

MEMORANDUM CONCERNING TRUSTEE OBJECTIONS TO MOTIONS TO MODIFY:
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 debtors' motions to modify the terms of their confirmed plan. 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 Response to Debtor(s)' Motion to Modify;*
- 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 motion to modify 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 motion to modify 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.

Paragraph VIII of the current version of the Trustee's Response to Debtor(s)' Motion to Modify starts as follows:

VIII. The Trustee makes the following recommendations concerning the Modification:

The Modification should be approved.

Trustee objects to the proposed Modifications for the following reasons:

x 1. Term of the modification is less than the Applicable Commitment Period.

- 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, including interest). If, through the motion to modify, the debtors attempt to lower the term of the plan to less than the applicable commitment period and not provide for the payment in full of all of the unsecured claims, including interest at the rate of 6% APR, the Trustee will utilize this objection to object to the motion to modify.

b. The Trustee recommends that the debtors avoid this objection by either meeting the applicable commitment period through the terms of the motion to modify or proposing a modification that provides for the payment in full of all of the unsecured claims including interest at the rate of 6% APR.

c. If raised, the Trustee may waive the objection if the debtors provide the Trustee with a new modification 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 2. Trustee objects to the form of the proposed confirmation order (and/or, if applicable, the form of the proposed plan) because:

This objection has a number of sub-categories, all of which will be covered herein below.

x TRCC has not yet been filed. The BAPCPA plan and form Order as set forth in the Court's Local Rules should be used which provides for, among other things, the filing of a TRCC.

a. *In the event that the TRCC has not yet been filed, the Trustee takes the position that a motion to modify should include not only the motion but also a "BAPCPA" plan (see Local Form 3015-a) and a "BAPCPA" order (see Local Form 3015-b). Upon filing of a Motion to Modify prior to the Trustee's filing of the TRCC, a docket entry is entered that the time for filing the TRCC is thereby extended until such time as the motion to modify is disposed of.*

The BAPCPA plan and order contemplates the filing of a TRCC by the Trustee once the extension of time to file the TRCC expires. If the debtors file their motion to modify without the BAPCPA plan and order, there are no provisions in such a proposed plan or order providing authority for the Trustee to reconcile the claims as actually filed with the plan as confirmed through the TRCC process. In such a case, the Trustee will raise this objection.

b. *The Trustee recommends that the debtors avoid this objection by either delaying the filing of the motion to modify until after the TRCC is filed or by using the BAPCPA plan and order when filing such a motion to modify.*

c. *If raised, the Trustee may waive this objection if the debtors file an amended motion to modify thereby including the proper BAPCPA plan and BAPCPA order.*

x TRCC has been filed and is pending or approved. The pre-BAPCPA plan and order should be used which does not provide for the filing of a new TRCC.

a. *In the event that the TRCC has been filed (regardless of whether such has been approved or not)*, the Trustee takes the position that a motion to modify should include not only the motion but also the “pre-BAPCPA” modification order that was commonly used in the Eastern District of Texas prior to the passage of BAPCPA that set forth in detail the total plan payments, the names of the creditors to be paid by the Trustee, and the amounts, interest rate, and monthly payments to be paid to said creditors. The Trustee will raise this objection when the debtors file a motion to modify where the TRCC has already been filed which includes the BAPCPA plan and BAPCPA order which contemplate the Trustee filing a new TRCC.

b. The Trustee recommends that the debtors avoid this objection by their using the proper pre-BAPCPA modification order that does not anticipate the Trustee filing a new TRCC when they file a motion to modify after the Trustee has filed his TRCC.

c. If raised, the Trustee may waive the objection if the debtors provide the Trustee with a new modification order in the format of the “pre-BAPCPA” modification orders thereby setting forth in detail the amount of the plan payments to be made by the debtors to the Trustee as well as the names, amounts, interest rate, and monthly payments of the creditors to be paid by the Trustee.

x Proposed Order should indicate that the “Total Paid” to the secured creditor(s) is an estimate or approximate amount that may vary depending upon the actual amount of interest paid to said creditor(s) over the term of the plan.

a. After the passage of BAPCPA, the Trustee began to compute actual interest paid to the creditors entitled to interest under the terms of the confirmed plan. The total interest that is paid on such a claim may vary, depending upon timing of the Trustee’s receipt of plan payments from the debtors and the timing of disbursements made by the Trustee to the creditors.

For example, if the debtors consistently are late on their plan payments (or skips plan payments and then catches up a month or two later) thereby causing a delay in the Trustee’s disbursements to creditors, more interest will accrue on these claims than would have accrued had the debtors made plan payments timely and consistently each and every month.

By way of another example, if the debtors make extra plan payments (or tax refunds are added to the plan base thereby providing more money to disburse to the creditors), less interest will accrue on these claims than would have accrued had the extra payments not been made.

If the form modification order provides a column for “Total Paid” to secured creditors, the debtors should somehow indicate in the modification order that the “Total Paid” is an “Estimate”. If such does not, the Trustee will raise this objection.

b. The Trustee recommends that the debtors avoid this objection in one of the following manners:

(1) *The debtors may indicate that the amount(s) in the “Total Paid” column to be paid to the secured creditors is an “Estimate” amount. However, in so doing, the debtors must be careful not to indicate that the “Total Paid” is an “Estimate” where the secured creditor has either been paid in full prior to the filing of the motion to modify or the secured creditor will not receive any further disbursements by the Trustee to that particular creditor (for example, if the collateral is being surrendered to the creditor through the modification).*

(2) *If the debtors opt not to put the word “Estimate” over the “Total Paid” column, the debtors may also add the following clause to the proposed modification order:*

Total Paid to Secured Claims is an Estimate:

The total paid column as set forth herein as such pertains to the secured claim(s) being paid by the Trustee through the plan, if any, represents an estimate of the total amount that the Trustee will ultimately pay to said creditor(s) unless said creditor(s) have either been paid in full prior to the filing of the modification or unless the creditor(s) will receive no further disbursements from the Trustee under the modification.

(3) *The debtors may eliminate the “Total Paid” column in the proposed modification order.*

c. *If raised, the Trustee may waive the objection if the debtors provide the Trustee with a new modification order that provides for one of the three options as set forth in subparagraph “b” above.*

x The proposed Order fails to give an accurate breakdown of the principal, interest, and/or adequate protection payments previously paid by the Trustee to the following named creditors: [names of creditor(s) usually with the amounts of the principal, interest, and adequate protection payments, if any, previously paid by the Trustee listed]

a. *In the event that a creditor is not to receive any further disbursements under the terms of the confirmed plan (due to the surrender of the collateral, the changing of the treatment of the claim from being paid through the plan to the debtors paying such direct as disbursing agents, or whatever the reason), the Trustee takes the position that the proposed modification order should give an accurate breakdown of the amount(s) paid by the Trustee for principal, adequate protection payments, and/or interest, as the case may be, to the creditor(s) in question.*

b. *The Trustee recommends that the debtors avoid this objection by doing one of the following:*

(1) *The proposed modification order should give an accurate breakdown of the adequate protection payment(s), principal payment(s), and/or interest payment(s) previously disbursed by the Trustee to the creditor(s) that are not to receive any further disbursements under the motion to modify. Since adequate protection payment(s)*

represent a reduction in the principal amount owed to creditors, the Trustee will not object to a motion to modify where the adequate protection payment(s) are combined with the principal payment amount(s).

(2) *The proposed modification order may add the adequate protection payment(s), principal payment(s), and interest payment(s) into one total amount and then include the following provision:*

Total Paid to Secured Creditor(s) that are not receiving any further disbursements from the Trustee herein:

The total paid amount as set forth herein for the following creditor(s) represent the sum of the principal payment(s) (including adequate protection payments, if any) plus interest payment(s) paid to date by the Trustee to said creditor(s) as reflected in the Trustee's records: [name(s) of the creditor(s) that are not to receive any further disbursements by the Trustee under the modification order]

c. If raised, the Trustee may waive this objection if the debtors provide the Trustee with a new modification order that provides for one of the two options as set forth in subparagraph "b" above.

x The proposed order requires the secured creditor(s) to release the underlying lien(s) prior to discharge in violation of 11 USC 1325(a)(5)(B)(i).

a. BAPCPA added the provision under 11 USC 1325(a)(5)(B)(i) that indicates that a secured creditor is not required to release its lien on the underlying collateral until the earlier of (aa) the payment of the underlying debt determined under nonbankruptcy law; or (bb) discharge under section 1328. Older versions of Legal Pro modification form order (see paragraph 7 on page of the form modification order) violates that Code provision.

b. Legal Pro has updated their forms, thereby eliminating this provision. In order to avoid the objection, debtors should use the latest version of Legal Pro that has the provision in it or include the suggested provision in paragraph c below.

c. In the event that the debtors are using an older version of Legal Pro (or some other program or form that has the lien release language in their form order that violates this Code section), the Trustee recommends the debtors provide the Trustee with a new modification order that either removes the provision in question or include the following provision under the miscellaneous provision of the new modification order:

No Release of underlying lien(s) until discharge:

Notwithstanding any other provision herein to the contrary, the provisions of 11 U.S.C. 1325(a)(5)(B)(i) apply and the holder of any allowed secured claim shall retain its lien securing the underlying debt until the earlier of the payment of the underlying

debt as determined under nonbankruptcy law or the debtor(s) obtain a discharge under Section 1328 of the Bankruptcy Code; and, if this case is dismissed or converted without completion of the plan, such lien shall also be retained by such lien holder to the extent recognized by applicable nonbankruptcy law.

 x The proposed Order fails to include the following provision(s) as contained in previous Confirmation Order:

 x Payment of 100% of the allowed claims filed by unsecured creditors.

 x Payment of interest to unsecured creditors.

 x No future modifications to reduce the dividend to the unsecured creditors.

 x Notice of future employment.

 Other:

a. *The Trustee takes the position that the proposed modification order should contain the same special provisions as contained in the original confirmation order as long as the special provisions are still relevant. If the special provision is no longer relevant (for example, the debtors are now employed), the debtors may drop the special provision in the modification order (in the example given, the provision relating to notification of new employment) but set out an explanation in the actual motion to modify of why the particular provision is no longer applicable (in the example given, the motion to modify should state that the modification is being filed to take into account the new income of the debtors as a result of new employment).*

b. *The Trustee recommends that the debtors avoid this objection and its various subparts by either setting forth in the proposed modification order all of the special provisions as set forth in the original confirmation order and/or explain in the motion to modify why the special provisions are no longer applicable.*

Note: The Trustee may require further evidence in the form of documentation or a special circumstances affidavit confirming that the reason(s) for inclusion of the special provision in the original confirmation order no longer applies.

c. *If raised, the Trustee may waive the objection if the debtors either provide the Trustee with a new modification order that contains the omitted provisions and/or explain why the special provisions are no longer applicable.*

Note: As noted above in subparagraph "b" above, the Trustee may require further evidence of why the special provision should not be included in the modification order.

Of the laundry list of items in this objection, the Trustee will not waive the following objections:

The failure to include in the modification order the provision providing that there will be no future modifications to reduce the dividend to the unsecured creditors. By the very terms of this provision, a future motion to modify cannot reduce the dividend to the unsecured creditors and this provision must still be included in the new modification order.

x 3. Debtor(s) have insufficient disposable income to fund the proposed modifications for the following reason(s):

This objection also has a number of sub-categories, all of which will be covered herein below.

x Per budget.

a. *The modification, as proposed through the motion to modify, must be feasible. The budget on file must show that the debtors will be able to make the plan payments as set forth in the motion to modify. The Trustee will raise this objection if the debtors' budget indicates that the debtors' net income (after the deduction of their reasonable and necessary expenses as contained on Schedule J) is not sufficient to allow the debtors to make their plan payments as set forth in the motion to modify.*

NOTE: This objection will not be raised if the motion to modify simply reflects step-up in plan payments that were included in the original confirmation order (required, for example, when a direct payment ends) or needs to be included in the modification order for any changes in circumstances that now requires such step-up in plan payments.

b. *The Trustee recommends that the debtors avoid this objection by preparing and filing a new budget with the motion to modify that shows that the plan payments are feasible under the modification.*

c. *If raised, the Trustee may waive this objection upon the debtors preparing and filing a new budget that shows that the plan payments are feasible under the modification.*

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 motion to modify 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 the following provision in the proposed modification order if still receiving such:*

New Employment:

Debtor(s) shall amend their budget with the Court within 30 days of obtaining new employment, in order to reflect the total amount of their income and new expenses, if any, in relation to earning that income for the purpose of allowing the Debtor(s) or the Trustee to modify the plan, if necessary, to permit the dedication of any additional disposable income to the plan for the benefit of the creditors as a result of this 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 Inability to live within budget and make post petition mortgage payments (or other direct payments) and/or plan payments under previous Confirmation Order.

a. *The Trustee will raise this objection if the purpose of the motion to modify is to add post-petition mortgage arrears if it appears that the debtors are unable to live within their budget and are not making their on-going direct payments to creditors such as their mortgage company.*

Note: The Trustee will probably not raise this objection if there is a previous Court order (usually in conjunction with a creditor's motion to lift stay) thereby approving the debtors' preparing and filing a motion to modify to add these post-petition mortgage arrears to be paid through the plan. If there is such an order, the Trustee will assume that the Court has already made a finding that the debtors are capable of making their future on-going monthly mortgage payments.

b. *The Trustee recommends the debtors avoid this objection by basing their motion to modify upon a previous Court order where the Court essentially approved of the debtors adding these post petition mortgage arrears to the plan to be paid by the Trustee. The debtors should note, in the body of the motion to modify, that such a Court order exists.*

c. *If raised, the Trustee may waive this objection if the debtors either advise the Trustee of the existence of a previous Court order that approves of the debtors preparing and filing a motion to modify to add such post petition mortgage arrears to the plan or, absent such a Court order, the debtors provide the Trustee with evidence that the debtors are now making their on-going monthly mortgage payments.*

Other:

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

x 4. 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):

This objection also has a number of sub-categories, all of which will be covered herein below.

x Per budget.

a. *The modification, as proposed, 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.

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 plan as reflected in the modification.*

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 modification 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 motion to modify.*

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 new modification order that provides for the payment in full of all of the unsecured creditors plus interest at the rate of 6% APR and further provides 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.

This objection is essentially the same objection as contained in the Trustee's Objection #1 (with Objection #1 approaching the issue as failure to meet the applicable commitment period while this objection relies upon a failure to dedicate the debtors' projected disposable income for the full applicable commitment period). The Trustee refers the debtors and their attorneys to his comments and recommendations in relation to the Trustee's Objection #1.

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

The Trustee will comment and make his recommendations concerning this objection jointly with his comments and recommendations in relation to the objection immediately following this one relating to the debtors' failure to dedicate past tax refunds previously added to the plan base.

x Failed to dedicate past tax refunds previously added to the plan base under prior Confirmation Order.

a. *Tax refunds, if any, whether received prior to or after the filing of the motion to modify, are disposable income that must be accounted for in the modification. The Trustee will raise one or both of these objections if the debtors fail to account for these tax refunds.*

b. *The Trustee recommends that the debtors avoid this objection by somehow accounting for the past and future tax refunds in the modification by including the following provision in the proposed modification order:*

Tax Refunds in Modifications:

All future tax refunds which Debtor(s) receive during the term of the plan, starting with the tax refund, if any, to be received for the tax year [insert the applicable year], in excess of \$[insert the amount, if any, pro-rated in the budget; \$0 if none is pro-rated in the budget] shall be turned over to the Trustee within ten (10) days of receipt of such and shall be added to the plan base. Whether or not a tax refund is due, Debtor(s) shall provide a copy of their tax return to the Trustee within ten (10) days of filing such during the term of the Plan.

With respect to tax refunds received by Debtor(s) during the term of the plan prior to the tax year noted above, such refunds are already accounted for in the payment schedule as set forth in this modification order.

If the modification order includes this language that makes a representation that prior years' tax refunds, if any, are included in the payment schedule in the modification, the debtors need to be sure that the tax refunds are in fact included in the payment schedule.

If the purpose of the motion to modify is to allow the debtors to keep a tax refund for a particular year due to a specific unforeseen need (for example, to make repairs on the home following a hurricane), the Trustee recommends that the debtors modify this language to except out the tax year in question.

Note: The Trustee may require further evidence of the debtors need for the keeping their tax refund of the year in question (copy of tax return, detailed explanation of why the debtors need to keep the refund with, if possible, copies of estimates or invoices evidencing that the return has been spent or will be spent on reasonable and necessary expenses). The Court has stated in the past that, just because debtors find ways of spending the tax refunds, such does not make the expenses reasonable and necessary.

c. *If raised, the Trustee may waive this objection if the Debtors provide the Trustee a new modification order containing the suggested provision as set forth in subparagraph "a" 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 motion to modify.*

b. *The Trustee recommends the debtors avoid this objection by the debtors preparing and filing a new budget with the motion to modify that reflects all sources of income, whether from a new job or new income from other sources.*

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 new modification 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 motion to modify.*

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

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 through the proposed modification.

x 5. Debtor(s) have not filed an amended budget pursuant to the Court's Local Rules which prevents a determination of whether Debtor(s) will be able to make all of the plan payments under the Modification.

a. ***Local Rule Bankruptcy Procedure 3015(h)(1)*** states that debtors seeking a modification of a confirmed plan must separately file an ***amended Schedule I and an amended Schedule J*** in order to verify current income and expenditure information. Except as otherwise noted herein, the Trustee will

raise this objection where the debtors have failed to file an amended Schedule I and an amended Schedule J to support the motion to modify pursuant to this Court's Local Rule.

b. The Trustee recommends that the debtors avoid this objection by filing an amended budget along with the motion to modify.

Exception: If there has been a budget filed within a year of the filing of the motion to modify and if the income and expenses of the debtors have not changed in a material manner and upon proper representation of this fact by the debtors in their motion to modify, the Trustee will probably not raise this objection. The Trustee recommends that the debtors include the following representation in their motion to modify:

The plan payments as set forth in this motion to modify are supported by the budget filed by the Debtor(s) on _____ and the Debtor(s) hereby represent that their income and expenses have not changed substantially since the filing of that budget.

Note: The prior budget filed within one year of the filing of the motion to modify must still show that the modification is feasible (i.e., debtors will be able to make the plan payments under the modification) and that the debtors are in fact dedicating all of their projected disposable income to the plan.

c. If raised, the Trustee may waive this objection if the Debtors either file an amended budget or prepare an affidavit for the Trustee that their income and expenses have not changed in a material manner as reflected in the last budget filed within a year of the filing of the motion to modify.

x 6. Debtor(s) have not provided new pay advices or other evidence of current income which prevents the Trustee from confirming the amount of the Debtor(s)' current income.

a. The Trustee will raise this objection if the debtors have filed (or should have filed) an amended budget and the debtors have failed to provide the Trustee new pay advices or other evidence of the income as set forth in such an amended budget filed or to be filed.

b. The Trustee recommends that the debtors avoid this objection by the debtors providing the Trustee with new pay advices or other evidence of current income if the debtors have or will be filing a new budget.

c. If raised, the Trustee may waive this objection if the debtors provide the Trustee with new pay advices or other evidence of current income that verify the accuracy of the income as reflected in the debtors' new budget filed or to be filed herein.

x 7. Modification appears to be underfunded.

- a. *The Trustee raises this objection if the total plan base under the motion to modify 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 modification.*
- b. *The Trustee recommends the debtors avoid this objection by filing a motion to modify that has sufficient funds paid to the Trustee to allow the Trustee to pay all of the creditors that the Trustee must pay through the terms of the modification.*
- c. *If raised, the Trustee may waive this objection if the debtors provide the Trustee with a new modification 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 modification. 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).*
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x 8. Modification fails to provide for or fully provide for the priority claim(s) and/or proposes to overpay the priority claim(s) of the following claimants: [with the name(s) of the priority creditor(s) in question listed usually with the amount of the priority claim noted]

First part of the objection: Modification fails to provide for or fully provide for the priority claim(s):

- a. *The modification must provide for the full payment of all priority claims unless the holder of the priority claim has agreed to a different treatment of the claim under the modification. If the modification does not provide for the full payment of all priority claims without such an agreement from the priority claim holder, the Trustee will raise this objection.*
- b. *The Trustee recommends the debtors avoid this objection by providing for the full payment of all priority claims in the modification.*
- c. *If raised, the Trustee may waive this objection if the debtors must do one of the following:*
- (1) *Provide the Trustee with a new modification order thereby providing for the full payment by the Trustee of that priority claim. The debtors will, of all probability, have to increase their monthly plan payments in the new modification order so that the remaining creditors will not be adversely affected by including the full payment of the priority claim through the new order.*

Note: if the debtors are unable to increase the plan payments or otherwise change the modification order in order to provide for the full payment of the priority claim without adversely affecting the other creditors, the Trustee asserts that the debtors will have to file an amended motion to modify with full notice to the other creditors in order to get the priority claim paid.

(2) Obtain an agreement from the priority creditor either agreeing to something different from the full payment of its claim and attach that agreement to a new modification order.

(3) Object to the priority claim in order to have the claim disallowed so that this objection is no longer applicable to the pending motion to modify.

Note: This option is only available to the debtors if the debtors have valid grounds to object to the priority claim.

(4) If notice of including the payment of the priority claim must be given to the matrix, prepare and file an amended motion to modify to add the payment of the priority claim (or to provide for a different treatment for the priority claim where obtaining an actual agreement from the priority claim holder is impractical).

Second part of the objection: Modification proposes to overpay the priority creditor:

- a. The Trustee will raise this objection if the modification proposes to overpay the priority claim.
- b. The Trustee recommends the debtors avoid this objection by matching the exact amount of the priority claim to be paid through the plan.
- c. If raised, the Trustee may waive this objection if the debtors provide the Trustee with a new modification order that reduces the proposed amount to be paid to the priority creditor to the amount of the priority claim.

x 9. Modification fails to provide for or fully provide for the secured claim(s) and/or proposes to overpay the secured claim(s) of the following claimants: [with the name(s) of the secured creditor(s) in question listed usually with the amount(s) of the secured claim(s) noted]

First part of the objection: Modification fails to provide or fully provide for secured claim(s):

- a. The Trustee will raise this objection if the modification fails to provide for or fails to fully provide for the secured claim of a creditor.
- b. The Trustee recommends the debtors avoid this objection by matching the exact amount of the allowed portion of the creditor's secured claim.
- c. If raised, the Trustee may waive this objection if the debtors provide the Trustee with a new modification order thereby matching the exact amount of the allowed portion of the creditor's secured claim if such can be done without adversely affecting the other creditors being paid through the modification.

Note: If the debtors are unable to match the claim through a new modification order without adversely affecting the other creditors, the Trustee asserts that the debtors must prepare, file, and give notice of an amended motion to modify that correctly pays the secured creditor.

Second part of the objection: Modification proposes to overpay the allowed portion of the secured claim of a creditor:

- a. *The Trustee will raise this objection if the modification proposes to overpay the allowed portion of the secured claim of a creditor.*
- b. *The Trustee recommends the debtors avoid this objection by matching the exact amount of the allowed portion of the creditor's secured claim.*
- c. *If raised, the Trustee may waive this objection if the debtors provide the Trustee with a new modification order thereby reducing the amount to be paid to the secured creditor to the exact amount of the allowed portion of the creditor's secured claim.*

x 10. Modification is infeasible in that such fails to fully provide for the amount previously paid by the Trustee under the previous Confirmation Order of the following claimant(s):

- a. *The Trustee will raise this objection where the motion to modify fails to fully provide for the amount previously disbursed by the Trustee to a particular creditor pursuant to the terms of a previous confirmation order.*

For example, if the Trustee had disbursed a total of \$1,000.00 to a particular creditor and the debtors, through the modification, propose to pay that creditor only \$800.00 and then surrender the collateral to the creditor so that the creditor will receive no further disbursements there under, the terms of the modification is infeasible in that such fails to fully provide for the \$1,000.00 previously paid by the Trustee to the creditor in question.

- b. *The Trustee recommends the debtors avoid this objection by matching the exact amount of Trustee disbursements (whether adequate protection payments, principal payments, or interest payments) to a particular creditor if that creditor is not to receive any further disbursements under the plan after the modification.*

Note: The debtors should be mindful of the Trustee's close-out dates each month so that the amounts as set forth in the motion to modify will take into account any additional disbursements made by the Trustee pursuant to such close-outs.

- c. *If raised, the Trustee may waive this objection if the debtors provide the Trustee with a new modification order which reflects the exact amount of the Trustee's disbursements to a particular creditor if such can be done without adversely affecting the other creditors being paid through the modification.*

Note: If the debtors are unable to match the exact amount of the Trustee's disbursements to a particular creditor without adversely affecting the other creditors, the Trustee asserts that the debtors must prepare, file, and give notice of an amended motion to modify that correctly pays that secured creditor.

x 11. Modification proposes to pay the following claimant(s) that do not otherwise hold an allowed claim filed in this case:

a. *The Trustee can only pay creditors that hold allowed claims in a case. If the modification is filed after the claims bar date, the Trustee will raise this objection if the creditor being paid through the modification does not hold an allowed claim in the case.*

Note: If the modification is filed prior to the claims bar date, the Trustee will not raise this objection and will deal with the creditor when the Trustee reconciles the claims as actually filed with the claims to be paid through the modification through the TRCC process.

b. *The Trustee recommends the debtors avoid this objection by confirming that the modification proposes to pay only creditors that have filed proof of claims. In addition, the Trustee recommends that the debtors consider the suggestions as set forth in subparagraph "c" below.*

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

(1) *Provide the Trustee with a new modification order thereby removing from being paid through the modification the creditor that does not hold an allowed claim from the modification.*

(2) *Prepare and file a claim on behalf of the creditor and, if necessary, file a motion to allow a late filed proof of claim if the time for the debtors to file a claim on behalf of the creditor has passed. The debtors should provide the Trustee with a new modification order with the following provision therein:*

Payment of Creditor With a Pending Motion to Allow Late Filed Claim:

The Trustee shall accrue future plan payments distributions attributable to [name of creditor(s)] as set forth herein until such time as the Court has an opportunity to rule upon the pending Motion to Allow Late Filed Claim. In the event the Court grants the Motion, the Trustee is thereby authorized to disburse to said creditor(s) the escrowed amount and all future disbursements as contemplated herein to said creditor(s) pursuant to the confirmed plan as modified herein. In the event the Court denies the Motion, the Trustee is thereby authorized to disburse the escrowed amount and all future disbursements as contemplated herein to said creditor(s) to the other creditors to be made pursuant to the terms of the confirmed plan as modified herein.

(3) *If such objection relates to the payment of post petition mortgage arrears, provide the Trustee with a new modification order with the following provision therein:*

Payment of Post Petition Arrears Not Supported by a Claim:

The Trustee shall accrue future plan distributions attributable to [Name of Mortgage Co.] as set forth herein that are not otherwise supported by a proof of claim without interest until

such time as the creditor's allowed claim is amended to reflect the amount of the post-petition arrears or until further order of this court. Upon the filing of such a claim by said creditor, the Trustee is authorized to disburse the escrowed amount and all future disbursements as contemplated herein to said creditor pursuant to the confirmed plan.

 x 12. Modification proposes to continue to pay the following claimant(s) where previous disbursements made to said claimant(s) have been returned to the Trustee for the reason as stated:

a. *There are times where prior Trustee disbursements to a particular creditor has been returned to the Trustee [for example, an indication that the payment address on the proof of claim is no longer valid; an indication that the creditor has been paid in full; an indication that the creditor is unable to identify the debtors and/or the proper account on which the payment is to be credited to; or other reason(s) that may arise]. The Trustee will, in such cases, raise this objection in order to resolve the issue one way or the other on whether the creditor in question should continue to receive disbursements under the modification.*

b. *The Trustee recommends the debtors avoid this objection by carefully reviewing the Trustee's website prior to filing of the motion to modify for any objection codes that may be posted next to a creditor that is to be paid through the motion to modify and attempt to resolve the problem prior to filing the motion to modify.*

Note: If the motion to modify is being filed prior to the TRCC, an objection code next to a particular creditor represents, of all probability, a hold on the funds to be accrued to a particular claim due to the creditor's failure to file a proof of claim at the time the case was confirmed and not for any reasons where the Trustee would raise this objection.

Note: If the objection code is next to a particular creditor's name after the TRCC is approved, there is usually a problem with disbursements to that particular creditor and the debtors may need to contact the Trustee's accounting department in order to determine what the issue is so that such can be resolved prior to the debtors filing the motion to modify.

c. *If raised, the Trustee may waive the objection if the debtors are able to work out the underlying issue. The following are some examples where the issues have been resolved:*

If the creditor has been paid in full, the debtors should provide the Trustee a new modification order thereby removing that creditor from being paid through the modification.

If the payment address as set forth in the proof of claim is wrong or is no longer valid, the debtors should be able to contact the creditor and request the creditor to file with the Court a change of address. Once such is filed, the Trustee will be able to remove the objection code from his computer system and should be able to withdraw his objection to the modification.

Note: The Court has allowed the debtors to insert the new payment address for a particular creditor in a new modification order where the creditor has advised the debtors of the new address but the creditor, for some reason, has failed to file a change of address with the Court.

x 13. Modification proposes to pay interest to the following unsecured claim(s) and/or unsecured portions of secured claims which discriminates against other unsecured creditors:

- a. *The Trustee raises this objection where the debtors, through the modification proposes to single out one or more unsecured creditors for payment that unfairly discriminates against the remaining unsecured creditors by paying that creditor interest.*
 - b. *The Trustee recommends the debtors avoid this objection by not proposing to pay one or more unsecured creditors with interest unless the debtors propose to pay interest to all unsecured creditors.*
 - c. *If raised, the Trustee may waive this objection if the debtors amend their motion to modify in order to remove this special treatment to one or more unsecured creditors that unfairly discriminates against the other unsecured creditors.*
-

x 14. Debtor(s) are not current on their plan payments under the terms of the proposed Modification.

- a. *The Trustee will raise this objection if the debtors are not current on their plan payments under the motion to modify.*
 - b. *The Trustee recommends the debtors avoid this objection by being current on their plan payments under the modification when filed and thereafter remaining current after the modification is filed.*
 - c. *If raised, the Trustee may waive this objection if the debtors make plan payments in amount that is sufficient to bring the debtors plan payments current under the terms of the modification.*
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15. Modification appears to be infeasible in that Debtor(s) have a poor payment record with no indication how Debtor(s) will be able to make future payments under the Modification.

- a. *The Trustee will raise this objection if the debtors have a poor history in making their plan payments under the terms of the prior confirmation order even if the debtors have been artificially brought current on their plan payments under the motion to modify.*
- b. *The Trustee recommends the debtors avoid this objection by making recent plan payment(s) at the time the motion to modify is filed (couple of monthly payments made in a row would be best).*

c. *If raised, the Trustee may waive this objection if the debtors are current on their plan payments under the modification by the time of the Court hearing on the modification and have strung together a couple of recent payments under the modification.*

Note: The Trustee will not waive this objection if the debtors are artificially current on their plan payments under the modification by the time of the Court hearing on the modification but have still not made any recent plan payments.

___ 16. Attorney's fees require approval by the Court.

a. *The Trustee will raise this objection if the debtors' attorney is either requesting fees that the attorney is not entitled to (for example, stay fees where there has been no certification of stay litigation); fees that are not contemplated under the "no-look" fees as contemplated in the Court's Local Rules (for example, fees for the modification that is filed for the purpose of curing an underfunding problem or providing for a priority claim after the filing of the TRCC); or excessive fees for a modification (generally, the Trustee will not object to a fee of \$600.00 or less for a motion to modify) or other legal services.*

Note: The "no-look" fee concept per the Court's Local Rules: The "no-look" attorney's fees for pre-confirmation and post-confirmation work as set forth in the Court's Local rules of Bankruptcy Procedures simply refer to the fees that the debtors' attorneys may charge without the necessity of the debtors' attorney filing a formal fee application.

*Note: The "no-look" fee time period per the Court's Local Rules: **Local Rule of Bankruptcy Procedure 2016(h)** sets forth the basic "no-look" fees that cover the legal services pertaining to pre-petition and post-petition services that are rendered prior to the earlier of the following:*

- (1) the first successful post-confirmation modification of a Chapter 13 plan which occurs subsequent to the filing of the Trustee's Recommendation Concerning Claims (the "TRCC" herein); or*
- (2) the filing of a certification by the Trustee that all claims have been reconciled with the terms of the confirmed plan without the necessity of a plan modification.*

*Note: The "no-look fee amounts per the Court's Local Rules: The basic "no-look" fees as set forth in **Local Rule of Bankruptcy Procedure 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.*

b. *The Trustee recommends the debtors avoid this objection by either requesting the amount of the proper "no-look" fee that the attorney is entitled to under the Court's Local Rules or the attorney will*

need to be prepared to file a formal fee application thereby seeking Court's approval of the additional attorney's fees.

Note: if the debtors' attorney decides to file a fee application for a modification filed prior to the time period that is covered by the "no-look" fees as contemplated in the Court's Local Rules, the Trustee takes the position any such fee application must cover the legal services performed for this entire time period, not just for legal services pertaining to the preparation and prosecution of the modification.

Note: If the debtors' attorney decides to file a fee application for a modification, the Trustee asserts that the modification order should provide that all of the related attorney's fees should be escrowed by the Trustee until such time that the fee application is approved by the Court. The modification order should also provide that the debtors' attorney will file the fee application within 30 days either after the entry of the modification or, if the TRCC has not yet been approved, within 30 days after the entry of the order approving the TRCC. Finally, the modification order should provide, depending upon the timing of the filing of the motion to modify, that the Trustee is authorized to do one of the following:

(1) If the fee application is timely filed and is ruled upon by the Court, the Trustee may reduce, if applicable, the amount of attorney's fees to be paid to the debtors' attorney to the amount of fees actually approved by the Court.

Note: The Trustee takes the position that he cannot increase the amount of attorney's fees to be paid to the debtors' attorney to an amount greater than the amount provided for in the modification order. In the event that the attorney requests, through the fee application, an amount that is greater than the amount that the Trustee is escrowing as a result of the modification order, the Trustee will release the hold on the fees being paid through the modification but will not increase the amount to match the higher fees. If the attorney wants the Trustee to pay the excess, the Trustee asserts that the debtors will need to file yet another motion to modify. In addition, if the modification order fails to provide for the payment of all of the attorney's fees as approved by the Court pursuant to the fee application, the Trustee will, of all probability, take the position that the plan as modified is now infeasible based upon its failure to fully provide for the full payment of an approved administrative expense.

(2) If the modification is filed prior to the expiration of the time period as contemplated in the Local Rules for the "no-look" fees and the fee application is not filed within 30 days after the approval of the TRCC, the Trustee may reduce the amount of attorney's fees to be paid to the debtors' attorney to an amount so that the total paid to the debtors' attorney, either direct or through the plan, equal the applicable "no-look" fee as set forth in the Court's Local Rules.

(3) If the modification is filed after the expiration of the time period as contemplated in the Local Rules for the "no-look" fees and the fee application is not filed within 30 days after the approval of the modification, the Trustee may reduce the amount of attorney's fees to be paid to the debtors' attorney to a total of \$600 for the modification, whether paid direct or through the plan.

A sample modification provision that may be inserted in the modification order is as follows:

Attorney's Fees to be Escrowed until Fee Application is filed:

Attorney Fees are to be held in escrow by the Chapter 13 Trustee pending approval of a fee application by the Court. If the Fee Application is not filed within thirty (30) days of the approval of the TRCC, the attorney fees will be reduced to the appropriate amount as set forth in Local Rule 2016(h) that requires no formal fee application.

This language, if appropriate, may be changed to reference the entry of the modification order as opposed to the TRCC.

c. If raised, the Trustee may waive the objection if the debtors either provide the Trustee with a new modification order thereby reducing the amount of attorney's fees to an appropriate amount or provide the Trustee with a new modification order allowing the debtors' attorney to file a fee application subject to the restrictions as set forth in sub-paragraph "b" above.

___ **17. Modification is not in compliance with the Court's Local Rules for the following reason(s):**

___ **The proposed change(s) to the confirmed plan are not set forth in the Motion.**

___ **The purpose(s) or the necessity of the Modification are not set forth in the Motion.**

___ **The amount of the attorney's fees being charged and/or a description of the legal services performed for such charges are not included in the Motion.**

___ **The Debtor(s) failed to file a modified Chapter 13 plan with the motion to modify.**

a. **Local Rule Bankruptcy Procedure 3015(h)(1) sets forth the *three disclosures* that should be included in the motion to modify:**

(a) **the *purpose or necessity* for the modification;**

(b) **the *changes being made* to the plan payment, the term of the plan, the distributions to any class, or other substantive provision; and**

(c) **the *amount of additional attorney's fees*, if any, requested for services pertaining to the modification. A brief description of the services rendered and the total amount of the fees should be included here.**

*The Trustee will raise one or more of the objections in the event that the motion to modify fails to meet the disclosures as set forth in the Court's Local Rules. In addition to these disclosures, **Local Bankruptcy Procedure 3015(h)(1)** also requires the filing of a "**modified plan**" together with the motion to modify. The Trustee will raise this objection upon the debtors' failure to file a modified plan with the motion to modify.*

b. *The Trustee recommends the debtors avoid this objection by including in the motion to modify the purpose or necessity for the modification; a description of the changes being made to the confirmed plan; and the amount of attorney's fees being charged for the modification, if any, and a description of the legal services being performed for these services. In addition, the debtors should file a modified plan along with the motion to modify.*

c. *If raised, the Trustee may waive this objection if the debtors amend their motion to modify in order to include the missing disclosures as required by the Court's Local Rules and/or include a modified plan.*

___ 18. Other:

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