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2017 Southeast Bankruptcy Workshop

Consumer Track

National Form Plan and New Rules

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**Chapter 13 Challenges: Implementing the National Form Plan and
Amended Bankruptcy Rules**

Speakers:

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So, the New Chapter 13 Form Plan is Not for You?

M. Regina Thomas, Clerk of Court
United States Bankruptcy Court
Northern District of Georgia

After years of developing a national plan form, an overwhelming majority of districts will “opt out” of using this form when the new rules and forms become effective on December 1, 2017. How is this “opt out” possible? Proposed Federal Rule of Bankruptcy Procedure 3015.1 and proposed Amended Rule 9009 chart the path.

Proposed Rule 3015.1

For a district to require the use of a local form plan, rather than the Official Form, these conditions must be met:

3015.1	
(a)	Adopted after public notice and an opportunity for public comment.
(b)	Each paragraph must be numbered and labeled in boldface type with heading.
(c)	Initial paragraph must state whether -
1	The plan contains any nonstandard provision.
2	Limits the amount of a secured claim based on value of collateral.
3	Avoids a security interest or lien.
(d)	Must contain separate paragraphs for -
1	Curing any default/maintaining payments on principal residence.
2	Paying domestic support obligations.
3	Paying claims in final paragraph of §1325(a) ¹ .
4	Surrender of property and stay relief request under §§362(a) and 1301(a).
(e)	Final paragraph for -
1	Any nonstandard provision AND statement that a nonstandard provision anywhere else in plan is VOID.
2	Certification by debtor's attorney or pro se debtor there are no nonstandard provisions except in the final paragraph.

While the proposed rule required “public notice and an opportunity for public comment,” no specifics method or timeframe is provided. Based on the public notices available as of this writing, the average notice and comment period is 30 days.

If most districts will “opt out” of using the national plan form, what was accomplished by the creation of the official form? Arguably, the requirements of 3015.1 will provide national creditors with some uniformity in chapter 13 plans, clear delineation of nonstandard provisions in all plans, and an actual required form in each district – whether it is the national form and a mandatory district form.

Proposed Amended Rule 9009

The “opt out” of the national plan form would not be permitted without the proposed changes to Rule 9009. The proposed language requires that an Official Form be used without alterations unless another rule, the form itself or instructions application to the form permit alterations. With the national plan form, proposed Rule 3015.1 permit changes to the form and provides specific requirements.

¹ Generally known as a 910 car claim.

QUICK REFERENCE GUIDE TO 2017 CHANGES TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AFFECTING CHAPTER 13 CASES

©Beverly M. Burden, Chapter 13 Trustee EDKY
June 20, 2017

This Quick Reference Guide is a summary of certain changes to the Federal Rules of Bankruptcy Procedure to be effective December 1, 2017. It is based on my present interpretation of the proposed Rules. I might be wrong; I might change my mind. Therefore, read the Rules and Official Comments; conduct your own research; and formulate your own conclusions. Do not rely solely on this guide.

<u>What:</u>	<u>Where:</u>	<u>How:</u>	<u>When:</u>	<u>Service:</u>	<u>B. Burden's Comments:</u>
Proof of claim by secured creditor or unsecured creditor, other than governmental units and other existing exceptions	Rule 3002(a) and (c)	Proof of claim	In a chapter 13 case, 70 days after: <ul style="list-style-type: none"> Petition date (order for relief); or Date of the order of conversion to chapter 13. No change in bar date for governmental units.		Creditor, including a secured creditor, must file proof of claim to have an allowed claim. “A lien that secures a claim against the debtor is not void due only to the failure of any entity to file a proof of claim.”
Proof of claim by holder of a claim that is secured by a security interest in the debtor's principal residence	Rule 3002(c)(7)	Proof of claim & attachments	In a chapter 13 case, <ul style="list-style-type: none"> 70 days after order for relief to file proof of claim and attachments required under Rule 3001(c)(2)(C); and 120 days after order for relief to file attachments required by Rule 3001(c)(1) and (d) as a supplement to claim. 		The Rule 3001(c)(2)(C) attachment is Mortgage Proof of Claim Attachment Form B410A and an escrow statement if applicable. Rule 3001(c)(1) requires a copy of the “writing” on which the claim is based. Rule 3001(d) requires proof of perfection.

<u>What:</u>	<u>Where:</u>	<u>How:</u>	<u>When:</u>	<u>Service:</u>	<u>B. Burden's Comments:</u>
Proof of claim by creditor with insufficient notice of deadline for filing claims	Rule 3002(c)(6)	Motion to extend time for filing proof of claim, which must be granted before claim is filed.	Motion may be filed before or after bar date. Claim must be filed within 60 days after order is entered granting motion for extension of time to file claim.	Presumably serve motion per Rule 7004 via Rule 9014.	Extension allowed if notice was insufficient to give creditor time to file claim: <ul style="list-style-type: none"> • "because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a)"; or • notice was mailed to creditor at foreign address.
Objection to claim	Rule 3007(a)	<ul style="list-style-type: none"> • Objection; and • a Notice of Objection (Official Form) 	Serve at least 30 days before: <ul style="list-style-type: none"> • any scheduled hearing on the objection, or • any deadline for claimant to request hearing 	<ul style="list-style-type: none"> • Serve claimant by first-class mail to notice address in POC; and • If claimant is U.S. or U.S. officer or agency, serve per 7004(b)(4) or (5); • If claimant is insured depository institution, serve per 7004(h); and • Serve debtor, trustee, (and if applicable a codebtor who filed claim under Rule 3005) by first class mail "or other permitted means" 	For service on U.S., mail copy to: <ul style="list-style-type: none"> • civil process clerk at U.S. Attorney for district; • U.S. Attorney General at Washington DC; and • Affected agency or officer. For service on insured depository institution: send by certified mail addressed to an officer (with exceptions). Trustees serve debtor by mail even if debtor's attorney gets ECF notice?

<u>What:</u>	<u>Where:</u>	<u>How:</u>	<u>When:</u>	<u>Service:</u>	<u>B. Burden's Comments:</u>
Determining amount of secured claim under § 506(a) – claims of nongovernmental units	Rule 3012(a) and (b)	<ul style="list-style-type: none"> • Motion; • Objection to claim; or • In plan. <p>But not by adversary proceeding (Rule 7001(2)).</p>	<p>If by motion, give at least 7 days' notice per Rule 9006(d)?</p> <p>Or file motion at least 7 days before confirmation hearing?</p> <p>If by objection to claim, give 30 days' notice per Rule 3007.</p> <p>If in plan, creditor gets 21 days' notice of deadline to object to confirmation and 28 days' notice of confirmation hearing per Rule 2002.</p>	<ul style="list-style-type: none"> • If by motion, presumably serve per Rule 7004 via Rule 9014. • If by objection to claim, serve per Rule 7004 via revised Rule 3007. • If by plan, serve holder of claim and any other entity the court designates, per Rule 7004 via Rule 3012(b). 	<p>Upon confirmation, "any determination in the plan made under Rule 3012 about the amount of a secured claim is binding on the holder of the claim"</p> <p>What are notice requirements for plans amended before confirmation?</p>
Determining amount of secured claim under 506(a) – claims of governmental units	Rule 3012(a) and (c)	<ul style="list-style-type: none"> • Motion; or • Objection to claim. 	<p>File after:</p> <ul style="list-style-type: none"> • Governmental unit files claim or • Time for filing claim under Rule 3002(c)(1) has expired. <p>If by motion, give at least 7 days' notice per Rule 9006(d)?</p> <p>If by objection to claim, give 30 days' notice per Rule 3007.</p>	<ul style="list-style-type: none"> • If by motion, presumably serve per Rule 7004 via Rule 9014. • If by objection to claim, serve per Rule 7004 via revised Rule 3007. 	<p>Claims bar date in Rule 3002(c)(1) for governmental units is not changed.</p> <p>Amount of secured claim of governmental units cannot be determined in the plan.</p> <p>If governmental unit does not timely file claim under Rule 3002(c)(1) and debtor files claim under Rule 3004, does debtor also have to file motion or objection to its own claim to determine secured amount?</p>

<u>What:</u>	<u>Where:</u>	<u>How:</u>	<u>When:</u>	<u>Service:</u>	<u>B. Burden's Comments:</u>
Determining amount of any claim entitled to priority	Rule 3012(a) and (b)	<ul style="list-style-type: none"> • Motion; or • Objection to claim. 	<ul style="list-style-type: none"> • File motion after a claim is filed; or • File a claim objection (presumably after claim is filed). <p>If by motion, give at least 7 days' notice per Rule 9006(d)?</p> <p>If by objection to claim, give 30 days' notice per Rule 3007.</p>	<ul style="list-style-type: none"> • If by motion, presumably serve per Rule 7004 via Rule 9014. • If by objection to claim, serve per Rule 7004 via revised Rule 3007. 	<p>Amount of claim entitled to priority cannot be determined in the plan.</p> <p>If priority creditor does not timely file claim under Rule 3002(c)(1) and debtor files claim under Rule 3004, does debtor also have to file motion or objection to its own claim to determine amount entitled to priority?</p>
Objection to confirmation	Rule 3015(f)	Objection	File objection at least 7 days before the date set for hearing on confirmation unless court orders otherwise.	Serve per Rule 7004 via Rule 9014.	<p>Creditors are to get:</p> <ul style="list-style-type: none"> • 21 days' notice of the deadline for filing objections to confirmation (Rule 2002(a)(9)); and • 28 days' notice of the confirmation hearing (Rule 2002(b)(3)). <p>What notice do creditors get of plans amended before confirmation?</p>

<u>What:</u>	<u>Where:</u>	<u>How:</u>	<u>When:</u>	<u>Service:</u>	<u>B. Burden's Comments:</u>
Avoid a lien or other transfer of exempt property under § 522(f)	Rule 4003(d)	<ul style="list-style-type: none"> • Motion; or • In plan. <p>But not by adversary proceeding (Rule 7001(2)) (no change).</p>	<p>If by motion, give at least 7 days' notice per Rule 9006(d)?</p> <p>Or file motion at least 7 days before confirmation hearing?</p> <p>If in plan, creditor gets 21 days' notice of deadline to object to confirmation and 28 days' notice of confirmation hearing per Rule 2002.</p>	<ul style="list-style-type: none"> • If by motion, serve per Rule 7004 via 9014 • If in plan, serve affected creditor per Rule 7004 via Rule 4003(d) 	
Request for order declaring lien satisfied	Rule 5009(d)	Debtor may request by motion an order declaring that "secured claim has been satisfied and the lien has been released under the terms of a confirmed plan."	Likely file motion at time a case is being closed, but rule does not prohibit request at another time.	Service on claim holder per Rule 7004.	New.

Sample Proposed Opt-Out Chapter 13 Plans

2017 SOUTHEAST BANKRUPTCY WORKSHOP

FLNB LF 13-21 (Eff. 12/1/17)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
DIVISION

In re:

Case No.
Chapter 13

Debtor(s)¹

☐ Check if this is an AMENDED
PLAN [First, Second...]

CHAPTER 13 PLAN

PART 1: NOTICES

To Creditors: *Your rights may be affected by this plan.*

You should read this plan and other documents sent to you carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one. If you oppose the plan's treatment of your claim or any provision of this plan, you or your attorney must file an objection to confirmation prior to the date set for the hearing on confirmation, unless otherwise ordered by the Bankruptcy Court. **The Bankruptcy Court may confirm this plan without further notice if no objection to confirmation is filed. Creditors who are not individuals (i.e.: corporations, LLC's, etc.) must have an attorney in order to have their objections considered by the Court. Creditors must file a timely proof of claim in order to be paid under any plan.**

To debtor: *You must check one box on each line to state if the plan includes the following items. If an item is checked as "Not included," or if both boxes are checked, the provision will be ineffective if set out later in the plan.*

1.1	A limit on the amount of a secured claim, set out in § 3.2, which may result in a partial payment or no payment at all to the secured creditor.	<input type="checkbox"/> Included <input type="checkbox"/> Not included
1.2	Debtor intends to avoid a judicial lien or security interest; see § 3.4.	<input type="checkbox"/> Included <input type="checkbox"/> Not included
1.3	Nonstandard provisions, set out in Part 8.	<input type="checkbox"/> Included <input type="checkbox"/> Not included

PART 2: PLAN PAYMENTS AND PLAN LENGTH

2.1 Payments to the Trustee: The future earnings or other future income of the debtor are submitted to the supervision and control of the trustee. The debtor (or the debtor's employer) shall pay to the trustee the sum of \$_____ per month for _____ months; and [if applicable] then \$_____ per month for _____ months. *[Add additional language if necessary]*

Total base of plan payments: \$_____.

¹ All references to "debtor" shall include both debtors in a joint case.

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Payments shall be mailed to the Chapter 13 Trustee at: Leigh D. Hart, Chapter 13 Trustee, Lock Box 2238, Memphis, TN 38101-2238

Plan Length: The term of the plan is _____ months.

2.3 Tax Refunds: Debtor will supply the trustee with a copy of each income tax return filed during the plan term within 14 days of filing the return and will turn over to the trustee all income tax refunds received during the plan term, **unless otherwise provided in Part 8.**

2.4 Additional Payments (check one):

☐ None

☐ Debtor shall make additional payments as follows: _____

PART 3: TREATMENT OF SECURED CLAIMS

Unless otherwise ordered by the Court, the claim amount(s), including the value of a secured claim, stated on a timely filed proof of claim will control over any contrary amount listed below. In the absence of a contrary timely filed proof of claim, the amounts stated below are controlling.

3.1 Secured Debts Which Will Extend Beyond the Length of the Plan

☐ None

☐ To be disbursed by the trustee during the plan:

<u>Name</u>	<u>Amount of Claim</u>	<u>Monthly Payment</u>	<u>Interest Rate (if specified)</u>
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[Add additional lines, if necessary]

3.2 Secured Debts Which Will Not Extend Beyond the Length of the Plan

(a) Secured Claims Subject to Valuation Under 11 U.S.C. § 506.

☐ None

☐ Each of the following secured claims shall be paid through the plan as set forth below, until the secured value, as determined by the bankruptcy court, or the amount of the claim, whichever is less, has been paid in full. The portion of any allowed claim that exceeds the amount of the secured claim will be treated as an unsecured claim. ***The debtor must file a proper motion or notice if any secured claim is to be paid less than the amount shown on a timely filed proof of claim.***

Any remaining portion of the allowed claim shall be treated as a general unsecured claim.

<u>Name</u>	<u>Proposed Total Amount of Secured Claim</u>	<u>Interest Rate (if specified)</u>
-------------	---	---

[Add additional lines, if necessary]

(b) Secured Claims Not Subject to Valuation Under 11 U.S.C. § 506.

☐ None

☐ Each of the following secured claims shall be paid through the plan as set forth below until the amount of the claim has been paid in full.

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<u>Name</u>	<u>Amount of Secured Claim</u>	<u>Interest Rate (if specified)</u>
-------------	--------------------------------	-------------------------------------

[Add additional lines, if necessary]

(c) Determination of Secured Status and Strip Lien (11 U.S.C § 506).

- ☐ None
- ☐ The debtor intends to strip the lien(s) of each creditor listed below, and pay the claims as unsecured in accordance with Part 5, below. *(This provision requires that the debtor file a separate motion.)*

<u>Name</u>	<u>Amount of Claim</u>	<u>Description of Property</u>
-------------	------------------------	--------------------------------

[Add additional lines, if necessary]

3.3 Prepetition Defaults

- ☐ None
- ☐ Prepetition defaults owed to the following creditor(s) will be cured over the plan term, and payment of arrearages under this plan shall conclusively constitute payment of all pre-petition arrearages:

<u>Name</u>	<u>Amount of Default Cured</u>	<u>Interest Rate (if specified)</u>
-------------	--------------------------------	-------------------------------------

[Add additional lines, if necessary]

3.4 Motions to Avoid Lien

- ☐ None
- ☐ The debtor intends to avoid a judicial lien or nonpossessory, nonpurchase-money security interest held by each of the creditors listed below. *(This provision requires that a separate motion be filed by the debtor.)*

<u>Name</u>	<u>Amount of Claim</u>	<u>Nature of Lien to be Avoided</u>
-------------	------------------------	-------------------------------------

[Add additional lines, if necessary]

3.5 Direct Payments to Creditors

- ☐ None
- ☐ The debtor shall make regular payments directly to the following creditors:

<u>Name</u>	<u>Amount of Claim</u>	<u>Monthly Payment</u>	<u>Interest Rate (if specified)</u>
-------------	------------------------	------------------------	-------------------------------------

[Add additional lines, if necessary]

Upon entry of the Order Confirming Plan, the automatic stay shall be terminated as to the *in rem* rights of the creditors whose secured claims are being paid direct by the debtor in § 3.5, above.

3.6 Property to be Surrendered

- ☐ None
- ☐ The debtor surrenders the following property. Upon confirmation of this plan the stay under 11 U.S.C. § 362(a) shall be terminated as to the collateral only and the stay under § 1301 shall be terminated in all respects. Any creditor whose collateral is being surrendered may be entitled to an allowed unsecured claim, to be treated in Part 5 below. Certain Local Rules may apply to creditors whose claims are secured by property being surrendered.

<u>Name</u>	<u>Amount of Claim</u>	<u>Description of Property</u>
<i>[Add additional lines, if necessary]</i>		

**PART 4: TREATMENT OF TRUSTEE'S FEES, ATTORNEYS' FEES
AND OTHER PRIORITY CLAIMS, INCLUDING DOMESTIC SUPPORT OBLIGATIONS**

Trustee's fees and all allowed priority claims, including domestic support obligations other than those treated in § 4.4(c), will be paid in full without post-petition interest.

- 4.1 Trustee's Fee:** Trustee's fees are governed by statute and will be paid through the plan. Trustee's fees may change during the course of the case.

- 4.2 Attorney's Fee** (unpaid portion): \$ _____ (fees) \$ _____ (costs)
Pursuant to 11 U.S.C. § 521(f)(4)(B) and Standing Order(s) of this Court, the debtor shall file all required annual statements. Debtor's attorney may seek additional fees for filing required annual statements; if the plan is modified due to an increase in income shown on an annual statement, the debtor's attorney may seek additional fees for the plan modification. No advanced notice or opportunity to object to these fee applications will be given.

- 4.3 Filing Fee** (unpaid portion): Any unpaid portion of the filing fee will be paid in accordance with the order granting the debtor's application to pay the filing fee in installments.

4.4 Domestic Support Obligations

- ☐ Debtor has no Domestic Support Obligations
- ☐ Debtor owes Domestic Support Obligations
- (a) Debtor is required to pay all domestic support obligation(s) that become due after the filing of the petition directly to the holder of the claim.
- (b) The non-governmental holder(s) of any domestic support obligation(s) and the proposed payment of their claims are listed below:

<u>Claimant</u>	<u>Amount of Claim</u>	<u>Payment</u>
<i>[Add additional lines, if necessary]</i>		

- (c) The following domestic support obligations are assigned to, owed to, or recoverable by a governmental unit, and may be paid differently than domestic support obligations owed to private parties:

Claimant and proposed treatment: _____

4.5 Other Priority Claims

<u>Name</u>	<u>Amount of Claim</u>	<u>Interest Rate (if specified)</u>
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[Add additional lines, if necessary]

PART 5: TREATMENT OF NONPRIORITY UNSECURED CLAIMS

5.1 General Nonpriority Unsecured Claims

Allowed nonpriority unsecured claims that are not separately classified in Part 5.2 will be paid, pro rata. If more than one option is checked, the option providing the largest payment will be effective. *Check all that apply.*

A total of \$ _____.

_____ % of the total amount of these claims, an estimated payment of \$ _____.

Funds remaining after disbursements have been made to all other creditors provided for in this plan. Allowed nonpriority unsecured claims shall be paid interest to the extent available, not to exceed 6%, unless otherwise provided in Part 8.

5.2 Separately Classified Nonpriority Unsecured Claims

None. *If "None" is checked, the rest of Part 5.2 need not be completed or reproduced.*

<u>Name</u>	<u>Basis for Separate Classification</u>	<u>Amount to be Paid</u>	<u>Interest Rate (if specified)</u>
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[Add additional lines, if necessary]

PART 6: EXECUTORY CONTRACTS AND UNEXPIRED LEASES

The executory contracts and unexpired leases listed below are assumed. All other executory contracts and unexpired leases are rejected. *Check one.*

None. *If "None" is checked, the rest of Part 6 need not be completed or reproduced.*

☐ The following executory contracts are assumed:

<u>Other Party</u>	<u>Description of Contract or Lease</u>
--------------------	---

[Add additional lines, if necessary]

PART 7: STANDARD PLAN PROVISIONS

7.1 Title to the debtor's property shall re-vest in debtor on confirmation of a plan or dismissal of the case, unless otherwise provided in Part 8, provided that proceeds from any potential or pending cause of action or other asset not yet liquidated, are property of the Estate and must be paid to the Chapter 13 Trustee pending further order of the Court.

7.2 Except as provided above, allowed secured claim holders shall retain liens until liens are released or upon completion of all payments under this Plan.

7.3 Secured creditors and lessors to be paid directly by the debtor and/or co-debtors may continue to mail to debtor the customary monthly notices or coupons notwithstanding the automatic stay.

PART 8: NONSTANDARD PLAN PROVISIONS

- ☐ None
- ☐ Under Bankruptcy Rule 3015(c), nonstandard provisions must be set forth below. A nonstandard provision is a provision not otherwise included in the Official Form or deviating from it. Nonstandard provisions set out elsewhere in this plan are ineffective.

The following plan provisions will be effective only if there is a check in the box labeled "Included" in Part 1.3.

[Add additional lines, if necessary]

PART 9: SIGNATURES OF DEBTOR AND DEBTOR'S ATTORNEY

If the debtor does not have an attorney, the debtor must sign below; otherwise, the debtor's signature is optional. The attorney for the debtor, if any, must sign below.

Signature of Debtor 1

Signature of Debtor 2

Signature of Attorney for Debtor

Date:

MM/DD/YYYY

Attorney Name
Bar Number
Address
Telephone Number
Email Address

By filing this document, the debtor, if not represented by an attorney, or the attorney for the debtor, certifies that the wording and order of the provisions in this Chapter 13 Plan are identical to those contained in the Official Form adopted by this Court effective on the date of signing, other than any nonstandard provisions included in Part 8. (www.flnb.uscourts.gov/sites/default/files/forms/lf13_21.pdf)

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(Draft April 14, 2017)

In the United States Bankruptcy Court for the Southern District of Georgia

In the matter of:

Debtor(s)

)
)
)
)

Chapter 13 Case

Number _____

CHAPTER 13 PLAN AND MOTION

[Pursuant to Bankruptcy Rule 3015.1, the Southern District of Georgia General Order _____ adopts this form in lieu of the Official Form 113]

☐ Check if this is an amended plan.

1. Notices.

Debtors must check one box on each line to state whether or not the plan includes each of the following items. If an item is checked as not being contained in the plan or if both boxes are checked, the provision will be ineffective if set out in the plan.

- (a) This plan: ☐ contains nonstandard provisions. See paragraph 14.
☐ does not contain nonstandard provisions.
- (b) This plan: ☐ values the claim(s) that secures collateral. See paragraph 4(f).
☐ does not value claim(s) that secures collateral.
- (c) This plan: ☐ seeks to avoid a lien or security interest. See paragraph 8.
☐ does not seek to avoid a lien or security interest.

2. Plan Payments.

- (a) The Debtor(s) shall pay to the Trustee the sum of \$_____ for the applicable commitment period of:
☐ 60 months; or
☐ a minimum of 36 months. § 1325(b)(4). (If applicable include the following:) These plan payments change to \$_____ monthly on _____, 20__.
- (b) The payments under paragraph 2(a) shall be paid:
☐ pursuant to a Notice to Commence Wage Withholding (the Debtor(s) request(s) that the Trustee serve such Notice(s) upon the Debtor's employer(s) as soon as practicable after the filing of this plan). Such Notice(s) shall direct the Debtor's employer(s) to withhold a dollar amount that corresponds to the following percentages of the monthly plan payment:
☐ Debtor _____% ☐ Joint Debtor _____%
☐ direct to the Trustee for the following reason(s):
☐ The Debtor(s) receive(s) income solely from self-employment, Social Security, government assistance, or retirement.
☐ The Debtor(s) assert(s) that wage withholding is not feasible for the following reason(s): _____
- (c) Additional Payments of \$_____ (estimated amount) will be made on _____ (anticipated date) from _____ (source, including income tax refunds).

3. Long-Term Debt Payments.

- (a) **Maintenance of Current Installment Payments.** The Debtor(s) will make monthly payments in the manner specified as follows on the following long-term debts pursuant to § 1322(b)(5). These postpetition payments will be disbursed by either the Trustee or directly by the Debtor(s), as specified below. Postpetition payments are to be applied to postpetition

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(Draft April 14, 2017)

amounts owed for principal, interest, authorized postpetition late charges and escrow, if applicable.

<u>CREDITOR</u>	<u>COLLATERAL</u>	<u>PRINCIPAL RESIDENCE(Y/N)</u>	<u>PAYMENTS TO BE MADE BY (TRUSTEE OR DEBTOR(S))</u>	<u>MONTH OF FIRST POSTPETITION PAYMENT TO CREDITOR</u>	<u>INITIAL MONTHLY PAYMENT</u>
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- (b) **Cure of Arrearage on Long-Term Debt.** Pursuant to § 1322(b)(5), prepetition arrearage claims will be paid in full through disbursements by the Trustee, with interest (if any) at the rate stated. Prepetition arrearage payments to be applied to prepetition amounts owed as evidenced by the allowed claim.

<u>CREDITOR</u>	<u>COLLATERAL</u>	<u>PRINCIPAL RESIDENCE(Y/N)</u>	<u>ESTIMATED AMOUNT OF ARREARAGE</u>	<u>INTEREST RATE (if applicable)</u>	<u>MONTHLY PAYMENT</u>
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4. **Treatment of Claims.** From the payments received, the Trustee shall make disbursements as follows unless designated otherwise:

- (a) **Trustee's Fees.** The Trustee percentage fee as set by the United States Trustee.
- (b) **Attorney's Fees.** Attorney's fees allowed pursuant to § 507(a)(2) of \$_____.
- (c) **Priority Claims.** Other § 507 claims, unless provided for otherwise in the plan will be paid in full over the life of the plan as funds become available in the order specified by law.
- (d) **Fully Secured Allowed Claims.** All allowed claims that are fully secured shall be paid through the plan as set forth below.

<u>CREDITOR</u>	<u>COLLATERAL</u>	<u>ESTIMATED CLAIM</u>	<u>INTEREST RATE</u>	<u>MONTHLY PAYMENT</u>
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- (e) **Secured Claims Excluded from 11 U.S.C. § 506 (those claims subject to the hanging paragraph of § 1325(a)).**
The claims listed below were either: (1) incurred within 910 days before the petition date and secured by a purchase money security interest in a motor vehicle acquired for the personal use of the Debtor(s), or (2) incurred within 1 year of the petition date and secured by a purchase money security interest in any other thing of value. These claims will be paid in full under the plan with interest at the rate stated below.

<u>CREDITOR</u>	<u>COLLATERAL</u>	<u>ESTIMATED CLAIM</u>	<u>INTEREST RATE</u>	<u>MONTHLY PAYMENT</u>
-----------------	-------------------	------------------------	----------------------	------------------------

- (f) **Valuation of Secured Claims to Which § 506 is Applicable.** The Debtor(s) move(s) to value the collateral partially securing the following claims pursuant to § 506 and provide payment in satisfaction of those claims as set forth below. The unsecured portion of any bifurcated claims set forth below, will be paid pursuant to paragraph 4(h). The Debtor(s) shall serve this plan on all affected creditors in compliance with Rule 3012(b) and attach a certificate of service.

<u>CREDITOR</u>	<u>VALUE OF COLLATERAL</u>	<u>VALUATION OF SECURED CLAIM</u>	<u>INTEREST RATE</u>	<u>MONTHLY PAYMENT</u>
-----------------	--------------------------------	---------------------------------------	----------------------	----------------------------

- (g) **Special Treatment of Unsecured Claims.** The following unsecured allowed claims are classified to be paid at 100% ☐ with interest at _____% per annum; ☐ without interest.

- (h) **General Unsecured Claims.** Allowed general unsecured claims, including the unsecured portion of any bifurcated claims provided for in paragraph 4(f) or paragraph 8 of this plan, will be paid a _____% dividend or a prorata share of \$_____, whichever is greater.

5. Executory Contracts.

- (a) Maintenance of Current Installment Payments or Rejection of Executory Contract(s) and/or Unexpired Lease(s).

<u>DESCRIPTION OF</u>	<u>ASSUMED/</u>	<u>MONTHLY</u>	<u>DISBURSED BY</u>
-----------------------	-----------------	----------------	---------------------

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(Draft April 14, 2017)

CREDITOR

PROPERTY OR CONTRACT

REJECTED

PAYMENT

TRUSTEE OR DEBTOR(S)

(b) Treatment of Arrearages.

CREDITOR

ESTIMATED ARREARAGE

6. **Adequate Protection Payments.** The Debtor(s) will make § 1326(a)(1) pre-confirmation lease and adequate protection payments on allowed claims of the following creditors: ☐ Direct to the Creditor; or ☐ To the Trustee

CREDITOR

ADEQUATE PROTECTION OR
LEASE PAYMENT AMOUNT

7. **Domestic Support Obligations.** The Debtor(s) will pay all postpetition domestic support obligations direct to the holder of such claim identified here. § 101(14A). The Trustee will provide the statutory notice of § 1302(d) to these claimants.

CREDITOR

ADDRESS

8. **Lien Avoidance.** Pursuant to 11 U.S.C. § 522(f), the Debtor(s) move(s) to avoid the liens or security interests of the following creditors, upon confirmation but subject to § 349, with respect to the property described below. The Debtor(s) shall serve this plan on all affected creditors in compliance with Rule 4003(d) and attach a certificate of service.

CREDITOR

LIEN IDENTIFICATION (if known)

PROPERTY

9. **Surrender of Collateral.** The following collateral is surrendered to the creditor to satisfy the secured claim to the extent shown below upon confirmation of the plan. The order confirming plan shall terminate the automatic stay as to the property described in this paragraph. Any creditor affected by this provision may file an itemized proof of claim for any unsecured deficiency within a reasonable time after the surrender of the property. The Debtor(s) request(s) that upon confirmation of this plan the stay under 11 U.S.C. § 362(a) be terminated as to the collateral only and that the stay under § 1301 be terminated in all respects.

CREDITOR

DESCRIPTION OF COLLATERAL

AMOUNT OF CLAIM SATISFIED

10. **Retention of Liens.** Holders of allowed secured claims shall retain the liens securing said claims to the full extent provided by § 1325(a)(5).
11. **Amounts of Claims and Claim Objections.** The amount, and secured or unsecured status, of claims disclosed in this Plan are based upon best estimate and belief of the Debtor(s). An allowed proof of claim will supersede those estimated claims. In accordance with the Bankruptcy Code and Rules, objections to claims may be filed before or after confirmation.
12. **Payment Increases.** The Debtor(s) will increase payments in the amount necessary to fund allowed claims as this Plan proposes, after notice from the Trustee and a hearing if necessary, unless a Plan Modification is approved.
13. **Federal Rules of Bankruptcy Procedure 3002.1.** The Trustee shall not pay any fees, expenses, or charges disclosed by a creditor pursuant to Rule 3002.1(c) unless the Debtor's plan is modified after the filing of the notice to provide for payment of such fees, expenses, or charges.
14. **Nonstandard Provisions.** Under Bankruptcy Rule 3015(c), nonstandard provisions must be set forth below. A nonstandard provision is a provision not otherwise in this local plan form or deviating from it. Nonstandard provisions set out elsewhere in this plan are void.

AMERICAN BANKRUPTCY INSTITUTE

(Draft April 14, 2017)

15. Signatures.

By signing below, I certify the foregoing plan contains no nonstandard provisions other than those set out in Paragraph 14.

Dated: _____

Debtor

Joint Debtor

Attorney for the Debtor(s)

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

In re: _____)	Case No. _____
_____)	
_____)	
(address) _____)	Chapter 13
_____)	
(city, state, zip) _____)	
SS# xxx-xx- _____)	
SS# xxx-xx- _____)	
Debtor(s) _____)	

NOTICE TO CREDITORS AND PROPOSED CHAPTER 13 PLAN

1. Notices.

The Debtor(s) filed for relief under Chapter 13 of the United States Bankruptcy Code on _____.

In most instances, the filing automatically stays collection and other actions against the Debtor, Debtor's property and certain co-debtors. If you attempt to collect a debt or take other action in violation of the bankruptcy stay you may be penalized.

Official notice will be sent to creditors, which will provide the name and address of the Trustee, the date and time of the meeting of creditors, and information regarding the filing of proofs of claims.

Creditors should read this plan carefully as your rights may be affected by this plan. Your claim may be reduced, modified or eliminated. Following the conclusion of the meeting of creditors, a final plan will be served on all parties in interest and creditors, along with information about the deadline for filing objections to the plan and the time, date and place of the hearing on any timely filed objections.

This plan includes or does not include the following:

A.	A limit on the amount of a secured claim, set out in Section 4, which may result in a partial payment or no payment at all to the secured creditor.	<input type="checkbox"/> Included	<input type="checkbox"/> Not included
B.	Avoidance of a judicial lien or nonpossessory, nonpurchase money security interest will be done by separate motion or adversary proceeding.		<input checked="" type="checkbox"/> Not included
C.	Nonstandard provisions set out in Section 9.	<input type="checkbox"/> Included	<input type="checkbox"/> Not included

2. Plan Payments.

The Debtor will make payments to the Trustee as follows:

\$ _____ per month for _____ months,
 \$ _____ per month for _____ months,
 Additional payments _____

The Debtor shall commence payments to the Trustee within thirty (30) days from the date the petition was filed. If fewer than 60 months of payments are specified, additional monthly payments will be made to the extent necessary to pay creditors as specified in this plan.

3. Fees and Priority Claims.

3.1. Attorney fees.

- ☐ The Attorney for the Debtor will be paid the presumptive base fee of \$ _____ or a reduced fee of \$ _____. The Attorney has received \$ _____ from the Debtor pre-petition and the remainder of the fee will be paid monthly by the Trustee as funds are available.
- ☐ The Attorney for the Debtor will file an application for approval of a fee in lieu of the base fee.

3.2. Trustee costs. The Trustee will receive from all disbursements such amount as approved by the Court for payment of fees and expenses.

3.3. Priority Claims.

All pre-petition claims entitled to priority under 11 U.S.C. §507 will be paid in full, without interest, in deferred cash payments unless otherwise indicated.

3.3.1. Domestic Support Obligations ("DSO").

- a. ☐ None
- b. The name and address of the holder of any DSO as defined in §101(14A) is as follows:

Name of DSO Claimant	Address, City & State

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- c. All post-petition DSO amounts will be paid directly by the Debtor to the holder of the claim and not by the Trustee.
- d. Arrearages owed to DSO claimants under 11 U.S.C. § 507(a)(1)(A) not presently paid through wage garnishment will be paid by the Trustee as follows:

Name of DSO Claimant	Estimated Arrearage Claim	Monthly Payment
		\$
		\$
		\$

3.3.2. Other Priority Claims to be Paid by Trustee.

Creditor	Estimated Priority Claim
	\$
	\$

4. Secured Claims.

4.1. Real Property – Claims Secured Solely by Debtor's Principal Residence.

- a. ☐ None
- b. ☐ Maintenance of Payments and Cure of Default.

Creditor	Address of Residence	Current Y/N	Monthly Payment	Estimated Arrearage Amount on Petition Date	If Current Indicate Payment by Debtor (D) or Trustee (T)
			\$	\$	
			\$	\$	

- c. ☐ Claims Secured by Debtor's Principal Residence to be Paid in Full in Plan.

Creditor	Address of Residence	Estimated Claim	Monthly Payment (P&I)	Monthly Escrow Payment	Interest Rate
		\$	\$	\$	%
		\$	\$	\$	%

- d. ☐ Request for Valuation to Treat Claims Secured by Debtor's Principal Residence as Totally Unsecured. *This will be effective only if the applicable box in Section 1.A. of this plan is checked.*

Creditor	Address of Residence	Value of Residence	Estimated Amount of Claims Senior to Creditor's Claim	Estimated Amount of Claim	Amount of Secured Claim
		\$	\$	\$	\$ -0-
		\$	\$	\$	\$ -0-

4.2 Real Property – Claims Secured by Real Property Other Than by Debtor's Principal Residence AND Claims Secured by Debtor's Principal Residence and Additional Collateral.

- a. ☐ None
- b. ☐ Maintenance of Payments and Cure of Default.

Creditor	Collateral	Current Y/N	Monthly Payment	Estimated Arrearage Amount on Petition Date	If Current Indicate Payment by Debtor (D) or Trustee (T)
			\$	\$	
			\$	\$	
			\$	\$	

- c. ☐ Claims Secured by Real Property Other than Debtor's Principal Residence to be Paid in Full in Plan.

Creditor	Collateral	Estimated Claim	Monthly Payment (P&I)	Monthly Escrow Payment	Interest Rate
		\$	\$	\$	%
		\$	\$	\$	%
		\$	\$	\$	%

- d. ☐ Request for Valuation to Treat Claims Secured by Real Property Equal to the Value of the Property and any Amount in Excess as Unsecured. *This will be effective only if the applicable box in Section 1.A. of this plan is checked.*

Creditor	Collateral	Value of Property	Estimated Amount of Claims Senior to Creditor's Claim	Amount of Secured Claim	Interest Rate	Monthly Payment to Creditor
		\$	\$	\$	%	\$
		\$	\$	\$	%	\$
		\$	\$	\$	%	\$

4.3 Personal Property Secured Claims.

- a. ☐ None
- b. ☐ Maintenance of Payments and Cure of Default on Long Term Claims Secured by Personal Property.

Creditor	Collateral	Current Y/N	Monthly Payment	Estimated Arrearage Amount on Petition Date
			\$	\$
			\$	\$
			\$	\$

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- c. ☐ Claims Secured by Personal Property to be Paid in Full in Plan.

Creditor	Collateral	Estimated Claim	Monthly Payment	Interest Rate	Adequate Protection Payment per §1326(a)(1)
		\$	\$	%	\$
		\$	\$	%	\$
		\$	\$	%	\$

- d. ☐ Claims Secured by Personal Property excluded from 11 U.S.C. §506 being either (i) incurred within 910 days before the petition date and secured by a purchase money security interest in a motor vehicle acquired for personal use of the Debtor, or (ii) incurred within one (1) year of the petition date and secured by a purchase money security interest in any other thing of value. If the creditor attaches documentation to show that exclusion from 11U.S.C. §506 is appropriate, the claims will be paid in full by the Trustee as follows:

Creditor	Collateral	Estimated Amount of Secured Claim	Monthly Payment	Interest Rate	Adequate Protection Payment per §1326(a)(1)
		\$	\$	%	\$
		\$	\$	%	\$
		\$	\$	%	\$

- e. ☐ Request for Valuation to Treat Claims as Secured to the Value of the Collateral and Any Amount in Excess as Unsecured. *This will be effective only if the applicable box in Section 1.A. of this plan is checked.*

Creditor	Collateral	Value of Collateral	Estimated Amount of Claims Senior to Creditor's	Amount of Secured Claim	Interest Rate	Monthly Payment to Creditor
		\$	\$	\$	%	\$
		\$	\$	\$	%	\$
		\$	\$	\$	%	\$

The Debtor requests that the Court determine the value of the secured claims listed as set forth in Sections 4.1.d, 4.2.d and 4.3.e as applicable. For each non-governmental secured claim listed above, the Debtor states that the value of the secured claim should be set out in the column heads *Amount of Secured Claim*. For secured claims of governmental units unless otherwise ordered by the Court, the value of a secured claim listed in a proof of claim filed in accordance with the Bankruptcy Rules controls over any contrary amount listed above. For each listed claim, the value of the secured claim will be paid in full with interest at the rate stated above.

The portion of any allowed claim that exceeds the amount of the secured claim will be treated as an unsecured claim under Section 6.1 of this plan. If the amount of a creditor's secured claim is listed above as having no value, the creditor's allowed claim will be treated in its entirety as an unsecured claim under Section 6.1 of this plan. Unless otherwise ordered by the Court, the amount of the creditor's total claim listed on the proof of claim controls over any contrary amounts listed in Section 4.

The holder of any claim listed in Section 4 as having value in the column headed *Amount of Secured Claim* will retain the lien on the property interest of the Debtor or the estate until the earlier of:

- (a) payment of the underlying debt determined under non-bankruptcy law, or
- (b) discharge of the underlying debt under 11 U.S.C. §1328, at which time the lien will terminate and be released by the creditor.

5. Collateral to be Surrendered.

- a. ☐ None
- b. ☐ The Debtor Proposes to Surrender to Each Creditor Listed Below the Collateral that Secures the Creditor's Claim.

The Debtor requests that upon timely filing of a claim evidencing a non-preferential perfected lien, the stay under 11 U.S.C. §362(a) be terminated as to the collateral only and that the stay under §1301 be terminated in all respects effective upon confirmation of this plan, and the creditor be allowed 120 days for personal property and 180 days for real property to file a documented deficiency claim after liquidating the collateral. Any allowed unsecured claim resulting from disposition of the collateral will be treated as an unsecured claim under Section 6.1.

Creditor	Collateral to be Surrendered

6. Nonpriority Unsecured Claims.

6.1 Nonpriority Unsecured Claims Not Separately Classified.

Allowed nonpriority unsecured claims will be paid pro-rata with payments to commence after priority unsecured claims are paid in full. The estimated dividend to nonpriority unsecured claims is full. _____%.

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6.2 Separately Classified Nonpriority Unsecured Claims.

- a. ☐ None
- b. ☐ The Nonpriority Unsecured Allowed Claims Listed Below are Separately Classified and Will be Treated as Follows:

Creditor	Basis for Separate Classification and Treatment (include name and address of Co-Debtor, if applicable)	Estimated Amount of Claim	Monthly Payment (if applicable)	Interest Rate
		\$	\$	%
		\$	\$	%

- c. ☐ Long Term Unsecured Claims will be Treated as Follows:

Creditor	Nature of Claim	Monthly Payment
		\$
		\$
		\$

7. Executory Contracts/Leases.

- a. ☐ None
- b. ☐ The Following Executory Contracts and/or Leases Will be Rejected:

Creditor	Nature of Lease or Contract

- c. ☐ The Following Executory Contracts and/or Leases Will be Assumed and Will be Paid as Follows:

Creditor	Nature of Lease or Contract	Monthly Payment	Monthly Payment Paid by Debtor (D) or Trustee (T)	Arrearage Amount	Arrearage Paid by Debtor (D) or Trustee (T)	Arrearage Monthly Payment
		\$		\$		\$
		\$		\$		\$
		\$		\$		\$

8. Local Standard Provisions.

- a. All payments on any claim secured by real property will be disbursed by the Trustee unless the account is current, in which case the Debtor may elect to continue making mortgage payments directly. All payments on any claim secured by personal property

will be disbursed by the Trustee, unless otherwise ordered by the Court.

- b. Proofs of claims must be filed to receive disbursements pursuant to the plan.
- c. Any creditor holding an allowed secured claim and to whom the Debtor is surrendering property under the order confirming plan is granted relief from the automatic stay and any Co-Debtor stay so the creditor may obtain possession and liquidate the property. Any net proceeds, after payment of liens and costs of liquidation, are to be forwarded to the Trustee.
- d. All payments being made by the Trustee on any claim secured by real or personal property shall terminate upon the lifting of the automatic stay with respect to the affected property.
- e. All insurance and extended service contract coverage on unsecured general claims are canceled and the claim must reflect cancellation and rebate to the account unless provided otherwise herein or in the order confirming plan.
- f. Confirmation of the plan does not bar later objection to any claim, nor does it bar any adversary proceeding or counterclaim related to such claim.
- g. Notwithstanding the allowance of a claim as secured, all rights under Title 11 to avoid liens are reserved and confirmation of the plan is without res judicata effect as to any action to avoid a lien.

THE FOLLOWING ADDITIONAL PROVISIONS ARE APPLICABLE TO THE HOLDER OR SERVICER ("HOLDER") OF A CLAIM SECURED BY A DEED OF TRUST, OR SECURED BY A MORTGAGE OR SECURITY INTEREST IN REAL PROPERTY OR A MOBILE HOME THAT IS/ARE THE DEBTOR'S PRINCIPAL RESIDENCE:

- a. The Holder, upon confirmation, is precluded from imposing late charges or other default related fees based solely on pre-confirmation default.
- b. If the Trustee is disbursing ongoing monthly installment payments, the Holder must apply each ongoing payment to the month in which the payment is designated.
- c. For any loan with an escrow account, the Holder must prepare and must send an escrow analysis annually to the Debtor, the Trustee and the Debtor's attorney. The first escrow analysis must be filed with the proof of claim in accordance with Rule 3002.1 of the Federal Rules of Bankruptcy Procedure. The escrow analysis should not include any amounts that were included or should have been included in the arrearage claim.
- d. The Holder shall continue to send monthly statements to the Debtor in the same manner as existed pre-petition and such statements will not be deemed a violation of the automatic stay.
- e. The Holder is required, upon request, to provide account information to the Trustee within 21 days of the request and failure to provide a timely response may result in an

order requiring the Holder to appear and show cause as to why Holder should not be sanctioned for failure to comply with this order.

- f. Nothing herein shall modify Holder's responsibilities under Rule 3002.1 of the Federal Rules of Bankruptcy Procedure.
- g. Unless the Court orders otherwise, an order granting a discharge in the case shall be a determination that all prepetition and post-petition defaults have been cured and the account is current and reinstated on the original payment schedule under the note and security statement as if no default had ever occurred.

PENALTY FOR FAILURE OF HOLDER TO COMPLY WITH THE REQUIREMENTS OUTLINED UNDER FRBP 3002.1. Without limitation to the Court's authority to afford other relief, any willful failure of the Holder to credit payments in the manner required by Rule 3002.1 of the Federal Rules of Bankruptcy Procedure or any act by the creditor following the entry of discharge to charge or collect any amount incurred or assessed prior to the filing of the Chapter 13 Petition or during the pendency of the Chapter 13 case that was not authorized by the order confirming plan or approved by the Court after proper notice, may be found by the Court to constitute contempt of Court and to be a violation of 11 U.S.C. § 524(i) and the injunction under 11 U.S.C. § 524(a)(2).

9. Nonstandard Plan Provisions.

- a. ☐ None
- b. The following plan provisions will be effective only if there is a check in the box "included" in Section 1.C.

10. Signature(s):

If the Debtor(s) do not have an attorney, the Debtor(s) must sign below; otherwise the Debtor(s) signatures are optional. The attorney for the Debtor(s), if any, must sign below.

X
Signature of Debtor 1

X
Signature of Debtor 2

Executed on _____
mm / dd / yyyy

Executed on _____
mm / dd / yyyy

By filing this document, the Debtor(s), if not represented by an attorney, or the Attorney for Debtor(s) also certify(ies); (1) all nonstandard provisions are set forth in Section 9; (2) there are no nonstandard provisions other than those set out in Section 9; and (3) any nonstandard provision placed elsewhere in the plan is void.

Date: _____

Attorney for Debtor
Address: _____

Telephone _____
State Bar No: _____

2017 SOUTHEAST BANKRUPTCY WORKSHOP

**UNITED STATES BANKRUPTCY COURT MIDDLE
DISTRICT OF NORTH CAROLINA**

In re: _____) Case No. _____
_____) _____
_____) _____
SS# xxx-xx-_____) NOTICE TO CREDITORS
SS# xxx-xx-_____) AND
_____) PROPOSED PLAN Debtor(s)
_____)

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the Notice to Creditors and Proposed Plan was served by first class mail, postage prepaid, to the following parties at their respective addresses:

Date: _____