

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re:	)	Case No. 06-52898
	)	Chapter 13
Donald R. Padgett and	)	SSN: XXX-XX-0844
Joy A. Padgett,	)	SSN: XXX-XX-0844
	)	
Debtor.	)	Judge C. Kathryn Preston

**THIRD AMENDED CHAPTER 13 PLAN FILED UNDER BAPCPA**

Above Median Income  \_\_\_\_\_  
 Below Median Income \_\_\_\_\_

The Debtor is entitled to relief under Chapter 13 of the Bankruptcy Code and proposes a plan as follows:

1. The future earnings of the Debtor are submitted to the supervision and control of the Trustee and the Debtor shall pay the Trustee the sum of **\$7,000.00 per month for one (1) month, \$825.00 per month for fifty-eight (58) months and \$42,000.00 per month for one (1) month.** Distributions to begin upon confirmation pursuant to 11 U.S.C. § 1326(a).
2. From the payments so received, the Trustee shall make disbursements, subject to the Trustee's fee, pursuant to the paragraphs marked below:

**Pre-Confirmation Adequate Protection Payments/Lease Payments**

The following pre-confirmation adequate protection payments on claims secured by personal property and pre-confirmation lease payments for leases of personal property shall be paid by the Trustee to the below listed creditors. Secured creditors must file a proof of claim to receive payment. Payments will be reserved by the Trustee until confirmation and paid after confirmation to these creditors. If the Chapter 13 case is dismissed or converted, the Trustee shall pay the reserved payments to the creditors as listed below. The Trustee is entitled to receive his fees on these payments.

Creditor	Lease/PMSI	Property Description	Monthly Payment
<b>Ohio Heritage Bank</b>	<b>Loan</b>	<b>2003 Jeep Liberty</b>	<b>\$176.30</b>

**Administrative expenses, attorney's fees, and priority payments** as required under § 1326(b). The total attorney fee as of the date of the filing of the petition was \$2,324.00. Nothing was paid to Counsel by the Debtors prior to filing. **On November 14, 2006, Counsel for the Debtors filed an application for the approval of his unpaid fees and expenses in this matter in the amount of \$7,344.95. On January 5, 2007, Counsel for the Debtors filed and Amended Application for the approval of his unpaid fees and expenses in this matter which remain unpaid totaling \$9,367.69 through December 31, 2006. \$6,400.00 of the balance due Counsel shall be paid with the first payment due under the Plan. The remaining balance due Counsel shall be paid at the rate of \$450.00 per month until paid in full.** The debtor(s)' attorney will be paid all allowed fees in full after payment of Class 1 claims and concurrently with Class 2 claims but before Class 3, Class 4, or Class 5 claims.

**Class 1 Current Mortgage Payments**

  X   Payments on Debtor(s)' home secured by 1<sup>st</sup> mortgage (and subsequent mortgages, if applicable) shall be paid directly by Debtor(s), if in compliance with LBR Rule 3015-1(d). **The collateral securing the following Claims is insured through the Vaneman Insurance Company of Coshocton, Ohio;**

<u>Creditor</u>	<u>Property Address</u>
Home Loan Savings Bank 401 Main Street Coshocton, Ohio 43812 <b>(1<sup>st</sup> Mortgage-\$375.00 per mo., to be paid by the Debtors outside the Plan)</b>	871 Walnut Street Coshocton, Ohio 43812
JP Morgan Chase Bank OH2-5170 528 S. Main Street Akron, Ohio 44311 <b>(2<sup>nd</sup> Mortgage-\$600.00 per mo., to be paid by the Debtors outside the Plan)</b>	871 Walnut Street Coshocton, Ohio 43812

Upon the foreclosure or other sale of the real property owned by the Debtors that is located at 831 Walnut Street, Coshocton, Ohio 43812 (the "Rental Property"), the first mortgage lien on such property and the first mortgage lien on the real property owned by the Debtors and located at 871 Walnut Street, Coshocton, Ohio 43812 (the "Residence") totaling approximately \$22,464.61 shall be paid in full (the first mortgage lien held by Home Loan Savings Bank covers both the Rental Property and the Residence). At that time, the Debtors shall pay outside the Plan the additional sum of \$375.00 per month to JP Morgan Chase Bank ("JP BANK") upon its second mortgage lien upon the Residence, which lien shall become a first mortgage lien upon such property upon the sale of the Rental Property. Notwithstanding the foregoing, the secured claim of JP Bank upon the Residence shall be limited to \$62,535.39 until the foreclosure or other sale of the Rental Property. At the time of the foreclosure or other sale of the Rental Property, the secured claim of JP Bank upon the Residence shall be limited to \$85,000.00 and the mortgage and other loan documents associated therewith shall be modified to provide for a principal balance of \$85,000.00 on the secured claim of JP Bank upon the Residence (less the principal portion of any payment received by JP Bank from the Debtors upon such claim from and after the Petition Date), together with interest at the rate of 6.78% per annum and a Maturity Date of fifteen years (15) years from the date of the entry of an Order confirming this Plan. The Debtors presently anticipate that the foreclosure or other sale of the Rental Property shall be completed within one (1) year from the Petition Date.

**AND/OR**

       Payments on Debtor's home secured by 1<sup>st</sup> mortgage (and subsequent mortgages, if applicable) and if payments are in arrears as of the petition filing date shall be made during the plan by the Trustee on a conduit basis and subject to his full fees beginning with the month of \_\_\_\_\_, **2006**. Unless otherwise provided by the plan, if such mortgage payment is to begin after the month in which the petition is filed, the Debtor is personally responsible to make direct payments to the mortgage creditor of all mortgage payments due after the petition was filed and up to, but not including, the month specified for the Trustee to commence payments. ***Any post-petition mortgage arrearage that accrues after the above-mentioned date shall be treated concurrently with Class 4 claims.***

Creditor	Property Address	Monthly Payment / Arrearage
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NOTE: If sufficient funds are not available to make a full monthly payment on all the Class 1 claims, the available funds should be distributed to the Class 1 creditors on a pro rata basis based on the unpaid specific monthly payments due through that month's distribution.

**Class 2 secured creditors and unexpired leases for which the plan designates specific monthly payments. Paid after current monthly payments on Class 1 claims and before post-petition arrearage on Class 1 claims.**

**All secured creditors in this category shall retain their liens until the earlier of discharge or payment of the underlying debt determined under non-bankruptcy law. Rejecting secured creditors and all other secured creditors are to be paid the current market rate of interest or note rate, whichever is lower, on their allowed secured claim, which shall be six percent (6%), unless otherwise stipulated.**

\_\_\_\_ (a) Claims to which § 506 valuation is NOT applicable. Claims listed in this subsection consist of debts secured by a purchase money security interest in a vehicle for which the debt was incurred within 910 days of filing the bankruptcy petition, or, if the collateral for the debt is any other thing of value, the debt was incurred within 1 year of filing.

(1)\_\_\_\_\_ The lien holder is to be paid in full with interest and in equal monthly payments as specified below:

Creditor	Property Description	Purchase Claim Date	Interest Amount	Rate	Monthly Payment
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**OR**

(2)\_\_\_\_\_ The collateral as described below is to be surrendered to the lien holder in full satisfaction of the debt.

Creditor	Property Description

**OR**

(3)\_\_\_\_\_ Debtor(s) propose(s) to value the vehicle or personal property as if § 506 applies. The proposed value of such property is secured as indicated below upon written agreement or stipulation with the Creditor and the balance is unsecured. If there is no written agreement or stipulation prior to confirmation, debtor(s) shall surrender the collateral as in (a)(2) above.

Creditor	Property Description	Secured Valuation (Replacement Value)	Interest Rate	Monthly Payment
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  X   (b) Claims to which § 506 valuation is applicable.

(1) Claims listed in this subsection consist of any claims secured by personal property not described above. Secured claims in this category will retain their liens and will be paid the full value of the personal property in accordance with § 506 with valuation determined in accordance

with Local Rules, unless otherwise stipulated. To the extent secured creditors' claims are in excess of the collateral value, the balance will be treated as an unsecured Class 5 claim. Rejecting secured creditors and all other secured creditors are to be paid the current market rate of interest or note rate, whichever is lower, on their allowed secured claim, which shall be six percent (6%), unless otherwise stipulated. If the estate is determined to be solvent, all secured and unsecured creditors are to be paid the lesser of the note rate or a current market rate of interest on their allowed claims which shall be six percent (6%). **The collateral securing the following Claims is insured through the Vaneman Insurance Company of Coshocton, Ohio.**

Creditor	Property Description	Purchase Claim Date	Amount	Interest Rate	Monthly Payment
Ohio Heritage Bank	2003 Jeep Liberty	June, 2003	\$5,795.00	6%	\$176.30

(2) Property to be surrendered with any resulting deficiency balance to be treated as a general unsecured Class 5 claim.

Creditor \_\_\_\_\_ Property to be Surrendered \_\_\_\_\_

\_\_\_\_\_ (c) Executory contracts and vehicle leases.

\_\_\_\_\_ Debtor hereby rejects the following executory contracts with any resulting claim to be treated as unsecured:

**OR**

\_\_\_\_\_ Debtor hereby assume the executory contract or vehicle lease of \_\_\_\_\_

\_\_\_\_\_ lease payments to be made by Debtor in accordance with the terms of the original contract as term of lease is longer than term of plan and arrearage on lease is two months or less;

**OR**

\_\_\_\_\_ lease payments to be disbursed by the Trustee as lease payment arrearage in excess of two (2) months or the term of the lease is shorter than the term of the plan (LBR 3015-1(c)(I)). Post-petition lease payments are \$\_\_\_\_\_ per month for \_\_\_\_\_ months. Lease arrearage, if applicable, is approximately \$\_\_\_\_\_ and will be paid as a Class 4 claim.

Any post-petition arrearage that accrues on Class 2 claims shall be treated concurrently with Class 4 claims.

**NOTE: If sufficient funds are not available to make a full monthly payment on all the Class 2 claims and attorney fees, the available funds shall be distributed to the Class 2 creditors and attorney on a pro rata basis based on the unpaid specific monthly payments due through that month's distribution.**

**Class 3 Priority claims listed on Schedule E including Domestic Support Obligations. Paid after current monthly payments on Class 2 claims and before post-petition arrearage on Class 2 claims. Class 3 claims shall be paid pro rata and concurrently with Class 4 claims.**

**All claims entitled to priority under § 507(a) shall be paid in full unless the holder of a particular claim agrees to a different treatment of such claim except for a priority claim under § 507(a)(1)(B). It is further provided that any and all pre-petition penalties, and post-petition penalties and**

interest, which have attached or will be attached to any such claim shall be treated as general unsecured claims and not entitled to priority.

**Domestic Support Obligations**

None

The Debtor is required to pay all post-treatment domestic obligations directly to the holder of the claim and not through the Chapter 13 Trustee.

The names, addresses and phone numbers of the holder of any domestic support obligation as defined in § 101(14A):

Name	Address, City, State and ZIP	Telephone Number
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The names, addresses and phone numbers of the State Child Support Enforcement Agency:

Name	Address, City, State and ZIP	Telephone Number
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Arrearage owed to Domestic Support Obligation holders:

None

Name of holder of Domestic Support Obligation Arrearage Claim:

Name of Creditor	Estimated Arrearage Claim
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Name of governmental unit to which a Domestic Support Obligation Arrearage Claim has been assigned, or is owed, or is recoverable by, and the estimated arrears:

Name of Creditor	Name of Governmental Unit	Estimated Arrearage Claim	Proposed Treatment
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Other Priority Claims (tax claims, etc.). Priority tax payments required to be paid by § 1322(a)(2) are to be paid pro rata with the other Class 3 and Class 4 claims:

Creditor	Estimated Claim
City of Coshocton Tax Department 760 Chestnut St. Coshocton, OH 43812	\$161.27
<b>State of Ohio Dept.of Taxation State Office Tower 30 E. Broad St. Columbus, OH 43266-0404</b>	<b>\$6,656.71</b>
State of Ohio Dept.of Taxation P.O. Box 182402	

**Class 4 pre-petition and post-petition mortgage arrearage, pre-petition and post-petition lease arrearage, and other secured claims not otherwise designated. Class 4 claims shall be paid pro rata, concurrently and in full, with Class 3 claims.**

\_\_\_\_\_ Arrearage on residential mortgage loan(s). No interest shall be paid on any pre-petition mortgage arrearage as part of the cure of the default if the mortgage was entered into after October 22, 1994.

Creditor	Property Address	Estimated Arrearage Amount
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\_\_\_\_\_ Arrearage on assumed leases or executory contracts. Debtor(s) propose(s) to cure defaults to the following creditors:

Creditor	Property Address	Estimated Arrearage Amount
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**Class 5 General Unsecured Claims**

  X   After payment of allowed claims in Class 1, 2, 3, and 4, **allowed non-contingent, liquidated, general unsecured claims** shall be paid **\$56,127.25** or a threshold dividend of **50%**, whichever is greater, pursuant to 11 U.S.C. § 1325(a)(4).

**Additional Provisions**

\_\_\_\_\_ Co-signed loans or accounts of \_\_\_\_\_ to be paid outside of plan by the co-signer and to be considered a contingent debt.

**OR**

\_\_\_\_\_ Co-signed loans or accounts of \_\_\_\_\_ to be paid 100% with interest at the contract rate. Said co-signed loans or accounts shall be treated as Class 1, 2, 3, 4 or 5 claims, as appropriate.

**OR**

\_\_\_\_\_ Co-signed loans or accounts of \_\_\_\_\_ to be paid at the same dividend as general unsecured claims.

**Tax Returns**

  X   All tax returns and tax reports due pre-petition have been filed.

\_\_\_\_\_ All tax returns and tax reports due as of the date of petition have not been filed.

Tax Agency	Kind of Tax	Tax Period	Date Return Will Be Filed
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**Sale of Assets**

The debtor(s) propose(s) to sell the described real or personal property, after court/trustee approval and notice to creditors and the trustee, and will commit the proceeds as follows:

Property Description	Date By Which Sale Is To Be Completed	Total Proceeds	Disposition of Proceeds
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**NONE**

Confirmation of the plan vests all of the property of the estate in the Debtor pursuant to § 1327. The bankruptcy estate, including the property vesting in the Debtor at time of confirmation, shall continue until the case is closed, dismissed or converted, whichever occurs first.

The effective date of the Plan shall be the date of confirmation of the Plan.

Debtor provides that all of his projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

**Special Provisions, If Any:**

- (a) Upon demand, utility companies requiring security deposits shall be paid through the plan.
- (b) The Debtors shall surrender the Rental Property to the holders of the 1st mortgage lien and second lien on such property. Except as otherwise provided herein, upon the sale of the Rental Property, any remaining amounts due and owing the first mortgage holder or the second lien holder on such property shall be treated as an unsecured claim.
- (c) The Residence which he is secured by a first mortgage lien in favor of Home Loan Savings Bank("HLSB"), a second mortgage lien in favor of JP Bank and a third mortgage lien in favor of Chase Bank ("CB") had a value as of the Petition Date of \$85,000.00. Since the value of said real property, is less than the amount of the secured claims of HLSB and JP upon such property, the lien of CB against the Residence shall be released and canceled of record upon completion of an adversary proceeding to be filed by the Debtors against CB to determine the validity and priority of its lien. CB, as a wholly unsecured creditor, shall have its claim paid entirely as a Class 5 Claim.
- (d) From and after the date of the filing of this Plan, should the Debtors' income situation change, the Debtors shall make a report to this Court as to the impact of such change and shall promptly propose a modification to the plan if the change results in a positive gain in the Debtors' net disposable income.
- (e) **JP Bank has a contingent claim in this proceeding of approximately \$707,190.75, which claim is secured by liens on the Rental Property and the Residence with a secured value of at most \$104,535.39. In addition, in their schedules, the Debtors also listed as contingent the claims of Konica Business Tech, Inc., SP Richards and US BanCorp. which totaled \$224,441.98. On the Petition Date, the business assets of the primary obligor of these contingent debts, Main Office Supply, Inc. ("Main"), a closely held corporation previously owned by the Debtors, were subject to a first lien in favor of JP Bank and were in the hands of a receiver, which assets had an estimated value of at least \$528,625.00 on such date (the "Business Assets"). The Debtors propose that these contingent debts shall be paid first through the liquidation of the Business Assets. Should the Business Assets be insufficient to pay these contingent debts in full, then the Debtors shall advise the Court of such fact and shall apply to this Court for authority to modify this Chapter 13 Plan to provide for the payment of the amounts remaining due and owing the contingent creditors as unsecured claims.**

- (f) In 1996, the Debtor, Joy A. Padgett ("Mrs. Padgett), received by bequest from her deceased parents, a one-third interest in approximately 250 acres of unimproved real property located in Coshocton County, Ohio (the "Real Property"). Thereafter, on or about February 3, 2006, Mrs. Padgett transferred her interest in the Real Property to her brothers, William L. Dickerson and Victor W. Dickerson, for no consideration (the "Real Property Transfer"). Between the date Mrs. Padgett received her interest in the Real Property until the date of the transfer of such interest, Mrs. Padgett did not derive any income or other benefit from such property. Nevertheless, at the time of the Real Property Transfer, Mrs. Padgett submits that the Real Property had a total value of approximately \$140,000.00. Assuming a ten percent (10%) cost of sale factor, Mrs. Padgett believes that her interest in the Real Property as of the date of the Real Property Transfer was \$42,000.00. Accordingly, in order to provide a benefit to their creditors for Mrs. Padgett's interest in the Real Property, this Plan provides for the payment of the sum of \$42,000.00 in the final month of the Plan from either the sale or refinancing of the Real Property, which sale or refinancing the Wilkersons have agreed to accomplish.

Dated: January 18, 2007

/s/ Donald R. Padgett  
Donald R. Padgett, Debtor

/s/ Joy A. Padgett  
Joy A. Padgett, Debtor

**SUBMITTED BY:**

/s/ Robert E. Bardwell, Jr.  
Robert E. Bardwell, Jr. (0040701)  
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Attorney for Debtors,  
Donald R. Padgett and Joy A. Padgett

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon the individuals identified below on this 18<sup>th</sup> day of January, 2007 to, by ordinary U.S. mail or electronic mail.

/s/ Robert E. Bardwell, Jr.  
Robert E. Bardwell, Jr.

**SERVICE LIST**

Office of the U.S. Trustee  
(via electronic mail)

Frank M. Pees  
Chapter 13 Trustee  
(via electronic mail)

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Joy A. Padgett  
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Coshocton, Ohio 43812

Thomas R. Merry, Esq.  
*(via electronic mail)*

Allen J. Reis, Esq.  
175 S. 3rd St, Suite 900  
Columbus, OH 43215

Chase Bank  
P.O. Box 4661  
Houston, TX 77210

Chase Bank  
P.O. Box 24714  
Columbus, OH 43224

Chase Bank  
P.O. Box 15298  
Wilmington, DE 19850-5298

City of Coshocton, Tax Department  
760 Chestnut Street  
Coshocton, OH 43812

Home Loan Savings Bank  
401 Main Street  
Coshocton, OH 43812

Horizon USA  
c/o Samuel R. Grafton, Esq.  
225 W. 34th Street, Ste. 1609  
New York, NY 10122-1600

Huntington National Bank  
P.O. Box 1558 EA 1W37  
Columbus, OH 43216-1558

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Unionville, CT 06085

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Coshocton, OH 43812

Ohio Heritage Bank  
P.O. Box 77046  
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SP Richards  
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Atlanta, GA 30384

State of Ohio Dept. of Taxation  
State Office Tower  
30 East Broad Street  
Columbus, OH 43266-0404

State of Ohio Dept. of Taxation  
P.O. Box 182402  
Columbus, OH 43218

TCM/Home Loan Savings Bank  
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Tampa, FL 33631

US BanCorp  
P.O. Box 790448  
Saint Louis, MO 63179