Dated: February 08, 2022
The following is ORDERED:

M. Ruthie Hagan
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
GETWELL PHARMACY OF TENNESSEE, INC.,
Debtor

Case No. 21-21598
Chapter 11
Subchapter V

MEMORANDUM OPINION AND ORDER CONFIRMING DEBTOR'S AMENDED CHAPTER 11 PLAN

On January 12, 2022, the Court held a hearing to determine if the Subchapter V Plan of Reorganization, as amended on January 25, 2022, (the "Amended Plan") of Getwell Pharmacy of Tennessee, Inc. ("Getwell" or "Debtor") should be confirmed. At the hearing, Getwell presented evidence in support of confirmation while AmerisourceBergen Drug Corporation ("ABDC"), the only creditor to object to confirmation, presented evidence opposing confirmation. After

reviewing (i) the Debtor's Plan, as amended, (ii) the Objection to confirmation filed by Amerisource, (iii) the testimony given in this case, (iv) the complete record in this case, and (v) after receiving evidence and hearing arguments of counsel at the confirmation hearing, the Court makes the following findings of fact and conclusions of law under Fed. R. Civ. P. 52, made applicable to this case by Fed. R. Bankr. P. 7052 and 9014. All findings of fact shall constitute findings of fact even if stated as conclusions of law, and all conclusions of law shall constitute conclusions of law even if stated as findings of fact. For the reasons set forth below, Debtor's Subchapter V Plan, as amended, is confirmed pursuant to 11 U.S.C. § 1191.

FINDINGS OF FACT

1. The Debtor is a corporation organized under the laws of the State of Delaware with its principal place of business in Germantown, Tennessee. Rick Chambers ("Mr. Chambers") is the sole shareholder of the Debtor, and he is the president and owner of the Debtor.

2. The corporation was formed in December 2018. Shortly after its formation, Debtor began plans to open three to four pharmacy locations in Tennessee, South Carolina and Mississippi. The Debtor owns and operates a pharmacy in Olive Branch, Mississippi.

3. Prior to this bankruptcy case being filed, Danny Cordell, a creditor, obtained an allegedly improper consent judgment and attempted to seize all assets located on the premises of the Olive Branch, Mississippi location.

4. On May 13, 2021, the Debtor filed this Subchapter V case under Chapter 11 of the Bankruptcy Code. [DE 1] After filing this case, the Court ordered the allowance of continued use of cash collateral and entered several interim orders on the use of cash collateral. [DE 33, 42 and 83]

5. On August 25, 2021, the Court granted Debtor's Motion to Incur Additional Debt up to $10,000 from Broadway Advance, LLC ("Post-Petition Financing"). [DE 70]

6. On July 13, 2021, ABDC filed its proof of claim in the amount of $163,392.16 which included a secured claim of $162,997.16. [Claim No. 7-1]

7. On August 11, 2021, the Debtor filed its Small Business Subchapter V Plan of Reorganization. [DE 64] On January 25, 2022, the Debtor filed its First Amended Small Business Plan of Reorganization. [DE 93]

8. The Debtor's Amended Plan proposes to sell all assets to Broadway Advance, LLC free and clear of liens and claims. The Amended Plan provides for the payment in full of the Post-Petition Financing with all remaining proceeds going to ABDC. In addition, the Amended Plan allows ABDC the right to credit bid for the assets. [DE 93]

9. On or about September 17, 2021, ABDC submitted a ballot rejecting the Debtor's Plan and asserted a claim of $162,997.16. [DE 77]

10. On September 15, 2021, ABDC filed its Objection to Confirmation of Debtor's Proposed Subchapter V Plan of Reorganization. [DE 72]

11. On January 12, 2022, the Court conducted an evidentiary hearing to consider confirmation of the Amended Plan (the "Confirmation Hearing").

12. During the Confirmation Hearing, the Debtor presented the testimony of the Debtor's sole shareholder and president, Mr. Chambers.

13. The Court has considered the testimony and the credibility of the witness in making these Findings of Fact and Conclusions of Law.

CONCLUSIONS OF LAW

1. Exclusive Jurisdiction and Core Proceeding. The Court has subject matter jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant

to 28 U.S.C. § 157(b)(2)(A),(L) and (O). The Court may exercise its subject matter jurisdiction pursuant to 28 U.S.C. § 157(b)(1). The Debtor is and remains qualified as a "Debtor" under 11 U.S.C. § 109.

2. Venue. Venue in the Western District of Tennessee is proper as of the Petition Date and remains proper under 28 U.S.C. §§ 1408 and 1409.

3. Judicial Notice. The Court takes Judicial Notice of the docket in this Chapter 11 case maintained by the Clerk of Court, including all pleadings and other documents filed, all Orders entered, evidence and arguments made, offered, or introduced at the hearings, including, but not limited to, the Plan, as amended.

4. The Court finds that the Amended Plan adequately provides the information required by 11 U.S.C. § 1190(1).

5. Confirmation of Debtor's Amended Subchapter V Plan of Reorganization

(i) 11 U.S.C. §§ 1191

In a case in which a subchapter V debtor cannot obtain full consent for the plan (i.e. one or more impaired classes of claims or interests rejects the plan), 11 U.S.C. § 1191(b) sets forth the requirements for cramdown and replaces the requirements of § 1129(b). 11 U.S.C. § 1181(a). Instead, under § 1191(b), the court shall confirm a subchapter V plan that satisfies the confirmation requirements, other than the requirements of § 1129(a)(8) (providing that all classes vote to accept the plan or not be impaired by the plan), § 1129(a)(10) (requiring at least one impaired class to accept the plan), and § 1129(a)(15) (requiring payment of unsecured creditors in full or devoting allocated projected disposable income to the plan), so long as the plan does not discriminate unfairly against any impaired, non-consenting class, and is fair and equitable regarding each class of impaired claims or interests that has rejected the plan. 11 U.S.C. § 1191(b). As such, the Court must first determine whether, other than paragraphs 8, 10, and 15 of

§ 1129(a), the requirements of § 1129(a) have been met.

(ii) Requirements of § 1129(a)

a) Section 1129(a)(1)

The first requirement of § 1129(a) is that the plan must comply with "the applicable provisions of this title." 11 U.S.C. § 1129(a)(1). Debtor's Amended Plan sets forth six (6) classes of claims and interests. [DE 93] Upon review, the Amended Plan properly classifies claims and interests in accordance with §§ 1122 and 1123(a)(1). [DE 93] The claims and interests placed in each class are substantially similar to other claims and interests in each such class. [DE 93] Valid business, factual, and legal reasons exist for separately classifying the various classes of claims and interests created under the Amended Plan, and such classes, and the Amended Plan's treatment thereof, do not unfairly discriminate between holders of claims or interests in each class. The Amended Plan also provides for the same treatment by Debtor of each claim or interest in each respective class, thereby satisfying § 1123(a)(4). Therefore, the Amended Plan satisfies §§ 1122 and 1123(a). Accordingly, Debtor's Amended Plan satisfies § 1129(a)(1).

b) Section 1129(a)(2)

Section 1129(a)(2) requires that "[t]he proponent of the plan compl[y] with the applicable provisions of this title." 11 U.S.C. § 1129(a)(2). No party objected to the Amended Plan for failing to comply with the provisions of title 11. This Court accordingly concludes that the Debtor established by a preponderance of the evidence that it complied with the applicable provisions of the Bankruptcy Code, including the provisions regarding the contents of a subchapter V plan of reorganization, thereby satisfying § 1129(a)(2).[1]

[1] All that is required in a subchapter V plan is that the debtor include a brief history of its business operations, a liquidation analysis, and projections with respect to the ability of the debtor to make payments under the proposed plan of reorganization.

c) Section 1129(a)(3)

Under § 1129(a)(3), a plan must have "been proposed in good faith and not by any means forbidden by law." As an initial matter, the Court concludes that the Amended Plan has not been proposed by any means forbidden by law. No party-in-interest has suggested otherwise and leaving that aspect of § 1129(a)(3) aside, the Court focuses on the requirement of good faith. The Bankruptcy Code does not define the term "good faith," but the Sixth Circuit has held that "§ 1129(a)(3) expressly requires an inquiry into the debtor's motives in proposing the plan ...." *Village Green I, GP v. Fed. Nat'l Mortgage Ass'n (In re Village Green I, GP)*, 811 F.3d 816, 819 (6th Cir. 2016). "[T]he important point of inquiry is the plan itself and whether such plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code." *In re Madison Hotel Assocs.*, 749 F.2d 410, 425 (7th Cir. 1984); *see also In re Trenton Ridge Investors, LLC*, 461 B.R. 440, 468 (Bankr. S.D. Ohio 2011). One of the primary purposes of Chapter 11 is the preservation of the business as a going concern. *See Trenton Ridge*, 461 B.R. at 469. Another is the "maximization of the value of the estate." *Id.* (quoting *Bonner Mall P'ship v. U.S. Bancorp Mortgage Co. (In re Bonner Mall P'ship)*, 2 F.3d 899, 916 (9th Cir. 1993)). In assessing whether the Debtor proposed the Amended Plan in order to achieve a result consistent with the purposes of the Bankruptcy Code, the Court must examine the totality of the circumstances. *See Trenton Ridge*, 461 B.R. at 468-69. Considering the totality of the circumstances, the Court concludes that the Debtor has established by a preponderance of the evidence[2] that it filed the Amended Plan as part of its efforts to preserve its business as a going concern and to maximize the value of its estate and that the Debtor therefore has proposed the Amended Plan in good faith. No party has

[2] The standard of proof required by the debtor to prove that a Chapter 11 plan was proposed in good faith is by a preponderance of the evidence. *In re Pearl Res. LLC*, 622 B.R. 236, 260 (Bankr. S.D. Tex. 2020) (*citing In re Briscoe Enter., Ltd., II,* 994 F.2d 1160, 1165 (5th Cir. 1993)).

contended otherwise. Accordingly, the Court finds that § 1129(a)(3) is satisfied.

d) Section 1129(a)(4)

Section 1129(a)(4) provides that "any payment" made or to be made by the plan proponent or the debtor for services "in or in connection with" the plan or the case must be approved by or "subject to the approval of" the bankruptcy court as "reasonable." 11 U.S.C. § 1129(a)(4). Pre-confirmation payments for fees and expenses incurred in a bankruptcy case have been held to be within the scope of § 1129(a)(4). *In re Pearl Res. LLC*, 622 BR at 261 (*citing In re Cajun Elec. Power Coop., Inc*., 150 F.3d 503, 513-14 (5th Cir. 1998)). Thus, there must be disclosure, and two, the court must approve the reasonableness of payments. *In re Pearl Res. LLC*, 622 BR at 261 (*citing* 7 Collier on Bankruptcy ¶ 1129.03[4] (16th ed. 2015)). Section 1129(a)(4) is designed to ensure compliance with the Code policy that the bankruptcy court police the awarding of fees in title 11 cases, so that holders of claims and interests derive the benefit of such information as it might affect their decision to accept or reject the plan. Here, no party-in-interest has filed an objection to the Amended Plan regarding this provision. Additionally, the Court has reviewed the Amended Plan and finds that it complies with the requirements of § 1129(a)(4). Accordingly, the Amended Plan satisfies § 1129(a)(4).

e) Section 1129(a)(5)

Section 1129(a)(5) imposes as a requirement for confirmation that the plan proponent disclose any individual proposed to serve, after confirmation, "as a director, officer, or voting trustee of the debtor," and that the holding of such office by each individual "is consistent with the interests of creditors and equity security holders and with public policy." 11 U.S.C. § 1129(a)(5). Here, the Court notes that no party-in-interest has filed an objection to the Amended Plan regarding this provision. Nevertheless, § 1129(a) obligates this Court to make a finding under § 1129(a)(5), whether or not any party has objected to the plan on § 1129(a)(5) grounds. *See* 11 U.S.C. § 1129(a)

("The court shall confirm a plan only if all of the following requirements are met."). In this case, Debtor's Amended Plan proposes to sell all assets of the business to Broadway Advance, LLC and therefore this section is inapplicable, and this Court views the Amended Plan as acceptable and in compliance with § 1129(a)(5). Accordingly, Debtor's Amended Plan satisfies § 1129(a)(5).

f) Section 1129(a)(6)

Section 1129(a)(6) requires that "any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval." 11 U.S.C. § 1129(a)(6). Such provision is not applicable to Debtor. Accordingly, Debtor's Amended Plan satisfies § 1129(a)(6).

g) Section 1129(a)(7)

Section 1129(a)(7) provides:

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

11 U.S.C. § 1129(a)(7). Section 1129(a)(7) requires a plan of reorganization meet the "best interests" test, which requires that each dissenting creditor receive at least as much as it would receive in a hypothetical Chapter 7 liquidation of the debtor. 11 U.S.C. § 1129(a)(7)(A). Here, no party-in-interest objected to plan confirmation on this ground. Nevertheless, the Court finds each class of claims has either accepted the Amended Plan or will receive more than it would in a Chapter 7 liquidation based on the testimony of Mr. Chambers regarding liquidation sale verses going concern sale, which the Court finds credible. The Court concludes that the requirement of §

1129(a)(7) of the Bankruptcy Code has been satisfied with respect to Debtor's Amended Plan.

h) Section 1129(a)(8)

Section 1129(a)(8) provides that "[w]ith respect to each class of claims or interests (A) such class has accepted the plan; or (B) such class is not impaired under the plan." 11 U.S.C. § 1129(a)(8). Section 1129(a)(8) is satisfied only if each class under a proposed plan has either accepted the plan or is not impaired under the plan. Debtor's Amended Plan does not satisfy § 1129(a)(8) as there are four impaired classes and of the four impaired classes, only one has accepted the Plan. [DE 77] However, as set forth above, § 1129(a)(8) is one of three subsections of § 1129(a) that does not have to be satisfied for a subchapter V plan to be confirmed. 11 U.S.C. § 1191(b). A plan that does not satisfy § 1129(a)(8) nonetheless can be confirmed if the plan satisfies the cramdown requirements contained in § 1191(b). Section 1191(b) permits a plan proponent to "cramdown" a plan over a dissenting class if the plan does not "discriminate unfairly" and provides "fair and equitable" treatment to the dissenting classes that are impaired under the plan. Before a plan proponent may cramdown a plan, it must establish that all of the other requirements of § 1129(a) are met. Accordingly, the Court will address the remaining requirements of § 1129(a) before discussing the cramdown requirements of § 1191(b).

i) Section 1129(a)(9)

As discussed supra, classification of claims is covered in § 1122, which provides that "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." 11 U.S.C. § 1122(a). A debtor possesses considerable, but not complete, discretion to classify claims and interests in its Chapter 11 plan of reorganization. While considerable, that discretion is tempered at least with respect to unsecured priority tax claims. Section 1123(a)(1) provides that a plan shall "designate, subject to section 1122 of this title, classes of claims, other than claims of a kind specified in section

507(a)(2), 507(a)(3), or 507(a)(8) of this title, and classes of interests." 11 U.S.C. § 1123(a)(1). Here, ABDC objects to the Amended Plan because it failed to designate the claim or interest of the IRS based on its filed proof of claim. While the Court appreciates the objection by ABDC, the Court notes that, based on statements made by Debtor's counsel, the IRS may have decided to agree to different treatment (or that no claim exists). The Court finds weight in the fact that the IRS did not object to the Amended Plan despite having received notice of the Amended Plan. The Court therefore concludes that Debtor has demonstrated by a preponderance of the evidence that the Plan complies with § 1129(a)(9).

j) Section 1129(a)(10)

Under § 1129(a)(10), "[i]f a class of claims is impaired under the plan," then it must be the case that "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." 11 U.S.C. § 1129(a)(10). As one court stated, "[s]ection 1129(a)(10) operates as a statutory gatekeeper barring access to cramdown where there is absent even one impaired class accepting the plan. Cramdown is a powerful remedy available to plan proponents under which dissenting classes are compelled to rely on difficult judicial valuations, judgments, and determinations. The policy underlying Section 1129(a)(10) is that before embarking upon the tortuous path of cramdown and compelling the target of cramdown to shoulder the risks of error necessarily associated with a forced confirmation, there must be some other properly classified group that is also hurt and nonetheless favors the plan." *In re Pearl Res. LLC*, 622 B.R. at 263 (citing *One Times Square Ltd. P'ship v. Banque Nationale de Paris (In re One Times Square Assocs. Ltd. P'ship)*, 165 B.R. 773 (S.D.N.Y. 1994)).

As outlined above, § 1129(a)(10) does not have to be satisfied for a subchapter V plan to be confirmed. 11 U.S.C. § 1191(b). Nonetheless, in this case, Class 2-Braodway Advance, LLC is a non-insider, impaired class, that voted in favor of Debtor's Amended Plan. [DE 77]

Accordingly, the Court finds that Debtor's Amended Plan meets the requirement of § 1129(a)(10).

k) Section 1129(a)(11)

Section 1129(a)(11) is commonly referred to as the "feasibility" requirement of confirmation. A debtor's plan is feasible if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor ... unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11). "Under the feasibility standard, a debtor must demonstrate that its plan offers a reasonable possibility of success by a preponderance of the evidence." *In re Pearl Res. LLC*, 622 B.R. at 263 (*citing Fin. Sec. Assurance Inc. v. T-H New Orleans Ltd. P'ship (In re T-H New Orleans Ltd. P'ship),* 116 F.3d 790, 801 (5th Cir. 1997)). "The court need not require a guarantee of success." *Id.* at 263 (*citing In re Lakeside Global II, Ltd.*, 116 B.R. 499, 507 (Bankr. S.D. Tex. 1989)). "Essentially, a debtor must be able to show that it can accomplish what it proposes to do, in the time period allowed, and on the terms set forth in the plan. The bankruptcy court must make a specific finding as to feasibility after engaging in a peculiarly fact intensive inquiry that involves a case-by-case analysis, using as a backdrop the relatively low parameters articulated in the statute." *Id.* at 263 (*citing Lakeside Global,* 116 B.R. at 507 and *In re Star Ambulance Serv., LLC*, 540 B.R. 251, 266 (Bankr. S.D. Tex. 2015)). "To confirm a plan, the bankruptcy court must make a specific finding that the plan as proposed is feasible." *Id.* at 263 (*citing In re M & S Assoc., Ltd.,* 138 B.R. 845, 848 (Bankr. W.D. Tex. 1992)).

Here, this Court specifically finds that the Amended Plan is feasible and has a reasonable assurance of commercial viability based on (1) third-party interest in the assets, (2) the fully executed Sale and Purchase Agreement [Trial Ex. 1] and (3) Mr. Chambers unique experience with buying and selling pharmacy assets. Accordingly, Debtor's Amended Plan satisfies § 1129(a)(11).

l) Section 1129(a)(12)

Section 1129(a)(12) requires the payment of "[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan[.]" 11 U.S.C. § 1129(a)(12). The Amended Plan is silent as to these fees. However, under § 507, such fees are afforded priority as administrative expenses. 11 U.S.C. § 507. The Amended Plan shall be amended to provide for the payment of such fees on the effective date and thereafter, as may be required or otherwise agreed upon by the parties. Accordingly, the Court finds that Debtor's Amended Plan complies with § 1129(a)(12).

m)Section 1129(a)(13)

Section 1129(a)(13) requires that a plan provide for "the continuation . . . of payment of all retiree benefits, . . . at the level established pursuant to . . . section 1114 of [the Bankruptcy Code], at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits." 11 U.S.C. § 1129(a)(13). Pursuant to the Amended Plan, this section is inapplicable to the instant Debtor. [DE 93] Accordingly, the Amended Plan satisfies the requirements of § 1129(a)(13).

n) Section 1129(a)(14)

Section 1129(a)(14) of the Bankruptcy Code requires that if the debtor is mandated by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor must have paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition. 11 U.S.C. § 1129(a)(14). Here, Debtor is not required by a judicial or administrative order, or by statute, to pay any domestic support obligation; accordingly, the Amended Plan satisfies the requirements of § 1129(a)(14).

o) Section 1129(a)(15)

Section 1129(a)(15) requires that if the debtor is an individual, and the holder of an allowed unsecured claim has objected to confirmation of the plan, the property to be distributed to the holder must be not less than the value required by § 1129(a)(15). 11 U.S.C. § 1129(a)(15). Here, § 1129(a)(15) does not apply because Debtor is not an individual; accordingly, the Amended Plan satisfies the requirements of § 1129(a)(15).

p) Section 1129(a)(16)

Section 1129(a)(16) requires that "[a]ll transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust." 11 U.S.C. § 1129(a)(16). Here, upon review, all transfers of property under the Amended Plan will be made in accordance with any applicable provisions of non-bankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust; accordingly, the Amended Plan satisfies the requirements of § 1129(a)(16).

Now that the Court has determined that Debtor's Amended Plan meets the applicable requirements under § 1129(a), other than § 1129(a)(8), the Court will turn its attention to confirmation of Debtor's Amended Plan pursuant to § 1191(b).

(iii) Confirmation Pursuant to § 1191(b) and "Cramdown"

Under the cramdown rules in § 1191(b), if all other confirmation elements are met (with exception of paragraphs (8), (10) or (15) of § 1129), the court must confirm a plan on request of the debtor, if, with respect to each impaired class that has not accepted it, the plan (1) does not discriminate unfairly and (2) is fair and equitable. 11 U.S.C § 1191(b). These two general standards are the same as the standards that govern in a cramdown under § 1129(b). While subchapter V does not affect any change in the unfair discrimination requirement, § 1191(c) does provide a new "rule of construction" in subchapter V cases for the condition that a plan be "fair

and equitable," replacing the detailed definition of that term contained in § 1129(b). Subchapter V does not change existing law regarding permissible cramdown treatment of secured claims because with regard to a class of secured claims, a subchapter V plan is "fair and equitable" if it meets the existing rules for secured claims stated in § 1129(b)(2)(A). 11 U.S.C § 1191(c)(1). Section 1129(b)(2)(A) states:

> (2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:
>
> (A) With respect to a class of secured claims, the plan provides—
>
> (i) (I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and
> (II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;
>
> (ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or
>
> (iii) for the realization by such holders of the indubitable equivalent of such claims.

11 U.S.C. § 1129(b)(2)(A).[3] The general standards for confirmation (i.e. that the subchapter V plan does not discriminate unfairly against any impaired, non-consenting class and is fair and

[3] Nevertheless, § 1191(c) does not state a "fair and equitable" rule specifically for unsecured claims. Instead, it imposes a projected disposable income requirement ("best efforts" test), which requires a feasibility finding, and requires that the plan provide appropriate remedies if payments are not made. 11 U.S.C § 1191(c). Notably, in a subchapter V case, the absolute priority rule under § 1129(b)(2)(B) is eliminated for cramdown, which will allow existing owners to retain their full ownership without giving any new value, but only if the plan provides for the debtor to distribute all of its projected disposable income over at least three years from the date the first payment is due under the plan (or property having a value of at least that amount). 11 U.S.C § 1181(a). The absolute priority rule has been replaced with the "fair and equitable" requirement to protect dissenting unsecured classes similar to those requirements found in applicable Chapters 12 and 13 cases and individual Chapter 11 cases.

equitable) shall be evaluated in light of ABDC's objection.

ABDC asserts that the Amended Plan fails to meet the requirements for cramdown under § 1129(b)(2)(A), made applicable here under § 1191(c)(1), because the Amended Plan as proposed is not fair and equitable as to its claim. ABDC contends that while the Amended Plan provides for ABDC to receive all proceeds (less the Post-Petition Financing) from the sale of all the Debtor's assets, ABDC believes the purchase price to be "shockingly low." At the hearing, the Court heard testimony from Mr. Chambers as to the value of assets as a going concern versus liquidation value. Given Mr. Chambers' unique qualifications (i.e. that he had helped buy and sell over 400 pharmacies while an executive at Fred's), the Court finds that the valuation Mr. Chambers assesses to the assets to be fair and reasonable. Furthermore, ABDC presented no evidence to the contrary. And finally, given the amendment to the plan that allows ABDC to credit bid for the purchase of the assets, the Court further finds that the Amended Plan is fair and equitable.

In reaching this conclusion, the Court has considered the evidence presented at the Confirmation Hearing and assessed the demeanor and credibility of the witness who provided confirmation testimony. The Amended Plan accordingly complies with § 1129(b)(2)(A)(i)(II) of the Bankruptcy Code and, thus, is fair and equitable and, for the reasons stated herein, the Court also finds that the Amended Plan does not discriminate unfairly.

CONCLUSION

An Order consistent with this Memorandum Opinion will be entered on the docket simultaneously herewith.

The Bankruptcy Court Clerk shall cause a copy of this Order and Notice to be sent to the following interested persons:

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The Matrix