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United States Bankruptcy Court  
Columbia, South Carolina (40)

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE: )  
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CHAMBERS GUIDELINES - )  
CASES ASSIGNED TO JUDGE WAITES )  
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AMENDED OPERATING ORDER 15-01

The attached Chambers Guidelines are effective December 1, 2015 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.

  
\_\_\_\_\_  
John E. Waites, U.S. Bankruptcy Judge

Columbia, South Carolina  
November 16, 2015

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

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**Proposed Orders:** File on CM/ECF unless otherwise advised. All proposed orders should include a cover page<sup>1</sup> and 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. Orders due after court hearings should be filed within 10 days of the hearing.

**Joint Statements of Dispute:** File on CM/ECF by the following deadlines:

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

**Self-Scheduled Hearings:** To determine if a matter should be self-scheduled, consult lists provided in SC LBR 9013-4 and the Court Calendar available [here](#).

To determine whether a Chapter 13 matter is to be scheduled on the consent or dispute calendar, consult [LIST OF MATTERS FOR SCHEDULING IN CHAPTER 13 CASES \(JUDGE WAITES CASES ONLY\)](#) set forth herein.

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

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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>1</sup> Absent removal of the matter from the court calendar, all counsel and parties shall attend.

### **I. Continuances**

Continuances may be timely requested using the *Request for Continuance* text event on CM/ECF (if all responding parties consent) or by filing a motion for continuance along with a separate calendar removal request (if unable to obtain consents of all responding parties). Prior to making a continuance request in chapter 13 matters, the chapter 13 trustee should be consulted.<sup>2</sup>

**Continuances are not effective until granted by court order.**<sup>3</sup>

### **II. Settlements**

The settlement of a matter scheduled for hearing should be promptly reported to chambers using the *Notification of Settlement and Request for Removal from Court Hearing Calendar* text event on CM/ECF; or 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. When prompted by the text event, the party filing the withdrawal must specify the reason for withdrawal, including, but not limited to, the debtor's agreement to file an amended plan or the parties' agreement to enter into a consent order or take other action.

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<sup>1</sup> Extraordinary circumstances such as illness or family emergency will also be considered to obtain a continuance after the deadline.

<sup>2</sup> For some matters relating to confirmation, the Trustee may announce the continuance on the record during the hearing and the matter will not be removed from the calendar in advance.

<sup>3</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.

## **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 upon reasonable notice at any time after the submission of the Statement of Dispute. Representations made in a Joint Statement of Dispute shall be considered binding on the parties. Counsel should 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 [judgewartes\\_hearings@scb.uscourts.gov](mailto:judgewartes_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 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 other information needed for case administration, and report settled and disputed matters. Counsel or parties may also make statements on the record. The

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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.

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 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

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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.

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.
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

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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.



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, incur debt (including modification of debt), or request or agree to mortgage modification or other loss mitigation during the pendency of the case 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. An additional no-look fee of \$1500 is allowed for services provided under the Loss Mitigation/Mortgage Modification Portal Procedures. The supplemental fee amount for purposes of SC LBR 2016-1(b)(2)(A) is \$1,200.

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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. **Standard Form Orders Regarding Motions for Relief from the Automatic Stay in Chapter 13 Cases**

Due to the large volume of settlement orders and other § 362 orders reviewed in chambers, standard form orders have been developed to increase efficiency in the review and processing of these orders. The use of the following form orders relating to motions for relief from the automatic stay will allow for expedited consideration without a hearing:

1. Order granting relief from stay in Chapter 13 case based upon a failure to object to motion for relief from stay. See Exhibit C. This order may also be generated using the CM/ECF text only event "Certification of No Response and Request for Default 362 Order."
2. Settlement order for a motion for relief from stay based upon a post petition default in payment pursuant to a plan in a Chapter 13 case. See Exhibit D. This order may also be generated using the CM/ECF text only event "Request for Settlement Order on Motion for Relief from Stay."
3. Order granting relief from stay in Chapter 13 case based upon failure to comply with settlement order. See Exhibit E (to be used in connection with Exhibit D).
4. Settlement order for a motion for relief from stay based upon a post petition default in payment where equity/value exists above Movant's lien. See Exhibit F. This order may also be generated using the CM/ECF text only event "Request for Settlement Order on Motion for Relief from Stay."
5. Consent order granting relief from the automatic stay to continue or pursue an action in family court. See Exhibit J.

### II. **Settlement Orders Containing Non-Standard Language (Hearing Required).**

Parties may include non-standard language in the form Settlement Orders in the section provided or they may draft a settlement order containing non-standard language. **Unless otherwise advised, a hearing, attended by counsel for all parties to the settlement, will be required for approval of any non-standard form order or a settlement order containing non-standard language.** A settlement order must also comply with the following guidelines:

1. Debtor(s)' Certification. A settlement order must include the following certification by debtor(s)' counsel **at the end of the order**:

Prior to consenting to this settlement order, the payment obligations set forth in this 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.

(signature of counsel)  
Attorney for the Debtor(s)

2. Statement of Equity/Value Above Lien. Settlement orders must include a statement of the equity/value in the subject property above the movant's lien according to the parties' certifications of fact. The amount of equity stated should be the total equity or value above the movant's lien in the property without regard to any claimed exemptions or junior liens.

(Example): According to the certification(s) of facts, the value/equity in the subject property above the movant's lien is \$\_\_\_\_\_.

3. ***Ex parte Relief.*** If a settlement order contains an *ex parte* stay relief provision based upon a failure to make a cure payment or a failure to make a future direct payment, the order must provide that the *ex parte* relief provision shall expire no more than 12 months from the expiration of the cure period. A demonstration of cause at a hearing is required for approval of proposed orders containing longer default periods.

- a. Any *ex parte* relief provision upon failure to comply with the settlement order shall be stated as follows:

**Relief from stay may be provided without further hearing upon the filing of an affidavit of default by the movant and the entry of the proposed order by the Court.**

- b. In cases where there is significant equity (more than \$5,000.00) in the subject collateral, an *ex parte* relief provision will not be allowed. Instead, the settlement order should provide that in the event of a default, upon the filing of an affidavit of default and request for further hearing by the movant, the Court will set a further hearing to consider relief from stay. Upon default, the movant should use the CM/ECF event, Affidavit of Default and Request for Further 362 Hearing, to file the affidavit of default and request a hearing. The debtor(s) and Trustee shall have ten (10) days from the date of service of the notice of further 362 hearing to object to the Movant's request for relief. If no timely objections are filed, Movant may file a proposed order granting relief from the automatic stay and the Court may enter such order without any further hearing.

### **III. *Ex parte Relief Due to Default on Settlement Order.***

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 12 months after the expiration of the cure period) and indicate with specificity the 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.

### **IV. *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. § 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.

**LOSS MITIGATION/MORTGAGE MODIFICATION  
AND MEDIATION PROGRAM**

All loss mitigation/mortgage modification (“LM/MM”) occurring during a bankruptcy case must be approved by the Court<sup>13</sup> using the following procedures to be effective.<sup>14</sup> While nothing herein requires a mortgage creditor to agree to LM/MM, the procedures set forth below are intended to facilitate LM/MM discussions which may be otherwise required under applicable non-bankruptcy law or generally offered by the mortgage creditor (“Mortgage Creditor”).<sup>15</sup>

**I. LM/MM via the Portal (Preferred Method)**

a. **LM/MM Portal.** The Portal is a secure web platform operated by Default Mitigation Management LLC (“DMM”), available at <https://www.dclmwp.com>.<sup>16</sup> The Portal is preferred because it allows Court oversight and reduces disputes by enabling parties interested in LM/MM to more quickly communicate and exchange all necessary documentation in a secure and transparent online environment while preserving the record of communication and documents exchanged and establishing deadlines for completion of the review.

b. **LM/MM Portal Procedures.**

(1) Debtor(s) are encouraged to participate in LM/MM via the Portal with the assistance Debtor(s)’ Counsel.<sup>17</sup> Debtors who seek to represent themselves *pro se* for purposes of pursuing LM/MM assume all risks.<sup>18</sup> At the beginning of the Debtor(s)’ bankruptcy case and/or before initiating the LM/MM process, Debtor(s)’ Counsel should determine whether

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<sup>13</sup> **References herein to the Court shall mean Judge Waites only.**

<sup>14</sup> The deadlines and requirements set forth herein are not intended to supersede or extend any deadlines or requirements set forth by applicable non-bankruptcy law, including but not limited to regulations promulgated by the Consumer Financial Protection Bureau (“CFPB”).

<sup>15</sup> **Other than the requirement that the Court approve the final LM/MM by Order, these procedures are not applicable to debtor accepted Streamlined Modifications, which by definition are offers from mortgage lenders or servicers without the need for the Debtor(s) to submit any documentation or financial information to obtain approval.** Streamlined Modifications include but are not limited to FNMA Streamlined Modifications, FHLMC Streamlined Modifications, Streamlined HAMP modifications, and other similar federally sponsored programs/initiatives. A Streamlined Modification may be approved by the Court through the submission of a proposed *Consent Order Approving Mortgage Modification* using the form attached as Exhibit R, using the CM/ECF event, *Proposed Consent Order Approving LM/MM*.

<sup>16</sup> DMM is identified as the Portal provider due to its experience and reasonable cost (\$40 for each Debtor(s)’ Prepared Package and \$40 for the portal submission by the Debtor(s)). Registration for portal use can be completed online at <https://www.dclmwp.com> or by contacting DMM at 1-800-481-1013. The Court may, upon application and review, approve other service providers, in which event such providers will be listed on the Court’s website.

<sup>17</sup> Counsel filing the Debtor(s)’ case shall be presumed to be counsel for LM/MM efforts unless special counsel with expertise in LM/MM is employed by the Debtor(s) with notice to the Court using the *Limited Notice of Appearance, Request for Notice, and Disclosure of Compensation* form attached as **Exhibit M**. The *Limited Notice of Appearance, Request for Notice and Disclosure of Compensation* should be filed using the CM/ECF event, *Limited Notice of Appearance for LM/MM & Request for Notice*. In the event that the no-look fee for LM/MM purposes is to be paid to separate counsel from the attorney representing the Debtor(s) in the filing and administration of the bankruptcy case, the attorneys’ fees to each shall be paid in equal amounts in each distribution from the Trustee, unless otherwise agreed by counsel.

<sup>18</sup> For an additional fee, DMM may offer document preparation and LM/MM facilitation services for debtors who are otherwise unrepresented in using the Portal.

the Mortgage Creditor provides applicable LM/MM programs that may benefit the Debtor(s) and whether LM/MM is feasible, and review LM/MM requirements with the Debtor(s).

- (2) If the Debtor(s) intend to seek LM/MM during the first 12 months of the case, the Debtor(s) must include the appropriate nonstandard plan language (set forth below in Paragraph e (1) or (2)) in the Plan.
- (3) If the Debtor(s) do not intend to seek LM/MM during the first 12 months of the case, but wish to reserve their rights to later pursue LM/MM after confirmation of the Plan, the Debtor(s) must include nonstandard reservation of rights language in the Plan (see Paragraph e (3)).<sup>19</sup> Failure to include such language may preclude subsequent court approval of any LM/MM agreement.
- (4) As an initial matter, Debtor(s)' Counsel should contact the applicable Mortgage Creditor to determine whether it will consent or provide a statement of no objection to engage in LM/MM discussions via the Portal.
  - i. If the Mortgage Creditor agrees, Debtor(s)' Counsel may immediately submit a proposed **Order Requiring Loss Mitigation/Mortgage Modification ("LM/MM Order")**, using the form attached as Exhibit K with the following modifications:<sup>20</sup>
    1. Change title of order to "Consent Order Requiring Loss Mitigation/Mortgage Modification."
    2. Replace the first paragraph of the order with the following: "This matter comes before the Court upon the agreement of the Debtor(s) and [Creditor Name] to participate in the Loss Mitigation/Mortgage Modification Portal Program. With the consent of the parties, it is hereby"
    3. Include consent signatures at the end of the order.
  - ii. If unable to obtain the agreement of the Mortgage Creditor, Debtor(s)' Counsel may file a **Notice and Motion for Loss Mitigation/Mortgage Modification** and proposed **Order Requiring Loss Mitigation/Mortgage Modification ("LM/MM Order")**,<sup>21</sup> using the forms attached as Exhibits J and K, and serve on the applicable Mortgage Creditor, co-borrowers or obligors on the loan, and their counsel, if known.<sup>22</sup>
    - a. The affected Mortgage Creditor, co-borrowers, and other obligors shall have 14 days from the date of service of the Motion to object to the Motion. Any objection must state specific reasons verified as accurate by counsel for the objecting party. Upon timely objection, a hearing shall be held on the date identified in the Notice and all applicable parties and counsel shall attend. In the absence of an objection, the Court may grant, without a hearing, the Motion and enter the **LM/MM Order**.

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<sup>19</sup> The LM/MM process should be commenced before discharge of the Debtor(s) and in time to allow completion of the procedures before the case is closed.

<sup>20</sup> The proposed order should be filed using the *Proposed Consent Order Requiring LM/MM (no motion filed)* CM/ECF event.

<sup>21</sup> The **Notice and Motion for Loss Mitigation/Mortgage Modification** and proposed **LM/MM Order** should be filed using the *Loss Mitigation/Mediation* CM/ECF event.

<sup>22</sup> In order to ensure timely responses to inquiries from the Court, the Mortgage Creditor's designated counsel shall be deemed to be the attorney who files the most recent pleading in the case on behalf of the Mortgage Creditor.

- (5) Upon entry of the **LM/MM Order**, Debtor(s)' Counsel shall immediately register on the Portal. **Once the LM/MM Order is issued, all communication between the parties regarding LM/MM shall be through the Portal and the parties must comply with the deadlines and requirements set forth in the LM/MM Order.**
- (6) Within 7 days after entry of the **LM/MM Order** or within any other applicable deadline set by non-bankruptcy law (including CFPB requirements), if shorter, the Mortgage Creditor shall advise its counsel of entry of the **LM/MM Order**, register to use the Portal (if not previously registered), assign to the Portal the Mortgage Creditor's designated counsel, and ensure that the Portal provider has been provided with any and all application forms and documentation requirements necessary for consideration of all available types of LM/MM. Debtor(s)' Counsel shall report, by correspondence filed on the Court's docket, any failure to timely register to use the Portal.
- i. **Loan Transfer during LM/MM Process.** The Mortgage Creditor, via counsel, is ordered to inform the Court, the Debtor(s), Debtor(s)' Counsel, the Trustee, and any participating co-borrower or obligor if the applicable loan is sold or securitized to another company during the LM/MM process within 7 days of the transfer. The transferee or new servicer of the loan shall be advised of these requirements by the original Mortgage Creditor and shall be bound by all prior orders, agreements, forms, and documentation. The transferee or servicer shall register for the Portal within 7 days and the Mortgage Creditor shall transfer the Portal account to the transferee so that the transferee may review all previously submitted transmissions and continue with the process.
- (7) Within 14 days after entry of the **LM/MM Order**, unless exempted,<sup>23</sup> the Court's approved online document preparation program (the "Document Preparation Program") must be used to complete the standard LM/MM forms (the "Debtor(s)' Prepared Package") and upload the Debtor(s)' Prepared Package to the Portal. Use of the Document Preparation Program, provided at [www.documods.com](http://www.documods.com),<sup>24</sup> is required to expedite the exchange of information between the Debtor(s) and the Mortgage Creditor and ensure greater accuracy in the preparation of the required documentation.
- (8) Within 7 days after submission of the Debtor(s)' Prepared Package and any other necessary documentation on the Portal, the Mortgage Creditor shall:
- i. Acknowledge receipt of the information on the Portal;
  - ii. Provide on the Portal all contact information of the representative in charge of the Debtor(s)' account; and
  - iii. Notify Debtor(s)' Counsel of any additional or updated information required to process the application.

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<sup>23</sup> Debtor(s)' Counsel who are experienced with LM/MM and with the use of the Portal may request by motion, stating grounds with specificity, to be exempted from using the Document Preparation Program. **Pro se Debtors must use the Document Preparation Program.**

<sup>24</sup> Enter **sebkdocs40** for the \$40.00 rate. DMM also offers a DocuPrep program through which it directly assists the Debtor(s) in completing the Debtor(s)' Prepared Package (for a fee charge of approximately \$200.00).

- (9) Unless a shorter time is set by applicable law, rules or regulations (such as the CFPB), the Mortgage Creditor shall have a total of 90 days from entry of the *LM/MM Order* (“Loss Mitigation Period”) to conclude its consideration and provide a final response to the Loss Mitigation request by advising on all means of Loss Mitigation, including mortgage modification, or verify a denial by filing a *Mortgage Loan Modification Report*, using the form attached as Exhibit L.<sup>25</sup> **Any denial shall state specific reasons for the denial.**
- i. Upon the failure to reach an agreement regarding LM/MM within the 90-day Loss Mitigation Period, any party may request an extension of the Loss Mitigation Period by motion, which states specific grounds for the extension.
- (10) Upon acceptance of the Debtor in a Trial Period Plan and before the first trial period payment is due, Debtor(s)’ Counsel shall submit a proposed *Order Approving Trial Period Plan* using the form attached as Exhibit N for consideration and approval by the Court.<sup>26</sup> If a copy of the trial period agreement is attached to the proposed order, **any private information must be redacted** according to Federal Rule of Bankruptcy Procedure 9037.
- (11) Any final agreement for LM/MM shall be submitted for approval by the Court by way of *Consent Order Approving Loss Mitigation/Mortgage Modification*, using the form attached as Exhibit O.<sup>27</sup> If a copy of the LM/MM agreement is attached to the proposed order, **any private information must be redacted** according to Federal Rule of Bankruptcy Procedure 9037.
- i. 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.
- ii. Dismissal of the bankruptcy case, relief from the automatic stay as to the affected property, or reaffirmation of the debt shall not be a prerequisite of an agreement for loss mitigation, including modification of mortgage loan, unless allowed by the Court after consideration at a hearing.
- (12) Absent entry of a *Consent Order Approving Loss Mitigation/Mortgage Modification*, a final report, using the form attached as Exhibit L, must be submitted within thirty (30) days of the expiration of the Loss Mitigation efforts.
- (13) In order to ensure the timely completion of LM/MM and unless a final report concluding LM/MM has been filed, the Court will set a status hearing on the LM/MM efforts (“Status Hearing”) within 120 days from the entry of the *LM/MM Order*. The Debtor(s), Debtor(s)’ Counsel, the representative of the Mortgage Creditor with the most knowledge regarding the LM/MM efforts made in the case and counsel for the affected Mortgage Creditor shall appear in person at the Status Hearing. In the event the LM/MM process is completed, approved or denied prior to that time, parties via counsel may file a report to that effect and a calendar removal request.

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<sup>25</sup> The *Mortgage Loan Modification Report* should be filed using the CM/ECF event of the same name.

<sup>26</sup> The proposed *Order Approving Trial Period Plan* should be filed using the CM/ECF event, *Proposed Order Approving Trial Period Plan*.

<sup>27</sup> The proposed *Consent Order Approving Loss Mitigation/Mortgage Modification* should be filed using the CM/ECF event, *Proposed Consent Order Approving LM/MM*.

(14) No later than 60 days after entry of the *Consent Order Approving Loss Mitigation/Mortgage Modification*, the Mortgage Creditor shall deliver all documents necessary to complete the permanent modification to Debtor(s)' Counsel and the parties shall execute all necessary documents to finalize the modification. Upon the Mortgage Creditor's failure to timely deliver the necessary documents, the Debtor(s) may file a Motion to Compel and seek attorney's fees incurred as a result of unreasonable delay.

c. **Good Faith Requirement.** All parties are required to act in good faith throughout the LM/MM process. Debtor(s)' Counsel and counsel for the Mortgage Creditor shall immediately report to the Court the other party's failure to timely comply with any of the LM/MM procedures or deadlines or failure to otherwise act in good faith by filing correspondence on the Court's docket.

d. **LM/MM Mediation.** At any time after the *LM/MM Order* is entered, any party may request or the Court, *sua sponte*, may direct the appointment of a mediator to facilitate LM/MM discussions and resolve disputes between the parties.<sup>28</sup> If approved, the Court will select a mediator and issue an *Order Appointing Mediator*.<sup>29</sup>

(1) Within 3 days after the entry of the *Order Appointing Mediator*, the mediator shall register to the Portal at no cost. Once registered, Debtor(s)' Counsel shall assign the mediator to the account on the Portal so that the mediator may review the file and have access to the account on the Portal. Each mediation session shall be conducted via telephone conference call on a date set by the mediator and last no longer than one hour. Debtor(s)' Counsel shall publish the phone number for the conference call on the Portal no later than 3 days before the scheduled mediation. Any party may request an expedited hearing before the Court on issues not resolved by mediation.

(2) Costs for a mediator shall not, without Court order, exceed \$500.00 for two one-hour sessions, and shall be equally divided and paid within 10 days of the *Order Appointing Mediator* and in advance of the session by the parties unless otherwise ordered.<sup>30</sup>

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<sup>28</sup> A request for mediation made more than 60 days after entry of an order granting relief from stay on the subject property or made after denial of an appeal must allege specific grounds that demonstrate a lack of good faith, change in circumstances, or other cause. The request for mediation should be filed using the CM/ECF event, *Request for Appointment of Mediator*.

<sup>29</sup> If the selected mediator is unable to serve, the parties may contact Chambers to request the appointment of a new mediator.

<sup>30</sup> In the event of a settlement of issues before mediation takes place, the mediator may nevertheless be entitled to fees for time spent in preparation for mediation at the hourly rate of \$250/hour, but such fee request shall not exceed \$500.00 without Court order.



- e. **Chapter 13 Plan Language.** The following nonstandard language has been approved for inclusion in the Chapter 13 plan to indicate the Debtor(s) intention to pursue LM/MM, subject to objection by affected parties.

(1) Option One (The Debtor(s) are capable of making regular contract payments or adequate protection payments)

The Debtor(s) shall seek loss mitigation or consensual mortgage modification of the mortgage loan secured by the following property via the Portal process set forth in Chamber's Guidelines:

[Real Property Description]

Beginning on [date], the Debtor(s) will pay either  regular contract payments or  adequate protection payments in the amount of \$\_\_\_\_\_ directly to [Mortgage Creditor]. The Debtor(s) will also be responsible for payment of any arrearage directly to [Mortgage Creditor] if not relieved through a loss mitigation or loan modification process. No payment will be made by the Trustee on this secured claim.

(2) Option Two (The Debtor(s) are unable to make present payments)

The Debtor(s) are unable to resume payments to [Mortgage Creditor] at this time, and therefore, the Debtor(s)' plan relies upon loss mitigation or a consensual mortgage loan modification of the mortgage loan secured by the following property:

[Real Property Description]

If the mortgage loan modification is approved, the Debtor(s) shall directly pay [Mortgage Creditor]'s allowed mortgage claim, including any prepetition and post petition amounts. No payment will be made by the Trustee on this secured claim.

In the event that (1) the request for mortgage loan modification (and any necessary documentation) is not submitted or is denied (after appeal) or (2) the Debtor(s) fail to timely make any required Trial Period Plan Payments, the Mortgage Creditor may, after 14 days' written notice to the Debtor(s), Debtor(s)' Counsel, and the Trustee, submit an affidavit and proposed order seeking relief from the stay. However, the Mortgage Creditor may not obtain relief until its final consideration of loss mitigation or mortgage modification is concluded and reported to the Debtor(s) and Debtor(s)' Counsel.

(3) Option Three (Reservation of Rights Language)

The Debtor(s) reserve the right to seek loss mitigation or modification of the mortgage loan using the Loss Mitigation/Mortgage Modification Portal procedures described in Chambers Guidelines during the bankruptcy case, which may be effective upon subsequent approval by order of the Court

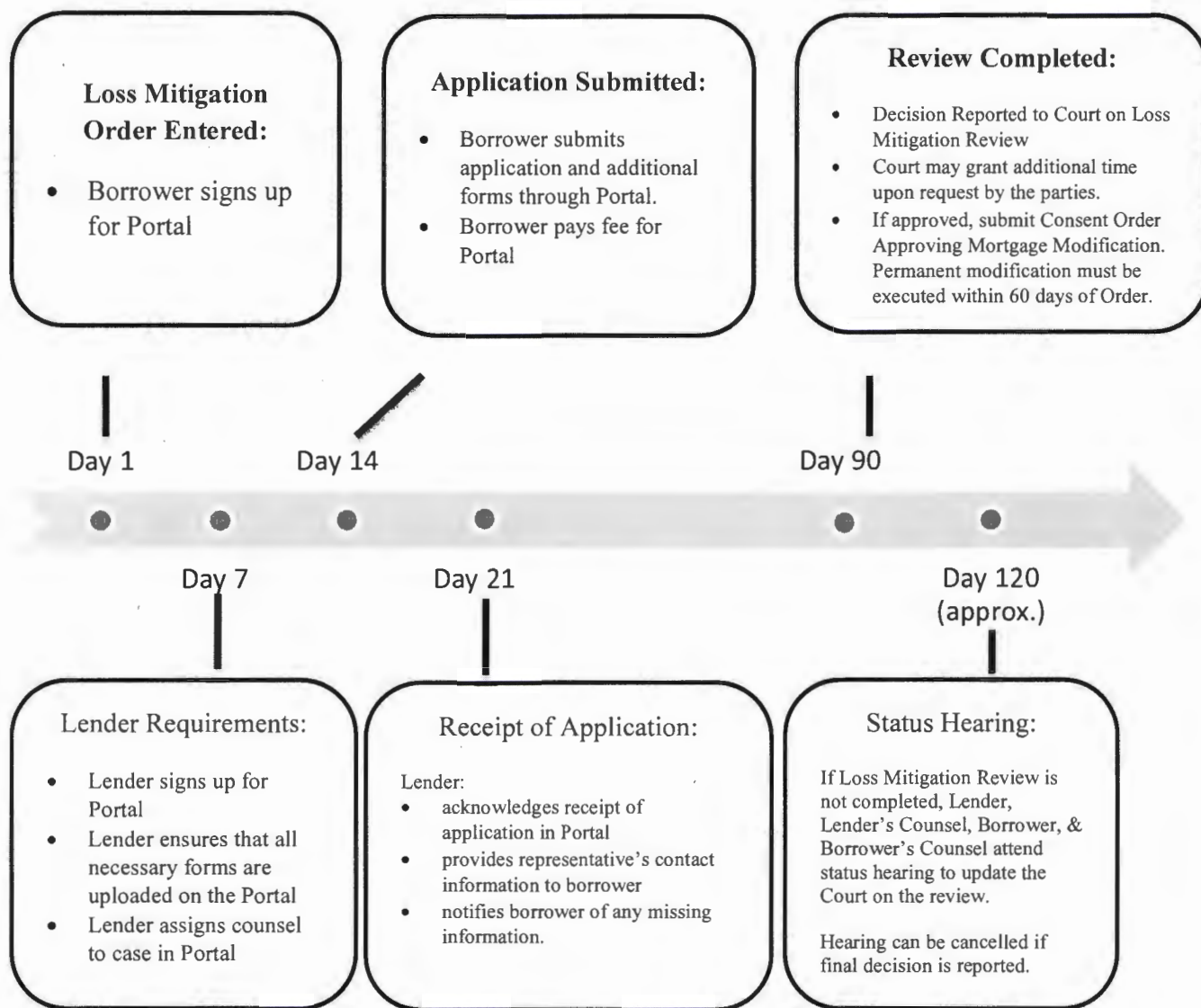
f. **Attorney's Fees for LM/MM via the Portal.** Counsel assisting the Debtor(s) with LM/MM via the Portal shall be permitted to charge an attorney's fee for LM/MM related services. In Chapter 13 cases, a **\$1500** no-look fee shall be allowed (in addition to the no-look fee established under the Guidelines for compensation for professionals), which may be paid directly by the Debtor from post petition income or exempt assets or through the confirmed Plan, with **\$1000** of that fee allowed to be distributed in the initial distribution by the Trustee. The manner of payment of the no-look fee for loss mitigation/mortgage modification must be addressed in the **LM/MM Order**. See Exhibit K. The fee provides additional compensation for all services through the completion of the LM/MM process and includes:

- a. Filing of the **Notice and Motion for Loss Mitigation/Mortgage Modification** and proposed **LM/MM Order**;
- b. Assembling and submitting Debtor(s)' Prepared Package;
- c. Filing of other required pleadings and preparation of proposed orders, as applicable;
- d. Communicating with the Mortgage Creditor, co-borrower or obligor, and the Mediator, if appointed;
- e. Filing of the proposed **Order Approving Trial Period Plan**, if applicable; **Consent Order Approving Loss Mitigation/Mortgage Modification**, or a **Mortgage Loan Modification Report**; and
- f. Appearing at hearings relating to LM/MM.

\$1000 of the no-look fee shall be deemed earned and payable after the filing of an Attorney Fee Disclosure Statement and upon completion of the submission of all documents necessary for consideration of loss mitigation/mortgage modification. The remaining portion of the no-look fee shall be deemed earned and payable upon submission of a proposed **Order Approving Trial Period Plan**, **Consent Order Approving Loss Mitigation/Mortgage Modification**, or **Mortgage Loan Modification Report**. Additional fees for LM/MM efforts may be allowed in the event of extraordinary circumstances or if LM/MM mediation is ordered upon motion specifying cause and further order.

As an alternative to the no-look fee, an application seeking additional compensation may also be submitted for expedited consideration.

## Timeline for Loss Mitigation Review:



These deadlines are supplemental to and do not supersede the deadlines required in other legal mandates, including the National Mortgage Settlement and the CFPB.

## II. Non-Portal LM/MM

- a. **Duty to Report Non-Portal LM/MM Efforts for Approval.** Non-Portal LM/MM efforts must be reported to the Court via the filing of correspondence by Debtor(s)' Counsel, counsel for the Mortgage Creditor or the parties *pro se* or by submission of an order seeking approval.<sup>31</sup> Failure to timely notify the Court of such efforts may result in adverse rulings.
- b. **Approval of Non-Portal Trial Period Plan.** Upon acceptance of the Debtor in a Trial Period Plan and before the first trial period payment is due, Debtor(s)' Counsel shall submit a ***Consent Order Approving Trial Period Plan (Non-Portal)*** using the form attached as Exhibit P. If a copy of the trial period agreement is attached to the proposed order, **any private information must be redacted** according to Federal Rule of Bankruptcy Procedure 9037.
- c. **Approval of Non-Portal Final Agreement for Loss Mitigation/Mortgage Modification.** Any final agreement for LM/MM shall be submitted for approval by the Court by way of a proposed ***Consent Order Approving Loss Mitigation/Mortgage Modification (Non-Portal)***, using the form attached as Exhibit Q. If a copy of the LM/MM agreement is attached to the proposed order, **any private information must be redacted** according to Federal Rule of Bankruptcy Procedure 9037.
- i. 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.
  - ii. Dismissal of the bankruptcy case or reaffirmation of the debt shall not be a prerequisite of an agreement for loss mitigation, including modification of mortgage loan, unless ordered by the Court after consideration at a hearing.
  - iii. If not provided in a previously confirmed plan, an amended plan which provides that all mortgage payments shall be made directly by Debtor(s) to the Mortgage Creditor shall be filed prior to the approval of the final agreement for LM/MM.
  - iv. Upon approval of the final agreement for LM/MM, the Court will grant relief from the automatic stay for the benefit of the Mortgage Creditor upon submission of a proposed order from the Mortgage Creditor via counsel.<sup>32</sup> Unless otherwise ordered, the automatic stay shall remain effective as to all other lienholders.
- d. **Attorney's Fees for Non-Portal LM/MM.** No additional no-look attorney's fee is authorized for Non-Portal LM/MM efforts. Debtor(s)' Counsel may seek attorney's fees in an amount of up to \$300 for efforts to obtain Court approval by filing an application for supplemental fees in accordance with SC LBR 2016-1.
- e. **Pursuing LM/MM without Assistance of Counsel.** Debtors who elect to represent themselves *pro se* for purposes of pursuing LM/MM assume all risks, and if unsuccessful, a further opportunity to seek LM/MM during the bankruptcy case will not be approved.

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<sup>31</sup> Unrepresented Mortgage Creditors may submit correspondence to chambers by e-mail to [jwaites\\_prose@scb.uscourts.gov](mailto:jwaites_prose@scb.uscourts.gov), with copy provided to Debtor(s)' Counsel and the Trustee.

<sup>32</sup> The proposed order should be titled "Order Granting Relief from Stay as to [Mortgage Creditor Name] Only" and should be filed using the CM/ECF event, *Proposed Order*.

**MOTIONS TO SUBSTITUTE COLLATERAL/USE INSURANCE PROCEEDS**

Motions to substitute collateral or use insurance proceeds to purchase a vehicle of equal or greater value may be filed on passive notice and scheduled for a possible hearing on the consent calendar. Proposed orders granting motions to substitute collateral should be filed using the form attached as Exhibit B.

## 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>1</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. If a matter is scheduled to be heard by video or telephone conference, the premarked exhibits should be provided to the courtroom deputy two business days prior to the scheduled hearing by email to [judgewaites\\_hearings@scb.uscourts.gov](mailto:judgewaites_hearings@scb.uscourts.gov), or by delivery to the applicable Court location via U.S. Mail, FedEx/UPS, or hand delivery.

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<sup>1</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) within 14 days and are requested to e-mail a Discovery Report to the law clerks 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 FINAL ORDERS AND JUDGMENTS IN THE 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.**

The terms of any settlement resulting in the filing of a Stipulation of Dismissal must be provided to chambers for *in camera* review if any consideration is exchanged in return for the dismissal. In Chapter 13 cases, notice of any such settlement must be provided to the Chapter 13 Trustee so that the Trustee can advise chambers whether he/she consents to the settlement.

## 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.

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

<b>Consent Calendar</b>	
<p>Confirmation Hearings            Objections to Amended Plan (after confirmation hearing)            Motions to Value*            Motions to Assume or Reject*            Motions to Avoid Judicial Lien*            Motions for Moratorium*              Motions to Change Venue*            Motions to Divide Case or for Joint Administration*            Motion for Exemption or Waiver from Credit Counseling or Financial Management Course*              Motions to Obtain Credit*            Motions to Sell, Use, or Lease Property or to Prohibit or Condition the Use, Sale or Lease of Property*            Motions to use Cash Collateral*            Trustee's Application to Abandon Property            Motions to Substitute Collateral/Use Insurance Proceeds*</p>	<p>Application for Fees/Compensation*            Motions to Withdraw as Attorney            Application for Administrative Expense*              Motions to Approve Settlement*              Objection to Exemptions (if by Trustee, passive*)            Motions to Value Tax Claim &amp; Establish Priority            First Motion to Extend Time to Object to Discharge or Dischargeability of Debt*              Request for Chapter 13 Discharge (BAPCPA) pursuant to SC LBR 3015-5(a)*            Trustee's Motion to Dismiss or Convert *            Motions to Reconsider Dismissal or Reopen</p>
<b>Dispute Calendar</b>	
<p>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</p> <p><b>"CATCH ALL" – motions not otherwise listed on the consent calendar.</b></p>	
<b>§ 362 Calendar</b>	
<p>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*</p>	

\*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.

**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**

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

IN RE:

[Debtor Name],

Debtor(s).

C/A No. \_\_\_\_\_

Chapter \_\_\_\_

**ORDER GRANTING MOTION TO  
SUBSTITUTE COLLATERAL OR USE  
INSURANCE PROCEEDS**

Before the Court is the Debtors' Motion to Substitute Collateral or Use Insurance Proceeds (the "Motion") regarding the secured claim of \_\_\_\_\_ (hereinafter "Creditor"). Having reviewed the pleadings and heard the arguments of counsel, it is hereby

ORDERED that Debtors' Motion be granted to allow Debtors to use insurance proceeds to purchase a vehicle of equal or greater value to the [description of wrecked vehicle] under lien to the Creditor under the condition that the new vehicle purchased by the Debtors will be substituted as collateral for the allowed secured claim of Creditor and the lien of Creditor will be properly noted on the title of the newly purchased vehicle;

IT IS FURTHER ORDERED that the insurance proceeds shall be forwarded to the Debtors' attorney, \_\_\_\_\_ for proper disbursement;

IT IS FURTHER ORDERED that Debtors and Debtors' attorney shall ensure that the seller of the new vehicle shall forward the title of said vehicle to Creditor so that Creditor may record its lien and hold it until either its claim has been satisfied or the Plan has been discharged;

IT IS FURTHER ORDERED that Creditor shall forward the title to the [description of wrecked vehicle] to the insurance company which distributes the proceeds, so that such insurance company may dispose of the wrecked vehicle. The name and address of the insurance company will be provided by Debtors and Debtors' attorney to Creditor; and

IT IS FURTHER ORDERED that Debtors' attorney shall timely monitor all transactions and hold the insurance proceeds in trust to be disbursed for the replacement vehicle and that Debtors' attorney shall ensure that the seller has notice of and complies with this Order.

**AND IT IS SO ORDERED.**

**EXHIBIT C<sup>1</sup>**

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

IN RE:

[Debtor Name],

Debtor(s).

C/A No. \_\_\_\_\_

Chapter 13

**ORDER GRANTING RELIEF FROM  
AUTOMATIC STAY**

This matter comes before the Court pursuant to the motion of \_\_\_\_\_ (“Movant”), which seeks relief from the automatic stay in this case. According to the affidavit of Movant, no objection to the requested relief was filed by Debtor(s) or the Trustee, or any objections filed were subsequently withdrawn. It appearing that the motion should be granted, it is therefore

ORDERED that relief from the automatic stay is granted as to the property described as (insert brief description), and that Movant may proceed with its state court remedies against the property, including sending any required notice to Debtor(s). The Movant has agreed to waive any claim arising under 11 U.S.C. § 503(b) or § 507(b) as a result of this Order, and has further agreed that any funds realized in excess of all liens, costs, and expenses will be paid to the Trustee;

IT IS FURTHER ORDERED that:

- Based upon Debtor(s)' failure to object to Movant's request regarding the Fed. R. Bankr. P. 4001(a)(3) stay, this order is effective immediately.
- Pursuant to Fed. R. Bankr. P. 4001(a)(3), this order is stayed until the expiration of 14 days after its entry.

**AND IT IS SO ORDERED.**

---

<sup>1</sup> This order may be automatically generated using the text only CM/ECF event “Certification of No Response and Request for 362 Default Order.”

**EXHIBIT D<sup>1</sup>**

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

IN RE:

[Debtor Name],

Debtor(s).

C/A No. \_\_\_\_\_

Chapter 13

**SETTLEMENT ORDER  
ON  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY**

This matter comes before the Court on the motion for relief from the automatic stay filed by \_\_\_\_\_ ("Movant"). The Chapter 13 Trustee did not object to the motion or has agreed to the settlement. The property which is the subject of the motion is described as follows:

[Property Description]

Upon the agreement of the parties, it is hereby ORDERED:

According to the certifications of facts, the value/equity in the subject property above the movant's lien is \$\_\_\_\_\_.<sup>2</sup>

As of \_\_\_\_\_, Debtor has accrued a post petition arrearage in the amount of \$\_\_\_\_\_. The post petition arrearage consists of:

- Payments for the month(s) of \_\_\_\_\_ in the amount of \$\_\_\_\_\_ per month.
- Late charges in the amount of \$\_\_\_\_\_.
- Attorney's fees and costs in the amount of \$\_\_\_\_\_.
- Other costs (specify below) in the amount of \$\_\_\_\_\_.

Debtor shall continue to remit to Movant the regular post petition monthly payments beginning \_\_\_\_\_, 20\_\_\_\_, and continuing thereafter in accordance with the terms of the loan agreement and the chapter 13 plan.

In addition to the regular post petition monthly payments set forth above, Debtor shall cure the post petition arrearage of \$\_\_\_\_\_ as follows:

- Pay initial payment of \$\_\_\_\_\_ by \_\_\_\_\_, 20\_\_\_\_.

<sup>1</sup> This order may be automatically generated using the text only CM/ECF event "Request for Settlement Order on Motion for Relief from Stay."

<sup>2</sup> The amount of equity stated should be the total equity or value above the movant's lien in the Property without regard to any claimed exemptions or junior liens. If the value/equity exceeds \$5,000.00, Exhibit F should be used.



Pay \$\_\_\_\_\_ per month beginning \_\_\_\_\_, 20\_\_ for \_\_\_ months.

Pay final payment of \$\_\_\_\_\_ by \_\_\_\_\_, 20\_\_.

Failure to make a payment within 20 days from its due date shall be considered a default under the terms of this settlement order.

Payments shall be paid directly to Movant at:

[Address for Payment]

In the event of a default under the terms of this Order, relief from stay may be provided without further hearing upon the filing of an affidavit of default by Movant and the entry of the proposed order by the Court. Movant may then proceed with its state court remedies against the property, including sending any required notice to Debtor(s). **This *ex parte* relief provision of this Order shall expire and no longer be effective 12 months from the expiration of the cure period set forth above.**

Movant agrees to waive any claim arising under 11 U.S.C. § 503(b) or § 507(b) as a result of this Order. In the event relief from the automatic stay is granted due to Debtor's default under the terms of this Settlement Order, Movant agrees that any funds received in excess of all liens, costs, and expenses will be paid to the Trustee.

The parties agree that the Fed. R. Bankr. P. 400I(a)(3) stay:

- is applicable to any order granting relief for default on this settlement order.
- is not applicable to any order granting relief for default on this Settlement Order.

**NON-STANDARD LANGUAGE**  
**(Hearing May Be Required for Approval)**

**AND IT IS SO ORDERED.**

**WE SO MOVE AND CONSENT:**

/s/ Attorney for Movant \_\_\_\_\_  
Attorney for Movant  
District Court I.D. \_\_\_\_\_

/s/ Attorney for Debtor \_\_\_\_\_  
Attorney for Debtor  
District Court I.D. \_\_\_\_\_

**CERTIFICATION:**

Prior to consenting to this settlement order, the payment obligations set forth in this Order, including the amounts, method, and timing of payments, and consequences of default were reviewed with and agreed to by the Debtor or the party obligated to pay.

/s/ Attorney for Debtor \_\_\_\_\_  
Attorney for Debtor  
District Court I.D. \_\_\_\_\_

**EXHIBIT E**

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

IN RE:

Debtor(s).

C/A No. \_\_\_\_\_

Chapter \_\_\_\_\_

**ORDER GRANTING  
RELIEF FROM STAY  
BASED UPON FAILURE TO COMPLY  
WITH SETTLEMENT ORDER**

This matter comes before the Court upon the Affidavit of Default filed by \_\_\_\_\_ ("Movant"), which indicates that Debtor(s) have failed to comply with the terms of the Settlement Order entered on \_\_\_\_\_, by failing to make the payment(s) due on \_\_\_\_\_ in accordance with the Settlement Order. Therefore, it is

ORDERED that relief from the automatic stay is granted as to the property described as [insert brief description], and that Movant may proceed with its state court remedies against the property, including sending any required notice to Debtor(s). The Movant has agreed to waive any claim arising under 11 U.S.C. § 503(b) or § 507(b) as a result of this Order, and has further agreed that any funds realized in excess of all liens, costs, and expenses will be paid to the Trustee.

IT IS FURTHER ORDERED that:

- Based upon Debtor(s)' prior agreement to Movant's request regarding the Fed. R. Bankr. P. 4001(a)(3) stay, this order is effective immediately.
- Pursuant to Fed. R. Bankr. P. 4001(a)(3), this order is stayed until the expiration of 14 days after its entry).

**AND IT IS SO ORDERED.**

**EXHIBIT F<sup>4</sup>**

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

IN RE:

[Debtor Name],

Debtor(s).

C/A No. \_\_\_\_\_

Chapter 13

**SETTLEMENT ORDER  
ON  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
(Value/Equity Exists  
Above Movant's Lien)<sup>5</sup>**

This matter comes before the Court on the motion for relief from the automatic stay filed by \_\_\_\_\_ ("Movant"). The Chapter 13 Trustee did not object to the motion or has agreed to the settlement. The property which is the subject of the motion is described as follows:

[Property Description]

Upon the agreement of the parties, it is hereby ORDERED:

According to the certifications of facts, the value/equity in the subject property above the movant's lien is \$\_\_\_\_\_.<sup>6</sup>

As of \_\_\_\_\_, Debtor has accrued a post petition arrearage in the amount of \$\_\_\_\_\_. The post petition arrearage consists of:

- Payments for the month(s) of \_\_\_\_\_ in the amount of \$\_\_\_\_\_ per month.
- Late charges in the amount of \$\_\_\_\_\_.
- Attorney's fees and costs in the amount of \$\_\_\_\_\_.
- Other costs (specify below) in the amount of \$\_\_\_\_\_.

Debtor shall continue to remit to Movant the regular post petition monthly payments beginning \_\_\_\_\_, 20\_\_\_\_, and continuing thereafter in accordance with the terms of the loan agreement and the chapter 13 plan.

<sup>4</sup> This order may be automatically generated using the text only CM/ECF event "Request for Settlement Order on Motion for Relief from Stay."

<sup>5</sup> This form is to be used if the value/equity above the movant's lien in the property exceeds \$5,000.00.

<sup>6</sup> The amount of equity stated should be the total equity or value above the movant's lien in the property without regard to any claimed exemptions or junior liens.

In addition to the regular post petition monthly payments set forth above, Debtor shall cure the post petition arrearage of \$ \_\_\_\_\_ as follows:

- Pay initial payment of \$ \_\_\_\_\_ by \_\_\_\_\_, 20\_\_.
- Pay \$ \_\_\_\_\_ per month beginning \_\_\_\_\_, 20\_\_ for \_\_\_ months.
- Pay final payment of \$ \_\_\_\_\_ by \_\_\_\_\_, 20\_\_.

Failure to make a payment within 20 days from its due date shall be considered a default under the terms of this settlement order.

Payments shall be paid directly to Movant at:

[Address for Payment]

In the event of a default under the terms of this Order, Movant may file an affidavit of default and request for further hearing, and a hearing will be scheduled to determine whether relief from stay is warranted. The debtor(s) and Trustee shall have ten (10) days from the date of service of the notice of further 362 hearing to object to the Movant's request for relief. If no timely objections are filed, the Court may grant relief without any further hearing.

Movant agrees to waive any claim arising under 11 U.S.C. § 503(b) or § 507(b) as a result of this Order. In the event relief from the automatic stay is granted due to Debtor's default under the terms of this Settlement Order, Movant agrees that any funds received in excess of all liens, costs, and expenses will be paid to the Trustee.

The parties agree that the Fed. R. Bankr. P. 4001(a)(3) stay:

- is applicable to any order granting relief for default on this settlement order.
- is not applicable to any order granting relief for default on this Settlement Order.

**NON-STANDARD LANGUAGE**  
**(Hearing May Be Required for Approval)**

**AND IT IS SO ORDERED.**

**WE SO MOVE AND CONSENT:**

/s/ Attorney for Movant \_\_\_\_\_

Attorney for Movant

District Court I.D. \_\_\_\_\_

/s/ Attorney for Debtor \_\_\_\_\_

Attorney for Debtor

District Court I.D. \_\_\_\_\_

**CERTIFICATION:**

Prior to consenting to this settlement order, the payment obligations set forth in this 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.

/s/ Attorney for Debtor \_\_\_\_\_

Attorney for Debtor

District Court I.D. \_\_\_\_\_

**EXHIBIT G**

(RESERVED FOR FUTURE USE)

**EXHIBIT H**

(RESERVED FOR FUTURE USE)



**EXHIBIT I**

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

IN RE:

C/A No. \_\_\_\_\_

[Debtor Name],

Chapter \_\_\_\_

Debtor(s).

**CONSENT ORDER GRANTING RELIEF  
FROM STAY TO CONTINUE OR  
PURSUE ACTION IN FAMILY COURT**

This matter comes before the Court upon the request of \_\_\_\_\_ for an Order granting relief from the automatic stay provided under 11 U.S.C. § 362(a) to permit \_\_\_\_\_ to adjudicate the following actions in Family Court:

- Divorce
- Child Support
- Alimony
- Equitable Distribution of Marital Property & Debts
- Other \_\_\_\_\_

The parties consent to relief from the automatic stay. It is therefore,

ORDERED that relief from the automatic stay is granted to allow the Family Court to adjudicate the above-referenced actions and to accord such other relief as is appropriate under state law. However, additional relief from stay is necessary for the enforcement of a marital obligation against property of the estate or to hold the Debtor in civil contempt. Notwithstanding any determination by the Family Court, property of the estate may be subject to further order of this Court.

**AND IT IS SO ORDERED.**

**WE SO MOVE AND CONSENT:**

/s/ Attorney for Movant \_\_\_\_\_  
Attorney for Movant  
District Court I.D. \_\_\_\_\_

/s/ Attorney for Debtor \_\_\_\_\_  
Attorney for Debtor  
District Court I.D. \_\_\_\_\_

/s/Chapter 13 Trustee \_\_\_\_\_  
Chapter 13 Trustee

**EXHIBIT J**

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

IN RE:

[Debtor Name],

Debtor(s).

C/A No. \_\_\_\_\_

Chapter \_\_\_\_\_

**NOTICE AND MOTION FOR  
LOSS MITIGATION/MORTGAGE  
MODIFICATION PURSUANT TO  
JUDGE WAITES' CHAMBERS  
GUIDELINES**

**To: \_\_\_\_\_ ("Mortgage Creditor") and Parties in Interest**

The Debtor(s), through counsel, hereby move the Court for an Order Requiring Loss Mitigation/Mortgage Modification with respect to the following property:

*[Identify the Property]  
[Last Four Digits of Loan Number]  
[Mortgage Creditor's Name and Address]*

The Debtor(s) request an order directing the parties to participate in the Loss Mitigation/Mortgage Modification via the Portal as set forth in Judge Waites' Chambers Guidelines, available at <http://www.scb.circ4.dcn/ChambersJW.htm>.

Prior to filing this Motion, Debtor(s)' Counsel has determined that:

- The Mortgage Creditor is registered with the Portal. Debtor(s)' Counsel will upload to the Portal Debtor(s)' Prepared Package together with any additional forms or documents which the Mortgage Creditor may post on the Portal within 14 days after entry of the Order.
- The Mortgage Creditor is not registered. The Debtor(s) request that the Court require Mortgage Creditor to register with the Portal within 7 days after entry of the Order. Debtor(s)' Counsel will upload to the Portal Debtor(s)' Prepared Package together with any additional forms or documents which the Mortgage Creditor may post on the Portal within 14 days after entry of the Order.

The Debtor(s)  have or  have not previously sought loss mitigation/mortgage modification through any procedure/process during this bankruptcy case or within the previous two years. List dates and results: \_\_\_\_\_

If a previous attempt at loss mitigation/mortgage modification was made or is ongoing, the change of circumstances which makes this attempt more likely to succeed is as follows:

**TAKE FURTHER NOTICE that any response, return and/or objection to this Motion should be filed with the Court no later than 14 days from service of the Motion and a copy simultaneously served on all parties in interest.**

TAKE FURTHER NOTICE that no hearing will be held on this Motion, except as required by the Judge, unless a response, return and/or objection is timely filed and served, in which case, the Court will conduct a hearing on \_\_\_\_\_, \_\_\_\_ at \_\_\_\_ a.m./p.m. at \_\_\_\_\_, \_\_\_\_\_, South Carolina. No further notice of this hearing will be given.

\_\_\_\_\_  
Attorney Name & Fed. ID #  
Address  
Email

**NOTE REGARDING THIS FORM:** If the Debtor(s) propose a moratorium of plan payments as a means of allowing payment of the no-look fee attributable to loss mitigation/mortgage modification services, if the debtor(s) seek to pay Debtor(s)' Counsel a \$2,000 initial distribution through the Chapter 13 plan, or if the debtor(s) propose to delay the resumption of regular mortgage payments, notice of such proposal shall be provided in this Notice and Motion for Loss Mitigation/Mortgage Modification and notice served on the affected mortgage creditor and the Chapter 13 Trustee.

**EXHIBIT K**

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

IN RE:

[Debtor Name],

Debtor(s).

C/A No. \_\_\_\_\_

Chapter \_\_\_\_

**ORDER REQUIRING  
LOSS MITIGATION/MORTGAGE  
MODIFICATION**

A Motion for Loss Mitigation/Mortgage Modification was filed by [Debtor Name] ("Debtor(s)") on [Date] \_\_\_\_\_, 20\_\_ and the parties have had notice and an opportunity to object. It appearing that no objections were filed or that any objections filed have been withdrawn or otherwise ruled upon or that the applicable parties now consent, it is hereby

**ORDERED** that the Debtor(s), acting through counsel, and \_\_\_\_\_ ("Mortgage Creditor") [and additional parties, if any] are directed to participate in the Loss Mitigation/Mortgage Modification Portal Program; it is further

**ORDERED** that the Debtor(s), Debtor(s)' counsel, the Mortgage Creditor and its counsel, and any participating co-borrower or obligor shall comply with the Loss Mitigation/Mortgage Modification Procedures set forth in Judge Waites' Chambers Guidelines (available at [www.scb.uscourts.gov/ChambersJW.htm](http://www.scb.uscourts.gov/ChambersJW.htm)) and engage in the Loss Mitigation/Mortgage Modification ("LM/MM") process in good faith, and that failure to do so may result in the scheduling of a hearing to consider sanctions or other relief; and it is further

**ORDERED** that the Debtor(s), Debtor(s)' Counsel, and the Mortgage Creditor and its counsel shall observe the following deadlines:

- (1) Upon entry of this Order, Debtor(s)' Counsel shall immediately register on the Portal.<sup>1</sup> Once registered, all communication between the parties regarding the loss mitigation review shall be sent through the Portal. Communication and negotiation by the Debtor shall be through Debtor(s)' Counsel unless otherwise allowed by the Court.
- (2) Within 7 days after entry of this Order, the Mortgage Creditor shall advise its counsel of entry of the Order, register to use the Portal (if not previously registered), assign to the Portal the Mortgage Creditor's designated counsel, and ensure that the Portal provider has been provided with any and all application forms and documentation requirements necessary for consideration of all available types of LM/MM. Debtor(s)' Counsel shall report, by correspondence filed on the Court's docket, any failure to timely register to use the Portal.
- (3) Within 14 days after entry of this Order, Debtor(s)' Counsel shall upload the standard LM/MM forms (the "Debtor(s)' Prepared Package") to the Portal. Unless exempted by the Court, the Court's approved online document preparation program (the "Document

<sup>1</sup> The Portal is available at <https://www.dclmwp.com>.

Preparation Program”), provided at [www.documods.com](http://www.documods.com), must be used to complete the Debtor(s)’ Prepared Package.

- (4) Within 7 days after submission of the Debtor(s)’ Prepared Package and any additional documentation on the Portal, the Mortgage Creditor shall:
  - i. Acknowledge receipt of the information on the Portal;
  - ii. Provide on the Portal all contact information of the representative in charge of the Debtor(s)’ account; and
  - iii. Notify Debtor(s)’ Counsel of any additional or updated information required to process the application.
- (5) **Unless a shorter time is set by applicable law, rules or regulations**, the Mortgage Creditor shall have a total of 90 days from entry of this Order (“Loss Mitigation Period”) to conclude its consideration and provide a final response to the Loss Mitigation request by advising on all means of Loss Mitigation, including mortgage modification, or verify a denial by filing a Mortgage Loan Modification Report. Any denial shall state specific reasons for the denial. Upon the failure to reach a final disposition regarding LM/MM within the 90-day Loss Mitigation Period, any party may request by motion that the Loss Mitigation Period be extended.
- (6) Upon acceptance of the Debtor(s) in any Trial Period Plan and before the first trial period payment is due, Debtor(s)’ Counsel shall submit a proposed Order Approving Trial Period Plan for consideration and approval by the Court.
- (7) **Other requirements set forth in Chambers Guidelines, which may include additional required steps and deadlines, are incorporated herein and shall be effective. Failure to adhere to the Order and Chambers Guidelines may subject parties and counsel to sanctions or other relief.**

It is further **ORDERED** that the parties must submit and seek Court approval of any final agreement providing for any loss mitigation/mortgage modification using forms and procedures outlined in Judge Waites’ Chambers Guidelines referenced above. Dismissal of the bankruptcy case, relief from the automatic stay as to the affected property, or reaffirmation of the debt shall not be a condition of loss mitigation, including modification of mortgage loan, unless allowed by the Court after consideration at a hearing; and it is further

**ORDERED** that, absent entry of a Consent Order Approving Loss Mitigation/Mortgage Modification, a final report must be submitted within thirty (30) days of the expiration of the Loss Mitigation efforts; and it is further

**ORDERED** that the Mortgage Creditor, via counsel, is ordered to inform the Court, the Debtor(s), Debtor(s)’ Counsel, the Trustee, and any participating co-borrower or obligor if the applicable loan is sold or securitized to another company during the LM/MM process within 7 days of the transfer. The transferee or new servicer of the loan shall be advised of these requirements by the original Mortgage Creditor and shall be bound by all prior orders, agreements, forms, and documentation. The transferee or servicer shall register for the Portal within 7 days and the Mortgage Creditor shall transfer the Portal account to the transferee so that the transferee may review all previously submitted transmissions and continue with the process.

**ORDERED** that Debtor(s)' Counsel, in consideration for assisting the Debtor(s) with the LM/MM process and in addition to any other fees charged in connection with the case, shall be permitted to charge an additional attorney's fee of \$1,500. Said fee shall be paid in a manner described below and reflected in a fee disclosure **[select applicable provision and include only that provision in the order]**:

- The Debtor(s) shall pay \$1,500 directly to Debtor(s)' Counsel outside of the bankruptcy in accordance with a separate fee or retainer agreement. If Debtor(s) fail to make such payment, Debtor(s)' Counsel is authorized to file a request for supplemental fees to seek payment through the Chapter 13 Plan;
- Debtor has or shall pay a partial payment of \$\_\_\_\_ directly to Debtor(s)' Counsel outside of the bankruptcy, leaving a balance of \$\_\_\_\_ to be paid from the Chapter 13 Plan. Debtor(s)' Counsel shall either (a) in the event that a plan has previously been confirmed, file a supplemental fee application under the expedited fee procedure in which case the Trustee shall apply any monthly distributions that would previously have been allocated for mortgage arrearage toward the attorney's fees,<sup>2</sup> or (b) in the event that the loan modification process has or will begin prior to confirmation of Debtor(s)' plan, increase the fees that are being paid through the plan by said remaining balance, with an increased initial disbursement of up to \$2,000 rather than the normal initial disbursement of \$1,000;<sup>3</sup>
- The entire fee of \$1,500 shall be paid to Debtor(s)' Counsel from the Chapter 13 Plan. Debtor(s)' Counsel shall either (a) in the event that a plan has previously been confirmed, file a supplemental fee application under the expedited fee procedure in which case the Trustee shall apply any monthly distributions that would previously have been allocated for mortgage arrearage toward the attorney's fees, or (b) in the event that the LM/MM process has or will begin prior to confirmation of Debtor(s)' plan, increase the fees that are being paid through the plan by said remaining balance, with an increased initial disbursement of up to \$2,000 rather than the normal initial disbursement of \$1,000;<sup>4</sup>
- In a Chapter 13 plan, the Debtor(s) shall propose resuming regular monthly mortgage payments to be paid directly by the Debtor(s) beginning in the month of \_\_\_\_\_, 20\_\_\_\_, during which time Debtor(s) shall pay installments of \$\_\_\_\_\_ per month directly to Debtor(s)' Counsel beginning on \_\_\_\_\_, 20\_\_.
- Other: (to be completed by Debtor(s)' counsel and subject to Court approval)

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<sup>2</sup> The Trustee will only be required to pay attorney's fees out of the payments allocated to the Mortgage Creditor at the time the Trustee ceases to make such payments to the Mortgage Creditor, which would normally be at the time of entry of the final order for loss mitigation/mortgage modification or at the time of relief from the automatic stay.

<sup>3</sup> The increased initial disbursement of anything more than \$1,000 shall only apply in cases in which the plan payment is \$750 per month or higher. The Debtor(s) must provide notice that this relief is sought in Motion for Loss Mitigation/Mortgage Modification or by separate motion served upon the affected Mortgage Creditor. An order providing this manner of payment must include the consent of the Chapter 13 Trustee.

<sup>4</sup> The Trustee will only be required to pay attorney's fees out of the mortgage arrearage allocation at the time the Trustee ceases to make such payments to the Mortgage Creditor, which would normally be at the time of entry of the final order for loss mitigation/mortgage modification or at the time of relief from the automatic stay. Debtor(s) must provide notice that this relief is sought in Motion for Loss Mitigation/Mortgage Modification or by separate motion served upon the affected Mortgage Creditor. An order providing this manner of payment must include the consent of the Chapter 13 Trustee.

**IT IS FURTHER ORDERED** that should the Debtor(s) at any time fail to meet a payment obligation as described above, regardless of whether it is a direct payment to the attorney or a plan payment to the Trustee, Debtor(s)' counsel shall report that failure to the Court by correspondence and is under no obligation to continue to assist the Debtor(s) with the mortgage modification or loss mitigation process.

**AND IT IS SO ORDERED.**

EXHIBIT L

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

[Debtor Name],

Debtor(s).

C/A No. \_\_\_\_\_

Chapter \_\_\_\_

**MORTGAGE LOAN  
MODIFICATION/LOSS MITIGATION  
REPORT**

Following efforts to negotiate loss mitigation/mortgage modification of the below described loan, the parties report that loss mitigation/mortgage modification was denied or has failed for the following reasons:<sup>1</sup>

Name of Mortgage Creditor: \_\_\_\_\_

Property Address: \_\_\_\_\_

Dated:                      Signature: \_\_\_\_\_

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<sup>1</sup> Indicate if a Trial Period Plan was previously approved but was not successfully completed.



**EXHIBIT M**

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

IN RE:

[Debtor Name],

Debtor(s).

C/A No. \_\_\_\_\_

Chapter \_\_\_\_

**LIMITED NOTICE OF APPEARANCE,  
REQUEST FOR NOTICE, AND  
DISCLOSURE OF COMPENSATION**

The undersigned attorney files this Limited Notice of Appearance on behalf of [Debtor(s)' Name] ("Debtor(s)") in this case for the sole purpose of seeking Loss Mitigation/Mortgage Modification for the Debtor(s). The undersigned further states that s/he will receive \$\_\_\_\_\_ compensation for this limited appearance to be paid through the Chapter 13 Trustee's distribution or through direct payment by Debtor(s) from post petition income or exempt assets. An attorney fee disclosure statement shall be filed upon the earning of the fee according to Chambers Guidelines.

\_\_\_\_\_  
Attorney Name & Fed. ID #  
Address  
Email

**CERTIFICATE OF SERVICE**

The above signing attorney certifies that on [date of service], a copy of the foregoing Limited Notice of Appearance, Request for Notice, and Disclosure of Compensation was served on the Debtor(s), the Chapter 13 Trustee and any affected creditor by first class U.S. Mail at the following addresses:

EXHIBIT N

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

[Debtor Name],

Debtor(s).

C/A No. \_\_\_\_\_

Chapter \_\_\_\_

**ORDER GRANTING APPROVAL OF  
TRIAL PERIOD PLAN  
(PORTAL)**

This matter comes before the Court upon the Debtor(s)' Request to Approve Trial Period Plan with \_\_\_\_\_ ("the Mortgage Creditor"), and this Court having considered the matter  
ORDERS AS FOLLOWS:

- a. The request is granted.
- b. The Trial Period Plan with the Mortgage Creditor is hereby approved and the parties are ordered to comply with the terms of the Trial Period Plan:
  - The Trial Period Plan is described in the attachments hereto (**with private information redacted**) or
  - The terms are as follows:
    - i. The Trial Period Plan Payments are in the amount of \$ \_\_\_\_\_, representing principal, interest, taxes and insurance beginning \_\_\_\_\_, 20 \_\_\_\_.
    - ii. The payments will be sent to: [insert address]

Debtor(s)' counsel shall timely submit for Court approval any final loss mitigation or mortgage modification agreement after the Trial Period Plan Payments are made.

**AND IT IS SO ORDERED.**

APPROVAL REQUESTED BY:

\_\_\_\_\_  
Attorney Name & Fed. ID #  
Address  
Email

**EXHIBIT O**

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

IN RE:

[Debtor Name],

Debtor(s).

C/A No. \_\_\_\_\_

Chapter \_\_\_\_

**CONSENT ORDER APPROVING LOSS  
MITIGATION/MORTGAGE  
MODIFICATION<sup>1</sup>  
(PORTAL)**

This matter comes before the Court upon the request of [Debtor(s)' Name(s)] ("Debtor(s)") and [Creditor Name] ("Mortgage Creditor") for approval of the parties' agreement for loss mitigation/mortgage modification ("LM/MM"). Mortgage Creditor has an existing loan secured by the Debtor(s)' real property. Using the Portal procedure set forth in the undersigned's Chamber's Guidelines, the parties have reached an agreement for LM/MM, which will have the following benefits to the Debtor(s):

- Reduction of the Debtor(s)' mortgage payments from the current amount of \$\_\_\_\_\_ per month to approximately \$\_\_\_\_\_ per month.
- Interest rate reduced from \_\_\_\_\_% to \_\_\_\_\_% [ Fixed or  Variable]
- Arrearage in the amount of \$\_\_\_\_\_  forgiven or  postponed.
- Other – Describe below:

Regarding LM/MM, the parties represent and agree that:

1. There will be no extension of additional funds beyond what is already owed;
2. Payments to other lien holders under the plan will not be affected;
3. That the LM/MM has no detrimental effect on other creditors and is in the best interest of Debtor(s) and the estate;
4. That payments to Creditor for arrearage are/are not being made by the Trustee, and will/will not be made upon the effective date of the LM/MM agreement; any overage paid by the Trustee will be refunded to the Trustee within 60 days;
5. Stay relief has not been granted to any secured creditor on the property as a prerequisite of the agreement for loss mitigation;
6. The trial period has been successfully completed [if applicable]; and
7. The documents finalizing the LM/MM shall be executed by the parties within 60 days from the entry of this Order.

<sup>1</sup> Mortgage Creditor's consent may be demonstrated by attachment of document evidencing Mortgage Creditor's offer.

Debtor(s) certify that the costs of DMM have been previously paid by Debtor(s) (or other source) and the attorney's fees specifically attributable to services required for participation in LM/MM have been previously paid by Debtor or will be paid through the Trustee's distributions.

Now, therefore, upon the agreement of Debtor and Mortgage Creditor and with the consent of the Trustee, as indicated by the signatures below,

IT IS HEREBY ORDERED that the LM/MM is hereby approved.

**AND IT IS SO ORDERED.**

**WE SO MOVE AND CONSENT:**

/s/ Attorney for Mortgage Creditor \_\_\_\_\_  
Attorney for Mortgage Creditor  
District Court I.D. \_\_\_\_\_

/s/ Attorney for Debtor \_\_\_\_\_  
Attorney for Debtor  
District Court I.D. \_\_\_\_\_

\_\_\_\_\_  
Chapter 13 Trustee

**EXHIBIT P**

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

IN RE:

[Debtor Name],

Debtor(s).

C/A No. \_\_\_\_\_

Chapter \_\_\_\_

**CONSENT ORDER APPROVING  
TRIAL PERIOD PLAN  
(NON-PORTAL)**

This case came before the Court upon the Debtor(s)' Motion to Approve Non-Portal Trial Period Plan with \_\_\_\_\_ ("Mortgage Creditor"), and this Court having considered the matter **ORDERS AS FOLLOWS:**

- a. The Motion is granted.
- b. The Trial Period Plan with Mortgage Creditor is hereby approved and the parties are ordered to comply with the terms of the Trial Period Plan:
  - The Trial Period Plan is described in the attachments hereto (with private information redacted) **or**
  - The terms are as follows:
    - iii. The Trial Period Plan Payments are in the amount of \$ \_\_\_\_\_, representing principal, interest, taxes and insurance beginning \_\_\_\_\_, 20 \_\_\_\_.
    - iv. The payments will be sent to: [insert address]

Debtor(s)' counsel shall timely submit for Court approval any final loss mitigation or mortgage modification agreement after the Trial Period Plan Payments are made and file an amended plan if the confirmed plan does not provide for Loss Mitigation/Mortgage Modification or provide that all payments shall be made directly to the Mortgage Creditor.

**AND IT IS SO ORDERED.**

**WE SO MOVE AND CONSENT:**

/s/ Attorney for Mortgage Creditor  
Attorney for Mortgage Creditor  
District Court I.D. \_\_\_\_\_

/s/ Attorney for Debtor  
Attorney for Debtor  
District Court I.D. \_\_\_\_\_

\_\_\_\_\_  
Chapter 13 Trustee

**EXHIBIT Q**

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

IN RE:

[Debtor Name],

Debtor(s).

C/A No. \_\_\_\_\_

Chapter \_\_\_\_

**CONSENT ORDER APPROVING LOSS  
MITIGATION/MORTGAGE  
MODIFICATION<sup>13</sup>  
(NON-PORTAL)**

This matter comes before the Court upon the request of [Debtor(s)' Name(s)] ("Debtor(s)") and [Creditor Name] ("Mortgage Creditor") for approval of the parties' agreement for loss mitigation/mortgage modification ("LM/MM"). Mortgage Creditor has an existing loan secured by the Debtor(s)' real property. The parties have reached an agreement for LM/MM without using the Portal, which will have the following material benefits to the Debtor(s):

- Reduction of the Debtor(s)' mortgage payments from the current amount of \$ \_\_\_\_\_ per month to approximately \$ \_\_\_\_\_ per month.
- Interest rate reduced from \_\_\_\_% to \_\_\_\_% [ Fixed or  Variable]
- Arrearage in the amount of \$ \_\_\_\_\_  forgiven or  postponed.
- Other – Describe below:

Regarding LM/MM, the parties represent and agree that:

1. There will be no extension of additional funds beyond what is already owed;
2. Payments to other lien holders under the plan will not be affected;
3. That the LM/MM has no detrimental effect on other creditors and is in the best interest of Debtor(s) and the estate;
4. That payments to Mortgage Creditor for arrearage are/are not being made by the Trustee, and will/will not be made upon the effective date of the LM/MM agreement; any overage paid will be refunded to the Trustee within 60 days;
5. The Debtor(s) have amended the plan, if necessary, to provide for mortgage payments to be made directly to Mortgage Creditor.
6. Relief from the automatic stay shall be granted for the benefit of Mortgage Creditor upon submission of a proposed order by Mortgage Creditor via counsel which specifies that the automatic stay is not lifted as to other lienholders.<sup>14</sup> Unless otherwise ordered, the automatic stay shall remain effective as to all other lienholders; and

<sup>13</sup> Mortgage Creditor's Consent may be demonstrated by attachment of document evidencing Mortgage Creditor's offer.

<sup>14</sup> The order granting relief from stay should be titled "Order Granting Relief from Automatic Stay as to [Mortgage Creditor] Only."

7. The documents finalizing the LM/MM shall be executed by the parties within 60 days from the entry of this Order.

Now, therefore, with the consents of Debtor(s), Mortgage Creditor, and the Trustee, as indicated by the signatures below,

IT IS HEREBY ORDERED that LM/MM is hereby approved.

**AND IT IS SO ORDERED.**

**WE CONSENT:**

/s/ Attorney for Mortgage Creditor  
Attorney for Mortgage Creditor  
District Court I.D. \_\_\_\_\_

/s/ Attorney for Debtor  
Attorney for Debtor  
District Court I.D. \_\_\_\_\_

\_\_\_\_\_  
Chapter 13 Trustee

**EXHIBIT R**

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

IN RE:

[Debtor Name],

Debtor(s).

C/A No. \_\_\_\_\_

Chapter \_\_\_\_

**CONSENT ORDER APPROVING LOSS  
MITIGATION/MORTGAGE  
MODIFICATION<sup>15</sup>  
(STREAMLINED MODIFICATION)**

This matter comes before the Court upon the request of [Debtor(s)' Name(s)] ("Debtor(s)") and [Creditor Name] ("Mortgage Creditor") for approval of the parties' agreement for a streamlined loss mitigation mortgage modification ["Streamlined LM/MM"]. Mortgage Creditor has an existing loan secured by the Debtor(s)' real property. The parties have reached an agreement for Streamlined LM/MM, which will have the following benefits to the Debtor(s):

- Reduction of the Debtor(s)' mortgage payments from the current amount of \$\_\_\_\_\_ per month to approximately \$\_\_\_\_\_ per month.
- Interest rate reduced from \_\_\_\_% to \_\_\_\_% [ Fixed or  Variable]
- Arrearage in the amount of \$\_\_\_\_\_  forgiven or  postponed.
- Other – Describe below:

Regarding the Streamlined LM/MM, the parties represent and agree that:

1. There will be no extension of additional funds beyond what is already owed;
2. Payments to other lien holders under the plan will not be affected;
3. That the Streamlined LM/MM has no detrimental effect on other creditors and is in the best interest of Debtor(s) and the estate;
4. That payments to Mortgage Creditor for arrearage are/are not being made by the Trustee, and will/will not be made upon the effective date of the Streamlined LM/MM agreement; any overage paid will be refunded to the Trustee within 60 days;
5. The Debtor(s) have amended the plan, if necessary, to provide for mortgage payments to be made directly to Mortgage Creditor;
6. Stay relief has not been granted to any secured creditor on the property as part of the Streamlined LM/MM agreement;
7. The trial period has been successfully completed [if applicable]; and
8. The documents finalizing the Streamlined LM/MM shall be executed by the parties within 60 days from the entry of this Order.

<sup>15</sup> Mortgage Creditor's Consent may be demonstrated by attachment of document evidencing Mortgage Creditor's offer.



Now, therefore, upon the agreement of Debtor and Mortgage Creditor and with the consent of the Trustee, as indicated by the signatures below,

IT IS HEREBY ORDERED that the Streamlined LM/MM is hereby approved.

**AND IT IS SO ORDERED.**

**WE SO MOVE AND CONSENT:**

/s/ Attorney for Mortgage Creditor \_\_\_\_\_  
Attorney for Mortgage Creditor  
District Court I.D. \_\_\_\_\_

/s/ Attorney for Debtor \_\_\_\_\_  
Attorney for Debtor  
District Court I.D. \_\_\_\_\_

\_\_\_\_\_  
Chapter 13 Trustee