

# Number Eight and Still Trying Harder - An Analysis of Chapter XIII in Sacramento\*

## I. INTRODUCTION

During the great depression of the 1930's, many non-business debtors were unable to pay their debts as they became due. Many debtors tried straight bankruptcy,<sup>1</sup> but it proved inadequate for their needs.<sup>2</sup> In order to remedy these inadequacies Congress enacted Chapter XIII of the Bankruptcy Act in 1938.<sup>3</sup> Two alternatives were thus provided for the wage earner. The wage earner could affect an extension, which is full payment of creditors *via* installments, or a composition, which is the payment of a percentage of the debts owed the creditors *via* installments.<sup>4</sup>

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\*Sacramento had the eighth largest number of total disbursements under Chapter XIII in the nation for the fiscal year of 1970. COST STUDY TABLE NO. 1 — CHAPTER XIII TRUSTEES DISBURSING MORE THAN \$1,000,000 DURING YEAR 1970, ADM. OFFICE OF U.S. CTS. (on file at UCD Law Review).

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<sup>1</sup>Straight bankruptcy is the distribution of the debtor's assets among his creditors on a *pro rata* basis. The debtor receives a discharge from most of his debts after this distribution. *In re Jones*, 10 F. Supp. 165, 167 (D.C. Mo., 1935).

<sup>2</sup>L. TWINEM, GUIDE TO WAGE EARNER PLAN UNDER CHAPTER XIII OF THE BANKRUPTCY ACT 3 (1968) [hereinafter cited as TWINEM]. Regarding the inadequacies of straight bankruptcy see Section II, *Inadequacies of Straight Bankruptcy*.

<sup>3</sup>"Congress shall have the power . . . to establish . . . uniform Laws on the subject of Bankruptcies throughout the United States." U.S. CONST. Art. 1 § 8 [4].

<sup>4</sup>11 U.S.C. § 1023 (1964).

By 1969, the use of Chapter XIII varied greatly across the nation.<sup>5</sup> In the fiscal year 1969 there were 184,930 bankruptcy actions. Only 15.6 percent (28,910) were Chapter XIII proceedings. Of the total number of bankruptcies, 91.7 percent, or 169,500, were non-business bankruptcies, while the remaining 8.3 percent or 15,430 were business bankruptcies.<sup>6</sup>

The Sacramento area, in California, has a much higher percentage of people using Chapter XIII than the national average of 15.6 percent. Twenty-seven percent of all non-business, voluntary bankruptcies were Chapter XIII proceedings. Sacramento also enjoys a high percentage of Chapter XIII plans completed successfully. Eighty-two percent of the creditors had their debts paid in full, and over 68 percent of all people using Chapter XIII never missed a payment.<sup>7</sup>

Some problems exist in the use of Chapter XIII. One of the groups advocating major changes in the Chapter XIII proceedings, the American Bar Association's Consumer Bankruptcy Committee, has commented:

Most Chapter XIII courts with a substantial number of wage earner plans under administration have had to 'twist' or 'bend' Chapter XIII to make it work. Probably no other Chapter of the Bankruptcy Act is as susceptible to so many varying interpretations as is Chapter XIII.<sup>8</sup>

This article concentrates primarily upon the procedure followed in administering Chapter XIII in the Sacramento area. It focuses on the administration of Chapter XIII in general and examines how Sacramento has 'twisted' and 'bent' Chapter XIII to develop a smooth-running operation.

## II. INADEQUACIES OF STRAIGHT BANKRUPTCY

The attorney handling a bankruptcy case should be aware of the ad-

<sup>5</sup>Copenhaver, *Ways and Means to Encourage Use of Chapter XIII as an Alternative to Straight Bankruptcy*, 24 BUS. LAW. 321, 322 (1968-69) [hereinafter cited as Copenhaver].

<sup>6</sup>The use of Chapter XIII varied widely in different circuits. In the Second Circuit, only 4% of all voluntary bankruptcies were based on Chapter XIII; this circuit included Connecticut, New York and Vermont. In the Fifth Circuit, which is comprised of Alabama, Florida, Georgia, Louisiana, Mississippi and Texas, the use of Chapter XIII comprised over 27% of all voluntary bankruptcies. DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 296-300 (1969).

<sup>7</sup>Interview with Robert Loheit, Chapter XIII Trustee for Sacramento, in Sacramento, Oct. 26, 1970 [hereinafter cited as Loheit].

<sup>8</sup>*Consumer Bankruptcy Committee of the American Bar Association, MEMORANDUM TO ACCOMPANY PROPOSED AMENDMENTS TO CHAPTER XIII OF THE BANKRUPTCY ACT 1,2* (on file at UCD Law Review).

vantages and disadvantages of Chapter XIII compared to straight bankruptcy so that he may properly advise his client. Because the plan is voluntary, the final choice is up to the client, but the attorney has the role of advising his client of both possibilities open to him. Many attorneys are unaware of Chapter XIII,<sup>9</sup> and take most of their clients through straight bankruptcy without giving consideration to Chapter XIII. Most debtors also believe that straight bankruptcy is the answer to all their financial troubles and are not even aware of Chapter XIII.

Straight bankruptcy may be inadequate in a particular case for a number of reasons. There is a six year waiting period between each straight bankruptcy discharge.<sup>10</sup> If a person follows an extension plan *via* Chapter XIII there is no waiting period. A Chapter XIII plan may be filed any time after a person has completed straight bankruptcy. The debtor may be denied a straight bankruptcy discharge for committing any of the acts specified by 14(c) of the Bankruptcy Act.<sup>11</sup>

Some debts are not dischargeable in straight bankruptcy. These include taxes, alimony, child support, and liability for fraud and intentional torts.<sup>12</sup> Many times a creditor claims he was defrauded by a materially false financial statement, and contends the debt should not be discharged by bankruptcy.<sup>13</sup> All debts are not marked off by creditors once a person has been adjudicated a bankrupt.<sup>14</sup> In most Chapter XIII proceedings, the debtor's obligations will be paid in full.

Many debts are reaffirmed after bankruptcy because the security must be surrendered in a straight bankruptcy proceeding. These include debts on furniture and automobiles covered by secured liens. The Bankruptcy Court may discharge these debts but the creditor can

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<sup>9</sup>Comment, *Bankruptcy Relief for Wage Earners*, 1970 WISC. L. REV. 148, 154 (1970) [hereinafter cited as *Relief*].

<sup>10</sup>11 U.S.C. § 32(c) (5) (1964). This waiting period prevents a person from being adjudicated a bankrupt more than once during any six year period.

<sup>11</sup>11 U.S.C. § 32(c) (1964). These reasons include (1) certain crimes, (2) dishonest bookkeeping, (3) a false financial statement of a sole proprietor, partner or corporate executive, (4) destroying property to defraud creditors, (5) refusing to obey a lawful order of the court, (6) non-payment of filing fees, (7) failure to explain a loss of assets.

<sup>12</sup>11 U.S.C. § 35(a) (1964).

<sup>13</sup>*Medland Discount Co. v. Robichaux*, 184 So.2d 93,96 (1966); *Sweet v. Ritter Fin. Co.*, 263 F. Supp. 540, 543 (W.D. Va., 1967); *Stevens v. Liberty Loan Corp.*, 161 Colo. 312, 421 P.2d 732, 734 (1966). Although the burden is on the creditor to prove the debtor intended to deceive him, and that credit was extended on the basis of that financial statement, the debtor must defend the case.

<sup>14</sup>In at least 20% of bankruptcy cases creditors file suits to collect debts which bankrupt individuals believe have been forgiven. *THE WALL STREET JOURNAL*, Nov. 5, 1970, at 1, col. 8.

take back the security. If the debtor needs the secured object for work or home there is a good chance the debt will be reaffirmed.<sup>15</sup>

Other debts besides secured debts may be reaffirmed. A debt may be reaffirmed when the debtor wants to retain friendly relations with the creditor.<sup>16</sup> Protection of co-signers<sup>17</sup> is another common reason for a reaffirmation of a debt after straight bankruptcy. Chapter XIII enables the debtor to pay his debts thus making the problem of reaffirmation a moot question.

A debtor may want to pay his debts even though he has made the mistake of over-extending himself financially.<sup>18</sup> Straight bankruptcy does not provide for this alternative; Chapter XIII does.

### III. CONSIDERATIONS FOR AND AGAINST THE USE OF CHAPTER XIII

#### A. IN FAVOR

It is crucial that an attorney, advising his client, be able to correctly give the scope of protection Chapter XIII provides. A debtor, his real and personal property, and his future wages are under the protection of the Bankruptcy Court and accordingly his creditors may be enjoined from repossession without prior permission of the Bankruptcy Court.<sup>19</sup> Unlike straight bankruptcy, the debtor does not have to give up equity in his property.<sup>20</sup> If his equity is substantial, or the collateral is necessary to his family, the plan provides for repayment of the debt.<sup>21</sup>

A Chapter XIII plan also provides some advantages found in straight bankruptcy. A major one is that interest on unsecured and most secured claims stops accruing once the Chapter XIII proceedings begin.<sup>22</sup>

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<sup>15</sup>A debtor reaffirms a debt by agreeing to pay it even though he knows it has been discharged by a bankruptcy proceeding. Copenhaver, *supra* note 5, at 322.

<sup>16</sup>*Relief*, *supra* note 9, at 152.

<sup>17</sup>*Id.*

<sup>18</sup>Note, *Chapter XIII Wage Earner Plans: A Bankruptcy Alternative for Over-extended Consumers*, 4 N.E.L. REV. 179 (1968).

<sup>19</sup>*In re Duncan*, 33 F. Supp. 997, 999 (D.C.E.D. Virg., 1940). The courts have gone as far as enjoining a creditor from foreclosing on real estate under a negotiable promissory note even though a wage earner's plan may not include real property. See *Hallenbeck v. Penn Mutual Life Insurance Co.*, 323 F.2d 566 (4th Cir., 1963).

<sup>20</sup>11 U.S.C. § 1046 (1964).

<sup>21</sup>*Loheit*, *supra* note 7.

<sup>22</sup>11 U.S.C. § 1002 (1964) provides: "The provisions of Chapters 1 to 7, inclusive, of this title shall, insofar as they are not inconsistent or in conflict with the provisions

Chapter XIII also gives the debtor the opportunity of paying his debts in full.<sup>23</sup> This in many instances is its biggest advantage. It helps a debtor to maintain his self esteem. A debtor who completes a Chapter XIII plan also avoids the moral stigma of having been adjudicated a bankrupt.<sup>24</sup>

## B. AGAINST

Chapter XIII is not a cure-all for every person who is insolvent. An attorney must consider several factors in determining if he is going to recommend Chapter XIII or straight bankruptcy. Because the plan is voluntary,<sup>25</sup> he must be sure his client has a strong desire to pay his debts.<sup>26</sup> If not, perhaps straight bankruptcy or a composition in Chapter XIII would be the best solution. Another limitation is that the client must be a "wage earner," which is defined in 11 U.S.C. § 1006(8) as "an individual whose principal income is derived from wages, salaries or commissions."<sup>27</sup> Changes in this requirement have been suggested, but as yet have not been enacted.<sup>28</sup>

The attorney should also determine whether his client has a sporadic work record or if he is out of work. If so, he would probably have difficulty following a systematic plan calling for set payments at designated intervals.<sup>29</sup> A debtor's income can be another negating factor

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of this chapter, apply in proceedings under this chapter. . . ." 11 U.S.C. § 103 (1964); Vanston Bondholders Protective Committee v. Green, 329 U.S. 156, 163-64 (1946); Pacific States Corporation v. Hall, 166 F.2d 668, 672 (9th Cir., 1948).

<sup>23</sup>Giles, *The Overlooked Debtor Remedy-Wage Earners Proceedings under Chapter XIII of the Bankruptcy Act*, 15 S.D.L. REV. 273, 280 (1970) [hereinafter cited as Giles].

<sup>24</sup>TWINEM, *supra* note 2, at 8.

<sup>25</sup>11 U.S.C. § 1021 and 11 U.S.C. § 1202 (1964) both provide that a debtor may file a plan. There are no provisions in Chapter XIII for anything other than a voluntary commencement.

<sup>26</sup>Some debtors may not want to pay their debts because they are upset over the merchandise or service they received from their creditors. Hess, *Wage Earners Plans in Oregon*, 47 ORE. L. REV. 146, 147 (1968-69) [hereinafter cited as Hess].

<sup>27</sup>Thirty-six hundred dollars a year was the original limit on salaries. A person earning above this amount could not affect a Chapter XIII plan. In 1950, 11 U.S.C. § 1006(8) was amended and \$5000 was substituted for \$3600. In 1959 the section was amended to its present form specifying no limit.

<sup>28</sup>COMPARATIVE PRINT OF DRAFT OMNIBUS CHAPTER XIII BILL UNDER CONSIDERATION BY THE CONSUMER BANKRUPTCY COMMITTEE OF THE AMERICAN BAR ASSOCIATION § 606 (3) (December 1969) (On file at UCD Law Review) [hereinafter cited as OMNIBUS BILL]. This proposal would eliminate the requirement that the debtor be a wage earner and extend the cloak of Chapter XIII's protection to all natural persons.

<sup>29</sup>Giles, *supra* note 23, at 281.

in considering the use of Chapter XIII.<sup>30</sup> Some people earn too little money to make any possible Chapter XIII plan feasible.

## IV. THE SACRAMENTO PLAN

### A. INTRODUCTION

Chapter XIII of the Bankruptcy Act was drafted in a manner that left many unanswered questions concerning its administration. Because of this ambiguity, districts have interpreted the administration of Chapter XIII differently. The purpose of this section is to examine Chapter XIII as it is administered in Sacramento and contrast it with Chapter XIII administration in the rest of the nation in order to find the reasons for its local success.

### B. PRE-PLAN REQUIREMENTS

#### 1. THE INITIAL SCREENING

The trustee takes a much more active role in Sacramento than he does in many other parts of the nation. When a debtor first considers Chapter XIII as the answer to his financial trouble, he is either referred to the trustee by his attorney or goes directly to the trustee's office. There he is screened to determine if a wage earner's plan is feasible. This is done before his initial petition is filed. The trustee will analyze the list of debts and assets and determine whether Chapter XIII proceedings are feasible and reasonable for both the creditors and the debtor. This information is put on a tape and run through a calculator enabling the trustee's office to determine the debtor's margin. The margin is the amount of money the debtor will have in excess of his living expenses and payments provided for under the plan.<sup>31</sup>

Traditionally, the attorney has had the role of screening the debtor to determine whether Chapter XIII is the correct alternative.<sup>32</sup> Whether the debtor's attorney or the trustee performs this function, he must make sure the information given him is factually correct. All debts must be listed and the debtor's income cannot be overstated. If the debtor's wife is also working it should be determined whether this is a permanent or temporary situation.

<sup>30</sup>*Id.* If a debtor has no funds available after paying his living expenses, no plan would be possible.

<sup>31</sup>Loheit, *supra* note 7.

<sup>32</sup>Hess, *supra* note 26, at 147-48.

During the screening process the debtor must be made aware of the length of the plan,<sup>33</sup> and that it is necessary for him to go without many luxuries during the course of the plan to insure its successful completion. Both the lawyer and trustee should be convinced that the debtor is prepared to make this sacrifice before instituting Chapter XIII proceedings. If the debtor is married, the trustee, or attorney, must be certain the spouse will co-operate and help make the plan successful.<sup>34</sup>

At the initial screening it is also helpful for the trustee, or attorney, to ascertain whether the wife or any other party is secondarily or jointly liable for the debts. Even though the injunctive power of the Bankruptcy Court is considerable, in the absence of a provision to the contrary, the confirmation of an extension plan under Chapter XIII does not automatically extend the obligation of persons who are secondarily liable on the debt.<sup>35</sup> Some courts even require the wife to file her own Chapter XIII plan to protect her salary from garnishment when there are joint debts.<sup>36</sup>

A large part of the success of Chapter XIII in Sacramento is due to this initial screening. Unlike many attorneys who handle only an occasional Chapter XIII, the trustee works with debtors contemplating Chapter XIII constantly and cannot help but develop some intuitive feelings about the possible success of a proposed plan.<sup>37</sup>

## 2. FILING THE PETITION

In Sacramento, once the trustee is convinced the debtor should proceed with Chapter XIII, the next step is to file the petition. At this point the proceedings revert back to the attorney representing the client and it is his responsibility to file this petition as soon as possible.<sup>38</sup> Time is of the essence because the debtor may begin getting injunctive relief at the time of filing.<sup>39</sup>

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<sup>33</sup>There is no statutory time limit for the length of a Chapter XIII plan. This has caused some confusion. Most referees, including the one in Sacramento, do not approve plans which will take longer than three years to complete. The problem in enforcing this arbitrary rule is that many creditors are now beginning to extend credit up to four or five years on such things as automobiles, mobile homes and home improvement loans.

<sup>34</sup>TWINEM, *supra* note 2, at 10.

<sup>35</sup>However, the 6th circuit held that it is not inconsistent to put into the plan that co-signers will be left alone and remain free from harassment as long as the plan is being carried out. *Schraer v. G.A.C. Finance Corp.*, 408 F.2d 891, 894-95 (6th Cir., 1969).

<sup>36</sup>*Reed v. General Finance Loan Co. of Norfolk*, 394 F.2d 509 (4th Cir., 1968).

<sup>37</sup>Loheit, *supra* note 7.

<sup>38</sup>See Form #1 in appendix.

<sup>39</sup>11 U.S.C. § 1014 (1964). This relief is not made compulsory in the code, but it is provided in the Sacramento area.

If the debtor has started a proceeding in straight bankruptcy, a Chapter XIII petition may be filed either before or after adjudication, provided the debtor's estate has not been distributed.<sup>40</sup> A petition for Chapter XIII relief may be filed even though no straight bankruptcy proceedings have commenced.<sup>41</sup> In Sacramento most debtors who file a petition have not commenced a straight bankruptcy proceeding. A petition for a wage earner's plan under Chapter XIII must state that the debtor is insolvent and would like to effect an extension and/or a composition out of his future earnings.<sup>42</sup>

The original petition must be accompanied by a statement setting forth a full and true statement of all debts as accurately as the debtor is able to determine.<sup>43</sup> This statement includes the name of each creditor and his complete address. It also includes the monthly payment due each creditor and the outstanding balances. Whether a creditor is secured or unsecured should be noted.<sup>44</sup> The debtor is also required to include in this statement<sup>45</sup> a list of all property he owns, both real and personal, and a statement of affairs and executory contracts.<sup>46</sup> The attorney should make certain the debtor realizes that these documents are signed under oath and that if any false statements are knowingly made, the debtor is liable in criminal proceedings.<sup>47</sup>

When the original petition and the attached documents are filed with the court the debtor must pay a \$15 filing fee.<sup>48</sup> In some jurisdictions if the debtor does not have the \$15 it may be paid in installments.<sup>49</sup> However, Sacramento does not allow installment payment of the filing fee. The trustee bases this decision on the theory that if a person cannot pay \$15 for the filing fee he is not a very good risk for a Chapter XIII plan. If a debtor has commenced a proceeding in straight bankruptcy and has already paid the \$50 fee required and then changes to a Chapter XIII plan, he is not required to pay the \$15 filing fee.<sup>50</sup>

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<sup>40</sup>11 U.S.C. § 1021 (1964).

<sup>41</sup>The ". . . debtor may file an original petition under this chapter with the court which would have jurisdiction of a petition for his adjudication." 11 U.S.C. § 1022 (1964).

<sup>42</sup>11 U.S.C. § 1023 (1964).

<sup>43</sup>11 U.S.C. § 1024 (1964).

<sup>44</sup>See Form #2 in appendix.

<sup>45</sup>11 U.S.C. § 1024(1) (1964).

<sup>46</sup>See Form #3 in appendix.

<sup>47</sup>*Interstate Finance Corp. v. J.T. Schogham*, 265 F.2d 889, 891-92 (6th Cir., 1969).

<sup>48</sup>11 U.S.C. § 1024(2) (1964).

<sup>49</sup>By General Order in Bankruptcy 35(4).

<sup>50</sup>11 U.S.C. § 68 (1964).



Some bankruptcy courts, such as the one in San Francisco, require the debtor to post a bond in addition to the filing fee.<sup>51</sup> The bond is required on the assumption that it will be added assurance of the debtor carrying out the plan. The amount of the bond and when it must be filed is within the discretion of the referee. Sacramento does not require a bond because generally a person going through Chapter XIII proceedings would not be able to post the bond.<sup>52</sup> In areas where this bond is required the number of Chapter XIII proceedings are significantly reduced.<sup>53</sup> Other than the above mentioned exceptions, most parts of the country, including Sacramento, follow the same basic pattern with regard to filing the original petition and the accompanying documents and fees.<sup>54</sup>

### C. THE DEBTOR'S PLAN

The next duty of the attorney is the preparation of the debtor's plan. The plan sets forth the amount the debtor will turn over each pay-day to the trustee's office for distribution to his creditors.<sup>55</sup> The plan may call for an extension or a composition.<sup>56</sup> In Sacramento, 99 percent of Chapter XIII plans are extension plans.<sup>57</sup> Section 646 of the Bankruptcy Act is the section dealing with the provisions of the plan. It states:

A plan under this chapter -

1. shall include provisions dealing with unsecured debts generally, upon any terms;
2. may include provisions dealing with secured debts, severally, upon any terms;

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<sup>51</sup>U.S.C. § 1026 (1964). This section states that "the court may, upon hearing after notice to the debtor and such other persons as the court may designate, require the debtor to file, within such time as the court may fix, a bond or undertaking with such sureties, as may be approved by the court, . . . Upon failure of the debtor to comply with such requirements the proceeding under this chapter shall be dismissed."

<sup>52</sup>Interview with Melvyn Coben, attorney specializing in Chapter XIII proceedings in Sacramento, Dec. 30, 1970 [hereinafter cited as Coben].

<sup>53</sup>Loheit, *supra* note 7.

<sup>54</sup>See Hess, *supra* note 26.

<sup>55</sup>Note, *Relief for the Wage-Earning Debtor: Chapter XIII or Private Debt Adjustment?* 55 NW. U.L. REV. 372, 373 (1969-71). However, before any money is dispersed to the creditors, the trustee is required to pay the filing fees, actual costs and expenses of the trustee, fee for referee's salary, and some of the debtor's attorney's fee. 11 U.S.C. § 1059 (1964). In Sacramento the attorney receives \$50 before the creditors begin to get paid.

<sup>56</sup>11 U.S.C. § 1006(7) (1964).

<sup>57</sup>Loheit, *supra* note 7.

3. may provide for priority of payment during the period of extension as between the secured and unsecured debts affected by the plan;
4. shall include provisions for the submission of future earnings or wages of the debtor to the supervision and control of the court for the purpose of enforcing the plan;
5. shall provide that the court may from time to time during the period of extension increase or reduce the amount of any of the installment payments provided by the plan, or extend or shorten the time for any such payments, where it shall be made to appear, after hearing upon such notice as the court may designate, that the circumstances of the debtor so warrant or require;
6. may include provisions for the rejection of executory contracts of the debtor; and
7. may include any other appropriate provisions not inconsistent with Chapter XIII.<sup>58</sup>

This section does not insist upon a prescribed form for the plan. Each plan will vary according to the individual situation.

### 1. HOW MUCH AND WHEN

In Sacramento the trustee and debtor decide how much the debtor can afford to apply toward the payment of his debts each pay-day. This amount is then put in the plan. Once the amount the debtor will pay under the plan is determined, the debtor begins immediate payment to the trustee. Some jurisdictions wait until the plan is confirmed by the referee before requiring payments to begin.<sup>59</sup> The trustee in Sacramento requires immediate payment to ascertain whether the plan is feasible and to test the good faith of the debtor.

### 2. WHO MAKES THE PAYMENT

In a large number of jurisdictions the debtor's employer is ordered by the referee to make direct deposits to the trustee.<sup>60</sup> Some employ-

<sup>58</sup>11 U.S.C. § 1046 (1964).

<sup>59</sup>Hess, *supra* note 26, at 149.

<sup>60</sup>TWINEM, *supra* note 2, at 19. In discussing direct deposits to the trustee the author states:

Wherever possible, arrangements should be made with the debtor's employer for deposits from his wages or salary to be made directly to the trustee. This can be functioned either by sending a part of the debtor's salary directly to the trustee for application under the plan or by sending the entire wage or salary check directly to the trustee who, in turn, may make the part allowable to the debt or under the plan available to him. Such an arrangement makes it more certain that the deposits will be made in full and on a regular basis. *Id.*

ers resent the increased bookkeeping this requires and have terminated the employment of the debtor on these grounds alone. In *In re Jackson*,<sup>61</sup> the 7th Circuit reversed a decision which had allowed a referee to enjoin an employer from firing a debtor. The sole reason for the termination was a wage deduction ordered by the referee. The 7th Circuit held that §658(2)<sup>62</sup> of the Bankruptcy Act is not justification for an injunction ordering the employer to keep any employee on the payroll. The court also noted that the proper remedy would have been an order requiring the debtor to endorse his paychecks and turn them over to the trustee.

Some employers, such as the United States government, cannot by law be ordered to make payments due its "employees" directly to the trustee. A government employee may still participate in a Chapter XIII plan by paying the amount due under the plan directly to the trustee instead of relying on automatic deductions from his wages.<sup>63</sup>

In Sacramento, the debtor's plan does not ask for direct payments by the employer except in rare circumstances.<sup>64</sup> This is primarily because Chapter XIII is thought of as an exercise in debtor rehabilitation as well as a means of paying debts owed to creditors. The debtor whose plan calls for payment of \$100 each month and is paid on a bi-weekly basis, would, for example, be required to render to the trustee \$50 out of each paycheck.

### 3. PROVISIONS FOR UNSECURED CREDITORS

The plan must include provisions for payment of creditors.<sup>65</sup> As noted *supra*, the unsecured creditors may be dealt with generally upon any terms. Identical treatment is not required. Many areas, including Sacramento, pay all debts of \$10 or below immediately.<sup>66</sup> Generally the funds are divided among the unsecured creditors on a *pro rata* basis. In Sacramento, aside from small unsecured claims, a typical plan calls for the payment of secured creditors. This has been criticized as being contrary to the spirit of the Bankruptcy Act.<sup>67</sup> How-

<sup>61</sup>*In re Jackson*, 424 F.2d 1220, 1222 (7th Cir., 1970).

<sup>62</sup>11 U.S.C. § 1058(2) (1964).

<sup>63</sup>*U.S. v. Krakover*, 377 F.2d 104, 106 (10th Cir., 1967), cert. denied, 389 U.S. 845, 88 S. Ct. 97, 19 L. Ed. 2d 112.

<sup>64</sup>The rare circumstance may be a person in the service who is constantly traveling, or someone with no sales resistance. Loheit, *supra* note 7.

<sup>65</sup>11 U.S.C. § 1006(2) (1964) defines creditor as the holder of any claim, while 11 U.S.C. § 1006(1) (1964) defines claim as including all claims of whatever character against the debtor or his property but does not include claims secured by estates in real property or chattels real.

<sup>66</sup>Loheit, *supra* note 7.

<sup>67</sup>C. RICE, *MISSOURI CREDITORS' REMEDIES* 218 (2nd. ed. 1967).

ever, it should be noted that secured creditors stand to lose much more by accepting a Chapter XIII proceeding than do unsecured creditors.<sup>68</sup> In a straight bankruptcy proceeding the collateral is returned to the secured creditor. If a secured creditor accepts a Chapter XIII plan, the collateral remains in the hands of the debtor and is subject to further wear and depreciation. In many cases the attitude of the secured creditors toward Chapter XIII must be favorable if there is to be any Chapter XIII plan. As mentioned earlier, the unsecured creditors have been doing rather well recovering their money in Sacramento.<sup>69</sup>

#### 4. PROVISION FOR SECURED CREDITORS

The Bankruptcy Act provides that the plan may include provisions dealing with secured creditors. The plan does not have to include a secured creditor, but if a secured creditor's interest is affected,<sup>70</sup> he must consent to the plan before it is confirmed.<sup>71</sup> Sacramento has interpreted this provision to mean that if a secured creditor is provided for at substantially the same rate as the contract called for, he is not affected by the plan and his acceptance is not required. Some courts have held that a creditor remains "unaffected" even though the debtor has missed several payments prior to the confirmation of the plan.<sup>72</sup>

An important tool of the debtor's attorney in Sacramento and elsewhere is the power to reject a secured contract.<sup>73</sup> The attorney should, in determining whether a secured contract should be rejected, look at the debtor's equity in the collateral. If the debtor has a high equity in valuable collateral, all steps should be taken to include the secured creditor in the plan or be certain that the creditor's contract rights remain "unaffected". If, however, the debtor has only a nominal equity in collateral which is not of particular value to him or has a very low

<sup>68</sup>Countryman, *Chapter XIII Wage Earners' Plans: Past, Present and Future*, 18 CATHOLIC U. OF AMER. L. REV. 275 (1968-69). The creditor should find a Chapter XIII plan attractive. Creditors receive dividends in only 12% of all straight bankruptcy proceedings: the average dividend being 6%. *Id.*

<sup>69</sup>Unsecured debts have been paid off at the rate of 52.7 cents on the dollar in Sacramento. Loheit, *supra* note 7.

<sup>70</sup>The word "affected" has caused a great deal of controversy in Chapter XIII Bankruptcy Law. The controversy is discussed in Article, *Debtor's Dilemma: Status of The Secured Creditor Under Chapter XIII of The Bankruptcy Act*, 4 UCD L. REV. 277 (1971-72) [hereinafter cited as *Secured Creditors*].

<sup>71</sup>*E.g.*, *In re Clevenger*, 282 F.2d 756, 757 (7th Cir., 1960).

<sup>72</sup>*Id.*

<sup>73</sup>11 U.S.C. § 1046 (1964). A contract is rejected when the attorney notifies the creditor that no further payments will be made. The creditor then is entitled to take back the collateral.

cost to actual value ratio, serious thought should be given to rejection of the contract.<sup>74</sup> The Bankruptcy Act provides that when a debtor rejects a contract, the creditor is entitled to "damages" in a Chapter XIII proceeding as an unsecured creditor.<sup>75</sup> In Sacramento, the referee will look to the Bankruptcy Act to give the debtor the power of rejection and then look to the state law for the measure of the creditors' damages, i.e., the amount he is entitled to as an unsecured creditor in Chapter XIII proceedings. The creditor will find no monetary relief as an unsecured creditor because California law prohibits deficiency judgments on the sale of consumer goods.<sup>76</sup> The only relief the creditor will find is the repossession of his collateral.<sup>77</sup>

The trustee also checks to see if all the creditors claiming to be secured have properly perfected their security interest.<sup>78</sup> The trustee is in the same position in a Chapter XIII proceeding as a trustee in an ordinary bankruptcy proceeding. He may have a superior position over a creditor with an unperfected security interest.<sup>79</sup> If the trustee establishes this preference, the creditor still has to be dealt with in the plan as an unsecured creditor.

##### 5. PROVISIONS CONCERNING FUTURE SPENDING

Most plans also include provisions concerning the future use of credit by the debtor.<sup>80</sup> If the debtor incurs a large amount of new obligations once the plan is in operation, it destroys both the plan and its purpose. In Sacramento<sup>81</sup>, and most other districts, the debtor is prohibited from any new borrowing for the length of the plan, without prior approval from the trustee.<sup>82</sup> Before approving a debtor's request to use credit, the trustee will analyze the need of the debtor for the item he wishes to buy and his ability to finance it without disrupting the current Chapter XIII plan. One may have to develop an entirely new life style while under a Chapter XIII plan because the use of all credit is prohibited (including gasoline credit cards, bank cards and 30-day charge accounts) without prior permission of the trustee. In a credit-oriented society this may be quite an experience for a debtor and he should be forewarned of this situation by his attorney.

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<sup>74</sup>Coben, *supra* note 52.

<sup>75</sup>11 U.S.C. § 1042 (1964).

<sup>76</sup>CAL. CIV. CODE § 1801 *et seq.* (Deering's Supp. 1970).

<sup>77</sup>Coben, *supra* note 52.

<sup>78</sup>CAL. COMMERCIAL CODE § 9101 *et seq.* (Deering's 1963).

<sup>79</sup>*In re Oliver*, 127 F. Supp. 842, 846 (D.C. Kan., 1955), *aff'd* City National Bank and Trust Co. v. *Oliver*, 230 F.2d 686, 689-90 (10th Cir., 1956).

<sup>80</sup>11 U.S.C. § 1058 (1964).

<sup>81</sup>Coben, *supra* note 52.

<sup>82</sup>An exception is made for medical expenses. *Id.*

## D. CONFIRMING THE PLAN

Once the attorney has prepared the plan, the next step is to file the plan with the Bankruptcy Court. An additional \$15 fee is required upon filing of the plan.<sup>83</sup>

*1. NOTICE REQUIREMENT*

The attorney must give at least ten days notice to the creditors and the debtor concerning the first meeting of the creditors. This meeting is called by the referee. Some referees will require that a summary of the debtor's plan be incorporated in the notice of the first meeting. Other districts require extra copies of the plan from the debtor and enclose them with the notice sent to each creditor.<sup>84</sup> In Sacramento the trustee's office handles the bulk of notice mailing. This is done with the help of a computer programmed with the names and addresses of the creditors in the area.<sup>85</sup>

*2. THE IMPORTANCE OF CREDITOR AWARENESS*

When a debtor is denied Chapter XIII relief by his creditors, straight bankruptcy is often his only alternative. An essential factor contributing to any successful Chapter XIII operation is the creditor's awareness concerning the benefits of Chapter XIII. The creditors respond most rapidly when they become aware of the economic advantages of Chapter XIII plans,<sup>86</sup> compared to the straight bankruptcy alternative. In the Sacramento area when Chapter XIII plans first came into vogue, the Chapter XIII trustee and Melvyn Coben, an attorney specializing in the bankruptcy field, spent considerable time addressing creditor groups and answering questions. Through the many appearances they were able to acquaint creditors with the operation of Chapter XIII. The creditors learned that it was in their economic interest to cooperate and give their approval to pending Chapter XIII proceedings. The potential proceeds from straight bankruptcy proceedings were also discussed. This awareness on the part of creditors accounts for the astonishingly high rate of approval given Chapter XIII plans by both secured and unsecured creditors.<sup>87</sup> In areas where Chapter XIII awareness among creditors is at a very

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<sup>83</sup>11 U.S.C. § 1033(2) (1964).

<sup>84</sup>Hess, *supra* note 26, at 148.

<sup>85</sup>Loheit, *supra* note 7.

<sup>86</sup>Coben, *supra* note 52.

<sup>87</sup>Loheit, *supra* note 7. The unsecured creditors have been receiving 52.7 cents on the dollar, while the secured debts have been paid at the rate of 76.1 cents on the dollar.

low level, an effort such as the one made in Sacramento could prove very successful.

### 3. OBTAINING CREDITOR ACCEPTANCE OF THE PLAN

After mailing the notice, the debtor's attorney is responsible for procuring the acceptance of reluctant creditors. A creditor must make his objection to the plan known on or before the initial creditors meeting. If this is not done before the plan is confirmed, he will be bound by the terms of the plan with his silence acting as an assent to its conditions.<sup>88</sup> However, if the attorney does receive some objections from creditors, it is his primary responsibility to try to secure the necessary acceptance to the plan. This may be done by stressing the probable economic benefit to the creditor.<sup>89</sup> An attorney performs this function most often when trying to convince an unsecured creditor to accept a plan which calls for a delay in his payments. In Sacramento, the trustee performs this function with the assistance of the debtor's attorney. This has proved successful because the Chapter XIII trustee knows the creditors and the credit conditions in this area.

A majority of unsecured creditors must accept a Chapter XIII plan before it is confirmed.<sup>90</sup> The numerical majority must also represent a majority in the amount of creditor claims.<sup>91</sup> Generally, there is no problem procuring the acceptance of unsecured creditors, because they receive a much higher rate than they would in a straight bankruptcy proceeding.

When a secured creditor who has a security interest in property which is essential to the debtor rejects the plan, a critical problem arises. Many times the item must be retained by the debtor or he will be faced with the cost of its replacement. This would be the situation if the rejecting secured party has a security interest in an automobile which the debtor needs to commute to work. If the secured party demands and receives the car through a reclamation proceeding,<sup>92</sup> the debtor would be forced to either purchase a replacement, or jeopardize his job by his inability to get to work.

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<sup>88</sup>TWINEM, *supra* note 2, at 21.

<sup>89</sup>Giles, *supra* note 23, at 282.

<sup>90</sup>11 U.S.C. § 1052(1) (1964).

<sup>91</sup>11 U.S.C. § 1052(1) (1964). If unsecured creditors are affected by the plan, acceptance is necessary by "a majority in number of all such creditors whose claims have been proved and allowed before the conclusion of the meeting, which number shall represent a majority in amount of such claims . . . ."

<sup>92</sup>A creditor asks the court for a return of his collateral at a reclamation proceeding.

Difficulties in acquiring the acceptance of secured creditors may be ameliorated by the methods mentioned in the preceding parts of this paper. These include threatening to reject the contract, not materially affecting the creditor's right under the contract by providing for him outside the plan, and most importantly, by making the creditors aware of the benefits they can expect to receive under a Chapter XIII plan.<sup>93</sup>

Another method has been used successfully in Sacramento. The debtor's attorney moves for a continuance in order to try to convince the rejecting secured creditors to change their minds. During this continuance the debtor still makes payments to the trustee. Next the attorney, or trustee, should contact the secured creditor and tell him the amount of money which is being held for him by the trustee. All that is necessary for the secured creditor to obtain the money is his acceptance of the plan. This tactic is also useful in demonstrating the dependability of the debtor.<sup>94</sup> Pending the outcome of the postponed creditor's meeting, the debtor's property is still under the injunctive protection of the court.<sup>95</sup>

If a secured creditor rejects the plan and no amount of persuasion, friendly or otherwise, can change his mind, all is not lost. In some instances a secured creditor may be dealt with outside of the plan while his collateral remains under the injunctive protection of the court.<sup>96</sup>

Sacramento has developed a flexible practice in its actions toward rejecting secured creditors. If a secured party has a security interest in collateral that is essential to the completion of the plan,<sup>97</sup> and in which the debtor has a substantial equity, the referee will enjoin the creditor from repossessing the security. This leaves the creditor with two choices: he may accept the plan or bring a proceeding for reclamation. If the referee finds the collateral is essential to the debtor and the debtor has a substantial equity in the collateral, the request for reclamation will be denied. The referee will then order the trustee to assume the executory contract. The referee, if possible, orders the trustee to pay the secured creditor his contract amount so that he is not "dealt with" by the plan. This means the creditor is not a part of the debtor's plan. However, if this is not possible, the secured

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<sup>93</sup>See Subsection IV(c), *The Debtor's Plan*, *supra*.

<sup>94</sup>Coben, *supra* note 52.

<sup>95</sup>11 U.S.C. § 1011 (1964).

<sup>96</sup>For an in depth discussion of the treatment of secured creditors generally, see *Secured Creditors*, *supra* note 70.

<sup>97</sup>Collateral essential to the plan may include an automobile the debtor needs to get to work.



creditor's monthly payments called for under the contract will be reduced to the level necessary for instituting a successful plan.<sup>98</sup> There is language to support this procedure in *In re Pizzolato*<sup>99</sup>; however, there is some authority to the contrary.<sup>100</sup>

This point has not as yet been appealed in Sacramento. Perhaps this is because appeals in Chapter XIII proceedings are very rare,<sup>101</sup> and there is nothing in the Bankruptcy Act directly contrary to this workable solution. In addition, the high level of voluntary creditor acceptance to Chapter XIII plans drastically reduces the need for the use of this procedure.

#### 4. THE FIRST MEETING OF THE CREDITORS

The attorney should try to do the proper advance work in procuring the necessary acceptances before the first meeting of the creditors. At this meeting the debtor's plan may be confirmed by the referee. If the plan is not confirmed, the debtor usually converts his plan to a straight bankruptcy proceeding. The debtor, trustee, attorney and generally some creditors are present for this meeting. The attorney advises the court of:

1. the scheduled indebtedness covered by the plan,
2. manner and amount of payment to be made,
3. the length of time required to finish the plan, and
4. if there are enough acceptances for confirmation.<sup>102</sup>

The trustee reports to the court whether the debtor is making payments in accordance with the plan. At this meeting the referee may listen to objecting creditors and deal with their complaints.<sup>103</sup> The plan is confirmed at this time if "the court is satisfied that the plan

<sup>98</sup>Interview with Robert Loheit, Chapter XIII Trustee for Sacramento District, in Sacramento, Jan. 7, 1971 [hereinafter cited as Loheit II].

<sup>99</sup>*In re Pizzolato*, 281 F. Supp. 109, 111 (W.D. Ark., 1967).

<sup>100</sup>*See, Secured Creditors, supra* note 70.

<sup>101</sup>Giles, *supra* note 23, at 277. In discussing appeals in Chapter XIII proceedings the author states:

Very few cases under Chapter XIII ever proceed beyond the hearing level before the referee in bankruptcy . . . .

1. If the creditors do not go along with the plan the debtor in most cases will simply convert his cause to straight bankruptcy.
2. Very few secured creditors would realize nearly as much on repossessed and resold security . . . .
3. The respective claims of the creditors are so comparatively small that the cost of litigation will exceed their claim and even if they win in court they lose financially, few creditors or their attorneys are that unrealistic.

<sup>102</sup>Brown, *A Primer of Wage-Earner Plans Under Chapter XIII of the Bankruptcy Act*, 17 BUS. LAW. 682, 686-87 (1961-62).

<sup>103</sup>*Id.*

and its acceptance are in good faith and have not been made or procured by any means, promises or acts forbidden by this act.”<sup>104</sup>

### E. AFTER CONFIRMATION

The obligation of the attorney and trustee to the debtor does not end once the plan is confirmed.<sup>105</sup> The attorney must continue to represent the debtor in matters concerning the Chapter XIII proceeding until the debtor receives his final discharge.<sup>106</sup> The trustee continues receiving and disbursing funds, and handling problems during the interim.<sup>107</sup>

A creditor should accept a plan by filing a “proof of claim” before confirmation of the plan.<sup>108</sup> A “proof of claim” is a document showing the amount the creditor claims is owed to him. Upon confirmation, all creditors, whether they have filed claims or accepted the plan, are bound by it.<sup>109</sup> A six month grace period after the first creditor’s meeting is allowed the creditor during which time he may file his “proof of claim”.<sup>110</sup> If this claim is not filed within the six month period the creditor will not be entitled to receive any funds. Because the debtor and his property are under the injunctive protection of the court, the creditor may interfere with neither during the course of the plan.<sup>111</sup>

Once this six month period has passed, the debtor’s attorney will receive a copy of the “proof of claims” filed by the creditors.<sup>112</sup> He

<sup>104</sup>11 U.S.C. § 1051 (1964). Note however that if all creditors have not accepted, the standards of § 1052 and § 1056 must be looked to. 11 U.S.C. § 1052 (1964) requires acceptance of a majority of unsecured-creditors and all secured creditors dealt with by the plan before confirmation. 11 U.S.C. § 1056 (1964) states that the court shall confirm a plan if satisfied that “(1) the provisions of this chapter have been complied with; (2) it is for the best interest of the creditors and is feasible . . . .”

<sup>105</sup>See TWINEM, *supra* note 2.

<sup>106</sup>When a debtor receives his final discharge the plan is complete. The debtor and his property are no longer under the jurisdiction of the court.

<sup>107</sup>TWINEM, *supra* note 2, at 33.

<sup>108</sup>11 U.S.C. § 1033(3) (1964).

<sup>109</sup>11 U.S.C. § 1057(1)(2) (1964). An exception is made for creditors who have a secured interest in realty.

<sup>110</sup>11 U.S.C. § 1002 (1964) states: “The provisions of Chapter I to VII inclusive, of this Act shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply in proceedings under this chapter.” See *In re Gates* 256 F. Supp. 1 (E.D.Wis., 1966). This court held the six month grace period in filing claims present in straight bankruptcy is also present in Chapter XIII proceedings (1964). Tax claims due the government are not required to be filed within the six month period. 11 U.S.C. § 1080 (1964).

<sup>111</sup>11 U.S.C. § 1057 (1967).

<sup>112</sup>Hess, *supra* note 26, at 148.

should at this time go over these claims with the debtor. If he finds any which the debtor denies, or contests the amount, an Application to Reject Claim<sup>113</sup> should be filed. The referee schedules a hearing at which time the debtor, represented by counsel, will contest the validity of that particular claim.

The attorney must also be prepared to file an application to excuse a payment if the debtor is unable to make a payment for some temporary reason. If the debtor takes a pay cut or in any other way is unable to meet his obligations under the plan, an application to reduce the monthly payments may be necessary.<sup>114</sup> In Sacramento, if the debtor has a valid reason for requesting this relief, it is usually granted. The attorney must also be alert to any attempts by excluded or new creditors to repossess the debtor's property or garnish his wages. The attorney must take the steps necessary to prevent this. Sincere encouragement of the debtor is also an unsung but highly important function of the attorney and Chapter XIII trustee.<sup>115</sup> All of these subsequent services by the attorney are rendered without any additional fee.<sup>116</sup>

During the course of a Chapter XIII plan it may become apparent that the continuance of the plan is not feasible because of defaults on the part of the debtor.<sup>117</sup> If the debtor has filed an original Chapter XIII petition, the proceedings may either be dismissed or the debtor may request an order adjudicating him a bankrupt and directing straight bankruptcy proceedings to begin.<sup>118</sup> If the debtor originally filed for Chapter XIII while a straight bankruptcy proceeding was pending,<sup>119</sup> the case reverts back to a straight bankruptcy proceeding.<sup>120</sup>

After the final payment is made and the plan is complete, an order will be issued by the court discharging the debtor for all debts and liabilities provided for in the plan. Debts held by creditors who have

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<sup>113</sup>See appendix form labeled Notice of Application for Rejection of Contract, Release of Security and Determination of Rejected Creditors Claim.

<sup>114</sup>However, when one Chapter XIII plan is in existence, a new plan cannot be confirmed. Courts feel this would be an abuse of the Bankruptcy Act. It should also be noted that there are no provisions in Chapter XIII preventing the court from terminating an existing plan and thereafter confirming a new plan with consent of creditors. *See, Webb v. Levin*, 374 F.2d 186 (4th Cir., 1967).

<sup>115</sup>Coben, *supra* note 52.

<sup>116</sup>*Id.*

<sup>117</sup>11 U.S.C. § 1066 (1964).

<sup>118</sup>11 U.S.C. § 1066(2) (1964).

<sup>119</sup>11 U.S.C. § 1021 (1964).

<sup>120</sup>11 U.S.C. § 1066(1) (1964).

not accepted the plan and are not dischargeable under § 17 of the Bankruptcy Act<sup>121</sup> are not discharged by this action<sup>122</sup>

If after three years from the confirmation of the plan the debtor has failed to complete all his payments due to circumstances beyond his control, the court may enter an order discharging the debts and liabilities, except those not dischargeable under § 17 of the Bankruptcy Act<sup>123</sup> held by creditors who have not accepted the plan.<sup>124</sup> This is done if the debtor applies for such discharge. Notice is sent to the creditors and a hearing is held on the matter.<sup>125</sup>

## F. THE COST OF CHAPTER XIII

The cost of Chapter XIII administration should be kept to a minimum in order to assure the success of the plan. Aside from the two \$15 filing fees mentioned *supra*, the main costs of Chapter XIII are incurred in fees for the debtor's attorney and the trustee.<sup>126</sup>

The referee receives a reimbursement of one percent for his expenses. These expenses are based on the payments actually made by or for the debtor.<sup>127</sup> The trustee is paid by commissions of not more than five percent of the total amount paid for or by the debtor.<sup>128</sup> In 1963 the Judicial Conference limited the annual compensation of the trustee in Chapter XIII cases to no more than the maximum annual compensation of a full-time referee in any district.<sup>129</sup> The Bankruptcy Act also provides for the actual cost and expenses of the trustee.<sup>130</sup> These expenses vary in each district and in many cases are also based on a percentage of the total amount paid by the debtor. In Sacramento the trustee's fee and expense fund for the fiscal year of 1970 averaged 7.93% of gross revenues.<sup>131</sup>

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<sup>121</sup>11 U.S.C. § 35 (1964).

<sup>122</sup>TWINEM, *supra* note 2, at 36.

<sup>123</sup>Debts not dischargeable under § 17 of the Bankruptcy Act include taxes, money received under false pretenses, money received by fraud and money due an employee. 11 U.S.C. § 35 (1964).

<sup>124</sup>11 U.S.C. § 1060 (1964).

<sup>125</sup>11 U.S.C. § 1061 (1964).

<sup>126</sup>TWINEM, *supra* note 2, at 29.

<sup>127</sup>11 U.S.C. § 1059(1) (1964). The fee has been fixed by the Judicial Conference of the United States.

<sup>128</sup>11 U.S.C. § 1059(3) (1964).

<sup>129</sup>TWINEM, *supra* note 2, at 29.

<sup>130</sup>11 U.S.C. § 1059(2) (1964).

<sup>131</sup>Loheit, *supra* note 7.

The Bankruptcy Act provides that the court may set a reasonable fee for the debtor's attorney.<sup>132</sup> These fees are within the discretion of the referee and may vary. If the attorney's fees are lower than the fees for straight bankruptcy, the trustee should be doing a large percentage of the work and simplifying the task of the attorney. The attorney's fee should be adequate for the work performed but not exorbitant since the interest of a financially distressed debtor and the creditors must also be kept in mind. The attorney's fee in Sacramento has been set at \$100 for plans under \$1000; \$150 for plans calling for payments of \$1001 to \$1500; and \$200 for plans calling for disbursements of over \$1501. If the debtor's wife is employed and a separate plan is put into operation for her, the attorney collects half of the normal fee for handling her case in addition to her husband's case.<sup>133</sup>

At what time the attorney should be paid poses a vexing problem. The language of § 659<sup>134</sup> of the Bankruptcy Act seems to indicate that the attorney should be paid in full before any money is distributed to the creditors. If an attorney does insist on this priority, he may encounter heated creditor resistance. Because not all services are actually rendered until the completion of the plan, the referee may try to avoid full advance payment for services that have not yet been rendered. In Sacramento, the attorney receives a payment of \$50 before distribution to the creditors and is paid the remainder along with secured creditors.<sup>135</sup> The deferred payments may give the debtor's attorney a keener interest in the successful consummation of the plan.<sup>136</sup>

Many times the cost of the administration of a Chapter XIII plan may be partially or completely offset by the savings in interest payments the debtor realizes. The debtor pays no interest on unsecured claims,<sup>137</sup> and some jurisdictions allow no interest on the unsecured portion of any secured claim.<sup>138</sup> Interest on secured claims may be allowed when the value of the security is at least equal to the value

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<sup>132</sup>11 U.S.C. § 1059(4) (1964).

<sup>133</sup>Coben, *supra* note 52.

<sup>134</sup>"Such reasonable fee to the attorney for the debtor as the court may allow for the professional services actually rendered by such attorney to the debtor in and in connection with the proceedings under this chapter . . . ." 11 U.S.C. § 1059(4).

<sup>135</sup>Coben, *supra* note 52.

<sup>136</sup>*Id.*

<sup>137</sup>*See*, United States v. General Eng'r. & Mfg., 188 F.2d 80 (8th Cir., 1951). Once the debtor has filed the petition there will be no more interest incurred on unsecured claims.

<sup>138</sup>11 U.S.C. § 103 (1964); Note, *Chapter XIII of the Bankruptcy Act: As Maine Goes, So Should the Nation*, 5 SAN DIEGO L. REV. 329, 341 (1968).

of the unpaid balance and the contract rate of interest.<sup>139</sup> Sacramento has followed the policy of cutting off interest on unsecured and secured claims altogether, with the exception of paying secured lenders ten percent simple interest on the pure principal of their debt.<sup>140</sup> This ten percent interest payment to secured lenders can be criticized as being too generous, but it must be remembered that it is less than the service charge allowed the merchant who adds a time-price differential figure into his contract price. The court may not change the amount called for in a contract when it includes the time-price differential.<sup>141</sup>

## V. CONCLUSION

Recently, proposals have been offered to amend Chapter XIII to make it easier to administer and more realistic in its scope. One set of amendments has been proposed by the National Bankruptcy Conference.<sup>142</sup> The Consumer Bankruptcy Committee of the American Bar Association has also proposed amendments to Chapter XIII of the Bankruptcy Act.<sup>143</sup>

Both of these proposals call for some changes which are already standard policy in Sacramento. The proposals call for a restriction of the secured creditor's veto power. A court could confirm a plan without acceptance by any creditor or class of creditors as long as the plan adequately provided for the realization of the amount of the claims.<sup>144</sup> As discussed in the section entitled Obtaining Creditor Acceptance of the Plan, *supra*, Sacramento already does this.

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<sup>139</sup>*Vanston Bondholders Protective Committee v. Green*, 329 U.S. 156, 163-64 (1946); *Beecher v. Leavenworth State Bank*, 192 F.2d 10, 14 (9th Cir., 1951); *Constaner v. Mora*, 234 F.2d 710, 712-13 (1st Cir., 1956).

<sup>140</sup>*Loheit II*, *supra* note 98.

<sup>141</sup>*Id.*

<sup>142</sup>Their proposals have been introduced in a bill to Congress. H.R. 6792, 91st Cong., 1st sess. (1969).

<sup>143</sup>Countryman, *Proposed New Amendments for Chapter XIII*, 22 BUS. LAW. 1151 (1967).

<sup>144</sup>NATIONAL BANKRUPTCY CONFERENCE, MEMORANDUM TO ACCOMPANY PROPOSED AMENDMENTS TO CHAPTER XIII OF THE BANKRUPTCY ACT 4 (on file at UCD Law Review). OMNIBUS BILL, *supra* note 28, at § 614, § 646 (1)(2), § 652 (b)(c).

The trustee's role would be expanded under the proposals of the Consumer Bankruptcy Committee of the American Bar Association. This has already been done in many parts of the country,<sup>145</sup> including Sacramento, but enactment of these proposals would give trustees more power in districts where their sole role has been that of a disbursing agent. It has also been suggested that a full time Chapter XIII trustee be appointed when the number of debtor's plans are substantial in an area.<sup>146</sup> The trustee is also expressly given the rights, powers and defenses granted a trustee under §§ 60, 67, 70(c) and 70(e) of the Bankruptcy Act.<sup>147</sup> Uniformity in all districts will be enhanced by the fact that the Consumer Bankruptcy Committee's proposal states that once a petition is filed, "the debtor shall unless otherwise ordered by the court for cause shown, promptly commence making payments."<sup>148</sup> The trustee already exercises these powers in Sacramento.

In many areas Chapter XIII proceedings should account for a far larger percentage of non-business voluntary bankruptcies. It does not for six major reasons:

1. The regulations are too complex;
2. A Chapter XIII plan is far more work for an attorney than a straight bankruptcy;
3. The attorney's fee for handling a Chapter XIII plan is the same or less than the fee for handling a straight bankruptcy;
4. Many attorneys are not aware of Chapter XIII;
5. Either the trustee or referee, or both, are uninformed or disinterested in Chapter XIII;
6. There may be a low level of creditor awareness concerning Chapter XIII in a particular area.

The new proposals would make the proceedings much more realistic and shift more of the work load to the trustee. However, any major change in the Chapter XIII proceedings may be years away.<sup>149</sup> For the present, other districts should take a long look at what Sacramento has done. Every major proposal for change in the Chapter

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<sup>145</sup>See Comment, *The Chapter XIII Trustee: Trustee or Disbursing Agent?*, 21 MAINE L. REV. 53 (1969).

<sup>146</sup>OMNIBUS BILL, *supra* note 28, at § 618.

<sup>147</sup>*Id.*

<sup>148</sup>*Id.*, § 635.

<sup>149</sup>Letter from H. Kent Presson To Jack Lovell and Mike Spaan, December 7, 1970 (on file at UCD Law Review). Mr. Presson, the principal Staff Attorney, Bankruptcy Division of the Administrative Office of the United States Courts, wrote of the National Bankruptcy Bill H.R. 6792 that "the bill has never been favorably reported out of the House Judiciary Committee and I doubt if it will be."

XIII proceedings has been implemented here, except where the express wording of the Bankruptcy Act provides otherwise. Sacramento has gone even further in some areas, such as the trustee's screening of the Chapter XIII applicants. These facts coupled with a high level of creditor awareness concerning the plan, and fair treatment for both the creditor and the debtor, have produced a smooth running, highly efficient operation.

*Michael R. Spaan*



UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

IN THE MATTER OF

IN PROCEEDINGS FOR A WAGE  
EARNER'S PLAN UNDER  
CHAPTER XIII

Debtor. )

No. \_\_\_\_\_

PETITION

TO: THE HONORABLE JUDGE OF THE DISTRICT COURT OF THE  
UNITED STATES FOR THE EASTERN DISTRICT OF CALIFORNIA

The above Petitioner \_\_\_\_\_ Soc. Sec. No. \_\_\_\_\_  
residing at \_\_\_\_\_  
a \_\_\_\_\_ by occupation, and employed by \_\_\_\_\_

respectfully represents:

1. Your Petitioner is an individual whose principal income is derived from wages, salary or commissions and has resided in this District the greater portion of the previous six months preceding this petition.

2. No bankruptcy proceedings, initiated by a petition by or against your petitioner, is now pending.

3. Your Petitioner is unable to pay his debts as they mature, and desires to effect an extension of time to pay his debts out of his future earnings.

4. The schedule hereto annexed, marked Schedule A, and verified by your Petitioner's oath, contains a full and true statement of all his debts, and so far as it is possible to ascertain, the names and addresses of his creditors, and such further statements concerning said debts as are required by the provisions of the Act of Congress relating to Bankruptcy.

5. The schedule hereto annexed, marked Schedule B, and verified by your Petitioner's oath, contains an accurate inventory of all his property, real and personal, and a full and complete statement of affairs and of debts, as required by the provisions of said Act.

WHEREFORE, your Petitioner prays that proceedings may be had upon this Petition in accordance with the provisions of Chapter XIII of the Act of Congress relating to Bankruptcy.

\_\_\_\_\_  
Petitioner

By: \_\_\_\_\_

STATE OF CALIFORNIA )  
COUNTY OF SACRAMENTO ) ss.

I, a debtor in the within described proceedings, who subscribed to the foregoing document, do hereby make solemn oath that the statements contained therein are true and complete according to the best of my knowledge, information and belief.

\_\_\_\_\_  
Debtor

Subscribed and sworn to before me this \_\_\_\_\_

\_\_\_\_\_  
Notary Public

STATEMENT OF ALL DEBTS

<u>Name of Creditor and Complete Address</u>	<u>Payment</u>	<u>Balance</u>
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Total Secured Creditors:	\$ _____
Total Priority Creditors:	_____
Total Unsecured Creditors:	_____
 GRAND TOTAL:	 \$ _____

\_\_\_\_\_  
Debtor

STATE OF CALIFORNIA        )  
COUNTY OF SACRAMENTO ) ss.

I, a debtor in the within described proceedings, who subscribed to the foregoing document, do hereby make solemn oath that the statement contained there is true and complete according to the best of my knowledge, information and belief.

\_\_\_\_\_  
Debtor

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

## SCHEDULE A

**SCHEDULE B**  
**STATEMENT OF ALL PROPERTY**

1. Real Estate (equity value) \$ \_\_\_\_\_
  2. Household Goods (resale value) \$ \_\_\_\_\_
  3. Automobile(s) (resale value) \$ \_\_\_\_\_
  4. Deposits of money in bank and elsewhere \$ \_\_\_\_\_
  5. Property in reversion, remainder, expectancy, trust, patents, copyrights, trademarks, shares in shipping vessels, books, prints, horses, and other animals, debts due on open account, negotiable instruments and securities, cash surrender value of insurance, and unliquidated claims \$ \_\_\_\_\_
  6. Other personal property \$ \_\_\_\_\_
- TOTAL: \$ \_\_\_\_\_

**PROPERTY CLAIMED AS EXEMPT FROM THE OPERATION OF THE ACT OF CONGRESS RELATING TO BANKRUPTCY**

For the purposes of this Chapter XIII Proceeding only, all personal property exemptions are waived.

**STATEMENT OF AFFAIRS AND EXECUTORY CONTRACTS**

1. Other residences during the past six years:
2. Have you, within the six years immediately preceding the filing of this Petition:
  - (a) Been in partnership with anyone or engaged in any business? Yes \_\_\_\_\_ No \_\_\_\_\_.
  - (b) Been proceeded against under the Bankruptcy Act? Yes \_\_\_\_\_ No \_\_\_\_\_.
  - (c) Date of Filing: \_\_\_\_\_
3. Have you, within two years immediately prior to the filing of the original petition herein:
  - (a) Kept books of account, or received income from any source other than for wages or for hire?  
Yes \_\_\_\_\_ No \_\_\_\_\_. If so, state \_\_\_\_\_
  - (b) Maintained any bank account or safe deposit boxes in your own name or with others?  
Yes \_\_\_\_\_ No \_\_\_\_\_. If so, state \_\_\_\_\_
  - (c) Made any assignment for the benefit of or a general settlement with creditors?  
Yes \_\_\_\_\_ No \_\_\_\_\_. If so, state \_\_\_\_\_
4. Have you within one year prior to the filing of the original petition herein:
  - (a) Transferred or disposed of any property or suffered any loss from fire, theft, or gambling?  
Yes \_\_\_\_\_ No \_\_\_\_\_. If so, state \_\_\_\_\_
  - (b) Been a party/plaintiff or defendant to any suit? Yes \_\_\_\_\_ No \_\_\_\_\_. If so, state \_\_\_\_\_
5. Have any executions or attachments been levied against your property within the four months immediately preceding the filing of the original petition herein?  
Yes \_\_\_\_\_ No \_\_\_\_\_. If so, state \_\_\_\_\_
6. Where and when did you file your last Federal and State income tax return?
7. Do you hold any property in trust for any other person? Yes \_\_\_\_\_ No \_\_\_\_\_. If so, state \_\_\_\_\_
8. Are you a party to any executory contracts? Yes \_\_\_\_\_ No \_\_\_\_\_. If so, state \_\_\_\_\_

REFER TO SCHEDULE A \_\_\_\_\_

STATE OF CALIFORNIA )  
COUNTY OF SACRAMENTO ) ss.

Debtor

I, a debtor in the within described proceedings, who subscribed to the foregoing document, do hereby make solemn oath that the statements contained therein are true and complete according to the best of my knowledge, information and belief.

Subscribed and sworn to before me this \_\_\_\_\_

Debtor

Notary Public

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

IN THE MATTER OF

IN PROCEEDINGS FOR A WAGE  
EARNER'S PLAN UNDER  
CHAPTER XIII

Debtor.

No. \_\_\_\_\_

## DEBTOR'S PLAN

The above named debtor proposes under Chapter XIII of the Bankruptcy Act, more especially Section 646 thereof, the following plan:

The debts of the debtor, duly proved and allowed, shall be paid to the holders thereof in full, in accordance with the provisions of the Bankruptcy Act and this plan.

The debtor, or his employer, shall pay to the Trustee out of his future earnings and wages the sum of \$\_\_\_\_\_. The Trustee shall make distribution of the funds so received by paying: (1) The filing fee; (2) The fees and costs required by provisions of Section 659 of the Act; and (3) The creditors.

Secured debts held by creditors who accept the plan shall have priority over the unsecured debts and shall be paid prorata except:

The unsecured debts shall be dealt with generally and paid prorata; provided, that where the amount or balance of any unsecured debt is less than \$10.00 it may be paid in full.

The future earnings and wages of the debtor are submitted to the supervision and control of the court for the purpose of enforcing the plan.

The court may from time to time during the period of extension increase or reduce the amount of any of the installment payments provided by the plan, or extend or shorten the time for any such payments, where it shall be made to appear after hearing upon notice to the debtor and the trustee, that the circumstances of the debtor so warrant or require; provided, that nothing in this plan shall be construed to prevent the granting of a discharge to the debtor as provided by Section 661 of the Act.

The debtor further represents that he is able to carry out his plan and submits the following:

Number of dependents:

Employer:

Occupation:

Length of service with present employer: \_\_\_\_\_

Petitioner's average earnings per month: \$ \_\_\_\_\_

Spouse's average earnings per month: \$ \_\_\_\_\_

Other income per month: \$ \_\_\_\_\_

Total average net income per month: \$ \_\_\_\_\_

Expenses per month:

Housing \$ \_\_\_\_\_

Utilities \$ \_\_\_\_\_

Food \$ \_\_\_\_\_

Transportation \$ \_\_\_\_\_

Insurance &amp; Dues \$ \_\_\_\_\_

Clothing \$ \_\_\_\_\_

Miscellaneous \$ \_\_\_\_\_

Other \$ \_\_\_\_\_

Total expenses per month: \$ \_\_\_\_\_

Excess income over living expenses: \$ \_\_\_\_\_

Payments per month proposed by Plan: \$ \_\_\_\_\_

SURPLUS: \$ \_\_\_\_\_

\_\_\_\_\_  
Debtor

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

IN THE MATTER OF	)	IN PROCEEDINGS FOR A WAGE
	)	EARNER'S PLAN UNDER
	)	CHAPTER XIII
	)	
Debtor.	)	No. _____

APPLICATION UNDER CHAPTER XIII FOR APPOINTMENT OF  
TRUSTEE AND ISSUANCE OF RESTRAINING ORDER

The above named debtor, Soc. Sec. No. \_\_\_\_\_  
respectfully represents:

1. That your petitioner is a citizen of the United States and has filed herewith a petition under Chapter XIII of the Act of Congress relating to Bankruptcy and a Plan proposing to effect an extension of time to pay debts out of future earnings and praying that proceedings be had upon the petition in accordance with the provisions of Chapter XIII of said Act. That by the Plan, all future earnings and wages are submitted to the supervision and control of the Court for the purpose of consummating the Plan.

2. That your Petitioner is regularly employed by \_\_\_\_\_

3. That the appointment of a Trustee to take charge of the earnings and wages of your Petitioner in accordance with the Plan referred to above is necessary to preserve the estate of your Petitioner and to prevent loss thereto, and to insure the payment of the necessary costs and fees, and that the petitioner named above should be ordered to pay from his wages the sum proposed in the Plan and pay such sum forthwith to the Trustee appointed by this Court until such time as the Plan submitted by your Petitioner is confirmed or until the further order of this court.

4. That, unless the creditors of the above named debtor are restrained by this court, the ability of the debtor to complete or comply with the proposed wage earner plan herein would be detrimentally affected to the prejudice of all his creditors, and that creditors holding liens upon or claiming title to property in the possession or control of the debtor would not be prejudiced by said restraining order.

WHEREFORE, your petitioner prays: 1. That a Trustee be appointed forthwith to take charge of the earnings and wages of your Petitioner; that your Petitioner be ordered to pay the amount of the payments proposed by the Plan from his earnings and wages and pay the said sum forthwith to such Trustee, until such time as the Plan submitted by your petitioner is confirmed or until further order of this Court and for such other relief as the Court deems just and proper. 2. That a Restraining Order be issued by this Court, restraining the creditors of the above named debtor from commencing or continuing any suits against the said debtor, or from levying attachments or executions upon the wages or other assets of the debtor, or from repossessing any property in the possession or control of the debtor without the permission and leave of this Court first had and obtained and for such other and further relief as is proper under the circumstances.

STATE OF CALIFORNIA     )  
COUNTY OF SACRAMENTO   ) ss.

\_\_\_\_\_  
Debtor

I, a Debtor in the within described proceedings, who subscribed to the foregoing document, do hereby make solemn oath that the statements contained therein are true and complete according to the best of my knowledge, information and belief.

Subscribed and sworn to before me this \_\_\_\_\_

\_\_\_\_\_  
Debtor

\_\_\_\_\_  
Notary Public

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

IN THE MATTER OF	)	IN PROCEEDINGS FOR A WAGE
	)	EARNER'S PLAN UNDER
	)	CHAPTER XIII
Debtor.	)	No. _____

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RESTRAINING ORDER

IT APPEARING that the above debtor has filed an original petition herein for relief under the provisions of Chapter XIII of the Bankruptcy Act, and has proposed to pay his debts out of his future earnings, and has waived his personal property exemptions for the purpose of these proceedings and submitted all property in his possession and all his future earnings to the jurisdiction, supervision, and control of this Court, and

IT FURTHER APPEARING, that, unless the creditors of the above named debtor are restrained by this Court from commencing or continuing any suits against the debtor, or from levying attachments or executions upon the wages or other assets of the debtor, or from repossessing any property in the possession or control of the debtor without the permission and leave of this Court first had and obtained, the ability of the debtor to complete or comply with the proposed Wage Earner Plan herein would be detrimentally affected to the prejudice of all his creditors, and that creditors holding liens upon or claiming title to property in the possession or control of the debtor would not be prejudiced by the granting of this restraining order, now, therefore,

IT IS ORDERED, that all persons, their agents, employees, servants, and attorneys, be, and they are hereby enjoined and restrained from commencing or continuing any suit against the above named debtor or from levying attachment or execution upon his wages or other assets, or from repossessing or interfering with any property in the possession or control of the debtor, or molesting, harassing or disturbing the lawful peace of the debtor in any way without permission and leave of this Court first had and obtained, and,

IT IS FURTHER ORDERED that all persons affected by these proceedings whose performance of a contract term or condition is enjoined or restrained by this order shall be deemed excused from said contract term or condition during the period of time this order is in effect as said contract relates to said debtor, or any other person, including but not limited to assignors and contingent guarantors.

IT IS FURTHER ORDERED that a conformed copy of this restraining order, mailed to the address of the persons or their assignors or assignee affected hereby, shall be sufficient service thereof.

THIS ORDER is without prejudice to the rights of creditors claiming to hold a lien upon or title to property in the debtor's possession or control to file an appropriate petition in reclamation with this Court and to obtain a hearing thereon.

DATED:

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REFeree IN BANKRUPTCY

NOTICE: Violation of a Federal Court Order may be punishable by fine and/or imprisonment.

This order does not include creditors with claims secured by estates in real property or chattels real.

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

IN THE MATTER OF

IN PROCEEDINGS FOR A WAGE  
EARNER'S PLAN UNDER  
CHAPTER XIII

Debtor.

No. \_\_\_\_\_

ORDER APPOINTING A TRUSTEE, ORDER TO DEBTOR TO PAY  
TO TRUSTEE, AND ORDER TO EMPLOYER OF DEBTOR

On this day \_\_\_\_\_, it appearing to the undersigned Referee in Bankruptcy that the above named debtor, Social Security No. \_\_\_\_\_ filed a petition in this court on \_\_\_\_\_ in accordance with the provisions of Chapter XIII of the Act of Congress relating to Bankruptcy and has applied for the appointment of a Trustee, and the Referee finds:

- (a) That the debtor is a citizen of the United States.
- (b) That the debtor has submitted a plan to pay his debts out of his future earnings and by his plan submitted all of his future earnings and wages to the supervision and control of the Court for the purpose of consummating the plan.
- (c) That the debtor has requested this Court to appoint a Trustee to take charge of the future earnings and wages of said debtor.
- (d) That the appointment of a Trustee to take charge of the earnings and wages of the debtor is necessary to preserve the estate and to prevent loss thereto, and to insure the payment of the necessary costs and fees.
- (e) That the above named debtor is employed by:

THEREFORE, IT IS BY THE COURT, ORDERED, ADJUDGED, AND DECREED, that ROBERT E. LOHEIT, 1023 Forum Building, 1107 9th Street, Sacramento, California be, and he is, hereby appointed Trustee of said debtor's estate to take charge of the earnings and wages of the debtor herein and to protect the interests of his creditors and that he and his surety are held and bound by a General Order made and entered by this Court on the 23rd of January, 1963, and the bond executed in pursuance thereof.

IT IS FURTHER ORDERED that said debtor, until further order of this Court, pay from his earnings the sum of \$ \_\_\_\_\_ beginning on the next pay day following this order to the appointed Trustee.

IT IS FURTHER ORDERED that said debtor notify the Trustee within five days of any change of employment or home address.

IT IS FURTHER ORDERED that all earnings and wages of the debtor from his present employer or any subsequent employer be paid by the employer to the debtor in accordance with the employer's usual procedure and that no deduction be made by said employer in favor of any creditor or any creditor's agent, employee, servant, or attorney, or for any execution, garnishment, or attachment. Payroll deductions made in accordance with the provisions of Federal Income Tax law relating to current required withholding, Federal Social Security law, State Disability law, group insurance plans, pension plans, retirement plans, company stock purchase plans, union dues agreements, employee welfare fund agreements, and employer sustenance agreements are not affected by this order and may be continued in their usual manner.

IT IS FURTHER ORDERED that a copy of this order be mailed to the employer of said debtor, or to any subsequently known employer, and that such mailing shall be sufficient service thereof.

IT IS FURTHER ORDERED that this order be and remain in full force and effect until the further order of the Court.

REFeree IN BANKRUPTCY

IN THE MATTER OF )  
 )  
 )  
 )  
 Debtor. )

No. \_\_\_\_\_

At Sacramento in said district on this \_\_\_\_\_

**DATED:** \_\_\_\_\_

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UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

IN THE MATTER OF	)	IN PROCEEDINGS FOR A WAGE
	)	EARNERS PLAN UNDER
	)	CHAPTER XIII
	)	
Debtor (s)	)	No. _____

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NOTICE OF APPLICATION FOR REJECTION OF CONTRACT,  
RELEASE OF SECURITY AND DETERMINATION OF  
REJECTED CREDITOR'S CLAIM

Comes now the attorney for the debtor(s) above-named and makes application to the Court herein for a hearing to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_ M. in Room 8109 of the United States District Courthouse, 650 Capitol Mall, Sacramento, California 95814.

Said debtor(s) through their attorney at said time and place will apply to said Court for an order directing that said debtor(s) may reject the following executory contract(s), and permitting said creditor(s) to peaceably pursue their contract rights to said security and that this Court determine what, if any, claim said rejected creditor(s) might have:

Said application will be based upon this notice, all papers and pleading on file herein and evidence both oral and documentary to be presented at said hearing.

