

TRUSTEE'S MEMORANDUM TO DEBTORS CONCERNING WAGE WITHHOLDING ORDER

I am the Chapter 13 Trustee duly appointed to administer your Chapter 13 bankruptcy case. The purpose of this Memorandum is to provide information to the debtors concerning the entry of a Wage Withholding Order in their case. For the reasons as stated in this Memorandum, **I encourage each debtor that is a wage earner to have a Wage Withholding Order entered in their case.** Included on my website is a form that the debtors can complete and return to me requesting that a Wage Withholding Order be entered in their case. Upon the receipt of such, my staff will prepare and file the paper work with the Court to have such entered. The debtors must assume that the entry of a Wage Withholding Order will take approximately 4 to 6 weeks from the time the debtors forward the request to my office. Accordingly, the debtors need to continue to make their plan payments to this office until such time as they see the plan payments coming out of their check.

Some of the debtors' attorneys will also prepare and file the paper work with the Bankruptcy Court in order to request the entry of a Wage Withholding Order. The debtors should discuss this issue with their attorney.

Upon the entry of a Wage Withholding Order from the Bankruptcy Court, the debtors' employer deducts the debtors' plan payments from their pay check and forwards such to my office for administration. **In order to qualify for a Wage Withholding Order to be entered in their case, the debtors must be a wage earner.** A Wage Withholding Order would not be applicable for unemployed, self-employed, or retired debtors.

In that I am the Trustee duly appointed by the Bankruptcy Court to administer this Chapter 13 bankruptcy proceeding, I do not represent the debtors, the debtors' employer, or the creditors and I cannot give anyone legal advice on that party's rights in this bankruptcy. I may change or revise this Memorandum at any time without further notice to party.

Purpose of the Entry of a Wage Withholding Order: A large portion of Chapter 13 bankruptcies that are filed each year fail and are dismissed due to the debtors' failure to make plan payments to the Trustee pursuant to the terms of their Chapter 13 plan. The success rate of the debtors actually completing their case goes up substantially where the Bankruptcy Court enters a Wage Withholding Order directing that debtors' employer to deduct from the their paycheck as a payroll deduction an amount equal to the debtors' plan payments and forwarding these deductions to the Trustee to be administered pursuant to their Chapter 13 plan.

Authority to Issue Such a Wage Withholding Order: The Bankruptcy Court has the authority to issue a Wage Withholding Order pursuant to the provisions of 11 U.S.C. 1325(c) after the confirmation of the debtors' proposed Chapter 13 Plan without the consent of the debtors. The Bankruptcy Court has the authority to issue a Wage Withholding Order prior to the confirmation of a proposed Chapter 13 Plan by the consent of the debtors.

Advantages of the Entry of a Wage Withholding Order:

--As long as the debtors make their initial plan payments prior to the entry of the Wage Withholding Order, the debtors will thereafter stay current with their plan payments to the Trustee.

If the debtors fail to make their initial plan payments prior to the entry of a Wage Withholding Order, the debtors will start out delinquent in their plan payments to my office which may, in turn, cause problems in the administration of their case. If the debtors fail to catch up this missed plan payments, their case may ultimately be dismissed by the Bankruptcy Court.

The debtors must monitor the deductions from their paychecks to make sure that the employer is in fact deducting their plan payments from their paychecks and such deductions are in the correct amount. **The entry of a Wage Withholding Order is a convenience to the debtors to assist them in timely making their plan payments to my office. However, the ultimate responsibility of making these plan payments rests upon the debtors.**

--With a Wage Withholding Order, the debtors will no longer have to go through the effort and expense of obtaining certified funds in order to make their plan payments to my office. Instead, I will accept the debtors' employer's check.

--With a Wage Withholding Order, the debtors will no longer need to forward the plan payments to my office each month. Instead, the debtors' employer will be forwarding these checks to my office on behalf of the debtors.

--If there is a question about the feasibility of the debtors' plan, the entry of a Wage Withholding Order may help the debtors in demonstrating that the plan is in fact feasible.

--As long as the debtors remain employed, the chances of the debtors successfully completing their plan and obtaining their discharge (if eligible) go up substantially.

In the event that the debtors lose their jobs or their financial situation changes so that the debtors are having difficulty in making their plan payments and/or their other household expenses, the debtors should immediately contact their attorney to discuss their options.

In the event that the debtors change jobs, the debtors should immediately contact their attorney or my office so that a new Wage Withholding Order may be issued pertaining to the debtors' new employer.

--If the debtors have no Wage Withholding Order in place and if the debtors fall delinquent on their plan payments to my office thereby resulting in my office generating a motion to dismiss being filed in the debtors' case, I and/or the Court may be more willing to work with the debtors in their effort to bring their plan payments current if the debtors are willing to enter into a Wage Withholding Order.

--One of the most common objections to the entry of a Wage Withholding Order that I hear from the debtors is the fear that the entry of such an Order will have a harmful affect on their employment. **Pursuant to the provisions of 11 U.S.C. 525(b), no private employer may terminate the employment of**

or otherwise discriminate against any employee that files for relief under the Bankruptcy Code. If the debtors suspect that they have been fired or otherwise discriminated against by their employer because the debtors are in bankruptcy, the debtors should immediately contact their attorney.

Payroll Deduction: Upon the employer's receipt of notice of the entry of such a Wage Withholding Order, the employer should immediately proceed to deduct the appropriate amount of the plan payment from the debtors' paycheck. The plan payment amount is set forth in the copy of the Wage Withholding Order that I forwarded to the debtors' employer. The Wage Withholding Order may indicate that there are future step-ups in plan payments which will require the employer's adjustment of the amount being deducted from the debtors' paycheck on the dates as set forth in the Wage Withholding Order.

Debtors must keep track of the deductions being made from their paychecks to make sure that the employer is deducting the correct amount from the debtors' paycheck, including any future step-up in plan payments that may be provided for in the debtors' Chapter 13 plan.

There may be future Court orders entered adjusting the amount of these deductions due to modifications of the terms of the debtors' Chapter 13 plan.

The debtors should continue to monitor the payroll deductions being made from their payroll checks to make sure that the employer is deducting the correct amount pursuant to the terms of such a modification.

Calculation of the Amount to be Deducted from the Debtors' Paycheck: Employers should deduct from each of the debtors' payroll checks an amount sufficient to pay the debtors' Chapter 13 monthly plan payments as set forth in the Wage Withholding Order. The debtors can confirm that their employers are deducting the correct amount from their paychecks by following these two steps:

Step 1: "Annualize" the withholding amount: Multiply the monthly plan payment as set forth in the Wage Withholding Order by 12 to come up with the annualized amount for plan payments of the debtors.

For example, assume that the plan payment is \$500.00 per month. This needs to be converted to an annualized amount by multiplying it by 12. $\$500.00 \times 12 = \$6,000.00$ is the annualized amount.

Step 2: Convert the annualized amount of plan payments for the debtors to the amount to be withheld from each check based upon the frequency the debtors are paid.

If the debtors are paid monthly: Divide the annualized amount by 12 (in other words, the full amount of plan payment as set forth in the Wage Withholding Order should be deducted from each monthly paycheck).

In the example above, if the annualized amount is \$6,000.00, this amount would be divided by 12 to compute the amount to be taken out of each check. $\$6,000.00 / 12 = \500.00 .

If the debtors are paid twice a month (semi-monthly): Divide the annualized amount by 24 (in other words, one-half of the monthly plan payment as set forth in the Wage Withholding Order will be deducted from each of the two paycheck issued each month).

In the example above, if the annualized amount is \$6,000.00, this amount would be divided by 24 to compute the amount to be taken out of each check. $\$6,000.00 / 24 = \250.00 .

If the debtors are paid every two weeks (bi-weekly): Divide the annualized amount by 26 (the number of paychecks issued to the debtors in a year).

In the example above, if the annualized amount is \$6,000.00, this amount would be divided by 26 to compute the amount to be taken out of each check. $\$6,000.00 / 26 = \230.76 .

If the debtors are paid every week (weekly): Divide the annualized amount by 52 (the number of paychecks issued to the debtors in a year).

In the example above, if the annualized amount is \$6,000.00, this amount would be divided by 52 to compute the amount to be taken out of each check. $\$6,000.00 / 52 = \115.38 .

If the debtors calculate a different amount that should be deducted from their paycheck than what is showing up on their paycheck, the debtors should immediately contact their employer's payroll department to discuss.

Unlike certain garnishments under Texas state law, the Bankruptcy Code does not impose any type of limits of the amount that may be deducted from the debtors' paycheck for the payment of Chapter 13 plan payments other than the actual monthly plan payment amount as set forth in the Wage Withholding Order.

For example, Texas state law limits the total amount of garnishment for child and spousal support to 50% of an employee's "disposable earnings" as that term is defined in the Texas Family Code. There is no such limitation contained in the Bankruptcy Code.

Termination of the Payroll Deduction: This Wage Withholding Order may be terminated by the Bankruptcy Court for a number of reasons: the debtors successfully made all of their plan payments to my office pursuant to the terms of their confirmed Chapter 13 plan; the Chapter 13 bankruptcy was terminated early prior to the debtors' completion of plan payments either by dismissal of the bankruptcy by the Bankruptcy Court or the conversion of the case by the debtors to a different Chapter

of the Bankruptcy Code; the debtors are no longer employed by the employer in question; or such other reason that the Bankruptcy Court may have to terminate the payroll deduction.

The Bankruptcy Court has, in the past, refused to terminate a Wage Withholding Order unless the debtors have completed their plan payments, terminated their employment with the employer in question, or converted their case to a different Chapter in the Bankruptcy Code. If the debtors want to terminate a Wage Withholding Order so that the debtors may make the plan payments direct without any other change in circumstances, the Bankruptcy Court will, of all probability, deny the request to terminate the Wage Withholding Order.

Similarly, the Trustee will not request the Bankruptcy Court to terminate a Wage Withholding Order under such facts. If the debtors intend to try to convince the Bankruptcy Court to terminate the Wage Withholding Order, the debtors will either need to go through their attorney to make the request to terminate such a Wage Withholding Order.

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Marshall, Tyler, Lufkin, and Beaumont Divisions