

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS**

IN RE:
David M. Montelongo

§
§
§
§
§

Case No.

Debtor(s)

Chapter 13 Proceeding

Notice: Local Rule 3002 provides, in part:

"Every Creditor filing a Proof of Claim in all cases shall transmit a copy with attachments, if any, to the Debtor's Attorney (or the Debtor if the Debtor is pro se) and the Trustee appointed in the case."

Creditors are further notified that **WITHOUT FURTHER NOTICE** the Plan may be amended at the Meeting of Creditors (341(a) meeting). Any amendment may affect your status as a creditor. The Debtor's estimate of how much the Plan will pay, projected payments and estimates of the allowed claims may also change. The following information is an attempt to advise Creditors of the status of the case based on the information known at the time of its preparation. Any special concerns of a creditor may justify attendance at the First Meeting of Creditors and such other action as may be appropriate under the circumstances. More detailed information is on file at the office of the United States Bankruptcy Clerk in El Paso, Texas.

DEBTOR'S CHAPTER 13 PLAN

- A. The Debtor's Plan Payment is scheduled at 150.00 per month [Pay Order, Direct Pay] for 60 months. The gross amount to be paid into the plan is 9,000.00.
- B. The Plan proposes to pay in full all allowed priority, special class and secured claims to the extent of the value of the collateral and approximately 14 % of the unsecured allowed claims.
- C. Value of non-exempt assets is 0.00.
- D. Monthly net income is 1,141.00, less expenses of 991.00, equals the amount available for plan, which is 150.00.
- E. If the payment of any debt is proposed to be paid directly by the Debtor outside the Plan, it is so noted in Section IV(1) set forth below.

I. Vesting of Estate Property

- Upon confirmation of the Plan, all property of the estate SHALL vest in the Debtor(s), and SHALL NOT remain as property of the estate subject to the automatic stay of 11 U.S.C. §362.
- Upon confirmation of the Pan, all property of the estate SHALL NOT vest in the Debtor(s), and SHALL remain as property of the estate subject to the automatic stay of 11 U.S.C. §362.

II. Lien Release

The holder of each secured claim shall retain the lien on the collateral securing its claim. Once a secured creditor (other than a creditor paid directly pursuant to this plan under 11 U.S.C. Section 1322(b)(2) & (b)(5)), has received payments which satisfy the creditor's secured claim, the creditor shall release the lien(s) securing its claim, except to the extent the Internal Revenue Code or the Bankruptcy Code operate to provide otherwise.

III. Executory Contracts/Unexpired Leases

Pursuant to 11 U.S.C. §1322(b)(7) of the Bankruptcy Code, the Debtor(s) hereby elects to assume the following executory contracts or unexpired leases. If any default exists, the Debtor's plan to cure such default is noted in Section IV (2)(E) set forth below:

Other Party	Description of Contract or Lease
-NONE-	

Pursuant to 11 U.S.C. §1322(b)(7) of the Bankruptcy Code, the Debtor(s) hereby elects to reject the following executory contracts or unexpired leases, if any:

Other Party	Description of Contract or Lease
-NONE-	

IV. Specific Treatment for Payment of Allowed Claims

1. DIRECT PAYMENTS BY DEBTOR TO CREDITORS

Creditor Name	Remarks	Debt Amount	Monthly Payment
-NONE-			

2. PAYMENTS BY TRUSTEE

A. Administrative Expenses

The Trustee may receive up to 10% of all sums disbursed, except on any funds returned to the debtor.

Creditor Name	Amount of Debt	Payment Method 1. Before 2. After, or 3. Along With Secured Creditors	Remarks
Edgar Borrego	1,995.00	3. Along With	Attorney Fees
Filing Fees	185.00	1. Before	Filing Fees

B. Secured Creditors

Creditor Name/Collateral	Estimated Amount of Debt	Value of Collateral	Monthly Payment or Method of Disbursement	Interest Rate	Anticipated Total to Be Paid	Other Treatment/Remarks
CitiFinancial 1984 Mercury Grand Marquis	2,282.00	1,450.00	Prorata	Cont. Rate*	1,450.00	*Up to 12%

C. Priority Creditors

Creditor Name	Estimated Amount of Debt	Payment Method 1. Before 2. After 3. Along With Secured Creditors	Remarks
-NONE-			

D. General Unsecured Creditors, [including claims from rejection of executory contracts]. (Describe treatment for the class of general, unsecured creditors.)

General Nonpriority Unsecured debts shall be paid **14** cents on the dollar and paid pro rata, with no interest if the creditor has no Co-obligors, provided that where the amount or balance of any unsecured claim is less than \$10.00 it may be paid in full.

Special Nonpriority Unsecured debts which are co-signed or are non-dischargeable shall be paid in full (100%) as listed below.

Creditor Name	Estimated Amount of Debt	Remarks
-NONE-		

E. Cure claims on Assumed Executory Contracts & Leases:

Creditor Name	Estimated Amount of Debt	Monthly Payment or Method of Disbursement	Remarks
-NONE-			

Totals:

Administrative Claims	2,180.00
Secured Claims	1,450.00
Priority Claims	0.00
Unsecured Claims	21,711.00
Cure Claims	0.00

F. Supplemental Plan Provisions

The above plan is a uniform Chapter 13 plan adopted for use in the El Paso Division of the Western District of Texas. None of its provisions can be altered except as hereinafter set forth in this Supplemental Plan Provision. To the extent any provision of the Supplemental Plan is in conflict with the provisions in the uniform plan, the Supplemental Plan shall prevail. Any provisions in the Supplemental Plan not provided for in the uniform plan, the Supplemental Plan shall prevail. Any provisions in the Supplemental Plan not provided for in the uniform plan shall become a part of the plan in addition to the provisions of the uniform plan.

The following are the Supplemental Plan Provisions:

- a. **ADMINISTRATIVE EXPENSES:** The Trustee shall first pay the expenses, as prescribed by the court, for administering the Plan. The balance, if any, of attorney's fees owed to the Debtor's attorney will be paid by disbursing the total amount of funds held by the Trustee at the time of the initial distribution under the Plan, less payment of court costs and payments authorized to the Trustee, and thereafter concurrently with priority and allowed secured claims, in full, with monthly installments over a period not to exceed twelve 12 months, and in advance of unsecured creditors. Debtor's attorney reserves the right to make demand at any time for full payment of balance of attorney's fees ahead of other claims. If the Debtor's Chapter 13 Plan is dismissed, then the Trustee shall apply any funds on hand or later received to the balance of the attorney's fees. Any funds remaining after the payment of the attorney's fees in full, shall be refunded to the Debtor. If the Debtor should decide to convert this Chapter 13 Plan to a Chapter 7 case, the Debtor's attorney may direct the Trustee to pay all payments received by the Trustee to the Debtor's attorney for attorney's fees to convert the case and represent the Debtor in the Chapter 7 case; or upon conversion to the Chapter 7 case, the Trustee shall refund any funds on hand to the Debtor if the attorney fees have been paid in full.
- b. **SHELTER:** In the event the Debtor is in arrears in any payments to creditors holding a mortgage on the Debtor's home or other shelter used as Debtor's residence, such delinquent payments shall be made by the Trustee before any distribution is made to Class 3 unsecured creditors.
- c. **TAX CLAIMS:** Priority claims for taxes which are deemed secured shall be paid in full. They shall receive interest under the Plan subsequent to the date of filing. Such secured tax claims shall be paid along with secured claims.

Priority claims for taxes which are deemed unsecured shall not accrue penalty or interest subsequent to the date of filing and such penalty or interest as might otherwise accrue thereafter shall be discharged upon conclusion of this proceeding. Such unsecured tax claims shall be paid along with secured claims.

Non-Priority claims for taxes which are deemed secured shall be treated as all other secured claims as set out in this Plan.

Non-Priority claims for taxes which are deemed unsecured shall be treated as all other unsecured claims as set out in this Plan.

Pecuniary tax penalty claims shall receive equivalent treatment and payment as the taxes to which the penalty attaches.

Non-Pecuniary tax penalty claims shall be subordinated to unsecured claims. Payments, if any, to this class will be on a pro-rata basis. They shall receive no interest. They

shall only be paid if all classes of unsecured claims are paid in full. Any balance remaining on claims for non-pecuniary tax penalties after the payment provided for herein, shall be discharged.

The Trustee shall classify or reclassify tax claims pursuant to the actual written claim or amended claim as filed herein by the taxing authority. Their classification shall be used by the Trustee irrespective of the original scheduling by the Debtor or any written claim filed on behalf of the taxing authority by the Debtor. The Debtor reserve the right to object to the amount or classification of any tax claim.

d. **PRIORITY CLAIMS:** All claims entitled to priority under Section 507 of the Bankruptcy Code will be paid in full in equal monthly installments.

e. **SECURED CLAIMS:** Secured creditors whose claims are timely filed, duly proved, and allowed shall be paid pro-rata.

The value, as of the effective date of this Plan, of property to be distributed under the Plan on account of secured claims is not less than the allowed amount of such claims. The holders of such claims shall retain their liens on the collateral which is security for such claims; provided, however, the Debtor elects to avoid the liens which are set aside by Section 522(f) of the Bankruptcy Code.

The status of claims shall be determined in accordance with Section 506 of the Bankruptcy Code and Bankruptcy Rules 3001 and 3002. Claims thought to be secured but which are found by the Court to be unsecured will be treated as unsecured.

f. **UNSECURED CLAIMS:** Unsecured claims will be divided into three classes, and each claim within a particular class shall receive the same treatment.

(1) Class 1 shall be all claims arising out of consumer debts for which any individual is liable with the Debtor by way of co-signature, guarantee, endorsement or otherwise. All claims in this class shall be paid in full, including interest, on a pro-rata basis.

(2) Class 2 shall be all claims based on NSF checks or any claims which might incur criminal sanction, or will be treated as priority claims.

(3) Class 3 shall be all other unsecured claims. Payments, if any, to this class will be on a pro-rata basis. Any Class 3 unsecured claims to be paid in the amount of \$50.00 or less may be paid, to such extent, in full, in equal installments, or as the Trustee elects, rather than on a pro-rata basis.

g. **STUDENT LOANS:** All non-dischargeable student loans, whose claims are timely filed and allowed, shall be treated as unsecured claims. They shall be paid along with unsecured claims on a pro-rata basis. Any balance remaining unpaid at the conclusion of the Plan shall not be discharged, including interest that has accrued as of the date the petition is filed.

h. **INTEREST:** No interest, penalty or additional charges shall be allowed on any account subsequent to the filing of the petition herein, except that interest shall be allowed on Class 1 claims as specified above and to fully secured creditors in accordance with Section 506(b) of the Bankruptcy Code.

i. **DEADLINE:** All claims must be filed within ninety (90) days after the first date set for First Meeting of Creditors and in accordance with Bankruptcy Rule 3002(c).

j. **INCREASE OR REDUCE PAYMENTS:** After hearing, upon such notice as may be designated, the Court may increase or reduce the amount of pay of the installments provided by the Plan, extend or shorten the time or any such payments where it shall be made to appear that the circumstances of the Debtor so warrant or require; provided, however, that nothing in this Plan shall be construed to prevent the granting of a discharge of the Debtor as provided in Section 1328 of the Bankruptcy Code.

k. **LENGTH OF PLAN:** The number of months allowed for repayment of debts shall be determined to be met when the Trustee receives a sum of money equal to the amounts she would have received in the number of months as provided by the Plan, or the Plan may be amended from time to time.

l. **REDEMPTION:** If the Debtor has paid the allowed secured claim in full, upon conversion to a Chapter 7 case, the collateral shall be considered as redeemed under 11 U.S.C. Section 722.

m. **USE OF CREDIT:** In the event the Debtor has a necessity to incur debt, an application for permission to incur debt must be filed with the Bankruptcy Court. If the amount is not more than \$500, then permission from the bankruptcy court is not necessary and no application needs to be filed. Permission from the court is also not needed to obtain a loan for educational purposes, nor is it necessary if the Debtors wish to refinance their existing mortgage if the refinancing will not result in a higher monthly mortgage payment.

n. **POST PETITION CLAIMS:** Any claim added to the plan under rule 11 U.S.C. 1305 shall be paid as if the claim arose immediately prior to the filing of this case. Specifically, any claims for taxes added to the plan under rule 11 U.S.C. 1305 shall be paid as an unsecured priority claim to be paid before any other pre-petition general unsecured claim.

o. **SURRENDER OF COLLATERAL:** In the event any collateral securing a claim is subsequently surrendered, either before or after confirmation, the claim shall thereafter be considered to be an unsecured claim and will be treated as such. The creditor will then have 120 days from the date of surrender to amend their claim for any deficiency amount, if any. In the event that the creditor does not amend their claim, it is assumed that the claim has been satisfied by the surrender, and the trustee shall not disburse any further payment to such creditor.

p. **RESERVATION OF CAUSES OF ACTION:** Debtor(s) reserve(s) the right to bring a lawsuit on any or all causes of action against any of their Creditors for loans made in violation of Texas Homestead Laws, Texas Home Equity Laws, FDCPA, FCRA, & any other state or federal consumer protection statutes. Debtor(s) reserve(s) the right to file said lawsuits at any time during the pendency of the Chapter 13 Bankruptcy or at any time thereafter.

q. **TAX ASSESSOR/COLLECTOR CLAIMS:** Post -Petition claims for property taxes, including claims for the year in which the case is filed, shall be paid outside the plan unless otherwise specifically included in the plan or announced at the 341 meeting of creditors.

r. **PROJECTED DISPOSABLE INCOME:** All of the debtor(s) projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan, unless the plan is a full pay plan.

SPECIAL PROVISIONS

Priority Claims shall be paid in full. Allowed secured claims shall be paid in full. Classes 1 and 2 unsecured claims shall be paid in full. Duly filed and allowed Class 3 unsecured claims shall receive a pro-rata distribution after payment of the foregoing, which may not pay them in full. If Class 3 unsecured claims will not be paid in full, neither payments nor duration of the Plan will be increased merely because of the Plan projected higher payments based upon information available to the Debtor at the time the Plan was filed. Any balance remaining on Class 3 unsecured claims after the payments provided for herein, shall be discharged. Any other dischargeable debt provided for by the Plan, but not paid shall be discharged upon completion of the Plan.

Updated Jul 2003
asd

Respectfully submitted _____.

David M. Montelongo

Signature of Debtor

Signature of Joint Debtor

Name and Address of Attorney for Debtor:

Edgar Borrego 00787107
Attorney for Tanzy & Borrego Law Offices
2610 Montana Avenue
El Paso, TX 79903-3712
(915) 566-4300 Fax:(915) 566-1122

United States Bankruptcy Court
Western District of Texas

In re **David M. Montelongo**

Case No. _____

Chapter **13**

Debtor(s)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the attached Chapter 13 Plan was served on _____, on the persons listed below and/or on the attached list, at the addresses listed, by the following method(s): **First Class Mail**.

/s/ _____

Edgar Borrego 00787107

Attorney for Tanzy & Borrego Law Offices

To creditors:

Bank of America
P.O. Box 1390
Norfolk, VA 23501-139

Chase
P.O. Box 52188
Phoenix, AZ 85072-218

CitiFinancial
500 N. Zaragosa, Ste. P
P.O. Box 17629
El Paso, TX 79917-762

Drive-In Loans
320 S. Stanton
El Paso, TX 7990

El Gallito Ingles
9407 Alameda
El Paso, TX 7990

El Paso Physical Therapy
Louis Zuniga
8111 N. Loop
Suite B
El Paso, TX 7990

First Finance
408 E. Paisano
El Paso, TX 7990

MBNA America
P.O. Box 15026
Wilmington, DE 19850-502

Plaza Finance
300 E. San Antonio
Ste. B
El Paso, TX 7990

TAM Finance
615 N. Zaragosa
El Paso, TX 7990

Union Finance
400 S. Stanton
El Paso, TX 7990

Wal-mart
MCCBG
P.O. Box 103042
Roswell, GA 3007

Washington Mutual Finance
1360 Lee Trevino, #206
El Paso, TX 7993
