

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA**

In re:

))
))
Rescission and Replacement))
of Current Exhibit 1 Form with))
Revised Exhibit 1 Form to Local)) Standing Order No. 18-4
Bankruptcy Rules))
))

**ORDER OF RESCISSION AND REPLACEMENT OF CURRENT EXHIBIT 1
FORM WITH REVISED EXHIBIT 1 FORM TO LOCAL BANKRUPTCY RULES**

Exhibit 1, form of Chapter 13 Plan and Related Motions (“Chapter 13 Form of Plan”) to the Court’s Local Bankruptcy Rules, be and the same hereby is rescinded and shall be replaced by the attached revised form of Chapter 13 Plan and Related Motions (“Revised Chapter 13 Form of Plan”), which hereby is adopted, and shall constitute the Chapter 13 Form of Plan referenced in Local Bankruptcy Rule 3015-2(A). The substantive change set forth in the attached Revised Chapter 13 Form of Plan solely is intended for the purpose of effectuating the confirmation hearing process that will begin in the Norfolk and Newport News divisions of the Court for all Chapter 13 original and amended plans filed on or after October 29, 2018, as provided for in combined Norfolk Division Standing Order No. 18-1 and Newport News Standing Order No. 18-1, which was entered on October 9, 2018, and provides, in part, that, “Confirmation hearings will be held [in the Norfolk and Newport Divisions of the Court] on all Chapter 13 original and amended plans filed on or after October 29, 2018,” in those divisions.

NOW, IT IS THEREFORE ORDERED that:

1. Effective on and after October 29, 2018, the Revised Chapter 13 Form of Plan, attached as EXHIBIT 1 to this order, and as provided for in Local Bankruptcy Rule 3015-2(A), shall be the only permissible form of chapter 13 plan in the United States Bankruptcy Court for the Eastern District of Virginia.
2. Effective on October 29, 2018, the current Chapter 13 Form of Plan shall be rescinded and replaced with the above referenced Revised Chapter 13 Form of Plan.
3. Effective on and after October 29, 2018, all filed chapter 13 plans, including original or amended plans filed in cases pending on such date, shall conform to the above referenced Revised Chapter 13 Form of Plan.
4. Paragraph 4 of Standing Order No. 17-5, which provides that “inapplicable sections may be omitted from the above referenced current Chapter 13 Form of Plan; provided, however, that the section numbers and section headings thereto are retained, followed by the words, “None” or “Not Applicable”, or as otherwise provided for in the above referenced new Chapter 13 Form of

Plan[,]" shall remain in full force and effect.

Attachment

FOR THE COURT:

/s/ Stephen C. St. John
STEPHEN C. ST. JOHN
Chief United States Bankruptcy Judge

Dated: October 9, 2018

UNITED STATES BANKRUPTCY COURT
for the
EASTERN DISTRICT OF VIRGINIA

**REVISED EXHIBIT 1: CHAPTER 13 PLAN AND
RELATED MOTIONS**



Effective October 29, 2018

(Ver. 10/09/18)

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
_____ Division**

**CHAPTER 13 PLAN
AND RELATED MOTION**

Name of Debtor(s):

Case No:

This Plan, dated _____, is:

- the *first* Chapter 13 Plan filed in this case.
- a modified Plan that replaces the
 - confirmed or unconfirmed Plan dated _____

Date and Time of Modified Plan Confirmation Hearing:

Place of Modified Plan Confirmation Hearing:

The Plan provisions modified by this filing are:

Creditors affected by this modification are:

1. Notices

To Creditors:

Your rights may be affected by this plan. Your claim may be reduced, modified, or eliminated. You should read this plan carefully and discuss it with your attorney if you have one in this bankruptcy case. 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 at least 7 days before the date set for the hearing on confirmation, unless otherwise ordered by the Bankruptcy Court.

(1) Richmond and Alexandria Divisions:

The Bankruptcy Court may confirm this plan without further notice if no objection to confirmation is filed. See Bankruptcy Rule 3015.

(2) Norfolk and Newport News Divisions: a confirmation hearing will be held even if no objections have been filed.

(a) A scheduled confirmation hearing will not be convened when:

- (1) an amended plan is filed prior to the scheduled confirmation hearing; or**
- (2) a consent resolution to an objection to confirmation anticipates the filing of an amended plan and the objecting party removes the scheduled confirmation hearing prior to 3:00 pm on the last business day before the confirmation hearing.**

In addition, you may need to timely file a proof of claim in order to be paid under any plan.

The following matters may be of particular importance.

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 Included" or if both boxes are checked, the provision will be ineffective if set out later in the plan.

| | | | |
|----|---|----------|--------------|
| A. | A limit on the amount of a secured claim, set out in Section 4.A which may result in a partial payment or no payment at all to the secured creditor | Included | Not included |
| B. | Avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest, set out in Section 8.A | Included | Not included |
| C. | Nonstandard provisions, set out in Part 12 | Included | Not included |

2. Funding of Plan. The debtor(s) propose to pay the Trustee the sum of \$_____ per _____ for ____ months. Other payments to the Trustee are as follows: _____ . The total amount to be paid into the Plan is \$_____ .

3. Priority Creditors. The Trustee shall pay allowed priority claims in full unless the creditor agrees otherwise.

A. Administrative Claims under 11 U.S.C. § 1326.

1. The Trustee will be paid the percentage fee fixed under 28 U.S.C. § 586(e), not to exceed 10% of all sums received under the plan.

2. Check one box:

Debtor(s)' attorney has chosen to be compensated pursuant to the "no-look" fee

under Local Bankruptcy Rule 2016-1(C)(1)(a) and (C)(3)(a) and will be paid \$_____, balance due of the total fee of \$_____ concurrently with or prior to the payments to remaining creditors.

- Debtor(s)' attorney has chosen to be compensated pursuant to Local Bankruptcy Rule 2016-1(C)(1)(c)(ii) and must submit applications for compensation as set forth in the Local Rules.

B. Claims under 11 U.S.C. § 507.

The following priority creditors will be paid by deferred cash payments pro rata with other priority creditors or in monthly installments as below, except that allowed claims pursuant to 11 U.S.C. § 507(a)(1) will be paid pursuant to 3.C below:

| <u>Creditor</u> | <u>Type of Priority</u> | <u>Estimated Claim</u> | <u>Payment and Term</u> |
|-----------------|-------------------------|------------------------|-------------------------|
|-----------------|-------------------------|------------------------|-------------------------|

C. Claims under 11 U.S.C. § 507(a)(1)

The following priority creditors will be paid prior to other priority creditors but concurrently with administrative claims above.

| <u>Creditor</u> | <u>Type of Priority</u> | <u>Estimated Claim</u> | <u>Payment and Term</u> |
|-----------------|-------------------------|------------------------|-------------------------|
|-----------------|-------------------------|------------------------|-------------------------|

4. Secured Creditors: Motions to Value Collateral (“Cramdown”), Collateral being Surrendered, Adequate Protection Payments, and Payment of certain Secured Claims.

A. Motions to Value Collateral (other than claims protected from “cramdown” by 11 U.S.C. § 1322(b)(2) or by the final paragraph of 11 U.S.C. § 1325(a)). Unless a written objection is timely filed with the Court, the Court may grant the debtor(s)' motion to value collateral as set forth herein.

This section deals with valuation of certain claims secured by real and/or personal property, other than claims protected from “cramdown” by 11 U.S.C. § 1322(b)(2) [real estate which is debtor(s)' principal residence] or by the final paragraph of 11 U.S.C. § 1325(a) [motor vehicles purchased within 910 days or any other thing of value purchased within 1 year before filing bankruptcy], in which the replacement value is asserted to be less than the amount owing on the debt. **Such debts will be treated as secured claims only to the extent of the replacement value of the collateral. That value will be paid with interest as provided in sub-section D of this section. You must refer to section 4(D) below to determine the interest rate, monthly payment and estimated term of repayment of any “crammed down” loan. The deficiency balance owed on such a loan will be treated as an unsecured claim to be paid only to the extent provided in section 5 of the Plan.** The following secured claims are to be “crammed down” to the following values:

| <u>Creditor</u> | <u>Collateral</u> | <u>Purchase Date</u> | <u>Est. Debt Bal.</u> | <u>Replacement Value</u> |
|-----------------|-------------------|----------------------|-----------------------|--------------------------|
|-----------------|-------------------|----------------------|-----------------------|--------------------------|

B. Real or Personal Property to be Surrendered.

Upon confirmation of the Plan, or before, the debtor(s) will surrender his/her/their interest in the collateral securing the claims of the following creditors in satisfaction of the secured portion of such creditors' allowed claims. To the extent that the collateral does not satisfy the claim, any timely filed deficiency claim to which the creditor is entitled may be paid as a non-priority unsecured claim. Confirmation of the Plan shall terminate the automatic stay under §§ 362(a) and 1301(a) as to the interest of the debtor(s), any co-debtor(s) and the estate in the collateral.

| <u>Creditor</u> | <u>Collateral Description</u> | <u>Estimated Value</u> | <u>Estimated Total Claim</u> |
|-----------------|-------------------------------|------------------------|------------------------------|
|-----------------|-------------------------------|------------------------|------------------------------|

C. Adequate Protection Payments.

The debtor(s) propose to make adequate protection payments required by 11 U.S.C. § 1326(a) or otherwise upon claims secured by personal property, until the commencement of payments provided for in sections 4(D) and/or 7(B) of the Plan, as follows:

| <u>Creditor</u> | <u>Collateral</u> | <u>Adeq. Protection Monthly Payment</u> | <u>To Be Paid By</u> |
|-----------------|-------------------|---|----------------------|
|-----------------|-------------------|---|----------------------|

Any adequate protection payment upon an unexpired lease of personal property assumed by the debtor(s) pursuant to section 7(B) of the Plan shall be made by the debtor(s) as required by 11 U.S.C. § 1326(a)(1)(B) (payments coming due after the order for relief).

D. Payment of Secured Claims on Property Being Retained (except those loans provided for in section 6 of the Plan):

This section deals with payment of debts secured by real and/or personal property [including short term obligations, judgments, tax liens and other secured debts]. After confirmation of the Plan, the Trustee will pay to the holder of each allowed secured claim, which will be either the balance owed on the indebtedness or, where applicable, the collateral's replacement value as specified in sub-section A of this section, **whichever is less**, with interest at the rate provided below, the monthly payment specified below until the amount of the secured claim has been paid in full. **Upon confirmation of the Plan, the valuation specified in sub-section A and interest rate shown below will be binding unless a timely written objection to confirmation is filed with and sustained by the Court.**

| <u>Creditor</u> | <u>Collateral</u> | <u>Approx. Bal. of Debt or "Crammed Down" Value</u> | <u>Interest Rate</u> | <u>Monthly Payment & Est. Term</u> |
|-----------------|-------------------|---|--------------------------|--|
|-----------------|-------------------|---|--------------------------|--|

E. Other Debts.

Debts which are (i) mortgage loans secured by real estate which is the debtor(s)' principal residence, or (ii) other long term obligations, whether secured or unsecured, to be continued upon the existing contract terms with any existing default in payments to be cured pursuant to 11 U.S.C. § 1322(b)(5), are provided for in section 6 of the Plan.

5. **Unsecured Claims.**

A. Not separately classified.

Allowed non-priority unsecured claims shall be paid pro rata from any distribution remaining after disbursement to allowed secured and priority claims. Estimated distribution is approximately ____%. The dividend percentage may vary depending on actual claims filed. If this case were liquidated under Chapter 7, the debtor(s) estimate that unsecured creditors would receive a dividend of approximately ____%.

B. Separately classified unsecured claims.

| | | |
|-----------------|---------------------------------|------------------|
| <u>Creditor</u> | <u>Basis for Classification</u> | <u>Treatment</u> |
|-----------------|---------------------------------|------------------|

6. **Mortgage Loans Secured by Real Property Constituting the Debtor(s)' Principal Residence; Other Long Term Payment Obligations, whether secured or unsecured, to be continued upon existing contract terms; Curing of any existing default under 11 U.S.C. § 1322(b)(5).**

A. Debtor(s) to make regular contract payments; arrearages, if any, to be paid by Trustee. The creditors listed below will be paid by the debtor(s) pursuant to the contract without modification, except that arrearages, if any, will be paid by the Trustee either pro rata with other secured claims or on a fixed monthly basis as indicated below, without interest unless an interest rate is designated below for interest to be paid on the arrearage claim and such interest is provided for in the loan agreement. A default on the regular contract payments on the debtor(s) principal residence is a default under the terms of the plan.

| | | | | | | |
|-----------------|-------------------|-----------------|------------------|-----------------|--------------------|------------------|
| | | Regular | | Arrearage | | Monthly |
| <u>Creditor</u> | <u>Collateral</u> | <u>Contract</u> | <u>Estimated</u> | <u>Interest</u> | <u>Estimated</u> | <u>Arrearage</u> |
| | | <u>Payment</u> | <u>Arrearage</u> | <u>Rate</u> | <u>Cure Period</u> | <u>Payment</u> |

B. Trustee to make contract payments and cure arrearages, if any. The Trustee shall pay the creditors listed below the regular contract monthly payments that come due during the period of this Plan, and pre-petition arrearages on such debts shall be cured by the Trustee either pro rata with other secured claims or with monthly payments as set forth below.

| | | | | | | |
|-----------------|-------------------|-----------------|------------------|----------------------|----------------------------------|--|
| | | Regular | | | | |
| <u>Creditor</u> | <u>Collateral</u> | <u>Contract</u> | <u>Estimated</u> | <u>Interest Rate</u> | <u>Monthly Payment on</u> | |
| | | <u>Payment</u> | <u>Arrearage</u> | <u>on Arrearage</u> | <u>Arrearage & Est. Term</u> | |

C. Restructured Mortgage Loans to be paid fully during term of Plan. Any mortgage loan against real estate constituting the debtor(s)' principal residence upon which the last scheduled contract payment is due before the final payment under the Plan is due shall be paid by the Trustee during the term of the Plan as permitted by 11 U.S.C. § 1322(c)(2) with interest at the rate specified below as follows:

| <u>Creditor</u> | <u>Collateral</u> | <u>Interest Rate</u> | <u>Estimated Claim</u> | <u>Monthly Payment & Term</u> |
|-----------------|-------------------|----------------------|------------------------|-----------------------------------|
|-----------------|-------------------|----------------------|------------------------|-----------------------------------|

7. **Unexpired Leases and Executory Contracts.** The debtor(s) move for assumption or rejection of the executory contracts, leases and/or timeshare agreements listed below.

A. **Executory contracts and unexpired leases to be rejected.** The debtor(s) reject the following executory contracts:

| <u>Creditor</u> | <u>Type of Contract</u> |
|-----------------|-------------------------|
|-----------------|-------------------------|

B. **Executory contracts and unexpired leases to be assumed.** The debtor(s) assume the following executory contracts. The debtor(s) agree to abide by all terms of the agreement. The Trustee will pay the pre-petition arrearages, if any, through payments made pro rata with other priority claims or on a fixed monthly basis as indicated below.

| <u>Creditor</u> | <u>Type of Contract</u> | <u>Arrearage</u> | <u>Monthly Payment for Arrears</u> | <u>Estimated Cure Period</u> |
|-----------------|-------------------------|------------------|------------------------------------|------------------------------|
|-----------------|-------------------------|------------------|------------------------------------|------------------------------|

8. **Liens Which Debtor(s) Seek to Avoid.**

A. **The debtor(s) move to avoid liens pursuant to 11 U.S.C. § 522(f).** The debtor(s) move to avoid the following judicial liens and non-possessory, non-purchase money liens that impair the debtor(s)' exemptions. **Unless a written objection is timely filed with the Court, the Court may grant the debtor(s)' motion and cancel the creditor's lien.** If an objection is filed, the Court will hear evidence and rule on the motion at the confirmation hearing.

| <u>Creditor</u> | <u>Collateral</u> | <u>Exemption Basis</u> | <u>Exemption Amount</u> | <u>Value of Collateral</u> |
|-----------------|-------------------|------------------------|-------------------------|----------------------------|
|-----------------|-------------------|------------------------|-------------------------|----------------------------|

B. **Avoidance of security interests or liens on grounds other than 11 U.S.C. § 522(f).** The debtor(s) have filed or will file and serve separate adversary proceedings to avoid the following liens or security interests. The creditor should review the notice or summons accompanying such pleadings as to the requirements for opposing such relief. The listing here is for information purposes only.

| <u>Creditor</u> | <u>Type of Lien</u> | <u>Description of Collateral</u> | <u>Basis for Avoidance</u> |
|-----------------|---------------------|----------------------------------|----------------------------|
|-----------------|---------------------|----------------------------------|----------------------------|

9. Treatment and Payment of Claims.

- All creditors must timely file a proof of claim to receive any payment from the Trustee.
- If a claim is scheduled as unsecured and the creditor files a claim alleging the claim is secured but does not timely object to confirmation of the Plan, the creditor may be treated as unsecured for purposes of distribution under the Plan. This paragraph does not limit the right of the creditor to enforce its lien, to the extent not avoided or provided for in this case, after the debtor(s) receive a discharge.
- If a claim is listed in the Plan as secured and the creditor files a proof of claim alleging the claim is unsecured, the creditor will be treated as unsecured for purposes of distribution under the Plan.
- The Trustee may adjust the monthly disbursement amount as needed to pay an allowed secured claim in full.
- If relief from the automatic stay is ordered as to any item of collateral listed in the plan, then, unless otherwise ordered by the court, all payments as to that collateral will cease, and all secured claims based on that collateral will no longer be treated by the 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 the plan.

10. Vesting of Property of the Estate. Property of the estate shall revert in the debtor(s) upon confirmation of the Plan. Notwithstanding such vesting, the debtor(s) may not transfer, sell, refinance, encumber real property or enter into a mortgage loan modification without approval of the Court after notice to the Trustee, any creditor who has filed a request for notice and other creditors to the extent required by the Local Rules of this Court.

11. Incurrence of indebtedness. The debtor(s) shall not voluntarily incur additional indebtedness exceeding the cumulative total of \$5,000 principal amount during the term of this Plan, whether unsecured or secured, except upon approval of the Court after notice to the Trustee, any creditor who has filed a request for notice, and other creditors to the extent required by the Local Rules of this Court.

12. Nonstandard Plan Provisions

None. If "None" is checked, the rest of Part 12 need not be completed or reproduced.

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 "Included" in § 1.C.

Dated: _____

Debtor 1 (Required)

Debtor(s)' Attorney

Debtor 2 (Required)

By filing this document, the Attorney for Debtor(s) or Debtor(s) themselves, if not represented by an attorney, also certify(ies) that the wording and order of the provisions in this Chapter 13 plan are identical to those contained in the Local Form Plan, other than any nonstandard provisions included in Part 12.

Exhibits: Copy of Debtor(s)' Budget (Schedules I and J); Matrix of Parties Served with Plan

Certificate of Service

I certify that on _____, I mailed a copy of the foregoing to the creditors and parties in interest on the attached Service List.

Signature

Address

Telephone No:

CERTIFICATE OF SERVICE PURSUANT TO RULE 7004

I hereby certify that on _____ true copies of the forgoing Chapter 13 Plan and Related Motions were served upon the following creditor(s):

() by first class mail in conformity with the requirements of Rule 7004(b), Fed.R.Bankr.P.; or

() by certified mail in conformity with the requirements of Rule 7004(h), Fed.R.Bankr.P.

Signature of attorney for debtor(s)