SO ORDERED.

SIGNED this 29th day of March, 2018.

Robert E. Nugent
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS

In re: CHRIS CARLSON HOT RODS, LLC, DEBTOR.	Case No. 17-11660-11

ORDER APPROVING CHRIS CARLSON HOT RODS, LLC'S DISCLOSURE STATEMENT AND CONFIRMING PLAN OF REORGANIZATION, DATED JANUARY 26, 2018, *AS MODIFIED*

This matter initially came before the Court on the 8th day of March 2018 for hearing on the Combined Plan and Disclosure Statement of Chris Carlson Hot Rods, LLC ("Debtor"). Debtor appeared through counsel David Prelle Eron of Eron Law, P.A. The U.S. Trustee (the "UST") appeared through counsel Jordan M. Sickman. The Committee of Unsecured Creditors (the "Committee") appeared through counsel, David G. Arst. Creditor Alfred Suraci ("Suraci") appeared through counsel Kristen D. Wheeler. After hearing arguments of counsel and considering the record herein, the Court approved the Debtor's disclosure statement and made certain rulings regarding the balloting of the Debtor's chapter 11 plan and some of the objections to the plan. The Court continued the matter to an evidentiary hearing, which was held on the 14th day of March, 2018 to consider the feasibility of the Debtor's chapter 11 plan and to rule upon the balance of the matters raised in objections to the plan. Whereupon the Court, having reviewed the record and statements of counsel, and having considered the evidence presented by the Debtor and the United States Trustee, and having heard the testimony of Christopher Carlson, the Court makes the following findings of fact and conclusions of law:

1. The Court has jurisdiction over the Debtor's Chapter 11 case. 28 U.S.C. §§ 157, 1334. Venue is proper. 28 U.S.C. §§ 1408, 1409. This matter is a core proceeding under 28 U.S.C. § 157(b)(2) and the Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

2. On January 26, 2018, the Debtor filed its Combined Plan and Disclosure Statement Dated January 26, 2018 (Doc. 115) (the "Disclosure Statement" or "Plan"), which identifies the Debtor as the proponent in compliance with Bankruptcy Rule 3016(a).

3. Debtor, on January 29, 2018, did distribute the Plan and Disclosure Statement and ballot conforming to Official Form 14 to all holders of claims and interests and other parties in interest in accordance with Federal Rule of Bankruptcy Procedure 3017(d) and filed certification of such distribution with the Court.

4. The Court fixed March 5, 2018 as the last date for filing objections to the Plan and Disclosure Statement. Three Objections to the Plan were filed, one by Suraci, one by the Committee, and one by the UST. The Court overrules all three objections for the reasons set forth below.

5. Debtor's Disclosure Statement contains adequate information within the meaning of 11 U.S.C. § 1125. The only objection directed to the adequacy of the information provided in

the Disclosure Statement was contained in the objection filed by the UST. The UST asserted that the Debtor did not disclose sufficient information related to its premises lease. The Disclosure Statement disclosed that the Debtor would continue operating in its existing facility at a lease rate of $4,000 per month. Prior to the initial hearing on the Plan, the Debtor filed a Motion to Approve Lease on March 7, 2018 (Doc. No. 145), which disclosed all of the material terms of the proposed lease and attached a copy of the signed lease agreement. The terms contained in the lease mirrored those discussed in the Disclosure Statement. The UST withdrew its objections to the adequacy of the information in the Disclosure Statement on that basis.

6. On March 6, 2018, Debtor filed its Certificate of Voting on Debtor's Plan. The Certificate reflected that five ballots were timely cast in favor of the Plan by Dustin L. Baerg and Angela Capps (Class 1), and Larry Penner, D & S Auto Supply, Inc., and National Catastrophe Restoration, Inc. (Class 5). Two ballots were received on March 6, 2018, one day late, by Carter's Tool Sales (Class 2) and Drywall Systems, Inc. (Class 5), both accepting the Plan. Three ballots were timely cast against the Plan by Everett Stewart Jr. ("Stewart"), Suraci, and Drywall Systems, Inc. (who cast a replacement ballot to accept the Plan). The Court concludes that the second ballot of Drywall Systems, Inc. should be its controlling ballot. Class 1 unanimously accepted the Plan. Class 2 also unanimously accepted the Plan, albeit late. Classes 3, 4, 6, and 7 did not cast any ballots, and are thus deemed to have accepted the Plan. A total of four ballots were cast in favor of the Plan in Class 5, with a total amount listed on the ballots of $110,925.01. The ballot cast by Suraci, also in Class 5, was listed as "in excess of $100,000.00." However, the Debtor filed an objection to Suraci's claim (Doc. No. 130) on February 6, 2018, seeking to

disallow the claim in its entirety. The parties were granted stay relief on March 7, 2018 to litigate the existence and amount of any such claim in Kansas state court (Doc. No. 150). Similarly, Stewart's claim (Claim No. 20) was not listed in the Debtor's schedules, and was not filed until January 26, 2018, three months after the claims bar date of October 27, 2018 set by this Court (see Doc. No. 31). For these and other reasons, the Debtor filed Adversary Proceeding Number 18-05032 on March 6, 2018 seeking, *inter alia*, to disallow Everett's claim. Everett did not appear at the hearing. No determination had been reached as to the existence or amount of the Suraci or Stewart claims as of the date of trial. As such, pursuant to 11 U.S.C. § 502(a), neither claim is deemed to be an "allowed" claim at this time, and therefore neither Suraci nor Stewart are entitled to vote on the Plan. The Court does not render any determination on the merits of the Suraci or the Stewart claims at this time as they are the subject of pending proceedings. However, their ballots shall be disregarded for the purposes of calculating the votes submitted in favor of or opposition to the Plan. Based upon this determination, the Court finds that Class 5 has unanimously accepted the Plan.

7. The Plan, as modified herein, complies with all the provisions of 11 U.S.C. § 1129(a). In particular, the Court notes that the Plan provides that the property of the estate will revest in the Debtor at Plan confirmation. The UST, in its objection, contends that the Court should require the Plan to provide for the property of the estate, after having revested in the reorganized Debtor, to "re-revest" in the bankruptcy estate in the event that the case is converted to chapter 7 following Plan confirmation. The Court notes that 11 U.S.C. § 1141(b) creates a presumption that all property will revest in the reorganized debtor following plan confirmation,

unless the plan or confirmation order provides to the contrary. There is no corresponding Code provision for such revested property to return to the estate following conversion to chapter 7. The Court declines to require plan provisions that Congress has not included in the requirements of section 1129 or elsewhere in the Bankruptcy Code, and incorporates its rationale set forth in the record at both the initial hearing and the evidentiary hearing on Plan confirmation.

8. The Plan has been proposed in good faith and not by any means forbidden by law.

9. Any payment made or to be made by the Debtor as proponent of the Plan or by a person issuing securities or acquiring property under the Plan, for services or for costs and expenses in or in connection with the case, or in connection with the Plan and incident to the case, has been disclosed to the Court and is reasonable; any such payment to be fixed after confirmation of the Plan is subject to the approval of the Court as to its reasonableness.

10. The Debtor has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer or voting trustee, if any, of the Debtor, and the appointment to or continuance in such office of such individual is consistent with the interests of creditors and equity security holders and with public policy.

11. No governmental regulatory commission has jurisdiction, after confirmation of the plan, over the rates of the Debtor.

12. With respect to each impaired class of claims or interests, each holder of a claim or interest of such class has accepted the Plan, or will receive and 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 such holder would so receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy code on such date.

13. With respect to each class, such class has accepted the Plan or such class is not impaired under the Plan.

14. Except to the extent that that holder of a particular claim has agreed to a different treatment of such claim, the Plan provides that with respect to a claim of a kind specified in § 507(a)(2) of the Bankruptcy Code, on the Effective Date of the Plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim.

15. With respect to claims of a kind specified in §507(a)(8), the Plan provides (pursuant to the modification below) that the holder of such claim will receive on account of such claim regular installment payments in cash of a total value as of the Effective Date of the Plan equal to the allowed amount of such claim over a period ending not later than 5 years after the date of the order for relief.

16. At least one class of claims that is impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by any insider.

17. The Plan is a reorganization plan, the Debtor has provided an adequate means for the Plan's implementation, and the Plan is otherwise feasible, in that the confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization, except as contemplated in the Plan. The Court accepts the testimony and exhibits offered by the Debtor in support of its Plan and concludes that the Plan is based on realistic estimates rather than a visionary scheme that has no meaningful chance of success. In reaching its conclusion as

to feasibility, the Court incorporates all of its findings of fact and conclusions of law recited into the record at the conclusion of the evidentiary hearing on this matter.

18. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of §5 of the Securities Act of 1933 (15 U.S.C. §§ 77e).

19. The Debtor is not in default on any executory contracts or unexpired leases and is not required to cure any such obligations under Section 365 of the Bankruptcy Code.

20. All fees payable under 28 U.S.C. § 1930, as determined by the Court at the hearing on confirmation of the Plan, have been paid or the Plan provides for the payment of all such fees of and after the Effective Date.

21. The Debtor has not obligated itself to provide retiree benefits, as that term is defined in 11 U.S.C. § 1114, consequently, Section 1129(a)(13) of the Bankruptcy Code does not apply.

THEREFORE, IT IS HEREBY

ORDERED that the Disclosure Statement is hereby APPROVED, and the Court incorporates in support of this Order its remarks at the initial hearing on Plan confirmation.

FURTHER ORDERED that the objection to the Disclosure Statement filed by the UST on the grounds that the terms of the Debtors lease were not adequately disclosed is overruled, to the extent it remains pending, for the reasons set forth in Paragraph 5.

FURTHER ORDERED that the Plan is hereby CONFIRMED as modified herein.

FURTHER ORDERED that the objection to the Plan filed by Suraci is overruled as it is deemed moot. Suraci takes issue with the amount of his claim as listed in the Plan and in particular Exhibit B to the Plan. Suraci has been previously granted relief from stay, as set forth above, to litigate the existence and amount of his claim. The Plan shall not be binding upon Suraci as to the amount of his claim, which shall be determined by subsequent order of the state court or this Court, or by resolution of the parties.

FURTHER ORDERED that the objection to the Plan filed by the Committee is overruled as it is deemed moot. The Committee objected on the grounds that the Debtor had failed to satisfy the absolute priority rule as set forth in 11 U.S.C. § 1129(b)(2). However, as set forth in 11 U.S.C. § 1129(b)(1), the absolute priority rule is only applicable in instances where the Debtor seeks to "cram down" a chapter 11 plan over the dissent of at least one of the classes. Where all classes have accepted the plan, as is the case here, section 1129(b) is inapplicable. As such, the Debtor was not required to satisfy the absolute priority rule in this case.

FURTHER ORDERED that the objection to the Plan filed by the UST on the grounds that the property of the Debtor will not revest in a subsequent chapter 7 estate in the event of conversion is overruled for the reasons set forth in Paragraph 7.

FURTHER ORDERED that the objection to the Plan filed by the UST on the grounds of infeasibility is overruled for the reasons set forth in Paragraph 17.

FURTHER ORDERED that all fees payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the confirmation hearing, must be paid on or before the Effective

Date. The reorganized debtor is responsible for timely payment of all fees incurred under 28 U.S.C. § 1930(a)(6). After confirmation, and until the Court enters a Final Decree, the reorganized debtor must file with the Court and serve on the U.S. Trustee a quarterly disbursement report for each quarter, or portion thereof, in a format prescribed by and provided to the Debtor by the U.S. Trustee.

FURTHER ORDERED that Section VII.F is modified to provide that the Bar Date for filing applications for administrative expenses, and applications for approval of fees and expenses under § 506(b) shall be 90 days after the Effective Date solely for the Internal Revenue Service.

FURTHER ORDERED that Section III.C.2 is modified to provide that the priority portion of the claims of the IRS will accrue interest at 4% per annum, compounded daily. Based on the $169,992.81 priority amount set forth in the amended claim filed by the IRS, a quarterly payment of $9,424.90 would be required to pay the priority claim in 20 quarterly installments. Conversely, the unsecured claim of the IRS shall be $44,249.73 as reflected in the amended claim.

FURTHER ORDERED that Section III.D.2 is modified to provide that the IRS will retain its liens. The 20 quarterly payments shall be in the amount of $11,687.95 each. The IRS shall not be absolutely barred from pursuing the Debtor's principals on account of the trust fund recovery penalty (TFRP) with respect to the unpaid Form 941 liabilities as set forth in the claim filed by the IRS. In particular, the IRS shall be permitted to conduct an investigation and make TFRP assessments against the persons it determines to be responsible officers. However, as set forth in IRM 5.9.8.10, the IRS shall not collect or seek to collect those assessments (except for offsets of income tax overpayments) as long as the Debtor is current in its Plan payments.

FURTHER ORDERED that Debtor and counsel for Debtor are authorized to take all reasonable actions necessary to carry out the provisions of the Plan and this Order.

FURTHER ORDERED that all causes of action of the Debtor have revested in the Debtor, and the Debtor may prosecute all such causes of action, except to the extent any such causes of action are creations of bankruptcy law, in which case the bankruptcy estate may prosecute any such causes of action.

FURTHER ORDERED that The Court shall retain jurisdiction of this case pursuant to the provisions of the Bankruptcy Code until the proceedings are closed. If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction or is otherwise without jurisdiction over any matter arising out of this proceeding, this provision shall have no effect upon and shall not control, prohibit or limit the exercise of any jurisdiction by any other court having jurisdiction with respect to such matter.

IT IS SO ORDERED.

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Submitted by:
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