IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

In re PONCE DE LEÓN 1403, INC. Debtor(s).	Case No.: 11-07920 (ESL) Chapter 11

OBJECTION TO CONFIRMATION OF AMENDED PLAN OF REORGANIZATION (DOCKET NO. 177)

TO THE HONORABLE ENRIQUE S. LAMOUTTE
UNITED STATES BANKRUPTCY JUDGE:

COMES NOW PRLP 2011 Holdings LLC ("PRLP"), secured creditor herein, through its undersigned counsel and respectfully submits its objection (the "Objection") to Ponce De Leon 1403, Inc.'s (the "Debtor") January 25, 2013 Amended Plan of Reorganization (the "Plan") (Docket No. 177) for the following reasons:

PRELIMINARY STATEMENT

The Plan currently before the consideration of this Court should not be confirmed as it suffers from various deficiencies pursuant to Section 1129 of the Bankruptcy Code (the "Code"). As will be shown by PRLP, the Plan is not feasible due to, among other things, the fact that the treatment provided to creditors in the Plan is inconsistent with the most recent Appraisal Report prepared by Luis E. Vallejo of Vallejo & Vallejo Real Estate Appraisers and Counselors (the "Appraisal Report"). Specifically, the feasibility of the Plan is put into question inasmuch as the proposed Scenario A is predicated upon Debtor entering into an agreement with PRLP (which agreement has not materialized to date), as well as is based on expected sales of certain Residential and Commercial Units for which no historical sales support exists. Furthermore, the Plan cannot be confirmed under the proposed Scenario B treatment as the same is insufficiently

funded as to those creditors in Classes 3 and 4 of the Plan, as well as attempts to improvidently modify and expunge PRLP's collateral, guarantees and security interests therein.

PRLP will show that the Plan, as proposed, is patently unconfirmable in light of the fact that the Plan will not offer creditors more than they would receive under a liquidation scenario, the fact that Debtor has improper and improvidently precluded PRLP from participating in the General Unsecured Creditors Class to collect on their Deficiency Claim (as defined below), particularly when considering that the value of the Metro Plaza properties (as said term is defined below) will not be sufficient to cover PRLP's indebtedness in full. Furthermore, the Appraisal Report is premised and relies on insufficient and incorrect information. Both the applicable law and the testimony offered by the Accountant and Mr. Paul Lavergne support PRLP's contention that the Plan cannot be confirmed.

As shown in this Objection, Debtor's Plan has also been proposed in bad faith as it created a separate classification of creditors for the sole and exclusive purpose of "gerrymandering" the acceptance of one (1) impaired Class for purposes of forcing a cramdown confirmation pursuant to Sections 1129(a)(10) and (b) of the Code. As such, Debtor's Plan is patently unconfirmable and PRLP respectfully requests that the Court deny confirmation of the Plan.

I. UNCONTESTED FACTS

1. On September 16, 2011 (the "Petition Date") Debtor filed a voluntary petition for relief under the provisions of 11 U.S.C. Chapter 11, and as of that date has been managing its affairs and operating its business as debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108. See, Docket No. 1.

2. Debtor and Banco Popular de Puerto Rico ("BPPR"), now PRLP,[1] entered into a Financing Agreement on September 27, 2005 in the amount of $45 million, which loan was utilized for the construction of one hundred fifty (150) apartment units (the "Residential Units"), three commercial space (the "Commercial Units") and a commercial parking garage (the "Commercial Parking") located at 1403 Ponce de León Avenue, intersection Villamil Street, Stop 19, Santurce, Puerto Rico (the "Project" or the "Metro Plaza Property" or the "Collateral"). See, ¶ 5 of Docket No. 38.

3. The Court recognized PRLP's interest and lien over the Project and the Cash Collateral on September 21, 2011. See, Docket No. 7. Moreover, on September 30, 2011, Debtor recognized PRLP's debt as a liquidated, undisputed and non-contingent fully secured claim in the Metro Plaza Property in the amount of $14,723,989. See, Schedule D at Docket No. 14.

4. The Financing Agreement and the Loan Documents were acknowledged, reaffirmed, and ratified by Debtor on October 27, 2011 (Docket No. 38), and once again on February 15, 2012 (Docket No. 60). Furthermore, Debtor recognized and affirmed that, as of the Petition Date, it owed PRLP the amount $14,496,907.24, as well as ratified PRLP's security interest and liens over the Collateral including, but not limited to the Project and the Cash Collateral. See, p. 8 of Docket No. 38.

5. Debtor also recognized and ratified that PRLP has a replacement lien and post-petition security interest on all of the assets and Collateral of Debtor, as well as the fact that PRLP will receive upon confirmation of a plan of reorganization the proceeds of the sale of any of Debtor's assets. See, pp. 6 and 7 of Docket No. 38, and pp. 3 and 4 of Docket No. 60.

[1] BPPR's claim was later assigned to PRLP as evidenced at the *Notice of Transfer of Claim* filed by PRLP on October 5, 2011. See Docket No. 23. To wit, on January 20, 2012, PRLP filed a secured claim against Debtor in the amount of $14,496,907.24, which claim contains copies of all documents evidencing PRLP's interest in the Collateral, including the Cash Collateral. (the "PRLP Allowed Secured Claim"). See Proof of Claim No. 7 ("POC 7").

6. Debtor filed its Disclosure Statement (the "Disclosure Statement") and Plan of Reorganization (the "Original Plan") on April 13, 2012, which were later supplemented on May 18, 2012. See, Dkts. No. 75, 76 and 82.

7. PRLP filed its *Objection to Approval of Disclosure Statement* (the "Objection to the Disclosure Statement") on June 8, 2012, where it contested, among other things, Debtor's valuation of the Residential Units and the Project, and its lack of supporting evidence thereof. See, Docket No. 88.

8. The Court held a hearing on approval of the Disclosure Statement on June 19, 2012 (the "Hearing"). See, Docket No. 105. At the Hearing, Debtor presented the testimony of Debtor's accountant, Mrs. Doris Barroso (the "Accountant") who testified, among other things, as to the historical sales data of the Residential Unit since the filing of the Bankruptcy Case.

9. The Court entered an *Order Approving the Disclosure Statement* on June 25, 2012. See, Docket No. 107.[2]

10. On August 30, 2012, Debtor filed an *Application for Employment of Real Estate Appraiser* to employ Luis E. Vallejo of Vallejo & Vallejo Real Estate Appraisers and Counselors as Debtor's real estate appraiser. See, Docket No. 136. The application was approved on September 25, 2012. See, Docket No. 139.

11. On December 7, 2012, PRLP received a copy of the Appraisal Report for the Metro Plaza Towers Condominium prepared by Luis E. Vallejo of Vallejo & Vallejo.

12. PRLP held the deposition of the Accountant on December 14, 2012. See, Exhibit B of Docket No. 165. On December 20, 2012, PRLP held the depositions of Debtor's principal,

[2] On July 3, 2012, PRLP filed a *Notice of Appeal* and a *Motion for Leave to File Appeal* to the United States District Court for the District of Puerto Rico (the "District Court") of the Order Approving the Disclosure Statement (the "Appeal"). See Dkts. Nos. 112 and 115. The Appeal has been fully briefed by Debtor and PRLP and is currently pending before the District Court as Civil Case No. 12-01577 (JAF).

Mr. Paul Lavergne, and the appraiser, Mr. Luis E. Vallejo. See, **Exhibits A**[3] and **B**, respectively.

13. PRLP filed its *Objection to Confirmation of Plan of Reorganization as Supplemented (Dkts. Nos. 76 And 82)* on December 19, 2012, where it contested the feasibility and confirmation of the Original Plan based, among other things, on the updated property values of the Project as reflected in the Appraisal Report. See, Docket No. 165.

14. Debtor filed the instant Plan on January 25, 2013 in order to modify certain key provisions of the Original Plan, including, proposing a revamped repayment scheme to all creditors in the instant case, modifying the composition and treatment of the Classes under the Original Plan, and to incorporate the updated property values as per the Appraisal Report. See, Docket No. 177. As of February 11, 2013, Debtor owes PRLP the total amount of $10,066,548.77 of its Allowed Secured Claim including $9,630,564.17of principal and not less than $319,637.42of interest, including the costs and attorneys' fees in the amount of $116,347.18.[4]

15. For the reasons described below, PRLP objects to the confirmation of the Plan filed by Debtor in this case.

II. OBJECTIONS AND BASIS THEREOF

The Plan proposes two (2) different treatment scenarios to PRLP's Allowed Secured Claim under Class 2 of the Plan (the "Scenarios"), which can be summarized as follows:

a) **Scenario A:** Scenario A under Class 2 of the Plan proposes to pay the PRLP Allowed Secured Claim in full during a thirty-six (36) months period during which Debtor will retain all of its real property, *i.e.* PRLP's Collateral, and continue administering and

[3] A copy of Mr. Lavergne's deposition transcript will be submitted by PRLP in a separate motion as the final version of the same is currently being retrieved from the Court Reporter.

[4] In the event that it is determined that PRLP's claim is undersecured, the Proof of Claim will be amended accordingly.

selling units for the benefit of PRLP. Under this scenario, Debtor proposes to pay to PRLP 80% of the proceeds of each sale property until full payment of the PRLP Allowed Secured Claim. This scenario requires "a mutually satisfactory budget for the use of the cash collateral and a strong well-planned marketing strategy **and lease program** to be agreed with [PRLP] before the confirmation hearing." See, Docket No. 177 at p. 10 (Emphasis supplied). This proposed treatment will be identified hereinafter as "Scenario A."

b) **Scenario B:** "In the event the Debtor cannot reach an agreement" with PRLP, scenario B under Class 2 of the Plan proposes to surrender to PRLP the Metro Plaza Property as the indubitable equivalent "sufficient to cover the entire debt of PRLP as of this date". *Id.* According to the Plan, upon the alleged full payment to PRLP by and through the surrender of the Project, "the Debtor will be release [sic] from such debt and claim in full." See, Docket No. 177 at p. 11. This proposed treatment will be identified hereinafter as "Scenario B."

A. Objections to Scenario B.

1) Debtor will not be Able to Pay the Entirety of PRLP's Allowed Secured Claim Even with the Turnover of the Project.

Debtor represented at p. 10 of the Plan that, "[i]n the event the Debtor cannot reach an agreement with [PRLP] under Scenario A" it intends to seek confirmation of the Plan under Scenario B. See, p. 10 of Docket No. 177. Given that Debtor has not reached an agreement with PRLP to date, and pursuant to the clear terms of the Plan, PRLP assumes that confirmation will be sought under Scenario B.

As shown above and reflected by the record in this case, PRLP has a lien over all of Debtor's assets including the Residential Units, the Commercial Units and the Parking Garage. According to the Appraisal Report, the Residential Units and the Commercial Units

have a Present Discounted Market Value and/or Value to a Single Purchaser of $7.9 million. In addition, Mr. Vallejo appraises the Parking Garage at a Market Value of $1.5 million, for a total value of the Project of $9.4 million. See, p. 31 of Docket No. 177.[5]

Since PRLP's Allowed Secured Claim amounts to $10,066,548.77 it is evident that the total value of the Project is not sufficient to even cover the PRLP Allowed Secured Claim. Therefore, a turnover of the Collateral cannot logically pay PRLP in full as alleged at p. 11 of the Plan. See, Docket No. 177 at p. 11 ("the Debtor will be release [sic] **from such debt and claim in full**.") (Emphasis supplied). Specifically, under Scenario B of the Plan, PRLP would be left with a deficiency balance of close to $1,109,045.77 (the "Deficiency Claim")[6], which amount has not been classified or treated under the General Unsecured Creditors Class (Class 3).

The aforementioned Deficiency Claim assumes that the value assigned under the Appraisal Report is correct, but the fact remains that the value given to the Commercial Units and the Parking Garage are not reliable and should therefore be reduced. In fact, according to Mr. Vallejo's own testimony, the value of the Parking Garage as contained in the Appraisal Report must be reduced as Mr. Vallejo's opinion incorrectly assumed that (i) a contract will be renegotiated with M.B.T.I. and (ii) the Net Operating Income of the Parking Garage is $139,000.00. See, pp. 49-50 of Docket No. 177 and pp. 17-19 of **Exhibit B**. Nevertheless, Mr. Vallejo testified that there was no certainty that the contract with M.B.T.I. would be executed and that he had not seen any evidence of the existence of a contract or a letter of intent between Debtor and M.B.T.I. See, p. 19 of **Exhibit B**. Furthermore, Mr. Vallejo testified that his

[5] The Appraisal Report also identified a Gross Retail (Differed Sellout) Sales Value for the Residential and Commercial Units of $12.4 million dollars. According to the Appraisal Report itself, this amount does not represent an opinion of value as it fails to take into consideration expenses, carrying costs and present value. See p. 38 of Docket No. 177; see also, pp. 14-16 and 54-56 of Mr. Vallejo's Deposition attached hereto as Exhibit C

[6] This Deficiency Claim takes into consideration the sale of Residential Units 1711 and 1809 after the date of the Appraisal Report. And therefore, the total value of property available was reduced by $442,497.

conclusion of Net Operating Income does not reflect the current state of the Parking Garage and that the correct figure should be about $17,000. *Id.* at pp.22-23

With regards to the Appraisal Report's opinion of value as to the Commercial Units, Mr. Vallejo testified that he had not taken into consideration a Letter of Intent executed by Soka Gakkai International USA ("Soka Gakkai") for the lease of certain of said commercial locales, which Mr. Vallejo admitted was an essential piece of information that was not provided to him at the time the appraisal was performed. *Id.* at p.34. Upon review of the Letter of Intent, Mr. Vallejo concluded that the value of the Commercial Units would be affected adversely if the owner of the units was negotiating a lease requiring the investment of capital from the owner and the rate being negotiated is $9 per square foot. *Id.* at p. 33-40. As evidenced by the Letter of Intent produced by Debtor, the most recent negotiations with Soka Gakkai reflect a rate of $9 per square foot. See, **Exhibit C**. Therefore, the conclusion of value reached by Mr. Vallejo is not accurate and should be reduced. As a result of this, the Deficiency Claim would further increase.

Furthermore, it must be clarified that Debtor's proposed turnover of the Metro Plaza Property to PRLP under Scenario B of the Plan will not be sufficient to comply with the "indubitable equivalent" requirement of Section 1129(b)(2)(a)(iii) of the Code inasmuch Debtor fails to also turnover to PRLP the nearly $233,678.96 Cash Collateral deposited in Debtor's bank accounts, which Cash Collateral is fully encumbered in favor of PRLP.

B. Objections Applicable to all Scenarios

1. The Plan is Not Feasible and, therefore, Does Not Comply with the Requirements of Section 1129(a)(11).

Section 1129(a)(11) of the Bankruptcy Code, commonly referred thereto as the "feasibility test," requires a finding by the court that confirmation of the plan is not likely to be followed by liquidation or the need for further financial reorganization. 11 U.S.C. §1129(a)(11). As one court in this Circuit explained:

> The purpose of Section 1129(a)(11) is manifold: 1) to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation, 2) to prevent an abuse of the reorganization process by confirmation of a plan of a debtor likely to return to bankruptcy, and 3) to promote the willingness of those who deal with post-confirmation debtors to extend the credit that such companies frequently need.

In re Belco Vending, Inc., 67 B.R. 234, 236 (Bankr. D. Mass. 1986) (internal citations omitted).

A plan of reorganization is not feasible when if implemented without modification, it is "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," in violation of Section 1129 of the Bankruptcy Code. 11 U.S.C. § 1129(a)(11). The "feasibility" standard encompassed in Section 1129(a)(11) examines, among other things, the proponent's ability to consummate the provisions of the proposed plan. See In re Lakeside Global II, Ltd., 116 B.R. 499, 506 (Bankr. S.D. Tex. 1989) ("This definition [of feasibility] has been slightly broadened and contemplates whether [(a)] the debtor can realistically carry out its Plan,…and [(b)] whether the Plan offers a reasonable prospects of success and is workable.").

a. Feasibility of Scenario A:

The Plan contains five (5) Classes of creditors. These are: Administrative Claims (Class 1), PRLP (Class 2), General Unsecured Creditors (Class 3), unsecured creditor QB Construction, Inc. ("QB") (Class 4), and Equity Holders (Class 5).

Scenario A of Class 2 of the Plan proposes to pay PRLP in full during a 36 month period in which Debtor will continue to market and sell the properties as a going concern operation. Under Scenario A, the General Unsecured Creditors (Class 3) will be paid a 100% with interest at 3.25% form months 37 – 72 of the Plan. See, Docket No. 177 at pp. 11 and 12.

As shown through the Projected Statement of Cash Flows (the "Forecast") included at pp. 24 – 27 of the Plan, in order for Debtor to be able to comply with the terms of Scenario A, it will

need to sell all Residential and Commercial Units of the Metro Plaza Property within this 36-months period. See, Docket No. 177 at pp. 24 – 27. The Residential Units are composed of various different types of apartment units, including two or three bedroom apartments, as well as penthouse apartments.

According to the Accountant's testimony at the December 14, 2012 deposition, there have been no sales of the penthouse apartments to date, neither pre nor post-petition, yet Debtor's Forecast predicts that all penthouse units will be sold during the first three years of the Plan. See, pp. 61 – 66, and 95 - 97 of Exhibit B at Docket No. 165. The Forecast also predicts that Debtor will be able to sell the Commercial Units during this three year period as well, however no Commercial Units have been sold either pre or post-petition to date. See, *Id.* at pp. 34, 93, and 95 - 97. In fact, the alleged sale of the Commercial Units have been put into question based on the Accountant's testimony that the Commercial Units will apparently be leased, and not sold, as estimated in the Forecast. See, *Id.* at pp. 34 – 37. The apparent lease of the Commercial Units was confirmed in the December 20, 2012 deposition of Mr. Paul Lavergne. See, **Exhibit A**.

Given that Debtor has not been able to sell any penthouse apartments nor any Commercial Units to date, as well as the fact that Debtor is not in the process of selling the Commercial Units but rather appears to be in negotiations to lease the same, it is clear that Scenario A of the Plan is not feasible pursuant to 11 U.S.C. § 1129(a)(11).

b. Feasibility of Scenario B:

Debtor proposes to pay Class 3 (General Unsecured Creditors) creditors under a Scenario B treatment of the Plan "in full…within one year from [sic] effective date" through a capital contribution made by the shareholders of the Debtor. See, Docket No. 177 at p. 12. This alternate treatment to unsecured creditors was never included as part of the Original Plan. Furthermore, the Disclosure Statement does not provide any information whatsoever as to the shareholder's

liquidity or financial capacity to make the required capital contribution within the time frame contemplated in the Plan.

Absent the afore-mentioned critical information, the alleged full payment to creditors under Class 3 is highly speculative, at best. This fact gains added weight when considering that Debtor did not account for PRLP's $1,109,045.77 Deficiency Claim when proposing this so-called "full payment" treatment to Class 3 under Scenario B of the Plan. As such, the Scenario B treatment to creditors under the Plan is not feasible either.

Finally, it must be noted that Debtor does mention in the Plan or its Disclosure Statement how it expects to fund the full payment to Administrative Claims creditors under Class 1 of the Plan, particularly when considering that Debtor's cash on hand are fully encumbered to PRLP, which as of December 31, 2012 was estimated in the amount of $233,678.96 (See, Docket No. 176), and the fact that PRLP has not agreed to the use of said Cash Collateral for the payment to Class 1 creditors, or any other creditor for that matter, and which Cash Collateral must be reserved for the exclusive payment to PRLP pursuant to 11 U.S.C. §§ 506, 1129(a)(7), and 1129(b)(2)(a)(iii).

Pursuant to the foregoing, this Court should deny the approval of the Plan as it fails to comply with the feasibility requirements of Section 1129(a)(11) of the Bankruptcy Code. 11 U.S.C. § 1129(a)(11).

2. Gerrymandering of the Classes in Violation of Section 1122 and 1129(a)(10)

The Original Plan contained four (4) Classes of creditors. To wit: Administrative Claims (Class 1), PRLP (Class 2), General Unsecured Creditors (Class 3), and Equity Holders (Class 4). As explained above, the January 25, 2013 Plan before the Court's consideration currently contains five (5) Classes of creditors. These are: Administrative Claims (Class 1), PRLP (Class 2), General Unsecured Creditors (Class 3), unsecured creditor QB Construction, Inc. ("QB") (Class 4), and Equity Holders (Class 5).

QB formed part of, and was included as, a member of the General Unsecured Creditors under Class 3 of the Original Plan. Notwithstanding the fact that QB is an unsecured creditor, Debtor has segregated QB from Class 3 into a new Class 4 under the current Plan.

The proper classification of claims in a plan of reorganization is contained at Section 1122 of the Bankruptcy Code. The same provides:

> (a) Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.
> (b) A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

11 U.S.C. § 1122.

"[A]lthough the Code requires all claims within a class be substantially similar, courts--using varying theories and approaches--generally do not require that all substantially similar claims be placed in the same class. The separate classification of otherwise substantially similar claims and interests is acceptable as long as the plan proponent can articulate a "reasonable" justification for separate classification." 7-1122 Collier on Bankruptcy ¶ 1122.03.

Based on the above, Section 1122 of the Bankruptcy Code does not strictly require that all similar claims be grouped together into one class. As such, the Code, and the case law, recognizes that a Debtor may separate technically similar claims into separate classes. See, 11 U.S.C. § 1122(b), which allows the separation of certain unsecured claims based on their dollar amounts for administrative convenience purposes.

"The proponent of a plan may also choose to create other classes based on reasonable distinctions among claims and may therefore place substantially similar claims in different classes." Collier at ¶ 1122.03. "The plan proponent has substantial flexibility…and 'classification is constrained by two straight-forward rules: Dissimilar claims may not be

classified together; similar claims may be classified separately only for a legitimate reason.'" In re Quigley Co., 377 B.R. 110, 116 (Bankr. S.D.N.Y. 2007).

Notwithstanding the foregoing, a debtor cannot deliberately exclude a claim from a substantially similar class, or impermissibly group a claim into a dissimilar class, for the sole purpose of complying with Section 1129(a)(10), that is, for the sole and exclusive purpose of obtaining approval of the plan by, at least, one impaired class. 11 U.S.C. § 1129(a)(10). This type of practice is what is technically considered "class gerrymandering". See, Collier at ¶ 1122.03 ("Courts may allow the separate classification of substantially similar claims if deemed reasonable or justified from a business standpoint, **but will reject attempts to classify or "gerrymander" claims solely to create an impaired class that will vote in favor of a plan"**) (Emphasis supplied).

Debtor's Plan in the instant case fails to satisfy Sections 1122(a) and 1123(a)(4) of the Code since it improperly and unreasonably created a new Class 4 for the segregation and separation of QB from the other General Unsecured Creditors at Class 3 of the Plan, with repayment terms different and distinct from all other unsecured creditors in this case. The segregation of QB from Class 3 into its own independent Class 4 is an improper attempt to gerrymander claims in order to create an impaired accepting class and satisfy part of the requirements of section 1129(b). In re Barney & Carey Co., 170 B.R. 17, 24 (Bankr. D. Mass. 1994) **("artificial classification' may not be used to 'gerrymander,' that is, for the purpose of creating one accepting impaired class to improperly manipulate the voting requirements of section 1129(a)(10) [of the Bankruptcy Code]."**) (Emphasis supplied).

Furthermore, this "gerrymandering" issue becomes even more paramount when taking into consideration that Debtor will be forced to seek confirmation under Scenario B of the Plan. As explained in greater detail above, PRLP will not be able to receive full payment of its claim under Scenario B of the Plan in light of the current value of the Metro Plaza Property as reflected

at the Appraisal Report. As such, PRLP will be left with a Deficiency Claim of $700,000, which Deficiency Claim must be treated and included as part of the General Unsecured Creditors Class (Class 3) of the Plan.

Given that PRLP's Deficiency Claim must form part of General Unsecured Creditors Class of the Plan, and pursuant to the fact that said Deficiency Claim may be sufficient to control Class 3 as per Section 1126(c) of the Code, it appears that Class 4 was created for the sole and exclusive purpose of obtaining at least one impaired accepting class for "cramdown" purposed under 11 U.S.C. § 1129(a)(10). Based on the above, Debtor is attempting to induce this Court into error by creating a fictitious impaired class through the establishment of Class 4 in the Plan. This action constitutes a classic gerrymandering technique. In re El Comandante Mgmt. Co., LLC, 2006 Bankr. LEXIS 3820 (Bankr. D.P.R.); In re Barney & Carey Co., 170 B.R. 17, 24 (Bankr. D. Mass. 1994). See also, Phoenix Mut. Life Ins. Co. v. Greystone III Joint Venture (In re Greystone III Joint Venture), 995 F.2d 1274 (5th Cir. 1991).

In light of the foregoing, Debtor's Plan should not be confirmed by this Honorable Court as it fails to comply with the requirements of proper classification under Sections 1122, 1123 and 1129(a)(10) of the Bankruptcy Code.

3. The Plan as Filed has not been Proposed in Good faith as per Section 1129(a)(3).

As previously explained in this Objection, no plausible prospect exists for Debtor to achieve reorganization with the Plan as currently proposed. Upon analyzing the current value of the Metro Plaza Property as per the Appraisal Report and contrasting said data with Debtor's the sales trend for the Residential and Commercial Units as provided in the Forecast, Debtor's proposed treatment to creditors under the Plan, as well as the clear "gerrymandering" scheme included in the Plan, it is clear that none of Debtor's proposed Scenarios will be able to be confirmed by this Honorable Court, much less fully satisfy the entirety of PRLP's claim in this

case. The Plan as filed has not been proposed in good faith inasmuch as it alleges that PRLP will be "paid in full" when, in fact, it will not, for the sole purpose of liberating any and all guarantors from possible collection actions by PRLP.

Bankruptcy Code § 1129(a)(3) requires that the proposed plan of reorganization meet a "good faith" standard, as a condition to its confirmation. The term "good faith" is not defined in the Bankruptcy Code but courts have settled on a description that requires "a reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Code." Michael J. Holleran, *et al.*, *Bankruptcy Code Manual* § 1129.1.3 (2008) (*citing* In re McCormick, 49 F.3d 1524, 1526 (11th Cir. 1995)); See also, In re Coastal Cable T.V., Inc., 709 F.2d 762, 765 (1st Cir. 1983) (noting that a "good faith" plan of reorganization "must bear some relation to the statutory objective of resuscitating a financially troubled corporation"). The courts will look at the totality of the circumstances surrounding the plan to determine whether bad faith exists. *Id*. If the court finds bad faith, the plan cannot be confirmed. *Id*.

In the case at bar, although a plan has been proposed, it lacks a reasonable probability of meeting the statutory requirements for confirmation. As a result, the Plan does not comply with the good faith requirement of Section 1129(a)(3).

4. PRLP will not Receive More under the Plan than under a Hypothetical Liquidation Scenario as per Section 1129(a)(7).

Section 1129(a)(7)(A)(ii) of the Code requires that creditors in each class "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 such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date[.]" As explained in greater detail above, given the Project's current value as per the Appraisal Report, none of the Plan's Scenarios will be able to contemplate for the full payment of PRLP's secured claim. In light of this, the Plan fails to comply with Section 1129(a)(7) as PRLP is not receiving, at least, the same or more

than what it would otherwise receive in a Chapter 7 liquidation, nor is it receiving property of a value not less than the value of the Collateral as of the effective date of the Plan.

III. CONCLUSION

WHEREFORE, for all of the foregoing reasons, PRLP respectfully requests that the Court enter an order denying confirmation of the Plan, as supplemented, and granting to PRLP such further and other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 11th day of February, 2013.

We hereby certify that on this same date, we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the participants including the United States Trustee.

O'NEILL & BORGES LLC
Attorneys for PRLP 2011 Holdings, LLC
American International Plaza
250 Muñoz Rivera Avenue, Suite 800
San Juan, Puerto Rico 00918-1813
Tel: (787) 764-8181
Fax: (787) 753-8944

s/Hermann D. Bauer
Hermann D. Bauer
USDC-PR 215205
hermann.bauer@oneillborges.com

s/Ubaldo M. Fernández
Ubaldo M. Fernández
USDC No. 224807
ubaldo.fernandez@oneillborges.com

s/Nayuan Zouairabani
Nayuan Zouairabani
USDC No. 226411
nayuan.zouairabani@oneillborges.com