

Filing Your First Individual Chapter 11? Understand Issues and Confirm Creative Plans

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**OPERATING GUIDELINES AND REPORTING
REQUIREMENTS FOR CHAPTER 11 CASES**

Debtor:

Case No:

INTRODUCTION

Section 586(a)(3) of Title 28 of the United States Code provides that the United States Trustee shall supervise the administration of Chapter 11 cases within the Region for which such United States Trustee is appointed. Pursuant to that section, William K. Harrington, the United States Trustee for Region I, which is comprised of the judicial districts of the States of Massachusetts, New Hampshire, Rhode Island and Maine, has promulgated the following requirements for debtors- in-possession and appointed trustees in Chapter 11 cases.

Rule 9034, Federal Rules of Bankruptcy Procedures ("FRBP") requires that the United States Trustee be kept apprised of all matters pertaining to the case at all times. This includes ensuring that the United States Trustee is served with copies of all papers filed in the case.

Unless you are specifically directed otherwise, communications to or documents to be served upon the United States Trustee should be directed to the attention of the Assistant United States Trustee or Attorney-in-charge of the office for your district or division.

All certifications, reports, documents, and any other papers required by the Office of the United States Trustee which are to be signed by the debtor must be signed by the debtor or an authorized principal officer of the debtor. Failure of the debtor or an authorized officer to sign, or signing by any other party, including debtor's counsel, will render the document incomplete. Joint debtors may file one set of operating reports each month, but both debtors must sign every report.

TIMELY COMPLIANCE WITH EACH OF THE FOLLOWING REQUIREMENTS IS MANDATORY. FAILURE TO COMPLY WITH ANY REQUIREMENT MAY RESULT IN THE UNITED STATES TRUSTEE OR OTHER PARTIES MOVING TO DISMISS OR CONVERT YOUR CASE, FOR THE APPOINTMENT OF A TRUSTEE OR EXAMINER, OR THE IMPOSITION OF OTHER SANCTIONS.

ANY REQUESTS FOR MODIFICATION OF ANY OF THESE REQUIREMENTS MUST BE MADE IN WRITING AND APPROVED IN WRITING BY THE OFFICE OF THE UNITED STATES TRUSTEE.

GUIDELINES AND REQUIREMENTS

1. FILING OF "CERTIFICATION OF RECEIPT"

The debtor or a principal officer of the debtor must sign the "Certification of Receipt of Operating Guidelines and Designation of Specific Individuals," Exhibit A attached hereto, acknowledging and certifying receipt of these instructions and agreement to perform in accordance with the requirements. Counsel for the debtor must also sign the certification of receipt. The signed form must be returned to the Office of the United States Trustee within five (5) business days or at the initial debtor conference, whichever is earlier.

2. GENERAL REQUIREMENTS

- A. The debtor is required to comply in all respects with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules of the Bankruptcy Court.
- B. Notices and copies of pleadings must be sent to the United States Trustee as required by FRBP 9034. These may be sent to the Assistant United States Trustee or Attorney-in-charge of the office for your district and/or division.
- C. The debtor must pay all obligations arising after the filing of the petition ("post-petition") in full when due. This includes not only general business expenses, but all post-petition obligations, including, but not limited to:
 - (1) Wages;
 - (2) FICA taxes, both employees' and employer's share;
 - (3) Withheld federal, state, and local payroll taxes;
 - (4) All other taxes.

- D. The debtor may not, however, pay any professionals, such as attorneys, accountants, or appraisers, without Court approval, even though these may constitute general expenses which arise post-petition. Judicial approval of employment of such professionals must be obtained prior to the rendering of any services by such persons to the debtor. A copy of any application for employment or compensation of a professional must be served upon the United States Trustee.
- E. The debtor may not pay pre-petition obligations except as allowed by the Bankruptcy Code or order of the Court. Additionally, no assets may be sold or disposed of, other than in the ordinary course of business, except as allowed by and upon compliance with § 363 of the Code and the Bankruptcy Rules governing sales.
- F. The debtor shall file all federal, state, and local tax returns when due, or shall obtain an extension from the appropriate taxing authority, unless otherwise provided by the Bankruptcy Code or by order of the Court.

3. BANK ACCOUNTS

The debtor shall:

- A. Immediately upon the filing of the petition close any bank account over which the debtor has possession or control at the time of filing. The debtor shall provide to the United States Trustee at the initial debtor conference, or if no initial debtor conference is set, within five (5) business days, a declaration under penalty of perjury "Bank Account Declaration of Debtor", Exhibit B-1 attached hereto, that all pre-petition bank accounts have been closed.

- B. All funds must be deposited in debtor-in-possession bank accounts. Unless otherwise approved by the United States Trustee, new accounts must be opened. Suggested new accounts are the OPERATING ACCOUNT, the PAYROLL ACCOUNT and the TAX ACCOUNT. A payroll tax account is required unless payroll taxes and other taxes are deposited/paid when withheld. If the debtor uses cash collateral, separate cash collateral accounts must be established and maintained pursuant to 11 U.S.C. §363(c)(4). Attached is a "Debtor-in-Possession Statement for Depository", Exhibit B-2, and a listing of depositories, Exhibit C, which have agreed to comply with the guidelines of the United States Trustee. The debtor must complete this statement and present it to the depository to open the debtor-in-possession accounts. A copy of the statement should be provided to the United States Trustee at the initial debtor conference, or, if no conference is set a copy of the statement should be returned to the United States Trustee within five (5) business days of receipt of the operating guidelines.
- C. Ensure that the depository imprints the name of the debtor, the designation "Debtor- in-Possession" and the case number on all permanent checks. (The debtor must type or print all of the foregoing information on temporary checks.) The new account signature cards shall clearly indicate that the debtor is a "Chapter 11 Debtor-in-Possession." As proof that the foregoing has been done, the United States Trustee must be furnished with a "voided" sample of the permanent checks.
- D. Deposit all receipts and make all disbursements through these accounts. Any funds in excess of those required for current operations should be maintained in either an interest-bearing account, or other investments as permitted by 11 U.S.C. §345(b).

- E. In the event the depository refuses to comply with the United States Trustee guidelines, the debtor must move the accounts to another authorized depository within a reasonable time after notice from the United States Trustee; such reasonable time shall not exceed 30 days.

When a trustee is appointed to succeed a debtor-in-possession, the trustee may continue previously opened and maintained debtor-in-possession accounts, but must ensure that the accounts and checks reflect the trustee's name and title along with the name of the debtor and the case number.

4. INSURANCE

- A. All debtors must maintain insurance and make all insurance premium payments when due. Further, the United States Trustee must receive independent verification from the debtor's insurance carrier that the United States Trustee's Office will be notified of any change, cancellation or non-renewal of each policy.
- B. Unless the United States Trustee directs otherwise, the debtor shall maintain at least the following insurance coverages:
 - (1) If the debtor has tangible assets susceptible to casualty loss (fire, weather, theft, vandalism, etc.) casualty insurance must be maintained at an amount at least equal to the replacement value of the property;
 - (2) If the debtor has employees, workers' compensation insurance and unemployment insurance must be maintained;

- (3) If the debtor conducts business operations, general liability and, if appropriate, product liability insurance must be maintained;
 - (4) Any other insurance customary in the debtor's business.
- C. The United States Trustee must be provided with proof that the required insurance is being maintained. In fulfillment of this requirement, the debtor shall, at the initial debtor conference, or within five (5) business days of receipt of the operating guidelines if no initial debtor conference is required, provide the United States Trustee with a copy of the insurance binder or of the first page of all policies, showing coverage amounts and expiration dates. The debtor must also provide the completed "Insurance Expiration Statement" form attached hereto as Exhibit D indicating the date each policy is to expire.
- D. Upon expiration, termination, or renewal of any coverage, the debtor shall immediately provide the United States Trustee with adequate proof of renewal or replacement coverage.
5. TAXES

Trust fund payroll taxes are those monies which the employer/debtor-in-possession must withhold from employees' wages and deposit for the benefit of the Internal Revenue Service and other taxing authorities. These include withheld federal, state, and local income taxes as well as the employees' portion of FICA taxes. The debtor shall deposit to the debtor's Tax Account sufficient funds to pay any tax liability associated with the debtor's payroll, in accordance with the most recent edition of the Internal Revenue Service's Circular E Publication, and state and local taxing authority guidelines, unless a Court order or other order of the taxing authority requires otherwise. As an alternative, payroll taxes may be deposited with the applicable agencies at the time of each payroll

distribution. To verify deposits for trust fund taxes, the debtor must attach copies of receipted IRS Form 6123, or similar deposit receipt from any other taxing authority, to the debtor's monthly Schedule of Post-petition Liabilities.

6. INITIAL DEBTOR CONFERENCE

The debtor and counsel for the debtor must attend an initial debtor conference, if requested by the Office of the United States Trustee. These meetings will be scheduled by the Office of the United States Trustee generally within ten (10) working days after the filing of the petition. Should counsel for the debtor be unable to appear, substitute counsel must attend.

The debtor is required to produce the following documents at the initial debtor conference: (If no debtor conference is scheduled then documents must be forwarded within five (5) business days.)

- A. Completed "Information for Initial Debtor Conference" form attached hereto.
- B. Proof of establishment of new debtor-in-possession bank accounts:
 - (1) Operating Account;
 - (2) Payroll Account;
 - (3) Tax Account;
 - (4) Any other necessary accounts, such as Cash Collateral Account.
- C. Completed Declaration under penalty of perjury from the debtor verifying the closing of all pre-petition bank accounts and stating the date each account was closed and that all monies were transferred to the new debtor-in-possession bank accounts (form attached).
- D. Completed Insurance Expirations Statement (form attached) and proof of the following insurance coverage:

- (1) General comprehensive public liability;
 - (2) Fire and theft;
 - (3) Workers' compensation;
 - (4) Vehicle;
 - (5) Product liability;
 - (6) Any other coverage customary in the debtor's business.
- E. Most recently filed Federal Income Tax Return and Personal Property Tax Return with all schedules and attachments;
- F. Most recently prepared financial statements, audited as well as unaudited, including but not limited to, profit and loss statements, inventory statements, accounts receivable and accounts payable statements.
- G. Completed "Certification of Receipt of Operating Guidelines and Designation of Specific Individuals."
7. BOOKS AND RECORDS
- The books and records of the debtor must be closed as of the date of the filing of the petition. The debtor must open a new set of books and records, and must provide separate accounting with respect to pre-petition and post-petition accounts and transactions.
8. LIST OF CREDITORS, SCHEDULES, AND STATEMENT OF AFFAIRS
- A. The debtor must comply fully with 11 U.S.C. §521(1) and BANKRUPTCY RULE 1007. These rules require the debtor to file schedules and a statement of financial affairs with the Clerk of the United States Bankruptcy Court. A copy of the schedules and statement must be sent to the United States Trustee. A complete list of all creditors (and their addresses)

should be set forth in petition Schedules D, E and F. Local Rules may impose additional requirements, such as an alphabetical listing of creditors or the submission of a mailing matrix. The debtor must fully comply with all applicable Local Rules as well. Failure to file all required schedules and statement of affairs within fifteen (15) days of the date of filing or to obtain an extension of time from the Court may result in the Office of the United States Trustee filing a motion to dismiss or convert your case.

- B. Pursuant to BANKRUPTCY RULE 1007(d), the debtor must file with the petition a separate list of the debtor's twenty (20) largest unsecured creditors. The complete name, address, and telephone number of each creditor should be included, along with the nature and amount of each creditor's claim. See Official Form 4 in the appendix to the BANKRUPTCY CODE.) This list should not include any creditors who are "insiders" as that term is defined in § 101(31) of the Bankruptcy Code. If any creditor listed is not an individual, the list should include the name of an individual employed by or associated with the creditor who is familiar with the debtor's account.

9. PHYSICAL INVENTORY

Within thirty (30) days of filing the petition, the debtor shall provide the United States Trustee with a physical inventory as of the date of the filing of the petition. The inventory shall indicate itemized values at cost and fair market value.

10. CREDITORS MEETINGS

Section 341 of the BANKRUPTCY CODE requires a meeting of creditors in each case. This meeting is scheduled by the Office of the United States Trustee, and notice of the meeting is sent to all creditors by the Clerk's office. A representative of the debtor and debtor's counsel are required to attend. The debtor's representative should have knowledge of and be familiar with the operation of the debtor's business and the bankruptcy proceeding. In addition, the debtor-in-possession's accountant/bookkeeper should be available for examination at the § 341 meeting. If debtor's first month operating reports are due prior to the § 341 meeting, the debtor must file the operating reports and send a copy to the United States Trustee by the due date. The United States Trustee may also request, through debtor's counsel, that additional representatives of the debtor attend the § 341 meeting and be available for examination. After notice of the § 341 meeting has been mailed, meetings cannot be cancelled or rescheduled to accommodate conflicts with the schedule of the debtor or the debtor's attorney, except in extraordinary situations. The time periods set forth in FRBP 2003(a) shall be complied with in all cases. The debtor's counsel must contact the Office of the United States Trustee to request that the meeting be rescheduled. If the request is approved, the debtor's counsel must certify that notice of the rescheduled meeting has been sent to all parties in interest.

The United States Trustee or a member of his staff will preside at the § 341 meeting, administer the oaths/affirmations, and examine the debtor and/or other appropriate person(s). No written minutes will be kept at the meeting. The meeting will be recorded. All recordings will be stored by the Office of the United States Trustee for a period of two (2) years after the date first

set for the meeting of creditors. Requests for copies of recordings of the § 341 meeting must be made in writing to the Boston Office of the United States Trustee, 5 Post Office Square, Suite 1000, Boston, Massachusetts 02109. The request must include: case name, number, district, and date of the §341 meeting. Be sure to include a blank CD-R for copying.

The §341 meeting may be continued to a later date if deemed appropriate. Those creditors and parties in interest appearing at an initial §341 meeting of creditors will receive notice of a continued §341 meeting.

11. QUARTERLY FEES

Debtors-in-possession and trustees in Chapter 11 cases are required to pay a quarterly fee. The fee must be paid to the United States Trustee every quarter from the time the petition is filed until an order is entered by the Court **closing** the case (*or otherwise dismissing the case or converting it to another chapter other than Chapter 11*). It is important to remember that even after the Court enters an order confirming a Chapter 11 plan of reorganization, a case is not "closed" and debtors-in-possession must continue to pay quarterly fees until such time as the Court enters a final decree closing the case in response to a motion requesting a final decree. If a case is pending under Chapter 11 for even one day during a quarter, payment of the fee for that quarter is required. The amount of the quarterly fee depends upon the dollar amount of the debtor's disbursements during each calendar quarter to be calculated beginning the date the petition is filed. A minimum fee of \$325.00 is due for each quarter or fraction of a quarter that the case is pending, even if no disbursements are made during that quarter.

QUARTERLY FEE SCHEDULE (effective January 1, 2008)

<u>TOTAL QUARTERLY DISBURSEMENTS</u>	<u>QUARTERLY FEE</u>
\$ 0 - \$ 14,999.99	\$ 325
15,000.00 - 74,999.99	650
75,000.00 - 149,999.99	975
150,000.00 - 224,999.99	1,625
225,000.00 - 299,999.00	1,950
300,000.00 - 999,999.99	4,875
1,000,000.00 - 1,999,999.99	6,500
2,000,000.00 - 2,999,999.99	9,750
3,000,000.00 - 4,999,999.99	10,400
5,000,000.00 - 14,999,999.99	13,000
15,000,000.00 - 29,999,999.99	20,000
30,000,000.00 or more	30,000

Fees are to be paid according to the following schedule:

<u>QUARTER</u>		<u>ENDING</u>	<u>DUE DATE FOR PAYMENT</u>
1st Quarter	Jan-Feb-Mar	Mar. 31	April 30
2nd Quarter	April-May-June	June 30	July 31
3rd Quarter	July-Aug-Sept	Sept. 30	Oct. 31
4th Quarter	Oct-Nov-Dec	Dec. 31	Jan. 31

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Pursuant to § 1129(a)(12) of the BANKRUPTCY CODE, a plan of reorganization must provide for payment of all unpaid quarterly fees as of its effective date, or it cannot be confirmed. The plan of reorganization must also provide for the continued payment of quarterly fees until such time as the Court enters a final decree closing the case. The United States Trustee may also object to dismissal of any case in which outstanding fees are owed. Each debtor will receive a statement regarding the fee prior to each of the due dates. Each statement contains a payment stub which must be returned along with the debtor's check, MADE PAYABLE TO "UNITED STATES TRUSTEE," to the following address: U.S. Trustee Payment Center, P.O. Box 530202, Atlanta, Georgia 30353-0202. The debtor's account number, which can be obtained from the statement, should be written on the face of the check. If you do not receive the proper form or a bill from the Executive Office of United States Trustees, contact the Office of the United States Trustee in your district or division.

Direct all correspondence and questions regarding your account to the Office of the United States Trustee in your district or division. THE ADDRESS GIVEN IS A LOCKBOX AT A BANK. IT MAY NOT BE USED FOR SERVICE OF PROCESS, CORRESPONDENCE, OR FOR ANY PURPOSE OTHER THAN PAYMENT OF QUARTERLY FEES. If any check is returned for insufficient funds, all future quarterly payments must be made by cashier's check, certified funds or money order.

FAILURE TO PAY THE QUARTERLY FEE IS CAUSE FOR CONVERSION OR DISMISSAL OF YOUR CHAPTER 11 UNDER § 1112(b)(10) OF THE BANKRUPTCY CODE. FILING A FALSE REPORT MAY SUBJECT YOU TO CIVIL LIABILITY UNDER 31 U.S.C. § 3729(a)(7) AND TO CRIMINAL PENALTIES UNDER 18 U.S.C. § 1001 and 18 U.S.C. § 1621.

12. OPERATING REPORTS

- A. Pursuant to FRBP 2015 and 9034, operating reports should be filed with the United States Trustee. In addition, copies of such reports should be provided to the chairpersons of any creditors' committees.
- B. All operating reports must be filed by the 15th day of the next month following the end of the month covered by the report. Debtors must use the report forms provided by the Office of the United States Trustee, unless another form is approved by the United States Trustee. Operating reports must continue to be filed after the entry of an order of confirmation until such time as the Court enters a final decree closing the case. (Additionally, the debtor must still comply with any Local Rules requiring post-confirmation reporting.)
- C. In addition to the requirements and the instructions provided with the forms, note the following:
- (1) All forms must be complete and accurate. The forms must be legible.
 - (2) You should make additional copies of the blank forms provided by the Office of the United States Trustee to meet your filing needs.
 - (3) The reports, declarations, statements, and any documents which require the signature of the debtor or representative of the debtor must be signed by the debtor or an authorized representative of the debtor. Signing by debtor's counsel is not sufficient and will render the document incomplete. Joint debtors may file one set of operating reports each month but both debtors must sign every report.

- D. Pursuant to 28 U.S.C. § 586(a)(3) and FRBP 9034(K), the United States Trustee reserves the right to require additional information and/or reports as may be reasonably necessary in supervising the administration of the estate.
- E. Any requests for waiver or modification of the United States Trustee's required reports, statements, or procedures should be submitted in writing. Any waivers or modifications must be approved in writing by the Office of the United States Trustee. Retain the United States Trustee's written response for your records.

In those cases where a waiver or modification has been granted, the United States Trustee must still be informed of any significant event or transaction in the case. Any transaction involving \$500.00 or more is, presumptively, "significant" and must be brought to the attention of the United States Trustee by written report.

13. OTHER REQUIREMENTS

A. Employment and Compensation of Professionals

Applications for employment of professionals must be submitted to and approved by the Court prior to the rendering of any services by such persons to the debtor. Applications for compensation of professionals must be submitted to and approved by the Court prior to any payment by the debtor to such professional. A copy of any application for employment or compensation of a professional (such as accountant, appraiser, auctioneer, agent, or attorney) must be served upon the United States Trustee.

B. Use of Cash Collateral

Section 363(c)(2) of the BANKRUPTCY CODE provides that the debtor may not use cash collateral (as defined by § 363) without the consent of the secured creditor or the approval of the Court. Any application for use of cash collateral or approval of a cash collateral agreement must comply with FRBP 4001 and a copy must be served upon the United States Trustee. All cash collateral is to be deposited in separate bank accounts.

C. Obtaining Post-Petition Credit

The debtor may not obtain credit or incur secured or unsecured debt other than in the ordinary course of business. The debtor must comply with § 364 of the BANKRUPTCY CODE and FRBP 4001. A copy of any application to the Court to obtain credit or incur debt must be served upon the United States Trustee.

D. Use, Sale or Lease of Property of the Estate

The debtor must obtain approval of the Court to use, sell, or lease property of the estate, except in the ordinary course of business, under § 363 of the BANKRUPTCY CODE. All applications to use, sell, or lease property of the estate must be served on the United States Trustee and must comply with FRBP 6004 and FRBP 2002.

E. Notice to the United States Trustee

The debtor must serve the United States Trustee with a copy of any application or motion filed by the debtor which seeks an order of any kind from the Bankruptcy Court. Additionally, the debtor must serve the United States Trustee with a copy of all pleadings in any adversary proceeding or contested matter filed by or against the debtor. See FRBP 9034(K).

All notices, pleadings and reports required to be provided to the United States Trustee shall be provided to the Assistant United States Trustee for your district or division, whose address and telephone number are as follows:

William K. Harrington, United States Trustee
Office of the United States Trustee
5 Post Office Square, Suite 1000
Boston, Massachusetts 02109-3934
(617) 788-0400 FAX (617) 565-6368

4. EFFECT OF NONCOMPLIANCE

If the operating guidelines are not followed, or operating reports are not timely submitted, a motion to convert or dismiss or other appropriate motion will be filed by the Office of the United States Trustee.

THE UNITED STATES TRUSTEE RESERVES THE RIGHT TO REVISE, MODIFY OR AMEND THESE GUIDELINES AND REQUIREMENTS FROM TIME TO TIME, AND AS IS APPROPRIATE IN AN INDIVIDUAL CASE. COMMENTS OR SUGGESTIONS REGARDING THESE GUIDELINES OR OTHER POLICIES AND PROCEDURES OF THE OFFICE OF THE UNITED STATES TRUSTEE ARE SOUGHT AND

APPRECIATED, AND SHOULD BE DIRECTED TO THE OFFICE OF THE UNITED STATES TRUSTEE FOR YOUR DISTRICT.

WILLIAM K. HARRINGTON

UNITED STATES TRUSTEE

REGION I

MAINE, MASSACHUSETTS,
NEW HAMPSHIRE AND RHODE ISLAND

Attachments:

- *Information for Initial Debtor Conference
- *Certification of Receipt of Operating Guidelines and Designation of Specific Individuals (Exhibit A)
- *Bank Account Declaration of Debtor (Exhibit B-1)
- *Debtor-in-Possession Statement for Depository (Exhibit B-2)
- *Listing of Authorized Depositories (Exhibit C)
- *Insurance Expiration Statement (Exhibit D)
- *Notice (Exhibit E)
- *Monthly Operating Report (Short or Long term)

INFORMATION FOR INITIAL DEBTOR CONFERENCE

DATE: _____

CASE NAME: _____

CASE NUMBER: _____

BUSINESS INFORMATION:

FUNCTION: _____

NUMBER OF EMPLOYEES: _____ DATE STARTED/INCORPORATED: _____

CORPORATE OFFICERS OR PARTNERS:

NAME	TITLE	% OF OWNERSHIP	SALARY (past 12 mos)
------	-------	----------------	----------------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

CONDITIONS WHICH CAUSED THE CHAPTER 11 PETITION TO BE FILED: _____

PROPOSED PLANS OF REORGANIZATION: _____

FINANCIAL CONDITION AS OF FILING DATE (ESTIMATES ARE ACCEPTABLE):

CASH: _____ INVENTORY: _____

ACCTS. RECEIVABLE (TOTAL): _____ AMOUNT UNCOLLECTIBLE: _____

FIXTURES & EQUIPMENT _____ VEHICLES: _____

REAL ESTATE:

LOCATION/DESCRIPTION	VALUE	DEBT	LIEN HOLDER
----------------------	-------	------	-------------

_____	_____	_____	_____
_____	_____	_____	_____

ACCOUNTS/NOTES RECEIVABLE FROM OFFICERS: _____

OTHER SIGNIFICANT ASSETS: _____

DEBTOR INTERVIEW

PAGE TWO

OWING UNSECURED/TRADE ACCOUNTS: _____ # OF ACCTS. _____

TAXES:

TAXING AUTHORITY

AMOUNT

WAGES OWED: _____ # CLAIMS: _____

RENT OWED: _____ MOS. IN ARREARS: _____

ACCOUNTS OR NOTES PAYABLE TO OFFICERS: _____

SECURED DEBTS (DO NOT REPEAT OBLIGATIONS LISTED UNDER REAL ESTATE):

SECURED PARTY

AMOUNT

COLLATERAL

COMMENTS: _____

Exhibit A

**CERTIFICATION OF RECEIPT OF OPERATING GUIDELINES
AND DESIGNATION OF SPECIFIC INDIVIDUALS**

CASE NAME: _____

CASE NO.: _____

I hereby certify that I have received from the Office of the United States Trustee the Operating Guidelines and Reporting Requirements for Chapter 11 Cases. Further, I hereby certify that I have read and understand the guidelines and requirements, and I agree to perform in accordance with said guidelines and requirements. I also designate below, as provided under Bankruptcy Rule 9001(5), the individual responsible for discharging the duties of the Debtor under 11 U.S.C. § 1107 and as may be required by the Court or the United States Trustee. Also designated is the individual responsible for the preparation of all financial reports as required by the Court or the United States Trustee.

(Date)

(Signature)

(Title)

(Printed Name of Signatory)

OTHER DUTIES OF DEBTOR:

PREPARATION OF FINANCIAL REPORTS:

BY: _____
(Signature)

BY: _____
(Signature)

NAME: _____
(Print or type)

NAME: _____
(Print or type)

TITLE: _____

TITLE: _____

ADDRESS: _____

ADDRESS: _____

TELEPHONE: _____

TELEPHONE: _____

The undersigned, as counsel for the debtor, has read and reviewed with the debtor, the operating guidelines and reporting requirements discussed above.

(Date)

(Attorney for Debtor)

BANK ACCOUNT DECLARATION OF DEBTOR

CASE NAME: _____ CASE NUMBER: _____

I hereby declare under penalty of perjury that all prepetition bank accounts of the above-captioned debtor were closed, as listed below:

Depository Name	Account Name	Account Number	Date Closed/ Closing Balance
_____	_____	_____	_____/_____
_____	_____	_____	_____/_____
_____	_____	_____	_____/_____
_____	_____	_____	_____/_____

I further declare under penalty of perjury that all monies have been transferred to the following debtor in possession bank accounts:

Depository Name	Account Name	Account Number	Date Opened/ Opening Balance
_____	_____	_____	_____/_____
_____	_____	_____	_____/_____
_____	_____	_____	_____/_____
_____	_____	_____	_____/_____

I declare under penalty of perjury that the information provided above and on any attachment hereto is true to the best of my knowledge and belief.

(Date)

(Signature)

(Title)

DEBTOR-IN-POSSESSION STATEMENT FOR DEPOSITORY

To: Designated Depository

From: Office of the United States Trustee

Case Name: _____

Bankruptcy Case No: _____

Date: _____

The Debtor-in-Possession has stated that the depository
 (from the attached listing) for the above styled case is

 (Designated Depository)

This authorization may be used to establish one or more accounts at the selected depository. It should be provided to and left with bank personnel for their records when opening the debtor-in-possession account(s).

The authorized signatories on these accounts, which must be indicated below, may be determined by the debtor, an officer of the debtor, a general partner of the debtor, or the debtor's attorney.

Authorized Signatories	Title
_____	_____
_____	_____
_____	_____

 Debtor or Debtor's Attorney

 For WILLIAM K. HARRINGTON
 United States Trustee
 Region I, Maine, Massachusetts
 New Hampshire and Rhode Island

Northeast Consumer Forum

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EXHIBIT D

INSURANCE EXPIRATION STATEMENT*

NAME/ADDRESS OF INSURANCE COMPANY	TYPE OF INSURANCE (LIABILITY, FIRE ETC.) & PROPERTY INSURED	NAME OF INDIVIDUAL AGENT	EXPIRATION DATE OF POLICY	DATE NEXT PREMIUM DUE
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

I declare under penalty of perjury that the information provided above and on any attachments hereto is true and correct to the best of my knowledge and belief.

(Date)

(Signature)

(Title)

(Printed Name of Signatory)

* Attach additional sheets if necessary.

Exhibit E

NOTICE

DISCLOSURE OF INTENT TO USE TAXPAYER IDENTIFYING
NUMBER FOR THE PURPOSE OF COLLECTING AND REPORTING DELINQUENT
QUARTERLY FEES OWED TO THE UNITED STATES TRUSTEE PURSUANT TO 28 U.S.C.
1930(A)(6)

Please be advised that, pursuant to the Debt Collection Improvements Act of 1996, Public Law 104-134, Title III, §31001(i)(3)(A), 110 Stat. 1321-365, codified at 31 U.S.C. §3701, the United States Trustee intends to use the debtor's Taxpayer Identifying Number ("TIN") as reported by the debtor or debtor's counsel in connection with the Chapter 11 bankruptcy proceedings for the purpose of collecting and reporting on any delinquent debt, including Chapter 11 quarterly fees, that are owed to the United States Trustee.

The United States Trustee will provide the debtor's TIN to the Department of Treasury for its use in attempting to collect overdue debts. Treasury may take the following steps: (1) submit the debt to the Internal Revenue Service Offset Program so that the amount owed may be deducted from any payment made by the federal government to the debtor, including but not limited to tax refunds; (2) report the delinquency to credit reporting agencies, (3) send collection notices to the debtor, (4) engage private collection agencies to collect the debt, and (5) engage the United States Attorney's office to sue for collection. Collection costs will be added to the total amount of the debt.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re _____ Case No. _____
Reporting Period _____

MONTHLY OPERATING REPORT

Complete and submit to the United States Trustee within 15 days after end of month

Submit copy of report to any official committee appointed in the case

REQUIRED DOCUMENTS	Form No.	Document Attached	Explanation Attached
Monthly Reporting Questionnaire	MOR-1		
Schedule of Cash Receipts and Disbursements	MOR-2		
Copies of Debtor's Bank Reconciliations			
Copies of Debtor's Bank Statements			
Copies of Cash Disbursements Journals			
Statement of Operations	MOR-3		
Balance Sheet	MOR-4		
Schedule of Post-Petition Liabilities	MOR-5		
Copies of IRS Form 6123 or payment receipt			
Copies of tax returns filed during reporting period			
Detailed listing of aged accounts payables			
Accounts Receivable Reconciliation and Aging	MOR-6		

I declare under penalty of perjury (28 U.S.C. Section 1746) that this report and all attachments are true and correct to the best of my knowledge and belief.

_____ Signature of Debtor	_____ Date
_____ Signature of Joint Debtor	_____ Date
_____ Signature of Authorized Individual*	_____ Date
_____ Printed Name of Authorized Individual	_____ Title of Authorized Individual

*Authorized individual must be an officer, director or shareholder if the debtor is a corporation; a partner if debtor is a partnership; a manager or member if debtor is a limited liability company.

Region One's Authorized Depository Listing
2/22/12

1. Avidia Bank (formerly Hudson Savings Bank)
Margaret Sullivan, Controller / Assistant Vice President, (978) 567-3569
margaret@hudsonsb.com
42 Main Street
Hudson, MA 01749
(978) 562-3569; FAX (978) 567-3603
2. Bank of America, National Association
Bank of America, NA
1-800-452-5265 / fax 404-607-6371
Customer Service, 901 Main Street, Dallas, TX 75202 is responsible for opening accounts
(877) 757-8233 x51157
Important note: **To open the account call (877) 757-8233 x 50557 and supply requested paperwork via fax to (800) 886-8968.** Local branches of Bank of America may facilitate this process, at their discretion, but local branches cannot open Debtor in Possession bank accounts without the *prior* knowledge of the Dallas office. The Bank requires copies of six prior months of bank statements and a copy of the bankruptcy petition in order to open a Debtor in Possession account.
3. Bank of New York Mellon
Thomas M. Horgan, BNY Mellon Client Service Center, (412) 234-4172
500 Ross Street, Room 1380
Pittsburgh, PA 15262
Note: Bank of New York Mellon's network of banks includes:
 - Citibank, NA
 - Comerica Bank
 - First Tennessee Bank, NA
 - New York Community Bank
 - Zions First National Bank
 - Union Bank of California, NA
4. Beverly Co-Operative Bank
William F. Howard, President
254 Cabot Street
Beverly, MA 01915
(978) 922-0857; FAX (978) 922-9060

5. Boston Private Bank & Trust Company
Jeremy Parker, Senior Vice President, (617) 912-4233
Ten Post Office Square
Boston, MA 02109
(617) 912-1900; FAX (617) 912-4550
**NOTE: Boston Private Bank & Trust Company has chosen to limit its
bankruptcy estate accounts to chapter 11 business customers who have pre-
existing relationships with the bank (i.e. prior to filing)**
6. The Cooperative Bank of Cape Cod
Mary J. O'Connor, Vice President, Operations Manager (508) 568-3336
25 Benjamin Franklin Way
Hyannis, MA 02601
(508) 568-3200; 1-800-641-1100
7. Centrix Bank & Trust
Deborah A. Morin, Vice President, Controller
1 Atwood Lane
Bedford, NH 03110-0454
(603) 647-4446; FAX (603) 647-4415
8. Century Bank & Trust Company
Michael Serieka
400 Mystic Avenue
Medford, MA 02155-6316
(781) 391-4000 or (866) 823-6887
9. Citibank, NA
Bruce Gaudino, Vice President, (212) 559-6055; FAX (212) 793-5109
bruce.gaudino@citigroup.com
153 East 53rd Street, 4th Floor
New York, NY 10022
10. Citizens Bank
**NOTE: The branch must contact John Morris in Cranston, RI, in order to
open a valid DIP account. He is at (401) 477-1441**
john.k.morris@citizensbank.com
**ALSO: The bank has reserved the right to require new bankruptcy accounts
to be subject to management approval and any case's accounts may be
required to reach a threshold of at least \$10,000.**
11. Comerica Bank
Direct Contact: Angela Arrington (408) 556-5986
Twelfth Floor, MC 4812
333 West Santa Clara Street
San Jose, CA 95113-1713

12. Commerce Bank & Trust Company
Nancy Doane AVP (508) 797-3976
386 Main Street
P.O. Box 15020
Worcester MA 01615-0020
(508) 797-6800
13. Country Bank for Savings
Arthur F. Bopp, Vice President & CFO; abopp@countrybank.com
Debra A. Olearczyk (413) 277-2222, Dawn Piechota - (413) 277-2223
75 Main Street
Ware, MA 01082-2003
(413) 967-6221, 1-800-322-8233; FAX (413) 967-3161
14. Eagle Bank
Robert C. Foley, Vice President (617) 394-3631, rfoley@bankeagle.com
466 Broadway
Everett, MA 02149
(617) 387-5110
15. East West Bank
Victor Owens, Sr. Vice President, (949) 812-5555 victor.owens@eastwestbank.com
Katrina McLean, Vice President and Relationship Manager, Trustee Deposit Services
(626) 768-6713 katrina.mclean@eastwestbank.com
135 N. Los Robles Ave., First Floor, Pasadena, CA 91101
16. Eastern Bank
Amy Ma (781) 598-7915 a.ma@easternbk.com
195 Market Street
Lynn, MA 01901
(781) 599-2100
Betty Ann Gallo, (781) 598-8691, egallo@easternbk.com
17. Edgartown National Bank
Paul J. Watts, EVP
P.O. Box 96, 2 So. Water Street, Edgartown, MA 02539
(508) 627-1100
18. First Interstate Bank
Richard Uhl, Banking Group Manager and Senior Vice President
842 West Broadway
Jackson, WY 83002
(307) 734-7373

19. First Niagara Bank, NA
Darcy Behr, Deposit Operations/Account Services Manager
6950 South Transit Road, P.O. Box 886, Lockport, NY 14095-0886
(716) 625-7500
20. First Tennessee Bank, N.A.
Gwen Dunn, Vice President (901) 523-4280 fax (901) 523-4306
185 Madison Avenue
Memphis, TN 38103-2723
21. Hampshire First Bank
James Dunphy, President & CEO
80 Canal Street
Manchester, NH 03101
(603) 623-2007
22. JPMorgan Chase Bank
Bankruptcy Management Services
4 New York Plaza, 13th Floor
New York, NY 10004
Customer Service Representative, 800-634-5273 - Option #2
23. KeyBank, N.A.
Nancy Legrow (207) 842-1016
100 Gannett Drive, Suite 101
So. Portland, ME 04106
(207) 872-1000
24. Marlborough Savings Bank
Joseph J. Normant, Senior Vice President
81 Granger Blvd., Marlborough, MA 01752
Christoher J. Berglund, Senior Vice President, 508-481-8300
NOTE: Marlborough Savings Bank has chosen to limit its bankruptcy estate accounts to chapter 11 business customers who have pre-existing relationships with the bank (i.e. prior to filing)
25. New York Community Bank
Elliot Selig, 1st Vice President, 888-201-8123 fax 516-942-0624
390 N. Broadway, Suite 100, Jericho, NY 11753
26. Passumpsic Savings Bank
Robert M. Bishop, Senior Vice President, 802-751-4212
497 Railroad Street, St. Johnsbury, VT 05819
802-748-3196

27. People's United Bank
George W. Deecken, Vice President, Treasury Group, (203) 338-4129
850 Main Street,
Bridgeport, CT 06604
28. PlainsCapital Bank
Ronald C. Berg, President, Turtle Creek (214) 252-4108
2911 Turtle Creek Blvd, Suite 1300
Dallas, TX 75219
29. PNC Bank, N.A.
Melissa A. Bitzer, Assistant Vice President (412) 762-2774
melissa.bitzer@pnc.com
Mail Code PI-POPP-10-A
One PNC Plaza
249 Fifth Avenue
Pittsburgh, PA 15222-2707
30. Rockland Trust Company
Karen DelPrete, Vice President/Operations, (508) 732-3701 / fax (508) 732-3398
288 Union Street
Rockland, MA 02370
(617) 878-6100
31. Salem Five Cents Savings Bank
Sam Stevens, Commercial Operations Manager (978) 720-5318
sam.stevens@salemfive.com
210 Essex Street
Salem, MA 01970
(978) 720-5828
32. Silicon Valley Bank
Debbie Teryison, Head of Operations; FAX (408) 496-2417
3003 Tasman Drive
Santa Clara, CA 95054
(408) 654-7400 / fax (408) 654-6389
33. Sovereign Bank
Ms. Denise A. Gaudet, Senior Vice President
(617) 757-5435
75 State Street
Boston, MA 02109
NOTE: Sovereign Bank has chosen to limit its bankruptcy estate accounts to chapter 11 business customers who have pre-existing commercial loans with the bank (i.e. prior to filing)

34. SunTrust
Samuel R. Ettingoff, Senior Vice President
Sam.ettingoff@suntrust.com
Mail Code TN-Mem-0799
One Commerce Square, 6th Floor
Memphis, TN 38150
800-269-1895; fax (888) 234-9005
35. TD Bank
Lindsay Trueblood, Operations Supervisor (207) 753-7800 or 800-462-3666
P.O. Box 1377
Lewiston, ME 04243-1377
36. Union Bank of California, N.A.
Reorganization Services
18300 Von Karman Avenue, Suite 250
Irvine, CA 92612
37. United Bank
Laurie J. Rollins, Vice President & Treasurer
95 Elm Street, P.O. Box 9020
West Springfield, MA 01090-9020
(866) 959 2265
38. Wachovia Bank
Ginger Gidden (404) 214-1424
171 17th Street N.W., GA-4512
Atlanta, GA 30363\
39. The Washington Trust Company
Barbara Hart, Vice President (401) 348-1448 bkhart@washtrust.com
23 Broad Street
Westerly, RI 02891
800-475-1301 tel; (401) 348-1600 fax
40. Wells Fargo Bank, N.A.
Barbara Briody, Vice President
P.O. Box 6995
Portland, OR 97228-6995
Matt Freeman, Operations Analyst (503) 721-5300
41. Zions First National Bank
Maria Kranski, VP Operations, 800-737-6470, fax (801) 320-9920
1 South Main Street, 16th Floor
Salt Lake City, UT 84111

UNITED STATES BANKRUPTCY COURT

In re _____,
Debtor

Case No. _____

Small Business Case under Chapter 11

SMALL BUSINESS MONTHLY OPERATING REPORT

Month: _____

Date filed: _____

Line of Business: _____

NAISC Code: _____

IN ACCORDANCE WITH TITLE 28, SECTION 1746, OF THE UNITED STATES CODE, I DECLARE UNDER PENALTY OF PERJURY THAT I HAVE EXAMINED THE FOLLOWING SMALL BUSINESS MONTHLY OPERATING REPORT AND THE ACCOMPANYING ATTACHMENTS AND, TO THE BEST OF MY KNOWLEDGE, THESE DOCUMENTS ARE TRUE, CORRECT AND COMPLETE.

RESPONSIBLE PARTY:

 Original Signature of Responsible Party

 Printed Name of Responsible Party

Questionnaire: *(All questions to be answered on behalf of the debtor.)*

	Yes	No
1. IS THE BUSINESS STILL OPERATING?	<input type="checkbox"/>	<input type="checkbox"/>
2. HAVE YOU PAID ALL YOUR BILLS ON TIME THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
3. DID YOU PAY YOUR EMPLOYEES ON TIME?	<input type="checkbox"/>	<input type="checkbox"/>
4. HAVE YOU DEPOSITED ALL THE RECEIPTS FOR YOUR BUSINESS INTO THE DIP ACCOUNT THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
5. HAVE YOU FILED ALL OF YOUR TAX RETURNS AND PAID ALL OF YOUR TAXES THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
6. HAVE YOU TIMELY FILED ALL OTHER REQUIRED GOVERNMENT FILINGS?	<input type="checkbox"/>	<input type="checkbox"/>
7. HAVE YOU PAID ALL OF YOUR INSURANCE PREMIUMS THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
8. DO YOU PLAN TO CONTINUE TO OPERATE THE BUSINESS NEXT MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
9. ARE YOU CURRENT ON YOUR QUARTERLY FEE PAYMENT TO THE U.S. TRUSTEE?	<input type="checkbox"/>	<input type="checkbox"/>
10. HAVE YOU PAID ANYTHING TO YOUR ATTORNEY OR OTHER PROFESSIONALS THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
11. DID YOU HAVE ANY UNUSUAL OR SIGNIFICANT UNANTICIPATED EXPENSES THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
12. HAS THE BUSINESS SOLD ANY GOODS OR PROVIDED SERVICES OR TRANSFERRED ANY ASSETS TO ANY BUSINESS RELATED TO THE DIP IN ANY WAY?	<input type="checkbox"/>	<input type="checkbox"/>
13. DO YOU HAVE ANY BANK ACCOUNTS OPEN OTHER THAN THE DIP ACCOUNT?	<input type="checkbox"/>	<input type="checkbox"/>

B 25C (Official Form 25C) (12/08)

- 14. HAVE YOU SOLD ANY ASSETS OTHER THAN INVENTORY THIS MONTH?
- 15. DID ANY INSURANCE COMPANY CANCEL YOUR POLICY THIS MONTH?
- 16. HAVE YOU BORROWED MONEY FROM ANYONE THIS MONTH?
- 17. HAS ANYONE MADE AN INVESTMENT IN YOUR BUSINESS THIS MONTH?
- 18. HAVE YOU PAID ANY BILLS YOU OWED BEFORE YOU FILED BANKRUPTCY?

TAXES

DO YOU HAVE ANY PAST DUE TAX RETURNS OR PAST DUE POST-PETITION TAX OBLIGATIONS?

IF YES, PLEASE PROVIDE A WRITTEN EXPLANATION INCLUDING WHEN SUCH RETURNS WILL BE FILED, OR WHEN SUCH PAYMENTS WILL BE MADE AND THE SOURCE OF THE FUNDS FOR THE PAYMENT.

(Exhibit A)

INCOME

PLEASE SEPARATELY LIST ALL OF THE INCOME YOU RECEIVED FOR THE MONTH. THE LIST SHOULD INCLUDE ALL INCOME FROM CASH AND CREDIT TRANSACTIONS. *(THE U.S. TRUSTEE MAY WAIVE THIS REQUIREMENT.)*

TOTAL INCOME \$ _____

SUMMARY OF CASH ON HAND

Cash on Hand at Start of Month \$ _____

Cash on Hand at End of Month \$ _____

PLEASE PROVIDE THE TOTAL AMOUNT OF CASH CURRENTLY AVAILABLE TO YOU **TOTAL** \$ _____

(Exhibit B)

EXPENSES

PLEASE SEPARATELY LIST ALL EXPENSES PAID BY CASH OR BY CHECK FROM YOUR BANK ACCOUNTS THIS MONTH. INCLUDE THE DATE PAID, WHO WAS PAID THE MONEY, THE PURPOSE AND THE AMOUNT. *(THE U.S. TRUSTEE MAY WAIVE THIS REQUIREMENT.)*

TOTAL EXPENSES \$ _____

(Exhibit C)

CASH PROFIT

INCOME FOR THE MONTH *(TOTAL FROM EXHIBIT B)* \$ _____

EXPENSES FOR THE MONTH *(TOTAL FROM EXHIBIT C)* \$ _____

(Subtract Line C from Line B) **CASH PROFIT FOR THE MONTH** \$ _____

B 25C (Official Form 25C) (12/08)

UNPAID BILLS

PLEASE ATTACH A LIST OF ALL DEBTS (INCLUDING TAXES) WHICH YOU HAVE INCURRED SINCE THE DATE YOU FILED BANKRUPTCY BUT HAVE NOT PAID. THE LIST MUST INCLUDE THE DATE THE DEBT WAS INCURRED, WHO IS OWED THE MONEY, THE PURPOSE OF THE DEBT AND WHEN THE DEBT IS DUE. *(THE U.S. TRUSTEE MAY WAIVE THIS REQUIREMENT.)*

TOTAL PAYABLES \$ _____

(Exhibit D)

MONEY OWED TO YOU

PLEASE ATTACH A LIST OF ALL AMOUNTS OWED TO YOU BY YOUR CUSTOMERS FOR WORK YOU HAVE DONE OR THE MERCHANDISE YOU HAVE SOLD. YOU SHOULD INCLUDE WHO OWES YOU MONEY, HOW MUCH IS OWED AND WHEN IS PAYMENT DUE. *(THE U.S. TRUSTEE MAY WAIVE THIS REQUIREMENT.)*

TOTAL RECEIVABLES \$ _____

(Exhibit E)

BANKING INFORMATION

PLEASE ATTACH A COPY OF YOUR LATEST BANK STATEMENT FOR EVERY ACCOUNT YOU HAVE AS OF THE DATE OF THIS FINANCIAL REPORT OR HAD DURING THE PERIOD COVERED BY THIS REPORT.

(Exhibit F)

EMPLOYEES

NUMBER OF EMPLOYEES WHEN THE CASE WAS FILED? _____
 NUMBER OF EMPLOYEES AS OF THE DATE OF THIS MONTHLY REPORT? _____

PROFESSIONAL FEES

BANKRUPTCY RELATED:

PROFESSIONAL FEES RELATING TO THE BANKRUPTCY CASE PAID DURING THIS REPORTING PERIOD? \$ _____

TOTAL PROFESSIONAL FEES RELATING TO THE BANKRUPTCY CASE PAID SINCE THE FILING OF THE CASE? \$ _____

NON-BANKRUPTCY RELATED:

PROFESSIONAL FEES NOT RELATING TO THE BANKRUPTCY CASE PAID DURING THIS REPORTING PERIOD? \$ _____

TOTAL PROFESSIONAL FEES NOT RELATING TO THE BANKRUPTCY CASE PAID SINCE THE FILING OF THE CASE? \$ _____

B 25C (Official Form 25C) (12/08)

PROJECTIONS

COMPARE YOUR ACTUAL INCOME AND EXPENSES TO THE PROJECTIONS FOR THE FIRST 180 DAYS OF YOUR CASE PROVIDED AT THE INITIAL DEBTOR INTERVIEW.

	Projected	Actual	Difference
INCOME	\$ _____	\$ _____	\$ _____
EXPENSES	\$ _____	\$ _____	\$ _____
CASH PROFIT	\$ _____	\$ _____	\$ _____

TOTAL PROJECTED INCOME FOR THE NEXT MONTH: \$ _____

TOTAL PROJECTED EXPENSES FOR THE NEXT MONTH: \$ _____

TOTAL PROJECTED CASH PROFIT FOR THE NEXT MONTH: \$ _____

ADDITIONAL INFORMATION

PLEASE ATTACH ALL FINANCIAL REPORTS INCLUDING AN INCOME STATEMENT AND BALANCE SHEET WHICH YOU PREPARE INTERNALLY.

Reset

Save As...

Print

UNITED STATES BANKRUPTCY COURT
DISTRICT OF EUPHORBIA

IN RE:

PROFESSOR M. PLUM
COLONEL D. MUSTARD

CHAPTER 11
CASE NO. 12-12345

Debtors

DEBTORS' DISCLOSURE STATEMENT
DATED July 12, 2012
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I. INTRODUCTION

This is the disclosure statement (the “Disclosure Statement”) in the individual Chapter 11 case of Professor M. Plum and Colonel D. Mustard (the “Debtors”). This Disclosure Statement contains information about the Debtors and describes the Debtors’ Plan of Reorganization Dated July 12, 2012 (the “Plan”) to be filed by the Debtors. A full copy of the Plan is attached to this Disclosure Statement as Exhibit A. ***Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one).***

***The Plan provides for ten (10) classes of secured (or previously secured) claims; one (1) class of general unsecured claims; and one (1) class of equity security holders. Unsecured creditors holding allowed claims will receive distributions, which the proponent of the Plan has valued at approximately three quarters of one cent (0.75%) on the dollar, as follows:*¹**

¹ The Plan provides that the Debtors will make a total of six distributions (the Initial Distribution and the five Annual Distributions) to holders of Allowed Administrative, Priority, and General Unsecured Claims. Based on currently available information, the Debtors at this time project that holders of Allowed Unsecured Claims will be paid a total dividend of approximately 0.75% % of the face amount of their claims through the five projected Annual Distributions. The Debtors’ projections are based on the assumption that the total face amount of all Allowed Unsecured Claims in this case will equal approximately \$1,000,000, which the Debtors believe to be the total amount of unsecured claims that were scheduled/filed as of the date of this Disclosure Statement. The \$1,000,000 total includes projected unsecured deficiency claims totaling approximately \$750,000 held by Clueless Bank (Classes 6 and 7, which are being treated as unsecured), as well as a general unsecured claim held by Euphorbia Revenue Services in the amount of \$5,000, representing the penalty portion of its claim for unpaid sales taxes (Claim 1). Creditors are cautioned that the foregoing dividend analysis is an **estimated projection only**, and the actual dividend amount will likely change when claims become allowed or disallowed and the total amount of all allowed claims is known. For example, Classes 6 and 7 (Clueless Bank) are based on claims (Claims 2 and 3) arising from the Debtors’ guaranty of business debt (for Plumber Academic Manufacturing, Inc. (“Plumber Manufacturing”) and Mustard Plant, LLC. (“Mustard Plant”), *see infra*), and the assets of that business have recently been liquidated under Chapter 7 of the Code, so the amounts of the general unsecured deficiency claims of Clueless Bank that are ultimately allowed as Class 11 claims may be different than as stated in this Disclosure Statement depending on, *inter alia*, the exact amount of net proceeds recovered from the sale of the business assets of Plumber and Mustard Plant. For purposes of this dividend analysis, the Clueless Bank general unsecured claim in Class 7 is assumed to equal approximately \$250,000, based on the net proceeds of approximately \$500,000 recovered on the sale of Mustard Plant collateral. To the extent the

(1) First, upon entry of the Order confirming the Plan, the State of Euphorbia Bureau of Revenue Services (“Euphorbia Revenue Services”) shall have an Allowed Unsecured Priority Tax Claim in the Amount of \$10,300, representing the tax and interest component of its claim for unpaid sales taxes, as of the Petition Date (Claim 1), and an allowed General Unsecured Claim under Class 11 of the Plan in the amount of \$5,000 representing the penalty portion of Claim 3. The Allowed Priority Claim will be paid within five (5) years of the Petition Date, on or before February 1, 2017, with interest at the rate of 7% per annum calculated based on the outstanding balance at the time of each distribution (with total interest to be paid over five (5) years expected to be approximately \$2,500 on the Allowed Unsecured Priority Claim only).² The Euphorbia Revenue Services Allowed General Unsecured Claim will be treated along with all other Allowed General Unsecured Claims under Class 11, as set forth below, with no interest component. Any and all other claims of Euphorbia Revenue Services shall be disallowed at confirmation.

(2) Second, within 120 days after the Effective Date of the Plan, the Debtors shall make an initial distribution (the “Initial Distribution”) in the amount of \$5,000, all of which will be used to pay down Euphorbia Revenue Services’ Allowed Priority Claim by \$4,300 and to pay the first

amount of Clueless’s allowed Class 11 unsecured claims are ultimately allowed in a different amount, the dividend to other creditors in Class 11 could change.

² Attached hereto as Exhibit B is a projection of the payments of the Euphorbia Revenue Services Priority Tax Claim, with a schedule of projected interest.

year's interest on that claim in the amount of approximately \$700. No other creditors will receive funds from the Initial Distribution;

(3) Third, the Debtors will make five (5) annual pro-rata distributions (collectively, the "Annual Distributions"), in the amount of \$5,000 each, as follows: (a) \$1,500 will be distributed annually to Debtors' Counsel for present and future administrative claims, for outstanding fees, and for future Chapter 11 fees (collectively, "Counsel Fees"³), subject to Court approval;⁴ (b) Euphorbia Revenue Services will receive, through the first four Annual Distributions, \$1,500 annually on account of its Allowed Priority Tax Claim, plus interest at the rate of 7% per annum based on the unpaid balance at the time of each distribution (with interest payments expected to equal respectively (i) \$600; (ii) \$500; (iii) \$400; and (iv) \$300); and (c) creditors holding Allowed Unsecured Claims are expected to receive pro rata distributions of the remaining balances annually for five years, as follows: (i) \$1,400 in year one; (ii) \$1,500 in year two; (iii) \$1,600 in year three; (iv) \$1,700 in year four; and (v) \$3,500 in year five.

The First Annual Distribution shall be made on or before twelve (12) months after the Initial Distribution, and the Final Distribution will be

³ *The Debtors and their undersigned counsel have agreed that any outstanding Counsel Fees and future Counsel Fees, all of which are subject to Court approval, will be spread out over the life of the Plan so that unsecured creditors holding Allowed Unsecured Claims will receive on account of such claims their pro rata share of each Annual Distribution.*

⁴ *Counsel reserves the right to petition the Court at the time of discharge for an additional award of accrued, unpaid fees and expenses then due.*

made on or before sixty (60) months after the Initial Distribution, expected to be made on or before December 31, 2017. Upon completion of the Initial Distribution, and each subsequent Annual Distribution, Debtor's counsel shall transmit a disbursement report to the U.S. Trustee's Office.⁵

This would mean that, by the time of completion of the Plan payments, the total \$30,000 Plan Cash would be distributed as follows: (1) \$7,500 would be paid to Counsel for administrative expenses, subject to court approval (\$1,500 per year from each of the five Annual Distributions);⁶ (2) a total of \$12,800 (\$10,300 claim and approximately \$2,500 interest) would be paid to Euphorbia Revenue Services in full satisfaction of its Allowed Priority Tax Claim; and (3) the balance of approximately \$9,700 would be distributed, pro rata, to unsecured creditors holding Allowed Unsecured Claims.⁷

A. Purpose of this Document.

This Disclosure Statement describes:

- The Debtors and significant events during their bankruptcy cases;
- How the Plan proposes to treat claims or equity interests of the type you hold (i.e., what you will receive on your claim or equity interest if the plan is confirmed);
- Who can vote on or object to the Plan;

⁵ *Payments to creditors holding Allowed Secured Claims will be paid as they become due directly by the Debtors, except as otherwise expressly provided below and in the Plan.*

⁶ As of the date this Disclosure Statement was first submitted to the Court, the outstanding administrative expenses of Counsel totaled approximately \$1,500. The Plan contemplates an additional administrative reserve of approximately \$7,500 in Counsel Fees, all subject to Court approval.

⁷ Attached hereto as Exhibit C is a projected distribution summary and dividend analysis, which is based on presently available information and may change. See note 1 supra.

- What factors the Bankruptcy Court (the “Court”) will consider when deciding whether to confirm the Plan;
- Why the Debtors believes the Plan is feasible, and how treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation; and
- The effect of confirmation of the Plan

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

**B. Deadlines for Voting and Objecting;
Date of Plan Confirmation Hearing**

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

1. *Time and Place of Hearing to Confirm the Plan*

The hearing at which the Court will determine whether to confirm the Plan will take place on _____, **2012 at** _____ at the United States Bankruptcy Court, 321 Tree Street, Plumland, Euphorbia 01011.

2. *Deadline for Voting to Accept or Reject the Plan*

If you are entitled to vote to accept or reject the Plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to His Majesty, Esq., Majestic Law Office, 123 Orchard Street, Plum Village, Euphorbia 01777. See Section IV.A. below for a discussion of voting eligibility requirements.

Your ballot must be received by His Majesty, Esq., Majestic Law Office, 123 Orchard Street, Plum Village, Euphorbia 01777 no later than _____, 2012 (the “Voting Deadline”).

IMPORTANT NOTICE: IF YOU ARE ELIGIBLE TO VOTE AND YOUR COMPLETED BALLOT IS NOT RECEIVED BY MAJESTIC LAW OFFICE ON OR BEFORE THE VOTING DEADLINE, YOU WILL BE DEEMED TO HAVE VOTED TO ACCEPT THE PLAN.

3. *Deadline for Objecting to Confirmation of the Plan*

Objections to confirmation of the Plan must be filed with the Court and served upon the Debtor, through his counsel His Majesty, Esq. Majestic Law Office, 123 Orchard Street, Plum Village, Euphorbia 01777, by _____, 2012.

4. *Identity of Person to Contact for More Information*

If you want additional information about the Plan, you should contact His Majesty, Esq., Majestic Law Office, 123 Orchard Street, Plum Village, Euphorbia 01777.

C. **Disclaimer**

At a hearing [to be] held on August 15, 2012, the Court approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted. Creditors and interested holders are directed to read this Disclosure Statement and accompanying proposed Plan in its entirety and should not rely solely on the Summaries contained in this Disclosure Statement in deciding to vote for the Plan.

IT IS RECOMMENDED THAT EACH CREDITOR AND HOLDER OF INTEREST REVIEW THE ENTIRE PLAN AND DISCLOSURE STATEMENT CAREFULLY AND DETERMINE WHETHER OR NOT TO ACCEPT THE PLAN BASED ON THAT CREDITOR'S OR INTEREST HOLDER'S INDEPENDENT EVALUATION AND JUDGMENT. IT IS IMPORTANT THAT YOU VOTE IF YOU HAVE A RIGHT TO VOTE. IN DETERMINING WHETHER A PLAN OF REORGANIZATION HAS BEEN ACCEPTED BY THE REQUIRED MAJORITIES OF CREDITORS AND INTEREST HOLDERS, ONLY THOSE CREDITORS AND INTEREST HOLDERS WHO ACTUALLY VOTE ON THE PLAN ARE COUNTED, EXCEPT WHERE SPECIFICALLY STATED OTHERWISE.

NO REPRESENTATIONS CONCERNING THE DEBTOR OR THE PROPOSED PLAN ARE AUTHORIZED, EXCEPT AS SET FORTH IN THIS DISCLOSURE STATEMENT. CERTAIN OF THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE, BY NATURE, FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL BE REFLECTIVE OF ACTUAL OUTCOMES.

II. **BACKGROUND**

A. **Description and History of the Debtors' Businesses and Events Leading to a Bankruptcy Filing.**

Prior to the commencement of this bankruptcy case, Debtor Professor M. Plum wholly owned and operated Plumber Academic Manufacturing, Inc. ("Plumber Manufacturing"), a manufacturing business located in Plum Village, Euphorbia on real estate owned by Mustard Plant, LLC. ("Mustard Plant"), another entity wholly owned by Debtors Professor M. Plum and Colonel D. Mustard. Plumber Manufacturing previously designed and manufactured commercial academic supplies and previously had 25 employees. Due to the 2008 downturn in the economy and other factors, Plumber Manufacturing had serious financial difficulties and ultimately filed a petition in this

Court under Chapter 11 of the Code on July 1, 2011. Plumber was unable to secure additional funding to maintain on-going operations, and consequently on December 1, 2011, Plumber ceased operations and laid off its employees. Plumber's Chapter 11 case was converted to a case under Chapter 7 on December 15, 2011. Subsequently, with the cooperation of the Debtors and Mustard Plant, substantially all of the assets of these entities were liquidated by Plumber's Chapter 7 Trustee, Chapter 7 Case. No. 11-12345 (the "Plumber Chapter 7 Case").

Because of Plumber's financial difficulties and the cessation of its business operations, and Debtor Professor M. Plum's consequent loss of earnings, the Debtors were no longer able to meet their financial obligations, including the obligations arising from their guarantees of Plumber and Mustard Plant's business debts, and so had no choice but to file personal petitions for relief under Chapter 11 of the Code. Fortunately, Debtor Professor M. Plum was able to find employment as a sales representative in a related field in Plumland, with wages he believes will be sufficient to fund the Plan, as set forth more fully below in this Disclosure Statement and Exhibit D attached hereto. At this time, Colonel D. Mustard remains employed as a homemaker.

For the three years prior to filing Chapter 11, Debtor Professor M. Plum had the following income: (a) \$35,000 January 1, 2012 through Petition Date; (b) \$60,000 in 2011; and (c) \$25,000 in 2010; and (d) \$100,000 in 2011 for repayment of loan from corporation.

B. Insiders of the Debtors

Debtor Professor M. Plum wholly owns Plumber and Mustard Plant, all assets of which have been or are being liquidated in Chapter 7 as set forth more fully above. There will likely be no surplus assets in the Chapter 7 case and the Debtor therefore values both of those wholly owned entities at \$0.

C. Management of the Debtors Before and During Bankruptcy

During the two years prior to the date on which the bankruptcy petition was filed, and during this Chapter 11 case, the Debtors have managed their own affairs, and they will continue to do so after the effective date of the order confirming the Plan. As stated above, Debtor Professor M. Plum previously managed Plumber and Mustard Plant but those business operations have ceased.

D. Significant Events During the Bankruptcy Case

1. This case commenced as a Chapter 11 case upon the filing of a voluntary petition for relief under Chapter 11 by the Debtors on February 1, 2012 ("Petition Date").

Subsequently, as of the date of this Disclosure Statement, the following orders have entered in this case:⁸

2. On March 2, 2012 the Court entered an Order Granting the Debtors' Application to Employ His Majesty, Esq. as Debtors' counsel.

3. On March 10, 2012, the Court entered an agreed to Small Business scheduling order.

4. On April 15, 2012, the First Meeting of Creditors under section 341 of the Bankruptcy Code was held and adjourned.

5. On May 1, 2012, and June 1, 2012, the Court entered an order extending the time for Clueless Bank to object to the dischargeability of debts under Code section 523. The most recent order extended the deadline until August 31, 2012. The deadline for all other creditors to object to discharge or dischargeability expired on May 1, 2012.

6. In March 2012, pursuant to orders entered in the Plumber Chapter 7 case, the real estate of Plumber was sold at auction by the Chapter 7 Trustee, and the closing on the sale of those assets for approximately \$500,000 was consummated in April 2012.

E. Projected Recovery of Avoidable Transfers

The Debtor does not intend to pursue preference, fraudulent conveyance, or other avoidance actions. ***The Debtor believes that there are no preference, fraudulent conveyance or other avoidance actions to pursue.***

F. Claims Objections

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The procedures for resolving disputed claims are set forth in Article VI of the Plan.

The deadline for filing a proof of claim in this case was May 1, 2012 for persons other than governmental units, and is September 1, 2012 for governmental units. The deadline for filing objections to claims is 90 days after the Confirmation Date, or 90 days after the applicable claims deadline, whichever is later.

⁸ This is only a summary of the docket and the Orders described below. The docket and the Orders should be consulted for an exact description of their contents and terms. In the event of any discrepancy between this summary and the docket or the Orders, the terms of the docket and the Orders shall control.

G. Current and Historical Financial Conditions

The identity and fair market value of the estate's assets are as follows:

Property	Valuation	Source of Valuation	Secured Claim Amt.	Value of Exemption	Equity
Residence 95 State Highway Plumland, Euphorbia	\$499,000	Amended Schedule A and March 1, 2012 Appraisal	Secured claims to be allowed at \$499,000 (in excess of \$2 million asserted)	\$142,500	\$0
Bank Balances on Date of Filing	\$1,520	Sch. B	\$0	\$800	\$720
Household Goods & Furnishings	\$8,000	Sch. B	\$0	\$8,000	\$0
Miscellaneous Books & Photographs	\$500	Sch. B	\$0	\$500	\$0
Wearing Apparel	\$500	Sch. B	\$0	\$500	\$0
Engagement Ring & Wedding Bands	\$1,000	Sch. B	\$0	100%	\$0
¼ diamond earrings & misc. jewelry	\$800	Sch. B	\$0	\$1,500	\$0
Fire arms, sports, photographic and other hobby equipment	\$200	Sch. B	\$0	\$0	\$200
Simple IRA	\$1,500	Sch. B	\$0	\$1,500	\$0
Stock (Plumber Millwork, Inc. and MUSTARD PLANT, Inc.)	\$0	Sch. B	\$0	\$0	\$0
Power Boat with motor and trailer	\$7,000	Sch. B	\$0	\$0	\$7,000
2000 GMC Truck 185,000 miles	\$1,950	Sch. B	\$0	\$0	\$1,950
2001 Cadillac 157,000 miles	\$6,575	Sch. B	\$0	\$5,000	\$1,575
2008 Subaru 40,000 miles	\$5,000	Sch. B	\$4,699	\$0	\$301
1963 Chevrolet 130,000 miles	\$500	Sch. B	\$0	\$0	\$500
2008 Pickup 40,000 miles	\$9,000	Sch. B	\$9,528.11	\$0	\$0
1 cat	\$0	Sch. B	\$0	\$0	\$0
Old Snowmobile	\$1,005	Sch. B	\$0	\$0	\$1,005
Newer Snowmobile	\$1,415	Sch. B	\$0	\$0	\$1,415
SUBTOTAL					\$15,296
CHAPTER 7 TRUSTEE COMMISSION 11 U.S.C. § 326					(\$2,280)
Ch. 7 LIQUIDATION AMOUNT (Available for Unsecured Creditors in Hypothetical Chapter 7 Case)					\$13,016

A summary of the Debtors' projected monthly income and expenses is attached hereto as Exhibit D. A summary of the Debtors' periodic operating reports filed since the commencement of the Debtors' bankruptcy case is set forth in the following table:

Month	Gross Income	Expenses	Profit
March 2012	\$3,000	(\$3,500)	(\$500)

April 2012	\$6,000	(\$4,500)	\$1,500
May 2012	\$7,000	(\$8,000)	(\$1,000)
June 2012	\$7,000	(\$6,000)	\$1,000
TOTAL	\$23,000	(\$22,000)	\$1,000

III. SUMMARY OF THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. What is the Purpose of the Plan of Reorganization?

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

B. Unclassified Claims

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan Proponents have *not* placed the following claims in any class:

1. *Administrative Expenses*

Administrative expenses are costs or expenses of administering the Debtor’s Chapter 11 case which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

The following chart lists the Debtors’ estimated administrative expenses, and their proposed treatment under the Plan:

Type	Estimated Amount Owed	Proposed Treatment
Expenses Arising in the Ordinary Course of Business After the Petition Date	NONE outstanding	Paid in full on the effective date of the Plan, or according to terms of obligation if later
The Value of Goods Received in the Ordinary Course of Business Within 20 Days Before the Petition Date	NONE	Paid in full on the effective date of the Plan, or according to separate written agreement, or according to court order if such fees have not been approved by the Court on the effective date
Professional Fees, as	\$1,500	Counsel to be paid \$1,500 annually from

approved by the Court		Plan Cash for the duration of the 60-month Plan, subject to Court approval of fees (includes administrative reserve of approximately \$7,500 for future fees) ⁹
Clerk's Office Fees	NONE	Paid in full on the Effective Date of the Plan
Other Administrative Expenses	NONE	Paid in full on the Effective Date of the Plan
Office of the U.S. Trustee Fees	NONE	Outstanding Amount to be paid in full on the Effective Date of the Plan.

2. *Priority Tax Claims*

Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding 5 years from the order for relief.

The following chart lists the Debtors' estimated § 507(a)(8) priority tax claims and their proposed treatment under the Plan:

Description (name and type of tax)	Estimated Amount Owed	Date of Assessment	Treatment
State of Euphorbia Bureau of Revenue Services	\$10,300	2011	<i>The State of Euphorbia Bureau of Revenue Services ("<u>Euphorbia Revenue Services</u>") shall have an Allowed Unsecured Priority Claim in the Amount of \$10,300, representing the tax and interest component of its claim for unpaid sales taxes as of the Petition Date (Claim 1), and an allowed General Unsecured Claim under Class 11 of the Plan in the amount of \$5,000 representing the penalty portion of Claim 1.</i>

⁹ Counsel reserves the right to petition the Court at the time of discharge for an additional award of accrued, unpaid fees and expenses then due.

		<p><i>Interest on the Allowed Priority Tax Claim will be paid at the rate of 7% per annum on the balance outstanding as of the time of each distribution. The Allowed Priority Tax Claim will be paid in full with interest on or before March 1, 2017 in five (5) installments beginning with the Initial Distribution. Unsecured portion of Claim to be treated under Class 11. Upon Confirmation, all other claims of Euphorbia Revenue Services shall be disallowed, and Euphorbia Revenue Services' liens recorded in the Plumland County Registry of Deeds in Book 12345, Page 61 and Book 12346, Page 72 will be avoided in their entirety as unsecured pursuant to 11 U.S.C. § 506</i></p>
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C. Classes of Claims and Equity Interests

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

1. *Classes of Secured Claims*

Allowed Secured Claims are claims secured by property of the Debtors' bankruptcy estates (or that are subject to setoff) to the extent allowed as secured claims under § 506 of the Code. If the value of the collateral or setoffs securing the creditor's claim is less than the amount of the creditor's allowed claim, the deficiency will be classified as a general unsecured claim.

The following chart lists all classes containing Debtors' secured prepetition claims and their proposed treatment under the Plan:

Class #	Description	Insider?	Impairment	Treatment
Class 1	Secured Claim of City of Plum Village, secured by tax lien recorded in the Plumland County Registry of Deeds in Book 12347, Page 1112, in the original amount of \$4,500.	No	IMPAIRED	Secured claim to be paid with interest at 4.5% per annum amortized over 60 months beginning on the 1 st day of the month following the Effective Date and continuing monthly for 60 months in 60 equal installments of \$80.94 to be paid to City of Plum Village directly by the Debtors.
Class 2	Secured Claim of City of Plum Village, secured by tax lien recorded in the Plumland County Registry of Deeds in Book 12348, Page 81, in the original amount of \$8,500.	No	IMPAIRED	Secured claim to be paid with interest at 4.5% per annum amortized over 60 months beginning on the 1 st day of the month following the Effective Date and continuing monthly for 60 months in 60 equal installments of \$150 to be paid to City of Plum Village directly by the Debtors.
Class 3	Secured Claim of First Savings Bank, Secured by Mortgage of Debtors' real property located at 95 State Highway, Plumland, Euphorbia, by virtue of mortgage from Plum & Mustard to Euphorbia Savings Bank (later First Savings Bank by merger), dated February 1, 2000 and recorded February 2, 2000 in the PCRD in Book 12222, Page 5	No	IMPAIRED	To be paid directly by the Debtors pursuant to the terms of the loan documents.
Class 4	Secured claim of Clueless Bank, Secured by Mortgage of Debtors' real property located at 95 State Highway, Plumland, Euphorbia, by virtue of Mortgage from Plum & Mustard to Clueless Bank,	No	IMPAIRED	This claim (Claim 2) is allowed in the full amount as a secured claim. The mortgage remains on the residence at 95 State Highway, Plumland, Euphorbia (the "Property"). All payments will continue to be made in a timely manner in accordance with the existing note, and all other obligations under the note and the

	dated July 1, 2008 recorded July 2, 2008 in the PCRD in Book 12222, Page 12.			<p>mortgage on the Property will be timely paid and/or performed. All of the Bank's rights and remedies under said mortgage claim and any related documents are preserved.</p> <p><u>BY VIRTUE OF THE ENTRY OF THE CONFIRMATION ORDER, AND UPON THE EFFECTIVE DATE OF THE PLAN, THIS DEBT WILL BE DEEMED FULLY REAFFIRMED BY BOTH DEBTORS in accordance with 11 U.S.C. § 524. IN ADDITION, THE COVENANTS AND CONDITIONS ATTACHED TO THE PLAN AS EXHIBIT 1 ARE HEREBY INCORPORATED BY REFERENCE AS IF SET FORTH IN FULL AND SHALL BE DEEMED INCORPORATED INTO THE ORDER CONFIRMING THE PLAN.</u></p>
Class 5	Secured and unsecured claims of Clueless Bank, partially secured by Mortgage of Debtors' real property located at 95 State Highway, Plumland, Euphorbia, by virtue of Mortgage and Security Agreement from Professor M. Plum to Clueless Bank, dated July 31, 2009 recorded August 3, 2009 in the PCRD Book 15222, Page 48.	NO	IMPAIRED	<p>The Bank will make an 1111(b) election with respect to this claim (Claim 3). Accordingly, the claim will be allowed in the full amount (\$250,000) as a secured claim, and the mortgage securing this claim will remain on the Property. The treatment of the claim will be based on a hypothetical loan as follows, and the assumed principal amount of the loan will be as follows:</p> <p>Interest will continue to accrue on the full outstanding balance of this claim (\$250,000) at the rate of 5.5%, and the monthly payments on this claim will be \$555. The first payment will be due thirty (30) days after the Effective date of the Plan. The remaining unpaid amount of the claim will be due and payable in</p>

				<p>full 24 months after the Effective Date of the Plan (the “<u>Maturity Date</u>”). On the Maturity Date, the entire principal amount of the claim, all accrued but unpaid interest, and all other amounts will be due and payable. <u>IN ADDITION, THE COVENANTS AND CONDITIONS ATTACHED TO THE PLAN AS EXHIBIT 1 ARE HEREBY INCORPORATED BY REFERENCE AS IF SET FORTH IN FULL AND SHALL BE DEEMED INCORPORATED INTO THE ORDER CONFIRMING THE PLAN.</u></p>
Class 6	<p>Secured and Unsecured Claims of Clueless Bank, secured by Mortgage of Debtors’ real property located at 95 State Highway, Plumland Euphorbia, by virtue of Mortgage and Security Agreement from Professor M. Plum to Clueless Bank, dated July 1, 2009 recorded August 1, 2009 in the PCRD Book 12294, Page 49.</p>	No	IMPAIRED	<p>This claim (Claim 4) will be allowed in the full amount (\$500,000) as an unsecured claim and will be treated in the manner provided for general unsecured claims under the plan.</p> <p>Class 6 mortgage on Debtors’ real property located at 95 State Highway, Plumland, Euphorbia, to be avoided in its entirety as unsecured pursuant to 11 U.S.C. § 506 upon entry of the order confirming the Plan and all Class 6 claims (including Claim 4) shall be treated as unsecured pursuant to Class 11 of the Plan. <u>IN ADDITION, THE COVENANTS AND CONDITIONS ATTACHED TO THE PLAN AS EXHIBIT 1 ARE HEREBY INCORPORATED BY REFERENCE AS IF SET FORTH IN FULL AND SHALL BE DEEMED INCORPORATED INTO THE ORDER CONFIRMING THE PLAN.</u></p>

Class #	Description	Insider?	Impairment	Treatment
Class 7	Unsecured Claims of Clueless Bank, previously secured by Mortgage of Debtors' real property located at 95 State Highway, Plumland, Euphorbia, by virtue of Mortgage and Security Agreement from Professor M. Plum and Colonel D. Mustard to Clueless Bank, dated July 1, 2009 recorded August 1, 2009 in the PCRD Book 12294, Page 52.	No	IMPAIRED	<p>This claim (Claim 4) will be allowed in the full amount (\$750,000) as an unsecured claim and will be treated in the manner provided for general unsecured claims under Class 11 of the Plan. The claim will be reduced by the net proceeds received by the Clueless Bank from the disposition of the real estate previously owned by MUSTARD PLANT, Inc. (approximately \$500,000, which would reduce the claim to approximately \$250,000). In calculating the net proceeds, Clueless Bank shall be entitled to deduct any and all costs or expenses incurred by Clueless Bank in connection with the preservation, maintenance, and disposition of the real estate (including the amounts paid to the chapter 7 trustee).</p> <p>Class 7 mortgage on Debtors' real property located at 95 State Highway, Plumland, Euphorbia, to be avoided in its entirety as unsecured pursuant to 11 U.S.C. § 506 upon entry of the order confirming the Plan and all Class 7 claims (including Claim 4) shall be treated as unsecured pursuant to Class 11 of the Plan. <u>IN ADDITION, THE COVENANTS AND CONDITIONS ATTACHED TO THE PLAN AS EXHIBIT 1 ARE HEREBY INCORPORATED BY REFERENCE AS IF SET FORTH IN FULL AND SHALL BE DEEMED INCORPORATED INTO THE ORDER CONFIRMING THE PLAN.</u></p>

Class #	Description	Insider?	Impairment	Treatment
Class 8	Secured claims of the State of Euphorbia, Bureau of Revenue Services, previously secured by liens recorded in the Plum County Registry of Deeds in Book 11111, Page 14 and Book 11112, Page 24.	No	IMPAIRED	Upon entry of order confirming the Plan, all liens of the State of Euphorbia Bureau of Revenue Services (including the liens recorded in the Plum County Registry of Deeds in Book 11111, Page 14 and Book 11112, Page 24) shall be avoided in their entirety pursuant to 11 U.S.C. § 506. The State of Euphorbia Bureau of Revenue Services shall have an Allowed Priority Tax Claim and an allowed General Unsecured Claim under Class 11, all as set forth in Section III B. 2 above and section 4.04 of the Plan.
Class 9	Secured claims of First Savings Bank, secured by GMC Truck	No	IMPAIRED	Secured claim (Claim 7) allowed and to be paid directly by the Debtors pursuant to the loan documents, secured by Truck
Class 10	Secured claims of I.M. Bank secured by Chevrolet Volt	No	IMPAIRED	Secured claim (Claim 8) allowed and to be paid directly by the Debtors pursuant to the loan documents, secured by Chevrolet

2. *Classes of Priority Unsecured Claims*

Certain priority claims that are referred to in §§ 507(a)(1), (4), (5), (6), and (7) of the Code are required to be placed in classes. The Code requires that each holder of such a claim receive cash on the effective date of the Plan equal to the allowed amount of such claim. However, a class of holders of such claims may vote to accept different treatment.

The following chart lists all classes containing claims under §§ 507(a)(1), (4), (5), (6), and (7) of the Code and their proposed treatment under the Plan:

Class #	Description	Impairment	Treatment
NONE	NONE	NONE	N/A

3. *Class of General Unsecured Claims*

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code.

The following chart identifies the Plan’s proposed treatment of Class 3, which contains general unsecured claims against the Debtor:

Class #	Description	Impairment	Treatment
Class 11	General Unsecured Claims	Yes	Holders of Allowed Unsecured Claims will receive pro rata distributions from Plan Cash, after payment of Counsel Fees, and priority claims, once annually for 5 years beginning twelve months after the Initial Distribution. Upon completion of each Annual Distribution, Debtors’ counsel shall transmit a disbursement report to the U.S. Trustee’s Office.

4. *Class of Equity Interest Holders*

Equity interest holders are parties who hold an ownership interest (i.e., equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest holders. In a partnership, equity interest holders include both general and limited partners. In a limited liability company (“LLC”), the equity interest holders are the members. Finally, with respect to an individual who is a debtor, the Debtor is the equity interest holder.

The following chart sets forth the Plan’s proposed treatment of class of equity interest holders:

Class#	Description	Impairment	Treatment
Class 12	Equity interest holders: Professor M. Plum and Colonel D. Mustard	No	Upon entry of the Confirmation Order, all property of the Debtors’ estates shall vest in the Debtors, free and clear of all liens, claims and encumbrances, except to the extent provided in the Plan.

D. **Means of Implementing the Plan**

1. *Source of Payments*

Payments and distributions under the Plan will be funded by (1) an initial \$4,000 withdrawal from the Debtor’s bank account; and (2) future income from the Debtor’s employment.

2. *Post-confirmation Management*

Post-Confirmation, the Debtor’s compensation shall be as follows:

Name	Affiliations	Insider?	Position	Compensation
Professor M. Plum	Plumland Academy	N/A	Professor	Amount of income and profits necessary to pay Secured Creditors and ordinary and necessary household expenses as shown on <u>Exhibit D</u> .
Colonel D. Mustard	N/A	N/A	Homemaker	

E. Risk Factors

The proposed Plan has the following risks:

1. Debtor Professor M. Plum, who is now employed as a wage earner, could lose his job and/or receive a reduction(s) in salary and/or bonuses.
2. The cost of living could increase sufficiently to make distributions of Plan Cash unfeasible.
3. The Debtors could encounter unforeseen circumstances that negatively impact their occupations.
4. The Debtors could fail to refinance the Class 4 and 5 mortgages on their real estate located at 95 State Highway prior to the Clueless Bank Maturity Date (24 months after the Effective Date of the Plan), making it unfeasible to retain that property and potentially causing the Plan to fail.
5. Administrative claims could exceed estimated amounts.

F. Executory Contracts and Unexpired Leases

The Plan provides for the assumption of no executory contracts. Assumption means that the Debtors have elected to continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of the type that must be cured under the Code, if any. ***Any and all executory contracts of the Debtors will be rejected under the Plan. Consult your adviser or attorney for more specific information about particular contracts or leases.***

If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan.

The Deadline for Filing a Proof of Claim on a Claim Arising from the Rejection of a Lease or Contract is thirty (30) days after confirmation of the Plan. Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.

G. Tax Consequences of Plan

Creditors and Equity Interest Holders Concerned with How the Plan May Affect Their Tax Liability Should Consult with Their Own Accountants, Attorneys, and/Or Advisors. The federal, state and local tax consequences of the Plan may be complex, and in some cases, uncertain. Such consequences may also vary based upon the individual circumstances of each Holder of a Claim or interest. ACCORDINGLY, EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE AND LOCAL TAX CONSEQUENCES OF THE PLAN. THIS DISCLOSURE STATEMENT MAY NOT BE RELIED UPON FOR, AND SHALL NOT BE DEEMED TO CONSTITUTE, ADVICE ON THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN.

The following are anticipated general tax consequences of the Plan:

Implementation of the Plan may result in federal income tax consequences to holders of Allowed Claims. Tax consequences to a particular creditor may depend on the particular circumstances or facts regarding the claim of the creditor. No tax opinion has been sought or will be obtained with respect to any tax consequences of the Plan, and the following disclosure (the “Tax Disclosure”) does not constitute and is not intended to constitute either a tax opinion or tax advice to any Person. Rather, the Tax Disclosure is provided for informational purposes only.

Because the Debtors intend to continue business operations, they will receive a discharge with respect to their outstanding indebtedness. Actual debt cancellation in excess of the fair market value of the consideration -- stock, cash or other property -- paid in respect of such debt will hereinafter be referred to as a “Debt Discharge Amount.”

In general, the IRC provides that a taxpayer who realizes a cancellation or discharge of indebtedness must include the Debt Discharge Amount in its gross income in the taxable year of discharge. The Debt Discharge Amounts may arise with respect to Creditors who will receive, in partial satisfaction of their Claims, including any accrued interest, consideration consisting of or including cash. The Debtor's Debt Discharge Amount may be increased to the extent that unsecured Creditors holding unscheduled claims fail to timely file a Proof of Claim and have their Claims discharged on the Confirmation Date pursuant to Section 1141 of the Bankruptcy Code. No income from the discharge of indebtedness is realized to the extent that payment of the liability being discharged would have given rise to a deduction.

If a taxpayer is in a case under the Bankruptcy Code and a cancellation of indebtedness occurs pursuant to a confirmed plan, however, such Debt Discharge Amount is specifically excluded from gross income (the “Bankruptcy Exception”). The Debtor intends to take the position that the Bankruptcy Exception applies to it.

Accordingly, the Debtor believes it will not be required to include in income any Debt Discharge Amount as a result of Plan transactions.

Section 108(b) of the IRC, however, requires certain tax attributes of the Debtor to be reduced by the Debt Discharge Amount excluded from income. Tax attributes are reduced in the following order of priority: net operating losses and net operating loss carry-overs; general business credits; minimum tax credits; capital loss carry-overs; basis of property of the taxpayer; passive activity loss or credit carry-overs; and foreign tax credit carry-overs. Tax attributes are generally reduced by one dollar for each dollar excluded from gross income, except that general tax credits, minimum tax credits, and foreign tax credits are reduced by 33.3 cents for each dollar excluded from gross income. An election can be made to alter the order of priority of attribute reduction by first applying the reduction against depreciable property held by the taxpayer in an amount not to exceed the aggregate adjusted basis of such property. The Debtor does not presently intend to make such election. If this decision were to change, the deadline for making such election is the due date (including extensions) of the Debtor's federal income tax return for the taxable year in which such debt is discharged pursuant to the Plan.

The federal tax consequences of the Plan to a hypothetical investor typical of the holders of claims or interests in this case depend to a large degree on the accounting method adopted by that hypothetical investor. A "hypothetical investor" in this case is defined as a general unsecured creditor. In accordance with federal tax law, a holder of such a claim that uses the accrual method and who has posted its original sale to the Debtor as income at the time of the product sold or the service provided hypothetically should adjust any net operating loss to reflect the dividend paid by the Debtor under the Plan provided that holder previously deducted the liability to the Debtor as a "bad debt" for federal income tax purposes. Should that holder lack a net operating loss, then in accordance with federal income tax provisions, the holder should treat the dividend paid as ordinary income, again provided the holder previously deducted the liability to the debtor as a "bad debt" for federal income tax purposes. If the accrual basis holder of the claim did not deduct the liability as a "bad debt" for federal income tax purposes, then the dividend paid by the Debtor has no current income tax implication. A holder of a claim that uses a cash method of accounting would, in accordance with federal income tax laws, treat the dividend as income at the time of receipt.

THE DEBTOR MAKES NO REPRESENTATIONS REGARDING THE PARTICULAR TAX CONSEQUENCES OF CONFIRMATION AND CONSUMMATION OF THE PLAN AS TO ANY CREDITOR. EACH PARTY AFFECTED BY THE PLAN SHOULD CONSULT HER, HIS OR ITS OWN TAX ADVISORS REGARDING THE SPECIFIC TAX CONSEQUENCES OF THE PLAN WITH RESPECT TO A CLAIM.

IV. CONFIRMATION REQUIREMENTS AND PROCEDURES

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Code. These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must distribute to each creditor and equity security holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

A. Who May Vote or Object

Any party in interest may object to confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Plan Proponent believes that classes one through eleven are impaired and that holders of claims in each of those classes are therefore entitled to vote to accept or reject the Plan. The Plan Proponent believes that class twelve, the Debtors' class, is unimpaired and the Debtors do not have the right to vote to accept or reject the Plan.

1. *What Is an Allowed Claim or an Allowed Equity Interest?*

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1) the Debtors have scheduled the claim on the Debtors' schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest. When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

The deadline for filing a proof of claim in this case was May 1, 2012 for persons other than governmental units, and is September 1, 2012 for governmental units. The deadline for filing objections to claims is 90 days after the Confirmation Date, or 90 days after the applicable claims deadline, whichever is later.

2. *What Is an Impaired Claim or Impaired Equity Interest?*

As noted above, the holder or an allowed claim or equity interest has the right to vote only if it is in a class that is *impaired* under the Plan. As provided in § 1124 of the Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

3. *Who is **Not** Entitled to Vote?*

The holders of the following five types of claims and equity interests are *not* entitled to vote:

- Holders of claims and equity interests that have been disallowed by an order of the Court;
- Holders of other claims or equity interests that are not “allowed claims” or “allowed equity interests” (as discussed above), unless they have been “allowed” for voting purposes.
- Holders of claims or equity interests in unimpaired classes;
- Holders of claims entitled to priority pursuant to §§ 507(a)(2), (3), and (8) of the Code; and
- Holders of claims or equity interests in classes that do not receive or retain any value under the Plan;
- Administrative expenses.

4. *Who Can Vote in More Than One Class*

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

B. Votes Necessary to Confirm the Plan

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the Plan; and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least two-thirds (2/3) in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

IMPORTANT NOTICE: IF YOU ARE ELIGIBLE TO VOTE AND YOUR COMPLETED BALLOT IS NOT RECEIVED BY MAJESTIC LAW OFFICE ON OR BEFORE THE VOTING DEADLINE (SEE SECTION I. B. ABOVE), YOU WILL BE DEEMED TO HAVE VOTED TO ACCEPT THE PLAN.

2. *Treatment of Nonaccepting Classes*

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in a manner prescribed by § 1129(b) of the Code. A plan that binds nonaccepting classes is commonly referred to as a “cram down” plan. The Code allows the Plan to bind nonaccepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not “discriminate unfairly,” and is “fair and equitable” toward each impaired class that has not voted to accept the Plan.

You should consult your own attorney if a “cramdown” confirmation will affect your claim or equity interest, as the variations of this general rule are numerous and complex.

C. **Liquidation Analysis**

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a Chapter 7 liquidation. In this case, a liquidation of the Debtors’ assets would leave approximately \$13,016 and could be less. A liquidation analysis is set forth in Section II G and accompanying Exhibit D of this Disclosure Statement.

D. **Feasibility**

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or any successor to the Debtors, unless such liquidation or reorganization is proposed in the Plan.

1. *Ability to Initially Fund the Plan*

The Plan Proponent believes that the Debtors will have enough cash on hand on the Effective Date of the Plan to pay all the claims and expenses that are entitled to be paid on that date.

2. *Ability to Make Future Plan Payments and Operate Without Further Reorganization*

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments.

The Plan Proponent has provided projected financial information. Those projections are listed in Exhibit D. The Debtors current wage and other income is as follows: (1) Professor M. Plum currently earns wages of approximately \$50,000 annually, and receives rental income from his cousin in the amount of approximately

\$10,000 annually; and (2) Colonel D. Mustard receives approximately \$7,920 annually from an uncle's annuity.

The Plan Proponent's financial projections must show that the Debtors will have an aggregate annual average net cash flow, after paying operating and living expenses and post-confirmation taxes, of \$5,000 per year for 5 years. The final Plan payment is expected to be paid 5 years after the Initial Distribution, on or before December 31, 2017.

You Should Consult with Your Accountant or Other Financial Advisor If You Have Any Questions Pertaining to These Projections.

V. EFFECT OF CONFIRMATION OF PLAN

A. DISCHARGE OF DEBTOR AND INJUNCTION.

Injunction and Stay. The entry of the Confirmation Order shall constitute an injunction applicable to all persons, staying and enjoining the enforcement or attempted enforcement, by any means, against the Debtors, or property of the estate, of all liens, Claims and debts to be treated under the Plan or discharged as set forth below and in section 10.02 of the Plan. The Injunction and Stay provided for herein shall survive the closing of the case, and shall be deemed incorporated in the final decree closing the case.

Discharge. Confirmation of the Plan does not discharge any debt provided for in the Plan until the court grants a discharge on completion of all payments under the Plan, or as otherwise provided in § 1141(d)(5) of the Code. The Debtor will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.

B. Modification of Plan

The Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or revoting under the Plan.

C. Final Decree

Upon substantial consummation of the Plan, the Plan Proponent shall file with the Court a final account in accordance with District of Euphorbia Local Bankruptcy Rule 3022-1, accompanied by a proposed final decree making provisions by way of injunction and closing the case. The Debtor shall have the continuing obligation to pay the quarterly fees required by 28 U.S.C. § 1930 until the case is closed, converted or dismissed.

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Respectfully submitted this 12th day of July, 2012,

By Plan Proponents,

And by His Majesty, Esq.,

Debtors Professor M. Plum
And Colonel D. Mustard:

Debtors' Counsel:

/s/

Professor M. Plum

/s/ His Majesty
His Majesty, Esq.
Majestic Law Office
123 Orchard Street
Plum Village, Euphorbia 01777
123-456-7890
123-456-0987 (facsimile)
Mr. X@HisMajestyLaw.com

/s/

Colonel D. Mustard

UNITED STATES BANKRUPTCY COURT
DISTRICT OF EUPHORBIA

IN RE:

PROFESSOR M. PLUM
COLONEL D. MUSTARD

CHAPTER 11
CASE NO. 12-12345

Debtors

DEBTORS' PLAN OF REORGANIZATION
DATED JULY 12, 2012

ARTICLE I
SUMMARY

On February 1, 2012, the Debtors filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code. Since that time, the Debtors have continued their finances as debtors-in-possession pursuant to Section 1107 of the Bankruptcy Code.

This Plan of Reorganization (the "Plan") under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. (the "Code") proposes to pay creditors of Professor M. Plum and Colonel D. Mustard (the "Debtors") from plan cash and future income.

Plan provides for ten (10) classes of secured (or previously secured) claims; one (1) class of general unsecured claims; and one (1) class of equity security holders. Unsecured creditors holding allowed claims will receive distributions, which the proponent of the Plan has valued at approximately three quarters of one cent (0.75%) on the dollar, as follow:

(1) First, upon entry of the Order confirming the Plan, the State of Euphorbia Bureau of Revenue Services ("Euphorbia Revenue Services")

shall have an Allowed Unsecured Priority Tax Claim in the Amount of \$10,300, representing the tax and interest component of its claim for unpaid sales taxes, as of the Petition Date (Claim 1), and an allowed General Unsecured Claim under Class 11 of the Plan in the amount of \$5,000 representing the penalty portion of Claim 3. The Allowed Priority Claim will be paid within five (5) years of the Petition Date, on or before February 1, 2017, with interest at the rate of 7% per annum calculated based on the outstanding balance at the time of each distribution (with total interest to be paid over five (5) years expected to be approximately \$2,500 on the Allowed Unsecured Priority Claim only). The Euphorbia Revenue Services Allowed General Unsecured Claim will be treated along with all other Allowed General Unsecured Claims under Class 11, as set forth below, with no interest component. Any and all other claims of Euphorbia Revenue Services shall be disallowed at confirmation.

(2) Second, within 120 days after the Effective Date of the Plan, the Debtors shall make an initial distribution (the “Initial Distribution”) in the amount of \$5,000, all of which will be used to pay down Euphorbia Revenue Services’ Allowed Priority Claim by \$4,300 and to pay the first year’s interest on that claim in the amount of approximately \$700. No other creditors will receive funds from the Initial Distribution;

(3) Third, the Debtors will make five (5) annual pro-rata distributions (collectively, the “Annual Distributions”), in the amount of \$5,000 each, as follows: (a) \$1,500 will be distributed annually to Debtors’ Counsel for present and future administrative claims, for outstanding

fees, and for future Chapter 11 fees (collectively, “Counsel Fees”¹), subject to Court approval;² (b) Euphorbia Revenue Services will receive, through the first four Annual Distributions, \$1,500 annually on account of its Allowed Priority Tax Claim, plus interest at the rate of 7% per annum based on the unpaid balance at the time of each distribution (with interest payments expected to equal respectively (i) \$600; (ii) \$500; (iii) \$400; and (iv) \$300); and (c) creditors holding Allowed Unsecured Claims are expected to receive pro rata distributions of the remaining balances annually for five years, as follows: (i) \$1,400 in year one; (ii) \$1,500 in year two; (iii) \$1,600 in year three; (iv) \$1,700 in year four; and (v) \$3,500 in year five.

The First Annual Distribution shall be made on or before twelve (12) months after the Initial Distribution, and the Final Distribution will be made on or before sixty (60) months after the Initial Distribution, expected to be made on or before December 31, 2017. Upon completion of the Initial Distribution, and each subsequent Annual Distribution, Debtor’s counsel shall transmit a disbursement report to the U.S. Trustee’s Office.³

¹ *The Debtors and their undersigned counsel have agreed that any outstanding Counsel Fees and future Counsel Fees, all of which are subject to Court approval, will be spread out over the life of the Plan so that unsecured creditors holding Allowed Unsecured Claims will receive on account of such claims their pro rata share of each Annual Distribution.*

² *Counsel reserves the right to petition the Court at the time of discharge for an additional award of accrued, unpaid fees and expenses then due.*

³ *Payments to creditors holding Allowed Secured Claims will be paid as they become due directly by the Debtors, except as otherwise expressly provided below and in the Plan.*

All creditors and equity security holders should refer to Articles IV through VII of this Plan for information regarding the precise treatment of their claim. A disclosure statement that provides more detailed information regarding this Plan and the rights of creditors and equity security holders has been circulated with this Plan. The Debtors believe that the Plan provides for fair and equitable treatment of all claims and that the Plan is in the best interests of all creditors, and parties in interest. **Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one).**

IMPORTANT NOTICE: THE DISCLOSURE STATEMENT THAT ACCOMPANIES THIS PLAN CONTAINS IMPORTANT INFORMATION WITH RESPECT TO THIS PLAN, INCLUDING, *INTER ALIA*, INFORMATION CONCERNING YOUR ELIGIBILITY TO VOTE FOR THIS PLAN. *IF YOU ARE ELIGIBLE TO VOTE AND YOUR COMPLETED BALLOT IS NOT RECEIVED BY MAJESTIC LAW OFFICE ON OR BEFORE THE VOTING DEADLINE SET FORTH IN THE DISCLOSURE STATEMENT, YOU WILL BE DEEMED TO HAVE ACCEPTED THIS PLAN.*

ARTICLE II **DEFINITIONS**

Definitions and Rules of Construction. The definitions and rules of construction set forth in §§ 101 and 102 of the Code shall apply when terms defined or construed in the Code are used in this Plan, and they are supplemented by the following definitions. Unless the context otherwise requires, the following terms shall have the following meanings when used in initially capitalized form in this Plan. Such meanings shall be equally applicable to both the singular and plural forms of such terms. Any term used in initially capitalized form in the Plan that is not defined herein but that is defined in the Bankruptcy Code shall have the meaning ascribed to such term in the Bankruptcy Code.

2.1 Administrative Claim shall mean a claim allowable under Section 503(b) of the Bankruptcy Code with respect to the Debtor, including charges against the Debtor's estates under 28 U.S.C. § 1930 and Fee Claims.

2.2 Allowed, with respect to a Claim or Interest, shall mean any Claim or

Interest (a) that is the subject of a timely filed proof of claim; or (b) any Claim or Interest that has been listed in the schedules filed with the Bankruptcy Court by the Debtor pursuant to Bankruptcy Code Section 521 and is not listed therein as disputed, unliquidated or contingent, and, in each such case as to which either (i) no objection to the allowance thereof or other similar pleading has been filed within the applicable time period set forth in Article IX of the Plan, or (ii) an objection or other similar pleading has been filed and the Claim or Interest has been allowed by a Final Order but only to the extent so allowed; or (c) with respect to a Fee Claim incurred prior to the Confirmation Date, a claim that has been allowed by a Final Order of the Bankruptcy Court.

2.3 Allowed Amount shall mean the amount of any Allowed Claim or Allowed Interest.

2.4 Bankruptcy Code shall mean 11 U.S.C. § 101 *et seq.*, as in effect with respect to the Cases on the date of filing of this Plan. All Code references herein are to the Bankruptcy Code, unless otherwise stated.

2.5 Bankruptcy Court shall mean the United States Bankruptcy Court for the District of Euphorbia, or any other court with jurisdiction over the Cases.

2.6 Bar Date shall mean, as to Claims held by persons or entities other than Governmental Units, July 1, 2012, and shall mean, as to Claims held by Governmental Units, September 1, 2012.

2.7 Case shall mean the chapter 11 case entitled In re Professor M. Plum and Colonel D. Mustard, Case No. 12-12345 which is pending in the Bankruptcy Court.

2.8 Cash shall mean payment, including by check, issued by or on behalf of the Debtor with respect to any payment required to be paid pursuant to the Plan.

2.9 Claim shall mean a claim, as defined in Bankruptcy Code Section 101(5), against the Debtor.

2.10 Confirmation Date shall mean the date on which the Confirmation Order is entered on the docket of the Bankruptcy Court.

2.11 Confirmation Order shall mean the Order (which need not be a Final Order) confirming the Plan pursuant to Bankruptcy Code Section 1129.

2.12 Effective Date shall mean the date determined in accordance with Article IX of the Plan.

2.13 Encumbrances shall mean all liens, encumbrances, mortgages,

hypothecations, pledges, and security interests of any kind whatsoever.

2.14 Executory Contract shall mean an executory contract within the meaning of 11 U.S.C. § 365.

2.15 Fee Claim shall mean the Administrative Claim of a professional person for compensation and/or reimbursement of expenses, and shall include Counsel Fees (as defined in Section I above).

2.16 Final Order shall mean an order or judgment of any court, administrative agency or other tribunal as entered on its docket as to which (a) the time to appeal or petition for rehearing or certiorari has expired and as to which no appeal or motion for rehearing or petition for certiorari has been timely filed or taken, (b) if such an appeal or motion for rehearing or petition for certiorari has been timely filed or taken, such order or judgment has been affirmed by the highest tribunal in which review was sought or such appeal, motion for rehearing or petition for certiorari was dismissed or otherwise terminated without modification of such order or judgment, and the time has expired within which any further proceeding for review may be commenced.

2.17 Initial Distribution shall mean the amount of \$5,000.00 to be made within 120 days after the Effective Date.

2.18 Order shall mean an order of the Bankruptcy Court.

2.19 Petition Date shall mean February 1, 2012.

2.20 Plan shall mean this Plan of Reorganization, as it may be amended or modified by the Debtors from time to time, together with all exhibits, schedules and other attachments hereto, as the same may be amended or modified by the Debtors from time to time, all of which are incorporated herein by reference.

2.21 Plan Cash shall be an amount of cash equal to \$30,000 (Including the Initial Distribution).

2.22 Priority Claim shall mean an Unsecured Claim arising before the Petition Date and entitled to priority under Section 507(a)(2) through 507(a)(9) of the Bankruptcy Code.

2.23 Post-petition Bar Date shall mean the date that is sixty (60) days following the Confirmation Date.

2.24 Secured Claim shall mean a claim that is secured by a perfected (or similarly binding) Encumbrance on the assets of the Debtors, to the extent provided in 11 U.S.C. § 506.

2.25 Unexpired Lease shall mean a lease that has not expired or terminated within the meaning 11 U.S.C. § 365.

2.26 Unsecured Claim shall mean a Claim which arose before the Petition Date and which is not secured by any interest in any asset in the Debtors' estate, and shall include a Claim which arises from the rejection of an Executory Contract or Unexpired Lease, within the meaning of Section 365 of the Bankruptcy Code.

ARTICLE III
CLASSIFICATION OF CLAIMS AND INTERESTS

- 3.01 Class 1. Secured Claim of City of Plum Village, secured by tax lien recorded in the Plumland County Registry of Deeds in Book 12347, Page 1112, in the original amount of \$4,500.
- 3.02 Class 2. Secured Claim of City of Plum Village, secured by tax lien recorded in the Plumland County Registry of Deeds in Book 12348, Page 81, in the original amount of \$8,500.
- 3.03 Class 3. Secured Claim of First Savings Bank, Secured by Mortgage of Debtors' real property located at 95 State Highway, Plumland, Euphorbia, by virtue of mortgage from Plum & Mustard to Euphorbia Savings Bank (later First Savings Bank by merger), dated February 1, 2000 and recorded February 2, 2000 in the PCR in Book 12222, Page 5
- 3.04 Class 4. Secured claim of Clueless Bank, Secured by Mortgage of Debtors' real property located at 95 State Highway, Plumland, Euphorbia, by virtue of Mortgage from Plum & Mustard to Clueless Bank, dated July 1, 2008 recorded July 2, 2008 in the PCR in Book 12222, Page 12.

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- 3.05 Class 5. Secured and unsecured claims of Clueless Bank, partially secured by Mortgage of Debtors' real property located at 95 State Highway, Plumland, Euphorbia, by virtue of Mortgage and Security Agreement from Professor M. Plum to Clueless Bank, dated July 31, 2009 recorded August 3, 2009 in the PCRD Book 15222, Page 48.
- 3.06 Class 6. Secured and Unsecured Claims of Clueless Bank, secured by Mortgage of Debtors' real property located at 95 State Highway, Plumland Euphorbia, by virtue of Mortgage and Security Agreement from Professor M. Plum to Clueless Bank, dated July 1, 2009 recorded August 1, 2009 in the PCRD Book 12294, Page 49.
- 3.07 Class 7. Unsecured Claims of Clueless Bank, previously secured by Mortgage of Debtors' real property located at 95 State Highway, Plumland, Euphorbia, by virtue of Mortgage and Security Agreement from Professor M. Plum and Colonel D. Mustard to Clueless Bank, dated July 1, 2009 recorded August 1, 2009 in the PCRD Book 12294, Page 52.
- 3.08 Class 8. Secured claims of the State of Euphorbia, Bureau of Revenue Services, previously secured by liens recorded in the Plum County Registry of Deeds in Book 11111, Page 14 and Book 11112, Page 24.
- 3.09 Class 9. Secured claims of First Savings Bank, secured by GMC Truck
- 3.10 Class 10. Secured claims of I.M. Bank secured by Chevrolet Volt
- 3.11 Class 11. All unsecured claims allowed under § 502 of the Code. Class 11 shall consist of all Allowed Unsecured Claims, but except as otherwise stated in this Plan, this Class shall not include (i) Claims

included in another class; or (ii) unclassified Claims whose treatment is specified in Article IV of the Plan.

3.12 Class 12. The interests of the individual Debtors in property of the estate.

ARTICLE IV

TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS, U.S. TRUSTEE'S FEES, AND PRIORITY TAX CLAIMS

4.01 Unclassified Claims. Under Code section 1123(a)(1), administrative expense claims and priority tax claims are not in classes.

4.02 Administrative Expense Claims. Each holder of an administrative expense claim allowed under § 503 of the Code will be paid in full on the Effective Date of this Plan (as defined in Article VII), in cash, or upon such other terms as may be agreed by the holder of the claim and the Debtors. Counsel to the Debtors shall be paid Counsel Fees as an administrative expense claim from the Initial Distribution and from Plan Cash, subject to Court order(s) approving such fees, as specified in Article I above.

4.03 Priority Claims. Except as otherwise agreed by the Debtor and the holder of an Allowed Priority Claim, the holder of an Allowed Priority Claim, except for a claim entitled to Priority pursuant to 11 U.S.C. § 507(a)(8), shall be paid in full upon the later of the Effective Date and the date which is fifteen (15) days after the date upon which such Priority Claim becomes an Allowed Priority Claim. To the Debtors' knowledge, there are no non-tax Allowed Priority Claims in this case.

4.04 Priority Tax Claims. Upon entry of order confirming the Plan, all liens of the State of Euphorbia Bureau of Revenue Services (including the liens recorded in the Plum County Registry of Deeds in Book 11111, Page 14 and Book 11112, Page 24) shall be avoided in their entirety pursuant to 11 U.S.C. § 506. The State of Euphorbia Bureau of

Revenue Services shall have an Allowed Priority Tax Claim and an allowed General Unsecured Claim under Class 11.

4.05 United States Trustee Fees. All fees required to be paid by 28 U.S.C. § 1930(a)(6) (U.S. Trustee Fees) will accrue and be timely paid until the case is closed, dismissed, or converted to another chapter of the Code. Any U.S. Trustee Fees owed on or before the Effective Date of this Plan will be paid on the Effective Date.

ARTICLE V
TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN

5.01 Claims and interests shall be treated as follows under this Plan:

Class #	Description	Insider?	Impairment	Treatment
Class 1	Secured Claim of City of Plum Village, secured by tax lien recorded in the Plumland County Registry of Deeds in Book 12347, Page 1112, in the original amount of \$4,500.	No	IMPAIRED	Secured claim to be paid with interest at 4.5% per annum amortized over 60 months beginning on the 1 st day of the month following the Effective Date and continuing monthly for 60 months in 60 equal installments of \$80.94 to be paid to City of Plum Village directly by the Debtors.
Class 2	Secured Claim of City of Plum Village, secured by tax lien recorded in the Plumland County Registry of Deeds in Book 12348, Page 81, in the original amount of \$8,500.	No	IMPAIRED	Secured claim to be paid with interest at 4.5% per annum amortized over 60 months beginning on the 1 st day of the month following the Effective Date and continuing monthly for 60 months in 60 equal installments of \$150 to be paid to City of Plum Village directly by the Debtors.
Class 3	Secured Claim of First Savings Bank, Secured by Mortgage of Debtors' real property located at 95 State Highway, Plumland, Euphorbia, by virtue of mortgage from Plum & Mustard to Euphorbia Savings	No	IMPAIRED	To be paid directly by the Debtors pursuant to the terms of the loan documents.

	Bank (later First Savings Bank by merger), dated February 1, 2000 and recorded February 2, 2000 in the PCRD in Book 12222, Page 5			
Class 4	Secured claim of Clueless Bank, Secured by Mortgage of Debtors' real property located at 95 State Highway, Plumland, Euphorbia, by virtue of Mortgage from Plum & Mustard to Clueless Bank, dated July 1, 2008 recorded July 2, 2008 in the PCRD in Book 12222, Page 12.	No	IMPAIRED	This claim (Claim 2) is allowed in the full amount as a secured claim. The mortgage remains on the residence at 95 State Highway, Plumland, Euphorbia (the " <u>Property</u> "). All payments will continue to be made in a timely manner in accordance with the existing note, and all other obligations under the note and the mortgage on the Property will be timely paid and/or performed. All of the Bank's rights and remedies under said mortgage claim and any related documents are preserved. <u>BY VIRTUE OF THE ENTRY OF THE CONFIRMATION ORDER, AND UPON THE EFFECTIVE DATE OF THE PLAN, THIS DEBT WILL BE DEEMED FULLY REAFFIRMED BY BOTH DEBTORS in accordance with 11 U.S.C. § 524. IN ADDITION, THE COVENANTS AND CONDITIONS ATTACHED TO THE PLAN AS EXHIBIT 1 ARE HEREBY INCORPORATED BY REFERENCE AS IF SET FORTH IN FULL AND SHALL BE DEEMED INCORPORATED INTO THE ORDER CONFIRMING THE PLAN.</u>
Class 5	Secured and unsecured claims of Clueless Bank, partially secured by Mortgage of Debtors'	NO	IMPAIRED	The Bank will make an 1111(b) election with respect to this claim (Claim 3). Accordingly, the claim will be allowed in the full amount (\$250,000) as a secured

	<p>real property located at 95 State Highway, Plumland, Euphorbia, by virtue of Mortgage and Security Agreement from Professor M. Plum to Clueless Bank, dated July 31, 2009 recorded August 3, 2009 in the PCRD Book 15222, Page 48.</p>			<p>claim, and the mortgage securing this claim will remain on the Property. The treatment of the claim will be based on a hypothetical loan as follows, and the assumed principal amount of the loan will be as follows:</p> <p>Interest will continue to accrue on the full outstanding balance of this claim (\$250,000) at the rate of 5.5%, and the monthly payments on this claim will be \$555. The first payment will be due thirty (30) days after the Effective date of the Plan. The remaining unpaid amount of the claim will be due and payable in full 24 months after the Effective Date of the Plan (the "<u>Maturity Date</u>"). On the Maturity Date, the entire principal amount of the claim, all accrued but unpaid interest, and all other amounts will be due and payable. <u>IN ADDITION, THE COVENANTS AND CONDITIONS ATTACHED TO THE PLAN AS EXHIBIT 1 ARE HEREBY INCORPORATED BY REFERENCE AS IF SET FORTH IN FULL AND SHALL BE DEEMED INCORPORATED INTO THE ORDER CONFIRMING THE PLAN.</u></p>
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Class 6	Secured and Unsecured Claims of Clueless Bank, secured by Mortgage of Debtors' real property located at 95 State Highway, Plumland Euphorbia, by virtue of Mortgage and Security Agreement from Professor M. Plum to Clueless Bank, dated July 1, 2009 recorded August 1, 2009 in the PCRD Book 12294, Page 49.	No	IMPAIRED	<p>This claim (Claim 4) will be allowed in the full amount (\$500,000) as an unsecured claim and will be treated in the manner provided for general unsecured claims under the plan.</p> <p>Class 6 mortgage on Debtors' real property located at 95 State Highway, Plumland, Euphorbia, to be avoided in its entirety as unsecured pursuant to 11 U.S.C. § 506 upon entry of the order confirming the Plan and all Class 6 claims (including Claim 4) shall be treated as unsecured pursuant to Class 11 of the Plan. <u>IN ADDITION, THE COVENANTS AND CONDITIONS ATTACHED TO THE PLAN AS EXHIBIT 1 ARE HEREBY INCORPORATED BY REFERENCE AS IF SET FORTH IN FULL AND SHALL BE DEEMED INCORPORATED INTO THE ORDER CONFIRMING THE PLAN.</u></p>
Class #	Description	Insider?	Impairment	Treatment
Class 7	Unsecured Claims of Clueless Bank, previously secured by Mortgage of Debtors' real property located at 95 State Highway, Plumland, Euphorbia, by virtue of Mortgage and Security Agreement from Professor M. Plum and Colonel D. Mustard to Clueless Bank, dated July 1, 2009 recorded August 1, 2009 in the PCRD Book 12294, Page 52.	No	IMPAIRED	<p>This claim (Claim 4) will be allowed in the full amount (\$750,000) as an unsecured claim and will be treated in the manner provided for general unsecured claims under Class 11 of the Plan. The claim will be reduced by the net proceeds received by the Clueless Bank from the disposition of the real estate previously owned by MUSTARD PLANT, Inc. (approximately \$500,000, which would reduce the claim to approximately \$250,000). In calculating the net proceeds, Clueless Bank shall be entitled to deduct any and all costs or</p>

				<p>expenses incurred by Clueless Bank in connection with the preservation, maintenance, and disposition of the real estate (including the amounts paid to the chapter 7 trustee).</p> <p>Class 7 mortgage on Debtors' real property located at 95 State Highway, Plumland, Euphorbia, to be avoided in its entirety as unsecured pursuant to 11 U.S.C. § 506 upon entry of the order confirming the Plan and all Class 7 claims (including Claim 4) shall be treated as unsecured pursuant to Class 11 of the Plan. <u>IN ADDITION, THE COVENANTS AND CONDITIONS ATTACHED TO THE PLAN AS EXHIBIT 1 ARE HEREBY INCORPORATED BY REFERENCE AS IF SET FORTH IN FULL AND SHALL BE DEEMED INCORPORATED INTO THE ORDER CONFIRMING THE PLAN.</u></p>
Class #	Description	Insider?	Impairment	Treatment
Class 8	Secured claims of the State of Euphorbia, Bureau of Revenue Services, previously secured by liens recorded in the Plum County Registry of Deeds in Book 11111, Page 14 and Book 11112, Page 24.	No	IMPAIRED	Upon entry of order confirming the Plan, all liens of the State of Euphorbia Bureau of Revenue Services (including the liens recorded in the Plum County Registry of Deeds in Book 11111, Page 14 and Book 11112, Page 24) shall be avoided in their entirety pursuant to 11 U.S.C. § 506. The State of Euphorbia Bureau of Revenue Services shall have an Allowed Priority Tax Claim and an allowed General Unsecured Claim under Class 11, all as set forth in Section III B. 2 above and section 4.04 of the Plan.

Class 9	Secured claims of First Savings Bank, secured by GMC Truck	No	IMPAIRED	Secured claim (Claim 7) allowed and to be paid directly by the Debtors pursuant to the loan documents, secured by Truck
Class 10	Secured claims of I.M. Bank secured by Chevrolet Volt	No	IMPAIRED	Secured claim (Claim 8) allowed and to be paid directly by the Debtors pursuant to the loan documents, secured by Chevrolet
Class 11	General Unsecured Claims	No	IMPAIRED	Holders of Allowed Unsecured Claims will receive pro rata distributions from Plan Cash, after payment of Counsel Fees, and priority claims, once annually for 5 years beginning twelve months after the Initial Distribution. Upon completion of each Annual Distribution, Debtors' counsel shall transmit a disbursement report to the U.S. Trustee's Office.
Class 12	Equity interest holders: Professor M. Plum and Colonel D. Mustard	Yes	IMPAIRED	Upon entry of the Confirmation Order, all property of the Debtors' estates shall vest in the Debtors, free and clear of all liens, claims and encumbrances, except to the extent provided in the Plan.

ARTICLE VI
ALLOWANCE AND DISALLOWANCE OF CLAIMS

6.01 Disputed Claim. A disputed claim is a claim that has not been allowed or disallowed, and as to which either: (i) a proof of claim has been filed or deemed filed, and the Debtor or another party in interest have filed an objection; or (ii) no proof of claim has been filed, and the Debtors have scheduled such claim as disputed, contingent, or unliquidated.

6.02 Delay of Distribution on a Disputed Claim. No distribution will be made on account of a disputed claim unless such claim is an Allowed Claim.

6.03 Settlement of Disputed Claims. The Debtor will have the power and authority to settle and compromise a disputed claim with court approval and compliance with Rule 9019 of the Federal Rules of Bankruptcy Procedure.

6.04 Claims Subject to Allowance. Notwithstanding any other provision of the Plan, no distribution shall be made on account of any Claim until such Claim is Allowed.

6.05 Prepetition Claim and Amendments. Each Claim as to which a proof of claim was required to be filed on or before the Bar Date and as to which a proof of claim was not filed on or before the Bar Date shall not under any circumstances become an Allowed Claim.

6.06 Objections to Prepetition Claims and Interests. Claims and Interests that arose prior to the Petition Date, and which have not been scheduled by the Debtor as contingent, unliquidated or disputed, or as to which a valid proof of claim or interest has been filed on or before the Bar Date, shall be allowed in full, unless an objection to such Claim or Interest is filed on or before ninety (90) days after the Confirmation Date or such other date as is provided by Order of the Bankruptcy Court upon motion of the Debtors. Claims that have been objected to and not allowed shall have no right to vote with respect to the acceptance or rejection of this Plan, except as otherwise ordered by the Court. Notwithstanding the foregoing, the claims of Clueless Bank (Classes Four, Five and Six) are hereby allowed and shall not be subject to any objection.

6.07 Bar Date and Objections With Respect to Post-Petition Claims. Any Claim entitled to priority under Bankruptcy Code Section 507(a)(1) arising before the Confirmation Date and still outstanding 60 days thereafter shall be forever barred unless it is the subject of a proof of claim (or, in the case of a Fee Claim, an application for compensation) filed with the Bankruptcy Court on or before the Post-petition Bar

Date. Any Claim that is the subject of such a proof of claim (or application for compensation) shall be Allowed in full unless an objection thereto is filed within 30 days after the Post-petition Bar Date or such other date as is provided by Order upon motion of the Debtor, except that Fee Claims shall be Allowed only by Order of the Bankruptcy Court.

ARTICLE VII
PROVISIONS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES

7.01 Assumed Executory Contracts and Unexpired Leases.

(a) The Plan provides for the assumption of no executory contracts. Assumption means that the Debtors have elected to continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of the type that must be cured under the Code, if any. ***Any and all executory contracts of the Debtors will be rejected under the Plan. Consult your adviser or attorney for more specific information about particular contracts or leases.***

If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan.

The Deadline for Filing a Proof of Claim on a Claim Arising from the Rejection of a Lease or Contract is thirty (30) days after confirmation of the Plan. Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.

(b) The Debtors will be conclusively deemed to have rejected all executory contracts and/or unexpired leases not expressly assumed under section 7.01(a) above, or before the date of the order confirming this Plan, upon the Confirmation Date. A proof of claim arising from the rejection of an executory contract or unexpired lease under this section must be filed no later than thirty (30) days after the Confirmation Date.

ARTICLE VIII
MEANS FOR EXECUTION OF THE PLAN; MERGER

8.1 The funds necessary for the Debtors to execute and implement the Plan

will come from the following sources: (a) income generated from Debtors' employment before and after the Confirmation Date; (b) assumption or rejection of certain contract and lease obligations; (c) proceeds of causes of action and claims which the Debtors may elect to bring for recovery pursuant to state law and/or Sections 506, 544, 547, 548, 549, and 550 of the Bankruptcy Code (but the Debtors are not hereby undertaking any duty or obligation to any party to bring any such action or claim, and no such action or claim is being hereby waived or released by the Debtors); (d) proceeds from the sale of any property for which this Plan provides for the sale; (e) rentals from any property for which this Plan provides for the rental; and (f) any other funds generated or received by the Debtors and not allocated or paid pursuant to this Plan that may become available.

8.2 On the Effective Date, all assets of the Debtors, including, without limitation, all property of the Debtors' estates, and any tangible or intangible property, shall vest in Debtors, free and clear of all Liens and/or Claims of creditors pursuant to 11 U.S.C. § 1141(b) except as set forth in this Plan.

ARTICLE IX **GENERAL PROVISIONS**

9.01 Effective Date of Plan. The effective date of this Plan is the fifteenth calendar day following the entry of the order of confirmation. But if a stay of the confirmation order is in effect on that date, the effective date will be the first business day after that date on which no stay of the confirmation order is in effect, provided that the confirmation order has not been vacated.

9.02 Severability. If any provision in this Plan is determined to be unenforceable, the determination will in no way limit or affect the enforceability and operative effect of any other provision of this Plan.

9.03 Captions. The headings contained in this Plan are for convenience of reference only and do not affect the meaning or interpretation of this Plan.

9.04 Controlling Effect. Unless a rule of law or procedure is supplied by federal law (including the Code or the Federal Rules of Bankruptcy Procedure), the laws of the State of Euphorbia govern this Plan and any agreements, documents, and instruments executed in connection with this Plan, except as otherwise provided in this Plan.

9.05 Legally Binding Effect. The provisions of the Plan shall bind all holders of Claims and Interests, whether or not they accept the Plan.

9.06 Means of Cash Payment. Cash payments made pursuant to the Plan will be in United States funds, by the means agreed to by the Debtors and the respective holders of Allowed Claims, including by check or wire transfer or, in the absence of an agreement, such commercially reasonable manner as the Debtor shall reasonably determine.

9.07 Delivery of Distributions. Except as otherwise provided in this Plan, distributions and deliveries to holders of Allowed Claims will be made by the Debtors (i) at the addresses reflected in the proofs of claim filed by the holders of Allowed Claims (or at the last known address of such Holder if no proof of claim or motion requesting payment is filed, or if the Debtors have been notified in writing of a change of address); (ii) at the addresses set forth in any written notice of address changes delivered to the Debtors after the date of any related proof of claim; or (iii) at the addresses reflected in the schedules filed by the Debtors if no proof of claim has been filed and the Debtors have not received a written notice of change of address.

9.08 Undeliverable Distributions. If payment or Distribution to any Holder of an Allowed Claim under the Plan is not deliverable at any of the addresses set forth in

the preceding paragraph and/or is returned to the Debtors for lack of a current address for the Holder or otherwise, the Holder shall have one hundred twenty (120) days after the check issuance date to notify the Debtors in writing of the Holder's then current address. In the event that the Debtors have not received written notice of such address change from the Holder within one hundred twenty (120) days after the check issuance date, the Debtors shall void the returned check or payment, and shall be relieved of any obligation to make any further payments or distributions otherwise due to the Holder, all of which payments or distributions shall be forever forfeited by the Holder. All payments or distributions so forfeited shall thereafter be distributed in future scheduled distributions to the remaining Holders in the appropriate Class or Classes, and the Allowed Claims of the Holder whose check was returned shall be deemed satisfied to the same extent as if payment or distribution had been made to the Holder whose check was returned, and all Claims of the Holder whose check was returned (including Claims to such distributions) shall be discharged and forever barred. In the event payments or distributions from the Final Distribution are returned to the Debtors and forfeited pursuant to the provisions of this paragraph, all funds so forfeited shall be returned to and retained by the Debtors as their sole and exclusive property.

9.09 Time Bar to Cash Payments. Checks issued by the Debtors in respect of distributions to Holders of Allowed Claims pursuant to this Plan shall be null and void if not cashed within one hundred twenty (120) days of the date of their issuance. Requests for reissuance of any check must be made in writing to the Debtors by the Holder of the Allowed Claim with respect to which the original check was issued, within one hundred eighty (180) days after the date of issuance of the original check. If no request for reissuance is received by the Debtors within one hundred eighty (180) days after the

date of issuance of the original check, all claims in respect of void checks will be discharged and forever barred, and the funds remaining from such void checks shall be forever forfeited by the Holders of Allowed Claims whose checks were voided. All funds so forfeited shall thereafter be distributed in future scheduled distributions to the Holders of Allowed Claims pursuant to the terms of this Plan. In the events that (1) checks issued for the Final Distribution are not cashed within 120 days after the date of issuance; and (2) no request in writing for reissuance of such check(s) is received by the Debtors within one hundred eighty (180) days after the check issuance date; then, such check(s) shall also be voided by the Debtors and the funds remaining shall be returned to and retained by the Debtors as their sole and exclusive property.

9.10 De Minimis Distributions. “De Minimis Distributions” shall refer to any distribution where the amount due to the creditor for such distribution is less than \$10.00. No De Minimis Distributions will be made by the Debtors to any Holder of Allowed Claims unless and until such Holder makes a request in writing to the Debtors to make such De Minimis Distributions. At the time of any distribution under this Plan, the Debtors shall have the discretion for purposes of administrative efficiency to pay Holders of Allowed Claims whose total projected future distributions equal \$100 or less, in a single distribution equal to the amount of all projected future distributions that would otherwise be due to such Holders, in full satisfaction of all of such Holders’ Allowed Claims.

9.11 No Interest on Claims. Unless otherwise specifically provided for in this Plan, the Confirmation Order, or a postpetition agreement in writing between the Debtors and a Holder of a Claim and approved by the Bankruptcy Court, postpetition interest shall not accrue or be paid on any Claim, and no Holder of a Claim shall be

entitled to interest accruing on or after the Petition Date on any Claim, whether such Claim is an Allowed Claim or a Disputed Claim.

9.12 Disputed Claims Reserve. At the time of each distribution for which Disputed Claims exist, the Debtors shall maintain a reserve (the “Disputed Claims Reserve”) equal to 100% of the distribution to which Holders of Disputed Claims would be entitled under the Plan if such Disputed Claims were then Allowed Claims, or such lesser amount as required by a Final Order. The Holder of a Disputed Claim that becomes an Allowed Claim shall receive distributions of Cash from the Disputed Claims Reserve as soon as practical following the date on which such Disputed Claim becomes an Allowed Claim pursuant to a Final Order. Such distributions shall be made in accordance with the Plan based upon distributions that would have been made to such Holder(s) under the Plan if the Disputed Claim had been an Allowed Claim on the Effective Date. No Holder of a Disputed Claim shall have any claim against the Disputed Claims Reserve, with respect to such Claim, unless and until such Disputed Claim shall become an Allowed Claim. If at the time of the Final Distribution funds remain in the Disputed Claims Reserve because one or more Disputed Claims has not become an Allowed Claim(s) as of the date the Final Distribution is due to be made under the terms of this Plan, the funds so remaining shall be distributed as part of the Final Distribution to the Holders of Allowed Claims.

9.13 Modification of Confirmed Plan. After the Confirmation Date, the Debtors may modify the Plan under Section 1127 of the Bankruptcy Code and may remedy any defect or omission or reconcile any inconsistency in the Plan or in the Confirmation Order in such manner as may be necessary or appropriate to carry out the purposes and

intent of the Plan, so long as the interests of holders of Claims and Interests are not materially and adversely affected thereby.

9.14 Substantial Consummation. For purposes of Section 1101(2), the Plan shall be deemed to have been substantially consummated when all of the following conditions have been satisfied: (a) the Effective Date has occurred, (b) all payments and conveyances required to be made on or prior to the Effective Date with respect to Claims then or theretofore Allowed have been made, (c) all documents required to be executed and delivered on or prior to the Effective Date with respect to Claims then or theretofore Allowed have been executed and delivered, and (d) all the requirements of 11 U.S.C. § 1101(2) have been satisfied.

9.15 Closing of Case. The Debtors shall file with the Bankruptcy Court a final accounting in accordance with D. Euphorbia. LBR 3022-1, accompanied by a proposed final decree making provisions by way of injunction and closing the case. The Debtors shall seek to close the case following completion of the Initial Distribution, with the case to be re-opened upon completion of all Distributions for the issuance of the Debtors' discharge.

9.16 Dates. Whenever the Plan requires the Debtors or any other entity to make a distribution or take some other action on a particular date, such action shall be taken on the required date unless parties-in-interest agree otherwise.

9.17 Property of the Debtors. Upon entry of the Confirmation Order, all property of the Debtors' estates shall vest in the Debtors, free and clear of all liens, claims and encumbrances, except to the extent otherwise provided in the Plan.

9.18 Retained Jurisdiction. To the maximum extent permitted by applicable law, the Bankruptcy Court shall retain jurisdiction over the Case after the Confirmation Date for the following purposes:

(a) to consider and approve any amendment, modification or correction of the Plan, subject to the restrictions set forth in Bankruptcy Code Section 1127 and any modification of the Confirmation Order;

(b) to hear and determine all Fee Claims and all objections filed by the Debtors with respect to Claims other than Fee Claims;

(c) to hear and determine all adversary proceedings, contested matters, or other actions commenced in the Bankruptcy Court by the Debtors against any party and pertaining to any matter, including, without limitation, proceedings for recovery of assets or avoidance of obligations or liens under Sections 544, 545, 546, 547, 548, 549, 550, and 553 of the Bankruptcy Code, proceedings relating to the assumption or rejection of Executory Contracts and Unexpired Leases, and proceedings relating to the enforcement by any creditor of any remedy against the Debtors;

(d) to hear and determine any disputes arising under the Plan, its implementation and the execution of any necessary documents thereunder;

(e) to grant extensions of any deadlines set forth in the Confirmation Order as may be appropriate;

(f) to enforce all injunctions and stays granted under this Plan or the Bankruptcy Code, and to enforce the discharge provisions of the Bankruptcy Code and the Plan; and

(g) to make such Orders as are necessary and appropriate to carry out and implement the provisions of the Plan.

ARTICLE X
INJUNCTION, STAY AND DISCHARGE

10.01 Injunction and Stay. The entry of the Confirmation Order shall constitute an injunction applicable to all persons, staying and enjoining the enforcement or attempted enforcement, by any means, against the Debtors, or property of the estate, of all liens, Claims and debts to be treated under this Plan or discharged pursuant to

section 10.02 below. The Injunction and Stay provided for herein shall survive the closing of the case, and shall be deemed incorporated in the final decree closing the case.

10.02 Discharge. Confirmation of this Plan does not discharge any debt provided for in this Plan until the court grants a discharge on completion of all payments under this Plan, or as otherwise provided in § 1141(d)(5) of the Code. The Debtors will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure. Upon issuance of the Discharge, except as expressly provided in the Plan (and except as provided in the Plan and the covenants and conditions attached to the Plan as Exhibit 1 and incorporated herein by reference), the Debtors shall, as of the date of such Discharge, have the full benefit of the discharge provided by Section 1141(d) of the Bankruptcy Code. Without limiting the generality of the foregoing (and except as provided in the Plan and the covenants and conditions attached to the Plan as Exhibit 1 and incorporated herein by reference), the Debtors shall be permanently released and discharged from all liens, Claims, Encumbrances, and debts that arose before the Confirmation Date whether or not any such lien, Claim, Encumbrance, or debt has been scheduled by the Debtors, a proof of claim has been filed or deemed filed, any such Claim is Allowed, or the holder of any such Claim has accepted the Plan.

Northeast Consumer Forum

Respectfully submitted this 12th day of July, 2012,

By Plan Proponents,

And by His Majesty, Esq.,

Debtors Professor M. Plum
And Colonel D. Mustard:

Debtors' Counsel:

/s/ _____
Professor M. Plum

/s/ His Majesty
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Colonel D. Mustard

**Filing Your First Individual Chapter 11?
Understand Issues and Confirm Creative Plans**

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AN OUTLINE OF INITIAL CHAPTER 11 REQUIREMENTS

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Chapter 11 case filings can offer significant relief for individuals who are in need of a restructuring of their financial affairs. Individual chapter 11 filings create particular requirements that may not be familiar for those practitioners who are more familiar with chapter 13 filings. This outline focuses on some of those initial requirements.

I. *Requirements upon the commencement of the individual chapter 11 case*

Once the determination has been made that an individual chapter 11 is the best available option for a client, it is necessary to make sure that the client is prepared to take the initial steps and provide the correct initial information for a case filing.

Insurance

One of the first steps is confirming that the client has the proper insurances in place. Of course, a client must have proper insurances in place in a chapter 13 as well. In a chapter 11, however, the oversight is often be greater, and the Office of the United States Trustee requires independent verification of the expiration and renewal of insurances. The debtor must also provide a completed "Insurance Expiration Statement" available from the UST's Office, which indicates the date each policy is to expire, and upon expiration the debtor must provide updated proof of insurance. It is therefore incumbent upon an individual chapter 11 debtor to ensure that the proper insurances remain in place or risk dismissal of the proceeding.

DIP Accounts

In a chapter 13 proceeding, a debtor is required to open a DIP account when engaged in business pursuant to Massachusetts Local Bankruptcy Rules 13-2(a)(2). In some districts, this requirement may often be waived. In an individual chapter 11, the UST guidelines require all debtors to open one or more DIP accounts immediately following the filing of a chapter 11 petition, and provide proof of the opening of the account(s) in a timely manner. DIP accounts may include operating accounts, payroll accounts and tax accounts. In addition, in a case where there are multiple rental properties owned, a debtor may be required to open a separate DIP account for each separate rental property. The account statements must be appended to Monthly Operating Reports.

Monthly Operating Reports

A Chapter 11 debtor is required to file monthly operating reports with the Office of the United States Trustee. These monthly operating reports (MOR's) must be completed in the form provided by the US Trustee's office, which is included in these materials, and are due the 15th day of the month following the month covered by the report. The reports track the income and disbursements made by the debtor on a monthly basis, and must include copies of the DIP bank account statements.

Quarterly Fees

For every quarter that a debtor's chapter 11 proceeding is open, quarterly fees are due to the United States Trustee. The fees due range from a minimum of \$325 per month upwards, and are based upon the dollar amount of a debtor's disbursements during a quarter. The UST provides a fee schedule, and the fees are due at the end of the month following the quarter's end.

Initial Filing Requirements for the Small Business Debtor

A chapter 11 debtor who is designated as a “small business debtor” is defined as a person engaged in commercial or business activities, other than a person whose primary activity is the business of owning or operating real estate, and whose combined secured and unsecured debts is not more than \$2,343,300.00. 11 U.S.C. §101(51D). A small business debtor is required to append to the petition its “most recent balance sheet, statement of operations, cash-flow statement, and Federal income tax return,” or a statement that none exists or has been filed. 11 U.S.C. §1116(1). It is therefore important to ensure that your client has provided you with this information prior to the case filing.

Motions

The circumstances of certain chapter 11 cases require initial motions be filed within a short time frame after the filing of a petition. Examples of these include, but are not limited to, motions for use of cash collateral, motions to pay pre-petition wages, and applications to employ various professionals.

Cash collateral is defined in §363, and includes cash and cash equivalents, “whenever acquired in which the estate and an entity other than the estate have an interest,” and includes, but is not limited to, rents. Section 363 prevents a debtor in possession from using cash collateral unless “each entity that has an interest in such cash collateral consents; or the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions” of §363. In most individual Chapter 11 cases, the cash collateral consists of rents, and it is imperative that the debtor obtain permission to use this cash collateral before any expenses are paid, and thus cash collateral motions are commonly filed on an expedited or emergency basis.

While a chapter 13 debtor must file applications to employ professionals, only a chapter 11 debtor must file an application to employ bankruptcy counsel to the debtor in possession. Section 327 allows a debtor in possession to hire, with the court's approval, "attorneys, accountants, appraisers, auctioneers or other professional persons." The application must be filed within fourteen days of the case filing in order for the employment to be deemed effective as of the date of the bankruptcy case filing. MLBR 2014-1(d). Further MLBR 2014-1 sets forth the representations and disclosures which must be included in the statement required to be attached to the application.

III. *Deadlines*

Once a debtor gets past the initial filing requirements, it is important to track deadlines set forth by the Bankruptcy Code regarding plan proposal and confirmation. The time frames set forth for exclusivity are found in §1121, and in particular, if a debtor qualifies as a "small business debtor," the timeframes set forth are contained in §1121(e) and state that exclusivity ends 180 days following the order for relief, and that the plan and disclosure state must be filed no later than 300 days after the order for relief. The requirements to be met if the debtor wishes to obtain an extension of these deadlines are set forth in §1121(e)(3) and more rigorous than for a non small business debtor.

Further, in a small business case, the debtor must obtain confirmation of the plan no later than 45 days after the filing of the plan. 11 U.S.C. §1129(e). Just like the deadlines for exclusivity and filing a plan, this deadline may be extended pursuant to §1121(e)(3), only if "(A) the debtor ... demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time; (B) a new deadline is imposed at

the time the extension is granted; and (C) the order extending time is signed *before* the existing deadline has expired.” 11 U.S.C. §1121(e)(3) (emphasis added).

KEY DIFFERENCES BETWEEN INDIVIDUAL CHAPTER 11 CASES AND CHAPTER 13 CASES¹

Revised and amended by Thomas J. Raftery, Esq.

(CAUTION: Most of the statutes cited in the PDF version of this document link to Cornell University Law School, Legal Information Institute's presentation of the U.S. Code. It is incumbent upon the reader to make sure that the information there is up to date. This document is also not intended to give legal advice, rather to point out areas where there are significant differences between chapter 11 and chapter 13 and encourage you to do the research. This document does not list every instance of difference; those you must ascertain for yourself.)

	CHAPTER 11	CHAPTER 13
Eligibility		
Debt amounts.	None. However, see § <u>101(51D)</u> for definition of a small business debtor which may affect the timing of events in your case. (The current dollar amount to determine whether a debtor is a small business debtor is \$2,190,000 or less).	Not eligible if the amount of secured and unsecured debt exceeds certain limits. § <u>109</u> (The dollar amounts change every three years with the last change having taken effect on April 1, 2010. § <u>104(a)</u> The current dollar limits are unsecured debts less than \$360,475 and secured debts less than \$1,081,400).
Fees		
<u>Filing Fees</u>	\$1,046 (as of Nov. 1, 2011)	\$281 (as of Nov. 1, 2011)
Trustee's Compensation	None unless trustee appointed. If appointed, compensation based on "commission" set by Code §§ <u>326(a)</u> , <u>330(a)(7)</u> .	Up to 10% of plan payments made by the trustee. <u>28 USC § 586(e)(1)(B)(I)</u> .
<u>UST Fees</u>	Minimum \$325 per quarter; increases as disbursements increase.	None.
Attorney's Fees	Depends on complexity: \$15,000 to \$25,000+	\$2,500 to \$4,500 (if fee apps filed)
Committee Fees	Committee authorized to employ attorney and other professionals at estate's expense, Code §§ <u>330(a)</u> , <u>503(b)(2)</u> , <u>1103(a)</u> . Small business debtors may ask that no committee be appointed.	No committees, no fees.

¹Adapted and updated from materials originally prepared by the Honorable Michael S. McManus, E.D. Cal.

Northeast Consumer Forum

	CHAPTER 11	CHAPTER 13
Discharge		
Timing	After completion of plan payments. Code § <u>1141 (d)(5)(A)</u> . But the court may order otherwise.	After completion of plan payments. Code § <u>1328(a)</u>
Domestic Support Obligations	Individual chapter 11 debtor with a “domestic support obligation” is not required to certify currency on all required payments.	Debtor with a “domestic support obligation” also must certify that he or she is current on all required payments before the discharge will be entered. Code § <u>1328(a)</u> .
Financial Management Course	Individual chapter 11 debtor is required to take course to obtain discharge. Code § <u>1141(d)(3)</u> which references Code § <u>727(a)</u> . See Code § <u>727(a)(11)</u> .	Debtor must complete a financial management course. Code § <u>1328(g)</u> .
Hardship Discharge	After confirmation but before completion of plan payments, Code § <u>1141(d)(5)(B)</u> permits an individual debtor to request a hardship discharge.	After confirmation but before completion of plan payments, Code § <u>1328(b)</u> permits an individual debtor to request a hardship discharge.
Super Discharge	Not available.	Available but watered down. May discharge a debt for willful and malicious injury, <i>see</i> Code § <u>523(a)(6)</u> , as well as domestic nonsupport obligations, <i>see</i> Code § <u>523(a)(15)</u> . But Code § <u>1328(a)(4)</u> excepts for restitution or damages awarded in a civil action against the debtor as a result of “willful or malicious injury” that caused personal injury or death.
Consequences When Case is Unsuccessful		
Small Business Debtor Exception to Automatic Stay	The automatic stay does not apply to cases filed by a small business debtor if the debtor was a debtor in an earlier small business, case that remains pending, or it was previously a debtor in a small business that was dismissed or had a plan confirmed within the 2 years preceding the latest petition. Also, an entity that acquires substantially all of the assets of a small business having a petition dismissed or plan confirmed in the preceding 2 years cannot acquire the automatic stay in its own bankruptcy case petition unless it proves by a preponderance of the evidence that the acquisition was not for the purpose of evading Code § <u>362(n)</u> .	Nothing similar in chapter 13.

	CHAPTER 11	CHAPTER 13
Duration of Plan		
Minimum Length	There is no mandatory minimum chapter 11 plan length. However, if the holder of an allowed unsecured claim objects to a plan that does not pay unsecured claims in full, “the value of the property distributed under the plan [must be] not less than the projected disposable income of the debtor (as defined in § <u>1325(b)(2)</u>) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.” Code § <u>1129(a)(15)(B)</u> .	There is no mandatory minimum chapter 13 plan length. But if the plan does not provide for payment of unsecured claims in full and if the trustee or an unsecured creditor objects, the plan must run 3 to 5 years depending on whether annualized current monthly income exceeds state median family income. Code §§ <u>1322(d)</u> , <u>1325(b)(4)(A)(ii)</u> .
Maximum Length	Chapter 11 does not limit the length of chapter 11 plans. However, if an unsecured creditor objects, Bankruptcy Code § <u>1129(a)(15)(B)</u> requires an individual chapter 11 debtor to commit all projected disposable income for 5 years or, if longer, “during the period for which the plan provides payments.” Also, unless the court orders otherwise, no discharge will be issued until the “completion of all payments under the plan.” Code § <u>1141(d)(5)(A)</u> .	Absent good cause, a plan cannot require payments for more than 3 years if annualized current monthly income is less than the state median family income. Code § <u>1322(d)(2)</u> . If there is good cause to exceed 3 years, the plan’s length may not exceed 5 years. Code § <u>1322(d)(1)(C)</u> . If annualized current monthly income is equal to or more than median family income, a chapter 13 plan may not require payments for more than 5 years. Code § <u>1322(d)(1)</u> .
Modification of Plan		
Pre-Confirmation	Only the proponent of the plan may modify it prior to confirmation. Bankruptcy Code § <u>1127(a)</u> .	Only the debtor may modify the plan prior to confirmation. Code § <u>1323(a)</u> .
Post-Confirmation	If the debtor is an individual, after confirmation of the plan, and whether or not the plan has been substantially consummated, the debtor, any trustee, the United States Trustee, or the holder of an unsecured claim may propose a modification. This right ends when the plan payments have been completed. Code § <u>1121(e)</u> .	After confirmation, the debtor, the trustee, or the holder of an unsecured claim may propose a modification. This right ends when the plan payments have been completed. Code § <u>1329(a)</u> .

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	CHAPTER 11	CHAPTER 13
Other Secured Claims	Unlike chapter 13, nothing in chapter 11 prevents an individual debtor from stripping down an undersecured claim into its secured and unsecured parts, and treating each part as a separate and distinct claim. Code § <u>1129(b)(1)(A)</u> . Periodic payments to secured creditors need not be in equal installments. But see secured tax claims below.	Plan may not bifurcate certain undersecured claims into secured and unsecured constituent parts. Code § <u>1325(a)(5)</u> . This prohibition extends to claims secured by purchase money debt incurred within 910 days of the petition and secured by motor vehicles acquired for the personal use of the debtor or incurred during the 1-year period preceding the petition and secured by any other thing at value. If a secured claim is being paid through the plan in periodic payments, “such payments shall be in equal installments.” Code § <u>1325(a)(5)(B)(iii)(I)</u> .
Secured Tax Claims	Secured tax claims that would otherwise be priority tax claims under code § <u>507(a)(8)</u> were they not secured must be paid regular installments over a period ending 5 years after the order for relief and “in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan.” Code § <u>1129(a)(9)(D)</u> .	No similar limitations.
Long Term Debt	There is no limitation on the maximum duration of a chapter 11 plan. Consequently, it is possible to provide in the plan for the conversion of short-term debt to long-term debt. However, unless court orders otherwise, an individual chapter 11 debtor is not entitled to a discharge until the “completion of all payments under the plan.” Code § <u>1141(d)(5)(A)</u> . Second, if an unsecured creditor objects, Code § <u>1129(a)(15)(B)</u> requires an individual chapter 11 debtor to commit all projected disposable income “during the period for which the plan provides payments.”	The only debt that may be treated as long-term debt is a debt that matures after the completion of the plan and is not modified by the chapter 13 plan. (Cure permissible.) Provided a chapter 13 plan seeks only to cure an arrearage, long-term debt may continue beyond the length of the plan. Code § <u>1322(b)(3) & (5)</u> .

	CHAPTER 11	CHAPTER 13
Best Efforts	<p>If the holder of an allowed unsecured claim objects to confirmation, the plan must either pay unsecured claims in full, or the value of the property distributed under the plan must be no less than the projected disposable income of the debtor. Code § <u>1129(a)(15)</u>. Disposable income must be projected over the longer of the 5-year period following the first plan payment, or the entire period the plan provides for payments. Code § <u>1129(a)(15)</u>. To project disposable income, the debtor’s actual expenses, provided they are reasonably necessary for the maintenance or livelihood of the debtor, are deducted from current monthly income. The “presumed expenses” deducted from current monthly income under code § <u>1325(a)(3)</u> are not applicable. Code §§ <u>1129(a)(15)(B)</u> & <u>1325(b)(2)</u>.</p>	<p>If the holder of an allowed unsecured claim or the trustee objects to confirmation, the plan must either pay the unsecured claims in full, or all projected disposable income must be applied to make payments to unsecured creditors. Code § <u>1325(b)(1)</u>. Disposable income projected over 3 years must be devoted to the payment of unsecured creditors if the debtor’s annualized current monthly income is less than median family income. If it is more, the commitment period increases to 5 years. §§ <u>1322(d)</u>, <u>1325(b)(1)(B)</u> & (b)(4). The method of projecting disposable income hinges on whether the debtor’s annualized current monthly income is greater than median family income. If greater, the expenses deductible from debtor, current monthly income are limited by the presumed expenses used in the means test. Code § <u>707(b)(2)</u>, <u>1325(a)(3)</u>. If less than or equal to median family income, actual expenses that are reasonably necessary for the maintenance or livelihood of the debtor are deductible from current monthly income as under code § <u>1129(a)(15)(8)</u>. Code § <u>1325(b)(2)</u>.</p>
Treatment of Certain Claims		
Home Mortgages	<p>The plan may provide for the cure of any arrears on a home mortgage. Code § <u>1123(a)(5)(G), (b) & (d)</u>. “Curing” a default is distinct from modification of a claim. <i>In re Lenington</i>, 288 B.R. 802 (Bankr C.D. III. 2003). Unmatured, unaccelerated claims secured only by the debtor’s home cannot be modified. Code § <u>1123(b)(5)</u>. The exception to the anti-modification rule in chapter 13, Code § <u>1322(c)</u>, is not applicable in chapter 11. As a result, it does not appear that a matured or accelerated home loan can be extended unless such is permitted by applicable nonbankruptcy law.</p>	<p>The plan may provide for the cure of any arrears on a home mortgage. Code § <u>1322(b)(3)</u>. Unmatured, unaccelerated claims secured only by the debtor’s home cannot be modified. Code § <u>1322(b)(2)</u>. Section <u>1322(c)</u> permits chapter 13 debtors to cure defaults under a home mortgage unless and until the home is sold at a foreclosure sale. Also, notwithstanding the maturity of a home loan, the plan may provide for payment of the home loan through the plan pursuant to Code § <u>1325(a)(5)(8)</u>.</p>

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	CHAPTER 11	CHAPTER 13
Voting	Creditors with impaired claims may vote. A class of claims accepts the plan when 1/2 in number and 2/3 in amount of the claims voting accept the plan. Code §§ 1124, 1126, <u>1129(a)(8)</u> .	Creditors may not vote.
Absolute Priority Rule	If at least one impaired class of claims accepts the plan, it may be confirmed over the rejection of a class of unsecured claims if all claim holders in the rejecting class will be paid in full, or if no holder of a claim or interest junior to the rejecting class will receive or retain anything on account of such claim or interest. Code § <u>1129(b)(1)(B)(I)-(ii)</u> . Code § <u>1129(b)(2)(B)(ii)</u> carves out an exception to the absolute priority rule permitting individual chapter 11 debtors to retain postpetition earnings except to the extent necessary to pay postpetition domestic support obligations.	Because creditors may not vote, there is no absolute priority rule.
Best Interests	Unless the claim holder makes an election under code § 1111(b), a chapter 11 plan must provide to each holder of a claim in an impaired class not less than the present value of the amount that would be paid on such claim if the estate were liquidated under chapter 7. Code § <u>1129(a)(7)</u> .	A chapter 13 plan must provide to each allowed unsecured claim not less than the present value of the amount that would be paid on such claim if the estate were liquidated under chapter 7. Code § <u>1325(a)(4)</u> .

	CHAPTER 11	CHAPTER 13
Earliest Confirmation Date	<p>A meeting of creditors may occur no earlier than 21 days and no later than 40 days after the order for relief. <u>Rule 2003(a)</u>. However, nothing in chapter 11 requires that the meeting occur or be completed prior to confirmation. If the debtor solicited prepetition acceptances to a “prepackaged” plan, the court may even dispense with the meeting Code § <u>341 (e)</u>. 28 days’ notice of a hearing on disclosure statement and deadline to object to disclosure statement and 28 days’ notice of a confirmation hearing and deadline to object to confirmation must be given. (Total process = 60 to 90 days). <u>Rule 2002(b)</u>.</p> <p>If a small business debtor files a plan with the petition, if conditional approval is given to the disclosure statement on the 1st day of the case, and if objections may be raised at the confirmation hearing, the hearing could take place as early as the 28th day. Code § <u>1129(e)</u> requires that the plan of a small business debtor be confirmed no later than 45 days after the plan is filed.</p>	<p>A meeting of creditors may occur no earlier than 21 days and no later than 50 days after the order for relief. <u>Rule 2003(a)</u>.</p> <p>Parties must receive 21 days’ notice of the meeting. <u>Rule 2002(a)(1)</u>. 28 days’ notice of a confirmation hearing and deadline to object to confirmation must be given. <u>Rule 2002(b)</u>. Confirmation hearing may take place no earlier than 21 days and no later than 45 after meeting of creditors. Code § <u>1324(b)</u> Assuming: notice of the meeting served on the first day of the case; a meeting on the 21st day; notice of the confirmation hearing served on 14th day; and objections raised at the confirmation hearing, confirmation could occur as early as the 40th day</p>
Confirmation Standards		
Priority Debt	<p>Must be paid in full. Code § <u>1129(a)(9)</u>. Tax priority claims may be paid in installments. If so, interest must be paid, the installments must be regular, and be over a period ending not later than 5 years after the order for relief. Code § <u>1129(a)(9)(C)</u>. Nontax priority claims must be paid on the effective date unless the class accepts deferred cash payments. When paid deferred cash payments, interest must be paid. Code § <u>1129(a)(9)(B)</u> Debtor must be current on all post-petition domestic support obligations in order to confirm plan. Code § <u>1129(a)(14)</u>.</p>	<p>Must be paid in full, but if the plan has a term of 5 years and provides for the payment of all disposable income to creditors, the plan may provide for less than full payment of a domestic support obligation assigned to, owed directly to, or recoverable by, a governmental unit. Code §§ <u>507(a)(1)(B)</u>, <u>1322(a)(4)</u>. Code § <u>1322(a)(2)</u> does not require that interest be paid on priority claims when they are paid in installments. No restrictions on the debtor’s ability to pay over the length of the plan.</p>

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	CHAPTER 11	CHAPTER 13
The Plan		
Who May File a Plan and When it Must Be Filed	In a small business case, only the debtor may propose a plan in the first 180 days of the case. Thereafter, any party may file a plan. All plans must be proposed by the 300th day. Code § <u>1121 (e)</u> . In all other cases without trustees, only the debtor may file the plan in the first 120 days. If filed, the debtor has until the 180th day to solicit acceptances of the plan. If a trustee is appointed and no plan is filed in the first 120 days, or if the debtor fails to obtain the acceptance of the plan by the 180th day, any party in interest may propose a plan Code § <u>1121(a), (c), & (d)</u> . These time periods can be extended for up to 18 months after petition date (to file a plan) and 20 months after petition date (for acceptances).	Only the debtor may propose a plan. § <u>1321</u> . It must be filed within 14 days of the filing of the petition. <u>Rule 3015(b)</u> .

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	CHAPTER 11	CHAPTER 13
Disclosure Statement	If the debtor is not a small business debtor, the plan must be accompanied by a disclosure statement. It must be approved as including "adequate information" necessary for a "hypothetical investor" to make an informed judgment about the plan before acceptances to the plan are solicited. Code § <u>1125</u> . In Central District of California, the form plan and disclosure statement should be used (and certain judges have individual forms). In a small business case, the court may permit a combined plan and disclosure statement; or use of a form disclosure statement. The court may also conditionally approve the disclosure statement, subject to final approval at the confirmation hearing. Code § <u>1125(f)</u> ; Rules <u>3016(b)</u> , <u>3017.1</u> .	None.
Financial Reports	Code § <u>308</u> requires small business debtors to report their current and recent financial status, profitability, cash flow projections, comparisons of actual and projected receipts and disbursements, compliance with the postpetition requirements imposed by the Bankruptcy Code and the Bankruptcy Rules, filing of tax returns, and payment of all administrative expenses and taxes. To a degree, this information is included in the monthly operating reports required by the Office of the United States Trustee.	Section <u>308</u> does not apply in chapter 13 cases.
Disposable Income	Official Form <u>22B</u> must be filed. Rule <u>1007(b)(5)</u> . This form is much less detailed than Official Form <u>22C</u> . Means test deductions required by Code § <u>1325(b)(3)</u> are not applicable in a chapter 11.	Official Form <u>22C</u> must be filed. Rule <u>1007(b)(6)</u>
Property of the Estate	All property is included in the bankruptcy estate. Code § <u>541 (a)</u> . The estate includes property acquired after the petition is filed as well as an individual debtor's earnings from services. Code § <u>1115 (a) and (b)</u> .	Same requirement.

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	CHAPTER 11	CHAPTER 13
Financial Reporting		
Prepetition Counseling	All individual debtors must go through credit counseling prior to filing a prepetition. Code § <u>109 (b)(1)</u> .	All individual debtors must go through credit counseling prior to filing a prepetition. Code § <u>109 (b)(1)</u> .
Prepetition Tax Returns	If requested by the UST, court, or party in interest, federal income tax returns for the 3 years prior to the petition and unfiled when the case was commenced must be filed with the court. Code § <u>521 (f)(2), (g)(2)</u> .	Same requirement. Plus , not later than 7 days before the first date set for the creditors' meeting, a chapter 13 debtor must provide the trustee, and any creditor making a timely request, with a copy of the federal income tax return or transcript for the most recent prepetition tax year for which a return was required. Code § <u>521 (e)</u> ; <u>Rule 4002(b)(3) & (4)</u> . Plus, Code § <u>1308(a)</u> requires that all delinquent tax returns due for tax periods ending during the 4-year period prior to the filing of the petition be filed with the appropriate tax entity no later than the day before the first scheduled date for the meeting of creditors.
Statements & Schedules	Code § <u>521 (a)(1)</u> requires all debtors to file a list of creditors, schedule of assets and liabilities, schedule of current income and current expenditures, statement of financial affairs, Code § <u>342(b)</u> certificate (only if debts are primarily consumer debts), copies of employer payment advices, statement of monthly net income, and statement of reasonably anticipated increases in income or expenditures.	Same requirement. But , in chapter 13 cases, if these documents are not filed within 45 days of the filing of the petition, the case is "automatically" dismissed on the 46th day. Code § <u>521 (l)</u> . Not so in chapter 11 cases.

	CHAPTER 11	CHAPTER 13
Case Pending in Prior Years	If an individual was a debtor in a prior case under chapter 7, 11, or 13, if that prior petition was dismissed, and if the prior petition was pending within 1 year of the new petition, the automatic stay with respect to a debt, property securing such debt, or any lease terminates as to the debtor (but not the estate) on the 30th day after the filing of new case. However, Code § <u>362(c)(3)</u> does not apply if the new case was filed under a chapter other than chapter 7 after the prior case was dismissed pursuant to Code § <u>707(b)</u> . Code § <u>362(c)(3)(B)</u> permits any party in interest to file a motion to extend the stay as to all or some creditors. Such a request must be made with notice and a hearing and must be made within 30 days of the filing of the petition.	If an individual was a debtor in a prior case under chapter 7, 11, or 13, if that prior petition was dismissed, and if the prior petition was pending within 1 year of the new petition, the automatic stay with respect to a debt, property securing such debt, or any lease terminates as to the debtor (but not the estate) on the 30th day after the filing of new case. However, Code § <u>362(c)(3)</u> does not apply if the new case was filed under a chapter other than chapter 7 after the prior case was dismissed pursuant to section 707(b). Code § <u>362(c)(3)(B)</u> permits any party in interest to file a motion to extend the stay as to all or some creditors. Such a request must be made with notice and a hearing and must be made within 30 days of the filing of the petition.
More than One Case Pending in Prior Years	When an individual debtor has filed two or more prior cases that were pending during the previous year, but were dismissed, the automatic stay never goes into effect. Once again, there is an exception for a case “refiled” under code § <u>707(b)</u> . A party in interest may request that the court impose the automatic stay despite the filing and dismissal of multiple prior petitions. Code § <u>362(c)(4)(B)</u> . Such a request must be made with notice and a hearing and must be made within 30 days of the filing of the petition.	When an individual debtor has filed two or more prior cases that were pending during the previous year, but were dismissed, the automatic stay never goes into effect. Once again, there is an exception for a case “refiled” under code § <u>707(b)</u> . A party in interest may request that the court impose the automatic stay despite the filing and dismissal of multiple prior petitions. Code § <u>362(c)(4)(B)</u> . Such a request must be made with notice and a hearing and must be made within 30 days of the filing of the petition.
Other Issues		
Taxes	§ <u>1398</u> of the Internal Revenue Code treats the chapter 11 estate as a separate taxable entity for the debtor. Promptly after filing the chapter 11, the debtor must obtain an employer identification number (EIN). And the debtor (or trustee, if one has been appointed) must file a tax return for the bankruptcy estate. (IRC § <u>6012(a)(9)</u> , § <u>6012(b)(4)</u>)	§ <u>1398</u> is not applicable to chapter 13.

INDIVIDUAL CHAPTER 11 DEBTORS IN BUSINESS:
PLAN CONFIRMATION STANDARDS AND ISSUES

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I. INTRODUCTION AND CONFIRMATION STANDARDS

Chapter 11 reorganization is seldom easy. For any debtor, the plan confirmation process imposes formidable challenges of both a legal and practical nature. For individual Chapter 11 debtors, especially after the enactment of the Bankruptcy Reform and Consumer Protection Act of 2005 (BAPCPA), the process can be even more challenging.

All Chapter 11 plans, including those advanced by individual debtors, must meet the confirmation standards of 11 U.S.C. section 1129. Individual debtors face additional requirements, most resulting from BAPCPA provisions directed at individual debtors. Although these statutory changes are seven years old, they received little attention until the recent economic downturn and the resulting increase in individual Chapter 11 cases. Over the last several years, courts have addressed individual Chapter 11 issues with increasing frequency.

The code sections of particular concern to plan confirmation for individual debtors are as follows:

- A) Section 1115: Property of the estate for an individual Ch 11 debtor includes “ in addition to the property specified in Section 541” (1) all property of the kind specified in section 541 that the debtor acquires after the commencement of the case but before the case is closed, dismissed or converted to a case under chapter 7,12 or 13, whichever occurs first; and (2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed or converted to a case under chapter 7, 12 or 13, whichever occurs first.

- B) Section 1123(a)(8) Plan shall provide for the payment to creditors under the plan of all or such portion of earnings from personal services performed by the Debtor after the commencement of the

case or other future income of the debtor as is necessary for the execution of the plan.

C) Section 1129(a)(15) If an unsecured creditor objects to confirmation, plan must provide either payment in full or the commitment of all the debtor's projected disposable income (as defined by Section 1325(b)(2)) for five years or the term of the Plan, whichever is longer.

(Note section 1325(b)(2) defines “disposable income” rather than “projected disposable income.”)

D) Section 1141(a)(2) Discharge does not discharge individual debtor from any debt excepted from discharge under Section 523

E) Section 1141(a)(5) Discharge does not enter until the completion of payments under the plan

F) Section 1129(b)(2)(B)(ii) With respect to a class of unsecured claims, a junior class will not receive payment of claim or interest unless senior class paid in full, except that in an individual case, debtor may retain property included in the estate under Section 1115, subject to the requirements of Section (a)(14) of this section.

Individual Chapter 11 debtors must also of course satisfy the remaining provisions of Section 1129(a), most notably the “best interests” and feasibility requirements of Sections 1129(a)(7) and 1129(a)(11), Section 1129(a)(10) (requires at least one impaired class of creditors accept the plan), and Section 1129(a)(8) (each class of creditors must either accept the plan or be unimpaired). Section

1129(a)(8) is subject to Section 1129(b), which provides that a plan may be confirmed despite non-compliance with Section 1129(a)(8) if the plan does not discriminate unfairly and is fair and equitable. This requires, in part, that the plan comply with the so called absolute priority rule set forth in Section 1129(b)(2)(B)(ii).

Section 1129(b) also imposes certain requirements with respect to the treatment of secured claims.

Many of the above provisions impose requirements similar to those in Chapter 13 without the “safety valves” of Chapter 13 (i.e. no involuntary Chapter 13, no disclosure statement, absolute right to convert to Chapter 7) Individual Chapter 11 debtors also still face the creditor voting and Section 1129 requirements imposed by the Chapter 11 process

II. Income and Future Income issues

Pursuant to 11 U.S.C. section 1115, property of the estate includes, for Chapter 11 debtors, earnings from personal services performed during the case, i.e., future income. Pursuant to Section 1129(a)(15), in a case in which the holder of an unsecured claim objects to confirmation, the value of the property distributed under the plan must be “ not less than the projected disposable income of the Debtor (as defined in Section 1325(b)(2) to be received in the five year period beginning on the date the first payment is due under the plan or during the period for which the plan provides payments, whichever is longer. Section 1325(b)(2) defines “ disposable income” generally as projected income from all sources, less reasonably necessary personal expenses, charitable contributions and, for Debtors engaged in business, business expenses.

For individual Chapter 11 debtors, accurate financial reporting and detailed financial projections are critical both for assessing projected

income and for showing feasibility. These projections must include cash flow information for non-debtor businesses on which the debtor depends for income. Financial reporting is important to any Chapter 11 case, but for individual debtors, the requirements of Sections 1115 and 1129(a)(15) and the importance of reliable projections make it imperative that reports be accurate and that proper separation be maintained between individual debtors and closely held non-debtor business entities.

The requirements of Sections 1115 and 1129(a)(15) create multiple challenges for debtors when plan confirmation is contested and when disposable or projected disposable income includes business income from a non-debtor. If projected disposable income appears too low, an objecting creditor may challenge feasibility or may accuse the debtor of manipulating the cash flow of a non-debtor business entity. See In re Gbadebo, 2010 WL 1568609 (Bankr N.D. Cal). Indeed, in Gbadebo, the debtor faced Court scrutiny of the reasonableness of, inter alia, monthly mortgage and vehicle payments. Debtor was a professional engineer and sole shareholder and CEO of an engineering company. Faced with the objections of a judgment creditor, the Gbadebo court found certain of the Debtor's living expenses unreasonable, such that the Plan had not been filed in good faith. The Court also found the Debtor had manipulated reported income and used his closely held corporation as his "personal piggy bank," sometimes paying personal expenses directly from the business and failing to maintain sufficient separation between business and personal cash flow, resulting in cash flow projections and financial information the Court found unreliable.

Indeed, the recent reported cases which address issues under Sections 1115 and 1129(a)(15) usually also involve challenges to the reliability and accuracy of individual financial projections. See Gbadebo, *supra*; In re Clemente, 409 B.R. 288 (Bankr. D.N.J.2009). In Clemente, Debtor was a physician and the president of the Heart Centre PC. Among other challenges in his Chapter 11 case, Dr. Clemente

suffered from what the Court called “shortcomings as the debtor in possession,” which featured his abysmal failure to accurately account for and separate personal finances from those of the Heart Centre. An examiner was appointed, then during the Chapter 11 plan process, the Court determined the examiner was not sufficient and pursuant to Section 1104, appointed a Chapter 11 trustee. Dr. Clemente then moved to convert his case to Chapter 7. Once the Chapter 11 trustee was in place, however, the Debtor had no standing under Section 1112(a) to move to dismiss or convert. Moreover, under Section 1115, his post-petition earnings remained property of the estate, creating a potential constitutional quagmire. The Debtor was captive in a Chapter 11 proceeding which required him to commit future earnings to a Chapter 11 plan, arguably a form of indentured servitude. The Court did not find that Section 1115 in and of itself raised constitutional issues; it was the trap created by the combined effects of Section 1112(a) and section 1115.

To avoid addressing the Constitutional question, the Clemente court decided to treat the Debtor’s motion to convert as a motion to remove the Chapter 11 trustee for the limited purpose of allowing the Debtor to convert his case to Chapter 7. Similar Constitutional issues are likely to arise again, however. Individual Chapter 11 debtors like Dr. Clemente are not uncommon.

Section 1129(a)(15) applies only when an unsecured creditor files an objection to confirmation; filing a negative ballot is not sufficient. In re Shat, 2010 WL 702443 (Bankr. D. Nev.); In re Bullard, 358 B.R. 541 (Bankr. D. Conn. 2007); In re Tegeder, 369 B.R. 477 (Bankr. D. Neb. 2007); In re Roedemeier, 374 B.R. 264 (Bankr. D. Kan 2007). Simply filing an objection to disclosure is likewise not sufficient. Roedemeier, supra.

Some courts have questioned whether, in individual Chapter 11 cases, section 1129(a)(15) may trump Section 1129(b)(2)(B)(i), such that meeting obligations under Section 1129(a)(15) may relieve a

debtor from having to satisfy the absolute priority rule. See In re Friedman, 2012 WL 911545 (9th Cir. 2012) and absolute priority rule discussion *infra*.

III. Plan modification

Pursuant to Section 1127(e), if the debtor is an individual, the plan may be modified any time after confirmation but before the completion of payments, whether or not substantially consummated, on the request of the Debtor, the trustee, the United States trustee or the holder of an unsecured claim. The modification may increase or decrease payment amounts or payment terms or alter the treatment of a creditor who has received partial payment from another source. Unlike plan modifications under Section 1129(a), which are usually allowed only prior to confirmation and remain subject to all the normal plan requirements set forth in Sections 1121 through 1129, plan modifications for individual debtors may occur at any time during the life of the plan without additional disclosure and apparently without having to comply with the confirmation requirements of Section 1129. Section 1127(e) creates the potential for considerable mischief by vociferous creditors, especially in light of the requirements of Section 1129(a)(15). Debtors might also find opportunities to be creative or to address changed financial circumstances during the life of the Plan.

To date, section 1127(e) has come up in reported cases infrequently and primarily in the context of a debtor's efforts to deal with the delayed discharge provisions of Section 1141(d)(5), either by closing his case prior to discharge or by obtaining an early discharge. See, e.g. In re Johnson, 402 B.R. 851 (Bankr. N.D. Ind. 2009) (physician paying under 5 year plan, sought closing of case during plan to limit quarterly fees); In re Belcher, 410 B.R. 206 (Bankr. W.D. Va. 2009) (Debtors sought early discharge or relief from quarterly fees despite ongoing plan payments). In both cases, The United States trustee objected in part on the grounds the plan could be modified under 1127(e) and that section 1127(e) and other changes imposed by BAPCPA contemplated continuing oversight

of plan implementation similar to that in Chapter 13 and unlike the post-confirmation procedure for most other types of Chapter 11 cases. In Johnson, the Court held the requested closing (and potential reopening for discharge) was appropriate under Section 350 and that it was not feasible to require that all cases be kept open during the entire payment term, particularly in cases with longer term plans.

In Belcher, the Court simply held the debtors did not meet the requirements for an early or hardship discharge under Section 1141(d)(5)(B)(i) and (ii). In addition to the other requirements for a hardship discharge, Section 1141(d)(5)(B)(ii) requires that modification of the plan is not practicable. The Belcher court found the debtors had not shown they were unable to complete the payments called for under their Chapter 11 plan and also that they had failed to show that modification of their plan was not practicable.

IV. ABSOLUTE PRIORITY RULE

The “absolute priority rule” is relevant only when there is a dissenting class of creditors. Since the enactment of BAPCPA, the language of Section 1129(b)(2)(B), has changed as it relates to individual debtors. Section 1129(b)(2)(B)(ii) provides : [with respect to a class of unsecured creditors]

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

Section 1115 provides that property of the estate includes, in addition to the property specified in Section 541(a), property acquired

post-petition and post-petition earnings from personal services of the Debtor.

Over the last few years, courts have struggled to interpret the absolute priority rule in individual cases and in particular, to define the scope of property covered by the phrase “property included in the estate under Section 1115.” Could individual Chapter 11 debtors retain ALL property of the estate, both as defined by Section 541(a) and as supplemented by the post-petition property and earnings included in the estates of individual debtors by Section 1115, or merely the post-petition property and earnings. The answer to this question has a significant effect on plan feasibility.

There remains a split of authority, but the current weight of authority favors a narrow interpretation of Section 1115, such that the absolute priority rule still applies in individual Chapter 11 cases and “section 1115 property” means only post-petition earnings or assets acquired post-petition. See, e.g. In re Walsh, 447 B.R. 45 (Bankr. E.D. Mass 2011); In re Karlovich, 456 B.R. 677 (Bankr. S.D. Cal. 2010); In re Mullins, 435 B.R. 352 (Bankr. W.D.Va 2010); In re Maharaj, 449 B.R.484 (Bankr. E.D. Va. 2011); In re Lindsey, 453 B.R. 886 (Bankr. E.D. Tenn 2011); In re Tucker, 2011 WL 5926757; In re Lively, 2012 WL 959256 (Bankr. S.D. Tex. 2012); In re Borton, 2011 WL 5439285 (Bankr. D. Idaho 2011)

These courts generally view Section 1115 as unambiguous and assert that Congress would have carved out individuals from Section 1129(b)(2)(B) or amended Section 541 had a broader interpretation of Section 1115 or an exception to the absolute priority rule been intended. Some courts have opined that Congress intended not to treat individual Chapter 11 debtors more like Chapter 13 debtors but rather to treat them more like other Chapter 11 debtors. See In re Karlovich, *supra*.

The narrow interpretation presents significant plan confirmation challenges for individuals who may have valuable assets or equipment,

or valuable interests in closely held corporations which own equipment/assets necessary to their professions but cash flow inadequate to satisfy unsecured creditors. See In re Mullins, supra.

Only one appellate court has addressed the issue, and that court held the absolute priority rule was inapplicable in Chapter 11 cases. See In re Friedman, 2012 WL 911545 (9th Cir. BAP 2012). The fifth circuit will soon be addressing the issue also. See In re Lively, 2012 WL 959256 (Bankr. S.D. Tex 2012) (appealed and got direct certification to 5th Circuit). The Court in Lively held the absolute priority rule had been abrogated only in part by the BAPCPA amendments and found Section 1115 was unambiguous and referred only to property added to the estate through Section 1115, i.e. assets acquired post-petition and post-petition earnings. If proposing a plan which did not pay unsecured creditors in full and which did not have the consent of the unsecured creditor class, the debtor could only retain assets acquired post-petition. In re Lively, supra.

Both Friedman and Lively contain detailed analysis of the numerous bankruptcy court decisions on both sides of this issue.

The early cases interpreting Section 1115 tended to take a broader approach more sympathetic to debtors; even when an unsecured class was not being paid in full, an individual debtor could retain both “Section 541 property” and “Section 1115 property” and still remain in compliance with the absolute priority rule; in practical terms, the absolute priority rule did not apply at all in individual Chapter 11 cases. See In re Shat, 2010 WL 702443(collects cases and contains a very detailed analysis of the legal issues.) In Shat, debtors ran a profitable dry cleaning business, as sole proprietors, and also owned several rental real estate projects which were not profitable. Their Chapter 11 plan provided, inter alia, that general unsecured creditors would receive 10%. The unsecured creditor class rejected the plan but filed no legal objection. The Shat plan further provided for a cram down of mortgages

on rental real estate and for the retention by the debtor of all properties, subject to unavowed and unmodified liens.

Faced with a rejecting unsecured class of creditors, the Shat court was forced to address cram down under Section 1129(b)(2) as it applied to individual debtors. The Court found Section 1129(b)(2)(B)(ii) ambiguous and believed that a broad interpretation of property “included in the estate under Section 1115” was necessary to permit Chapter 11 to function as intended for individuals, particularly in light of the many other changes seemingly borrowed from Chapter 13. See also, In re Bullard, 358 B. R. 341 (Bankr. D. Conn. 2007); In re Tegeder, 369 B.R. 477 (Bankr. D. Neb 2007); In re Roedemeier, 374 B.R.264 (Bankr. D.Kan 2007). The recent Friedman decision followed similar reasoning; debtors needed the use of the post-petition income and assets to perform their Ch 11 plans, and a broad interpretation of Section 1115 was more consistent with the other amendments affecting individual Chapter 11 debtors. See also, SPCP Group LLC v. Biggins, 2011 WL 4389841 (M.D.Fla 2011).

Some courts took a contrary view, however, most notably the court in In re Gbadebo, 2010 WL 1568609. The Gbadebo court found Section 1129(b)(2)(B)(ii) unambiguous; the phrase “included in the estate under Section 1115” covered only the post-petition property specifically added by that provision. Section 1115 did not supersede Section 541. The Court held the “absolute priority rule” was eliminated only with respect to the debtor’s post-petition property, specifically added by Section 1115, not property of the estate as defined by Section 541. Recent bankruptcy courts have mostly followed the Gbadebo view, though there is one circuit court taking the opposite view, and the issue remains the subject of frequent litigation.

Even in jurisdictions which hold the absolute priority rule applies in individual cases, a Chapter 11 debtor with sufficient resources may still be able to confirm a plan over an objecting class by contributing sufficient “new value,” in money or money’s worth. See Bank of

America National Trust and Savings Assn. v. 203 North Lasalle Partnership, 526 U.S. 434 (1999). What constitutes sufficient “new value” is also a frequent subject of Chapter 11 litigation but beyond the scope of these materials.

V. CONCLUSION

For individual Chapter 11 debtors, plan confirmation under the revised Chapter 11 rules involves both challenge and opportunity and requires a careful and creative approach as case law on the major changes continues to evolve. In the meantime, individual Chapter 11 debtors will still face the ordinary requirements of Section 1129, including the basic requirement to prove feasibility and “best interests,” while simultaneously running non-debtor businesses.

In the current market, secured creditors whose claims are undersecured may also raise objections under Section 1129(a)(15), creating further challenges.

CLOSING AN INDIVIDUAL CHAPTER 11 CASE

- Three traditional ways of closing a chapter 11 case:
 - final decree,
 - dismissal, or
 - conversion to another chapter.
- Before BAPCPA, all chapter 11 debtors, including individuals, generally received a discharge with the confirmation of a plan of reorganization. 11 U.S.C. §1141(d)(1).
- Final decree usually followed soon after confirmation.
- BAPCPA made individual chapter 11 cases more like chapter 13, for example:
 - Now individual chapter 11 debtors generally do not receive a discharge at confirmation; but instead when they have completed all payments under their plans. 11 U.S.C. §1141(d)(5). No similar change for non-individual cases.
 - Discharge before completion of plan payment for “cause” when it is not “practicable” to modify a confirmed plan. 11 U.S.C. § 1141(d)(5).
 - Disposable income test. 11 U.S.C. §1129(a)(15).
 - A new section 1115 provides that the property of the estate of an individual chapter 11 debtor includes all property described in § 541 acquired after the commencement of the case and post-petition earnings up to the closing, dismissal, or conversion of the case.
 - It is easier to modify a confirmed plan and more parties (debtor, trustee, U.S. Trustee, or holder of allowed unsecured claim) can bring a motion to modify a plan. 11 U.S.C. §1127(e).
- Closing an individual case complicated by fact that discharge usually cannot be entered until the debtor completes all plan payments.

- Courts that have considered Pre-Discharge Closure of an individual Chapter 11 case have reached a variety of results:
 - In re Ball, 2008 WL 2223865 (Bankr. N.D. W.Va. May 23, 2008):
 - The debtor argued he finished all payments by executing and delivering to unsecured creditors a secured promissory note in their favor and was, thus, entitled to a discharge.
 - The court held the case could not be closed because the debtor was not yet entitled to a discharge order.
 - The court noted that plan called for payments over short period. It left open the question of whether some accommodation might be made for a debtor whose plan called for payments over a longer period of time.
 - In re Sheridan, 391 B.R. 287 (Bankr. E.D.N.C. 2008).
 - Debtor sought “early discharge” under 11 U.S.C. § 1141(d)(5)(A) for “cause.”
 - Because court approved an early discharge, it did not need to reach the issue of whether a case could be closed before discharge.
 - In lengthy footnote, the court described procedures for early closing cases where discharge will not be granted until completion of periodic payments to creditors.
 - In re Johnson, 402 B.R. 851 (Bankr. N.D. Ind. 2009).
 - Debtor moved the court to close the case early, subject to reopening it after completion of plan payments for entry of discharge order.
 - Court focused on section 350(a) which directs the court to close a case “after an estate is fully administered and the court has discharged the trustee,” and Bankruptcy Rule 3022 which instructs the court to issue a final decree closing a case once the case has been fully administered.
 - The court entered order: “This case is closed, provided, however, that it may be reopened without payment of any required fee at the request of any creditor.” Presumably, the debtor would have to pay the reopening fee.

- Two factors in Court's analysis:
 - Payment of quarterly fees over span of plan would have a significant, adverse impact on dividend to unsecured creditors—better to pay unsecured creditors than U.S. Trustee; and
 - The “potentially unlimited duration” of an individual chapter 11 plan cases, possibly decades. (No similar provisions to sections 1322(b)(5) and 1329(c) in chapter 11.)
- In re Belcher, 410 B.R. 206 (Bankr. W.D. Va. 2009).
 - Rejected reasoning in the Johnson case and held case could not be closed before debtor completed all plan payment and received a discharge.
 - Based decision in part on section 1127(c) which permits creditors to request modifications to a substantially consummated confirmed plan in individual chapter 11 cases at any time before completion of plan payments.
 - Plan payments to unsecured creditors funded with debtor's future income, thus, some modification of plan would be required if debtor's income changed.
 - Attempt to avoid U.S. Trustee fees is not “cause” under Section 1141(d)(5)(A) for an early discharge.
- In re Shotkoski, 2009 WL 4042665 (B.A.P. 8th Cir. Nov. 24, 2009).
 - BAP affirmed order denying application final decree.
 - The determination of whether a the estate has been fully administered requires a case-by-case analysis.
 - BAP did not hold that every individual chapter 11 case must remain open until all long-term plan payments have been completed and a discharge is entered.
 - Did not disagree with those courts which had decided to close early individual chapter 11 cases for convenience and efficiency.

- In re Necaise, 443 B.R. 483 (Bankr. S.D. Miss. 2010).
 - Individual chapter 11 debtor moved for early discharge prior to completion of plan payments, or, alternatively, for entry of order closing case to prevent continued accrual of quarterly fees to the U.S. Trustee.
 - Debtor argued that relief from quarterly fees would increase likelihood of being able complete remaining plan payments. Debtor also added that money saved from having to pay quarterly fees could be distributed to creditors instead.
 - Court cited Collier: “In the appropriate case, the court may grant a discharge upon confirmation, rather than only upon completion of payments. Such might be the case, for example, for an individual debtor who did not expect to make plan payments primarily from future earnings, consistent with the ordinary chapter 13 model, but rather contemplated a plan more consistent with the ordinary chapter 11 model, such as by distributions of property.” See 8 Collier on Bankruptcy ¶ 1141.05(2)(a).
 - Reviewed language of the “hardship” discharge: 11 U.S.C.A. § 1141(d)(5)(B).
 - Examined Advisory Committee Note to Bankruptcy Rule 3022: “Entry of final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed. Factors that the court should consider in determining whether the estate has been fully administered include
 - (1) whether the order confirming the plan has become final,
 - (2) whether deposits required by the plan have been distributed,
 - (3) whether the property proposed by the plan to be transferred has been transferred,
 - (4) whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan,
 - (5) whether payments under the plan have commenced, and
 - (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.” Fed. R. Bankr. P. 3022 Advisory Committee Note.

- Court recognized it had authority to grant a discharge as early as confirmation of the plan upon a showing of cause, but because debtor did not request a discharge at the time of plan confirmation, the debtor had not established the elements required under Section 1141(d)(5)(A) to justify early discharge under that subsection.
- Debtor had established the factors necessary to conclude that the estate had been fully administered for purposes of closing the case pursuant to Section 359, Fed R. Bankr. P. 3022, to prevent continued accrual of U.S. Trustee quarterly fees, subject to a later reopening to issue a discharge when the plan was consummated.
- In re Mendez, 464 B.R. 63 (Bankr. D. Mass. 2011).
 - “Individual chapter 11 debtor moved for entry of order administratively closing case now that plan has been confirmed and payments to creditors have commenced, in effort to avoid liability for payment of continuing quarterly fees to the U.S. Trustee.”
 - “Quarterly fees are due from a debtor until his chapter 11 case is “converted or dismissed,” 28 U.S.C. § 1930(a)(6), or as courts have recognized, until the case is closed.”
 - In Massachusetts “once a Chapter 11 plan is confirmed the case is deemed fully administered unless a matter is pending sixty (60) days following an entry of the final confirmation order.” MA LBR 3022-1(a).
 - “If case is closed now, there will be neither a stay nor a discharge injunction in place to protect the debtor.” To preserve the benefit of the automatic stay, “debtor has requested that the closing of his case be “administrative” only.”
 - Termination of the automatic stay also ends the tolling of unexpired non-bankruptcy statutes of limitation. 11 U.S.C. § 108(c).
 - The termination of the automatic stay upon case closing presents potential harms to both debtors and creditors: “Once the case is closed, with the statute of limitations clock winding down, a creditor whose claim is not yet discharged may nevertheless be left with only a contract claim under a confirmed plan paying pennies on the dollar.”
 - Upon closing of a case without a discharge, Fed. R. Bankr.P. 4006 instructs the clerk of court to issue a notice of no discharge to all interested parties. It is unsuitable and indeed misleading when debtor anticipates a discharge upon completion of his plan payments.

- Court stated it “must fashion a remedy which addresses the automatic stay and notice of no discharge issues.” Section §105(a) provides the basis for such a remedy.
 - Court closes case administratively, orders that the automatic stay pursuant to Section 362 continue and instructs the Clerk of Court not to issue notice under Fed. R. Bankr.P. 4006.
 - Court mentions the Jacksonville and Tampa Divisions of the United States Bankruptcy Court for the Middle District of Florida as having implemented a series of approved forms which individual debtors may use to accomplish precisely the result sought by the debtor in this case. (See Forms at United States Bankruptcy Court for the Middle district of Florida at www.flmb.uscourts.gov/procedures/).
 - Court held that individual Chapter 11 case need not remain open post-confirmation simply because a discharge has not entered, and plan payments have not been completed.
 - Court utilized power to enter “necessary or appropriate” orders in order to close case for administrative purposes only, with no discontinuation of automatic stay.
- In re Kerley, 2011 WL 5330667 (Bankr. N.D. Ala. 2011).
- “Individual chapter 11 debtors confirmed reorganization plans, which contemplate payments to creditors over time from post-confirmation earnings of the Debtors.”
 - Can the case be “administratively closed” for the purpose of avoiding payment of quarterly fees as well as avoiding further monthly operating reports in the absence of an order discharging debtors?
 - Court cites Section 350(a), Rule 3022 and the 1991 Advisory Committee Note to Rule 3022 regarding the six factors to consider in determining whether an estate has been “fully administered.”
 - Court understands that changes, many stemming from BAPCPA, have changed the individual chapter 11 landscape since 1991.
 - “1996 Amendments to 28 U.S.C. §1930(a)(6) extended the assessment of quarterly fees to post-confirmation chapter 11 debtors to increase revenue. In re Gould, 437 B.R. 34, 39 (Bankr. D. Conn. 2010).”

- “Section 362(c)(2)(A) provides that automatic stay terminates upon closing of a case prior to entry of discharge.”
 - “Rule 4006 provides that notice shall be issued to parties in the event an individual debtor's case is closed without entry of discharge.”
 - “Tolling provisions of Section 108(c) end 30 days after notice of the termination of the automatic stay.”
 - “It is up to Congress . . . to fashion the rules regarding what fees are due and when those fees may be waived.”
 - As cautioned in In re Ball, feasibility may “be impacted by the imposition of quarterly fees, and the appropriate time to address that issue is in the plan and disclosure statement.”
 - The Court “cannot ignore the likely chilling effect the real costs of reopening the case would have upon interested parties who might otherwise move in this Court to exercise the rights granted them by the Bankruptcy Code, including moving for modification of the confirmed plan or dismissal upon default.”
 - Agreeing with Belcher, the court explains that such a practice (referring to courts that have entered orders administratively closing cases while providing in the orders that a list of other statutory provisions shall be excepted from the effect of the case-closing order) under these facts, is “not appropriate to the new post-BAPCPA world of chapter 11 plans funded by post-confirmation earnings by individual debtors.” (Kerley citing Belcher.)
- Early discharge, without completing plan payments (Section 1141(d)(5)):
 - For “cause” (not defined);
 - By motion with notice and a hearing;
 - At any time after confirmation;
 - The value, as of the effective date of the plan, of property actually distributed to the holders of unsecured claims that must be equal to or more than those creditors would receive in a chapter 7 liquidation; and
 - Modification of the plan is not “practicable.”

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- Local Bankruptcy Rules.
 - Rhode Island - In non-individual cases, must file request for final decree within six months after confirmation. RI LBR 3022-1(a). But specifies that in an individual case, the motion for entry of discharge and application for final decree shall be filed “after the last plan payment has been made.” RI LBR 3022-1(d).
 - Massachusetts - Makes no distinction between individual and corporate cases. Case is generally fully administered 60 days after confirmation. Motion for final decree must be filed 60 days after that. MA LBR 3022-1.
 - New Hampshire - Makes no distinction between individual and corporate cases. Application for final decrees must be filed 120 days after confirmation. NH LBR 3022-1
 - Maine - Same as New Hampshire. ME LBR 3022-1.
 - Puerto Rico
 - Currently makes no distinction between individual and corporate cases. Same procedure as New Hampshire and Maine. PR LBR 3022-1.
 - Proposed amendments -
 - One proposal is to adopt administrative closing procedure mentioned in the Mendez case from Massachusetts and currently used in the Middle District of Florida.
 - Another is to allow final decree before completion of plan payments, just as in corporate case; and a special procedure for later reopening case to enter discharge with possibility of waiving reopening fee (currently used in the Western District of Kentucky LBR 2081-1).
- Secondary Sources:
 - Robert J. Landry III, *Individual Chapter 11 Cases After BAPCPA: Can You Still Close the Case Early?* 25 Am. Bankr. Inst. J. 10 (July/August 2006).
 - Walter W. Theus, Jr., *Individual Chapter 11S: Case Closing Reconsidered* 29 Am. Bankr. Inst. J. 1 (February 2010) (A 2010 article by an attorney at the Executive Office of the United States Trustees signaled a policy change whereby the trustee program would no longer “object to an individual chapter 11 debtor’s request to close the case before discharge, subject to reopening for entry of a

discharge upon completion of plan payments, if the estate is fully administered and any trustee has been discharged.”)

- Rosemary E. Williams, Bankruptcy Practice Handbook §14:156 (June 2011).
- Alan N. Resnick, *et al.*, Collier on Bankruptcy ¶¶ 1141.05 & 3022.01 (16th Ed. 2012).

III. Disclosure Statement and Plan

A. Adequate Information.

Individual Chapter 11 debtors are required to provide “adequate information” in the Disclosure Statement similar to their business counterparts.

To approve a disclosure statement, the court must determine that it contains "adequate information" as defined by Section 1125 of the Bankruptcy Code. "Adequate information" means information of a kind, and in sufficient detail, as is reasonably practical, in light of the nature and history of the debtor, to enable a hypothetical investor of the relevant class to make an informed judgment about the plan. 11 U.S.C. § 1125(a).

"Numerous courts have prescribed a list of disclosures which typically should be included in a disclosure statement." *In re Cardinal Congregate I*, 121 B.R. 760, 765 (Bankr. S.D. Ohio 1990) (citing *In re Dakota Rail, Inc.*, 104 B.R. 138 (Bankr. D. Minn. 1989); *In re Scioto Valley Mortgage Co.*, 88 B.R. 168 (Bankr. S.D. Ohio 1988); *In re S.E.T. Income Properties, III*, 83 B.R. 791 (Bankr. N.D. Okla. 1988); *In re Jeppson*, 66 B.R. 269 (Bankr. D. Utah 1986); *In re Metrocraft Publishing Servs., Inc.*, 39 B.R. 567 (Bankr. N.D. Ga. 1984); *In re Malek*, 35 B.R. 443 (Bankr. E.D. Mich. 1983)). These cases and others have developed a list of factors which may be necessary to meet the statutory requirement of adequate information. These factors are: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name

of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with the affiliates.

Disclosure of all factors, however, is not necessary in every case. Cases have specified that these factors are only a general "yardstick" and need to be modified as the circumstances and size of each case warrant. *In re Keisler*, 2009 Bankr. LEXIS 1814, 2009 WL 1851413 -4 (Bankr. E.D. Tenn. June 29, 2009). "It is . . . well understood that certain categories of information which may be necessary in one case may be omitted in another; no one list of categories will apply in every case." *In re Phoenix Petroleum*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001). Whether a disclosure statement provides adequate disclosure is "'left essentially to the judicial discretion of the court' and . . . 'the information required will necessarily be governed by the circumstances of the case.'" *Mabey v. S.W. Elec. Power Co. (In re Cajun Elec. Power Co.)*, 150 F.3d 503, 518 (5th Cir. 1998)

Section 1125(b) of the United States Bankruptcy Code states that acceptances or rejections of a proposed plan may not be solicited from holders of claims or interests unless there is transmitted with the solicitation, inter alia, a written disclosure statement, approved, after notice and a hearing, by the court as containing "adequate information."

"[W]here a plan is on its face nonconfirmable, as a matter of law, it is appropriate for the court to deny approval of the disclosure statement describing the nonconfirmable plan." *In re Silberkraus*, 253 B.R. 890, 899 (Bankr. C.D. Cal. 2000); As one court described this obligation in strong terms, "If, on the face of the plan, the plan could not be confirmed, then the Court will not subject the estate to the expense of soliciting votes and seeking confirmation." *In re Pecht*, 57 B.R. 137, 139 (Bankr. E.D. Va. 1986). "Not only would allowing a nonconfirmable plan to accompany a disclosure statement, and be summarized therein, constitute inadequate information, it would be misleading and it would be a needless expense to the estate." *Id.*

The Disclosure Statement must contain an adequate description of the manner in which the Plan will satisfy certain of the standards for confirmation set forth in Section 1129(a) of the Bankruptcy Code. An example is the requirement of Section 1129(a)(7) which provides if a holder of a claim has not accepted the plan, the holder of such claim will receive or retain under the plan property of a value that is not less than the amount that such a holder would receive were the debtor's assets liquidated under chapter 7 (the "best interests of creditors test"). Although a Debtor may believe that the relevant information is contained within the text of the Disclosure Statement, Courts are concerned that the information addressing the Section 1129 requirements be presented in as focused, conspicuous, and straightforward a manner as possible. These issues must also be addressed and resolved before a Disclosure Statement may be approved.

B. Will Ballot Apathy allow for “Deemed Voting” – *Sweetwater*.

The Disclosure Statement has overcome the “adequate information” and Section 1125 hurdles, and the Chapter 11 Plan has been transmitted to creditors. The Chapter 11 Debtor, like a

politician on election day, awaits the results of the balloting. However, what happens when the ballot deadline expires and all that occurs is simply “crickets” and that multiple creditors, of one or more classes, have failed to file ballots? Can an impaired creditors non-voting be treated as consent to the proposed plan treatment, or effectively can the lack of any ballot rejecting the Plan be effectively deemed acceptance?

Professor M. Plum and Colonel D. Mustard, the Debtors in the hypothetical Chapter 11 case, have addressed the ballot apathy issue with the inclusion of a “Deemed Acceptance” provision if creditors fail to vote.

As provided in the hypothetical Disclosure Statement:

IMPORTANT NOTICE: IF YOU ARE ELIGIBLE TO VOTE AND YOUR COMPLETED BALLOT IS NOT RECEIVED BY MAJESTIC LAW OFFICE ON OR BEFORE THE VOTING DEADLINE (SEE SECTION I. B. ABOVE), YOU WILL BE DEEMED TO HAVE VOTED TO ACCEPT THE PLAN.

Such implied acceptance is clearly and simply set forth in the Disclosure Statement’s statement of the deadlines for voting and objection¹ and again in describing confirmation requirements.² If the creditors simply don’t care enough to respond, should the Court proceed to confirm the plan and treat the requirements of Section 1129 as satisfied?

“Deemed acceptance” for non-voting creditors was considered by the Tenth Circuit Court of Appeals in the case of *In re Ruti-Sweetwater, Inc.*, 836 F.2d 1263 (1988), and effectively the proposition was approved in the greater context of meeting the confirmation requirements of Section 1129. In *Ruti-Sweetwater*, the Court stated: “Although actual acceptance of a plan by at least one class of impaired claims is necessary for a bankruptcy court’s confirmation of a plan

¹ I. Introduction, B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing, page 7.

² IV Confirmation Requirements and Procedures, B. Votes Necessary to Confirm Plan, page 25.

under § 1129(a)(10), *Hanson v. First Bank of South Dakota, N.A.*, 828 F.2d 1310, 1313 (8th Cir. 1987), not every creditor is obligated to vote on a plan.” 836 F.2d at 1267.

The *Ruti-Sweetwater* Court in addressing “deemed acceptance” made note of the Bankruptcy Code’s absence of any requirement that each creditor vote on a plan prior to its confirmation. Section 1126(a) provides only that a creditor “may accept or reject a plan.” The Court also considered that the former Bankruptcy Act had provided a failure to vote was considered a rejection of the plan, whereas the Code eliminated such provision and did not indicate whether a failure to vote is deemed to be an acceptance or rejection of the plan. .” 836 F.2d at 1267.

The *Ruti-Sweetwater* court specifically noted that Section 1129(a)(10) allows for confirmation where “one class of claims that is impaired under the plan has accepted the plan,” and that Section 1129 requires only one class of impaired claims need vote for acceptance of the plan for purposes of confirmation under § 1129(a) and § 1129(b). Effectively, once a class of impaired claims has accepted a plan, a plan may be “crammed down” over the objections of every other class of creditors pursuant to § 1129(b). citing *In Re Powell Brothers Ice Company*, 37 B.R. 104, 10 CBC 2nd 328, 331 (D. Kan. 1984).

The “deemed acceptance” holding of *Ruti-Sweetwater* has been questioned by other courts, and its use will be clearly dictated by both local practice and the presiding Judge. While the use of such provisions has been accepted within the First Circuit, as noted by Bankruptcy Judge Joan Feeney in the case of *In re: SW BOSTON HOTEL VENTURE, LLC, et al.*, 460 B.R.

38 (Bkrcty.D.MA 2011), in that Court's review of confirmation requirements.³ However, such a practice has not received approval in the Second Circuit⁴ and as noted in journal articles remains a matter of conflict.⁵

C. Treatment of Secured Claims.

Individual Chapter 11 debtors, like their Chapter 13 counterparts, have the ability to modify and bifurcate a secured claim.⁶ However, Chapter 11 debtors are equally precluded from modifying a claim secured only by a security interest in the debtor's principal residence.⁷

Prior to the 1994 amendment to the Bankruptcy Code, Chapter 11 debtors could strip a home mortgagee's lien down to the value of the collateral, *see Wade v. Bradford*, 39 F.3d 1126 (10th Cir. 1994), while Chapter 13 debtors were prohibited from modifying the secured claim of home mortgage lenders. However, the Bankruptcy Reform Act of 1994 added Section 1123(b)(5) to the Bankruptcy Code, providing in pertinent part that a plan may modify the rights of holders of

³ As noted by Judge Feeney: "Class 4, consisting of the claims of impaired miscellaneous secured creditors, did not vote. Thus, Class 4 is deemed to have accepted the Plan. *See Heins v. Ruti-Sweetwater, Inc. (In re Ruti-Sweetwater, Inc.)*, 836 F.2d 1263, 1267-68 (10th Cir. 1988)." 460 B.R. at 51.

⁴ Bankruptcy Judge Tina Brozman noted in her analysis that "Rule 3018(c) of the Federal Rules of Bankruptcy Procedure provides that "an acceptance or rejection shall be in writing . . ." The conclusion from all of this is that the court cannot deem an impaired class to have accepted a plan if no creditors in that class have voted." *In re: Freise*, 103 B.R. 90, 92 (Bkrcty.S.D.N.Y 1989); although the Second Circuit Court of Appeals in the case of *In re: Dish Network*, did state "We likewise do not decide how the bankruptcy court should treat classes in which no creditor files a timely vote. Compare *In re Ruti-Sweetwater, Inc.*, 836 F.2d 1263, 1266 (10th Cir. 1988) (holding that debtor's "inaction constituted an acceptance of the Plan"), with *In re M. Long Arabians*, 103 B.R. 211, 215-16 (B.A.P. 9th Cir. 1989) (holding that "[t]he holder of a claim must affirmatively accept the plan"). 634 F.3d 79,106 at footnote 14.

⁵ While most circuit appeals courts have not ruled on the *Sweetwater* doctrine, other courts have rejected the theory. *See In re Townco Realty Inc.*, 81 B.R. 707 (Bankr. S.D. Fla. 1987); *In re Friese*, 103 B.R. 90 (Bankr. S.D.N.Y. 1989); *In re Adkisson Village Apartments of Bradley Co. Ltd.*, 133 B.R. 923 (Bankr. S.D. Ohio 1991). *Consensual Plans with Non-voting Classes When the Failure to Vote Means Acceptance*, William L. Medford, American Bankruptcy Institute Journal, 21-2 ABIJ 28, 29. March 2002. See also *In re Vita Corp.* 380 B.R. 525 (C.D. Ill. 2008).

⁶ 11 USC Section 506(a).

⁷ 11 USC Section 1123(b)(5).

secured claims, "other than a claim secured only by a security interest in real property that is the debtor's personal residence."

The legislative history indicates Congress' intent to extend the anti-modification provisions applicable to Chapter 13 plans under 11 U.S.C. § 1322(b)(2) to proceedings under Chapter 11 in accordance with the Supreme Court's decision in *Nobelman v. American Savings Bank*, 508 U.S. 324, 113 S.Ct. 2106, 124 L. Ed. 2d 228 (1993). The purpose of 11 U.S.C. § 1123(b)(5) was to equalize the treatment of residential mortgages in Chapters 11 and 13.

Section 506(a) of the Bankruptcy Code addresses modification of secured claims and provides in relevant part:

(a)(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

The interplay between Sections 506(a) and 1123(b)(5) are the impetus for creative arguments regarding whether a claim is solely secured by the personal residence, and the applicable date to determine the properties use. This line of argument was considered in the case of *In re: Christopherson*, 446 B.R. 831 (Bkrcty. E.D.Ohio, 2011), In *Christopherson* , the Court provided that the analysis must first determine the date that establishes a debtor's primary residence for the purposes of Section 1123(b)(5), and that once the primary residence is established, the court must then determine if a property's mixed use can render the anti-modification provision inapplicable.

The *Christopherson* Court , in its analysis, stated:

Determining whether a property is a debtor's residence requires the consideration of two methods of reasoning. The majority of courts has determined that the critical date is the petition filing date. *In re Baker*, 398 B.R. 198 (Bankr.N.D. Ohio 2008); See, e.g., *In re Howard*, 220 B.R. 716, 718 (Bankr.S.D.Ga. 1998); *In re Lebrun*, 185 B.R. 665, 666 (Bankr.D.Mass. 1995); *In re Wetherbee*, 164 B.R. 212, 215 (Bankr.D.N.H. 1994). This rationale is supported by the policy against postpetition modification. Courts following this view reason that the failure to consider the petition date could lead to creditor manipulation. *In re Dinsmore*, 141 B.R. 499, 505-06 (Bankr.W.D.Mich.1992). Utilizing the petition date prevents creditors from disavowing, on a post-petition basis, a security interest in property not constituting a debtor's principal residence so as to gain the protections of § 1322(b)(2)'s anti-modification clause. *Id.* 466 B.R. at 835.

Once the date of use is established, the next consideration will be whether the anti-modification provision applies. Although an examination of §1123(b)(5) is unambiguous, the statute does not, however, explicitly define which residences are included or excluded from this anti-modification provision . As discussed in *Christopherson*:

Several courts have addressed this issue in the context of multi-unit properties and have held that the anti-modification clause does not apply utilizing a bright line rule that anti-modification clause does not apply to multi-unit properties in which the Debtor lives in only one unit. See, *Lomas Mortgage Inc., v. Louis*, 82 F.3d 1 (1st Cir. 1996); *In re Scarborough*, 461 F.3d 406 (3rd Cir. 2006); *In re Kimbell*, 247 B.R. 35 (Bankr.W.D.N.Y. 2000) Other courts have adopted a case-by-case analysis, opining that the applicability of the anti-modification provision should depend on the intended primary use of the property, not its physical dimensions. See *In re Brunson*, 201 B.R. 351, 352-54 (Bankr.W.D.N.Y. 1996); *In re Guilbert*, 176 B.R. 302 (Bankr.D.R.I 1995)(A debtor's residential property is not rendered "something other than a [primary] residence" regardless of its income-earning functions or its residents). Some courts have declined to follow this approach as it requires a subjective analysis of the parties intentions. 446 B.R. at 436.

While the individual Chapter 11 debtor will find certain benefits in the various manner in which it can treat the secured claims, the approved treatment will be by no means without inherent trials and tribulations