
THE "COMPLEAT" CHAPTER 13 CASE 2012

Chapter 13 Trustees
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A Basic Seminar for Attorneys and Staff

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(1) INTRODUCTION.

The purpose of the seminar is to help attorneys and their employees consistently prepare the bankruptcy documents properly and timely prosecute the case. When the bankruptcy documents are complete and accurate, the case can smoothly proceed toward confirmation of the Plan. A bankruptcy case should not be dismissed for reasons relating to how the documents are prepared. Improving your ability to timely present a confirmable plan will translate into less time spent in the case and fewer complaints from your clients and the Trustees. Another purpose is to help legal secretaries and paralegals understand how the Trustees' offices operate. A better understanding promotes better communication between the parties.

Please understand that the individual Trustees have their own way of doing things. The Trustees try to make their procedures uniform but, being individuals, have different forms and procedures. The Trustees have tried to point out where their procedures are different.

While it is the policy of the Chapter 13 Trustees to standardize their procedures, the policies and procedures stated in this handout are subject to change and the actual procedure used might be different in each case. Keep in mind that the procedures for the Trustees may vary from each office.

Most of the documents mentioned in these materials may be obtained from the Trustees' websites:

Russell Brown	www.chapter13.info
Edward Maney	www.maney13trustee.com
Dianne Kerns	www.dcktrustee.com

Additional sources for improving the best practices of debtor attorneys in consumer cases: www.abanet.org/media/youraba/200901/bankruptcy_bestpractices.pdf - [2009-01-23](#); *Best Practices for Filing Chapter 13*, Aspatore 2008.

(2) **THE PETITION.**

- (A) The starting point of all cases is the Petition. Official Form 1. As simple as the form is, mistakes are made in its preparation.
- (B) Disclose any trade names or other names used by the debtor in the past eight years, particularly a premarriage name of a debtor. Do not put the full name of a corporation on the petition as the Court likely would do a motion for an order to show cause why the case should not be dismissed (cannot have a corporation and individual joined in the same case).
- (C) Please verify the debtor's address shown on the petition and verify the social security number. If the debtors' mailing address and physical address are different, both should be listed on the petition. The debtor and debtor's attorney have the responsibility of insuring the addresses are correct.

A debtor must put his or her actual physical address on the petition. For example, do not use a P.O. Box as the physical address. The Trustees use the stated physical address to evaluate the validity of a claimed homestead exemption. A common problem is an incomplete street address, such as not using "Street," "Avenue," "Place," or "Circle."

- (D) Only the last four digits of the social security number or ITIN are to be disclosed on the petition. See Rules 1007(f) and 9037, F.R.B.P. Instead, a Statement of Social Security Number (Official Form 21) is to be filed, but not viewable on ECF.

In place of submitting a Statement of Social Security Number, the attorney for the debtor is to submit the debtor's social security number electronically when opening the case on CM/ECF and include in the Declaration Re: Electronic Filing the debtor's declaration that the social security number is true and correct. Also, see Rule 1007-1, L.R.B.P.

Clerk Note: Some debtor attorneys still are putting the full social security number of a debtor on a petition. Post-filing redaction issues are too common.

- (E) A common mistake is the failure to disclose any or all previous bankruptcy cases filed within eight years of the present petition. It makes no difference what type of case was filed, where it was filed, or whether a discharge was entered. Please list all required information about the case. If the debtor has filed no previous bankruptcy petitions, then the Petition must state "None." Rule 1005-2, L.R.B.P. It is insufficient merely to leave the space blank. Since the information on whether a debtor has filed a previous case nationwide is readily available, if there is even a

hint of a previous case, please check the Pacer nationwide information. The Chapter 13 Trustees check for prior bankruptcy filings—debtor attorneys should as well.

Also, perhaps the Court has ordered the debtor to file no more cases within a set amount of time or a new case would cause automatic stay issues.

Red flags:

- The debtor knows a lot about bankruptcy terms, jargon and procedure.
- Tax protestors or “sovereign” citizens.
- Remember, if a debtor has a prior case and the debtor voluntarily dismissed the case, the debtor may be prohibited from filing a petition for 180 days. Section 109(g)(2). After BAPCPA, the debtor may not be eligible for a discharge if a prior Chapter 7 discharge was granted within the last four years. Also, cases dismissed within a year of filing a new case affect the application of the automatic stay.

- (F) Local Rule 1005-2(a) requires that the debtors’ attorney is to include his or her email address on page two **along with any email address of the debtor**.
- (G) Debtors are to date the petition near their signatures.
- (H) Do not put the law firm name immediately below the signature line on page two where the attorney signs. The name of the signing attorney is supposed to be below the signature line.
- (I) Usually, the Court will dismiss the case if the master mailing list is not filed within seven days after the petition, or within 15 days for the statement, schedules, and plan. If necessary, do a motion to extend the time to file the remaining unfiled documents because too many cases get dismissed and reinstated. The Trustees generally require all remaining documents to be filed before the § 341(a) meeting of creditors and a Trustee may object to a motion to extend the filing time beyond the meeting of creditors. If the Court grants a motion to extend the filing time beyond the meeting of creditors, then the Trustee likely will continue the meeting of creditors. Contact the Trustee at least one day before the scheduled § 341(a) meeting to determine if the case will be called. This could save you and your clients a needless trip. Dismissal of a case causes problems scheduling or rescheduling the meeting of creditors and properly noticing out the Plan.

If the Bankruptcy Court dismisses a case and notices out a dismissal order before a meeting of creditors, then the meeting of creditors will have to be reset by the Court. **Immediately notify the debtors not to attend the scheduled meeting**

of creditors, as the Court not the Trustee, will notice out a new § 341(a) meeting.

It is possible that a creditor may have made the decision not to attend the meeting due to receiving the dismissal order.

- (J) Amended Petition. If you file an amended Petition, the debtor concomitantly must file a separate notice explaining why the Petition is being amended (e.g., social number or address is incorrect). Rule 1009-1(c)(1), L.R.B.P. Otherwise, the Clerk's office might not be able to discern the reason for the amendment. If the SSN (or ITIN) on the petition is incorrect:
 - (1) If any of the last four digits, but none of the last four, of the SSN are incorrect, then an amended Petition is to be filed as well as an amended Statement of Social Security Number (Official Form 21) or Declaration. Also, the debtor must notice the amended Statement to all parties in interest and file a certificate of service. Rule 1009-1(c), L.R.B.P.; or
 - (2) If only any of the first five digits of the SSN are incorrect, then only the Statement of Social Security Number or Declaration needs to be amended, and this amendment is to be noticed out, too. The Trustee will ask that the debtor attorney provide a Notice of Correction of Social Security Number in Bankruptcy Filing to three credit reporting agencies. This form is on the Trustees' websites. See www.chapter13.info/forms. Also, keep in mind that the United States Trustee requires bankruptcy trustees to notify the USTO of any problem with a social security number or debtor identity. So each instance of an incorrect SSN generates a document from the Trustee to the USTO.
- (K) Exhibits to Petition. As applicable to the case, attach the required Exhibits to the Petition:
 - (1) Exhibit A: Not applicable to Chapter 13.
 - (2) Exhibit B: No such document.
 - (3) Exhibit C: Disclosure if a debtor owns or has possession of property that might pose a threat to public safety. If you have a debtor who submits an Exhibit C, then please notify the bankruptcy trustee separately, particularly if a Chapter 7 case.
 - (4) Exhibit D: Statement of Compliance with Credit Counseling. Required of each debtor in Chapter 13.
- (L) Eligibility. The issue of debtor eligibility is outside the scope of these materials, except to say that attorneys sometimes forget to check whether a debtor is eligible

for Chapter 13 based on the debt amounts. When the Schedules are prepared for filing with the Petition, the preparation software will notify you of the amount of debts exceeding the limits¹. When the petition is filed without the Schedules, however, the attorney has to do some independent inquiry.

¹Noncontingent, liquidated unsecured debts not exceeding \$360,475 and Noncontingent, liquidated unsecured debts not exceeding \$1,081,400. Section 109(e). The dollar amounts are adjusted every three years, with the next adjustment occurring around April 2013. Section 104.

(3) THE MASTER MAILING LIST.

- (A) See Rule 1007-1, L.R.B.P., for requirements regarding the master mailing list.
- (B) Internal Revenue Service and Arizona Department of Revenue.

The IRS does not get added automatically to the MML, but the Court does add the ADOR to the MML, if not already present. If the debtor owes a debt to the IRS add the IRS to the MML. Chapter 7 and Chapter 13 trustee payments are to be sent to Insolvency Remittance, Post Office Box 21125, Philadelphia, PA 19114-0325. Administrative mail such as court documents, forms, general correspondence, and most other bankruptcy related communications should be sent to Centralized Insolvency Operation, Post Office Box 21126, Philadelphia, PA 19114-0326.(C) Bankruptcy document preparation software should automatically take creditors from the schedules and put them on the master mailing list.

- (C) Local Rule 1009-1(b) requires: If an amendment to a schedule adds one or more creditors, the debtor is to file an amendment to the master mailing list with the name and address of each creditor listed, including putting the information into CM/ECF.
- (D) The Court charges a \$30.00 fee for an amendment to Schedule D, E, or F, or the MML.

(4) **THE STATEMENT OF FINANCIAL AFFAIRS.**

(A) **General Information.**

- (1) Official Form 7.
- (2) Debtors must answer ALL questions. If the answer is "None" then state so. Leaving the question blank is unacceptable and you will be required to amend the SOFA.
- (3) A married debtor must provide information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.
- (4) The Trustees appreciate you putting more information in the Schedules than is required by the Official Forms.
- (5) Debtors can be lazy or hurried when filling out your bankruptcy information gathering packets. It is up to the attorneys to INSIST on getting complete information from their clients.
- (6) If the attorneys develop a habit of getting complete information early on in the case, later on it makes everyone's job easier, especially yours.

(B) **The Statement Questions.**

(1) Question 1. Income From Employment or Operation of Business.

Mark the box "None" or provide the required disclosures:

- Gross amount of income.
- Employment, trade or profession, whether an employee or independent contractor.
- For prior two years and year to date. (Should be calendar year for individuals.) Identify the beginning and ending dates.
- Incomes of spouses to be stated individually even if not a joint petition, unless the debtors are separated and not a joint petition.
- Each source of income must be identified separately.

The failure to provide year-to-date income and the **gross amount of** prior two years of income remain common problems.

The incomes in a joint case must be **separately** listed for husband and wife. As on the B22C, for a self-employed debtor the gross amount of income before expenses is to be stated.

The **source** of the income must be disclosed. If the income is from different types of sources, then each debtor is to disclose each source. *In re Garno*, 2010 W.L. 1254919 (Ariz. 2010) (Judge Curley).

If the debtors do not know their previous years' income, then they

may not have filed tax returns for those years. If the debtor is unsure about prior years' incomes, then at least estimate the income and state it is estimated. Many times the debtor's paystubs will have the year-to-date income on them. If the debtor absolutely does not know the amount of income and has unfiled returns, then state the best estimate. The question asks for gross amount of income. Please note, you cannot complete the B22C without current income information. Simply put, there should be no reason not to have debtor's year to date income as a B22C is to be filed.

(2) Question 2. Income other than from employment or operation of business.

A debtor must disclose such income for the prior two years. Examples: Social security or retirement income, alimony and child support.

Mark the box "None" or provide the required disclosures:

- State amount of income from other than employment activities.
- For prior two years and year to date. (Should be calendar year for individuals.) Identify the beginning and ending dates.
- Incomes of spouses to be stated even if not a joint petition, unless separated and not a joint petition.
- Each source of income must be identified separately.
- Taxation of the income is irrelevant.

(3) Question 3. Payments to creditors.

(a) If debts are primarily consumer debts:

Mark the box "None" or provide the required disclosures:

- Payments on loans, purchases, or other debts.
- Made within 90 days of the petition.
- Exception for aggregate amount transferred is less than \$600.00. (The exception amount is to be adjusted on 4/01/13 and every three years thereafter.)
- Add an " * " for payments on a DSO or part of a repayment plan through an approved nonprofit credit counseling agency.
- Payments by both spouses must be disclosed even if not a joint petition, unless separated and not a joint petition.
- Name and address of each creditor.
- All dates of payment.
- Total amount paid.
- Amount still owed.

(b) If debts are not primarily consumer debts:

Mark the box "None" or provide the required disclosures:

- Payments or other transfers to any creditor.
- Made within 90 days of the petition.
- Exception for aggregate amount transferred is less than \$5,850.00. (The exception amount is to be adjusted on 4/01/13 and every three years thereafter.)
- Add an " * " for payments on a DSO or part of a repayment plan through an approved nonprofit credit counseling agency.
- Payments by both spouses must be disclosed even if not a joint petition, unless separated and not a joint petition.
- Name and address of each creditor.
- All dates of payment or transfer.
- Total amount paid or value of transfers.
- Amount still owing.

Attorneys still are not providing all required information.

Most of the time, debtors do not know how to answer this question. Generalized statements, such as "usual bill" is insufficient disclosure. It is up to the attorneys to make sure the debtors understand what information they must provide. Payments made to **all** creditors regardless of type must be listed. It does not matter if the creditor has a lien on property or if the debtor is going to retain the property. **Payments to secured creditors and, particularly, relatives must be disclosed. If a debtor is current on mortgage or automobile payments when the petition is filed, then pre-petition payments to those creditors must be listed.** Payments made to credit counselors, such as Consumer Credit Counseling Services, must be listed (even if disclosed on SOFA # 9).

These disclosures are for a bankruptcy trustee to evaluate whether to seek recovery of potential preferential payments or transfers for the benefit of creditors, or in a Chapter 13 case, if the best interest of creditors test is met. Even if the Chapter 13 Plan meets the best interest of creditors test, the Chapter 13 Trustee may require the debtor **and transferee** to enter into a waiver of the statute of limitations on suit to recover the payments or transfers. *For example, see www.chapter13.info/forms.*

(4) Question 4a. Suits and administrative proceedings.

Mark the box "None" or provide the required disclosures:

- List all suits and administrative proceedings.
- In which the debtor is or was a party.
- Debtor is to include information on spouse even if not a joint petition, unless separated.
- Caption and case number, if any.
- Nature of proceeding.
- Court or agency, and location of such.
- Status or disposition.

The information to be disclosed includes all types of disputes including administrative hearings and arbitrations. No lawsuit has to be filed to require disclosure. Domestic relations cases must be disclosed. A common lack of mention is of the debtor's personal injury case.

An EEOC action must be disclosed. *Phifer v. California Department of Corrections*, 2007 W.L. 4568192.

Question 4b. Property attached, garnished or seized.

Mark the box "None" or provide the required disclosures:

- Describe all property taken from the debtor by attachment, garnishment, or seizure.
- Taken within one year.
- Debtor is to include information on spouse even if not a joint petition, unless separated.
- Name and address of creditor or seller.
- Date of each seizure/taking.
- Description and value of the property taken.

Make disclosure even if property was taken by a governmental entity in a criminal matter. Disclose if a lessor took possession of property from a lessee debtor.

(5) Question 5. Repossessions, foreclosures and returns.

Mark the box "None" or provide the required disclosures:

- List property repossessed, sold at a foreclosure sale, transferred by deed in lieu of foreclosure, or returned to the seller.
- The event occurred within one year before the petition.
- Debtor is to include information on spouse even if not a joint petition, unless separated.

- Name and address of creditor or seller.
- Date of repossession, foreclosure sale, transfer or return.
- Description and value of property.

Disclose all property foreclosed or returned, even if you think it had no value to the bankruptcy estate. An example would be where a debtor returned inventory to a supplier.

(6) Question 6a. Assignments.

Mark the box "None" or provide the required disclosures:

- Any assignment for the benefit of a creditor.
- Made within 120 days prepetition.
- Debtor is to include information on spouse even if not a joint petition, unless separated.

You may have to explain to the debtor what is an assignment.

Question 6b. Receiverships.

Mark the box "None" or provide the required disclosures:

- List property in possession of a custodian, receiver, or court official.
- In other person's possession within one year prepetition.
- Debtor is to include information on spouse even if not a joint petition, unless separated.
- Name and address of each custodian.
- Name and location of court, case title, and case number.
- Date of an court order.
- Description and value of the property.

(7) Question 7. Gifts.

All gifts made in the last year must be disclosed regardless of recipient.

Mark the box "None" or provide the required disclosures:

- List all gifts or charitable contributions within one year prepetition.
- Exception for gifts to family members less than \$100 per recipient.
- Debtor is to include information on spouse even if not a joint petition, unless separated.
- Name and address of person or organization.
- Relationship to the debtor, if any.
- Date of each gift.
- Description and value of the gift(s).

It usually is inconsistent to put a large monthly charitable expense on Schedule J, yet provide no explanation on SOFA # 7. Look at any Schedule A, lines 16-19, of the debtor's individual income tax return.

Taking a cash advance from a creditor and giving the money to a relative should be disclosed as a gift. *Matlock v. Gaul*, 2007 W.L. 774258 (11th Cir.).

(8) Question 8. Losses.

Mark the box "None" or provide the required disclosures:

- List all losses from fire, theft, casualty, or gambling.
- Within one year prepetition.
- Debtor is to include information on spouse even if not a joint petition, unless separated.
- Description and value of property.
- Description of circumstances and if covered by insurance.
- Date of loss.

Disclose all gambling losses. The Trustees see gambling debts to casinos or other creditors on Schedule F, yet those losses are not disclosed in the Statement of Financial Affairs. A casualty or theft loss may have been used as an itemized deduction for personal income taxes on Schedule A, line 20.

(9) Question 9. Payments related to debt counseling or bankruptcy.

Mark the box "None" or provide the required disclosures:

- Payments or transfers by or on behalf of the debtor.
- To all persons, including attorneys, regarding debt consolidation or bankruptcy relief.
- Name and address of each payee.
- Date of each payment.
- Name of payer, if not debtor.
- Amount of money or property paid or transferred.

Money paid to an attorney must be disclosed independent of the attorney's Rule 2016(b) disclosure statement. Compare the information on the Statement for consistency with the Rule 2016(b) disclosure statement. Payments made to credit counselors, such as Consumer Credit Counseling

Services, must be listed. Payments to nonattorney document preparers must be disclosed. If there is any bartering, then the value of the barter must be disclosed. Disclose money paid to an attorney in a prior case if within the last year, regardless of the result in the prior case.

(10) Question 10a. Other transfers.

This is a catchall question. If a debtor transfers, loses or gives up property to another within one year of the petition, then have that information disclosed.

Mark the box "None" or provide the required disclosures:

- Disclose all property transferred, other than in the ordinary course of business, absolutely or for security.
- Name and address of each transferee.
- Date of each transfer.
- Describe property transferred and value received in exchange.
- Debtor is to include information on spouse even if a joint petition, unless separated.

Question 10b. Transfer to self-settled trust.

Mark the box "None" or provide the required disclosures:

- List property transferred within 10 years to a self-settled trust or similar device.
- Name of trust or device.
- Amount of money or description of property transferred.
- Describe the debtor's interest in the property.

(11) Question 11. Closed financial accounts.

Mark the box "None" or provide the required disclosures:

- List all financial accounts or instruments in the name of the debtor or for the benefit of the debtor.
- Which were closed, sold, or transferred within one year prepetition.
- Include checking, savings, accounts, in a bank, credit union, brokerage, pension fund. The type of institution is irrelevant.
- Name and address of the institution.
- Type of account, last four digits of account number, amount of final balance.
- Debtor is to include information on spouse even if not a joint petition, unless separated.

(12) Question 12. Safe deposit boxes.

Mark the box "None" or provide the required disclosures:

- Each safe deposit or other box in which debtor has or had securities, cash or valuables.
- Within one year prepetition.
- Debtor is to include information on spouse even if not a joint petition, unless separated.

Review the debtor's income tax return. If an itemized return, see Schedule A, Line 23, of the itemized deductions for the federal individual income tax return.

(13) Question 13. Setoffs.

Mark the box "None" or provide the required disclosures:

- All setoffs by a creditor or bank.
- Against a debt or deposit.
- Within 90 days prepetition.
- Debtor is to include information on spouse even if not a joint petition, unless separated.

Did the IRS or Arizona Department of Revenue setoff a tax refund against a liability or for a student loan or domestic support obligation?

(14) Question 14. Property held for another person.

Mark the box "None" or provide the required disclosures:

- List all property owned by another person that the debtor is holding or controls.

Occasionally, the Trustees hear from a creditor, ex-spouse, or neighbor that debtors have property at their address. Many times the property is not disclosed on Schedule B nor disclosed in the Statement as belonging to someone else. The same with records of the Arizona Department of Motor Vehicles.

If the debtor held such property but relinquished control, then

consider whether such relinquishment must be disclosed elsewhere, such as SOFA # 10.

(15) Question 15. Prior address.

Mark the box "None" or provide the required disclosures:

- Any move within three years prepetition is to be disclosed.
- If a joint petition is filed, separate addresses of a spouse must be disclosed.

If a debtor bought a home, moved, or had a home foreclosed in the last year (Question 5), then the debtor will have a prior address. Attorneys should be reviewing a tax return for at least one year. Check the return for a prior address. The prior address information is important for others to verify the debtor's choice of exemptions.

(16) Question 16. Spouses and former spouses².

Mark the box "None" or provide the required disclosures:

- Disclosure required if the debtor resides or resided in a community property state within eight years prepetition.
- Identify the name of such spouse.

This question asks for the name of any nonfiling spouse and of any former spouse in the prior eight years. Therefore, if the debtor is married, but the spouse did not join in the case, the question must be answered. One use of the information is to eliminate the guessing game of whether a debtor is married and, if so, the Trustees require the nonfiling spouse's financial information on Schedule I. Also, if the debtor is claiming an exemption for the nonfiling spouse on Schedule C.

The information could be used to identify community property which is property of the estate. For former spouses, this information could help in locating persons who are owed child support.

(17) Question 17. Environmental concerns.

If a debtor has a positive response to this question, Exhibit C to the Petition may have to be included. The Trustees expect to see few debtors who are

² The question is not limited to a nonfiling spouse but the Trustees do not expect information on a joint debtor.

required to provide environmental information. One historical example: debtor owned land on which thousands of used tires were stored.

(18) Question 18. Nature, location and name of business.

Mark the box "None" or provide the required disclosures:

- Names, addresses, taxpayer identification numbers of each business.
- Businesses covered:
 - Sole proprietorship;
 - debtor owned 5% or more;
 - was a partner in a partnership; or
 - officer, director, partner, managing director of a corporation.
- Within six years prepetition.
- Disclose the nature of each business.
- Beginning and ending dates of each.

Some debtors are sloppy in answering this question. Too often, just the business name is provided, with no description of the business. If debtor does not receive W-2 wages it is quite likely the debtor is self-employed. If the debtor is no longer in business, then disclose the ending date.

Question 18 must be answered by ALL debtors. Debtors who are self employed or engaged in business must answer Questions 19 and 20. Such debtors will have to file monthly operating statements and possibly complete a Self Employment Questionnaire for the Trustee. Additional information or a questionnaire may be required. A response of "N/A" is insufficient. Like the preceding 17 questions, if the answer is none then it must be stated. It is common for debtors not to disclose the **nature** of the business.

(19A) Questions 19 - 25.

A debtor who is or was **within six years** self employed or in business then the debtor must answer Questions 19 and 20, too.

(19B) Question 19. Books, records and financial statements.

Mark the box "None" or provide the required disclosures:

List all bookkeepers and accountants who within **two** years kept or supervised books of account and records of the debtor.

List all firms or persons who within **two** years audited the debtor's records or prepared a financial statement.

(20) Question 20. Inventories.

Mark the box "None" or provide the required disclosures:

A self-employed debtor must provide the details of the last two inventories, regardless of dates. There is no particular time limitation of when the debtor did the inventories.

(21) Questions 21 - 25 are inapplicable to Chapter 13.

- (C) **Amendments.** When filing an amended Official Form, such as a Statement of Financial Affairs or a Schedule, always have the debtor sign the appropriate declaration and file the electronically version with the amended document. Rule 1008, F.R.B.P.; Rule 1007-1(c), L.R.B.P.; 28 U.S.C. § 1746; Administrative Procedures for Electronically Filed Cases ¶ IID.

(5) **THE SCHEDULES.**

Schedules are required by Rules 1007(b) and 9009. Official Form 6 in part fulfills that requirement. A debtor has a general duty to amend a Schedule as to property of the estate. An informal notification to the bankruptcy trustee does not suffice. *In re Searles*, 317 B.R. 368 (9th Cir. BAP 2004).

The Schedule forms used to say “market” value, but now permit a debtor to choose the appropriate valuation method (replacement, market, foreclosure).

It is inappropriate for the Schedules to include a disclaimer that the schedules are based upon “unaudited information that ha[d] not otherwise been verified and [wa]s subject to further review and potential adjustment.” *In re JK Harris & Co., LLC*, 475 B.R.470 (S.C. 2012).

If the information requested by the Schedule is inapplicable to the debtor, then please state “None” on that Schedule.

(A) **Schedule A. Real Property.**

Disclose ownership interests in all real property, even if the debtor believes he or she does not really own it. Disclose all property in which the debtor has a legal, equitable, or future interest; all property owned as a cotenant, community property, or as a life estate. Even if a spouse is not filing with the debtor, the debtor must disclose all community property and the filing debtor’s separate property. However, unexpired executory contract or unexpired interests go on Schedule G. Required disclosures:

- Provide a description and location of the property.
- Describe the nature of the debtor’s interest in the property.
- Indicate “H” for husband, “W” for wife, “J” for joint, or “C” for community property interest. No mark needed for an unmarried individual debtor.
- Current value of the property without deducting secured claim or exemption.
- Amount of secured claim (debt owed) against the property.

The Trustees want a debtor to provide any physical street address and, optionally, legal description of the property. Giving only the legal description usually is deficient. The Trustees will compare the Schedule A physical address with the physical address on the Petition. Make sure the property value is consistent with that stated in the Plan (as required by Local Rule).

(B) Schedule B. Personal Property.

Required disclosures:

- If the debtor has no such property listed lines 1 - 35, then the debtor is to place an "x" alongside.
- Description and location of property.
- Indicate "H" for husband, "W" for wife, "J" for joint, or "C" for community property interest. No mark needed for an unmarried individual debtor.
- Current value of the property without deducting a secured claim or exemption amount. (Unlike Schedule A, any secured debt amount is not placed on Schedule B.)

If the property is being held for the debtor by someone else, state the other person's name and address under "Description and Location of Property."

If the property is being held for a minor child, state the child's initials and the name and address of that child's parent or guardian.

Do not lump different kinds of property in the same classification. Itemize property within one category. For vehicles, describe the year, make and model. Give specific information on computers.

If a debtor is self employed but uses a corporation or limited liability entity, then make sure ownership of such interests are disclosed and SOFA # 18-20 answered.

Tax refunds not spent or not received yet are to be disclosed.

If property is owned by a corporation or other entity, and not the debtor personally, then do not place the property under any area, except that the value of the company is to be disclosed in # 13 or # 14, for example.

(C) Schedule C. Exemptions.

Required disclosures:

- Mark the appropriate statutory exemption box.
- Mark the box if the debtor claims a homestead exemption greater than \$146,450 (due for an adjustment on 4/1/13).
- Description of the property.
- State the law for the claimed exemption.
- The value of the claimed exemption. State the dollar amount. *If the exemption statute allows 100% of the property to be claimed as exempt, then it is permissible to say "100%" or such.*
- Current value of the property without deducting the exemption amount.

The property being claimed must be clearly described and the applicable exemption statute cited. Note that some state exemptions cannot be claimed if

debtor does not reside in the state. If that is the case, the debtors may have to claim federal exemptions. Refer to 11 U.S.C. § 522.

Itemize the property. For example, it is insufficient to merely say “household goods,” “vehicle” or “sporting goods.”

Check the accuracy of the claimed exemptions. Sometimes, Schedule C claims exemptions which clearly are improper. It seems that the preparer is unaccustomed to seeing nonexempt property so an exemption is created. Moreover, improper claiming of exemptions will invite more scrutiny by the Trustee’s office on the balance of the documents. **Do not lump** different kinds of property in the same classification (putting exempt and nonexempt property in the same paragraph).

If the Trustee or his staff attorney points out an error on the Schedule C, say at a meeting of creditors, be sure to promptly file an amendment to Schedule C so the Trustee does not have to file an objection to the improperly claimed exemption.

(D) Schedule D. Secured claims.

Required disclosures:

- Check the box if no secured claims.
- Name, mailing address and last four digits of any account number for secured creditors. List in alphabetical order.
- If a minor child is the creditor, state the child’s initials, and the name and address of a parent or guardian.
- Other than a spouse, if there is a codebtor on the debt, mark with an “X” and complete Schedule H.
- Indicate “H” for husband, “W” for wife, “J” for joint, or “C” for community property interest. No mark needed for an unmarried individual debtor.
- Provide the date the claim was incurred, nature of the lien, and description and value of the property.
- If the claim is contingent, unliquidated, or disputed, mark with an “X.”
- Amount of the claim; amount owed without deducting the value of collateral.
- The amount of unsecured portion, if any.

List all secured claims, whether the debtor is current, making direct payments, the collateral was surrendered but not sold, and so on. Make sure all secured claims are provided for (treated) in the Plan regardless of treatment.

A “contingent” liability for bankruptcy purposes is ‘one which the debtor will be called upon to pay only upon the occurrence or happening of an extrinsic event which will trigger the liability of the debtor to the alleged creditor.’

An “unliquidated” liability is where the amount of the debt is not readily ascertainable; where the dispute itself makes the claim difficult to ascertain or prevents the ready determination of the amount due.

If a debtor lists a title company as the creditor on a mortgage, it is likely that is a servicing agent for first and second lien holders. It is vital that the underlying note holders are listed as the creditor and given notice. Many times debtors bought property and are making the payments to a title company. Then the title company will break up the payment and pay the payees, after taking a servicing fee. If both the payees and debtors do not direct the title company to continue as the account servicing agent, then the title company will return payments disbursed by the Trustee. In turn, the Trustee will put the problem in the attorney’s lap. If a payee refuses to allow the title company to continue servicing the account, then have the debtor make direct payments if the amount is known. In this instance, consider rejecting the executory contract with the title company.

If a creditor has a lien against the debtor’s property but the plan is proposing to classify or strip off the lien, then the debt should still be listed on Schedule D.

(E) Schedule E. Priority Claims.

Required disclosures:

- Check the box if no priority claims.
- Check the applicable boxes for the type or types of priority claims listed.
- Name, mailing address and last four digits of any account number for secured creditors. List in alphabetical order.
- If a minor child is the creditor, state the child’s initials, and the name and address of a parent or guardian.
- Other than a spouse of a debtor if there is a codebtor on the debt, mark with an “X” for each, and complete Schedule H.
- Indicate “H” for husband, “W” for wife, “J” for joint, or “C” for community property interest. No mark is needed for an unmarried individual debtor.
- If the claim is contingent, unliquidated, or disputed, mark each with an “X.”
- Report the total amount owed, the amount entitled to priority, and the nonpriority amount.

Check Schedule E priority amounts against the Plan and claims to ensure all priority claims are provided for in the Plan pursuant to 11 U.S.C. § 1322(a)(2), including child support and spousal maintenance. **Student loans are not entitled to priority status and must not be listed on Schedule E.** The Trustee may note in

the Recommendation if there is a secured tax claim which might revert to priority regardless of a Plan provision or objection by a taxing agency.

A common misconception is to put all property taxes as priority. The Code provides that property taxes for the one year before the petition are priority. Actually, under Arizona law, property taxes are secured so you could or should place the property tax debts on Schedule D with a statement that one year is priority, if applicable.

The debtor should list any child support enforcement agency in addition to the receiving parent. When a child support order is entered, DES is supposed to assign an "Atlas number." An Atlas number is a unique number assigned nationwide to that child support. Putting the Atlas number on Schedule E and in the Plan would be extremely helpful to the debtors and Trustees. Listing the court which issued the child support gives no valuable information so do not list the court as the entity for enforcement or collection.

The Trustees recommend that debtor attorneys calendar the claims deadline for a government entity to file a proof of claim or for nondischargeable debt to file a proof of claim. Then, if the creditor fails timely to file a proof of claim, a debtor may file a proof of claim for the creditor within 30 days after expiration of the claim filing deadline for the creditor. Rule 3004, F.R.B.P.

If no proof of claim is filed, then the Trustees may be unable to pay any child support arrears. Since a domestic support obligation is nondischargeable, the debt will remain after discharge.

The agency responsible for collecting child support in Arizona is:

For Correspondence and Inquiries:

Division of Child Support Enforcement
Department of Economic Security
P.O. Box 40458, Site Code 021A
Phoenix, Arizona 85067
Office: (602) 252-4045

This is the address to put on the Master Mailing List and Schedule E.

For Payments:

Arizona Department of Economic Security
Support Payment Clearinghouse
CHILD SUPPORT ENFORCEMENT UNIT
P.O. Box 52107
Phoenix, Arizona 85072-2107

Sometimes the Arizona Attorney General gets involved in a case, and that information is:

Division of Child Support Enforcement
Office of the Attorney General
P.O. Box 6123, Site Code 775-C
Phoenix, Arizona 85005
Office: (602) 542-1645
Fax (602) 542-9189

The Chapter 13 Trustees send payments to:

Clearinghouse
P. O. Box 36626
Dept. AR3115/Child Support Enforcement
Phoenix, AZ 85067

Clearinghouse
P. O. Box 52107
Phoenix, AZ 85072

(F) Schedule F. Unsecured, Nonpriority Claims.

Required disclosures:

- Check the box if no unsecured claims.
- Name, mailing address and last four digits of any account number for unsecured nonpriority creditors. List the primary creditors in alphabetical order.
- If a minor child is the creditor, state the child's initials, and the name and address of a parent or guardian.
- Other than a spouse, if there is a codebtor on the debt, mark with an "X" and complete Schedule H.
- If the claim is contingent, unliquidated, or disputed, mark with an "X" for each.
- Describe the date the claim was incurred, the consideration involved, and if the claim is subject to setoff.
- State the amount of the claim.

Check Schedule F for compliance with the Chapter 13 debt limits. Section 109(e). If a debt is listed as disputed on a Schedule, the Trustees still will pay on the claim unless an objection against the claim is filed and sustained. In other words, if a debtor disputes a debt, then the proper procedure is to file an objection to it. If a creditor is having a third party try to collect the debt, then make sure both the creditor and collection agency or attorney are listed on Schedule F and the master mailing list.

Student loans are always classified as unsecured, nonpriority debts unless the creditor has a judgment lien (in which case the debt might be a secured claim). The fact that a debt may be nondischargeable does not give the debt priority

status. Also, do not classify student loans for payment ahead of other unsecured, nonpriority debts.

(G) Schedule G. Executory Contracts and Unexpired Leases.

Required information:

- Check the box if no unsecured claims.
- Name and address of *all* parties to the lease (example - apartment or car lease).
- Description of the contract or lease.
- Nature of the lease.
- If a government contract, state the contract number.

(H) Schedule H. Codebtors.

Required information:

- Name and address of codebtor (including a nondebtor spouse).
- Name and address of the creditor (include all guarantors and signors).

(I) Schedule I. Income.

- (1) Schedule I should clearly identify the employer, length of employment with that employer, the employer's address, debtor's occupation, and list all dependents and their ages, whether the dependents are living at home and receiving child support, or living away from home with child support being paid. If child support is being paid for children living away from home, please state to whom the support is paid and for whose benefit.
- (2) Monthly income is calculated from the paystub as follows:
 - (a) If paid weekly, the average net income is multiplied by 4.333.
 - (b) If paid biweekly, the average net income is multiplied by 2.167.
 - (c) If paid semi-monthly, the average net income is multiplied by 2.
- (3) The Trustees will object to payroll deductions for savings bond purchases and stock purchases, etc. If a deduction is a condition of employment, then the Trustees may have no objection to it, however be prepared to provide a copy of the 401(k) loan documents. If the deduction is a condition of employment, then proof must be provided. The Trustees might consider requiring your client to take the tax consequences of the loan as income, adjust tax withholdings and require an increase in payments.

Any anticipated increase or decrease in income in the first year must be reported at the bottom of Schedule I. This is important to explain

feasibility of graduated plan payments. It may be inconsistent for a debtor to propose graduated plan payments, but the debtor states no increase in income is expected in the next year.

Since the Trustees will be requesting verification of unusual types of deductions, it would be advantageous to get the information from the debtor before the case is filed. Even better yet, send the information to the Trustees early in the case so the issue does not have to be raised in the Recommendation. The Trustees may object to new contributions to a savings plan.

- (4) Job expenses. Sometimes debtors state they have un-reimbursed job expenses. If so, the Trustees may compare that statement to the income tax return, Schedule A, line 21.
- (5) Business Operating Statements. If a debtor is self employed or engaged in any business, then the debtor must file a Business Operating Statement each month. The Local Rules require a Business Operating Statement for the month in which the debtor filed the petition. See the Trustees' websites for their Self Employment Questionnaire, Business Case Questionnaire and Operating Statement forms. The debtor's obligation to file Business Operating Statements continues throughout the case, even after the Court confirms a plan. See 11 U.S.C. § 1304(c).
- (6) If a debtor's employer or employment status has changed, then file an amended Schedule I and declaration, and provide two paystubs to the Trustee.

(J) Schedule J. Expenses.

Schedule J will be compared with the Trustee's Expense Guidelines. If there are any material deviations from the Guidelines, they will be questioned or objected to by the Trustee. Please provide an explanation! Additional verification may be required. You can state reasons for *expense* deviations on Schedule I where it asks if income is expected to change in the first year, line 19 of Schedule J.

If a debtor claims a large amount for uninsured medical expenses, the Trustees might expect to see a deduction for them on the income tax return, Schedule A, lines 1-4.

Be prepared to ask your clients for verification of expenses for a minimum of six months prior to the petition. If your client is producing such verification of expenses, please review the documents to see if the expenses are reasonable and necessary, and organize the materials for the Trustee.

(6) SELF-EMPLOYED DEBTORS AND BUSINESS CASES.

Usually, when the Trustee's office requests more documents for the self employed debtor, the Trustee prefers the documents being provided to the attorney first, then organized to give the Trustee. If the debtor has an ownership interest in a company for self-employment income, then the Trustee likely will require a copy of the entity's income tax returns, if filed separately from the individual. Debtors are to file the BOS with the Court, not send them to the Trustee.

Forms on the Trustees' websites:

- Monthly Operating Statement and instructions
- Self-Employment Questionnaire
- Business Case Questionnaire
- Business Evaluation Waiver (Kerns)
- Trade Debt Affidavit (Kerns)

(7) PLANS.

(A) Statutory Requirements. Section 1322.

(1) *Mandatory Plan Contents.* A Plan must:

- (a) Provide for payments (submission of income) as is necessary for execution of the Plan.
- (b) Provide for full payment of all claims entitled to priority, unless the claim holder specifically agrees otherwise. (A lack of objection to a plan by the claimant is not an affirmative assent.)
- (c) Provide for the same treatment of claims within a particular class.

(2) *Permissive Plan Contents.*

- (a) The plan may provide for less than full payment of a DSO priority claim if all disposable income is submitted for a five-year period.
- (b) May designate a class or classes of unsecured claims but may not unfairly discriminate between them, except for a codebt.
- (c) Modify the rights of holders of a secured claim, other than a claim secured solely by a security interest in the debtor's principal residence.
- (d) Provide for the curing or waiving of any default.
- (e) Provide for payment on unsecured claims concurrently with other claims.
- (f) Provide for payment of any § 1305 claim.
- (g) Provide for the assumption, rejection or assignment of an executory contract or unexpired lease.
- (h) Provide for vesting of property of the estate upon confirmation or a later date.
- (i) Pay interest on nondischargeable claims after all other claims are paid.

(B) Local Rule Requirements. Rules 2084-4, 2084-6, L.R.B.P.

- (1) The debtor's estimate of the value of each secured claim, the method of determining the value, (examples such as Kelley Blue Book, appraisal, or debtor opinion) and the amount to be paid on each secured claim.
- (2) The interest rate to be paid on each mortgage arrearage or other secured claim.
- (3) A statement that the debtor has filed all tax returns or which returns are unfiled.

- (4) The signatures of the debtor and debtor's attorney, in the form allowed or required by the ECF interim operating order.
- (5) A plan is to propose adequate protection payments to creditors secured by personal property, beginning month one.
- (6) Properly designate the plan. Other than the original plan, a plan filed before entry of an order of confirmation of a plan shall be entitled "Amended Plan."

A plan filed after entry of an order of confirmation of a plan shall be titled as a "Modified Plan." In an amended or a modified plan, a debtor needs only to include those terms or conditions that differ from the plan confirmed by the court and the order confirming plan.

- (C) General Order 104. Model Plan Form. On January 1, 2010, the Bankruptcy Court issued General Order 104, requiring use of a Model Chapter 13 Plan form.

Caption:

- (1) Include the last four digits of the debtor's SSN and the debtor's address.
- (2) Mark the appropriate box as to an original, amended or modified plan. If an amended or modified plan, state the number of such (e.g., first, second).
- (3) If the plan is an amended or a modified plan, then provide each reason why changes.

**The following paragraphs correspond to the same numbered paragraph of the Model Plan:

(A) Plan payments and property.

- (1) Provide the plan payment start date, which should be no later than 30 days after the petition date. Section 1326(a)(1). State the amount of the plan payment and the applicable months. State the plan duration and the applicable commitment period.
- (2) Describe any other property the debtor will submit in addition to the regular plan payments.

- (B) Trustee Percentage Fee. The Trustee's percentage fee likely will fluctuate during the plan, but use 10% as the amount for the duration of the plan.

(C) Administrative expenses, mortgage payments and claims.

Each section allows for the debtor to alter the standard treatment as provided in the paragraph by marking a Varying Provisions box.

(1) *Adequate protection payments.* A plan is required to provide for the payment of adequate protection payments to certain creditors secured by *personal* property. Give the name of the creditor, a description of the property, and the monthly amount.

- AP payments are to be included in the plan payments, unless the Court orders otherwise. Rule 2084-6(a).
- The Trustee will make the AP payments to creditors if the requirements of Local Rule 2084-6 are met.

(2) *Administrative expenses.*

- (a) Attorney fees. State how much the debtor paid before filing the case and how much is owed. The amounts must be consistent with those disclosed in the Rule 2016(b) disclosure statement.
- (b) State other administrative expenses, if any.

(3) *Leases and unexpired executory contracts.*

- (a) If assumed, then provide the creditor name, property description, the estimated arrearage amount, and the arrearage through date. The actual amount of the arrears presumably will be adjusted to the creditor's allowed proof of claim.
- (b) If rejected, then provide the creditor name and property description.

(4) *Claims secured solely by real property.*

If the debtor is surrendering such property, then place that provision in paragraph (E).

- Provide the creditor name and brief property description.
- Collateral value and method of valuation.

- The amount of the post-petition payments; state if the debtor will pay the post-petition payments directly to the creditor or if the payments are included in the plan payments. Currently, only Trustee Kerns is a mortgage conduit.
 - State the estimated arrearage, with the understanding that the amount will be adjusted to the creditor's allowed proof of claim.
- (5) *Claims secured by personal property or a combination of real and personal property.*
- Provide the creditor name and brief property description.
 - Debt amount.
 - Collateral value and method of valuation.
 - The amount of principal to be paid on the secured claim or if to be paid in full.
 - State the interest rate to be paid on the secured claim (principal amount). State the actual interest rate without referring to another document, such as the contract.
- (6) *Priority unsecured claims.*
- (a) For a DSO claim, provide the name of the creditor, estimated prepetition arrearage, and the arrearage through date. As the plan form states, the debtor is to pay the post-petition payments directly to the DSO claim holder.
- (b) Other priority claims.
Provide the creditor name, the type of priority debt (under § 507), and the estimated amount
The actual amounts to pay would be changed to the amount on the creditor's allowed proof of claim.
- (7) *Codebtor claims.*
Provide the creditor name, codebtor name, and estimated debt amount. Presumably, the debtor will want to pay the

codebt in full to protect the codebtor, so the amount would get adjusted to the allowed proof of claim amount.

- (8) *Unsecured nonpriority claims.* Specific unsecured creditors or the amount of unsecured nonpriority claims need not be stated.
- (D) Lien retention. Creditors are to retain their liens until the debt is paid or upon discharge. For different lien release treatment use Varying Provisions.
- (E) Surrendered property. Provide the creditor name and property description.
- (F) Attorney fees. Discussion of attorney fees is left to separate materials.
- (G) Vesting. If property is to not revest back into the debtor upon confirmation then state so. Otherwise the presumed treatment will apply.
- (H) Tax returns. State any type and years unfiled.
- (I) Funding shortfall. A funding shortfall in a confirmed plan may come about for plans with tight funding or where a debtor makes many plan payments late so as to cause extra interest to accrue on a secured claim.
- (J) Varying provisions. State the Varying Provisions. Some attorneys are filing *two* summaries. The one in the Model Plan is the only plan summary.
- (K) Plan Payment Summary.
The Plan payment summary paragraph (K) must be completed by all debtors.
- (L) Section 1325 Analysis.
 - (1) Section 1325(a)(4). The best interest of creditors test section must be completed by all debtors.
 - (2) Section 1325(b) Analysis. To be completed by debtors with a current monthly income greater than the median income.
- (M) State the estimated amount that will be received by the class of unsecured, nonpriority claims.

(D) Plan Practice Pointers or Requirements.

- (1) Secured claims must be provided for or the property surrendered. The Plan must describe the debtor's proposed treatment of secured claims regardless of the treatment. For vehicle purchased within 910 days of the petition date, a creditor likely would object to the plan unless full payment of the claim is provided. The interest (discount) rate may be adjusted, however.
- (2) Provide for payment of all disposable income in the applicable commitment period. For those debtors who are below the median income, that will likely be the excess income on the bottom of Schedule I. For those debtors over the median income, the answer is not so clear. If the debtor is over the median income and has some disposable income on line 59 of the B22C, then the plan duration will have to be 60 months and the plan payment will be the debtors excess income on Schedule J or some amount less than that depending on how much has to be paid the unsecured creditors. For those with no disposable income on line 59, the applicable commitment period could be less than 60 months, but the plan payment will have to be some figure which does not violate good faith. The Trustee would recommend an amount closely relating to the debtor's excess income on Schedule J.
- (3) Post-petition tax refunds and other property.

As for nonexempt tax refunds owing at the time of filing, The Trustee may ask for those refunds to satisfy the disposable income and best interests of creditors requirements of the Code. At the very least, both Trustees will require the refund be calculated in Chapter 7 reconciliation if not turned over due to an exigent need.

As to tax refunds for post-petition years, the Trustees prefer that a debtor adjust the tax withholding so that he or she does not receive large tax refunds. This means that the debtor will have more disposable income to pay into the plan. Debtor's attorney should look at this before filing the debtor's Schedule I and plan. If a debtor does not change the withholding, the Trustees will require the debtors turn over the net tax refunds for the duration of the plan.

Whether certain property (in addition to Plan payments) is to be turned over to the Trustee as supplemental or advance Plan payments, may depend on the nature of the property. Nonexempt property may be

supplemental depending on whether the SOC accounted for turnover or the Plan base was increased.

In most instances, stated supplemental Plan payments will not effect the Plan duration unless all the creditors are paid in full. The debtor will not be able to miss Plan payments to use up the supplemental property as recent payments, unless the Plan was confirmed without supplemental property to be submitted.

Tax return versus tax refund. If a plan states that the debtor will pay the Trustee future tax refunds and the order confirming the plan provides for submission of tax returns, the debtor must pay the refunds and provide a copy of the returns.

- (4) If attorney fees are to be paid post-petition to the debtor's attorney, the expanded language and title must be included. L.R.B.P. 2084-3. Please put detail in the fee application contained in the Plan. Moreover, recheck the consistency of the Plan amount of attorney fees and the attorney's Rule 2016(b) disclosure. A discussion of the current state of affairs regarding attorney fees is provided in other materials.

- (5) Adequacy of Funding.

Interest will be calculated from the date the petition was filed. Lack of Plan specificity may increase interest accrual and the yield requirement. It is a rare debtor who makes all Plan payments timely throughout the case. Unless otherwise clearly stated in the Plan or Order confirming, the Trustees assume the Plan provides that the plan payments will be disbursed *pro rata* in the following order:

- Administrative expenses (attorney fees)
- Mortgage arrears and claims secured by real property
- Claims secured by personal property (including secured tax claims)
- Unsecured, priority tax claims (including child support)
- Codebtor or special class claims (including criminal restitution)
- Unsecured, nonpriority claims

- (6) Comparison of Plan With Schedules.

Compare the Schedules with the Plan to verify that all scheduled secured and priority claims are provided for in the Plan. The Plan must provide for unassigned child support arrears. Do not put student loans in a special class to receive payments ahead of other unsecured, nonpriority claims.

The claims docket should be checked to confirm all secured and priority claims are covered.

(7) Comparison of Plan with Plan Analysis.

Verify the calculation of interest and inclusion of all debt provided for in the Plan, plan funding, and Trustee's fees. Calculate the Trustee's fee as 10% of the Plan base, though the actual Trustee's percentage may fluctuate. This provides some cushion for a tightly funded Plan. The Chapter 7 reconciliation section of the Plan Analysis must be completed.

(8) Adequate Protection Payments.

Although adequate protection payments usually accumulate from month one of the Plan, many times the payments are not disbursed until confirmation occurs, unless the Court orders otherwise or the requirements of Local Rule 2084-4 are met.

(9) **Trustees' Policies on Direct Payments on Secured Debts.** There may be some differences between the Trustees' policies. Generally, the Trustees require that debts secured by *personal* property be included in the plan payments to the Trustee, whether or not the secured debts are being modified. Some generalized exceptions are where the debtors purchased the property within 30 or 60 days before filing the petition or on very large secured claims. Except for Trustee Kerns cases, Brown and Maney do not want the debtor to pay ongoing post-petition mortgage or lease payments to them, unless ordered by the Court.

Payments "in the plan." Please do not use the language "debtor shall make the payments in the plan" as it is ambiguous. Instead, use language such as "debtor shall make the payments directly" to the creditor or the "payments to the creditor are included in the plan payments."

(10) Secured tax claims. Please do not use language in the Plan that the debtor will pay "interest at the statutory rate." Put in a definite interest rate so the Trustee and creditors know what interest rate is proposed.

(E) Amended and Modified Plans.

(1) Amended Plans. An amended Plan is a plan filed after the original Plan but before confirmation of the original Plan. A modified Plan is a Plan filed after confirmation of a prior one. L.R.B.P. 2084-4(b), (c).

When drafting an amended Plan, please reread the Trustee's Recommendation on the original Plan and correct all problems noted.

Failure to comply with the requirements of the Recommendation may result in dismissal of the case. The filing of an amended Plan does **not** provide an automatic extension of time to resolve other issues mentioned in a Recommendation or satisfy the Trustee's request for other documents.

It is the attorney's responsibility and requirement to check claims at the Court for additional claims that were not covered by the previous Plan or Recommendation. If a secured proof of claim is filed before confirmation but not provided for in a Plan it will have to be dealt with. Either an amended plan must be filed, the creditor endorses the Order, or an objection is filed to the claim.

File amended Schedules I and J, and provide two recent, consecutive paystubs for each debtor if the Plan payment is changed or there was a job change. It does not matter whether the payment goes higher or lower. Please file the amended Schedules by the time you file the amended or modified Plan.

(2) Modified Plans.

Generally, modified Plans are filed to adjust for the surrender of certain property, make a reduction in Plan payments, or pay additional attorney fees or priority tax debt.

Modified Plans must include the attorney fee language and a Plan analysis.

Likely the Trustee will require Amended Schedules I and J to be filed, and two recent paystubs be provided, even if no payment change is contemplated. A debtor who is self-employed will have to have filed the monthly operating statements. A modified Plan or motion for a moratorium reopens the debtor's circumstances for inspection.

If a creditor files a secured claim after the Court confirms the Plan, but the Plan makes no provision for payment on it, then Trustee Brown does not require any modified plan. However, keep in mind if a debtor makes no payment on such secured claim, then the lien probably remains after discharge. On the other hand, Trustee Maney may contact you about a modified plan to provide for the missing secured claim and, if one is not filed, he may file a motion to dismiss.

(F) Moratoriums.

A motion for a moratorium must specify the **exact months** of the requested waiver and provide a compelling reason for the requested suspension. Evidence to support the waiver will have to be provided. For example, home and vehicle repair bills, medical bills, physician letters, etc., are examples of the information which might be required. The Trustee always asks for verification of the reason(s) for the requested waiver, so please ask the debtors for the verification up front instead of waiting until the Recommendation. Do not risk dismissal of the case by waiting. Moreover, specify how the missed payments are to be made up. Most always, the Trustees will object if the debtor does not intend to make up the payments.

When a debtor requests or needs a modified or an amended Plan, or a moratorium, why not send the debtor the forms for amended Schedules I and J, and a request for two additional paystubs. You should have standard forms for doing these. That way you can get the documents completed before the Recommendation is filed.

Do not lodge an order approving a motion for moratorium without the Trustee's signature. Local Rule 2084-13(a).

Remember: Interest is calculated from the petition date and continues to accrue until regular Trustee disbursements begin and the claim is paid.

The cutoff date for the three Trustees is the end of each month.

(G) Trustee's Recommendations. Provisions in the Trustee's Recommendations are considered objections to confirmation. Thus, the Trustee must be a party to the order confirming the Plan or order granting moratorium, and usually will be the last person to endorse the order. Rule 2084-13(a), L.R.B.P.

(H) Delays in Confirmation.

- (1) Delays in confirmation create numerous problems, the most significant of which are:
 - (a) Accrual of interest on secured claims or co-debtor claims.
 - (b) A higher dismissal rate with subsequent reinstatements. The Trustees are hardening their attitudes toward stipulating to reinstate cases. Attorneys may have to be doing more emergency motions to reinstate or filing new cases for those debtors.
 - (c) A greater chance of having a disgruntled client.
- (2) The most common delays to confirmation of the Plan are unresolved creditor objections and unfiled tax returns.

- (a) Creditor Objections. You may not be able to file a Plan which will make every creditor happy, but once an objection is filed, an immediate effort to resolve it should begin. For each month the unresolved objection remains, additional interest will accrue on secured claims. A creditor's objection is due 10 days after the § 341(a) meeting, or 25 days after service which ever is longer. **Thirty days is sufficient time to either resolve the objection or file a motion to get a hearing set on it.** The Trustees will not require the objection to be resolved at the deadline - just demonstrable action on it.

The failure to timely resolve the objection or file a motion to get a hearing may result in the lodging of a dismissal order. The additional time to get the case reinstated will cause additional interest to accrue. Of course, other adverse consequences could include the debtor losing a house to foreclosure or a car to repossession. Both consequences happen all too frequently.

- (b) Unfiled Tax Returns. This is one area of delay that can be prevented many times. In the first meeting with the debtor, find out what tax returns, if any, are unfiled and why. Have the debtor gather all required information to prepare the missing returns. If a debtor is missing W-2 or 1099 Forms, have him or her immediately begin to contact employers or the IRS. Once a Recommendation is written with returns still unfiled, there is only one month to get the information together. The trustees want proof of filing. This means a tax agency stamped copy of each return. Trustee Maney will accept as proof of filing, counsel's transmittal letter of the returns to the various taxing authorities. There are few reasons why tax returns are not timely filed to prevent dismissal of the case. The average time from the petition date to the deadline set in the Recommendation is at least four months. If there are unfiled returns shown, then the Trustees will likely bring it to the attention of the attorney and debtor at the § 341(a) meeting.

Many times the debtors will be missing their income and withholding information. The IRS will give taxpayers a printout at the satellite offices showing the basics of a W-2 or 1099. Reported

income and federal income tax withheld will be shown on the printout. This printout shows only the federal taxes withheld. A visit to the Arizona taxpayer's assistance office may be needed for Arizona information. Federal tax forms can be downloaded from www.irs.gov and then go to forms and publications. You can download Arizona tax forms at www.revenue.state.az.us. At the ADOR website, you can link to other sites for forms for other states, too.

Be sure to inform your clients to file the returns at the correct location. Local processing of the returns speeds posting of the returns and amended proofs of claim.

The federal returns should be filed at:

Internal Revenue Service
M/S 5014
Suite 112
4041 North Central Avenue
Phoenix, Arizona 85012-5000

The Arizona returns should be filed at:

ARIZONA DEPARTMENT OF REVENUE
Special Operations, 7th Floor
1600 West Monroe Street
Phoenix, Arizona 85007

If the debtor had insufficient income to be required to file returns, then please prepare the appropriate Affidavit at the time the case is filed. File the Affidavit with the tax agency at the above address. You may be able to get the taxing agency to withdraw its proof of claim early in the case.

- (I) **Extensions of Time.** The Trustees no longer have a form for making an informal request for an extension of time to comply with the Trustee's Recommendation. Trustee Brown does not allow informal requests. Trustee Maney will accept requests for informal extensions either by letter or e-mail. If an extension of time is filed to comply with one Recommendation condition, the deadline for compliance with other Recommendation conditions is unchanged.

When doing a motion for an extension of time, it is important to include details such as:

- (1) Is the motion the first, second or third one?
- (2) What creditor objections have been resolved?
- (3) What creditor objections are unresolved and what attempts have been made to resolve them?
- (4) Which requirements of the Trustee's Recommendation have been accomplished and which are unresolved?

(J) Dismissals and Reinstatements. Many times the Trustees see debtors' attorneys file objections to the lodged dismissal order, yet the attorney has done nothing to correct the problems relating to the dismissal. This conduct can result in sanctions assessed against counsel. Usually, the Court will reinstate a case sooner if the Trustee endorses a stipulated order to do so.

If the Trustees perceive an attorney having an ongoing problem following through on his or her cases, the Trustees may decline to stipulate to reinstate cases with that attorney. In those instances, the attorney must decide on doing a motion to reinstate or have the debtor file a new case, or both. The Trustees' position is moving toward having fewer reinstatements as there are too many cases being dismissed.

(K) Tax Refunds. Starting a year ago, Trustee Brown has required that debtors must pay over tax refunds to him as disposable and nonexempt income. Sometimes, the Trustee has let debtors keep their refunds *if* they make the request before spending the money, they have a documented need for the money, and the plan funding will be compensated for the money not turned over. If debtors fail to get approval in advance, the Trustee may contest the matter or seek plan funding over the refund amount.

(8) NOTICING.

The Clerk's office takes care of noticing all original plans, amended plans, modified plans, and motions for a moratorium along with the bar date notice.

(9) ORDER CONFIRMING PLAN.

- (A) The Trustee generally is to be the person who uploads an order confirming plan to the Court. Rule 2083-13(c), L.R.B.P.
- (B) The Trustees require a particular format for the order confirming plan, which you can get from their websites. If the Trustee provides a checklist for preparation of the proposed order, then use it. *For example, see www.chapter13.info/forms.*
- (D) In many cases, the issue arises over a secured proof of claim filed but not provided for in the Plan. Sometimes, attorneys submit a proposed order that states the debtor will surrender the property. The question arises of: Did the debtor or attorney notify the creditor that the property would be surrendered? Trustees have seen cases where the debtor has supposedly surrendered property yet the Trustee's office gets a call from the creditor a year later asking about the collateral.
- (E) The Trustees estimate that they have to return proposed orders confirming plans 50% of the time, which is an unreasonable percentage. See the Trustees' websites for any checklist before submitting a proposed SOC.
- (F) If there are any changes in the SOC as to how creditors are to be treated or which substantially change plan funding, then an amended Plan analysis must accompany the SOC.
- (G) Attorneys are required to review the claims docket prior to submitting the SOC to the Trustee. Rule 2084-13(b), L.R.B.P. If an unsecured secured or priority claim is filed but not provided for in the Plan, debtors may:
 - (1) File an objection to the proof of claim (though not a correct procedure for a valid secured claim);
 - (2) Get the holder of the claim to endorse the SOC;
 - (3) Provide for payment of the secured or priority portion of the claim as filed; or
 - (4) File an Amended Plan to provide for payment on the claim (not necessarily full payment on a secured claim).
- (H) All tax returns must be filed prior to submitting the SOC. If amended tax claims are needed due to returns being recently filed, then debtor's counsel must contact the taxing agencies and have them file the amended claim before you submit the SOC or, in an unusual case with Trustee consent, put contingent language in the SOC.
- (I) All objecting creditors must endorse the SOC *before* it is submitted to the Trustee for his signature, unless a hearing to resolve the objection has been set. If an objecting creditor amends a claim (such as the IRS), the creditor still must endorse the SOC unless the objection is withdrawn. The Clerk will return any SOC which

does not have all objecting creditors sign the Order. Please do *not* use a " /s/ " for the creditor's signature.

- (J) The SOC form contains language: "The Plan or this Order shall not constitute an informal proof of claim for any creditor." The reason for requesting this language is for creditors to file a proof of claim and not rely on the plan or order for failing to file a proof of claim verifying the amount owed.

- (K) *Common Reasons the Trustee Returns Proposed SOC's:*

If the Trustee provides a checklist to prepare and submit a proposed order confirming plan, please use it. Some common reasons why the Trustees return orders:

- (1) No cover letter is provided or the cover letter fails to address all of the Recommendation issues.
- (2) The SOC does not address all of the Recommendation items.
- (3) The SOC is not in the form required by the Trustee. Please do not alter the standard language of the Trustee's form with providing notice to the Trustee.
- (4) The years for tax returns to be turned over are incorrect.
- (5) A failure of counsel to review the claims register before submitting the SOC with a claim discrepancy remaining.
- (6) The Plan payment schedule is not listed in the SOC or is incorrectly stated.
- (7) Creditor objections have not been formally withdrawn or objecting creditors have not signed the SOC.
- (8) Information or documents required by the Recommendation have not been received, such as paystubs, lease termination, and 401(k) information, by the Trustee. The Trustees prefer the attorneys take charge of gathering information from their debtors and providing the information to the Trustees.
- (9) Attorney fees are increased in the Order without a separate fee application being filed and approved.
- (10) If an extension of time is filed to comply with one Recommendation condition, the deadline for compliance with other Recommendation conditions is unchanged.
- (11) At the time of confirmation, all debtors are required to certify that they are current on all domestic support obligations and filing of all required tax returns. The certification may be filed separately on the court's docket or

it may be included in the SOC signed by the debtor. If it is not filed or included in the SOC, the SOC will not be signed by the Trustee.

- (12) A failure to address tax refunds or other property submitted or to be submitted to the Trustee.
- (L) Notice of Submitting the PSOC to Trustee. After submitting a psoc to the Trustee, please create the applicable ECF docket entry. (Currently found at Bankruptcy/Notices/Submission of Proposed Order Confirming Chapter 13 Plan (Notice of).
- (M) Trustee Notice of Rejection of PSOC. If the Trustee rejects the proposed order confirming plan, the Trustee will create an ECF docket entry of such.

(10) PROOFS OF CLAIM.

(A) General.

Claims are deemed allowed unless objected to, even if untimely filed. Section 502. A claim is no more than an asserted right to payment. Before submitting a proposed order confirming plan, please check the Court's claims docket to make certain that creditors are being treated consistent with the Plan and the SOC. Note that there is no such thing as a "general unsecured claim." The correct terminology is "unsecured, nonpriority claim."

(B) Secured Claims.

If a secured creditor wants to receive disbursement on its unsecured portion, then a claim must be timely filed. There is no deadline for filing a secured proof of claim. Secured claims provided for payment in the confirmed Plan, but for which there is no claim filed, **will be paid per the confirmed Plan**, regardless of whether the secured claim amount is higher or lower than stated in the confirmed Plan. If an untimely claim is filed, the Trustee probably will file an objection to payment of any of the *unsecured* portion of the secured claim.

The above also is true for claims for an arrearage secured by the debtor's home. If the debtor wishes the higher claim amount to be paid, then some action needs to be taken such as a modified Plan filed.

If a secured proof of claim is filed before the Plan is confirmed but the Plan makes no provision for payment on the secured claim, then the Trustees want the claim dealt with either by an amended Plan, objection to the claim, providing for payment per the proof of claim, or the creditor endorses the SOC.

If a secured claim is filed after the Plan is confirmed but the Plan makes no provision for payment on the secured claim, then the Trustees will make no payment on the secured claim. **However, please note that the lien against the property probably survives the discharge and the creditor may be able to go against the property. Trustee Brown may notify the parties that no money will be paid on the secured claim but the lien may survive the discharge. Trustee Maney will require the debtor deal with the secured claim or file a motion to dismiss the debtor's case.**

(C) Priority Claims. The general principle is that timely filed priority claims must be paid in full, unless the claimant specifically agrees otherwise.

- (1) *Claim Unfiled or Untimely Filed.* If the confirmed Plan provides for payment of a priority claim, such as for taxes or child support, and the creditor fails to timely file a claim, then the Trustees will not pay on the debt. If a claim is untimely filed, the Trustees will file an objection to it. If the objection is sustained, the funds will be distributed to the next, lower class. **If the debt is also nondischargeable, such as child support, then the attorney should file a proof of claim for the creditor.**
- (2) *Claim Timely Filed.* If the priority claim amount is *higher* than the amount stated in the confirmed Plan, then the amount stated in the confirmed Plan will be paid. The Trustees generally will pay the higher priority claim amount if there is adequate Plan funding. However, the Trustees will try to get debtor's counsel to resolve the issue. If debtor's counsel fails to respond, the Trustees will file a motion for a status hearing or to require the debtor to file a modified Plan.

If the priority claim amount is *lower* than the amount stated in the confirmed Plan, then the claim amount will be paid. Any funds left over are paid to the next, lower class.

(D) Special Class Claims.

The Trustees will determine on a case-by-case basis whether to file an objection to an untimely proof of claim in a special class.

- (1) *Child Support Claims.* If the Plan provides for payment of child support arrears, a claim **must** be filed to receive disbursements. It is critical that the debtor's Schedules disclose the relevant detail as to the creditor to ensure correct payment. The deadline for a governmental creditor to file a claim for child support is 180 days after the petition is filed but for a nongovernmental creditor is 90 days after the first § 341(a) date.
- (2) *Student Loans.* Generally, student loan claims are paid *pro rata* with other unsecured, nonpriority claims. The Trustees may file an objection to a student loan claim which is untimely filed. As you could guess, child support and student loan creditors are notorious for ignoring bankruptcy cases and not filing claims. This may partly be due to the fact that these types of debts are not discharged (child support) or rarely dischargeable (student loans). Therefore, debtor's counsel should consider **timely** filing a proof of claim for the creditor. Get the documentation from the debtor in the beginning of

the case. Do not wait to see if the creditor eventually files a claim because the deadline may be missed. If the creditor does file a claim, then the creditor's claim supercedes the debtor's claim.

(E) Contingent and Disputed Claims.

Unless an objection to a claim is filed and sustained by the Court, it is deemed allowed. Therefore, merely stating in a Schedule that a claim is "disputed" or "contingent" is insufficient to act as an objection to the claim. If the validity of the debt is disputed, then the proper procedure is to file an objection to it. This gives the creditor specific notice that the validity of the debt is challenged.

(F) Claims Docket Problems. Where a plan fails to provide for a secured claim or where a mortgage arrearage claim differs from the Plan, Brown's Recommendation may state:

The Plan proposes payment of a secured claim to _____ who has filed no proof of claim. The Trustee requires that the Debtor(s) provide verification of the creditor's security interest by providing him with a copy of the security documents, such as a security agreement, UCC-1, title, deed of trust, or the like. Moreover, the Trustee requires that the Order Confirming Plan provide as follows: "The Trustee has authority to pay on the secured debt owed to _____ even though the creditor has filed no proof of claim, but the Plan and this Order are not an informal proof of claim for any creditor."

(11) TRUSTEE POST-CONFIRMATION REPORTS.

(A) Notice of Confirmed Plan and Claims Allowed.

After the Court confirms a plan, the Trustee will file a document giving notice of such. Attorneys should review the Notice as it gives information as to how the Trustee intends to disburse funds and what claims appear to be allowed. Debtor attorneys, please review the document to ensure the Trustee will disburse the funds correctly.

(B) Notice of Mortgage Arrearage Cured.

Rule 3002.1, F.R.B.P., was enacted to address issues regarding mortgage arrearages, payment changes and such. The Rule applies to claims secured by the debtor's principal residence and for which the Plan provided for a cure of mortgage arrears. Paragraph (f) of that Rule requires the Trustee to file a notice stating that the debtor has paid the amount to cure any default on a mortgage claim. The claimant must file a response which says whether the creditor agrees with the Trustee and if the debtor is otherwise current of post-petition mortgage payments.

Though the Rule allows a Trustee to file a motion, generally the Trustees will leave it to debtors to ask the Court for a determination whether defaults have been cured and post-petition payments have been made. So unless the creditor's response disagrees with the Trustee's Notice, such as to the amount of arrearage cured by the Trustee, the debtor will have to file any motion.

(12) **INCURRING DEBT AND SELLING PROPERTY.**

L.R.B.P. 2084-25 address the issue of incurring debt and selling property.

(A) **Incurring New Debt.**

(1) Unconfirmed Cases.

Please follow this procedure when incurring new debt or selling property:

- (a) File the appropriate motion with the Court;
- (b) File amended Schedules I and J;
- (c) Provide two recent, consecutive paystubs for each working debtor if there has been a change in income or employers;
- (d) Provide a statement as to the source of funds needed to close the transaction, such as a down payment; and
- (e) Provide the Trustee with all information if purchasing or refinancing property:

Automobiles and Personal Property

- ✓ Copy of the purchase contract showing the terms of the agreement.

Real Property

- ✓ Copy of the purchase contract.
Estimated relocation expenses. Escrow
estimated settlement sheet.

(2) Confirmed Case Under 36 Months. If the case has a confirmed Plan but is less than 36 months old, the following procedure is:

- (a) Provide a letter of request with a description of the property being purchased;
- (b) The Plan payments need to be current. If there is a *pending* motion for a moratorium, then this may suffice. Any requirement for turn over of tax refunds must be satisfied;
- (c) Provide two recent, consecutive paystubs for each working debtor;
- (d) File amended Schedules I and J, and provide the Trustee with a copy;
- (e) Provide a statement as to the source of funds to complete the transaction, such as a down payment; and
- (f) Comply with any other requirements of the confirmed Plan.

(3) Confirmed Case More Than 36 Months.

In a case where a Plan is confirmed and the case is more than 36 months old, then the standards for getting Trustee approval are lessened. To get any necessary Trustee approval, provide the following:

- (a) A letter requesting approval with a description of the property to be purchased;
- (b) The Plan payments must be current; and
- (c) Compliance with any other requirements of the confirmed Plan.

(B) Selling Real Property.

(1) Confirmed Plan:

If the Court has confirmed a Plan, then the following procedure is used:

- (a) Provide a copy of the purchase (sales) contract;
- (b) Provide a copy of the escrow instructions and preliminary settlement sheet;
- (c) File amended Schedules I and J. Schedule J is to use the new shelter cost;
- (d) Provide a copy of two recent, consecutive paystubs for each working debtor;
- (e) Plan payments must be current. Any required tax refunds must be turned over; and
- (f) Compliance with any other terms of the confirmed Plan.

(2) Unconfirmed Plan.

If the Plan is unconfirmed, then the appropriate motion must be filed with the same procedure as in a confirmed case.

(13) CONVERSION FROM CHAPTER 7 TO 13.

- (A) Common issues:
- (1) Failure to file a B22C. The B22A was filed, but there are differences between the forms. So file the B22C.
 - (2) Failure to file a plan. Sometimes the plan is not filed by the meeting of creditors, in which case the Trustee likely will continue the meeting and require the plan get filed.
 - (3) Failure to start plan payments. Occasionally this issue is caused by the failure to file the plan, but sometimes debtors are in the "Chapter 7 mode" and forget to make the first plan payment.
 - (3) Failure to include Chapter 7 trustee's administrative expenses. When a Chapter 7 trustee chases a debtor into Chapter 13, likely the Chapter 7 trustee will get an order allowing administrative expenses. Such amount has to be provided for in the plan.
 - (4) Sometimes debtors or attorneys think that the conversion of the case from Chapter 7 to 13 allows an easy dismissal of the Chapter 13 to eliminate the problematic Chapter 7. Section 1307(b). This is not so as a hearing is required.
 - (5) File amended Schedules I and J to support the Plan payment feasibility.

(14) CONVERSION FROM CHAPTER 13 TO 7.

This discussion assumes the case was not previously converted from another Chapter.

- (A) Common issues:
 - (1) If the case was not previously converted, then conversion of the case is done by filing a Notice of Conversion, not a motion. Rule 1071(f)(3), F.R.B.P. Filing a motion causes delay in the conversion until the Court notices the document.
 - (2) If the Chapter 13 Trustee received funds from nonexempt property then the Chapter 7 trustee might be entitled to receive the funds.
- (B) Attorneys must get their fees approved by a Court order for the Trustee to pay.
- (C) If the case previously was converted from another Chapter, do not seek to dismiss the case without filing a motion and having the Court rule on it. Some debtors convert their case from Chapter 7 and expect the Trustees to seek a dismissal when the Trustees will evaluate the cases individually or get the input of the Chapter 7 Trustee.

(15) DISMISSAL AND REINSTATEMENT.

- (A) Common Issues:
- (1) Local Rule 2084-16 requires an objection to a dismissal order lodged by the Trustee to contain information as to what issues have been resolved, what issues remain, and what has been done to move the plan toward confirmation. Most attorneys fail to meet the standards of the Local Rule. Many times attorneys fail to read the lodged or filed dismissal order as to what issues remain.
 - (2) Local Rule 2084-17: If the court dismisses a case on motion of the case trustee, the court may grant a motion to reinstate the case without a hearing if the trustee approves the proposed reinstatement order.
 - (3) Do not file a motion to reinstate the case if the Court has not yet dismissed the case. An objection to the lodged dismissal order is the proper procedure.
 - (4) Ignoring the case until dismissal does not generate sympathy from the Trustees.
 - (5) If an amended plan is needed then you can file the amended plan before the Court dismisses the case or reinstates a case.
 - (6) If a dismissal order has been lodged or granted, then filing a motion to extend time to comply with the Trustee's Recommendation is too late.
- (B) The Chapter 13 Trustee might object to reinstatement if the Trustee has filed a final report and account. So move expeditiously for reinstatement.

(16) PLAN COMPLETION AND DISCHARGE.

- (A) "Plan completion" to a debtor usually means all the plan payments have been made. To a Trustee "Plan completion" means all aspects of the Plan are met, including the providing of income tax returns to the Trustee.
- (B) Local Rule 2084-26:
Before the Court enters the debtor's discharge under Bankruptcy Code § 1328(a), the debtor must file a Certification that contains the information required by Bankruptcy Code § 1302(d)(1)(C) or contains a statement that 1302(d)(1)(C) does not apply and therefore the information is not required and that the debtor has complied with Bankruptcy Code § 1328(a), (f), (g) and (h).
- (C) The Court's website contains the "Chapter 13 Discharge Eligibility Certificate" that the debtor is to file.
- (D) Before the Court enters a Chapter 13 discharge, the Court waits until the Trustee has filed a Notice of Completed Plan or such. The Chapter 13 Trustee requires the debtor to file the Discharge Eligibility Certificate *before* the Trustee files a Notice of Completed Plan. The Trustees wait for the Certificate so as to make sure the debtor has provided a current address, the name and address of my employer, and the name of each creditor that holds a claim that is not discharged under § 523(a)(2) or (4) or was reaffirmed under § 524(c). Such information is needed for the Trustee to satisfy the duty in § 1302(d)(1)(C).
- (E) If the debtor appears to be ineligible for a Chapter 13 discharge, then the Trustee will file a Notice of Completed Plan without the Certification and the Notice of Completed Plan will state the Trustee's opinion that the debtor is ineligible for a discharge.
- (F) The Court will close a case without entry of a discharge if the debtor fails to file the Certification or complete the post-petition education course.

(17) INTERNET ACCESS TO CASE INFORMATION.

(a) *Debtor Access.*

The Chapter 13 Trustees allow Debtors to have Internet access to case information. Debtors may look at their case data by getting access from the National Data Center at www.13datacenter.com.

(b) *Attorney Access.*

The Trustees allow two methods of access to their case information:

- (1) The first method for debtor or creditor attorneys is through the Trustee's bankruptcy software provider. An Internet Access Agreement must be completed before getting access; the form is on the Trustee websites.
- (2) The second method for debtor attorneys is through the National Data Center, www.13datacenter.com.

Understand that the Trustees do not host the websites. If you have problems with such website, do not direct your inquiries to the Trustees, except where there is a question about the data in the case.

The Court allows debtors to receive the ECF emails and get a free look or download of a document. The form "Notice to Debtors Regarding Email Notification" can be found at www.chapter13.info/forms or www.azb.uscourts.gov.

(18) CYA (COVER YOUR ATTORNEY).

When practicing consumer bankruptcy law, you deal with so many different types of people. Most clients are decent people but, since a successful consumer bankruptcy practice is a number's game, you are bound to have clients who are less than cooperative or accepting of responsibility. Attorneys should have their agreements spelled out in writing. In addition to a written fee agreement, here is some information you should consider providing to the clients:

- When the first Plan payment is due and on which day of the month.
- What is the expected Plan payment amount for the entire duration of the Plan.
- That the Plan payment amount and duration are subject to change depending on the Trustee, creditor objections, and so on.
- Give your clients a copy of the Petition, Statement, Schedules, Master Mailing List, and Plan.
- Failure to make Plan payments will be cause for dismissal of the case. The debtor has the burden of showing all Plan payments have been made.
- All plan payments must be with certified or guaranteed funds, and sent to a specific post office box. Place the name(s) and case number on each payment. Save all receipts or proof of payments.
- Save all receipts or checks for post-petition mortgage payments.
- Until the Plan is confirmed, have the debtor make all post-petition mortgage payments by certified mail with return receipt.
- Tax refunds may be subject to loss to the Trustee. If tax debts are owed, the taxing agency may set off the refund and future ones (so the debtor should withhold only so much as is necessary to pay the expected taxes owed). If the debtor does not want to lose a tax refund, then the debtor should consider waiting to file.
- The Trustee may want a copy of future tax returns and that the client might not get any future reminders.
- Give the client(s) a copy of the conformed SOC with a compliance letter.
- Post-petition mortgage payments must be paid each month, on time.

- If post-petition mortgage or Plan payments cannot be made on time, then contact the attorney's office immediately. If the client cannot make both the mortgage payments and the Plan payments, then it may be preferable to make the mortgage payments. It is usually easier to get a moratorium approved than to battle a stay relief motion.
- The mortgage company may add on attorney fees and costs for bankruptcy work, stay relief motions, and the like.
- The creditors' meeting is usually held around five weeks after the petition is filed and that the case will be dismissed if the client does not attend the meeting. At the meeting, the Trustee requires that the debtor provide him with a copy of the latest income tax return, income verification, and a completed Trustee's questionnaire.
- The debtor will have to prove identity at the meeting of creditors by providing verification of the social security number and a picture identity card from selected sources. Original documents, not copies, are required.
- The client does not have to attend a confirmation hearing unless told otherwise.
- All creditors need to be listed, even if payments are current.
- If there are cosigned debts then the entire indebtedness with any interest must be repaid or the creditor could go after the cosigner. Even then, the cosigner's credit report may be harmed.
- If a lease is assumed (kept), the client needs to make the payments on time and the client remains liable on the lease.
- Any vehicle with money owed against it must be adequately insured.
- Any property with substantial nonexempt equity in it must be adequately insured.
- Generally, no property may be sold or transferred without permission of the Court or Trustee.
- If the client is keeping a house, then post-petition homeowner's dues must be paid each month.
- All property needs to be disclosed, even if possessed but not owned.

- If the debtor is self employed or engaged in any business, the debtor will have to complete a self employment questionnaire and file monthly business operating statements. Give the debtor the BOS form.
- If a debtor is engaged in business (not merely self employed), Trustee Brown usually requires, as a minimum, a business inventory, a completed Business Case Questionnaire, the last two years of corporate or individual tax returns, and a balance sheet (assets and liabilities) for the month the petition was filed.
- Make sure you go over with your clients all the questions which the debtors are going to be asked at the § 341(a) hearing.
- In a joint case, confirm that the debtors state they are married. The Trustees are seeing cases where it comes to light that the debtors are unmarried. The State of Arizona does not recognize a common law marriage.
- In a Chapter 7 case, the government may select the case for an audit and the debtors may have to provide much more information.

Put the disclosures in writing. Have the clients sign the disclosure statement and give them a copy at that time.

(19) COMMUNICATING WITH THE TRUSTEE OFFICES; TRUSTEE REPORTS.

- (A) Communicating with the Trustee's Office.
Please do not give the Trustee's email address or telephone extension to your clients, unless otherwise instructed. The Russell Brown Organizational Chart is provided and is on his website. The Maney and Kerns websites have a list of staff and case assignments.
- (B) Trustee Annual Report.
At least once a year at a time determined by the Trustee, the Trustee will send out annual reports to debtors showing the status of the plan payments, the plan payments received, and the disbursements made. The Trustee does not have to file the Final Report with the Court.
- (C) Trustee Final Report and Account.
 - (1) In a case converted to another Chapter, the Trustee has 30 days to file a Final Report. Since the Final Report is filed so quickly after conversion, the report might not show that money will be refunded to a debtor and such.
 - (2) For a dismissed case or one with plan completion, the Trustee has 150 days to file a Final Report and Account.

**DIANNE KERNS
MORTGAGE CONDUIT
MATERIALS**

**STANDING ORDER
EFFECTIVE OCTOBER 1, 2008**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA
JUDGES MARLAR AND HOLLOWELL'S STANDING ORDER ON
CONDUIT MORTGAGE PAYMENTS IN TUCSON CHAPTER 13 CASES**

This Standing Order is effective for all Chapter 13 cases assigned to Judges Marlar and Hollowell in cases where venue is in Tucson filed or pending after October 1, 2008.

- I. REQUIRED CONDUIT PAYMENTS ON RESIDENTIAL PROPERTY: Regular payments owed by a Debtor to a Creditor holding a claim secured by the Debtor's principal residence shall be made by the Debtor to the Trustee for payment through the Chapter 13 Plan if the Debtor is (i) in default under the terms of the secured claim as of the petition date, or (ii) becomes in default under the terms of the secured claim after the Chapter 13 filing. Such payments are referred to as "Conduit Payments."
- II. DEFINITIONS: As used in this Standing Order, the following capitalized terms shall mean:
- A. "Debtor" or "Debtors" are hereafter referred to as "Debtor."
 - B. The Chapter 13 Trustee is referred to as "Trustee."
 - C. The entity claiming a mortgage or servicer of the mortgage on the real property that is the principal residence of the Debtor is hereafter referred to as "Real Property Creditor."
 - D. The term "Arrearage" is the total amount past due as of the date of filing or, if applicable, as of the date of the filing of an amended Chapter 13 Plan.
 - E. "Plan" shall refer to a confirmed Chapter 13 Plan or confirmed amended Chapter 13 Plan.
 - F. "Mail" shall mean regular mail, email or fax.
- III. OTHER RULES APPLICABLE: Nothing in this Standing Order shall relieve any party from complying with any obligation under the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules of the District and Bankruptcy

Courts of Arizona, or any applicable Standing Orders. These procedures shall not be modified by any plan language without express order from the Court.

IV. DEBTOR'S DUTIES

- A. Debtor may be excused from initially complying with the Standing Order only upon the entry of a Court order upon a showing of circumstances justifying the same. If Debtor is not excused from compliance, but later cures the Arrearages, Debtor may seek to be excused from compliance with the Standing Order by filing a motion with the Court on notice to the Trustee and all creditors.
- B. Debtor must complete the checklist and release of information form (Exhibits A and B) and forward those documents to Trustee (not to the Court) within 5 days of the filing of the bankruptcy petition.
- C. Debtor or Debtor's attorney shall mail or email to the Trustee, a copy of all correspondence, notices, statements, payment coupons, escrow notices and default notices concerning any adjustment to the monthly payments or interest rate immediately upon receipt or creation of the same.
- D. Debtor shall include the regular payment amount owing to the Real Property Creditor, inclusive of Trustee's fees, in the regular plan payment to be paid by Debtor to the Trustee.
- E. Pursuant to provisions of Paragraph V(D) below, in the event the monthly Conduit Payment changes due to either changed escrow requirements or a change in an adjustable interest rate, Debtor's plan payment to the Trustee shall change by the same amount, plus the Trustee's fee.

V. TRUSTEE'S DUTIES

- A. Provided that the Debtor has complied with the obligation set forth in Section IV above, the Trustee is authorized to deduct from any payments collected, pursuant to 11 U.S.C. § 1326, the authorized percentage fee (10%) on the funds distributed as necessary costs and expenses, together with any fee, charge or amount required under § 1326. The Trustee's obligations under this Order shall not render the Trustee a mortgage servicing agent nor subject the Trustee to any rules and regulations governing mortgage servicers.
- B. The Trustee shall allow as an administrative expense an amount equal to two full regular monthly payments inclusive of escrow deposits and two associated late fees. This allowance shall reimburse Real Property Creditor for postpetition delinquencies that may accrue until the Trustee begins payments to that creditor. Once Trustee begins disbursements which include Conduit Payments, such

payments shall constitute current payments on the mortgage regardless of the contractual due date.

- C. Postpetition contract installment payments to Real Property Creditor shall be made by the Trustee whether or not the Plan has been confirmed and whether or not the holder of the claim has filed a proof of claim. The Trustee is required to make a full mortgage payment for each full plan payment made by the Debtor. The Trustee is not required to make partial payments to Real Property Creditor.
- D. A late charge may not be imposed on a postpetition contract installment payment paid or tendered to the Real Property Creditor during the contractual grace period even though an earlier installment, or any late charge thereon, may not have been paid when due. For purposes of determining whether a late charge may be imposed, any postpetition contract installment payment tendered by the Trustee shall be applied by the Real Property Creditor to the most recent postpetition contract installment payment to fall due.
- E. Within 30 days after the Trustee has received any notice of a change in the Conduit Payment, the Trustee shall file a notice of the terms of the change with the Court and provide notice of that change to Debtor, Debtor's attorney, and Real Property Creditor. Such change shall be treated as an amendment to the Creditor's Real Property claim and Debtor's Plan and a party in interest shall have an opportunity to object to the amendment within 20 days of the filing of the notice. Such notice shall be deemed a request to modify Plan under § 1329. After the filing of the notice, the Trustee shall be authorized to disburse the new Conduit Payment. In the event of an objection to the notice, the objecting party shall set the objection for hearing. Until such time as a court order is entered sustaining the objection, the Trustee is authorized to dispense the new Conduit Payment.
- F. Should the new Conduit Payment jeopardize the feasibility of the Plan, the Trustee may file a motion to amend the Plan or seek dismissal of the case, as the Trustee deems appropriate.

VI. REAL PROPERTY CREDITOR'S DUTIES

- A. The Real Property Creditor shall timely file a Proof of Claim, which shall include an accounting of the arrearages as of the Petition Date. Such arrearage calculation shall include: any prepetition payment defaults on principal and interest; a detailed calculation of any foreclosure fees; a detailed calculation of escrow arrearages, including any prepetition advances to the escrow account made by the Real Property Creditor; and a calculation of any prepetition escrow shortages, i.e. the amounts which were not contributed to the escrow account because of Debtor's prepetition payment default; and any other prepetition fees on the Debtor's account, such as inspection fees, late fees, corporate advances, etc.

- B. Unless otherwise ordered by the court, the Real Property Creditor shall notify the Trustee, Debtor and the attorney for the Debtor, 60 days prior to the effective date of any change of payment amount (inclusive of escrow changes) and/or interest rate in a document that conforms with Exhibits C or D or by electronically filing a “Notice of Payment Change” which accurately and completely describes the reason for the change in payment in the ECF docket.
- C. At least 60 days prior to a change of the name of the Real Property Creditor payee, or the address to which payments should be made, Real Property Creditor shall notify the Trustee, Debtor and the attorney for the Debtor, of any such change in a document that conforms to Exhibit E or by filing an assignment/transfer of claim in the ECF docket.
- D. If Real Property Creditor is entitled to advance or incur expenses in connection with the servicing of the note or mortgage, it shall notify the Trustee, Debtor and Debtor’s attorney of any such advances or expenses within 30 days after the advance or expense was paid in a document that conforms to Exhibit F.
- E. The Real Property Creditor shall mail a copy to the Trustee of all copies of correspondence, notices, statements, payment coupons, escrow notices and default notices concerning any change to the monthly payment or interest rate immediately upon receipt or creation of the same.
- F. Confirmation of the Plan shall impose an affirmative duty and legal obligation on the Real Property Creditor, to do all of the following:
 - 1. Apply the payments received from the Trustee for payment on the Arrearage pursuant to the Plan. The Arrearage shall be deemed paid in full upon the entry of the Discharge Order in this case, unless otherwise ordered by the Court.
 - 2. Treat the Debtor’s account as contractually current upon confirmation of the Plan, thereby precluding the imposition, directly, or indirectly, of late payment charges or other default-related fees based solely on any prepetition default or the payments referred to above.
 - 3. Apply the Conduit Payments to the month in which they were designated to be made under the Plan. Even if such payments are placed into a suspense, forbearance or similar account, they will be deemed to have been applied to the note pursuant to this subsection.

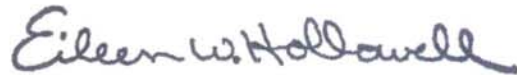
VII. EFFECT OF PLAN COMPLETION

- A. If the Debtor pays the Arrearage, together with interest, if any, as specified in the Plan, all prepetition defaults will be cured and the note and other loan documents will be deemed current as of the date of filing, extinguishing any right of the Real Property Creditor to recover any amount alleged to have arisen prior to the filing of the petition or to declare a default of the note, mortgage, or other loan documents based upon prepetition events.
- B. If Debtor has made all payments required under the Plan, the Trustee shall file a motion seeking an order of the Court determining that all prepetition and, if applicable, postpetition defaults on Debtor's residential home mortgage debt are deemed cured and all payments made on such debt through the date of Plan completion are current, with no arrearage, escrow balance, late charges, costs or attorney fees owing, except to the extent that the Court orders otherwise. The Court shall retain jurisdiction over any order entered under this section, regardless of the closing of the Debtor's bankruptcy case.

IT IS HEREBY ORDERED

Dated: July 30, 2008

Effective Date: October 1, 2008



Eileen W. Hollowell
U.S. Bankruptcy Judge



James M. Marlar
U.S. Bankruptcy Judge

Dianne Crandell Kerns, Trustee
Office of the Chapter 13 Trustee

Mailing Address:
7320 N. La Cholla #154-413
Tucson, AZ 85741
TELEPHONE 520.544.9094
FACSIMILE 520.544.7894
MAIL@DCKTRUSTEE.COM

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:

Debtor(s),

(CONDUIT CASE)

In Proceedings Under Chapter 13
Case No.

**NOTICE OF MORTGAGE
PAYMENT CHANGE**

YOU ARE HEREBY notified that pursuant to notice received by the Chapter 13 Trustee from _____, Claim No. ___, the ongoing conduit mortgage payment amount has changed to \$_____ per month, beginning _____.

Pursuant to Standing Order effective October 1, 2008, this notice serves as an amendment to Creditor's real property claim and Debtor(s) Plan. Parties in interest have 20 days from the date of this notice to file an objection to the payment change.

.....

The Trustee shall be authorized to disburse the new conduit payment without seeking further order of the Court.

If a written objection is timely filed with the Clerk of the Bankruptcy Court at 38 South Scott Ave, Tucson, AZ 85701, the objecting party shall set the objection for hearing. The Trustee is authorized to pay the new Conduit Payment until such time as an order is entered sustaining an objection to this payment change.

RESPECTFULLY SUBMITTED this _____.

By /s/ DCK 011557
Dianne C. Kerns, Chapter 13 Trustee

I certify that I electronically filed the above and foregoing Notice of Mortgage Payment Change with the Court via the CM/ECF system, which notices all interested parties using the CM/ECF system, including the Debtors' Attorney. I have also mailed this pleading first class, to the following on this date:

1 Debtor(s)

2 Debtor(s) Attorney

3 Affected Real Property Creditor

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5 BY: PJ

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**Dianne Crandell Kerns, Trustee
Office of the Chapter 13 Trustee**

Mailing Address:
7320 N. La Cholla #154-413
Tucson, AZ 85741
TELEPHONE 520.544.9094
FACSIMILE 520.544.7894
MAIL@DCKTRUSTEE.COM

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:

Debtor(s),

(CONDUIT CASE)

In Proceedings Under Chapter 13
Case No.

**NOTICE OF MORTGAGE
PAYMENT CHANGE**

YOU ARE HEREBY notified that pursuant to notice received by the Chapter 13 Trustee from <<Real Property Creditor>>, Claim No. __, the ongoing conduit mortgage payment amount has changed to _____ per month, beginning _____, 20__.

As a result, Plan payments shall now be \$__.

As a result, the Plan Base has been increased to \$__.

Pursuant to Standing Order effective October 1, 2008, this notice serves as an amendment to Creditor's real property claim and Debtor(s) Plan. Parties in interest have 20 days from the date of this notice to file an objection to the payment change.

1 The Trustee shall be authorized to disburse the new conduit payment without
2 seeking further order of the Court. It is the obligation of the Debtor(s) to submit the
3 changed payment amount in order to remain in compliance with the Standing Order.

4 If a written objection is timely filed with the Clerk of the Bankruptcy Court
5 at 38 South Scott Ave, Tucson, AZ 85701, the objecting party shall set
6 the objection for hearing. The Trustee is authorized to pay the new
7 Conduit Payment until such time as an order is entered sustaining an
8 objection to this payment change.
9

10 **A hearing will not be held on this motion unless an objection and/or**
11 **response is timely filed with the Clerk.**
12

13 RESPECTFULLY SUBMITTED this _____.

14 OFFICE OF THE CHAPTER 13 TRUSTEE
15 7320 N. La Cholla #154-413
16 Tucson, AZ 85741

17 By /s/ DCK 011557
18 Dianne C. Kerns, Chapter 13 Trustee
19

20 CERTIFICATE OF SERVICE

21 I certify that I electronically filed the above and foregoing Notice of Mortgage
22 Payment Change with the Court via the CM/ECF system, which notices all interested
23 parties using the CM/ECF system, including the Debtors' Attorney. I have also mailed
24 this pleading first class, to the following on this date: _____.
25
26

1 Debtor(s)

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3 Debtor(s) Attorney

4 Affected Real Property Creditor

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6 BY: PJ

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Exhibit A - (Debtor)

MORTGAGE CREDITOR CHECKLIST¹

***(FILE WITH TRUSTEE ONLY
DO NOT FILE WITH THE COURT)***

Debtor Name(s): _____ Bk Case #: _____

Property Address: _____

Daytime Phone: () _____ Evening: () _____

Attorney name: (if any) _____

THE FOLLOWING INFORMATION MUST BE COMPLETED FOR ALL MORTGAGES. PLEASE BE SURE TO COMPLETE THIS FORM TO THE BEST OF YOUR ABILITY AND ATTACH THE PAYMENT COUPON OR STATEMENT THAT WAS SUPPLIED BY YOUR MORTGAGE CREDITOR(S).

Creditor Name: _____		
Account #: _____		
Payment Address: _____		
Street Address		
_____	_____	_____
City	State	Zip
Creditor Phone Number: (if known) _____		
Regular Monthly Payment Amount: \$ _____ Current Interest Rate: _____		
Monthly Payment Due Date: _____		
Date Payment Late: _____ Monthly Late Charge Amount \$ _____		
Is this a variable interest rate loan? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, when is the next anticipated adjustment date? _____		
Are property taxes included in the monthly payment? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is insurance included in the monthly payment? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is the loan due in full and payable in less than 5 years? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, date due: _____		

¹ File one of these forms with the Trustee for each creditor to whom you granted a mortgage on your home.

Exhibit B - (Debtor)

**AUTHORIZATION TO RELEASE INFORMATION
TO THE TRUSTEE REGARDING SECURED CLAIMS BEING PAID
BY THE TRUSTEE**

***(FILE WITH TRUSTEE ONLY
DO NOT FILE WITH THE COURT)***

Debtor Name(s): _____ Case #: _____

The debtor(s) in the above captioned bankruptcy case do/does hereby authorize any and all lien holder(s) on real property of the bankruptcy estate to release information to the standing Chapter 13 Trustee in this bankruptcy filing.

The information to be released includes, but is not limited to, the amount of the post-petition monthly installment, the annual interest rate and its type, the loan balance, escrow accounts, amount of the contractual late charge and the mailing address for payments. This information will only be used by the Trustee and his/her staff in the administration of the bankruptcy estate and may be included in motions before the Court.

DATE:

Debtor's Signature

DATE:

Joint Debtor's Signature

Exhibit C - (Real Property Creditor)

NOTICE OF PAYMENT CHANGE DUE TO ESCROW ANALYSIS

***(FILE WITH TRUSTEE ONLY
DO NOT FILE WITH THE COURT)***

In accordance with the terms of the Mortgage, this is notification that the Annual Escrow Analysis has resulted in a postpetition payment change as indicated below:

Effective Date of Change	_____
Current monthly payment amount	_____
Principal & Interest	_____
Escrow Amount	_____
New payment amount	_____
Principal and Interest	_____
Escrow Amount (specify taxes, insurance, etc.)	_____

Attached to this Notice is a copy of the ANNUAL ESCROW ACCOUNT STATEMENT outlining the basis for the change. Additionally, attached is a PostPetition Cost and Fee Disclosure of the fees and costs due under the contract in the past 12 months. Any questions should be directed to _____ (name, address, telephone #, facsimile # and email address of contact person).

Name of Mortgage

Address of Mortgage

CERTIFICATE OF SERVICE

I hereby certify that on _____, I have served a copy of this Notice and all attachments to the following by U.S. Mail, postage pre paid:

Debtor: John Q. Debtor, 1234 Main St., Anywhere, IN 46601

Debtor's Attorney: Mary Counselor, 123 Pine St., Anywhere, IN 46601

Trustee: Tom Trustee, 456 Maple St., Anywhere, IN 46601

Marian the Mortgage Servicer Employee

Exhibit D - (Real Property Creditor)

NOTICE OF PAYMENT CHANCE DUE TO (ARM)

***(FILE WITH TRUSTEE ONLY
DO NOT FILE WITH THE COURT)***

In accordance with the terms of the Adjustable Rate Mortgage, this is notification that the Interest Rate is adjusting as follows:

Payment Adjustment Date: _____

Old Interest Rate: _____

New Interest Rate: _____

New Principal & Interest Payment: _____

Old Index: _____

New Index: _____

Index Name: _____

New Monthly Payment, including escrow: _____

The total monthly payment can change on a separate date as a result of any increase or decrease in a monthly escrow payment, if applicable. Any questions should be directed to _____
_____ (name, address, telephone #, facsimile # and email address of contact person).

Name of Mortgage

Address of Mortgage

CERTIFICATE OF SERVICE

I hereby certify that on _____, I have served a copy of this Notice and all attachments to the following by U.S. Mail, postage pre paid:

Debtor: John Q. Debtor, 1234 Main St., Anywhere, IN 46601

Debtor's Attorney: Mary Counselor, 123 Pine St., Anywhere, IN 46601

Trustee: Tom Trustee, 456 Maple St., Anywhere, IN 46601

Marian the Mortgage Servicer Employee

EXHIBIT E - (Real Property Creditor)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

IN RE:) Case No.
John Q. Debtor,)
)
Debtor.) NOTICE OF TRANSFER
) OF CLAIM (Other than for Security)
)
)
) (no hearing required)

A Proof of Claim has been filed in this case. The transferee hereby evidences, by way of documentation attached hereto, that the referenced claim has been transferred, other than the security, as is referenced in this Notice. This Notice must be used when any of the original payment information in a Proof of Claim changes. However, it should not be used for an amendment to the amount of the claim. For changes in the amount of the claim or the arrears only, an Amended Proof of Claim must be filed.

Original Claim Information:

Name of Claimant: _____
Name of Payee [if different from claimant]: _____
Payment Address: _____
Last 4 digits of Account #: _____
Claim # on Court's Registry: _____ [Or date of entry of Order allowing claim]
Amount of Claim: _____ [Total debt] _____ [Arrears]

Transferee Information:

Name of Claimant: _____
Name of Payee [if different from claimant]: _____
Payment Address: _____
Name/Address for Notices [if different from payment address: _____

Phone #: _____
Last 4 digits of Account #: _____

I, _____, do hereby declare under penalty of perjury that the information provided in this Notice is true and accurate to the best of my knowledge. I hereby declare that a

copy of this Notice has been mailed to the Transferor and that proof of the transfer is annexed thereto.

By: _____ Date: _____
Transferee/Agent of Transferee

The penalty for making a false statement or claim includes a fine or imprisonment for to five years, or both, 8 U S-C Sec 152.

CERTIFICATE OF SERVICE

Creditor (Transferee), Universal Servicing Company, certifies that it has served a copy of this Notice by ordinary U.S. mail or served electronically through the Court's ECF Systems on this _____ day of _____, 2008:

Debtor(s)

John Q. Debtor
100 Debtor Way
Anytown, KS 66666

Debtor's Attorney

Mary Smart, Esquire
Smart & Associates
100 Attorney Way
Anytown, KS 66667

Trustee

Jan Hamilton
P0 Box 3527
Topeka, KS 66601

Transferor

Many Mortgages Incorporated
123 Weownu Road
Bankrupt, PA 65432

U.S. Trustee

Office of the United States Trustee
301 N. Main, Ste 1150
Wichita, KS 67202

COMMON RECOMMENDATION PROVISIONS

REASONS FOR COMMON RECOMMENDATION PROVISIONS

RUSSELL BROWN, TRUSTEE

RECOMMENDATION LANGUAGE

The Trustee requires copies of two recent consecutive paystubs to verify scheduled income, Plan payment feasibility and compliance with the disposable income utilization requirement of the Code.

A self-employed debtor is usually required by federal law to file quarterly estimated tax vouchers and to pay in full the estimated income tax due for the given quarter. Trustee requires a copy of such voucher as filed for the quarter ending _____, together with proof of payment [copy of canceled (paid) check (front and back) or copy of other form of payment]. Similar documentation may be requested for future quarters. If the debtor is not required to pay self-employment taxes, the Trustee requires a copy of the income tax return for the previous year to confirm no self employment taxes are owed. The purpose of this request is to ensure that no post-petition taxes are incurred.

Schedule B contains an incomplete or generic listing of business equipment. The Trustee requests that the Debtor(s) provide him with a detailed inventory of the business assets. The itemized inventory is to consist of: (1) equipment, machinery, vehicles, tools, office furniture and other nonexpendable property; (2) parts, supplies and other expendable items, at cost; (3) items held for resale, at cost; and (4) accounts receivable, at invoiced amounts. Also, for the duration of this case, a debtor engaged in business is required to keep a record of receipts and the disposition of money and property.

A self-employed debtor is required to file Business Operating Statements with the Court and to provide copies to the Trustee. Statements for [month] and [month], are past due and must be received in the Trustee's office not later than [date]. Debtor is reminded that this is a monthly filing requirement and therefore the [future month] Statement must be received not later than [date].

REASON FOR

The Trustee would have previously requested income verification at the meeting of creditors and in the Trustee's Questionnaire. There is no reason why the income verification has not been provided by the time the Trustee does the Recommendation.

The Trustee wants to confirm that the debtor is starting to withhold the proper amount of self employment taxes. Many times, a debtor is in financial trouble because of not withholding self employment taxes.

Property on Schedules B and C must be specifically listed. Generic lumping of property is not acceptable. Many times, a debtor will not list the specific business equipment but just a statement "business equipment." If it appears all of the property is properly disclosed on Schedule B (no generic listing), then the Trustee may not make this request.

Even though the debtor would have been told at the meeting of creditors to file BOS, many times the debtor must take the form and then forget about it.

RECOMMENDATION LANGUAGE

[Creditor] has filed an objection to the Plan. The attorney for the Debtor(s) must notify the Trustee if the objection has been resolved or, if the objection is unresolved, file the appropriate motion to get the Court to hold a hearing on the objection. If resolution of the objection changes Plan funding requirements, the Trustee requires receipt of an amended Plan analysis (Local Form 13-2) with any proposed order confirming the Plan. If a motion is filed to get a hearing before the Court, the time to submit a proposed Order confirming the Plan to the Trustee is extended.

The proof of claim filed by [creditor] differs from the creditor's treatment under the Plan or is not provided for by the Plan. This discrepancy must be resolved before confirmation of the Plan. The Trustee requires that: (a) the Debtor(s) file an objection to the proof of claim; (b) the holder of the claim endorse the order confirming; (c) the order confirming to provide for the creditor pursuant to the proof of claim; or (d) an amended Plan be filed to provide for payment on the claim. If resolution of the claim changes Plan funding requirements, the Trustee requires receipt of an amended Plan analysis (Local Form 13-2) with any proposed order confirming the Plan.

The proof of claim filed by the [IRS or ADOR] asserts a secured claim in tax refund(s). This discrepancy must be resolved before confirmation of the Plan. Unless the order confirming the Plan provides that the creditor be allowed to setoff the refund(s), the Trustee requires that: (a) the Debtor(s) file an objection to the proof of claim; or (b) the holder of the claim endorse the order confirming the Plan.

The Plan provides for direct payment to secured creditor [creditor]. The Trustee objects and requires that payments to creditors secured by personal property be paid through the Trustee, unless there is a compelling reason for the direct payment. The Trustee requires a revised Plan or the order confirming to provide for payment through the Trustee unless a compelling reason is stated in writing.

The Plan proposes payment to secured claimant [creditor] who has not filed a proof of claim. The Trustee requires that the Order Confirming Plan provide that the Trustee has authority to pay on the secured claim even though no secured proof of claim has been filed.

REASON FOR

The debtor has the burden of going forward with confirming the plan. Once the appropriate pleading has been filed then the matter is then up to the Court.

This is usually where the Plan fails to make any provision for the payment to a creditor but the creditor has filed a secured or priority proof of claim. By taking care of such problems early on in the case, the debtor, debtor's attorney and the trustee rarely have to address such problems later on.

This is where the IRS or ADOR have filed a secured claim to offset the tax refund it is holding. Most of the time, the SOC will provide that the tax creditor can setoff the refund.

With a few exceptions, the Trustees require payments on secured claims, besides post-petition mortgage payments, be made through him.

As to secured claims only, the Trustee will pay on the claim if the debtor files a claim for the secured creditor or the Court gives approval for the Trustee to pay on the debt without a claim. This provision has no application to unsecured claims.

RECOMMENDATION LANGUAGE

Counsel has been informed by the Trustee's office that the debtor needs to do one of the following: 1) File an objection to the [tax agency's] proof of claim; 2) File tax returns showing inadequate income; or 3) Submit a sworn affidavit to the [tax agency] and the Trustee stating with proof that the Debtor is not required to file returns.

The proof of claim filed by the [tax agency] dated [dated] shows an estimated [federal or state] income tax liability of \$[amount], for year(s) [year(s)] which the [tax agency] advises is based upon an ongoing audit of the related tax return(s). The amount of additional tax due (if any) will not be determined for a period of six months to one year, according to [tax agency]. The Order Confirming the Plan must include a contingent provision that any additional priority tax liability arising from the audit must be paid in full by a modified Plan or amended Order Confirming the Plan.

Statement of Financial Affairs, Item #1, fails to include ____ [year(s)] ____ income. Statement to be amended to include the required information.

The 2016(b) Statement filed by the Debtors' counsel differs from the Fee Application contained in the Plan. The Trustee objects to the Application of Fees, if the fee agreement signed by the Debtor(s) differs from the Application for payment of Administrative Fees. The Trustee requires a copy of the attorney fee agreement not later than November 15, 1999.

The Petition fails to state if any prior bankruptcy cases were filed in the last six years or are pending. The Petition must be amended. If there are any previous or pending Bankruptcy cases, the location, case number and date filed must be disclosed. If there are no previous or pending cases, the Petition must state "None."

REASON FOR

The debtor probably states that he or she earned insufficient income to be required to file tax returns. However, the proof of claim must be withdrawn or the Court sustains an objection to it before confirmation.

An ongoing audit may result in a higher priority tax claim. Allowing a contingent provision will allow the plan to be confirmed with the assurances that the SOC or Plan will be modified in the future if the priority tax debt is higher.

The answer to Statement of Financial Affairs # 1 fails to disclose or adequately disclose the income.

The Plan and 2016(b) must be consistent with each other. If the two documents remain inconsistent, then the Trustee would either not pay on the attorney fees or pay the lesser amount.

The Petition must disclose prior bankruptcy cases in the last six years regardless of status.

RECOMMENDATION LANGUAGE

The Court claims docket has no designation as to whether the proof of claim filed by Wells Fargo Bank claims secured or priority status. The creditor failed to serve a copy of the claim on the Trustee and, presumably, counsel for the Debtor(s), in violation of Rule 2083-10, L.R.B.P. The Trustee presumes the creditor's claim is secured and, therefore, differs from the creditor's treatment under the Plan or is not provided for by the Plan. The claim discrepancy must be resolved before the Trustee recommends confirmation of the Plan. As to the claim: (a) If the claim is filed as an unsecured, nonpriority claim, then the Debtor(s) must provide a copy of the claim to the Trustee; (b) If the claim is filed as secured but the Debtor(s) believe that the debt is unsecured, then the Debtor(s) must file an objection to the claim; or (c) If the claim is other than an unsecured, nonpriority claim, then the Trustee requires that: (1) the holder of the claim endorses the order confirming the plan; (2) the order confirming the plan provides for payment of the claim pursuant to the claim; or (3) the Debtor(s) file(s) an amended Plan to provide for some payment on the secured claim. If the proof of claim is filed as secured, the Trustee requests that counsel provide a copy of the claim so he can inform the creditor of the Local Rule.

Pursuant to copies of paystubs provided, the Debtor has a payroll deduction for contribution to a 401k retirement plan. The Trustee objects to the deduction as it represents a form of savings that violates § 1325(b). The Trustee requires that the Debtor immediately terminate the deduction and to provide proof of termination to the Trustee.

The Plan proposes payment of a secured claim to Creditor XXX who has filed no secured proof of claim. The Trustee requires that the Debtor(s) provide verification of the creditor's security interest by providing him with a copy of the security documents, such as a security agreement, UCC-1, title, deed of trust or the like. Moreover, the Trustee requires that the Order Confirming Plan provide as follows: "The Trustee has authority to pay on the secured debt owed to Creditor XXX even though the creditor has filed no secured proof of claim, but the Plan and this Order are not an informal proof of claim for any creditor." If the security interest cannot be verified by the Debtor(s), then the Debtor(s) may delete the proposed treatment in a proposed order confirming plan after filing a motion and providing 25 days' notice to the creditor of the intent to delete the proposed secured treatment from the Plan.

REASON FOR

Sometimes, the Clerk's office will fail to designate the nature of a claim. Depending on the creditor involved, the Trustee will assume that the claim is filed as priority or secured. Therefore, some action needs to be taken.

The Trustee objects to debtors saving money in a bankruptcy case at the expense of their creditors.

The Trustee wants the debtor to provide for all secured claims so that such issues do not arise after the Court confirms the plan.

RECOMMENDATION LANGUAGE

The Trustee requests a copy of the Debtor's state and federal income tax returns for [year] and the turnover of any net tax refunds not received as of the petition date as nonexempt disposable income. If the Debtor spent the income tax refunds, then the Debtor must provide a written statement of how the refunds were spent and the Order confirming plan must provide for increased Plan yield to meet the best interests of creditors test.

Plan fails to include an analysis of payment distribution as required by Local Rule of Bankruptcy Procedure 2083-4(a)(3). Plan Analysis Form 13-2 to be filed with the Court, copy to the Trustee.

Plan fails to comply with Local Rule of Bankruptcy Procedure 2083-4(a)(4) in that it fails to specify the interest rate, if any, to be paid on secured arrears. Required information must be provided by November [date provided].

The Plan fails to provide information regarding the value of the real property, as required by Local Rule of Bankruptcy Procedure 2083-4(a)(1). The Order confirming must include the required information.

The Debtor paid \$1,000.00 to his attorney before filing the petition. Unless counsel can demonstrate otherwise, the Trustee considers \$750.00 of the retainer earned prepetition and the balance to be unearned. The Debtor must include that amount above \$750.00 in the best interests of creditors test.

Statement of Financial Affairs, Item #1, fails to include [year] income. Statement to be amended to include the required information.

The Statement of Financial Affairs, # 3, fails to disclose payments to Creditor XXX even though the monthly payments were current when the petition was filed. The Statement, # 3, must be amended to disclose prepetition payments to all creditors.

REASON FOR

Pursuant to § 521, the Trustee is asking for the returns and the turnover of tax refunds as additional disposable income.

The plan analysis is deficient in form.

The plan must state what interest rate is to be paid on secured claims, even if that rate is zero.

This information is required by the Local Rule so that creditors can weigh the information as to filing an objection to the plan.

The Trustee's position is that monies that are unearned on the petition date are property of the bankruptcy estate and the debtor must meet the best interests of creditors test on the monies. Usually, attorneys are not asked for turnover of the unearned portion of the retainer.

See Official Form 7.

See Official Form 7.

RECOMMENDATION LANGUAGE

The attorney's Rule 2016(b) Statement discloses a prepetition payment of attorney fees from the Debtor(s), yet the Statement of Financial Affairs # 9 has no disclosure of the payment. The Statement of Financial Affairs # 9 must be amended.

Other requirements:

- (a) Due to the possibility of errors on the claims docket, it is the attorney's responsibility to review all proofs of claim filed with the Court and resolve any discrepancies between the claims and the Plan prior to submitting any proposed Order Confirming Plan to the Trustee.
- (b) Requests by the Trustee for documents and information are not superseded by the filing of an amended plan or motion for moratorium.
- (c) The Trustee will object to any reduction in the Plan duration or payout in a proposed Order Confirming Plan unless an amended or modified plan is filed and noticed out.
- (d) The Trustee requires that any proposed Order Confirming Plan state: "The Plan and this Order shall not constitute an informal proof of claim for any creditor."

By the Recommendation deadline, the Debtor(s) will have had at least 60 days to resolve the creditor's objection. Sixty days is sufficient time to either resolve the objection or file a motion to get a hearing before the Court. Therefore, the Trustee will object to any informal or formal request for extension of time.

The Plan states that the payments distributed by the Trustee on claims secured by personal property are to be applied first to principal and then to interest. The Trustee objects to this provision as the Trustee's software is programmed to use the universally accepted method of amortization of paying interest first and then to principal. Second, such provision violates § 1325(a)(5)(B)(ii) by not providing for the present value of the secured claim. Third, since the Plan provision imposes an unreasonable burden on the Trustee, the Plan was not filed in good faith. 11 U.S.C. § 1325(a)(3). The Trustee requires that any order confirming Plan state that the Trustee will pay his method of paying simple interest on secured claims.

REASON FOR

See Official Form 7.

Debtors are required for moving their cases forward and that includes resolving claim issues. The claims docket often does not show all claims filed.

Requests for information must be met even though the debtor has filed an amended plan or such.

Creditors must be notified of changes that impact their claims or amount to be paid on them.

This provision is to prevent creditors from arguing that the plan or SOC are an informal claim for the creditors. Unsecured creditors must timely file their claims.

Sixty days is ample time to resolve a creditor's objection or file the appropriate motion to get the issue before the Court.

Some attorneys are including unusual payment schemes. The Trustees' systems are programmed to handle the most commonly accepted method of present value, which is to apply the plan payments to accrued interest, then to principal.

RECOMMENDATION LANGUAGE

The Trustee requires receipt of a statement from a competent authority that withholding, as reflected in paystubs provided to the Trustee, is sufficiently accurate to preclude the post-petition accrual of a tax debt or a refund. Plan payment feasibility and compliance with the disposable income utilization requirement of the Code must be verified.

The Trustee notes that payment for support is reported on Schedule J. Trustee requires that the debtor(s) provide a copy of the Court order for said support and documented evidence that all post-petition payments on said obligation have been paid.

The attorney fee and costs requested by counsel exceed the standard amount in this district for a flat fee case. The Trustee objects and requires that counsel file and notice to all creditors a separate fee application for approval by the Court or reduce the fee and costs, including any amounts paid prepetition, to a total of \$[2,750.00 for a nonbusiness case or \$3,000.00 for a business case].

REASON FOR

Debtor's returns showed too large of a tax refund or liability. Debtors should adjust their tax withholdings such that they have a minimal refund or liability.

Verification of such expenses is done by the Trustee.

Typically, the Trustees will object to a fee amount of the limits and request that the attorney file a fee application.

SOC PREPARATION CHECKLIST

SAMPLE CHECKLIST FOR PREPARING THE PSOC

Debtor(s): _____

Case Number: _____

- G Debtor name(s), case number and heading are correct.
- G All creditor objections are resolved.
- G SOC signed by all objecting creditors.
- G Date of latest review of Court Docket: _____
- G Date of latest review of Court Claims Register and actual claims: _____
- G Does the SOC comply with the Trustee's Recommendation?
- G Plan payment schedule, start date, and plan duration are correct.
- G Attorney fee amounts (paid and to be paid) are correct.
- G Applicable income tax return language present.
- G Applicable income tax refund language present.
- G Nonexempt property already paid to the Trustee.
- G Plan shortfall language in SOC.
- G Adequate protection language in SOC and amount is consistent with AP order.
- G Plan and SOC not an informal proof of claim language is present.
- G Plan has provision that can delete payment to secured creditor if no secured claim filed.
- G Lien stripping or reclassification of inferior mortgage language?
- G Plan funding is adequate? Attach a funding report.
- G Other: _____

MEETINGS OF CREDITORS

Dianne Kerns – Meeting of Creditors Preparation Template and Samples

The list below is a template the Trustee's office uses to review the documents filed by the debtor prior to the Meeting of Creditors. Also included are two example paragraphs of Trustee notes used in preparation of 341 Hearings.

PLAN FILED
SOFA FILED
PLAN NOTICED WITHIN 25 DAYS OF PETITION
CREDIT COUNSELING CERT FILED
CREDIT COUNSELING CERT DATED ON OR BEFORE PETITION
PAY ADVICES FILED
PAY ADVICES REVIEWED
TR PROVIDED PRIOR TO 341 (Y)
CONT HEARING IF N
B22C FILED COMPLETED
INCOME OVER MEDIAN PER B22C
CMI PER DEBTOR (\$)
CMI PER TTE CALCULATION (\$)
SCH I GROSS INCOME (\$)
DISPOSABLE INCOME PER B22C (\$)
DIPOSABLE INCOME PER TTE B22C CALC (\$)
A/P PROVIDED IN PLAN (Y) CREDITOR: AMT: \$150.00
COLLATERAL AND DEBT ON SCHEDULE D
POC FILED (Y) CREDITOR:
POC HAS PROPER DOCUMENTATION
A/P LETTER RECEIVED FROM CREDITOR N (CHECKED DOCKET:)
A/P DEFICIENCY LETTER SENT N
A/P DISBURSEMENT PREPARED N
DOES PLAN PROVIDE FOR CONDUIT PAYMENTS Y (PLN STATES CONDUIT PMT OF \$)

Tuesday, August 04, 2012 10:58:23 AM DEBTORS PLN STATES WILL AVOID LIEN W/2ND MORTGAGE
NEED TO ADVISE ATTY THAT THEY NEED TO FILED AN ADVERSARY HRG FOR THIS AS WE WILL OBJECT TO
AVOIDING THE LIEN IN THE PLN

Wednesday, August 05, 2012 1:44:54 PM ECF REVIEW OF S/S; NO PRIOR BK FILED; SCH A=REAL
PROPERTY @ FLORENCE AZ VALUED AT \$82,000.00 CLAIM \$125,000.00; SCH B=HOBBY EQUIPMENT=
GUITARS ELECTRIC AND ACOUSTIC VALUED AT \$; SCH C=ATTY HAS HOUSE EXEMPTION LISTED AT
\$0.00, AND CAR EXEMPTIONS LISTED AT 08 GMC EXEMPTION \$0.00, 99 DODGE EXEMPTION
\$4,000.00; SCH D=OK; SCH E=OK; SCH F=OK; SCH G= CELL PHONE CONTRACT; SCH H=OK; SCH
I=(MARRIED W/2 KIDS) (H) INCOME=\$4,000.00, TAXES=\$855.00, INSURANCE=\$200.00, 401K
LOAN=\$50.00, (W) STORE INCOME=\$2,000.00, TAXES=\$300.00, INSURANCE=\$35.09, K=SAVINGS

PLAN=\$20.00; SCH J=ATTY DOES NOT HAVE AN AMOUNT LISTED FOR RENT/MORTGAGE, AVERAGE MONTHLY EXPENSES FROM LINE 18 OF SCH J IS \$3,000.00; SOFA=INCOME OTHER THAN FROM EMPLOYMENT OR OPERATION OF BUSINESS=09 \$500.00 TAX REFUND; GIFTS=GOODWILL NO RELATION WITHIN THE PAST YR CLOTHING AND HOUSEHOLD GOODS DONATED VALUED AT \$200.00; CLOSED FINANCIAL ACCOUNTS=CHASE BANK CHECKING CLOSED 4/30/09 END BALANCE \$20.00, CHASE BANK SAVINGS CLOSED 4/30/09 END BALANCE \$0.00

SECTION 341(a) MEETING OF CREDITORS

REQUIRED STATEMENTS/QUESTIONS¹

1. State your name for the record. Is the address on the petition your current address?
2. Please provide your picture ID and Social Security number card for review.
 - a. If the documents are in agreement with the § 341(a) meeting notice, a suggested statement for the record is:

"I have viewed the original State of _____ drivers license (or other type of original photo ID) and original Social Security card (or other original document used for proof) and they match the name and Social Security number on the § 341(a) meeting notice."
 - b. If the documents are not in agreement with the § 341(a) meeting notice, a suggested statement for the record is:

"I have viewed the original Social Security card (or other original document used for proof) and the number does not match the number on the § 341(a) meeting notice. I have instructed the debtor (or debtor's counsel) to submit to the court an amended verified statement by [date], with notice of the correct number to all creditors, the United States Trustee, and the trustee; and to file with the court a redacted copy of the notice, showing only the last four digits of the Social Security number, and a certificate of service."
 - c. When the documents do not match the petition, the trustee shall attempt to ascertain why and shall report the matter to the United States Trustee.
 - d. If the debtor did not bring proof of identity and Social Security number, the trustee shall determine why.

¹ These statements/questions are required. The trustee shall ensure the debtor answers the substance of each of the questions on the record. The trustee may exercise discretion and judgment in varying the wording of the statements/questions, if the substance of the questions is covered.

3. Did you sign the petition, schedules, statements, and related documents and is the signature your own? Did you read the petition, schedules, statements, and related documents before you signed them?
4. Are you personally familiar with the information contained in the petition, schedules, statements and related documents? To the best of your knowledge, is the information contained in the petition, schedules, statements, and related documents true and correct? Are there any errors or omissions to bring to my attention at this time?
5. Are all of your assets identified on the schedules? Have you listed all of your creditors on the schedules?
6. Have you previously filed bankruptcy? (If so, the trustee must obtain the case number and the discharge information to determine the debtor(s) discharge eligibility.)
7. What is the address of your current employer?
8. Is the copy of the tax return you provided a true copy of the most recent tax return you filed?
9. Do you have a domestic support obligation? To whom? Please provide the claimant's address and telephone number, but do not state it on the record. Are you current on your post-petition domestic support obligations?
10. Have you filed all required tax returns for the past four years?

QUESTIONS FOR MEETINGS OF CREDITORS

Name	State your name for the record.
Swearing In	Do you solemnly swear or affirm that the testimony you give will be the truth, whole truth, and nothing but the truth?
Identification	Is this your original Arizona driver's license and social security card? [Or other identification.]
Address	Do you still live at the address listed on your bankruptcy petition?
Domicile	How long have you lived in Arizona? [If moved from another state in the previous 2½ years, then ask about previous domicile state.] Does that include the 91 days before you filed your petition?
Truthfulness of Bankruptcy Documents	Did you read, review and sign your bankruptcy documents in this case? Are you personally familiar with the information in your bankruptcy documents? Did you disclose all of your assets? Did you disclose all of your liabilities? Do you owe any domestic support obligation, such as child support or spousal maintenance? Have you filed all your required income tax returns for the last four years?
Assets	Do you have an ownership or beneficial interest in any will, trust, estate, personal injury or other such claim? [If yes, get details.] Have you ever waived your rights to such property?
Previous Bankruptcy Cases	Have you filed any other bankruptcy cases, under your current or any other social security number in the last eight years? [If yes, then ask what, when, where and result.]
Trustee's Q.	Are all your answers on the Trustee's Questionnaire true and correct?
Married	If joint case: Are you married to the man/woman to your right? If single debtor: Are you married? [If yes, then ask why spouse did not join case.]
Spouse Questions	Did you hear all the questions I asked your husband/wife? Did you hear all his/her answers? If I asked you the same questions, would all your answers be the same?

Questions for 341 Meetings/Edward J. Maney

Each debtor must be sworn in individually

1. Please state your full name.
2. Did you take the oath I administered?
3. Do currently live at the address listed on the petition that was filed in your case?
4. Have you been a resident of Arizona for more than 2 years prior to filing this case?
5. Have you filed any previous bankruptcies in the last 8 years?
6. Have you filed a previous bankruptcy case using a social security number other than your own?
7. Did you review the petition, statements and schedules that were filed in this case?
8. Did you sign the petition, statements and schedules?
9. Is the information in the petition, statement and schedules true and correct to the best of your knowledge?
10. Did you list all of your assets?
11. Did you list all of your liabilities?
12. Are there any changes to the schedules or statement you need to tell me about today?
13. Are you currently the beneficiary of a will or a trust?
14. Do you anticipate receiving any inheritance in the future?
15. In the past 8 years have you waived any beneficial interest in a will or a trust?
16. Is the social security number that appears on the 341 Meeting Notice you received from the court your social security number?
17. (If only one debtor on petition) Are you currently married?
Is all of your community property listed on the schedules? Community debt?
Is your spouse employed or self-employed?
18. Are you obligated to make any payments on a domestic support order?
Are you current on your dso payments?
Please provide the name and address of the recipient to whom the dso is owed.

Dianne Kerns – Meeting of Creditors Script

The list below contains the basic questions asked by the Trustee at the 341 Hearing. Depending on the information provided in the plan, the schedules, and the statements, other follow-up questions may be asked.

<Trustee calls the name of the debtor>

<Attorney makes appearance>

Please raise your right hand and state your full name. Do you solemnly swear and affirm that the testimony you are about to give will be the truth?

(If two debtors are present, swear in the second debtor the same way)

(if two debtors) Which one of you would like to answer questions?

1. Is the address listed on your petition still accurate today?
2. Did you live in Arizona continuously for at least two years prior to filing this case?
3. Did you provide the information to your attorney that was used to prepare your bankruptcy paperwork?
4. Did you personally review and sign the documents before they were filed with the bankruptcy court?
5. Are they true and correct to the best of your knowledge?
6. Did the papers list all of your assets?
7. And all of your creditors?
8. Did the papers accurately list your current monthly income?
9. And also your average monthly income over the six month period prior to filing this case?
10. Have there been any changes in circumstances that I need to know about?
11. Are you current on filing all required state and federal tax returns through this year?
12. Are you married?
13. (if not married) Do you share living expenses with any other adult?
14. Other than your attorney have you paid anyone to assist you with a loan modification or a debt settlement?
15. Do you have a mortgage on your home?
16. (If yes) Are you in default on any amount on the first mortgage?
17. Do you pay a domestic support obligation such as child support or alimony?
18. Are you the beneficiary under anyone's will or trust?
19. Are you a plaintiff in a law suit or could you sue anyone for any reason?
20. Other than this one, have you ever filed a bankruptcy in the past?
21. Are you still with <name of employer>?
22. You have proposed a plan that provides for payments of <describe payment plan>. Is that your understanding?
23. And do you believe that you can make those payments?
24. (if married, then ask spouse) Are you still with <name of employer>?

25. (If married) Did you hear the questions I asked your spouse?
26. (If married) If I asked you those same questions would your answers be the same?
27. Are there any creditors wishing to be heard?
 - a. (If there are creditors present) Do you have any questions for the debtor?
 - i. (If not) I will note your appearance.
 - b. (if no creditors are present) There are none.
28. There being no other creditors,
29. We have confirmed your identity, your hearing is concluded, and you are free to go.

Russell Brown
CHAPTER 13 TRUSTEE
Suite 800
3838 North Central Avenue
Phoenix, Arizona 85012-1965
602.277.8996
Fax 602.253.8346

TRUSTEE'S QUESTIONNAIRE

Name(s): _____

Case Number: _____

The Bankruptcy Court has appointed me as the Chapter 13 Trustee in your case. As your Trustee, I need information to process your bankruptcy case. If this is a joint case of husband and wife, then "you" means both debtors. **You must return this Questionnaire, along with the following documents, to the address above.**

You should save your receipts and records of your expenses as the Trustee may ask for verification of the expense amounts claimed on your schedule J and B22C Form.

DOCUMENTS TO TRUSTEE

The Trustee requires this Questionnaire be completed and given to the Trustee along with

- ☐ a copy of two recent and consecutive paystubs for each job,
- ☐ your most recently filed personal income tax returns, including W2 and 1099 forms,
- ☐ for each account, any bank statements for the month you filed your case, and
- ☐ any bank statements for the month before filing.

Except for this Questionnaire, provide copies of documents, not originals.

*Please black out **all but the last four digits** of any social security number or account number. If the account number is not visible on the account statement, you **must** label the statement with **the last 4 digits** of the account number.

You may have to attend another meeting of creditors if you fail to give the Trustee the Questionnaire and documents before or at the meeting. If not provided at the meeting of creditors, mail or fax this Questionnaire and the documents to the address or fax number above.

PLAN PAYMENTS

Your first plan payment to the Trustee is due about 30 days after you filed your plan. Plan payments must be by certified funds. Do **not** mail any plan payments to the address listed above. You should have received a yellow handout at your meeting of creditors that provides the plan payment address.

SOCIAL SECURITY NUMBER

- (1) Have you ever gone by or used a social security number other than what you gave to the Bankruptcy Court in this case?

No _____ Yes _____



DOMESTIC SUPPORT DEBTS

- (2) Do you owe a domestic support obligation, such as child support or spousal maintenance, whether or not there is a court order, including money coming due after you filed your case? No _____ Yes _____
- (3) If you owe a domestic support obligation, child support or spousal maintenance, give the name, address, and telephone number of each person or entity owed:
- (a) _____

- (b) _____

RESIDENCE

- (4) In the three years before you filed your case, did you live in any other state besides Arizona? No _____ Yes _____
- (5) If your answer to (4) is yes, then list the States and dates of residence in which you resided for more than 90 days before moving to Arizona:
- _____

MARITAL STATUS

- (6) Are you married, but your spouse did not join the bankruptcy petition? N/A or No _____ Yes _____
- (7) If your answer to (6) is yes, state why your spouse did not file with you:
- _____

INCOME & EXPENSES

- (8) Are you self employed, in business, or own a business? No _____ Yes _____
- If yes, you must complete a Self Employment Questionnaire and file monthly business operating statements. The Trustee will give you the form at your meeting of creditors.
- (9) If you are employed, did you receive from your employer a bonus of any kind within the past two years (e.g. Christmas, performance, profit sharing)? N/A or No _____ Yes _____
- (10) If you are employed, do you expect to receive a bonus of any type within the next three years? N/A or No _____ Yes _____
- (11) If your answer to (9) or (10) is yes, then describe each type of bonus, amount received or expected, and the date received or expected.
- _____

- (12) Since you filed your case, has your income changed? No _____ Yes _____
- (13) Since you filed your case, have your expenses changed? No _____ Yes _____
- (14) If your answer to (12) or (13) if yes, describe why:
- _____

TAX RETURNS

- (15) Do you have any unfiled State or Federal tax returns? No _____ Yes _____
- (16) For unfiled tax returns, for each return list the year and type of return:
- _____

ASSETS

- (17) Do you have any pending or potential claim for an inheritance, personal injury, wrongful death, wrongful termination or discrimination, or any other claim, or are you a beneficiary of a trust? No _____ Yes _____
- (18) If your answer to (17) is yes, describe each transfer:
- _____

TRANSFERS

- (19) Did you transfer any money or property to a family member in the 12 months before you filed your petition? No _____ Yes _____
- (20) In the past 10 years, did you transfer any money or property to a trust? No _____ Yes _____

DEBT NEGOTIATION OR MORTGAGE MODIFICATION

- (21) Did you pay any money or property to anyone, including an attorney, for debt negotiation or mortgage modification? No _____ Yes _____
- (22) If your answer to (21) is yes, state how much you paid and to whom:
- _____
- _____
- (23) If your answer to (21) is yes, did you receive any benefit from such service? No _____ Yes _____

YOUR ATTORNEY

- (24) If you have an attorney representing you in this case, how did you hear about your attorney? Examples: Referral by friend, referral by business, referral by another attorney, found by Internet search, Yellow Pages.
- _____

If by website, provide the address:

www. _____

CONTACT INFORMATION

The Trustee's office may need to contact you about your case. Please provide your contact information:

Personal Information:

Home telephone: (_____) _____

Pager/cellphone:

Debtor/Husband: (_____) _____

Wife: (_____) _____

Email:

Debtor/Husband:

Wife:

Work Telephone and Information:

Debtor/Husband: (_____) _____

Wife: (_____) _____

Employer name:

Employer name:

I (We), the undersigned Debtor(s), declare under penalty of perjury, that the answers on this Questionnaire are true and correct.

Date: _____, 20____.

Debtor: _____ Debtor: _____ 8/12

RUSSELL BROWN
CHAPTER 13 TRUSTEE

The Compleat Chapter 13 Case
October 11, 2012

Please retain this document for your records

Case No. _____
Plan Payment Amount: \$ _____

PLAN PAYMENTS

Trustee accepts plan payments only by cashier's check, money order, TFS Electronic Fund Transfer, or a check from your employer (a company you own is not your employer).

Make all plan payments payable to "Russell Brown, Trustee" and mail them to this address:

Russell Brown, Trustee
P.O. Box 52548
Phoenix, Arizona 85072

- Put your **name(s) and case number** on the payment. Sign the cashier's check.
- Do not use a company name on your payments. The Trustee's records are not organized by business name.
- The Trustee accepts no personal checks, no personal electronic fund transfers, or cash. The cashier's check must be drawn from an institution in the United States. Talk to your attorney about deducting plan payments from your wages.
- Sign up for TFS Automated payments by visiting www.TFSbillpay.com. Have your case number, district name (Arizona) and plan payment amount available when signing up.
- Do not mail payments by Express Mail, FedEx, UPS or similar expedited delivery service.
- Keep your payment receipts or carbon copies at least until you have completed your plan payments and the court has entered your discharge. Place the receipts or carbon copies in a safe location. You have the burden of proving that you made your plan payments.
- Make your payments on or before the day they are due. Payments made after the due date may cause interest to accrue on secured claims and a funding shortfall in your case.
- Unless you have an emergency or the Trustee's office makes a request, please do not bring plan payments to the Trustee's office.
- The address on the Trustee's envelopes, letters, pleadings, and Recommendations is not the plan payment address.
- Do not use your plan payment envelope for a change of address. Send a change of address form to the Bankruptcy Court and a copy to the Trustee's correspondence address.

LETTERS AND INQUIRIES

You may fax documents to the Trustee's fax number: 602-253-8346

Mail letters and documents (no plan payments) to the correspondence address:

Russell Brown
Chapter 13 Trustee
Suite 800
3838 North Central Avenue
Phoenix, Arizona 85012-1965

The email address for the office is:
mail@ch13bk.com

The Trustee's website has more information:
www.chapter13.info

INTERNET ACCESS TO YOUR CASE INFORMATION

If you have access to the Internet, you can view your case information at the National Data Center, such as plan payments received and how the Trustee pays your creditors.

Go to www.13datacenter.com and click "click here" in the Debtor area. Follow the instructions provided by the National Data Center.

Contact the National Data Center if you are unable to gain access to your case information.

However, contact the Trustee's office about information shown in your case; do not contact the National Data Center.

**See the other side of this sheet
for more information**

**Notice Is Hereby Given That Information Relating To Your
Chapter 13 Bankruptcy Case Will Be Made Available On
The Internet To Your Creditors And Other Parties In Interest**

Pursuant to 11 U.S.C. §§ 704(7) and 1302(b)(1), the Chapter 13 Trustee has a duty, unless otherwise ordered by the Bankruptcy Court, to furnish information concerning the administration of your bankruptcy case as is requested by parties in interest. In furtherance of this duty, the Chapter 13 Trustee will make the following information available to parties in interest who request such information:

- Your name, address, bankruptcy case number, state and district in which your case is pending, and the trustee assigned to your case. Your social security number will not be visible to parties in interest, but they will be able to search for your bankruptcy case using your social security number. Your employer's name will not be displayed.
- Information regarding claims filed against your bankruptcy case including the identity of the claimant, the type of claim filed, and the amount of the claim.
- A history of all payments you make to the Chapter 13 Trustee in your bankruptcy case including the date and amount of each payment.
- A history of all disbursements made by the Chapter 13 Trustee in your bankruptcy case including the date of disbursement, the payee and the amount.
- This information is from the Trustee's office, not from the Bankruptcy Court.

You may review, without charge, the information about your Chapter 13 case that is posted on the Internet. The website address where you may access your information and where it is posted is <http://www.13datacenter.com> which is operated by the National Data Center, Inc., a nonprofit corporation. The NDC does not sell or otherwise transfer your information to any other entity.

If you believe the information shown about your case is inaccurate, please contact the Chapter 13 Trustee's office with specific information.

Russell Brown
CHAPTER 13 TRUSTEE
Suite 800
3838 North Central Avenue
Phoenix, Arizona 85012-1965

The Complete Chapter 13 Case
October 11, 2012

602.277.8996
Fax 602.253.8346
mail@ch13bk.com

TRUSTEE'S REQUEST FOR DOMESTIC SUPPORT OBLIGATION INFORMATION

Debtor Name(s): _____ Case No.: _____

You may owe a Domestic Support Obligation in the nature of alimony, spousal maintenance or child support, as defined by 11 U.S.C. § 101(14A), to a spouse, former spouse, child of the debtor or such child's parent or legal guardian. However, your Schedules and the completed Trustee Questionnaire fail to provide all of the recipient's name, address, telephone number, Atlas number, or court case number.

Whether you are current or delinquent on the obligation is irrelevant to the Trustee's request for this information. Having such a court-ordered obligation triggers the requirements of 11 U.S.C. § 1302(b)(6), (d), that the Trustee must send certain information to the recipient (not just the governmental servicing agency).

Pursuant to 11 U.S.C. § 521(3), the Trustee requires you to provide the following information for **each** recipient. Please return this completed form to the Trustee. **Failure to provide sufficient information could cause the Trustee to continue a meeting of creditors or file a Motion to Dismiss your case for failure to cooperate.** The Trustee will not file this document with the Court.

	RECIPIENT # 1	RECIPIENT # 2
RECIPIENT NAME	_____	_____
FOR CHILD SUPPORT, ALIMONY, OR BOTH	_____	_____
ADDRESS	_____	_____
CITY, STATE	_____	_____
TELEPHONE	_____	_____
SOC SEC NUMBER	_____	_____
ATLAS #	_____	_____
COURT CASE #	_____	_____
WERE YOU EVER MARRIED TO THE RECIPIENT?	_____	_____
IF APPLICABLE, RECIPIENT'S MAIDEN NAME	_____	_____

Dated: _____, 201____.

Debtor Signature

Co-Debtor Signature



RUSSELL BROWN, TRUSTEE

SELF EMPLOYMENT QUESTIONNAIRE

Name(s) of Debtor(s): _____

Case Number: _____ Date: _____, 20____

_____ EIB

_____ NEIB

See the back side for instructions and information.

(1) Are you still self employed? No _____ Yes _____

(2) If no, when and why did you cease being self employed? _____

***** If you are no longer self employed, you may skip to the bottom of the page and sign.**

(3) Describe your self employment or business, and provide the name of the business:

(4) If this is a joint debtor case, are both of you engaged in the same business? No or N/A _____ Yes _____

(5) Indicate the type of business ownership and state your percent of ownership:

_____ Sole Proprietorship _____ Partnership _____ Corporation _____ L.L.C./L.L.P.

(6) If the business is a partnership or incorporated, provide the names of the other partners or shareholders.

(7) Do you have part-time or full-time employees? If yes, how many employees? _____ No _____ Yes _____

(8) Do you incur any trade credit in the operation of your business? No _____ Yes _____
(Trade credit is any short-term debt incurred in the ordinary course of your business.)

(9) Do you have an inventory of products to sell? No _____ Yes _____

(10) Have you incurred or do you expect to incur long-term trade debt since you filed your case? No _____ Yes _____

(11) Do you lease commercial real property? No _____ Yes _____

(12) Do you own or lease personal property, including office equipment or furnishings? No _____ Yes _____

(13) Do you own any real property which you rent to someone else? No _____ Yes _____

(14) Do you pay any payroll taxes, sales taxes, real estate taxes or personal property taxes? No _____ Yes _____

(15) Do you maintain business or liability insurance for your business? No _____ Yes _____

If yes, describe the nature of the insurance: _____

I/We declare under penalty of perjury that the answers in this Self Employment Questionnaire are true and correct to the best of my/our knowledge.

Signature of Debtor

Signature of Codebtor



A review of your petition, schedules, and statement of financial affairs indicates that you are self employed. This Questionnaire is to help the Trustee gain information about your self employment activities. The Trustee is making this request pursuant to §§ 521(4), 1106 and 1304 of the Bankruptcy Code. If this is a husband and wife case, and both of you are self employed in **different** self employments, then both of you must complete a separate Questionnaire. If both husband and wife are engaged in the same self employment or business, then you need complete only one Questionnaire. Depending on the nature of your business activities, the Trustee may need to get additional information and documents from you. This Questionnaire uses the terms “self employment” and “business” interchangeably. Please keep in mind:

- All information you provide must be complete and accurate. Failure to completely and accurately answer the questions may cause the Trustee to file a motion to dismiss your case.
- The Questionnaire must have the original signature of each debtor, even if the husband or wife is not involved in the business or self employment.
- You must return the completed Questionnaire to the Trustee at your meeting of creditors or, if you received this Questionnaire at the meeting of creditors, mail it in within two business days to Russell Brown, Suite 800, 3838 North Central Avenue, Phoenix, Arizona 85012-1965.

BUSINESS CASE QUESTIONNAIRE

Return to:
Russell Brown, Trustee
3838 N. Central Ave., Ste. 800
Phoenix, Arizona 85012

Debtor: _____

Case No.: _____

The purpose of this form is to help the Trustee gather information about your business. Please keep in mind when completing the Questionnaire:

- All information must be complete and accurate.
- Failure to complete the Questionnaire will cause the Trustee to move to dismiss your case.
- If this is a husband and wife case, then each of you must sign the Questionnaire.
- Provide copies of the documents, not your original ones.

(1) What circumstances caused you to file this Chapter 13 case (whether personal or business related)?

(2) Describe the nature of your business:

(a) List the current and all past names of the business.

(b) Describe the nature of the business.

(c) Describe the main product or service you provide.

(d) List any other owners, partners, shareholders or members besides you, or if none, state so.



(3) When did you start the business or when did you first acquire ownership?

If you bought an existing business, provide a copy of the purchase contract.

(4) List all address locations of the business with the primary location first.

(5) Business Lease(s).

(a) Are you leasing real property for the business? ☐ Yes ☐ No

If yes, describe the terms of the lease and whether you intend to accept (keep) the lease. Provide a copy of any lease to the Trustee.

(b) Are you leasing any personal property, such as equipment or furniture? ☐ Yes ☐ No

If yes, describe the terms of the lease and whether you intend to accept (keep) the lease. Provide a copy of any lease to the Trustee.

(6) Is your business seasonal? ☐ Yes ☐ No

If yes, describe why, and specify which months are good and poor months.

- (7) **Have you pledged or given a security interest in any asset, such as account receivables, rents, profits, or equipment for any loan?** ☐ Yes ☐ No

If yes, state the name of the creditor, describe the security agreement and provide a copy of the document.

(8) **Business Assets.**

- (a) On a **separate page**, itemize your business equipment with a market value of \$100.00 or more per item.

- (b) Do you have any inventory? ☐ Yes ☐ No
If yes:

(i) What is the estimated value of the inventory? \$_____

(ii) What is the method of valuing the inventory? (Cost, market value, or other)

- (c) Do you have accounts receivable? ☐ Yes ☐ No
If yes:

(i) What is the amount of the receivables? \$_____

(ii) What amount is actually collectible? \$_____

- (d) Has the business ever been appraised? ☐ Yes ☐ No
If yes, provide a copy if available and state when and by whom:

- (e) Bank accounts.
Provide a copy of the business bank statements for the six months before you filed your petition and for the month in which you filed your petition.

- (9) **Insurance. Do you carry any business insurance?** ☐ Yes ☐ No

If yes, provide a copy of the insurance contract and recent declarations page.

(10) Employees. Do you have any employees? ☐ Yes ☐ No

- (a) If no, then go to Question (11). If yes, complete the table and list any full or part-time employees.

Employee Name	Position	Monthly Salary	Full time (F) or Part-time (P)

- (b) Provide a copy of the latest quarterly federal 941 return with proof of payment of the withholding taxes for the employees since you filed your case.
- (c) If you are required to pay state sales taxes, provide a copy of the Arizona sales tax return and proof of payment of the taxes.
- (d) Federal tax returns. Provide a copy of the last two years of your individual income tax returns. If the business is a C corporation, provide a copy of last year's corporate income tax return.
- (e) If you had prepared a business income and expense statement, and balance sheet for the previous month or quarter, provide a copy of the documents.

(11) Licenses.

- (a) Do you have any business or professional licenses? ☐ Yes ☐ No

 If yes, provide a copy of the license(s).

I declare under penalty of perjury that the foregoing statements and answers in this Business Questionnaire are true and correct.

Dated: _____, 20____.

Debtor's signature

08/12

Name(s) of Debtor(s): _____

Chapter 13

Case No. _____

Financial Report for _____, 20____
(Month and Year)

1. INCOME.

Gross Business Receipts \$ _____
Sales Taxes Collected \$ _____

TOTAL INCOME

\$ _____

2. COSTS AND EXPENSES.

Advertising \$ _____
Auto Fuel & Operation \$ _____
Bad Debts & Collection Costs (noncash basis) \$ _____
Commissions & Bonuses \$ _____
Debt Installments (do not incl. the plan payment):
 (a) _____ \$ _____
 (b) _____ \$ _____
 (c) _____ \$ _____
Employee Benefits:
 (a) Hospitalization & Medical \$ _____
 (b) Retirement \$ _____
 (c) Other \$ _____
Insurance Premiums (fire, theft, liability, etc.) \$ _____
Legal & Accounting \$ _____
Maintenance & Repairs \$ _____
Materials & Supplies \$ _____
Office Supplies \$ _____
Other Business Expenses (itemize):
 _____ \$ _____
 _____ \$ _____
Postage & Shipping \$ _____
Rent or Lease Expense \$ _____
Returns & Allowances \$ _____
Salaries & Wages (gross, do not incl. owner's salary) \$ _____
Taxes:
 Employer's FICA (social security) contributions \$ _____
 Sales Taxes \$ _____
 Unemployment Taxes \$ _____
Telephone & Utilities \$ _____
Workers' Compensation Insurance \$ _____

TOTAL COSTS AND EXPENSES

\$ _____

3. NET INCOME (LOSS). (Total Costs & Expenses [#2] subtracted from Total Income [#1])

\$ _____

I/We declare under penalty of perjury that the information provided is true and correct to the best of my/our knowledge, information and belief. Dated: _____, 20____.

Debtor

Debtor

(File this Operating Statement with the Clerk of the Court.)

INSTRUCTIONS FOR THE BUSINESS OPERATING STATEMENT

- (1) **Reason for Business Operating Statement.** Every debtor who is self-employed or operating a business must file a monthly financial report known as a “Business Operating Statement (hereinafter called “BOS”). The term self-employed includes a person who operates a business, whether full or part time, or with another person. Also, a person who is an independent contractor, subcontractor, works on a contract labor basis, or any other work where taxes are not deducted from the pay received, is self-employed. If you have a job in addition to self-employment or business, you still must file a BOS.
- (2) **When to File.** The first BOS to be filed shall be for the actual month in which you filed your Chapter 13 case. Then, a BOS must be filed for each succeeding month. Each monthly BOS must be filed by the 15th day of the following month.
- (3) **Make Copies.** This form is your “master” copy. Put your name(s) and case number on it and then make copies to fill in for future reports.
- (4) **Where to File.** File the **original** BOS each month with the Bankruptcy Court. If you want a court-stamped copy returned to you from the Court, then provide an additional copy with a self-addressed, stamped envelope with the original. At this time, the Court does not allow filing by fax or email. Where to mail or deliver the BOS:

FOR CASES FILED IN PHOENIX:

United States Bankruptcy Court
Suite 101
230 North First Avenue
Phoenix, Arizona 85003-1706

FOR YUMA CASES:

Clerk of the Bankruptcy Court
325 West 19th Street
Suite A
Yuma, Arizona 85364

- (5) **Trustee.** Do not send a copy to the Trustee as the Trustee will receive a copy from the Court.
- (6) **Cash Basis.** The BOS is a cash-based report. Do not use an accrual accounting method for this report. Thus, do not include any intangible expenses such as depreciation, bad debts, and loss carry forward.
- (7) **Other Expenses.** This form is designed for a small business operation. If you have categories of expenses not shown in the form, you should list them under “other expenses.” If necessary, you may attach an explanatory form to the BOS.
- (8) **Sign and Date.** Each monthly report must be signed and dated. If this is a joint case, both debtors must sign even though only one debtor operates the business or is self-employed.

REQUEST FOR COPY OF RECORDING OF SECTION 341 MEETING

NOTE: YOU MUST PROVIDE A NEW CD-R (CD-RW is not acceptable) 700MB COMPACT DISC¹

Date: _____

Your Name: _____

Address: _____

Phone No.: _____

Date of Meeting: _____

Time of Meeting: _____

Case Name: _____

Case Number: _____

Chapter 11_____

Chapter 7_____ **Trustee Name**_____

Chapter 13_____ **Trustee Name**_____

Meeting was held in: **Phoenix** _____ **Yuma** _____ **Casa Grande** _____

Tucson _____ **Bullhead City**_____ **Other**_____

Prescott _____ **Sierra Vista**_____

Delivery or Mail: **Office of the U.S. Trustee**
230 N. First Ave, Suite 204
Phoenix, AZ 85003-1706
(602) 682-2600

If you want the CD returned to you by mail, please provide a self-addressed stamped envelope. For a single CD, the minimum postage is approximately \$1.06. |||

¹Special software is required to listen to the CD. The software can be downloaded for free at www.ftrgold.com and click on "COURTS", then follow the instructions.

ATTORNEY FEES

Rule 2084-3

Attorney Fees

(a) Plan Application for Payment. Unless the attorney files or will file a separate fee application, a chapter 13 plan (original, amended, modified) or a motion for a moratorium (collectively the "plan") shall contain an application for payment of compensation for services rendered or to be rendered by the attorney representing the debtor. The plan shall include in its title "Application for Payment of Administrative Expenses" or similar language.

(b) Amount Sought and Services Provided. Any application in the plan for payment of attorney fees separately shall disclose the amount of compensation sought, whether the compensation is a flat, hourly or a contingent fee, and is to include a comprehensive statement of the legal services provided and to be provided. The application also may include a list of flat fee services which may be performed by debtor's counsel post-confirmation where additional compensation is sought. The application must state the amount of the flat fee and specify what service is to be rendered for the debtor. The application need not state the actual time expended or to be expended, but shall provide generally the services performed, promised or contemplated.

(c) Payment Upon Dismissal. When the court dismisses the case before confirming a plan, and the deadline for creditor and case trustee objections have passed, the dismissal order may include approval of the attorney fees or debtor's counsel may upload an order approving the fees.

(d) Attorney Disclosure. The fees sought in the plan must be consistent in amount and description with the attorney's Rule 2016(b) disclosure statement. The disclosure statement shall have a comprehensive narrative explanation of the services rendered or to be rendered, and the expenses incurred and to be incurred.

(e) Additional Fees. Absent disclosure of additional attorney fees post-confirmation in the debtor's plan as specified in paragraph (b), or except for payment for fees without obtaining a court order authorizing the fees and specifically permitting direct payment of those fees, the debtor's attorney must file an amended Rule 2016(b) statement within 14 days of receipt of any additional funds paid post-petition.

(f) Separate Application. Nothing in this Local Rule prohibits a debtor's attorney from filing a separate fee application or the court from ordering the attorney to file a separate fee application pursuant to Rule 2016(a).

Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.

APR 26 2012

U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:

ADOPTION OF GUIDELINES FOR
PAYMENT OF ATTORNEYS FEES
IN CHAPTER 13 CASES

GENERAL ORDER
NO. 106

GUIDELINES FOR PAYMENT OF ATTORNEYS FEES IN CHAPTER 13 CASES

Effective in all chapter 13 cases filed on or after June 1, 2012

The following are guidelines ("Guidelines") for approving flat fee arrangements as part of the chapter 13 plan confirmation process.

An attorney may decline to seek approval of compensation pursuant to the Guidelines. If an attorney so declines, his or her compensation shall be disclosed, reviewed, and approved in accordance with applicable authority including, without limitation, 11 U.S.C. § 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017.

A. Flat Fee Guidelines

Alternatively, attorneys may have their fees approved and paid as part of the chapter 13 plan confirmation process if they comply with the Guidelines.

1. Counsel may seek approval for fees in the order confirming the plan up to the amounts set forth in Paragraph 2 without filing a detailed application if:
 - (a) Counsel provides all services listed in Section B.;
 - (b) No objection to the requested fees has been raised; and
 - (c) The court has not determined, in its sole discretion, that the fees have either not been earned or are not reasonable.
2. The maximum fee which can be approved through the procedure described in Paragraph 1 is: \$4,500, but if such fee is not sufficient to fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The court will not approve additional compensation in cases in which no plan is confirmed, or for work necessary to confirm the initial plan. Further, counsel should not view the fee permitted by the Guidelines as a retainer that, once exhausted, automatically justifies a fee motion seeking additional fees.

Counsel may request additional compensation only in instances where substantial and unanticipated post-confirmation work is necessary. In the event that counsel files for additional fees, time records in support of such an application must be provided and date from the inception of the case.

B. Minimum Required Services

Attorney responsibilities for a standard plan confirmation and general representation shall include, but are not limited to:

Review of financial documents and information
Consultation, planning and advice, including office visits and telephone communications
Representation and advice regarding filing of pre-filing credit briefing
Preparation/Filing of Petition, Schedules, Statement of Financial Affairs, Current Monthly Income, Payment Advice Declaration and Master Mailing List
Preparation/Filing of Chapter 13 Plan, Plan Analysis and necessary amendments
Preparation/Filing of bankruptcy notice in State Court actions
Representation at §341 meeting of creditors
Resolution of non-adversary proceeding creditor objections and any hearings related thereto
Review and analysis of creditor claims for potential objections, and attendance at related hearings
Objections to Proofs of Claim
Preparation/Filing of Affidavit of no income regarding tax claims
Notify client of unfiled tax return claims, follow up with taxing authority
Preparation of Proposed Order Confirming Plan with cover letter to Trustee addressing each issue numerically
Preparation/Filing of Motion to Extend (for each: Schedules, Stipulated Order of Confirmation, Motion to Dismiss)
Preparation/Filing of Responses to Pre-Confirmation Objections to Dismissal
Preparation/Filing of Pre-Confirmation Stipulation to Reinstate Case
Responses to motions for stay relief, and attendance at hearings
Drafting and mailing any necessary correspondence

Change of Debtor address filings
Representation regarding filing of post-filing education course
Representation regarding discharge eligibility certificate
Amendments to Schedules
Representation at continued 341 meeting

In Business cases, the following additional services must be provided:

Filing of Business Operating Statements with court
--

C. Hourly Fees

All fees not covered by the Guidelines, including, but not limited to, appeals or adversary proceedings, may be billed at hourly rates and will require a separate application for allowance of compensation and reimbursement of expenses in compliance with 11 U.S.C. §330 and Fed. R. Bankr. P. Rule 2016. Such fees are reviewable by the court for reasonableness.

Attorneys are not required to charge the Flat Fee and may bill at hourly rates for the rendering of any and all of the professional services described in the Guidelines, but in such event shall submit an application for allowance of compensation and reimbursement of expenses in compliance with 11 U.S.C. §330 and Fed. R. Bankr. P. Rule 2016, dating from the inception of the case.

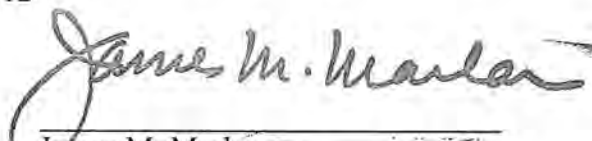
EXCEPT FOR PRE-PETITION RETAINERS AND HOURLY FEES, ALL FEES SHALL BE PAID THROUGH THE PLAN UNLESS OTHERWISE ORDERED. Attorneys shall file a 2016(b) Statement disclosing any fee(s) collected and the services performed, with a copy provided to the Debtor.

Regardless of the type of fee arrangement, attorneys shall represent the debtor(s) in all matters in the administrative case, unless an order is entered allowing their withdrawal.

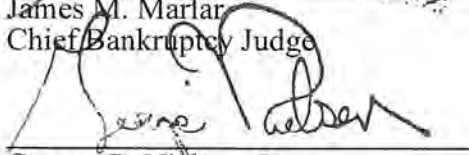
The Guidelines may be reviewed on an annual basis to determine reasonableness.

Approved, effective June 1, 2012, for chapter 13 cases filed in the District of Arizona.

Dated: April 26, 2012



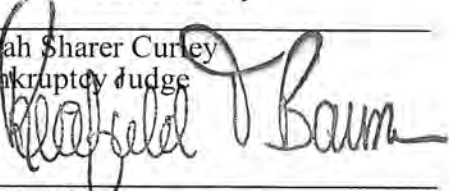
James M. Marlar
Chief Bankruptcy Judge



George B. Nielsen, Jr.
Bankruptcy Judge

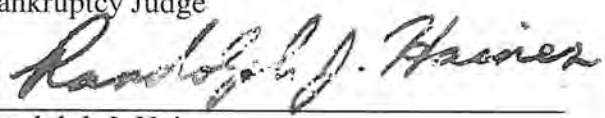
1
2 /s/ Sarah Sharer Curley


3 Sarah Sharer Curley
4 Bankruptcy Judge

5 
6 Redfield T. Baum
7 Bankruptcy Judge

8 /s/ Charles G. Case

9 Charles G. Case II
10 Bankruptcy Judge

11 
12 Randolph J. Haines
13 Bankruptcy Judge

14 
15 Eileen W. Hollowell
16 Bankruptcy Judge
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:

Chapter 13

No. _____

ORDER APPROVING PAYMENT
OF ADMINISTRATIVE EXPENSES

Debtors.

This matter came before the court pursuant to the Chapter 13 Plan and Application for Payment of Administrative Expenses and Notice of Date to File Objections to Chapter 13 Plan, which was noticed to all creditors on _____, as attested to in the previously filed certificate of mailing; the time for objection having expired; no objections having been received; and good cause appearing,

1. The original fee (exclusive of costs) at the inception of the case, as specified in the Chapter 13 Plan, was \$_____, of which the Debtors had paid \$_____, with the balance of \$_____ to be paid by the Trustee through the Debtors' payments under the Plan.

2. Said fee ☐ was ☐ was not a flat fee.

3. Counsel has already been paid:

A. Fees of \$_____.

B. Costs of \$_____ for the filing fee, plus \$_____ for a credit report from _____, for a total of \$_____.

1 4. Counsel is currently holding \$_____ in the trust account.

2 5. Counsel is not seeking any amount for services outside of the flat fee
3 agreement in this case. The fee includes a ☐ scrape-off ☐ other _____
4 action filed on _____.

5 6. ☐ Counsel is seeking additional fees of \$_____ in excess of the flat fee
6 for the following services.

7 ☐ Counsel is not seeking anything in excess of the flat fee.

8 IT IS HEREBY ORDERED APPROVING compensation for professional services to
9 _____ of _____
10 in the total amount of \$_____, of which \$_____ has already been paid by the
11 Debtors.

12 IT IS FURTHER ORDERED that the Trustee pay \$_____ to
13 _____ from the funds (s)he is holding. Per the Trustee's
14 website, (s)he is holding funds in the amount of \$_____ as of
15 _____.

16
17 DATED AND SIGNED ABOVE.
18
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Being a case assigned to Judge Marlar, the order confirming plan **must** contain the following language in the attorney fee section with applicable information added:

Attorney Fees. [Attorney] shall be allowed total compensation of \$_____. Counsel shall represent the Debtor(s) in the Minimum Required Services as set forth in General Order 106.

The original fee (exclusive of costs) at the inception of the case, as specified in the Chapter 13 Plan, was \$_____, of which the Debtor(s) paid \$_____, with a balance of \$_____ to be paid by the Trustee through the Debtor(s) payments under the plan.

Said fee [is / is not] a flat fee.

For costs or expenses, Counsel has been paid \$_____ for filing fees, plus \$_____ for a credit report from _____, for a total of \$_____.

Counsel currently is holding \$_____ in a trust account.

Counsel:

- ☐ Is not seeking compensation in excess of the flat fee; or
- ☐ Is seeking additional fees of \$_____ in excess of the flat fee for the following services:
 - ☐ Home mortgage scrape-off.
 - ☐ Other: _____ action filed on _____.

Jessica Sabo, Esq. #026360
Staff Attorney to Edward J. Maney
Chapter 13 Trustee
101 N. 1st Ave., #1775
Phoenix, Arizona 85003
(602) 277-3776
jsabo@maney13trustee.com

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:

xxxxxx,

Debtor.

In Proceedings Under Chapter 13

Case No. xxxxxxxx

**TRUSTEE'S OBJECTION TO
APPLICATION FOR PAYMENT OF
ADMINISTRATIVE EXPENSE**

NOW COMES Edward J. Maney, Chapter 13 Trustee assigned to administer this case, by and through counsel undersigned and hereby **OBJECTS** to the Application for Payment of Administrative Expense filed on May 9, 2012 (docket #71). In support of his objection, the Trustee states:

Debtor's filed for relief under Chapter 13 of the United States Bankruptcy Code on September 10, 2010. Debtors' plan was confirmed on April 19, 2012 (docket #67), approximately 1 year and 7 months later.

The Trustee Objects to the amount requested in the application for attorney fees. Debtor's Attorney had applied for a total award of \$8,800.00. The Application states \$2,500.00 was received before filing and the balance of fees (\$6,300.00), charged at an hourly rate, shall be paid by the Trustee. 11 U.S.C. §330(a)(3)(D) requires that the Court consider whether the work was "...performed within a reasonable amount of time commensurate with the complexity, importance and nature of the problem, issue or task addressed."

A Deficiency Notice was sent out by the court on September 13, 2010 (docket #5) due to the failure of Debtor's counsel to timely file the Statement of Current Monthly Income. Debtor's filed a Motion to Extend on September 24, 2010 (docket #10) asking the court for an additional 14 days (October 8, 2010), because Debtor's counsel "was out of town for a period of time". The Debtor once again failed to timely file the Schedules, Statement of Financial Affairs and the Chapter

1 13 Plan and the case was Dismissed on October 12, 2010 (docket #13). Debtor's Motion to
2 Reinstate Case (docket #17) was filed on October 18, 2010.

3 From the date of filing the petition to the date of Reinstatement, Debtor's counsel billed the
4 Debtor \$2,549.50, much of which was due to Debtor's counsel failure to timely file the requisite
5 Chapter 13 documents.

6 In addition, due to the failure of Debtor's counsel to timely submit a Stipulated Order
7 Confirming to the Trustee, which was due January 9, 2011, a Status Hearing was held on January
8 23, 2012 (docket #60), a full year after the Stipulated Order Confirming was due. Debtor's counsel
9 billed \$600.00 for his attendance at that hearing. Two additional Continued Status Hearing's were
10 necessary (docket's #61 & #64) and Debtor's counsel billed attendance at those hearings at \$450.00
11 and \$600.00, respectively.

12 The Trustee believes the preparation and filing of this Chapter 13 Plan did not justify an
13 additional \$6,300.00 in fees. The Trustee's position is that this case was neither complex nor were
14 there any unusual/important issues that arose that might justify total fees above that of the "no look
15 fee" of \$4,500.00 plus an additional \$500.00 for the lien strip action.

16 Based on the foregoing, Trustee requests the application for fees paid by the Trustee out
17 of the plan upon confirmation, dismissal or conversion, be limited to \$2,500.00.

18 Dated: See Electronic Signature.

19 EDWARD J. MANEY,
20 CHAPTER 13 TRUSTEE

21 By: _____
22 Jessica Sabo, Esq. #026360
23 Staff Attorney to Edward J. Maney
24 CHAPTER 13 TRUSTEE

25 Copy of the foregoing mailed: See Electronic Signature Below:

26 xxxxxx
27 xxxxxx
28 xxxxxx
Debtor's Attorney

By: _____

1 Scott A. Lieske, Esq. #016250
3838 N. Central Ave., Ste. 800
2 Phoenix, Arizona 85012
(602) 277-8996
3 (602) 253-8346, facsimile
Attorney for Russell Brown, Chapter 13 Trustee
4

5 **IN THE UNITED STATES BANKRUPTCY COURT**
6 **FOR THE DISTRICT OF ARIZONA**

7 In re:

8 XXXX

9 and

10 XXXX,

11 Debtors.
12

Chapter 13 Proceedings

Case No. XX-XXXXX

**TRUSTEE'S OBJECTION TO
APPLICATION FOR APPROVAL OF
ADMINISTRATIVE EXPENSE**

13 The Trustee, Russell A. Brown, by and through counsel undersigned, hereby objects to the
14 Supplemental Application for Payment of Administrative Fees and Expenses. Debtors' plan was
15 confirmed on September 29, 2011. There are no excess funds available in the plan to pay the
16 additional \$600.00 requested in the Supplemental fee application.

17 The Trustee requests this Court deny counsel's Supplemental Application for Payment of
18 Administrative Fees and Expenses and require Debtors' provide proof that the plan is sufficiently
19 funded in order to pay the additional fees.
20

21 /s/ Scott Lieske
22 Scott A. Lieske, Esq. ABN 16250
23 Staff Attorney for Chapter 13 Trustee
slieske@ch13bk.com

24 Copy of the foregoing mailed or emailed
25 to the following parties on the date of the
electronic signature affixed hereto:

26 XXXXXX
27

28 /s/ Scott Lieske ABN 16250

1 Scott A. Lieske, Esq. #016250
3838 N. Central Ave., Ste. 800
2 Phoenix, Arizona 85012
(602) 277-8996
3 (602) 253-8346, facsimile
Attorney for Russell Brown, Chapter 13 Trustee

4
5 **IN THE UNITED STATES BANKRUPTCY COURT**
6 **FOR THE DISTRICT OF ARIZONA**

7 In re:

8 XXXX,

9
10 Debtor.

In Proceedings Under Chapter 13

Case No. XX-XXXXXX

**TRUSTEE'S RESPONSE TO DEBTOR'S
SUPPLEMENT TO ATTORNEYS' FEE
APPLICATION**

11
12 In reply to Debtor's Supplement to Debtor's Attorneys' Fee Application, the Trustee provides
13 his response:

14 Although 11 U.S.C. § 330(a)(4)(B) allows debtor's counsel to qualify for fees from the estate
15 for representing the debtor's interests, it specifically allows the Court to consider "the benefit and
16 necessity of such services to the debtor and the other factors set forth in this section." Those 'other
17 factors' mentioned in the statute refer to those enumerated in § 330(a)(3).¹ *In re Collida*, 270 B.R.
18 209, 213 (Bankr. S.D. Tex. 2001). The Court is thus left to determine whether the services
19 performed did indeed constitute a benefit to the Debtor. In the revealing light of § 330(a)(3), the
20

21 ¹In determining the amount of reasonable compensation to be awarded, the court shall consider
22 the nature, the extent, and the value of such services, taking into account all relevant factors, including—

23 (A) the time spent on such services;

24 (B) the rates charged for such services;

25 (C) whether the services were necessary to the administration of, or beneficial at the time at
26 which the service was rendered toward the completion of, a case under this title;

27 (D) whether the services were performed within a reasonable amount of time commensurate
28 with the complexity, importance, and nature of the problem, issue, or task addressed; and

(E) whether the compensation is reasonable, based on the customary compensation charged by
comparably skilled practitioners in cases other than cases under this title.

1 Trustee believes that the Court shall find that no appreciable benefit has been conferred on the
2 Debtor. “The burden of proving that the compensation requested by counsel is reasonable and that
3 the services provided by counsel were actual and necessary falls on the attorney requesting the fees.”
4 *In re Rothman*, 206 B.R. 99, 110 (Bankr. E.D. Pa. 1997) (Fees were reduced based in part on
5 findings that a portion of the services performed provided no benefit to the estate or to the debtor.);
6 *See also In re Pirani*, 232 B.R. 891 (Bankr. E.D. Tex. 1999); and *In re Polishuk*, 258 B.R. 238
7 (Bankr. N.D. Okla. 2001) (Time spent formulating plans that were never confirmed was not a true
8 benefit to the estate or to the debtor.). That burden has not been met. Debtor’s counsel has
9 professed that the fees should be awarded because the services benefitted the Debtor, but has failed
10 to clarify what those benefits may be. “Even as amended in 1994, § 330(a)(4)(B) requires that the
11 services of counsel at least benefit the estate or the debtor.” Keith M. Lundin, *Chapter 13*
12 *Bankruptcy 3rd Ed.*, 294-6 (2002). Here the Debtor has failed to show that the services benefitted
13 either the estate or the Debtor. The fact that a debtor derives personal benefit does not constitute a
14 true benefit for purposes of awarding compensation under § 330(a)(4)(B). *See Bachman v. Pelofsky*
15 *(In re Peterson)*, 251 B.R. 359,365 (8th Cir. BAP 2000). Just because counsel chooses to indulge
16 the hollow and wasteful whims of a debtor does not mean that there has been a “benefit” conferred
17 on the debtor.

18 The Debtor should not be allowed to wage fruitless battles on the backs of his creditors.
19 Under the Debtor’s Plan as originally proposed, the general unsecured creditors (excluding the
20 employer) would have received \$21,934.71 of their \$56,551.00 claims (39%). After the litigation
21 on the Trustee’s objection, the Trustee was able to increase the distribution to all general unsecured
22 creditors (including the employer) to \$41,264.71 of their \$75,881.00 claims (54%). However, should
23 Debtor’s additional attorneys’ fees be granted pursuant to the fee application, the general unsecured
24 class will receive only \$30,364.00 of their \$75,881.00 claims (40%). This means that if the attorneys
25 fees are awarded as requested by the Debtor, his creditors will receive only 1% more than they would
26 have received under the original proposed plan, which has been ruled to be unconfirmable. “The
27 Debtor cannot be permitted to act out his litigious impulses at the expense of the creditors of the
28 Debtor’s estate.” *In re Rothman*, at 111.

1 The Court is not required to award attorneys' fees a priority status at the expense of the
2 unsecured creditors. The plain language of 11 U.S.C. § 1326(b) clearly allows concurrent payment
3 of administrative expense claims with each payment to creditors under the plan. It does not require
4 the administrative claims be paid as a priority claim. *In re Parker*, 15 B.R. 980, 983 (Bankr. E.D.
5 Tenn. 1981).

6 Based on the foregoing, the Court should deny a portion of counsel's fee application. The
7 Court should award counsel total compensation of \$5,125.00, which includes the \$2,700.00
8 originally requested in the plan and \$2,425.00 in additional fees, and allow reimbursement of
9 expenses of \$44.00. If the Court is inclined to award additional fees, the Trustee would request that
10 debtor be required to pay those fees concurrently with payments to other creditors and extend the
11 plan by the amount of the fees awarded.

12
13
14 /s/ Scott Lieske
15 Scott A. Lieske, Esq. ABN 16250
16 Staff Attorney for Chapter 13 Trustee
slieske@ch13bk.com

17 Copy of the foregoing mailed or emailed
18 to the following parties on the date of the
electronic signature affixed hereto:

19 XXXXXX
20

21 /s/ Scott Lieske ABN 16250
22
23
24
25
26
27
28

1 Scott A. Lieske, Esq. #016250
3838 N. Central Ave., Ste. 800
2 Phoenix, Arizona 85012
(602) 277-8996
3 (602) 253-8346, facsimile
Attorney for Russell Brown, Chapter 13 Trustee
4
5

6 **IN THE UNITED STATES BANKRUPTCY COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 In re:

9 XXXX

10 and

11 XXXX,

12
13 Debtors.

In Proceedings Under Chapter 13

Case No. XX-XXXXX

**TRUSTEE'S OBJECTION TO
APPLICATION FOR PAYMENT AND
COMPENSATION OF ATTORNEY
FEES AND COSTS**

14 The Trustee, Russell A. Brown, by and through counsel undersigned, hereby objects to the
15 Application for Payment of Administrative Expense filed by Debtors' counsel. This objection is
16 supported by the attached Memorandum of Points and Authorities.

17 The Trustee requests that the Court should deny a portion of counsel's fee application.
18
19
20

21 /s/ Scott Lieske

22 Scott A. Lieske, Esq. ABN 16250
Staff Attorney for Chapter 13 Trustee
23 *slieske@ch13bk.com*
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

Debtors filed their petition for Chapter 13 relief on June 14, 2010.

Debtors' counsel filed the Application for attorney fees on December 10, 2011, seeking fees and costs for the period of May 4, 2010 through December 2, 2011 in the amount of \$11,416.81, less a \$2,194.00 pre-petition retainer, for an award sought of \$9,222.81 to be paid from the monies held by the Chapter 13 Trustee.

Debtors filed their Chapter 13 Plan on June 28, 2010. There have been no Objections to the Plan filed by any creditors. The only significant issues in the October 28, 2010 Trustee Recommendation were the termination of a 401(k) payroll deduction and resolution of a Proof of Claim filed by the Internal Revenue Service.

Although 11 U.S.C. § 330(a)(4)(B) allows debtor's counsel to qualify for fees from the estate for representing the debtor's interests, it specifically allows the Court to consider "the benefit and necessity of such services to the debtor and the other factors set forth in this section." Those 'other factors' mentioned in the statute refer to those enumerated in § 330(a)(3).¹ *In re Collida*, 270 B.R. 209, 213 (Bankr. S.D. Tex. 2001). "The burden of proving that the compensation requested by counsel is reasonable and that the services provided by counsel were actual and necessary falls on the attorney requesting the fees." *In re Rothman*, 206 B.R. 99, 110 (Bankr. E.D. Pa. 1997); *See also*

¹In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and

(E) whether the compensation is reasonable, based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

1 *In re Pirani*, 232 B.R. 891 (Bankr. E.D. Tex. 1999); and *In re Polishuk*, 258 B.R. 238 (Bankr. N.D.
2 Okla. 2001).

3 The Ninth Circuit *Yermakov* decision provides guidance on calculating appropriate fees.
4 “The primary method used to determine a reasonable attorneys’ fee in a bankruptcy case is to
5 multiply the number of hours expended by an hourly rate. *In re Yermakov*, 718 F.2d 1465 1471 (9th
6 Cir. 1983). The *Yermakov* decision also specifically referenced the twelve factors outlined in the
7 Fifth Circuit’s *Johnson*² decision that should be considered in awarding attorneys’ fees. *See also*,
8 *In re Nucorp Energy, Inc.*, 764 F.2d 655 (9th Cir. 1985). The appropriate standard according to the
9 9th Circuit Bankruptcy Appellate Panel is to use the “lodestar” approach in consideration of the
10 factors from the *Johnson* decision. *In re Powerline Oil Co.*, 71 B.R. 767 (9th Cir. BAP 1986).

11 11 U.S.C. §330(a)(3)(B) requires that the Court consider the rates charged for such services.
12 The Trustee notes that counsel’s time records attached as Exhibit A to the Application contain
13 several entries for tasks that could/should have been performed by a paralegal. For example, on June
14 17, 2010 counsel lists a 0.5 hour entry for conveying proof of insurance to vehicle finance company.
15 In addition, there are multiple time entries that include time for filing documents. These are
16 primarily administrative tasks that should be billed only at the paralegal rate (\$40.00 per hour³) rather
17 than the full attorney rate of \$250.00 per hour.

18 11 U.S.C. §330(a)(3)(D) requires that the Court consider whether the work was “...performed
19 within a reasonable amount of time commensurate with the complexity, importance and nature of
20 the problem, issue or task addressed.” The Trustee notes that there are at least ten entries on
21 counsel’s time records where counsel alleges 0.5 hour or 1.0 hour spent receiving and reviewing a
22 fax. In addition, there is a 0.5 hour entry for reviewing a proof of claim and several entries of 1.0
23 hour to 1.5 hours to review paycheck stubs. On October 29, 2010 counsel lists entries totaling 2.25
24 hours spent reviewing the Trustee’s Recommendation and drafting a letter to the clients. Finally,
25

26 ² *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974).

27 ³ Counsel’s paralegal rate is set forth at the first 9/8/10 time entry on Exhibit A attached to counsel’s
28 Application.

1 there are at least five entries of 0.5 hour for either receiving or sending an email to the clients. The
2 Trustee has a concern whether these entries represent a reasonable amount of time spent on the
3 respective tasks.

4 The Trustee believes the attorney fees should be limited to \$3,000.00 total. If the Court
5 awards more than \$3,000.00 total fees, then the fees should be paid *after* the 42 month duration by
6 extending the plan. Alternatively, the Court is not required to award attorneys' fees a priority status
7 at the expense of the unsecured creditors. The plain language of 11 U.S.C. § 1326(b) clearly allows
8 concurrent payment of administrative expense claims with each payment to creditors under the plan.
9 It does not require the administrative claims be paid as a priority claim. *In re Parker*, 15 B.R. 980,
10 983 (Bankr. E.D. Tenn. 1981). The Plan duration must be extended by the amount of the increased
11 fees.

12 Based on the foregoing, the Court should deny a portion of counsel's fee application. If the
13 Court is inclined to award additional fees, the Trustee would request that the fees be paid after the
14 42 month duration, or in the alternative, debtor be required to pay those fees concurrently with
15 payments to other creditors and extend the plan by the amount of the fees awarded.

16
17
18
19 /s/ Scott Lieske
20 Scott A. Lieske, Esq. ABN 16250
21 Staff Attorney for Chapter 13 Trustee
22 *slieske@ch13bk.com*

23 Copy of the foregoing mailed or emailed
24 to the following parties on the date of the
25 electronic signature affixed hereto:

26 XXXXXX

27 /s/ Scott Lieske ABN 16250
28

EDWARD J. MANEY
CHAPTER 13 TRUSTEE
101 N. First Ave. Suite 1775
Phoenix, Arizona 85003

(602) 277-3776
Fax (602)277-4103
office@maney13trustee.com

Month, Day Year

Name
Firm
Address 1
City, State, Zip

Dear Name:

Re: Case XX-XXXXX

I am writing to you regarding the above referenced case. This case was either dismissed or converted some time ago and it does not appear an order for attorney fees has been signed by the court. If you intend to make a claim for any of the proceeds I am preparing to return to the debtor(s), please file a fee application or lodge Certificate of No Objection and an Order Approving Fees with the Court immediately. If I do not hear from you in 15 days, I will assume you have no objection to the return of all funds to the debtor(s). If you have any questions, please contact me.

Sincerely,

Edward J. Maney, Esq.

B22C

COMPLETING FORM B22C

Completing Official Form 22C, "Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income" and Related Issues.

Andrew Dudley, Staff Attorney for Edward J. Maney, Chapter 13 Trustee

This outline has been prepared to give a general idea of the issues which debtor's counsel may encounter when preparing Form B22C for their clients. Generally, the outline follows the Form line by line. Some lines have been skipped because the information requested in them is self-explanatory. If you have an issue which you are unsure how to treat on Form B22C, you should contact the Trustee's Staff Attorney, who may be able to provide some guidance and avoid an objection by the Trustee and delay in confirmation of the Chapter 13 Plan.

I. **PART I: REPORT OF INCOME** (Calculation of "Current Monthly Income"):

"Current Monthly Income" is defined in 11 U.S.C. §101(10A). It includes all sources of income received during the previous six calendar months prior to filing, as well as any amount paid by any entity other than the debtor on a regular basis for the household expenses of the debtor or debtor's dependents. It does not include Social Security benefits and other payments the debtor may receive as a victim of war crimes or international or domestic terrorism.

A. The first section of Form 22C is used to calculate the debtor(s) "current monthly income."

1. Line 1: Line 1 asks if the debtor is unmarried or married. Form 22C (unlike Chapter 7's Form 22A) does not allow the debtor to not fill out the Mean Test based on the debtor's status as a disabled veteran with debt incurred in active duty, or non-consumer debtor, or a reservist or national guard member on active duty. Debtors cannot declare "separate households" on Form 22C. If debtor is married, spouse's income must be included, even if spouse is not filing. Chapter 13 debtors must always complete and file Form 22C, even if the case is converted from Chapter 7 and Form 22A was already filed.
2. Line 2: Includes pay/shift differentials, OT, bonuses, etc. Includes *all* income, whether taxable or not. If the income has varied during those months, the income must be totaled and divided by six.
3. Line 3: Listed income from operation of business is **gross income only**. Do not deduct business expenses in Line 3b. *In re Wiegand*, 386 B.R. 238 (9th Cir BAP 2008).
 - a. Expenses from business can be deducted on Line 31 in calculation of "disposable income."

- b. Practice Pointer: The business income/expenses listed on 22C should be relatively close to the income on Schedule I and expenses on Schedule J, unless there has been a substantial change in either in the month or two immediately preceding the filing of the petition. The Trustee may require documentation to verify the substantial change.
- 4. Line 4: Gross income from rents only. Do not deduct operating expenses in Line 4b. Expenses from rental units can be deducted on Line 31 or 57 in calculation of "disposable income."
- 5. Line 6: Includes all pension or retirement income, including VA benefits, military pensions, IRA or 401k income. Do not include Social Security, Social Security disability or Social Security income received by a debtor parent for dependents.
- 6. Line 7: Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or debtor's dependents. This includes:
 - a. Child support or spousal support;
 - b. Contributions to household income from partners, roommates, siblings or parents, regardless of whether they live with the debtor or not;
 - c. Payments made directly to creditors on behalf of the debtor, like rent, car payments, insurance or tuition. *In re Moore*, 446 B.R. 458 (Bankr. D. Colo. 2011)(\$50,000 student loan payment directly to creditor included on original 22C, but could be excluded on an amended Form 22C showing change in circumstances at time of confirmation);
 - d. Contribution does not need to be pursuant to a written agreement; and
 - e. This does not include contributions from a non-filing spouse, since that income is already listed in Column B.
- 7. Line 8: Unemployment compensation is not a Social Security benefit and must be included.
- 8. Line 9: Income from all other sources includes (but not limited to):
 - a. Net gambling income;
 - b. Cash gifts;

- c. Litigation proceeds;
- d. Trust or inheritance income;
- e. Continuing income from the sale of a business or business assets;
- f. Private insurance benefits, *Blausey v. United States Trustee*, 552 F.3d 1124 (9th Cir. 2009);
- g. Life insurance proceeds;
- g. It does not include sale of assets, e.g. sale of stock, a vehicle or other tangible asset, whether exempt or nonexempt.
- h. Generally does not include one time withdrawals from a 401k or other retirement plan as such a withdrawal would not be income received on a regular basis as required by 11 U.S.C. §101(10A)(B).

9. Line 11: Combined Current Monthly Income.

II. PART II: CALCULATION OF § 1325(b)(4) COMMITMENT PERIOD.

A. The calculation of "applicable commitment period" is determined by comparison of debtor's annualized current monthly income to the average income for a household of equal or lesser size in the state of residence at filing.

1. Line 13: Marital Adjustment: If a debtor believes that a non-filing spouse's income should not be used to determine applicable commitment period, a debtor may attempt to deduct the amount of the non-filing spouse's income which was not paid on a regular basis for the household expenses of the debtor and debtor's dependents. The Trustee may object to amounts listed here and will, at a minimum, require documentation and verification for the necessity of the deduction.

2. Line 16: Applicable median family income.

a. If the debtors are married and live in different states, the residence is where most family members reside.

(1). According to the United States Trustee, if there is no "plurality of family members" in any one state, counsel should "use the state of spouse with the highest income." See Statement of the U.S. Trustee Program's Position on Legal

Issues Arising Under the Chapter 13 Disposable Income Test:
www.usdoj.gov/ust/eo/bapcpa/index.htm.

- b. Household size: There is a split of opinion as to what constitutes a "household" under this provision. The Chapter 13 Trustees in Phoenix and at least two judges in this District follow the "heads on beds" approach. *In re Epperson*, 409 B.R. 503 (Bankr. D. Ariz 2009). See also *In re Ellinger*, 370 B.R. 905 (Bankr. D. Minn 2007). These cases rely on the Census Bureau's definition of "household," which includes all related and non-related persons living in a single housing unit.
- (1). This definition does not require that members of debtor's household be dependents of the debtor as defined by the Internal Revenue Service;
 - (2). EXAMPLE 1: Debtor lives with his girlfriend and girlfriend's minor daughter. Household size of 3.
 - (3). EXAMPLE 2: Debtors reside with in-laws, brother in-law, brother in-law's partner and brother in-law's 2 minor children. Household size of 8.
 - (4). EXAMPLE 3: Debtors have 2 minor children, one of which they share custody with ex-spouse and 1 adult child who goes to college at Arizona State. On the date of filing, the one minor child is living with ex-spouse and the adult child is living on campus. Household size of 3.
 - (5). Practice Pointer: To clarify for the Trustee, if the household size does not include dependents, therefore no dependents are listed on Schedule I, be sure to explain the household size determination on Line 17 of Schedule I.
- c. Practice Pointer: If there are additional members of the household other than the debtor(s), and those additional household members are not contributing any income to the debtors or their dependents on Line 7, do not include any expenses for those non-contributing members of the household in the remainder of Form 22C or on Schedule I. Remember, expense deductions for calculation of disposable income are limited to the expenses for the debtor, spouse and dependents of the debtor. See 11 U.S.C. §1325(b)(2)(A)(I) and §707(b)(2)(A)(ii)(I). The expenses for additional members of the

debtors household must be offset by contributions to the debtor's current monthly income. This is true for Schedules I and J as well.

III. PART III: APPLICATION OF § 1325(b)(3) FOR DETERMINING DISPOSABLE INCOME.

- A. 11 U.S.C. §1325(b)(3) requires debtors to determine if the "amounts reasonably necessary to be expended" for expenses deducted from current monthly income to calculate "disposable income" are calculated using the Means Test provisions of §707(b)(2)(A) and (B). Again, the Trustee may object to expenses listed here and will, at a minimum, require documentation and verification for the necessity of the deduction.
1. Line 19: Marital adjustment: If a non-filing spouse has expenses which are not for the debtor or debtor's dependents, they can be deducted here. Expenses may include:
 - a. Withholding taxes.
 - b. Student loan payments.
 - c. Nonfiling spouse's support obligations.
 - d. Nonfiling spouse's debt payments.

IV. PART IV: CALCULATION OF DEDUCTIONS FROM INCOME.

- A. Deductions under the National and Local Standards of the IRS.
1. These deductions are only for the debtor and debtor's dependents. If the debtor has a household size of 5 for calculation of applicable commitment period in Line 16, but no dependents or spouse, the applicable national and local standards are for a household of 1. The expenses claimed pursuant to the household size must be consistent. A debtor cannot claim the National Standard expense for a household of 5 on one line, and the amount for a household of 1 in a different line.
 2. Lines 24A -25A: These amounts are taken directly from the national and local standards. Debtors are allowed these standards even if they do not actually incur them or their actual expenses are lower.
 - a. Line 25A: The housing and utilities expense includes basic costs of both a land line *and* cellular telephone. Any amount over the allowed Local Standard should be listed in Line 37, but the Trustee

may object to the additional amount and require documentation verifying the reasonable necessity of the additional expense. See discussion of Line 37 below.

3. Line 25B: Average payments for debts secured by debtors home as listed on Line 47 must be deducted from the Local Standards expense (no "double dipping.")
 - a. Do not deduct rent payment from the local standards here. If there is a difference between the rent payment and the local standards allowance, the difference may be listed on Line 26.
 - (1). **EXAMPLE**: Local standards for a household of 2 is \$1,030.00, but debtors pay \$1,500 per month in rent. A deduction for \$470 may be listed on Line 26 with an appropriate explanation.
 - b. Do not deduct mortgage payment in Line 25B.b. for a house which is surrendered in the Chapter 13 Plan. Debtors may take the full Local Standard deduction.
4. Line 27A: Debtors get the Local Standard for vehicle operating expense based on the number of vehicles they own.
 - a. At least one judge in this District has recently ruled that the additional \$200.00 operating expense for vehicles owned free and clear which are over 6 years old or have 75,000 reported miles or more cannot be added to the Local Standard ownership expense amount. The Phoenix Chapter 13 Trustees agree with this view and may object to the inclusion of this additional amount. *See Ransom v. FIA Card Services, N.A. (In re Ransom)*, 562 US ___, 131 S.Ct. 716, 726, 178 L.Ed.2d 603 (2011); *In re Hargis*, 451 B.R. 174 (Bankr. D. Utah 2011); *In re VanDyke*, 450 B.R. 836 (Bankr. C.D. Ill. 2011); *In re Schultz*, 463 B.R. 492 (Bankr. W.D. Mo. 2011); *In re Luban*, 2012 WL 694515 (Bankr. S.D. Fla. 2012).
5. Line 27B: If a debtor claims this expense, the Trustees will likely ask for documentation and justification of the expense. If the debtor does not usually use public transportation, it is likely that the Trustees will object.
6. Lines 28 and 29: Average payments for debts secured by vehicles as listed on Line 47 must be deducted from the Local Standards expense (no "double dipping").

- a. Do not deduct ownership expenses for vehicles owned free and clear. *Ransom v. FIA Card Services, N.A. (In re Ransom)*, 562 US ___, 131 S.Ct. 716, L.Ed.2d 603 (2011).
 - b. Do not deduct an ownership expense for a vehicle which is surrendered in the Chapter 13 Plan.
- B. Other Necessary Expenses: These expenses are limited to actual monthly expenses. The expenses must be **actual** and **reasonably necessary**. The Trustee may ask for documentation and verification of any of the expenses listed in Lines 30 through 37.
1. Line 30: The deduction for taxes is for actual monthly taxes incurred, not monthly amounts withheld. *In re Mullen*, 369 B.R. 25 (Bankr. D. Or. 2007). Counsel must look at debtor's prior tax returns, as well as including appropriate tax withholding percentage from debtor's income. If there is a large amount on this line, and the debtor received substantial refunds, the Trustee may object to the actual taxes amount.
 2. Line 31: Some attorneys list business expenses on this line, since those expenses are "mandatory for employment." If listing some other expense, the Trustee may require verification of the mandatory nature of the deduction. Any business expenses listed on this line should match or be very close to the amount of business expenses listed on Schedule J.
 3. Line 32: Includes ONLY payments for **term** life insurance for the debtor. It **does not** include premiums on policies for children or non-filing spouse, or premiums for whole life policies.
 4. Line 33: Court-ordered payments include child support or spousal support. May also include restitution payments and/or fees and fines. The monthly amount of child/spousal support that appears on Line 33 should equal the amount garnished from wages or listed as an expense on Schedule J. If it does not, the Trustee may object and require documentation and verification of the expense.
 5. Line 34: Limited to actual expenses for continuing education for employment (like CLE) **or** education for a physically or mentally challenged dependent child where there are no equivalent public education services. College expenses for children are not included in this deduction. *In re Saffrin*, 380 B.R. 191 (Bankr. N.D. Ill. 2007).
 5. Line 36: If there is a difference between debtor's actual health care costs and the cap set in Line 24B, the difference may be included here. The combined amount should be equivalent to the monthly medical expenses claimed on

Schedule J. Additional healthcare costs must be for “necessary” health care, not “elective.” *In re Gregory*, 452 B.R. 895, 899 (Bankr. M.D.Pa. 2011).

6. Line 37: Standard telephone service (both land line and cellular) is included in Line 25B. Excessive amounts may result in the Trustee requiring the debtor to provide documentation verifying the expense and justification that the additional expense is reasonably necessary for the health and welfare of the debtor and debtor's dependants or the production of income.
 - a. “Bundled” services should be unbundled to the extent the monthly bill includes home telephone services. *In re Cleaver*, 426 B.R. 390 (Bankr. D.N.M. 2010).
 - b. Expenses must be reasonably necessary for the health and welfare of the debtor and debtor’s dependants or for the production of income. The Trustee may object to additional expenses for high end cell phone plans, premium cable channels or satellite TV. *In re Minahan*, 394 B.R. 116 (Bankr. W.D.Va. 2008); *In re Scurlock*, 385 B.R. 814 (Bankr. M.D.N.C. 2008).

C. Additional Living Expenses.

1. Line 39: Actual expenses per month for insurance for debtor, spouse and dependents.
2. Line 40: This deduction is found in 11 U.S.C. §707(b)(2)(A)(ii)(II). College tuition or other expenses for adult children do not qualify. The elements necessary to claim this expense are:
 - a. The expenses must be a continuation of actual expenses paid by the debtors; and
 - b. the expenses must be reasonable and necessary for care of an elderly, chronically ill or disabled:
 - (1). Household member who is unable to pay for such an expense; or
 - (2). A member of the debtors’ immediate family (as defined by the statute) who is unable to pay for such expenses.
 - c. The Trustee will object to the inclusion of expenses in this Line if the elements listed above are not met. *In re Hicks*, 370 B.R. 919, 922-23 (Bankr. E.D. Mo. 2007). *See also In re Harris*, 415 B.R. 756 (Bankr.

E.D. Cal. 2009); *In re Williams*, 424 B.R. 207 (Bankr. W.D. Va. 2010); *In re Linville*, 446 B.R. 522 (Bankr. D. N.M. 2011).

3. Lines 42, 43 and 44: Debtors claiming expenses for additional home energy costs, education expenses for dependent children under 18 and additional food and clothing expenses must be able to document the actual expenses and justify the reasonable necessity of these expenses.
 - a. Expenses for education for dependent children under 18 years of age are limited. Debtors may spend more, but claimed expenses on Line 43 are capped. In addition, debtors must be able to demonstrate that the expenses are not already accounted for in the National or Local Standards or Other Necessary Expenses. 11 U.S.C. §707(b)(2)(A)(ii)(IV).
4. Line 45: Charitable contributions are limited to 15% of gross income. The Trustees may object and may require verification of the claimed charitable contribution amount if no previous contributions appear on debtor's tax returns for the prior year, no gifts appear on the Statement of Financial Affairs, Item #7 and/or no contributions appear on Schedule J, or if the amount of the charitable contributions suddenly increase in the months immediately preceding the petition date.

D. Deductions for Debt Payment.

1. Line 47: Do not include a deduction for debt payment on a secured claim which is surrendered in the Plan. Do not include a deduction for debt payment on a junior lien on a home which is being stripped. *In re Reyes*, 401 B.R. 910 (Bankr. C.D. Cal. 2009); *In re Darrohn*, 615 F.3d 470 (6th Cir. 2010).
 - a. The amounts listed for this deduction are 1/60th of the amount contractually due, not the amount of the monthly payment. While this may not matter with a long-term debt like a mortgage or a long-term vehicle contract which extends past 60 months, it may make a significant difference with shorter term debts.
 - (1). EXAMPLE: Debtors' car payment is \$500 per month, but they only owe \$5,000.00 on the vehicle. The amount deducted should be \$83.33, not \$500 ($5,000 \div 60 = 83.33$).
2. Line 48: List cure amounts for mortgages and cure amounts for leases (e.g leased vehicles) paid through the Plan only. Do not include payment on arrears for vehicles if the vehicles are being paid through the Plan.

3. Line 49: Priority debt amount due as of date filing. Since student loans are **NOT** priority claims, there can be no deduction for such expenses on this Line.

V. PART V: DETERMINATION OF DISPOSABLE INCOME UNDER § 1325(b)(2).

A. Additional Deductions from Income.

1. Line 54: 11 U.S.C. §1325(b)(2) specifically excludes child support, foster care payments or disability payments for dependent children to the extent reasonably necessary to be expended for such child from the definition of "disposable income," and those amounts are deducted on Line 54. The amount deducted for such support should equal the amount already listed on Line 7.
 - a. If the amount of the payment is deducted here **and** expenses are deducted for the child for whom the payments are made are also deducted in Part IV for living expenses, etc., the Trustee will object as "double dipping," as the "amount reasonably necessary to be expended" for the child or children cannot be deducted twice.
2. Line 55: The Ninth Circuit Bankruptcy Appellate Panel in *In re Parks*, ___ B.R. ___, 2012 WL 3193342 (B.A.P. 9th Cir. 2012) recently held that ongoing postpetition 401(k) contributions cannot be deducted in the calculation of disposable income.
 - b. Although the deduction for 401(k) or other retirement plan loan repayments can be deducted here pursuant to 11 U.S.C. §1322(f), the Trustees will require an increase in plan payments if the loan is paid off during the life of the plan. *Hamilton v. Lanning*, 560 US ___, 130 S.Ct. 2464, 177 L. Ed. 2d 23 (2010); *Seafort v. Burden*, 669 F.3d 662 (6th Cir. 2012).
3. Line 57: Any additional expenses which were not previously included may be deducted on Line 57. However, the Trustee will most likely require the debtor to document and justify any such deductions.

B. Disposable income.

1. Line 59: Pursuant to the Ninth Circuit Court of Appeals *Maney v. Kagenveama (In re Kagenveama)*, 541 F.3d 868 (9th Cir. 2008), "disposable income" x "applicable commitment period" = "projected disposable income" which must be contributed to unsecured creditors if the Trustee or an unsecured creditor objects to plan confirmation. If the "disposable income"

is a negative number, there can be no “projected disposable income” to contribute to unsecured creditors during the applicable commitment period. Therefore, there is no applicable commitment period for such debtors.

- a. If a debtor proposes a plan with a commitment period less than 60 months in reliance on *Kagenveama*, the Trustee will require documentation verifying the amounts listed for current monthly income in Lines 2 through 9 and verifying all expenses outside the National and Local Standards and actual expenses listed in lines 30 through 45, and any additional deductions listed in Lines 54, 55, 57 and 60.
2. The Ninth Circuit has recently upheld that portion of *Kagenveama* regarding disposable income and the applicable commitment period in *Danielson v. Flores (In re Flores)*, ___ F.3d ___, 2012 WL 3803936 (9th Cir. 2012).
3. Pursuant to the U.S. Supreme Court decision in *Hamilton v. Lanning*, 560 US ___, 130 S.Ct. 2464, 177 L. Ed. 2d 23 (2010), courts may look beyond the means test to determine “projected disposable income,” when there are known or virtually certain changes in a debtor’s income and expenses. Examples include the repayment of a 401k loan, termination of spousal or child support, loss or gain of employment immediately prior to filing, bonus income, etc. The full impact of *Lanning* on the “applicable commitment period” and calculation of “projected disposable income” has yet to be determined.

In re _____
Debtor(s)

Case Number: _____
(If known)

According to the calculations required by this statement:

- ☐ The applicable commitment period is 3 years.
☐ The applicable commitment period is 5 years.
☐ Disposable income is determined under § 1325(b)(3).
☐ Disposable income is not determined under § 1325(b)(3).
 (Check the boxes as directed in Lines 17 and 23 of this statement.)

CHAPTER 13 STATEMENT OF CURRENT MONTHLY INCOME AND CALCULATION OF COMMITMENT PERIOD AND DISPOSABLE INCOME

In addition to Schedules I and J, this statement must be completed by every individual chapter 13 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. REPORT OF INCOME

1	Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed. a. <input type="checkbox"/> Unmarried. Complete only Column A ("Debtor's Income") for Lines 2-10. b. <input type="checkbox"/> Married. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10. All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.			Column A Debtor's Income	Column B Spouse's Income									
2	Gross wages, salary, tips, bonuses, overtime, commissions.			\$	\$									
3	Income from the operation of a business, profession, or farm. Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 3. If you operate more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero. Do not include any part of the business expenses entered on Line b as a deduction in Part IV. <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 45%;">Gross receipts</td> <td style="width: 50%;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary business expenses</td> <td>\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Business income</td> <td>Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	\$	b.	Ordinary and necessary business expenses	\$	c.	Business income	Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$												
b.	Ordinary and necessary business expenses	\$												
c.	Business income	Subtract Line b from Line a												
4	Rent and other real property income. Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. Do not enter a number less than zero. Do not include any part of the operating expenses entered on Line b as a deduction in Part IV. <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 45%;">Gross receipts</td> <td style="width: 50%;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary operating expenses</td> <td>\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Rent and other real property income</td> <td>Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	\$	b.	Ordinary and necessary operating expenses	\$	c.	Rent and other real property income	Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$												
b.	Ordinary and necessary operating expenses	\$												
c.	Rent and other real property income	Subtract Line b from Line a												
5	Interest, dividends, and royalties.			\$	\$									
6	Pension and retirement income.			\$	\$									
7	Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child support paid for that purpose. Do not include alimony or separate maintenance payments or amounts paid by the debtor's spouse. Each regular payment should be reported in only one column; if a payment is listed in Column A, do not report that payment in Column B.			\$	\$									

8	Unemployment compensation. Enter the amount in the appropriate column(s) of Line 8. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below:								
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">Unemployment compensation claimed to be a benefit under the Social Security Act</td><td style="width: 20%;">Debtor \$ _____</td><td style="width: 40%;">Spouse \$ _____</td></tr> </table>	Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____	\$	\$			
Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____							
9	Income from all other sources. Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. Do not include alimony or separate maintenance payments paid by your spouse, but include all other payments of alimony or separate maintenance. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism.								
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;">a.</td><td style="width: 50%;"></td><td style="width: 40%; text-align: center;">\$</td></tr> <tr> <td>b.</td><td></td><td style="text-align: center;">\$</td></tr> </table>	a.		\$	b.		\$	\$	\$
a.		\$							
b.		\$							
10	Subtotal. Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).	\$	\$						
11	Total. If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 10, Column A.	\$							

Part II. CALCULATION OF § 1325(b)(4) COMMITMENT PERIOD

12	Enter the amount from Line 11.		\$									
13	Marital adjustment. If you are married, but are not filing jointly with your spouse, AND if you contend that calculation of the commitment period under § 1325(b)(4) does not require inclusion of the income of your spouse, enter on Line 13 the amount of the income listed in Line 10, Column B that was NOT paid on a regular basis for the household expenses of you or your dependents and specify, in the lines below, the basis for excluding this income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page. If the conditions for entering this adjustment do not apply, enter zero.											
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;">a.</td><td style="width: 50%;"></td><td style="width: 40%; text-align: center;">\$</td></tr> <tr> <td>b.</td><td></td><td style="text-align: center;">\$</td></tr> <tr> <td>c.</td><td></td><td style="text-align: center;">\$</td></tr> </table>	a.		\$	b.		\$	c.		\$		
a.		\$										
b.		\$										
c.		\$										
	Total and enter on Line 13.		\$									
14	Subtract Line 13 from Line 12 and enter the result.		\$									
15	Annualized current monthly income for § 1325(b)(4). Multiply the amount from Line 14 by the number 12 and enter the result.		\$									
16	Applicable median family income. Enter the median family income for applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)											
	a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____		\$									
17	Application of § 1325(b)(4). Check the applicable box and proceed as directed. <input type="checkbox"/> The amount on Line 15 is less than the amount on Line 16. Check the box for "The applicable commitment period is 3 years" at the top of page 1 of this statement and continue with this statement. <input type="checkbox"/> The amount on Line 15 is not less than the amount on Line 16. Check the box for "The applicable commitment period is 5 years" at the top of page 1 of this statement and continue with this statement.											

Part III. APPLICATION OF § 1325(b)(3) FOR DETERMINING DISPOSABLE INCOME

18	Enter the amount from Line 11.		\$
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19	<p>Marital adjustment. If you are married, but are not filing jointly with your spouse, enter on Line 19 the total of any income listed in Line 10, Column B that was NOT paid on a regular basis for the household expenses of the debtor or the debtor's dependents. Specify in the lines below the basis for excluding the Column B income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page. If the conditions for entering this adjustment do not apply, enter zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td><td style="width: 65%;"></td><td style="width: 30%; text-align: right;">\$</td></tr> <tr> <td style="text-align: center;">b.</td><td></td><td style="text-align: right;">\$</td></tr> <tr> <td style="text-align: center;">c.</td><td></td><td style="text-align: right;">\$</td></tr> </table> <p>Total and enter on Line 19.</p>	a.		\$	b.		\$	c.		\$	\$															
a.		\$																								
b.		\$																								
c.		\$																								
20	<p>Current monthly income for § 1325(b)(3). Subtract Line 19 from Line 18 and enter the result.</p>	\$																								
21	<p>Annualized current monthly income for § 1325(b)(3). Multiply the amount from Line 20 by the number 12 and enter the result.</p>	\$																								
22	<p>Applicable median family income. Enter the amount from Line 16.</p>	\$																								
23	<p>Application of § 1325(b)(3). Check the applicable box and proceed as directed.</p> <p><input type="checkbox"/> The amount on Line 21 is more than the amount on Line 22. Check the box for "Disposable income is determined under § 1325(b)(3)" at the top of page 1 of this statement and complete the remaining parts of this statement.</p> <p><input type="checkbox"/> The amount on Line 21 is not more than the amount on Line 22. Check the box for "Disposable income is not determined under § 1325(b)(3)" at the top of page 1 of this statement and complete Part VII of this statement. Do not complete Parts IV, V, or VI.</p>																									
<p>Part IV. CALCULATION OF DEDUCTIONS FROM INCOME</p>																										
<p>Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)</p>																										
24A	<p>National Standards: food, apparel and services, housekeeping supplies, personal care, and miscellaneous. Enter in Line 24A the "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable number of persons. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) The applicable number of persons is the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.</p>	\$																								
24B	<p>National Standards: health care. Enter in Line a1 below the amount from IRS National Standards for Out-of-Pocket Health Care for persons under 65 years of age, and in Line a2 the IRS National Standards for Out-of-Pocket Health Care for persons 65 years of age or older. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) Enter in Line b1 the applicable number of persons who are under 65 years of age, and enter in Line b2 the applicable number of persons who are 65 years of age or older. (The applicable number of persons in each age category is the number in that category that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.) Multiply Line a1 by Line b1 to obtain a total amount for persons under 65, and enter the result in Line c1. Multiply Line a2 by Line b2 to obtain a total amount for persons 65 and older, and enter the result in Line c2. Add Lines c1 and c2 to obtain a total health care amount, and enter the result in Line 24B.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="3" style="text-align: left; padding: 2px;">Persons under 65 years of age</th> <th colspan="3" style="text-align: left; padding: 2px;">Persons 65 years of age or older</th> </tr> </thead> <tbody> <tr> <td style="width: 5%; text-align: center;">a1.</td><td style="width: 35%;">Allowance per person</td><td style="width: 20%;"></td> <td style="width: 5%; text-align: center;">a2.</td><td style="width: 35%;">Allowance per person</td><td style="width: 20%;"></td> </tr> <tr> <td style="text-align: center;">b1.</td><td>Number of persons</td><td></td> <td style="text-align: center;">b2.</td><td>Number of persons</td><td></td> </tr> <tr> <td style="text-align: center;">c1.</td><td>Subtotal</td><td></td> <td style="text-align: center;">c2.</td><td>Subtotal</td><td></td> </tr> </tbody> </table>	Persons under 65 years of age			Persons 65 years of age or older			a1.	Allowance per person		a2.	Allowance per person		b1.	Number of persons		b2.	Number of persons		c1.	Subtotal		c2.	Subtotal		\$
Persons under 65 years of age			Persons 65 years of age or older																							
a1.	Allowance per person		a2.	Allowance per person																						
b1.	Number of persons		b2.	Number of persons																						
c1.	Subtotal		c2.	Subtotal																						
25A	<p>Local Standards: housing and utilities; non-mortgage expenses. Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and family size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court). The applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.</p>	\$																								

25B	<p>Local Standards: housing and utilities; mortgage/rent expense. Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and family size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court) (the applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 47; subtract Line b from Line a and enter the result in Line 25B. Do not enter an amount less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td><td style="width: 60%;">IRS Housing and Utilities Standards; mortgage/rent expense</td><td style="width: 35%;">\$</td></tr> <tr> <td style="text-align: center;">b.</td><td>Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47</td><td>\$</td></tr> <tr> <td style="text-align: center;">c.</td><td>Net mortgage/rental expense</td><td>Subtract Line b from Line a.</td></tr> </table>	a.	IRS Housing and Utilities Standards; mortgage/rent expense	\$	b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47	\$	c.	Net mortgage/rental expense	Subtract Line b from Line a.	\$
a.	IRS Housing and Utilities Standards; mortgage/rent expense	\$									
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47	\$									
c.	Net mortgage/rental expense	Subtract Line b from Line a.									
26	<p>Local Standards: housing and utilities; adjustment. If you contend that the process set out in Lines 25A and 25B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below:</p> <div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div>	\$									
27A	<p>Local Standards: transportation; vehicle operation/public transportation expense. You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation.</p> <p>Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 7. <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>If you checked 0, enter on Line 27A the “Public Transportation” amount from IRS Local Standards: Transportation. If you checked 1 or 2 or more, enter on Line 27A the “Operating Costs” amount from IRS Local Standards: Transportation for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (These amounts are available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p>	\$									
27B	<p>Local Standards: transportation; additional public transportation expense. If you pay the operating expenses for a vehicle and also use public transportation, and you contend that you are entitled to an additional deduction for your public transportation expenses, enter on Line 27B the “Public Transportation” amount from IRS Local Standards: Transportation. (This amount is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p>	\$									
28	<p>Local Standards: transportation ownership/lease expense; Vehicle 1. Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter, in Line a below, the “Ownership Costs” for “One Car” from the IRS Local Standards: Transportation (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 47; subtract Line b from Line a and enter the result in Line 28. Do not enter an amount less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td><td style="width: 60%;">IRS Transportation Standards, Ownership Costs</td><td style="width: 35%;">\$</td></tr> <tr> <td style="text-align: center;">b.</td><td>Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47</td><td>\$</td></tr> <tr> <td style="text-align: center;">c.</td><td>Net ownership/lease expense for Vehicle 1</td><td>Subtract Line b from Line a.</td></tr> </table>	a.	IRS Transportation Standards, Ownership Costs	\$	b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47	\$	c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47	\$									
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.									

29	<p>Local Standards: transportation ownership/lease expense; Vehicle 2. Complete this Line only if you checked the “2 or more” Box in Line 28.</p> <p>Enter, in Line a below, the “Ownership Costs” for “One Car” from the IRS Local Standards: Transportation (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 47; subtract Line b from Line a and enter the result in Line 29. Do not enter an amount less than zero.</p> <table border="1" data-bbox="188 327 1325 499"> <tr> <td data-bbox="188 327 261 373">a.</td><td data-bbox="261 327 967 373">IRS Transportation Standards, Ownership Costs</td><td data-bbox="967 327 1325 373">\$</td></tr> <tr> <td data-bbox="188 373 261 449">b.</td><td data-bbox="261 373 967 449">Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47</td><td data-bbox="967 373 1325 449">\$</td></tr> <tr> <td data-bbox="188 449 261 499">c.</td><td data-bbox="261 449 967 499">Net ownership/lease expense for Vehicle 2</td><td data-bbox="967 449 1325 499">Subtract Line b from Line a.</td></tr> </table>	a.	IRS Transportation Standards, Ownership Costs	\$	b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47	\$	c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47	\$									
c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.									
30	<p>Other Necessary Expenses: taxes. Enter the total average monthly expense that you actually incur for all federal, state, and local taxes, other than real estate and sales taxes, such as income taxes, self-employment taxes, social-security taxes, and Medicare taxes. Do not include real estate or sales taxes.</p>	\$									
31	<p>Other Necessary Expenses: involuntary deductions for employment. Enter the total average monthly deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. Do not include discretionary amounts, such as voluntary 401(k) contributions.</p>	\$									
32	<p>Other Necessary Expenses: life insurance. Enter total average monthly premiums that you actually pay for term life insurance for yourself. Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.</p>	\$									
33	<p>Other Necessary Expenses: court-ordered payments. Enter the total monthly amount that you are required to pay pursuant to the order of a court or administrative agency, such as spousal or child support payments. Do not include payments on past due obligations included in Line 49.</p>	\$									
34	<p>Other Necessary Expenses: education for employment or for a physically or mentally challenged child. Enter the total average monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.</p>	\$									
35	<p>Other Necessary Expenses: childcare. Enter the total average monthly amount that you actually expend on childcare—such as baby-sitting, day care, nursery and preschool. Do not include other educational payments.</p>	\$									
36	<p>Other Necessary Expenses: health care. Enter the total average monthly amount that you actually expend on health care that is required for the health and welfare of yourself or your dependents, that is not reimbursed by insurance or paid by a health savings account, and that is in excess of the amount entered in Line 24B. Do not include payments for health insurance or health savings accounts listed in Line 39.</p>	\$									
37	<p>Other Necessary Expenses: telecommunication services. Enter the total average monthly amount that you actually pay for telecommunication services other than your basic home telephone and cell phone service—such as pagers, call waiting, caller id, special long distance, or internet service—to the extent necessary for your health and welfare or that of your dependents. Do not include any amount previously deducted.</p>	\$									
38	<p>Total Expenses Allowed under IRS Standards. Enter the total of Lines 24 through 37.</p>	\$									
<p align="center">Subpart B: Additional Living Expense Deductions Note: Do not include any expenses that you have listed in Lines 24-37</p>											

39	Health Insurance, Disability Insurance, and Health Savings Account Expenses. List the monthly expenses in the categories set out in lines a-c below that are reasonably necessary for yourself, your spouse, or your dependents.			
	a.	Health Insurance	\$	
	b.	Disability Insurance	\$	
	c.	Health Savings Account	\$	
	Total and enter on Line 39			\$
	If you do not actually expend this total amount, state your actual total average monthly expenditures in the space below: \$ _____			
40	Continued contributions to the care of household or family members. Enter the total average actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses. Do not include payments listed in Line 34.			\$
41	Protection against family violence. Enter the total average reasonably necessary monthly expenses that you actually incur to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.			\$
42	Home energy costs. Enter the total average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities that you actually expend for home energy costs. You must provide your case trustee with documentation of your actual expenses, and you must demonstrate that the additional amount claimed is reasonable and necessary.			\$
43	Education expenses for dependent children under 18. Enter the total average monthly expenses that you actually incur, not to exceed \$147.92 per child, for attendance at a private or public elementary or secondary school by your dependent children less than 18 years of age. You must provide your case trustee with documentation of your actual expenses, and you must explain why the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.			\$
44	Additional food and clothing expense. Enter the total average monthly amount by which your food and clothing expenses exceed the combined allowances for food and clothing (apparel and services) in the IRS National Standards, not to exceed 5% of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) You must demonstrate that the additional amount claimed is reasonable and necessary.			\$
45	Charitable contributions. Enter the amount reasonably necessary for you to expend each month on charitable contributions in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2). Do not include any amount in excess of 15% of your gross monthly income.			\$
46	Total Additional Expense Deductions under § 707(b). Enter the total of Lines 39 through 45.			\$

Subpart C: Deductions for Debt Payment

47	Future payments on secured claims. For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, state the Average Monthly Payment, and check whether the payment includes taxes or insurance. The Average Monthly Payment is the total of all amounts scheduled as contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. If necessary, list additional entries on a separate page. Enter the total of the Average Monthly Payments on Line 47.					
		Name of Creditor	Property Securing the Debt	Average Monthly Payment	Does payment include taxes or insurance?	
	a.			\$	<input type="checkbox"/> yes <input type="checkbox"/> no	
	b.			\$	<input type="checkbox"/> yes <input type="checkbox"/> no	
	c.			\$	<input type="checkbox"/> yes <input type="checkbox"/> no	
				Total: Add Lines a, b, and c		
						\$

48	Other payments on secured claims. If any of debts listed in Line 47 are secured by your primary residence, a motor vehicle, or other property necessary for your support or the support of your dependents, you may include in your deduction 1/60th of any amount (the "cure amount") that you must pay the creditor in addition to the payments listed in Line 47, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure. List and total any such amounts in the following chart. If necessary, list additional entries on a separate page.			
		Name of Creditor	Property Securing the Debt	1/60th of the Cure Amount
	a.			\$
	b.			\$
	c.			\$
				Total: Add Lines a, b, and c
				\$
49	Payments on prepetition priority claims. Enter the total amount, divided by 60, of all priority claims, such as priority tax, child support and alimony claims, for which you were liable at the time of your bankruptcy filing. Do not include current obligations, such as those set out in Line 33.			\$
50	Chapter 13 administrative expenses. Multiply the amount in Line a by the amount in Line b, and enter the resulting administrative expense.			
	a.	Projected average monthly chapter 13 plan payment.		\$
	b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)		x
	c.	Average monthly administrative expense of chapter 13 case		Total: Multiply Lines a and b
				\$
51	Total Deductions for Debt Payment. Enter the total of Lines 47 through 50.			\$
Subpart D: Total Deductions from Income				
52	Total of all deductions from income. Enter the total of Lines 38, 46, and 51.			\$
Part V. DETERMINATION OF DISPOSABLE INCOME UNDER § 1325(b)(2)				
53	Total current monthly income. Enter the amount from Line 20.			\$
54	Support income. Enter the monthly average of any child support payments, foster care payments, or disability payments for a dependent child, reported in Part I, that you received in accordance with applicable nonbankruptcy law, to the extent reasonably necessary to be expended for such child.			\$
55	Qualified retirement deductions. Enter the monthly total of (a) all amounts withheld by your employer from wages as contributions for qualified retirement plans, as specified in § 541(b)(7) and (b) all required repayments of loans from retirement plans, as specified in § 362(b)(19).			\$
56	Total of all deductions allowed under § 707(b)(2). Enter the amount from Line 52.			\$
57	Deduction for special circumstances. If there are special circumstances that justify additional expenses for which there is no reasonable alternative, describe the special circumstances and the resulting expenses in lines a-c below. If necessary, list additional entries on a separate page. Total the expenses and enter the total in Line 57. You must provide your case trustee with documentation of these expenses and you must provide a detailed explanation of the special circumstances that make such expenses necessary and reasonable.			
		Nature of special circumstances		Amount of expense
	a.			\$
	b.			\$
	c.			\$
				Total: Add Lines a, b, and c
				\$

58	Total adjustments to determine disposable income. Add the amounts on Lines 54, 55, 56, and 57 and enter the result.	\$
59	Monthly Disposable Income Under § 1325(b)(2). Subtract Line 58 from Line 53 and enter the result.	\$

Part VI: ADDITIONAL EXPENSE CLAIMS

60	Other Expenses. List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.	
	Expense Description	Monthly Amount
	a.	\$
	b.	\$
	c.	\$
	Total: Add Lines a, b, and c	\$

Part VII: VERIFICATION

61	I declare under penalty of perjury that the information provided in this statement is true and correct. <i>(If this is a joint case, both debtors must sign.)</i>	
	Date: _____	Signature: _____ <i>(Debtor)</i>
	Date: _____	Signature: _____ <i>(Joint Debtor, if any)</i>

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Email: andrewd@maney13trustee.com
Attorney for Edward J. Maney, Chapter 13 Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:

xxxxxxx

and

xxxxxxx

Debtors.

In Proceedings Under Chapter 13

Case No. xxxxxxxxxx

**TRUSTEE'S SUPPLEMENTAL
RECOMMENDATION**

NOW COMES Edward J. Maney, the standing Trustee assigned to this case, by and through counsel undersigned and hereby submits this Supplemental Trustee's Recommendation. Counsel undersigned has reviewed the Schedules, Statement of Financial Affairs, Chapter 13 Plan and the proposed Stipulated Order Confirming ("SOC") received by the Trustee on March 7, 2012. The Trustee cannot recommend confirmation at the present time. The following issues must be resolved prior to confirmation of the Plan:

Specific Provisions:

1. The proposed SOC includes a reduction in proposed plan payments for months 6 (October 2011) to Month 30 (October 2013). No amended Schedules been filed which would demonstrate such a reduction. In addition, the Debtors have submitted plan payments of \$1,169.00 each month since the first payment (May 2011). The Trustee will object to any retroactive reduction in plan payments which were previously made by the Debtors under the original Plan.

2. The Trustee requires the Debtors to provide copies of all pay advices, statements, profit and loss statements or other documents received by the Debtors in the six months prior to filing this case. These documents are necessary for verification of the amount of gross wages, salary, tips, bonuses, overtime and/or commissions listed on Line 2 of Form 22C. The Trustee requires receipt of all information requested in this paragraph no later than thirty (30) days from the date of this Recommendation. Failure to timely comply may result in the Trustee lodging an order

1 dismissing Debtors' case. The Trustee may submit a Supplemental Recommendation upon receipt
2 of any of the information requested above.

3 3. The Trustee notes the following issues on Debtors' Form 22C which must be resolved
4 prior to confirmation:

- 5 a. **Line 25B and 47a:** Debtors have claimed an average monthly payment for
6 debts secured by their home of \$3,049.00. Debtors have provided copies of
7 statements showing their first mortgage payment at \$2,720.11. Debtors may
8 only deduct actual expenses. The Trustee objects to the claimed expense and
9 requires the Debtors to either provide documentation from the past six
10 months verifying the claimed expense amount or amend Form 22C to correct
11 this deduction. Any increase in disposable income must be turned over to
12 fund the plan.
- 13 b. **Line 27A:** It appears that Debtors have included an additional \$200.00 as
14 operating expenses for a vehicle owned free and clear which is over 6 years
15 old or has 75,000 reported miles or more. The Trustee objects to this
16 expense as not included within the National and Local Standards. *Ransom*
17 *v. FIA Card Services, N.A. (In re Ransom)*, 562 US ___, 131 S.Ct. 716, 726,
18 178 L.Ed.2d 603 (2011); *In re Hargis*, 451 B.R. 174 (Bankr. D. Utah 2011).
19 The Trustee requires the Debtors to prepare and file with the Court an
20 appropriately amended Form 22C deleting this additional amount and
21 reducing the operating expenses to the amount provided by the National and
22 Local Standards. Any increase in disposable income must be turned over to
23 the fund the plan.
- 24 c. **Line 28b and 47b:** The Debtors have included a deduction of \$602.31 as the
25 average monthly payment on debts secured by a vehicle. The actual monthly
26 expense for the vehicle securing the claim of Santander Consumer is
27 \$402.75. The Trustee requires the Debtors to prepare and file an
28 appropriately amended Form 22C which includes the actual expense amount.
Any increase in disposable income must be turned over to fund the plan.
- d. **Line 29a:** The Debtors have included a deduction for ownership costs of a
vehicle owned free and clear. The Trustee objects to the inclusion of this
expense pursuant to *Ransom v. FIA Card Services, N.A. (In re Ransom)*, 562
US ___, 131 S.Ct. 716, 178 L.Ed.2d 603 (2011). The Trustee requires the
Debtors to prepare and file an amended Form 22C removing this deduction.
Any increase in projected disposable income must be turned over to fund the
Plan.
- e. **Line 30:** Debtors have claimed a monthly expense of \$1,765.31 for taxes.
Debtors are only allowed to deduct *actual* tax debt incurred. *In re Mullen*,
369 B.R. 25 (Bkrcty D. Or. 2007). Using Debtors' 2010 tax returns and
paystubs, the Trustee has calculated Debtors' actual tax expense as
\$1,669.62. Debtor must amend Form 22C to correct this deduction. Any
increase in disposable income must be turned over to fund the plan.
- f. **Line 31:** The Trustee requires the Debtors to provide verification that the
deduction claimed on this line is a condition of employment, including
verification of the minimum required contribution amount. The Trustee
notes that there is no such deduction listed on Schedule I. If the Debtors

cannot verify the deduction **and** that the deduction is mandatory, the Trustee requires the Debtors to prepare and file an amended Form 22C removing this deduction. Any increase in disposable income must be submitted to the Plan.

g. **Line 32:** The Trustee requires the Debtors to provide documentation verifying that the amounts listed as premiums paid on life insurance is for policies for the Debtors, and does not include amounts paid for policies for dependents. Any amounts which are not paid exclusively for term life policies on the Debtors only must be removed and an appropriately amended Form 22C must be filed with the Court correcting this expense.

h. **Line 40:** The Debtors have not provided any verification that their adult children are elderly, chronically ill or disabled. Therefore, the Trustee maintains his objection to the deduction listed on this line and the payment of the “college costs” claimed on Schedule J as noted in the Trustee’s previous Recommendation. *In re Hicks*, 370 B.R. 919 (Bkrtcy E.D. Mo. 2007), *In re Harris*, 415 B.R. 756 (Bkrtcy. E.D. Cal. 2009), *In re Williams*, 424 B.R. 207 (Bkrtcy W.D. Va. 2010), *In re Linville*, 446 B.R. 522 (Bkrtcy D. N.M. 2011). The Debtors must prepare and file an appropriately amended Form 22C deleting this expense. Any increase in disposable income must be turned over to fund the Plan.

4. The Trustee requires the Debtors to provide documentation from the past six months (November 2011 to April 2012) which justifies the following expenses listed on Form 22C:

- a. Line 36 – Health care over and above the National Standards;
- b. Line 37 – Telecommunication Services (other than basic home phone and cell phone service).
- c. Line 42 – Home Energy Costs in excess of the Local Standards.

Any documentation submitted must be **legible** and **organized by category and month**. Any documentation submitted which does not meet these requirements will not be considered received by the Trustee, who may lodge an order dismissing Debtors’ case for failure to comply. The Debtors are **also** required to submit a written explanation justifying the reasonable necessity of the expenses listed above for the health and welfare of the Debtors and/or dependents. Where the documentation **and** written justification fail to support the reasonable necessity of the scheduled expense(s), the Trustee will require the Debtors to file an amended Form 22C with the Court and forward a copy to the Trustee. Any increase in disposable income must be turned over to the Plan. The Trustee requires compliance no later than 30 days from the date of this Recommendation.

5. The SOC includes a provision that bonus income will be turned over for the first 36 months “as payments.” The Trustee objects to this provision. Debtors are “over median income

1 debtors” with an applicable commitment period of 5 years (60 months). 11 U.S.C. §1325(b)(4)(B)
2 only allows for a reduction in the applicable commitment period if all allowed claims are paid in
3 full. Therefore, there can be no “advance payments” or reduction in commitment period unless all
4 allowed claims are paid in full. Any resubmitted order must include a provision that any bonus
5 income turned over shall be treated as supplemental payments. In addition, the Trustee requires:

- 6 a. The Debtors to provide copies of two most recent, consecutive paystubs for
7 each and every job each Joint Debtor may hold;
- 8 b. The Debtors to provide copies of their last paystubs received in 2011
9 showing any bonus income received, along with an explanation of the dates
10 any bonus income was received; and
- 11 c. A provision in any resubmitted order confirming that the Debtors will
12 provide quarterly income statements to the Trustee for verification of bonus
13 amounts, beginning with the quarter ending March 2012. Failure to provide
14 the quarterly income statements and/or turn over bonuses will result in the
15 Trustee lodging an order dismissing the Debtors’ case.

16 6. The Plan and SOC provide for payment of a secured claim to Santander Consumer
17 in an amount greater than that stated in the creditor’s secured proof of claim (claim #12). Any
18 resubmitted order confirming the plan may provide for the payment of the lower, secured claim
19 amount.

20 7. The Trustee requires the Debtors to provide complete copies of their 2011 state and
21 federal tax returns, including copies of all appropriate accompanying documents (W-2's, 1099's,
22 etc.).

23 8. Using the plan payment schedule listed in the original plan, the Trustee estimates a
24 \$3,170.88 shortfall in the funding of Debtors’ Plan. The shortfall includes Debtors’ *minimum*
25 \$1,141.75 Chapter 7 reconciliation requirement. The Trustee requires the Debtors to provide proof
26 of feasibility no later than 30 days from the date of this Recommendation.

27 **Plan Payment Status:**

28 9. Debtors’ interim Plan payments in the amount of \$1,169.00 are current through due
date April 27, 2012, with the next scheduled payment in the amount of \$1,169.00 coming due May
27, 2012.

: : : :

RECOMMENDATION

The Trustee does not recommend confirmation of the Chapter 13 Plan at this time. As noted above, the Debtors have submitted a proposed Stipulated Order Confirming Plan to the Trustee. The original Order is enclosed with Debtors' attorney's copy of this Recommendation, as the Debtors have not resolved the issues raised in paragraphs 1 through 9 above. The Trustee requires the Debtors to address the issues raised in paragraphs 1 through 9 no later than 30 days from the date of this Recommendation. The Trustee will lodge an Order dismissing Debtors' case if the above items are not addressed and/or Plan payments are not kept current on or before that date. The Trustee may submit a Supplemental Recommendation upon receipt of any of the information requested above. If the Debtors have any questions or concerns regarding this Recommendation, the Debtors should contact their attorney.

Dated: [see signature block]

Andrew M. Dudley, Staff Attorney
Edward J. Maney, Trustee

Copy of the foregoing mailed on [see signature block] to:

xxxxxx
xxxxxx
xxxxxx
Attorney for Debtors

By:_____

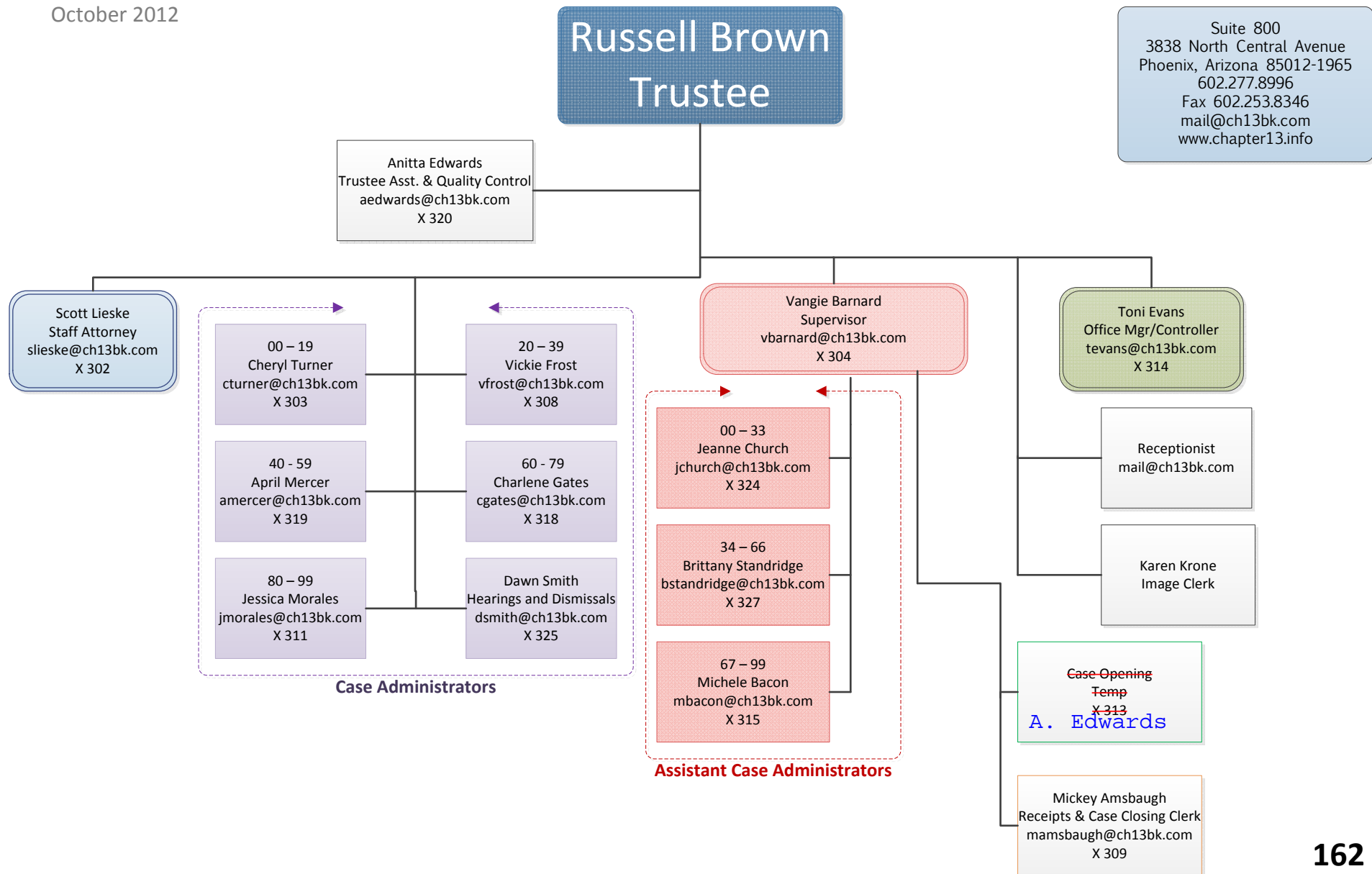
Dianne Kerns - Sample Objections related to Form B22C

1. Deduction for Special Circumstances. The Trustee objects to confirmation because the debtor has claimed deductions on line 57 of form B22C for special circumstances. Deductions for special circumstances must be itemized, documented, and verified. The reasonableness and necessity of the expense must be established, and proof that no reasonable alternative exists. 11 USC 707(b)(2)(B). This objection may be resolved by providing the Trustee with documentation to justify the deductions as special circumstances.
2. Change in Debtor's Income or Expenses. The Trustee objects to confirmation because the Debtor claims the average monthly disposable income as calculated using form B22C is not determinative of Debtor's projected disposable income. Generally, a debtor's projected disposable income is based on income and expenses during the 6 month period preceding the filing of the petition. In exceptional cases, where significant changes in a debtor's financial circumstances are known or virtually certain, the bankruptcy court has discretion to make an appropriate adjustment. *Hamilton v. Lanning*, (2010) 130 S. Ct. 2464. This objection may be resolved by submitting a completed "Lanning Worksheet" along with supporting documentation. The Lanning Worksheet is available on the Trustee's website at <http://www.dcktrustee.com/forms>.
3. Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (unencumbered vehicle). Trustee objects to confirmation as Debtor's Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (form B22C) will need to be amended. The ownership allowance on line 28(a) (and/or line 29(a)) is not available if the vehicle is unencumbered unless the vehicle is over 6 years old and/or has reported mileage of 75,000 miles or more. Line 28 (and/or line 29) vehicle expenses lists the Debtor's ownership costs in the amount of \$xxx and this amount will need to be removed. These objections may be resolved by filing an amended Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income.
4. Section 1325 Analysis. Trustee objections to confirmation because there is a discrepancy between the Section 1325 Plan Analysis and the Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (Form B22C). The 1325 Analysis in Section (L) of the plan states that the Debtor's Monthly disposable income from form B22C is \$xxx. However, line 59 of form B22C states the amount is \$xxx. This objection may be resolved by reconciling the amount shown in the plan analysis with the amount on line 59 of form B22C.

5. Deduction for Special Circumstances. The Trustee objects to confirmation because the debtor has claimed deductions on line 57 of form B22C for special circumstances. Deductions for special circumstances must be itemized, documented, and verified. The reasonableness and necessity of the expense must be established, and proof that no reasonable alternative exists. 11 USC 707(b)(2)(B). This objection may be resolved by providing the Trustee with documentation to justify the deductions as special circumstances.
6. Varying Provision. Trustee objects to confirmation because the Debtor has indicated that there has been a decrease in income and states the monthly disposable income has changed. In calculating the Debtor's projected disposable income under 11 USC 1325(b)(1)(B), the Court may account for changes in the Debtor's income or expenses that are known or virtually certain at the time of plan confirmation. However, the projected disposable income calculation based on the B22C is presumed correct. This objection can be resolved by providing the Trustee with evidence of a substantial change in the debtor's circumstances which would justify an adjustment to the Debtor's projected disposable income.
7. Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (Documentation of Expenses). Trustee objects to confirmation based on expenses listed on the Debtor's Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income: Line xx – xxxx. This objection may be resolved by submitting documentation of this/these contribution(s) for the past 6 months to the Trustee.

Russell Brown Organization Chart

October 2012



CHAPTER 13 LIQUIDATING PLANS

Russell Brown – Chapter 13 Trustee

October 11, 2012

This is a comparison of an asset Chapter 7 case and a liquidating plan in a Chapter 13 case. A liquidating Chapter 13 case might be an option for a debtor who is income poor but otherwise has nonexempt assets to liquidate. The goal of the debtor would be to get more money to nondischargeable claims in a Chapter 13 case than would be paid out in a Chapter 7 case. However, a liquidating Chapter 13 would not be an option for an above median income debtor with disposable income. If a debtor files a liquidating Chapter 13 case and decides against it or the Chapter 13 trustee opposes it, then the debtor could convert the case to Chapter 7.

	Chapter 7	Chapter 13
<i>Filing Fee</i>	\$306.00	\$281.00
<i>Trustee Compensation</i>	\$1 - \$5,000. 25% \$5,000.01 - \$50,000. 10% ≥ \$50,000.01..... 5%	Maximum 10%; RB annualized rate for FY 2012 was 3.68%
<i>Trustee Costs</i>	Yes	No
<i>Trustee's Attorney Fees and Costs</i>	Yes, in many cases	No
<i>Pay Late Unsecured Claims?</i>	Yes, if other claims paid; § 726(a)(3)	No
<i>Quick Case Closing?</i>	No; trustee might pursue an increase in nonexempt property value	Yes
<i>Discharge Effect on Future Case</i>	No Chapter 7 discharge for 8 years, § 727(a)(8) No Chapter 13 for 4 years, § 1328(f)(1)	No Chapter 7 discharge, generally, for 6 years, § 727(a)(9) No Chapter 13 discharge for 2 years, § 1328(f)(2)

Hypothetical example (no Chapter 13 plan payment is assumed) with \$30,000 of nonexempt, noncash assets:

	Chapter 7	Chapter 13
<i>Gross Amount</i>	\$30,000.00	\$30,000.00
<i>Trustee Fee</i>	\$2,750.00	\$600.00 (assumes 5%)
<i>Trustee Costs (est.)</i>	\$250.00	\$0
<i>Trustee Attorney Fees and Costs (est.)</i>	\$3,000.00	\$0
<i>Net to Creditors</i>	\$24,000.00	\$29,400.00