

Hon. John E. Waites, Chief Judge
United States Bankruptcy Court

Telephone Number: 803-253-3751

Law Clerk: Sarah Kistler

Telephone Number: 843-727-4112.

Law Clerk: David Jones

Proposed Orders Due from Court are to be e-mailed to judgewaites_porders@scb.uscourts.gov in Word or WordPerfect format only.

Proposed Joint Statements of Dispute and Proposed Joint Pretrial Orders (unless otherwise directed specifically by the Judge to be e-mailed to judgewaites_porders@scb.uscourts.gov) are to be filed on CM/ECF using the events of the same title.

Preferred method of communication to chambers regarding hearings or calendar-related matters: e-mail correspondence to judgewaites_porders@scb.uscourts.gov.

Deadline to request continuance or notify Court of settlement or withdrawal in order to remove a matter from the docket: 10:00 a.m. two business days before the hearing.

Hon. Helen Elizabeth Burris
United States Bankruptcy Court

Telephone Number: 864-591-5315

Judicial Assistant: Reggie Reinovsky

Law Clerk: Lauren Thorne

Proposed Joint Statements of Dispute, Proposed Joint Pretrial Orders, and Proposed Orders Due from Court (unless otherwise directed specifically by the Judge to be e-mailed to judgeburris_porders@scb.uscourts.gov) are to be filed on CM/ECF using the events of the same title.

Deadline to request continuance or notify Court of settlement or withdrawal in order to remove a matter from the docket: 10:00 a.m. on the day before the hearing.

Hon. David R. Duncan
United States Bankruptcy Court

Telephone Number: 803-765-5657

Judicial Assistant: Jacqueline Phillips

Law Clerk: Dawn Hardesty

Proposed Joint Statements of Dispute, Proposed Joint Pretrial Orders, and Proposed Orders Due from Court (unless otherwise directed specifically by the Judge to be e-mailed to judgeduncan_porders@scb.uscourts.gov) are to be filed on CM/ECF using the events of the same title.

Deadline to request continuance or notify Court of settlement or withdrawal in order to remove a matter from the docket: 10:00 a.m. on the day before the hearing.

CONTINUANCES, SETTLEMENTS AND WITHDRAWALS

This section applies to all matters on the Court's docket, with the exception of adversary proceedings. For matters set for trial by scheduling order, such proceedings or matters typically involve more advance preparation by the Court and therefore may require notification of a settlement, withdrawal (to the extent proper), or continuance several days in advance of trial. Consent orders may also be required.

Settlements in General. In order to relieve the Court from unnecessary preparation, settlements should be reported by filing a Notice of Settlement and Request for Removal from the Court Hearing Calendar in CM/ECF. Using the Notice of Settlement event sufficiently in advance, typically prior to 10:00 a.m. on the day before the hearing for Judges Burris and Duncan and 10:00 a.m. two business days prior to the date of the hearing for Judge Waites, may be sufficient to be excused from the hearing, depending on the nature of the proceeding.

Settlement of a Motion for Relief from the Automatic Stay. Any settlement of a motion to modify the automatic stay, where the trustee is not a party to the settlement, must indicate that the trustee did not object to the relief requested. Absent grounds under Fed. R. Civ. P. 59(e) or 60, the Court will not approve the settlement of a motion to reinstate the automatic stay where the automatic stay had previously been duly lifted by the creditor. In chapter 13 cases, the Court may enter an order entitled "Order Allowing Resumption of Payments by Trustee," attached as Exhibit A, upon the parties' agreement which provides that the chapter 13 trustee resume pre-petition debt payments to the creditor pursuant to the chapter 13 plan and that upon the future failure by debtor to pay according to the agreement between the debtor and creditor, the creditor may continue its state court collection actions without further order. Such an order should be considered only once in a case between the same creditor and debtor. The chapter 13 trustee's consent is necessary in either instance.

Failure to Comply with Settlement of Motion for Relief from the Automatic Stay. If a prior consent order has provided for *ex parte* relief from the automatic stay upon any further default, the attorney for the movant that filed the original motion, where practicable, may submit a certification of the debtor's noncompliance and a proposed order granting the relief sought. The proposed order shall specifically state the details of the default, including the specific time period for which payments were not made. Modification of the stay is effective only upon entry of the order.

Withdrawals. Withdrawals of an objection or pleading upon which a hearing was set should be in writing and filed before 10:00 a.m. on the day prior to the hearing for Judges Burris and Duncan and 10:00 a.m. two business days prior to the date of the hearing for Judge Waites. The withdrawal must state the reason for the withdrawal, indicate that any responding party has consented to such withdrawal, and state that parties receiving notice of the hearing do not oppose the withdrawal and are not expected to appear at the hearing. A withdrawal may be filed using the Withdrawal from the Court Calendar (text only) event in CM/ECF. Withdrawals any later than the stated deadline may affect the Court's calendaring and parties' schedules and therefore will require attendance at the hearing unless otherwise excused.

Continuances.¹ Continuances may be granted by submission of a proposed consent order of continuance or by requesting such continuance by facsimile at 803-253-3464 (Judge Waites), or 803-253-3996 (Judge Duncan). For all judges, and subject to the deadlines below, a continuance may also be requested by using the Request for Continuance event in CM/ECF. A continuance must be requested sufficiently in advance of the hearing, typically by 10:00 a.m. the day prior to the hearing for Judges Burris and Duncan and 10:00 a.m. two business days prior to the date of the hearing for Judge Waites, in order to avoid unnecessary preparation by the Court. Extraordinary circumstances such as illness or family emergency will also be considered. The following information is helpful in order to obtain a continuance: the nature of the dispute, the reason for the continuance, whether consents to the continuance have already been obtained and from whom, the time needed before the next hearing and specifics regarding the dispute. In obtaining an agreed upon continuance, all parties to the request shall be understood to have no scheduling conflicts for the continued date. The continued hearing may be set for any Court location in the District of South Carolina and before any judge of the Court if so designated. With regard to motions for relief from the automatic stay, a request for a continuance by the movant or consent to a continuance by movant shall be deemed a waiver of the automatic lifting of the stay pursuant to 11 U.S.C. § 362(e).

Calendar Removal Request. If the parties are seeking to have a matter removed from the calendar, a separate calendar removal request should be filed on CM/ECF unless the specific text only event in CM/ECF, referenced above, to note a settlement or withdrawal or request a continuance is used.

¹ Continuances of matters on the Court's chapter 13 docket may require submission of a joint statement of dispute at a time and date set by the Court.

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

CASE NO: _____
CHAPTER:

ORDER ALLOWING RESUMPTION
OF PAYMENTS

Debtor(s).

THIS MATTER comes before the Court pursuant to a Motion to Reconsider Order Granting Relief from the Automatic Stay or a Motion for Resumption of Payments under chapter 13 plan filed by the Debtor(s) on _____.

Upon consideration of the Motion and record in this case, the Court finds that insufficient grounds have been stated pursuant to Fed. R. Civ. P. 60 for relief from the Order granting relief from the automatic stay. However, upon the consent of the parties and the chapter 13 trustee, the Court authorizes the trustee to resume payments to _____ ("Creditor") to cure the pre-petition arrearage pursuant to the previously confirmed chapter 13 plan under the following conditions:

1) By the consent evidenced below, the chapter 13 trustee recommends resumption of these payments as in the best interests of all creditors because it promotes the likelihood of a successful reorganization.

2) A written forbearance agreement, separate and distinct from any settlement order previously entered in this case, has been entered between Debtor(s) and Creditor and clearly provides the terms upon which the Creditor shall forbear from collecting against the subject collateral. The terms of the forbearance agreement include the resumption of payments through the chapter 13 trustee to the Creditor according to the plan. A copy of said forbearance agreement has been provided to the chapter 13 trustee, but shall not be filed with the Court.

3) The parties agree that a resumption of payments in this fashion may be requested and granted only once in the chapter 13 case and that upon the trustee's receipt of written request from either Debtor(s) or Creditor, the resumption of payments may be terminated by the trustee without further direction or order from the Court.

4) Creditor has a duty to advise the chapter 13 trustee in writing of any future default in the forbearance agreement and/or any other cause which leads to Creditor's renewal of efforts to liquidate or collect against the subject collateral. Upon that event, the trustee may discontinue payments under the plan without further direction or order from the Court.

AND IT IS SO ORDERED.

CHAPTER 7 AND CHAPTER 11 CALENDAR (Judge Waites)

By no later than **10:00 a.m. two (2) business days prior to a scheduled hearing**, the party who initiated the matter giving rise to the hearing **on a Chapter 7 or 11 calendar** or his counsel, shall confer with counsel for all parties who have filed a response regarding the matter and report to chambers via e-mail to **judgewaites_porders@scb.uscourts.gov** whether the matter on the calendar is unopposed, settled, or otherwise resolved, or is otherwise expected to be removed from the hearing calendar.

If contested, the parties should be prepared to provide the following information:

1. The issues and the positions of the parties (if not otherwise clearly stated in the pleadings and other filings with the court, in which case the relevant pleadings should be specifically referenced),
2. The number and names of witnesses expected to be called to testify,
3. A list of the exhibits and documentary evidence, marked prior to the hearing, to be presented,
4. The applicable statutory or case law (unless otherwise fully cited in the pleadings or prior filings, in which case the relevant pleadings should be specifically referenced),
5. The estimated length of hearing, and
6. The telephone, fax number, and e-mail address of all participating counsel.

CONTESTED MATTERS

- **Extensions of Time for Filing of Pleadings in Contested Matters.** No extensions of time may be granted by one party to another on any deadline relating to the filing of a responsive pleading initiating a contested matter or responding to a pleading that initiates a contested matter.
- **Scheduling Orders.** If discovery is necessary to prepare for a hearing in a contested matter, a scheduling order may be requested by any party after consulting with all other parties. Whether all parties consent to the entry of a scheduling order should be noted.
- **Joint Stipulation.** Joint stipulations may be required to be submitted in the manner provided by the scheduling order.
- **Submission of Exhibits.** An original and one copy of all paper exhibits are to be submitted to the courtroom deputy and are not to be filed on CM/ECF.

ADVERSARY PROCEEDINGS

- **Introduction.** In order to balance the parties' desire for quick resolution, counsels' need to be fully prepared, and the Court's desire to stay current in its workload, standard procedures have been developed by the Judges.
- **Scheduling Orders.** In lieu of regular initial pretrial or status conferences which require parties' attendance, counsel are notified by chambers to meet the requirements of Fed. R. Civ. P. 16 and requested to advise the Court of the time necessary for discovery. Scheduling orders are thereafter entered.
- **Modification of Scheduling Orders.** If the parties wish to alter a deadline in a scheduling order, and it does not require the rescheduling of a hearing before the Court, you may contact chambers, indicating the proposed change and whether all parties agree to the modification. If the proposed amendment would necessitate rescheduling a matter already noticed for hearing or trial, the parties must file a motion seeking an amended scheduling order and indicate the reasons therefor, whether all parties consent, and the status of discovery efforts. An agreement to modify a deadline or a request to so modify is not effective absent entry of an amended scheduling order by the Court.
- **Extensions of Time for Filing of Responsive Pleadings in Adversary Proceedings.** A party which has asserted a claim against another party in an original or amended pleading may grant to that party, prior to the expiration of the original deadline, and without a Court order, one extension of time to respond to the pleading. The extension may not exceed fourteen (14) days. All such extensions must be in writing and in the form of a certification of extension, properly captioned in accordance with Fed. R. Bankr. P. 9004, and signed by a party to the extension agreement. In order for the Court to effectively monitor defaults, any certification of extension must be filed with the Court prior to the expiration of the original response deadline. Further extensions may be granted pursuant to a motion demonstrating exceptional circumstances or consent orders which propose extensions or agreements between counsel which meet these requirements.
- **Joint Pretrial Orders.** Pretrial orders are to be submitted timely on CM/ECF.

The parties need not agree on every matter contained therein in order to submit the order as joint. If there is disagreement on a matter, the joint pretrial order can reflect the disagreement.
- **Submission of Exhibits.** An original and one copy of all paper trial exhibits are to be submitted to the courtroom deputy at the same time as the filing of the joint pretrial order. Trial exhibits are not to be filed on CM/ECF.

- **Scheduling Trials.** In order to accommodate counsel when possible, alternative trial dates are often provided to counsel in writing. Counsel are requested to confer and agree upon a preferred date and an alternative date and advise chambers. Thereafter an order setting trial will be entered.
- **Dismissal of Adversary Proceedings.** Dismissals of adversary proceeding are governed by Fed. R. Bankr. P. 7041.

§ 362 MOTIONS (Judge Waites)

If the settlement order in a Chapter 13 case contains an *ex parte* stay relief provision, the settlement order may be approved without a hearing if it provides for such relief for a failure to make cure payments or a failure to make future direct payments for a period of up to 1 year after the expiration of the cure period.

Prior to consenting to a settlement order, the payment obligations set forth in the order, including the amounts, method, and timing of payments, and consequences of default shall be reviewed with and agreed to by the debtor(s).

Affidavits of Default on Settlement Orders. An affidavit of default under a settlement order in a Chapter 13 case shall include an attachment which demonstrates all direct post petition payments and their application and indicate payments which have not been received since the entry of the settlement order.

Rule 4001(a)(3) Stay. If the movant/declarant seeks a finding in a proposed order granting relief from stay that the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) does not apply to the order, the attorney for the movant/declarant shall state in the affidavit of default one of the following applicable circumstances: the debtor(s) did not object to a request for a such a finding or the debtor(s) expressly agreed to such relief as a part of a previously entered settlement order. In such event, the language of a proposed order requesting that finding may indicate the stay is not applicable to the order based thereon by the following language: “Based upon the debtor(s)’ prior agreement or failure to object to the movant’s request regarding the Fed. R. Bankr. P. 4001(a)(3) stay, this order is effective immediately.”

CHAPTER 13 MATTERS (Judge Waites)

Mortgage Modification. When seeking court approval for a modification of a mortgage, the order should be titled “Order Allowing Mortgage Modification” and should contain the consent of the debtor(s)’ counsel, mortgage creditor or its counsel, and the Chapter 13 trustee. If obtaining the creditor’s express consent on the order is not practical, it may be shown on an attachment to the order, or represented to have been obtained by the movant in the proposed order.

The order may provide for relief from the automatic stay for the sole purpose of entering into the agreement; and should provide that there will be no extension of additional funds beyond what is already owed; that payments to other lien holders under the plan will not be affected; and that the proposed modification has no detrimental effect on other creditors and believed to be in the best interest of the debtor(s) and the estate. The order should also address whether any payments to the creditor, whose loan is to be modified, via the Chapter 13 Trustee will continue or terminate upon entry of the order.

If the modification to the mortgage involves an extension of new funds or credit, a motion to incur debt or obtain credit should also be filed and properly noticed to all creditors and parties in interest.

Local Rule 3015-4 Compliance. Upon the failure to timely provide to the trustee the information required by Local Rule 3015-4, the trustee shall report such deficiency to the Court at the confirmation hearing and advise counsel for the debtor(s) no later than 2 days prior to the confirmation hearing if a dismissal based solely on that failure will be requested at the hearing.

Settlements, Withdrawals & Continuances/Filing of Joint Statements of Dispute to Excuse Attendance: The deadline for reporting settlements, withdrawals, or requests for continuances in a Chapter 13 case for purposes of calendar removal shall be no later than 10 a.m. 2 business days prior to the date of the hearing. With the exception of issues raised by the Chapter 13 trustee regarding compliance with 11 U.S.C. § 1325, if any matter remains contested at that time, a joint statement of dispute, which is subject to the Court’s approval, shall be filed by 10 a.m. 1 business day before the hearing.

If the joint statement of dispute is approved as an order of the Court and the parties have so requested, the Court may continue the matter to a dispute docket or otherwise excuse attendance at the initial hearing. Upon failure to file a joint statement or failure to obtain Court approval of the proposed joint statement, all counsel for the parties to the dispute shall appear at the hearing. The hearing will be treated as a pretrial hearing unless otherwise indicated in advance by the Court.

Requirement for Confirmation: As a condition to confirmation of a plan, the debtor(s) shall represent via the plan (by the addition of nonconforming language) or other filing with the Court that they understand the following:

- (1) The obligations set forth in the plan, including the amount, method, and timing of payments made to the trustee or directly to creditors;
- (2) The consequences of any default under the plan;
- (3) That debtor(s) may not agree to sell or sell property, employ professionals, or incur debt (including modification of debt) during the term of the plan without the advance authorization of the Bankruptcy Court.

Compliance with C-I & C-II Orders: Upon recommendation of a C-I or C-II form order, the Court may continue a confirmation hearing to ensure timely compliance with the order and confirmation of the plan.

CHAPTER 13 MATTERS

The Judges have implemented procedures for chapter 13 matters.¹ The goal of these procedures is to reduce unnecessary attendance and wait time at hearings for the bar and parties, allow compliance with Fed. R. Bankr. P. 9014(e), provide parties with further opportunity to settle matters or prepare arguments, and assist the Court in preparing for significant issues not highlighted by the pleadings through research and review. The calendar for hearing chapter 13 case matters is divided into a consent calendar for Judges Waites and Burris or general chapter 13 calendar for Judge Duncan (hereinafter “chapter 13/consent calendar”) and a dispute calendar, unless otherwise scheduled by the presiding Judge. The type of case matter to be scheduled for each day is identified on Exhibit A attached hereto and shall be scheduled accordingly by the Court and parties. Matters which are incorrectly scheduled may be stricken, determined, rescheduled or continued at the convenience of the Court and in the interests of justice. In its discretion, the Court may also reschedule matters *sua sponte*.

DISPUTE CALENDAR

Matters identified in Exhibit A to be originally scheduled on the dispute calendar are matters which are likely to require the presentation of testimony or other evidence or oral argument before the Judge. Parties and counsel should be fully prepared to proceed with a dispositive hearing on such matters unless removed by the Court upon a report of settlement or withdrawal as stated below or unless counsel are otherwise advised by the Court. In order to comply with Bankruptcy Rule 9014(e), the same duty to consult as previously referenced applies to a matter scheduled on the dispute calendar and settlement possibilities are to be discussed. A Statement of Dispute is **not** required prior to the hearing with respect to those matters originally scheduled on the dispute calendar.² However, if a party’s pleadings are not in specific form such that the Court can clearly identify all of the grounds for the dispute and fully ascertain each party’s position, a Joint Statement of Dispute (as set forth above and in the form attached hereto as Exhibit B) should be submitted by **10:00 a.m.** on the day prior to the hearing scheduled on the dispute calendar. Settlement of disputed matters or withdrawal of pleadings should be immediately reported to the respective chambers so as to permit efficient preparation for matters scheduled before the Court. Submission of settlement orders and withdrawal of pleadings are to be formally filed with the Court.

Identification of Disputed Matter and Statement of Dispute. In a disputed matter, parties and counsel shall have the duty to define the issues to be decided by the Court, disclose the witnesses to be called at the hearing, timely exchange any evidence to be presented to the Court, enter into stipulations which may assist the Court at the hearing, and estimate the time needed for hearing. By **12:00 p.m.** on the day immediately **following** the day of a hearing on the chapter 13/consent calendar (**or Judge Duncan’s original hearing date**), parties (through counsel if applicable) involved in matters that could not be settled or that remain in dispute shall report to the Court by filing a **Joint Statement of Dispute** according to the form attached hereto as Exhibit B.

¹ These procedures **do not** govern the hearing of motions for relief from the automatic stay.

² For all matters continued from the chapter 13/consent calendar to the dispute calendar as set forth herein, the Court should receive a Statement of Dispute.

If parties cannot agree to a Joint Statement of Dispute, separate statements shall be submitted to the Court by the same deadline and served upon opposing counsel via electronic mail, telefax, or hand delivery. Upon the failure of a party/counsel to consult regarding the matter before the Court to ensure the timely submission of the Joint Statement, in its separate statement the remaining party shall also indicate efforts (and their timing) made to contact and consult with the opposing party/counsel. The same duty to consult applies with respect to disputed matters involving the Trustee. In the event that the Trustee is a litigant to a disputed matter, the Trustee shall also bear a duty to submit a Statement of Dispute.

The failure by any party/counsel to timely submit a Statement of Dispute which is complete and submitted in good faith, or the failure by any party/counsel to timely and fully consult with the Trustee or opposing party/counsel, may be deemed a failure to prosecute which may result in dismissal or denial of the party's position, pleading, or plan of reorganization or may result in other sanctions pursuant to Bankruptcy Rule 9011, 11 U.S.C. § 105, 28 U.S.C. § 1927, or the inherent authority of the Court.

Parties and counsel submitting a Statement of Dispute shall be bound to the position and disclosures provided therein and shall be presumed ready for a hearing at any time after the submission of the Statement of Dispute upon reasonable notice.

CHAPTER 13/CONSENT CALENDAR

Definition of Consent Matter and General Procedures. Matters for the chapter 13/consent calendar are matters that generally are settled or uncontested (See Exhibit A). Chapter 13/consent calendars may be conducted by the chapter 13 Trustee (the "Trustee") with the Judge available only on a limited basis. The presiding judge may also choose to require parties to proffer evidence at the hearing.

Prior to the chapter 13/consent calendar, the Trustee shall provide notice of deficiencies in a debtor's plan of reorganization (the "Plan").³ If conducting the chapter 13/consent calendar, the Trustee shall address each scheduled matter and report the Trustee's recommendations to the Court. In doing so the Trustee may discuss Plan deficiencies and objections by parties in interest, examine debtors or other witnesses, identify other information needed for case administration, and report settled and disputed matters. Counsel or parties may also make statements on the record. The Court or Trustee may announce further hearing dates and times for continued matters or matters deemed in dispute. Once a new hearing date is designated, all counsel and parties will be presumed to agree to the date and no conflicts will be accepted. Settlements, Trustee recommendations, and other agreed upon dispositions shall be recorded in the minutes of the hearings, noted in the records of the Court, and acted on by the Judge at a later time. Matters which remain in dispute shall be identified to the Court as stated herein. At the Court's discretion in a matter deemed in dispute, a preliminary hearing may be conducted by telephone, in

³ Trustees typically provide written notice of deficiencies in a debtor's plan of reorganization at a debtor's 11 U.S.C. § 341 meeting of creditors and, if developments require, several days in advance of the hearing on confirmation of a debtor's plan of reorganization.

chambers, or on the record at or following the hearing scheduled on the chapter 13/consent calendar.

Attendance. The Court does not require the attendance of debtors or witnesses at a hearing on the chapter 13/consent calendar, but debtor's attendance may be required by the Trustee in order for the Trustee to obtain relevant information and make recommendations to the Court or when an objection is filed to confirmation of a debtor's plan. Accordingly, it is the responsibility of debtors and counsel to inquire with the Trustee as to the need for a particular debtor's attendance.⁴ Counsel for debtors and objecting parties are expected to attend unless otherwise excused by the Court (under the Statement of Dispute procedure described herein) or the Trustee upon being satisfied that there are no outstanding issues that require attendance. If counsel has informed the Trustee of a resolution of a matter and the Trustee has agreed, the Trustee may report a resolution on the record and excuse counsel's attendance. The failure to attend by counsel when not otherwise excused shall be reported to the Court by the Trustee and may be deemed a failure to prosecute.

If counsel or a party desires to be excused in advance from attending a hearing on the chapter 13/consent calendar because a matter has been determined to require the presentation of testimony or other evidence or oral argument to the Judge, no later than **10:00 a.m.** on the day immediately **prior** to the day of a hearing on the chapter 13/consent calendar, counsel and parties must submit a Joint Statement of Dispute (as discussed below) for the Court's review. Following review, the Court will advise whether the matter will be removed from the chapter 13/consent calendar and attendance excused. The designation of a new hearing date and time by the Court shall be conveyed to the party/counsel submitting the Joint Statement of Dispute. The party/counsel so informed bears the duty to inform all other participating parties/counsel.⁵

Duty to Consult. In order to comply with Bankruptcy Rule 9014(e), the Trustee, parties, and counsel that have a matter scheduled for hearing before the Court shall have a duty to timely consult with each other regarding the matter and discuss settlement possibilities. If a scheduled matter is not fully resolved and reported as such prior to the conclusion of the chapter 13/consent calendar, it shall be considered a disputed matter that will require presentation to the Judge for determination and shall be reported as disputed by the parties/counsel and the Trustee.

⁴ To assist the bar, Trustees may develop, implement, and publish standard rules and procedures governing attendance by debtors at hearings scheduled on the chapter 13/consent calendar.

⁵ Only Joint Statements of Dispute will be considered by the Court in order to remove a matter from the chapter 13/consent calendar on the day prior to the chapter 13/consent calendar.

EXHIBIT A

LIST OF MATTERS FOR SCHEDULING

<u>Chapter 13/consent calendar</u>	<u>Dispute Calendar</u>
Confirmation Hearings	Expedited Hearings (set by Chambers)
Motions to Value	Motions for Relief from or to Extend/Impose the Automatic Stay**
Motions to Assume or Reject	Co-debtor Stay Motions*
Motions to Avoid Judicial Lien	Motions to Reconsider Stay
Wage Order Request	Rules to Show Cause (set by Chambers)
Amended Plan Objections (after confirmation hearing)	Pro se Motions
Trustee's Petition to Dismiss – various kinds (based upon non-payment, passive*)	Claims Objections*
Application for Compensation*	Motions to Reconsider Dismissal, Reopen or to Vacate Dismissal
Application for Administrative Expense*	Motions by U.S. Trustee such as Sanctions, Dismiss or Convert, Disgorgement
Motions to Obtain Credit*	Motions to Change Venue*
Motions to Sell, Use, or Lease Property*	Petition to Convert or Dismiss by Creditor
Consensual Motion to Modify a Mortgage	Motion by Trustee to Convert or Sanctions Adversaries – pretrials (set by Chambers)
Motions to Prohibit or Condition the Use, Sale or Lease of Property*	Motions to Compel Compliance
Motions for Moratorium*	Motions for Contempt
Motions to Withdraw as Attorney	"CATCH ALL" – motions not otherwise listed or as set by the Court.
Motions to Approve Settlement*	Motions to Establish Priority of Tax Claim
Motions to Substitute Collateral	Motions to Return Fees or for Disgorgement
Motions to Separate Case	Motions for Hardship Discharge
Motions to use Cash Collateral*	Request for a Hardship Discharge (BAPCPA) pursuant to SC LBR 3015-5(b)
Request for Chapter 13 Discharge (BAPCPA) pursuant to SC LBR 3015-5(a)*	**The scheduling of motions for relief from or to extend/impose the automatic stay shall be governed by SC LBR 4001-1 and, where applicable, the § 362 calendar published on the Court's web page.
Objection to IRS Setoff	The procedures required for continuances or to report a settlement of motions for relief from the automatic stay are those stated in the Chambers Guidelines.
Objection to Exemptions (if by Trustee, passive*)	
*Indicates motions on passive notice list – (set by counsel)	

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:		C/A No.
	Debtor.	(JOINT) STATEMENT OF DISPUTE AND STIPULATION Chapter

The undersigned hereby certify that after consultation, the hearing on [type of hearing] originally scheduled for [date and time], after good faith efforts cannot be settled and remains contested so as to require the presentation of evidence and/or argument to the Court for determination. The following information is presented by way of stipulation of the parties:

1. Issues to be decided by the Court.
2. Position of Party/Parties (state w/ specificity).
3. Names of Witnesses to be called at the hearing.
4. Exhibits/Evidence to be presented.
5. Statutory, Case Law or other Applicable Authority.
6. Estimated Length of Hearing.
7. Telephone and Facsimile Number, Electronic Mail address of Counsel/Party/Parties.²

(DATED)

(SIGNATURE)

(DATED)

(SIGNATURE)

² Parties, or a person designated that is fully knowledgeable about the matters herein, are to be prepared to discuss this matter with the Court at any time after submission. Failure to provide a thorough and meaningful Joint Statement of Dispute, and/or the failure of any party or person designated to be reasonably available for discussion with the Court, may be deemed a failure to prosecute which may result in dismissal or denial of the party's position or pleading or may result in sanctions pursuant to Bankruptcy Rule 9011, 11 U.S.C. § 105, 28 U.S.C. § 1927 or the inherent authority of the Court.

EMERGENCY RELIEF ORDERS

Motions for expedited or emergency hearings are to be filed in accordance with SC LBR 9013-1(d). In order for a motion for expedited or emergency hearing to be timely considered, the filing party must contact a courtroom deputy at 803-765-5011, 803-765-5019, 803-765-5012 or 803-765-5024. Such motions shall detail the cause for emergency relief that is necessary in order to avoid irreparable harm. Hearings are set in the discretion of the Court.

When seeking to shorten the time for notice on a matter set according to the Court's passive notice procedures, SC LBR 9013-4(d) governs.

INABILITY TO FILE PURSUANT TO APPROVED MEANS AND EMERGENCY FILING PROCEDURES

The filing of documents with the Bankruptcy Court is governed by the Guidelines for the Filing of Documents (the "Guidelines"). In order to send a telefax to the applicable Judge pursuant to the Guidelines - "Emergency Filing in Conjunction with Inability to File Using CM/ECF (**other than a failure of the Court's system**)," the applicable telefax numbers are:

Judge Waites: 803-253-3464
Judge Burris: 803-253-3368
Judge Duncan: 803-253-3996

EX PARTE RELIEF

Unless otherwise ordered by the Court, motions or other pleadings requesting *ex parte* relief (e.g. relief sought by temporary restraining order) shall be filed electronically, where applicable. The motion or pleading shall be accompanied by a proposed order, which shall be separately e-mailed to the Judge's chambers in either Word or Word Perfect format. In addition, the movant must immediately contact a courtroom deputy by telephone in order to ensure expedited consideration by the Judge.

JUDICIAL LIEN AVOIDANCE ISSUES

Judicial Liens should be filed in accordance with the Bankruptcy Code and Rules as well as Exhibit A to SC LBR 3015-1 and SC LBR 4003-2.

To further 11 U.S.C. § 522(f)(2)(B), all liens must be examined in the context of all other unavoids and unavoidable liens. Accordingly, all liens should be dealt within one motion, or motions submitted concurrently, clearly indicating the priority of the lien to be avoided and that senior unavoids liens are included in the calculation.

Motions are to be avoided from junior to senior. Accordingly, begin with the most junior lien and determine whether it is avoidable in its entirety. All senior judicial liens would be included in the calculation. If it is avoidable, then it is appropriate to proceed to the next junior lien to determine its avoidability. The junior lien just avoided would not be included in the calculation, but all senior judicial liens would be included. If it is not avoidable or only avoidable in part, then all senior liens would be unavoidable and there is no need to do any further calculation.

In reviewing motions to avoid judicial liens, the Judges also examine, although not exclusively, whether:

- Debtor owns real property upon which the judgment has attached or whether a judgment has attached to Debtor's personal property.
- Debtor has claimed an exemption on Schedule C for the applicable property.
- Debtor's figures provided on the motion are consistent with the Schedules and Statement of Financial Affairs.
- Judgment is listed in Debtor's Schedules and Statement of Financial Affairs.
- Total amount of all other liens on property includes all mortgages and/or senior judicial liens, where applicable (see Exhibits A and C to SC LBR 4003-2).
- If it is necessary to file a motion to avoid a judicial lien in a closed case, a motion to reopen the case is not necessary. Likewise, if it is necessary to amend a schedule in direct relation to a lien avoidance issue, a motion to reopen may not be necessary. Nothing herein should be construed to waive any notice requirements with respect to the motion to avoid judicial lien or amendment of schedules.

If, despite demonstrated efforts, counsel feels that one-on-one training would assist counsel in the accuracy of his/her submission of motions to avoid judicial liens, counsel may contact chambers for an appointment with one of the Judge's law clerks.

COMPLAINTS SEEKING TURNOVER OF PROPERTY

If seeking an order for immediate turnover based upon a Complaint, the filing party must also file a Motion For Immediate Turnover and a request for an Expedited Hearing along with the Complaint (the Motion for Immediate Turnover should refer to the Complaint and ask for the substantive relief of an immediate turnover; the request for an Expedited Hearing on the Motion should be filed as a separate document).

SCHEDULING CONFLICTS

Due to the volume of cases and the number of parties involved in each, the U.S. Bankruptcy Court for the District of South Carolina cannot provide an informal means of protecting counsel or parties from scheduling conflicts with hearings or other response deadlines set before the Court. Therefore, the Court cannot assure counsel or parties that a hearing will not be scheduled or other response required during any specific time period in which they may have a conflict, even if the dates or circumstances have been provided to the Court or a particular Judge in advance. Responses will not be provided to any correspondence requesting such protection or scheduling consideration, although counsel may contact the Courtroom Deputies to inquire about the scheduling of particular hearings.

Many matters are self-scheduled and therefore the initiating party may manage his/her own scheduling conflicts and those of opposing counsel, if known. If matters are scheduled by other parties or the Court, counsel or parties with a conflict should request a continuance or other relief by appropriate motion filed in the case(s) affected by the conflict.

MEDIATION PROGRAM

The United States Bankruptcy Court for the District of South Carolina recognizes that litigation of disputes in bankruptcy cases and adversary proceedings often imposes significant economic burdens on the parties and causes delay. Accordingly, the Court has implemented an informal mediation program to provide litigants with a means to resolve their disputes more quickly, at less cost, and without some of the burdens associated with litigation. The Court maintains the attached list of experienced bankruptcy attorneys who have agreed to mediate bankruptcy matters in a quick time frame and at a reduced hourly rate. Pursuant to SC LBR 9019-2, the Court may order mediation of a matter upon agreement of the parties to the matter, on motion of a party to the matter or the U.S. Trustee, or *sua sponte* using the form order attached. Inquiries may be made to chambers of the presiding judge.

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

[INSERT DEBTOR'S NAME]

Debtor(s).

[INSERT PLAINTIFF'S NAME]

Plaintiff,

vs.

[INSERT DEFENDANT'S NAME]

Defendant.

[CASE NUMBER]

[ADVERSARY NUMBER]

[CHAPTER NO.]

MEDIATION ORDER

THIS MATTER comes before the Court for consideration of mediation, as requested by the parties.

Therefore, it is ordered that mediation be scheduled and completed in this proceeding on or before **[insert deadline]**. Upon completion of the mediation, counsel for the Plaintiff shall advise the Court in writing only that the mediation has occurred, the date of the mediation, whether the case was settled in whole or in part, and whether a trial is required.

The Court appoints **[insert attorney's name]** of the **[insert firm name]** law firm to serve as mediator in this matter.

All parties and their trial counsel, having authority to settle and to adjust pre-existing settlement authority if necessary, are required to attend the mediation in person unless excused by the Court for good cause shown. Insurer representatives **[if applicable]** with decision-making authority also are required to attend in person, unless excused by the Court, if their agreement would

be necessary to achieve a settlement. Every person who is excused from attending in person must be available to participate by telephone, unless otherwise ordered. At the mediation, parties, their insurer representatives and their primary trial counsel should be prepared to participate in a mutual, good faith effort to negotiate a fair and reasonable settlement. All necessary discovery should be completed prior to mediation unless otherwise agreed to by counsel for all parties. Lack of discovery or settlement authority is no excuse for failure to appear and/or participate.

This order shall be served on all counsel of record. Counsel are responsible for notifying and ensuring the presence of parties and insurer representatives as described above. If a case has been mediated previously, counsel shall notify the Court immediately in writing. All costs of mediation shall be divided equally between the parties and paid within ten (10) days of submission by the mediator. Since a portion of the cost of mediation shall be incurred by the trustee in administration of the estate, at this stage, the Court limits the hourly rate of the mediator and his associates to \$_____ per hour and the total cost of mediation to \$_____ absent further order. In his discretion, the mediator may require costs, including fees, to be paid in advance of the mediation conference.

Communications made in connection with or during the mediation are confidential and protected by Federal Rule of Evidence 408 and Federal Rule of Civil Procedure 68. If a settlement is not reached at mediation, settlement discussions are neither admissible at trial nor to be disclosed to the presiding judge.

If any reason exists why any party or counsel should not participate in this mediation, the Court is to be advised of these reasons in writing.

AND IT IS SO ORDERED.

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
_____, 20__.

CHAPTER 11 CASES

- Parties preparing to file a larger chapter 11 case or a complex case under Local Rule 2081-2 who wish to advise the court of the anticipated filing of the case should not directly contact Judges' chambers but should notify the Clerk of Court or the Chief Deputy Clerk.
- Once the case has been filed and assigned to a particular Judge, parties may contact the Judge's chambers to schedule any emergency hearings or other calendar matters.

REDACTION OF PRIVACY INFORMATION

Pursuant to Federal Rule of Bankruptcy Procedure 9037, certain privacy information must be redacted from filings made with the Court. The failure to comply with Rule 9037, or to file an amended, redacted document where required, may result in a hearing before the Court. Once a document is filed with the Court that contains improper privacy information, a motion and proposed order are required to disable public access to the document, and a corrected pleading must be filed. If the filer is also the movant and does not intend to file a corrected pleading, the motion and proposed order should additionally include a withdrawal of the underlying document. If a hearing has been set on the underlying pleading, please refer to the portion of the Chambers Guidelines addressing [Continuances, Settlements and Withdrawals](#). The motion must contain *specific information* detailing how the pleading is violative of Rule 9037.

[Two Form Proposed Orders](#) Disabling Public Access to Filed Documents and Directing Filing of a Corrected Pleading have been created to assist with the filing of such requests. Form A addresses those circumstances where a party that is not the filer of the document is seeking an order disabling public access due to privacy information. Form B addresses those circumstances where the filer of the document is seeking an order disabling public access on its own motion.