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U.S. COURTS
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Attorneys For: Citizens Community Bank

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

In the Matter of)	Bankruptcy No. 03-41775
)	
JOHN L. MERZLOCK,)	OBJECTION OF CITIZENS
)	COMMUNITY BANK TO CONFIRMATION
Debtor.)	OF DEBTOR'S SECOND AMENDED
)	CHAPTER 13 PLAN AND
_____)	RELATED MOTIONS

COMES NOW CITIZENS COMMUNITY BANK, an Idaho Banking Company, a creditor in the above referenced proceeding, by and through Craig W. Christensen, its attorney of record, pursuant to 11 U.S.C. 1324, Rules 3015 and 9014 of the Rules of Bankruptcy Procedure, and objects to the proposed confirmation of Debtors' Second Amended Chapter 13 Plan And Related Motions dated November 4, 2003, and moves the Court to deny confirmation of said Second Amended Chapter 13 Plan And Related Motions on the grounds:

1. That on or about the 13th day of March, 2003, Citizens Community Bank as Plaintiff, filed its adversary proceeding in the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Bannock under Case No. CV-2003-1198B naming the Debtor, John L. Merzlock, as a party Defendant.

OBJECTION OF CITIZEN COMMUNITY
BANK TO CONFIRMATION OF DEBTOR'S
SECOND AMENDED CHAPTER 13 PLAN
AND RELATED MOTIONS

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2. That on June 12, 2003, the Honorable N. Randy Smith, District Judge entered Judgment against the Debtor, John L. Merzlock, in an amount of \$206,256.14, comprised of a principal balance of \$189,675.21, accrued interest of \$12,592.30, advances of 400.00, additional interest of \$2,405.52, costs of court of \$173.11, and attorney fees of \$1,000.00.

3. That Debtor, John L. Merzlock, filed his petition under Chapter 13 of Title 11 of the U.S. Code on August 22, 2003 under bankruptcy case No. 03-41775 in the United States Bankruptcy Court for the District of Idaho.

4. That Debtor, John L. Merzlock, failed to file all schedules, the Statement of Affairs, and the Chapter 13 Plan on August 22, 2003 and was given an additional fifteen (15) days to file the same pursuant to Rule 1007(c).

5. That Debtor, John L. Merzlock, filed his Motion To Extend Time To File Schedules on or about September 8, 2003.

6. The Honorable Jim D. Pappas, Chief U.S. Bankruptcy Judge, executed his Order Granting Motion To Extend Time To File Schedules and granted Debtor until on or before September 15, 2003 to file his schedules, the Statement of Affairs, and the Chapter 13 Plan.

7. That Debtor, John L. Merzlock, failed to file his schedules, Statement of Affairs, and the Chapter 13 Plan on or before September 15, 2003; the schedules, Statement of Affairs, and

the Chapter 13 Plan were not filed by Debtor, John L. Merzlock, until September 16, 2003.

8. That Debtor, John L. Merzlock, had a judgment rendered against him in a separate State Court proceeding for in excess of \$1.0 million of damages and punitive damages.

9. That 11 U.S.C. §109(e) provides in part as follows:

"Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than (\$269,250.00) \$290,525.00 and noncontingent, liquidated, secured debts of less than (\$807,750.00) \$871,550.00 or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$269,250 \$290, 525 and noncontingent, liquidated, secured debts of less than (\$807,750.00) \$871,550.00 may be a debtor under chapter 13 of this title."

10. That Debtor, John L. Merzlock, in his schedule F reflects unsecured debts of \$518,887.74.

11. That Debtor, John L. Merzlock, is indebted to Citizens Community Bank in the judgment amount of \$206,246.14, which is an unsecured claim as reflected by Amended Proof of Claim filed by Citizens Community Bank in the bankruptcy proceedings.

12. That Debtor, John L. Merzlock, does not qualify under 11 U.S.C. §109(e) as "an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than (\$269,250.00) \$290,525.00..."

13. That John L. Merzlock, is a married individual and has failed to include all of the community assets, or separate assets, of his spouse in the bankruptcy estate.

14. That John L. Merzlock, is a married individual and has failed to include all of his partnership properties as property of the estate and the affiliated debts and obligations for which he is personally liable.

15. That Debtor, John L. Merzlock, failed to file his petition and proposed Second Amended Chapter 13 Plan and Related Motions in good faith as required by 11 U.S.C. §1325(a)(3).

16. That Debtor, John L. Merzlock, does not qualify with the requisite statutory standards to file a Chapter 13 proceeding.

17. That Debtor, John L. Merzlock, has failed to file a Plan which provides for and pays to Citizens Community Bank, either through the Trustee or outside the Plan, its allowed claim of \$206,246.14, together with accruing interest, costs and attorney fees.

18. That Debtor's proposed Second Amended Chapter 13 Plan And Related Motions fails to provide for or cure the pre-petition total amount in default over the term of the Second Amended Chapter 13 Plan in the amount of \$206,246.14, together with attorney fees and costs incurred in the bankruptcy proceedings.

19. Debtor's proposed Second Amended Chapter 13 Plan And Related Motions provides for payment through the Trustee of the sum

of \$500.00/per month for the months of October, 2003 through March, 2004, at which time the monthly installments shall increase to \$1,000.00/per month for the months of April, 2004 through September, 2006.

The proposed Second Amended Chapter 13 Plan and Related Motions does NOT provide for, or propose, the payment of any interest to parties in interest on their allowed claims over the term of the Plan; further, the said Second Amended Plan and Related Motions is only for a three (3) year term.

20. That Debtor's proposed Second Amended Chapter 13 Plan And Related Motions now proposes to make payments to Citizens Community Bank either inside or outside of the plan depending on whether or not the appeal of the Citizens Community Bank Judgment is affirmed or set aside.

21. That Debtor's proposed Second Amended Chapter 13 Plan And Related Motions provides in paragraph 1.1.1.b.iii. that if Debtor is obligated for payments to Citizens Community Bank, then the Debtor's residence will be sold and non-exempt proceeds of sale turned over to the Chapter 13 Trustee.

22. The Second Amended Chapter 13 Plan and Related Motions fails to provide for the required execution sale documents by Debtor's spouse, Karma Merzlock and without her cooperation and approval no sale of the subject real property can be sold or retained pending further Court order.

23. The Second Amended Chapter 13 Plan and Related Motions fails to provide a time period within which the real property (residence) will be marketed, the terms of the proposed sale, the involvement of a Court appointed Realtor, or the involvement of the Chapter 12 Trustee in such a sales process and distributions,

24. Debtor's Second Amended Chapter 13 Plan And Related Motions fails to require in paragraph 1.1.2 that all income tax refunds will be paid to the Trustee during the term of the plan to be used for payment by the Trustee on allowed claims.

25. Debtor's Second Amended Chapter 13 Plan and Related Motions fails to provide that payments shall be first applied to costs, attorney fees, and then to accrued interest and then the unpaid principal balance.

26. The proposed Second Amended Chapter 13 Plan And Related Motions in paragraph 4.2.2 provides that "Creditors shall apply the periodic payments under this plan, to the earliest payment that is due."; Creditors should have the option to apply the earliest payment to administrative and priority costs and expenses, prior

27. That Debtors' proposed Second Amended Chapter 13 Plan And Related Motions fails to provide for payment of the unsecured claim of Citizens Community Bank and further fails to comply with the requirements of 11 U.S.C. 1325(a)(4) in that it does not provide that "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed

unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date."

28. The Debtor's Second Amended Chapter 13 Plan And Related Motions has not been accepted by Citizens Community Bank as required by 11 U.S.C. 1325(a)(5)(A).

29. That Debtor's Second Amended Chapter 13 Plan And Related Motions fails to provide that the underlying terms and provisions of said Judgment granted to Citizens Community Bank will remain in full force and effect pending final payment of the allowed claim due Citizens Community Bank.

30. That the Judgment of Citizens Community Bank was payable in full as of June 12, 2003; Debtor's Second Amended Chapter 13 Plan and Related Motions does NOT propose to cure the amount in default within a period of thirty-six (36) months; that the Debtors' Second Amended Chapter 13 Plan And Related Motions does NOT propose to make payments outside of the plan to Citizens Community Bank and fails to provide that the balance due and owing shall be paid in full on or before completion of the Chapter 13 Plan.

31. That Citizens Community Bank is entitled to interest on its costs of court and its reasonable attorney fees pursuant to the Judgment at the highest lawful rate of interest and as required by 11 U.S.C. 506 and 1325(a)(5)(B)(ii) and as provided in paragraph 1.1.1.b. and other pertinent statutes and loan documents.

WHEREFORE, Citizens Community Bank respectfully rejects the proposed Second Amended Chapter 13 Plan And Related Motions of Debtor, John L. Merzlock, dated November 4, 2003, and requests that the Court deny confirmation of said Second Amended Chapter 13 Plan And Related Motions and requests an award of costs and reasonable attorney fees incurred in appearing and defending said claim in these proceedings, together with any and all other appropriate relief which the Court deems reasonable and proper.

DATED This 21st day of November, 2003.

CRAIG W. CHRISTENSEN, CHARTERED

By Craig W. Christensen
Attorney for Citizens Community Bank

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 21st day of November, 2003, a true and correct copy of the foregoing Objection of Citizens Community Bank To Confirmation of Debtor's Second Amended Chapter 13 Plan was mailed, postage prepaid thereon, to the below named parties:

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Attorney at Law
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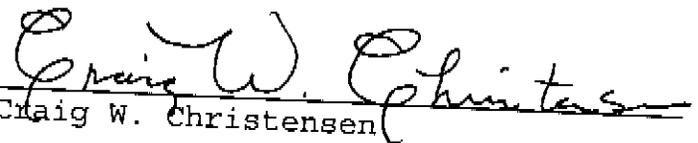
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