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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA 2013 NOV -1 PM 3: 18

U.S. BANKRUPTCY  
DISTRICT OF SOUTH CAROLINA

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CHAMBERS GUIDELINES - )  
CASES ASSIGNED TO JUDGE WAITES )  
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**AMENDED  
OPERATING ORDER 13-04**

The attached Chambers Guidelines are effective November 1, 2013 in all cases assigned to and administered by the undersigned and are binding upon counsel and all parties appearing therein. The failure by any party/counsel to comply with these guidelines may result in the dismissal, striking, or denial of the party's position, pleading, or plan of reorganization without a hearing, the cancellation of a hearing, or other sanctions pursuant to Fed. R. Bankr. P. 9011, 11 U.S.C. § 105, 28 U.S.C. § 1927, or the inherent authority of the Court.

  
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John E. Waites, U.S. Bankruptcy Judge

Columbia, South Carolina  
November 1, 2013

# **CHAMBERS GUIDELINES**

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

## **Chambers Contact Information:**

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## **Preferred method of communication to chambers:**

- Regarding hearing related matters: E-mail correspondence to [judgewaites\\_hearings@scb.uscourts.gov](mailto:judgewaites_hearings@scb.uscourts.gov).
- All other matters: E-mail correspondence directly to law clerks.

**Proposed Orders:** All proposed orders should include a cover page<sup>1</sup> and should be electronically filed on CM/ECF unless specifically requested by the Judge to be sent to chambers in Word or WordPerfect format via e-mail to [judgewaites\\_porders@scb.uscourts.gov](mailto:judgewaites_porders@scb.uscourts.gov). Orders due after court hearings should be filed within 10 days of the hearing.

**Joint Statements of Dispute:** File on CM/ECF using the events of the same title. Deadlines to submit Joint Statements of Dispute:

- Chapter 13 matters - 10:00 a.m. one (1) business day before the hearing.
- Matters in cases of all other chapters - 10:00 a.m. two (2) business days before the hearing.

**Deadline to request continuance or notify Court of settlement or withdrawal in order to remove a matter from the hearing calendar:** 10:00 a.m. two (2) business days before the hearing.

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<sup>1</sup> The cover page expedites the signing of the large volume of orders received by the Judge.

**Self Scheduled Hearings:** It is not necessary to contact chambers or the courtroom deputy if the party filing a motion anticipates that the hearing on the matter will be lengthy. The Judge relies on the estimate of time set forth in the [Joint Statement of Dispute](#) to manage the docket and may reschedule lengthy hearings if necessary.

To determine if a matter should be self-scheduled either under the passive notice procedure or non-passive notice procedure, consult lists provided in [SC LBR 9013-4](#).

To determine the proper date and time for scheduling hearings, consult the Court Calendar available [here](#).

To determine whether a Chapter 13 matter is to be scheduled on the consent or dispute calendar, consult [Exhibit B](#) to these guidelines.

Emergency/expedited hearings and all matters arising in adversary proceedings are scheduled by chambers. See [SC LBR 7001-1](#) and [SC LBR 9075-1](#).

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## CONTINUANCES, SETTLEMENTS, & WITHDRAWALS

This section applies to all matters on the Judge's docket, with the exception of adversary proceedings, which are governed by separate sections below. **In order to be timely considered by the Judge, requests for continuances, notifications of settlement, or withdrawals must be filed on CM/ECF by no later than 10:00 a.m. two business days prior to the date of the hearing.<sup>2</sup> Absent removal of the matter from the court calendar, all counsel and parties shall attend.**

### **I. Continuances**

Continuances may be requested in one of the following ways:<sup>3</sup>

- (1) Timely requesting a continuance on CM/ECF through use of the "Request for Continuance" text event. This method may be used only if all responding parties consent to the continuance;
- (2) Timely filing a proposed consent order of continuance on CM/ECF along with a separate calendar removal request; or
- (3) Timely filing a motion for a continuance on CM/ECF along with a separate calendar removal request.

Proposed consent orders of continuance and motions for a continuance must include the following information:

- (1) The reason for the continuance;
- (2) Whether the matter has been previously continued;
- (3) Whether consents to the continuance have already been obtained and from whom;
- (4) The time needed before the next hearing and/or a requested hearing date; and
- (5) The nature of the any remaining dispute (include specific details).

**Continuances are not effective until granted by court order.** In obtaining an agreed upon continuance, all counsel and parties to the request shall be understood to have no scheduling conflicts for the continued date.<sup>4</sup>

### **II. Settlements**

The settlement of a matter scheduled for hearing should be promptly reported to chambers by e-mail to [judgetwaites\\_hearings@scb.uscourts.gov](mailto:judgetwaites_hearings@scb.uscourts.gov) with a copy provided to all participating counsel **and also:**

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<sup>2</sup> Extraordinary circumstances such as illness or family emergency will also be considered to obtain a continuance after the deadline.

<sup>3</sup> In chapter 13 matters, the chapter 13 trustee should be consulted in connection with continuance requests.

<sup>4</sup> With regard to motions to dismiss or convert pursuant to 11 U.S.C. § 1112, a request for a continuance by the movant or consent to a continuance by the movant shall be deemed a waiver of the scheduling and ruling deadlines imposed by 11 U.S.C. § 1112(b)(3) and the rules.

- (1) Via the “Notification of Settlement and Request for Removal from Court Hearing Calendar” text event on CM/ECF; or
- (2) Where applicable, by filing a notice and application for settlement pursuant to Fed. R. Bankr. P. 4001(d) or 9019, and a calendar removal request.

### **III. Withdrawals**

Withdrawals of any filing upon which a hearing has been set should be filed on CM/ECF using the “Withdrawal from the Court Calendar” text event. The party filing the withdrawal will be prompted to provide the following information:

- (1) The name of the pleading being withdrawn;
- (2) The slot number, date, time, and location of the hearing;
- (3) The reason for the withdrawal;
- (4) All other counsel and parties to the proceeding have consented to such withdrawal or do not oppose the withdrawal; and
- (5) Whether any parties are expected to appear at the hearing.

## **Joint Statements of Dispute**

If a matter set for hearing is contested, the parties should file a Joint Statement of Dispute by the applicable deadline, using the form attached as [Exhibit A](#).<sup>5</sup> If the pleadings clearly set forth all issues to be decided by the Court and the statutory, case law or other applicable authority, the parties may simply reference the pleadings in those sections of the Joint Statement of Dispute and complete the other sections.

Parties and counsel submitting a Joint Statement of Dispute may not reserve the right to materially alter or supplement the Joint 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. Representations made in a Joint Statement of Dispute shall be considered binding on the parties. Counsel must be prepared to discuss the Statement and the affected proceeding with the Court at any time after its submission.

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 e-mail, telefax, or hand delivery.

The failure by any party/counsel to timely submit a Joint Statement of Dispute which is complete and submitted in good faith, to timely and fully consult with the Trustee or opposing party/counsel, or 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, 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.

If a matter is settled after the filing of a Joint Statement of Dispute, counsel should advise chambers immediately by e-mail to [judgewaites\\_hearings@scb.uscourts.gov](mailto:judgewaites_hearings@scb.uscourts.gov) with copy to all participating counsel.

### **Deadlines to submit proposed Joint Statements of Dispute:**

- **Chapter 13 matters - 10:00 a.m. one (1) business day before the hearing.**
- **Matters in cases of all other chapters - 10:00 a.m. two (2) business days before the hearing.**

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<sup>5</sup> **The form used by the Judge is new and differs from the form provided in the Local Rules.**

## CHAPTER 13 PROCEDURES

The following procedures<sup>6</sup> for chapter 13 matters apply to cases assigned to the Judge.<sup>7</sup>

### **I. Local Rule 3015-4 Compliance**

Upon the failure to timely provide to the chapter 13 trustee (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) by no later than **10:00 a.m. two business days prior to the confirmation hearing** if a dismissal based on that failure will be requested at the hearing.

### **II. Duty to Consult**

In order to comply with Bankruptcy Rule 9014(e), the Trustee, parties, and counsel who have a chapter 13 matter scheduled for hearing before the Court shall have a duty to timely consult with each other regarding the matter and discuss settlement possibilities or stipulations.

### **III. Chapter 13 Calendar**

The calendar for hearing chapter 13 case matters before the Judge is divided into two calendaring types: a consent calendar and a dispute calendar.<sup>8</sup> The type of case matter to be scheduled for each calendar is identified on [Exhibit B](#) and shall be scheduled accordingly by the Court and parties. Matters which are incorrectly scheduled may be stricken, determined, rescheduled or continued without notice as necessary by the Court or in the interests of justice.

#### **A. Consent Calendar**

- 1. Definition of Consent Matter.** Matters for the chapter 13 consent calendar are matters that are frequently uncontested or otherwise resolved.
- 2. General Procedures & Role of the Trustee.** Chapter 13 consent calendars may be conducted in court by the Trustee. Prior to the chapter 13 consent calendar, in a matter regarding confirmation, the Trustee shall provide notice of deficiencies in a debtor’s plan of reorganization (the “Plan”).<sup>9</sup> In 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

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<sup>6</sup> These procedures **do not** govern the hearing of motions for relief from the automatic stay.

<sup>7</sup> 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 Judge in preparing for significant issues not highlighted by the pleadings through research and review.

<sup>8</sup> Consent and dispute calendars may be held on the same date, but may be scheduled at different times.

<sup>9</sup> 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.



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. If a new hearing date is announced without objection, all counsel and parties will be presumed to agree to the date and time and no later conflicts will be accepted. Settlements, Trustee recommendations, and other agreed upon dispositions shall be recorded and considered by the Judge.

- 3. Attendance.** In most instances, unless otherwise advised, the Judge does not require the attendance of debtor(s) or witnesses at a hearing on the Chapter 13 consent calendar. However, **the Judge requires attendance by debtor(s) and counsel** in the following circumstances:
- a. If debtor(s) file an amended plan, amended schedules or statements, or a claims objection within 3 business days prior to a confirmation hearing, which materially affects the confirmation hearing, unless the filing or amended document resolves all objections and the Trustee has affirmatively excused the attendance.
  - b. There is an outstanding objection and the Trustee has not agreed to carry the matter over or excused attendance in accordance with the Joint Statement of Dispute procedures (set forth [here](#)). Counsel for the objecting parties and necessary witnesses would also be expected to attend.
  - c. A case in which the Trustee has provided notice that a request to dismiss the case will be made at the confirmation hearing pursuant to Local Rule 1017-2(a).

In all other circumstances, debtor(s)' attendance may be required by the Trustee in order for the Trustee to obtain relevant information and make recommendations to the Court. Accordingly, **it is the responsibility of debtor(s), objecting parties, and counsel to inquire with the Trustee as to the need for attendance.**<sup>10</sup> 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 or parties when not otherwise excused shall be reported to the Court by the Trustee and may be deemed a failure to prosecute.

#### **4. Calendar Removal.**

**Continuances for Matters Identified as Being Contested - Joint Statement of Dispute Procedure.** If any matter scheduled on the consent calendar is identified as being contested or requiring the presentation of testimony or other evidence or oral argument to the Judge, a Joint Statement of Dispute shall be filed in accordance with the Joint Statement of Dispute procedures set forth [here](#). 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, unless excused, the Trustee shall also bear a

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<sup>10</sup> To assist the bar, Trustees may develop, implement, and publish standard rules and procedures governing attendance by debtors at hearings scheduled on the consent calendar.

duty to submit a Joint Statement of Dispute, except as to issues raised by the Chapter 13 Trustee in writing regarding compliance with 11 U.S.C. §§ 1322 and 1325.

If counsel and the Trustee have agreed to a continuance prior to the filing of a Joint Statement of Dispute or all counsel have requested a later hearing date in the Joint Statement of Dispute, the Trustee in his or her discretion may excuse attendance of counsel and the parties and may announce at the hearing a continuance of up to 30 days. If no Joint Statement of Dispute has been filed, the Trustee may extend the time for filing of a Joint Statement of Dispute to a time no later than 10:00 a.m. on the day before the continued hearing. If a continuance of more than 30 days is needed, a continuance request must be made in accordance with the procedures set forth in the [Continuances, Settlements & Withdrawals](#) section.

Upon failure to file a Joint Statement of Dispute or if the Trustee does not consent to a continuance, all counsel for the parties to the dispute shall appear at the hearing on the consent calendar. Counsel should be prepared on the issues and the law. A hearing will be held by the Judge and treated as a preliminary hearing unless otherwise indicated in advance by the Court.

## **B. DISPUTE CALENDAR**

- 1. Definition of Disputed Matter.** Disputed matters are matters which by their nature are likely to require the presentation of testimony or other evidence or argument before the Judge. A list of matters that are to be originally scheduled for a hearing on the dispute calendar is provided in [Exhibit B](#).
- 2. General Procedures.** Parties and counsel should be fully prepared to proceed with a dispositive hearing on matters originally scheduled on the dispute calendar unless the matter is removed by the Court upon a continuance, report of settlement, or withdrawal as stated below or unless counsel are otherwise advised by the Court. In a disputed matter, parties and counsel shall have the duty, in advance of the hearing, to consult and 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.<sup>11</sup>
- 3. Attendance.** Counsel, necessary witnesses, and parties are expected to appear for a matter originally scheduled on the dispute calendar, unless the matter is removed from the calendar pursuant to the procedures set forth below.
- 4. Calendar Removal.** For guidelines regarding reporting settlements, filing withdrawals, or requesting continuances of disputed matters for purposes of calendar removal, see the [Continuances, Settlements, & Withdrawals](#) section.

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<sup>11</sup> For matters expected to take more than 1 hour, counsel should promptly advise chambers by e-mail to eliminate unnecessary wait time.

- 5. Filing of a Joint Statement of Dispute.** If the parties expect to present testimony or evidence (the admission of which has not been stipulated) or if all parties' pleadings do not clearly set forth all of the grounds for the dispute, a Joint Statement of Dispute must be filed in accordance with the procedures set forth [here](#). However, a Joint Statement of Dispute is **not** required prior to the hearing if the hearing is limited to oral argument by counsel and if the issues are clearly set forth in the pleadings.<sup>12</sup>

#### **IV. Requirement for Confirmation**

As a condition to confirmation of a chapter 13 plan, the debtor(s) shall represent by filing a Debtor's Statement in Support of Confirmation via the Plan (by the addition of nonconforming language) or via CM/ECF, which indicates 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.

The Trustee shall not recommend confirmation without ensuring that such Statement has been either included in the Plan or filed on CM/ECF.

#### **V. Expedited Fee Amount**

The expedited fee amount for purposes of SC LBR 2016-1(b)(1) is \$3,500 for a consumer case and \$4,000 for a business case. The supplemental fee amount for purposes of SC LBR 2016-1(b)(2)(A) is \$1,200.

#### **VI. Proposed Orders**

Proposed orders must clearly set forth the grounds and contain findings that justify the entry of the order. A proposed order should not merely refer to or approve the application/motion.

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<sup>12</sup> For all matters continued from the consent calendar to the dispute calendar as set forth herein, the Court should receive a Joint Statement of Dispute.

## STAY RELIEF PROCEDURES

### I. Settlement Orders

A settlement order in a chapter 13 case may contain an *ex parte* stay relief provision. An order containing a provision providing such relief based upon a failure to make a cure payment or a failure to make a future direct payment for a period of no more than 12 months after the expiration of the cure period may be approved without a hearing.<sup>13</sup> Longer default periods will be scheduled for a hearing

A settlement order must include a certification by debtor(s)' counsel that 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 were reviewed with and agreed to by the debtor(s) or the party obligated to pay.

### II. *Ex Parte* Relief Due to Default on Settlement Orders

An affidavit of default should state that the default occurred within the effective time period for the *ex parte* relief provision included in the settlement order (e.g., within one year after the expiration of the cure period) and indicate payments which have not been received since the entry of the settlement order. The affidavit must also include an attachment which demonstrates all direct post petition payments and their application.

### III. Rule 4001(a)(3) Stay

If the movant 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 affidavit of default shall state one of the following applicable circumstances:

- (1) the debtor(s) did not object to a request for such a finding or
- (2) the debtor(s) expressly agreed to such relief as 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 by including 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.”**

### IV. Stay Relief Related to Mortgage Modifications

When seeking relief from the automatic stay in order to obtain 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**

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<sup>13</sup> For example, the order may include a provision that “the *ex parte* relief provision of this Order shall expire 12 months from the expiration of the cure period set forth above.”

**an attachment to the order (such as a letter from the creditor approving the modification), or represented to have been obtained by the movant's counsel 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:

- (1) That there will be no extension of additional funds beyond what is already owed;
- (2) That payments to other lien holders under the Plan will not be affected; and
- (3) That the proposed modification has no detrimental effect on other creditors and is believed to be in the best interest of the debtor(s) and the estate.
- (4) Whether any payments from the Chapter 13 Trustee to the creditor whose loan is to be modified will continue or terminate upon entry of the order.

If agreed to, the Court may enter the Order Allowing Mortgage Modification without a hearing.

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.

## **VII. Motions to Extend the Automatic Stay**

For all motions to extend the automatic stay filed in cases before the Judge, an affidavit of the movant shall be filed supporting such motion, which provides the information necessary to determine whether the requirements of 11 U.S.C. Section 362(c)(3) are met. The affidavit must be filed at the same time as the motion to extend the automatic stay. The chapter 13 plan and all schedules must be filed by no later than five (5) business days prior to the scheduled hearing on the motion to extend the automatic stay. The failure to file the chapter 13 plan and all schedules and statements in time for the Trustee's consideration may result in the denial of the motion. The motion may be granted in advance of the hearing if the affidavit is timely submitted, there are no objections by parties in interest, and the Trustee consents to the extension.

## EXHIBITS IN ADVERSARIES & CONTESTED MATTERS

The original and one bench copy of all paper exhibits and an itemized list of the exhibits are to be submitted to the courtroom deputy prior to the hearing or at the hearing and are not to be filed on CM/ECF.<sup>14</sup> Counsel should also ensure that there are enough copies of the exhibits for all opposing counsel, *pro se* parties, and any witness providing testimony regarding the exhibits. To avoid confusion, the exhibits of the party initiating the matter should be premarked using letters (e.g., Movant's or Plaintiff's Exhibit A, B, C, etc.), and the responding party's exhibits should be premarked using numbers (e.g., Respondent's or Defendant's Exhibit 1, 2, 3, etc.) The parties should exchange exhibits and confer **prior** to the hearing to determine whether they will be able to stipulate to the admission of exhibits set forth in the Joint Statement of Dispute or Joint Pretrial Order.

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<sup>14</sup> Exhibits in Adversaries are to be submitted with the Joint Pretrial Order in accordance with the terms of the Judge's Scheduling Order. In contested matters, exhibits should be submitted to the courtroom deputy prior to the hearing with sufficient time provided to ensure proper identification and handling.

## ADVERSARY PROCEEDINGS

### I. Scheduling Orders

Once the issues are joined or upon order of the Court, counsel are notified by chambers to meet the requirements of Fed. R. Civ. P. 26(f) and are requested to file a Discovery Report using the appropriate text event to advise the Court of the time necessary for discovery. Scheduling orders are thereafter entered pursuant to Fed. R. Civ. P. 16(b). In its discretion or if requested by the parties, the Court may conduct an initial pretrial or status conference.

### II. 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, the request should be made to chambers and should indicate the proposed change and whether all parties agree to the modification. If the proposed amendment would necessitate rescheduling a matter already noticed for hearing, including the final pretrial hearing, or trial, the parties must file a motion seeking an amended scheduling order and indicate the reasons for amendment, 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.**

### III. Consent to Entry of Final Orders and Judgments

Any party objecting to the entry of final orders or judgments by this Court on any issue in the adversary proceeding, whether or not designated as “core” under 28 U.S.C. § 157(b), shall file a motion by the deadline specified in the scheduling order requesting that this Court determine whether the proceeding is subject to the entry of final orders or judgments by this Court. **FAILURE OF ANY PARTY TO FILE A MOTION ON OR BEFORE THE DEADLINE PROVIDED IN THE SCHEDULING ORDER SHALL CONSTITUTE CONSENT BY SUCH PARTY TO THIS COURT ENTERING ALL APPROPRIATE FINAL ORDERS AND JUDGMENTS IN THIS PROCEEDING.**

### IV. Availability of Court During Depositions

Absent advance notification, the Judge is usually not available to address discovery issues arising during a deposition. If parties anticipate the need for the Court’s involvement, the issues should be raised in advance by motion or joint request.

### V. Continuances

Continuances for hearings scheduled in adversary proceedings, including trial, may be requested **only** by the filing of a motion for continuance along with a calendar removal request. The motion should clearly indicate the reason for the continuance, whether the other parties consent to the continuance, and the time needed before the next hearing. **Hearings and trials in adversary proceedings may not be continued merely through the**

**submission of a consent order of continuance or through use of the CM/ECF “Request for Continuance” event.**

## **VI. Settlements**

Settlements of adversary proceedings may be reported by filing a consent order, by filing a notice and application for settlement, if required under the Bankruptcy Rules, or through use of the “Notice of Settlement and Request for Removal from Court Hearing Calendar” text event on CM/ECF. **The consent order must clearly indicate whether it resolves all issues in the adversary proceeding in order for the matter to be removed from the calendar.** Counsel are also encouraged to promptly report settlements of adversary proceedings to chambers by e-mail to [judgewaites\\_hearings@scb.uscourts.gov](mailto:judgewaites_hearings@scb.uscourts.gov). To ensure removal from the calendar or to excuse counsel and parties from attendance, settlements must be reported **no later than two business days before the hearing or trial.**

## **VII. Joint Pretrial Orders**

Pretrial orders, the requirements of which are detailed in prior scheduling orders issued in the proceeding, 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 may reflect the disagreement. The original and one copy of all paper exhibits as well as an itemized list of exhibits shall be submitted to the courtroom deputy at the same time as the Joint Pretrial Order.



**REQUESTS FOR EMERGENCY RELIEF**  
**(Supplement to Local Rule 9075-1)**

**Motions for Expedited Hearings or for Shortened Notice.** Motions for expedited or emergency hearings or to shorten notice are to be filed in accordance with SC LBR 9075-1. Upon the failure to indicate how quickly the matter needs to be heard, the Court will set the matter for a hearing within approximately 20 days from the date of the filing of the motion. **Hearings set on less than 10 days notice will require service of motion/pleading and notice of hearing on all parties entitled to notice by expedited means (facsimile, e-mail, overnight mail or hand delivery).**

## **TELEPHONE/VIDEO CONFERENCE PARTICIPATION IN HEARINGS**

**Requests to Participate by Telephone or Videoconference.** The Court will consider written requests by counsel to participate by telephone or videoconference capabilities in hearings or trials in which counsel can demonstrate that travel or attendance creates an unnecessary expense or burden and that opposing counsel is informed of the request and does not object to the appearance by telephone. All such requests must be made in writing to chambers as soon as possible and **no later than two business days before the date of the hearing or trial**. Counsel should indicate in their written request the extent of their participation (e.g., mere listening, argument, questioning of witnesses or presenting evidence). The presentation or viewing of evidence by non attending counsel will require prior coordination with the courtroom deputy. Counsel should not rely on requests for such participation unless and until approved by the Court. Participation by these means may be limited based on the technological capabilities of the Court location.

## JUDICIAL LIEN AVOIDANCE

### **Instructions to Complement Local Rules**

Motions to avoid judicial liens should be filed in accordance with the Bankruptcy Code and Rules as well as SC LBR 4003-2 and accompanying exhibits. In chapter 13 cases, motions to avoid judicial liens should be included in the chapter 13 plan.

Pursuant to 11 U.S.C. § 522(f)(2)(B), all liens must be examined in the context of all other unavoids and unavoidable liens. All liens should be addressed 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. 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 the senior lien 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 following factors are examined:

- Whether a judgment constitutes a lien (the debtor owns real property upon which the judgment has attached or whether a judgment has attached to the debtor's personal property).
- Whether the debtor is entitled to claim an exemption on Schedule C for the applicable property and whether the applicable property is listed on Schedule A. (If no exemption is claimed on Schedule C, a hearing is required in order for the debtor to present evidence demonstrating his or her entitlement to the exemption.)
- Whether the numerical amounts provided on the motion are consistent with the Schedules and Statement of Financial Affairs.
- Whether the judgment is listed in Debtor's Schedules and Statement of Financial Affairs.
- Whether the 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 may not be 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.

**EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Debtor.

C/A No.

(JOINT) STATEMENT OF DISPUTE  
AND STIPULATION

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 (state whether admission is stipulated or any grounds for objection).
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.
8. Final Authority. Unless otherwise indicated by a separately filed motion, filed simultaneously herewith, which requests that the Court determine whether this proceeding is subject to the entry of final orders or judgments by this Court, the parties submitting this Joint Statement of Dispute consent to this Court entering final orders and judgments in this proceeding.

\_\_\_\_\_  
(DATED)

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(DATED)

\_\_\_\_\_  
(SIGNATURE)

## EXHIBIT B

### LIST OF MATTERS FOR SCHEDULING IN CHAPTER 13 CASES (JUDGE WAITES CASES ONLY)

<b>Consent Calendar</b>	
Confirmation Hearings	Application for Fees/Compensation*
Objections to Amended Plan (after confirmation hearing)	Motions to Withdraw as Attorney
Motions to Value*	Application for Administrative Expense*
Motions to Assume or Reject*	Motions to Approve Settlement*
Motions to Avoid Judicial Lien*	
Motions for Moratorium*	Objection to Exemptions (if by Trustee, passive*)
	Motions to Value Tax Claim & Establish Priority
Motions to Change Venue*	First Motion to Extend Time to Object to Discharge or Dischargeability of Debt*
Motions to Divide Case or for Joint Administration*	
Motion for Exemption or Waiver from Credit Counseling or Financial Management Course*	Request for Chapter 13 Discharge (BAPCPA) pursuant to SC LBR 3015-5(a)*
Motions to Obtain Credit*	Trustee's Motion to Dismiss or Convert *
Motions to Sell, Use, or Lease Property or to Prohibit or Condition the Use, Sale or Lease of Property*	Motions to Reconsider Dismissal or Reopen
Motions to use Cash Collateral*	
Trustee's Application to Abandon Property	
Motions to Substitute Collateral/Use Insurance Proceeds*	

  

<b>Dispute Calendar</b>	
Claims Objections*	
Requests to Convert or Dismiss Case by Creditor or Other Non-Trustee Party	
Motion for Hardship Discharge and Notice/ Request pursuant to SC LBR 3015-5(b)	
Motion to Allow Continued Administration of Case After Death and/or Designate Person to Act for Debtor	
Motion to Convert/Dismiss by Debtor (previous conversion)	
Motions to Employ Nunc Pro Tunc	
<b>"CATCH ALL" – motions not otherwise listed on the consent calendar.</b>	

  

<b>§ 362 Calendar</b>	
Motions for Relief from the Automatic Stay or Agreements related thereto***	
Co-debtor Stay Motions* **	
Motions to Extend/Impose the Automatic Stay***	
Motions to Reconsider Relief from Stay	
Matters arising under Rule 3002.1*	

\*Indicates motions on passive notice/self-scheduled list, which are set by counsel

\*\*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. Co-debtor stay relief motions should also be scheduled on the dates and times provided for other types of stay relief motions on the § 362 calendar.