

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

February 13, 2020 at 11:30 a.m.

1.	<u>19-22566-E-11</u> <u>AF-6</u>	JUANITO COPERO Arasto Farsad	CONTINUED RE: CHAPTER 11 PLAN 8-8-19 <u>[52]</u>
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Final Ruling: No appearance at the February 13, 2020 Hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor's Attorney, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 7, 2019. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

The Confirmation of Plan of Reorganization has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered.

Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Confirmation of the Chapter 11 Plan is granted.
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On October 1, 2019, the court filed its order approving the Disclosure Statement and setting the schedule for service of pleadings, filing of opposition and voting, and filing of evidence. These dates and deadlines are:

October 7, 2019 Plan, Disclosure Statement, Disclosure Statement Order, and Ballot Mailed

November 15, 2019 Last Day for Submitting Completed Ballot Accepting or Rejecting the Plan

November 15, 2019 Last Day to File Objections to Confirmation

December 6, 2019 Last Day to File Replies to Objections, Evidence in Support of Confirmation, Tabulation of Ballots, Proof of Service

Order Approving Disclosure Statement, Dckt. 70.

DEBTOR IN POSSESSION TABULATION OF BALLOTS
Dckt. 89

CLASS	ACCEPT	REJECT	ACCEPTANCE PERCENTAGE
<u>Class 1A is the secured claim of Mercedes Benz Financial Services LLC</u> regarding the Debtor's 2014 Mercedes Benz GL Class Utility 4D GL550 (Vote obtained).	1	0	100%
<u>Class 1B is the secured claim of Ocwen Loan Servicing</u> regarding the Debtor's primary and sole mortgage attached to the Debtor's real property located at 115 Michael Ct. Vallejo, CA 94591.	0	0	N/A
<u>Class 1C is the secured claim of the Internal Revenue Service</u> regarding a lien on all of the Debtor's personal property pursuant to 26 U.S.C. section 6321.	0	0	N/A
<u>Class 1D is the secured claim of Ocwen Loan Servicing</u> regarding the Debtor's primary and sole mortgage attached to the Debtor's real property located at 103 Michael Ct. Vallejo, CA 94591.	1	0	100%
<u>Class 1E is the secured claim of Ally Bank</u> regarding the Debtor's 2014 Mercedes Benz E Class E350.	0	0	N/A

<u>Class 2.</u> IRS (Claim No. 1) (for the general unsecured portion of their claim.)	0	0	N/A
<u>Class 2.</u> Navy Federal Credit Union (Claim No. 4)	0	0	N/A
<u>Class 2.</u> Travis Credit Union	0	0	N/A
<u>Class 2.</u> Capital One Bank	0	0	N/A
<u>Class 2.</u> EDD (Claim No. 8)	0	0	N/A
<u>Class 2.</u> American Enterprises International	0	0	N/A
<u>Class 2.</u> Capital One	0	0	N/A
<u>Class 2.</u> Discover Financial	0	0	N/A
<u>Class 2.</u> Grant and Weber, Inc.	0	0	N/A
<u>Class 2.</u> Pacific Credit Service	0	0	N/A
<u>Class 2.</u> American Eagle	0	0	N/A

Only two Classes of Creditors having voted in support of confirmation. The first is Class 1A, whose claim is unimpaired and the collateral surrendered. The second is Class 1D, who has agreed to the Plan treatment. No other ballots have been presented by creditors.

REVIEW OF PLAN

Creditor/Class	Treatment	
Class 1A: Mercedes Benz Financial Services LLC	Claim Amount	
	Impairment	None
	NOTE: satisfied by surrender of collateral	
Class 1B: Ocwen Loan Servicing, LLC	Claim Amount	\$229,605.25
	Impairment	None - Approved Loan Modification, Order, Dckt. 60. Monthly principal and interest payments of \$946.06 and escrow payment currently computed to be \$670.73 for seventeen years and then a balloon payment stated to be \$164,098.68.

Class 1C: IRS	Claim Amount	\$123,496.79
	Impairment	Arrearage paid in 60 equal payments; Creditors in these class may not repossess or dispose of their collateral so long as Debtor is not in material default under the Plan
Class 1D:; Deutsche Bank National Trust Company, as Trustee for GSAMP Trust 2005-WMC-1)	Claim Amount	\$427,918.45
	Impairment	Stipulation for Plan Treatment Filed November 13, 2019. Dckt. 83. Secured Claim to be amortized over 360 months, 6% interest, with monthly payments of \$2,565.59, plus monthly escrow, currently computed to be \$662.03.
Class 1E: Ally Bank	Claim Amount	\$26,654.77
	Impairment	
		Claim paid in 60 equal payments; may not repossess or dispose of their collateral so long as Debtor is not in material default under the Plan.
Class 2: Unsecured Claims	Claim Amount	\$63,809.69
	Impairment	Creditors will receive a pro-rata share of a fund totaling \$1,914.29, created by Debtor's payment of \$159.56 per month for a period of 12 months; creditors in this class may not take any collection action against Debtor so long as Debtor is not in material default under the Plan
Class 3a: Professional Fees	Claim Amount	\$15,000.00
	Impairment	Paid upon effective date of Plan.
	Claim Amount	\$650.00

Class 3b: Other
Administrative Claims

	Impairment	Paid upon effective date of Plan, except expenses incurred in the ordinary course of Debtor's business or financial affairs, which shall be paid when normally due and payable.
Class 3c: Tax Claims	Claim Amount	\$188,968.60
	Impairment	Paid in full with interest (at the non-bankruptcy statutory interest rate) by monthly payments commencing the effective date in accordance with 11 U.S.C. § 511; tax creditors may not take any collection action against Debtor so long as Debtor is not in material default under the Plan.

COMPLIANCE WITH 11 U.S.C. § 1129(a) and (b)

The Debtor in Possession filed a Memorandum in Support of Confirmation. Dckt. 88. However, Debtor did not provided the court with any evidence for the court to make the necessary findings of fact and conclusions of law for the court to order confirmation of the Plan.

There were only two ballots voting for confirmation: Class 1A, secured claim that is unimpaired held by Mercedes Benz; and Class 1D, secured claim of Deutsche Bank National Trust Company, as Trustee for GSAMP Trust 2005-WMC-1, which is impaired.

One of the requirements for confirmation of a Plan as provided in 11 U.S.C. § 1129 is that with respect to each class of claims or interests, such class has voted to accept the plan or is not impaired. 11 U.S.C. § 1129(a)(8). Here, one impaired class has voted to confirm the Plan. Class 1D. However, Impaired Classes 1C, 1E, 2, and 3c are impaired and have not voted to confirm the Plan.

In his original Confirmation Brief (Dckt. 88) the Debtor in Possession does not address the cram down requirements of 11 U.S.C. § 1129(b) or how the court can confirm this Plan for which no impaired classes have voted to confirm. Debtor in Possession argued that Deutsche Bank National Trust Company, as Trustee, with an impaired claim has voted to confirm the Plan, as well as having filed a Stipulation for plan treatment of its claim; and no other impaired classes objected to confirmation. Brief, p. 4:19-24.5; Dckt. 88.

The Debtor in Possession attempted to assert that silence of a creditor is to be deemed consent and treated as an affirmative vote to confirm the Plan.

The plain language of 11 U.S.C. § 1129(a)(8) states that each class must accept the Plan. To vote to accept the Plan Congress requires in 11 U.S.C. §1126(a) that a creditor may either accept or reject a Chapter 11 plan. The provisions of 11 U.S.C. § 1126 define what percentage of creditors need not only to accept a plan but what percentage of the total claims accepting must be when compared to creditors not accepting the plan. In 11 U.S.C. § 1126(c) this computation is made based on the actual

creditors who have either accepted or rejected the plan.

The court continued the hearing to allow the Debtor in Possession to present the court with adequate evidence and to comply with 11 U.S.C. § 1129(b), the cram down provisions, for classes of claims and interests which do not accept the plan.

For impaired creditors in classes which do not vote to confirm a Chapter 11 Plan, 11 U.S.C. § 1129(b) provides the plan proponent with relief, allowing the plan proponent to cram down confirmation on those non-accepting impaired classes under the plan. 11 U.S.C. § 1129(b) provides for such cram down as follows:

(b)(1) Notwithstanding section 510(a) of this title, **if all of the applicable requirements of subsection (a) of this section other than paragraph (8)** [all classes voting for confirmation] **are met** with respect to a plan, the court, on request of the proponent of the plan, **shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable**, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

(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.

(B) With respect to a class of unsecured claims--

(I) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

(C) With respect to a class of interests--

(I) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

In the Supplemental Brief filed, the Debtor in Possession still fails to clearly identify and seek confirmation pursuant to 11 U.S.C. § 1129(b). The Debtor in Possession instead elected to proceed with the theory that silence is acceptance and that 11 U.S.C. § 1129(a) and § 1126 impose an affirmative duty to oppose confirmation and no duty to accept the plan. The plain language of 1129(a) and § 1126 do not contain such “you are deemed to accept unless you reject language.”

CONTINUANCE AND ISSUES TO BE ADDRESSED FOR FINAL HEARING

No objections to confirmation have been filed and no votes against the plan have been filed. Notwithstanding no opposition, it is necessary for the Debtor in Possession plan to provide the court with evidence (declaration(s)) and supplemental points and authorities to complete the record for why the requested relief may be properly granted. As has been well established, a federal court does not grant relief merely because a party asks for it and no opposition is filed, but the federal court must be presented with evidence and determine that the relief is proper under the applicable law. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010); *see also Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.)*, 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing *Everett v. Perez (In re Perez)*, 30 F.3d 1209, 1213 (9th Cir. 1994)).

Therefore, the court having entered the defaults of the non-responding parties, continues the hearing to allow the Debtor in Possession to complete the record for the court so that the court may fulfill its duties as discussed above by the United States Supreme Court.

SUPPLEMENTAL BRIEFING

Debtor filed an Amended Brief in Support of Chapter 11 Plan Confirmation and the Declaration of Juan Copero (“Declaration”) in support of the Amended Brief on January 18, 2020. Dckts. 94, 95.

Review of the Amended Brief

Debtor and counsel believe that the subject Chapter 11 Plan of reorganization meets all of the requirements of Section 1129 and state the following in support:

- A. The Plan complies with § 1129(a)(1) because it designates classes of claims and interest(s), identifies impaired classes, and specifies the treatment of the impaired classes. Brief, at 3.
- B. Debtor complied with § 1129(a)(2) because Debtor disclosed all assets and debts, all litigation / pending suits, all income, the prospects for the continuance of such income, and has also identified any “insiders.” Vote solicitation took place after the court approved the Disclosure Statement. *Id.*
- C. Debtor turns to the requirements of § 1129(a)(3), and contends that the Plan is proposed in good faith and is not forbidden by law. Referring to F.R.B.P 3020(b)(2), Debtor asserts that where no plan confirmation objections are filed, there is a presumption that a plan has been filed in good faith. In his case, Debtor did not have any objection and was able to obtain two votes in favor of the Plan— one secured class, Ocwen Loan Servicing, and another one from a secured creditor, Mercedes Benz Financial Services, that would convert to a general unsecured creditor as soon as the “underwater” vehicle is auctioned off. At the time of filing, the Mercedes Benz Claim, Claim No. 11, had a unsecured portion in the amount of \$9,265.89. Debtor contends that this amount will increase “as auctions do not generally provide a very low ‘Black Book Value.’” *Id.*

Debtor cites to *Ryan v. Loui*, 892 F.2d 829, 835 (9th Cir. 1989) for the assertion that a plan is proposed in good faith when it achieves a result consistent with the objectives and purposes of the Code. Further noting that the court is to consider the totality of the circumstances. *Stolrow v. Stolrows, Inc.* 84 B.R. 167, 172 (9th Cir. B.A.P. 1988), *Smyos v. Padilla*, 213 B.R. 349, 352 n.2 (9th Cir. B.A.P. 1997). Debtor also points to “another court” that has held that a plan is proposed in good faith if there is a reasonable likelihood that the plan will achieve a result consistent with the standards prescribed under the Code. *In re Kemp*, 134 B.R. 413, 414 (Bankr. E.D. Cal. 1991), *In re Madison Hotel Assocs.*, 749 F.2d 410, 425 (7th Cir. 1984). Finally, Debtor asserts that the Ninth Circuit in *In re Sylmar Plaza L.P.*, 314 F.3d 1070 (9th Cir. 2002), the court held that there is no lack of good faith when the primary purpose of Debtor’s filing is to take advantage of bankruptcy protections. *Id.* at 4.

Here, Debtor filed his bankruptcy case to address significant priority tax debt, delinquent mortgages and other debts. Namely, Debtor's 103 Michael Court property was in active non-judicial foreclosure and the filing stopped the case. This in turn allowed Debtor to obtain a new mortgage and has been making timely payments. Debtor was also able to address the mortgage on his second property at 115 Michael Court by curing the arrearage and obtain a lower payment on the primary loan attached to this property. Furthermore, Debtor gave up his Mercedes SUV so that he could use the additional \$1,500.00 to afford the proposed Plan payments. *Id.* See Declaration, ¶¶ 3, 8.

Debtor argues he also promptly prosecuted his case by immediately opening debtor-in-possession bank accounts, segregating rents received, having savings on hand to meet plan distributions and other requirements, and hiring an accountant to properly prepare monthly operating reports. *Id.* at 4, 5. See Declaration, ¶¶ 9, 10.

- D. The Plan complies with § 1129(a)(4) as it expressly states that professional fees require prior court approval. *Id.* at 5.
- E. The Plan complies with § 1129(a)(5) as the it provides for the Debtor to continue to manage his property and affairs to fund the Plan. *Id.*
- F. Regulatory Rate Changes under § 1129(a)(6) are not applicable to this case. *Id.*
- G. In discussing § 1129(a)(7), Debtor again restates that each class who has voted has accepted the Plan and is not impaired. Debtor explains that the statute does not specify what happens if all the creditors or interest holders in class entitled to vote fail to do so for whatever reason. Debtor argues that the failure of these impaired class holders can negatively affect a Plan, especially if it provides for treatment of one or more classes that contain only a single creditor or handful of creditors, such that one creditor's failure to vote means that the statutory acceptance majorities cannot be achieved. *Id.*

Debtor turns to Circuit cases to find an answer on whether the failure to cast a vote indicates acceptance of the plan. The circuit courts, Debtor argues, are split. Debtor cites to the Tenth Circuit's *In re Ruti-Sweetwater, Inc.* 836 F. 2d 1263 (10th Cir. 1988) where the court held that where a class with no ballots returned, by not rejecting the plan, is deemed to have accepted the plan. The Ninth Circuit, on the other hand, has held that there can be no deemed acceptance where a creditor objected to the plan, regardless of voting. *In re M. Long Arabians*, 103 B.R. 211, 215 (Bankr. 9th Cir. B.A.P. 1989). *Id.* at 6.

Debtor provides the court with legislative history related to section 1126, S. Rep. No. 95-989, 9th Cong., 2d Sess. 123 (1978), providing in part:

This section requires a plan to be actively accepted. If a creditor does not cast a ballot, the amount owed to the creditor, and the creditor as a member of the class, is not included in the computation of whether the class accepted the plan. The Senate Committee comment to this section makes this clear, “the amount and number are computed on the basis of claims actually voted for or against the plan, not as under chapter X [formerly section 501 et seq. of this title] on the basis of the allowed claims in the class.”

Thus, Debtor argues failure to vote should not necessarily be considered acceptance but it should also not be counted as a rejection of the plan. *Id.*

In his case, Debtor’s primary secured impaired creditor, Ocwen Loan Servicing (Class 1B), voted in favor of the Plan. Debtor also received a vote from creditor Mercedes Benz financial, a Class 1A with an “unimpaired” secured claim. This status is temporary as Debtor surrendered the vehicle, which is “underwater” by approximately \$10,000.00 and is certain to result in a general unsecured claim according to Debtor. Debtor argues that perhaps Debtor should have placed Mercedes Benz Financial on both Class 1A for secured portion and under Class 2 as a general unsecured in order to obtain a separate vote for their deficiency claim. Under Class 2, Mercedes Benz is an impaired creditor as Debtor is offering only a small percentage to all Class 2 claimants. *Id.* See Declaration, ¶ 6.

Debtor’s Counsel alleges that he contacted everyone in Class 2 in order to obtain votes. However, the claimants would not agree to vote or participate, including objecting to the plan. Therefore, Debtor has only two votes to count towards the requisite balloting. Both Debtor and Counsel argue that because no other creditor neither dissented or voted against the Plan, § 1129 has been satisfied. *Id.*

- H. While buried in a discussion of § 1129(a)(8), the court accepts this as a sufficient analysis of the cram down provisions of 11 U.S.C. § 1129(b). Debtor in Possession argues that the cram down features of this section have been satisfied in this case because there have no objections to the Plan by any creditors or any rejection votes. And, even if there had been dissent from creditors, the cram down requirements are met because the Plan is fair and equitable as creditors with secured claims are to receive the full amount of their claims and retain property of a value equal to the amount of their claims. Adding that under § 1129(b)(2)(B)(ii) a plan not paying a creditor with an unsecured claim in full is considered “fair and equitable” (and can be crammed down over their objections) so long as

the individual debtor does not retain property except property included in the bankruptcy estate under § 1115. *Id.* at 7.

Pointing the court to *In re Friedman*, where the court held that the absolute priority rules does not apply in individual Chapter 11 cases, such as Debtor's. *Id.*

Debtor believes and testifies that the proposed Plan satisfies all of § 1129 requirements on the grounds that:

1. There are no objections or “no” votes against the Plan.
2. Creditors with general unsecured claims under Class 2 are set to receive 3% of their claims based on a properly calculated and disclosed Chapter 7 Liquidation Analysis.
3. A vote has been obtained by a impaired creditor with a secured claim.
4. A vote has been obtained by a creditor with a secured claim, that will soon become a creditor with a general unsecured claim as the vehicle has been repossessed and will be sold at auction. *Id.* See Declaration, ¶ 13.

- I. As for § 1129(a)(9) Administrative Expenses and Claims under 11 U.S.C. § 507, Debtor states that there are no administrative expenses other than Debtor's Counsel and U.S. Trustee's fees. Debtor's Counsel will file a Fee Application after confirmation of the Plan. As for claims under section 507, Debtor has proposed to pay the taxing agencies per the Code. No deviating agreements were reached and no such terms were proposed in the Plan. *Id.* at 7, 8.

Debtor was able to file numerous payroll returns that had not been submitted at the time of the filing of Debtor's Petition. This lowered the amounts owed and as for the amounts still owed, Debtor is proposing to pay it off with 6% interest. Per Debtor's Counsel, the taxing agencies appear to agree as to how their claims will be treated. See Declaration, ¶ 4.

- J. The Plan satisfies § 1129(a)(10) on the basis that Debtor has a vote from at least one class of impaired claims has accepted the Plan and there are no insider votes.
- K. Debtor's proposed Plan satisfies § 1129(a)(11) because it was based on a an asset liquidation and exemptions analysis and on a “solid and steady”

average net business income and thus works for Debtor's budget as proposed. This Plan will allow Debtor to address his financial issues and thus unlikely that Debtor will be back in bankruptcy court. *See* Declaration, ¶ 14.

- L. As for § 1129(a)(12), Debtor further asserts that all fees payable under 20 U.S.C. § 1930 have been paid or the plan provides for its payment. The Plan also provides for payment of any U.S. Trustee fees owed on the effective date and this requirement is also met.
- M. Employee Retirement benefits under § 1129(a)(13) are not applicable in this case.
- N. Post-Petition Support Obligations under § 1129(a)(14) are not applicable.
- O. As for § 1129(a)(15), Debtor argues that this section is satisfied as the Plan proposes to pay Class 2 creditors with general unsecured claim 3% of their claims as there is no disposable income available or equity in any unexempt assets. Further adding that Debtor is "technically" entitled to pay 0% and that by offering 3% he is also meeting the "Best Interest of Creditors" Test.
- P. § 1129(a)(16) for Transfers by the Corporation or the Trust is not applicable in this case.
- Q. In conclusion, Debtor prays that the proposed Plan be confirmed as Debtor is committed to perform per the Plan terms and plan has been proposed in good faith.

DISCUSSION

Debtor's supplemental brief addresses the cram down requirements of 1129(b) under 1129(a)(7) and 1129(a)(8). Ultimately, Debtor shows the court that there is one vote by an impaired class, that of Ocwen Loan Servicing, for Deutsche Bank, Trustee.

Debtor in Possession argues that it has changed the Ballot Tabulation to show Mercedes Benz voting on its impaired unsecured claim. While the Debtor in Possession may be altering the Ballot Tabulation, it cannot alter the actual ballot. The Mercedes Benz ballot, Dckt. 90 at 2-3, expressly states that it is the ballot for the Class 1A vote. The ballot does not include a second section for Mercedes Benz to make a Class 2c unsecured claim vote. A creditor voting in one class is not assumed to have an implied, unstated vote in another class.

The Debtor in Possession has provided evidence, in the form of the Declaration of Juanito Copero (the Debtor serving as the Debtor in Possession), Dckt. 95, in support of confirmation. The Debtor in Possession provides clear, credible testimony concerning the plan and the feasibility of performance.

Based on the evidence presented to the court, the Plan having been accepted by at least one impaired class of claims, and satisfying the requirements of 11 U.S.C. § 1129(b) for all non-accepting classes, the Plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The hearing for confirmation of the proposed Chapter 11 Plan having been conducted by the court, and upon review of the pleadings, no evidence having been presented by the Debtor in Possession Plan proponent, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Confirmation of the Chapter 11 Plan is granted.

Counsel for the Debtor in Possession, as the Plan Proponent shall prepare a proposed order confirming the Plan, to which a copy of the Plan will be attached as an exhibit, and lodge with the court said proposed order.