(a)(9) has been satisfied.

19 **10. Section 1129(a)(10): Acceptance by at Least One Impaired Non-Insider Class.**

20 Section 1129(a)(10) provides that if a plan proponent chooses to impair classes of claims
21 in its proposed plan, then at least one impaired class of claims must accept plan treatment. See
22 11 U.S.C. § 1129(a)(10). All classes of claims and interests are impaired and Classes 6 and 7
23 have accepted plan treatment. The latter classes of claims are not held by insiders. Section
24 1129(a)(10) has been satisfied.

25 **11. Section 1129(a)(11): Feasibility/Future Liquidation.**

26
27
28 ²⁷ See discussion at note 24, supra.

Section 1129(a)(11) requires that confirmation of the plan is not likely to be followed by liquidation, or the need for further financial reorganization of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan. See 11 U.S.C. § 1129(a)(11); see also Sherman v. Harbin (In re Harbin), 486 F.3d 510, 517 (9th Cir. 2007). In accordance with the settlement previously reached with The Moody Trust and approved by the court, there are two possible means²⁸ through which the proposed Third Amended Plan will be implemented and claims will be paid: (1) under the Moody Payoff, Debtors will refinance or otherwise raise funds to pay The Moody Trust the amount of \$6,091,000 in full satisfaction of its claims; or (2) under the Moody Purchase, The Moody Trust (or its designee) will purchase NWC's assets through a contribution of \$250,000 in cash and a contribution of its claim in the agreed amount of \$6,091,000. In addition, The Moody Trust shall assume all of the Debtors' secured debts (not to exceed \$115,000) and shall continue to pay the secured claims after the close of the Moody Purchase. The Moody Trust shall not assume the Debtors' obligations to pay allowed unsecured claims, but will provide the cash contribution that may permit a pro rata distribution to allowed unsecured claims. Under The Moody Trust Settlement, the Moody Payoff option is no longer being pursued and evidence has been presented in support of the Moody Purchase option. Evidence of The Moody Trust's ability to complete the purchase has been admitted and is not contested. See notes 16, 17 and 18, supra. A means of payment of secured and unsecured claims that are allowed is therefore provided under the Third Amended Plan.

Under the Moody Purchase option, no further operation of the Debtors is contemplated by consummation of the Third Amended Plan, and none of the Debtors' assets revert in the Debtors. The requirements of Section 1129(a)(11) are met.

12. Section 1129(a)(12): Fees.

Section 1129(a)(12) requires that a Chapter 11 debtor be current in payment of UST fees no later than the effective date of the proposed plan. The latest monthly operating reports attest that the Debtors are current on quarterly fees owed to the UST. No objection to plan

²⁸ See discussion at note 15, supra.

confirmation has been made by the UST. The plan provides for payment of such fees to continue after plan confirmation if necessary. See Third Amended Plan at Art. 16.1, 16.2, 16.3, and 16.4. Under the circumstances, the court concludes that Section 1129(a)(12) has been met.

13. Sections 1129(a)(13), (14), (15), and (16): Retirement Benefits, Domestic Support Obligations, Individual Debtors, Transfers of Property.

Section 1129(a)(13) requires retiree benefits to be paid, if any. Section 1129(a)(14) requires the plan proponent to pay all domestic support obligations required after the bankruptcy petition date. Section 1129(a)(15) requires certain treatment of allowed unsecured claims when the Chapter 11 debtor is an individual. Section 1129(a)(16) provides for the continued enforcement of any applicable nonbankruptcy restrictions on transfers by nonprofit entities in Chapter 11. There is no dispute that these provisions are not applicable in this Chapter 11 proceeding.

14. Section 1129(b): Cram down.

If a plan proponent satisfies all the provisions of Section 1129(a) except the unanimous class acceptance requirement of Section 1129(a)(8), the court may still confirm a proposed plan through the “cramdown” process as long as the plan does not discriminate unfairly against and is fair and equitable towards each impaired class that has not accepted the plan. See 11 U.S.C. § 1129(b)(1). See RadLAX Gateway Hotel, LLC v. Amalgamated Bank, 566 U.S. 639, 642 (2012); Bank of America Nat’l Trust and Sav. Ass’n v. 203 North LaSalle Street P’ship, 526 U.S. 434, 441 (1999); In re Ambanc La Mesa, 115 F.3d at 653.

(a) Unfair Discrimination Against a Dissenting Class.

Discrimination between classes may be fair if (1) the discrimination is supported by a reasonable basis, (2) the proposed plan could not be confirmed or consummated without the discrimination, (3) the discrimination is proposed in good faith, and (4) the degree of discrimination is directly related to its basis. See In re Ambanc La Mesa, 115 F.3d at 656; In re Rexford Properties LLC, 558 B.R. 352, 365 (Bankr. C.D. Cal. 2016).

In this instance, secured Classes 1, 2, 3, 4 and 5, unsecured Classes 6 and 7, and equity Classes 8 and 9 are placed into separate classes because they are not substantially similar. Each of the secured claimants have different collateral or have different priority against the same

collateral. Each of the unsecured claimants represent dissimilar business and economic interests. Each of the equity classes represent dissimilar ownership interests. Under these circumstances, there is no unfair discrimination.

(b) Fair and Equitable Treatment of a Dissenting Class.²⁹

As previously discussed, cramdown is required for secured Classes 1, 2, 3, 4, and 5 only because no ballots were cast and each class is a dissenting class as a matter of law. Likewise, interest holders in Classes 8 and 9 did not cast ballots and also are dissenting classes. To be fair and equitable with respect to a class of secured claims, there are three permissible alternative treatments: (1) the holder of a claim in the class retains its lien and receives deferred cash payments equal to the allowed amount of the secured claim; (2) the collateral is sold free and clear of liens and the holder's claim attaches to the proceeds of the sale; and (3) the holder received the indubitable equivalent of its claim. See 11 U.S.C. §1129(b)(2)(A)(i, ii and iii).

Under the Third Amended Plan, each of the claimants in the non-accepting secured classes will retain their liens against their respective collateral, the collateral will be sold to the purchaser, liability for the secured claims will be assumed by the purchaser, and the secured claims will be paid by The Moody Trust in accordance with the existing agreements. No objections have been raised to the interest rates paid on the assumed obligations nor the ability of the purchaser to perform on the obligations. Under these circumstances, the court concludes that the treatment of secured Classes 1, 2, 3, 4, and 5 is fair and equitable within the meaning of Section 1129(b)(2)(A).

Under the Third Amended Plan, the Moody Purchase option provides for the Class 8 equity interest of QL in NWC to be cancelled inasmuch as the assets of NWC are being sold. Under the Third Amended Plan, the equity interest in QL that is held by JEH under Class 9 will be retained by JEH, and there are no interests junior to those interests. Under these

²⁹ Under the Third Amended Plan, the only unsecured classes, i.e., Classes 6 and 7, have accepted plan treatment and cramdown of those classes under Section 1129(b)(2)(B) is not required. As a result, the pro rata payment of claimants in those classes and the retention by existing equity holders of any interests in the assets of NWC or QL, if any, would not run afoul of the fair and equitable treatment requirements of Section 1129(b)(2)(B)(i and ii).

1 circumstances, the treatments of Classes 8 and 9 are fair and equitable within the meaning of
2 Section 1129(b)(2)(C).

3 **CONCLUSION**

4 The court having considered the record, including the evidence offered in support of
5 confirmation, finds that the Debtors have met their burden of proof on the applicable
6 requirements of Section 1129(a) and 1129(b). Accordingly, the proposed Third Amended Plan
7 as amended will be confirmed.

8 Counsel for the Debtors are directed to submit an order incorporating these findings and
9 conclusions by reference. A copy of the confirmed Third Amended Plan of Reorganization, as
10 modified, must be attached to the order.

11
12 Copies sent via CM/ECF ELECTRONIC FILING

13 Copy sent via BNC to:
14 QUICKER LIQUOR LLC
15 NEVADA WINE CELLARS, INC.
16 ATTN: OFFICER OR MANAGING AGENT
7582 LAS VEGAS BLVD., STE. 484
LAS VEGAS, NV 89123

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