

Dated: November 16, 2020



Brenda Moody

Brenda Moody Whinery, Chief Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:
SKYLINE RIDGE, LLC,
Debtor.

Chapter 11
Case No. 4:18-bk-01908-BMW

**MEMORANDUM DECISION
REGARDING CONFIRMATION OF
AMENDED PLANS OF
REORGANIZATION**

On June 10, 2020, the Court issued its *Ruling and Order Regarding Plan Confirmation* (DE 620)¹ (the “Ruling and Order”), in which the Court denied confirmation of the competing plans proposed by Skyline Ridge, LLC (“Skyline” or the “Debtor”) and Cinco Soldados, LLC (“Cinco”), and granted the parties leave to amend their respective plans to rectify the deficiencies set forth in the Ruling and Order. The Debtor and Cinco both timely filed amended plans as set forth below.

Before the Court are the *Debtor’s Third Amended Plan of Reorganization Dated July 10, 2020* (DE 627) filed by the Debtor, as amended and modified by the *Notice of Typographical Errors Re: Debtor’s Third Amended Plan of Reorganization* (DE 645) (collectively, the “Debtor’s Amended Plan”); the competing *Second Modified Cinco Plan of Reorganization Dated September 18, 2018* (DE 632) filed by Cinco, as amended and modified by the *Notice of Errata in Second Modified Cinco Plan of Reorganization Dated September 18, 2018, Filed July 16, 2020*

¹ References to entries on the docket are indicated by “DE __.”

1 [Dkt. 632] (DE 634) and the *Second Notice of Errata in Second Modified Cinco Plan of*
2 *Reorganization Dated September 18, 2018, Filed July 16, 2020* (DE 652) (collectively, “Cinco’s
3 Amended Plan”); and all filings related thereto.

4 On August 6, 2020, the Court held a status hearing on plan confirmation, at which time
5 the parties agreed that no further evidence was needed, but requested that the Court set a briefing
6 schedule. The Court set August 21, 2020 as the deadline for filing briefs, and September 4, 2020
7 as the deadline for filing responses thereto.

8 Briefs, responses to those briefs, and certain joinders thereto were filed by the Debtor;
9 Cinco; secured creditor Fotinos Properties, L.L.C. (“Fotinos”); secured creditor the Rallis
10 Creditor Group;² non-insider general unsecured creditors Paula Stachowski, Daniel Stromberg,
11 David Parri, Vicki Puchi-Saavedra, Eduardo Saavedra, and Earth’s Healing, Inc.;³ insider general
12 unsecured creditor Samuel Zarifi (“Mr. S. Zarifi”) and certain of his entities; and the principal of
13 the Debtor, Ahmad Zarifi (“Mr. Zarifi”).⁴ (DE 653; DE 654; DE 655; DE 656; DE 657; DE 658;
14 DE 663; DE 664; DE 665; DE 666; DE 667). The Court has considered all filed briefs and
15 responses thereto.⁵

17 ² Thomas J. Rallis and Mary P. Rallis, Trustees of the Thomas Rallis and Mary Rallis Trust dated
18 December 19, 2002; Mark A. Clark and Susan B. Clark, Co-Trustees of the Mark and Susan Clark Family
19 Trust UA September 13, 2002; John W. McDonald and Connie McDonald; Hit Tank LLC; Harriet
20 Coulter; Karena Coulter; John W. McDonald, Trustee of the John W. McDonald Profit Sharing Plan;
21 Samuel D. Alfred and Magan G. Alfred, Trustees of the Samuel D. Alfred and Magan G. Alfred
22 Revocable Living Trust dated November 17, 2006; and Ronald D. Mercaldo and Dawn C. Mercaldo,
23 Trustees under the Ronald D. Mercaldo and Dawn C. Mercaldo Revocable Living Trust dated May 21,
24 2008 will collectively be referred to as the “Rallis Creditor Group.”

25 ³ Paula Stachowski, Daniel Stromberg, David Parri, Vicki Puchi-Saavedra, Eduardo Saavedra, and
26 Earth’s Healing, Inc. will collectively be referred to as the “Cinco Supporters.”

27 ⁴ Mr. Zarifi’s pleading is captioned a “Joinder in the Debtor’s Objection to Confirmation of Cinco’s Plan
28 of Reorganization and Supplemental Argument.” (DE 655). However, the time for Mr. Zarifi to object to
Cinco’s plan was January 16, 2019. (DE 221). Although the Court granted Cinco leave to amend its plan
consistent with the Ruling and Order, the Court did not reopen the objection period. Further, Mr. Zarifi’s
treatment is only improved under Cinco’s plan, as amended. As such, the Court will treat Mr. Zarifi’s
filing as a brief, and will not consider the novel objections or requests for reconsideration set forth therein.

⁵ In the briefs filed by the Debtor, Mr. S. Zarifi and certain of his entities, and Mr. Zarifi, the parties
appear to ask the Court to reconsider certain of the findings of fact and conclusions of law set forth in the
Court’s Ruling and Order. (*See* DE 653). Given that none of these parties have filed an appropriate motion
pursuant to the Federal Rules, the Court will not consider the requests for reconsideration embedded in
such briefs.

1 Based upon the pleadings, arguments of counsel, the findings of fact and conclusions of
2 law set forth in the Ruling and Order, which Ruling and Order is incorporated herein, and the
3 entire record before the Court, the Court now issues its ruling regarding confirmation of the
4 amended plans.

5 **I. Jurisdiction**

6 The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157(b).⁶
7 This is a contested matter governed by Federal Rule of Bankruptcy Procedure 9014. The
8 following constitute the Court’s findings of fact and conclusions of law pursuant to Federal Rule
9 of Civil Procedure 52, made applicable to contested matters by Federal Rules of Bankruptcy
10 Procedure 9014(c) and 7052.

11 **II. Confirmability of the Amended Plans**

12 **A. The Debtor’s Amended Plan**

13 In the Ruling and Order, the Court denied confirmation of the Debtor’s plan on the basis
14 that the plan failed to satisfy §§ 1129(a)(5) and 1129(b).⁷

15 **1. Section 1129(a)(5) – Post-Confirmation Management**

16 In the Ruling and Order, the Court found that so long as pre-petition claims remain
17

18 ⁶ The Debtor argues that the Court does not have jurisdiction to approve a settlement of the Cinco
19 litigation, like the one proposed in Cinco’s Amended Plan, absent the Debtor’s consent.

20 Pursuant to 28 U.S.C. § 157(b)(1), “[b]ankruptcy judges may hear and determine all cases under
21 title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under
22 [§ 157(a)], and may enter appropriate orders and judgments, subject to review under section 158 of [the
23 title 28].”

24 Section 1123(b)(3)(A) of the Bankruptcy Code states that “a plan may provide for the settlement or
25 adjustment of any claim or interest belonging to the debtor or to the estate[,]” and pursuant to 28 U.S.C.
26 § 157(b)(2)(L), “confirmations of plans” are core proceedings over which the Court has jurisdiction.

27 Further, pursuant to 28 U.S.C. § 157(b)(2)(A), “matters concerning the administration of the estate”
28 are core proceedings. The Skyline Note and the Debtor’s claims against Cinco arising from the Skyline
Note and related documents are assets of the estate, and as such, the settlement agreement set forth in
Cinco’s Amended Plan, which proposes to resolve the Debtor’s claims against Cinco pertaining to the
Skyline loan documents, directly concerns the administration of the estate.

Based upon the foregoing, the Court has jurisdiction over these proceedings. Even if consent of the
Debtor were required, because consent to adjudication by a bankruptcy court need not be express, the
Court finds that the Debtor has impliedly consented to this Court’s jurisdiction to adjudicate these plan
confirmation proceedings and/or waived its jurisdictional argument by failing to raise it in connection
with Cinco’s proposal of its prior plan, in which plan Cinco likewise proposed to settle the Cinco
litigation.

⁷ Unless otherwise indicated, statutory references are to the Bankruptcy Code, title 11 of the United States
Code.

1 unresolved and unpaid, Mr. Zarifi's continued management of the Debtor would not be in the
2 best interest of creditors or public policy. The Court determined that in order to satisfy the
3 requirements of § 1129(a)(5), the Debtor's plan would need to be amended to provide the
4 Disbursing Agent⁸ with sufficient decision-making authority to address the concerns raised in
5 the Ruling and Order, which concerns pertained to: (1) post-confirmation reporting; (2) control
6 over the Debtor's accounts; (3) which funds would be paid to the Disbursing Agent to distribute
7 to creditors; (4) the sale or refinancing of properties in order to pay claims; (5) the prosecution
8 of pending and future litigation; and (6) the settlement of claims litigation and the pending
9 litigation with Cinco.

10 The Debtor's Amended Plan provides for a Manager,⁹ who would serve until: (a) all
11 allowed claims had been paid through the plan; (b) all objections to Disputed Claims¹⁰ had been
12 resolved by final order and any allowed amounts paid in full; and (c) the Manager had been paid.
13 (DE 627 at § 4.2). Christopher Linscott ("Mr. Linscott"), who is currently employed as the
14 Debtor's accountant and who was the proposed Disbursing Agent under the Debtor's and Cinco's
15 prior plans, has agreed to serve as Manager. (DE 633). There are resignation and removal
16 provisions in the Debtor's Amended Plan, and the appointment of a replacement Manager would
17 be subject to Court approval. (DE 627 at § 4.3). The plan term remains unchanged under the
18 Debtor's Amended Plan, such that there would be no quicker recovery for creditors under the
19 Debtor's Amended Plan, and protracted litigation remains a possibility.

20 The Debtor's Amended Plan provides in relevant part:

21 **4.5 Manager's Powers and Duties.** The Manager will have the
22 following powers and responsibilities:

- 23 a. Complete and exclusive control over all of Debtor's cash,
24 liquid assets, and bank accounts;

25 _____
26 ⁸ Unless otherwise indicated, defined terms have the meanings ascribed to them in the Ruling and Order.

27 ⁹ As defined in the Debtor's Amended Plan, the "Manager" is "the individual or entity appointed to act
28 as the manager of the Debtor beginning on the Effective Date pursuant to § 4.1 of the [Debtor's Amended]
Plan." (DE 627 at § 1.31).

¹⁰ As defined in the Debtor's Amended Plan, "Disputed Claim" means "every Claim that is not an
Allowed Claim." (DE 627 at § 1.22).

- 1 b. Complete and exclusive authority to make all payments
2 permitted or required under this Plan;
- 3 c. Complete and exclusive authority to establish and enforce
4 budgets for the litigation of objections to Disputed Claims
5 and the prosecution of claims or causes of action held by
6 Debtor;
- 7 d. Complete and exclusive authority to pay all operating
8 expenses incurred in the ordinary course of Debtor's
9 business on or after the Effective Date of the Plan;
- 10 e. Complete and exclusive authority to fund the Disputed
11 Claim Reserve Account;¹¹
- 12 f. Complete and exclusive authority to prepare and file with
13 the Court any required post-confirmation reports or other
14 documents;
- 15 g. Complete authority to communicate with the holders of
16 Claims and Equity Interests¹² concerning the
17 implementation and status of this Plan;
- 18 h. Complete authority to take all other actions reasonably
19 necessary to implement this Plan or to operate the routine
20 business of the Debtor, except for actions that require the
21 consent of the Holders of Equity Interests; and
- 22 i. The authority to take any of the following actions, subject
23 to consultation with and the express consent of a majority
24 of the holders of Equity Interests of the Debtor, which
25 consent may not be unreasonably withheld. If the Manager
26 believes such consent has been unreasonably withheld, the
27 Manager may file a motion with the Bankruptcy Court
28 requesting an order permitting such action to be taken.
After notice to the holders of Claims and Equity Interests
and an opportunity to object, the Court may permit the
Manager to take such action if it determines that the
proposed action is reasonable, is in the best interest of

¹¹ As defined in the Debtor's Amended Plan, the "Disputed Claim Reserve Account" is "a segregated, interest bearing account maintained and administered by the Debtor for the purpose of holding cash for distribution on account of Disputed Claims pursuant to [the Debtor's Amended] Plan." (DE 627 at § 1.23).

¹² As defined in the Debtor's Amended Plan, "Equity Interests" are "the equity interests in the Debtor, all of which are presently held by [Mr.] Zarifi, a married man owning such Equity Interests as his sole and separate property." (DE 627 at § 1.25).

1 creditors, and is fair and equitable with respect to the
2 holders of Equity Interests:

- 3 1. The right to sell, lease, or otherwise dispose of any of
4 Debtor's real or personal property (except for the Cinco
5 Loan Documents¹³) at fair market value;
- 6 2. The right to borrow money and to mortgage or
7 encumber any of Debtor's real or personal property,
8 upon terms that are commercially reasonable;
- 9 3. The right to negotiate and execute settlements with the
10 holders of Disputed Claims;
- 11 4. The right to negotiate and execute settlements with
12 anyone against whom Debtor has a claim or cause of
13 action, except for any claims or causes of action arising
14 out of or relating to the Cinco Loan Documents (which
15 may be settled only in accordance with § 4.6 of this
16 Plan); and
- 17 5. The right to engage or terminate professionals outside
18 the ordinary course of Debtor's business.

19 **4.6. Authority to Compromise Claims Related to Cinco Loan**
20 **Documents.** At any time within six months from the Effective
21 Date, Manager shall have the authority to settle any claims or
22 causes of action held by Debtor that arise out of or relate to the
23 Cinco Loan Documents, without the consent [of] the holders
24 of Equity Interests, if and only if such settlement would result
25 in payment to Debtor in cash in the amount of at least
26 \$5,500,000, to be paid within 30 or fewer days from the
27 execution of the settlement agreement; any settlement of
28 claims arising out of or relating to the Cinco Loan Documents
on terms that are less favorable to the Debtor, or which will be
consummated more than six months after the Effective Date,
shall require the express, written consent of a majority of the
holders of Equity Interests.

In addition to the powers and authority expressly given to the Manager in the Debtor's Amended Plan, the Manager would "have such additional rights, powers, and authority the

¹³ As defined in the Debtor's Amended Plan, the "Cinco Loan Documents" are "the *Loan Agreement* dated July 21, 2006 between Debtor and Cinco; the promissory note dated July 21, 2006 in the original principal amount of \$4,000,000, under which Debtor is the lender and Cinco is the borrower; the *Second Deed of Trust and Fixture Filing* dated July 21, 2006 and recorded in the Office of the Pima County Recorder on July 25, 2006 at Docket No. 12853, Page No. 4268; and any amendments to the foregoing."

1 Bankruptcy Court deems necessary to ensure the proper implementation of this Plan or to protect
2 the rights and interests of creditors and equity security holders under this Plan.” (DE 627 at
3 § 4.11).

4 Cinco and the Cinco Supporters argue that the Debtor’s Plan still fails to satisfy
5 § 1129(a)(5) because: (1) it is unclear what standard would apply to guide the Manager’s
6 decision-making; (2) Mr. Linscott is being proposed as a shield against § 1129(a)(5) so that Mr.
7 Zarifi can continue to litigate with objecting creditors; (3) the term of the Manager’s appointment
8 is ambiguous in that it is possible Mr. Zarifi could be put back into control of the Debtor prior to
9 resolution of the disputes between the Debtor and Cinco; and (4) the Manager’s control over the
10 Cinco litigation would be illusory under the Debtor’s Amended Plan given that the plan confers
11 upon the Manager only nominal control over the Cinco litigation, with material decisions
12 requiring the consent of Mr. Zarifi or Court approval.

13 The Debtor counters that: (1) the appointment of Mr. Linscott as Manager is consistent
14 with the interests of creditors and equity holders; (2) the Debtor’s Amended Plan gives the Court
15 authority to give the Manager additional rights, powers, and/or authority as necessary; (3) Mr.
16 Linscott would be fully capable of competently performing his duties as a manager under state
17 law and as Manager under the Debtor’s Amended Plan; (4) there are safeguards in place under
18 the terms the Debtor’s Amended Plan in the event Mr. Linscott were to be deemed an
19 unacceptable Manager; (5) the Debtor’s Plan gives the Manager authority to settle all claims if
20 certain conditions are met; (6) the Debtor should not be required to strip Mr. Zarifi of his control
21 over the Debtor after all debts have been paid even if litigation with Cinco is still ongoing, and
22 any such requirement would be an unconstitutional deprivation of Mr. Zarifi’s property and due
23 process rights.

24 Ultimately, it is clear that under the Debtor’s Amended Plan, the Manager would not be
25 able to settle any Disputed Claims without Mr. Zarifi’s consent or Court approval. This procedure
26 would cause unnecessary delay and expense given that, absent Mr. Zarifi’s consent, the Manager
27 would need to file motions to approve settlements of the Disputed Claims, which would most
28 likely be objected to by Mr. Zarifi. In its Ruling and Order, the Court has already determined the

1 proposed settlements of the Disputed Claims to be fair and equitable, thus making the Debtor's
2 proposed procedure more untenable.¹⁴

3 Moreover, the control that the Debtor's Amended Plan purports to give the Manager with
4 respect to the Cinco litigation is illusory. Unless the Manager were to be able to negotiate and
5 execute a \$5.5 million settlement of the Cinco litigation to be funded within six months of the
6 Effective Date, the Manager would need Mr. Zarifi's consent in order to settle the Cinco
7 litigation. The Court notes that this minimum settlement amount is greater than the maximum
8 amount that Skyline could collect on the Skyline Note based on the appraised value of the Rancho
9 Soldados Property. Further, the Debtor's Amended Plan does not prohibit Mr. Zarifi from
10 unreasonably withholding his consent to a settlement of the Cinco litigation, nor does it allow
11 the Manager to bring any such settlement before the Court for approval.

12 In short, under the Debtor's Amended Plan, the Manager would have only nominal
13 authority to settle Disputed Claims and/or the Cinco litigation. Based upon the foregoing, the
14 Debtor has failed to resolve the Court's concerns regarding the post-confirmation management
15 of the Debtor, given Mr. Zarifi's continuing control over the Disputed Claims and the Cinco
16 litigation. As such, the Debtor's Amended Plan fails to satisfy § 1129(a)(5), and is therefore
17 unconfirmable. The Court, therefore, need not determine whether the Debtor has addressed the
18 remaining deficiencies set forth in the Court's Ruling and Order.

19 **B. Cinco's Amended Plan**

20 In the Ruling and Order, the Court denied confirmation of Cinco's plan on the basis that
21 the plan failed to satisfy §§ 1129(a)(1) and 1129(a)(5). Further, the Court found that Cinco's Plan
22 would satisfy the feasibility requirement in § 1129(a)(11) so long as the Effective Date were to
23 occur within thirty days of the entry of a final order of confirmation.

24 **1. Section 1129(a)(1) – Plan Compliance With Code**

25 In the Ruling and Order, the Court found that the proposed settlement of the Cinco

26 _____
27 ¹⁴ The Court will note that after the Debtor's Amended Plan was filed, the Debtor proposed settlements
28 and a conditional withdrawal of a claim objection with respect to certain of the Disputed Claims. (DE
642; DE 672; DE 703; *see also* DE 661; DE 683; DE 688). To date, none of the proposed settlements nor
the conditional withdrawal has been approved, and even if such settlements and conditional withdrawal
were to be approved, not all Disputed Claims would be resolved.

1 litigation, which settlement proposed to pay the Debtor the principal balance on the Skyline Note:
2 (1) did not sufficiently account for the possibility that the Debtor could prevail in litigation in
3 part; and (2) was ambiguous as to whether Mr. Sheafe had agreed to waive his right, if any, to
4 interest under the Sheafe Note or his right to pro rata payment of the Sheafe Note. For these
5 reasons, the Court found that the settlement, as proposed, was not sufficiently clear or fair and
6 equitable.

7 The Court determined that a modification of the settlement that provided clarification and
8 provided for additional consideration from Cinco to Skyline would be required to find the
9 settlement to be fair and equitable.¹⁵ The Court explained that a modification of the settlement
10 would need to provide Skyline with full recovery of principal on the Skyline Note and of Mr.
11 Zarifi's capital contribution, plus additional consideration, before Mr. Sheafe would be able to
12 recover any payment on the Sheafe Note or recover any of his additional contributions to Cinco.

13 Under Cinco's Amended Plan: (1) Cinco would provide Skyline with full recovery of
14 principal on the Skyline Note, applying all payments to principal; (2) Mr. Sheafe would
15 subordinate payment on the Sheafe Note to the extent of \$250,000, without interest, to be paid to
16 Mr. Zarifi as a return of his initial capital contribution; (3) Cinco would bring the real estate taxes
17 on the Rancho Soldados Property current on the Effective Date; (4) Mr. Sheafe would waive his
18 right under the First Amendment to pro-rata payment on the Sheafe Note; (5) Mr. Sheafe would
19 waive his right to interest on the Sheafe Note; and (6) Cinco would immediately cause completion
20 of a cul de sac on the Rancho Soldados Property, which Cinco argues would significantly benefit
21 Cinco, and by implication Mr. Zarifi. (DE 632 at § IV.A).

22 The Debtor argues that the settlement, as amended, is not fair and equitable, and does not
23 provide any additional consideration from Cinco to Skyline or from Cinco to Mr. Zarifi that
24 Cinco is not already obligated to pay. Specifically, the Debtor argues that: (1) Cinco is already
25 required to pay all real property taxes under the Skyline Deed of Trust, and that, in any event, the

26 ¹⁵ The Court will note that any additional consideration, whether from Cinco to Skyline, Cinco to Mr.
27 Zarifi, or Mr. Sheafe to Mr. Zarifi would ultimately solely benefit and flow to Mr. Zarifi given that the
28 principal balance owing on the Skyline Note would be sufficient to pay all claims in full and given that
Mr. Zarifi is the sole member of the Debtor. Similarly, any value added to Cinco or the Rancho Soldados
Property would benefit Mr. Zarifi as a member of Cinco.

1 Debtor would not benefit from the payment of real estate taxes because under Cinco's Amended
2 Plan, the Skyline Deed of Trust would be released and the Debtor would no longer have any
3 interest in the Rancho Soldados Property; (2) the Debtor would not receive any benefit from Mr.
4 Sheafe's waiver of any rights pertaining to his loan, and that in any event, the Sheafe Note is
5 unenforceable, any claims to enforce the First Amendment are time-barred, and Mr. Sheafe's
6 testimony regarding the accrual of interest on the Sheafe Note was either false or cannot
7 constitute additional consideration; (3) Cinco has failed to provide any evidence as to when, if
8 ever, Mr. Zarifi would be paid anything on account of his equity contributions; (4) Cinco and its
9 equity holders are already required to contribute the funds necessary to develop the Rancho
10 Soldados Property, and such development would provide no benefit to the Debtor; (5) Cinco has
11 failed to satisfy the Court's requirement that Mr. Zarifi's capital contributions be repaid prior to
12 any payments to Mr. Sheafe; and (6) the dollar amount is not fair and equitable.

13 Mr. Zarifi contends that the amended settlement does nothing to compensate him for the
14 loss of revenue and diminution of the value of his interest in Cinco, and would improperly require
15 him to release claims against Mr. Sheafe and the Sheafe Trust.

16 In addition to joining in the arguments made by the Debtor, Fotinos argues that at least
17 until all of the Debtor's creditors are paid in full, it would not be proper for a claim owned by the
18 Debtor to be compromised in exchange for payments to Mr. Zarifi personally.

19 Cinco and the Cinco Supporters argue that the Debtor is ignoring the Court's conclusion
20 that Mr. Zarifi and the Debtor are and have been alter egos and maintain that Cinco's Amended
21 Plan sufficiently proposes a return of Mr. Zarifi's initial capital contribution in compliance with
22 the Ruling and Order.

23 As previously noted by the Court, the settlement proposed by Cinco is in the best interest
24 of the creditors of Skyline in that the funds to be paid to Skyline, in the approximate amount of
25 \$2,793,959, are sufficient to promptly pay all allowed administrative, secured, non-insider
26 unsecured, and insider unsecured claims in full. The only party that could be negatively impacted
27 by the proposed settlement is the sole equity holder, Mr. Zarifi. Under the proposed settlement,
28 as amended, Mr. Zarifi remains the sole member of a reorganized Skyline, which will have assets

1 including in excess of \$1.7 million in cash and in excess of \$3.8 million in unencumbered real
2 property. Mr. Zarifi will also retain his 43% interest in Cinco.

3 The settlement, as amended, further provides and clarifies that Mr. Sheafe waives his
4 claim to interest on the Sheafe Note, waives his claim to pro-rata payment of the Sheafe Note
5 with the Skyline Note, and subordinates any payment on the Sheafe Note to the extent of Mr.
6 Zarifi's \$250,000 initial capital contribution.¹⁶ Cinco's Amended Plan also provides that Cinco
7 will not make any distributions to its members until the \$250,000 is paid to Mr. Zarifi. Further,
8 while Cinco's payment of the real property taxes on the Rancho Soldados Property and the
9 completion of the cul de sac in the Rancho Soldados Property may not directly benefit Skyline,
10 it clearly benefits Mr. Zarifi, the sole member of Skyline and a member of Cinco.

11 Contrary to Mr. Zarifi's assertion that he would be required to release his claims against
12 Mr. Sheafe and the Sheafe Trust under Cinco's Amended Plan, the proposed settlement, as
13 amended, does not alter or modify any of Mr. Zarifi's rights as against Mr. Sheafe or the Sheafe
14 Trust. Further, Cinco's Amended Plan expressly provides that except as specifically provided
15 therein, "nothing in [Cinco's Amended] Plan shall affect the rights or liabilities of Chris Sheafe
16 or his affiliates, and Ahmad Zarifi or his affiliated (other than Skyline), with respect to Cinco
17 Soldados. This means, without limitation, that each of Messrs. Zarifi and Sheafe retain their
18 membership interests in and personal claims against Cinco Soldados." (DE 632 at § IV.A).

19 Ultimately, the issue before the Court is whether the additional consideration Cinco and
20 Mr. Sheafe have proposed is sufficient to render the settlement fair and equitable. Given the
21 uncertainty and cost of protracted litigation between Cinco and Skyline, given the fact that the
22 settlement will promptly pay all allowed claims in the Skyline case, and based upon the additional
23 consideration discussed above, which additional consideration significantly benefits Mr. Zarifi,
24 and upon consideration of the *In re A & C Properties* factors, the Court finds that the settlement,
25 as amended, is fair and equitable, and "compares favorably with the expected rewards of

26 _____
27 ¹⁶ The Court's requirement in the Ruling and Order that a modification of the settlement of the Cinco
28 litigation would need to provide for payment of Mr. Zarifi's capital contribution was a requirement that
the settlement be modified to provide for payment of Mr. Zarifi's initial \$250,000 capital contribution,
only.

1 litigation.” *Grief & Co. v. Shapiro (In re W. Funding, Inc.)*, 550 B.R. 841, 851 (B.A.P. 9th Cir.
2 2016). It is the determination of the Court that Cinco has satisfied the concerns raised in the
3 Ruling and Order pertaining to the Cinco settlement, and Cinco’s Amended Plan therefore
4 satisfies the provisions of § 1129(a)(1).

5 **2. Section 1129(a)(5) – Post-Confirmation Management**

6 In the Ruling and Order, the Court required Cinco to address and/or clarify the following
7 provisions in its plan that appeared to the Court to be inconsistent with the role of the Disbursing
8 Agent under Cinco’s plan:

- 9 • § IV.D, which provided that Mr. Sheafe and Mr. Zarifi would agree on causes of
10 action that would not be deemed released;
- 11 • § IV.F, which provided that post-Effective Date, only the reorganized Debtor and
12 Cinco would have the authority to resolve claims;
- 13 • § IV.J, which provided that Mr. Sheafe or officers of the reorganized Debtor would
14 be authorized to take actions necessary to effectuate Cinco’s plan;
- 15 • § V.E, which provided that Cinco or the reorganized Debtor would be able to move
16 the Court for an order estimating any disputed claim;
- 17 • § V.F, which would have given authority to the reorganized Debtor and Cinco
18 with respect to claims bar date issues;
- 19 • § VI.B, which would have given claim settlement authority to the reorganized
20 Debtor and Cinco;
- 21 • § VI.C, which would have granted the reorganized Debtor authority with respect
22 to setoffs;
- 23 • § VI.D, which only provided exculpation and limitation of liability to the
24 reorganized Debtor and Cinco;
- 25 • § VIII.A.16, which section provided that after the Effective Date only the
26 reorganized Debtor would have authority to object to claims and interests; and
- 27 • § VIII.A.22, which section provided for distributions on the Effective Date by the
28 reorganized Debtor.

1 Cinco has addressed all of the above issues in its amended plan, and no party has asserted
2 otherwise.¹⁷

3 **3. Section 1129(a)(11) – Feasibility**

4 The Court determined that Cinco’s plan would meet the requirements of § 1129(a)(11)
5 provided that the Effective Date were to occur within thirty days of entry of a final order of
6 confirmation.

7 Cinco’s Amended Plan provides that “[i]f the Effective Date does not occur within 30
8 days after termination of the stay of the Confirmation Order, the Confirmation Order shall be
9 vacated and of no further effect.” (DE 632 § H.3).

10 This language in Cinco’s Amended Plan is consistent with the Court’s Ruling and Order,
11 and Cinco’s Amended Plan satisfies § 1129(a)(11).¹⁸

12 **C. Section 1129(c)**

13 Given that the Court has determined that only Cinco’s Amended Plan is confirmable, it is
14 not necessary for this Court to engage in a § 1129(c) analysis.

15 **III. Conclusion**

16 Based upon the foregoing, and the totality of the evidence presented in this case, the Court
17 finds and concludes that the Debtor has failed to meet its burden of establishing that the Debtor’s
18 Amended Plan satisfies the provisions of § 1129(a)(5), and is therefore not confirmable. On the
19 other hand, Cinco has met its burden of establishing that, with minor clarifications, as set forth
20 above, Cinco’s Amended Plan satisfies the provisions of §§ 1129(a)(1) and (a)(5), as well as all
21

23 ¹⁷ In addition to the § 1129(a)(5) issues discussed above, the Court noted in the Ruling and Order that it
24 was unclear whether the Disbursing Agent would supplant the Debtor and Cinco in the claim distribution
25 process with respect to the Stachowski/Stromberg settlement. Although no party addressed this issue in
26 the briefing, it does not appear as if this ambiguity has been resolved in Cinco’s Amended Plan. To the
27 extent this was an oversight, and Cinco’s intent was to give the Disbursing Agent the authority over the
28 release of funds pursuant to the Stachowski/Stromberg settlement, this clarification would need to be
included in an order confirming Cinco’s Amended Plan.

¹⁸ The Court will, however, require any confirmation order to expressly provide that the requirement that
the Initial Settlement Payment, calculated as the unpaid principal balance of the Skyline Note, applying
all payments to principal, be paid in full via cash or wire transfer to the Disbursing Agent prior to the
Effective Date may not be waived.

1 other applicable provisions of § 1129, as set forth in the Ruling and Order, and will thus be
2 confirmed by the Court.

3 The foregoing constitutes the Court’s ruling with respect to confirmation of the competing
4 plans, as amended. Counsel for Cinco may lodge a form of order consistent with this
5 Memorandum Decision, which also provides the supplemental clarification required by footnotes
6 17 and 18 of this decision.

7 **DATED AND SIGNED ABOVE.**