

# **Concurrent** Session

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## Chapter 13 from A to Z

Horace Fox, Jr. | Lehman & Fox; Chicago

Hon. Daniel S. Opperman | U.S. Bankruptcy Court (E.D. Mich.); Bay City

Mary K. Viegelahn | Chapter 13 Trustee; Kalamazoo, Mich.



## **Chapter 13 from A to Z**

### **Valuation**

- a. In Re Smith, 1:08-bk-17343-MT (Bankr. C.D. Cal 10.09.10) holds that the totally unsecured portion of second mortgage is countable against the 109 (e)(1) unsecured limit\*
- b. Experience in other jurisdictions

### **Loan Modification**

- a. What is a loan modification?
- b. Who benefits from a loan modification?
  1. Lender
  2. Homeowner
- c. What are the benefits?
  1. Loan
  2. Foreclosure

### **Fees**

- a. Flat fee agreement Northern District of Illinois\*
- b. No look fee agreement Western Michigan\*
- c. Other districts
- d. Percentage of cases in which full fee is paid/ discuss fees paid upon dismissal pre-confirmation

### **Ethical Issues**

#### **Future of Chapter 13-the perfect storm**

- a. BAPCPA
- b. The economy and the meltdown of the real estate market
- c. Impact of the loss of wealth in real estate and unsecured debt limitations and lien stripping \*provided

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS

**RIGHTS AND RESPONSIBILITIES AGREEMENT BETWEEN  
CHAPTER 13 DEBTORS AND THEIR ATTORNEYS  
(Model Retention Agreement, revised as of May 1, 2007)**

Chapter 13 gives debtors important rights, such as the right to keep property that could otherwise be lost through repossession or foreclosure—but Chapter 13 also puts burdens on debtors, such as the burden of making complete and truthful disclosures of their financial situation. It is important for debtors who file a Chapter 13 bankruptcy case to understand their rights and responsibilities in bankruptcy. In this connection, the advice of an attorney is often crucial. Debtors are entitled to certain services from by their attorneys, but debtors also have responsibilities to their attorneys. In order to assure that debtors and their attorneys understand their rights and responsibilities in the Chapter 13 process, the judges of the Bankruptcy Court for the Northern District of Illinois have approved the following agreement, setting out the rights and responsibilities of both debtors in Chapter 13 and their attorneys. By signing this agreement, debtors and their attorneys accept these responsibilities.

***BEFORE THE CASE IS FILED***

**THE DEBTOR AGREES TO:**

1. Discuss with the attorney the debtor's objectives in filing the case.
2. Provide the attorney with full, accurate and timely information, financial and otherwise, including properly documented proof of income.

**THE ATTORNEY AGREES TO:**

1. Personally counsel the debtor regarding the advisability of filing either a Chapter 13 or a Chapter 7 case, discuss both procedures (as well as non-bankruptcy options) with the debtor, and answer the debtor's questions.
2. Personally explain to the debtor that the attorney is being engaged to represent the debtor on all matters arising in the case, as required by Local Bankruptcy rule and explain how and when the attorney's fees and the trustee's fees are determined and paid.
3. Personally review with the debtor and sign the completed petition, plan, statements, and schedules, as well as all amendments thereto, whether filed with the petition or later. (The schedules may be initially prepared with the help of clerical or paralegal staff of the attorney's office, but personal attention of the attorney is required for the review and signing.)
4. Timely prepare and file the debtor's petition, plan, statements, and schedules.

5. Explain to the debtor how, when, and where to make all necessary payments, including both payments that must be made directly to creditors and payments that must be made to the Chapter 13 trustee, with particular attention to housing and vehicle payments.

6. Advise the debtor of the need to maintain appropriate insurance.

***AFTER THE CASE IS FILED***

**THE DEBTOR AGREES TO:**

1. Make the required payments to the trustee and to whatever creditors are being paid directly, or, if required payments cannot be made, to notify the attorney immediately.

2. Appear punctually at the meeting of creditors (also called the “341 meeting”) with recent proof of income and a picture identification card. (If the identification card does not include the debtor’s social security number, the debtor will also bring to the meeting a social security card.) The debtor must be present in time for check-in and when the case is called for the actual examination.

3. Notify the attorney of any change in the debtor’s address or telephone number.

4. Inform the attorney of any wage garnishments or liens or levies on assets that occur or continue after the filing of the case.

5. Contact the attorney immediately if the debtor loses employment, has a significant change in income, or experiences any other significant change in financial situation (such as serious illness, marriage, divorce or separation, lottery winnings, or an inheritance).

6. Notify the attorney if the debtor is sued or wishes to file a lawsuit (including divorce).

7. Inform the attorney if any tax refunds to which the debtor is entitled are seized or not received when due from the IRS or Illinois Department of Revenue.

8. Contact the attorney before buying, refinancing, or selling real property, and before entering into any loan agreement.

9. Supply the attorney with copies of all tax returns filed while the case is pending.

**THE ATTORNEY AGREES TO:**

1. Advise the debtor of the requirement to attend the meeting of creditors, and notify the debtor of the date, time, and place of the meeting.

2. Inform the debtor that the debtor must be punctual and, in the case of a joint filing, that both spouses must appear at the same meeting.

3. Provide knowledgeable legal representation for the debtor at the meeting of creditors (in time for check-in and the actual examination) and, unless excused by the trustee, for the confirmation hearing.
4. If the attorney will be employing another attorney to attend the 341 meeting or any court hearing, personally explain to the debtor in advance, the role and identity of the other attorney and provide the other attorney with the file in sufficient time to review it and properly represent the debtor.
5. Timely submit to the Chapter 13 trustee properly documented proof of income for the debtor, including business reports for self-employed debtors.
6. Timely respond to objections to plan confirmation and, where necessary, prepare, file, and serve an amended plan.
7. Timely prepare, file, and serve any necessary statements, amended statements and schedules and any change of address, in accordance with information provided by the debtor.
8. Monitor all incoming case information (including, but not limited to, Order Confirming Plan, Notice of Intent to Pay Claims, and 6-month status reports) for accuracy and completeness. Contact the trustee promptly regarding any discrepancies.
9. Be available to respond to the debtor's questions throughout the term of the plan.
10. Prepare, file, and serve timely modifications to the plan after confirmation, when necessary, including modifications to suspend, lower, or increase plan payments.
11. Prepare, file, and serve necessary motions to buy or sell property and to incur debt.
12. Object to improper or invalid claims.
13. Timely respond to the Chapter 13 trustee's motions to dismiss the case, such as for payment default, or unfeasibility, and to motions to increase the percentage payment to unsecured creditors.
14. Timely respond to motions for relief from stay.
15. Prepare, file, and serve all appropriate motions to avoid liens.
16. Provide any other legal services necessary for the administration of the case.
17. In the event that the case is converted to Chapter 7, provide any other legal services which may be necessary consistent with the attorney's responsibilities under Local Bankruptcy Rule 2090-5, with such additional fees as may be appropriate.

**ALLOWANCE AND PAYMENT OF ATTORNEYS' FEES**

1. Any attorney retained to represent a debtor in a Chapter 13 case is responsible for representing the debtor on all matters arising in the case unless otherwise ordered by the court. For all of the services outlined above, the attorney will be paid a fee of

\$ \_\_\_\_\_ .

In extraordinary circumstances, such as extended evidentiary hearings or appeals, the attorney may apply to the court for additional compensation for these services. Any such application must be accompanied by an itemization of the services rendered, showing the date, the time expended, and the identity of the attorney performing the services. The debtor must be served with a copy of the application and notified of the right to appear in court to object.

2. *Early termination of the case.* Fees payable under the provisions set out above are not refundable in the event that the case is dismissed, unless the dismissal is due to a failure by the attorney to comply with the duties set out in this agreement. If a dismissal is due to such a failure by the attorney, the court may order a refund of fees on motion by the debtor.

3. *Retainers.* The attorney may receive a retainer or other payment before filing the case, but may not receive fees directly from the debtor after the filing of the case. In any application for fees, whether or not requiring an itemization, the attorney shall disclose to the court any fees paid by the debtor prior to the case filing.

4. *Improper conduct by the attorney.* If the debtor disputes the sufficiency or quality of the legal services provided or the amount of the fees charged by the attorney, the debtor may file an objection with the court and request a hearing.

5. *Improper conduct by the debtor.* If the attorney believes that the debtor is not complying with the debtor's responsibilities under this agreement or is otherwise not engaging in proper conduct, the attorney may apply for a court order allowing the attorney to withdraw from the case.

6. *Discharge of the attorney.* The debtor may discharge the attorney at any time.

Date: \_\_\_\_\_

Signed:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Attorney for Debtor(s)

Debtor(s)  
*Do not sign if the fee amount at top of this page is blank.*

CENTRAL STATES BANKRUPTCY WORKSHOP

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS

In re: )  
 ) Case No.  
Debtor(s). ) Hearing Date:

ATTORNEY'S APPLICATION FOR COMPENSATION FOR REPRESENTING CHAPTER 13 DEBTOR(S)

The undersigned attorney seeks compensation pursuant to 11 U.S.C. §330(a)(4)(B) for representing the interests of the debtor(s) in this case.

Use of Model Retention Agreement:

- The attorney and the debtor(s) have entered into the Court's Model Retention Agreement.
- The attorney and the debtor(s) have not entered into the Court's Model Retention Agreement.

Dismissal of prior case

- A Chapter 13 case of the debtor or debtor's spouse was dismissed within one year of this case filing.

Fees in prior case(s):  The attorney has not represented the debtor(s) in any prior bankruptcy case.

The attorney has represented the debtor(s) in prior bankruptcy cases as follows:

- Case no. \_\_\_\_\_ Chapter \_\_\_\_ Plan confirmed?  Yes  No Fees paid \$ \_\_\_\_\_
- Case no. \_\_\_\_\_ Chapter \_\_\_\_ Plan confirmed?  Yes  No Fees paid \$ \_\_\_\_\_
- Case no. \_\_\_\_\_ Chapter \_\_\_\_ Plan confirmed?  Yes  No Fees paid \$ \_\_\_\_\_

Fees sought in present case:

- \$ \_\_\_\_\_, for services through plan confirmation.
- \$ \_\_\_\_\_, for services through case closing.
- \$ \_\_\_\_\_, for services after plan confirmation.

Expense reimbursement:

- \$ \_\_\_\_\_, for filing fee.
- \$ \_\_\_\_\_, for expenses itemized on the attached sheet.

Total reimbursement requested: \$ \_\_\_\_\_.

Payment received directly from debtor:  None  \$ \_\_\_\_\_.

Compensation previously awarded in this case:  None  
 a total of \$ \_\_\_\_\_, pursuant to order(s) entered on the following dates:

\_\_\_\_\_

Plan payments: \$ \_\_\_\_\_ for \_\_\_\_\_ months.

Secured debt:  None  home mortgage(s) in default  motor vehicle loans  
 Other: \_\_\_\_\_

Unsecured debt: \_\_\_\_\_ No. of claims: \_\_\_\_\_ Total amount: \_\_\_\_\_  
To be paid under plan \_\_\_\_\_%

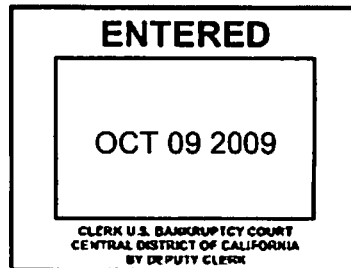
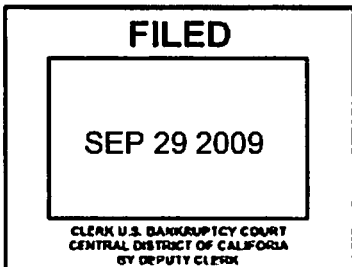
Professional time expended: \_\_\_\_\_ attorney hours; \_\_\_\_\_ paraprofessional hours.

Itemization of time:  Not Submitted  Attached to this application.

Hourly rates: \$ \_\_\_\_\_ attorney; \$ \_\_\_\_\_ paraprofessional.

Date of Application: \_\_\_\_\_ Attorney's signature: \_\_\_\_\_  
[Typed name] [Firm name, address, phone #]

# FOR PUBLICATION



**FOR PUBLICATION**  
**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

In re:  
Russell L Smith,  
Joy C Smith; &  
In re:  
Mynor A. Salguero,  
Cecilia Salguero; &  
In re:  
Christopher H. George

Case No: 1:08-bk-17343-MT  
Case No: 1:08-bk-19355-MT  
Case No: 1:08-bk-18885-MT  
Chapter: 13

**AMENDED MEMORANDUM OF LAW RE:  
DEBTOR'S ELIGIBILITY UNDER 11 U.S.C.  
§109(e) IN LIGHT OF UNDERSECURED  
DEBT EXCEEDING DEBT LIMITS**

Date: April 14, 2009  
Time: 11:00am  
Location: Courtroom 302

Debtor(s).

**Introduction**

These cases present the increasingly common issue of how an undersecured debt should be treated in determining the debt limitations to qualify for a Chapter 13 bankruptcy where the debt arises out of the debtor's principal residence. Section 109(e) of the Bankruptcy Code requires that all debtors filing a petition for relief under Chapter 13 have noncontingent, liquidated, unsecured debts of less than \$336,900 and noncontingent, liquidated, secured

1 debts of less than \$1,010,650.<sup>1</sup> There are two questions presented here for purposes of  
2 determining eligibility to file Chapter 13 under 11 U.S.C §109(e): (1) should the wholly  
3 unsecured junior deed of trust be treated as a secured or unsecured claim, and (2) should the  
4 partially secured first deed of trust on a residence be bifurcated into secured and unsecured  
5 amounts for an eligibility determination?  
6

### 7 Facts

8 Russell and Joy Smith ("the Smiths" or "debtors") filed a chapter 13 petition on  
9 September 25, 2008. On schedules E and F, the Smiths listed unsecured claims of \$87,195.  
10 On schedule D, the Smiths listed two mortgages secured by their principal residence. The  
11 Smiths also listed secured tax debt and a note secured by a security interest in their vehicle.  
12 The Smiths valued their principal residence at \$425,000. They scheduled the first deed of trust,  
13 held by Countrywide Home Loans, at \$547,782. They scheduled the second deed of trust, held  
14 by Washington Mutual, at \$250,000. They scheduled their secured tax debt at \$8,282.70. They  
15 valued their car at \$12,000, and the promissory note secured by the car at \$13,775.14. In total,  
16 the Smiths scheduled \$337,195 in general unsecured debt and the fully unsecured second  
17 trust deed. The unsecured portion of the first trust deed and the tax debt would add more to  
18 this total. On May 15, 2009, an order was entered granting the debtors' motion to value their  
19 principal residence under *Lam v. Thrift Investors (In re Lam)*, 211 B.R. 36 (9th Cir. B.A.P.  
20 1997) and allowing for the avoidance of the junior lien upon discharge.

21 Christopher Harmon George ("George" or "debtor") filed a chapter 13 petition on  
22 November 6, 2008. On schedules E and F, George listed \$324,397 in unsecured claims.<sup>2</sup>  
23 George also listed two mortgages secured by his principal residence. He valued his principal  
24 residence at \$382,000 and scheduled the first deed of trust, held by Bank of America, at  
25 \$389,233. He scheduled the second deed of trust, also held by Bank of America, at \$269,002.  
26

27 <sup>1</sup> Congress has placed a uniform eligibility requirement for Chapter 13, regardless of the enormous differences in median  
28 home prices across the nation. No one appears to have ever raised the constitutionality of this unequal access to Chapter 13,  
but it differs markedly from the treatment of debtors in the Chapter 7 "means test" where median incomes and local  
standardized living expenses are taken into consideration. See 11 U.S.C. § 707(b)(2).

<sup>2</sup> The Debtor listed \$7,339.00 as unliquidated on his schedules. Because George potentially exceeds the debt limit by more  
than \$250,000, the \$ 7,339.00 does not affect the debt limit calculation.

1 George brought a motion to avoid the lien created by the second trust deed under *Lam*. The  
2 Court granted the motion on February 10, 2009. The general unsecured debt added to the  
3 fully unsecured second deed of trust would amount to \$593,399 in unsecured debt. The  
4 Chapter 13 Trustee objected to the confirmation of Debtor's plan because debtor's unsecured  
5 debt exceeded section 109(e)'s debt limit.

6 Mynor and Cecilia Salguero ("the Salgueros" or "debtors") filed a chapter 13 petition on  
7 November 20, 2008. On schedules E and F, the Salgueros listed unsecured debts of  
8 \$102,380. On Schedule D, the Salgueros listed three mortgages secured by their principal  
9 residence.<sup>3</sup> They valued their principal residence at \$524,250. They scheduled the first deed of  
10 trust, held by Indymac Bank, at \$555,000. They scheduled the second deed of trust, held by  
11 Washington Mutual Mortgage, at \$245,548. They scheduled the third deed of trust, held by  
12 Washington Mutual Mortgage, at \$225,867. This amounts to \$573,795 in general unsecured  
13 debt when combined with the unsecured junior trust deeds. On June 24, 2009, an order was  
14 entered approving a stipulation between the junior lien holders and the debtor to extinguish the  
15 liens upon entry of discharge.

### 17 Discussion

18 A debtor must meet the debt limits as of the petition date. *Scovis v. Henrichsen (In re*  
19 *Scovis)*, 249 F.3d 975, 981 (9th Cir. 2001). Post-petition events do not change the debt limit  
20 analysis. *Slack v. Wilshire Insurance Company (In re Slack)*, 187 F.3d 1070, 1072 (9th  
21 Cir.1999). Initially, a court looks at a debtor's schedules to determine whether the debtor  
22 meets the debt limit requirements. *Scovis*, 249 F.3d at 982. A court may look beyond the  
23 schedules if there are allegations or indicia that the schedules were not filled out in good faith.  
24 *Id.*, see *Soderlund v. Cohen (In re Soderlund)*, 236 B.R. 271, 273 (9th Cir. B.A.P. 1999)(finding  
25 a court properly looked to proofs of claim and the Chapter 13 plan when the debtor filed  
26 multiple versions of schedules). Bad faith, in this context, exists when it appears to a legal  
27 certainty that the claim is not what the debtor reported. See *Scovis*, 249 F.3d at 982-983, *citing*

28  
<sup>3</sup> The Salgueros would exceed the debt limit under secured debt if the unsecured junior liens were counted toward secured debt limits. Their only argument is that undersecured debt should not count towards either limit.

1 *Matter of Pearson*, 773 F.2d 751, 757 (6th Cir. 1985). In all of the cases before this court, there  
 2 are no allegations of bad faith.<sup>4</sup> The Court, accordingly, must base its determination solely on  
 3 the debts that debtors reported on their schedules.

4 According to the schedules filed in the cases at issue here, each of these debtors has  
 5 significantly exceeded the debt limits and appears not to be eligible for Chapter 13. The  
 6 debtors seek to reorganize under Chapter 13 by paying the arrearages on their first trust deeds  
 7 over time and by avoiding the liens of the junior trust deeds. If they are not eligible for Chapter  
 8 13 relief, a Chapter 11 case would be prohibitively expensive and may mean they cannot find a  
 9 way to save their home through bankruptcy reorganization. The debtors have made various  
 10 arguments as to why they do not exceed the debt limits and their cases should not be  
 11 dismissed.

12 The first issue they raise is whether the “undersecured”<sup>5</sup> debt is considered liquidated.  
 13 Only noncontingent, liquidated, debts count for purposes of calculating the debt limits. A debt  
 14 is liquidated when it is “readily ascertainable, notwithstanding the fact that the question of  
 15 liability has not been finally decided.” *In re Guastella*, 341 B.R. 908, 916 (9th Cir. B.A.P. 2006),  
 16 quoting *Slack v. Wilshire Ins. Co. (In re Slack)*, 187 F.3d 1070, 1073-75 (9th Cir.1999). A debt  
 17 is readily determinable when it would only require a simple hearing to determine the amount of  
 18 the debt. *Guastella*, 341 B.R. at 917.

19 Debtors argue that the debt secured by a second deed of trust is unliquidated because  
 20 it is unknown whether the debt will be determined to be secured at the time the schedules are  
 21 filed. The motion to value the lien is not filed until after the case is underway, and the court  
 22 does not determine value until a subsequent hearing. Debtors further argue that 11 U.S.C.  
 23 §1322(b)(2)’s special protection for claims secured by the primary residence prevents the court  
 24 from readily ascertaining the full security because the court might have to consider multiple  
 25 property valuations to determine whether the claim is partially secured or fully unsecured.

26  
 27  
 28 <sup>4</sup> A different analysis might be involved in a case where there appeared to be bad faith manipulation of the schedules. In all these cases, the subsequent motion to avoid lien includes an appraisal generally supporting the values used in the schedules.

<sup>5</sup> “Undersecured” debt, as used here, is defined as that part of the debt formerly secured by the deed of trust, although “unsecured” would be a more accurate term for these junior trust deeds.

1           The calculation of a debt's secured status usually requires only a simple hearing, and  
2 among the hundreds of motions to value junior liens in the last year in this court, this generally  
3 has been an uncontested hearing.<sup>6</sup> A court needs simply to look at the contract, recent  
4 evidence of the amount due and an appraisal or other evidence of the property's value  
5 provided by the debtor. From this information, the court can easily determine to what extent  
6 the debt is secured.<sup>7</sup> Section 1322(b)(2)'s special protections for claims secured solely by a  
7 debtor's principal residence do not increase the difficulty of this analysis. The court is  
8 determining whether the junior trust deed is wholly unsecured and not modifying or even  
9 valuing the partially unsecured first trust deed. Because the court can determine the fully  
10 unsecured portion of these junior trust deeds with a simple hearing, these debts are  
11 considered liquidated.

12           The Ninth Circuit, in *Scovis*, stated that undersecured debt must be considered  
13 unsecured for a §109(e) eligibility determination. 249 F.3d 975, 983-985 (9th Cir. 2001). In  
14 *Scovis* the Debtors valued their residence at \$325,000. *Id.* at 983. A first deed of trust  
15 encumbered the property. *Id.* The first deed of trust secured a promissory note totaling  
16 \$249,026.91. *Id.* The property also secured a judgment lien of \$208,000. *Id.* The debtors listed  
17 a homestead exemption of \$100,000. *Id.* The *Scovis* court looked to §506(a) to define  
18 "secured" and "unsecured" in the §109(e) context. *Id.* The *Scovis* court found that the vast  
19 majority of all courts, including all circuit courts, that addressed the issue found that  
20 undersecured debt counted as unsecured debt for §109(e) purposes. Applying §506(a), the  
21 Ninth Circuit determined that \$132,026.91 of the judgment lien was undersecured and counted  
22 as unsecured debt. The court then looked to the debtor's exemption and determined that the  
23 debtor's \$100,000 exemption left the other portion of the judgment lien as unsecured debt. The  
24 court classified the remaining \$75,973.09 as unsecured because it was readily ascertainable  
25 that the Debtors could avoid the lien in the bankruptcy. The court found that because the  
26

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27 <sup>6</sup> The substantial difference between the range of value of the house and the amount owed to the holder of the senior lien has  
28 meant that few junior lien holders wish to dispute that their liens can be stripped. Thus, the specific value of the property is  
not being determined in these uncontested motions.

<sup>7</sup> The Ninth Circuit, in *Scovis*, implicitly finds as much. If a debtor could claim that the parties cannot know the undersecured amount upon filing of the schedules, then every undersecured claim would be beyond 11 U.S.C. §109(e) analysis.

1 Debtors listed both the homestead exemption and the lien, the bankruptcy court had a  
2 sufficient degree of certainty, on the petition date, that the Debtors could avoid the lien.

3 Debtors here argue that *Scovis* does not apply. Debtors first assert that the facts in the  
4 instant cases differ significantly from the facts before the Ninth Circuit in *Scovis*. Debtors argue  
5 that the Bankruptcy Code favors consensual liens such as those at issue here. Unlike  
6 judgment liens, a debtor cannot use 11 U.S.C. §522(f)(1)(A) to strip a consensual lien. Debtors  
7 may not avoid a consensual lien until a court issues a Chapter 13 discharge or confirms a  
8 Chapter 11 plan. This comparison, while accurate, does not explain why this court should treat  
9 consensual liens differently for §109(e) purposes. If a court dismisses a case in which a debtor  
10 used §522(f) to strip a judgment lien, §349(b)(1)(b) restores the lien. Thus a lien strip under  
11 §522(f), which is very similar to the valuation and stripping of a consensual lien, is not final until  
12 discharge. Further, the Ninth Circuit, in *Scovis*, cited to *In re Miller*, 907 F.2d 80 (8th Cir. 1990).  
13 The *Miller* court explicitly found that an undersecured portion of a consensual lien counted  
14 towards the debtor's unsecured debt limit. The similarities in the finality in the stripping of a  
15 judgment lien and a consensual lien and *Scovis*'s citation to a case determining the  
16 undersecured portion of a consensual lien to be unsecured debt for debt limit purposes  
17 suggest that *Scovis*'s analysis does extend to consensual liens.

18 Debtors further argue that the Bankruptcy Code does not avoid the undersecured liens  
19 because the claims remain "secured" until the discharge is entered. The discharge then  
20 satisfies the liens' purpose and the liens fall away. Cal. Civ. Code §2909 (2009). Under this  
21 approach, the lien remains secured during the bankruptcy, and the court cannot consider it  
22 unsecured debt for §109(e) purposes. Debtors cite to the language of *Dewsnup v. Timm*, 502  
23 U.S. 410, 417 (1993), ruling that in a Chapter 7 bankruptcy "the creditor's lien stays with the  
24 real property until the foreclosure. That is what was bargained for between the mortgagor and  
25 the mortgagee. The voidness language sensibly applies only to the security aspect of the lien  
26 and then only to the real deficiency in the security."

27 This argument misstates how the lien avoidance operates in a Chapter 13 or 11.  
28 Section 506(a) allows the court to value the property. Once the court values the property,  
§506(d) voids any lien or portions of a lien securing a debt that exceeds the value of the

1 property. This lien is then void for purposes of the bankruptcy. Once the court issues a Chapter  
2 13 discharge or confirms a Chapter 11 plan, the lien avoidance is complete. See *In re Zimmer*,  
3 313 F.3d 1220 (9<sup>th</sup> Cir. 2002); *Gold Coast Acquisition v. In re 1441 Veteran Street (In re 1441*  
4 *Veteran Street)*, 144 F.3d 1288 (9th Cir. 1998).<sup>8</sup> California Civil Code §2909 does not play a  
5 role in this process, and decisions subsequent to *Dewsnup* limit its applicability to the Chapter  
6 7 context in which the issue arose. See, e.g., *Lam, Zimmer, supra*.

7 While debtor argues quite persuasively that *Scovis* should not control here, its ruling is  
8 broad and appears to clearly apply to these cases. It holds that completely undersecured liens  
9 must count as unsecured debt for purposes of §109(e). This approach to the undersecured  
10 debt is consistent with other courts that have ruled on the issue. See, e.g., *In re Toronto*, 165  
11 B.R. 746 (Bankr. D. Conn. 1994) (“Construing the §109(e) unsecured debt limitation to include  
12 claims deemed unsecured by operation of the Code is consistent with the approach most  
13 courts have taken in considering the effect of §506(a) on §109(e.”); *In re Prosper*, 168 B.R.  
14 274 (Bankr. D. Conn 1994) (“It is patently unfair for the debtor to be permitted to treat a claim  
15 as unsecured for the purposes of distribution, which in this case would have resulted in no  
16 distribution whatsoever, and yet treat the same claim as fully secured for the purpose of  
17 evading the unsecured debt limitation of § 109(e).”)

18 While the analysis of *Scovis* controls the result when considering the fully unsecured  
19 junior trust deeds, a different question arises with respect to the partially secured first trust  
20 deed. Section 1322(b)(2) prevents a bankruptcy court from modifying a lien secured only by a  
21 debtor’s principal residence. *Nobleman v. American Savings Bank (In re Nobleman)*, 508 U.S.  
22 324 (1993). Thus, while the Bankruptcy Court may still value a debtor’s principal residence, the  
23 Code does not allow the Court to modify a lien even partially secured by the residence. See  
24 *Zimmer v. PSB Lending Corp.(In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002). The Bankruptcy  
25 Appellate Panel for the Ninth Circuit recognized this issue in the case *In re Soderlund*, 236  
26 B.R. 271, 273 (9th Cir. B.A.P. 1999). The *Soderlund* court classified fully undersecured debt as  
27 unsecured for §109(e) purposes but, in footnote 5, it opined that it might come to a different  
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<sup>8</sup> The 2005 revision to 11U.S.C. § 1141(d)(5) would likely change this result in an individual Chapter 11 case and the discharge would now need to await completion of payments under the plan, as with Chapter 13 plans.

1 conclusion if confronted with a loan partially secured by a debtor's principal residence.  
2 *Soderlund*, at n.5.

3       The debtors read footnote 5 to say that a court should find any debt secured when  
4 §1322(b)(2) might prevent a debtor from modifying the loan. They wish to extend the limitation  
5 placed on modifying a partially secured trust deed to wholly unsecured junior liens on the  
6 primary residence. While footnote 5 is simply dicta, it does indicate the problem with applying  
7 *Scovis* and *Soderlund* to debtor's primary residence indebtedness. Debtors' reading of the  
8 footnote is, however, far broader than §1322(b)(2) requires. At best, the footnote indicates that  
9 a court should consider a debt secured for purposes of the §109(e) analysis if it finds a  
10 mortgage on the primary residence partially secured.<sup>9</sup> This interpretation hews closely to  
11 *Scovis*' requirement that a court consider all undersecured debt unsecured for purposes of  
12 §109(e) analysis, but recognizes the realities of how that particular debt will be treated in the  
13 bankruptcy case. It also would not be appropriate to split a claim for eligibility purposes if that  
14 claim must be treated as fully secured at confirmation. *Accord, In re Toronto*, 165 B.R. 746  
15 (Bankr.D.Conn.1994).

16       In order to avoid treating a lien one way for confirmation and another for eligibility, and  
17 to treat the partially secured senior trust deeds consistent with *Nobleman* and *Zimmer*, any lien  
18 which is partially secured on debtor's primary residence will be treated as a secured debt for §  
19 109(e) purposes as well.

## 21 Conclusion

22       Where debtors' schedules show the senior deeds of trust exceeding the home's value,  
23 the junior trust deeds must be counted as unsecured debt. Where a trust deed is partially  
24 secured on a debtor's primary residence, that debt will be counted as secured debt for §109(e)  
25 purposes.

26  
27  
28 <sup>9</sup> Finding a mortgage partially secured is the critical question because the Ninth Circuit, in *Zimmer v. PSB Lending Corp*,  
determined that section 1322(b) does not protect a loan secured by a lien on a primary residence if that lien is fully  
undersecured. 313 F.3d 1220 (9th Cir. 2002).

1 While the court does not have the freedom to distinguish *Scovis* in the manner  
2 proposed by the debtors, it agrees that it is inequitable to deny middle class debtors with only a  
3 single family home access to Chapter 13. The Chapter 13 debt limits are simply too low for a  
4 large number of middle class homeowners in this district, especially where home values have  
5 plummeted steeply leaving such large amounts of unsecured debt. This court must apply the  
6 law as it exists, however, and that causes these debtors to exceed §109(e)'s debt limit. These  
7 cases will, accordingly, be dismissed as exceeding the debt limits.

8 In order to give debtors an opportunity to evaluate whether they wish to appeal this  
9 ruling, the dismissal order will not issue until after the court's regularly scheduled Chapter 13  
10 calendar on August 11, 2009. Should these debtors wish to have their case stayed pending  
11 appeal, they should file a motion to do so by August 21, 2009.

12 Although the language in *Scovis* and *Soderlund* controls as to classification of  
13 undersecured debt on a primary residence, neither of those cases directly addressed the lien  
14 stripping on a primary residence situation at issue here. Allowing these petitions to continue  
15 pending appeal will allow the Debtors to make up arrearages, make it easier to convert to  
16 Chapter 11 should that be necessary, and allow the Chapter 13 plans to progress fairly far  
17 along should the Court of Appeals modify its ruling in *Scovis* to allow these cases to remain in  
18 Chapter 13.

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Judge Kathleen Thompson

*/s/*

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Robin Riblet

*/s/*

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Theodor Albert



UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

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MEMORANDUM REGARDING ALLOWANCE OF COMPENSATION  
AND REIMBURSEMENT OF EXPENSES  
FOR COURT-APPOINTED PROFESSIONALS

AS AMENDED EFFECTIVE JANUARY 1, 2010

Parties in interest have continued to lodge objections to applications for the allowance of compensation and reimbursement of expenses. In an attempt to reduce the number of these objections, the judges of this court have determined that it is in the interests of all debtors, creditors, and other parties in interest, and their respective attorneys, and the United States Trustee, that the following general guidelines regarding fee applications and reimbursement of expenses be established and published.

1. Professional persons are appointed by the United States Bankruptcy Court for the Western District of Michigan, pursuant to 11 U.S.C. §§ 328 and 330(a)(1) and FED.R.BANKR.P. 2016. The burden of proof regarding all fee applications submitted by court-appointed professionals is upon the applicant.
2. Every application must succinctly itemize each activity, the date of the activity, the professional who performed the work, a description of both the nature and substance of the work, and the time expended thereon (the "itemization"). An itemization which lacks explanation of activities performed will be deemed inadequate and shall be noncompensable.
3. In order for time spent on activities such as court appearances, preparation for court appearances, conferences, telephone calls, drafting documents, and research to be compensable, the nature and purpose of the activity must be stated. Time entries for telephone calls must list the person with whom the applicant spoke and give a brief description of the conversation. Time entries for correspondence must state the addressee and give a brief explanation of the contents. Time entries involving documents must specify the specific document. Time entries for legal research must describe the matter or proceeding researched, and the legal issue that was researched.

## CENTRAL STATES BANKRUPTCY WORKSHOP

4. Applicants shall not attempt to circumvent minimum time requirements or any detail requirement by “lumping” or “bunching” a number of activities into a single itemization entry. Each type of service must be listed with a corresponding specific time which was spent on the activity.
5. Time entries with unexplained abbreviations are noncompensable. (Where abbreviations are used, an appendix explaining the abbreviations shall be attached.) Where computer time sheets are submitted to substantiate entries, a code key must be supplied, or the application will not be considered. In more complex petitions, a glossary of persons involved may be helpful.
6. All applications shall state the case filing date, the chapter, whether conversion has occurred, and the date of conversion. The application must state the amount of any retainer paid, as well as the date of each previous application, the amount of compensation and expenses requested, the amount of compensation and expenses approved, the date of approval, and the amount previously received. The application must also indicate the total hours charged and give a summary of the hours and hourly rate charged by each professional.
7. If more than one professional has charged time for activities such as intra-office conference or joint court appearances, the applicant must explain the need for each professional's participation in the activity.
8. All time listed must represent the actual time required to perform the activity and should be stated in tenths (0.10) of an hour. “Rounding up” of time or minimum time increments, e.g. 0.25 hours, is not permitted.
9. The rate charged must be commensurate with the level of skill required for a particular task; for example, attorney rates or paralegal rates may not be charged for nonlegal work, such as copying or delivering documents, preparing or filing proofs of service, or for trustee duties generally performed without the assistance of an attorney. When paralegals are utilized to perform legal services for an estate, they may be compensated as paraprofessionals rather than treated as an overhead expense.
10. No fees shall be allowed for general research on law well known or that should be well known to practitioners in the area of law involved.
11. Reasonable time spent by an attorney in preparing and reviewing an application for compensation may be compensable.

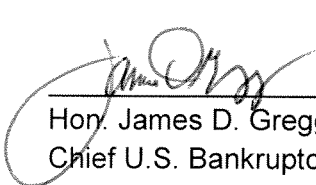
12. The court will consider whether tasks performed within a reasonable number of hours and whether the requested hourly rate is reasonable based upon the customary rate charged by experienced practitioners.
13. Except as otherwise allowed by statute, e.g., 11 U.S.C. § 330(a)(4)(B), the court will not allow compensation for services which do not benefit the debtor's estate; for example, fees for reading the work product of another attorney simply as a matter of interest or performing legal services mainly beneficial to the debtor, or the debtor's principals.
14. An application for reimbursement of expenses must explicitly list each expense, its date incurred/paid, and a general description of the nature and purpose of the expense. For example, requests for mileage must include the date, destination, miles, per mile rate, and the reason for the trip. Professionals should utilize the most economical method for necessary expenses; for example, coach air fare, moderately priced accommodations, and commercial firm duplication for large number of copies. Courier service, express mail service and fax transmissions should not be used routinely, but, if used, should be as a result of justifiable reasons including time constraints.
15. Although the State of Michigan Bar Association does not require attorneys to attend continuing legal education ("CLE") classes, the judges of this court have determined to encourage bankruptcy CLE. The Chief Judge shall maintain a list of attorneys who have attended CLE for each calendar year. Those attorneys who fail to attend CLE in any given calendar year may be required to attend fees hearings.
16. Because of the additional work required by the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") to competently handle a chapter 13 case through confirmation, and the court's continued interest in promoting and rewarding attorney CLE, the court shall utilize sliding scale to award compensation to chapter 13 debtors' attorneys. Commencing January 1, 2010 and ending until modified or rescinded, the court may approve a "no look" fee in an amount not to exceed \$2,400.00 for services rendered through confirmation. Attorneys who have and continue to *personally attend bankruptcy education seminars* (with at least seven hours of legal education attended) during the calendar year immediately prior to the date the chapter 13 was filed and who certify in writing as to the seminar(s) attended, e.g., FBA Bankruptcy Section Seminar, ABI Central States, etc., and thus have attained chapter 13 expertise,

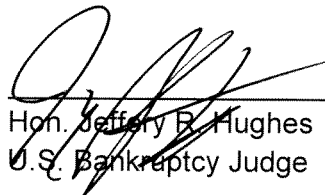
## CENTRAL STATES BANKRUPTCY WORKSHOP

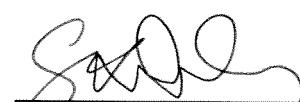
may be awarded a “no look” fee up to \$3,000.00 for services rendered through confirmation. Attorneys who are or become certified by the American Board of Certification (“ABC”) may be awarded a “no look” fee up to \$3,300.00. These fees are not “entitlements” as there still may be simple straightforward consumer cases in which the attorney should request and will be awarded less than the “no look” fees stated above. Attorneys shall file with the court a copy of the fee agreement executed between the debtor and the debtor’s attorney. If services are performed with a reasonable value in excess of the “no look” fees and are documented by the filing of an itemized fee application, *covering both the initial “no look” fee awarded and the additional fees requested*, upon review, the court may award fees in excess of the “no look” fees stated hereinabove.

17. The court may consider applications for fees and expenses on a notice and opportunity to object basis as permitted by the Local Bankruptcy Rules for the Bankruptcy Court for the Western District of Michigan. The court may, sua sponte, or upon the motion of any party in interest or the United States Trustee after notice and hearing, order that payment of all, or some portion of, allowed interim fees be withheld for a specified period of time. Whenever payment of an applicant’s fee has been deferred by the court, that applicant may file at any time a motion to rescind or modify the deferral. Motions to rescind or modify deferral shall be scheduled for hearing and heard by the court.
18. *Attorneys should keep in mind that in most cases the reasonableness of the work done and the fee charged will depend upon the results attained. A part of the service to be performed by an attorney is to estimate, as to each prospective matter or proceeding, the probability of success, the amount to be realized and the overall benefit to debtor or creditors. It must be reiterated that “no look” fees are not entitlements. Attorneys who routinely claim a “no look” fee award for simple cases which do not warrant payment of the “no look” fee may discover that the court may require itemization in all future cases.*

The court will consider applications for allowance of compensation and reimbursement of expenses which comport with the guidelines set forth in this memorandum.

  
\_\_\_\_\_  
Hon. James D. Gregg  
Chief U.S. Bankruptcy Judge

  
\_\_\_\_\_  
Hon. Jeffrey R. Hughes  
U.S. Bankruptcy Judge

  
\_\_\_\_\_  
Hon. Scott W. Dales  
U.S. Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN**

In Re:

Debtor(s).

\_\_\_\_\_ //

Case #: \_\_\_\_\_  
Chapter 13  
Hon.  
Filed:

**CHAPTER 13 PLAN**

( ) Original or ( ) Amendment No.: \_\_\_\_\_ ( ) Pre-Confirmation ( ) Post-Confirmation

**I. GENERAL PROVISIONS**

This Plan will use the term "Debtor" to refer to the person or both persons who filed the Petition in this case. Terms listed after a "( )" are applicable only if the box is checked.

**TERM KEY - the following terms may be referred to as abbreviations throughout the**

**Plan:** Interest = Int; Adequate Protection = A/P; Principal = Pr; Taxes = Tx; Insurance = Ins; Within = W/I; Inside Plan = I/S (means paid by Trustee); Outside Plan = O/S (means paid direct by Debtor); Monthly = MO; Pre-Petition = Pre-Pet; Post-Petition - Post-Pet; Payment = Pymt; Domestic Support Obligation = DSO; Confirmation = Conf; Fair Market Value = FMV; Secured = Sec; Unsecured = Uns; Claim = Clm; Amount = Amt; Arrears = Arrs; Estimated = Est; Applicable Commitment Period = ACP; and Optional = Opt.

**A. APPLICABLE COMMITMENT PERIOD - 11 U.S.C. '1325(b)(4)**

( ) The applicable commitment period is 60 months.

( ) The applicable commitment period is 36 months.

**B. PLAN PAYMENT** The Debtor submits all or such portion of the Debtor=s future income

to the control of the Trustee as in, or may be necessary for the execution of the Plan. The Debtor, or the Debtor=s employer shall pay to the Trustee the sum of \$\_\_\_\_\_ per ( ) week, ( ) bi-weekly, ( ) semi-monthly, ( ) monthly, or ( ) other. (If proposing a step payment or a liquidating Plan, mark "Other" and the provide terms in "Other Plan

Provisions<sup>o</sup> as set forth below. ***Pursuant to 11 U.S.C. '1326 the Debtor shall commence making payments not later than 30 days after the date of the filing of the Plan or the Order for Relief, whichever is earlier.***

The Debtor shall submit all disposable income directly to the control and supervision of the Trustee. If the Debtor becomes 30 days delinquent in making payments under the Plan, the Trustee may submit a payroll order to the Clerk with an appropriate affidavit (copies to the Debtor and Debtor=s counsel) and the Court may enter the payroll order without further hearing. The Debtor shall notify the Trustee immediately of any change of employment until the Plan is completed.

( ) **Other Plan Payment Provisions:**

**C. LIQUIDATION TEST** The amount to be distributed on each allowed unsecured claim under the Plan shall not be less than the value as of the Petition date of the amount that would be paid on such a claim if the estate of the Debtor was liquidated under Chapter 7 of the Bankruptcy Code.

**D. DISPOSABLE INCOME & TAX REFUNDS** If this Plan provides for a dividend of less than 100% to all filed and allowed general unsecured creditors, the Debtor agrees to pay into the Plan all disposable income as defined in 11 U.S.C. ' 1325(b)(1)(B) and (2) for the term of the Plan, including but not limited to: income tax refunds, property tax credits, gambling winnings, inheritances, judgments, settlements, etc. received during that period. The Debtor agrees to maintain the same level of exemptions as when the case was filed except as dictated by a change in the dependency allowance(s) and/or marital status. The Trustee shall have the discretion to increase the percentage to the unsecured creditors as a result of additional payments made under this provision. The Trustee shall have the discretion and authority to determine if tax refunds or other sources of income are not disposable income provided the Debtor provides the Trustee with supporting documentation and submits a Stipulation.

**E. BALLOON PAYMENT** The Debtor shall remit such additional sums as may be necessary to complete payments required under the Plan within 60 months from confirmation. This provision is not in lieu of or a substitute for regular Plan payments.

**F. VESTING OF ESTATE PROPERTY** Upon confirmation of the Plan, pursuant to 11 U.S.C. ' 1327(b) all property of the estate shall ( ) vest in the Debtor, except for: (I) the future earnings of the Debtor; (ii) additional disposable income as defined in &ID; and (iii) other property necessary to the Plan (including personal and real property as defined in the Plan and any associated insurance proceeds which may be used by the Debtor, with Court approval, to purchase replacement collateral.) Or ( ) shall remain property of the estate. In any event, all property in which the Debtor retain possession and control shall be insured by the Debtor. The Chapter 13 Trustee shall have no responsibility to insure assets and shall have no liability for damage or loss to any property which is in the possession and control of the Debtor. 11 U.S.C. ' 348(f)(1) remains effective in the event of a conversion to another chapter.

**G. PROHIBITION AGAINST INCURRING POST-PETITION DEBT & DISPOSAL OF PROPERTY** During the term of this Plan, the Debtor shall not incur post-petition debts in excess of \$1,000.00 without first obtaining approval from the Court and may not dispose of any real or personal property with a value greater than \$1,000.00 without first obtaining the consent of the Court pursuant to 11 U.S.C. ' 364.

**H. UNSCHEDULED CREDITORS FILING CLAIMS** If a creditor=s claim is not listed in the schedules, but the creditor files a timely proof of claim, the Trustee is authorized to classify the claim into one of the classes under this Plan and to pay the claim within the class, unless the claim is disallowed.

**I. ALLOWANCE OF LATE FILED CLAIMS** Any claim that is filed late by unscheduled or omitted pre-petition creditor(s) due to failure to receive notice of the Bankruptcy Petition filing may be allowed as timely filed, subject to the right of any party in interest to file an objection. If a late filed claim is allowed that may not be subject to a Claims Bar Date (i.e. a deficiency claim following the liquidation of collateral), the Chapter 13 Trustee shall not be required to seek the return of prior disbursements to creditors in order to comply with the equal distribution provision of the Plan.

**J. PLAN REFUNDS** The Trustee may in the exercise of his or her duties to assist the Debtor in the performance under the Plan, grant reasonable refunds to the Debtor from the funds paid to the Trustee but not distributed to the Creditors, to meet emergency situations which may arise during the course of the plan. The Plan duration shall be extended to the extent necessary to repay all refunds granted. The Debtor shall file a Stipulation of Plan Refund setting forth the specifics as to the basis for a refund.

**K.** The Debtor shall comply with all requirements of 11 U.S.C. ' 1322 and ' 1325.

**L. TRICKETT NOTICE**

( ) Applicable if Debtor is taking the State Entireties Exemption and joint claims must be paid in full.

The Debtor has claimed the State Exemptions pursuant to 11 U.S.C. ' 522(b)(2) and M.C.L.A. ' 600.5451(1)(o) and M.C.L.A. ' 600.6023(a) in regard to certain real property owned by the Debtor and his or her spouse as tenants by the entireties. Under State law, however, such property may not be exempt as to creditors who hold a joint claim against the Debtor and his or her spouse. As a result, allowed joint creditors shall be paid the full amount of the claim, regardless of the dividend or distribution to other general unsecured creditors.

Creditors are advised that they have until the claims bar date set forth in the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors and Deadlines (specifically, the deadline to file a Proof of Claim) to file a Proof of Claim in this Bankruptcy proceeding which must be clearly marked as a JOINT CLAIM provided the creditor has a joint claim against the Debtor and his or her spouse. Such claims must attach supporting documentation and must be filed according to the instructions on the Proof of Claim form.

**II. PRIORITY OF PAYMENT OF CLAIMS:**

**A.** Unless otherwise specifically stated in the Plan in Provisions III - VII, the Chapter 13 Trustee shall disburse the funds received in the following priority:

1. Unpaid filing fees;
2. Chapter 13 Trustee=s Administrative Expenses;

3. Monthly payments on any domestic support obligation entitled to priority pursuant to 11 U.S.C. ' 507(a)(1);
4. Pre-confirmation adequate protection payments pursuant to 11 U.S.C. ' 1326(a)(1) provided such payments are to be made through the Trustee and there is an order authorizing such payments or pursuant to the applicable Local Bankruptcy Rule.
5. Attorney fees and expenses, as allowed by the Order Confirming the Plan or such additional attorney fees as are awarded pursuant to an Order of the Court, unless there are secured claims for which monthly payments are provided for in the Plan, including but not limited to, monthly mortgage payments, lease or executory contract payments, secured creditors with equal monthly payments, and adequate protection payments. In such event, the attorney fees will be paid after such payments have been made until the attorney fees and expenses have been paid in full.
6. Any additional funds remaining, after payments described above, shall be paid monthly to secured creditors for which no monthly payment is designated, or shall be paid pro rata with other secured creditors.
7. Any funds remaining, after payments described above, shall be paid monthly to priority claims on a pro rata basis.
8. Any funds remaining after payments described above shall be paid to allowed general unsecured claims on a pro rata basis.

### **III. TREATMENT OF CLAIMS**

**A. ADMINISTRATIVE PRIORITY CLAIMS.** The Debtor shall pay in full, in deferred cash payments all allowed claims entitled to priority under 11 U.S.C. ' 507.

1. The Trustee shall be paid the percentage fee set forth from time to time by the U.S. Department of Justice, Executive Office of the U.S. Trustee. Such fee shall be taken on all Plan receipts at the time funds are distributed by the Trustee to any party other than the Debtor.
2. The Counsel for the Debtor has received a retainer of \$\_\_\_\_\_ prior to the filing of the case. The balance of attorney fees in the amount of \$\_\_\_\_\_ plus any additional attorney fees as may be allowed are to be paid as an administrative expense through the Plan as follows:

a. ( ) After payment of filing fees and Trustee fees Counsel for the Debtor shall be paid a minimum of \$\_\_\_\_\_ upon confirmation and \_\_\_% of specified monthly Plan payment received by the Trustee until paid in full.

b. ( ) After payment of filing fees and Trustee fees Counsel for the Debtor shall be paid all remaining available funds not specifically designated for monthly payments on DSO obligations, monthly mortgage payments, lease and executory contracts, adequate protection payments, or monthly equal payments to secured creditors.

**B. OTHER PRIORITY CLAIMS.**

**1. Domestic Support Obligation (DSO).**

a. Post-petition DSO shall be paid as follows and before all other priority creditors:

( ) Within the Plan by the Trustee. These claims consist of the following DSO recipient(s):

<u>Name</u>	<u>Amount / Freq</u>	<u>Start Date</u>	<u>End Date</u>	<u>Age of Child(ren)</u>
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( ) The Debtor is current on the DSO and will pay the DSO recipient directly. The Debtor will comply with 11 U.S.C. ' 1325(a)(8) and shall, prior to confirmation of the Plan, provide the Trustee with an affidavit or other evidence (i.e. wage deduction, a statement from Friend of the Court, or a statement from the recipient) that all post petition, pre-confirmation, DSO payments are current.

b. Pre-petition DSO which are in arrears as of the petition date shall be paid:

( ) within the Plan by the Trustee. These claims consist of the following DSO recipient(s):

<u>Name</u>	<u>Amount</u>
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( ) directly by the Debtor by consent of the parties.

2. **Priority Tax Claims**, are allowed claims entitled to priority under ' 507 and shall be paid in full, in deferred cash payments, on a pro rata basis, but subsequent to the payment of all secured claims. Unsecured or omitted priority claims shall be paid in full, unless an objection is filed by an interested party. Post petition priority claims shall be paid in full pursuant to 11 U.S.C. ' 1305(a)(1) and (b), unless an objection is filed by a party in interest. These claims consist of the following creditors, and the amount stated is an estimate only, the claim shall control as to the amount of the debt, absent an objection:

<b><u>Creditor</u></b>	<b><u>Est. Amount</u></b>	<b><u>Nature of Debt</u></b>
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3. **Other Priority Claims or Payment Provisions:**

**C. SECURED CREDITORS**

1. **Lien Retention:** Pursuant to 11 U.S.C. ' 1325(a)(5)(B), all holders of allowed secured claims provided for by the Plan shall retain the lien securing such claim until the earlier of (i) the payment of the underlying debt determined under applicable non-bankruptcy law; or (ii) a discharge pursuant to 11 U.S.C. ' 1328, and if the case under this Chapter is dismissed or converted without completion of the Plan, such lien shall be retained by such holder to the extent recognized by applicable non-bankruptcy law. Except, that a holder of an allowed secured claim in which the last payment is due after the date on which the final payment to the plan is due shall retain its lien pursuant to applicable State Law following the entry of the discharge.

2. **Real Property Subject To A Lien:**

a. **Residential Real Property: Post Petition Mortgage Payments & Pre Petition Arrears.**

<i>Creditor Name</i>	<i>Pd I/S or O/S</i>	<i>Ongoing Pymt</i>	<i>Est. Arrear</i>

The following is the common address and the tax id parcel # for the Debtor=s residential real property:

**b. Non-Residential Real Property: Post Petition Mortgage Payments & Pre Petition Arrears.**

<i>Creditor Name</i>	<i>Pd I/S or O/S</i>	<i>Ongoing Pymt</i>	<i>Est. Arrear</i>

The following is the common address and the tax id parcel # for the Debtor=s non - residential real property:

**c. Other Provisions:**

(i) Unless otherwise stated, the post petition mortgage payment(s) shall commence on the first day of the month following the Petition Date.

(ii) The pre petition arrearage is an estimate and the Trustee shall pay the pre petition arrears based on the claim as filed by the Creditor. Any claim filed for pre petition arrears shall be paid through the Plan over a reasonable period of time and pro rata with other secured creditors.

(iii) If the post petition, ongoing mortgage payment, is paid through the Plan, the Trustee is authorized to modify the ongoing mortgage payment upon notification by the mortgage holder of any payment change. The Trustee is also authorized to automatically increase the Plan payment by an amount sufficient to cover any increase in such payment and the additional Trustee=s fee. The Trustee may amend a wage order to include any such increase with notice to the employer, Debtor and Counsel for the Debtor. The Trustee may

adjust the date post petition mortgage payments commence or the date the arrears is calculated ~~through~~ to address any pre or post petition mortgage arrears through the Plan.

(iv) The ongoing monthly payment ( ) does include an escrow for insurance and real property taxes; or ( ) does not include an escrow for insurance and real property taxes.

**d. Pre-Petition Real Property Tax Claims.** Claims in this Class consists of those taxing authorities having a lien upon real property pursuant to applicable State law. Such claims shall be paid pro-rata with other secured claims, and subsequent to the post petition ongoing mortgage payment(s). Creditors in this Class shall retain its lien on the real property pursuant to applicable State law and shall be entitled to receive its statutory interest and collection fees as set forth on its Proof of Claim.

<b><u>Taxing Authority</u></b>	<b><u>Amount</u></b>	<b><u>Delinquent Tax Years</u></b>
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**e. Real Property Tax Escrow:**

( ) The Debtor elects to utilize a tax escrow through the Plan. The Trustee will escrow \$\_\_\_\_\_ per month for the payment of future property taxes on the Debtor=s residence. The escrow funds will be disbursed upon the Trustee=s receipt of a real estate tax bill. It is the Debtor=s responsibility to timely forward the tax bill to the Trustee to enable the Trustee to pay the real property taxes due. It is the Debtor=s responsibility to verify that such taxes are paid each year until the Plan is completed.

**f. Creditors Whose Mortgage is Wholly Unsecured.** This Class consists of those creditors having a debt secured by a mortgage on the Debtor=s residential real property for which there is no equity to secure its claim. This claim(s) is subject to being stripped and its claim reduced to a general unsecured claim. Upon the entry of a discharge by the Court the Debtor may record, with the appropriate County Register of Deeds, this Plan and Order Confirming as evidence that the lien is discharged. Those creditors are as follows:

<b><u>Name of Creditor</u></b>	<b><u>Est. Claim</u></b>	<b><u>FMV of Real Property</u></b>	<b><u>Aggregate Amount of Senior Liens</u></b>
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This is the Debtor's estimate as to the amount owing to the creditor. The claim shall control as to amount of the debt, subject to an objection filed by a party in interest.

**3. Personal property**

**a. Collateral to Be Retained:** Each secured creditor in this class shall retain its lien and shall be paid as secured to the fair market value of the underlying collateral as set forth below. Each secured creditor shall be paid pro-rata with other secured claims unless otherwise indicated below. The excess of any secured claim over the fair market value of the collateral shall be paid as a general unsecured claim. If the collateral retained by the Debtor is subsequently destroyed the Debtor may use the insurance proceeds from such collateral to purchase substitute collateral of equal or greater value and the creditor's lien shall attach to the replacement collateral. The Debtor must file a Motion or obtain a consent Stipulation from the secured creditor and Trustee.

**b. Secured Claims Subject to 11 U.S.C. ' 506.** The holder of such claim shall retain the lien securing such claim until the earlier of the payment of the underlying debt determined under non bankruptcy law; or discharge under ' 1328; and if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable non bankruptcy law; and the value as to the effective date of the plan, or property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim if payments, such payments shall be in equal monthly amounts ; and the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan. All creditors in this Class are to receive the equal monthly payments pursuant to 11 U.S.C. ' 1325(a)(5) as listed below, plus an additional pro rata amount that may be available from funds on hand. Claims in this Class shall receive the interest rate specified below or the contract rate, whichever is lower.

<u>Creditor, Address</u>	<u>Collateral</u>	<u>FMV</u>	<u>Int %</u>	<u>Pre-Conf AP</u>	<u>Equal Monthly Pymt</u>
<u>&amp; Account #</u>					

**c. Secured Claims Not Subject to 11 U.S.C. ' 506 (Vehicles purchased within 910 days or other personal property purchased within 1 year prior to filing).** Each secured creditor in this Class has a lien on a vehicle acquired for the personal use of the Debtor and the debt was incurred within 910 days; or as to other personal property acquired for personal use of the Debtor within 1 year prior to the filing of the Petition. Such a claim is not subject to cramdown and will be paid the full balance owing. Claims in this Class shall receive the interest rate specified below or the or the contract rate, whichever is lower.

<u>Creditor, Address &amp; Acct #</u>	<u>Collateral</u>	<u>Balance Owing</u>	<u>Int %</u>	<u>Pre-Conf AP</u>	<u>Equal Monthly Pymt</u>
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All creditors listed above are to receive the equal monthly payments as listed per the month, during the life of the Plan plus an additional pro rata amount that may be available from funds on hand. If the creditor files a claim with a balance owing which is different that the amount listed above, the claim shall control as to the amount of the debt, unless a party in interest objects to the claim.

**d. Pre-Confirmation Adequate Protections Payments.** If the Trustee is to make pre-confirmation adequate protection payments to a secured creditor the name, address, account number and payment amount has been provided above as required by Local Bankruptcy Rule 3016. However, the Trustee will not disburse an adequate protection payment until a proof of claim has been filed. Payments to secured creditors pursuant to **III C.4. b & c** shall commence within 30 days from the Petition Date, unless otherwise provided for by the Plan. Such payments shall be made on the first day of the month following the Petition Date.

**4. Collateral to Be Surrendered:** The following collateral will be surrendered to the creditor; the stay shall be terminated effective upon entry of the order confirming plan; and any deficiency shall be treated as a general unsecured claim:

<u>Creditor</u>	<u>Collateral Description</u>
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To the extent a creditor holding a junior lien has filed a secured claim such claim shall be allowed as a general unsecured claim, absent an objection by a party in interest.

**D. EXECUTORY CONTRACTS**

**1. Land Contracts:**

a. The Debtor will assume the following land contract(s) and the pre-petition defaults on assumed land contracts shall be treated as follows:

<u>Creditor</u>	<u>Paid I/S</u> <u>or O/S</u>	<u>Est. Pre-Pet Arrs</u>	<u>Monthly Pymt</u> <u>To Cure Arrs</u>	<u>Ongoing Pymt</u>	<u>Int %</u>
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Unless otherwise stated, the start date for post petition payments and to cure pre petition arrears will commence on the first day of the next month following the Petition Date. The arrears set forth above is an estimate only and the proof of claim shall control as to the total balance due, the monthly payment amount, the amount of the arrears and the number of months remaining unless a party in interest files an objection to the claim.

b. The Debtor will reject the following land contract(s):

**2. Other Executory Contracts** - The Debtor has the following executory contracts, which may include tenancy leases, vehicle leases, so called rent-to-own contracts and the like which shall be treated as follows:

<u>Creditor</u> <u>&amp; Acct #</u>	<u>Property</u> <u>Description</u>	<u>Assume or</u> <u>Reject</u>	<u>Pymt</u> <u>Amount</u>	<u># of Months</u> <u>Remaining</u>	<u>Paid I/S or</u> <u>O/S</u>
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The proof of claim shall control as to the total balance due, the monthly payment amount, the amount of the arrears and the number of months remaining unless a party in interest files an objection to the claim.

**E. TERMINATION OF THE AUTOMATIC STAY.** If a secured Creditor or Lessor obtains an Order terminating the automatic stay at anytime during these proceedings

(either pre confirmation or post confirmation) the Trustee shall make no further payments to the Creditor unless the Order terminating the automatic stay states otherwise.

**F. UNSECURED CREDITORS**

**1. General Unsecured Creditors:** Claims in this class are to be paid from funds available after the dividends to secured and priority creditors and monthly payments to creditors indicated in the classes above. The payment allowed to the general unsecured claimants will be satisfied by:

( ) a) Payment of a dividend of 100%. Plus present value of \_\_\_\_%, if necessary to satisfy the Best Interest of Creditors Test.

( ) b) Payment of a pro-rata share of a fixed amount of \$\_\_\_\_\_ set aside for creditors in this class or a plan term of \_\_\_\_\_ months, whichever pays more.

( ) c) Payment of that amount remaining after payment of superior classes as set forth above. Payment to this class shall be on a pro rata basis. The term of the Plan shall be \_\_\_\_\_ months. The estimated base is \$\_\_\_\_\_.

( ) d) A dividend of not less than \_\_\_\_% or the Applicable Commitment Period, whichever pays more.

**2. Special Unsecured Creditors:** Claims in this class may include debts co-signed by an individual other than the Debtor, debts for non-sufficient funds (NSF) checks, for continuing professional services or debts that may be non-dischargeable such as student loans or criminal fines: If the ACP is 36 months claims will be paid and will be disbursed pro-rata with the unsecured creditors for the first thirty-six (36) months of the Plan and then paid in full over the remaining term of the Plan.

<u>Creditor</u>	<u>Reason For Special Treatment</u>	<u>Interest Rate</u>
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( ) The following special unsecured claim(s) are an exception pursuant to 11 U.S.C. § 1301 and shall be paid as follows:

**IV. SPECIAL PROVISIONS**

**A. Tax Returns:** all tax returns which have become due prior to the filing of this case have been filed, except as follows:

**B. Debtor Engaged in Business.** If the Debtor is self-employed and incurs some trade credit in the production of income or has employees, the Debtor will comply with:

1. 11 U.S.C. ' 1304b) and c) regarding operation of the business and duties imposed on the Debtor are incorporated herein by reference.

2. The provisions of the Order Regarding Continuation of Business Operations entered by the Court, including but not limited to filing with the Trustee such business reports, income tax returns, and any other such documentation regarding the operation of the business as may be required by the Trustee on a monthly basis or otherwise.

**C. Effect of Additional Attorney Fees Beyond the aNo Look Fee.e** If disbursements to general unsecured creditors have been made and a Counsel for the Debtor files a subsequent fee application in an amount that would cause the amount already paid to general unsecured creditors to result in an over payment, the additional attorneys fees as awarded pursuant to an Order of the Court shall be paid as administrative claim and shall not be paid out of the base already disbursed to general unsecured creditors. In addition, the Chapter 13 Trustee shall not have to recover monies disbursed to general unsecured creditors prior to the issuance of an Order for additional attorney fees.

**D. Effect of Allowed Late Filed Claims and Amended Claims.** If disbursements to general unsecured creditors have been made and subsequently a late filed claim is allowed or a secured creditor amends a previously filed claim to a general unsecured deficiency claim in an amount that would cause the amount already paid to general unsecured creditors to result in an over payment, such claim shall be paid the same dividend as previously paid general unsecured claims even if the base to general unsecured claims exceeds the amount stated in the confirmed Plan. In addition, the Chapter 13 Trustee shall not have to recover monies disbursed to general unsecured creditors as a result of such additional claims filed or amended.

**V. OTHER PLAN PROVISIONS NOT SEPARATELY SET FORTH ABOVE:**

**A. TRUSTEE=S AVOIDANCE POWERS.** The Debtor(s) acknowledges that both pre and post confirmation the Trustee has certain avoidance powers pursuant to ' 544, ' 545, ' 547, ' 548, ' 549, and ' 550. The Debtor(s) acknowledges that any action(s) brought by the Trustee, either pre- or post-confirmation, pursuant to these avoidance powers is preserved for the benefit of the Estate pursuant to ' 551. The Trustee may bring any avoidance action within the period of time set forth in ' 546.

**B. MISC. PROVISIONS:**

Date:

\_\_\_\_\_  
\_\_\_\_\_, Debtor

Date:

\_\_\_\_\_  
\_\_\_\_\_, Debtor

Date:

\_\_\_\_\_  
\_\_\_\_\_, Counsel for the Debtor

Revised 06/15/2009

