**IN THE UNITED STATES BANKRUPTCY COURT**

**FOR THE NORTHERN DISTRICT OF ALABAMA**

**WESTERN DIVISION**

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| **In re:**  **Click to enter DEBTOR and JOINT DEBTOR,**  **Debtor(s).** |  | **Case No. Case number-JHH**  **Chapter 13** |

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| --- |
| NOTICE OF OPPORTUNITY TO OBJECT AND REQUEST HEARING  Pursuant to Western Division Administrative Order No. 20-01, the court will consider the relief requested in this motion (the "Motion") without further notice or hearing unless a party in interest files a response within 30 days from the date set forth on the attached certificate of service, plus an additional three days for service if any party was served by U.S. Mail.  If you oppose the relief requested in the Motion, then, within the time allowed, you must file a response with the clerk of court electronically (or by hand delivery or mail to the clerk's office at 2005 University Boulevard, Room 2300, Tuscaloosa, Alabama 35401), and you must serve a copy of your response on all appropriate persons. If you file and serve a response within the time permitted, the court will schedule and notify you of a hearing.  If you do not file a response within the time permitted, the court will consider that you do not oppose the relief requested in the Motion; the court may deem admitted the allegations set forth in the Motion; the court will proceed to consider the Motion without further notice or hearing; and the court may grant the relief requested. |

**DEBTOR'S MOTION TO (I) SURRENDER COLLATERAL, (II) REDUCE ALLOWED AMOUNT(S) OF SECURED CLAIM(S), (III) SET DEADLINE FOR FILING DEFICIENCY CLAIM(S) AND ADMINISTRATIVE EXPENSE APPLICATION(S) RESULTING FROM SURRENDER(S), AND (IV) MODIFY DEBTOR'S CONFIRMED CHAPTER 13 PLAN**

The chapter 13 debtor(s) (whether a single debtor or joint debtors, the "Debtor") in the above-captioned bankruptcy case (the "Case") move the court, pursuant to 11 U.S.C. §§ 105, 362, 363, 502, 506, 1303, 1325, and 1329 and Rules 2002, 3007, 3008, 3015, 4001, and 6004, for entry of an order substantially in the form of the proposed order attached hereto as "Exhibit A" (the "Proposed Order"),[[1]](#footnote-1) approving the Debtor's surrender of the below-described collateral to the holder(s) of the claim(s) secured thereby (in satisfaction of the secured portion(s) of the creditor(s)' claim(s)),[[2]](#footnote-2) setting a deadline for these secured creditor(s) to file proof(s) of claim(s) and/or application(s) for allowance of administrative expense(s) for any unsecured claim(s) resulting from the surrender(s), and approving the below-described modifications (collectively, the "Modifications," and each, a "Modification") to the Debtor's confirmed chapter 13 plan (the "Plan").

**A. Surrender of Collateral:**

1. **Proposed Surrender(s).** The Debtor requests that the court approve the Debtor's surrender to each creditor listed below (each, a "Creditor") any and all interest of the Debtor and the Debtor's bankruptcy estate in and to the collateral (collectively, the "Collateral") for the Creditor's secured claim (each, a "Secured Claim") (complete a separate row for each Secured Claim):

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Name of Creditor** | **Proof of Claim Number(s)[[3]](#footnote-3)** (if any) | **Collateral Description** | **Current Plan Treatment**  (check one) | **Name(s) of Co-Debtor(s)** (if any) |
| Enter Creditor Name | Claim # | Collateral Description | The Debtor is paying the Secured Claim through the Plan.  The Debtor is curing the defaults (if any) on the Secured Claim through the Plan and maintaining the current installment payments.  The Debtor (or a third party) is paying the Secured Claim directly (outside of the Plan) on contract terms. | Enter Co-Debtor Name(s) |

1. **Good Faith Basis for Surrender(s).** The Debtor avers that the surrender(s) are proposed in good faith and further states (e.g., explain the reason(s) for the surrender(s) and provide relevant information regarding the Collateral):

Click here to enter text.

1. **Relief from Stay(s).** The Debtor further requests that, upon entry of the order granting the Motion, the stay of 11 U.S.C. § 362(a) be terminated as to the Collateral only and that the stay under 11 U.S.C. § 1301 be terminated in all respects as to any above-named co-debtor(s) (each, a "Co-Debtor").[[4]](#footnote-4)

**B. Treatment of the Secured Claim(s); Deadline for Filing Deficiency Claim(s) and Administrative Expense Application(s):**

1. **Treatment of Secured Claims.** For each Secured Claim described above, the Debtor requests that the court deem the Secured Claim satisfied by the Debtor's surrender of the Collateral for the Secured Claim and reclassify any deficiency owed to the Creditor by the Debtor on the subject indebtedness (a "Deficiency") as unsecured.[[5]](#footnote-5) Accordingly, the Debtor requests that court reduce the allowed amount(s) of the Secured Claim(s) to the amount(s) paid by the chapter 13 trustee (if any); disallow the unpaid balance(s) of the Secured Claim(s) for distribution purposes; and allow the holder(s) of the Secured Claim(s) the opportunity to assert unsecured claim(s) for any Deficienc(ies) owed. The Debtor does not hereby seek to avoid or otherwise affect any lien or security interest of a Creditor in or to the Collateral for the Creditor's Secured Claim.
2. **Existing General Unsecured Claims.** If pursuant to a proof of claim listed above, a Creditor already holds an allowed nonpriority unsecured claim that is being paid, pro rata, with other allowed nonpriority unsecured claims not separately classified by the Plan (collectively, the "General Unsecured Claims," and each, a "General Unsecured Claim"), the Debtor does not hereby request disallowance of the Creditor's General Unsecured Claim.
3. **Deadline for Filing Deficiency Claim(s) and Administrative Expense Applications.** The Debtor asks that the court set a deadline of **70 days** from the date of the order granting the Motion (the "Deadline") for each Creditor to file a proof of claim (or an amendment to an existing proof of claim) for any Deficiency owed to the Creditor (a "Deficiency Claim"), without prejudice to the Debtor's right to object to any Deficiency Claim filed. Further, to the extent any Creditor asserts that, due to a failure of adequate protection, it is entitled to the allowance and payment of an administrative expense for all or a portion of the Deficiency owed the Creditor[[6]](#footnote-6) (an "Administrative Expense"), the Debtor requests that the court require the Creditor file an application for allowance of the Administrative Expense by the Deadline (an "Administrative Expense Application"), without prejudice to the Debtor's right to object thereto. The Debtor submits that the Deadline is reasonable and necessary.If a Creditor fails to file a Deficiency Claim or Administrative Expense by the Deadline, the Debtor requests that the Court deem satisfied any Deficiency not heretofore allowed as part of a General Unsecured Claim.

**C. Modifications Regarding the Secured Claim(s):**

1. **Reduction(s) to Amount(s) of Payments on Secured Claim(s).** The Debtor proposes to reduce the amount(s) that are to be paid on the Secured Claim(s) to the amount(s) paid by the chapter 13 trustee, if any (and to reduce any monthly fixed payment(s) granted in respect of the Secured Claim(s) to $0.00). The Debtor further requests that the chapter 13 trustee suspend disbursements on the Secured Claim(s) pending determination of the Motion, including any current installment payments being disbursed by the trustee.
2. **Treatment of Allowed Deficiency Claim(s).** The Debtor proposes that any allowed Deficiency Claim(s) be paid, pro rata, with other General Unsecured Claims on the terms of the Plan (as the same may be modified).
3. **Treatment of Allowed Administrative Expense(s).** The Debtor proposes that any allowed Administrative Expense(s) be paid in full through the Plan, without interest; that any order approving an Administrative Expense Application (in whole or in part) increase the Debtor's Plan payments by the amount necessary to pay the allowed Administrative Expense; and that, if requested by the Debtor or the chapter 13 trustee, such order grant the Creditor a monthly fixed payment on the allowed Administrative Expense. The Debtor proposes that the trustee pay any allowed Administrative Expense(s) in accordance with the distribution sequence specified by the administrative order applicable to the Case. If there is no administrative order applicable to the Case, the Debtor proposes that the trustee pay the Administrative Expense in accordance with the distribution sequence specified by the court's most recent administrative order.

1. **Discharge of Deficienc(ies).** The Debtor proposes that, regardless of whether a Creditor timely files a Deficiency Claim or an Administrative Expense Application, and notwithstanding the treatment of the Creditor's Secured Claim as a long-term secured debt or a direct pay obligation under the Plan, the Debtor's personal liability for any Deficiency owed to the Creditor shall be discharged upon entry of a discharge order in the Case.

**D. Other Modification(s)** (*Part D may be omitted if there are no other Modification(s)*; *if Part D is included, complete all subparts.*)**:**

1. **Plan Payments**. The Debtor's Plan payments are $Enter amount Select frequency. The Debtor proposes (check one):

that Plan payments remain the same; or

to modify Plan payments by Choose increasing or decreasing the Debtor's Plan payments to $Enter amount Select frequency.

1. **Plan Term.** The Debtor's Plan term is Enter number months. The Debtor proposes (check one):

that the Plan term remain the same; or

to modify the Plan term by Choose extending or reducing the Plan term to Enter number months.

1. **General Unsecured Distribution.** The Plan provides that each holder of a General Unsecured Claim shall receive (check one):

Enter percentage% of the creditor's General Unsecured Claim;

100% of the creditor's General Unsecured Claim plus interest at the annual rate of Enter percentage%;

a pro rata share of a $Enter amount pot; or

a pro rata share of the Plan payments (totaling $Enter amount) that remain after disbursements have been made to all other creditors provided for in the Plan, if any.

This is referred to as the "General Unsecured Distribution." The Debtor proposes (check one):

that the General Unsecured Distribution remain the same; or

to Select reduce, increase, or modify the General Unsecured Distribution to each holder of a General Unsecured Claim to (check one):

Enter percentage% of the creditor's General Unsecured Claim;

to 100% of the creditor's General Unsecured Claim plus interest at the annual rate of Enter percentage%;

a pro rata share of a $Enter amount pot; or

a pro rata share of the Plan payments (totaling $Enter amount) that remain after disbursement have been made to all other creditors provided for in the Plan, if any.

1. **Monthly Fixed Payments** (check one):

The Debtor proposes that, except as set forth in Part C hereof, monthly fixed payment(s) provided for by the Plan (if any) remain the same; or

In addition to the fixed payment modifications set forth in Part C hereof, the Debtor proposes to modify certain other monthly fixed payment(s) provided for by the Plan[[7]](#footnote-7) as follows (complete a separate row for each fixed payment that the Debtor proposes to modify):

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Creditor Name** | **Claim Type** (secured, priority, arrearage, etc.) | **Proof of Claim Number** | **Current Monthly Fixed Payment** | **Proposed Monthly Fixed Payment** |
| Enter Creditor Name | Enter Type | Claim # | $Amount | $Amount |

1. **Grounds for Part D Modification(s).** As grounds for the Modification(s) set forth in this Part D of the Motion, the Debtor states as follows (e.g., describe any pertinent changes in the Debtor's circumstances, including, without limitation, the need for replacement transportation or housing and the costs associated therewith):

Click here to enter text.

1. **Other Exhibit(s).** As further support for the relief requested in this Part D of the Motion (check any and all that apply):

the Debtor has (or will)[[8]](#footnote-8) file amended schedules I and J sworn to under penalty of perjury;

the Debtor has attached (as "Exhibit B") an affidavit or declaration; or

other (describe): Click here to enter text.

**WHEREFORE, PREMISES CONSIDERED,** the Debtor(s) request entry of an order substantially in the form of the Proposed Order.

Dated:

Signature of Attorney for Debtor or pro se Debtor

Print Name: Enter Name

Address: Enter Address

Telephone No. Enter Telephone No.

**EXHIBIT A**

(Attach the Proposed Order.)

**IN THE UNITED STATES BANKRUPTCY COURT**

**FOR THE NORTHERN DISTRICT OF ALABAMA**

**WESTERN DIVISION**

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| **In re:**  **Click to enter DEBTOR and JOINT DEBTOR,**  **Debtor(s).** |  | **Case No. Case number-JHH**  **Chapter 13** |

**ORDER GRANTING DEBTOR'S MOTION TO (I) SURRENDER COLLATERAL, (II) REDUCE ALLOWED AMOUNT(S) OF SECURED CLAIM(S), (III) SET DEADLINE FOR FILING DEFICIENCY CLAIM(S) AND ADMINISTRATIVE EXPENSE APPLICATION(S) RESULTING FROM SURRENDER(S), AND (IV) MODIFY DEBTOR'S CONFIRMED CHAPTER 13 PLAN**

This matter is before the court on the *Debtor's Motion to (I) Surrender Collateral, (II) Reduce Allowed Amount(s) of Secured Claim(s), (III) Set Deadline for Filing Deficiency Claim(s) and Administrative Expense Application(s) Resulting from Surrender(s), and (IV) Modify Debtor's Confirmed Chapter 13 Plan* (Doc. Enter Doc #) (the "Motion"). Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the Motion. Notice of the Motion, and of the opportunity to object to the Motion and request a hearing, was provided to the chapter 13 trustee, the Co-Debtor(s) (if any), and all creditors in the Case, including, without limitation, the holder(s) of the Secured Claim(s). No interested party timely filed a response, and it appears to the court that the Motion should be granted. Accordingly, it is ORDERED:

1. The Motion is GRANTED.
2. The Debtor is authorized to surrender the Collateral.
3. The stay of 11 U.S.C. § 362(a) is terminated as to the Collateral only, and the stay of 11 U.S.C. § 1301 is terminated with respect to the Co-Debtor(s) (if any).
4. The Secured Claim(s) are deemed satisfied by the Debtor's surrender of the Collateral; the Secured Claim(s) are allowed in the amount(s) paid by the chapter 13 trustee; and the balance(s) of the Secured Claim(s) are disallowed for distribution purposes.
5. Nothing herein avoids or otherwise affects any lien or security interest of a Creditor on or in the Collateral for the Creditor's Secured Claim, nor does this order affect any General Unsecured Claim of a Creditor.
6. The Debtor's personal liability for the Deficienc(ies), if any, shall be discharged upon entry of a discharge order in the Case.
7. Deficiency Claims and Administrative Expense Applications must be filed no later than the date that is **70 days** after the date of this Order (the "Deadline"); *provided, however*, if the Deadline falls on a Saturday, Sunday, or legal holiday, the Deadline is extended to the next business day.
8. If a Creditor fails to file a Deficiency Claim or Administrative Expense Application by the Deadline, the court shall deem the entire indebtedness secured by the Collateral satisfied by the surrender, and any untimely Deficiency Claim or Administrative Expense Application filed by the Creditor shall be subject to disallowance/denial.
9. A Creditor is permitted to file an estimated Deficiency Claim; *provided, however,* the Creditor must promptly amend its Deficiency Claim upon disposition of the Collateral to account for all Collateral proceeds received by the Creditor. Amounts overpaid to a Creditor because of the Creditor's failure to timely amend an estimated Deficiency Claim shall be subject to disgorgement.
10. The Modifications are approved and shall take effect on the date of this order.

Dated:

UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT B**

(Attach the affidavit or declaration; omit if not applicable.)

**IN THE UNITED STATES BANKRUPTCY COURT**

**FOR THE NORTHERN DISTRICT OF ALABAMA**

**WESTERN DIVISION**

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| **In re:**  **Click to enter DEBTOR and JOINT DEBTOR,**  **Debtor(s).** |  | **Case No. Case number-JHH**  **Chapter 13** |

**CERTIFICATE OF SERVICE**

I hereby certify that on the date of this certificate of service, I caused the *Debtor's Motion to (I) Surrender Collateral, (II) Reduce Allowed Amount(s) of Secured Claim(s), (III) Set Deadline for Filing Deficiency Claim(s) and Administrative Expense Application(s) Resulting from Surrender(s), and (IV) Modify Debtor's Confirmed Chapter 13 Plan* (the "Motion"), the exhibit(s) to the Motion (the "Exhibit(s)"), including the proposed order on the Motion, and this certificate of service[[9]](#footnote-9) to be served on the creditors and other interested parties identified on the attached mailing matrix[[10]](#footnote-10) by First-Class United States Mail.

I also hereby certify that on the date of this certificate of service, I caused the Motion, the Exhibit(s), and this certificate of service to be served on the parties listed below by the means specified (if none, leave blank):

|  |  |
| --- | --- |
| **Name and Address**  (If any entity is served care of an officer or agent, identify the person served by name and by title.) | **Method of Service**  (If service is made by certified mail, include the certified mail number.) |
| Click here to enter text. | Click here to enter text. |

Dated: Select date

Signature of Attorney for Debtor or pro se Debtor

1. The movant must submit a Word version of the Proposed Order to the court's e-orders e-mail address ([orders\_jhh@alnb.uscourts.gov](mailto:orders_jhh@alnb.uscourts.gov)). If the movant fails to submit the Proposed Order within **three (3) days** after the expiration of the response period, the court may enter an order denying the Motion, without prejudice, for lack of prosecution, or notice the Motion for hearing. [↑](#footnote-ref-1)
2. This form may not be used if the Debtor is seeking to surrender collateral in full satisfaction of a debt or otherwise to value surrendered collateral.  [↑](#footnote-ref-2)
3. If a Creditor has filed multiple proofs of claim for the Creditor's Secured Claim (e.g., there are separate proofs of claim for prepetition and postpetition arrearages owed on a secured debt), list all proof of claim numbers. [↑](#footnote-ref-3)
4. If a Co-Debtor is named, the movant shall serve a copy of the Motion, the Proposed Order, and any other exhibit(s) to the Motion on the Co-Debtor and add the Co-Debtor to the mailing matrix for the Case. [↑](#footnote-ref-4)
5. *See, e.g., Bank One, NA v. Leuellen*, 322 B.R. 648, 651-64 (S.D. Ind. 2005) (Judge Hamilton); *In re Scarver*, 555 B.R. 822, 828-40 (Bankr. M.D. Ala. 2016) (Judge Sawyer). [↑](#footnote-ref-5)
6. *See In re Johnson*, 247 B.R. 904, 909-11 (Bankr. S.D. Ga. 1999) (Judge Dalis); *see also* 11 U.S.C. §§ 503(b), 507(b). [↑](#footnote-ref-6)
7. This form may not be used to grant a fixed payment on a claim that is not provided for by the Plan. This form may be used to remove a fixed payment granted to the holder of a priority or nonpriority unsecured claim. [↑](#footnote-ref-7)
8. If (by the response deadline) the Debtor's schedules I and J (as amended) do not to support a requested Modification to Plan payments, the court may deny the Motion, without prejudice, or notice the Motion for hearing. [↑](#footnote-ref-8)
9. This certificate of service must be attached to, and filed with, the Motion. [↑](#footnote-ref-9)
10. Attach a current, official mailing matrix for the case. [↑](#footnote-ref-10)