FILED
MAR - 9 2010
BANKRUPTCY COURT
OAKLAND, CALIFORNIA

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
1300 Clay Street (2d fl.)
Oakland, CA 94612

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re

Chapter 13

CHAPTER 13 CASES FILED
IN OAKLAND DIVISION

Debtor./

ORDER RE FORM CHAPTER 13 PLAN

Certain members of the bar have expressed confusion and concern over the intended meaning of the boxes in Paragraph 2(b) of the form of Chapter 13 Plan approved for use in the Oakland Division of this court. Those boxes read, respectively, "§ 506" and "Non § 506." The "plain language" of these boxes is meaningless. It follows that the confusion is justified.

Although it is in no-way apparent from the plan, the court understands that the boxes were intended for a very narrow purpose, specifically, to indicate whether or not a debtor incurred a debt secured by a motor vehicle within the 910-days prior to the date of the petition. If so, then pursuant to the "hanging paragraph" of Bankruptcy Code § 1325(a), Bankruptcy Code § 506(a)'s method of

valuing secured claims would not apply, and the debtor would be required to pay the full amount of such a secured debt without regard to the value of the vehicle securing the claim.

The problem, however, apart from the meaningless language of the boxes, is that the model plan language below the boxes states, in relevant part:

> With respect to secured claims per § 506, valuation stated shall bind unless a timely objection to confirmation is filed. With respect to a non § 506 claim as referenced in § 1325, the claim, to the extent allowed, shall control.

Chapter 13 debtors may not modify a debt secured only by a first deed of trust on a residence, or a junior deed of trust that attaches to some equity (both hereinafter referred to as a "secured deed of trust") by reducing the amount of the creditor's claim based on the value of the property. See Bankruptcy Code § 1322(b)(2).

However, if the debtor checks the "§ 506" box, a creditor whose claim is secured only by a secured deed of trust may be bound by a property valuation that is not germane to the issue of confirmation. Similarly, if a debtor were to check the "Non § 506 box," list a claim thereafter that is a claim secured by a secured deed of trust, then the plan, taking into account the language below the boxes, might reasonably be construed as binding a creditor by a value and claim amount listed by the debtor that is less than what might be the actual amount of an undersecured debt secured by a secured deed of trust.

/////

/////

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
1300 Clay Street (2d fl.)
Oakland, CA. 94612

Generally, documents should be construed in a manner that is legal, rather than illegal. Even so, and to avoid any confusion or misunderstanding while the ambiguity in Oakland's form chapter 13 plan exists, it is

ORDERED AS FOLLOWS, applicable to all chapter 13 cases filed in the Oakland Division of this court:

1. Except to the extent that the collateral listed in paragraph 2(b) of the model chapter 13 plan approved for use in the Oakland division of this court is a motor vehicle, the court will pay no regard to whether the above-referenced "§ 506" and "Non § 506" boxes are checked, and if checked, to which of the boxes has been checked.

2. In cases where the collateral listed is a motor vehicle, and the "§ 506" box in the plan is checked, the court will construe the checking of the box as a representation by the debtor that the debtor incurred the debt secured by a motor vehicle more than 910 days prior to the filing of the petition.

3. If any ambiguity is present in paragraph 2(b) or any other provision of any chapter 13 plan filed on the approved form, the court will construe the plan in a manner consistent with the provisions of Bankruptcy Code § 1322(b)(2), and all other applicable provisions of the Bankruptcy Code.

/////

/////

/////

/////

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
1300 Clay Street (2d fl.)
Oakland, CA. 94612

Dated: March 9, 2010

Randall J. Newsome
Chief Judge

Edward D. Jellen
United States Bankruptcy Judge

Leslie Tchaikovsky
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
1300 Clay Street (2d fl.)
Oakland, CA 94612