

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.

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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.