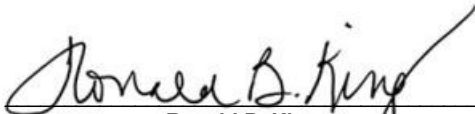



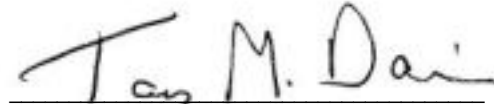
SIGNED this 17th day of October, 2017.



  
\_\_\_\_\_  
Ronald B. King  
Chief United States Bankruptcy Judge

  
\_\_\_\_\_  
Craig A. Gargotta  
United States Bankruptcy Judge

  
\_\_\_\_\_  
H. Christopher Mott  
United States Bankruptcy Judge

  
\_\_\_\_\_  
Tony M. Davis  
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS**

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§

**STANDING ORDER  
FOR CHAPTER 13 CASE ADMINISTRATION IN THE EL PASO DIVISION  
EFFECTIVE IN ALL CASES FILED ON OR AFTER NOVEMBER 1, 2017**

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**IT IS HEREBY ORDERED:**

**1. EFFECTIVE DATE AND APPLICABILITY**

The Effective Date of this Standing Order is November 1, 2017, and applies to all cases filed in the El Paso Division on and after November 1, 2017. This Standing Order, together with the Consolidated Standing Order for the Adoption of a District Form Chapter 13 Plan entered in the Western District of Texas effective November 1, 2017 ("District-Wide Standing Order"), will govern in all cases filed in the El Paso Division on and after November 1, 2017.

This Standing Order, together with the District-Wide Standing Order, supersedes and replaces all prior standing orders relating to Chapter 13 administration, cases and plans in the El Paso Division ("Prior Standing Order") in all cases filed on and after November 1, 2017. For all cases filed prior to November 1, 2017, the Prior Standing Orders will remain in effect unless otherwise ordered by the Court in a particular Chapter 13 case.

**2. CHAPTER 13 FORM PLAN**

Pursuant to the Consolidated Standing Order for the Adoption of a District Form Chapter 13 Plan entered in the Western District of Texas and effective November 1, 2017 ("District-Wide Standing Order") a district-wide form Chapter 13 Plan has been adopted for use in all divisions in all cases filed on and after November 1, 2017 ("District-Wide Form

Plan"). The District-Wide Form Plan may be revised periodically. The Clerk shall make available for the public the District-Wide Form Plan and any revised District-Wide Form Plans.

The District-Wide Form Plan must be used by all Chapter 13 Debtor(s) in all cases filed in the El Paso Division on and after November 1, 2017. For all cases filed before November 1, 2017, the form chapter 13 Plan adopted by the First Joint Standing Order Relating to the Chapter 13 Case Administration in the El Paso and Waco Divisions dated November 8, 2005, as supplemented by the Supplemental Standing Order Relating to Chapter to Chapter 13 Case Administration in the El Paso, Midland and Waco Divisions dated November 19, 2012 ("Prior Plan Form") must be used by chapter 13 Debtor(s), unless otherwise ordered by the Court in a particular Chapter 13 case.

### **3. ADOPTION OF OTHER FORMS**

A. Attached as Exhibit #1 to this Standing Order is a Declaration of the Debtor(s) Concerning Confirmation Requirements. Such Declaration shall be completed by the Debtor(s) and presented to the person presiding at the Section 341 Meeting of Creditors. If the case can be confirmed no later than ten days after completion of the Section 341 Meeting, this completed form will satisfy the confirmation requirements of 11 U.S.C. § 1325(a)(8) and (9) regarding domestic support obligations, as that term is defined in 11 U.S.C. § 101(14A), and tax returns.

B. Attached as Exhibit #2 to this Standing Order is a Questionnaire Upon Completion of Plan Payments for Debtor(s). Such Questionnaire shall be sent to all Debtor(s) by the Trustee and completed by all Debtor(s) and returned to the Trustee within 30 days of receipt. If not returned to the Trustee within the 30-day period, the Trustee shall file a motion to compel the Debtor(s) to appear and show cause why they have not cooperated. Upon the Trustee's receipt of the completed Questionnaire, the Trustee shall file a motion, with 21 day negative notice, for issuance of a discharge. The Trustee in filing the motion, and the Court in ruling on it, may rely on the factual representations of the Debtor(s) made in the Questionnaire, for purposes of satisfying the discharge requirements of 11 U.S.C. § 1328(a). The Trustee's motion shall be served on all creditors, all holders of domestic support obligations and any state child support enforcement agency required to receive notice under the Bankruptcy Code. Service of this motion shall satisfy the Trustee's notice requirements of 11 U.S.C. § 1302(d)(1)(C). If the Debtor fails to complete Exhibit #2, then an Order Closing the Case Without Discharge may be submitted by the Trustee. If no objection to the Trustee's Motion for issuance of a Discharge is timely filed, the discharge hearing shall be deemed to have been waived and an order discharging the Debtor(s) shall be entered.

### **4. DEBTOR(S) DUTY TO FACILITATE NOTICE REGARDING DOMESTIC SUPPORT OBLIGATIONS**

In order to facilitate the expeditious notice to domestic support obligation claim holders and the applicable state agencies required by 11 U.S.C. § 1302(d)(1)(A) and (B), the Debtor(s) shall, at the time the Bankruptcy Schedules are filed, provide to the Trustee: (1) the

names and current addresses and telephone numbers of all persons to whom the Debtor(s) owe a domestic support obligation; and (2) the name, address and telephone number of the state child support enforcement agency in each state where a person described in clause (1) above resides. For purposes of this paragraph, a domestic support obligation claim holder must be listed even if the Debtor(s) are current on the obligation.

**5. SERVICE OF PLAN AND AMENDED PLANS**

A. Whether or not the Plan is filed with the Chapter 13 petition at the commencement of the case, the Debtor(s) shall be responsible for serving the Plan on all creditors.

B. Whenever a Chapter 13 plan is amended prior to confirmation, the Debtor(s) shall serve the amended Plan on all creditors, parties in interest and the Trustee at the same time the Plan is filed.

C. Absent leave of Court, the last date that Debtor(s) may file a pre-confirmation amended Plan is 21 days prior to the confirmation hearing date. The Court will only consider de minimis, nonsubstantive, or technical amendments to the Plan at the confirmation hearing.

D. A certificate of service must be filed with the Clerk of the Court reflecting service of any Plan or amended Plan and should indicate service was made on the Trustee.

**6. PRE-CONFIRMATION DISBURSEMENTS BY THE CHAPTER 13 TRUSTEE**

A. The Court hereby orders that all pre-confirmation adequate protection payments to those secured claimants that the Debtor(s) propose to pay through the Plan shall be made by the Trustee in the form of pre-confirmation, or "interim" disbursements made monthly, on the same dates the Trustee makes post-confirmation disbursements in other cases. The Debtor(s) are hereby ordered to remit such payments to the Trustee commencing 15 days after the filing of the petition. Provided all conditions for disbursement are met, the Trustee shall begin disbursing to creditors under this paragraph on the first regularly scheduled disbursement 30 days after the petition is filed, unless otherwise provided herein or by separate order. Such interim disbursements by the Trustee shall be in lieu of direct adequate protection payments by Debtor(s) to those secured claimants that the Debtor(s) propose to pay through the Plan, as provided in 11 U.S.C. § 1326(a)(1)(C), and no direct adequate protection payments by Debtor(s) to those creditors shall be required unless otherwise ordered by the Court.

B. The Trustee shall be authorized to make pre-confirmation disbursements of funds held by the Trustee in the case for Trustee fees and to the allowed ongoing mortgage payment and adequate protection payments provided for in the proposed Plan on a pro-rata or set payment basis on regular monthly disbursement dates. Unless the

Plan states otherwise, the Trustee shall disburse the funds received in accordance with the District-Wide Standing Order, as it may be amended.

**7. ADDITIONAL ADEQUATE PROTECTION TO VEHICLE LENDERS**

Pursuant to 11 U.S.C. § 363, the Debtor(s) shall not use a vehicle post-petition unless the Debtor(s): (i) maintain insurance on the vehicles in the amount required by the Debtor(s)' pre- petition contract; (ii) provide proof of insurance to the lienholder upon request; and (iii) provide the Trustee with all necessary information for a wage order not later than the date of the initial Section 341 Meeting of Creditors (if the Debtor(s) are a wage or salaried employee and the Court has not ordered otherwise).

**8. DEADLINE FOR FILING OBJECTIONS TO CLAIMS: LATE-FILED CLAIMS**

A. Objections to proofs of claim must be in writing and filed no later than 30 days after the later of: (1) the bar date applicable to the particular claim being objected to, or (2) the date the particular amended claim being objected to was amended. However, if a proof of claim is filed within thirty (30) days of the confirmation hearing, parties have thirty (30) days from date of that filing to file any objections to such claim.

B. No objection to a late-filed claim shall be necessary; such claims are deemed disallowed unless otherwise ordered by the Court. The burden is on the claimant to request, by motion, allowance of a late-filed claim.

**9. DEADLINE FOR FILING RESPONSE OBJECTIONS TO CLAIMS**

Responses to objections to claims must be filed by the deadline provided in the notice included in the particular objection, pursuant to Local Bankruptcy Rule 9014. If no such notice is included in the objection to claim, no response is necessary and the objection to claim shall be set for hearing.

**10. ALLOWANCE OF CLAIM FOR PURPOSE OF TRUSTEE'S DISBURSEMENTS ON CLAIM**

For purposes of the Trustee's disbursements on a claim under the Plan, as soon as the deadline (as established herein) for filing an objection to a particular proof of claim has passed, if no objection to the claim is then pending, the Trustee is authorized to rely on the most recent order determining the allowance of the claim or, if no such order has been entered, on the Court's official record of filed proofs of claim in the case.

**11. MOTIONS TO VALUE COLLATERAL OR TO AVOID LIENS INDEPENDENT TO THE PLAN AND RESPONSES THERETO**

A. While some motions under 11 U.S.C. § 506 to value collateral or under 11 U.S.C. § 522(f) to avoid lien may be contained within the District-Wide Form Plan, the

Debtor(s) may elect to separately file a motion to value collateral or to avoid a lien, independent of the Plan. Any such independent motion must be in writing.

B. Responses or objections to motions to value collateral or to avoid liens that are filed separately from the Plan must be in writing and filed by the deadline provided in the notice included in such motion, pursuant to Local Bankruptcy Rule 9014. If no such notice is included, no response is necessary and the motion shall be set for hearing.

**12. DEADLINE FOR FILING OTHER OBJECTIONS TO THE DEBTOR'S PLAN**

Any objection to the confirmation of the Debtor(s)' Plan, including responses and objections to the motions to value collateral and to avoid liens that are contained in the Plan, must be in writing and shall be filed no later than 14 days prior to the confirmation hearing date. All objections to a Plan, including responses and objections to the motions to value collateral and to avoid liens that are contained in the Plan, will be considered at the confirmation hearing.

**13. MOTIONS TO MODIFY PLAN, MOTIONS FOR MORATORIUM, AND MOTIONS TO INCUR DEBT**

A. All motions to modify a Chapter 13 Plan must:

- (1) be noticed to all creditors and parties in interest, including the Trustee, within two days of filing;
- (2) contain negative notice language affording creditors a 21 day opportunity to file objections to the proposed relief;
- (3) specifically indicate the number of months (if any) which the motion proposes to extend the term of the Plan from the date of confirmation through completion; and
- (4) reference the Debtor(s)' Schedules I & J and indicate what material changes have occurred, if any.

B. A "Motion for Moratorium," a "Motion to Cure Plan Arrearage," and a "Motion to Temporarily Suspend Plan Payments" are motions to modify a Chapter 13 Plan within the meaning of this paragraph. Such motions shall state clearly the reasons for such request and indicate if any prior moratorium has been granted and, if so, give the details and time period(s) covered. These motions do not require "pre-approval" from the Trustee. The granting of a moratorium does NOT excuse a Debtor(s)' obligation to make up the missed payments under the Plan.

C. The Debtor(s) shall not incur consumer debt without prior approval of either the Court or the Trustee. The Trustee's approval shall be sought by the submission of a

written request to the Trustee by the Debtor(s)' attorney (or the Debtor(s), if not represented by counsel), and such request shall not be filed with the Clerk. At the time the request is submitted to the Trustee, however, the Debtor(s) shall also file with the Clerk Amended Schedules I & J. In the written request to the Trustee, the Debtor(s) shall state:

- (1) the reason or need for the incurring of the debt; and
- (2) the item to be purchased or refinanced, the amount of the debt, and other relevant financing terms.

If the request is approved by the Trustee, the Debtor(s) shall file such approval with the Clerk. If the request is not approved by the Trustee within ten (10) days, a motion to incur debt, which shall contain the same information as the request to the Trustee and shall also reference the Trustee's lack of approval of the request, may then be filed with the Clerk.

#### **14. PLAN PROVISIONS FOR "SURRENDER" OF PROPERTY**

Entry of an order confirming a Plan that provides for surrender of property as treatment of a secured claim shall operate to modify the automatic stay imposed pursuant to 11 U.S.C. § 362(a) and 1301(a) to permit the holder of the claim to exercise its rights with respect to obtaining possession and title to the property. Unless otherwise provided by the Plan or confirmation order, this modification of the automatic stay becomes effective 14 days after entry of the confirmation order and no separate motion for relief from the automatic stay need be filed by the affected secured creditor.

#### **15. DUTIES OF THE TRUSTEE**

It is sufficient for the purposes of Local Bankruptcy Rules 2016(c)(1) and 3015(e)(3) that the Trustee note his or her recommendation concerning confirmation of the Debtor(s)' Chapter 13 Plan by signing off on the confirmation order.

#### **16. DEBTOR(S) COUNSEL: SCOPE OF REPRESENTATION & COMPENSATION**

##### **A. Scope of Representation; Benchmark Fee**

- (1) An attorney representing the Debtor(s) in a Chapter 13 case shall represent the Debtor(s) in all matters in or related to that case, from the earlier of the filing of the petition (if the attorney signs the petition) or the filing of a notice of appearance by the attorney (if the Debtor(s) originally filed the petition pro se) until the case is dismissed or

otherwise closed (including disposition of any motion to reinstate the case), absent Court approval of counsel's withdrawal from representation.

(2) The Court may from time to time establish a standard benchmark fee for Debtor(s)' counsel in a routine non-business Chapter 13 case, and a standard benchmark fee for Debtor(s)' counsel in a routine business case (see subparagraphs (3) and (4) below). An attorney may not receive a post-petition retainer or payment from the Debtor(s) other than as specified in this Standing Order without leave of court. As guidelines, the Court contemplates that the following matters will be included in the standard benchmark fee:

(a) all conferences with the Debtor(s), including budget consultations and timely responses to Debtor(s) inquiries, whether by telephone or in writing;

(b) preparation of the bankruptcy petition, schedules, statement of affairs, plan, and pre-confirmation amendments thereto;

(c) representation of the Debtor(s) at the § 341 meeting of creditors, including any continuances thereof;

(d) representation of the Debtor(s) at confirmation and discharge hearings, including reset confirmation hearings;

(e) representation of the Debtor(s) in connection with two motions under 11 U.S.C. § 362;

(f) representation of the Debtor(s) on motions to dismiss, including Trustee motions to dismiss with or without prejudice;

(g) preparation of and representation of the Debtor(s) on routine motions, which include the following:

(i) one motion for moratorium or one motion to modify;

(ii) motions to waive pay order;

(iii) motions to pay filing fees in installments;

(iv) one motion to reinstate the case;

(v) objections to claims and motions to value collateral and to avoid liens;

(vi) motions to extend time to file paperwork;

(vii) motions to convert or dismiss the case; and

(viii) defense of two motions for relief.

(h) providing notices to creditors, where appropriate, such as explaining the automatic stay;

(i) making and performing, or assisting the Debtor(s) in making or performing, the disclosures and duties required by 11 U.S.C. §§ 521, 527, 528, and 1308 including completion of the Questionnaire required at the end of the case; and

(j) other miscellaneous normal, customary services including correspondence with clients, review of correspondence from clients, communication with the Trustee, Trustee's office, and Clerk's office.

(3) In an individual non-business case, the Court deems \$3,600.00 ("the Individual Standard Fee") as reasonable compensation and reimbursement of expenses for an attorney representing the Debtor(s) in accordance with 11 U.S.C. § 330(a)(3)(B).

(4) In an individual business case, the Court deems \$4,100.00 ("the Business Standard Fee") as reasonable compensation and reimbursement of expenses for an attorney representing the Debtor(s) in accordance with 11 U.S.C. § 330(a)(3)(B).

(5) The Court will allow an Individual Standard Fee or a Business Standard Fee and the bankruptcy clerk filing fees without the requirement of an application for compensation under 11 U.S.C. § 330 and the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules").

B. Additional Compensation

(1) Notwithstanding the foregoing, an attorney may for cause shown request additional fees for the services listed. Such request may be made through the filing of a formal application for compensation and following the Bankruptcy Rules and Local Rules for such procedure. Alternatively Debtor(s)' counsel may follow the expedited procedure provided hereafter. In no event however shall counsel condition representation upon payment of an additional fee prior to undertaking



a task. Counsel's choice is to undertake the work and then seek compensation or to decline the work and file an application for permission to withdraw from further representation in the case.

(2) Expedited Application for Additional Compensation

(a) If (and only if) counsel's employment agreement with the Debtor(s) regarding attorneys' fees and scope of employment authorizes fees and expenses to be charged beyond the amount originally agreed to be paid, as disclosed by counsel pursuant to Bankruptcy Rule 2016(b), and only if and when the case filing fee has been paid in full, counsel may seek the allowance and payment of additional fees and expenses. In the interest of establishing a simpler, more expeditious, and less expensive process for requesting and obtaining allowance of such additional attorneys' fees and expenses in Chapter 13 cases, as an alternative to the procedure established under Local Rule 2016(4), the following procedure may be used. This abbreviated procedure may be used not more than three times in any case, and the total additional fees and expenses that are requested in a case using this abbreviated procedure may not be more than the amount originally charged.

(b) Except as provided below in subsection (b)(3), such additional fees may only be requested by the filing by counsel of a "Motion for Additional Fees." If previous motions for additional fees have been filed, then subsequent motions shall be identified numerically as "Second Motion for Additional Fees," etc. The content of the motion shall:

(i) include the 21-day negative notice language of Local Bankruptcy Rule 9014(a) and be served on all creditors with allowed claims, the Debtor(s) and the Trustee;

(ii) state the amount agreed to be paid under the original fee agreement, and the amount of any pre-petition retainer;

(iii) state the dates and amounts of all previous requests for additional fees and expenses, and the amount awarded on each;

(iv) briefly describe the services performed for the current request;

(v) state the proposed source of payment of the fees and expenses requested (e.g., directly by the Debtor(s), through the plan, by a third party, from sales proceeds, etc.);

(vi) briefly describe the anticipated effect of the allowance of the additional fees and expenses on the plan (i.e., on its feasibility, the amount of any reduction in the dividend to unsecured creditors, etc.); and

(vii) contain a certificate of service indicating service on the Trustee, Debtor(s), and all other parties in interest in the case.

(3) Exceptions: In the few limited instances listed below, a request for additional attorneys' fees and expenses may be included in a pleading that requests other relief. That a request for additional fees and expenses is included shall be noted in the caption of the pleading (and in the caption of the form of the order submitted with the pleading), which caption shall also indicate how many such requests have preceded the current request (e.g., "and Fourth Request for Additional Debtor's Attorneys' Fees"). The pleading shall comply with the requirements of subsection 2(b)(i) through (vii), above, and may include 21-day negative notice. If 21-day negative notice is included, and if no party in interest files a timely response, the Court may approve the request for additional attorneys' fees and expenses, in addition to the other relief requested, without further notice or hearing.

The only pleadings that may include such requests for additional attorneys' fees and expenses are:

(a) applications to sell property where the proceeds of the sale will be the source of payment of any authorized additional fees and expenses;

(b) motions or other pleadings where a third party, not the bankruptcy estate or the Debtor(s), will be the source of payment of any authorized additional fees and expenses; and

(c) motions to modify, motions for moratorium, and defense of motions for relief from the automatic stay that are not covered by the benchmark fee.

(4) Responsive pleadings may not include requests for additional attorneys' fees and expenses of counsel for the Debtor(s).

**17. SUMMARY DISMISSAL OF CASE**

A Chapter 13 case may be summarily dismissed upon submission of an order by the Trustee for any one of the following causes:

- A. failure of the Debtor(s) to timely pay the filing fee;
- B. failure of the Debtor(s) to timely file a Plan or use the applicable Plan Form;
- C. failure of the Debtor(s) to timely file Schedules;
- D. unexcused failure of the Debtor(s) to appear at the scheduled Meeting of Creditors (Section 341 Meeting);
- E. delinquency of the Debtor(s) of 60 days or more days on payments under a proposed or confirmed Plan;
- F. failure of the Debtor(s) to comply with the provisions of a prior order of the Court;
- G. failure of the Debtor(s) to submit tax returns pursuant to § 521(e)(2); or
- H. failure of the Debtor(s) to submit payment advices pursuant to § 521(a)(1)(B)(iv).

**18. ONGOING MORTGAGE PAYMENTS IN CHAPTER 13 CASES**

A. Definitions. As used herein, the following terms shall mean:

(1) "Arrearage" means past-due payments, fees or charges due to a Mortgage Creditor as of the petition date.

(2) "Ongoing Mortgage Payment" means the monthly post-petition amount the Debtor is obligated to pay to any Mortgage Creditor, and that will be disbursed by the Trustee under the Plan or this Standing Order, on a monthly basis pursuant to the terms of a note, mortgage, or deed of trust constituting a perfected lien on real property that is the Debtor's principal residence, including principal, interest, taxes, insurance, and any other charges allowed to be escrowed or otherwise charged or assessed against such real property. *This does not include rental or lease payments, lot payments, or payments on Contracts for Deed.*

(3) "Debtor" means a Chapter 13 Debtor or Debtor(s).

(4) "Mortgage Creditor" means the entity or entities, or the servicer for such entity or entities, asserting a claim secured by a consensual lien through a mortgage or deed of trust on real property that is the principal residence of the Debtor.

(5) "Petition Date" means the date the Debtor files the Chapter 13 petition or the date the case converted to Chapter 13 from another chapter.

(6) "Trustee" means the Standing Chapter 13 Trustee.

(7) "Party-in-interest" means the Debtor, the Trustee, the United States Trustee, the holder(s) of a lien in real property that is the Debtor's principal residence, or any other party with an interest in the property.

B. Ongoing Mortgage Payments

(1) If a Debtor owes an Arrearage claim to a Mortgage Creditor, all post-petition mortgage payments to the Mortgage Creditor during the term of the Chapter 13 Plan shall be made through the Trustee as part of the Chapter 13 Plan payment.

(2) If the Debtor is current on the mortgage on the Petition Date, the Debtor may make the post-petition mortgage payments directly to the Mortgage Creditor.

(a) If the Debtor is current on the mortgage on the Petition Date, the Debtor shall complete Exhibit #3 and provide that document to the Trustee (not the Court) within 5 days of the Petition Date.

(b) If a Debtor is current on the mortgage on the Petition Date, nevertheless decides to pay the post-petition payments to the Mortgage Creditor through the Trustee as part of the Plan payment, the terms of this Standing Order apply.

C. Debtor's Duties

(1) A Debtor with an Arrearage claim shall complete Exhibit #4 Mortgage Arrearage Claim Checklist and Exhibit #5 Authorization to Release Information to the Trustee and provide those documents to the Trustee (not to the Court) within 5 days of the Petition Date.

(2) The Debtor's Plan shall include the name of all Mortgage Creditors holding an Arrearage claim and shall include the estimated

amount of the Arrearage and the full amount of the monthly Mortgage Payment as of the Petition Date.

(3) The Debtor shall include in the Chapter 13 Plan payment to the Trustee the amount of the Ongoing Mortgage Payment, plus the Trustee's fee.

D. Trustee's Duties

(1) The Trustee will not disburse Ongoing Mortgage Payments until a proof of claim is filed with the Court. If the Trustee deems the proof of claim to contain sufficient information, and in the absence of a filed objection to the proof of claim, the Court grants the Trustee authority to disburse Ongoing Mortgage Payments as if the Plan had been confirmed. If the Trustee has available funds, the initial disbursement should precede the hearing on plan confirmation.

(2) The Trustee is authorized to set up an additional claim for the Mortgage Creditor for the Debtor's first mortgage payment due after the filing of the case. The claim will be paid as a secured claim, on a pro-rata basis along with the prepetition mortgage arrearage claim, unless the Mortgage Creditor has already clearly added such amount to the pre-petition arrearage claim. This allowance shall reimburse the Mortgage Creditor for any post-petition delinquency that may accrue until the Trustee begins payments to that Creditor.

(3) If a party-in-interest objects to the amount of the Ongoing Mortgage Payment, the Trustee shall be authorized to hold the Ongoing Mortgage Payments in reserve pending a resolution of the objection pursuant to an allowed amended claim or a Court order.

E. Mortgage Creditor's Duties

(1) Any Ongoing Mortgage Payment disbursed by the Trustee to the Mortgage Creditor shall be applied to the next post-petition payment due under the terms of the note and shall not accrue a late charge under such note or be reported as "late" to the credit reporting agencies unless the Debtor fails to make a full payment under the Chapter 13 Plan to the Trustee that causes a delay in the Trustee's disbursement of the Ongoing Mortgage Payment to the Mortgage Creditor.

(2) The Mortgage Creditor shall comply with subsection F herein regarding *Post-Petition Mortgage Payment Changes and Charges*.

F. Post-Petition Mortgage Payment Changes and Charges

(1) Changes to Ongoing Mortgage Payment. If the mortgage documents provide for payment changes, including changes due to interest rate adjustments or escrow account modifications, the following terms shall apply:

(a) No later than 21 days prior to any post-petition change in the Ongoing Mortgage Payments, the Mortgage Creditor shall file with the Court and serve on the Debtor and Debtor's counsel a document that substantially complies with Official Form B 1051, *Notice of Mortgage Payment Change*, that shall include the new mortgage payment amount, the date the new payment takes effect, and a description of the reason for the payment change.

(b) No later than 21 days after service of the Mortgage Creditor's *Notice of Mortgage Payment Change*, the Debtor, the Trustee, the United States Trustee, or any party-in-interest may file a response to such notice of payment change. If no such response is filed, that amount will become the new Ongoing Mortgage Payment on the effective date provided in the Mortgage Creditor's *Notice of Mortgage Payment Change*. The Trustee is authorized to disburse the new Ongoing Mortgage Payment without seeking formal modification of the Plan. If a *Notice of Mortgage Payment Change* is filed less than 21 days prior to the effective date of the mortgage payment change, the Trustee is authorized to set the new Ongoing Mortgage Payment to commence as soon as practicable.

(c) No post-petition adjustment to the Ongoing Mortgage Payment shall be valid unless authorized by the agreement upon which the claim is based. The Chapter 13 Trustee is not authorized to change the mortgage payment unless the Mortgage Creditor's *Notice of Mortgage Payment Change* is filed with the Court, unless otherwise ordered by the Court.

(d) If a Mortgage Creditor has a claim based on an open-end credit agreement such as a home equity line of credit, and/or if the interest rate or payment term is subject to frequent change that makes compliance with this sub-part impracticable or overly burdensome, a Motion may be filed with the Court to exempt that claim from compliance with this subsection or to alter the manner of compliance required. The Mortgage Creditor, the Debtor, and the Trustee may also present an agreement to do so for the Court's approval.

(2) Post-petition Mortgage Fees Expenses and Charges. If the Mortgage Creditor incurs post-petition attorney's fees, costs, or other

charges such as property inspection fees, post-petition late charges or other items payable by the Debtor under the terms of the loan documents, the following shall apply:

(a) Following service of the Mortgage Creditor's *Notice of Postpetition Mortgage Fees, Expenses and Charges*, under Bankruptcy Rule 3002.1(c), the Trustee is authorized to add such amount as an arrearage claim to be paid as funds are available for that class of claimant, after payment of other allowed secured claims. The Mortgage Creditor shall not duplicate or separately claim allowance of such fees, expenses or charges in an order of the court or in a proof of claim.

(b) The Trustee shall annually file a *Notice of Trustee Disbursements in Ongoing Mortgage Case* (Exhibit #6), which sets forth the date and amount of each payment made by the Trustee to a creditor whose claim is subject to these provisions. The Notice shall specify the period covered by the Notice, and identify the months for which each contractual payment is applied according to the records of the Trustee. The Notice shall be served on the Debtor, Debtor's counsel and each creditor holding a claim described on the Notice.

(3) Changes to Mortgage Creditor Payee. At least 60 days prior to a change of the name of the Mortgage Creditor payee, or change to the address to which Ongoing Mortgage Payments should be sent, the Mortgage Creditor shall file with the Court and notify the Trustee, Debtor and the Debtor's attorney of any such change using a document that conforms to Exhibit #7 (*Notice of Transfer of Servicing*). The Trustee will change the name and/or address of the Mortgage Creditor payee as soon as practicable after the *Notice of Transfer of Servicing* is filed with the Court.

G. Trustee's Final Report Upon Dismissal or Conversion

Upon dismissal or conversion of the case, the Trustee will file a Final Report including an accounting of all Arrearage payments and Ongoing Mortgage Payments, and will also serve the Mortgage Creditor. The Mortgage Creditor will have 30 days from the filing of such Final Report to file an objection to the Trustee's accounting. Absent a timely objection, the Trustee's Final Report will be binding on the Mortgage Creditor.

H. Effect of Plan Confirmation

Upon ceasing the conduit mortgage payments to be paid through the Plan at or around the completion of a Chapter 13 case, the Trustee will file a *Notice Deeming Mortgage Current and Directing Debtor to Resume Monthly Mortgage Payments* (Exhibit #8). The Mortgage

Creditor will have 21 days from the filing of the Notice to file an Objection. Absent a timely objection, the Trustee's *Notice Deeming Mortgage Current and Directing Debtor to Resume Monthly Mortgage Payments* will be binding on the Mortgage Creditor and the Debtor with the same effect as an Order of the Court.

**IT IS THEREFORE ORDERED that the above procedures are hereby adopted by the Bankruptcy Court for the Western District of Texas in the El Paso Division.**

###



**EXHIBIT # 1**

**UNITED STATES BANKRUPTCY COURT  
WESTERN DIVISION OF TEXAS  
EL PASO DIVISION**

**IN RE:**

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|                  | § | <b>CASE NO.</b>     |
|                  | § |                     |
| <b>Debtor(s)</b> | § | <b>(Chapter 13)</b> |

**DECLARATION OF THE DEBTOR(S)  
CONCERNING CONFIRMATION REQUIREMENTS**

The Debtor(s) in the above captioned case, \_\_\_\_\_,  
being duly sworn upon oath, state as follows (check all applicable statements):

1.     Since the filing of this bankruptcy case, I/we have not been required by a judicial or administrative order or by statute to pay any domestic support obligation as defined in 11 U.S.C. § 101(14A).  
      **OR**  
       I/We have paid all amounts that first became due and payable under a domestic support obligation (as defined in 11 U.S.C. § 101(14A)) after the filing of this bankruptcy case that I/we am/are required by a judicial or administrative order or by statute to pay.
  
2.     I/We have filed all federal, state, and local tax returns required by law to be filed for all taxable periods ending during the four year period prior to the filing of this bankruptcy case.  
      **OR**  
       I/We have signed a Supplement to the Confirmation Order certifying that all required tax returns will be filed no later than \_\_\_\_\_.

**By signing this Affidavit, I/we acknowledge that all statements contained herein are true and accurate and that the Court may rely on the truth of each of these statements in determining whether to confirm my/our Chapter 13 Plan. The Court may revoke confirmation of the Chapter 13 Plan if the statements herein are not accurate. Debtor(s) understand that, should any of the above declarations change prior to entry of a confirmation order, Debtor(s) will have to present an updated Declaration to the Chapter 13 Trustee.**

*I/We declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on \_\_\_\_\_, 20\_\_\_\_.*

\_\_\_\_\_  
Debtor

\_\_\_\_\_  
Debtor

**EXHIBIT # 2**

**DEBTOR QUESTIONNAIRE UPON COMPLETION OF  
PLAN PAYMENTS IN BANKRUPTCY CASE NO.**

CIRCLE THE CORRECT ANSWERS:

1. YES/NO I/We have completed an instructional course concerning personal financial management, as described in 11 U.S.C. § 111, provided by the following entity:

Stuart C. Cox Chapter 13 Standing Trustee  
1760 N. Lee Trevino  
El Paso, TX 79936

2. YES/NO I/We have received a discharge in a Chapter 7, 11 or 12 bankruptcy case within four years of the date I/we filed this bankruptcy case.
3. YES/NO I/We have received a discharge in another Chapter 13 bankruptcy case within two years of the date I/we filed this bankruptcy case.
4. YES/NO Did you elect to use State exemptions? If yes, then the following two questions must be answered.
- a. YES/NO I/We had, either at the time of the filing of this bankruptcy case, or at the present time, equity in excess of \$155,675 (\$311,350 if married and filing this case jointly) in the type of property described in 11 U.S.C. § 522(p)(l). [generally, your homestead]
- b. YES/NO There is currently pending any proceeding in which I [in an individual case] or either of us [in a joint case] may be found guilty of a felony [a felony is an offense punishable by a minimum term of imprisonment of more than one year] of the kind described in 11 U.S.C. § 522(q)(1)(A) [one where the circumstances of the felony demonstrated that the filing of this case was an abuse of the Bankruptcy Code] or liable for a debt of the kind described in 11 U.S.C. § 522(q)(1)(B) [violation of federal or state securities laws or regulations of orders issued thereunder; fraud, deceit or manipulation in a position of trust in connection with the purchase or sale of certain registered securities; civil remedies under the racketeering statute; or criminal acts, intentional civil injuries, or willful or reckless misconduct causing serious physical injury or death to another in the preceding five years]

5a. YES/NO I/We have been required by a judicial or administrative order or by statute to pay any domestic support obligation, as defined in 11 U.S.C. § 101 (14A) [a debt owed to or recoverable by a spouse, former spouse, or child or the child's parent or legal guardian, or a government unit, for alimony, maintenance, or support of those persons, that was established by a separation agreement, divorce decree, property settlement, or order of the court or, where applicable, a determination of a governmental unit] either before this bankruptcy case was filed, or at any time after the filing of this bankruptcy case.

IF THE ANSWER TO QUESTION 5a IS "YES," THEN ALL OF THE FOLLOWING QUESTIONS MUST BE COMPLETED/ANSWERED:

5b. YES/NO I/We certify that, prior to the date of this Questionnaire, I/we have paid all amounts due under any domestic support obligation [as defined in 11 U.S.C. § 101(14A)] required by a judicial or administrative order or by statute, including amounts due before this bankruptcy case was filed, to the extent provided for by my/our Plan. The name and address of each holder of a domestic support obligation is as follows:

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5c. My/Our most recent address is:

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5d. The name and address of my/our most recent employer(s) is:

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5e. The following creditors hold a claim that is not discharged under 11 U.S.C. § 523(a)(2) or (a)(4), or a claim that was reaffirmed under 11 U.S.C. § 524(c):

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I/we acknowledge that all statements contained herein are true and accurate. The Court may rely on the truth of each of these statements in determining whether to grant me/us a discharge in this Chapter 13 bankruptcy case. The Court may revoke my discharge if the statements herein are not accurate.

*I/We declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on \_\_\_\_\_, 20\_\_.*

\_\_\_\_\_  
Debtor

\_\_\_\_\_  
Debtor

**EXHIBIT # 3**

Debtor 1 Name \_\_\_\_\_

Case # \_\_\_\_\_

Debtor 2 Name \_\_\_\_\_

**PRE-PETITION MORTGAGE DECLARATION FOR  
DEBTOR(S) CURRENT ON ALL MORTGAGE PAYMENTS**

***SUBMIT TO TRUSTEE ONLY  
DO NOT FILE THIS DOCUMENT WITH THE COURT***

\_\_\_\_\_ The Debtor(s) are current on all home mortgage payments and shall continue to pay the regular monthly mortgage payment(s) directly to the creditor(s) listed below.

\_\_\_\_\_ The Debtor(s) do not have a mortgage.

\_\_\_\_\_ The Debtor(s) will surrender their homestead.

THE FOLLOWING INFORMATION MUST BE PROVIDED FOR ALL MORTGAGE CLAIMS THE DEBTOR(S) PLAN(S) TO PAY DIRECTLY. A COPY OF THE MORTGAGE PAYMENT COUPON OR THE MOST RECENT MORTGAGE STATEMENT MUST ALSO BE ATTACHED.

Complete Name of Mortgage Creditor/Service: \_\_\_\_\_

Complete Payment Address: \_\_\_\_\_

\_\_\_\_\_

Telephone/Fax Number: \_\_\_\_\_

Name of Legal Representative, if known: \_\_\_\_\_

Address of Legal Representative: \_\_\_\_\_

\_\_\_\_\_

Complete (un-redacted) Account Number \_\_\_\_\_

\_\_\_\_\_  
Signature (Debtor 1)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature (Debtor 2)

\_\_\_\_\_  
Date

**EXHIBIT # 4**

**MORTGAGE ARREARAGE CLAIM CHECKLIST**

***SUBMIT TO THE TRUSTEE ONLY  
DO NOT FILE THIS DOCUMENT WITH THE COURT***

Debtor Name(s): \_\_\_\_\_

Bk Case #: \_\_\_\_\_

Property Address: \_\_\_\_\_

Residence

Rental

Other (Describe)

Daytime Phone: (\_\_\_\_) \_\_\_\_\_ Evening Phone: (\_\_\_\_) \_\_\_\_\_

Mortgage Company Attorney Name & Contact Information: \_\_\_\_\_

\_\_\_\_\_  
THE FOLLOWING INFORMATION MUST BE PROVIDED FOR ALL MORTGAGE ARREARAGE CLAIMS LISTED IN YOUR PLAN. PLEASE COMPLETE THIS FORM TO THE BEST OF YOUR ABILITY AND ATTACH THE MORTGAGE PAYMENT COUPON OR STATEMENT PROVIDED TO YOU BY THE MORTGAGE CREDITOR.

Creditor Name: \_\_\_\_\_

Account #: \_\_\_\_\_

Payment Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Regular Monthly Payment Amount: \$\_\_\_\_\_ Current Interest Rate: \_\_\_\_\_%

Monthly Payment Due Date: \_\_\_\_\_ Date Payment Late: \_\_\_\_\_

Monthly Late Charge Amount: \$\_\_\_\_\_

Is there a grace period for making a payment? If so, explain:

\_\_\_\_\_  
\_\_\_\_\_

Is this a variable interest rate loan? YES/NO

If yes, when is the next anticipated adjustment date? \_\_\_\_\_

Are property taxes included in the monthly payment? YES/NO

Is insurance included in the monthly payment? YES/NO

Is the loan due in full and payable in less than 5 years? YES/NO

If yes, due date? \_\_\_\_\_

Debtor(s) Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Joint Debtor(s) Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT # 5**

**AUTHORIZATION TO RELEASE INFORMATION TO THE TRUSTEE  
REGARDING SECURED MORTGAGE CLAIMS BEING PAID BY THE TRUSTEE**

***SUBMIT TO THE TRUSTEE ONLY  
DO NOT FILE THIS DOCUMENT WITH THE COURT***

Debtor Name(s): \_\_\_\_\_

Bk Case #: \_\_\_\_\_

The Debtor(s) in the above captioned bankruptcy case hereby authorize any and all lien holder(s) on real property of the Debtor(s) to release information to Stuart C. Cox, Standing Chapter 13 Trustee. The information to be released includes, but is not limited to, the amount of the post-petition monthly installment, the annual interest rate and its type, the loan balance, impound accounts, amount of the contractual late charge and the mailing address for payments. This information will only be used by the Trustee and his staff in the administration of the bankruptcy case and may be included in motions before the Court.

Debtor(s) Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Joint Debtor(s) Signature: \_\_\_\_\_ Date: \_\_\_\_\_



**EXHIBIT # 6**

**UNITED STATES BANKRUPTCY COURT  
WESTERN DIVISION OF TEXAS  
EL PASO DIVISION**

**IN RE:**

|                  |   |                     |
|------------------|---|---------------------|
|                  | § |                     |
|                  | § |                     |
|                  | § | <b>CASE NO.</b>     |
|                  | § |                     |
| <b>Debtor(s)</b> | § | <b>(Chapter 13)</b> |

**NOTICE OF TRUSTEE DISBURSEMENTS IN ONGOING MORTGAGE CASE**

**NOTICE IS HEREBY GIVEN** pursuant to *Standing Order For Chapter 13 Case Administration in the El Paso Division Effective In All Cases Filed On or After November 1, 2017* that the following is a schedule of payments made on the claim of \_\_\_\_\_ (Mortgage Creditor).

This notice covers the period from [date after last notice sent] through [today's date]. These payments should be applied pursuant to the terms of the confirmed/modified Chapter 13 Plan, beginning with the first installment due under the terms of the Plan, and in accordance with the procedures in place in the Western District of Texas, El Paso Division.

In order to collect a claim against the estate or the Debtor for late charges, attorney fees, or other charges you believe are authorized pursuant to your agreement with the Debtor (other than a claim for a regularly scheduled installment that became due within the period covered by this report) you must file your claim pursuant to Federal Rule of Bankruptcy Procedure 3002.1(c). You may file this claim by filing a supplemental proof of claim that clearly itemizes and identifies the charges being asserted.

RESPECTFULLY SUBMITTED,

/s/ Stuart C. Cox  
Stuart C. Cox, Trustee  
1760 N. Lee Trevino Dr.  
El Paso, TX 79936  
(915) 598-6769

## **SUMMARY OF PAYMENTS**

[insert payment history]

## **CERTIFICATE OF SERVICE**

I certify that on \_\_\_\_\_, 20\_\_, a true and correct copy of the foregoing Notice *Payments* was served electronically and/or by United States Mail upon the Mortgage Creditor, Creditor's Counsel, Debtor(s), Debtor's Counsel, and the U.S. Trustee at the addresses set forth below.

\_\_\_\_\_  
Stuart C. Cox, Trustee

U.S. Trustee  
Attorney for Debtor(s)  
Debtor(s)  
Mortgage Co. Notice Address from POC  
Mortgage Co. Address from Notice of Appearance  
Counsel for Mortgage Co.



**EXHIBIT # 8**

**UNITED STATES BANKRUPTCY COURT  
WESTERN DIVISION OF TEXAS  
EL PASO DIVISION**

**IN RE:**

§  
§  
§  
§  
§

**CASE NO.**

**Debtor(s)**

**(Chapter 13)**

**TRUSTEE'S NOTICE DEEMING MORTGAGE CURRENT AND  
DIRECTING DEBTOR TO RESUME MONTHLY MORTGAGE PAYMENTS**

**This pleading requests relief that may be adverse to your interests.**

**No hearing will be conducted on this pleading unless a written objection is filed within 21 days from the date of service.**

**A timely filed Objection is necessary for a hearing to be held. If no Objection is timely filed, this Trustee's Notice Deeming Mortgage Current And Directing Debtor(s) To Resume Monthly Mortgage Payments will be binding on the Mortgage Creditor and the Debtor(s) with the same effect as an Order of the Bankruptcy Court.**

**TO THE UNITED STATES BANKRUPTCY JUDGE:**

Comes now Stuart C. Cox, Chapter 13 Trustee (hereinafter "Trustee"), and making this his *Notice Deeming Mortgage Current and Directing Debtor to Resume Monthly Mortgage Payments* states as follows:

1. That the Debtor(s) has completed all payments due under the Chapter 13 Plan as confirmed and modified herein and that attached hereto and marked as Exhibit 1 is the Trustee's record of payees and payments on the Debtor(s) residential home mortgage.

2. That the Trustee has paid all monthly mortgage payments due during the Plan in accordance with the provisions of said Plan and has further paid all arrearages, interest, costs, escrow shortages, attorney fees, and other expenses as set forth in the original and any amended proof of claim or written notice filed by MORTGAGE CREDITOR, its predecessors, successors, and assignees.

3. That the Trustee has provided MORTGAGE CREDITOR with written notice of completion of the Debtor(s) Plan and payment in full of all amounts set out above.

4. That the Debtor(s)' mortgage is current through the month of \_\_\_\_\_.

5. The Debtor(s) is directed to resume making regular monthly mortgage payments beginning with the payment due for \_\_\_\_\_.

Respectfully Submitted

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Stuart C. Cox, Trustee  
1760 N. Lee Trevino Dr.  
El Paso, TX 79936  
(915) 598-6769 Telephone

**CERTIFICATE OF SERVICE**

I certify that on \_\_\_\_\_, 20\_\_, a copy of the foregoing *Trustee's Notice Deeming Mortgage Current and Directing Debtor to Resume Monthly Mortgage Payments* was served electronically and/or by United States Mail upon the Mortgage Creditor, Creditor's Counsel, Debtor(s), Debtor's Counsel, and the U.S. Trustee at the addresses set forth below.

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Stuart C. Cox, Trustee

U.S. Trustee  
Attorney for Debtor(s)  
Debtor(s)  
Mortgage Creditor  
Attorney for Mortgage Creditor