



Chapter 6

3:30 – 4:30pm

How to Get Paid in Chapter 13; Claims Objections Litigation

**Jeffrey B. Wells
Law Offices of Jeffrey B. Wells**

**Emily Jarvis
Law Offices of Jeffrey B. Wells**

Electronic format only:

- 1. How to Get Paid in a Chapter 13 – J. Wells*
- 2. Appendices for How to Get Paid in a Chapter 13 – J. Wells*
- 3. Objections to Claims – E. Jarvis*
- 4. Appendices for Objections to Claims – E. Jarvis*

Electronic versions of these documents are available on the KCBA website:
<https://www.kcba.org/cle/EventDetails.aspx?Event=3713>

HOW TO GET PAID IN A CHAPTER 13

In order to ensure consistent payments of your attorneys' fees, it is necessary to be conversant with the underlying statutory basis and rules governing payment of attorneys' fees in Chapter 13. The primary statutory basis for award of attorneys' fees is found in 11 U.S.C. §§ 327 and 330, together with rule 2014 of the Federal Rules of Bankruptcy Procedure as well as the local district Bankruptcy Court rules.

Unlike the requirements in Chapter 7 and 11, local rule 2014 – 1(c) of the Western District of Washington provides that there need not be any application for the appointment of General Counsel for the Debtor in a Chapter 13 case. This rule avoids the embarrassing problem of denial of attorneys' fees in a Chapter 11 case where debtor's counsel has forgotten or has unduly delayed filing an application for appointment. Interwest Bus. Equip Inc. v. U.S. Trustee 23 F.3d 311 (10th Cir. 1994). Of course debtor's counsel cannot receive compensation from the Chapter 7 estate but they are allowed if employed by the Trustee under §327 with court approval. Lamie v. U.S. Trustee 540 U.S. 526, 124 S.Ct 1023, 157 L.Ed 2d 1024 (2004).

Another significant divergence between Chapter 11 individual debtor representation and representation of Debtors in Chapter 13 involves discharge litigation. In Chapter 11 the court will not allow compensation for services that were not reasonably likely to benefit the Debtor's estate or necessary to the administration of the estate. This is a difficult problem for Chapter 11, since discharge litigation would not benefit the estate but rather the individual. Such services cannot be compensated from the bankruptcy estate. In Chapter 13, however, 11 U.S.C. §330(a)(4)(B) provides:

[I]n a Chapter 12 or Chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

Therefore attorneys' fees incurred in representing an individual Chapter 13 Debtor in discharge litigation are compensable. Indeed an entire array of services which benefit the Debtor and not the estate are often the norm for Chapter 13 attorneys. Motions to borrow money, purchase vehicles, requests for refunds from the trustee, are all examples of services rendered by the Chapter 13 trustee which arguably did not benefit the bankruptcy estate.

The court in In re Davis, 2009 Bankr. LEXIS 4099 explained the import of §330(a)(4)(B) by stating:

The standard for compensation of a debtor's attorney in a chapter 13 case has been recognized in Collier on Bankruptcy as differing from the general rule:

Section 330(a)(4)(B) contains an exception to the general rule that professionals' services are compensable only to the extent that they benefit the estate. In a chapter 12 or chapter 13 case in which the debtor is an individual, a debtor's attorney may also receive reasonable compensation of representing the interests of the debtor in connection with the bankruptcy case, based on the necessity of such services to the debtor and the other factors applied to all professional compensation.

This section was undoubtedly enacted in recognition of the fact that in Chapter 13 cases and individual chapter 13 cases, the debtor is, in a sense, the principal asset of the estate. Plans in such cases are typically funded by the debtor's income, which is property of the estate; the individual debtor is the going concern. Thus services that benefit the debtor in connection with the case are services that facilitate the successful completion of the debtor's plan. For example, if a debtor's exemptions are challenged, the debtor's plan may become nonconfirmable because the plan does not meet the best interests of creditors tests of section 1325(a)(5). A successful defense of the objections may thus be necessary for confirmation and success of the plan. Similarly, the debtor's litigation of the dischargeability of a particular debt, or defense against a motion for relief from stay may determine whether the debtor will continue with the chapter 13 case. Even litigation outside the bankruptcy court, such as defending in a child support

proceeding which would disrupt the debtor's plan payments, may be considered representation of the debtor in connection with the bankruptcy case.

3 Collier on Bankruptcy P 330.04(1)(b) (Matthew Bender 15th ed. Revised 2009)(footnotes omitted). See also in *Re Powell*, 314 B.R. 567, 571 (Bankr. N.D. Tex 2004) indicating that §330(a)(4)(B) language 'in connection with the bankruptcy case' must be read liberally to include attorney work for a debtor that could have a conceivable effect on the Chapter 13 case.

A prerequisite to any application is full disclosure. Failure to provide full disclosure under 11 U.S.C. §329 will result in a loss of right to receive compensation. *In re Crayton* 192 B.R. 970 (9th Cir. BAP 1996).

The requirement of full disclosure also includes whether the compensation requested has been or will be shared with another entity. FRBP 2016(b). A cautionary tale is found in *In re Peterson* 2004 WL1895201 (Bankr. D. Idaho 2004) where Debtor's attorney had a contract attorney attend the 341 hearing but did not disclose such fee sharing.

11 U.S.C. §331 provides that applications for interim compensation shall not be more than once every 120 days after a case is filed, unless otherwise permitted by the court. By necessity, the general practice is that the final fee application can be made whenever it's appropriate even if it sooner than 120 days from the last fee application.

In the Western District of Washington the form for a Chapter 13 fee application is set forth in local rule 2016 – 1(f). Specifically, local rules state:

(f) Chapter 13 Fee Applications. In chapter 13 cases, all applications for compensation for services and for reimbursement of necessary expenses in excess of \$1,000 shall be served on the debtor, the chapter 13 trustee, all creditors holding allowed claims and all parties requesting notice pursuant to Fed.R. Bankr. P. 2002(i), and shall include the following:

(1) a statement, by date, of the amounts of compensation and reimbursement of expenses previously allowed and amounts paid;

- (2) a narrative summary of the services provided;
- (3) an itemized time record of services for which an award of compensation is sought, including:
 - (A) the date the service was rendered;
 - (B) the identity of the person who performed the service and the hourly rate of such individual;
 - (C) a detailed description of the service rendered and the time spent performing the service;
 - (D) the total number of hours spent and the total amount of compensation requested;
- (4) an explanation of the effect the additional compensation will have on the plan and the plan disbursements to creditors; and
- (5) an itemized time record for all services provided since the date the case was originally filed.

The form used by our firm (which presumably complies with the local rule) is attached as **Appendix A**. Appendix A includes the notice and motion as well as the affidavit in support of attorneys' fees, the summary of time and costs, and the proposed order.

Attached hereto as **Appendix B** and **Appendix C** are the initial disclosure of fees filed with the bankruptcy schedules and the Chapter 13 plan provisions indicating the disclosure of fees paid prepetition and the presumptive fee provision.

The Western District of Washington has adopted a presumptive "no look" fee of \$3,500. Local rule 2016-1(e)(1) states:

Preconfirmation Fees in Chapter 13 Cases. (1) Presumptive fee. Attorneys representing debtors in chapter 13 cases may be awarded fees of up to \$3,500 (or such other amount as may be set by general order) (the presumptive fee") without having first filed a written application. The fee shall be compensation for all services rendered to the debtor(s) through entry of the order confirming plan and shall include, without limitation: the filing of a chapter 13 plan in the form required by Local Bankruptcy Rule 3015-1; filing with the chapter 13 trustee the

Chapter 13 Information Sheet together with the documents required by Fed. R. Bankr. P. 1007; appearing at the 11 U.S.C. §341 meeting of creditors; responding to objections to confirmation and motions for relief from stay that are resolvable without argument before the court; negotiating and presenting unopposed or agreed orders assuming or rejecting leases; resolving disputes regarding the valuation of collateral or providing for pre-confirmation adequate protection payments to creditors; amending the initial plan as necessary to obtain an order confirming the plan; adding creditors to the schedules and plan; negotiations with the Department of Licensing; and review of the chapter 13 trustee's statement of filed claims.

The validity of the use of presumptive maximum fees was upheld in Boone v. Derham-Burk, 298 B.R. 392 (9th Cir. BAP 2003). However, fees over and above the presumptive fee can be approved under 2016-1(e)(2) which provides as follows:

Fees in Excess of Presumptive Fee. Pre-confirmation attorneys' fees in excess of the presumptive fee may be requested by motion filed with the court not more than 21 days after the entry of the order of confirmation on the court's docket, provided the fee request is accompanied by an itemized breakdown of time and is filed in the form and manner required by Local Bankruptcy Rule 2016-1(f).

Of particular importance is the 21 day deadline by which application for pre-confirmation fees must be made following confirmation. Of course, post-confirmation fees will not be governed by this limitation.

Finally, do not put off or be reticent to prepare and file your Chapter 13 fee application. The time spent in preparing and filing and presenting the fee application is compensable. See In re Nucorp Energy 764 F.2d 655 (9th Cir. 1985).

How to Get Paid in a Chapter 13

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Appendix A – Application for Compensation

- Notice
- Motion
- Affidavit
- Summary of Fees and Costs
- Proposed Order

Appendix B – Disclosure of Compensation of Attorney for Debtor

Appendix C – Chapter 13 Plan (first page)

THE HONORABLE MARC L. BARRECA

Hearing Date: _____, 2013

Response Date: _____, 2013

Hearing Time: 9:30 a.m.

Hearing Location: Seattle

Chapter 13

THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re

CLIENT,

Debtors.

Case No. 12 - _____

NOTICE OF HEARING ON MOTION
FOR AWARD OF ATTORNEYS' FEES

PLEASE TAKE NOTICE that the hearing on the **Application for Award of Appraiser's Fees for Wells and Jarvis, P.S. in the amount of \$ _____** IS SET FOR HEARING AS FOLLOWS:

JUDGE: Marc Barreca

TIME: 9:30 a.m.

PLACE: United States Courthouse
700 Stewart St, Room 7106
Seattle, WA 98101

DATE: _____, 2013

IF YOU OPPOSE the Application, you must file your written response with the court clerk, NOT LATER THAN THE RESPONSE DATE, which is _____, 2013.

IF NO RESPONSE IS TIMELY FILED AND SERVED, the Court may, in its discretion, GRANT THE MOTION PRIOR TO THE HEARING, WITHOUT FURTHER NOTICE, and strike the hearing.

DATED this 22nd day of January, 2013

WELLS AND JARVIS, P.S.

By: /s/ Jeffrey B. Wells
Jeffrey B. Wells, WSBA #6317
Attorney for Debtors

WELLS AND JARVIS, P.S.

502 Logan Building
500 Union Street

Seattle, WA 98101-2332

206-624-0088 Fax 206-624-0086

NOTICE OF HEARING ON MOTION FOR AWARD OF
ATTORNEYS' FEES

1 THE HONORABLE MARC L. BARRECA

2 Hearing Date: _____, 2013

3 Response Date: _____, 2013

4 Hearing Time: 9:30 a.m.

5 Hearing Location: Seattle

6 Chapter 13

7 THE UNITED STATES BANKRUPTCY COURT FOR THE
8 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

9 In re

10 CLIENT,

11 Debtors.
12
13

Case No. 12-_____

APPLICATION FOR AWARD OF
ATTORNEYS FEES

14 The attorneys for the Debtors hereby apply for fees in the amount of
15 \$_____. This application is based upon the accompanying declaration of Jeffrey B.
16 Wells and Emily A. Jarvis and the itemized time and expense record attached thereto as
17 Exhibit A.

18 DATED this 23rd day of January, 2013.

19 WELLS AND JARVIS, P.S.

20 By: /s/ Jeffrey B. Wells

21 Jeffrey B. Wells, WSBA #6317

22 Attorney for Debtor

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27 APPLICATION FOR COMPENSATION

- 1

WELLS AND JARVIS, P.S.

502 Logan Building

500 Union Street

Seattle, WA 98101-2332

206-624-0088 Fax 206-624-0086

THE HONORABLE MARC L. BARRECA

Hearing Date: _____, 2013

Response Date: _____, 2013

Hearing Time: 9:30 a.m.

Hearing Location: Seattle

Chapter 13

THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re

NAMES,

Debtors.

Case No. 12-_____

DECLARATION IN SUPPORT OF
APPLICATION FOR AWARD OF
ATTORNEYS FEES

We, Jeffrey B. Wells and Emily Jarvis, declare as follows:

1. The present Chapter 13 was commenced on _____, 2012. Your applicants have been the Debtors' attorneys since the inception of the case.

2. Your applicants received a retainer of \$2,000 plus the filing fee of \$281 when they initially undertook both cases. This is the initial application for fees and costs in the nominal amount of \$_____. This application covers services rendered between April 30, 2012 and January 15, 2013.

3. Payment would come from the initial retainer and ongoing payments by the Chapter 13 Trustee.

4. Description of services:

5. The itemized time records upon which this application for award of

1 compensation is based are attached hereto as **Exhibit A**. Services were performed by Jeffrey
2 B. Wells at an hourly rate of \$____. Services were performed by Emily A. Jarvis at an hourly
3 rate of \$____. Services were performed by Lynn van der Put, legal assistant, at an hourly rate
4 of \$____. The total time spent by Jeffrey B. Wells was 21.50 hours. The total time spent by
5 Emily A. Jarvis was 15.9 hours. The total time spent by Lynn van der Put was 10.9 hours.
6 Total fees incurred amount to \$____.

8 6. Expenses, set forth in the itemized records, Exhibit A, amount to \$____
9 (photocopy fees, filing fees, and postage). The total for fees and costs incurred amounts to
10 \$____. After application of the initial retainer the balance due is
11 \$_____.

12 7. Other than the fees and expenses incurred as set forth above, no other expenses
13 have been incurred.

14 8. Debtors have a sixty month plan. Their confirmed Chapter 13 plan requires that
15 they pay a total of \$3,600 to unsecured creditors in order to receive a discharge. Their plan is
16 sufficiently funded to pay this amount plus the Internal Revenue Service priority claim, the
17 requested attorney fee award, and the trustee's fee.

18 We declare under penalty of perjury under the laws of the State of Washington that the
19 foregoing information is true and correct to the best of our knowledge and understanding.
20

21 DATED this 22nd day of January, 2013.

22 WELLS AND JARVIS, P.S.

23 By: /s/ Jeffrey B. Wells
24 JEFFREY B. WELLS, WSBA #6317
25 Attorney for Debtor
26

By: /s/ Emily A. Jarvis
Emily A. Jarvis, WSBA #41841
Attorney for Debtor

27 WELLS AND JARVIS, P.S.
502 Logan Building
500 Union Street

LAW OFFICES OF
 Jeffrey B. Wells
 500 Union Street, Suite 502
 Seattle, WA 98101-2332

Invoice submitted to:
 K
 528 NE 97th Street
 Seattle WA 98115

July 07, 2010

In Reference To: Chapter 13 Bankruptcy
 Client File No.

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
2/10/2010 JBW Conference with client regarding Chapter 7 filing	0.60 325.00/hr	195.00
2/15/2010 LVDP Prepare answer to complaint HSBC	0.20 100.00/hr	20.00
2/23/2010 JBW Conference with client regarding Chapter 13 schedules	0.60 325.00/hr	195.00
2/26/2010 LVDP Preparing Chapter 13 bankruptcy schedules	0.90 100.00/hr	90.00
3/1/2010 LVDP Further preparation of Chapter 13 bankruptcy schedules	0.40 100.00/hr	40.00
4/5/2010 JBW Review and revise schedules	0.80 325.00/hr	260.00
4/6/2010 JBW Conference with client regarding means test corrections and corrections to schedules	0.20 325.00/hr	65.00
4/7/2010 LVDP Further revisions to Chapter 13 schedules	0.30 100.00/hr	30.00
LVDP Prepare homestead declaration	1.50 100.00/hr	150.00
4/12/2010 LVDP Revisions to bankruptcy schedules	0.60 100.00/hr	60.00
LVDP prepare chapter 13 plan	0.60 100.00/hr	60.00
JBW Review file; prepare plan; review means test	0.50 325.00/hr	162.50
4/15/2010 JBW Call from client regarding adjustments on means test	0.40 325.00/hr	130.00
4/27/2010 JBW Review and revisions to plan and schedules	0.50 325.00/hr	162.50
5/6/2010 LVDP Prepare abandonment homestead declaration, revisions to Chapter 13 plan, add creditors	1.00 100.00/hr	100.00

		<u>Hrs/Rate</u>	<u>Amount</u>
5/20/2010 JBW	Review plan, means test, schedule I & J, call to client; conference with legal assistant	0.50 325.00/hr	162.50
6/22/2010 LVDP	Scan and submit Trustee documents, Amend Schedules E and F	0.50 100.00/hr	50.00
6/23/2010 JBW	Conference with client regarding objection to plan and amendments to schedules	0.40 325.00/hr	130.00
JBW	Prepare response to objection to plan	0.40 325.00/hr	130.00
6/28/2010 EAJ	Attend 341 hearing; discuss plan with Mr. Wells	1.20 200.00/hr	240.00
6/29/2010 EAJ	Finalize response to Bank of America objection/declaration and exhibit and file with court; prepare memo to Chapter 13 trustee regarding amending plan; send requested documentation necessary for confirmation	0.50 200.00/hr	100.00
For professional services rendered		12.60	\$2,532.50

Additional Charges :

		<u>Qty/Price</u>	
5/10/2010 JBW	Recording Fees. Pacific County Auditor	1 64.00	64.00
5/20/2010 JBW	Chapter 13 filing fee.	1 274.00	274.00
Total costs			\$338.00

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10 THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

11 In re

12 CLIENT,

13 Debtors.
14

Case No. 12-_____

ORDER AWARDING ATTORNEYS'
FEES

- **PROPOSED** -

15
16 THIS MATTER having come on regularly before the above-signed Judge of the above-
17 entitled court upon the application for award of attorneys' fees for Wells and Jarvis, P.S., and
18 the Court having reviewed the files and records herein and being fully advised in the premise;
19 Now, Therefore,

20 IT IS HEREBY ORDERED that the sum of \$_____ is approved as and for
21 attorneys' fees for Wells and Jarvis, P.S. and payment of the balance of \$_____ is
22 authorized from the Chapter 13 Trustee.
23

24 /// End of Order ///

25
26
27 PROPOSED ORDER AWARDING ATTORNEYS FEES

1 Presented by:

2 /s/ Jeffrey B. Wells

3 Jeffrey B. Wells, WSBA #6317

4 WELLS AND JARVIS, P.S.

5 Attorneys for Debtors

6 500 Union Street, Ste 502

7 Seattle, WA 98101

8 206-624-0088

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27 PROPOSED ORDER AWARDING ATTORNEYS FEES

United States Bankruptcy Court
Western District of Washington

IN RE:

Case No. _____

Debtor, Name Of _____

Debtor(s) _____

Chapter 13 _____

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR

1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor(s) and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept \$ 3,500.00

Prior to the filing of this statement I have received \$ 1,500.00

Balance Due \$ 2,000.00

2. The source of the compensation paid to me was: ☒ Debtor ☐ Other (specify):
3. The source of compensation to be paid to me is: ☒ Debtor ☐ Other (specify):
4. ☒ I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.
- ☐ I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation, is attached.

5. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:
- a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
 - b. Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;
 - c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
 - d. Representation of the debtor in adversary proceedings and other contested bankruptcy matters;
 - e. [Other provisions as needed]

6. By agreement with the debtor(s), the above disclosed fee does not include the following services:
Client will be responsible for all filing fees. Client agrees to pay Attorney for his services at an hourly rate.

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

February 25, 2013

Date

Jeffrey B. Wells
500 Union Street, Ste 502
Seattle, WA 98101-2320
(206) 624-0088 Fax: (206) 624-0086

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re:	Case No. 12 -
Names of Debtors	CHAPTER 13 PLAN
Debtor(s).	<input checked="" type="checkbox"/> Original <input type="checkbox"/> Amended
	Date: _____

I. Introduction:

A. Debtor is eligible for a discharge under 11 USC § 1328(f) (check one):

☒ Yes

☐ No

B. Means Test Result. Debtor is (check one):

☐ a below median income debtor

☒ an above median income debtor with positive monthly disposable income

☐ an above median income debtor with negative monthly disposable income

II. Plan Payments:

No later than 30 days after the filing of the plan or the order for relief, whichever date is earlier, the debtor will commence making payments to the Trustee as follows:

A. AMOUNT: \$ _____

B. FREQUENCY (check one):

☒ Monthly

☐ Twice per month

☐ Every two weeks

☐ Weekly

C. TAX REFUNDS: Debtor (check one): ☒ COMMITS; ☐ DOES NOT COMMIT; all tax refunds to funding the plan. Committed refunds shall be paid in addition to the plan payment stated above. If no selection is made, tax refunds are committed.

D. PAYMENTS: Plan payments shall be deducted from the debtor's wages unless otherwise agreed to by the Trustee or ordered by the Court.

E. OTHER: _____

III. Plan Duration:

The intended length of the plan is 60 months, and may be extended up to 60 months after the first payment is due if necessary for completion. The plan's length shall not be less than the debtor's applicable commitment period as defined under 11 U.S.C. §§ 1322(d) and 1325(b)(4).

IV. Distribution of Plan Payments:

Upon confirmation, the Trustee shall disburse funds received in the following order and creditors shall apply them accordingly, PROVIDED THAT disbursements for domestic support obligations and federal taxes shall be applied according to applicable non-bankruptcy law:

A. ADMINISTRATIVE EXPENSES:

1. Trustee. The percentage set pursuant to 28 USC §586(e).

2. Other administrative expenses. As allowed pursuant to 11 USC §§ 507(a)(2) or 707(b).

3. Attorney's Fees: Pre-confirmation attorney fees and costs shall not exceed \$3,500. \$1,500 was paid prior to filing. To the extent pre-confirmation fees and costs exceed \$3,500, an appropriate application, including a complete breakdown of time and costs, shall be filed with the Court within 21 days of confirmation.

Approved pre-confirmation fees shall be paid as follows (check one):

a. ☒ Prior to all creditors;

b. ☐ Monthly payments of \$ _____;

c. ☐ All remaining funds available after designated monthly payments to the following creditors: _____

d. ☐ Other: _____

OBJECTIONS TO CLAIMS

I. When to Object to Proofs of Claim

Set forth in more detail below are the requirements for proofs of claim, the mechanics of filing objections to claims, and substantive elements to include when objecting to claims. But before you dive head-first into filing objections, it is helpful to consider whether it is even necessary to do so. There are certain circumstances when the allowance or denial of a claim is irrelevant to your client and the success of his or her plan. Given the limited means of Chapter 13 debtors and the presumptive pre-confirmation fee standardized in the Local Rules, this is always a valuable inquiry to make before undertaking claims litigation.

A. General Unsecured Claims

Often, the outcome of a debtor's case does not depend on whether or not a general unsecured claim is allowed. The monthly plan payment amount is based upon the disposable income of the debtor. Most of the time a debtor's disposable income is such that unsecured creditors will receive only partial payment of their claims (or even no funds if plan payments are dedicated entirely toward secured and/or priority debt). In that scenario, absent some other compelling factor, a debtor is likely ambivalent even if one claim is potentially disputable since the amount he or she is paying into the plan is the same regardless and the outstanding claim balances will be discharged upon completion of the plan. Every now and then a debtor's overall unsecured debts are low enough and/or his disposable income is high enough that he is able to propose a plan which pays unsecured creditors one hundred percent plus interest at the federal rate. In that case it would clearly be to a debtor's benefit to object to disputable claims since, if he is successful, the plan will be paid off that much sooner.

Even if a plan does not appear to be a 100% plan at the outset, if it is close to being so it still may be worth it to object because Chapter 13 proceedings are forward looking, and debtors must adjust their plans with any changes in income or expenses. A successful objection to an unsecured claim may result in a 100% plan, especially if a debtor's disposable income increases during the course of the Chapter 13 and they end up contributing more to the plan.

B. Secured and Priority Claims

In contrast to general unsecured claims, if grounds exist for objecting to a priority claim or a claim secured on an asset the debtor intends to retain, it is generally advisable to proceed with the objection. All allowed priority debts have to be paid within the course of the Chapter 13 plan, so a successful objection which reduces the amount of the claim will often have a direct impact on the amount a debtor has to pay into their plan. Likewise, a default on a secured claim has to be cured during the Chapter 13 and thus a direct correlation exists between the size of the arrearage claim and the amount required to be paid into the plan. Many debtors trying to save a house or catch up on another secured debt struggle to make the minimum required payment to the trustee even after stretching their plans out to the maximum five years, so a successful objection to claim could mean all the difference in making their plan feasible. Even if a plan appears to be a 100% plan, pursuing a valid objection to a priority or secured claim is recommended because (1) a successful objection would shorten the plan and (2) since plan payments can be reduced during the course of the Chapter 13 if a debtor's disposable income is reduced, it may not always turn out to be a 100% plan by the end, and a reduction in the minimum amount required to fund the plan could benefit the subsequently cash-strapped debtor.

II. Requirements for Proofs of Claim

The requirements for proofs of claim are set forth in Federal Rule of Bankruptcy Procedure 3001. Unlike in a Chapter 11 proceeding, an unsecured creditor, even if listed in the debtor's liability schedules, must file a proof of claim in order to be paid through a Chapter 13 plan. The bankruptcy court mails to all creditors the notice of the date by which all proofs of claim must be filed (governmental claims are given their own later deadline). F.R.B.P 3002 governs timing of filing various types of claim. Proofs of claim are filed with the court and may be viewed under the claims register that is available through the electronic court filing system.

Generally creditors file their own proofs of claim, although in certain circumstances a debtor may need to file a claim on behalf of a creditor. See F.R.B.P 3004. Whether you are filing a claim on behalf of a creditor or the debtor, or preparing an objection on behalf of the debtor to a claim filed by another party, it is relevant to know the required components of a proof of claim.

A. Proof of Claim Form

Attached as **Appendix A** to these materials is an example proof of claim. F.R.B.P 3001 sets forth the requirements for a proof of claim. If the claim is based on a writing, a copy of the relevant document(s) should be attached. As set forth on Appendix A, the proof of claim form provides space to designate if it is secured or priority and the collateral or basis for such a designation.

B. Required Attachments for Mortgage Lenders

The requirements for mortgage lenders participating in bankruptcy have increased under the recent revisions to the procedural rules. Attached as **Appendix B** are supplemental claim forms for mortgage lenders to be included with the original proof of claim and to be filed as applicable subsequent to the original claim. Among other elements, the claim must set forth a

statement of the amount necessary to cure any default as of the date of the petition. An escrow statement for the debtor's principal residential mortgage must also be included. Rule 3001 provides that sanctions may be sought for failure to comply with these requirements.

C. Required Attachments for Revolving Credit Claim Holder

Recent changes to the Federal Rules of Bankruptcy Procedure also added requirements for claims based upon open-end or revolving credit agreements. Because these debts are often sold and transferred between multiple parties such that a debtor otherwise would not recognize the claim, these claim holders must disclose the name of the previous creditor, the date of the most recent transactions, and other historical information about the account. See F.R.B.P. 3001(c)(3). In general bankruptcy courts have held that a claim purchased by a party who fails to prove chain of title to the original holder of the claim should be disallowed. See e.g. *In re Doherty*, 2009 WL 428921.

If an account is old enough, affirmative defenses such as statute of limitations may be asserted in the objection to claim. See e.g. *In re McGregor*, 398 B.R. 561 (Bankr. N.D. Miss. 2008)(Bankruptcy court held that filing a claim which was otherwise barred by the applicable state's statute of limitations did not violate the automatic stay, but debtor's counsel could raise this issue in the objection to claim). Under Washington law the statute of limitations is three years for oral contracts (RCW 4.16.080) and six years for written agreements (RCW 4.16.040), although the date which triggers the statutory prescriptive period is the date of the last payment on the account, not the date of the initial contract. (RCW 4.16.270).

III. Requirements for Filing Objections to Claim

A. Deadline

Under Local Bankruptcy Rule 3007-1(b), objections to timely filed proofs of claim must be filed and served no later than 270 days after the Chapter 13 petition date absent good cause. It is advisable to file the objection prior to that date if possible, however, given that plan confirmation is often contingent upon resolution of claims issues and you are likely to be hit with a motion to dismiss if your case drags on too long without confirmation. Specifically, for any Chapter 13 case where a plan is not confirmed within 210 days after the originally scheduled 341 meeting, the Local Bankruptcy Rules now require debtors to file a status report setting forth the reasons confirmation has not occurred to date. L.B.R. 3015-1(e).

B. Procedural Requirements of Objections

Objections to claim must comply with the notice and other requirements for motions practice set forth in Local Bankruptcy Rule 9013-1 and with Federal Rule of Bankruptcy Procedure 3007. They require a longer notice period than regular motions, specifically thirty days. Debtors need not mail the objection to claim to all creditors but rather may serve it only upon the parties in interest.

Under Federal Rule of Bankruptcy Procedure 9014, a contested matter (i.e., an actual dispute other than in an adversary proceeding) such as an objection to claim must be served on the claimant in the manner of a summons and complaint. Service of a summons and complaint are governed by F.R.B.P. 7004. While Rule 7004 allows service by mail in many cases, special attention must be paid when serving the objection on certain parties. For example, service upon an agency of the United States requires service on the agency, the US Attorney for the district in which the action is brought, and the Attorney General of the United States. Rule 7004(b)(5). In the case of a mortgage holder, extra requirements such as certified mail with attention put to an officer may apply if the entity is an insured depository institution. Rule 7004(h). Likewise, Rule

7004 requires that service be directed to a particular party if it is being made on a corporate entity. Rule 7004(b)(3).

IV. Common Types of Objections to Claim

A. Auto Loan Cram Downs

A frequent scenario where objections to claim are necessary and beneficial for a Chapter 13 debtor is the one where the debtor seeks to reduce the principal balance and/or interest rate of an auto loan on a non-910 vehicle. Auto lenders routinely file their claim listing the entire contractual balance of the loan without regard to the age or value of the car. Even if a debtor proposes to reduce the amount of an auto loan to the value of the vehicle in his or her chapter 13 plan, the proof of claim trumps and the terms of the plan will not be binding on the auto lender absent either entry of a stipulation or an order resolving an objection to claim.

If the lender responds to the objection to claim and contests the debtor's valuation and suggested interest rate, the matter will typically be resolved through an evidentiary hearing set by the court. The applicable standard for valuations is the "replacement value" of the vehicle as set forth in 11 U.S.C. § 506(a)(2). The interest rate analysis is governed by *Till v. SCS Credit Corporation*, 541 U.S. 465; 124 S. Ct. 1951; 158 L. Ed. 2d 787 (2004) and its progeny, which sets the appropriate interest rate at the national prime rate plus an accommodation for the appropriate risk factor. Attached as **Appendix C** is a sample of an objection to an auto loan claim for a non-910 vehicle which sets forth a discussion of the relevant case law.

Even a debtor who is ineligible for a bankruptcy discharge may nevertheless be able to modify the contract rate of interest on a 910 claim using *Till*. See e.g. *In re Harrison*, 394 B.R. 879 (Bankr. N.D. Ill. 2008). There the bankruptcy court in that case reasoned that the ability to modify the rights of secured claim holders was not dependent on a discharge. However, absent a

discharge the debtors remained liable to the creditor for any unpaid balance due upon exit from bankruptcy.

B. Internal Revenue Service Claims

If a Chapter 13 is filed around the time the debtor submitted his or her tax return, or the debtor filed the return late, the IRS will typically file a proof of claim with an estimated tax liability, indicating that the return has not yet been processed. This amount may be much higher than the actual tax liability per the filed return, which in turn may make an otherwise confirmable plan appear infeasible. Often a formal objection to claim is not necessary if the debtor's counsel can coordinate expediting the return's processing with the IRS insolvency department.

Claims actions may also be necessary in the case of a secured claim. The IRS may file a proof of claim alleging secured status for the full tax owing if a tax lien was previously recorded, without regard to the actual value of the debtor's real or personal property. If a debtor prevails on the objection, the claim will be bifurcated and the unsecured portion must be divided up into priority and general non-priority claims. The secured and priority claims still have to be paid within the course of the Chapter 13, but the overall figure paid under the plan may be reduced because dischargeable penalties will be relegated to general non-priority status. An example of an objection to the secured portion of an IRS claim is attached as **Appendix D**. When objecting to an IRS claim, recall the special service requirements set forth above.

C. Mortgage Lenders

Objections to claims of mortgage lenders typically deal with procedural defects of the claim, disputed charges or arrearage figures in the claim, or standing issues. If the debtor was only recently granted a loan modification by the lender, or one is pending, the proof of claim

may still show an arrearage. Court approval is required for a mutually agreed upon loan modification finalized during the Chapter 13. An objection to claim is not the proper forum to seek to avoid a lien or to force a modification of a lien on real property. Liens on real property generally pass through Chapter 13 unaffected and due process requires that any lien strips or modifications must occur through an adversary proceeding. See e.g. *Brawders v. County of Ventura*, 502 F.3d 856 (9th Cir. 2007) and Section V below for more detail.

A formal objection may not be necessary to resolve some claims issues. For example a lender may be willing to negotiate as to the inclusion of late fees and penalties and/or a reduction of attorney fees. Most loan documents allow for inclusion of attorneys' fees, for example those resulting from filing a proof of claim or a motion for relief from stay. Under Ninth Circuit law, over-secured creditors can collect interest at the default rate pursuant to the terms of the contract. *In re General Electric Capital Corp. v. Future Media Productions Inc.*, 536 F.3d 969 (9th Cir. 2008). Under Washington State law, liquidated damage clauses are generally favored and assessment of default interest pursuant to contract is upheld, but only as long as the sums involved do not amount to a penalty. Liquidated damages are a pre-estimate of damages, but should not be a punishment for default. *Watson v. Ingram*, 70 Wn. App. 45, 49-50, 851 P.2d 761 (1993), *aff'd* 124 Wn.2d 845, 881 P.2d 247 (1994) (citing *Mgmt., Inc. v. Schassberger*, 39 Wn.2d 321, 326, 235 P.2d 293 (1951)).

One cautionary aspect to keep in mind with regard to claims litigation is that if the debtor does not prevail and attorney fees are awarded to the other side pursuant to the contract or for a frivolous action, these will be a non-dischargeable post-petition obligation.

While there may be legitimate issues surrounding standing of the lender filing the proof of claim and the proper identity of the note holder, such litigation typically does not allow a

debtor to confirm a house-saving plan without providing for ongoing mortgage payments. Pending litigation also may not be sufficient to prevent relief from stay being granted on the property.

V. Lien Avoidance and Modification

One of the significant benefits of a Chapter 13 proceeding is the ability to modify liens on real property. As held in *In re Zimmer*, 313 F.3d 1220 (9th Cir. 2002), Chapter 13 debtors can avoid a wholly unsecured mortgage that is secured only on their residence, despite 11 U.S.C. §1322(b)(2)'s anti-modification protections for residential loans. See also *Nobelman v. American Sav. Bank*, 113 S. Ct. 2106 (1993) which confirmed the corollary, that an under-secured claim secured on a debtor's residence could not be modified. An example of a complaint to avoid a wholly unsecured second mortgage lien is attached as **Appendix E**. When serving a complaint to avoid a lien keep in mind the special service requirements set forth above for FDIC insured institutions and corporate servicers.

For investment properties, the possibilities for modification are greater, as §1322(b)(2) does not apply and even a partially secured loan can be bifurcated and the unsecured portion of the lien stripped from the property. In addition, the interest rate for those properties can be modified using the standard set forth in *Till* (supra). The cram-down option for investment properties has its limitations, however. The secured portion must be paid within the Chapter 13 plan period, which lasts a maximum of five years. *Enewally v. Washington Mut. Bank*, 368 F.3d 1165 (9th Cir. 2004). Per the terms of § 1325(a)(5), the secured portion also must be paid through equal monthly installments, prohibiting plans which propose a balloon or refinance option at the end of the plan. In this regard, Chapter 11 may be the better route for an investment property owner seeking to modify partially-secured mortgages.

Interesting issues can arise in the context of lien strips in "Chapter 20s" (a Chapter 13 after a Chapter 7). Some cases suggest that a wholly unsecured lien holder whose lien is avoided in the 13, even where the debtor's personal liability was discharged in the prior Chapter 7 case, retains *in rem* rights to payment from the debtor's disposable income under the Chapter 13 plan. See e.g. *In re Clark*, 21 CBN 327 (Bankr. D. Mont. 2010). At least one case has suggested that lien strips in this scenario last only the duration of the plan on the premise that only a discharge can remove the lien permanently, although this does not appear to be the majority view. *In re Victorio*, 454 B.R. 759 (Bankr. S.D. Cal., 2011).

VI. Conclusion

Whether through objections or adversary proceedings, Chapter 13 provides debtors with multiple valuable mechanisms to resolve and modify claims.

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Appendix A

Proof of Claim Form (obtainable in the forms section of the Western District of Washington Bankruptcy Court website)

Appendix B

Supplemental Proof of Claim Forms for Mortgage Lenders (also can be downloaded from online)

Appendix C

Example Objection to Claim on Non-910 Vehicle Loan

Accompanying Declaration of Debtor

Exhibit (Blue Book Print-Out)

Order Denying Claim in Part

Appendix D

Example Objection to Secured IRS Claim

Accompanying Declaration

Notice of Hearing

Proposed Order Partially Disallowing Claim

Certificate of Service

Appendix E

Complaint to Avoid Second Mortgage

Exhibit A (Legal Description)

APPENDIX A

B 10 (Official Form 10) (12/12)

UNITED STATES BANKRUPTCY COURT <u>Western</u> DISTRICT OF <u>Washington</u>		PROOF OF CLAIM
Name of Debtor:		Case Number:
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property):		COURT USE ONLY <input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____ <input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
Name and address where notices should be sent:		
Telephone number:	email:	
Name and address where payment should be sent (if different from above):		
Telephone number:		email:
1. Amount of Claim as of Date Case Filed: \$ _____ If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: _____ (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor: _____	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____		Basis for perfection: _____
Value of Property: \$ _____		Amount of Secured Claim: \$ _____
Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount Unsecured: \$ _____
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).
		Amount entitled to priority: \$ _____
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		

7. Documents: Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

☐ I am the creditor. ☐ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, or their authorized agent. ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)
(See Bankruptcy Rule 3004.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: _____

Title: _____

Company: _____

Address and telephone number (if different from notice address above): _____

(Signature)

(Date)

Telephone number: _____ email: _____

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the

claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS**Debtor**

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor

A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

Claim

A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. § 506 (a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.

A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. § 507 (a)

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION**Acknowledgment of Filing of Claim**

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

APPENDIX B

Mortgage Proof of Claim Attachment

If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See Bankruptcy Rule 3001(c)(2).

Name of debtor: _____ Case number: _____

Name of creditor: _____ Last four digits of any number you use to identify the debtor's account: _____

Part 1: Statement of Principal and Interest Due as of the Petition Date

Itemize the principal and interest due on the claim as of the petition date (included in the Amount of Claim listed in Item 1 on your Proof of Claim form).

1. Principal due (1) \$ _____

2. Interest due

Interest rate	From mm/dd/yyyy	To mm/dd/yyyy	Amount
_____ %	_____	_____	\$ _____
_____ %	_____	_____	\$ _____
_____ %	_____	_____	+ \$ _____
Total interest due as of the petition date			\$ _____

Copy total here (2) + \$ _____

3. Total principal and interest due

(3) \$ _____

Part 2: Statement of Prepetition Fees, Expenses, and Charges

Itemize the fees, expenses, and charges due on the claim as of the petition date (included in the Amount of Claim listed in Item 1 on the Proof of Claim form).

Description	Dates Incurred	Amount
1. Late charges	_____	(1) \$ _____
2. Non-sufficient funds (NSF) fees	_____	(2) \$ _____
3. Attorney's fees	_____	(3) \$ _____
4. Filing fees and court costs	_____	(4) \$ _____
5. Advertisement costs	_____	(5) \$ _____
6. Sheriff/auctioneer fees	_____	(6) \$ _____
7. Title costs	_____	(7) \$ _____
8. Recording fees	_____	(8) \$ _____
9. Appraisal/broker's price opinion fees	_____	(9) \$ _____
10. Property inspection fees	_____	(10) \$ _____
11. Tax advances (non-escrow)	_____	(11) \$ _____
12. Insurance advances (non-escrow)	_____	(12) \$ _____
13. Escrow shortage or deficiency (Do not include amounts that are part of any installment payment listed in Part 3.)	_____	(13) \$ _____
14. Property preservation expenses. Specify: _____	_____	(14) \$ _____
15. Other. Specify: _____	_____	(15) \$ _____
16. Other. Specify: _____	_____	(16) \$ _____
17. Other. Specify: _____	_____	(17) + \$ _____
18. Total prepetition fees, expenses, and charges. Add all of the amounts listed above.		(18) \$ _____

Part 3. Statement of Amount Necessary to Cure Default as of the Petition Date

Does the installment payment amount include an escrow deposit?

☐ No

☐ Yes Attach to the Proof of Claim form an escrow account statement prepared as of the petition date in a form consistent with applicable nonbankruptcy law.

1. Installment payments due	Date last payment received by creditor	_____	
		mm/dd/yyyy	
	Number of installment payments due	(1) _____	
2. Amount of installment payments due	_____ installments @	\$ _____	
	_____ installments @	\$ _____	
	_____ installments @	+ \$ _____	
	Total installment payments due as of the petition date	\$ _____	Copy total here ► (2) \$ _____
3. Calculation of cure amount	Add total prepetition fees, expenses, and charges		Copy total from Part 2 here ► + \$ _____
	Subtract total of unapplied funds (funds received but not credited to account)		- \$ _____
	Subtract amounts for which debtor is entitled to a refund		- \$ _____
	Total amount necessary to cure default as of the petition date		(3) \$ _____

Copy total onto Item 4 of Proof of Claim form

UNITED STATES BANKRUPTCY COURT

In re _____
Debtor

Case No. _____

Chapter 13

Notice of Mortgage Payment Change

If you file a claim secured by a security interest in the debtor's principal residence provided for under the debtor's plan pursuant to § 1322(b)(5), you must use this form to give notice of any changes in the installment payment amount. File this form as a supplement to your proof of claim at least 21 days before the new payment amount is due. See Bankruptcy Rule 3002.1.

Name of creditor: _____

Court claim no. (if known): _____

Last four digits of any number
you use to identify the debtor's
account: _____

Date of payment change: _____

Must be at least 21 days after date of
this notice

mm/dd/yyyy

New total payment: _____

\$ _____

Principal, interest, and escrow, if any

Part 1: Escrow Account Payment Adjustment

Will there be a change in the debtor's escrow account payment?

☐ No

☐ Yes Attach a copy of the escrow account statement prepared in a form consistent with applicable nonbankruptcy law. Describe the basis for the change. If a statement is not attached, explain why: _____

Current escrow payment: \$ _____

New escrow payment: \$ _____

Part 2: Mortgage Payment Adjustment

Will the debtor's principal and interest payment change based on an adjustment to the interest rate in the debtor's variable-rate note?

☐ No

☐ Yes Attach a copy of the rate change notice prepared in a form consistent with applicable nonbankruptcy law. If a notice is not attached, explain why: _____

Current interest rate: _____ %

New interest rate: _____ %

Current principal and interest payment: \$ _____

New principal and interest payment: \$ _____

Part 3: Other Payment Change

Will there be a change in the debtor's mortgage payment for a reason not listed above?

☐ No

☐ Yes Attach a copy of any documents describing the basis for the change, such as a repayment plan or loan modification agreement. (Court approval may be required before the payment change can take effect.)

Reason for change: _____

Current mortgage payment: \$ _____

New mortgage payment: \$ _____

Part 4: Sign Here

The person completing this Notice must sign it. Sign and print your name and your title, if any, and state your address and telephone number if different from the notice address listed on the proof of claim to which this Supplement applies.

Check the appropriate box.

- ☐ I am the creditor. ☐ I am the creditor's authorized agent.
(Attach copy of power of attorney, if any.)

I declare under penalty of perjury that the information provided in this Notice is true and correct to the best of my knowledge, information, and reasonable belief.

X _____ Date _____
Signature mm/dd/yyyy

Print: _____ Title _____
First Name Middle Name Last Name

Company _____

Address _____
Number Street

_____ City State ZIP Code

Contact phone _____ **Email** _____

UNITED STATES BANKRUPTCY COURT

In re _____
Debtor

Case No. _____

Chapter 13

Notice of Postpetition Mortgage Fees, Expenses, and Charges

If you hold a claim secured by a security interest in the debtor's principal residence, you must use this form to give notice of any postpetition fees, expenses, and charges that you assert are recoverable against the debtor or against the debtor's principal residence. File this form as a supplement to your proof of claim. See Bankruptcy Rule 3002.1.

Name of creditor: _____

Court claim no. (if known): _____

Last four digits of any number you use to
identify the debtor's account: _____

Does this notice supplement a prior notice of postpetition fees,
expenses, and charges?



No.



Yes. Date of the last notice: _____

mm/dd/yyyy

Part 1: Itemize Postpetition Fees, Expenses, and Charges

Itemize the fees, expenses, and charges incurred on the debtor's mortgage account after the petition was filed. Do not include any escrow account disbursements or any amounts previously itemized in a notice filed in this case or ruled on by the bankruptcy court.

Description	Dates incurred	Amount
1. Late charges	_____	(1) \$ _____
2. Non-sufficient funds (NSF) fees	_____	(2) \$ _____
3. Attorney fees	_____	(3) \$ _____
4. Filing fees and court costs	_____	(4) \$ _____
5. Bankruptcy/Proof of claim fees	_____	(5) \$ _____
6. Appraisal/Broker's price opinion fees	_____	(6) \$ _____
7. Property inspection fees	_____	(7) \$ _____
8. Tax advances (non-escrow)	_____	(8) \$ _____
9. Insurance advances (non-escrow)	_____	(9) \$ _____
10. Property preservation expenses. Specify: _____	_____	(10) \$ _____
11. Other. Specify: _____	_____	(11) \$ _____
12. Other. Specify: _____	_____	(12) \$ _____
13. Other. Specify: _____	_____	(13) \$ _____
14. Other. Specify: _____	_____	(14) \$ _____

The debtor or trustee may challenge whether the fees, expenses, and charges you listed are required to be paid. See 11 U.S.C. § 322(b)(5) and Bankruptcy Rule 3002.1.

Part 2: Sign Here

The person completing this Notice must sign it. Sign and print your name and your title, if any, and state your address and telephone number if different from the notice address listed on the proof of claim to which this Supplement applies.

Check the appropriate box.

- ☐ I am the creditor.
- ☐ I am the creditor's authorized agent. (Attach copy of power of attorney, if any.)

I declare under penalty of perjury that the information provided in this Notice is true and correct to the best of my knowledge, information, and reasonable belief.

X

Signature _____

Date _____

mm/dd/yyyy

Print:

First Name _____

Middle Name _____

Last Name _____

Title _____

Company _____**Address**

Number _____

Street _____

City _____

State _____

ZIP Code _____

Contact phone _____**Email** _____

APPENDIX C

THE HONORABLE TIMOTHY W. DORE

Hearing Date: August 29, 2012

Hearing Time: 9:30 a.m.

Response Date: August 22, 2012

Hearing Location: Seattle

Chapter 13

THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re

Debtors.

Case No.

OBJECTION TO CLAIM NUMBER 5
BY TOYOTA MOTOR CREDIT
CORPORATION

COME NOW the Debtors herein, by
and through their attorneys of record, Law Offices of Jeffrey B. Wells, and object to secured
claim number 5 filed by Toyota Motor Credit Corporation ("Toyota") in the amount of
\$23,085.50. Debtors do not disagree with the amount of Toyota's claim, but do deny that this
entire amount is entitled to secured status.

Background

As evidenced on the Retail Installment Sale Contract attached to Toyota's proof of
claim, N purchased a new 2009 Toyota Sienna in February of 2009 with
financing from Toyota. The amount financed totaled \$36,625.77 and included an interest rate
of 9.39%.

The present Chapter 13 proceeding was filed April 30, 2012. Toyota filed a proof of

OBJECTION TO CLAIM

- 1

Law Offices
JEFFREY B. WELLS
502 Logan Building
500 Union Street
Seattle, WA 98101-2332
206-624-0088 Fax 206-624-0086

1 claim seeking secured status for the full amount owed with the contract interest rate of 9.39%.
2 In their First Amended Chapter 13 Plan, Debtors have proposed to cram down the Toyota
3 loan to the value of the vehicle with an interest rate of 7%.

4 Value of the Collateral

5 11 U.S.C. § 506(a)(1) dictates that a claim is only a secured claim to the extent of the
6 value of the creditor's interest in the property subject to its lien, and is an unsecured claim to
7 the extent that the value of its interest is less than the amount of the claim. As set forth on the
8 accompanying declaration of [redacted] the Sienna was worth only \$16,285 as of the
9 date of filing, and therefore Toyota's loan is only a secured claim up to this amount. The
10 remainder of the loan balance is an unsecured claim and should be treated as such in the
11 bankruptcy.
12

13 As set forth in more detail on the accompanying declaration, [redacted] believes
14 \$16,285 represents an accurate valuation of the Sienna given its age, condition and features. 11
15 U.S.C. § 506(a)(2) dictates that the value of an allowed secured claim secured by personal
16 property is based on the property's "replacement value," which means the price a retail
17 merchant would charge for that type of property considering its age and condition.
18

19 proposed replacement value of the Sienna is supported by Kelly Bluebook's estimate
20 of the "private-party" value for the same vehicle in the same condition and with the same
21 mileage and features. A print-out of that estimate is attached to her declaration as **Exhibit A**.
22

23 Bankruptcy courts tend to determine values on a case-by-case basis. In the Ninth
24 Circuit, the correct method for calculating the replacement/retail value of a vehicle under §
25 506(a)(2) generally depends on the facts presented in each case. See e.g. *Taffi v. United States*,
26 *96 F.3d 1190, 1193 (9th Cir. 1996)*. Even after BAPCPA, courts "have employed a variety of
27

1 vehicle valuation methods under § 506(a)(2), and presently the Ninth Circuit has not
2 established a uniform method.” *In re Araujo*, 2011 Bankr. Lexis 2897 (N.D. Ca, 2011) at 7.
3 Reference to pricing guides such as Kelly Bluebook provides a frequently-used starting point
4 for determining replacement values. Some courts have started with the pricing guides’ “retail”
5 value and adjusted downward to take into account the specific vehicle’s condition (see e.g. *In*
6 *re Morales*, 387 B.R. 36 (C.D. Ca 2008)), while others have adopted the “private-party” value,
7 which already considers the condition of the vehicle (see e.g. *In re Robert Bruce Ayres*, 2010
8 Bankr. Lexis 519). Arguably the same end result is reached under either approach. *Id.* at 17.
9

10 The Bankruptcy Appellate Panel for the Tenth Circuit, in upholding a bankruptcy
11 court’s application of the Kelly Bluebook “private party” standard for valuing vehicles for
12 purposes of § 506(a)(2), noted that the term “retail” as used in § 506 is not necessarily
13 synonymous with the “retail value” in pricing guides like Kelly Bluebook. While the B.A.P. did
14 not mandate the use of the “private party” value as the proper valuation procedure, it observed
15 that the “retail values” in Kelly Bluebook are likely to be too high in many cases, noting that
16 “the Bankruptcy Code’s definition of ‘retail’ includes an adjustment for the age and condition
17 of the vehicle; [Kelly Bluebook] defines ‘retail’ as the price for a vehicle that is in ‘excellent
18 condition’ with the proviso that less than 5% of vehicles for sale qualify as ‘excellent’ . . .
19 clearly, these two are not equivalent.” *Midwest Reg’l Credit Union v. De Anda-Ramirez*, 359
20 B.R. 794 (10th Cir. BAP, 2007).
21
22

23 11 U.S.C. § 1325(a)(5)(B)(ii) allows confirmation of a Chapter 13 plan if, with respect
24 to each *allowed* secured claim provided for by the plan, “the value, as of the effective date of
25 the plan, of property to be distributed under the plan on account of such claim is not less than
26 the amount of such claim.” Because the vehicle was purchased in 2009.
27

1 are entitled to pay only the value of the collateral securing the claim and do not run afoul of 11
2 U.S.C. § 1325(a)(9)'s exception for vehicles purchased within 910 days of the bankruptcy
3 filing, which would otherwise require payment of the full loan balance.

4 Interest

5 In addition to allowing Debtors to pay only the value of the automobile, 11 U.S.C. §
6 1325(a)(5)(B) also allows a debtor to "cram down" the interest rate in some situations from the
7 original contract rate. The U.S. Supreme Court in *Till v. SCS Credit Corporation*, 541 U.S.
8 465; 124 S. Ct. 1951; 158 L. Ed. 2d 787 (2004) held that the new crammed down rate of
9 interest payable to a secured lender over the life of the Chapter 13 plan is the national prime
10 rate plus a risk factor depending on the creditworthiness of the debtor.
11

12 The present national prime rate of interest as of May 30, 2012 is 3.25%. Taking into
13 account steady employment as counselors and care giver, their risk of
14 default is relatively low for a Chapter 13 debtor. Therefore, Debtors believes that their
15 proposed interest rate of 7%, which is more than double the prime rate, sufficiently
16 incorporates any accompanying risk factor. Further, as set forth on the accompanying
17 declaration, the proposed interest rate is well above the current market rates for individual
18 automobile loans.
19

20 Conclusion

21 Based on the foregoing, Debtors request that the court allow Toyota's claim as a secured
22 claim only in the amount of \$16,285 with 7% interest, and that the remainder of its claim be
23 allowed only as a general unsecured claim.
24

25 Dated this 23rd day of July, 2012.

26 /s/ Emily Jarvis

Emily Jarvis, WSBA #41841

THE HONORABLE TIMOTHY W. DORE

Hearing Date: August 29, 2012

Hearing Time: 9:30 a.m.

Response Date: August 22, 2012

Hearing Location: Seattle

Chapter 13

THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re

Case No.

Debtors.

DECLARATION OF
IN SUPPORT OF
OBJECTION TO CLAIM

I, I am one of the Debtors herein. I make this declaration in support of
the objection by my husband and I to claim number 5 filed by Toyota Motor Credit Corp.

My husband and I own multiple vehicles, one of which is a 2009 Toyota Sienna that
has approximately 42,500 miles. Given the mileage, its age, features, and relatively good
condition, I think it is worth \$16,285. Kelly Bluebook supports this valuation. Attached as
Exhibit A is a printout from the Kelly Bluebook website showing a "private-party" value of
\$16,285 for the same age, make and model vehicle with the same features, approximate
mileage, and similar condition as ours.

The loan currently has an interest rate of 9.39%. I believe that an interest rate of 7%
is more than adequate given the current market standards. I undertook some research online

DECLARATION OF RAQUEL MONARES

- 1

Law Offices
JEFFREY B. WELLS
502 Logan Building
500 Union Street
Seattle, WA 98101-2332
206-624-0088 Fax 206-624-0086

1 to determine prevailing rates at Bank of America, Chase, and BECU for auto loans. The
2 print-outs from these websites are attached hereto as **Exhibit B**. They show interest rates as
3 low as 2.39% up to the highest of 4.77%, therefore I believe my proposed rate of 7% reflects
4 the current market plus a sufficient margin for risk of default.

5 Therefore, I respectfully request that the Court allow the claim of Toyota Financial
6 Services as a secured claim only in the amount of \$16,285 at 7% annual interest, and order that
7 the remaining balance be allowed only as an unsecured claim.
8

9 I declare under penalty of perjury under the laws of the State of Washington that the
10 foregoing statements are true and correct to the best of my knowledge and information.

11 SIGNED this 23rd day of July, 2012.
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DECLARATION OF RAQUEL MONARES

- 2

Law Offices
JEFFREY B. WELLS
502 Logan Building
500 Union Street
Seattle, WA 98101-2332
206-624-0088 Fax 206-624-0086

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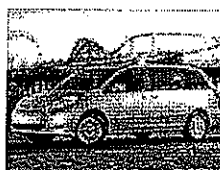
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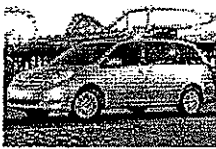
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2009 Toyota Sienna



Engine: V6, 3.5 Liter

Transmission: Automatic, 5-Spd w/Overdrive

More Specs

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9 THE UNITED STATES BANKRUPTCY COURT FOR THE
10 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

11 In re

Case No.

12 ORDER DISALLOWING IN PART THE
13 SECURED CLAIM OF TOYOTA MOTOR
14 CREDIT CORPORATION

Debtors.

15 THIS MATTER having come on regularly before the above-signed Judge of the above
16 entitled Court upon the Debtor's objection to claim number 5 of Toyota Motor Credit
17 Corporation, and notice having been given to claimant, and no opposition to said motion
18 having been filed, and good cause having been shown; Now, Therefore,

19 IT IS HEREBY ORDERED that claim number 5 of Toyota Motor Credit Corporation
20 is allowed as a secured claim only in the amount of \$16,285 at 7% interest, and the remaining
21 balance shall be allowed only as a general unsecured claim.
22

/// End of Order ///

23 Presented by:

24 /s/Emily Jarvis

25 Emily Jarvis, WSBA #41841
26 500 Union Street, Ste 502
27 Seattle, WA 98101
206-624-0088

ORDER DENYING IN PART SECURED CLAIM OF TOYOTA

APPENDIX D

THE HONORABLE BRIAN D. LYNCH

Hearing Date: March 13, 2013

Hearing Time: 9:00 a.m.

Response Date: March 6, 2013

Hearing Location: Tacoma

Chapter 11

THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT TACOMA

In re

Case No. _____

Debtor.

NOTICE OF HEARING ON
OBJECTION TO CLAIM NUMBER #1
BY INTERNAL REVENUE SERVICE

PLEASE TAKE NOTICE that the hearing on the **Objection to Claim #1 of the Internal Revenue Service** IS SET FOR HEARING AS FOLLOWS:

JUDGE: Brian D. Lynch

TIME: 9:00 a.m.

PLACE: Union Station
1717 Pacific Ave., Courtroom I
Tacoma, WA 98402

DATE: March 13, 2013

IF YOU OPPOSE the Objection to Claim, you must file your written response with the court clerk, NOT LATER THAN THE RESPONSE DATE, which is March 6, 2013.

IF NO RESPONSE IS TIMELY FILED AND SERVED, the Court may, in its discretion, GRANT THE MOTION PRIOR TO THE HEARING, WITHOUT FURTHER NOTICE, and strike the hearing.

DATED this 5th day of February, 2013.

WELLS AND JARVIS, P.S.

By: /s/ Jeffrey B. Wells
Jeffrey B. Wells, WSBA #6317
Attorney for Debtor

1 THE HONORABLE BRIAN D. LYNCH

2 Hearing Date: March 13, 2013

3 Hearing Time: 9:00 a.m.

4 Response Date: March 6, 2013

5 Hearing Location: Tacoma

6 Chapter 11

7 THE UNITED STATES BANKRUPTCY COURT FOR THE
8 WESTERN DISTRICT OF WASHINGTON AT TACOMA

9 In re

Case No.

10 OBJECTION TO CLAIM NUMBER #1
11 BY INTERNAL REVENUE SERVICE

12 Debtor.

13 COMES NOW the Debtor herein, by and through its attorneys of
14 record, Wells and Jarvis, P.S., and objects to claim number 1 filed by the Internal Revenue
15 Service ("IRS"). As set forth in more detail below, Debtor believes the underlying tax is only
16 secured in the amount of \$73,536.18.

17 The IRS has filed a claim totaling \$257,870.04. Of this amount, the IRS claims
18 \$252,302.63 as secured, \$4,903.72 as unsecured priority tax and \$663.69 as unsecured
19 general claim.

20 As set forth on the accompanying declaration of the Debtor has no real
21 estate and had personal property as of the date of filing with a value of \$73,536.18. The
22 Debtor listed \$82,536.18, but of that amount \$9,000 was held by a landlord as a security
23 deposit. Therefore, \$73,536.18 of the tax liens is secured by assets, the balance is unsecured.
24 The first tax lien was recorded on October 6, 2008 and based upon the proof of claim filed by
25
26
27

OBJECTION TO CLAIM

- 1

WELLS AND JARVIS, P.S.

502 Logan Building

500 Union Street

Seattle, WA 98101-2332

206-624-0088 Fax 206-624-0086

1 the IRS, has an outstanding balanced owed on that first tax lien of \$71,291.56. The next filed
2 tax lien was recorded on October 26, 2009 in the amount of \$9,819.90. The IRS lists
3 \$11,283.62 of that secured lien due and owing. There is, in fact, only \$2,244.62 worth of
4 Debtor's personal property not already covered by the first tax lien of October 6, 2008. Only
5 \$2,244.62 is the October 26, 2009 lien should have secured status, the balance must be
6 unsecured. All of the other tax liens are unsecured.
7

8 Wherefore Debtor respectfully requests that an order be entered denying the IRS's
9 claim number 1 but allowing a claim providing for a secured claim of \$73,536.18, a priority
10 tax claim of \$108,333.74 and an unsecured general claim of \$76,000.12.

11 Dated this 1st day of February, 2013.

12 WELLS AND JARVIS, P.S.

13
14 By: /s/ Jeffrey B. Wells
15 Jeffrey B. Wells, WSBA #6317
16 Attorney for Debtor
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THE HONORABLE BRIAN D. LYNCH

Hearing Date: March 13, 2013

Hearing Time: 9:00 a.m.

Response Date: March 6, 2013

Hearing Location: Tacoma

Chapter 11

THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT TACOMA

In re

Case 1

Debtor.

DECLARATION OF L IN
SUPPORT OF OBJECTION TO
CLAIM NUMBER #1 BY INTERNAL
REVENUE SERVICE

I am the President of the Debtor herein.

has no real estate and had personal property as of the date of filing with a value of \$73,536.18. The bankruptcy schedules listed \$82,536.18 in personal property, but of that amount \$9,000 was held by a landlord as a security deposit. Therefore, \$73,536.18 of the tax liens is secured by assets and the balance is unsecured. The first tax lien was recorded on October 6, 2008 and based upon the proof of claim filed by the IRS, has an outstanding balance owed of \$71,291.56. The next filed tax lien was recorded on October 26, 2009 in the amount of \$9,819.90. The IRS lists \$11,283.62 of that secured lien due and owing. There is, in fact, only \$2,244.62 worth of personal property not already covered by the first tax lien of October 6, 2008. Only \$2,244.62 is the October 26, 2009 lien should have secured status, the balance must be unsecured. All of the other tax liens are unsecured.

Claim #1 by the IRS's claim should be denied but a claim should be allowed

DECLARATION OF ED GLUECK IN SUPPORT
OF OBJECTION TO CLAIM - 1

WELLS AND JARVIS, P.S.

502 Logan Building

500 Union Street

Seattle, WA 98101-2332

206-624-0088 Fax 206-624-0086

1 providing for a secured claim of \$73,536.18, a priority tax claim of \$108,333.74 and an
2 unsecured general claim of \$76,000.12.

3 Dated this 6th day of February, 2013.

4
5 By: /s/ _____
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1 THE HONORABLE BRIAN D. LYNCH

2 Hearing Date: March 13, 2013

3 Hearing Time: 9:00 a.m.

4 Response Date: March 6, 2013

5 Hearing Location: Tacoma

6 Chapter 11

7 THE UNITED STATES BANKRUPTCY COURT FOR THE
8 WESTERN DISTRICT OF WASHINGTON AT TACOMA

9 In re

Case No.

10
11 Debtor.

ORDER PARTIALLY DISALLOWING
SECURED CLAIM #1 OF THE
INTERNAL REVENUE SERVICE

12 - *Proposed* -
13

14 THIS MATTER having come on regularly before the above-signed Judge of the above
15 entitled Court upon the Debtor's objection to claim number 1 of the Internal Revenue
16 Service, and proper notice having been given to claimant, and no opposition to said objection
17 having been filed, and good cause having been shown; Now, Therefore,

18 IT IS HEREBY ORDERED that claim number 1 of the Internal Revenue Service is
19 denied, but a claim is allowed providing for a secured claim of \$73,536.18, a priority tax
20 claim of \$108,333.74 and an unsecured general claim of \$76,000.12.

21 /// End of Order ///

22 Presented by:

23 /s/Jeffrey B. Wells

24 Jeffrey B. Wells, WSBA #6317

25 Attorney for Debtor

26 500 Union Street, Ste 502

27 Seattle, WA 98101

206-624-0088

THE HONORABLE BRIAN D. LYNCH

Hearing Date: March 13, 2013

Hearing Time: 9:00 a.m.

Response Date: March 6, 2013

Hearing Location: Tacoma

Chapter 11

THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT TACOMA

In re

Case No.

CERTIFICATE OF SERVICE

Debtor.

I hereby declare under penalty of perjury that on the 8th day of February, 2013, I caused true and correct copies of the **Objection to Claim Number 1 of the Internal Revenue Service, Notice of Hearing on Objection to Claim Number 1 of the Internal Revenue Service, Declaration of Ed Glueck, proposed Order Disallowing Claim of Internal Revenue Service**, and this **Certificate of Service** to be served by placing same in the U.S. Mail, first class, postage prepaid, addressed to:

IRS Special Assistant US Attorney
915 Second Ave
Seattle, WA 98174-1081

Internal Revenue Service, Central Insolvency
PO Box 7346
Philadelphia, PA 19101-7346

Jenny A. Durkan
US Attorney for Western Dist of WA
Attn: Civil Process Clerk
700 Stewart St, Ste 5220
Seattle, WA 98101

Eric H. Holder
US Attorney General
950 Pennsylvania Ave NW
Washington, D.C. 20530-0001

1 Civil Process Clerk
2 United States Attorney's Office
3 555 Fourth Street, NW
4 Washington, DE 20530

5 In addition, the following persons were serviced notice electronically by the ECF:

6 Brian D Lynch US Trustee Jill Lunn Zachary Mosner

7 In addition, copies of the above were served on the Debtor.

8 DATED this 8th day of February, 2013.

9 /s/ Lynn van der Put
Lynn van der Put

APPENDIX E

THE HONORABLE PAUL B. SNYDER
Chapter 13

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

In Re

NO. 12-44681

Debtors.

ADVERSARY NO.

L.

Plaintiffs,

v.

COMPLAINT TO AVOID SECOND-
POSITION LIEN ON RESIDENCE

Defendants.

COME NOW the Plaintiffs herein, by and through their attorneys of record, Law Offices of Jeffrey B. Wells, and for their complaint to avoid the second-position lien of Bosco Credit VI Trust Series 2012-1 (hereinafter "Bosco") and its servicer Franklin Credit Management Corporation (hereinafter "Franklin"), allege as follows.

I. PARTIES

1. Plaintiffs are the Debtors in the above-entitled bankruptcy case, having filed for

1 Chapter 13 relief on July 3, 2012.

2 2. Defendants Bosco and Franklin are nominally secured creditors of the Plaintiffs
3 holding/servicing the second deed of trust on their residence.

4 II. JURISDICTION AND VENUE

5 3. This is a core proceeding over which this Court has jurisdiction under 28 U.S.C.
6 §157(2)(K).

7 4. Venue is properly placed in this Court under 28 U.S.C. §1409(a).

8 III. FACTUAL BACKGROUND

9 5. Plaintiffs seek to avoid the Defendants' second-position lien on their residence
10 located at 1. That property is legally described on
11 Exhibit A attached hereto and is hereinafter referred to as "the Residence."

12 6. As set forth on their bankruptcy schedules, Plaintiffs value the Residence at \$195,000
13 based on activity of comparable properties in the area. There are two deeds of trust on the
14 Residence.

15 7. American Servicing Company holds a Note which is secured by the first-position
16 deed of trust on the Residence. That creditor has not yet filed a proof of claim in this case, but as
17 set forth on the bankruptcy schedules approximately \$258,601 was owing as of the petition date.
18 Given that this amount alone exceeds the value of the Residence, there is no equity to which junior
19 liens such as Defendant's can attach.

20 8. Defendants are nominally secured by the second-position deed of trust on the
21 Residence. Defendants have not yet filed a proof of claim in this bankruptcy case. As set forth on
22 Plaintiff's bankruptcy schedules, approximately \$63,000 was owed at the time of filing.

9. Because the outstanding balance owed to the senior lienholder exceeds the value of the Residence, Defendants' second position lien on the Residence is wholly unsecured. Section 506(a) of the Bankruptcy Code provides that the claim of a creditor secured by a lien on property of the estate "is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property." Here, there is no value to which Defendants' lien may attach and its claim is therefore wholly unsecured. Section 1322(b)(2) of the Bankruptcy Code allows debtors in their Chapter 13 Plan to modify "the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence." In this case, as set forth above, Defendants are not the holders of a secured claim, and therefore the prohibition against modifying their rights is not applicable, and the lien may be removed from the Residence.

WHEREFORE, Plaintiffs respectfully request that the Court, pursuant to 11 U.S.C. § 506(a) and § 1322(b)(2), enter judgment providing:

1. That the second-position deed of trust held by Defendants Bosco and Franklin is wholly unsecured and that, as a result, their claim shall be treated as a general unsecured claim for the purposes of the associated Chapter 13 bankruptcy; and
2. That the second-position lien shall be removed from the title of the Residence described on Exhibit A attached hereto; and
3. For such other and further relief as the court may find just and equitable in the premise.

DATED this 31st day of August, 2012.

Law Offices of Jeffrey B. Wells

/s/ Emily Jarvis

Emily Jarvis, WSBA #41841

Attorney for Plaintiffs/Debtors

COMPLAINT TO AVOID SECOND POSITION LIEN ON
RESIDENCE
Z:\Client Files\Bright 7 or 13\Adversary\Adversary Complaint.wpd

Law Offices
JEFFREY B. WELLS
502 LOGAN BUILDING
500 UNION STREET
SEATTLE, WA 98101
(206) 624-0088 • Fax (206) 624-0086

Loan Number:

Date: SEPTEMBER 19, 2006

Property Address:

DN 98391

EXHIBIT "A"

LEGAL DESCRIPTION

LOT 110 OF SPRINGHAVEN, ACCORDING TO PLAT RECORDED APRIL 25, 2002 UNDER
RECORDING NO. 200204255008, IN PIERCE COUNTY, WASHINGTON.

For reference only, not for re-sale.

A.P.N. # : 700150-1100

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