AMERICAN BANKRUPTCY INSTITUTE

2021 Consumer Practice Extravaganza

Intro to Chapter 13

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INTRODUCTION TO CHAPTER 13

ABI CPEX21 VIRTUAL CONFERENCE
BANKRUPTCY 101 TRACK
FRIDAY NOVEMBER 5, 2021

PANELISTS

- Honorable Brian D. Lynch USBC (WD Wash.); Tacoma
- Julie Philippi, Chapter 13 Trustee; Buffalo, NY
- Randy Nussbaum, Sack Tierney PA; Scottsdale AZ
- Sean Ferry, Robertson, Anschutz, Schneid, Crane and partners, PLLC; San Diego, CA

Why is chapter 13 great?

- Chapter 13 is completely voluntary
- Debtors can pay the fees through the plan
- It is the easiest way to keep an asset – especially a home
- It has a high success rate
- Trustees add value
- Debtors can modify their plan as circumstances change

Starting out

- Eligibility
- Reasons to choose chapter 13
- Plan Drafting
- Role of the Trustee
- A little about fees (but more later)
- Tools you can use
  - NDC.org
  - TFSbillpay.com
  - And more

Creditor concerns

- Filing proofs of claim
- Objecting to confirmation
- Relief from the automatic stay
- Rule 3002.1
- Loss mitigation

Plan confirmation

- Negotiation
  - 1322(b)(5) is Not self-Executing
- Don’t be afraid of an evidentiary hearing
  - Keep track of your time
  - Your client can be a witness

A little on complex cases and attorney fees

- Chapter 11 v. Chapter 13
  - Subchapter 5
- Chapter 13 post filing issues
- Determining Jurisdictional limits
- Bad faith?
- Getting paid

What happens after confirmation?

- Plan defaults - motions to dismiss
- Conversion to another chapter
- Plan completion - basic closing process
  - Necessary forms
  - Financial management course
  - Notice of final cure
- What questions do you have?
- Thank you!

ABI CPEX21 BANKRUPTCY 101 TRACK
INTRODUCTION TO CHAPTER 13

CONFIRMATION PITFALLS
How To Avoid Delays In The Chapter 13 Process

Schedules

1. Do lien searches. If a plan does not address a lien, it will survive bankruptcy. If a lien is alleged in a confirmed plan, it is valid under bankruptcy law even if it is not valid under state law. *In re Espinosa,* 559 U.S. 260 (2010); *In re Layo,* 460 F.3d 289 (2nd Cir. 2006).

2. Watch out for purchase money security interests. Some typical examples are Zales, Wells Fargo (Raymour-Flanigan), Ruby Gordon, Jared, Kay Jewelers, Sterling, United Consumer (Kirby Vacuum). If the client says they bought something "on time," the chances are good it is a secured claim. Do not forget, if it is bought within one year of filing, it cannot be crammed down. §1325(a) hanging paragraph.

3. Complete the schedules, even the small stuff. List clothing, cash, bank accounts, claims against third parties, etc. If there is a leased vehicle, put the fair market value of the vehicle on Schedule B. Debtor's interest in the vehicle might be $0 or unknown, but the vehicle itself has a fair market value. Put in account numbers on Schedules D and E/F and consideration. Schedule H should be completed with name and address. It is not sufficient to say "co-debtor" or "spouse." All the employment information on Schedule I should be completed. The SFA should be completed.

4. When possible, claim the maximum dollar amount of an exemption. You'll avoid having to amend later if the value of the asset in question turns out to be higher than expected.

5. $1 vs. Unknown value. Find out if your trustee/court prefers $1 or "unknown" for assets where the value is truly not known (value of litigation, value of pensions). However, claim the maximum dollar exemption, do not claim "unknown" as the exemption. However, if you can reasonably determine a value, then do so.

6. Is it a real auto lease or a pmsi? Check the certificate of title and the lease terms (ex. nominal or no buy out at the end of the lease).

7. Certain items are not a good idea to include as expenses. Ex. housekeeping, children's sports, tobacco. But check with your trustee for local practice.

8. Extra vehicles, vacation homes, timeshares, etc. are probably not necessary to performance under the plan. If there is equity in these items, you must compare the equity to the cost of the lien during the plan.

9. If there is rental property, it must be insured, and there must be either a positive cash flow or enough equity to justify the negative cash flow.

<u>The Plan</u>

10. Plans should be drafted as if they are contracts between the creditors and the debtors. The plan must address all secured claims, priority claims, leases, and classes of unsecured claims.

11. The Model Plan provides for cram down and lien avoidance via the plan. If your court uses the Model Plan or a modified version of it, verify with your trustee/court if separate motions are required. Even if it can be done in the plan, Rule 7004 must still be followed for good service.

12. If your plan seeks to circumvent the Bankruptcy Code or Rules, do not file it. If you do, your client may slip it through, which might win the battle (see *Espinosa* above) but cost you the war (disciplinary action against you as an officer of the court; your credibility with the court and the trustees).

13. If line 59 of the B22C means test is a positive number, that times 60 = the minimum amount the debtor must pay unsecured creditors under the plan.

14. Modified plans must still satisfy the best interests of creditors test (aka liquidation test or chapter 7 test).

15. To give secured creditors present value, they must be paid with interest. Generally, interest is set at the prime lending rate plus a risk factor of 1-3. *In re Till*, 541 U.S. 645 (2004). Prime has been steady for several months at 3.25%. Thus the "*Till* rate" range is 4.25%-6.25%. There are several websites that provide this information. **NOTE TO SECURED CREDITORS: this can be a bargaining chip in difficult cases.** Remember that any interest rate is subject to court approval

<u>Claims</u>

16. Tax liens are entitled to statutory interest. This includes county property tax claims.

17. Real estate taxes are SECURED claims, not priority.

18. Student loans are **<u>not</u>** priority claims.

<u>Supporting Documents</u>

19. Get the full tax returns to the trustee 7 days before the first 341 meeting. §521(e)(2)(A)(i).

20. Check with your trustee as to their policy on document delivery. Many trustees use a document delivery portal.

21. You should be as familiar with the details in the documents you send to the trustee as the trustee will be at the § 341 meeting.

22. You should know before a petition is filed if all tax returns have been filed. If not, this must be done before confirmation.

<u>Payments</u>

25. If the plan payment increases pre-confirmation, make sure the debtor starts making the increased payment immediately or feasibility is called in question.

26. The equal monthly payments to secured creditors cannot total more than the total monthly plan payment plus the trustee fee. Known as a stacking problem.

27. If the budget filed with the court shows a net less than the plan payment, then the plan is not feasible.

<u>Noticing</u>

28. If a creditor's rights are affected, make sure the creditor is served under Rule 9006 or FRBP 7004, unless the court allows something different.

29. Know the noticing requirements and deadlines.

30. Some courts serve the plan on all creditors. Other courts require debtors' counsel to do it. Know what your court does.

<u>Miscellaneous</u>

31. Know the law.

32. If your case has special issues, give the trustee a heads up before the first meeting. It helps with the trustee's case analysis, how the hearing is conducted, and the ultimate recommendation to the court.

33. Check the docket or the court calendar before calling the trustee's office to ask about continued/adjourned dates.

34. If you communicate with the trustee's office, please include a case number. We can search my other methods, but our software defaults to searching by case number.

35. If you need a professional appointed, e.g., realtor or non-bankruptcy attorney, get this done as soon as possible. If not, you run the risk that the court will not approve their fee. *In re Keren Ltd. Partnership*, 189 F.3d 86 (2nd Cir. 1999). Not all courts require or allow professionals to be appointed in Chapter 13 cases, so it is important to know what the requirement is in your district. See *In re Jones*, 505 B.R. 229 (Bankr. E.D. Wis 2014).

Filing Proofs of Claim in Chapter 13 Cases

1. Creditors should typically file a proof of claim in a Debtor's Chapter 13 Case.
2. **Ensures eligibility for distribution.**
    a. We all want to get paid. The filing of the proof of claim typically establishes a creditor's eligibility for distribution through the plan.
3. Proof of Claim must conform substantially to the appropriate Official Form (FRBP 3001(a)
    a. Must Contain:
        i. Bankruptcy case name and number
        ii. Creditor's name and address
        iii. Claim amount
        iv. Basis for the Claim (supporting evidence)
            1. Based on Writing (FRBP 3001(c)(1)
                a. A redacted version of the writing needs to be included with the filed claim
                b. Consumer Credit Agreement
                    i. Must include a monthly statement with the proof of claim
            2. Secured Claim (FRBP 3001(d))
                a. Must include a redacted version of the writing in which the claim is based
                b. Must include any evidence of perfection of the security interest
                c. Claim secured by an interest in Debtor's principal residence
        v. Where Debtor is an individual
            1. Specific supporting documents/information is required where Debtor is an individual. If the claim includes interest, fees, expenses, and charges, itemized statements describing those charges must be included with the proof of claim.
        vi. Principal Residence

1. If security interest is in Debtor's principal residence, the proof of claim attachment/part A must be filed with the proof of claim
2. The contents of Part A include:
   a. Total debt calculation
   b. Arrears
   c. Monthly Payment Amount
   d. Pay History
   e. Escrow Advances/Deficiency breakdown
3. FRBP 3002.1
   a. If you represent creditors who service loans that are secured by any interest in Debtor's principal residence, 3002.1 is going to dictate the Creditor's actions through the bankruptcy case.
   b. Notice of Mortgage Payment Changes (3002.1(b))
      i. Secured creditor must provide notice of a mortgage payment change at least 21 days before the first payment under the new amount is due
      ii. Considered a supplement to Debtor's proof of claim
   c. Notice of Post-petition mortgage fees/expenses/charges
      i. Secured Creditor must provide notice of any post-petition fees, expenses, or charges that are incurred through the case
      ii. Must be filed within 180 days of when the fee, expense, or charge is incurred
      iii. Considered a supplement to Debtor's proof of claim
   d. Response to Trustee's Notice of Final Cure
      i. Must be filed within 21 days after being served with the trustee's notice of final cure
      ii. Includes two sections in which Creditor will agree or disagree as to whether the Trustee and the Debtor

cured the pre-petition arrears and maintained the post-petition payments

e. Effect of noncompliance of 3002.1
   i. The Court may, after notice and hearing:
      1. Preclude the secured creditor from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case
      2. Award other appropriate relief, including reasonable attorney fees and expenses resulting from the noncompliance

f. Failure to file the requisite documentation in accordance with rule 3002.1 can expose Creditor's to large liabilities in the form of sanctions, claim reductions, or claim objections.

b. Claims are signed on the penalty of perjury.

c. Fraudulently filed claims can be punished by fine or even imprisonment.

4. Claims Should be Filed Timely
   a. Failure to timely file a proof of claim can result in the claim being disallowed
   b. Identity of Creditor will dictate your deadline to file the claim
      i. Governmental Claims
      ii. Infants or Incompetents
      iii. Based on Judgment Avoiding
      iv. Resulting from Rejection of Executory Contract
   c. Extraordinary Circumstances may allow for the late filing of a proof of claim
      i. Ninth Circuit Extraordinary Circumstances
         1. Court notice was misleading
         2. Extreme circumstance made the timely filing of a proof of claim impossible.

5. Amending Proofs of Claim
   a. No restriction on amending claims before the claims bar date runs

   b. Amending claims after the bar date runs is appropriate under certain circumstances
      i. Forbearances and loan modifications are two common circumstances that are impacting proof of claims recently
6. Allowance of Claim is a "Core" Proceeding
   a. The Court may hear and make a final determination allowing or disallowing a claim
      i. This decision can have a res judicata effect
         1. Example – A debtor's failure to object to a proof of claim in the bankruptcy case barred Debtor from bringing a state court action against creditor on the same factual basis
7. Standing
   a. Any creditor may file a proof of claim
   b. Creditor's agents may also file a proof of claim
8. Objections to Claim
   a. Standing – any party in interest has standing to object to a proof of claim
   b. Grounds
      i. Claims filed in a bankruptcy case are usually automatically allowed
      ii. Grounds/bases – usually limited to those outlined in §502
9. Transferring Claims
   a. Transfer of claims are common in bankruptcy cases
   b. FRBP 3001(e) governs the transfer of claims in bankruptcy.
10. Withdrawing Claims
   a. Creditors have absolute right to withdraw its claim without approval of Court or Debtor
   b. The withdrawal of the claim puts the parties in the same position that they would have been had the claim not been filed.

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INTRODUCTION TO CHAPTER 13

An attorney representing a Chapter 13 debtor needs to be prepared for a variety of issues that may arise in that representation. It's probably impossible for that attorney to properly represent a Chapter 13 debtor without a basic understanding or awareness of these issues.

With this in mind, from the moment a lawyer is first contacted by a prospective client, the lawyer needs to be sensitive as to what is really in the best interests of the client and ensure that certain prophylactic steps are taken from the onset.

Factors to be Considered from the Onset

In certain instances, Chapter 13 may not even be the appropriate option for that individual. The following is a discussion addressing the differences between Chapter 11 and 13, which oftentimes are ignored by the unsophisticated or myopic lawyer.

* * *

CHAPTER 11 VS. CHAPTER 13

> Clients who are facing serious financial difficulties but may not be eligible for Chapter 7 need to consider from the onset whether they are willing to proceed under Chapter 11 or 13 of the Bankruptcy Code. In determining whether to choose either of those options, clients need to understand the ramifications of each because if for whatever reason reorganization is not acceptable to them, then they are left with having to settle with their creditors. Settlement may not be a horrible alternative, though that option requires clients to come up with money to settle and to also have to address potential tax ramifications since debt forgiveness can trigger taxable income at ordinary income rates.
>
> Traditionally, individuals seeking reorganization would proceed under Chapter 13 as long as they were eligible. To be eligible, a potential debtor would need to have ordinary income and total secured debt of just over $1,257,850 dollars and unsecured debt of approximately $419,275. If those criteria were met, then Chapter 13 would often be a viable alternative.
>
> Unfortunately, there are a number of problems with Chapter 13 as currently enacted. In some cases, a client proceeding under Chapter 13 will have to make monthly payments to a trustee for five (5) years. That payment would consist of the difference between that client's income and allowed monthly expenses, which are regulated to ensure that a Chapter 13 debtor can maintain a decent lifestyle, but nothing too extravagant. Even more importantly, the number

is an adjustable one, which means if a client's disposable income increases either because that client's income goes up or expenses are reduced, then the monthly payment can be adjusted in certain instances, though normally it is adjusted upwards. Finally, some Chapter 13 clients have to remain in Chapter 13 for five years even if a third party is willing to lend them the money so they can pay off the Plan early or even if the client has non-exempt assets that that client could access to pay off the Plan. This effectively places some Chapter 13 clients in a situation in which he is handcuffed for that period of time because of the restrictions imposed on that client by bankruptcy law.

Chapter 11 is another form of reorganization which is really designed for companies and bigger cases, but can be utilized by individuals. This of course raises the question of why would an individual consider a Chapter 11 since it is more expensive, far more burdensome than a Chapter 13, requires more extensive paperwork to be filed, not just initially but throughout the case, and requires a far more complicated procedure for approval of a Plan of Reorganization. The answer is based upon certain aspects of Chapter 11 which can actually make it far more attractive than Chapter 13 for certain individuals.

An individual Chapter 11 can easily cost $20,000 to $25,000, which is three to four times more than many Chapter 13s. Nevertheless, Chapter 11 may be far more beneficial than a Chapter 13 for the following reasons:

1. A Chapter 11 debtor may be able to deduct certain expenses on a monthly basis that may not be allowed in a Chapter 13. Even if that difference is only $500 a month over the course of a 60-month Plan, this translates to $30,000 of additional money available to a debtor.

2. Whereas in a Chapter 13 the statute specifically provides for a procedure for annual adjustments of the monthly Plan payment, in a Chapter 11, once the Plan is confirmed, there is little chance the debtor would even have to increase his payments.

3. Probably most importantly, there does not appear to be any prohibition in permitting a Chapter 11 debtor to pay off a Plan early. This option could allow a Chapter 11 debtor to extricate himself from bankruptcy much earlier if that individual can raise the money to pay off the Plan early.

4. The Debtor's Plan payment does not commence until confirmation of the Plan which may not be for many months from the original filing date.

5. A Chapter 11 does not require the appointment of a Chapter 13 trustee which eliminates that individual's statutory percentage which can be as much as 10% of the payments disbursed.

> If reorganization becomes a strong possibility as we review your paperwork and draft Schedules, I will devote more attention to this matter, but I at least want you to become generally familiar with these options since you will need to make a decision in the near future if your income is too high.
>
> Also, in reorganization, you are able to retain certain non-exempt assets that you otherwise could not keep as long as retaining them will not cost the estate an excess amount of money that could be used to pay creditors.
>
> In 2016, the Ninth Circuit ruled that individuals in Chapter 11 have to abide by the Absolute Priority Rule unless the Chapter 11 is a Subchapter V. This requires individuals seeking relief under that Chapter to contribute an amount to be determined by the Court as new value in return for being able to retain assets in the bankruptcy case. In almost all instances, this will increase what a Chapter 11 debtor has to pay to creditors, though it's unclear at this time as to exactly how much more debtors will have to pay to comply with this statutory requirement. Though this obligation in itself is not sufficient to compel an individual to seek Chapter 13 relief when Chapter 11 is also an option, it is a factor which should make a difference in cases which are close calls.
>
> In individual cases, if the client is eligible for a Subchapter V filing, certain of the above requirements are inapplicable, such as compliance with the Absolute Priority Rule. The Debtor's obligations have to be more than 50% business based, but if it is, this form of Chapter can be very advantageous.

In specific instances, carefully considering the above analysis can save a client a substantial amount of time and money, especially if that client is not appropriate for Chapter 13 or is ineligible. Especially with the advent of Subchapter V, the lawyer may be performing a disservice for the client by not at least considering a Chapter 11, and in other instances, a failure to spell out that option could even be malpractice.

In other cases, a failure to engage in an in-depth analysis of the client's eligibility can also be problematic as well. The potential debtor may not be eligible for Chapter 13, although in a short period of time, may be. It therefore becomes absolutely crucial to confirm when and if that individual may have last filed for bankruptcy. Along the same lines, a number of statutory deadlines could either benefit or impede the reorganization so that the exact timing of the case could become crucial. If the individual wants to see certain payments reversed, filing within the preference period can be extremely advantageous, whereas if the opposite is true and recovering such payments could be problematic for the client, waiting a few days could become very important. Especially in set fee cases in which the attorney is trying to minimize his time, it's not uncommon for little attention to be devoted to these topics.

Finally, but occasionally extremely germane, is ensuring that the client's non-contingent and liquidated debt does not exceed the current statutory maximum. The caps are absolute and exceeding one by even a few dollars will render the Chapter 13 debtor ineligible for that relief. When representing a client facing a substantial amount of debt, devote the necessary time to this issue and if the debt can be reduced to an extent in which the client is eligible, engage in the planning to ensure that is what occurs.

Once the client has filed, the following issues may arise.

Post-Filing Issues

For many years, uncertainty has reigned in the Ninth Circuit as to whether 11 U.S.C. § 1307(b) extended to a Chapter 13 debtor an absolute right to dismiss the case. Without question, the statute stated such was the case, but bankruptcy judges in the Ninth Circuit had painstakingly carved out exceptions to the right for clearly dishonest or unscrupulous debtors. The judges were evidently frustrated with individuals who were clearly "gaming" the system and had been utilizing Chapter 13 for a safe haven from understandably aggravated creditors. The absolute dismissal right allowed such debtors to shield themselves from such creditor action and then, at their full whim and discretion, to dismiss the case when advantageous to do so.

The *Nichols* decision of a few months ago ended any ambiguity as to this controversy. In *Nichols* (copy attached), the bankruptcy judge was faced with a classic situation in which a Chapter 13 debtor unequivocally filed the Chapter 13 without any real ability to proceed. The aggrieved creditor demanded conversion of the case to Chapter 7, which would have been devastating for the debtor. The debtor correctly moved for a dismissal, but the Judge, upon finding that the debtor had filed in bad faith, relied upon case law which allowed the Judge to deny dismissal in extreme circumstances.

The Ninth Circuit recognized that the wording of the statute basically granted carte blanche to even a reprehensible Chapter 13 debtor to extricate himself from bankruptcy to the clear disadvantage of even a sympathetic creditor. The Court noted that the statute clearly read the way it did and if Congress had wanted to place limitations on the absolute dismissal right, it could have easily done so, but chose not to since Chapter 13 had always included an absolute dismissal option for the debtor.

Left undetermined is what happens when a debtor accidentally asks for dismissal under another section of the statute in which the court is granted discretion as to whether to convert or dismiss. Coincidentally, this firm was involved in a case in which a debtor is seeking dismissal, but failed to specifically cite the operative statute at the time the request was made. Equity strongly suggests the dismissal should be granted, but if nothing else, a practitioner should always clearly state that the relief is being sought under 11 U.S.C. § 1307(b).

The next issue involves defending an effort of an angry creditor demanding the case be dismissed or converted because the debtor has exceeded the jurisdictional limits.

Determining Jurisdictional Limits

Attached is a redacted argument from a recent case in which the creditor was demanding dismissal and the debtor was arguing that the unsecured debt did not exceed the jurisdictional cap.

Normally, new or irresponsible Chapter 13 lawyers assume that if debt is disputed, it will not be included in the tabulation. Nothing could be further from the truth. For that to be the case, the debt either has to be contingent or unliquidated. Oftentimes, it's relatively easy for an astute Chapter 13 attorney to recognize that such a challenge may be coming and be prepared to demonstrate why a portion of the debt is contingent or has not been liquidated. As a general proposition, if it's a close call and the debtor has been acting in good faith, courts will be inclined to allow the individual to proceed in Chapter 13. Many judges have come to realize that forcing the debtor to potentially convert to Chapter 11 to remain bankruptcy eligible serves very little purpose and the Congressional decision to exclude from the cap calculations contingent and unliquidated debt strongly suggests that Chapter 13 was enacted to be available to a wide array of individuals needing bankruptcy protection.

Most lawyers are able to recognize when debt is contingent and the case law has been fairly consistent in determining that if a creditor's claim cannot be easily calculable without an in-depth evidentiary hearing, the claim is probably unliquidated.

An attorney taking on a contentious case needs to recognize a potential bad faith challenge.

Is the Case Filed in Bad Faith?

The *Ellsworth* decision outlines the factors which are taken into account in determining if a case has been filed in bad faith.

When filing such a case, the debtor and the debtor's counsel need to consider the following:

1. Is the debtor generally sympathetic?
2. Has the debtor made a habit of seeking bankruptcy protection when convenient and often?
3. The impact of the bankruptcy on the creditor.
4. Who the judge is.
5. Will the public be served by allowing the debtor to proceed?

Once again, like in other instances, if it's a close call, the court will normally allow the debtor to proceed, but if your client has been accused of egregious conduct and your client is of questionable virtue, you need to warn the client that the court may not allow the debtor to proceed in Chapter 13.

The next issue is getting paid in a Chapter 13.

Getting Paid, a Rather Crucial Consideration

First of all, you need to read the *In re Boates* decision. *Boates* is appliable in both Chapter 7 and Chapter 13 and prohibits a lawyer from accepting from the debtor a prohibitively large retainer. *Boates* is a perfect example of how bad facts make bad law. The ramifications of *Boates* now requires a lawyer representing a Chapter 13 debtor to have to calculate how much of a retainer will be tolerated by the court. Fortunately, almost all bankruptcy judges have utilized a common sense approach and allowed a reasonable amount of fees to be pre-paid, especially because unlike other forms of bankruptcy, the fees only have to be reasonable and necessary and not for the benefit of the bankruptcy estate.

The law is unclear as to whether an attorney can be paid out of monies recovered by the Chapter 13 trustee in certain instances. For example, if the lawyer accepts a disproportionately large retainer and is ordered to remit the money to the bankruptcy estate, can the lawyer then later on try to get paid out of those same amounts? The case law is not clear, but common sense dictates that if the lawyer should not be allowed to be paid from that money from the onset, allowing that same lawyer to then seek payment out of that fund would be inappropriate.

However, as a general rule, as long as the lawyer can prove that the lawyer's time was reasonable and necessary, the lawyer should be able to be paid out of any available money, including the debtor's Plan payments or other sums that may have been recovered by the bankruptcy estate.

In most instances, this concept is not controversial unless the lawyer, who normally would not have kept track of his or her time since the case was a fixed fee one, now finds himself scrambling around trying to recreate time records which previously did not exist. Since the lawyer wants to avoid at all cost this scenario, if at the beginning of a case any chance exists that that lawyer may need to file a Fee Application, the lawyer should keep track of his time even if he does so on a relatively informal basis. It's very much easier to convert informal time records into formal ones than having to conjure up time records from scratch.

<u>So, What's the Lesson From All of This?</u>

Most Chapter 13 cases are routine and straightforward. Nevertheless, you should be able to recognize when a case could potentially go awry and take appropriate steps to provide the maximum protection to your client from the moment the potential client walks in the door.

FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

IN RE DONALD HUGH NICHOLS; JANE ANN NICHOLS, *Debtors*,	No. 20-60043
	BAP No. 20-1032
DONALD HUGH NICHOLS; JANE ANN NICHOLS, *Appellants*, v. MARANA STOCKYARD & LIVESTOCK MARKET, INC.; THE PARSONS COMPANY; CLAY PARSONS; KAREN PARSONS; ARIZONA DEPARTMENT OF REVENUE; JILL H. FORD, Chapter 7 Trustee, *Appellees*.	OPINION

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Taylor, Lafferty III, and Brand, Bankruptcy Judges,
Presiding

Argued and Submitted July 9, 2021
Portland, Oregon

Filed September 1, 2021

Before: Diarmuid F. O'Scannlain, Richard A. Paez, and Mark J. Bennett, Circuit Judges.

Opinion by Judge O'Scannlain

SUMMARY[*]

Bankruptcy

The panel reversed the bankruptcy court's decision denying Chapter 13 debtors' motion to voluntarily dismiss their bankruptcy case pursuant to 11 U.S.C. § 1307(b), and remanded to the bankruptcy court for further proceedings.

Although § 1307(b) confers upon a Chapter 13 debtor the right to request dismissal "at any time," the bankruptcy court concluded that under *In re Rosson*, 545 F.3d 764 (9th Cir. 2008), there was an implied exception to § 1307(b) where the debtor had engaged in bad faith or abuse of the bankruptcy process. The bankruptcy court concluded that this exception applied, justifying denial of the motion to dismiss, and it then converted the case to a liquidation under Chapter 7.

The panel held that *Rosson* was effectively overruled by *Law v. Siegel*, 571 U.S. 415 (2014), which held that a bankruptcy court may not use its equitable powers under 11 U.S.C. § 105 to contravene express provisions of the Bankruptcy Code. The panel held that *Rosson* therefore is

[*] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

no longer binding precedent. Considering the question anew, and agreeing with the Second and Sixth Circuits, the panel held that a bankruptcy court is prohibited from invoking equitable considerations to contravene § 1307(b)'s express language conferring upon Chapter 13 debtors an absolute right to dismiss their case.

COUNSEL

German Yusufov (argued), Yusufov Law Firm PLLC, Tucson, Arizona, for Appellants.

D. Alexander Winkelman (argued) and Frederick J. Petersen, Mesch Clark Rothschild, Tucson, Arizona, for Appellees.

OPINION

O'SCANNLAIN, Circuit Judge:

We must decide whether debtors in a Chapter 13 bankruptcy have the right to dismiss their case, regardless of the bankruptcy court's determination that they engaged in an abuse of the bankruptcy process.

I

A

Appellants Donald Hugh Nichols and his wife, Jane Ann Nichols (collectively, "the Nicholses"), filed a Chapter 13 bankruptcy petition seeking to restructure their debts. After filing the petition, the Nicholses were indicted on federal criminal charges for their alleged participation in a scheme to defraud Appellee Marana Stockyard and Livestock Market, Inc. ("Marana").

To avoid disclosure of information that might compromise their position in the criminal proceedings, the Nicholses declined to complete any of the steps required by the Bankruptcy Code to advance their case. They refused, *inter alia*, to hold a meeting with creditors, *cf.* 11 U.S.C. § 341; to file outstanding tax returns, *cf. id.* § 1308; or to propose an appropriate repayment plan, *cf. id.* § 1322. Their bankruptcy case thus languished for months without resolution.

Marana, which had filed a claim in the Nicholses' bankruptcy case seeking to recover losses from the alleged fraud, moved pursuant to 11 U.S.C. § 1307(c) for the case to be converted to a liquidation under Chapter 7 of the Bankruptcy Code.[1] In response, the Nicholses requested a stay of the bankruptcy case during the pendency of the criminal proceedings.

The bankruptcy court denied the motion to stay. At the same time, the bankruptcy court determined that conversion

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[1] Section 1307(c) provides, in relevant part:

> [O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—
>
> (1) unreasonable delay by the debtor that is prejudicial to creditors;
>
> . . .

of the case to a Chapter 7 liquidation was justified "for cause" under § 1307(c) due to the Nicholses' delays, which the court deemed to be unwarranted. The bankruptcy court also determined that conversion to Chapter 7 would have been proper, in the alternative, under § 1307(e), insofar as the Nicholses had failed to file tax returns for several years.[2]

B

The Nicholses requested another opportunity to remain in Chapter 13, however. The bankruptcy court acceded to their request and postponed by 30 days the entry of an order converting the case to Chapter 7. The bankruptcy court required the Nicholses to file outstanding tax returns and to submit a confirmable repayment plan to the Chapter 13 trustee before expiration of the 30-day period.

The Nicholses did not comply with the bankruptcy court's requirements. Before the expiration of the 30-day period, the Nicholses moved to dismiss voluntarily their bankruptcy case pursuant to § 1307(b).[3]

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[2] Section 1307(e) provides:

> Upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.

[3] Section 1307(b) provides:

> On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of

C

Although § 1307(b) confers upon a Chapter 13 debtor the right to request dismissal of his case "at any time," the bankruptcy court denied the Nicholses' motion to dismiss. Relying upon our decision in *In re Rosson*, 545 F.3d 764 (9th Cir. 2008), the bankruptcy court understood there to be an implied exception to § 1307(b) where the debtor has engaged in bad faith or abuse of the bankruptcy process. The bankruptcy court concluded that the Nicholses had "used Chapter 13 to hide from creditors during the pendency of the criminal proceedings" and that "[s]uch conduct constitutes an abuse of the bankruptcy process, justifying denial of the . . . Motion to Dismiss." The bankruptcy court thereupon converted the case to a liquidation under Chapter 7.

The Nicholses timely appealed the bankruptcy court's order to the Ninth Circuit's Bankruptcy Appellate Panel ("BAP"). The BAP affirmed the bankruptcy court's order. The Nicholses then timely appealed the BAP's decision to this court.

II

The Nicholses now argue that the bankruptcy court erred by relying upon *Rosson*'s implied "bad faith or abuse of process" exception to § 1307(b) to deny their request for voluntary dismissal. According to the Nicholses, *Rosson* has been effectively overruled by the Supreme Court's subsequent decision in *Law v. Siegel*, 571 U.S. 415 (2014), which, they contend, must be understood to prohibit a

> this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

bankruptcy court from invoking equitable considerations to contravene § 1307(b)'s express language conferring upon a Chapter 13 debtor an absolute right to dismiss his case. The narrow question before us is whether *Rosson* has been implicitly abrogated by *Law*.

A

1

Rosson concerned a Chapter 13 debtor who was ordered by the bankruptcy court to deposit the proceeds of an expected arbitration award with the Chapter 13 trustee. 545 F.3d at 768. When the bankruptcy court was informed that the debtor had received the anticipated payment, but had not deposited it as instructed, the bankruptcy court determined *sua sponte* to convert the case to Chapter 7. *Id.* Before the conversion order could be entered, however, the debtor moved to dismiss under § 1307(b). *Id.* The bankruptcy court denied the motion to dismiss and converted the case, stating that it would be a "gross miscarriage of justice" to allow the debtor to "abscond" with assets of the estate. *Id.* at 769. The debtor appealed to the district court, which affirmed. *Id.*

2

On subsequent appeal to this court in *Rosson*, we acknowledged the existence of a circuit split regarding a debtor's right to dismiss under § 1307(b) while a motion to convert under § 1307(c) remains pending. *Id.* at 771–72 (comparing *In re Barbieri*, 199 F.3d 616 (2d Cir. 1999); with *In re Molitor*, 76 F.3d 218 (8th Cir. 1996)). We further recognized that the Ninth Circuit's BAP had previously concluded that § 1307(b) confers upon a Chapter 13 debtor an absolute right to voluntary dismissal of his case. *Id.*

at 772 (discussing *In re Croston*, 313 B.R. 447 (9th Cir. BAP 2004); and *In re Beatty*, 162 B.R. 853 (9th Cir. BAP 1994)). We determined, however, that the BAP's interpretation of § 1307(b) was no longer tenable after the Supreme Court's decision in *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007), which concerned the scope of a debtor's right to convert from Chapter 7 to Chapter 13 pursuant to 11 U.S.C. § 706(a).[4] *Id.* We understood *Marrama* to stand for the broad proposition that "even otherwise unqualified rights in the debtor are subject to limitation by the bankruptcy court's power under § 105(a) to police bad faith and abuse of process." *Id.* at 773 n.12.

Based on such interpretation of *Marrama*, we held that "the debtor's right of voluntary dismissal under § 1307(b) is not absolute, but is qualified by the authority of a bankruptcy court to deny dismissal on grounds of bad-faith conduct or to prevent an abuse of process." *Id.* at 774 (quotation marks and citation omitted). Accordingly, we affirmed the bankruptcy court's order denying the debtor's motion to dismiss and converting the case to Chapter 7 because of the debtor's bad faith conduct. *Id.* at 774–75.

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[4] Section 706(a) provides:

> The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. Any waiver of the right to convert a case under this subsection is unenforceable.

B

1

Law, which was decided six years later, concerned a Chapter 7 debtor who perpetrated a fraud on the bankruptcy court by falsely reporting that a lien existed on his primary residence. 571 U.S. at 418–19. The trustee later determined that the alleged lien was a sham filed by the debtor to protect his interest in the home. *Id.* at 419. Accordingly, the trustee initiated an adversary proceeding to have the lien removed, and, after he prevailed, he sought to have his attorney's fees paid from the debtor's exempt property. *Id.* at 419–20.

Despite 11 U.S.C. § 522(k)'s express prohibition on the use of a debtor's exempt property to cover expenses associated with administering the estate, the bankruptcy court granted the trustee's request.[5] *Id.* at 420. On appeal, the BAP affirmed the order as a permissible exercise of the bankruptcy court's equitable powers. *Id.* Upon subsequent appeal to this court, we also affirmed. *Id.* In an unpublished memorandum disposition, we concluded that the surcharge was proper because it was "calculated to compensate the estate for the actual monetary costs imposed by the debtor's misconduct, and was warranted to protect the integrity of the bankruptcy process." *Id.* (quoting *In re Law*, 435 F. App'x. 697, 698 (9th Cir. 2011)).

2

The Supreme Court reversed. In so doing, the Court made clear that a bankruptcy court may not use its equitable

[5] Section 522(k) provides, in relevant part: "Property that the debtor exempts under this section is not liable for payment of any administrative expense . . . ."

powers under § 105(a) to contravene express provisions of the Bankruptcy Code. 571 U.S. at 422–23. On behalf of a unanimous Court, Justice Scalia wrote that § 105(a) does not "allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code," including § 522(k)'s express prohibition on charging a debtor's exempt property to pay the trustee's administrative expenses. *Id.* at 421 (quoting 2 Collier on Bankruptcy ¶ 105.01[2] (16th ed. 2013)).

In doing so, the Supreme Court firmly rejected the argument—advanced by the Solicitor General in an amicus brief—that *Marrama* must be understood to establish that a bankruptcy court's § 105(a) powers to punish bad faith conduct implicitly qualify language contained elsewhere in the Bankruptcy Code. *Id.* at 425–26. On the contrary, *Law* concluded that "*Marrama* most certainly did not endorse, even in dictum, the view that equitable considerations permit a bankruptcy court to contravene express provisions of the Code." *Id.* at 426.

C

1

Although we are typically bound by the prior decision of another three-judge panel, we may depart from such precedent if a subsequent Supreme Court opinion "undercut[s] the theory or reasoning underlying the prior circuit precedent in such a way that the cases are clearly irreconcilable." *Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc). Here, we have no doubt that *Law* undercuts the reasoning of *Rosson*.

The holding of *Rosson* cannot stand absent the premise, ostensibly articulated in *Marrama*, that a bankruptcy court's equitable powers under § 105(a) can limit express language contained elsewhere in the Bankruptcy Code. *See* 545 F.3d at 773 n.12. *Law*, however, clearly rejected such reasoning. *See* 571 U.S. at 426. In fact, *Law* explicitly rejected the sweeping interpretation of *Marrama* that we embraced in *Rosson*. *See id.* *Rosson* and *Law* are thus irreconcilable, such that *Rosson* has been effectively overruled.

Marana argues, however, that *Rosson* is consistent with *Law* because *Rosson* did not limit the Chapter 13 debtor's right to dismiss based on § 105(a), but rather based on a "holistic interpretation" of § 1307. According to Marana, *Rosson* stands for the proposition that, when faced with a bad-faith debtor's motion for voluntary dismissal under § 1307(b), a bankruptcy court may nevertheless heed its competing statutory mandate under § 1307(c) to convert the case to Chapter 7 to promote the best interest of creditors.

Moreover, Marana contends that *Law*'s treatment of *Marrama* does not undermine *Rosson*. Marana argues that *Rosson* should be understood to rely on *Marrama* not for the sweeping proposition that express provisions of the Bankruptcy Code are limited by the bankruptcy court's § 105(a) powers to punish bad faith, but rather for the far narrower principle that a debtor's bad faith is a "cause" justifying conversion to Chapter 7 under § 1307(c). Because, on Marana's view, *Law* rejected only the broad reading of *Marrama*, but otherwise left that precedent intact, Marana argues that *Rosson* remains similarly undisturbed.

Marana's arguments fail to persuade, however, because they mischaracterize the reasoning that we actually employed in *Rosson*. We did not rely on § 1307(c), nor did we discern in such statutory subsection any import for interpreting the mandate of § 1307(b). Rather, we primarily relied on the premise that *Marrama* had established "the important point" that "even otherwise unqualified rights in the debtor are subject to limitation by the bankruptcy court's power under § 105(a) to police bad faith and abuse of process." 545 F.3d at 773 n.12.

Our expansive reading of *Marrama* was a defensible one at the time. Indeed, in *Law*, the Solicitor General advanced the very same reading of *Marrama* that we adopted in *Rosson*. *See, e.g.*, Brief for the United States at 25, *Law v. Siegel*, 571 U.S. 415 (2014) (No. 12-5196) (citing *Marrama* for the principle that § 105(a) empowers a bankruptcy court to disregard the express language of § 522(k) in order to punish fraud, misrepresentation, or other misconduct by the debtor). We must recognize, however, that such a position was unanimously and unambiguously rejected in *Law*.

2

Consequently, we now hold that *Rosson* has been effectively overruled by *Law* and is no longer binding precedent in this Circuit. Ever since our en banc opinion in *Miller v. Gammie*, 335 F.3d 889 (9th Cir. 2003), in which we clarified the standard in this Circuit for departure from a prior three-judge panel's decision based on intervening Supreme Court precedent, we have not hesitated to overrule our own precedents when their underlying reasoning could not be squared with the Supreme Court's more recent pronouncements.[6] We follow the same course here.

[6] *See, e.g.*, *Langere v. Verizon Wireless Servs., LLC*, 983 F.3d 1115, 1122 (9th Cir. 2020); *United States v. Baldon*, 956 F.3d 1115, 1121 (9th Cir. 2020); *Dorman v. Charles Schwab Corp.*, 934 F.3d 1107, 1112 (9th Cir. 2019); *Murray v. Mayo Clinic*, 934 F.3d 1101, 1105 (9th Cir. 2019); *United States v. Valencia-Mendoza*, 912 F.3d 1215, 1222 (9th Cir.

III

Because we are no longer bound by *Rosson*, we must consider anew whether a Chapter 13 debtor's right to voluntary dismissal of his case under § 1307(b) admits of an exception in the event of the debtor's bad faith or abuse of process. If not, the Nicholses were entitled to dismiss their case, regardless of the bankruptcy court's determination that conversion to Chapter 7 was warranted.

A

1

On this point, section 1307(b)'s text is unambiguous. The statute provides, in relevant part: "On request of the debtor at any time . . . the court shall dismiss a case under this chapter." The term "shall" "normally creates an obligation impervious to judicial discretion." *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998); *see also Barbieri*, 199 F.3d at 619 ("The term 'shall,' as the Supreme Court has reminded us, generally is mandatory and leaves no room for the exercise of discretion by the trial court."). Section 1307(b)'s text plainly requires the bankruptcy court to dismiss the case upon the debtor's request. There is no textual indication that the bankruptcy court has any discretion whatsoever.

Although our sister circuits have disagreed with respect to the existence of a "bad faith" exception to a debtor's right to dismiss under § 1307(b), there is no dispute that the statute's text, by its own terms, confers an absolute right to

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2019); *Rodriguez v. AT & T Mobility Servs. LLC*, 728 F.3d 975, 981 (9th Cir. 2013); *Phelps v. Alameida*, 569 F.3d 1120, 1133 (9th Cir. 2009).

dismiss. For example, the Fifth Circuit, which concluded, similarly to our holding in *Rosson*, that a debtor's right to dismiss is subject to an implied exception in the event of the debtor's bad faith conduct, nonetheless confirmed that "the plain language of . . . § 1307(b) can be read to confer an absolute right to dismiss." *In re Jacobsen*, 609 F.3d 647, 649 (5th Cir. 2010).

Indeed, the Fifth and Eighth Circuits' view—that the debtor's right under § 1307(b) is subject to an implied exception—is grounded, not on an alternative reading of the statutory text, but rather on the same, now-discredited theory of equitable powers that we had previously embraced in *Rosson*. *See Jacobsen*, 609 F.3d at 661 ("Proceeding from the propositions in *Marrama* that an apparently unqualified right is subject to an exception for bad faith and that bad faith justifies a bankruptcy court's exercise of its powers under § 105(a), we conclude that § 1307(b) is subject to a similar exception . . . ."); *In re Molitor*, 76 F.3d 218, 220 (8th Cir. 1996) (relying on the "broad purpose" of the Bankruptcy Code to arrive at an interpretation that protects bankruptcy courts from "a myriad of potential abuses").

As we have already discussed, the Supreme Court's decision in *Law* clearly rejected such reasoning. And, ever since *Law* was decided, no other Circuit has taken the position that there is an implied equitable exception to § 1307(b)'s right to dismiss. *Cf. Smith v. U.S. Bank N.A.*, 999 F.3d 452, 456 (6th Cir. 2021) ("The command of 1307(b) is no mere procedural nicety, which is likely why no circuit court has accepted [the implied bad faith exception] argument since *Law* . . . ."). Accordingly, for the same reason that we dispensed with *Rosson*, we must also reject the approach previously adopted by the Fifth and Eighth Circuits, and instead hew to the "absolute right" approach articulated by the Second Circuit in *Barbieri* and followed, most recently, by the Sixth Circuit in *Smith*.

2

Furthermore, the statutory text does not provide any support for the view that any other subsection in § 1307, such as § 1307(c), limits the debtor's right to dismiss under § 1307(b). Had it wished to provide for such an exception, Congress easily could have indicated the existence of one expressly. Indeed, § 1307(b) *does* contain a single *express* exception to the debtor's right to dismiss, which bars dismissal where the debtor has *already* exercised his right to convert the case to Chapter 13 from Chapters 7, 11, or 12. That Congress codified an express exception to § 1307(b)'s right to dismiss demonstrates that Congress considered the issue of exceptions and chose not to prescribe additional ones. *See United States v. Johnson*, 529 U.S. 53, 58 (2000) ("The proper inference . . . is that Congress considered the issue of exceptions and, in the end, limited the statute to the ones set forth.").

Marana argues that an "absolute right" reading of § 1307(b) would effectively render § 1307(c) a nullity by depriving the bankruptcy court of discretion to convert a case to Chapter 7 for cause. But "that is no more significant than the fact that an order granting a creditor's motion to convert under § 1307(c) would foreclose dismissal under § 1307(b)." *Barbieri*, 199 F.3d at 620. "In the event of competing motions filed under subsections (b) and (c), one subsection will inevitably prevail at the expense of the other." *Id.* (brackets omitted) (quoting *In re Patton*, 209 B.R. 98, 100 (Bankr. E.D. Tenn. 1997)). "Accordingly, the assertion that an absolute right under § 1307(b) would nullify § 1307(c) 'carries no weight since either party could make the same argument.'" *Id.* (quoting *Patton*, 209 B.R. at 104).

Far from conflicting with other sections of the Bankruptcy Code, the "absolute right" reading of § 1307(b) is entirely consistent with the text and policy of § 303(a), which is designed to ensure that Chapter 13 remains a "wholly voluntary alternative to Chapter 7." *Smith*, 999 F.3d at 455 (quoting *Harris v. Viegelahn*, 575 U.S. 510, 514 (2015)); *see also Barbieri*, 199 F.3d at 620 (reasoning that the reading of § 1307(b) as conferring an absolute right to dismiss best reflects "the intention of Congress to create an entirely voluntary chapter of the Bankruptcy Code").

B

We conclude that § 1307(b)'s text confers upon the debtor an absolute right to dismiss a Chapter 13 bankruptcy case, subject to the single exception noted expressly in the statute itself. Consequently, the bankruptcy court here erred in denying the Nicholses' motion to dismiss based solely on its finding of abuse of the bankruptcy process.

We are confident that the Bankruptcy Code provides ample alternative tools for bankruptcy courts to address debtor misconduct. Even if such tools were lacking, however, it would be up to Congress to remedy the omission by way of appropriate legislation. We must adhere to the statute's clear mandate, regardless of practical difficulties that may ensue.

IV

Accordingly, we **REVERSE** the decision of the bankruptcy court, and we **REMAND** this matter to the bankruptcy court for further proceedings in accord with this opinion.[7]

REVERSED and REMANDED.

[7] Appellants' motion to strike portions of the Supplemental Excerpts of Record is denied as moot as our opinion does not rely on the contested portions of the record. Appellants' Mot. to Strike from Excerpts of Record Documents, *Nichols v. Marana Stockyard and Livestock Mkt.*, No. 20-60043 (9th Cir. Jan. 4, 2021), ECF No. 27.

[redacted]

[redacted]

IN THE UNITED STATES BANKRUPTCY COURT

THE DISTRICT OF ARIZONA

In re: [redacted] Debtor.	Chapter 13 Proceedings Case No. [redacted] **DEBTOR'S RESPONSE TO OBJECTION TO FIRST AMENDED CHAPTER 13 PLAN**

[redacted] Debtor in the above-captioned bankruptcy case, hereby submits her Response to the Objection filed by [redacted] (DE 222) with respect to Debtor's First Amended Chapter 13 Plan filed on October 2, 2020 ("First Amended Plan" at DE 213). As explained herein, the Objection is without merit and the First Amended Plan should be confirmed. This Response is supported by the following memorandum of points and authorities. Debtor also incorporates by reference her arguments contained in Debtor's *Response to Motion to Dismiss and Objection to Confirmation* (DE 31) and the entire record in this case.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

The Objection was filed by Debtor's mother, [redacted] The Objection claims that the Debtor is ineligible for Chapter 13 relief because she is over the debt limitation under Section 109(e), that the First Amended Plan was not filed in good faith and that the First Amended Plan is not feasible. Each of these objections[1] are without merit and are addressed below.

As the Court is well aware, [redacted] is also the Plaintiff in hotly contested litigation against Debtor and her ex-husband over disposition of an irrevocable trust ("Trust") in Massachusetts in which the Debtor is the sole beneficiary. This Court abstained from hearing that litigation, which is currently proceeding in the Massachusetts court. Without question, the litigation represents a bona fide dispute as to both liability for and the amount of [redacted] purported claim. Importantly, the law in the Ninth Circuit permits this Court to consider the nature of the liability dispute, and if the Court determines that the dispute prevents [redacted] claim from being "readily determinable" it may find the claim to be unliquidated for purposes of Chapter 13 eligibility. The Debtor also disputes the apparent factual allegation by [redacted] that Debtor held unspent funds related to the Massachusetts litigation on the petition date; this is false. For this additional reason, [redacted] claim is not easily calculable and is unliquidated.

Next, [redacted] assertion that the First Amended Plan was not proposed in good faith fails under the applicable Ninth Circuit factors. As shown below, under the "totality of the circumstances" and the factors enunciated in *In re Leavitt*, 209 B.R. 935 (9th Cir. BAP 1997), aff'd 171 F.3d 1219 (9th Cir 1999), the First Amended Plan was proposed in good faith. Finally, Debtor's plan is adequately funded and is feasible. Debtor, who has a perfect payment record, will be able to make all payments under the First Amended Plan and comply with the Plan. The Debtor's income, along with a small supplement by her ex-husband, is sufficiently realistic to meet the plan payments and Debtor should be given the opportunity to carry out her Plan. A *Supplemental Affidavit of* [redacted] *Regarding Plan Payment* ("Supplemental Affidavit") is filed concurrently herewith.

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[1] Other than [redacted], no other party has objected to the First Amended Plan.

II. A Dispute Over Liability Can Be a Factor When Determining if [redacted] Claim is Readily Ascertainable For Eligibility Purposes.

A. Case law provides that the bankruptcy court can consider a bona fide dispute when considering if a claim is readily determinable.

Ninth Circuit case law is not a model of clarity on the standards to determine if a claim is liquidated[2]. Although the case law is muddled, upon close examination, the Ninth Circuit provides that if the nature of the dispute requires a contested evidentiary hearing to establish the amount **or** liability of the claim which prevents the "ready determination" of the claim, then the claim is unliquidated and excluded from the Section 109(e)[3] computation.

In *In re Ho,* 274 B.R. 867 (9th Cir. BAP 2002), the BAP thoroughly examined Ninth Circuit case law as to the analysis that the bankruptcy court should consider when determining whether a claim is liquidated[4] for purposes of Section 109(e). *Ho* concluded that Ninth Circuit precedent provides that a dispute over liability can be pertinent to determining whether a claim is liquidated or unliquidated depending on the nature of the dispute. *Ho* at 873-875. *Ho* provides a comprehensive analysis of the relevant cases, including *In re Slack*, 187 F.3d 1070 (9th Cir. 1999); *In re Wenberg,* 94 B.R. 631 (9th Cir. BAP 1998) aff'd 902 F.2d (9th Cir. 1990); *In re Nicholes,* 184 B.R. 82 (9th Cir. BAP 1996) and the cases cited within those cases.

In its extensive review of the case law, *Ho* stated:

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[2] Debtor's eligibility and specifically whether [redacted] claim is liquidated under Section 109(e) was previously briefed and argued before t[redacted] at the hearing held on November 7, 2019. At the hearing the Court denied [redacted] request to dismiss under Section 109(e) without prejudice. The Court recognized [redacted] case law on liquidation for purposes of eligibility under Section 109(e) was "a little fudgy" (audio tape at 16.54).

[3] Debtor must owe debts less than $419,275 in unsecured debt an[redacted]han $1,257,850 in secured debt when the petition is filed. 11. U.S.C. § 109(e). [redacted] f[redacted]Proof of Claim as unsecured for $1.8 million dollars. If the Court determ[redacted]t [redacted] has an unliquidated claim, then Debtor meets eligibility. See Debtor's Schedules an[redacted]ndments thereto listing approximately $120,000 in unsecured debt.

[4] The term "liquidated" is not defined in the Bankruptcy Code.

> The Ninth Circuit cited with approval *In re Nicholes*, 184 B.R. 82 (9th Cir. BAP 1995), which the panel said is “consistent with the law of this circuit.” *Slack*, 187 F.3d at 1075. In *Nicholes*, we held:
>
> > Construing [*In re Sylvester*, 19 B.R. 671 (9th Cir. BAP 1982)] with [*In re Wenberg*, 94 B.R. 631 (9th Cir. BAP 1988)] and [*In re Loya*, 123 B.R. 338 (9th Cir. BAP 1991)], we hold that the fact that a claim is disputed does not per se exclude the claim from the eligibility calculation under § 109(e), since a disputed claim is not necessarily unliquidated. So long as a debt is subject to ready determination and precision in computation of the amount due, then it is considered liquidated and included for eligibility purposes under § 109(e), regardless of any dispute. On the other hand, *if the dispute itself makes the claim difficult to ascertain or prevents the ready determination of the amount due, the debt is unliquidated* and excluded from the § 109(e) computation.
>
> 184 B.R. at 90–91 (emphasis added). When the *Slack* panel quoted from *Nicholes* in its opinion, however, it omitted the last sentence of our discussion, which made it clear that a dispute about liability could, under certain circumstances, affect whether a debt is liquidated.

Ho at 874. *Ho* went on to conclude:

> We conclude that *Slack*[5] should not be read to remove that issue from the analysis. The Ninth Circuit cited *Nicholes* with approval in its decision, and *Nicholes* is rooted in the Ninth Circuit precedent of *In re Wenberg*, 902 F.2d 768 (9th Cir.1990), where the circuit affirmed and adopted our opinion, which had said that “[t]he definition of ‘ready determination’ turns on the distinction between a simple hearing to determine the amount of a certain debt, and an extensive and contested evidentiary hearing in which substantial evidence may be necessary to establish amounts *or liability*.” *In re Wenberg*, 94 B.R. 631, 634 (9th Cir. BAP 1988) (emphasis added). Nothing in *Slack* indicates an intent to retreat from *Wenberg*. Particularly in light of the fact that, in *Slack*, there was no real question of liability (only of whether the determination of liability was finalized in state court), the court's failure to quote the entire

[5] In *Slack*, the debtor stipulated pre-petition to plaintiff’s actual damages and the state court had also issued a tentative ruling pre-petition on debtor’s liability in a sum certain. Thus in *Slack* the debt amount[redacted]l but decided” pre-petition. *Ho* at 874. In Debtor’s case there is no stipulation with [redacted] on amount and there are no pre-petition rulings on liability. *Ho* recognized that lia[redacted] as “not seriously at issue” in *Slack* and that *Slack* “does not necessarily resolve the question whether some disputes about liability can render a claim unliquidated”. *Id*.

> passage from *Nicholes* should not be interpreted to transmogrify *Nicholes* to mean that liability disputes never play a role in determining whether a debt is unliquidated or to overrule *Wenberg*.

Ho at 874-875.

In *Nicholes* the BAP stated:

> The Ninth Circuit Bankruptcy Appellate Panel expanded *Sylvester* 's definition of "ready determination" and analyzed the interplay between "disputed" debts and "unliquidated" debts in *Wenberg*. The Panel in *Wenberg* held that
>
> [t]he definition of "ready determination" turns on the distinction between a simple hearing to determine the amount of a certain debt, and an extensive and contested evidentiary hearing in which substantial evidence may be necessary to establish amounts or liability. On this issue, the bankruptcy judge has the best occasion to determine whether a claim will require an overly extensive hearing or whether the claim is subject to a bona fide dispute; therefore not subject to "ready determination."
>
> 94 B.R. at 634–35. In other words, it is the nature of the dispute, and not the existence of the dispute, that makes a claim unliquidated. Like tort claims and other claims requiring juridical awards before liability and amount are established, some disputed claims cannot be readily determined because they require additional processing by the court.

Nicholes at 90. *Nicholes* emphasized:

> It is important to emphasize today that the bottom line is that § 109(e) calculations depend on "ready determination," not upon the existence or absence of disputes. If a debt is not readily determinable, whether <u>as a result of a dispute or otherwise</u>, then the claim is unliquidated.

Nicholes at 91 (emphasis added).

Nicholes and *Wenberg* clearly held that where an extensive evidentiary hearing would be required to determine liability, the claim is not easily calculable and as such is unliquidated. *Slack* agreed with *Nicholes* and *Wenberg* when it stated:

> Whether the debt is subject to "ready determination" will depend on whether the amount is easily calculable or whether an extensive hearing will be needed to determine the amount of the debt, <u>or the liability of the debtor</u>. See *In re Wenberg*, 94 B.R. at 634. Therefore, the mere assertion by the debtor that he is not liable for the claim

> will not render the debt unliquidated for the purposes of calculating eligibility under § 109(e).

Slack at 1074. (Emphasis added).

Here, there is an ongoing extensive and contentious trial in Massachusetts to determine the liability and amount (if any) of [redacted] claim. Years after the litigation was filed, there have been no rulings made on liability or the amount of [redacted] claim. Extensive discovery and a trial will be necessary to determine liability and amount. The nature[6] of the Massachusetts litigation (which is made up entirely of tort counts[7]) prevents [redacted] claim from being readily determinable.

This is not a case of the Debtor making a "mere assertion" disputing [redacted] claim. The litigation between the parties is extensive and constitutes a bona fide dispute which renders the [redacted] claim unliquidated. The Massachusetts litigation can only be decided by an extensive and contested evidentiary hearing/trial involving substantial evidence. The nature of the dispute requires extensive evidence from both Debtor and [redacted] to determine liability (and damages, if any)[8]. Therefore, [redacted] claim cannot

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[6] Debtor acknowledges that a dispute as to liability does not automatically per se exclude a claim from the eligibility calculation. However, the case law provides that if the *nature* of the dispute makes the claim not r[redacted]eterminable then the claim is unliquidated. *Nicholes* at 91; *Ho* at 875. Here, [redacted] claim is unascertainable without extensive contested litigation making it exclu[redacted]m the eligibility calculation. It is without question here that extensive litigation is required to resolve the liability issue.

[7] The Massachusetts complaint alleges breach of fiduciary duty, conversion, breach of trust, fraud and misrepresentation, intentional infliction of emotional distress, and promissory estoppel, all of which are torts or a tort remedy. Although not dispositive on the issue of liquidation, unlitigated tort claims are generally unliquidated because damages are not fixed (like in a contract claim). See *Nicholes* at 89: citing *Sylvester*, 19 B.R. at 673 and *Matter of Belt*, 106 B.R. 553, 558 (Bankr.N.D.Ind.1989).

[8] [redacted] continues to deliberately misrepresent the essence of the Massachusetts [redacted] and Debtor is once again forced to respond to and refute the misstatem[redacted]om [redacted] regarding her claim. The essential facts of the litigation are as follows: [redacted] is [redacted]ntor of an irrevocable Trust of which Debtor is the sole beneficiary and [redacted] of [redacted]t. The Trust held property – an office building. Per the express terms of the Trust, [redacted] <u>expressly waived all her rights to the Trust asset</u> and the Trust provided that [redacted] as Trustee, could distribute as much of the Trust property to the beneficiary (Debtor) as is necessary for the beneficiary's health, education, maintenance and support (the "HEMS" standard). The Debtor sold Trust property pursuant to the express[redacted]f the Trust, a transaction approved by the Trust Protector (an auditor, who was [redacted] estate lawyer and who drafted the Trust). There are other facts at play in the Mas

possibly be subject to "ready determination" and is unliquidated for purposes of chapter 13 eligibility.

B. <u>Debtor held no funds from the disposition of the Trust on the petition date</u>.

To the extent Fantasia asserts the Debtor held funds related to the disposition of the Trust on the petition date, the Debtor disputes the same. At the November 7, 2019 hearing, [redacted] counsel asserted that that there was $484,000 remaining from the sale of the Trust asset and that it was "unspent" money (audio at approximately 27:40). Debtor factually disputes such assertion. Under Section 109(e), the amount of the debt is determined as of "the date of the filing of the petition." On the petition date, Debtor did not hold any funds from the sale or disposition of the Trust asset. See Schedules filed in this case at DE 1. [redacted] also attaches an accounting to her Objection (as exhibit 3 thereto), however, in November 2019, Debtor provided [redacted] with an updated accounting detailing the allocation of the Trust asset and expenses through June 17, 2019 ("Updated Accounting"). Attached hereto as Exhibit "A" is the Updated Accounting, which shows that as of June 17, 2019 (two months prior to the August 6, 2019 petition date), the expenses effectively equaled the proceeds from sale of the Trust asset. The Debtor's Schedules and the Updated Accounting clearly show the Debtor was not holding $484,000 on the petition date.

[redacted] also made a similar argument as to the $484,000 in her reply to her objection to the original plan and motion to dismiss (the "Reply" at DE 43). At page four of her Reply, [redacted] argues that she is entitled to recover from the Trust, $484,000 that the

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litigation but the above underlying critical facts are indisputable. One of the contested issues in the Massachusetts litigation is whether the Debtor's distributions under the Trust met the HEMS standard. The HEMS stand [redacted] ubjective and must be considered in light of the Debtor's personal circumstances. [redacted] completely ignores the nature of the dispute and t that her claim cannot ertained without an evidentiary hearing. Curiously, [redacted] did not want this Court to decide the Massachusetts litigation yet she continues to antly argue her side of that litigation, this time in the hopes that it will persuade this Court to deny confirmation of Debtor's First Amended Plan.

"Debtor claims remains from the sale proceeds[9]." Yet the petition date is the date used to determine the debt amount and, again, on the petition date there was no $484,000.

C. <u>The eligibility issue is a disguised attempt to avoid the requirement of filing an adversary complaint to determine dischargeability of Fantasia's claim</u>.

[redacted] is worried that she will not prevail in the Massachusetts litigation. Even though [redacted] claim is far from being readily ascertainable, [redacted] knows that if she is successful in preventing confirmation of the First Amended Plan based on eligibility then she has effectively achieved the same result as if had she filed and won an adversary complaint for non-dischargeability.

Simply put, [redacted] eligibility objection "hedges her bet" on the outcome of the Massachusetts litigation. [redacted] retains the ability to file a non-dischargeable adversary if she prevails in Massachusetts. Debtor agreed to an extension to file such adversary to sixty days after a final and non-appealable judgment in the Massachusetts case (Stipulated Settlement Order at DE 223). [redacted] Objection to confirmation on eligibility grounds in order to have a non-dischargeable claim without need to file an adversary should be seen for what it really is—an end run around the filing of an adversary, creditor abuse of the bankruptcy system and a waste of judicial resources.

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[9] There are many contentious issues in dispute in the Massachusetts litigation, including a contested allegation over whether Debtor's distributions under the Trust met the HEMS standard. The HEMS standard is subjective and must be considered [redacted] of the Debtor's personal circumstances. Despite not having a contract [redacted] offers a HUD statement as "proof" that her claim is readily ascertainable. [redacted] ignores the nature of the dispute and fact that her claim cannot be [redacted] without an evidentiary hearing. Debtor was entitled to sell the Trust asset under the express terms of the Trust and to distribute under the HEMS standard. Compare the HUD statement here to the two pre-petition events that took place in *Slack* – debtors pre-petition stipulation as to the amount of damages and a tentative state court decision on liability that included a damage amount. The HUD statement fall[redacted] short of establishing liquidated damages or liability, no matter how loud or often [redacted] claims it does.

III. Debtor's First Amended Plan was filed in good faith.

The Ninth Circuit holds that bad faith involves the application of the "totality of the circumstances" test and identified four non-exclusive areas for consideration, *Leavitt*, at 1224:

(1) whether the debtor "misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his Chapter 13 [petition or] plan in an inequitable manner,"

(2) "the debtor's history of filings and dismissals,"

(3) whether "the debtor only intended to defeat state court litigation,"; and

(4) whether egregious behavior is present.

In addition, a "court must make its good faith determination in light of all militating factors." *Ho* at 876 (9th Cir. BAP 2002) (citing *In re Goeb*, 675 F.2d 1386, 1390 (9th Cir. 1982)). "The bankruptcy court is not required to find that each [*Leavitt*] factor is satisfied or even to weigh each factor equally." *In re Khan*, 523 B.R. 175, 185 (9th Cir. BAP 2014). Rather, "[t]he Leavitt factors are simply tools that the bankruptcy court employs in considering the totality of the circumstances." *Id.*

Here, Debtor's First Amended Plan was filed in good faith and none of the *Leavitt* factors are present in this case.

(1) Whether Debtor misrepresented facts, unfairly manipulated the Code or otherwise filed the chapter 13 or plan in an inequitable manner. Here, Debtor accurately scheduled [redacted], described the Massachusetts litigation with particularity and properly listed [redacted] claim as unliquidated of unknown amount. There was no misrepresentation of facts or evidence or any manipulation of the Code by listing [redacted] tort claim amount as unknown. Further, there is nothing in the record to indicate listing [redacted] claim as "unknown" was misleading to the court or creditors in any way. Due to the contested litigation, the nature of which necessarily requires an evidentiary hearing to determine liability, listing the claim amount as "unknown" was proper. Filing the First Amended Plan which would potentially discharge [redacted] claim and other creditor

claims does not equate to bad faith. The record is clear that there has been no attempt to mislead or conceal in this case. The recent Stipulated Settlement Order (DE 223) is indicative of Debtor's determination to remain in Chapter 13 and her diligent efforts to obtain confirmation. Debtor's plan is a sixty (60) month plan (the longest term available) and [redacted] would receive a pro-rata share of the distribution to unsecured creditors should she have an allowed claim. Should [redacted] win in Massachusetts she would be entitled to the lion's share of the retainer funds (over $120,000) recovered by the Chapter 13 Trustee. Further, [redacted] retains the ability to bring a non-dischargeability complaint against Debtor. This factor is in favor of Debtor.

(2) History of filings and dismissals. This is the Debtors first and only bankruptcy case. There are no prior bankruptcies or dismissals. This factor is in favor of Debtor.

[redacted]

(3) Whether Debtor's only purpose in filing for chapter 13 was to defeat state-court litigation. Debtor has a valid reorganization purpose in discharging dozens of medical debts, credit card debt and other creditor claims[10]. It is true that Debtor wished to have the bankruptcy court hear the Massachusetts litigation. Debtor's attempt to have this Court hear the litigation was unsuccessful. Yet the Massachusetts litigation was not defeated by Debtor's Chapter 13 filing, it was merely stayed. Debtor's petition which allowed her a breathing spell under the automatic stay was authorized under the Code and is not bad faith. On the petition date there was no imminent trial date set or pending ruling on amount or liability in Massachusetts. Debtors attempt to prevent substantial hardship for her and her ex-husband (both of whom have significant and ongoing health issues) from having to travel to and litigate in Massachusetts, and their belief that having the bankruptcy court hear the matter would save on fees and costs was a legitimate purpose for filing bankruptcy. This factor states that bad faith exist where a debtor's *only* purpose is to defeat

[10] Debtor's Schedules list approximately seventy (70) creditors, dozens of which are creditors with medical claims.

state court litigation. The [redacted] claim was not the only claim sought to be addressed by Debtor's bankruptcy case; Debtor had dozens of other creditors. Here, considering all of the Debtor's purposes for filing Chapter 13, including her desire to discharge medical and credit card debts, this factor weighs against a finding of bad faith.

(4) Presence of egregious behavior. There is nothing in the record to indicate any egregious behavior relevant to the Chapter 13 case. Debtor has fully cooperated with the chapter 13 Trustee, is current on plan payments and has never been delinquent on plan payments.

Even if the Court were to find that the Debtor filed bankruptcy primarily in response to the Massachusetts litigation, that factor alone, under a totality of the circumstances test, does not result in a finding of bad faith. Further, the Court is not obligated to count the four factors as though they present some sort of a box-score but rather is to consider them all and weigh them in judging the "totality of the circumstances." *In re Eisen*, 14 F.3d 469 (9th Cir.1994. Here, the factors support a finding of good faith.

IV. The First Amended Plan is Feasible.

A. <u>Debtor has made all of her plan payments and is current (with no prior defaults).</u>

The Debtor made thirteen consecutive and timely $400 monthly plan payments under her original chapter 13 plan (DE 3). The First Amended Plan increases the plan payment by $275 and increases the plan duration from thirty-six (36) months to sixty (60) months.

B. [redacted] <u>is capable of making the $275 additional plan payment</u>.

[redacted] submitted an affidavit (attached to the First Amended Plan) as evidence that he will contribute $275 monthly as plan payments for the duration of the First Amended Plan. [redacted] has the financial ability to make such payments and has unconditionally committed to do so. Debtor and [redacted] were previously married, have a long history together and remain on civil terms. [redacted] continues to assist Debtor[11].

[11] For example, [redacted] agreed to pay and will soon be paying $5,000 to Debtor's prior

Both during and after their marriage, [redacted] has consistently provided support for the Debtor. Reliance on contributions from third parties in order to make plan payments is not prohibited. See *In re Schwalb*, 347 B.R. 726, 760 (Bankr.D.Nev.,2006)(finding that a father's history of commitment to his daughter's financial well-being, is sufficient to find that all payments under the plan will be made and that Section 1325(a)(6) has been satisfied). As established by the Supplement Affidavit of [redacted] (filed concurrently herewith) and the Budget attached as Exhibit "A" thereto, [redacted] has sufficient regular monthly net income available to make the $275 monthly contribution to Debtor's plan payments. [redacted] commitment to provide an additional $275 per month to fund the First Amended Plan is not qualified in any respect.

V. Conclusion

[redacted] claim for tort damages is not readily ascertainable and is therefore unliquidated for purposes of eligibility for Chapter 13. Under the "totality of the circumstances" and considering the *Leavitt* factors, the Debtor filed her case and proposed the First Amended Plan in good faith. Finally, the Debtor has presented sufficient evidence that future plan payments will be made, satisfying the Chapter 13 feasibility requirement. Debtor respectfully requests that [redacted] Objection be denied and that the Court confirm Debtor's First Amended Plan.

DATED: November 16, 2020.

[redacted]

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counsel under th[redacted]ated Settlement Order (DE 2[redacted]was approved by [redacted]. Unsurprisingly, [redacted] never questioned whether [redacted] has the ability to $5,000. Yet [redacted] more than eighteen times the [redacted]hly payments that [redacted] now claims [redacted] does not have the ability to make.

ABI CPEX21 BANKRUPTCY 101 TRACK
INTRODUCTION TO CHAPTER 13

I. ELIGIBILITY FOR CHAPTER 13 – SECTION 109

a. Debtor must be an "individual" – a flesh & blood human being, this definition is narrower than 'person' found in the definition section at Section 101(41) which can include a business entity.

b. Debtor must have regular income, which is defined as "income sufficiently stable and regular . . . to make payments under a plan." Section 101(30).

   i. Courts have recognized that Congress intended a liberal interpretation of "regular income." *See, In re Ellenburg*, 89 B.R. 258, 260 (Bankr. N.D. Ga. 1988); *In re Cohen*, 13 B.R. 350, 356 (Bankr. E.D. N.Y. 1981).

   ii. The test for regular income is not the type or source of income, but rather its regularity and stability. *In re Varian,* 91 B.R. 653, 654 (Bankr. D. Conn. 1988); *In re Campbell*, 38 B.R. 193, 195 (Bankr. E.D. N.Y. 1984).

c. The "180 Day Rule"

   i. Section 109(g) prohibits a debtor from filing if than have been a debtor ina bankruptcy case in the previous 180 days and: 1) the case was dismissedfor cause; or 2) the debtor voluntarily dismissed the bankruptcy case after a motion for relief from stay was filed.

d. Debt Limits – Section 109(e)

   i. Limits the amount of non-contingent, liquidated secured and unsecured debt that a debtor can have at the time of filing the petition.

   ii. Currently $419,275.00 unsecured (including priority) and secured of $1,257,850.00. These amounts adjust for inflation every 3 years. Last adjustment was April 1, 2019.

   iii. Determination of the debt limits is as of filing the petition and schedules as long as the schedules were filed in good faith. *See, Matter of Pearson*,773 F.2d 751 (6th Cir. 1985); *In re Scovis*, 249 F.3d 975 (9th Cir. 2001).

iv. If debts are contingent and/or unliquidated, they do not count toward the debt limit.

II. GET THE SCHEDULES RIGHT AND THE PLAN WILL FOLLOW

a. Schedule A – Real Estate

i. Best to show how value determined, including calculation of cost of sale in the description section
ii. Be sure the debt is listed in the correct column – all secured mortgage and tax debt

b. Schedule D – Secured Debt

i. Make sure ALL secured debt is listed
ii. Watch out for low dollar secured debts, both PMSI and Non-PMSI
iii. Make sure to put in date incurred – if purchased within 910 days (cars) or 1 year (any other thing of value) or not determines treatment in the plan and indicate on schedule D if the debt is PMSI or non-PMSI (goes to if it is entitled to pre-confirmation adequate protection or not.
iv. Property taxes are secured debts
v. Watch for income tax or other tax – may be secured if tax lien

c. Schedule E – Priority Debt

i. Consider scheduling IRS and state taxing authority in every case, notice only. Especially if the debtor is unsure about tax debt being owed.

ii. If priority debt is owed and not scheduled there will be no claim, or a late claim, subject to objection by the Trustee. The debt could survive the case. Priority debt must be paid in full – tax debt may or may not be discharged –including general unsecured tax debt.

iii. Check tax transcripts before filing—make sure all returns are filed

iv. Don't forget business tax returns, including payroll, sales and use, road use and personal property tax.

v. If you file returns shortly before filing the case, or between filing and the 341 send signed copies to the agent at the IRS who filed the proof of claim.

vi. Code requires that the 4 years of pre-petition years be filed before confirmation can be recommended.

vii. Domestic Support Obligation (DSO) list recipient name and address
If recipient out of state, check UST website for that states DSO address

d. Schedule F and Debts generally

i. If close to the debt limit, be sure to check if debts are contingent/un-liquidated/disputed

ii. For all debt sections –proofread to make sure creditor not listed with "need address" or similar notation. Vital that all creditors receive notice in Chapter 13 case toensure discharge if Debtor is eligible for discharge

1. Not like a chapter 7 no asset case – See *In re Gueseck,* 310 B.R. 400 (Bankr. E.D. Wis. 2004) - because all chapter 13 cases are "asset" cases
Especially important if adding debt
a. Must be pre-petition debt
b. Court does not send notice to the creditor; when amending debt schedules, you must send the creditor notice (copy of the 341 notice) with bar date, Chapter 13 plan, and file a certificate of service or affidavit of mailing with the Court.
c. Adding debt after the claims bar date is too late.

e. Schedule G Executory contracts
i. Don't forget the leased car
ii. Instructions state lease should be on schedules A/B, D and G
iii. Make sure car payment is listed on J – if lease ongoing lease payments are direct.

f. Schedule H Co-Debtors
i. List them – did debtor co-sign for their kids' car?

g. Schedule I -- Income
i. Make sure employer address is complete.
ii. Fill in how long the debtor has been employed – Trustee reviews when looking at income – if income not consistent has there been a recent job change?
iii. For child support received –
1. Know when it ends (if kids are teenagers)
2. How will the plan payments be made up when the child support ends?
iv. For Child support paid and/or 401(k) Loan repayment
1. If under-median income, plan payments should increase when the 401(k) loan or child support ends –step plan

2. If over-median income line 33 and 55 of the B22C should be averaged. OK to do step plan here too, if needed to make the required payments.

v. Business Income

1. Net income must appear on schedule I; attachment is REQUIRED by line 8.a.
2. Acceptable proof of business income
    a. Schedule C tax return (divide by 12 for monthly); but NOT depreciation
    b. If no records compile them!

vi. Don't forget schedule I # 13, if no changes state "none" – and if there are changes put them down (i.e., step plan in the first year – how will they make step). This is a code requirement under Section 521(a)(1)(B)(vi) and if not done the case is automatically dismissed under Section 521(i).

h. <u>Schedule J – Expenses</u>

i. For mortgage payments, the schedules assume amount includes escrow unless taxes and insurance are listed separately

ii. Don't forget the ongoing timeshare payments or condo fees

iii. Don't forget the leased car, or any direct car payments

iv. Taxes, if debtor is self-employed provide something for taxes (unless already provided on attachment to Schedule I)

1. Avoid incurring post-tax debt
2. Review prior returns – how much has debtor owed or paid in the past. EIC may reduce tax burden.

v. Child support if not on I

vi. Dependents, in general on J, should match household size on "means test" (Form 122C-1 &2) and tax returns. If they do not match, be prepared to explain.

vii. Net on the bottom of J must approximately equal the plan payment. Except:

1. For over-median income debtors
2. If income is in part from social security
3. If income qualifies as VA disability under the HAVEN act
4. The disposable income must support the plan payment

viii. Expenses on schedule J are looked at as a totality of the circumstances for under median income debtors

i. <u>Attorney fees on the 2016(b) – must match plan2016(b) and SOFA #16</u>

i. Breakdown the total received – filing fee, credit counseling, credit report fee, etc.

III. <u>122C "Means Test" INCOME ISSUES</u>

a. Calculating CMI –routine mistakes – calculate carefully

i. If above median or close, please provide YTD pay stubs for the last payday in the month preceding the CMI period and the last YTD pay stub for the end of the CMI period.

1. For example, if CMI is October to March, then provide stub from the last pay date in September, the last pay date in December (or W-2) and then stub from last pay period in March
2. This way no "extra" stubs are missed, such as bonuses or back pay
3. Did the Debtor receive a bonus outside of the CMI period?
4. Recent change in employment – Lanning adjustment?

ii. Don't forget any income –

1. Child support - does it match I?
2. business income
3. rental income
4. help from family
5. unemployment income
6. NOT social security or VA income that qualifies under the HAVEN act

iii. Household size –

1. Should match dependents on schedule I and tax returns
2. If not be prepared to explain
3. Example – divorced/blended family where a child or children are only claimed every other year – generally OK to count on B22C
    a. *In re Sauser*, 09-37736-pp (E.D. Wis. 2010) Chapter 7 case, adult children in the household with little or no contribution to the household was found to be an abuse and the Court denied the Debtors relief under Chapter 7.
    b. The analysis of family or household size fact based there is not a bright line rule.

b. <u>It should be RARE to use the marital adjustment on line 19</u>

i. If used, do not double dip the expenses

1. For example, if you claim NFS car payment it cannot also beclaimed on the expense side of the 122C-2

ii. Have an itemization of what expenses are claimed

IV. <u>B22C Expenses – forward looking</u>

a. Vehicles generally

i. if debtor doesn't own a car, they cannot take the deduction (use public transportation)

ii. If Car PIF $0 allowed on line 13. *Ransom v. FIA Card Services*,2011 U.S. LEXIS 608 (Jan. 11, 2011)

iii. Leased cars take line 13 deduction only, do not copy to line 33

b. Taxes on line 16 should generally be actual tax and not withholding

i. Generally last year's tax with adjustments if needed

ii. Provide proof if needed

   iii. Use schedule I income

c. No deduction for surrendered or lien stripped property
   i. *In re Turner*, 574 F.3d 349 (7th Cir. 2009)
   ii. Watch if plan is amended to surrender something pre-confirmation
d. Child support – should be pro-rated if it ends within 5 years
e. 401(k) loans – line 41 – also needs to be pro-rated
f. read the instructions for the unusual lines
   i. maximum amount for education expense
g. proof for amounts in some lines are required.
h. Don't forget to back out the child support on line 40
i. Trustee will compare amounts for retirement contribution on line 55 to pay stubs – you should too.
   i. Trustee will object to replacing 401(k) loan with a contribution when the loan ends. *Seafort v. Burden (In re Seafort),* 669 F.3d 662 (6th Cir. 2012).
j. If priority debt or secured debt is filed significantly lower than scheduled, Trustee will require amended 122C-2, and plan with increased amount to the general unsecured creditors.
k. Alternatively, if secured or priority debt claims are high, you can amend the B22C to lower the amount required to general unsecured creditors
l. Make sure amount paid in plan to unsecured creditors matches what is required – DMI on line 59 x 60 months = amount required to be paid to general unsecured creditors, including attorney fees, unless you are making a *Lanning* adjustment. *Hamilton v. Lanning*, 130 S. Ct. 2464 (U.S. 2010).

V. PLAN ISSUES

a. Use of model plans required
   i. See Bankruptcy rule 3015. The required forms are attached as exhibits
   ii. Making changes to the plan form is prohibited, except in the special provision section.
   iii. You amend a plan pre-confirmation and modify aplan post-confirmation.
b. Chapter 13 plan payments.
   i. Cases are ALWAYS more successful if there is a payroll order
   ii. Failing that, pay electronically via www.TFSbillpay.com
   iii. Plan should state which debtor is making payments (husband or wife), and how often; weekly, bi-weekly, semi-monthly, or monthly.
   iv. Make sure you have a complete payroll address; we will look in schedule I if nothing in the plan.
   v. If information incomplete, trustee will issue a direct pay order
   vi. If income seasonal, consider skip plan, or step up/step down plan depending on the season
      1. common occupations for "skip plans" are teachers and construction
c. Tax refunds are income that should be reported on Schedule I for under median

income debtors (1/12 of annual average) See *Marshall v. Blake (In re Blake),* 885 F.3d 1065 (7th Cir. 2018). –Case deals with Earned income credit.

d. If a 60-month plan is proposed, does it have to be? If under–median, consider shorter term plan if debtors can afford those payments
e. Attorney Fees
   i. Know what the standards are in your district. Are there "no-look" fees? What are the requirements?
   ii. If you go over "no-look" amount, you need to file an itemized fee application, starting with the beginning of the bankruptcy representation
f. Make sure DSO is listed in the plan
   g. If you choose to use the options to pay less than in full under Section 1322(a)(2) make sure you get the required agreement, because otherwise priority debt must be paid in full
   ii. If you choose to use the option under 1322(a)(4), only the 507(a)(1)(B) government DSO can be paid less than 100%, and you must tell the Trustee how much to pay if less than 100% (i.e., the same as general unsecured creditors.)
   iii. Practice pointer – If one spouse has a large DSO claim, or you think they will have trouble staying current, consider filing for only one debtor, and the spouse with the DSO obligation as a NFS.

VI. Governmental Secured claims.

a. Must be paid in full – no "cram down" via the plan. Rule 3012, use claim objection or valuation motion.
b. Property Tax claims are SECURED, not priority debt
   i. Section 511 requires statutory interest
c. Other tax claims could be secured – check tax transcripts for lien
   i. If secured also entitled to interest – may need to look to state law.

VII. Secured claims

a. Don't forget pre-confirmation adequate protection payments for PMSI secured debt
   i. For Personal property – not real estate
      1. Only purchase money security interest
      2. not for auto title or household good loans
      3. Non-PMSI = no pre-confirmation adequate protection.
   ii. Real Estate is not personal property –no pre-confirmation adequate protection payments.
   iii. Make sure if car is 910, or other personal property is purchased in 1 year, you have it in the correct section
      1. Even if debt must be paid in full, still OK to use Till interest rate.

Till v. SCS Credit Corp., 541 U.S. 465; 124 S. Ct. 1951; 158 L.Ed.2nd 787 (2004).

b. For mortgage debt: are you in a conduit or a direct pay district – know the local rules or norms.

VIII. **Amount to the unsecured creditors**

a. Dictated by B22C form for over-median income debtors
b. If the debtor has nonexempt property, preferences or fraudulent transfers the "best interest test" of Section 1325(a)(4) requires that the unsecured creditors receive what they would have received in a chapter 7
c. Student loans – know your local rules, cases or norms. This is an area that varies across the country.
d. Co-signed debt paid in full to protect the co-debtor- separate classification allowed by 11 U.S.C. § 1322(b)(1).
e. Provide for judicial liens and non-PMSI liens to be avoided by Section 522(f).
f. Avoiding mortgage liens, if no equity attaches **proper service critical**
g. Make sure plan language is internally consistent
h. If no unsecured debt scheduled or expected, make it a 100% plan so that small claims can be paid in full.
i. Make sure the math works
    i. Overall, is the plan feasible?
    ii. Generally, pro-rata payments are preferable
    iii. If fixed monthly payments, is there
        1. Enough money coming in monthly to pay the fixed payments?
        2. Watch bi-weekly payments carefully – only twice per year do 3 payments come into the trustee
        3. Enough in fixed payments to pay the claim by the end of the case?
        4. Should there be more going to fixed payments? – i.e., will all the other claims be paid quickly, leaving only the fixed payment to be paid, and money will just accumulate.
j. You may wish to wait until after the 341 to amend the plan to resolve an objection to confirmation -- avoid multiple amended plans.
k. Use the special provisions for special situations only. There should not be any "standard" special provisions.

IX. **Amending the plan before confirmation**

a. Check the claims register for claims that have come in, amounts, and unexpected secured claims and address them.
b. Prior to the claims bar date and/or confirmation, the trustee website (www.ndc.org) may not be up to date. After confirmation and the bar date is a good idea to review the trustee website to ensure payments are being disbursed as

you expect.

X. **TRUSTEE MATH –** Figuring out plan feasibility

a. Attorney fees +
b. Secured debt +
c. Projected Interest on Secured debt +
    i. Use bankrate.com or other interest rate calculator to figure out
d. Priority debt +
e. Amount of unsecured debt being paid +
f. Trustee fee on subtotal (1- trustee fee = total)
    i. If the Trustee fee is 6% take 1 -.06 = .94; then subtotal x. 94
g. Divide by number of months remaining

XI. **SENDING TAX RETURNS, PAY STUBS AND OTHER DOCUMENTS TO THE TRUSTEE**

a. Required to be received by the Trustee 7 days prior to the 341
    i. Pay stubs are filed with the court. Even if debtor has other sources of income suchas social security, pension or VA benefits it is fine to provide this information. The trustee will use pay stubs to verify income and payroll deductions
    ii. Please file readable documents
b. Review tax returns before you send them – does the information on the returns match what you have on the schedules and SOFA
    i. Dividend and interest income
    ii. Capital gains income
c. Make sure complete copies of the Returns are sent, not just 2 pages of the1040
    i. Schedules A-F of the income tax return, to the extent filled out
d. If the Trustee has one, use their secure portal. NOT email. Redact everything.

XII. **PREPARATION FOR 341 MEETING**

a. Review the claims filed in the case prior to the meeting – do they match with what is expected?
b. Amount/interest rate for secured claims OK?
c. Any secured claims filed that are not already addressed in the plan?
d. If IRS or state tax claim, are there unfilled returns?

XIII. **TRUSTEE WEBSITE – NDC.org**

a. User ID and password – if you don't have one get one
b. Free for debtors and their counsel
c. get receipt and disbursement information
d. run reports to monitor cases for non-payment

XIV. PROSECUTING THE SIMPLE CHAPTER 13

a. The Role of the Chapter 13 Trustee
    i. Case administration, collect payments from the debtor and send the money to creditors as provided in the confirmed plan.
    ii. Ensure the law is being complied with
        1. Under Section 1302(b)(2) the trustee shall appear and be heard at any hearing that concerns
            a. the value of property subject to a lien
            b. confirmation of a plan
            c. modification of the plan after confirmation
        2. timely plan payments see Section 1326 and 1302(5)
        3. DSO notification requirements see Section 1302(d)
    iii. Many of the same duties as a Chapter 7 (See Section 1302(a)(1)) trustee but NOT "collect and reduced to money the property of the estate" as provided in Section 704(a)(1).
    iv. The Chapter 13 Trustee is required to "advise, other than on legal matters, and assist the debtor in performance under the plan" Section 1302(a)(4)
    v. The trustee and staff try to assist and answer questions from debtors but walk a tightrope because we cannot give legal advice, oftentimes we must tell debtors to contact their attorney.

XV. TIMING OF FILING

a. Prior 7 discharge? 11 U.S.C. Section 1328(f) – Debtor is eligible for a Chapter 13 Discharge 4 years from the filing of the Chapter 7. Filing to filing rule.
b. Know when a foreclosure sale is final in your jurisdiction. At the sheriff's sale, at court confirmation or sale?

XVI. MAKING MORTGAGE PAYMENTS AND PLAN PAYMENTS AFTER THE PETITION IS FILED

a. For jurisdictions where the ongoing mortgage payments are made directly, the first mortgage payment the Debtor must make is the first payment due after filing, so if the case is filed at the end of a month, and the contractual mortgage payment is due on the first of each month, the Debtor will have to make the next payment that is due.
b. The first plan payment must be made within 30 days of filing the petition. 11

U.S.C. Section 1326.

i. Note that if the Debtor is making plan payments via payroll order the payments may not be received by the trustee within the required 30 days, you should instruct your client to make the first payment directly, at least until they see the funds taken out of their paycheck.

XVII. **GETTING THE TRUSTEE TO RECOMMEND CONFIRMATION**

a. Have clean petition and schedules
b. Make sure all of the elements needed are provided for in the plan
c. Make sure the first plan payment is received by the trustee by the time of the first 341 meeting of creditors

XVIII. **CLAIMS REVIEW**

a. Trustee objects to late filed priority and unsecured claims, need procedure to review claims just after the bar date (both regular and government) to ensure claims Debtor wants paid are filed
    i. See *In re Greening*, 152, F.3d 631 (7th Cir. 1998); *Disch v. Rasmussen*,417 F.3d 769 (7th Cir. 2005).
    ii. Debtor has 30 days after the bar date to file a claim on behalf of a creditor, Bankruptcy Rule 3004.
        1. *In re Schuster*, 428 B.R. 833 (Bankr. E.D. Wis. 2010). Because chapter 13 debtor failed to establish the untimely filing on behalf of omitted creditor was the result of his excusable neglect, his motion for enlargement of time in which to file a claim was denied. Even if excusable neglect had been established, any amount still due and owing to omitted creditors upon debtor's discharge would remain nondischargeable.
b. Classes of claims to make sure filed timely
    i. Child Support/DSO
    ii. IRS/WDOR and other priority debt - assuming it is non-dischargeable
    iii. Student loans
    iv. Co-signed debt being paid in full through the plan
c. Rule 3002.1 provides specific requirements for secured claims of mortgage on principal residences
    i. Certain attachments to the original claim
    ii. Notice of any additional fees or costs every 180 days
        1. Notice, not a claim, consensus is that the Trustee pays only if provided in the plan.
    iii. Trustee or Debtor notice of final cure at the end of the case, creditor required to respond
    iv. Debtor can challenge notices, but there are time limits.

XIX. POST CONFIRMATION PLAN MODIFICATION

a. 11 U.S.C Section 1329 provides for modification after confirmation
b. Generally, some change in circumstance required
c. Good faith required, see *In re Kearney*, 439 B.R. 694 (Bankr. E.D. Wis. 2010) Post-confirmation plan modification is subject to the good faith test of 11 U.S.C. Section 1325, and debtor whose income increased, and expenses appeared to havebeen manipulated to justify lower plan payments did not satisfy good faith requirement.

d. Post-petition causes of action are property of the Chapter 13 estate and must be reported to the Trustee. In re Waldron, 536 F.3d 1239 (11th Cir. 2008). The case held that claims acquired after the commencement of the bankruptcy case but before the case was dismissed were property of the estate under the plain language of § 1306(a). New assets that the debtors acquired unexpectedly after confirmation by definition did not exist at confirmation and could not be returned to the debtor under § 1327(b). The appellate court further held that the bankruptcycourt properly required the debtors to amend their schedules to disclose the claimsunder Rule 1009.

XX. DISCHARGE IN CHAPTER 13

a. Section 1328(f) debtors are eligible for a discharge if they had a
   i. Prior chapter 7 case where they received a discharge four (4) or more years ago
   ii. Prior chapter 13 case where they received a discharge two (2) or more years ago
      1. Time period runs from filing to filing. *See In re Grice*, 373 B.R.886 (Bankr. E.D. Wis. 2007).
b. Like Chapter 7 debtor must complete financial management course. Your chapter 13 trustee may offer this course for free under the TEN (Trustee Education Network) program.
c. All Debtors must provide DSO certification form required by Section 1328(a). DSO can arise at any time during the case see section 101(14A).
d. Direct payments (such as mortgages, car leases, some student loans are plan payments. In the E.D. the Debtor must certify that all payments, including direct payments have been made to get a discharge. See local rule 4004 and Local Form 2831.
   i. If a mortgage company files a response to the final cure and states that the debtor is not current with direct payments, but the Debtor files Form 2831 and states all the payments have been made a hearing on discharge will be set.

ABI CPEX21 BANKRUPTCY 101 TRACK
INTRODUCTION TO CHAPTER 13

EXHIBIT A – SCHEDULE PREPARATION TIPS

I. MINIMUM FILING REQUIREMENTS.

A. Filing Fee.

1. Chapter 7 - $335
2. Chapter 13 - $310
3. Payment of filing fees in installments. F.R.B.P. 1006(b)(1) and question #8 of the voluntary petition.
   a. Permitted in Chapter 7 and Chapter 13 cases only where no post-petition fees have been paid to an attorney. F.R.B.P. 1006(b)(3).
4. Waiver of filing fee. F.R.B.P. 1006(c)
   a. Permitted in Chapter 7 cases where Debtor's income is less than 150% of the poverty line, and where the Debtor is unable to pay fee in installments. 28 U.S.C. § 1930(f)(1)

B. Voluntary Petition. (Official Form 101)

1. Part 1, Question # 1 & 2: Include Debtor's full legal name and any other names used in the previous 8 years.
   a. Include "Jr.," "Sr.," "III" designation as appropriate.
   b. Include name of any non-filing spouse.
2. Social Security Number. (Question #3)
   a. Put only the last four digits on the petition.
   b. The full Social Security number goes on the <u>Statement of Social Security Number</u>, which document is also required as a part of the minimum filing.
      (1) This statement does not become a part of the public record.

3. Include business or trade name of any sole proprietorship business & EIN used. (Question #4 & 12)

   a. Do <u>not</u> include the name of any separate legal entity, such as a corporation or LLC in which the Debtor has an interest.

4. Current address/mailing address. (Question #5)
   a. Current address/county will determine the § 341 hearing site.
   b. If the listed current address suggests that the filing venue is inappropriate, you should make sure that prior address information is accurately reported in the Statement of Financial Affairs.

5. Venue question is #6: Filing generally must occur in whatever federal district the Debtor has resided in or has principal assets in for the largest portion of the 180 days preceding the filing. 28 U.S.C. §1408

6. Question #7 – What Chapter are you filing. Mistake here can cause headaches.

7. Question #8 – How will the filing fee be paid?

8. Prior & pending related bankruptcy information. (Question #9 &10)

   a. Check Pacer and provide complete information concerning prior filings. Search on national pacer via social security number at https://pacer.login.uscourts.gov/csologin/login.jsf

   b. This information goes to the issue of eligibility for a discharge, and not necessarily eligibility to file.

9. Question #11 – Do you rent your residence

10. Question #13 – For Chapter 11 only

11. Question #14 - Any property that poses a hazard or needs immediate attention?

12. Part 5: Certification concerning credit counseling.

   a. Check the appropriate box, however, <u>in addition</u>, you must file the actual certificate. § 521(b)

      (1) Certificate must be from an agency whose name appears on the United States Trustee's approved list.

(2) The certificates are a standardized form.

(3) Credit counseling must have been obtained within the *preceding* 180 days. § 109(h)(1)

(4) Also file the debt repayment plan, if any. §521(b)(2)

13. Part 6 – Statistical Reporting (questions #16- 20)

a. If filing Chapter 7 and Debts are NOT primarily consumer debts you may not have to worry about the means test.

b. For question #17 if you answer YES that funds will be available to distribute, you may have left assets un-exempt, and if you can't exempt some assets, you should prepare your client that one or more of their assets may be liquidated by the Chapter 7 Trustee.

14. Part 7. Signatures. Individuals must sign their own petitions.

a. Both Debtors must sign under penalty of perjury and section explains penalties for making a false statement, fraud, and concealing property.

b. Power of Attorney may sign where POA document provides for it.

c. Corporate petition is signed by whomever is authorized to do so by the Board of Directors.

d. Must be signed by the attorney for the Debtor.

(1) Declares that attorney has informed Debtor of all options under the Code.

(2) Certifies that the § 342(b) notice has been provided.

(3) Signature of the attorney on the petition constitutes "a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect." § 707(b)(4)(D)

e. Avoid mailing petition for signature or otherwise permitting a client to take unsigned petition/schedules out of your office.

f. Know your local rules regarding maintaining original documents with original signaturesin your file as you may be required to provide verification.

C. List of Creditors. § 521(a)(1)(A)

1. This is the mailing matrix that is used by the clerk's office to provide notice to creditors and other interested parties.

2. Creditor addresses and account numbers should be based upon at least two communications received from the creditor within the preceding 90 days. § 342(c)(2)(A)

3. There are provisions for creditors and other parties to designate an address for purposes of notice. See §§ 342(e)-(f)

II. SUPPORTING SCHEDULES AND STATEMENT OF FINANCIAL AFFAIRS.

A. If Not Filed With the Petition, All Supporting Schedules and Statements, Except the Statement of Intention, Must Be Filed Within 14 Days. F.R.B.P. 1007(c).

1. Be extremely cautious in filing minimum documents only.

a. You do it because of exigent circumstances, however, the case may turn out to be more than you bargained for.

2. §521(i) provides for automatic dismissal if supporting schedules are not filed within 45 days.

3. Comment on schedule preparation generally: Minimize problems later by doing a thorough job on the front end.

a. Read the forms and be responsive to what is being requested.

b. Know why the information is being requested.

B. Schedule of Assets and Liabilities. § 521(a)(1)(B)(i)

1. Schedule A/B - Real Estate.

   a. Show liens (mortgages, taxes, judgment liens, etc.).

      i. Have your client provide documentation of all liens, including lien perfection information, such as <u>recorded</u> mortgages.
      ii. Show value and indicate the basis for that value.
          1. Have your client provide documentation.
          2. Market analysis or appraisal may be appropriate, particularly if you are close with regard to the exemptions.

      NOTE: Make sure to check community property if appropriate, and the “what” and “who” questions for real estate and vehicles.

2. Schedule A/B - Personal Property.

   a. Review <u>every</u> category with your client to ensure that you have made full disclosure of <u>all</u> assets, tangible and intangible.

   b. Assets frequently not disclosed include tax refunds, security deposits, claims against third parties for various reasons, business interests, probate claims, joint bank accounts, pre-paid services or other obligations, and assets that the Debtor thinks "don’t really belong" to them for whatever reason.

   c. Ask the client about the existence of documents where the client may have disclosed the existence and values of assets to third parties, such as:

      (1) Divorce financial disclosure statements,
      (2) Tax returns,
      (3) Riders to homeowner’s policies, and
      (4) loan/credit applications.

d. Assets are to be valued based upon their replacement value as defined in § 506. § 527(a)(2)(B)

(1) Replacement value means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." § 506(a)(2)

(2) Valuation should be made without deduction for costs of sale or marketing. § 506(a)(2)

(3) See *Neidenbach v. Amica Mutual Insurance*, 96 F. Supp. 3d 925 (8th Cir. 2015). Debtors valued their home and contents in their bankruptcy schedules at about $307,000 total. Fire a year later there is a fire and an insurance claim for $637,500. Insurance claim denied, policy voided and debtors had to return funds already advanced.

e. Trustee pet peeves – no cell phones listed, electronics lumped in with household goods. Failure to list HSA accounts when they are on the pay stub.

3. Schedule C - Exemptions.

a. Only individuals can claim exemptions, not corporations.

b. May elect to use federal bankruptcy exemptions, <u>or</u>, state exemptions and federal non-bankruptcy exemptions.

(1) Exception if Debtor has not lived in current state for two years; must then look to the state where Debtor resided for largest portion of the 180 days preceding the 2 years prior to filing. § 522(b)(3)

c. In joint filings, Debtors cannot stack state and federal exemptions. § 522(b)(1)

4. Schedule D - Secured Creditors.

    a. Be sure to include all requested information concerning date claim was incurred, nature of the lien, collateral description and collateral value.

        (1) Obtain backup documents.

        (2) Trustee will be looking at lien perfection documentation to determine whether lien may be avoidable.

        (3) Collateral valuations should match what was listed on Schedules A and B.

        (4) Check community property boxes as appropriate

    b. If the client no longer has collateral, or if debt is secured by property not belonging to the Debtor, then that creditor should not be listed as secured.

        (1) If client no longer has collateral, find out why and be prepared to deal with it.

            (a) Possible action by creditor for conversion under 11 U.S.C. §523(a)(6).

5. Schedule E/F – Unsecured Priority Creditors. § 507

    a. In consumer cases, these typically include:

        (1) Domestic support obligations. <u>See</u> § 101(14A) and § 507(a)(1);

        (2) Most tax obligations, § 507(a)(8); and

        (3) Claims for death or personal injury resulting from drunk driving, § 507(a)(10).

b. Include domestic support obligations even if there is no arrearage.

(1) Include both the direct claimant and any state collection agency.

(2) Trustee will also need the claimant's phone number.

c With regard to taxes, distinguish among priority taxes, secured taxes, and unsecured, non-priority taxes, and list on the appropriate schedule.

(1) Tax claim may be split between priority and non-priority; correctly identify the amounts on Schedule E.

6. Schedule E/F - Unsecured Without Priority.

a. Be sure to include <u>all</u> creditors and parties in interest.

(1) Include collection agents and attorneys.

(2) Frequently missed creditors include former spouses, friends and relatives to whom the Debtor owes money, former landlords, former business partners, co-debtors, various third parties, and insurance companies relative to uninsured automobile accidents.

b. Be sure to include requested information regarding account number, the date of claim and nature of claim.

c. If claim is contingent, unliquidated or disputed, you should so indicate. (Goes to debt limits for Chapter 13)

d. Check "co-debtor" box as appropriate.

f. Notice everyone you can. Use part 3 to relate debts and put down collection agencies or debt buyers.

7. Schedule G - Executory Contracts and Unexpired Leases.

   a. Examples of what to include are apartment leases, vehicle leases, pre- or post marital agreements, and cell phone leases.

   b. The other parties to these executory contracts should also be listed on the appropriate debt schedule. (Cell phone)

8. Schedule H - Co-Debtors and statement regarding community property.

   a. May include non-filing spouse, former spouses, current and former business partners, and co-defendants in litigation.

   b. Also list co-Debtors on appropriate debt schedules.

9. Comment: Counsel should use whatever methods and resources they deem most appropriate and necessary to obtain information concerning assets/liabilities keeping in mind their "certification" of the schedules under § 707(b)(4)(D).

C. Schedules of Income and Expenses. § 521(a)(1)(B)(ii)
D.

1. Schedules I and J must be filed in order to disclose the Debtor's <u>current</u> or forward-looking income and expenses.

2. This is <u>not</u> the means test.

   a. Debtor's income and expenses on Schedules I and J should reflect the Debtor's circumstances as of the filing date. Be sure to answer how long employed. Helps explain when there are differences between Schedule I and the means test. The Trustee compares Schedule I to the pay stubs, be prepared to explain discrepancies.

   b. Social Security and Veteran's disability should be included on schedule I, for disclosure purposes, but they are not "income" for bankruptcy purposes.

      i. The HAVEN Act passed in August 2019 added Veterans disability, but doing the investigation/calculation regarding VA disability takes a bit of work. There are tips and resources available on the Chapter 13

Trustee website here: http://www.ch13oshkosh.com/news.html - news item on October 24, 2019.

3. Information on Schedules I and J may be used by the United States Trustee to bring a motion to dismiss under § 707(b) based upon "abuse" or "totality of the circumstances" regardless of what the means test shows.

   a. Alternatively, this information could be used to support a rebuttal of a presumption of abuse under the means test.

E. Statement of Reasonably Anticipated Increases in Income or Expenses in the 12 Months Subsequent to Filing. § 521(a)(1)(B)(vi)

1. The forms for Schedules I and J contains spaces to be used to report anticipated changes to income and/or expenses.

2. The information will be considered by the United States Trustee in their decision to bring, or not bring, a § 707(b) motion to dismiss based upon an abuse, perhaps regardless of the means test.

3. In Chapter 13, for an under median debtor, whatever is leftover should be close to the plan payment. If there are expected changes, consider filing a step chapter 13 plan. More on that later . . .

F. Statement of Monthly Net Income with Calculations. § 521(a)(1)(B)(v)

1. This is based upon income and expenses at the time of the filing as the information appears on Schedules I and J.

2. The current form for Schedule J includes space at the bottom to report the monthly net income with calculations.

G. Statement of Current Monthly Income and Calculations that Determine Whether a Presumption of Abuse Arises. § 727(b)(2)(C)

1. The Means Test.
2. Must include a statement of "current monthly income."

   a. "Current monthly income" means the average monthly income from all sources that the Debtor receives without regard to whether such income is taxable, derived during the six months preceding the bankruptcy filing.

b. "Median family income" means the median family income both calculated and reported by the Bureau of the Census in the then most recent year.

3. Must include "monthly expenses" as prescribed in § 707(b)(2)(A)(ii).

4. Must include calculations that determine whether or not a presumption of abuse arises. § 707(b)(2)(C)

H. Statement of Financial Affairs and Certification that Attorney Gave the Notice Required Under § 342(b). § 521(a)(1)(B)(iii)

1. The certification referred to is the same one that is required under § 527(a)(1). (<u>See</u> Exhibit D-1 to the "Getting Started" outline.)

2. Regarding the questions in the Statement of Financial Affairs, <u>read them and be responsive to what is being asked</u>.

3. Some traps for the unwary:

a. Information concerning income should corroborate Schedule I and income reflected on the means test. Check this <u>before</u> you file.

(1) Discrepancies should be explained.

b. Understand and explain to your clients the concepts of preference and fraudulent conveyance.

(1) Whether or not there may be potential preferences and/or fraudulent conveyances may affect the timing of the bankruptcy filing depending on whether or not the client wants the trustee to recover an asset.

(2) <u>May</u> also give the Debtor the opportunity to recover involuntary preferences, such as garnishments.

c. Lawsuit information may be indicative of claims by or against the Debtor that should be reflected on the appropriate schedules.

d. If financial accounts have been closed in the last year, determine what happened to the funds.

e. Make sure that any assets listed as being contained in a safe deposit box or storage unit likewise appear on Schedule B.

f. Property held for another is a way to make disclosure of the proper ownership of assets that third parties might otherwise assume belong to the Debtors. This might include vehicles, furnishings, jewelry, and other personal property.

(1) If your client indicates that an asset in their possession does not belong to them, obtain documented verification.

I. Payment Advices Received Within 60 Days Prior to the Filing.

1. These are required to be filed with the court.

2. Eastern District form can be used in either district.

3. The trustee will compare payment advices to the information appearing on Schedule I and the income side of the means test, and will report discrepancies to the United States Trustee. Or may object to confirmation in a Chapter 13 case.

a. Be proactive and explain discrepancies when providing payment advices to the trustee.

J. Disclosure of Attorney's Fees.

1. <u>Any</u> attorney representing a Debtor for compensation must file with the court a statement of compensation paid or agreed to be paid. § 329(a)

2. Must be filed within 14 days of the Order for relief with a copy to the United States Trustee. F.R.B.P. 2016(b) Form 2030.

a. Supplemental statements are to be filed within 14 days after any payment or agreement not previously disclosed.

3. Reasonableness of fees charged are subject to review by the court, usually on the motion of the United States Trustee.

K. Record of Educational IRA or Section 529 Plans. § 521(g)

1. There is a spot on Schedule B to disclose information about these accounts. It is unclear whether or not this meets the requirement of "a record."

2. This requirement is not in with the other filing requirements contained in § 521(a)(1)(B), meaning that there is no provision for the court to waive this filing requirement.

III. OTHER DOCUMENTS TO BE FILED.

A. Statement of Intention, § 521(a)(2). For Chapter 7 cases.

1. Debtors with debts secured by property of the estate must indicate their intentions with respect to the retention or surrender of the collateral.

2. The Statement of Intention must be filed within 30 days of the filing of the petition, or prior to the § 341 meeting of creditors, whichever is earlier.

3. A copy must be served upon the affected secured creditor. F.R.B.P. 1007(b)(2)

B. Tax Returns.

1. The tax return or tax transcript for the most recent tax year for which a return was filed must be provided to the trustee at least 7 days prior to the date first set for the § 341 hearing. § 521(e)(2)(A)

a. Make sure to send both the federal and the state tax returns. Many Trustees have secure portals for this information.
b. Providing tax returns every year may be an ongoing requirement in Chapter 13 cases.

RESOURCE LIST

https://www.uscourts.gov/ National website. Find bankruptcy rules and forms, including instructions and notes.

There is an App for That: ChapMobile app is available on Android and IOS – for viewing court calendars and 341 meeting information. Download and pick your court.

https://www.justice.gov/ust US Trustee website. Trustee information, means test information. National policy information.

https://www.ndc.org/home – Free for debtors and their attorneys (creditors pay). Provides accounting of receipts and disbursements by the Trustee. Ability to login for all your cases no matter which trustee. Ability to run reports to make sure your clients are making their plan payments and how much you have been paid and are still owed for attorney's fees.

https://tfsbillpay.com/ Make electronic payments to the Trustee. For use if you are not working and cannot do a payroll order. There is a fee, increases as the amount of the payment increases.

The Eastern District Chapter 13 Trustees are UST approved financial management course providers. The on-line course is available Free to Chapter 13 Debtors in the Eastern District at https://www.13class.com/ You need to get the Trustee Identifier Number from your respective Trustee. The class is available in English and Spanish.
Mentor list serve and general list serve. Annual update CLE – full day in the fall. Annual BICR Section Educational/Social Retreat – American Club in Kohler. Thursday & Friday in late February or early March.

10/23/2021

AMERICAN BANKRUPTCY INSTITUTE

https://www.abi.org/ National Organization for Insolvency professionals. National and regional conferences. Central State Bankruptcy Workshop, every other year in Lake Geneva. Hon. Eugene R. Wedoff Seventh Circuit Consumer Bankruptcy Conference, fall in Chicago.

NACBA

https://www.nacba.org/ National Association of Consumer Bankruptcy Attorneys. National educational seminars. Group also lobbies for changes to the bankruptcy laws to benefit consumers.

THE NACTT ACADEMY FOR CONSUMER BANKRUPTCY EDUCATION
ConsiderChapter13.org

http://www.nactt.com/ National Association of Chapter 13 Trustees. Annual educational seminar focused on Chapter 13 issues. Open to all. The educational arm is the NACTT Academy at https://considerchapter13.org/ The academy sends a weekly email newsletter with articles written by attorneys and trustees, hosts regular webinars, and presents the educational portion of the annual seminar.

ACT²

http://act12.org/ Association of Chapter 12 Trustees. National Seminar every 2-3 years all about Chapter 12 open to all. Website has compilation of Chapter 12 case law. Wisconsin Chapter 12 Trustees will post information about the next seminar on the BICR. On Twitter @farmfreshstart

10/23/2021

B2000 (Form 2000) (12/20)

UNITED STATES BANKRUPTCY COURT
REQUIRED LISTS, SCHEDULES, STATEMENTS AND FEES
Voluntary Chapter 7 Case

☐ **Filing fee of $245.** If the fee is to be paid in installments or the debtor requests a waiver of the fee, the debtor must be an individual and must file a signed application for court approval. Official Form 103A or 103B and Fed.R.Bankr.P. 1006(b), (c).

☐ **Administrative fee of $78 and trustee surcharge of $15.** If the debtor is an individual and the court grants the debtor's request, these fees are payable in installments or may be waived**.**

☐ **Voluntary Petition for Individuals Filing for Bankruptcy** (Official Form 101); **or Voluntary Petition for Non-Individuals Filing for Bankruptcy** (Official Form 201); **Names and addresses of all creditors** of the debtor. Must be filed WITH the petition. Fed.R.Bankr.P. 1007(a)(1).

☐ **Notice to Individual Debtor with Primarily Consumer Debts** under 11 U.S.C. § 342(b) (Director's Form 2010), if applicable. Required if the debtor is an individual with primarily consumer debts. The notice must be GIVEN to the debtor before the petition is filed. Certification that the notice has been given must be FILED with the petition or within 15 days. 11 U.S.C. §§ 342(b), 521(a)(1)(B)(iii), 707(a)(3). Official Form 101 contains spaces for the certification.

☐ **Bankruptcy Petition Preparer's Notice, Declaration, and Signature** (Official Form 119). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. § 110(b)(2).

☐ **Statement About your Social Security Numbers** (Official Form 121). Required if the debtor is an individual. Must be submitted WITH the petition. Fed.R.Bankr.P. 1007(f).

☐ **Credit Counseling Requirement** (Official Form 101); **Certificate of Credit Counseling and Debt Repayment Plan,** if applicable; **Section 109(h)(3) certification or § 109(h)(4) request ,** if applicable. If applicable, the Certificate of Credit Counseling and Debt Repayment Plan must be filed with the petition or withing 14 days. If applicable, the Certificate of Credit Counseling and Debt Repayment Plan must be filed with the petition or within 14 days. If applicable, the § 109(h)(3) certification or the § 109(h)(4) request must be filed WITH the petition. Fed.R.Bankr.P. 1007(b)(3), (c).

☐ **Statement disclosing compensation paid or to be paid to a "bankruptcy petition preparer"** (Director's Form 2800). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. §110(h)(2).

☐ **Statement of Your Current Monthly Income** (Official Form 122A). Required if the debtor is an individual. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedules of assets and liabilities** (Official Form 106 or 206). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedule of Executory Contracts and Unexpired Leases** (Schedule G of Official Form.106 or 206). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedules of Your Income and Your Expenses.** (Schedules I and J of Official Form 106) If the debtor is an individual, Schedules I and J of Official Form 106 must be filed with the petition or within 14 days. 11 U.S.C. § 521(1) and Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement of financial affairs** (Official Form 107 or 207). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Copies of all payment advices or other evidence of payment** received by the debtor from any employer within 60 days before the filing of the petition. Required if the debtor is an individual. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement of Intention for Individuals Filing Under Chapter 7** (Official Form 108). Required ONLY if the debtor is an individual and the schedules of assets and liabilities contain debts secured by property of the estate or personal property subject to an unexpired lease. Must be filed within 30 days or by the date set for the Section 341 meeting of creditors, whichever is earlier. 11 U.S.C. §§ 362(h) and 521(a)(2).

☐ **Statement disclosing compensation paid or to be paid to the attorney** for the debtor (Director's Form 2030). Required if the debtor is represented by an attorney. Must be filed within 14 days or any other date set by the court. 11 U.S.C. § 329 and Fed.R.Bankr.P. 2016(b).

☐ **Certification About a Financial Management Course** (Official Form 423), if applicable. Required if the debtor is an individual, unless the course provider has notified the court that the debtor has completed the course. Must be filed within 60 days of the first date set for the meeting of creditors. 11 U.S.C. § 727(a)(11) and Fed.R.Bankr.P. 1007(b)(7), (c).

B2000 (Form 2000) (12/20)

UNITED STATES BANKRUPTCY COURT
REQUIRED LISTS, SCHEDULES, STATEMENTS AND FEES
Chapter 13 Case

☐ **Filing fee of $235.** If the fee is to be paid in installments, the debtor must file a signed application for court approval. Official Form 103A and Fed.R.Bankr.P. 1006(b).

☐ **Administrative fee of $78.** If the court grants the debtor's request, this fee is payable in installments.

☐ **Voluntary Petition for Individuals Filing for Bankruptcy** (Official Form 101). **Names and addresses of all creditors** of the debtor. Must be filed WITH the petition. Fed.R.Bankr.P. 1007(a)(1).

☐ **Notice to Individual Debtor with Primarily Consumer Debts** under 11 U.S.C. § 342(b) (Director's Form 2010), if applicable. Required if the debtor is an individual with primarily consumer debts. The notice must be GIVEN to the debtor before the petition is filed. Certification that the notice has been given must be FILED with the petition or within 15 days. 11 U.S.C. §§ 342(b), 521(a)(1)(B)(iii), 1307(c)(9). Official Form 101 contains spaces for the certification.

☐ **Bankruptcy Petition Preparer's Notice, Declaration, and Signature** (Official Form 119). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. § 110(b)(2).

☐ **Statement of Social Security Number** (Official Form 121). Must be submitted WITH the petition. Fed.R.Bankr.P. 1007(f).

☐ **Credit Counseling Requirement** (Official Form 101); **Certificate of Credit Counseling and Debt Repayment Plan,** if applicable; **Section 109(h)(3) certification or § 109(h)(4) request,** if applicable. If applicable, the Certificate of Credit Counseling and Debt Repayment Plan must be filed with the petition or within 14 days. If applicable, the § 109(h)(3) certification or the § 109(h)(4) request must be filed WITH the petition. Fed.R.Bankr.P. 1007(b)(3), (c).

☐ **Statement disclosing compensation paid or to be paid to a "bankruptcy petition preparer"** (Director's Form 2800). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. §110(h)(2).

☐ **Statement of Your Current Monthly Income, etc.** (Official Form 122C). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007.

☐ **Schedules of Assets and Liabilities** (Official Form 106). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedule of Executory Contracts and Unexpired Leases** (Schedule G of Official Form 106). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedules of Current Income and Expenditures.** (Schedules I and J of Official Form 106). Must be filed with the petition or within 14 days. 11 U.S.C. § 521(1) and Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement of Financial Affairs** (Official Form 107). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Copies of all payment advices or other evidence of payment** received by the debtor from any employer within 60 days before the filing of the petition. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Chapter 13 Plan.** (Official Form 113), or local form plan (check with your local court for required plan version). Fed.R.Bankr.P. 3015.1. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 3015.

☐ **Statement disclosing compensation paid or to be paid to the attorney** for the debtor (Director's Form 2030), if applicable. Must be filed within 14 days or any other date set by the court. 11 U.S.C. § 329 and Fed.R.Bankr.P. 2016(b).

☐ **Certification About a Financial Management Course** (Official Form 423), if applicable. Must be filed no later than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under § 1328(b), unless the course provider has notified the court that the debtor has completed the course. 11 U.S.C. § 1328(g)(1) and Fed.R.Bankr.P. 1007(b)(7), (c).

☐ **Statement concerning pending proceedings of the kind described in § 522(q)(1)**, if applicable. Required if the debtor has claimed exemptions under state or local law as described in §522(b)(3) in excess of $170,350*. Must be filed no later than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under § 1328(b). 11 U.S.C. § 1328(h) and Fed.R.Bankr.P. 1007(b)(8), (c).

* Amount subject to adjustment on 4/01/22 and every three years thereafter with respect to cases commenced on or after the date of adjustment.

Client Questionnaire
Section 1 - Basic Information

Part A. Name and Address

Name:______________________________
Have you used any other names in the past eight years? ☐ No ☐ Yes
If yes, please list other names used:
Have you used any business names or Employer Identification Numbers (EIN) in the last 8 years?
If yes, please list business names and/or EINs used:

Telephone Numbers\Email address:
Home:__________________
Work:__________________
Cell:__________________
Email:______________________________
Social Security Number: ___ ___ ___ - ___ ___ - ___ ___ ___ ___
Driver's License Number: ______________________________ Expiration Date:_______________ State:______
Date of Birth:__________________
Address:______________________________
City:______________________________ State:_______ Zip:_____________ County:__________________
Have you lived at this address for at least 180 days? ☐ No ☐ Yes
Have you lived at this address for at least 730 days (2 years)? ☐ No ☐ Yes
If you answered no to either of the questions above, please list your previous address:
Address:______________________________
City:____________________________ State:_______ Zip:_____________ County:______________
If you have a different mailing address, please list:
Mailing Address:______________________________
City:____________________________ State:_______ Zip:_____________ County:______________

Marital Status: ☐ Never Married ☐ Married and living together ☐ Widowed
☐ Married and living apart ☐ Divorced

Part B. Name and Address of Spouse

If you are filing jointly with your spouse, fill in the following information about your spouse:
Name:______________________________
Has your spouse used any other names in the past 8 years? ☐ No ☐ Yes
If yes, please list other names used:
Has your spouse used any business names or Employer Identification Numbers (EIN) in the last 8 years?
If yes, please list business names and/or EINs used:

Telephone Numbers\Email address:
Home:__________________
Work:__________________
Cell:__________________
Email:______________________________
Social Security Number: ___ ___ ___ - ___ ___ - ___ ___ ___ ___
Driver's License Number: ______________________________ Expiration Date:_______________ State:______
Date of Birth:__________________
If your spouse lives at a different address, please list:

Address:______________________________
City:____________________________ State:________ Zip:_____________ County:______________
Has your spouse lived at this address for at least 180 days? ☐ No ☐ Yes
Has your spouse lived at this address for at least 730 days (2 years)? ☐ No ☐ Yes
If you answered no to either of the questions above, please list your spouse's previous address:
Address:______________________________
City:____________________________ State:________ Zip:_____________ County:______________
If your spouse has a different mailing address, please list:
Mailing Address:______________________________
City:____________________________ State:________ Zip:_____________ County:______________

Part C. Prior and/or Pending Bankruptcy Cases

Have you filed a bankruptcy case in the last 8 years? ☐ No ☐ Yes
If yes, in which district of which state was the case filed? ______________________________
Case Number:______________________________
Date Filed:______________________________
Date Discharged: ______________________________
Was the case dismissed (you did not complete the bankruptcy)? ☐ No ☐ Yes
If so, what date was it dismissed? ______________________________
Are any bankruptcy cases pending or being filed by your spouse, a business partner, or an affiliate? ☐ No ☐ Yes
If yes, name of debtor:______________________________
Relationship to you: ______________________________
Case Number:______________________________
Date Filed:______________________________
District (If known): ______________________________

Part D. Debtors Who Reside as Tenants of Residential Property

Do you have an eviction pending against you? ☐ No ☐ Yes
If yes, please provide your landlord's name and address:
Name:______________________________
Address:______________________________
City:______________________________ State:________ Zip:_____________

Part E. Business Owned as a Sole Proprietor

Are you the sole proprietor of a full- or part-time business?
If yes, please provide the name and location of the business:
Name of business:______________________________
Address:______________________________
City:______________________________ State:________ Zip:_____________

Description of business:

Part F. Hazardous Property or Property That Needs Immediate Attention

Do you own or have any property that needs immediate attention or that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety? ☐ No ☐ Yes

If yes, please describe the hazard:

If immediate attention is needed, why is it needed?

Where is the property? Address: ____________________________

City: ____________________________ State: _______ Zip: ____________

Section 2 - Property *(Schedule A/B)*

Separately list and describe assets in each category below. List an asset only once. If an asset fits in more than one category, list the asset in the category where you think it fits best. If more space is needed, attach a separate page to this questionnaire.

Part A. Residence, Building, Land, Other Real Estate

Address and Description of Property	**List all mortgages, home equity loans and other liens against the property:** Please provide details requested below.	Estimated **Value** of Property	**Owned by:** You, your spouse, both you and your spouse, you and at least one person other than your spouse.	**If you are not the only owner:** Please enter the % of the property you own.	**Office Use Only** *Exemptions?*
Address: What is the property? Check all that apply. ☐ Single-family home ☐ Duplex or multi-unit building ☐ Condominium or cooperative ☐ Manufactured or mobile home ☐ Land ☐ Investment property ☐ Timeshare ☐ Other:	Who issued the mortgage, lien or loan? *(Name and Address)* What is the amount of the mortgage, lien or loan? What is your current interest rate on the loan? What is your monthly payment? Does payment include taxes and/or insurance? ☐ No ☐ Yes How many payments are left?		☐ You ☐ Spouse ☐ Joint ☐ Other:		
Address: What is the property? Check all that apply. ☐ Single-family home ☐ Duplex or multi-unit building ☐ Condominium or cooperative ☐ Manufactured or mobile home ☐ Land ☐ Investment property ☐ Timeshare ☐ Other	Who issued the mortgage, lien or loan? *(Name and Address)* What is the amount of the mortgage, lien or loan? What is your current interest rate on the loan? What is your monthly payment? Does payment include taxes and/or insurance? ☐ No ☐ Yes How many payments are left?		☐ You ☐ Spouse ☐ Joint ☐ Other:		

Part B. Cars, Vans, Trucks, Tractors, SUVs, Motorcycles, RVs, Watercraft, Aircraft, Motor Homes, ATVs, Other Vehicles

Type of Property	**Do you own this type of property?**	**Description**	**Value** of Property	**Owned by:** You, your spouse, both you and your spouse, you and at least one person other than your spouse.	**Office Use Only** *Exemptions?*
Vehicle #1	☐ No ☐ Yes	Year: ______________ Make: _________________________ Model: _________________________ Mileage:_________________________ Other Information:		☐ You ☐ Spouse ☐ Joint ☐ Other:	
Vehicle #2	☐ No ☐ Yes	Year: ______________ Make: _________________________ Model: _________________________ Mileage:_________________________ Other Information:		☐ You ☐ Spouse ☐ Joint ☐ Other:	
Vehicle #3	☐ No ☐ Yes	Year: ______________ Make: _________________________ Model: _________________________ Mileage:_________________________ Other Information:		☐ You ☐ Spouse ☐ Joint ☐ Other:	
Watercraft/Aircraft/Motor Homes/ATVs/Other (*list year, make, and model*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	

Part C. Personal and Household Items

Type of Property	**Do you own this type of property?**	**Description**	**Value** of Property	**Owned by:** You, your spouse, both you and your spouse, you and at least one person other than your spouse.	**Office Use Only** *Exemptions?*
Household Goods and Furnishings (*Major appliances, furniture, linens, china, kitchenware, etc.*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Electronics (*TVs, stereos, computers, game consoles, tablets, iPods, mobile phones, etc.*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Collectibles of value (*art, paintings, prints, memorabilia, antiques, stamp/coin/card collections, etc.*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Sports, photo, exercise, and other hobby equipment; musical instruments	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Firearms, ammunition, and related equipment	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Clothing (*everyday clothes, furs, leather coats, designer wear, shoes, accessories*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Jewelry	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Pets/non-farm animals	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	

Type of Property	Do you own this type of property?	Description	Value of Property	Owned by: You, your spouse, both you and your spouse, you and at least one person other than your spouse.	Office Use Only *Exemptions?*
Health aids and all other household items not listed	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	

Part D. Financial Assets

Type of Property	Do you own this type of property?	Description	Value of Property	Owned by: You, your spouse, both you and your spouse, you and at least one person other than your spouse.	Office Use Only *Exemptions?*
Cash (*spare change/money in your purse or wallet, cash not in accounts*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Checking account #1 (*list name(s) on account, bank name, and account number*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Checking account #2 (*list name(s) on account, bank name, and account number*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Savings account #1 (*list name(s) on account, bank name, and account number*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Savings account #2 (*list name(s) on account, bank name, and account number*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	

Type of Property	**Do you own this type of property?**	**Description**	**Value** of Property	**Owned by:** You, your spouse, both you and your spouse, you and at least one person other than your spouse.	**Office Use Only** *Exemptions?*
Certificate of deposit (*list name(s) on account, bank name, and account number*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Other financial account #1 (*list name(s) on account, bank name, and account number*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Other financial account #2 (*list name(s) on account, bank name, and account number*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Other financial account #3 (*list name(s) on account, bank name, and account number*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Other financial account #4 (*list name(s) on account, bank name, and account number*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Bonds, mutual funds, and publicly traded stocks	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Non-publicly traded stocks and interests in businesses, corporations, LLCs, partnerships, and joint ventures (*list % of ownership*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Government and corporate bonds and instruments (*including U.S. Savings Bonds*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	

Type of Property	**Do you own this type of property?**	**Description**	**Value** of Property	**Owned by:** You, your spouse, both you and your spouse, you and at least one person other than your spouse.	**Office Use Only** *Exemptions?*
Retirement, pension, or profit-sharing plan #1 (*IRA, 401(k), 403(b), thrift savings account, or other pension or profit-sharing plan*) (*list type of plan and where the account is held*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Retirement, pension, or profit-sharing plan #2 (*IRA, 401(k), 403(b), thrift savings account, or other pension or profit-sharing plan*) (*list type of plan and where the account is held*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Retirement, pension, or profit-sharing plan #3 (*IRA, 401(k), 403(b), thrift savings account, or other pension or profit-sharing plan*) (*list type of plan and where the account is held*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Security deposits (*typically with landlord or utility*) (*list holder*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Prepayments (*prepaid rent, layaway, gift cards, etc.*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Annuities (*list company*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Education IRA, Sec. 529 or Sec. 530 account, state tuition plan	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Trusts, life estates, future, and equitable interests in property or assets	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	

Type of Property	**Do you own this type of property?**	**Description**	**Value** of Property	**Owned by:** You, your spouse, both you and your spouse, you and at least one person other than your spouse.	**Office Use Only** *Exemptions?*
Patents, copyrights, trademarks, trade secrets, and other intellectual property	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Licenses, franchises, and other general intangibles	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Tax refunds owed to you (*list years due*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Alimony and child support	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Other amounts someone owes you (*unpaid wages, disability benefits, sick pay, vacation pay, workers' compensation, unpaid loans made by you, etc.*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Cash value of insurance policies (*whole or universal life, health, disability, HSA, etc.*) (*list insurance company and beneficiary*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Inheritances, estate distributions, and death benefits	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Personal injury claims or awards	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	

Type of Property	**Do you own this type of property?**	**Description**	**Value** of Property	**Owned by:** You, your spouse, both you and your spouse, you and at least one person other than your spouse.	**Office Use Only** *Exemptions?*
Lawsuits or claims against anyone for anything	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
All other claims or rights to sue someone	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Any other financial asset not listed	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	

Part E. Business-Related Assets

Type of Property	**Do you own this type of property?**	**Description**	**Value** of Property	**Owned by:** You, your spouse, both you and your spouse, you and at least one person other than your spouse.	**Office Use Only** *Exemptions?*
Accounts receivable or commissions earned (*list*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Office equipment, furnishings, and supplies (*list*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Machinery, fixtures, equipment, business supplies, and tools of your trade (*list*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Business inventory (*list*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Interests in partnerships or joint ventures (*name and type of business, % interest*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Customer and mailing lists	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Other business-related property not already listed	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	

Part F. Farm and Commercial Fishing-Related Property

Type of Property	**Do you own this type of property?**	**Description**	**Value** of Property	**Owned by:** You, your spouse, both you and your spouse, you and at least one person other than your spouse.	**Office Use Only** *Exemptions?*
Farm animals (*livestock, poultry, farm-raised fish, etc.*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Crops (*growing or harvested*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Farm and commercial fishing equipment, implements, machinery, fixtures, and tools of trade (*list*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	
Farm and commercial fishing supplies, chemicals, and feed (*list*)	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	

Part G. Miscellaneous

Type of Property	**Do you own this type of property?**	**Description**	**Value** of Property	**Owned by:** You, your spouse, both you and your spouse, you and at least one person other than your spouse.	**Office Use Only** *Exemptions?*
All other property of any kind not previously listed	☐ No ☐ Yes			☐ You ☐ Spouse ☐ Joint ☐ Other:	

Section 3 - Debts *(Schedule D/E/F)*

Part A. Debts Secured by Property

Please list below all debts that you owe OR that creditors claim you owe that are secured by property.

Type of Debt	Creditor Information	Property Information:	Person(s) Responsible/Codebtor	Do you dispute the debt?	Office Use Only
Home loan and/or mortgage	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	1. Describe property: 2. Monthly payment amount: 3. Number of payments remaining:	Who owes the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	
Home loan and/or mortgage	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	1. Describe property: 2. Monthly payment amount: 3. Number of payments remaining:	Who owes the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	

Type of Debt	Creditor Information	Property Information:	Person(s) Responsible/Codebtor	Do you dispute the debt?	Office Use Only
Home loan and/or mortgage	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	1. Describe property: 2. Monthly payment amount: 3. Number of payments remaining:	Who owes the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	
Home loan and/or mortgage	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	1. Describe property: 2. Monthly payment amount: 3. Number of payments remaining:	Who owes the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	

Car loans	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	1. Describe property: 2. Monthly payment amount: 3. Number of payments remaining:	Who owes the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	
Car loans	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	1. Describe property: 2. Monthly payment amount: 3. Number of payments remaining:	Who owes the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	

Car loans	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	1. Describe property: 2. Monthly payment amount: 3. Number of payments remaining:	Who owes the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	
Other property loans	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	1. Describe property: 2. Monthly payment amount: 3. Number of payments remaining:	Who owes the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	

Other property loans	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	1. Describe property: 2. Monthly payment amount: 3. Number of payments remaining:	Who owes the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	
Other property loans	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	1. Describe property: 2. Monthly payment amount: 3. Number of payments remaining:	Who owes the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	

Other property loans	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	1. Describe property: 2. Monthly payment amount: 3. Number of payments remaining:	Who owes the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	
Other property loans	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	1. Describe property: 2. Monthly payment amount: 3. Number of payments remaining:	Who owes the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	

Part B. Credit Card Debts

Please list below all credit card debts that you owe OR that creditors claim you owe.

Type of Debt	Creditor Information:	Person(s) Responsible/Codebtor	Do you dispute the debt?	Office Use Only
Major credit card debts (Visa, American Express, Master Card, Discover)	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	
Major credit card debts (Visa, American Express, Master Card, Discover)	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	

Major credit card debts (Visa, American Express, Master Card, Discover)	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	
Major credit card debts (Visa, American Express, Master Card, Discover)	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	

Major credit card debts (Visa, American Express, Master Card, Discover)	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	
Major credit card debts (Visa, American Express, Master Card, Discover)	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	

Department store credit card debts	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	
Department store credit card debts	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	

Other credit card debts (gas cards, phone cards, etc.)	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	
Other credit card debts (gas cards, phone cards, etc.)	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	

Other credit card debts (gas cards, phone cards, etc.)	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	
Other credit card debts (gas cards, phone cards, etc.)	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	

Cash advances	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	
Cash advances	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	

Part C. Medical Debts

Please list below all unpaid medical bill debts that you owe OR that creditors claim you owe.

Type of Debt	Creditor Information:	Person(s) Responsible/Codebtor	Do you dispute the debt?	Office Use Only
Unpaid medical bills	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different: 6. Any additional information about the debt:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	
Unpaid medical bills	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different: 6. Any additional information about the debt:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	

Unpaid medical bills	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different: 6. Any additional information about the debt:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	
Unpaid medical bills	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different: 6. Any additional information about the debt:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	

Part D. Tax Debts

Please list below all unpaid tax debts that you owe OR that creditors claim you owe.

Type of Debt	**Creditor Information**:	**Person(s) Responsible/ Codebtor**	**Do you dispute the debt?**	**Office Use Only**
Unpaid taxes	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different: 6. Any additional information about the debt:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	
Unpaid taxes	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different: 6. Any additional information about the debt:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	

Unpaid taxes	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different: 6. Any additional information about the debt:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	
Unpaid taxes	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different: 6. Any additional information about the debt:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	

Part E. Student Loan Debts

Please list below all Student Loan debts that you owe OR that creditors claim you owe.

Type of Debt	Creditor Information:	Person(s) Responsible/Codebtor	Do you dispute the debt?	Office Use Only
Student loan	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different: 6. Any additional information about the debt:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	
Student loan	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different: 6. Any additional information about the debt:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	

Student loan	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different: 6. Any additional information about the debt:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	
Student loan	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different: 6. Any additional information about the debt:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	

Part F. Other Debts

Please list below all debts not listed above that you owe OR that creditors claim you owe.

Please Describe the Type of Debt ***(e.g. unpaid rent, alimony or child support, service fees, other bank loans, or personal loans.)***	**Creditor Information**:	**Person(s) Responsible/Codebtor**	**Do you dispute the debt?**	**Office Use Only**
Describe:	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different: 6. Any additional information about the debt:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	
Describe:	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different: 6. Any additional information about the debt:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	

Please Describe the Type of Debt *(e.g. unpaid rent, alimony or child support, service fees, other bank loans, or personal loans.)*	Creditor Information:	Person(s) Responsible/Codebtor	Do you dispute the debt?	Office Use Only
Describe:	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different: 6. Any additional information about the debt:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	
Describe:	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different: 6. Any additional information about the debt:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	

Describe:	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different: 6. Any additional information about the debt:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	
Describe:	1. Amount Owed *(amount of claim)*: 2. Creditor Name and Address: 3. Account Number, if any: 4. Date/range of dates when debt was incurred: 5. Contact person's name and address if different: 6. Any additional information about the debt:	Who incurred the debt? ☐ Self ☐ Spouse ☐ Joint ☐ Other: Is there a codebtor or cosigner on this loan? ☐ No ☐ Yes **If yes,** please provide name and address:	☐ No ☐ Yes	

Section 4 - Unexpired Leases and Contracts *(Schedule G)*

List below any leases or contracts that are still current and to which you are a party. Include residential, car and business leases, and service or business contracts.

Description of Lease or Contract	Name and Address of Other Party or Parties	Date Contract Expires	Office Use Only

Section 5 - Current Income *(Schedule I)*

Part A. Debtor's Employer Information

Name and Address of your employer:

____
____
____
____

How long have you been employed at this job: ______________________
Occupation *(please state job title or provide brief description)*: ______________________

Second employer *(if applicable):*
Name and Address of your **Second** employer:

____
____
____
____

How long have you been employed at this second job: ______________________
Occupation *(please state job title or provide brief description)*: ______________________
Notes: ______________________

Part B. Joint Debtor's (Spouse's) Employer Information

Name and Address of your spouse's employer:

____
____
____
____

How long has spouse been employed at this job: ______________________
Occupation *(please state job title or provide brief description)*: ______________________

Second employer *(if applicable):*
Name and Address of your spouse's **Second** employer:

____
____
____
____

How long has spouse been employed at this second job: ______________________
Occupation *(please state job title or provide brief description)*: ______________________
Notes: ______________________

Part C. Debtor's Wage Information

What is the gross amount of your paycheck, before taxes/other deductions are taken out? ________________

How often do you get paid? ☐ once a week ☐ every two weeks
☐ twice a month ☐ once a month ☐ other ____________________

What is your estimated overtime pay per month? ________________

How much is taken out of each paycheck for taxes, Medicare, and social security? (combined total) ________________

How much is taken out of each paycheck for Mandatory Contributions to Retirement? ________________

How much is taken out of each paycheck for Voluntary Contributions to Retirement? ________________

How much is taken out of each paycheck for Required Repayments of Retirement fund Loans? ________________

How much is automatically deducted for insurance? ________________

How much is taken out for Domestic Support Obligations? ________________

How much is deducted for union dues? ________________

Other Deduction (*describe*):______________________________ ________________

Other Deduction (*describe*):______________________________ ________________

Other Deduction (*describe*):______________________________ ________________

Do you receive income from business operations outside of your regular paycheck listed above?
☐ No ☐ Yes
If **yes**, how much do you receive per month? ________________

Do you receive income from interest or dividends outside of your regular paycheck listed above?
☐ No ☐ Yes
If **yes**, how much do you receive per month? ________________

Do you receive income from alimony or family support payments for your use or for the care of your dependents?
☐ No ☐ Yes
If **yes**, how much do you receive per month? ________________

Do you receive income from Unemployment?
☐ No ☐ Yes
If **yes**, how much do you receive per month? ________________

Do you receive income from Social Security?
☐ No ☐ Yes
If **yes**, how much do you receive per month? ________________

Do you receive monetary government assistance?
☐ No ☐ Yes
If **yes**, please describe:______________________________
How much do you receive per month? ________________

Do you receive retirement or pension money?
☐ No ☐ Yes
If **yes**, how much do you receive per month? ________________

Do you have any other source of income not listed?
☐ No ☐ Yes
If **yes**, please describe______________________________
How much do you receive per month? ________________

Are you expecting any increase or decrease in salary next year?
☐ No ☐ Yes
If **yes**, please describe______________________________

Part D. Joint Debtor's (Spouse's) Wage Information

What is the gross amount of your paycheck, before taxes/other deductions are taken out? ________

How often do you get paid? ☐ once a week ☐ every two weeks
☐ twice a month ☐ once a month ☐ other ________

What is your estimated overtime pay per month? ________

How much is taken out of each paycheck for taxes, Medicare, and social security? (combined total) ________

How much is taken out of each paycheck for Mandatory Contributions to Retirement? ________

How much is taken out of each paycheck for Voluntary Contributions to Retirement? ________

How much is taken out of each paycheck for Required Repayments of Retirement fund Loans? ________

How much is automatically deducted for insurance? ________

How much is taken out for alimony or family support for the care of your dependents? ________

How much is deducted for union dues? ________

Other Deduction (*describe*):________ ________

Other Deduction (*describe*):________ ________

Other Deduction (*describe*):________ ________

Do you receive income from business operations outside of your regular paycheck listed above?
☐ No ☐ Yes
If **yes**, how much do you receive per month? ________

Do you receive income from interest or dividends outside of your regular paycheck listed above?
☐ No ☐ Yes
If **yes**, how much do you receive per month? ________

Do you receive income from alimony or family support payments for your use or for the care of your dependents?
☐ No ☐ Yes
If **yes**, how much do you receive per month? ________

Do you receive income from Unemployment?
☐ No ☐ Yes
If **yes**, how much do you receive per month? ________

Do you receive income from Social Security?
☐ No ☐ Yes
If **yes**, how much do you receive per month? ________

Do you receive monetary government assistance?
☐ No ☐ Yes
If **yes**, please describe:________
How much do you receive per month? ________

Do you receive retirement or pension money?
☐ No ☐ Yes
If **yes**, how much do you receive per month? ________

Do you have any other source of income not listed?
☐ No ☐ Yes
If **yes**, please describe________
How much do you receive per month? ________

Are you expecting any increase or decrease in salary next year?
☐ No ☐ Yes
If **yes**, please describe________

Part E. Debtor's Current Monthly Income Calculation

Fill in your monthly income for the categories below in the column labeled "Month 1." If your income for one of the below categories varies from month to month, complete the below chart by entering in your income for all six months.

	Month 1 (last month) ____/____	Month 2 (2 months ago) ____/____	Month 3 ____/____	Month 4 ____/____	Month 5 ____/____	Month 6 ____/____	For Office Use Only
Gross wages, salary, tips, bonuses, overtime, commissions.							
Income from operation of business: a. Gross Income - b. Expenses = c. Net Income.							
Rent and other real property income:: a. Gross Income - b. Expenses = c. Net Income.							
Interest, dividends, and royalties.							
Pension and retirement income (NOT Social Security).							
Regular contributions from others to the household expenses, including child support.							
Unemployment Compensation.							
Social Security income.							
Other sources not already mentioned. Describe:							

Part F. Joint Debtor's (Spouse's) Current Monthly Income Calculation

Fill in your monthly income for the categories below in the column labeled "Month 1." If your income for one of the below categories varies from month to month, complete the below chart by entering in your income for all six months.

	Month 1 (last month) ____/____	Month 2 (2 months ago) ____/____	Month 3 ____/____	Month 4 ____/____	Month 5 ____/____	Month 6 ____/____	For Office Use Only
Gross wages, salary, tips, bonuses, overtime, commissions.							
Income from operation of business: a. Gross Income - b. Expenses = c. Net Income.							
Rent and other real property income:: a. Gross Income - b. Expenses = c. Net Income.							
Interest, dividends, and royalties.							
Pension and retirement income (NOT Social Security).							
Regular contributions from others to the household expenses, including child support.							
Unemployment Compensation.							
Social Security income.							
Other sources not already mentioned. Describe:							

Section 6 - Current Expenses *(Schedule J)*

1. Is this a Joint Filing with your Spouse?

☐ No ☐ Yes

2. Please list all dependents of you and your spouse with their age and relationship to you *(if applicable)*.

Relationship	Age	Who does the dependent live with?

Do you and your spouse live separately and maintain separate households? ☐ No ☐ Yes. If **yes**, please let your attorney know and they will have to provide you with an additional copy of this section to detail the expenses for the completely separate household.

The following questions ask for your expenses each month. If you are unsure of the amount you pay each month, but know the amount for a different period (per week, per day, every 2 months, etc.), write in the amount and the frequency that you pay the amount.

3. Do your expenses include another person's expenses other than yourself and your dependents?

☐ No ☐ Yes

Indicate how much you pay for each item each month:

4. Primary rent or home mortgage: $ ____________

   Does that amount include real estate taxes?

   ☐ No ☐ Yes

   If **no**, how much do you pay? $_________

   Does that amount include property, homeowner's, or renter's insurance?

   ☐ No ☐ Yes

   If **no**, how much do you pay? $_________

   Does that amount include any home maintenance, repair, or upkeep expenses?

   ☐ No ☐ Yes

   If **no**, how much do you pay? $_________

   Does that amount include any homeowner's association or condominium dues?

   ☐ No ☐ Yes

   If **no**, how much do you pay? $_________

5. Are there additional mortgage payments? $

   ☐ No ☐ Yes

   If **yes**, how much do you pay? ____________

6. Utilities:

   a. Electricity and heating fuel: $ ____________

   b. Water and sewer: $ ____________

   c. Telephone service/long distance: $ ____________

   d. Do you have any other utility bills? If **yes**, describe and enter monthly amount below:

   ____________ $ ____________

   ____________ $ ____________

   ____________ $ ____________

7. Food and housekeeping supplies $ ____________

8. Childcare and Children Education Costs $ ______
9. Clothing, laundry, and dry cleaning: $ ______
10. Personal care products and services: $ ______
11. Medical and dental expenses: $ ______
12. Transportation (do NOT include car payments): $ ______
13. Recreation,entertainment, newspapers, magazines, and books: $ ______
14. Charitable contributions and religious donations: $ ______
15. Insurance NOT deducted from wages or included in home mortgage payments or other real estate property expenses: (**Do not include amounts entered in Line 4 or Line 20**)
    a. Life insurance: $ ______
    b. Health insurance: $ ______
    c. Auto insurance: $ ______
    d. Other insurance *(describe and list monthly amount)*:
    ______ $ ______
    ______ $ ______
    ______ $ ______
16. Tax bills NOT deducted from wages or included in home mortgage payments or other real estate property expenses:
    ______ $ ______
    ______ $ ______
    ______ $ ______
17. Installment payments for car, furniture, etc. *(Describe)*:
    ______ $ ______
    ______ $ ______
    ______ $ ______
    ______ $ ______
    ______ $ ______
    ______ $ ______
18. Alimony, maintenance and support paid to others: $ ______
19. Payments for support of additional dependents not living at your home: $ ______
20. Other Real Estate Property expenses **NOT** included with Rent or Home Mortgage Property (**Do not include amounts entered in Line 4 or Line 5**) ______
    a. Mortgage payment on other Real Estate Property $ ______
    b. Taxes on other Real Estate Property $ ______
    c. Other Real Property, Homeowner's, or Renter's Insurance payments $ ______
    d. Home maintenance (including repairs and upkeep) $ ______
    e. Homeowner's association or condominium dues $ ______
21. Other expenses *(Describe)*: ***(please see "Additional Expenses" below before putting anything here)***
    ______ $ ______
    ______ $ ______
    ______ $ ______
    ______ $ ______
    ______ $ ______
    ______ $ ______

Describe any increase or decrease in expenses you expect to occur within the next year?

____

Due to the nature of the Federal Bankruptcy forms there is a special separate category of expenses that needs to be filled out with some unusual numbering. Please ignore the numbering and fill out everything that you can below:

	Additional Expenses *(707(b)Expenses for Form 122)*		
17.	Mandatory payroll deductions not already listed:		
	______________________	$	__________
	______________________	$	__________
	______________________	$	__________
19.	Court ordered payments not already listed:		
	______________________	$	__________
	______________________	$	__________
	______________________	$	__________
20.	Education for employment or for a physically or mentally challenged child:	$	__________
21.	Child care (*baby sitting, day care, nursery & preschool, etc.)*:	$	__________
25.	Disability Insurance (*if not listed above)*:	$	__________
	Health Savings Account:	$	__________
26.	Care for elderly, chronically ill or disabled family members:	$	__________
27.	Protection from family violence:	$	__________
29.	Education expense for your children under 18:	$	__________
41. *(c13s)*	Non-mandatory contributions to retirement accounts *(including loan repayments)*:		
	______________________	$	__________
	______________________	$	__________
	______________________	$	__________

Section 7 - Statement of Financial Affairs *(Form 107)*

If you are filing jointly with your spouse, include information about both you and your spouse.

1. List every address where you have lived other than where you live now during the last **3 years**.

☐ NONE

Previous Address(es)	From	To

2. If you lived with a spouse or domestic partner in a community property state or territory (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, and Wisconsin) within the last **8 years**, list the state or territory where you lived and the name and current address of your spouse or domestic partner.

☐ NONE

Community Property State or Territory	Name and Address of Spouse or Domestic Partner

3. List the total amount of income that you received from all jobs and all businesses, including part-time activities, during this year and the two previous calendar years.

☐ NONE

Debtor

Period	Source of income	Gross income (*before deductions and exclusions*)
January 1 of this year through date of commencement of case	☐ Wages, commissions, bonuses, tips ☐ Operating a business	
Last year (January 1 - December 31)	☐ Wages, commissions, bonuses, tips ☐ Operating a business	
The year before last (January 1 - December 31)	☐ Wages, commissions, bonuses, tips ☐ Operating a business	

Spouse *(if applicable)*

Period	Source of income	Gross income (before deductions and exclusions)
January 1 of this year through date of commencement of case	☐ Wages, commissions, bonuses, tips ☐ Operating a business	
Last year (January 1 - December 31)	☐ Wages, commissions, bonuses, tips ☐ Operating a business	
The year before last (January 1 - December 31)	☐ Wages, commissions, bonuses, tips ☐ Operating a business	

4. List any other income that you received during this year and the two previous calendar years.

☐ NONE

Debtor

Period	Source of income (describe)	Gross income (before deductions and exclusions)
January 1 of this year through date of commencement of case		
Last year (January 1 - December 31)		
The year before last (January 1 - December 31)		

Spouse *(if applicable)*

Period	Source of income	Gross income (before deductions and exclusions)
January 1 of this year through date of commencement of case		
Last year (January 1 - December 31)		
The year before last (January 1 - December 31)		

5. **If your debts are primarily consumer debts *(i.e. non-business)***, list each creditor to whom you paid a total of **$600** or more within the last **90 days**. Do not include payments for domestic support obligations, such as child support and alimony.

☐ NONE

Name and Address of Creditor	Dates of Payment	Total Amount Paid	Amount Still Owed	Was this payment for ...
				☐ Mortgage ☐ Car ☐ Credit card ☐ Loan repayment ☐ Suppliers or vendor ☐ Other:

Name and Address of Creditor	Dates of Payment	Total Amount Paid	Amount Still Owed	Was this payment for ...
				☐ Mortgage ☐ Car ☐ Credit card ☐ Loan repayment ☐ Suppliers or vendor ☐ Other:

Name and Address of Creditor	Dates of Payment	Total Amount Paid	Amount Still Owed	Was this payment for ...
				☐ Mortgage ☐ Car ☐ Credit card ☐ Loan repayment ☐ Suppliers or vendor ☐ Other:

6. **If your debts are primarily non-consumer debts *(i.e. business)***, list each creditor to whom you paid a total of **$6,425** or more in one or more payments within the last **90 days**. Do not include payments for domestic support obligations, such as child support and alimony.

☐ NONE

Name and Address of Creditor	Dates of Payment	Total Amount Paid	Amount Still Owed	Was this payment for ...
				☐ Mortgage ☐ Car ☐ Credit card ☐ Loan repayment ☐ Suppliers or vendor ☐ Other:

Name and Address of Creditor	Dates of Payment	Total Amount Paid	Amount Still Owed	Was this payment for ...
				☐ Mortgage ☐ Car ☐ Credit card ☐ Loan repayment ☐ Suppliers or vendor ☐ Other:

Name and Address of Creditor	Dates of Payment	Total Amount Paid	Amount Still Owed	Was this payment for ...
				☐ Mortgage ☐ Car ☐ Credit card ☐ Loan repayment ☐ Suppliers or vendor ☐ Other:

7. List all payments that you made within the past **1 year** to any "insider." *("Insiders" include your relatives, your business partners and their relatives, your corporations, or your affiliates.)*

☐ NONE

Name and Address of Insider	Dates of Payment	Total Amount Paid	Amount Still Owed	Reason for payment

8. List all payments or transfers of property that you made within the past **1 year** that benefitted an "insider."

☐ NONE

Name and Address of Insider	Dates of Payment	Total Amount Paid	Amount Still Owed	Reason for payment (*include the creditor's name*)

9. List any lawsuits, court actions, or administrative proceedings to which you are or were a party within the past **1 year**.

☐ NONE

Case Title and Case Number	Nature of the Case	Court or Agency and Location	Status or Disposition

10. Describe all property that has been repossessed, foreclosed, garnished, attached, seized, or levied within the past **1 year**.

☐ NONE

Creditor's Name and Address	Description and Value of Property	Date	Explain what happened
			☐ Property was repossessed ☐ Property was foreclosed ☐ Property was garnished ☐ Property was attached, seized, or levied

Creditor's Name and Address	Description and Value of Property	Date	Explain what happened
			☐ Property was repossessed ☐ Property was foreclosed ☐ Property was garnished ☐ Property was attached, seized, or levied

11.List all setoffs made by any creditor, including a bank or financial institution, against a debt or deposit within **90 days** before the filing of this case. Include any refusals by a creditor to make a payment because you owed a debt.

☐ NONE

Creditor's Name and Address	Description of action taken by creditor	Date Action Taken	Setoff Amount and Last 4 Digits of Account Number

12. Within the past **1 year**, was any of your property in the possession of an assignee for the benefit of creditors, a court-appointed receiver, a custodian, or another official?

☐ No

☐ Yes

13. List any gifts that you made within the past **2 years** that have a total value of more than $600 per person.

☐ NONE

Name and Address of Recipient	Relationship to You	Description of Gifts	Dates Gifts Given	Value

14. List any gifts or contributions that you made to a charity within the past **2 years** that have a total value of more than $600.

☐ NONE

Name and Address of Charity	Description of Contribution	Contribution Date	Value

15. List all losses from fire, theft, or other disaster, or gambling within the past **1 year or since the filing of this case.**

☐ NONE

Description of Property and How Loss Occurred	Description of any Insurance Coverage (*include the amount that insurance has paid*)	Date of Loss	Value of Property Lost

16. List all payments made or property transferred by you or by someone acting on your behalf to anyone you consulted about filing for bankruptcy or preparing a bankruptcy petition within the past **1 year**. Include any attorneys, bankruptcy petition preparers, or credit counseling agencies.

☐ NONE

Name and Address of Person Paid	Name of Person Who Made the Payment, if Not You	Description and Value of Any Property Transferred	Date of Payment or Transfer	Amount of Payment

17. List all payments made or property transferred by you or by someone acting on your behalf within the past **1 year** to anyone who promised to help you deal with your creditors or to make payments to your creditors.

☐ NONE

Name and Address of Person Paid	Name of Person Who Made the Payment, if Not You	Description and Value of Any Property Transferred	Date of Payment or Transfer	Amount of Payment

18. List all property, other than property transferred in the ordinary course of your business or financial affairs, that you sold, traded, or transferred either absolutely or as a security within the past **2 years**.

☐ NONE

Name and Address of Person Who Received the Transfer/ Relationship to You	Description and Value of Property Transferred	Describe Any Property or Payments Received or Debts Paid in Exchange	Date of Transfer

19. List all property you transferred within the past **10 years** to a self-settled trust or a similar device of which you are a beneficiary.

☐ NONE

Name of Trust	Description and Value of Property Transferred	Date of Transfer

20. List all financial accounts and instruments held in your name or for your benefit that were closed, sold, moved, or transferred within the past **1 year**.

☐ NONE

Name and Address of Institution	Last 4 Digits of Account Number	Type of Account or Instrument	Date Account Was Closed, Sold, Moved, or Transferred	Last Balance Before Closing or Transfer
		☐ Checking ☐ Savings ☐ Money Market ☐ Brokerage ☐ Other:		

Name and Address of Institution	Last 4 Digits of Account Number	Type of Account or Instrument	Date Account Was Closed, Sold, Moved, or Transferred	Last Balance Before Closing or Transfer
		☐ Checking ☐ Savings ☐ Money Market ☐ Brokerage ☐ Other:		

21. List each safe deposit box or other depository for securities, cash, or other valuables that you have had within the past **1 year**.

☐ NONE

Name and Address of Financial Institution	Name and Address of Anyone With Access to Box or Depository	Description of Contents	Do You Still Have It?
			☐ No ☐ Yes

22. List any storage unit or place other than your home in which you have stored property within the past **1 year**.

☐ NONE

Name and Address of Storage Facility	Name and Address of Anyone With Access to Box or Depository	Description of Contents	Do You Still Have It?
			☐ No ☐ Yes

23. List all property that you hold or control that is owned by someone else.

☐ NONE

Name and Address of Owner	Location of Property	Description of Property	Value

24. List every site for which you received notice by a governmental unit that you may be liable under or in violation of an environmental law. Include the name and address of the governmental unit, the date of the notice, and, if known, the environmental law.

Environmental law means any federal, state, or local statue or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil surface water, ground water, or other medium, including, statutes or regulations controlling the cleanup of these substances, wastes, or material.

Site means any location, facility, or property as defined under any environmental law, whether you own, operate, or utilize it or used to own, operate, or utilize it, including disposal sites.

Hazardous material means anything an environmental law defines as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term.

☐ NONE

Site Name and Address	Name and Address of Governmental Unit	Environmental Law, If You Know It	Date of Notice

25. List the name and address of every site for which you have notified a governmental unit of a hazardous material release. Include the name and address of the governmental unit to which the notice was sent, the date of the notice, and, if know, the environment law.

☐ NONE

Site Name and Address	Name and Address of Governmental Unit	Date of Notice	Environmental Law

26. List all judicial or administrative proceedings, including settlements and orders, under any environmental law to which you have been a party. Include the case title and the case number, the court or agency, the nature of the case, and the status.

☐ NONE

Case Title and Case Number	Name and Address of Court or Agency	Nature of the Case	Status of the Case
			☐ Pending ☐ On Appeal ☐ Concluded

27. List the name and address, nature of business, name of accountant or bookkeeper, Employer Identification Number (EIN), and dates of operation of every business you owned or with which you had any of the following connections within the past **4 years**.

- ☐ A sole proprietor or self-employed in a trade, profession, or other activity, either full-time or part-time
- ☐ A member of a limited liability company (LLC) or limited liability partnership (LLP)
- ☐ A partner in a partnership
- ☐ An officer, director, or managing executive of a corporation
- ☐ An owner of at least 5% of the voting or equity securities of a corporation

☐ NONE

Business Name and Address	Nature of Business	Name of Accountant or Bookkeeper	Employer Identification Number (EIIN)	Beginning and End Dates of Operation

28. List all financial institutions, creditors, or other parties to which you gave a financial statement about your business within the past **2 years**.

☐ NONE

Name and Address	Date Issued

Documents Required Prior to Completion of Bankruptcy Petition

Thank you for meeting with us. To fully explain your options in bankruptcy at your next appointment, we need you to bring in the items marked with an "X" below.

- ☐ Pay stubs, a payroll print-out, or other evidence of ANY income received from ___________ to ___________*
- ☐ Federal and state income tax returns or transcripts for the following years: ______________________
- ☐ Bank and other financial account statements for the past 90 days**
- ☐ Copy of the deed or title policy for all real estate titled in your name
- ☐ Mortgage statement (showing monthly payment, balance due, maturity date, and arrears, if any)
- ☐ Current homeowners insurance policy (declaration page)
- ☐ Recent real estate tax bill
- ☐ Information about the sale of ANY real estate in the past 10 years (settlement statement showing sale price and amount you received)
- ☐ Recent appraisal or market analysis for any real estate or mobile home you own
- ☐ Lease or rental agreement(s), including any eviction notices
- ☐ Copies of any stocks or bonds (including those held for a minor child)
- ☐ Information about any bank or other financial account you have closed in the past year
- ☐ Current appraisal of each vehicle owned
- ☐ Loan or lease statement for each vehicle you own (showing monthly payment, balance due, and maturity date)
- ☐ Copy of the title to each vehicle you own
- ☐ Current automobile insurance policy (declaration page)
- ☐ Copy of divorce decree and property settlement agreement or support order
- ☐ Recent statements for all 401(k), pension, annuity, other retirement plans
- ☐ Recent statements for any educational IRAs or state-qualified tuition plans
- ☐ Term life insurance (declaration pages showing premiums and death benefit)
- ☐ Whole life insurance (statement showing premiums, current cash value, and death benefit)
- ☐ Self-Employed: Breakdown of all business income and expenses from ___________ to ___________
- ☐ Current student loan statement
- ☐ All unpaid bills you can find, including collections and attorney letters and medical bills
- ☐ Copies of any pending lawsuits, wage garnishments, wage assignments, or other legal actions, including foreclosure lawsuits pertaining to real estate
- ☐ Copies of any judgments obtained against you
- ☐ Documents regarding any workman's compensation or personal injury claim
- ☐ Certificate of credit counseling
- ☐ Power of Attorney for ____________________
- ☐ ____________________________________

* We need pay stubs up to the date your case is filed with the court. Please save all new pay stubs you receive. If you are filing by yourself, we will need pay information for your non-filing spouse for the same time period. In addition to pay stubs, bring all other documentation of household income such as child support, Social Security, pension, disability, unemployment, public assistance, etc.

** Make sure that you also provide us with bank statements for any accounts that you hold jointly (spouse, parent, child, etc.)

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General Information on Required Bankruptcy Courses

In 2005, Congress passed the Bankruptcy Abuse Prevention and Consumer Protection Act. The Act requires that individuals filing for bankruptcy complete a credit counseling course prior to filing. It also requires a debtor education course after filing but prior to discharge.

Credit Counseling

Congress hoped that the credit counseling course would provide information that might help filers find alternative solutions to bankruptcy. The course focuses on income, expenses and debts to assess if you are able to pay off your debt by way of a repayment plan thus avoiding bankruptcy. You will want to have your financial information gathered as the credit counseling provider will require it to determine whether a repayment plan is feasible for you. It is good to remember that you are only required to attend and complete the course: you do not have to follow the credit counseling provider's recommendations and repayment plan. Most often the course determines that you have no other option than bankruptcy. The course is available online or by phone and must be completed within 180 days prior to filing. If you take the course online or through an automated phone system you will be required to talk to a counselor over the phone, by live chat, or email after the course. They will provide you with a written budget analysis and recommendations based on your specific financial situation. Your course will not be complete until you talk to the counselor.

Debtor Education

Congress wanted to provide an educational class on money management to those who have filed for bankruptcy so they can gain tools and knowledge to help them avoid bankruptcy in the future. The course will focus on your financial life after bankruptcy and again you will want to have your financial information gathered as you will be creating a budget, learning best practices on using credit, creating a savings account for emergencies, and other money management tips. This course is also available online or by phone. If you file a chapter 7 you will need to take the course within 60 days after your 341 meeting and if you file a chapter 13 you will need to take the course before your last payment. If you take the debtor education course online or through an automated phone system you will be required to take and pass a test after the course (70% or better is considered passing).

Certificates of Completion

You will need to get certificates of completion from each provider in order to demonstrate that you have taken the courses. Your attorney must ensure that you complete each course and file your certificates of completion with the bankruptcy court. The credit counseling certificate must be filed before your bankruptcy can begin and the debtor education certificate must be filed before your case and debts can be discharged.

Faculty

Sean Ferry is a managing bankruptcy attorney with Robertson, Anschutz, Schneid, Crane & Partners, PLLC in San Diego. He previously was a contract attorney and law clerk with Bruce Wilson, APLC and a law clerk with Scheufler Law. Mr. Ferry received his B.A. in political theory from Michigan State University and his J.D. from California Western School of Law.

Rebecca R. Garcia is a chapter 13 trustee in Oshkosh, Wis. She was appointed on Dec. 1, 2014, as the standing chapter 13 trustee and April 1, 2016, as the standing chapter 12 trustee. Prior to her appointment, Ms. Garcia was a staff attorney for Mary B. Grossman, the chapter 13 trustee in Milwaukee from 2002-14. She has been practicing in the area of consumer bankruptcy since 1996. Prior to 2002, she represented debtors in consumer cases. Ms. Garcia is a past member of the board of the Bankruptcy, Insolvency and Creditors Rights Section of the State Bar of Wisconsin and a member of the National Association of Chapter 13 Trustees. She received her B.A. from the University of Wisconsin Platteville in 1992 and her J.D. from Marquette University in 1996.

Hon. Brian D. Lynch is a U.S. Bankruptcy Judge for the Western District of Washington in Tacoma, sworn in on June 1, 2010. He served as chief bankruptcy judge from Oct. 1, 2014, to Sept. 30, 2019. Judge Lynch is the chair of the NCBJ's Liaison Committee with the U.S. Trustee. He is also the Ninth Circuit representative to the Bankruptcy Judges Advisory Group. In 2018, Judge Lynch was selected by the NACTT to receive the Hon. Ralph Kelley Award for contributions to the chapter 13 community and the NACTT. Prior to his service as a bankruptcy judge, he was the chapter 13 trustee for the Portland Division of the District of Oregon bankruptcy court and the standing chapter 12 trustee for Oregon. Prior to that, practiced in the fields of bankruptcy law and creditors' rights. Judge Lynch received his J.D. in 1975 from Georgetown University Law Center.

Randy Nussbaum is an attorney with Sacks Tierney P.A. in Scottsdale, Ariz., and has assisted individuals and businesses with complex bankruptcy protection (debtor and creditor), transaction and litigation matters for nearly 40 years. He has represented secured and unsecured creditors, surety companies, creditors' committees, lessors, professional athletes, doctors, lawyers, and trustees in chapter 7, 11 and 13 proceedings, including adversary actions (bankruptcy litigation). The cases have involved such diverse matters as real estate, construction, manufacturing, trucking, asset-based lending, bankruptcy related to divorce, and high-value and complex individual bankruptcies. Mr. Nussbaum is a Certified Bankruptcy Specialist by the Arizona Board of Legal Specialization and is Board Certified in Business Bankruptcy Law by the American Board of Certification. He has been named to the *Super Lawyers* "Top 50" list of Arizona attorneys multiple times and has been listed in *The Best Lawyers in America* annually since 2010; he was selected as its "Lawyer of the Year" (Scottsdale) for Bankruptcy and Creditor Debtor Rights in 2019 and for Bankruptcy Litigation in 2021. Mr. Nussbaum is a 1990 graduate of Scottsdale Leadership and has volunteered for the organization for nearly 30 years, serves on its advisory board, and is a recipient of the prestigious Frank W. Hodges Alumni Achievement Award. He also served as a Sterling Awards Jurist for the Scottsdale Chamber of Commerce and received the Chamber's Volunteer of the Year Award for 2017. In 2018, he was inducted into the Scottsdale History Hall of Fame. Mr. Nussbaum received his B.A. *cum* *laude* and in 1977 his J.D. in 1980 from Arizona State University, graduating in the top 25 percent of his class.

Julie Philippi is the standing chapter 13 trustee for the Western District of New York in Buffalo, and has spent most of her career representing consumer debtors in chapter 7, 12 and 13 cases. Prior to her appointment, she was a staff attorney for Rod Danielson, chapter 13 trustee for the Riverside Division of the Central District of California, from 2002-07. Ms. Philippi also has experience in chapter 11 cases, bankruptcy litigation and chapter 7 trustee representation. She was formerly certified as a specialist in Bankruptcy Law by the State Bar of California and is Board Certified in Consumer Bankruptcy Law by the American Board of Certification. Ms. Philippi received her B.A. in international studies from the University of South Carolina and her J.D. from the University of California, Berkeley, Boalt Hall School of Law.