

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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In re:

Chapter 13

Case No.:

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NOTICE OF MOTION and MOTION REQUESTING A  
MORTGAGE MODIFICATION MEDIATION PROGRAM ORDER  
with REQUEST FOR CREDITOR STIPULATION

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NOTICE

To: \_\_\_\_\_ and its successors, assigns and servicing agents ("the Creditor"), please take notice:

\_\_\_\_\_ ("the Debtor" whether one or more) files this motion for Mediation and Request for Stipulation to participate in a voluntary Mortgage Modification Mediation Program ("MMM"). **The Creditor has 30 days from the filing of this Notice to stipulate to the entry of an MMM Order, or signify that it is declining to participate in mediation.** If the Creditor does not respond to this invitation to participate in MMM, the Debtor may withdraw the Motion or file a letter with the Court requesting additional time to receive a response from the Creditor.

MOTION and REQUEST

**Eligibility**

The Debtor represents:

1. The debtor is the owner-occupant of a one-to-four-unit residential property used as the Debtor's primary residence.
2. The Debtor has regular income.
3. The Debtor has an unpaid principal mortgage balance that is equal to or less than \$729,750 (for a one-unit property).
4. The Debtor has signed the mortgage note.
5. The Debtor has a mortgage payment that is not affordable due to financial hardship.

## Terms of Order Sought

The Debtor requests an Order providing the following terms:

6. **Amount of Modified Mortgage Payment.** Debtor will make post-petition mortgage payments to the Creditor of 31% of the Debtor's gross monthly income or 75% of the Debtor's current mortgage payment, whichever is less (the "Modified Mortgage Payment").
7. **Payment of Modified Mortgage Payment.** The first Modified Mortgage Payment will be due and must be received by the Creditor no later than the next monthly scheduled due date (plus any grace period) after entry of an Order approving this Motion. The only exception to this requirement is if the Debtor does not know the identity of the Creditor at the time the payment is due; in that event, the Debtor will make the Modified Mortgage Payment to the Debtor's attorney to be held in trust until the Creditor is identified.
8. **Payment Term.** The Debtor will continue to make the Modified Mortgage Payments to the Creditor each month in sufficient time to be received before the expiration of the grace period until MMM is concluded or an Order of the Court expressly states otherwise.
9. **Creditor's Consent.** If the Creditor agrees to this proposed Order, then the Creditor will execute the attached Stipulation and mail it to Debtor's counsel at the address set forth below.
10. **Presentation to the Court.** The Debtor's counsel will forthwith file the Stipulation with a Proposed Order approving the Motion.
11. Within 5 business days from the date of the entry of the Order -
  - a. **Delivery of Order to Creditor and MMM Clerk.** The Debtor will supply a copy of such Order to the Creditor and the Wisconsin Foreclosure Mediation Network MMM Clerk at [mmmclerk@MediateWisconsin.com](mailto:mmmclerk@MediateWisconsin.com). The terms of the Order will supersede any conflicting language in the Chapter 13 Plan.
  - b. **Debtor's DMM Registration.** The Debtor will register to use the DMM Loss Mitigation Web Portal ("the Portal") ([www.dclmwp.com](http://www.dclmwp.com)) and the Debtor will pay \$25 to the DMM Loss Mitigation Web Portal. The Debtor understands that the Portal fee is nonrefundable.
12. Within 5 business days of receipt of the Order from the Debtor -
  - a. **Assignment of Mediator.** The MMM clerk will assign a mediator from the MMM roster of mediators and notify, via email, all parties and the Mediator of such assignment.
  - b. **Creditor's DMM Registration.** The Creditor will register to use the Portal to receive and manage the Documents. (There is no charge for the Creditor to use the Portal.) In the event the Creditor is not registered to use the Portal, the Creditor's attorney may act on the Creditor's behalf in using the Portal.

- c. **Creditor's Forms and Proof of Claim.** The Creditor or the Creditor's attorney will deliver to the Debtor and the Mediator the forms and a list of loan modification documents (the "Documents") needed to compile a complete loan modification application, as well as a copy of the Creditor's proof of claim if one has been filed. The preferred method of delivery is the Portal.
13. **Delivery of Debtor's Documents.** Within 14 days from the entry of the Order, the Debtor will provide the Creditor and the Mediator with bankruptcy Schedules "I" and "J," as well as the Documents required by the Creditor by filing the Documents via the Portal. The Debtor understands that the Documents may need to be updated, and agrees to use the Portal to provide current Documents upon the Creditor's request. (Questions about filing or downloading the Documents on the Portal can be directed to DMM Support at 1-800-481-1013 or by email to support@defaultmitigation.com.)
14. **Mediation Fee.** The Debtor will pay \$200 (the "Mediation Fee") to the Mediator, no later than 14 days after the assignment of the Mediator. Mediators do not accept Debtors' personal checks for the Mediation Fee, and the Mediator is not required to perform any services until the fee is received. If the fee is not paid when due, the Mediator will issue a courtesy reminder to the Debtor, and if the fee is not paid promptly, the Mediator will advise the MMM Clerk and may withdraw from the case. The Creditor agrees to pay \$200 to the Mediator no later than 14 days after appointment of the Mediator.
15. **Creditor's Scope of Authority and Good Faith.** The Creditor agrees to designate a representative with knowledge of all of the Creditor's loss mitigation programs with either full authority to make a final decision on the modification of the Debtor's mortgage or access to an underwriter with full authority to make a final decision on the modification. The Creditor agrees to promptly inform the Debtor of any deficiencies in the submissions to DMM, to engage in the mediation process in good faith, and to continue participation until a decision is rendered regarding Debtor's eligibility for a mortgage modification.
16. **Debtor's Good Faith.** The Debtor agrees to appear and participate in good faith in the mediation sessions. The Mediation Fee is nonrefundable even if the Debtor does not appear or does not agree with the outcome of the mediation session.
17. **Mediation Process and Appearances.** The Mediator will promptly contact the attorneys for the Debtor and the Creditor to schedule the mediation sessions. The expectation is that the process will include at least one in-person mediation session, and may include one pre-mediation teleconference, and up to two post-mediation teleconferences. The parties and the Mediator have the flexibility to vary from this process as the Mediator deems appropriate. The Creditor's representative and the Creditor's attorney may attend all scheduled mediation sessions by telephone or video conference. The Debtor (both debtors in a joint case), Debtor's attorney, and the Mediator will appear in person at all non-telephonic mediation and post-mediation sessions. Only attorneys, as opposed to paralegals or other law office staff, may make appearances on behalf of either party at pre-mediation (scheduling), mediation, or post-mediation sessions.

18. **Scope of Mediation Topics.** The mediation session may include the negotiation of a modification of the Debtor's mortgage loan, whether by new payment terms, reduction or forgiveness of principal, interest, escrow shortage, advanced costs (e.g. real estate tax advance), surrender or sale of the mortgaged property, or otherwise. Disputes concerning the amount of the Creditor's claim, application of payments, and standing of the Creditor to seek foreclosure are not included in the scope of the Program.
19. **Privileged Communications.** All statements made by the parties, attorneys and other participants at or associated with the mediation shall be privileged and not reported, recorded or placed into evidence, made known to the Court or construed for any purposes as an admission. No party shall be bound by any statement made or action taken at the mediation conference unless an agreement is reached. The mediator will keep confidential all statements made at the mediation, and will report to the Court only the status of the mediation process or the results of the mediation.

#### **Agreed Modification of the Automatic Stay**

20. The automatic stay is immediately modified, as of the date of the Order approving the Motion, to permit the Creditor to request information, evaluate and analyze the Debtor's financial situation, participate in the mortgage modification process and negotiate loan modification terms.
21. If the Creditor does not receive any Modified Mortgage Payment by the due date, including any applicable grace period, the Creditor may file a Motion for Relief from Stay. If the Court grants the Creditor's Motion, the Creditor will be able to pursue any remedy against the mortgaged property available under the mortgage and applicable nonbankruptcy law, including foreclosure.

#### **Mediation Conclusion**

22. The mediation sessions will conclude no later than 75 days after the Mediator is assigned. Unless the Debtor and the Creditor agree in writing to extend the deadline, the Mediator will issue a final report to the Court within 14 days after the conclusion of the 75-day period. If neither a written extension nor the final report is filed within 90 days after the Mediator is selected, the Mediator's assignment will be terminated, and the MMM Program will be deemed concluded in this case.
23. If no report is filed or the report advises that no agreement was reached, the Debtor understands and agrees to file a feasible modified Chapter 13 plan to address the claim of the Creditor and the Debtor's other creditors. Failure to file such a modified plan within a reasonable period of time is cause for granting the Creditor relief from the automatic stay.

#### **Successful Mortgage Modification**

24. If the parties reach a modification, the Debtor will cooperate in promptly filing any documents with the Court including the filing of a modified Chapter 13 plan, if appropriate.

25. If the parties reach a modification, the Creditor agrees to promptly prepare and execute all necessary documents, including, as appropriate, the withdrawal or amendment of its proof of claim in the Debtor's bankruptcy case.
26. Upon successful completion of the MMM Program and entry into a mortgage modification agreement, the Debtor will not voluntarily dismiss this Chapter 13 case for at least nine months. The Debtor may seek relief from this provision for good cause shown.

WHEREFORE, the Debtor requests that, upon the Creditor's stipulation and consent, the Court enter an Order providing that the Debtor and the Creditor enter into MMM on the preceding terms.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Debtor

Attorney Name:

Firm Name:

Street Address:

Suite Number:

City, State, Zip:

Phone:

Fax:

email:

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