

WRITTEN DECISION – NOT FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re:	)	Bk. Case No. 25-05061-JBM11
	)	
IMH DALLAS ARIOSO, LLC,	)	
	)	
Debtor.	)	
	)	<b>MEMORANDUM DECISION</b>
	)	<b>GRANTING MOTION FOR RELIEF</b>
	)	<b>FROM STAY</b>
	)	
	)	
	)	
	)	
	)	
	)	Date: March 11, 2026
	)	Time: 2:30 p.m.
	)	Judge: Hon. J. Barrett Marum

**I. INTRODUCTION**

On December 1, 2025, IMH Dallas Arioso, LLC (the “Debtor”) filed a Voluntary Petition under Chapter 11 (the “Petition”), identifying itself as a Single Asset Real Estate (“SARE”) Debtor. ECF No. 1 at 2. The Debtor owns and operates its business renting out the residential property located at 3030

1 Claremont Drive, Grand Prairie, Texas 75052 (the “Property”) consisting of nineteen buildings and 288  
2 apartments. ECF No. 26 at 2.

3 It is undisputed that the Property is underwater and that the Debtor has not commenced making  
4 the monthly payments that a SARE debtor may make to hold off stay relief after the 90<sup>th</sup> day of a  
5 bankruptcy case. The Debtor’s Lender (defined below) has therefore moved for stay relief under sections  
6 362(d)(2) and (d)(3). The Court will **GRANT** that motion under both (d)(2) and (d)(3) because, as  
7 discussed in detail below, the Debtor will not be able to confirm a plan. The Court is mindful that this  
8 motion comes relatively early in the case and that as a result it is not appropriate to hold the Debtor’s  
9 plan to the standard that would apply at confirmation; indeed, the standard under both (d)(2) and (d)(3)  
10 regarding confirmability of a plan is lower than that. Here, however, the Debtor’s plan is plainly  
11 unconfirmable as drafted. Stay relief is therefore appropriate.

12  
13 **II. BACKGROUND**

14 The Debtor purchased the Property in February 2022 for \$64,000,000. *Id.* In the Debtor’s  
15 Schedules, the Debtor now values the Property at \$45,000,000. ECF No. 12 at 6. To complete the  
16 purchase, the Debtor borrowed \$56,000,000 from RREF IV – D Clairemont Drive, LLC’s (the  
17 “Lender’s”) predecessor in interest by way of the “Senior Loan” as identified in the Debtor’s Schedules.  
18 ECF No. 12 at 11. The Senior Loan is secured by a Deed of Trust against the Property. ECF No. 47-10  
19 at 36; *see also* ECF No. 47-10 at 190-326. Through a series of assignments, the Lender became the  
20 owner of the Senior Loan. *Id.* After the Debtor filed the Petition, the Lender filed a claim totaling  
21 \$63,790,457.73 (the “Claim”), which accounted for unpaid principal on the Senior Loan, accrued  
22 interest, fees, obligations and other liabilities, costs, and attorneys’ fees. POC No. 11; *see also*  
23 Addendum to Proof of Claim, ECF No. 47-10 at 5. The portion of the Claim that exceeds the value of  
24 the Property (the “Lender’s Deficiency Claim”) is unsecured.

25 On February 13, 2026, the Lender filed a Motion for Relief from Automatic Stay (the “Motion”)  
26 to allow it to foreclose on the Property. ECF No. 47. The Lender argued the Debtor’s lack of equity in  
27 the Property and inability to successfully reorganize (and thus that the Property is not necessary to an  
28 effective reorganization) entitled it to stay relief. ECF No. 47-1 at 5. On February 25, 2026, the Debtor

1 opposed (the “Opposition”), arguing that the Debtor would be able to propose a confirmable plan because  
2 the Debtor contended the Lender’s Deficiency Claim is “secured by, among other things, a Guaranty”  
3 (the “Guaranty”). ECF No. 50-1 at 2. The Debtor claimed the Guaranty justifies separately classifying  
4 the Lender’s Deficiency Claim from other unsecured creditors (mainly vendors that provided services to  
5 the Property), thereby creating the possibility there will be an impaired consenting class notwithstanding  
6 the Lender’s anticipated rejection of the plan. ECF No. 50-1 at 5. On March 2, 2026, the Debtor filed  
7 its Initial Chapter 11 Plan (the “Plan”). ECF No. 53. On March 4, 2026, the Lender filed a Reply to the  
8 Debtor’s Opposition (the “Reply”) that referred directly to the Plan and identified numerous issues with  
9 it that the Lender contends preclude its confirmation. ECF No. 56.

10 On March 11, 2026, the Court held a hearing on the Motion. Following the hearing, the Court  
11 required the parties to submit additional briefing to address its outstanding questions, specifically as to  
12 the Lender’s claim for relief under 11 U.S.C. § (“Section”) 362(d)(3). ECF No. 67. The Court in part  
13 concluded that because the Reply referred directly to the Plan, it functioned as an initial moving paper  
14 with respect to the alleged defects in the Plan and thus entitled the Debtor to file a supplemental  
15 opposition. The Court specifically directed the parties to brief the Section 362(d)(3) standard for stay  
16 relief based on non-confirmability of a plan, and whether it focuses on the plan the Debtor filed by the  
17 90<sup>th</sup> day of the case, or a modified version of the plan that the Debtor might file in the future. *Id.* Both  
18 parties timely submitted their supplemental filings.

19  
20 **III. LEGAL STANDARD**

21 Under Section 362(d), the Court must grant relief from the automatic stay following notice and  
22 a hearing under certain circumstances.

23 The Court must grant relief with respect to an act to gain possession of or exercise control over  
24 property of the estate pursuant to subsection (d)(2) when “the debtor does not have an equity in such  
25 property and such property is not necessary to an effective reorganization.” 11 U.S.C. § 362(d)(2). The  
26 Supreme Court set forth the standard for determining when property is necessary to an effective  
27 reorganization, holding “this requires [] not merely a showing that if there is conceivably to be an  
28 effective reorganization, this property will be needed for it; but that the property is essential for an

1 effective reorganization *that is in prospect.*” *United Sav. Ass’n of Texas v. Timbers of Inwood Forest*  
2 *Assocs., Ltd.*, 484 U.S. 365, 375-376 (1988) (emphasis in original). The Court went on to explain such  
3 a showing calls for “a reasonable possibility of a *successful reorganization* within a reasonable time.”  
4 *Id.* (citations omitted) (emphasis added).

5 The Court must also grant relief with respect to a stay of an act against single asset real estate by  
6 a creditor whose claim is secured by an interest in such real estate unless the debtor has done one of two  
7 things within 90 days of entry of the order for relief: “the debtor has filed a plan of reorganization that  
8 has a reasonable possibility of *being confirmed* within a reasonable time,” or the debtor has commenced  
9 making monthly payments that satisfy certain conditions. 11 U.S.C. § 362(d)(3) (emphasis added).

10 **IV. DISCUSSION**

11 The Court concludes stay relief to allow the foreclosure sale to proceed is appropriate pursuant  
12 to both subsections 362(d)(2) and (d)(3). It is clear the Plan the Debtor filed has no hope of ever being  
13 confirmed, much less being confirmed within a reasonable time. It is also apparent that the Plan  
14 represents the kind of visionary scheme that Congress was specifically addressing when it added section  
15 (d)(3) to the Bankruptcy Code. The Court will therefore grant the Motion.

16 **A. Section 362(d)(2)**

17 First, the parties agree the Debtor lacks any equity in the Property. The Debtor concedes the  
18 value of the Property is lower than the total of the encumbrances upon it.<sup>1</sup>

19 Accordingly, the Court must determine whether the Property is necessary to an effective  
20 reorganization. As discussed above, if the Debtor has “a reasonable possibility of a successful  
21 reorganization within a reasonable time” for which the Property is necessary, then the Court need not  
22 grant the requested stay relief under this subsection.

23 The Court concludes that there is no reasonable possibility of a successful reorganization within  
24 a reasonable time in this case for the reasons detailed below. The Plan would require a complete  
25 substantive overhaul for the Court to be able to confirm it, and the Debtor has provided little support for  
26 that possibility in its Supplemental Opposition. Nor is there any indication the Lender will change its

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28 <sup>1</sup> Although the Debtor checked the box on its Opposition to claim that it has equity in the Property, the Lender properly points out “the Debtor has admitted in its Schedules and at the 341 meeting of creditors in this case that it lacks equity in the Property.” ECF No. 56 at 2; *see also* ECF Nos. 16 and 59 (the Debtor’s Schedules and Amendment to Schedules).

1 mind and vote in favor of a different plan the Debtor might propose at some point in the future. This  
2 means stay relief under (d)(2) is appropriate.

3 **1. The Lender’s Deficiency Claim Must Be Classified With All Other Unsecured Creditors**

4 The Court concludes the Plan improperly classifies the Lender’s Deficiency Claim separately  
5 from other general unsecured claims based on the Guaranty executed on February 10, 2022, by and  
6 between the Lender’s predecessor in interest and three individuals (Eric Jones, Tressa Majka, and Ed  
7 Monce, collectively the “Guarantors”). ECF No. 50-2 at 3. Under Section 1122(a), “[e]xcept as  
8 provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class  
9 only if such claim or interest is substantially similar to the other claims or interests of such class.”  
10 Despite the permissive language in the statute, bankruptcy courts require debtors to justify separate  
11 classification: “the term ‘substantially similar’ is not defined in the Bankruptcy Code, but as the  
12 legislative history to § 1122 illustrates, the term ‘substantially similar’ requires ‘classification based on  
13 the nature of the claims or interests classified....’” *In re Mason*, 456 B.R. 245, 249 (Bankr. N.D. W. Va.  
14 2011) quoting H.R. Rep. No. 595, 95th Cong. 1st Sess. 406 (1977); S.Rep. No. 989, 95th Cong., 2d Sess.  
15 118 (1978).

16 The Debtor improperly separately classified the Lender’s Deficiency Claim here for three  
17 reasons. First, the Debtor has not submitted any evidence of the Guarantors’ current net worth and thus  
18 cannot demonstrate their meaningful solvency. Second, the current state court litigation on the Guaranty  
19 does not increase the probability of a third-party source of recovery without such evidence. Third, the  
20 Debtor does not present a legitimate business or economic reason for separate classification.

21 **a. Meaningful Solvency of Guarantors and Separate Classification**

22 As a threshold matter, the Guaranty does not serve as “security” for the Lender’s Deficiency  
23 Claim as the Debtor argued. ECF No. 50-1 at 2. To constitute security for a loan, an instrument must  
24 pledge specific assets as collateral from which the lender could seek recovery. Under the Guaranty, the  
25 Guarantors “irrevocably and unconditionally guarantee[d] to Lender the prompt and unconditional  
26 payment and performance of the Guaranteed Obligations as and when the same shall be due and payable,  
27 whether by lapse of time, by acceleration of maturity or otherwise. Guarantor hereby irrevocably and  
28 unconditionally covenants and agrees that it is liable for the Guaranteed Obligations as a primary

1 obligor.” ECF No. 50-2 at 3-4. However, the Guarantors did not pledge specific assets or funds by way  
2 of the Guaranty. Although the Guaranty in theory provided the Lender with recourse for the Debtor’s  
3 default under the loan, it does not function as security for the loan.

4 The Court thus turns to whether the Guaranty in this case renders the Lender’s Deficiency Claim  
5 unique from other unsecured creditors’ claims such that it is not “substantially similar” to those claims  
6 and warrants separate classification. Here, the Lender’s unsecured deficiency claim is substantially  
7 similar to other unsecured claims and the Guaranty cannot justify separate classification.

8 When examining a guaranty’s effect on claim classification, courts look to evidence regarding a  
9 creditor’s ability to actually recover on the guaranty. The court in *In re South Loop 2656, LLC*, No.  
10 8:12-bk-20466-MW, 2013 Bankr. Lexis 5554 at \*3 (Bankr. C.D. Cal. Oct. 16, 2013) held:

11  
12 There is more to the matter than the bare existence of a guarantee. There must be a  
13 showing that the guarantors are solvent in a meaningful way (i.e., de minimis solvency  
14 will not suffice). If the Guarantors are all insolvent, the guarantee does not render the US  
15 Bank’s deficiency claim dissimilar to other general unsecured creditors. Here, Debtor has  
16 not made a sufficient showing that the Guarantors are meaningfully solvent (or, indeed,  
17 solvent at all). Because Debtor has the burden of proof on this issue, this component of  
18 the analysis is decided in favor of US Bank.

19  
20 Ninth Circuit Courts have since adopted this reasoning. For example, the court in *In re NNN Parkway*  
21 *400 26, LLC*, agreed that:

22 since this entire question of separate classification is one addressed to separating reality  
23 from façade, it follows that the basis for the distinction must be one *that is meaningful*. As  
24 in *South Loop* this court holds that a guaranty from an *insolvent* guarantor provides  
25 nothing meaningful and so it becomes a distinction without a difference and cannot alone  
26 support separate classification.

27  
28 *In re NNN Parkway 400 26, LLC*, 505 B.R. 277, 284 (Bankr. C.D. Cal. 2014). The *NNN Parkway 400*  
29 *26* court concluded the debtor could not separately classify a claim based on a guaranty where the  
30 “evidentiary showing regarding the strength of this guaranty is so thin as to be almost non-existent,” and  
31 the debtor presented no persuasive evidence as to meaningful solvency or the probability of recovery in  
32 the state court litigation. *Id.*

1 The Declaration (mistitled “Memorandum of Points and Authorities in Support of Opposition to  
2 Motion for Relief”) the Debtor submitted along with the Opposition in this case merely states, “[w]hen  
3 the Loan was made, the Guarantors represented to the Original Lender that they had a combined net  
4 worth of over \$100 million.” ECF No. 50-2 at 2. The Declaration makes no mention of the Guarantors’  
5 present net worth or ability to satisfy a judgment on the Guaranty should the Lender obtain one. Even  
6 if four-year old information regarding the Guarantors’ net worth were somehow probative of their current  
7 finances, it is not clear whether the Guarantors provided the Lender with evidence supporting their net  
8 worth at the time of making the Guaranty; instead, the Declaration states they simply “represented” the  
9 same to the Lender. Moreover, only one of the Guarantors signed the Declaration, so the Court lacks  
10 evidence from the remaining Guarantors.

11 The Debtor’s entire basis for separately classifying the Lender’s Deficiency Claim hinges on the  
12 Guaranty and the Court cannot by way of the Declaration determine whether the Guaranty actually  
13 provides a third-party source of repayment. ECF No. 50-1 at 3 (“Because Secured Lender’s deficiency  
14 claim has a third-party source of repayment that other unsecured claims do not, it is not substantially  
15 similar to other unsecured claims and must be separately classified pursuant to section 1122(a).”). The  
16 Debtor had the burden to demonstrate the Guarantors are solvent in a meaningful way and failed to do  
17 so.

18 **b. Litigation on the Guaranty and Separate Classification**

19 The Debtor further argued that because the Lender “very recently sued the Guarantors” to enforce  
20 the Guaranty in state court, this case is distinct from other plans with guaranteed loans on the basis that  
21 the litigation increases the Lender’s chance of third-party recovery. ECF No. 50-1 at 5. In support of  
22 this proposition, the Debtor cited *In re Johnston*, 21 F.3d 323 (9th Cir. 1994), *as amended* (May 6, 1994),  
23 where the Ninth Circuit concluded the debtor properly separately classified a creditor’s claim in its plan  
24 when the debtor and the creditor engaged in state court litigation respecting the claim. The Court  
25 concludes the *Johnston* case does not stand for the proposition that, on its own, the existence of state  
26 court litigation based on a guaranty justifies separate classification. Instead, the case illustrated that a  
27 debtor can justify separate classification of a claim when the claimant with an unsecured claim can seek  
28

1 recovery through *both* non-debtor collateral and against a non-debtor on a guaranty claim, wholly  
2 different circumstances from those in this case where no such non-debtor collateral exists.

3 In *Johnston*, the debtor commenced litigation contemporaneously with his bankruptcy filing and  
4 the creditor countersued with respect to delivered products and a personal guarantee for the cost of the  
5 products. The bankruptcy court, affirmed by both the Bankruptcy Appellate Panel and the Ninth Circuit,  
6 confirmed the debtor’s plan including the separate classification of the creditor’s claim against the  
7 debtor/guarantor because it “considered [the creditor] to be situated differently from all other unsecured  
8 creditors” due to the pending lawsuit. *Id.* at 326. In *Johnston*, the claim was “partially secured by  
9 collateral of the business debtor and “the primary obligor,” or actual assets over and above the personal  
10 guaranty by the individual debtor and CEO of the business debtor. *Id.* at 328. Importantly, the individual  
11 debtor’s case rose to the Ninth Circuit on appeal, so the collateral at issue was indeed non-debtor  
12 collateral from which the claimant could seek recovery.

13 Although the Ninth Circuit affirmed on the basis that “the legal character of [the creditor’s] claim  
14 is *not* ‘substantially similar to the other claims or interests of such class[es]’” and that the creditor thus  
15 had “a status different from the other unsecured creditors,” this Court concludes the legal character of  
16 the Lender’s Deficiency Claim here does not warrant separate classification. *Id.* at 328 citing *In re Los*  
17 *Angeles Land & Invs., Ltd.*, 282 F. Supp. 448 (D. Haw. 1968), *aff’d*, 447 F.2d 1366 (9th Cir. 1971). The  
18 *Johnston* court went on to explain courts look to the nature of the claim in the “ordinary common  
19 vernacular” sense in assessing claim classification, looking to the rights conferred on a creditor by the  
20 claim’s legal character. *Id.* at 327.

21 Other Ninth Circuit courts have since applied these principles to determine proper classification  
22 of claims. Even if state court litigation on a guaranty ensues, if the guarantors are not meaningfully  
23 solvent such litigation will not alter the probability of third-party recovery. In *LOOP 76*, an Arizona  
24 Bankruptcy Court analyzed *Johnston*, concluding “the only factor in *Johnston* that seems at all relevant  
25 to either the bankruptcy court’s finding, or the Ninth Circuit’s affirmance of substantial dissimilarity, is  
26 that the creditor *had a non-debtor source of repayment of the claim.*” *In re LOOP 76, LLC*, 442 B.R.  
27 713 (Bankr. D. Ariz. 2010), *aff’d sub nom. In re Loop 76, LLC*, 465 B.R. 525 (B.A.P. 9th Cir.  
28 2012), *aff’d*, 578 F. App’x 644 (9th Cir. 2014) (emphasis added).

1 Practically speaking, because the Debtor did not demonstrate the Guarantors are meaningfully  
2 solvent, the Lender’s Deficiency Claim is not in fact of a different status from other unsecured creditors.  
3 Though the Guaranty on its face would appear to indicate the Lender’s claim may be of a different status  
4 from other claims, in these circumstances it does not meaningfully alter the Lender’s Deficiency Claim’s  
5 status. The *Johnston* court reasoned specifically with respect to the state court litigation justifying  
6 separate classification for the creditor’s claim that the creditor “cannot deny the possibility, if not  
7 necessarily the probability, that, if successful in the litigation, it could be paid in full before all other  
8 unsecured creditors.” *Id.* at 328.

9 Here, however, the Lender could be successful in the state court litigation and still recover  
10 nothing if the Guarantors are insolvent or only barely solvent. Nothing before the Court, in either the  
11 Plan or the Declaration, points to a different outcome and it is not at all uncommon for a plaintiff to  
12 prevail in a lawsuit and then recover nothing. The Plan could have, but did not, leverage the Guarantors  
13 by including them through either pledges of funds or capital contributions; instead, the Debtor simply  
14 argues that the Lender could sue the Guarantors in state court, which does not bolster the Plan’s  
15 possibility of confirmation.

16 **c. Legitimate Business or Economic Reasons for Separate Classification**

17 In concluding that the plan’s classification scheme in *Johnston* did not unfairly discriminate and  
18 was fair and equitable, the court reasoned “there were reasonable, nondiscriminatory reasons for” the  
19 separate classification. *Id.* The court in *In re Barakat* reasoned along the same lines, holding in similar  
20 circumstances that “absent a legitimate business or economic reason, separate classification is not  
21 permitted.” *In re Barakat*, 99 F.3d 1520 (9th Cir. 1996). The debtor could not separately classify the  
22 creditor’s claim in *Barakat* because the “Debtor classified [the creditor’s] unsecured deficiency claim  
23 separately from other general unsecured claims for the purpose of creating an impaired class that would  
24 accept the Plan.” *Id.* at 1524.

25 The “one clear rule” to which courts agree respecting separate classification mandates that  
26 debtors “not classify similar claims differently in order to gerrymander an affirmative vote on a  
27 reorganization plan.” *In re Barakat*, 99 F.3d 1520 at 1525, quoting *Matter of Greystone III Joint Venture*,  
28 995 F.2d 1274, 1279 (5th Cir. 1991), *on reh’g* (Feb. 27, 1992); *see also In re Tucson Self-Storage, Inc.*,

1 166 B.R. 892, 897 (B.A.P. 9th Cir. 1994). When claim classification prevents the largest creditor from  
2 voting with the rest of the general unsecured creditors, such classification runs “contrary to the principles  
3 underlying the Bankruptcy Code, that is, that creditors holding greater debt should have a comparably  
4 greater voice in reorganization.” *Id.* citing *In re Boston Post Rd. Ltd. P’ship*, 21 F.3d 477, 483 (2d Cir.  
5 1994). In *Boston Post Rd.*, even though “prohibiting the debtor from separately classifying deficiency  
6 claims will effectively bar single asset debtors from utilizing the Bankruptcy Code’s cramdown  
7 provisions, the court was not persuaded that a single-asset debtor should be able to cramdown a plan that  
8 disadvantages the largest creditor.” *In re Barakat*, 99 F.3d 1520 at 1526 (citing *In re Boston Post Rd.*  
9 *Ltd. P’ship*, 21 F.3d 477).

10 Here, to conclude the Lender’s Deficiency Claim is not substantially similar to other unsecured  
11 creditors and thus may be separately classified would be fundamentally unfair where the value of the  
12 Lender’s Deficiency Claim constitutes approximately 95% of the value of the unsecured claims in this  
13 case.<sup>2</sup> To allow separate classification would be to allow impermissible gerrymandering of claims for  
14 the purpose of securing plan confirmation. Principles of equity do not so permit.

15 The Debtor suggested a business purpose for separate classification in the Supplemental  
16 Opposition, stating “Debtor will have a continued need for the services of these trade vendors as it  
17 operates the Property. Failing to pay their general unsecured claims in a timely manner could jeopardize  
18 the Debtor’s ability to obtain these services in the future.” ECF No. 86 at 16. However, a continued  
19 need to employ vendors at the Property does not necessarily support separately classifying the usual  
20 vendors’ claims. Grand Prairie, Texas has a population of nearly 200,000 people and is in very close  
21 proximity to both Dallas and Arlington, Texas, both large cities with countless businesses. If some or  
22 all of the Debtor’s pre-petition vendors refuse to do business with it post-confirmation because they are  
23 not quickly paid in full under the Plan, the Debtor does not explain why it will not simply be able to find,  
24 for example, a new painting company to replace G & C Painting, which the Debtor scheduled as being  
25 owed a little over \$25,000. ECF No. 16 at 26. Or a new plumber to replace Fred’s Plumbing, which the  
26 Debtor scheduled as being owed about \$12,000. *Id.* Accordingly, the Court concludes that the Debtor

27  
28 <sup>2</sup> “The Secured Lender’s deficiency claim will account for 95% of the unsecured claims in this case.” ECF No. 47-1 at 5;  
*see also* Claims Register.

1 should have access to many vendors that could provide services to the Property so the justification of  
2 needing to maintain these specific vendor relationships is very weak.

3 In sum, the Debtor can only successfully reorganize within a reasonable time if the Debtor can  
4 separately classify the Lender's claims, otherwise no impaired consenting class will exist (because the  
5 Lender will vote its unsecured claim against confirmation) and the Plan will not be confirmed. But the  
6 Debtor has not adequately demonstrated the Lender has a non-debtor source of repayment for the  
7 Lender's Deficiency Claim, nor that the Debtor has a legitimate business or economic reason for separate  
8 classification. Moreover, the Lender's Deficiency Claim swamps the other claims' aggregate value  
9 within the general unsecured class. This, plus the dubious rationales the Debtor has offered to support  
10 the separate classification, strongly indicates that the Debtor's attempt to separately classify the Lender's  
11 Deficiency Claim in the first instance constitutes impermissible gerrymandering of claims for the  
12 purpose of plan confirmation. The Plan's proposed treatment of the classes of claims further supports  
13 this conclusion (as detailed further below). Accordingly, the Debtor has no reasonable possibility of a  
14 successful reorganization within a reasonable time; the Debtor cannot separately classify the Lender's  
15 Deficiency Claim and the Lender indicated it will vote against a plan when properly classified with the  
16 remaining vendor claims such that the Debtor will not be able to confirm a plan. ECF No. 47-1 at 16  
17 ("In the instant case, the Secured Lender will not vote in favor of any plan.").

## 18 **2. Impermissible Discrimination Between Classes of Claims**

19 Under Section 1129(b)(1), the court shall confirm a plan if the plan meets the provisions of  
20 Section 1129(a) and "if the plan does not discriminate unfairly, and is fair and equitable, with respect to  
21 each class of claims or interests that is impaired under, and has not accepted, the plan." Even if the  
22 Debtor could separately classify the Lender's claims, the Plan unfairly discriminates. Section 8.4 of the  
23 Plan proposes to pay all the other unsecured creditors "ninety (90) days after the Effective Date," and to  
24 only pay the Lender's Deficiency Claim (as well as the secured portion of the Claim) by "June 30, 2029,"  
25 after a speculative sale of the Property. ECF No. 53 at 34-35. The Debtor's Plan therefore singles out  
26 its largest creditor for the worst treatment under the Plan by providing that it will not receive payment  
27 for an extended period of time while all other creditors receive payment on an expedited basis. As  
28 detailed above, the Court concludes the possibility of employing other trade vendors mitigates the

1 Debtor's concern as to obtaining services at the Property, so no legitimate business reason warrants this  
2 disparate treatment. Moreover, the Guaranty's existence does not meaningfully show the Lender  
3 possesses a third-party source of repayment, so the Guaranty does not justify the treatment as "fair." In  
4 short, it seems clear the Debtor has set its Plan up to provide very attractive treatment to all unsecured  
5 creditors aside from the Lender in the hopes those other unsecured creditors vote in favor of the Plan.

6 **3. The Plan is not Fair and Equitable**

7 The Court also concludes the Plan's treatment of the secured portion of the Lender's Claim is  
8 not fair and equitable. For purposes of determining whether a plan provides fair and equitable treatment  
9 toward a class of secured claims, courts refer to Section 1129(b)(2)(A)(i), which states with respect to  
10 secured claims:

- 11 (I) that the holders of such claims retain the liens securing such claims, whether the  
12 property subject to such liens is retained by the debtor or transferred to another entity, to  
13 the extent of the allowed amount of such claims; and  
14 (II) that each holder of a claim of such class receive on account of such claim deferred  
15 cash payments totaling at least the allowed amount of such claim, of a value, as of the  
16 effective date of the plan, of at least the value of such holder's interest in the estate's  
17 interest in such property;  
18 (ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the  
19 liens securing such claims, free and clear of such liens, with such liens to attach to the  
20 proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii)  
21 of this subparagraph; or  
22 (iii) for the realization by such holders of the indubitable equivalent of such claims.

19 The Plan as drafted fails to satisfy any of the means for demonstrating fair and equitable treatment.

20 In particular, the Court concludes the negative amortization under the proposed Plan is not fair  
21 and equitable. Ninth Circuit courts consider ten factors in determining whether proposed negative  
22 amortization may be fair and equitable. *Great W. Bank v. Sierra Woods Grp.*, 953 F.2d 1174, 1178 (9th  
23 Cir. 1992). The Court concludes that the negative amortization at issue in this case is not fair and  
24 equitable according to at least seven of those factors. The Plan does not offer a prime rate of interest  
25 and present value of the deferred payments, the amount and length of the proposed deferral is not  
26 reasonable, the ratio of debt to value throughout the plan is not satisfactory, the Debtor's financial  
27 projections are not sufficiently proven and the Plan does not appear feasible (as detailed further below),  
28 the Plan unduly shifts the risks to the Lender, and the risks are borne by just one creditor. The Court is

1 especially concerned with the Plan’s proposed interest payments. The Debtor proposes to pay 2.75%  
2 less than the prime interest rate despite the Supreme Court’s holding in *Till* that adjusting the prime rate  
3 upward based on the risk of nonpayment is the appropriate method for determining an adequate interest  
4 rate in the cram down context. *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). The Plan’s treatment of  
5 the Lender’s Claims cuts in the opposite direction. Under *Till*, such treatment is not fair and equitable.

6 **4. The Plan is not Feasible**

7 Finally, the Court concludes the Plan as written is not feasible. The Plan’s success hinges on a  
8 speculative proposed sale of the Property. The Debtor claims, with little support, that in June 2029 the  
9 Debtor will be able to sell the Property for \$81,600,000.00. ECF No. 53 at 64.

10 Feasibility is primarily demonstrated by the Debtor showing the Plan’s “reasonable probability  
11 of success.” *In re Acequia, Inc.*, 787 F.2d 1352, 1364-1365 (9th Cir. 1986); see *In re Sunnyslope Housing*  
12 *Limited Partnership*, 859 F.3d 637, 646-47 (9th Cir. 2017) (holding that feasibility “requires the debtor  
13 to demonstrate that the plan has a reasonable probability of success”) (internal quotations omitted). To  
14 demonstrate feasibility in liquidating plans, courts in the Ninth Circuit generally focus on evidence such  
15 as appraisals of real estate or analyses of publicly traded stock prices. See *In re Coastal Equities, Inc.*,  
16 33 B.R. 898, 907 (Bankr. S.D. Cal. 1983) (finding a liquidating plan feasible where the Debtor provided  
17 competent evidence of the subject property’s appraised value which was utilized in the plan). In the  
18 context of the sale of real property, as here, the Debtor must therefore provide evidence of the Property’s  
19 value as utilized in the Plan and the Debtor’s ability to complete the sale as contemplated by the Plan.

20 Here, the Debtor proposes to eventually liquidate the Property following certain renovations and  
21 increases in occupancy at the Property. In the Supplemental Opposition, the Debtor attached a 2022  
22 appraisal of the Property (the “Appraisal”) that reflects the Property’s value with 94% occupancy at  
23 \$65,100,000. ECF No. 86-1 at 7. According to the Appraisal, which anticipated \$5,000,000 in  
24 renovations in 2022, the Property would have been worth \$76,800,000 at the same occupancy rate the  
25 Debtor now aims to achieve. ECF No. 86-1 at 9. Now, the Debtor proposes to expend only \$2,000,000  
26 on renovations (the funds for which it will draw from projected income, which is also speculative), but  
27 still expects the value for the Property and business to far exceed that in the Appraisal’s projected  
28 increase. ECF No. 53 at 64. The Debtor has not provided competent evidence to support the Plan’s

1 reasonable probability of success by way of an outdated appraisal and less significant renovations in an  
2 increasingly unstable economy.

3 Moreover, as the Lender pointed out in the Supplemental Reply, the Plan “provides no  
4 mechanism for how the Property will be marketed or sold.” ECF No. 56 at 9. Accordingly, the Court  
5 concludes the Plan as drafted is not feasible.

6 **B. Section 362(d)(3)**

7 In the Motion, the Lender claimed, “the Debtor’s cash-flow is woefully insufficient to make  
8 monthly payments to the Secured Lender at the non-default rate under the Loan (as hereafter defined),”  
9 and the Debtor did not dispute the same. ECF No. 47-1 at 6. So, the only means by which the Debtor  
10 could support the Court’s denying stay relief under subsection (d)(3) would be by demonstrating that  
11 “the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within  
12 a reasonable time.”

13 The Court concludes the standard for reasonable success by the Debtor under Section 362(d)(3)  
14 must be higher than the standard under Section 362(d)(2). The Court agrees with the Lender that the use  
15 of distinct language in the different subsections within the same section points to Congress’s intent to  
16 set different standards. *See* ECF No. 87 at 3. The Lender argues the Plan must be confirmable as filed  
17 on or before the 90<sup>th</sup> day after filing the Petition; the Debtor argues to the contrary that the Debtor need  
18 only “demonstrate that its plan has ‘a realistic chance of being confirmed [and] is not patently  
19 unconfirmable,’” instead claiming it need only demonstrate “the reasonable possibility of plan  
20 confirmation.” ECF No. 86 at 16-17 quoting *In re RIM Dev., LLC*, 448 B.R. 280, 289 (D. Kan. 2010).

21 The reasoning in *In re BGM Pasadena, LLC*, No. 2:15-BK-27833-BB, 2016 WL 1738109  
22 (Bankr. C.D. Cal. Apr. 27, 2016) further persuades the Court that Congress intended to require the Debtor  
23 to file a substantively confirmable plan within 90 days of filing a SARE petition. In *BGM*, the court  
24 detailed whether the debtor was entitled to a stay pending appeal after it entered two orders granting  
25 relief from the automatic stay. In so doing, the court analyzed the debtor’s likelihood of success on the  
26 merits in showing the creditor was not entitled to stay relief. The court had granted stay relief under  
27 both Section 362(d)(1) and Section 362(d)(3).

1 In assessing “whether the plan proposed by the Debtor had a reasonable possibility of being  
2 confirmed within a reasonable period,” the *BGM* court held the debtor could not satisfy that burden  
3 because “[t]he plan in its present form ha[d] no prospect whatsoever of being confirmed.” *In re BGM*  
4 *Pasadena, LLC*, No. 2:15-BK-27833-BB, 2016 WL 1738109 at \*2. The court acknowledged that the  
5 debtor “may be able to propose a different plan at some point in the future,” but that possibility could  
6 not relieve the debtor from the 90-day deadline in Section 362(d)(3). *Id.* The court’s sound reasoning  
7 followed:

8  
9 The whole purpose of section 362(d)(3) is to expedite the process of proposing a realistic  
10 plan in cases that Congress believed should and could move promptly toward  
11 reorganization. If a debtor wants to take more than 90 days to formulate its plans for  
reorganization, Congress decided that the debtor should have to pay for that privilege by  
making monthly payments.

12 *Id.* When the debtor filed multiple versions of a plan leading up to the 90-day deadline and “none of  
13 the[] versions ha[d] a realistic prospect of reorganization within a reasonable period,” the subsection  
14 dealing especially with SARE cases afforded the creditor stay relief. *Id.*

15 However, the Court does not go so far as to conclude Section 362(d)(3) prevents a debtor from  
16 making *any* changes at all to a plan that it has filed for purposes of analyzing its reasonable possibility  
17 of being confirmed within a reasonable period. It would make little sense to read Section 362(d)(3) to  
18 foreclose the debtor’s ability to make alterations to correct technical defects or minor changes that would  
19 otherwise prevent confirmation. When a plan requires wholesale material changes, though, as would be  
20 required in this case pursuant to the analysis under Section 362(d)(2) above, the debtor has not submitted  
21 a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time.

22 The Court concludes the Plan in this case suffers the same fatal defect—it is a visionary scheme  
23 at best. In other words, the Plan is patently unconfirmable as written (and thus the Lender is entitled to  
24 relief even under the Debtor’s proposed standard). Under the Plan, the Debtor cannot pay interest, even  
25 at the prime rate. The Plan also shifts all the economic risk to the Lender. The existence of the Guaranty  
26 and the Lender’s pursuit of the Guarantors does not change this analysis. For the same reasons the Plan  
27 is unconfirmable under Section 362(d)(2) as described in detail above, the Court concludes the Lender  
28 is entitled to stay relief under Section 362(d)(3).

V. CONCLUSION

The Debtor failed to demonstrate that it either has a reasonable possibility of a successful reorganization within a reasonable time or that it has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time. Accordingly, the Court **GRANTS** the Motion. The Court does not waive the fourteen-day stay of this Order under FRBP 4001.

Dated: April 14, 2026

  
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J. BARRETT MARUM, Judge  
United States Bankruptcy Court