

MEMORANDUM CONCERNING TRUSTEE OBJECTIONS TO CHAPTER 13 PLANS AT CONFIRMATION:
How to Avoid and/or Resolve Such Objections

The information as contained in this Memorandum is being provided as a courtesy to the debtors and their attorneys in order to assist in the administration of their cases by helping them to understand the objections raised by the Trustee in response to the debtors' proposed Chapter 13 plans. The purpose of this Memorandum is to inform the debtors and their attorneys of the following:

- a. *the Trustee's basis of each of the standard objections as contained in the current version of the Trustee's Confirmation Report, Witness & Exhibit List (the "Trustee's Report" herein) filed in every case;*
- b. *the Trustee's recommendations on what the debtors should do to avoid each of these objections;*
and
- c. *the Trustee's recommendations on what the debtors should do to resolve each of these objections if such are raised by the Trustee.*

The Trustee intends that the recommendations contained herein are nothing more than general guidelines. The Trustee reserves the right to make any objection to a proposed Chapter 13 plan that he feels is appropriate, depending upon the specific circumstances of the case, even if the debtors appear to have followed the recommendations as contained herein on how to avoid the given objection. The Trustee also reserves the right to continue to prosecute any objection to a proposed Chapter 13 plan that he feels is appropriate, depending upon the specific circumstances of the case, even if the debtors appear to have followed the recommendations as contained herein on how to meet the given objection.

The debtors and their attorney are, of course, free to follow these recommendations; come up with their own solutions in an effort to resolve these objections; and/or ultimately present the issues to the Bankruptcy Court for resolution. The Trustee cannot give the debtors or their attorneys any type of legal advice and nothing contained herein should be considered by the debtors or their attorneys for that purpose. Ultimately, the debtors must rely upon their attorneys for advice concerning legal matters pertaining to their case.

This Memorandum is divided into three sections: Section 1 (Business Case Certification); Section 2 (No Objection Trustee Report); and Section 3 (Trustee Objections).

References herein to "LBR" refer to the Local Rules of Bankruptcy Procedure as adopted by the Bankruptcy Court for the Eastern District of Texas.

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SECTION 1
Business Case Certification

Paragraph IV of the current version of the Trustee's Report states the following:

X IV. **The Trustee certifies that this is a case involving a debtor engaged in business.**

The Trustee utilizes this section to certify that, in the opinion of the Trustee, the case involves debtors that are engaged in a business pursuant to the provisions of LBR 2016(h)(1)(A) and (B) thereby allowing for an increase in the amount of \$500.00 in the "no-look" debtors' attorney's fees as set forth

therein. In the event the Trustee has not checked off this certification and the debtors feel that the underlying case does in fact involve debtors engaged in business, the debtors' attorney should point this out to the Trustee either at the pre-confirmation meetings or at the confirmation hearing. If the Trustee agrees that the case is a business case and if the case is otherwise ready to be confirmed, an additional provision should be added to the confirmation order providing for the Trustee's certification that the case is in fact a business case justifying the \$500 enhanced fee. In the event the Trustee does not agree with the debtors' attorney, the debtors' attorney should request that the matter be placed on the "call" docket so that the issue (probably testimony) can be submitted to the Court for determination.

Note: In order to be paid this additional \$500.00 in fees, the attorney must request the additional \$500.00 in fees in the underlying Chapter 13 plan. For example, if the underlying plan fails to request the additional \$500.00, the debtors' attorney will not be paid this additional \$500.00 even if the debtors are self-employed and the Trustee certifies that the case is a business case. In such a case, the Trustee shall pay the debtors' attorney in accordance to the terms of the confirmed plan without the additional \$500.00 for business fees.

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SECTION 2

No Objection Trustee Report

Paragraph V of the current version of the Trustee's Report states the following:

V. The Trustee makes the following recommendations concerning the confirmation of the plan:

X The plan should be confirmed, subject to plan payments being current at the time of the scheduled Confirmation Hearing.

By placing an "X" in this box, the Trustee indicates that he has no objections to the proposed plan and is supporting confirmation of the proposed plan (subject to the debtors being current on their plan payments at the time of the scheduled confirmation hearing). Upon receipt of such "no-objection" Trustee's Report and if the debtors are current on their plan payments and if there are no other pending objections to confirmation of the plan, the debtors' attorney should forward a proposed electronic copy of a confirmation order substantially in conformity with the Court's Local Form 3015-b with his or her electronic signature at the end of same to the Trustee at conforders@ch13tyler.com. If the Trustee is in agreement that the case is ready to be confirmed, the Trustee will add his electronic signature to the proposed confirmation order and will cause such to be uploaded.

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SECTION 3

Trustee Objections

Paragraph V of the current version of the Trustee's Report also has an alternative choice to be used where the Trustee is objecting to confirmation of the proposed plan followed by sub-paragraphs (numbered 1 through 16) thereby checking off the ones applicable to the plan. In that regard, the current version of the Trustee's Report states the following:

X The Trustee objects to confirmation on the following grounds:

X 1. Debtor(s) have failed to file a plan pursuant to LBR 3015(a) and/or provide sufficient notice of said plan pursuant to LBR 3015(f) in order to be considered for upcoming confirmation hearing.

This objection actually contains two objections. The first objection applies where the debtors have failed to file a plan that complies with LBR 3015(a):

a. LBR 3015(a) requires the debtors to propose a Chapter 13 plan in a format which substantially conforms to Local Form 3015-a. If the debtors use a form Chapter 13 plan that does not conform to Local Form 3015(a), the Trustee will raise this objection.

b. To avoid this objection, the debtors should file a Chapter 13 plan that substantially conforms to Local Form 3015-a.

c. If the Trustee raises this objection and if the debtors did not file a plan that substantially conforms to Local Form 3015-a, the debtors will, of all probability, either take an initial denial of the proposed plan (assuming that this is the first time the case is up for confirmation) or file an amended plan that does comply with LBR 3015(a) and request a continuance (with such a continuance counting as an initial denial) to allow the notice period to run for the amended plan.

Note: If the case has had a previous denial, the debtors should request the Trustee to put the matter on the "call" docket so that the debtors may request the Court for relief from the previous initial denial order to allow the debtors one last opportunity to confirm a plan that complies with LBR 3015(a). The Trustee may or may not oppose the request, depending upon the totality of the circumstances.

The second part of this objection applies where the debtors have failed to provide sufficient notice of an amended Chapter 13 plan as required by LBR 3015(f):

a. LBR 3015(f) requires 35 days' notice before the confirmation hearing if the debtors modify their Chapter 13 plan before the confirmation hearing. The Trustee raises this objection if the debtors fail to provide this full 35 days' notice.

b. The debtors may avoid this objection by filing any amended plans with the full 35 days' notice prior to the confirmation hearing.

c. If raised, the debtors may try to convince the Court to either confirm the amended plan without the full 35 days' notice or request a continuance (which will count as an initial denial). If the debtors decide to request that the proposed amended plan should be confirmed without the full 35 days' notice, the matter needs to be placed on the "call" docket wherein the debtors must convince the Court that one of the three exceptions as set forth in LBR 3015(f) applies.

Note: The three exceptions as set forth in LBR 3015(f) to allow the Court to confirm a plan without the full 35 days' notice are as follows:

(a) the modification does not adversely affect any creditors;

- (b) any adversely affected creditor has consented; or
- (c) the adverse impact of the modification on creditors is de minimis.

LBR 3015(f) provides that only the Court (not the Trustee) has the ability to make the findings to allow the Court to confirm the plan without the full 35 days' notice.

The Trustee may or may not oppose a request to confirm an amended plan without the full 35 days' notice, depending upon the totality of the circumstances.

X 2. Debtor(s) have failed to provide the following:

X Copies of all payment advices or other evidence of payment received by Debtor(s) in the 60 days prior to filing of the petition pursuant to LBR 1007(e).

a. LBR 1007(e) provides that all payment advices or other evidence of payment from any employer of a Chapter 13 debtor as required by 11 U.S.C. 521(a)(1)(B)(iv) be provided to the Trustee at least seven (7) days prior to the first date set for the 341 meeting. The Trustee will raise this objection at confirmation when the debtors have failed to provide the Trustee with a copy of these payment advices even after the creditors' meeting.

b. The debtors may avoid this objection by providing the payment advices to the Trustee at least seven (7) days prior to the first date set for the 341 meeting.

c. If raised, the Trustee will waive this objection if the debtors provide the payment advices prior to confirmation and if the Trustee and his staff have sufficient time to review the information prior to confirmation.

Note: If there is not sufficient time to review the payment advices (especially in light of the debtors' failure to timely provide such prior to the 341 meeting and in light of the many other cases that are on the confirmation docket), the Trustee will not waive the objection and will request confirmation to be denied. Neither the Trustee or his staff will take time from other duties to review documents that should have been provided to the Trustee prior to the 341 meeting.

X Copy of the Federal Income Tax Return required under applicable law for the most recent tax year ending immediately before the commencement of the case for which a Federal Income Tax Return was filed pursuant to 11 USC 521(e)(2)(A)(i).

a. 11 U.S.C. 521(e)(2)(A)(i) requires the debtors to provide the Trustee (not later than 7 days before the date first set for the first creditors' meeting) with a copy of their Federal income tax return required under applicable law (or a transcript thereof) for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed. This objection is raised

when the debtors have failed to provide the Trustee with a copy of such return even after the creditors' meeting.

Note: 11 U.S.C. 1308(a) requires the debtors to file all of their tax returns due under applicable non-bankruptcy law for all taxable periods ending during the 4-year period ending on the date of the filing of the petition. These returns should be filed not later than the day before the date first set for the first creditors' meeting. 11 U.S.C. 1308(e) sets forth the consequence of the debtors' failure to comply with these provisions (i.e., the dismissal or conversion to Chapter 7 of a case upon the request of any party in interest or the Trustee).

b. The debtors may avoid this objection by providing the requested tax return to the Trustee at least seven (7) days prior to the first date set for the 341 meeting.

c. If raised, the Trustee may waive this objection if the debtors provide the payment advices prior to confirmation and if the Trustee and his staff have sufficient time to review the tax return prior to confirmation.

Note: If there is not sufficient time to review the tax return (especially in light of the debtors' failure to timely provide such prior to the 341 meeting and in light of the many other cases that are on the confirmation docket), the Trustee will not waive the objection and will request confirmation to be denied. Neither the Trustee or his staff will take time from other duties to review documents that should have been provided to the Trustee prior to the 341 meeting.

Note: If the debtors failed to provide a copy of the tax return prior to the scheduled 341 meeting, the debtors had, of all probability, requested the Trustee not to conclude the creditors' meeting. Upon providing the Trustee with a copy of the missing tax return, the debtors should request the Trustee to conclude the creditors' meeting upon the Trustee's review of the missing return. The proposed plan may not be confirmed if the creditors' meeting has not been concluded.

X 3. Trustee has requested amendments, documents, information, and/or verification as outlined in paragraph II, Meeting of Creditors, as set forth on page 1 hereof. To the extent said amendments, documents, information and/or verifications have not been timely provided, the Trustee alleges that the filing of the petition and the proposed plan for reorganization lack good faith pursuant to 11 USC 1325 and/or constitutes a breach by the Debtor(s)' duties as set forth in 11 USC 521.

a. In his initial letter to the debtors and their attorneys, the Trustee provides the debtors with a list of documents that the debtors should provide to the Trustee prior to the commencement of the creditors' meeting. In addition, during the course of the Trustee's review of the schedules and other documents as filed in the underlying case by the debtors, the Trustee may also request additional documents and/or amendments to schedules or other documents in order to be consistent with the testimony as given by the debtors at the creditors' meeting. The Trustee lists on the first page of the Trustee's Report all of the

documents and/or amendments that the Trustee has requested but not yet received. This objection is raised by the Trustee when the debtors have either failed to provide the requested documents and/or filed the requested amendments as listed on the first page of the Trustee's Report.

b. The debtors may avoid this objection by providing the requested documentation to the Trustee prior to the scheduled creditors' meeting and, if applicable, timely file or provide the amended schedules or other documents after the creditors' meeting.

c. If raised, the Trustee may waive this objection if the debtors provide the missing documentation prior to confirmation and if the Trustee and his staff have sufficient time to review such prior to confirmation. The Trustee may also waive this objection, where applicable, if the debtors file the requested amendments and if the Trustee and his staff have sufficient time to review such prior to confirmation. For any amendments, the debtors will need to file the appropriate electronic declaration page. If the debtors disagree that the requested documentation need to be provided and/or the requested amendments need to be filed, the debtors may request the Trustee to waive the request or, if the Trustee declines to waive such, the debtors may submit the issue to the Court for determination.

Note: If there is not sufficient time to review the documents and/or amendments [especially in light of the debtors' failure to timely provide such prior to (or after, as the case may be) the 341 meeting and in light of the many other cases that are on the confirmation docket], the Trustee will not waive the objection and will request confirmation to be denied. The Trustee or his staff will not take time from other duties to review documents and/or amendments that should have been provided to the Trustee prior to the 341 meeting and/or within a reasonable time thereafter.

X 4. Trustee has not been able to conduct and/or conclude a Meeting of Creditors pursuant to 11 USC 341 due to:

X Debtor(s)' failure to appear.

X Debtor(s)' attorney's failure to appear.

X Failure to provide requested documents to the Trustee in sufficient time for Trustee to review prior to scheduled meeting.

In such cases, the Trustee reserves the right to amend this Trustee's Report once the Meeting of Creditors is concluded.

a. 11 U.S.C. 343 requires the debtors to appear and submit to examination under oath at the creditors' meeting as required pursuant to the provisions of 11 U.S.C. 341. If the debtors and/or their attorney fail to appear or the debtors fail to timely provide documentation to the Trustee which in turn prevents the Trustee from conducting the creditors' meeting and/or concluding the creditors' meeting, the Trustee will raise this objection with the appropriate sub-section checked off.

b. The debtors may avoid this objection by attending and submitting to examination under oath at their scheduled creditors' meeting and/or timely providing to the Trustee any requested documents in sufficient time for the Trustee and his staff to review such.

c. If raised, the Trustee may waive this objection if the creditors' meeting has been rescheduled and held in accordance with the Trustee's procedures concerning creditors' meetings and/or, if applicable, the debtors have provided the missing documentation and the Trustee and his staff have been able to review such and the Trustee has no further questions for the debtors.

Note: If the creditors' meeting has not been concluded, the debtors should request the Trustee to conclude the creditors' meeting upon the Trustee's review of the missing documentation. The proposed plan may not be confirmed if the creditors' meeting has not been concluded.

X 5. Debtor(s) have insufficient disposable income to fund the proposed plan for the following reason(s):

X Per budget.

a. The proposed plan must be feasible by being supported with a budget on file that shows that the debtors will be able to make the plan payments as set forth therein. The Trustee will raise this objection if the debtors' budget indicates that the debtors' net monthly income as reflected on their budget is not sufficient to allow the debtors to make their plan payments as set forth in the proposed plan.

b. The Trustee recommends that the debtors avoid this objection by preparing and filing a budget with the proposed plan that shows that the plan payments are feasible under the plan (along with an indication in the budget of any projected increases of income or decreases in expenses that will support any step-up in plan payments as set forth in the plan).

c. If raised, the Trustee may waive this objection upon the debtors preparing and filing a new budget (or such other evidence) that shows that the plan payments are feasible under the proposed plan.

x Unemployment income and/or other income as listed on Schedule I will or has ended.

a. The Trustee raises this objection when the budget on file that is being used to support the feasibility of the proposed plan includes "temporary" income (for example, unemployment income) that will ultimately run out or cease.

b. The Trustee recommends that the debtors avoid this objection by either preparing and filing a new budget that removes this temporary income (if the debtors are no longer receiving such) or including a provision in the proposed confirmation order requiring the debtors to file a new budget when the debtors obtain new employment.

c. *If raised, the Trustee may waive this objection if the debtors meet one of the two options as set forth in subparagraph "b" above.*

X Failed to make post petition mortgage payments and/or other direct payments as set forth in the plan by the time of the 341 meeting or at such other time prior to confirmation that comes to the Trustee's attention.

a. *The Trustee will raise this objection if the debtors have failed to make their post-petition mortgage payments by the time of the debtors' creditors' meeting.*

b. *The Trustee recommends the debtors avoid this objection by making all of their post-petition mortgage payments.*

c. *If raised, the Trustee may waive this objection if the debtors provide the Trustee with evidence that the debtors are now making their on-going monthly mortgage payments.*

X Failed to provide the Trustee and/or the Court with proper certification that all post-petition payments (mortgage, domestic support obligations, auto payments, etc.) are being paid direct by the debtors as provided for in the proposed Chapter 13 Plan.

a. *Recently, some Chapter 13 plans have been confirmed where the debtors have failed to make their on-going payments direct in accordance with the terms of their plan (in particular, the debtors' mortgage payments). This issue subsequently comes to the attention of the Trustee and the Court when the affected creditor (usually, the mortgage company) files its motion to lift stay thereby alleging that these post-petition direct payments had not been made. Starting with cases filed on or after 5/1/11, the Trustee is requesting every debtor, where applicable, to provide the Trustee with a certification, signed under penalty of perjury, that the debtor has made all post-petition direct payments in accordance with the terms of the debtor's plan. The Trustee will raise this objection upon the debtors' failure to provide this certification.*

Note: The Court will, of all probability, be adopting its own certification form for the debtors and require each debtor to file such with the Court thereby confirming all such payments have been made. The certification that the Trustee is requesting will apply until such time as the Court adopts its own form and the Trustee is not requesting that such Certification be filed with the Court.

b. *The Trustee recommends the debtors avoid this objection by their making all of their post-petition direct payments in accordance to the terms of their plan and to provide the Trustee with the requested certification confirming that these payments have been made.*

Note: The Trustee has provided a suggested form Certification on his website at www.ch13tyler.com under the tab entitled "Forms". As noted above, this form Certification will be used until such time as the Court adopts its own form and will not be filed with the Court. The Trustee contemplates that, upon the Court's adoption of its own form, the Court will require such to be filed with the Court.

c. *If raised, the Trustee may waive this objection if the debtors provide the Trustee with evidence that the debtors have made all of their post-petition direct payments as provided in their plan.*

X Lump sum payment is speculative.

a. *The Trustee will raise this objection if the proposed plan provides for a lump-sum payment to the Trustee where the debtors have failed to provide a reasonable explanation or other evidence of how the debtors will be able to make the lump sum payment.*

b. *The debtors may avoid this objection by providing a reasonable explanation or other evidence at or prior to the debtors' creditors' meeting on how the debtors will be able to make the lump sum payment.*

c. *If raised, the Trustee may waive this objection upon the debtors' providing the Trustee with a reasonable explanation or other evidence on how the debtors will be able to make the lump sum payment.*

X Other:

This objection may cover any other miscellaneous objections that the Trustee may raise that question the sufficiency of the debtors' net income and their ability to make their on-going plan payments under the proposed plan.

X 6. Debtor(s) have failed to dedicate all of their projected disposable income to be received in the applicable commitment period for the following reason(s):

X Per budget.

a. *The proposed plan must dedicate all of the debtors' projected disposable income to the plan. The Trustee will raise this objection if the debtors' net income (after the deduction of the reasonable and necessary expenses as reflected on Schedule J) is greater by more than \$100 than the plan payments as set forth in the modification. This objection may also be raised if the expenses or other deductions as reflected in the budget appear to be unreasonably high and/or not necessary.*

Note: The Trustee traditionally allows the debtors an additional \$100 in discretionary income that does not need to be dedicated to the plan. However, this is a general allowance which the Trustee may not allow if the budget as proposed and/or other circumstances of the case require the debtors to dedicate all disposable income to the plan.

b. *The Trustee recommends the debtors avoid this objection by dedicating all of their net income (after deduction of their reasonable and necessary expenses as reflected on Schedule J) to the proposed plan.*

c. *If raised, the Trustee may waive this objection if the debtors do one of the following:*

(1) *The debtors provide the Trustee with a new confirmation order, thereby raising the debtors' plan payments to a level acceptable to the Trustee and as supported by the debtors' budget.*

(2) *If the circumstances allow for such, the debtors may prepare and file a new budget that accurately reflects the debtors' income and their reasonable and necessary expenses while at the same time supporting the current level of monthly plan payments as set forth in the proposed plan.*

Note: The Trustee may request additional evidence to support the changes in income or expenses as set forth in the new budget.

(3) *The debtors provide the Trustee with a confirmation order that provides for the payment in full of all of the unsecured creditors plus interest at the rate of 6% APR and further provide that there will be no future modification that reduces the dividend to the unsecured creditors.*

X Term of plan is less than the Applicable Commitment Period and such fails to provide for payment in full of all of the unsecured creditors, including interest.

a. *The Trustee takes the position that the applicable commitment period is determined through the Means Test where the plan must be at least a 36 month plan for a below median income debtor or at least a 60 month plan for an above median income debtor (unless the debtors can propose a plan for a period less than the applicable commitment period and provide for payment in full of all of the unsecured claims plus interest). The Trustee raises this objection if the term of the proposed plan is less than the applicable commitment period and the proposed plan does not provide for the payment in full of all of the unsecured claims plus interest at the rate of 6% APR.*

b. *The Trustee recommends that the debtors avoid this objection by either meeting the applicable commitment period through the proposed plan or proposing a plan that provides for the payment in full of all of the unsecured claims plus interest at the rate of 6% APR.*

c. *If raised, the Trustee may waive the objection if the debtors provide the Trustee with a confirmation order that increases the term of the plan to the applicable commitment period or provides for 100% dividend to the unsecured creditors plus interest at 6% APR.*

X Failed to dedicate tax refunds to be added to the plan base during the Applicable Commitment Period.

a. Tax refunds, if any, received after the filing of the debtors' petition are disposable income that must be dedicated to the plan. The Trustee will raise this objection if the debtors fail to dedicate to the plan base their tax refunds received during the term of the plan (less the pro-rated amount of their refund, if any, that the debtors include in their budget to pay the debtors' reasonable and necessary expenses as set forth therein).

b. The Trustee recommends that the debtors avoid this objection by dedicating to the plan base all tax refunds received by the debtors during the term of the plan (less the pro-rated amount of their refund, if any, that the debtors include in their budget to pay the debtors' reasonable and necessary expenses as set forth therein).

c. If raised, the Trustee may waive this objection if the debtors provide the Trustee a confirmation order containing a provision dedicating tax refunds to the plan base as set forth in sub-paragraph "b" above.

x Failed to dedicate income from new job and/or other sources that are not otherwise disclosed.

a. The Trustee will raise this objection if the Trustee knows or suspects that the debtors have a new job (or income from other sources) and that new income is not otherwise reflected on the debtors' budget nor is it dedicated to the plan payments as set forth in the proposed plan.

b. The Trustee recommends the debtors avoid this objection by the debtors preparing and filing a budget with their proposed plan that reflects all sources of income, whether from a new job or income from other sources, and dedicate all of this income.

c. If raised, the Trustee may waive this objection if debtors prepare and file a new budget that reflects the income from the new job or other sources. If necessary, the debtors should provide the Trustee with a confirmation order thereby raising the plan payments in order to meet the debtors' obligation to dedicate all of the debtors' projected disposable income to the plan as set forth in the proposed plan.

Note: If the debtors' income has gone down and the debtors are not able to afford the level of plan payments as set forth in the proposed plan, the Trustee asserts that the debtors will have to prepare, file, and give notice of an amended plan that proposes to lower the debtors' plan payments. The Trustee contends that the debtors' lowering their plan payments cannot be done through a confirmation order because such represents an adverse affect on the creditors that require notice on the creditors through an amended plan.

Note: If the debtors' incomes goes up as a result of a new job and/or other income and the debtors attempt to increase their expenses in an amended budget to offset this increase in income so that their plan payments remain the same, the Trustee will require

proof of these increased expenses. Of all probability, the Trustee will maintain his objection

X Providing for the payment of the following items that are not otherwise necessary for the effective reorganization of the Debtor(s):

a. *The Trustee will raise this objection if the debtors have proposed a plan that provides for the payment of certain items that the Trustee believes are not otherwise necessary for the effective reorganization of the debtors, whether the Debtors propose to pay for such items direct or through the plan. Of all likelihood, if the debtors disagree with the Trustee and desire to retain the items in question, the debtors will need to place the case on the "call" docket and present evidence/testimony to the Court to justify the retention of such.*

Note: Examples of items that the Trustee will, of all probability, raise the objection include the following: boat; 4 wheelers; extra vehicles; tractors; travel trailers; second home or other real property; horses, cattle, or other livestock that generate no income or insufficient income to offset expenses related thereto; etc.

b. *The Trustee recommends the debtors avoid this objection by proposing surrendering the items in question.*

c. *If raised, the Trustee may waive this objection if the debtors propose to surrender the items through the confirmation order.*

Note: The Trustee may also waive the objection, in appropriate circumstances, where the debtors propose to increase the dividend to the unsecured creditors along with a provision that there would be no future modifications to reduce this dividend to the unsecured creditors.

X Excessive expenses.

a. *The Trustee will raise this objection if the debtors have included certain expenses on their budget that the Trustee believes are excessive under the circumstances of their case. Of all likelihood, if the debtors disagree with the Trustee and desire to retain the expense items in question, the debtors will need to place the case on the "call" docket and present evidence/testimony to the Court to justify these expenses.*

Note: Examples of excessive expenses include private school expenses, support of or payment of expenses of adult children or other third parties, country club dues, certain college expenses, etc.

b. *The Trustee recommends the debtors avoid this objection by proposing a budget with reasonable and necessary expenses.*

c. *If raised, the Trustee may waive this objection if the debtors propose to increase their plan payments through the confirmation order to offset these excessive expenses.*

X Other:

This objection may cover any other miscellaneous objections that the Trustee may raise questioning whether the debtors have in fact dedicated all of their disposable income to the plan.

X 7. Debtor(s) have failed to file and/or accurately complete Form 22C (Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income) as referred to in #3 above.

a. *The Trustee will raise this objection if the debtors have failed to file and/or accurately complete Form 22C.*

b. *The debtors may avoid this objection by accurately completing and filing Form 22C.*

c. *If raised, the Trustee may waive this objection if the debtors amend their Form 22C and, if required, increase the dividend to the unsecured creditors through the proposed confirmation order.*

X 8. Proposed Plan fails to provide for the payment of the minimum dividend to the unsecured creditors pursuant to Form 22C (Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income).

a. *The Trustee will raise this objection if the debtors have proposed a plan that fails to provide the minimum dividend to the unsecured creditors as required by Form 22C.*

b. *The debtors may avoid this objection by proposing a plan that provides the minimum dividend to the unsecured creditors pursuant to Form 22C or providing the Trustee with a special circumstances affidavit supporting their allegation that the debtors are unable to propose a plan that provides this minimum dividend to the unsecured creditors.*

c. *If raised, the Trustee may waive this objection if the debtors either increase the dividend to the unsecured creditors through the confirmation order or providing the Trustee with a special circumstances affidavit.*

***Note:** A special circumstances affidavit must contain testimony under oath from the debtors setting forth the alleged special circumstances that prevents the debtors from proposing a plan providing for the minimum dividend to the unsecured creditors. The affidavit should explain why there are no other reasonable alternatives and have supporting documentation attached thereto to support the various allegations as contained therein.*

For example, if the debtors have higher actual transportation expenses (due to an out-of-town job or doctors), the debtors must sign and have notarized a special circumstances affidavit setting forth these higher transportation expenses. The affidavit should also indicate that there are no other reasonable alternatives (for example, no local job and/or doctors available) and have attached thereto copies of fuel receipts and other documentation supporting the higher transportation expenses.

X 9. Debtor(s) have failed to make monthly Chapter 13 plan payments or have a poor history of making monthly plan payments pursuant to 11 USC 1326(a)(1) and/or has failed to dedicate all disposable income by Debtor(s)' failure to make Chapter 13 plan payments during the initial months of the plan.

a. *The Trustee will raise this objection if the debtors are not current on their plan payments under the proposed plan.*

b. *The Trustee recommends the debtors avoid this objection by being current on their plan payments under the proposed plan through the date of confirmation.*

c. *If raised, the Trustee may waive this objection if the debtors make plan payments in an amount that is sufficient to bring the debtors plan payments current under the terms of the proposed plan through the date of confirmation.*

X 10. Proposed plan appears to be underfunded.

a. *The Trustee raises this objection if the total plan base under the proposed plan is in an amount that is not sufficient to allow the Trustee to pay all of the creditors that the Trustee is required to pay under the terms of the proposed plan.*

b. *The Trustee recommends the debtors avoid this objection by filing a proposed plan that has sufficient funds paid to the plan base to allow the Trustee to pay all of the creditors that the Trustee must pay through the terms of the proposed plan.*

c. *If raised, the Trustee may waive this objection if the debtors provide the Trustee with a confirmation order that raises the plan base to a level to allow the Trustee to pay all of the creditors that the Trustee must pay through the terms of the proposed plan. The Trustee suggests that this may be accomplished by the debtors either raising the plan payments to be made (which will need to be supported by the debtors' budget) or, if the term of the plan is less than 60 months, by increasing the term of the plan (up to 60 months).*

Note: A plan may also become underfunded after the Trustee's Recommendation Concerning Claims where the Trustee reconciles the terms of the confirmed plan with the claims as actually

filed. For example, a claim that is being paid through the plan may come in higher than the estimated amount in the plan. The Trustee will advise the debtors of the infeasibility of the plan and thereafter file a motion to dismiss the case if the debtors fail to remedy the infeasibility through a motion to modify or other means.

X 11. Proposed plan prefers specific unsecured claims which violates 11 USC 1322(a)(3) and 1322(b)(1) by discriminating against other unsecured creditors.

a. *The Trustee raises this objection where the debtors, through the proposed plan, proposes to single out one or more unsecured creditors for payment that unfairly discriminates against the remaining unsecured creditors.*

b. *The Trustee recommends the debtors avoid this objection by not proposing to pay one or more unsecured creditors in full unless the debtors propose to pay all unsecured creditors in full at the same time.*

c. *If raised, the Trustee may waive this objection if the debtors amend their proposed plan in order to remove this special treatment to one or more unsecured creditors that unfairly discriminates against the other unsecured creditors.*

Note: The Trustee asserts that this change cannot be made through the confirmation order (without the consent of that creditor) because the removal of the creditor in question constitutes an adverse affect on that creditor without notice.

X 12. Proposed plan does not meet the Chapter 7 to Chapter 13 Comparison Test as set forth in 1325(a)(4) as follows:

___ Plan fails to provide a dividend to the unsecured creditors in a sufficient amount to equal Debtor(s)' equity interest in non-exempt real and/or personal property.

___ Plan fails to dedicate and add to the plan base for the benefit of the unsecured creditors any non-exempt recovery from outstanding lawsuit(s) and/or claim(s).

a. *11 U.S.C. 1325(a)(4) requires that the value of the property to be distributed under the plan to the unsecured creditors is not less than the amount these unsecured creditors would receive had this case been filed under Chapter 7 of the Bankruptcy Code. The Trustee will raise this objection if the projected dividend to the unsecured creditors is less than the equity of the debtors' non-exempt property, if any, and/or if the debtors fail to dedicate to the plan base any non-exempt recovery from outstanding lawsuits or claims, if any.*

b. *The Trustee recommends the debtors avoid this objection by proposing a plan that does provide a dividend to the unsecured creditors equal to or greater than the equity in the debtors' non-exempt*

property and/or proposing a plan that dedicates to the plan base any non-exempt recovery from outstanding lawsuits or claims.

Note: In the alternative, the debtors may also avoid this objection by proposing a plan providing for 100% dividend plus 6% APR interest to the unsecured creditors and, if applicable, a provision dedicating to the plan base any non-exempt recovery from any lawsuit or claim, along with a provision providing for no future modifications to reduce this dividend.

c. *If raised, the Trustee may waive this objection upon the debtors providing a confirmation order providing for the provisions as set forth in sub-paragraph "b" above.*

X 13. Attorney's fees require court approval in that the requested amount exceeds that amount as set forth in LBR 2016(h).

a. *The Trustee will raise this objection if the debtors' attorney is requesting fees that exceed the "no-look" fees as set forth in LBR 2016(b).*

Note: The basic "no-look" fees as set forth in LBR 2016(h) are as follows:

(1) *The basic "no-look" fee for a Chapter 13 bankruptcy is **\$3,000.00**.*

(2) *This basic "no-look" fee may be increased by an additional **\$500.00** upon proper certification by the debtors' attorney for legal services pertaining to **automatic stay litigation** that occurs prior to the expiration of the "no-look" fee time period.*

(3) *This basic "no-look" fee may be increased by an additional **\$500.00** upon certification by the Trustee that the underlying case involves self-employed debtors.*

These "no-look" attorney's fees for pre-confirmation and post-confirmation work as set forth in LBR 2016(h) simply refer to the fees that the debtors' attorneys may charge without the necessity of the debtors' attorney filing a formal fee application.

b. *The Trustee recommends the debtors avoid this objection by either requesting the proper amount of the "no-look" fee pursuant to LBR 2016(h) or the attorney inserts a special provision in the plan providing that the Trustee will escrow the attorney's fees until such time as the attorney files his or her fee application. Such a provision should put a deadline of filing such fee application (30 days after the earlier of the first successful post-confirmation modification of the plan which occurs subsequent to the filing of the TRCC or the filing of a certification by the Trustee that all proof of claims have been reconciled with the terms of the confirmed plan without the necessity of a plan modification) or, upon the attorney's failure to file a formal fee application with that time deadline, that the fees will be reduced to the appropriate amount set forth in LBR 2016(h).*

c. *If raised, the Trustee may waive the objection if the debtors either provide the Trustee with a confirmation order thereby reducing the amount of attorney's fees to an amount equal to or less than*

the amount of the “no-look” fees or a confirmation order providing for the Trustee to escrowing the attorney’s fees subject to the attorney filing a formal fee application as contemplated in sub-paragraph “b” above.

x 14. Debtor(s) have failed to file monthly operating reports as required by LBR 2015(a).

a. LBR 2015(a) requires the self-employed debtors to file with the Court monthly operating reports for the months from the filing of the petition through the date the plan is confirmed by the Court. The Trustee will make this objection if the self-employed debtors fail to file with the Court these monthly operating reports. These reports need to be signed by the debtors under penalty of perjury.

Note: These monthly operating reports are due not later than the 21st day of the month following the month for which the report is being submitted.

b. The Trustee recommends the self-employed debtors avoid this objection by their timely preparing and filing their required monthly operating reports.

c. If raised, the Trustee may waive the objection if the debtors prepare and file the required monthly operating reports.

X 15. Debtor(s)’ filing of the petition was not in good faith pursuant to 11 USC 1325(a)(7) and/or plan has not been proposed in good faith or by any means forbidden by law pursuant to 11 USC 1325(a)(3).

Note: 11 U.S.C. 1325(a)(7) requires the debtors to file their petition in good faith. Generally, this statute focuses on the debtors’ conduct prior to the debtors’ filing their petition.

Note: 11 U.S.C. 1325(a)(3) requires the debtors to file their plan in good faith and not by any means forbidden by law. Generally, this statute focuses on the debtors’ conduct after the filing their petition.

a. The Trustee will raise this objection if the Trustee suspects that the debtors have filed their petition or their plan in bad faith.

Note: In that these terms are not defined in the Bankruptcy Code, the good faith or bad faith of the debtors will be determined by the specific circumstances of the underlying case.

b. The Trustee recommends the debtors to avoid this objection by not engaging in any conduct which may bring into question their good faith in their filing the petition or the plan.

c. If raised, the Trustee may waive the objection upon the debtors providing the Trustee with evidence that the petition and/or plan was proposed in good faith.

Note: In that this objection by the Trustee will only be raised in unusual cases, the Trustee will, of all probability, not waive the objection and the issue will probably have to be determined by the Court.

X 16. Other:

The final objection that the Trustee may raise includes any other objection that the Trustee may raise to the proposed plan, depending upon the circumstances of the case, that are not otherwise covered herein above.