

# Effectiveness of Reaffirmation Agreements

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# DISCOVER



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# **EFFECTIVENESS OF REAFFIRMATION AGREEMENTS**

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## I. Where are we and how did we get here?

- a. Reaffirmation practices came under attack in the late 90's
  - i. *In Re Latanowich*, 207 B.R. 326 (Bankr. D. Mass. 1997) which called into question the reaffirmation practices of Sears, in which pro se reaffirmation agreements were neither filed with nor approved by the Courts yet Sears allegedly collected payments pursuant to the agreements.
  - ii. *Vazquez v. Sears, Roebuck & Co. (In Re Vazquez)*, 221 B.R. 222 (Bankr. N.D. Ill. 1998) reaffirmation agreement never filed with, nor approved by, bankruptcy court was void and unenforceable; creditor willfully violated discharge injunction in attempting to collect discharged pre-petition debt; debtor awarded compensatory damages for actual loss plus punitive damages in amount of roughly ten times his actual damages; damages assessed against creditor, not against creditor's law firm on facts of the matter).
  - iii. After *Latanowich*, a number of other cases challenged the reaffirmation agreement practices of other creditors. See *In re Cherry*, 247 B.R. 176 (Bankr. E.D. Va. 2000); *BankBoston N.A. v. Nanton*, 239 B.R. 419, 1999 U.S. Dist. LEXIS 15343 (D. Mass. 1999); *In re Melendez*, 235 B.R. 173 (Bankr. D. Mass. 1999); *In re Bruzzese*, 214 B.R. 444 (Bankr. E.D. N.Y. 1997).
  - iv. In resolving these reaffirmation cases, many creditors agreed to give the debtor a special notice advising the debtor of:
    - o The consequences of entering into a Reaffirmation Agreement;
    - o The fact that the Reaffirmation Agreement was a voluntary;
    - o Agreement between the debtor and creditor and was not Compelled under Title 11;
    - o The legal ramifications attendant to entering into a Reaffirmation Agreement; and
    - o Emphasizing the rescission period.
  - v. Subsequent to the reaffirmation class action cases, many jurisdictions adopted forms of Reaffirmation Agreements that required more specificity and detail through Local Rules or

- ii. in the best interest of the debtor.
- g. Section 524(c)(6)(B) provides that subparagraph (A) does not apply to consumer debt that is secured by real property.
- h. Fed.R.Bankr.P Rule 4008 requires:
  - i. Reaffirmation Agreements to be accompanied by a Statement of Comparison, which compares the income and expenses as shown on schedules I and J with the amounts listed in the Statement in Support of the Reaffirmation Agreement. **CREDITORS BEAWARE THE B240 AND MODIFIED B240 FORMS DO NOT CONTAIN THIS STATEMENT.**
    - 1. If the income and expenses in Part D are different from the income and expenses reported on Schedules I and J, the debtor must explain the difference;
    - 2. Most creditors have created customized reaffirmation agreements that incorporate the 4008 Comparison into Part D, however, be advised that Official Form B240 and the revised Form B240 do not.
  - ii. 4008 also requires that a Cover Sheet be filed along with the reaffirmation agreement;
  - iii. The Cover Sheet, Official Form 27, be found by following the links on [www.uscourts.gov](http://www.uscourts.gov): or your local courts website.
    - 1. The Cover Sheet summarizes the Reaffirmation Agreement and includes:
      - a. Creditor's name;
      - b. Amount of the debt at the time the case was filed and at the time of the reaffirmation agreement;
      - c. Interest rate;
      - d. Repayment Schedule;
      - e. Market value and description of the property;
      - f. Whether the creditor believes the debt may be nondischargeable;
      - g. Income and Expenses from Schedules I and J;
      - h. Income and Expenses from the Statement in Support of the Reaffirmation Agreement;
      - i. An explanation of any difference between the amounts from Schedules I and J and those from the

Statement in Support of the Reaffirmation Agreement;

- j. If the presumption of undue hardship arises, the appropriate box must be checked and an explanation as to how the debtor will rebut the presumption;
- k. The debtor must also disclose if the debtor was represented by counsel during the negotiation of the reaffirmation agreement and has the attorney, if any, signed the certification section (Part C) of the reaffirmation agreement.
- l. The party filing the cover sheet must also sign and certify that the cover sheet is being filed with a true and correct copy of the reaffirmation agreement.

### **III. Mandatory Disclosures Under BAPCPA**

- a. Official Form B240, Modified B240 created to incorporate the amendments and many creditors use their own modified forms. Examples are attached.
- b. §524(k) now requires a litany of notices, disclosures, and instructions that must be included in a reaffirmation agreement.
- c. §524(k)(2) states that the disclosures “shall be made clearly and conspicuously and in writing.” It further provides that the terms “Amount Reaffirmed” and “Annual Percentage Rate” shall be disclosed more conspicuously than other terms. The requisite disclosures must also contain language that states “before agreeing to reaffirm a debt, review these important disclosures.”
- d. §524(k)(3) requires a reaffirmation agreement to contain a Disclosure Statement. §524(k)(3)(A) identifies the Disclosure Statement as “Part A” and mandates the information that must be contained in the Disclosure Statement.
- e. The Disclosure Statement must contain:
  - i. “Part A: Before agreeing to reaffirm a debt, review these important disclosures:” §524(k)(3)(A).
  - ii. A Summary of Reaffirmation Agreement, which states “this summary is made pursuant to the requirements of the Bankruptcy Code.” §524(k)(3)(B).

- iii. The amount being reaffirmed, which means the “total amount of debt that the debtor agrees to reaffirm...and the total of any fees and costs accrued as of the date of the disclosure statement.” §524(k)(3)(C)(i) and (ii).
  1. The “Amount Reaffirmed”, which must be more conspicuous than the other terms of the agreement, must also be accompanied by the following statements:
    - a. “The amount of the debt you have agreed to reaffirm” and
    - b. Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure statement. Consult your credit agreement.”
- iv. The “Annual Percentage Rate”. This term must be more conspicuous than the other terms of the agreement. §524(k)(3)(E).
  1. Subsections (E) and (F) deal with the various interest rates (i.e. fixed, variable) applicable to the agreement and how to disclose the rate.
- v. A Repayment Schedule;
  1. the Payment schedule must be described “with reasonable specificity” §524(k)(3)(H)
- vi. A creditor must disclose whether the creditor is asserting a security interest in the property. §524(k)(3)(G).
  1. Must also identify the collateral, the original purchase price, and/or the amount of the loan;
  2. Some jurisdictions may also require the creditor to disclose the fair market value of the property in the reaffirmation agreement, which is now required to be disclosed in the Fed.R.Bankr.P. 4008 Cover Sheet.
- vii. §524(k)(3)(J)(i)(1)-(6) requires a laundry list of mandatory disclosures and instructions:
  1. **“NOTE:** When this disclosure refers to what a creditor ‘may’ do, it does not use the word ‘may’ to give the creditor

specific permission. The word ‘may’ is used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement reaffirming a debt. If you don’t have an attorney helping you, the judge will explain the effect of your reaffirming a debt when the hearing on the reaffirmation agreement is held.”

2. “Reaffirming a debt is a serious financial decision. The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.”
3. “1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a security agreement you and your creditor agree on).”
4. “2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.”
5. “3. If you were represented by an attorney during the negotiation of your reaffirmation agreement, the attorney must have signed the certification in Part C.”
6. “4. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, you must have completed and signed Part E.”
7. “5. The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.”
8. “6. If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D.

- a. If creditor is a credit union this paragraph shall read: “If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court.”
9. “7. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your reaffirmation agreement. The bankruptcy court must approve your reaffirmation agreement as consistent with your best interests, except that no court approval is required if your reaffirmation agreement is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on your real property, like your home.”

**10. YOUR RIGHT TO RESCIND (CANCEL) YOUR REAFFIRMATION AGREEMENT.** You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters a discharge order or before the expiration of the 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (or canceled).

**11. WHAT ARE YOUR OBLIGATIONS IF YOU REAFFIRM THIS DEBT?** A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy case. That means that if you default on your reaffirmed debt after your bankruptcy case is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the creditor may be permitted by that agreement or applicable law to change the terms of that agreement in the future under certain conditions.

**12. ARE YOU REQUIRED TO ENTER INTO A REAFFIRMATION AGREEMENT BY ANY LAW?**  
No, you are not required to reaffirm a debt by any law.

Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

**13. WHAT IF YOUR CREDITOR HAS A SECURITY INTEREST OR LIEN?** Your bankruptcy discharge does not eliminate any lien on your property. A 'lien' is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the security property if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State's law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you make a single payment to the creditor equal to the current value of the security property, as agreed by the parties or determined by the court.

- e. §524k(4) does not mandate the form of Part B ("The Reaffirmation Agreement"), but it must contain: 'I (we) agree to reaffirm the debts arising under the credit agreement described below'.
- f. The reaffirmation agreement must also provide a brief description of the credit agreement, description of any changes to the agreement, signature of the debtor and creditor, date of the signatures, and the date of the creditor's acceptance. §524(k)(4).
- g. Cases relating to Form of the Reaffirmation Agreement:
  - a. *In re Donald* 343 B.R. 524 (Bankr. E.D. N.C., 2006), the court denied the request to approve the reaffirmation agreement as the agreement did not contain all of the required disclosures and some of the disclosures contained in the agreement were incorrect or misleading;
  - b. *In re Quintero*, 2006 Bankr. LEXIS 906 (N.D. Cal., 2006) the court refused to approve a reaffirmation agreement wherein the creditor failed to include the required disclosures and as a result of the creditor's error, the Court ruled that the creditor was not permitted to repossess car;
  - c. *In re Strathres*, Case No. 10-55413 (Bankr. E.D. MI. 2010) - Court denied approval of reaffirmation agreement that did not contain adequate description of repayment schedule. Reaffirmation agreement failed to provide the term over which the payments would be made and indicated that payments would be \$275.33 per month for 0 months;

- d. *In re Blackstock*, Case No. 09-68632 (Bankr. E.D. Mi. 2010) – Court denied approval of reaffirmation agreement there Agreement did not contain adequate description of repayment schedule. Although Reaffirmation Agreement indicated that payment could vary from month to month, Agreement must disclose at least an approximate current monthly payment amount and the next monthly payment due date;

#### **IV. Reaffirmation Agreement Must Be “Made” Prior To Discharge**

- a. The plain language of U.S.C. §524 (c)(1) provides that in order for a reaffirmation agreement to be valid, it must be “made” before the granting of discharge.
  - i. There is debate among the courts as to whether “made” refers to entering into and signing the reaffirmation agreement or actually filing the reaffirmation agreement with the court.
    1. See *In re Piontek*, Case No. 09-70632 (Bankr. E.D.MI. 2010). The debtor was provided a reaffirmation agreement approximately two months before the issuance of the discharge. The debtor failed to return the reaffirmation agreement to the creditor until after the court had issued the discharge. The court ruled that the reaffirmation agreement was not valid as it was not “made” prior to discharge because all parties had not yet signed the document when the discharge was entered.
    2. *In re Smith*, 2012 WL 441322 (Bankr. N.D. Ohio 2012) – Rule 4008(a) requires reaffirmation agreements to be filed not later than 60 days after the first date set for the first meeting of creditors. Rule 4004 provides a vehicle for delaying entry of discharge at the request of the debtor. Debtor’s Motion to Vacate Discharge for purposes of allowing belated reaffirmation agreement denied. Section 524 makes clear that reaffirmation agreements are not enforceable if not made before entry of reaffirmation.
  - ii. The majority of courts have ruled that the parties cannot enter into a reaffirmation agreement after the discharge has been issued and that the discharge cannot be set aside to allow for the filing of a reaffirmation agreement.
    1. *Pickerel v. Household Realty Corp.*, 2010 WL 2301190 (Bankr. N.D. Ohio 2010) – Reaffirmation agreement signed prior to entry of discharge but not filed with Court until after discharge is binding and enforceable reaffirmation

agreement. As long as the reaffirmation agreement is executed prior to entry of discharge, Code does not impose time limit to file and there is no prohibition against filing timely executed reaffirmation agreement after entry of discharge;

2. In *In re Cottrill*, 2007 Bankr. LEXIS 2009 (N.D. W.V. 2007) the debtors filed statement of intention reflecting their intent to reaffirm the debt; however, they failed to execute a reaffirmation agreement. Subsequent to entry of their discharge, the debtors sought to file a reaffirmation agreement. The debtors suggested that §524(c) is subject to waiver since they agreed to reaffirm the debt prior to discharge or in the alternative, set aside the discharge so that the agreement could be filed. The court found that pursuant to 28 U.S.C. §1334(b), it no longer had jurisdiction over the matter. The court went on to state that the untimely filed reaffirmation agreement and the request to waive §524(c)(1) do not “arises under”, “arise in” and is not “related to” the debtor’s bankruptcy proceeding. §524(c)(1) creates strict time requirements for filing reaffirmation agreements. Failure to abide by §524(a)(1) renders §524(c) inapplicable to the proceeding. A reaffirmation agreement is valid only if all elements of the statute are satisfied and they cannot be waived or extended after discharge otherwise §524(c)(1) would not protect a debtor from bad judgment or making ill-advised decisions after the debt has been discharged;
3. In *In re Stewart* 2006 Bankr. LEXIS 2959 (Bankr. N.D. Ohio 2006) the court decided that the discharge cannot be set aside for the purpose of filing a reaffirmation agreement entered into after discharge;
4. *In re Smith*, 467 BR 122 (Bankr. W.D. Mi. 2012) – Debtors’ alleged uneasiness at not having reaffirmation agreement with residential mortgage lender and possible foreclosure if debtors default in post-petition payments did not warrant setting aside discharge order. Section 105 does not provide basis to disregard or limit or expand express statutory provisions. Court must exercise equitable powers only within the confines of the Code and to carry out, but not countermand, provisions of Title 11.

b. Fed.R.Bankr.P 4008—Other timing issues:

- i. Reaffirmation Agreement must be filed within 60 days of the date first set for the meeting of creditors. Fed.R.Bankr.P 4008.
  1. *In re Smith*, 2012 WL 441322 (Bankr. N.D. Ohio 2012) – Rule 4008(a) requires reaffirmation agreements to be filed not later than 60 days after the first date set for the first meeting of creditors. Rule 4004 provides a vehicle for delaying entry of discharge at the request of the debtor. Debtor’s Motion to Vacate Discharge for purposes of allowing belated reaffirmation agreement denied. Section 524 makes clear that reaffirmation agreements are not enforceable if not made before entry of reaffirmation;
  2. *In re Russell*, Case No. 11-61160 (Bankr. E.D. Mi. 2011) – Motion to Vacate Discharge for purposes of allowing late filing of reaffirmation agreement denied. Motion failed to allege that reaffirmation agreement had been executed prior to entry of discharge, which prevents enforceable agreement. Court cannot “cure” the failure to execute the discharge agreement by vacating the discharge. Further, deadline to file reaffirmation agreement is 60 days after first meeting of creditors unless an extension of time is obtained before discharge is entered. Court cannot extend deadline after discharge and cannot vacate discharge and create new deadlines.
- ii. Fed.R.Bankr.P 4008 also states: “[t]he court may, at any time and in its discretion, enlarge the time to file a reaffirmation agreement”;

**V. Part C: Certification of Debtor’s Attorney—Should I or Shouldn’t I Certify?**

- a. §524(C)(3) and §524 (k)(5)(A) requires the debtor’s attorney to certify the following in a reaffirmation agreement:
  - i. He/she is the attorney for the Debtor and represented this Debtor during the course of negotiating this Reaffirmation Agreement;
  - ii. That the agreement represents a fully informed and voluntary agreement by the Debtor and does not impose an undue hardship on the Debtor or any dependent of the Debtor;
  - iii. He/She has fully advised the Debtor of the legal effect and consequences of this Reaffirmation Agreement including but not limited to a default under such agreement;

iv. These certifications are not subject to alteration.

b. §524(k)(5)(B):

i. If a presumption of undue hardship (monthly income is less than monthly expenses) has been established the attorney's certification shall state that in the opinion of the attorney the debtor is able to make the payment:

1. The presumption can be avoided if schedules I and J and the debtors Statement in Support of the Reaffirmation Agreement clearly displays the debtors ability to make the payments required in the reaffirmation agreement;

2. Must also include signature of Debtor's attorney and the date signed.

c. Cases relating to Attorney Certifications:

i. *In re Perez, 2010 Bankr. LEXIS 2229 (Bankr. D. N.M. 2010, July 12, 2010)*, the debtor filed a executed a reaffirmation agreement; however, debtor's counsel unilaterally altered the required disclosures in Part C of the reaffirmation agreement pursuant to a local bankruptcy rule, which rendered the agreement unenforceable. The court determined that §521(a)(2)(B) does not require that a debtor complete and sign an enforceable reaffirmation agreement and because the *debtor*, as opposed to the debtor's attorney, did everything in her power and control to timely reaffirm the debt, §362(h) did not operate to terminate the automatic stay. The court declined to address whether a creditor could repossess its collateral post-discharge pursuant to an *ipso facto* clause, there is little doubt that the determination that the debtor complied with Sections 362(h) and 521(a) would be interpreted to preclude the enforcement of such a provision under Section 521(d);

ii. *In re Narro, Case No. 10-15859(Bankr. N.M. 2011)*. The Debtors' Statement of Intention indicated their intent to retain their 2006 Lincoln Navigator. Based on the Debtors' Statement of Intention, counsel for creditor prepared a standard form reaffirmation agreement and submitted the form to counsel for the Debtors. The completed reaffirmation agreement did not contain the three required certifications in Part C. Debtors' counsel had stricken through the second certification which states:

...(2 ) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor;

Creditor's counsel notified Debtors' counsel that the reaffirmation agreement did not comply with 11 U.S.C. § 524(c)(3) so it was being returned unfiled. Despite not having been signed and accepted by creditor, Debtors' counsel proceeded to file the reaffirmation agreement. After the entry of the discharge, creditor repossessed the Navigator. The Debtors then filed an Emergency Motion for Turnover of the Vehicle and an adversary complaint seeking sanctions for violation of the discharge injunction. The Court ultimately dismissed the debtor's adversary complaint and ruled that the reaffirmation agreement was not enforceable due to the alterations made to the Attorney Certification section. The Court held that Ford's repossession of the vehicle did not violate the discharge injunction.

- d. What is Debtor's counsel refuses to sign the Reaffirmation Agreement?
- i. In *In re Mendoza*, 2006 Bankr. Lexis 1698 (Bankr. W.D. TX 2006), Debtor's counsel executed the declaration portion of the reaffirmation agreement; however, the attorney failed to check the box certifying that he had made the requisite disclosures to the client; specifically, that the agreement does not represent an undue hardship, the agreement was voluntary on the part of the debtors or the box stating that even though the agreement is an undue hardship, the attorney is of the opinion that the debtor can make the monthly payments required under the agreement. The court found that even though the attorney signed the reaffirmation agreement, the failure to properly certify that the required disclosures were made caused the reaffirmation agreement to be declared invalid;
  - ii. In *In re Isom*, 2007 WL 2110318 (Bankr. E.D. of VA), the Debtor was represented by counsel during her chapter 7 bankruptcy case; however, debtor's counsel refused to execute an affidavit or declaration to accompany the reaffirmation agreement. The court held that without the attorney's certification the reaffirmation agreement was unenforceable. The court noted that reaffirmation agreements are an integral part of a Chapter 7 case and debtor's counsel cannot abandon the client for that portion of the case;

iii. In *In re Minardi*, \_\_\_ B.R. \_\_\_, 2009 WL 210718 (Bankr. N.D. Okla. Jan. 23, 2009), the court held that, if the debtor was represented by counsel during the course of the Chapter 7 case, the attorney must execute the reaffirmation agreement for the agreement to be valid. The court noted that it would not recognize efforts by the debtor's bar to exclude reaffirmation agreements from the services provided;

iv. The United States Bankruptcy Court for the Eastern District of Michigan has issued an Administrative Order clarifying the responsibilities of debtor's counsel relating to reaffirmation agreements that states:

As a matter of fulfilling the obligations of counsel for a debtor in a Chapter 7 Case:

- i. Counsel may not exclude from representation services relating to a reaffirmation agreement: and
- ii. Counsel shall appear and represent the debtor at any hearing on any reaffirmation agreement.

v. See also, *In re Smith*, Case No 07-109 (Bankr. S.D. Ohio) wherein the court found that Debtor's counsel acted properly by not executing the reaffirmation agreement, where counsel believed the agreement would cause the debtor to suffer an undue hardship. The court found that it is debtor's counsel's duty to fully inform the debtor of the consequences of reaffirming a debt; however, if debtor's counsel chooses not to sign Part C when an undue hardship exists, the court will review the agreement and determine if debtor's counsel's presence is necessary.

## **VI. Pro Se Reaffirmation Agreements**

a. If the debtor is not represented by an attorney, a Motion for Court Approval of the Reaffirmation Agreement must be filed with the Reaffirmation Agreement. The form of the motion is set forth in §524(k)(7).

i. The Motion must state:

I am not represented by an attorney in connection with this reaffirmation agreement.

I believe this reaffirmation agreement is in my best interest based on the income and expenses I have disclosed in my Statement of Support of this affirmation agreement.

Therefore, I ask the court for an order approving this reaffirmation agreement.

b. §524(c)(6)—The Court will typically hold a hearing to review the Reaffirmation Agreement and must determine if the reaffirming the debtor imposes an undue hardship on the debtor or the debtor’s dependents and if it is in the best interests of the debtor

i. The court will also explain the legal consequences of the Reaffirmation Agreement and any default pursuant to the Reaffirmation Agreement

**VII. Part D: Debtor’s Statement in Support of the Reaffirmation Agreement and the Presumption of Undue Hardship**

a. §524(k)(6)(A) requires the following statements to be included in the reaffirmation agreement:

I believe this reaffirmation agreement is in my best interest and will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received is \$\_\_\_\_\_, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total \$\_\_\_\_\_, leaving \$\_\_\_\_\_ to make the required payments on this reaffirmed debt. I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship and must be reviewed by the court. However, this presumption may be overcome if I explain to the satisfaction of the court how I can afford to make payments here:

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

I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.

- b. It is important to fill out Part D correctly as using the incorrect amounts can lead to an artificial presumption of undue hardships and the possibility of having to attend an unnecessary hearing
  - i. The first blank is for the debtor's current income;
  - ii. The second blank is for the debtor's current expenses, less the debt being reaffirmed; and
  - iii. The third blank is the difference between the first two blanks, i.e. the amount the debtor has available to make the payment on the reaffirmed debt.
- c. Provide as much detail in these sections as possible to assist the Court with determining if the presumption can be overcome. Don't use generic phrases, i.e. "will cut expenses", "will tighten belt".
- d. Presumption of Undue Hardship
  - i. Pursuant to §524(m)(1), a reaffirmation agreement is presumed to be an undue hardship on the debtor, until 60 days after it is filed with the court, if the debtor's monthly income less the debtor's monthly expenses as shown on the debtor's Statement in Support of the agreement is less than the scheduled payments on the reaffirmed debt;
  - ii. This presumption may be rebutted in writing by the debtor if the debtor's statement contains an explanation that identifies additional sources of funds to make the scheduled reaffirmation payments;
  - iii. If the presumption is not rebutted to the court's satisfaction, then the court *may* disapprove the reaffirmation agreement;
  - iv. However, no reaffirmation agreement will be disapproved without notice and a hearing and this section mandates the conclusion of this hearing before the entry of the debtor's discharge;
  - v. The presumption of undue hardship does not apply to credit unions. §524(m)(2);
  - vi. Cases relating to Presumption of Undue Hardship:
    - 1. *In re Morton*, 410 BR 556 (6th Cir. BAP 2009), the Bankruptcy Appellate Panel ruled that the Bankruptcy Court cannot disapprove a reaffirmation agreement, in

which the attorney has signed and no presumption of undue hardship exists, because the Court felt the reaffirmation agreement was not in the best interest of the Debtor;

2. *In re Payton*, 338 B.R. 899 (Bankr. D. N.M., 2006), the court held that a presumption of undue hardship exists if the monthly income and expenses listed in Part D, the Statement in Support of the Reaffirmation Agreement, indicate a deficit and the inability to make the reaffirmation payments. The debtor may rebut the presumption through other sources or additional income. The court determined that it is not required to rely solely on the expenses and income listed in the Debtor's Statement in Support of the Reaffirmation Agreement in deciding whether to approve or disapprove the agreement;
3. *In re Laynas*, 345 B.R. 505 (Bankr. E.D. Penn., 2006), the amounts listed by the debtor on Schedules I and J were different than the amounts contained in the debtor's Statement in Support of the Reaffirmation Agreement. According to the schedules, the debtor could not afford the payment; however, the amounts as shown in the Statement in Support of the Reaffirmation Agreement indicated the Debtor could afford the payment. Even though the numbers in the debtor's Statement in Support of the Reaffirmation Agreement did not create the presumption of undue hardship, the court evaluated the accuracy of the information in the debtor's Statement by reviewing other indicators of the debtor's financial condition. The debtor did not provide an explanation for the differences between the debtor's Statement in Support of the Reaffirmation Agreement and the schedules. The court found that it should also consider other factors regarding "the debtor's best interest", such as whether the debtor needs the vehicle or whether the debtor would actually lose the vehicle without the agreement (ride through);
4. *In re Mendoza*, 2006 Bankr. LEXIS 1698 (Bankr. W.D. Texas, 2006), the court determined that the presumption of undue hardship existed as the debtor did not file the required Statement in Support of Reaffirmation Agreement;
5. *In re Stillwell*, 2006 Bankr. LEXIS 1847 (Bankr. N.D. Okla., 2006), the court found that a presumption of an undue hardship arose when the debtor's schedules indicated they could not afford the reaffirmation agreement

payments, even though the debtors speculated that overtime would allow them to make the payments;

6. *In re Wilson*, 2007 Bankr. LEXIS 817 (D. N.M., 2007), pursuant to § 524(k), the court only needs to review the Statement in Support of the Reaffirmation Agreement to determine if there is an undue hardship; that the Schedules I and J contain numbers different from Part D is irrelevant;
7. In *In re Reihart*, Case No. 06-00497, (M.D. of Penn, 2006), the amounts listed in the Statement in Support of the Reaffirmation Agreement differed from Schedules I and J significantly and the difference was unexplained. The Court disregarded the Statement in Support of the Reaffirmation Agreement and examined Schedules I and J. The Court scheduled a hearing to allow the debtor the opportunity to explain the difference between Part D and Schedules I and J.

#### **VIII. What if the Debtor changes his/her mind after executing the Reaffirmation Agreement?**

- a. §524(c)(4) allows a debtor to rescind (cancel) the Reaffirmation Agreement by providing notice to the creditor;
- b. The rescission must occur within 60 days from the date the Reaffirmation Agreement is filed with the court or prior to the entry of the discharge, whichever occurs later;
- c. Cases relating to Rescission issues:
  - i. *In Re Ireland*, 241 B.R. 539 (Bankr. E.D. Mich. 1999), language in one of three reaffirmations that debtor's rescission of any one would be a rescission of all three violated debtor's rescission rights under the statute to make unfettered decision as to each agreement;
  - ii. *Pickerel v. Household Realty Corp.*, 2010 WL 2301190 (Bankr. N.D. Ohio 2010) Rescission requires debtor to give notice of rescission to creditor. Although no particular form of notice is required, notice should adequately convey to creditor the debtor's intent to no longer be bound;
  - iii. *Salyersville National Bank v. Bailey*, 2011 WL 6141644 (6th Cir. BAP 2011) – Reaffirmation agreement would be rescinded where reaffirmation was based on mutual mistake of creditor and debtor. Reaffirmation agreement is valid and enforceable only to extent it

would be enforceable under applicable nonbankruptcy law. However, court will not rescind agreement merely because later events make reaffirmation an imprudent decision. Reaffirmation was predicated on creditor holding a valid mortgage on debtor's residence. Chapter 7 trustee thereafter brought action to avoid mortgage as never properly recorded and trustee and creditor agreed that the property would be sold with the proceeds being retained by the estate, with the bank filing an unsecured claim for the amount of the debt. Erroneous assumption that bank held validly perfected secured claim was mistake of material fact that went to the very root of the reaffirmation agreement;

- iv. *In Re Losievsky, 1999 Bankr. Lexis 1701 (Bankr. E.D. Mich. 1999)* in *terrorem* language inserted by creditor into parties' reaffirmation agreement was void where provision effectively coerced bankruptcy debtors into not exercising their rescission rights;
- v. *In re Slack, Case No. 09-42599 (Bankr. E.D. Mi. 2009)* – Stipulation to Reinstate Reaffirmation Agreement would not be approved by Court. While Code permits a Debtor to rescind a reaffirmation agreement, nothing in the Code permits a Debtor to later “withdraw” that rescission and reinstate the reaffirmation agreement. Denial was without prejudice to parties to prepare and submit a new reaffirmation agreement as long as that could be done prior to entry of discharge.

**IX.** The Debtor did not reaffirm, now what?

- a. Voluntary Payments--§524(f) permits the debtor to make voluntary payments on any discharged debtor;
- b. §524(l) states that “notwithstanding any other provision of this title, the following shall apply:”
  - i. A creditor may accept payments from the debtor before and after the filing of an agreement of the kind specified in subsection (c) with the court;
  - ii. A creditor may accept payments from a debtor under such agreement that the creditor believes in good faith to be effective;
  - iii. The requirements in subsections (c)(2) and (k) shall be satisfied if the disclosures required under those subsections are given in good faith.

- c. 4<sup>th</sup> Option? Section 521(a)(2)(A) and (B) require that the Debtor not only file a statement of intention that specifies the property will be reaffirmed, redeemed, or surrendered, see §521(a)(2)(A), but the debtor must actually perform the stated intention, §521(a)(2)(B), within 30 days after the date first set for the 341 hearing.
- d. If the debtor fails to file the statement of intention, fails an improper statement of intention, or fails to timely perform the stated intention, §521(a)(2)(C) and §362(h) provides that the automatic stay is vacated, the property is no longer property of the estate and creditors can take action as allowed under applicable non-bankruptcy law as to the collateral.
- e. The interplay between §521(a)(2) and §362(h) have created statutory prohibition on the 4<sup>th</sup> Option.
- f. Prior to BAPCPA:
  - i. The 3<sup>rd</sup>, 4<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup> Circuits did allow 4<sup>th</sup> Option/Ride Through;
  - ii. The 1<sup>st</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, and 11<sup>th</sup> Circuits did not allow 4<sup>th</sup> Option/Ride Through. See *In re Bell*, 700 F.2d 1053 (6<sup>th</sup> Cir. 1983); *In Re Edwards*, 901 F.2d 1383 (7<sup>th</sup> Cir. 1990)
- g. The 9<sup>th</sup> and 4<sup>th</sup> Circuits have recently overturned prior decisions that allowed the 4<sup>th</sup> Option/Ride Through;
  - i. In *In Re Dumont*, Case No. 08-60002 (9<sup>th</sup> Cir. 2009) the debtor refused to sign a reaffirmation agreement and the creditor repossessed the vehicle after the discharge had been entered. The 9<sup>th</sup> Circuit Court of Appeals reversed its decision in *McClellan Fed. Credit Union v. Parker (In re Parker)*, 139 F.3d 668 (9<sup>th</sup> Cir. 1998), wherein the court allowed the ride through option as §521 only required the debtor to file a statement of intention. In reversing its prior decision, the court noted that §362(h) in conjunction with §521(a)(2), now mandate that the debtor perform the stated intention. The court limited its ruling to those cases where the debtor refused to sign a reaffirmation agreement and did not address whether the 4<sup>th</sup> option is available when a court declines to approve a reaffirmation agreement. Additionally, the court determined that the repossession of the vehicle, without a payment default, was permitted pursuant to state law and the contract. The contract contained an ipso facto clause and §521(d) authorized the creditor to enforce that contractual provision;

- ii. In *In re Jones*, Case No. 08-2177, (4<sup>th</sup> Cir. 2010), the 4<sup>th</sup> Circuit reversed its prior decision in *In re Belanger*, 962 F.2d. 345 (4<sup>th</sup> Cir. 1992), due to §521(a)(2) and §362(h), which now require the debtor to not only file a statement of intention, but to actually timely perform the stated intention. If the debtor states the intention to reaffirm the obligation, then the debtor must enter into a reaffirmation agreement within 30 days from the date first set for the 31 meeting or the automatic stay will be vacated and the property will no longer be property of the estate. The court also recognized the general rule that an ipso facto clause is generally unenforceable; however, the amended §521(d) not allows for an exception to that rule when the Debtor fails to comply with §521(a) and §362(h);
- iii. *Dennis W. Hall v. Ford Motor Credit Company LLC*, Case No. 103, 370 (Supreme Court of Kansas, 2011), the debtor filed a chapter 7 bankruptcy and did not reaffirm the obligation with Ford Credit. Due to the absence of a reaffirmation agreement, Ford Credit attempted to repossess the vehicle. The debtor subsequently filed a state court action in which he requested an order that prevented Ford Credit from repossessing the vehicle. The trial court ruled in Ford Credit's favor. The debtor then filed an appeal with the Kansas Court of Appeals and it was eventually transferred to the Kansas Supreme Court. The Kansas' version of the Uniform Consumer Credit Code allows a creditor to enforce the default provisions of a consumer credit transaction only if a payment default exists or if the creditor can establish the prospects of payment, performance, or realization of collateral is significantly impaired. The Kansas Supreme Court ruled that the filing of the bankruptcy alone is not enough to satisfy the significant impairment test; however, the debtor's failure to respond to the requests to reaffirm the obligation, the entry of the discharge that shifts all the risk to the creditor, the inability of the creditor to contact the customer, and the fact that the vehicle was worth less than the amount still owed on the contract, did create a significant impairment justifying repossession even when the account was current;
- iv. *Ford Motor Credit Company LLC v. Maureen P. Roberson (In re Roberson)*, the Debtor filed a Chapter 7 bankruptcy case and did not reaffirm her loan with the Ford Credit. The Chapter 7 case was discharged on January 30, 2008, and on February 19, 2008, Ford Credit repossessed the vehicle pursuant to the "ipso facto" clause contained in the underlying contract. The Debtor then filed a Chapter 13 bankruptcy case and filed a motion for the return of the vehicle. At the time of her Chapter 13 case was filed, the Debtor

owed \$9732.35 to Ford Credit and her schedules indicated the vehicle has a value of \$8000.00. In the Chapter 13 case the Debtor filed an adversary proceeding against Ford Credit alleging the repossession violated the discharge injunction and several state consumer protection statutes. The Bankruptcy Court sought certified the question of whether a creditor can repossess the vehicle if the account is current when the customer files bankruptcy and does not reaffirm the debt to the Maryland Court of Appeals. The Maryland Court of Appeals decided that a creditor can repossess a car when the customer files bankruptcy and does not reaffirm the debt. The state law prohibited acceleration of the debt, but not repossession when the creditor deemed itself “insecure” “Insecurity” is defined ‘having a good faith belief that the possibility of receiving payment or performance from another party to a contract is unlikely’” Factors such as the existence of any equity, payment history, lack of communication between the parties, filing of a bankruptcy, and the failure to reaffirm impact a finding of “insecurity”;

- v. *In re Henderson, et. al.*, 2013 WL 2255170 (Bankr. D. Nev 2013), the bankruptcy court combined five Chapter 7 cases in which the debtors were seeking approval of reaffirmation agreements. All of the reaffirmation agreements were filed by debtors who were acting without counsel and the Court had to determine if the agreements were in the best interest of the debtors pursuant to 11 U.S.C. §524(c)(6)(A). The Court determined that the reaffirmation agreements were not in the best interest of the debtors as the creditors could not enforce the “ipso facto” clause contained in the contracts due to a recent change in state law. The Court held that the right to repossess the vehicles is controlled by non-bankruptcy, state law. “[T]he disposition of the debtor's assets is generally left to state law ... The parties contract, in conjunction with state law, determines when a debtor has defaulted on an automobile loan.” *Dumont v. Ford Motor Credit Co. (In re Dumont)*, 581 F.3d 1104, 1114–15(9th Cir.2009), *aff'g*, 383 B.R. 481, 488–89 (B.A.P.9th Cir.2008). Nevada recently amended the relevant state statute, NEV.REV.STAT. § 97.304 (2011). The new law allowed repossession only if there was a monetary default or if “[t]he prospect of payment, performance, or realization of collateral is significantly impaired”. In each of the cases before the court, the only default, was the filing of the bankruptcy. The Court predicted that the Nevada Supreme Court, which had not defined “significantly impaired”, would not deem the mere filing of a bankruptcy alone, a significant impairment. The Court determined that since repossession of the vehicles was not permitted under

state law, without an additional basis beyond filing the bankruptcy, approving the agreement would not be in the debtor's best interest;

h. Cases allowing Fourth Option:

- i. *In re Hart*, 402 B.R. 78 (Bankr. D. Del. 2009), the court allowed the debtor to exercise the pay and retain option after the court declined to approve the reaffirmation agreement, which covered both real and personal property, as the debtors were not able to overcome the presumption of undue hardship. The court determined that the debtor timely performed the stated intention as provided for under §521(a)(2) and as a result the automatic relief from stay provisions under §362(h) did not become effective. Additionally, the court notated that §362(h) only applied to personal property and not to real property;
- ii. *In re Waller*, 394 B.R. 111 (Bankr. D. S.C. 2008), the debtor was not able to rebut the presumption of undue hardship and the court decline to approve a reaffirmation agreement relating to real property. The court did allow the 4<sup>th</sup> option by finding that that debts secured by real property are not impacted by §362(h) and 521(a)(2)(C), as those sections relate to personal property;
- iii. *In re Blakeley*, 2007 Bankr. LEXIS 538 (D. Utah, 2007), holding that although BAPCPA has eliminated the “ride through”, under limited circumstances in which the debtor complies with all of §521 and §362(h), the debtor can “ride through” the bankruptcy if the court declines to approve the reaffirmation agreement;
- iv. *In re Husain*, 2007 Bankr. LEXIS 768 (E.D. Virginia, 2007) wherein the vehicle was not reaffirmed however the court held that the discharge injunction would continue as long as the debtor was current in payments and insured the property;
- v. *In re Baker*, 2009 U.S. Dist. LEXIS 6333 (D. Delaware, January 29, 2009), the United States District Court for the District of Delaware affirmed the decision of the bankruptcy court which prevented a creditor from repossessing the vehicle even though the court declined to approve the reaffirmation agreement. The Court held that a debtor who attempted to reaffirm the obligation, but the bankruptcy court denied approval of the reaffirmation agreement, was entitled to continue to “pay and drive” since debtor had complied with §521 and §362(h) by timely filing a proper statement of intent and timely signing a reaffirmation agreement;

X. Credit Unions

- a. Credit Union-- If the creditor is a credit union as defined by 19(b)(1)(A)(iv) of the Federal Reserve Act, §524(k)(5)(B) (the certification that if a presumption exists, in the opinion of the attorney the debtor is able to make the payments and §524(m) (court review of presumption) do not apply.
  - i. Courts do not need to review the Reaffirmation Agreement to determine if the presumption of undue hardship exists or if it has been rebutted;
  - ii. *In Re Huskinson, 2008 WL 2388113 (Bankr. N.D. Oh. 2008)*, the court noted that if the debtor executes a Reaffirmation Agreement with the assistance of counsel, and the creditor is a credit union, the transaction is not subject to court's oversight;
    - 1. The court still maintains oversight if the debtor is acting without counsel pursuant to §524(c)(6) See *In re Cooper, 2012 WL 566070 (Bankr. D. Kan. 2012)*
- b. If the creditor is a credit union, the Statement in Support shall read, 'I believe this reaffirmation agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.' §524(k)(6)(B).

**XI.** Debtor's Counsel's Role in the Reaffirmation Agreement Process:

- a. Verify loan documents and terms;
- b. Verify lien perfections/recorded mortgage
- c. Budget and Presumption of Undue Hardship Issues;
- d. Possible renegotiation of terms;
- e. If not reaffirming, loss of potential mortgage modification and/or refinance options in future;
- f. Do not reaffirm, but continue to make payments;

**XII.** Mortgage Related Issues

- a. If the Debtor fails to reaffirm the mortgage, does the debtor lose the opportunity to refinance or obtain a loan modification in the future?
  - i. *Smith v. First Suburban National Bank (In re Smith), 224 BR 388 (N.D. Ill. 1998)*, the debtor did not sign a Reaffirmation Agreement, but refinanced the home loan with the bank. The refinance is a new promise to pay; however, it included at least a portion of the pre-petition, discharged debt. The court determined

the bank violated the discharge injunction by accepting payments and mailing monthly statements on the new note;

ii. Minority view: *Minster State Bank v. Heirholzer (In re Heirholzer)*, 170 BR 938, (Bankr. N.D. Oh. 1994), the court ruled that the lenders agreement not to foreclose on the property in exchange for a post-discharge promissory note was sufficient consideration making the new loan enforceable;

- b. As was discussed above, the vast majority of courts will not allow a debtor to reopen a case to have the discharge set aside to enter into a Reaffirmation Agreement;
- c. As property values begin to increase, what other options exist? Additional exceptions to §524 to address refinances and loan modifications?
- d. Lender offered non-recourse loans?
- e. §524(f) allows lenders to seek periodic payments post-discharge on mortgages on the principal residence

**XIII.** Common Problems in the Reaffirmation Agreement Process:

- a. Failure to complete form;
- b. Failure to timely complete form;
- c. Presumption of Undue Hardship—lack of detail
- d. Budget—unrealistic Schedules I and J;

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B240A (Form B240A) (04/10)

Check one.	
<input type="checkbox"/>	Presumption of Undue Hardship
<input type="checkbox"/>	No Presumption of Undue Hardship
See Debtor's Statement in Support of Reaffirmation, Part II below, to determine which box to check.	

UNITED STATES BANKRUPTCY COURT

In re \_\_\_\_\_, Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

REAFFIRMATION DOCUMENTS

Name of Creditor: \_\_\_\_\_

Check this box if Creditor is a Credit Union

PART I. REAFFIRMATION AGREEMENT

Reaffirming a debt is a serious financial decision. Before entering into this Reaffirmation Agreement, you must review the important disclosures, instructions, and definitions found in Part V of this form.

A. Brief description of the original agreement being reaffirmed: \_\_\_\_\_ For example, auto loan

B. AMOUNT REAFFIRMED: \$ \_\_\_\_\_

The Amount Reaffirmed is the entire amount that you are agreeing to pay. This may include unpaid principal, interest, and fees and costs (if any) arising on or before \_\_\_\_\_, which is the date of the Disclosure Statement portion of this form (Part V).

See the definition of "Amount Reaffirmed" in Part V, Section C below.

C. The ANNUAL PERCENTAGE RATE applicable to the Amount Reaffirmed is \_\_\_\_\_%.

See definition of "Annual Percentage Rate" in Part V, Section C below.

This is a (check one)  Fixed rate  Variable rate

If the loan has a variable rate, the future interest rate may increase or decrease from the Annual Percentage Rate disclosed here.

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**D. Reaffirmation Agreement Repayment Terms** *(check and complete one):*

- \$ \_\_\_\_\_ per month for \_\_\_\_\_ months starting on \_\_\_\_\_.
- Describe repayment terms, including whether future payment amount(s) may be different from the initial payment amount.

**E. Describe the collateral, if any, securing the debt:**

Description: \_\_\_\_\_  
 Current Market Value \$ \_\_\_\_\_

**F. Did the debt that is being reaffirmed arise from the purchase of the collateral described above?**

- Yes. What was the purchase price for the collateral? \$ \_\_\_\_\_
- No. What was the amount of the original loan? \$ \_\_\_\_\_

**G. Specify the changes made by this Reaffirmation Agreement to the most recent credit terms on the reaffirmed debt and any related agreement:**

	Terms as of the Date of Bankruptcy	Terms After Reaffirmation
Balance due <i>(including fees and costs)</i>	\$ _____	\$ _____
Annual Percentage Rate	_____ %	_____ %
Monthly Payment	\$ _____	\$ _____

**H.**  Check this box if the creditor is agreeing to provide you with additional future credit in connection with this Reaffirmation Agreement. Describe the credit limit, the Annual Percentage Rate that applies to future credit and any other terms on future purchases and advances using such credit:

**PART II. DEBTOR'S STATEMENT IN SUPPORT OF REAFFIRMATION AGREEMENT**

**A. Were you represented by an attorney during the course of negotiating this agreement?**

Check one.  Yes  No

**B. Is the creditor a credit union?**

Check one.  Yes  No

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C. If your answer to EITHER question A. or B. above is "No," complete 1. and 2. below.

1. Your present monthly income and expenses are:

a. Monthly income from all sources after payroll deductions (take-home pay plus any other income) \$ \_\_\_\_\_

b. Monthly expenses (including all reaffirmed debts except this one) \$ \_\_\_\_\_

c. Amount available to pay this reaffirmed debt (subtract b. from a.) \$ \_\_\_\_\_

d. Amount of monthly payment required for this reaffirmed debt \$ \_\_\_\_\_

If the monthly payment on this reaffirmed debt (line d.) is greater than the amount you have available to pay this reaffirmed debt (line c.), you must check the box at the top of page one that says "Presumption of Undue Hardship." Otherwise, you must check the box at the top of page one that says "No Presumption of Undue Hardship."

2. You believe that this reaffirmation agreement will not impose an undue hardship on you or your dependents because:

Check one of the two statements below, if applicable:

You can afford to make the payments on the reaffirmed debt because your monthly income is greater than your monthly expenses even after you include in your expenses the monthly payments on all debts you are reaffirming, including this one.

You can afford to make the payments on the reaffirmed debt even though your monthly income is less than your monthly expenses after you include in your expenses the monthly payments on all debts you are reaffirming, including this one, because:

Use an additional page if needed for a full explanation.

D. If your answers to BOTH questions A. and B. above were "Yes," check the following statement, if applicable:

You believe this Reaffirmation Agreement is in your financial interest and you can afford to make the payments on the reaffirmed debt.

Also, check the box at the top of page one that says "No Presumption of Undue Hardship."

**PART III. CERTIFICATION BY DEBTOR(S) AND SIGNATURES OF PARTIES**

I hereby certify that:

- (1) I agree to reaffirm the debt described above.
- (2) Before signing this Reaffirmation Agreement, I read the terms disclosed in this Reaffirmation Agreement (Part I) and the Disclosure Statement, Instructions and Definitions included in Part V below;
- (3) The Debtor's Statement in Support of Reaffirmation Agreement (Part II above) is true and complete;
- (4) I am entering into this agreement voluntarily and am fully informed of my rights and responsibilities; and
- (5) I have received a copy of this completed and signed Reaffirmation Documents form.

SIGNATURE(S) (If this is a joint Reaffirmation Agreement, both debtors must sign.):

Date \_\_\_\_\_ Signature \_\_\_\_\_  
*Debtor*

Date \_\_\_\_\_ Signature \_\_\_\_\_  
*Joint Debtor, if any*

**Reaffirmation Agreement Terms Accepted by Creditor:**

Creditor \_\_\_\_\_  
*Print Name* *Address*

\_\_\_\_\_ *Signature* *Date*  
*Print Name of Representative*

**PART IV. CERTIFICATION BY DEBTOR'S ATTORNEY (IF ANY)**

*To be filed only if the attorney represented the debtor during the course of negotiating this agreement.*

I hereby certify that: (1) this agreement represents a fully informed and voluntary agreement by the debtor; (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

A presumption of undue hardship has been established with respect to this agreement. In my opinion, however, the debtor is able to make the required payment.

*Check box, if the presumption of undue hardship box is checked on page 1 and the creditor is not a Credit Union.*

Date \_\_\_\_\_ Signature of Debtor's Attorney \_\_\_\_\_  
Print Name of Debtor's Attorney \_\_\_\_\_

**PART V. DISCLOSURE STATEMENT AND INSTRUCTIONS TO DEBTOR(S)**

**Before agreeing to reaffirm a debt, review the terms disclosed in the Reaffirmation Agreement (Part I above) and these additional important disclosures and instructions.**

**Reaffirming a debt is a serious financial decision.** The law requires you to take certain steps to make sure the decision is in your best interest. If these steps, which are detailed in the Instructions provided in Part V, Section B below, are not completed, the Reaffirmation Agreement is not effective, even though you have signed it.

**A. DISCLOSURE STATEMENT**

1. **What are your obligations if you reaffirm a debt?** A reaffirmed debt remains your personal legal obligation to pay. Your reaffirmed debt is not discharged in your bankruptcy case. That means that if you default on your reaffirmed debt after your bankruptcy case is over, your creditor may be able to take your property or your wages. Your obligations will be determined by the Reaffirmation Agreement, which may have changed the terms of the original agreement. If you are reaffirming an open end credit agreement, that agreement or applicable law may permit the creditor to change the terms of that agreement in the future under certain conditions.
2. **Are you required to enter into a reaffirmation agreement by any law?** No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments that you agree to make.
3. **What if your creditor has a security interest or lien?** Your bankruptcy discharge does not eliminate any lien on your property. A "lien" is often referred to as a security interest, deed of trust, mortgage, or security deed. The property subject to a lien is often referred to as collateral. Even if you do not reaffirm and your personal liability on the debt is discharged, your creditor may still have a right under the lien to take the collateral if you do not pay or default on the debt. If the collateral is personal property that is exempt or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you make a single payment to the creditor equal to the current value of the collateral, as the parties agree or the court determines.
4. **How soon do you need to enter into and file a reaffirmation agreement?** If you decide to enter into a reaffirmation agreement, you must do so before you receive your discharge. After you have entered into a reaffirmation agreement and all parts of this form that require a signature have been signed, either you or the creditor should file it as soon as possible. The signed agreement must be filed with the court no later than 60 days after the first date set for the meeting of creditors, so that the court will have time to schedule a hearing to approve the agreement if approval is required. However, the court may extend the time for filing, even after the 60-day period has ended.
5. **Can you cancel the agreement?** You may rescind (cancel) your Reaffirmation Agreement at any time before the bankruptcy court enters your discharge, or during the 60-day period that begins on the date your Reaffirmation Agreement is filed with the court, whichever occurs later. To rescind (cancel) your Reaffirmation Agreement, you must notify the creditor that your Reaffirmation Agreement is rescinded (or canceled). Remember that you can rescind the agreement, even if the court approves it, as long as you rescind within the time allowed.

**6. When will this Reaffirmation Agreement be effective?**

**a. If you *were* represented by an attorney during the negotiation of your Reaffirmation Agreement and**

**i. if the creditor is not a Credit Union**, your Reaffirmation Agreement becomes effective when it is filed with the court unless the reaffirmation is presumed to be an undue hardship. If the Reaffirmation Agreement is presumed to be an undue hardship, the court must review it and may set a hearing to determine whether you have rebutted the presumption of undue hardship.

**ii. if the creditor is a Credit Union**, your Reaffirmation Agreement becomes effective when it is filed with the court.

**b. If you *were not* represented by an attorney during the negotiation of your Reaffirmation Agreement**, the Reaffirmation Agreement will not be effective unless the court approves it. To have the court approve your agreement, you must file a motion. See Instruction 5, below. The court will notify you and the creditor of the hearing on your Reaffirmation Agreement. You must attend this hearing, at which time the judge will review your Reaffirmation Agreement. If the judge decides that the Reaffirmation Agreement is in your best interest, the agreement will be approved and will become effective. However, if your Reaffirmation Agreement is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on your real property, like your home, you do not need to file a motion or get court approval of your Reaffirmation Agreement.

**7. What if you have questions about what a creditor can do?** If you have questions about reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement. If you do not have an attorney helping you, you may ask the judge to explain the effect of this agreement to you at the hearing to approve the Reaffirmation Agreement. When this disclosure refers to what a creditor “may” do, it is not giving any creditor permission to do anything. The word “may” is used to tell you what might occur if the law permits the creditor to take the action.

**B. INSTRUCTIONS**

1. Review these Disclosures and carefully consider your decision to reaffirm. If you want to reaffirm, review and complete the information contained in the Reaffirmation Agreement (Part I above). If your case is a joint case, both spouses must sign the agreement if both are reaffirming the debt.
2. Complete the Debtor’s Statement in Support of Reaffirmation Agreement (Part II above). Be sure that you can afford to make the payments that you are agreeing to make and that you have received a copy of the Disclosure Statement and a completed and signed Reaffirmation Agreement.
3. If you were represented by an attorney during the negotiation of your Reaffirmation Agreement, your attorney must sign and date the Certification By Debtor’s Attorney (Part IV above).
4. You or your creditor must file with the court the original of this Reaffirmation Documents packet and a completed Reaffirmation Agreement Cover Sheet (Official Bankruptcy Form 27).
5. *If you are not represented by an attorney, you must also complete and file with the court a separate document entitled “Motion for Court Approval of Reaffirmation Agreement” unless your Reaffirmation Agreement is for a consumer debt secured by a lien on your real property, such as your home. You can use Form B240B to do this.*

**C. DEFINITIONS**

1. **“Amount Reaffirmed”** means the total amount of debt that you are agreeing to pay (reaffirm) by entering into this agreement. The total amount of debt includes any unpaid fees and costs that you are agreeing to pay that arose on or before the date of disclosure, which is the date specified in the Reaffirmation Agreement (Part I, Section B above). Your credit agreement may obligate you to pay additional amounts that arise after the date of this disclosure. You should consult your credit agreement to determine whether you are obligated to pay additional amounts that may arise after the date of this disclosure.
2. **“Annual Percentage Rate”** means the interest rate on a loan expressed under the rules required by federal law. The annual percentage rate (as opposed to the “stated interest rate”) tells you the full cost of your credit including many of the creditor’s fees and charges. You will find the annual percentage rate for your original agreement on the disclosure statement that was given to you when the loan papers were signed or on the monthly statements sent to you for an open end credit account such as a credit card.
3. **“Credit Union”** means a financial institution as defined in 12 U.S.C. § 461(b)(1)(A)(iv). It is owned and controlled by and provides financial services to its members and typically uses words like “Credit Union” or initials like “C.U.” or “F.C.U.” in its name.

2015 CENTRAL STATES BANKRUPTCY WORKSHOP

B240A/B ALT (Form 240A/B ALT) (Reaffirmation Agreement) (12/11)

<input type="checkbox"/> Presumption of Undue Hardship <input type="checkbox"/> No Presumption of Undue Hardship (Check box as directed in Part D: Debtor's Statement in Support of Reaffirmation Agreement.)
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UNITED STATES BANKRUPTCY COURT  
District of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
Chapter \_\_\_\_\_

**REAFFIRMATION AGREEMENT**

[Indicate all documents included in this filing by checking each applicable box.]

- |                                                                                                |                                                                                           |
|------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Part A: Disclosures, Instructions, and Notice to Debtor (pages 1 - 5) | <input type="checkbox"/> Part D: Debtor's Statement in Support of Reaffirmation Agreement |
| <input type="checkbox"/> Part B: Reaffirmation Agreement                                       | <input type="checkbox"/> Part E: Motion for Court Approval                                |
| <input type="checkbox"/> Part C: Certification by Debtor's Attorney                            |                                                                                           |

[Note: Complete Part E only if debtor was not represented by an attorney during the course of negotiating this agreement. Note also: If you complete Part E, you must prepare and file Form 240C ALT - Order on Reaffirmation Agreement.]

Name of Creditor: \_\_\_\_\_

[Check this box if] Creditor is a Credit Union as defined in §19(b)(1)(a)(iv) of the Federal Reserve Act

**PART A: DISCLOSURE STATEMENT, INSTRUCTIONS AND NOTICE TO DEBTOR**

**1. DISCLOSURE STATEMENT**

*Before Agreeing to Reaffirm a Debt, Review These Important Disclosures:*

**SUMMARY OF REAFFIRMATION AGREEMENT**

This Summary is made pursuant to the requirements of the Bankruptcy Code.

**AMOUNT REAFFIRMED**

The amount of debt you have agreed to reaffirm: \$ \_\_\_\_\_

*The amount of debt you have agreed to reaffirm includes all fees and costs (if any) that have accrued as of the date of this disclosure. Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement.*

ANNUAL PERCENTAGE RATE

*[The annual percentage rate can be disclosed in different ways, depending on the type of debt.]*

a. If the debt is an extension of "credit" under an "open end credit plan," as those terms are defined in § 103 of the Truth in Lending Act, such as a credit card, the creditor may disclose the annual percentage rate shown in (i) below or, to the extent this rate is not readily available or not applicable, the simple interest rate shown in (ii) below, or both.

(i) The Annual Percentage Rate disclosed, or that would have been disclosed, to the debtor in the most recent periodic statement prior to entering into the reaffirmation agreement described in Part B below or, if no such periodic statement was given to the debtor during the prior six months, the annual percentage rate as it would have been so disclosed at the time of the disclosure statement: \_\_\_\_\_%.

--- And/Or ---

(ii) The simple interest rate applicable to the amount reaffirmed as of the date this disclosure statement is given to the debtor: \_\_\_\_\_%. If different simple interest rates apply to different balances included in the amount reaffirmed, the amount of each balance and the rate applicable to it are:

\$ \_\_\_\_\_ @ \_\_\_\_\_ %;  
\$ \_\_\_\_\_ @ \_\_\_\_\_ %;  
\$ \_\_\_\_\_ @ \_\_\_\_\_ %.

b. If the debt is an extension of credit other than under than an open end credit plan, the creditor may disclose the annual percentage rate shown in (i) below, or, to the extent this rate is not readily available or not applicable, the simple interest rate shown in (ii) below, or both.

(i) The Annual Percentage Rate under §128(a)(4) of the Truth in Lending Act, as disclosed to the debtor in the most recent disclosure statement given to the debtor prior to entering into the reaffirmation agreement with respect to the debt or, if no such disclosure statement was given to the debtor, the annual percentage rate as it would have been so disclosed: \_\_\_\_\_%.

--- And/Or ---

(ii) The simple interest rate applicable to the amount reaffirmed as of the date this disclosure statement is given to the debtor: \_\_\_\_\_%. If different simple interest rates apply to different balances included in the amount reaffirmed, the amount of each balance and the rate applicable to it are:



**Reaffirming a debt is a serious financial decision.** The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.

1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a separate agreement you and your creditor agree on).

2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.

3. If you were represented by an attorney during the negotiation of your reaffirmation agreement, the attorney must have signed the certification in Part C.

4. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, you must have completed and signed Part E.

5. The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.

6. If the creditor is not a Credit Union and you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D. If the creditor is a Credit Union and you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court.

7. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you and the creditor of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your reaffirmation agreement. The bankruptcy court must approve your reaffirmation agreement as consistent with your best interests, except that no court approval is required if your reaffirmation agreement is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on your real property, like your home.

**YOUR RIGHT TO RESCIND (CANCEL) YOUR REAFFIRMATION AGREEMENT**

You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters a discharge order, or before the expiration of the 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (or canceled).

**Frequently Asked Questions:**

What are your obligations if you reaffirm the debt? A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy case. That means that if you default on your reaffirmed debt after your bankruptcy case is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the creditor may be permitted by that agreement or applicable law to change the terms of that agreement in the future under certain conditions.

Are you required to enter into a reaffirmation agreement by any law? No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

What if your creditor has a security interest or lien? Your bankruptcy discharge does not eliminate any lien on your property. A “lien” is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the property securing the lien if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State’s law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you must make a single payment to the creditor equal to the amount of the allowed secured claim, as agreed by the parties or determined by the court.

**NOTE:** When this disclosure refers to what a creditor “may” do, it does not use the word “may” to give the creditor specific permission. The word “may” is used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement reaffirming a debt. If you don’t have an attorney helping you, the judge will explain the effect of your reaffirming a debt when the hearing on the reaffirmation agreement is held.

**PART B: REAFFIRMATION AGREEMENT.**

I (we) agree to reaffirm the debts arising under the credit agreement described below.

1. Brief description of credit agreement:

2. Description of any changes to the credit agreement made as part of this reaffirmation agreement:

SIGNATURE(S):

Borrower:

Accepted by creditor:

\_\_\_\_\_

\_\_\_\_\_

(Print Name)

(Printed Name of Creditor)

\_\_\_\_\_

\_\_\_\_\_

(Signature)

(Address of Creditor)

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

\_\_\_\_\_

(Signature)

Co-borrower, if also reaffirming these debts:

\_\_\_\_\_

\_\_\_\_\_

(Print Name)

(Printed Name and Title of Individual  
Signing for Creditor)

\_\_\_\_\_

Date of creditor acceptance:

(Signature)

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

\_\_\_\_\_

**PART C: CERTIFICATION BY DEBTOR'S ATTORNEY (IF ANY).**

*[To be filed only if the attorney represented the debtor during the course of negotiating this agreement.]*

I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor; (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

*[Check box, if applicable and the creditor is not a Credit Union.]* A presumption of undue hardship has been established with respect to this agreement. In my opinion, however, the debtor is able to make the required payment.

Printed Name of Debtor's Attorney: \_\_\_\_\_

Signature of Debtor's Attorney: \_\_\_\_\_

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

PART D: DEBTOR'S STATEMENT IN SUPPORT OF REAFFIRMATION AGREEMENT

[Read and complete sections 1 and 2, OR, if the creditor is a Credit Union and the debtor is represented by an attorney, read section 3. Sign the appropriate signature line(s) and date your signature. If you complete sections 1 and 2 and your income less monthly expenses does not leave enough to make the payments under this reaffirmation agreement, check the box at the top of page 1 indicating "Presumption of Undue Hardship." Otherwise, check the box at the top of page 1 indicating "No Presumption of Undue Hardship"]

1. I believe this reaffirmation agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is \$ \_\_\_\_\_, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total \$ \_\_\_\_\_, leaving \$ \_\_\_\_\_ to make the required payments on this reaffirmed debt.

I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if I explain to the satisfaction of the court how I can afford to make the payments here: \_\_\_\_\_

(Use an additional page if needed for a full explanation.)

2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.

Signed: \_\_\_\_\_  
(Debtor)

\_\_\_\_\_  
(Joint Debtor, if any)

Date: \_\_\_\_\_ — Or —

[If the creditor is a Credit Union and the debtor is represented by an attorney]

3. I believe this reaffirmation agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.

Signed: \_\_\_\_\_  
(Debtor)

\_\_\_\_\_  
(Joint Debtor, if any)

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

**PART E: MOTION FOR COURT APPROVAL**

*[To be completed and filed only if the debtor is not represented by an attorney during the course of negotiating this agreement.]*

**MOTION FOR COURT APPROVAL OF REAFFIRMATION AGREEMENT**

I (we), the debtor(s), affirm the following to be true and correct:

I am not represented by an attorney in connection with this reaffirmation agreement.

I believe this reaffirmation agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement, and because (provide any additional relevant reasons the court should consider):

Therefore, I ask the court for an order approving this reaffirmation agreement under the following provisions (*check all applicable boxes*):

11 U.S.C. § 524(c)(6) (debtor is not represented by an attorney during the course of the negotiation of the reaffirmation agreement)

11 U.S.C. § 524(m) (presumption of undue hardship has arisen because monthly expenses exceed monthly income)

Signed: \_\_\_\_\_  
(Debtor)

\_\_\_\_\_  
(Joint Debtor, if any)

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

**AMERICAN BANKRUPTCY INSTITUTE**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION - DETROIT**

**IN THE MATTER OF:**

Debtor.

Case No.  
Honorable  
Chapter 7

XXX-XX-  
\_\_\_\_\_ /

**REAFFIRMATION AGREEMENT COVER SHEET**

This form must be completed in its entirety and filed, with the reaffirmation agreement attached, within the time set under Rule 4008. It may be filed by any party to the reaffirmation agreement.

1. Creditor's Name
2. Amount of the debt subject to this reaffirmation agreement:  
XXX,XXX.XX on the date of bankruptcy XXX,XXX.XX (as of the date of the Disclosure Statement Part A of the Reaffirmation Agreement) to be paid under reaffirmation agreement
3. Annual percentage rate of interest: X.X% prior to bankruptcy  
X.X% under reaffirmation agreement (  Fixed Rate  Adjustable Rate)
4. Repayment terms (if fixed rate): See Below

Number of Payments	Amount of Payments	When Payments are Due
	\$	Monthly starting.

5. Collateral, if any, securing the debt: Current market value: \$XX,XXX.XX

Description:

6. Does the creditor assert that the debt is nondischargeable?  Yes  No  
(If yes, attach a declaration setting forth the nature of the debt and basis for the contention that the debt is nondischargeable.)

Debtor's Schedule I and J Entries

7A. Total monthly income from Schedule I, line 12 \$ \_\_\_\_\_

8A. Total monthly expenses from Schedule J, line 22 \$ \_\_\_\_\_

9A. Total monthly payments on reaffirmed debts not listed on Schedule J \$ \_\_\_\_\_

Debtor's Income and Expenses as Stated on Reaffirmation Agreement

7B. Monthly income from all sources after payroll deductions \$ \_\_\_\_\_

8B. Monthly expenses \$ \_\_\_\_\_

9B. Total monthly payments on reaffirmed debts not included in monthly expenses \$ \_\_\_\_\_

10B. Net monthly income \$ \_\_\_\_\_  
(Subtract sum of lines 8B and 9B from line 7B. If total is less than zero, put the number in brackets.)

**2015 CENTRAL STATES BANKRUPTCY WORKSHOP**

11. Explain with specificity any difference between the income amounts (7A and 7B):

\_\_\_\_\_

12. Explain with specificity any difference between the expense amounts (8A and 8B):

\_\_\_\_\_

If line 11 or 12 is completed, the undersigned debtor, and joint debtor if applicable, certifies that any explanation contained on those lines is true and correct.

/s/ \_\_\_\_\_  
Signature of Debtor (only required if  
line 11 or 12 is completed)

/s/ \_\_\_\_\_  
Signature of Joint Debtor (if applicable, and only  
required if line 11 or 12 is completed)

Other Information

Check this box if the total on line 10B is less than zero. If that number is less than zero, a presumption of undue hardship arises (unless the creditor is a credit union) and you must explain with specificity the sources of funds available to the Debtor to make the monthly payments on the reaffirmed debt: \_\_\_\_\_

\_\_\_\_\_

Was debtor represented by counsel during the course of negotiating this reaffirmation agreement?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

If debtor was represented by counsel during the course of negotiating this reaffirmation agreement, has counsel executed a certification (affidavit or declaration) in support of the reaffirmation agreement?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

**FILER'S CERTIFICATION**

I hereby certify that the attached agreement is a true and correct copy of the reaffirmation agreement between the parties identified on this Reaffirmation Agreement Cover Sheet.

/s/ \_\_\_\_\_  
Signature

\_\_\_\_\_  
Kilpatrick & Associates, PC  
Attorney For Creditor  
903 N. Opdyke, Suite C, Auburn Hills, MI 48326  
ecf@kaalaw.com

**AMERICAN BANKRUPTCY INSTITUTE**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION - DETROIT**

**IN THE MATTER OF:**

Debtor. Case No.  
Honorably  
Chapter 7  
XXX-XX-  
\_\_\_\_\_ /

**REAFFIRMATION AGREEMENT**

*[Indicate all documents included in this filing by checking each applicable box]*

- |                                                                              |                                                                                                    |
|------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Part A: Disclosure Statement (Pages 3-5)            | <input type="checkbox"/> Part D: Debtor's Statement in Support of Reaffirmation Agreement (Page 8) |
| <input type="checkbox"/> Part B: Reaffirmation Agreement (Page 6)            | <input type="checkbox"/> Part E: Motion for Court Approval (Page 9)                                |
| <input type="checkbox"/> Part C: Certification by Debtor's Attorney (Page 7) | <input type="checkbox"/> Proposed Order Approving Reaffirmation Agreement (Page 10)                |

**PART A: DISCLOSURE STATEMENT, INSTRUCTIONS AND NOTICE TO DEBTOR(S)**

A presumption of undue hardship has been established with respect to this agreement.

**I. DISCLOSURE STATEMENT**

DATE OF DISCLOSURE STATEMENT: \_\_\_\_\_

**BEFORE AGREEING TO REAFFIRM A DEBT, REVIEW THESE IMPORTANT DISCLOSURES:**

**SUMMARY OF REAFFIRMATION AGREEMENT.** This Summary is made pursuant to the requirements of the Bankruptcy Code.

<u>AMOUNT REAFFIRMED:</u>	<u>ANNUAL PERCENTAGE RATE:</u>
<b>\$XX,XXX.XX</b>	<b>X.X%</b>
<p>This is the amount of debt you have agreed to reaffirm. Your credit agreement may obligate you to pay additional amounts, which may come due after the date of this disclosure statement. Consult your credit agreement.</p> <p>The "AMOUNT REAFFIRMED" disclosed above includes the following fees and costs:</p> <p>Attorney Fees: \$ _____</p> <p>Costs: \$ _____</p>	

**Notice of Security Interest:** A security interest or lien in goods or property is asserted over the debt that you are reaffirming. \_\_\_\_\_ ("Creditor") has a security interest in the motor vehicle described below:

Motor Vehicle: \_\_\_\_\_ Original Purchase Price: \_\_\_\_\_

# 2015 CENTRAL STATES BANKRUPTCY WORKSHOP

## REPAYMENT SCHEDULE

Your Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments are Due

**Simple Interest Contract Disclosure:** Your credit agreement is a simple interest contract. Please review your credit agreement for an explanation on how early or late payments effect the amount of interest due on your credit agreement.

### 2. INSTRUCTIONS AND NOTICE TO DEBTOR(S)

**NOTE:** When this disclosure refers to what a creditor 'may' do, it does not use the word 'may' to give the creditor specific permission. The word 'may' is used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement reaffirming a debt. If you don't have an attorney helping you, the judge will explain the effect of your reaffirming a debt when the hearing on the reaffirmation agreement is held.

Reaffirming a debt is a serious financial decision. The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.

1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a security agreement you and your creditor agree on).
2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.
3. If you were represented by an attorney during the negotiation of your reaffirmation agreement, the attorney must have signed the certification in Part C.
4. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, you must have completed and signed Part E.
5. The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.
6. If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D.
7. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your reaffirmation agreement. The bankruptcy court must approve your reaffirmation agreement as consistent with your best interests, except that no court approval is required if your reaffirmation agreement is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on your real property, like your home.

**YOUR RIGHT TO RESCIND (CANCEL) YOUR REAFFIRMATION AGREEMENT.** You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters a discharge order or before the expiration of the 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (or canceled).

# AMERICAN BANKRUPTCY INSTITUTE

## Frequently Asked Questions:

**WHAT ARE YOUR OBLIGATIONS IF YOU REAFFIRM THIS DEBT?** A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy case. That means that if you default on your reaffirmed debt after your bankruptcy case is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the creditor may be permitted by that agreement or applicable law to change the terms of that agreement in the future under certain conditions.

**ARE YOU REQUIRED TO ENTER INTO A REAFFIRMATION AGREEMENT BY ANY LAW?** No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

**WHAT IF YOUR CREDITOR HAS A SECURITY INTEREST OR LIEN?** Your bankruptcy discharge does not eliminate any lien on your property. A 'lien' is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the security property if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State's law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you make a single payment to the creditor equal to the current value of the security property, as agreed by the parties or determined by the court.

**2015 CENTRAL STATES BANKRUPTCY WORKSHOP**

**PART B: REAFFIRMATION AGREEMENT**

I agree to reaffirm the debts arising under the credit agreement described below.

**BRIEF DESCRIPTION OF CREDIT AGREEMENT:**

Retail Installment Contract Date: \_\_\_\_\_ Account No.: XXXX  
Motor Vehicle: \_\_\_\_\_

I agree to be bound by all the terms and conditions of the credit agreement, which is hereby incorporated by reference. I agree to the "ANNUAL PERCENTAGE RATE" disclosed in the PART A: DISCLOSURE STATEMENT. I agree to pay the "AMOUNT REAFFIRMED" disclosed in the PART A: DISCLOSURE STATEMENT. I agree to make monthly payments described in the REPAYMENT SCHEDULE disclosed in the PART A: DISCLOSURE STATEMENT each month until the debt has been satisfied. If the Creditor has agreed to any changes to the credit agreement as part of this Reaffirmation Agreement, such changes are listed below:

**Description of any changes to the credit agreement made as part of this reaffirmation agreement:**

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

**DEBTOR AGREES TO MAIL TO CREDITOR ANY NOTICE OF RESCISSION TO THE CREDITOR AT THE FOLLOWING ADDRESS:**

**Kilpatrick & Associates, P.C.**  
903 N. Opdyke Rd., Suite C.  
Auburn Hills, MI 48326

SIGNATURE(S):

Borrower (Debtor):

Co-borrower (Co-Debtor), if also reaffirming these debts:

\_\_\_\_\_  
(Print name)

\_\_\_\_\_  
(Print name)

/s/ \_\_\_\_\_  
(Signature)

/s/ \_\_\_\_\_  
(Signature)

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

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

Accepted by Creditor:

**KILPATRICK & ASSOCIATES, P.C.**  
903 North Opdyke Road, Suite C  
Auburn Hills, MI 48326  
(248) 377-0700 ecf@kaalaw.com

\_\_\_\_\_  
(Print name)

/s/ \_\_\_\_\_  
(Signature)

Date of Creditor Acceptance: \_\_\_\_\_

Account No.: 6906



2015 CENTRAL STATES BANKRUPTCY WORKSHOP

PART D: DEBTOR'S STATEMENT IN SUPPORT OF REAFFIRMATION AGREEMENT

1. I believe this reaffirmation agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is \$ \_\_\_\_\_, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total \$ \_\_\_\_\_, leaving \$ \_\_\_\_\_, to make the required payments on this reaffirmed debt. I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if I explain to the satisfaction of the court how I can afford to make payments here:

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

2. Rule 4008 Comparison of Net Monthly Income and Current Monthly Expenses as listed in this Reaffirmation Agreement with Net Monthly Income and Current Monthly Expenses as stated in Schedules I and J:

The total net monthly income (take home pay plus any other income received) as stated on my Schedule I is \$ \_\_\_\_\_, and the total monthly expenses as listed on Schedule J is \$ \_\_\_\_\_.

These amounts are (check one):

The same as the net monthly income and total monthly expenses as listed in the Debtor's Statement above required by 11 U.S.C. § 524 (k), or

Different from the net monthly income and total monthly expenses as listed in the Debtor's Statement above required by 11 U. S.C. § 524 (k). If different, the Debtors must include an explanation of any difference here:

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

3. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.

Debtor's Signature: /s/ \_\_\_\_\_

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

Co-Debtor's Signature: /s/ \_\_\_\_\_

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

**AMERICAN BANKRUPTCY INSTITUTE**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION - DETROIT**

**IN THE MATTER OF:**

Debtor. Case No  
Honorable  
Chapter 7  
XXX-XX-  
\_\_\_\_\_ /

**PART E: MOTION FOR COURT APPROVAL**

**DEBTOR'S MOTION FOR APPROVAL OF REAFFIRMATION AGREEMENT**

**NOW COMES**, Debtor herein, and in support of this Motion for Approval of Reaffirmation Agreement, states as follows:

1. I, the Debtor, affirm the following to be true and correct.
2. I am not represented by an attorney in connection with this reaffirmation agreement.
3. I believe this reaffirmation agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement.
4. I believe this reaffirmation agreement is in my best interest based on the following additional relevant reasons the court should consider:

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

THEREFORE, I ask the court for an order approving this reaffirmation agreement.

/s/ \_\_\_\_\_  
Debtor

Date: \_\_\_\_\_ /s/ \_\_\_\_\_  
Co-Debtor

**2015 CENTRAL STATES BANKRUPTCY WORKSHOP**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION - DETROIT**

IN THE MATTER OF:

Debtor  
XXX-XX-

Case No.  
Honorable  
Chapter 7

\_\_\_\_\_ /

**ORDER APPROVING REAFFIRMATION AGREEMENT**

This matter having come before the Court on Debtor's Motion for Approval of Reaffirmation Agreement between Debtor and Creditor, \_\_\_\_\_, related to a \_\_\_\_\_, and the Court being fully advised in the premises:

**IT IS HEREBY ORDERED** that the Court grants the Debtor's motion and approves the reaffirmation agreement described above.

Account No.: 6906

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AMERICAN BANKRUPTCY INSTITUTE

Credit Union Reaffirmation

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

IN RE:

Case No.

Debtor(s).

Chapter 7  
Hon.

REAFFIRMATION AGREEMENT WITH

**PART A: BEFORE AGREEING TO REAFFIRM A DEBT.  
REVIEW THESE IMPORTANT DISCLOSURES**

**Reaffirming a debt is a serious financial decision.** The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.

Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a separate agreement you and your creditor agree on).

Complete and sign Part D and be sure you can afford to make the payments you are agreement to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.

If you were represented by an attorney during the negotiation of your reaffirmation agreement, the attorney must have signed the certification in Part C.

If you were not represented by an attorney during the negotiation of your reaffirmation agreement, you must have completed and signed Part E.

The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.

If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation agreement is presumed to be an undue hardship as explained in Part D.

If you were not represented by an attorney during the negotiation of your reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your reaffirmation agreement. The bankruptcy court must approve your reaffirmation agreement as consistent with your best interest, except that no court approval is required if your reaffirmation is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on your real property, like your home.

8. Miscellaneous questions and information:  
***Your right to rescind (cancel) your reaffirmation agreement.*** You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters

a discharge order or before the expiration of the 60 day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (canceled).

**What are your obligations if you reaffirm the debt?** A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy case. That means that if you default on your reaffirmed debt after your bankruptcy case is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the creditor may be permitted by that agreement or applicable law to change the terms of that agreement in the future under certain conditions.

**Are you required to enter into a reaffirmation agreement by any law?** No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

**What if your creditor has a security interest or lien?** Your bankruptcy discharge does not eliminate any lien on your property. A lien is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the security property if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State's law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you make a single payment to the creditor equal to the current value of the security property, as agreed by the parties or determined by the court.

**SUMMARY OF REAFFIRMATION AGREEMENT**

This Summary is made pursuant to the requirements of the Bankruptcy Code

**AMOUNT REAFFIRMED:** \$ \_\_\_\_\_ is the amount of debt you have agreed to reaffirm. Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement.

**ANNUAL PERCENTAGE RATE:**

**Simple Interest Rate:** N/A

**Variable Interest Rate:** N/A

Your debt is secured by a security interest, which has not been waived in whole or in part, or determined to be void by a final order of the court at the time of this disclosure. The undersigned creditor is asserting a security interest of lien in goods for some or all of the debts you are reaffirming as follows:

**ITEM OF COLLATERAL:**

**ORIGINAL LOAN AMOUNT:**

I (we) agree to reaffirm the debts arising under the credit agreement described below. The above sum of money shall be paid in monthly installments of \_\_\_\_\_ per month and a

like sum shall be due on the same day of each month thereafter until the entire reaffirmed amount, plus interest, is paid in full. All of the terms of the original loan agreement which are not inconsistent with this Agreement shall remain in full force and effect.

This Reaffirmation Agreement is being entered into for the purpose of retaining possession of secured property, to-wit: The creditor is hereby granted a continuing security interest in said property, and the terms and conditions of the loan agreements and security agreements shall continue in full force and effect.

NOTE: When this disclosure refers to what a creditor may do, it does not use the word may to give the creditor specific permission. The word may is used to tell you what might occur if the law permits the Creditor to take the action. If you have questions about your reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement reaffirming a debt. If you don't have an attorney helping you, the judge will explain the effect of your reaffirming a debt when the hearing on the Reaffirmation Agreement is held.

**PART B: TERMS OF REAFFIRMATION AGREEMENT**

I (we) agree to reaffirm the debts arising under the credit agreement described below. The above sum of money shall be paid in monthly installments of \_\_\_\_\_ per month and a like sum shall be due on the same day of each month thereafter until the entire reaffirmed amount, plus interest, is paid in full. All of the terms of the original loan agreement which are not inconsistent with this Agreement shall remain in full force and effect.

This Reaffirmation Agreement is being entered into for the purpose of retaining possession of secured property, to-wit: . The creditor is hereby granted a continuing security interest in said property, and the terms and conditions of the loan agreements and security agreements shall continue in full force and effect.

Description of any changes to the credit agreement made as part of this reaffirmation agreement: \_\_\_\_\_

Dated: \_\_\_\_\_  
Borrower: \_\_\_\_\_ Co-Borrower: \_\_\_\_\_

Date: \_\_\_\_\_  
/S/ \_\_\_\_\_

**PART C: CERTIFICATION OF DEBTOR'S ATTORNEY (IF ANY):**

I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor; (2) this agreement does not impose an undue hardship on the

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debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

Date: \_\_\_\_\_  
Attorney for Debtor

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**PART D: DEBTOR'S STATEMENT IN SUPPORT OF REAFFIRMATION AGREEMENT *WITH* A CREDIT UNION:**

I believe this reaffirmation agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and completed and signed reaffirmation agreement.

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

**Alternate Part D: DEBTOR'S STATEMENT IN SUPPORT OF REAFFIRMATION AGREEMENT WITH NON-CREDIT UNION CREDITOR:**

I believe this reaffirmation agreement will not impose an undue hardship on my dependants or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is \$\_\_\_\_\_, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total \$\_\_\_\_\_, leaving \$\_\_\_\_\_ to make the required payments on this reaffirmed debt. I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if explained to the satisfaction of the court how I can afford to make the payments here:

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

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**PART E: MOTION FOR COURT APPROVAL  
(to be completed only if the debtor is not represented by an attorney)**

**AMERICAN BANKRUPTCY INSTITUTE**

I (we), the debtors affirm the following to be true and correct:

- (1) I am not represented by an attorney in connection with this reaffirmation agreement.
- (2) I believe this reaffirmation agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement, and because (provide any additional relevant reasons the court should consider):

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

Therefore, I ask the court for an order approving this reaffirmation agreement.

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

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

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**COURT ORDER:**

The court grants the debtor's motion and approves the reaffirmation agreement describe above.

Date: \_\_\_\_\_  
U.S. BANKRUPTCY JUDGE

**SELECT CASE LAW ON REAFFIRMATION AGREEMENTS  
IN THE 6<sup>TH</sup> AND 7<sup>TH</sup> CIRCUITS**

**John H. Squires, of Counsel  
Springer Brown, LLC  
400 S. County Farm Road  
Suite 330  
Wheaton, IL 60187  
630-510-0000  
630-510-0004 (fax)**

**SELECT CASE LAW ON REAFFIRMATION AGREEMENTS**  
**THE COURTS IN 6<sup>TH</sup> AND 7<sup>TH</sup> CIRCUITS**

*In Re Smurzynski*, 72 B.R. 368 (Bankr. N.D. Ill. 1987) (purpose of reaffirmation provisions is to prevent debtor from being coerced into signing agreement and to enable debtor to be fully aware of the consequences)

*In Re Edwards*, 901 F.2d 1383 (7<sup>th</sup> Cir. 1990) (debtor could not retain collateral while continuing to make regularly scheduled installment payments without the consent of the creditors; options of surrender, redemption or reaffirmation were exclusive)

*In Re Bowling*, 116 B.R. 659, 664 (Bankr. S.D. Ind. 1990) (if a transaction leaves a debtor obligated to pay, or believing that he or she is obligated to pay any part of discharged debt, (it cannot) be characterized as voluntary repayment with the meaning of §524(f))

*In Re Johnson*, 148 B.R. 532 (Bankr. N.D. Ill. 1992) (creditor not in civil contempt for violating discharge injunction by continuing collection efforts against debtor who defaulted on the reaffirmation agreement where creditor was operating on assumption it had a valid and enforceable reaffirmation agreement which debtor had honored sometime post discharge; reaffirmation agreement was not binding on debtors where agreement failed to advise debtor of rescission rights and debtor did not attend reaffirmation hearing)

*Minster State Bank v. Heirholzer (In Re Heirholzer)*, 170 B.R. 938, 941 (Bankr. N.D. Ohio 1994) (debtor signed post-discharge note in exchange for bank agreeing not to foreclose held new and sufficient consideration rendering new loan enforceable)

*In Re Duke*, 79 F.3d 43 (7<sup>th</sup> Cir. 1996) (creditor's letter proposing reaffirmation to debtor's counsel with copy to debtor is not violative of stay)

*In Re Turner*, 156 F.3d 713 (7<sup>th</sup> Cir. 1998) (debtor cannot unilaterally reaffirm debt without agreement of affected creditor)

*Vazquez v. Sears, Roebuck & Co. (In Re Vazquez)*, 221 B.R. 222 (Bankr. N.D. Ill. 1998) (reaffirmation agreement never filed with, nor approved by, bankruptcy court was void and unenforceable; creditor willfully violated discharge injunction in attempting to collect discharged pre-petition debt; debtor awarded compensatory damages for actual loss plus punitive damages in amount of roughly ten times his actual damages; damages assessed against creditor, not against creditor's law firm on facts of the matter)

*Smith v. First Suburban Nat'l Bank (In Re Smith)*, 224 B.R. 388, 396 (Bankr. N.D. Ill. 1998) (creditor held in violation of discharge injunction by processing payments and mailing monthly statements on a new post-discharge promissory note for new home plus \$19,000.00 of pre-petition debt which had not been reaffirmed)

*In Re Ireland*, 241 B.R. 539 (Bankr. E.D. Mich. 1999) (language in one of three reaffirmations that debtor's rescission of any one would be a rescission of all three violated debtor's rescission rights under the statute to make unfettered decision as to each agreement)

*In Re Losievsky*, 1999 Bankr. Lexis 1701 (Bankr. E.D. Mich. 1999) (in terrorem language inserted by creditor into parties' reaffirmation agreement was void where provision effectively coerced bankruptcy debtors into not exercising their rescission rights)

*Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417 (6<sup>th</sup> Cir. 2000) (provisions for discharge injunction and reaffirmation agreements did not impliedly create a private right of action for an asserted violation; sending a reaffirmation letter is not violative of §362(a)(6))

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*Cox v. Zale Del., Inc.*, 242 B.R. 444 (D.N.D. Ill.), *aff'd*, 239 F.3d 910 (7<sup>th</sup> Cir. 2000) (consumer could not bring a private action against a creditor for a non-filed reaffirmation agreement; only remedy was contempt)

*In Re Davis*, 273 B.R. 152 (Bankr. S.D. Ohio 2001) (reaffirmation agreement “made” prior to discharge where creditor prepared and signed it and presented to debtors for signing and debtors’ attorney and debtor husband signed agreements prior to entry of discharge order)

*McCready v. eBay, Inc.*, 453 F.3d 882, 890 (7<sup>th</sup> Cir. 2006) (pro se seller did not produce notice of claim for rescission under bankruptcy code to internet sales service and customer where complaint did not give any indication of any injury suffered by seller and remedy that he sought; alleged free-standing federal rescission claim under §§ 521 and 524 of the Bankruptcy Code was contained in three paragraphs that were buried in expansive state law count entitled “Breach of Contract” which consisted of 22 pages and 155 paragraphs of gobbledygook)

*In Re McFall*, 356 B.R. 674 (Bankr. N.D. Ohio 2006) (where debtor’s statement of intention did not comply with §362(h)(1)(A) by failure to state any intention, the automatic stay was terminated and repossession of the vehicle did not violate the automatic stay)

*Ford Motor Credit Co. LLC v. Morton (In Re Morton)*, 410 B.R. 556 (6<sup>th</sup> Cir. B.A.P. 2009) (where bankruptcy court erroneously disapproved an effective reaffirmation agreement, the B.A.P. would apply the doctrine of equitable tolling to the deadline for debtor to rescind the agreement should he want to do so, thus placing the parties back in the positions where they were when the bankruptcy court acted; creditor has standing to appeal a bankruptcy court’s disapproval of its reaffirmation agreement)

*In Re Giglio*, 428 B.R. 397 (Bankr. N.D. Ohio 2009) (agreement not made until signed by both debtor and creditor)

*Pickerel v. Household Realty Corp. (In Re Pickerel)*, 433 B.R. 679 (Bankr. N.D. Ohio 2010) (debtors who claimed reaffirmation agreement with creditor was ineffective because it was not filed with the court until after date of discharge were denied relief on claim that creditor violated the §524 discharge injunction by suing them after they defaulted on reaffirmation agreement since §524 does not require filing prior to discharge)

*Salyersville Nat'l Bank v. Bailey (In Re Bailey)*, 664 F.3d 1026 (6<sup>th</sup> Cir. 2011) (reaffirmations as contracts are subject to applicable state court law; reaffirmation held unenforceable because premised on a mutual mistake)

*Thompson v. Credit Union Fin'l Group*, 453 B.R. 823 (D.W.D. Mich. 2011) (Bankruptcy Court denied the debtor's motion seeking enforcement of discharge reversed because debtor's unapproved assumption of lease under §365(p) did not eliminate discharge protection that flowed from Trustee's rejection of lease; lessor had to obtain debtor's assumption and court approval)