

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re:	)	Bk. Case No. 25-04126-JBM7
	)	Bk. Case No. 25-04127-JBM7
	)	
SIDE YARD PUBLIC HOUSE, INC.,	)	<i>Jointly Administered</i>
	)	
Debtor-in-Possession.	)	<b>MEMORANDUM DECISION RE PLAN CONFIRMATION</b>
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	)	
	)	
MILOVAN, INC.,	)	
	)	Date: May 7, 2026
Debtor-in-Possession.	)	Time: 10:30 a.m.
	)	Judge: Hon. J. Barrett Marum

Debtors Side Yard Public House, Inc. (“Side Yard”) and Milovan, Inc. (“Milovan” and jointly, the “Debtors”) sought confirmation of their joint small business plan under Sub Chapter V of the Bankruptcy Code. Following various iterations and amendments to the plan, the Court confirmed the Debtors’ Amended Subchapter V Plan Dated March 6, 2026 (“Plan”), subject to the Debtors’ presentation of additional evidence and clarification of certain provisions in the Plan by way of the confirmation order. Satisfied with the Debtors’ submissions, the Court entered an order confirming the Plan on May 22, 2026.

1 The Court issues this memorandum decision to highlight the fact that, due primarily to  
2 the dogged efforts of its counsel, the U.S. Small Business Administration (“SBA”) cast its ballots  
3 in favor of the Debtors’ plan. The SBA’s vote allowed the Debtors to confirm a consensual plan  
4 under Subchapter V of the Bankruptcy Code; had the SBA abstained, the Debtors would have  
5 had to confirm non-consensually given the size and nature of the SBA’s claims. For a  
6 Subchapter V debtor, like Side Yard and Milovan, confirmation of a plan on a consensual basis  
7 impacts the plan’s implementation, including the date of the debtor’s discharge and the  
8 Subchapter V trustee’s discharge from the case. So, the consequences to a Subchapter V debtor  
9 when a creditor like the SBA does not vote are real and have led to a debate as reflected in the  
10 case law regarding how or whether to count for plan confirmation purposes a class that does not  
11 vote. The Court need not weigh in on that debate here because the SBA actually voted and  
12 because this is the first instance of the SBA voting on a Sub Chapter V plan of which the Court is  
13 aware, the Court issues this memorandum decision to highlight that fact.

14 **FACTUAL BACKGROUND**

15 The Debtors filed chapter 11 petitions under Subchapter V of the Bankruptcy Code on  
16 October 2, 2025, and the Court quickly approved the cases for joint administration based on  
17 request though first day motions. Side Yard owns and operates an outdoor restaurant and bar in  
18 Escondido, California; Milovan operates a market on the same premises. The Debtors share  
19 common ownership and management.

20 As part of their request for first day relief, the Debtors moved for court approval for use  
21 of cash collateral. They explained that in June 2020, Milovan obtained a loan from the SBA in  
22 the amount of \$150,000, through the COVID-19 Economic Injury Disaster Loan program  
23 (“COVID EIDL”). **ECF No. 6 at 2**; *see also* POC No. 8-1 at 4. The SBA subsequently increased  
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1 the amount of the loan to Milovan three times, to \$500,000 in September 2021, then to \$598,700  
2 in December 2021, and finally to \$780,900 in January 2022, which was balance of the COVID  
3 EIDL on the date of petition. **ECF No. 6 at 2.**

4 Milovan scheduled the COVID EIDL on its Schedule D in the amount of \$780,900, and  
5 stated that the claim was secured by all Milovan assets other than ABC licenses. *See* 25-04127-  
6 JBM11 **ECF No. 31 at 10.** The Debtor noted that the value of collateral supporting the SBA  
7 claim was \$101,514.51. *Id.*

8 The SBA subsequently filed a proof of claim in the Milovan case, which stated the claim  
9 in the amount of \$899,796.32 at a 3.75% interest rate, secured by Milovan's personal property  
10 via a security agreement and UCC-1 Financing Statement. POC No. 8-1.

11 The Debtors' Plan that the Court ultimately confirmed classified the SBA secured claim  
12 into two sub-classes: Class 2A as a secured claim against Side Yard's office furniture in the total  
13 amount of \$53,500 and Class 2C as a secured claim against Milovan in the total amount of  
14 \$101,514.51. **ECF No. 100.** The Plan provided that both secured claims would be paid on  
15 quarterly basis in certain sums until paid in full. *Id.* at 6-7. And the Plan further provided that  
16 the unsecured portion of the SBA claim against Milovan, in the amount of \$744,781.81, would  
17 be treated as a Class 3B claim, or part of the unsecured creditor class to be paid pro rata with all  
18 other unsecured creditors on a quarterly basis. *See id.* at 8. The Plan provided that all three of  
19 these classes were impaired.

20 Attached to the Debtors' Brief in Support of Plan Confirmation was the declaration of  
21 Debtors' counsel, who, in turn, attached to his declaration the ballots received based on the  
22 Debtors' solicitation of creditors. **ECF No. 107 at 16-17.** Among the ballots returned were three  
23 ballots submitted on behalf of the SBA with respect to Class 2A (secured claim – Side Yard),  
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1 Class 2C (secured claim – Milovan), and Class 3B (unsecured claim - Milovan). *Id.* at Exs. 1-2  
2 at 20-23; Ex.4(a) at 26-27. All three ballots accepted the Plan. *Id.*

3 The SBA ballots were signed and submitted by an Assistant U.S. Attorney on behalf of  
4 the SBA (“SBA Counsel”). The SBA Counsel regularly appears for the SBA through the U.S.  
5 Attorney’s Office in bankruptcy matters before this Court.

6 The Court issued a Tentative Ruling prior to the confirmation hearing, noting, among  
7 other things, that § 1126 governed acceptance or rejection of chapter 11 plans, which provided  
8 that where the United States was a creditor, the Bankruptcy Code provided that the Secretary of  
9 the Treasury could accept or reject the plan. **ECF No. 110 at 2**. The Court noted, however, that  
10 the plain language of the statute was permissive rather than mandatory and that in the Debtors’  
11 case, there were no objections to the Plan. *Id.* As such, the Court stated that it would hear from  
12 the SBA Counsel on this point, including clarification on the SBA Counsel’s authorization to  
13 submit ballots on behalf of the SBA, given the Court’s prior encounter with the same issue in a  
14 different Subchapter V case, in which the same debtor’s counsel and SBA Counsel advised the  
15 Court that the SBA did not vote on chapter 11 plans. *Id.*

16 At the confirmation hearing, SBA Counsel explained that he sought guidance from the  
17 SBA on the issue of plan voting and that he was referred to the Commercial Litigation Branch of  
18 the U.S. Department of Justice (“DOJ”). Based on internal discussions, the DOJ advised SBA  
19 Counsel that he had the authority to sign and submit a ballot for the SBA in his capacity as  
20 counsel, subject to internal and confidential guidelines, presumably with respect to the terms of  
21 the plan. The SBA Counsel received concurrence from the SBA. Based on the SBA Counsel’s  
22 representations at the confirmation hearing and for the reasons stated in its Tentative Ruling, the  
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1 Court was left satisfied that the SBA’s ballots were proper and that the Court could count them  
2 in favor of Plan confirmation.

3 The Court continued the confirmation hearing to May 7, 2026, pending additional  
4 evidence in the form of a supplemental declaration from the Debtors’ principal regarding the  
5 valuation of certain assets. The Debtors filed the principal’s supplemental declaration, which  
6 was satisfactory, and the Court issued a Tentative Ruling providing that it would confirm the  
7 Plan as amended and revised, directed the Debtors to upload a confirmation order, and vacated  
8 the May 7, 2026 hearing. Following the Debtors’ submission, on May 22, 2026, the Court  
9 entered an order confirming the Plan. **ECF No. 121.**

10 **ANALYSIS**

11 Section 1126 addresses and sets parameters regarding the acceptance or rejection of a  
12 chapter 11 reorganization plan, including who in the case is entitled to vote on the debtor’s plan.  
13 In a Subchapter V case, who is entitled to vote, if the creditor (or equity security holder) votes,  
14 and how the creditor (or equity security holder) votes may impact whether a plan is confirmed on  
15 a consensual or a nonconsensual basis under the Bankruptcy Code. And how the bankruptcy  
16 court confirms a Subchapter V plan under § 1191, in turn, informs certain other post–  
17 confirmation matters, including the post–confirmation duties, if any, of the Subchapter V trustee  
18 and when in the case the Subchapter V debtor obtains a discharge.

19 Here, the Plan provided for the SBA’s claims under three different classes and treated the  
20 classes as impaired, thus on its face entitling the SBA to cast ballots. Given the SBA’s treatment  
21 under the Plan, the SBA’s balloting was a critical component on whether the Court confirmed the  
22 Plan on a consensual or a non-consensual basis.

1 Based on the purpose of the SBA to assist small businesses, it is unsurprising that the  
2 SBA is a recurrent creditor in certain Subchapter V cases, including this one. This is particularly  
3 true at this juncture in time. The SBA previously provided relief to numerous small businesses  
4 during the COVID-19 pandemic through an Economic Injury Disaster Loan program (“COVID  
5 EIDL”), among other disaster relief programs offered to small businesses. *See generally U.S.*  
6 *Small Business Administration, COVID-19 Economic Injury Disaster Loan,*  
7 <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/eidl>. Years later, some of  
8 these small businesses who obtained relief through the COVID EIDL program have found  
9 themselves in bankruptcy and, in particular, Subchapter V of chapter 11 based on eligibility and  
10 election under the Bankruptcy Code.

11 But Subchapter V debtors who propose plans that include SBA claims (particularly  
12 secured claims) have often faced an impediment to confirmation on a consensual basis: the SBA  
13 has taken the position generally that it does not vote on chapter 11 plans “as a matter of internal  
14 ‘policy’ or practice, . . . in light of § 1126(a) which provides that the Secretary of Treasury may  
15 vote on behalf of the United States.” *In re 5 Star Home Care, Inc.*, 2026 WL 1127906, at \*9  
16 (Bankr. D.S.C. Apr. 24, 2026).

17 The SBA is an agency of the United States government. Section 1126(a) provides in  
18 relevant part that “[i]f the United States is a creditor . . . , the Secretary of the Treasury may  
19 accept or reject the plan on behalf of the United States.” 11 U.S.C. § 1126(a). Given the SBA’s  
20 absence in voting on a plan where its claims are impaired, many a Subchapter V debtor has  
21 confronted the reality of its inability to confirm a consensual Subchapter V plan consistent with  
22 § 1126. *See, e.g., In re 5 Star Home Care, Inc.*, 2026 WL 1127906, at \*11; *In re M.V.J. Auto*  
23 *World, Inc.*, 661 B.R. 186, 188, 190 (Bankr. S.D. Fla. 2024). Indeed, this Court has, prior to this  
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1 case, had the SBA stipulate to its treatment in the plan and say that it supports the plan, all while  
2 being unwilling to cast an official ballot presently required by Bankruptcy Rule 3018 in favor of  
3 the plan.

4 Here, as stated above, the Court confirmed the Debtors' Plan on a consensual basis  
5 pursuant to § 1191(a), based on its inclusion of the SBA's ballots cast in favor of the Plan. The  
6 Court's decision was premised on the following reasons:

7 First, at the confirmation hearing the SBA Counsel represented to the Court that he had  
8 submitted the ballots on behalf of the SBA with the express authorization of both the DOJ and  
9 the SBA, following consultation with both the department and the agency. The SBA Counsel  
10 also made clear to the Court that such authorization was not reflexive but based on the DOJ and  
11 the SBA's review of the Plan, as well as their respective authorization to cast the ballots on  
12 behalf of the SBA, similar in the Court's view to the analysis undertaken by any other creditor or  
13 interest holder on a reorganization plan. The SBA Counsel also provided the disclaimer that  
14 regarding future Subchapter V cases in this District at least, the decision on balloting for the  
15 SBA would be made on a case-by-case basis.

16 Second, the language referencing the Treasury Secretary in § 1126(a) is written in the  
17 permissive, which supports the interpretation that the Treasury Secretary's vote on the plan is not  
18 mandatory, such that the Treasury Secretary is not the only person authorized to vote on a  
19 chapter 11 plan. *See, e.g., In re Mikulec Indus., Inc.*, 1992 WL 170685, at \*3 (W.D.N.Y. July  
20 13, 1992) (noting that the reference to the Treasury Department in § 1126(a) was not "an  
21 absolute requirement that the government's vote be cast by the Secretary of Treasury, especially  
22 in light of the use of the permissive 'may' in the above-quoted provision" and thus allowing a  
23 ballot cast by the Secretary of Defense).

1 This interpretation of § 1126(a) also makes practical sense to the Court. It seems highly  
2 unlikely the Treasury Secretary will ever cast a ballot on a Subchapter V plan filed in the  
3 bankruptcy courts in which the plan provides for an impaired SBA claim; clearly, the Secretary  
4 has not been doing so and cannot be expected to change course going forward. Assuming this to  
5 be the case, holding that only the Treasury Secretary can vote on such a plan necessarily results  
6 in the complete foreclosure of consensual plan confirmation for a Subchapter V debtor with the  
7 SBA as an impaired creditor. In the Court’s view, Congress, which enacted the Small Business  
8 Reorganization Act of 2019 and created Subchapter V as a streamlined, cost-effective process for  
9 small business debtors in chapter 11 and set it up to incentivize consensual plan confirmation,  
10 could not have intended a de facto prohibition of consensual plan confirmation to Subchapter V  
11 debtors proposing a Subchapter V plan inclusive of impaired SBA claims.

12 The Court also notes that forthcoming amendments to Bankruptcy Rule 3018 will likely  
13 further facilitate the SBA’s voting through its counsel rather than through written ballot signed  
14 and submitted by the Secretary of the Treasury. As amended to take effect on December 1, 2026  
15 if Congress takes no action to the contrary, the bankruptcy court will be permitted to allow a  
16 creditor – or the creditor’s counsel or authorized agent – to accept the plan on the record at the  
17 plan confirmation hearing, among other things. *See U.S. Courts, Pending Rules and Forms*  
18 *Amendments*, [https://www.uscourts.gov/sites/default/files/document/2026\\_congressional\\_package\\_final.pdf](https://www.uscourts.gov/sites/default/files/document/2026_congressional_package_final.pdf)  
19 *at* 33-34.

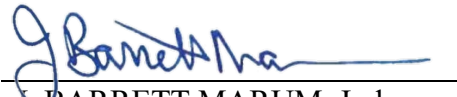
20 Finally, the Court notes that here no party objected to the Debtors’ Plan or to the Court  
21 counting the SBA’s ballots. In another context, perhaps that makes a difference in the Court’s  
22 reasoning or ultimate determination. Here, however, the Court discerned no prejudice to any  
23 party in terms of consensual plan confirmation pursuant to § 1191(a) and so the Court confirmed  
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1 the Plan on that basis. The Court is hopeful that the SBA will vote more frequently in future  
2 cases before this and other courts.

3 **CONCLUSION**

4 The SBA submitted written ballots in favor of the Debtors' Amended Subchapter V Plan  
5 Dated March 6, 2026. Based on these ballots, which the Court deemed appropriately cast  
6 consistent with the provisions of the Bankruptcy Code, and the ballots cast by other creditors, the  
7 Court confirmed the Debtors' Subchapter V plan on a consensual basis pursuant to **11 U.S.C.**  
8 **§ 1191(a).**

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11 Dated: June 23, 2026

  
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J. BARRETT MARUM, Judge  
United States Bankruptcy Court