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BOISE, IDAHO

UNITED STATES BANKRUPTCY COURT

DISTRICT OF IDAHO

In Re:	)	
	)	Case No. 99-42056
HALE, Clyde V.,	)	
	)	
Debtor.	)	
	)	

CHAPTER 13 PLAN AND RELATED MOTIONS

This plan is proposed by the Debtor. It contains provisions that may significantly affect your rights. It contains matters, which if not objected to, may be accepted by the court as true. Creditors cannot vote on this plan. A creditor who wishes to oppose the plan and related motions may do so by timely filing a written objection. Any objection must be in writing, and must be filed with the court and served upon the Debtor, Debtor's attorney, and the Chapter 13 Trustee by the time set by the Court for the first meeting of creditors, within five (5) days thereafter, or as otherwise allowed by law. Absent any such objection, the court may confirm this plan, accept the valuations and allegations herein, and grant the motions without further notice or hearing. If a creditor files a timely written objection, that creditor must also appear at the hearing on confirmation of the plan to assert the objection, or it may be denied without further notice or hearing. The provisions of the confirmed plan will bind the Debtor and each creditor.

1. **PAYMENTS TO TRUSTEE**. Such portion of the projected future earnings and disposable income (pursuant to 11 USC §1325(b)(1)(B)) of the Debtor as is necessary for the execution of

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the plan is submitted to the supervision and control of the Chapter 13 Trustee for the duration of this plan, to wit:

(a) **PERIODIC PAYMENTS.** Debtor will pay to the Trustee for a term, not exceeding 60 months the sum of $3,250 monthly.

(b) **INCOME TAX REFUNDS.** (Check One)

☒ Debtor projects no income tax refunds during the term of this plan. As a result, no income tax refunds will be turned over to the Trustee; OR

☐ Debtor projects income tax refunds during the term of this plan. During the initial 36 months of the plan, the Debtor will turn over to the Trustee all income tax refunds. At any time during the term of the plan, Debtor shall be entitled to use a tax refund to pay taxes due any other taxing authority; however, the Debtor shall remit any tax refund balance to the Trustee. Upon the Trustee's recommendation or upon notice and hearing, the Court may enter an order entitling the Debtor to retain, in whole or in part, income tax refunds owing during the term of the plan to facilitate the terms of this plan or meet the other reasonable or necessary needs of the Debtor.

(c) **EARLY PAYOFF.** This plan may not be paid in less than thirty-six (36) months by Debtor without notice to interested parties and an opportunity for hearing before the Court.

(d) **WAGE DEDUCTION ORDER.** Debtor acknowledges that if the Debtor is ever more than thirty (30) days delinquent on any payment due under section 1(a) of this plan, upon request of the Trustee a wage deduction order to Debtor's employer may immediately issue.

2. **DEFERRAL OF PAYMENTS FOR CAUSE.** The Trustee for cause may defer not more than two monthly payments per calendar year without further notice to parties or hearing before the Court.

3. **POST CONFIRMATION RECOVERY OF PROPERTY.** Debtor elects as follows:

(Check One) ☐ The trustee shall retain the right, post-confirmation, to recover monies, to recover property and avoid liens pursuant to 11 USC §541, et. seq. Any such recovery or avoidance shall, when liquidated, be disbursed to creditors as additional disposable income, in accordance with 11 USC §1325(b); OR

☒ The debtor has calculated the right to recover monies, to recover property and avoid liens pursuant to 11 USC §541, et. seq. in the plan payment. As a result, the trustee shall not retain such further rights, post-confirmation.

4. **DISBURSEMENTS & PLAN TREATMENT BY TRUSTEE.** From the payments so received, the Trustee shall make disbursements as follows:

(a) **PROVISIONS FOR PRIORITY CREDITORS.** Full payment of allowed claims entitled to priority under 11 USC §507 in deferred cash payments as follows:

(1) **Trustee.** Fees to the Trustee as provided by 28 USC §586.

(2) **Attorney.** Fees to the Debtor's attorney in the total amount of $500 in equal monthly installments over the initial 24 months.

(3) **Maintenance/Child Support.** Unless the holder of the claim agrees otherwise, upon confirmation of the plan and the filing of an allowed claim, any allowed unsecured claims of a spouse, former spouse, or child of Debtor, for delinquent maintenance or child support shall be paid:

(Check One) ☐ during the initial _____ months of the plan;

☐ in equal monthly installments over the term of the plan; OR

☒ not applicable.

(4) **Taxes.** Unless the holder of the claim agrees otherwise, upon confirmation of the plan and the filing of an allowed claim, any allowed unsecured priority claims of governmental units shall be paid:

(Check One) ☐ during the initial ___ months of the plan; OR

☒ in equal monthly installments over the term of the plan.

(b) **PROVISIONS FOR CREDITORS HOLDING SECURED CLAIMS**

(1) **Modification of rights of holders of secured claims.** To each of the following named creditors, the full value of the allowed secured claim held, provided a timely allowed claim is filed. Each creditor holding an allowed secured claim shall retain its lien on the collateral securing that claim until the *allowed secured value* has been paid, at which time the lien shall be released. The *allowed secured value* is defined as the lesser of the amount of a creditor's claim or the market value of the creditor's collateral, as set forth in this plan. The *allowed secured value* shall be amortized at the rate of interest (simple interest, direct reducing), in equal monthly installments over the term of the plan, unless otherwise provided. No pre-confirmation interest shall be paid, unless otherwise provided. Upon payment of the allowed value of the secured claim, the secured creditor's lien

shall be released, void of any further effect, including void of any further security interest. Any portion of the debt owed to a creditor in excess of the allowed value of the collateral will be treated in this plan as an unsecured claim. Unless otherwise ordered by the Court, payments shall commence upon filing of an allowable claim and pursuant to the terms of the Order of Confirmation of the plan. The *Projected Total Payments* constitute the Debtor's best estimate of the total of all payments made to the secured creditor on the secured portion of such creditor's claims. At the discretion of the Trustee, *allowed secured values* of $500 or less may have payment accelerated.

Secured creditor rights and claims will be modified in accordance with the values and terms provided for herein by debtor. An order valuing the secured portion of a claim, at less than the total amount of the claim, voids the creditor's lien to the extent of the unsecured portion of the claim.

The debtor hereby MOVES the court for an order so fixing the value of the collateral as follows:

CREDITOR	DESCRIPTION OF COLLATERAL	ALLOWED SECURED VALUE	RATE OF INTEREST	PROJECTED TOTAL PAYMENTS
Conseco	2000 Volvo	$85,000	8%	$ 103,410
Conseco	1997 reefer	27,150	8%	33,030
Bank of America	1998 Dodge	24,800	8%	30,171
Jensen Jewelers	ring	3,000	8%	3,650

If a secured creditor objects to this provision, Debtor will nevertheless ask the Court, at the hearing on confirmation, to confirm the plan over such creditor's objection, pursuant to 11 USC §1325(a)(5)(B). In the event that any such secured creditor fails to timely file a secured claim a late filed claim shall be allowed for purposes of distributing payments for the secured portion of its claim. In the event that such creditor's late filed claim has an unsecured portion in its proof of claim, no distribution shall be allowed for the unsecured portion of the claim.

(2) **Curing of Default in Long Term Secured Claims.** To each of the below named creditors, the debtor does not propose to pay, in full, their allowed secured claim during the term of this Plan. Each creditor shall retain its lien on the collateral securing the claim until the allowed secured claim is paid in full. The Debtor will continue the regular monthly contract payments outside of the plan. Each post-petition payment shall be paid by Debtor as it comes due. The initial payment shall commence on the

first full month following the filing of this bankruptcy by Debtor. The periodic payments under this plan, shall be applied by creditor to the earliest payment for which a portion of the payment is due. Payments shall commence upon filing of an allowable claim and pursuant to the terms of the Order of Confirmation of the plan. Unless otherwise provided, the frequency of payments shall be in approximate equal monthly amounts, during the term of the plan. The *Total in Default* provided hereinafter represents the Debtor's projection of the total amount necessary to cure the default. In the event that the creditor's allowed claim provides otherwise, the allowed claim shall control. Each such creditor shall further be entitled to receive interest on their claim, as allowed by law. Such interest rate shall be the non-default contract rate of interest provided in the promissory note between each creditor and Debtor.

CREDITOR	REGULAR PAYMENT	TOTAL IN DEFAULT
Long Beach Mortgage	$ 1,066	$ 3,198

(c) **PROVISIONS FOR UNSECURED CLAIMS**

(1) **Classification of Unsecured Claims.** Unless otherwise provided, the following unsecured claims will receive the indicated dollar amounts, in equal monthly installments during the term hereof, on their allowed claim. Payments shall commence upon confirmation of this plan and filing of an allowed claim.

CREDITOR	AMOUNT TO BE PAID
CLASS "A" -Co-signed obligations owing to:	
CLASS "B" - Student loans owing to:	
CLASS "C" - Other obligations owing to:	

(2) **General Unsecured Claims.** Upon confirmation, and at times consistent with the other provisions of this plan, the Trustee will, from funds available after payment of priority and secured claims, pay pro-rata dividends to all creditors who have filed timely allowed unsecured claims.

5. **DISBURSEMENTS & PLAN TREATMENT BY DEBTOR.** Debtor shall make disbursements directly to creditors and provides to treat claims as follows:

(a) **Long Term Secured Claims Not in Default and Not Included in this Plan.** To secured creditors to whom the last payments are due beyond the term of the plan, whose rights are *not* being modified pursuant to 11 USC §1322(b)(2) and are not otherwise impaired, the secured claim of each shall be paid directly by Debtor according to the terms of the outstanding agreements with

each creditor. Each of the following named secured creditors shall retain their lien on the collateral securing the debt until their allowed claim is paid in full. The Debtor will pay these creditors directly as follows:

CREDITOR	COLLATERAL DESCRIPTION	ESTIMATED BALANCE OWING	PAYMENT OUTSIDE PLAN
Ray Carroll	residence	$ 36,000	$ 300

(b) **Surrender of Collateral.** The Debtor will surrender debtor's interest in the following collateral securing each allowed secured claim filed by the following creditors. After surrender of the collateral such creditor's deficiency, if any, after liquidation of the collateral, will be paid as an unsecured claim under the provisions for general unsecured creditors if such creditor amends its secured claim to an unsecured claim for such deficiency. Upon the entrance of the order confirmation this plan, the automatic stay imposed by 11 USC §362(a) shall be terminated pursuant to 11 USC §362(d).

CREDITOR	COLLATERAL TO BE SURRENDERED
Mercedes-Benz	1998 Freightliner
Great Dane Financial	1997 reefer

(c) **Assumption Or Rejection Of Unexpired Leases Or Executory Contracts.** The Debtor assumes or rejects the following unexpired leases and/or executory contracts in accordance with 11 USC §365.

CREDITOR	DESCRIPTION OF LEASED PROPERTY	ASSUME OR REJECT
N/A		

(d) **Judicial Lien Avoidance.** The Debtor hereby MOVES, pursuant to 11 USC §522(f)(1)(A), to avoid the judicial liens of the following creditors. Absent a timely written objection from the creditor by the time set by the court for the first meeting of creditors or within five (5) days thereafter, the order of confirmation will avoid its lien, and its claim will be treated under section 4(c)(2) of this plan. Debtor asserts the property is exempt under I.C. §55-1001, et seq.

CREDITORS	DESCRIPTION OF JUDGMENT LIEN	COUNTY & INSTRUMENT NUMBER
N/A		

(e) **Other Lien Avoidance.** The debtor hereby MOVES, pursuant to 11 USC §522(f)(1)(B), to avoid the nonpossessory nonpurchase money security interests of the following creditors. Absent a timely written objection from the creditor by the time set by the court for the first meeting of creditors or within five (5) days thereafter, the order of confirmation will avoid its lien, and its claim will be treated under section 4(c)(2) of this plan.

CREDITOR	DESCRIPTION OF EXEMPT PROPERTY	EXEMPTION STATUTE
N/A		

6. **VESTING OF PROPERTY OF THE ESTATE**: Subject only to the liens provided for in this plan and upon confirmation of this plan, all property of the estate:

(Check One) x shall vest in the debtor; OR
shall not vest in the debtor.

DATED: 01/29/2000

DEBTOR