

Non-Standard Plan Provisions

Plan Summary:

- **Creditors should read the attached Plan Summary carefully as their rights may be affected.**
- To the extent that the attached Plan Summary and any provisions in the above proposed plan differ or contradict each other, such is incidental and not intentional, ~~but nonetheless the attached Plan Summary will control~~ and, upon the request any party in interest, including the Trustee or Bankruptcy Administrator, the Debtor will file necessary amendments to remove and/or clarify such differences or contradictions.

COMMENT: This change is meant to ensure that if there is a discrepancy between the Plan and the Plan Summary (which as mentioned will be re-ordered to match the Plan and include the Plan Sections Headings), that the Trustee (if not others) will seek a correction rather than simply using the Plan and disregarding the Plan Summary. I realize that is another step for the Trustee staff reviewing the case, but this will be a diminishing burden as the Best Case plan improves and our experience with this new process increases.

Adequate Protection Payments:

- Adequate Protection Payments for personal property will be 1% of the Value of Property as listed in Section 4.2(d) and will persist for _____ months following confirmation, after which the Monthly Payment listed will commence. If such time period is for more than 12 months, the creditor will be served notice of this provision by certified mail, return receipt requested and regular U.S. Mail.

COMMENT: This is to set out the Adequate Protection Payments and Time Period clearly. As to the heightened notice for longer Adequate Protection Payments (or for elsewhere below), we are open to any suggestions on what such should contain and how it should look.

Debtor Creditor Relationship:

The following provisions regarding the Debtor Creditor Relationship will apply to all creditors:

- **Credit Reporting:** Unless otherwise provided for by other state or federal laws, no creditor affected by this plan is required to report the account information for the Debtor(s) to any credit reporting agency. ~~If, however, any creditor affected by this plan chooses to report account information regarding the Debtor(s) to any credit reporting agency, such reports shall be consistent with the terms and provisions of this Plan, as confirmed and 11 U.S.C. § 1327(a).~~ If, however, any creditor affected by this plan chooses to report account information regarding the Debtor(s) to any credit reporting agency during the plan, such reports shall accurately reflect payments received under the confirmed plan, unless the confirmation order has been revoked, the plan is in default, or the creditor has not received payments required to be made under the plan in the manner required by the plan (including creditor the amounts required under the plan, pursuant to 11 U.S.C. §§ 524(i) & 1327(a).

COMMENT: It is my understanding that a similar provision has been included in WDNC plans. This language is modeled on that in 11 U.S.C. § 524(i), but does not require reporting of claims to the credit bureaus during bankruptcy, but just reporting pursuant to the payments under the plan. This will help with refinancing mortgages during bankruptcy.

- **Mobile Telephone Contact:** ~~Any prior authorization to contact the Debtor(s), either in writing or verbally, expressed or implied, by mobile telephone is revoked and rejected as an executory contract.~~ Any prior consent to contact the Debtor(s), either in writing or verbally, expressed or implied, on their mobile telephone is revoked pursuant to the Telephone Consumer Protection Act (“TCPA”). Such contact includes but is not limited to mobile telephone calls, text messages, voice mail messages, silent voice mail messages, or any other form of communication by mobile telephone or otherwise.

COMMENT: We have removed the rejection of the executory contract and are only using this a a written withdrawal of consent to contact by mobile telephone under the TCPA and related FCC regulations and staff commentary. This could be done outside of the Plan, but this provides additional notice and certainty for all parties.

The following provisions regarding the Debtor Creditor Relationship will apply only to the following creditors, by certified mail, which have been separately notified of these provisions by certified mail, return receipt requested and regular U.S. Mail:

[CREDITOR NAMES]

- **Arbitration:** All arbitration provisions, except any related to the Debtor's principal residence and protected from modification pursuant to 11 U.S.C. § 1322(b)(2), including waivers of class action standing and participation, are hereby void.
- **Choice of Law:** All choice of law provisions, except any related to the Debtor's principal residence and protected from modification pursuant to 11 U.S.C. § 1322(b)(2), are hereby void and the applicable laws of North Carolina shall henceforth apply to all matters involving to the relationship between the Debtor and creditors.
- **Choice of Venue:** All choice of venue provisions, except any related to the Debtor's principal residence and protected from modification pursuant to 11 U.S.C. § 1322(b)(2), are hereby void and venue shall be in North Carolina, whether the state or federal courts as otherwise appropriate, for all matters related to or arising from this bankruptcy.
- ~~**Jurisdiction for Non-Core Matters:** Confirmation of this plan shall constitute the express consent by any party in interest in this case, or any one or more of them, including all creditor or other parties duly listed in Schedules D, E, F, G, and H, or any amendments thereto, to the referral of a proceeding related to a case under Title 11 of the United States Code to a Bankruptcy Judge to hear and determine and to enter appropriate orders and judgments as provided for by 28 U.S.C. § 157(c)(2).~~

COMMENT: We have removed the jurisdiction for Non-Core Matters completely. As to the others, those will only be included in plans where we know of consumer rights claims prior to filing and will notify those creditors directly and explicitly.

Claims Secured by Security Interest in Real Property or Mobile/Manufactured Home or Additional Collateral:

A Holder of a claim as described in [Section 8.2](#) (“Holder”) shall:

COMMENT: These provisions will be included in all Plans with mortgages or mobile homes.

COMMENT: The language in header for [Section 8.2](#) is unclear whether the final phrase “THAT IS THE DEBTOR’S PRINCIPAL RESIDENCE” applies only to the preceding “A MOBILE HOME” or to the entire list, which includes “A DEED OF TRUST” and “A MORTGAGE OR SECURITY INTEREST IN REAL PROPERTY”. I presumed that it was intended to limit all three, but this grammar is unclear.

- **Account Information:** The requirements in [Section 8.2\(e\)](#) to provide the Trustee with account information within 21 days of a request may also be exercised by the Debtor's attorney and failure to provide a timely response may result in an order requiring the Holder to appear and show cause why the Holder should not be sanctioned for failure to comply.

COMMENT: This only allows debtor’s counsel to do the same as a Trustee. If there is no basis to give us this authority, I question where it exists for a Trustee alone.

- **Notices of Fees and Costs:** N.C.G.S. § 45-90 et seq. and §24-10.1 shall continue to apply, with all such notices being sent to the Debtor. Provision of such notices shall not constitute a violation of the automatic stay.

COMMENT: This just reiterates *Saeed* and *Hillmon* so that creditors are aware.

- **Periodic Mortgage Statements:** Effective April 15, 2018, a Holder shall, the requirement of [Section 8.2\(d\)](#) notwithstanding to send statements in the same manner as existed pre-petition, send periodic monthly statements to the Debtor on a form complying with 12 C.F.R. § 1026.41.

COMMENT: [Section 8.2\(d\)](#) is inaccurate, since mortgage servicer have a new Periodic Mortgage Statement specifically for Chapter 13 debtors.

- **Determination of Secured Claim:** Claims held by governmental units, including those guaranteed by the Veteran's Administration, USDA, HUD, Fannie Mae/Freddie MAC, etc., shall be determined, pursuant [Rule 3012\(c\)](#), by subsequent motion or objection to claim.

COMMENT: This is to clarify that strip-offs of all the listed possible government creditors must be done by motion or claim objection. If the court wants to tell us that Fannie Mae doesn’t fit in that list, we’d be happy.

The following provisions regarding Claims Secured by a Security Interest in Real Property, Mobile Home or Additional Collateral will apply only to the following creditors, which have been

separately notified of these requirements by certified mail, return receipt requested and regular U.S. Mail:

[CREDITOR NAMES]

- **Real Property Other than the Debtor's Principal Residence:** A Holder of a claim secured by a security interest in real property other than the Debtor's principal residence shall comply with the requirements of Rule 3002.1.
- **Real Property Other than Provided for Under 11 U.S.C. § 1322(b)(5):** A Holder of a claim secured by a security interest in real property to be Paid in Full under Sections 4.1(c) or 4.2(c), or Valued to Treat Claim as Secured to the Value of the Property under Sections 4.2(d) shall comply with the requirements of Rule 3002.1.
- **Mobile ~~or Manufactured~~ Home or Additional Collateral:** A Holder of a claim secured by a security interest in a mobile home or secured by additional collateral, whether provided for as Maintenance of Payments and Cure of Default under Sections 4.3(b), Paid In Full under Sections 4.3(c), or Valued to Treat Claim as Secured to the Value of the Property under Section 4.3(e), shall comply with Rule 3002.1.

COMMENT: These provisions will only be included when applicable in a specific case and will be tailored to the actual treatment rather than the list of possible treatments. The specific creditors will be given separate notice of these requirements. These provisions do not mandate any consequences for noncompliance, leaving that to the court to determine.

Student Loans:

The Buchanan Provisions shall apply:

COMMENT: These provisions will only be included in plans where there are student loans.

- The Debtor is not seeking nor does this Plan provide for any discharge, in whole or in part, of her student loan obligations.
- The Debtor shall be allowed to seek enrollment in any applicable income-driven repayment ("IDR") plan with the U. S. Department of Education and/or other student loan servicers, guarantors, etc. (Collectively referred to hereafter as "Ed"), without disqualification due to her bankruptcy.
- Ed shall not be required to allow enrollment in any IDR unless the Debtor otherwise qualifies for such plan.
- The Debtor may, if necessary and desired, seek a consolidation of her student loans by separate motion and subject to subsequent court order.
- Upon determination by Ed of her qualification for enrollment in an IDR and calculation of

any payment required under such by the Debtor, the Debtor shall, within 30 days, notify the Chapter 13 Trustee of the amount of such payment. At such time, the Trustee or the Debtor may, if necessary, file a Motion to Modify the Chapter 13 Plan to allow such direct payment of the student loan(s) and adjust the payment to other general unsecured claims as necessary to avoid any unfair discrimination.

- The Debtor shall re-enroll in the applicable IDR annually or as otherwise required and shall, within 30 days following a determination of her updated payment, notify the Chapter 13 Trustee of such payment. At such time, the Trustee or the Debtor may, if necessary, file a Motion to Modify the Chapter 13 plan to allow such direct payment of the student loan(s) and adjust the payment to other general unsecured claims as necessary to avoid any unfair discrimination.
- During the pendency of any application by the Debtor to consolidate her student loans, to enroll in an IDR, direct payment of her student loans under an IDR, or during the pendency of any default in payments of the student loans under an IDR, it shall not be a violation of the stay or other State or Federal Laws for Ed to send the Debtor normal monthly statements regarding payments due and any other communications including, without limitation, notices of late payments or delinquency. These communications may expressly include telephone calls and e-mails.
- In the event of any direct payments that are more than 30 days delinquent, the Debtor shall notify her attorney, who will in turn notify the Chapter 13 Trustee, and such parties will take appropriate action to rectify the delinquency.
- The Debtor's attorney may seek additional compensation by separate applications and court order for services provided in connection with the enrollment and performance under an IDR.

Additionally, for any IDR ~~provided for under the plan paid by the Chapter 13 Trustee:~~

- **Notice of Final Plan Payment:** Within 30 days after the Debtor completes all payments under the plan, the Chapter 13 Trustee shall ~~notify the Debtor's attorney and the Debtor may file and serve, by certified mail, return receipt requested and regular U.S. Mail, on the Debtor, Debtor's attorney, the Chapter 13 Trustee, Ed., the U.S. Attorney and Attorney General, creditor, creditor's legal counsel, any co-obligor, co-borrower and third-party obligor, a notice stating that the Debtor has paid in full the amount required to cure any default on the claim and has paid all payments due to Ed. during the Chapter 13 plan. The notice shall also inform the noticed parties of their obligation to file and serve a response, as follows. If the Debtor contends that final cure payment has been made and all plan payments have been completed, and the Trustee does not timely file and serve the notice required by this subdivision, the Debtor may file and serve the notice.~~ notify the Debtor's attorney and the Debtor may file and serve, by certified mail, return receipt requested and regular U.S. Mail, on the Debtor, Debtor's attorney, the Chapter 13 Trustee, Ed., the U.S. Attorney and Attorney General, creditor, creditor's legal counsel, any co-obligor, co-borrower and third-party obligor, a notice stating that the Debtor has paid in full the amount required to cure any default on the claim and has paid all payments due to Ed. during the Chapter 13 plan. The notice shall also inform the noticed parties of their obligation to file and serve a response, as follows.

COMMENT: The only burden for this is for the Trustee to notify us at the end of a case, so that we can take action.

- **Response to Notice of Final Cure Payment:** Within 21 days after service of the [above notice under subdivision \(c\)](#), Ed. shall file and serve on the Debtor, Debtor's counsel, and the Chapter 13 Trustee a statement indicating (1) whether it agrees that the Debtor has paid in full the amount required to cure [any](#) default on the claim, (2) whether the Debtor has otherwise made all payments due during consistent with § 1322(b)(5) of the Code, and (3) whether payments made during the plan were applied towards any period of forgiveness or cancellation of an eligible Loan. The statement shall itemize the required cure or postpetition amounts, if any, that Ed. contends remain unpaid as of the date of the statement. The statement shall be filed as a supplement to the holder's proof of claim and is not subject to Rule 3001(f).

COMMENT: These provisions do not mandate any consequences for noncompliance, leaving that to the court to determine. When we send the notice to Ed. we can send a form for it to complete providing these options. These are also provisions which, given the previous opposition by Ed., should be expected and would not require Trustees to bring on their own.

Taxes:

- **Post-petition tax claims:** The Debtor's plan shall provide for full payment of any post-petition tax claim filed by the Internal Revenue Service which are allowed pursuant to 11 U.S.C. § 1305 (b), unless the Internal Revenue Service, after a good faith consideration of the effect such a claim would have on the feasibility of the Debtor's Chapter 13 plan, specifically agrees to a different treatment of such claim. However, any future modification of the Debtor's plan to provide for full payment of any allowed post-petition tax claim shall only occur after the filing of a motion requesting a modification of the plan to that effect.
- **Offers in Compromise:** The Internal Revenue Service shall, pursuant to I.R.C. §7122 (a) (2002) and 11 U.S.C. §§105 and 525 (a), and notwithstanding any provisions of the Internal Revenue Manual, consider any properly tendered Offer in Compromise by the Debtor. This provision shall not be construed to require the Internal Revenue Service to accept any such Offer in Compromise, but the Internal Revenue Service shall consider such Offer in Compromise as if the Debtor was not in an on-going bankruptcy. In the event that an Offer in Compromise is accepted by the Internal Revenue Service and any tax obligation is reduced, [the debtor may seek a modification of the plan pursuant to 11 U.S.C. § 1329](#) ~~the Chapter 13 Trustee shall review the Chapter 13 payment to determine if a reduction in the plan payment is feasible.~~

COMMENT: This is changed to remove the obligation on the Trustee to review, but also to make sure that the debtor is not precluded from seeking a modification under an argument that the OIC was "anticipated".

Consumer Rights Claims:

- **Retention of Consumer Rights Causes of Action:** Confirmation of this plan shall constitute a finding that the Debtor does not waive, release or discharge but rather retains and reserves

for him or herself and the Chapter 13 Trustee any and all pre-petition claims and any and all post-petition claims that they could or might assert against any party or entity arising under or otherwise related to any state or federal consumer statute or under state or federal common law including but not limited to fraud, misrepresentation, breach of contract, unfair and deceptive acts and practices, retail installment sales act violations, Truth in Lending violations, Home Equity Protection Act violations, Real Estate Settlement Protection Act violations, Fair Debt Collection Practices Act violations, Fair Credit Reporting Act violations, Equal Credit Opportunity Act violations, Fair Credit Billing Act violations, Consumer Leasing Act violations, Federal Garnishment Act violations, Electronic Funds Transfer Act violations, and any and all violations arising out of rights or claims provided for by Title 11 of the United States Code, by the Federal Rules of Bankruptcy Procedure, or by the Local Rules of this Court.

- **Standing for Consumer Rights Causes of Action:** Confirmation of this plan shall vest in the Debtor full and complete standing to pursue any and all claims against any parties or entities for all rights and causes of action provided for under or arising out of Title 11 of the United States Code including but not limited to the right to pursue claims for the recovery of property of this estate by way of turnover proceedings, [the right to recover pre-petition voluntary preferences, which the trustee does not attempt to avoid, or pre-petition voluntary preferences, which are specifically delegated by the Trustee to the Debtor to pursue](#), the right to pursue automatic stay violations, and the right to pursue discharge violations.

COMMENT: This has been changed to use the language of 11 U.S.C. § 522(h) and allow the Trustee a right to first pursue these claims.

- ~~**Employment of Professionals:** Debtor's counsel may seek approval for additional compensation for representation of the Debtor in the above.~~

COMMENT: This is surplusage, since we have the right to do so.

Irregular Plan Payments:

COMMENT: These will only be included as applicable in a specific case.

- **Seasonal Plan Payments:** The requirements of Section 2.1 notwithstanding, the Debtor shall have reduced plan payments of \$ _____ during the months of _____.
- **Liquidation of Assets:** The requirements of Section 2.1 notwithstanding, the Debtor shall have until _____ (date) upon which to present the Chapter 13 Trustee with a fully executed Offer and Contract for the sale of _____ (describe property) and subsequent tender of non-exempt proceeds. After such date, the Chapter 13 Trustee may, pursuant to 11 U.S.C. § 1307(c), seek either conversion of this case to Chapter 7 or dismissal of the case. This provision shall not constitute of waiver of the Debtor's right to voluntarily dismiss this case pursuant to 11 U.S.C. § 1307(a).

Attorneys Fees and Costs:

- **Noticing costs:** In addition to attorneys fees allowed under Section 3.1 and commensurate with the March 11, 2016, Standing Order Regarding Procedures in Aid of the Administration of Chapter 13 Cases, which allows Chapter 13 Trustees reimbursement for noticing, the Debtor's attorney is authorized to seek **by separate application** reimbursement for the costs of noticing of the Chapter 13 plan at the rate of \$1.00 per regular mail notice and \$4.00 certified mail costs, as shown on the attached certificate of service.

COMMENT: By including that we can seek this by separate application, it is meant to preserve a right to ask for reimbursement, without predetermining whether we will be reimbursed. That should allow for confirmation with out additional delay.

Miscellaneous:

COMMENT: These will only be included as applicable in a specific case.

- **Domestic Support Obligations:** In regards to Domestic Support Obligations owed directly to or recoverable by a governmental unit, as provided for in 11 U.S.C. § 507(a)(1)(B), the Plan shall:
 - _____ Provide for the full payment, in deferred cash payments, of such claim
 - _____ Provide for less than full payment of all amounts owed for such claim, but all of the Debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.
- **Classification of Claims:** In a jointly filed case, the Debtors or Chapter 13 Trustee may file a subsequent motion to provide for the separate classification of unsecured claims based on the liquidation requirements for each Debtor's assets, including Tenancy by the Entireties.
- **ACP and 100% Dividend:** The Applicable Commitment Period in Section 1 notwithstanding, pursuant to 11 U.S.C. § 1325(b)(1)(A), the plan provides for the value of property to be distributed under the plan to general unsecured claims will not be less than the amount of such claims and accordingly, *viz.* **the plan provides for a 100% dividend**, there is no Applicable Commitment Period.

COMMENT: This is taken from the language in the Code, but is also not meant to pre-determine whether a case could be modified later under 11 U.S.C. § 1329 to complete in less than the proposed 36 or 60 months, as such modification would still be subject to the other requirements there, with the most difficult to overcome being showing a good faith reason for modification to less time and not a hardship discharge under 11 U.S.C. § 1328(b).

- **Surrender of Personal Property:** If, within 180 days of confirmation, a holder of a lien against personal property collateral surrendered under Section 5(b) has **not** taken possession of collateral or commenced judicial action to do so, the Debtor may dispose of such personal

property as allowed under North Carolina law.

COMMENT: This is meant to allow debtors to dispose of junk cars that no one, including the lien holder, wants and which get debtors into trouble with home owners associations, etc. This does not include real property.