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United States Bankruptcy Court  
Columbia, South Carolina (40)

IN RE:

## CHAMBERS GUIDELINES - CASES ASSIGNED TO JUDGE WAITES

  
John E. Waites, U.S. Bankruptcy Judge

Columbia, South Carolina  
January 15, 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 (1) business day before the hearing.
- Matters in cases of all other chapters - 10:00 a.m. two (2) business days before the hearing.

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

**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 [Exhibit B](#) to these guidelines.

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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>2</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>3</sup>

**Continuances are not effective until granted by court order.**<sup>4</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>2</sup> Extraordinary circumstances such as illness or family emergency will also be considered to obtain a continuance after the deadline.

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

## **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 [judgewaites\\_hearings@scb.uscourts.gov](mailto:judgewaites_hearings@scb.uscourts.gov) with copy to all participating counsel.

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

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

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<sup>5</sup>

The form used by the Judge is new and differs from the form provided in the Local Rules.



## **CHAPTER 13 PROCEDURES**

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

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

Upon the failure to timely provide to the chapter 13 trustee (the "Trustee") the information required by Local Rule 3015-4, the Trustee shall report such deficiency to the Court at the confirmation hearing and advise counsel for the debtor(s) by no later than **10:00 a.m. two business days prior to the confirmation hearing** if a dismissal based on that failure will be requested at the hearing.

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

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

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

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

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

- 1. Definition of Consent Matter.** Matters for the chapter 13 consent calendar are matters that are frequently uncontested or otherwise resolved.
- 2. General Procedures & Role of the Trustee.** Chapter 13 consent calendars may be conducted in court by the Trustee. Prior to the chapter 13 consent calendar, in a matter regarding confirmation, the Trustee shall provide notice of deficiencies in a debtor's plan of reorganization (the "Plan").<sup>9</sup> In conducting the chapter 13 consent calendar, the Trustee shall address each scheduled matter and report the Trustee's recommendations to the Court. In doing so, the Trustee may discuss Plan deficiencies and objections by parties in interest, examine debtors or other witnesses, identify other information needed for case administration, and report settled and disputed matters. Counsel or parties may also make

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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.

statements on the record. The Court or Trustee may announce further hearing dates and times for continued matters or matters deemed in dispute. If a new hearing date is announced without objection, all counsel and parties will be presumed to agree to the date and time and no later conflicts will be accepted. Settlements, Trustee recommendations, and other agreed upon dispositions shall be recorded and considered by the Judge.

**3. Attendance.** In most instances, unless otherwise advised, the Judge does not require the attendance of debtor(s) or witnesses at a hearing on the Chapter 13 consent calendar. However, **the Judge requires attendance by debtor(s) and counsel** in the following circumstances:

- a. If debtor(s) file an amended plan, amended schedules or statements, or a claims objection within 3 business days prior to a confirmation hearing, which materially affects the confirmation hearing, unless the filing or amended document resolves all objections and the Trustee has affirmatively excused the attendance.
- b. There is an outstanding objection and the Trustee has not agreed to carry the matter over or excused attendance in accordance with the Joint Statement of Dispute procedures (set forth here). Counsel for the objecting parties and necessary witnesses would also be expected to attend.
- c. A case in which the Trustee has provided notice that a request to dismiss the case will be made at the confirmation hearing pursuant to Local Rule 1017-2(a).

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

**4. Calendar Removal.**

**Continuances for Matters Identified as Being Contested – Joint Statement of Dispute Procedure.** If any matter scheduled on the consent calendar is identified as being contested or requiring the presentation of testimony or other evidence or oral argument to the Judge, a Joint Statement of Dispute shall be filed in accordance with the Joint Statement of Dispute procedures set forth here. The same duty to consult applies with respect to disputed matters involving the Trustee. In the event that the Trustee is a litigant to a disputed matter, unless excused, the Trustee shall also bear a 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.

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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.

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

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

## **B. DISPUTE CALENDAR**

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

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



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

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

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

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

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

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

The expedited fee amount for purposes of SC LBR 2016-1(b)(1) is \$3,500 for a consumer case and \$4,000 for a business case. An additional no-look fee of \$1000 is allowed for services provided under the Loss Mitigation/Mortgage Modification Program. 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.
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.
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.
5. Settlement order granting relief from the automatic stay to continue or pursue an action in family court. See Exhibit G.

### **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.

### **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 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

Loss mitigation/mortgage modification affects case administration, property of the estate and the Debtor's payment obligations/distributions to creditors. Therefore, individuals in bankruptcy cases assigned to Judge Waites,<sup>13</sup> including joint debtors, who seek consensual modifications of mortgage loans or other types of loss mitigation during the bankruptcy case shall submit such modifications for court consideration and approval as follows:<sup>14</sup>

### **1. General Responsibilities in all Cases.**

- a. Debtor's counsel shall review the requirements of these Guidelines with each Debtor considering loss mitigation/mortgage modification during the bankruptcy case.
- b. The Debtor, Debtor's Counsel, Trustee & affected Mortgage Creditor shall have an affirmative duty to **immediately advise** the Court by correspondence (filed on the Court's docket) of all loss mitigation/mortgage modification efforts during the case, which shall include the date of commencement, participating parties and agents, ongoing status and ultimate completion/results.
- c. The Debtor, through counsel, shall seek approval by the Court of the terms of any Trial Period Plan utilizing **Exhibit L**.
- d. The Debtor, through counsel, and affected Mortgage Creditor shall seek approval by the Court of the terms of any final loss mitigation/mortgage modification agreement according to paragraph 6 below.
- e. The Debtor, through counsel, shall report to the Court unsuccessful results of loss mitigation/mortgage modification efforts utilizing **Exhibit J**.

### **2. Loss Mitigation/Mortgage Modification Portal.** The Portal provides a mechanism for secure, real time, transparent communication with reasonable time deadlines and Court oversight, and allows for consideration of continuances of hearings and other proceedings related to the subject property. The Portal described herein is the **preferred method** for seeking loss mitigation/mortgage modification in bankruptcy cases before Judge Waites.

- a. **Required Use of Portal.** Absent an order otherwise, if loss mitigation or mortgage modification efforts will affect or delay case proceedings (including, but not limited to, hearings on confirmation, relief from stay, objections to claim or petitions to dismiss), the Portal is required as the **exclusive method** allowed by Judge Waites in his cases. The Portal is also required if loss mitigation or mortgage modification is requested after any of the following:
  - i. The Debtor has failed to make any payment to the Trustee or Mortgage Creditor after confirmation of a plan.

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

<sup>14</sup> The term "loss mitigation" is intended to describe the full range of solutions that may avert the loss of a debtor's home to foreclosure, promote communication between parties, and reduce costs; for example, loan modification or refinance, forbearance, short sale or surrender of property in satisfaction of debt.

- ii. A motion for § 362 relief from stay has been filed by the Mortgage Creditor.
- iii. Plan feasibility depends upon the Debtor's prosecution of an objection to the amount of the claim of the Mortgage Creditor.
- iv. The Trustee or Mortgage Creditor has filed a motion to dismiss based upon a lack of feasibility due to the claim of the Mortgage Creditor.

Debtor's Counsel shall have an affirmative duty to report the status of all loss mitigation/mortgage modification efforts, if any, when requesting a continuance or delay in any case proceedings.

- b. **Responsibilities of Debtor's Counsel.** Absent approval by the Court, the Debtor's participation in all loss mitigation/mortgage modification efforts through the Portal (including the submission of documents, communication and negotiation) shall be through counsel. Counsel filing the Debtor's case shall be presumed the counsel for these efforts unless separate special counsel is employed as indicated by the filing of Exhibit K or the Court approves otherwise.

**3. Portal Procedures.** The procedures for participation in the Loss Mitigation/Mortgage Modification through the Portal are as follows:

- a. Prior to the filing of the Notice and Motion for Loss Mitigation/Mortgage Modification (attached as **Exhibit H**) by the Debtor, if seeking mortgage modification, Debtor's Counsel shall:
  - 1. Determine that mortgage modification is feasible—with the Debtor typically required to devote 31% of his gross monthly income to repayment of the mortgage (which would include principal + interest + taxes + insurance + assessments) **or** such different amount designated by the applicable Mortgage Creditor
  - 2. Use the Court's approved online document preparation program (the "Document Preparation Program") to prepare the standard loan modification/loss mitigation forms (the "Debtor's Prepared Package") to expedite the exchange of information between the Debtor and the Mortgage Creditor and ensure greater accuracy in the preparation of the required documentation.<sup>15</sup> The Debtor's Prepared Package is completed through [www.documods.com](http://www.documods.com).<sup>16</sup>
- b. **Chapter 13 cases:** Once the steps described above are complete, Debtor's Counsel shall serve on the Mortgage Creditor, co-borrowers or obligors on the applicable loan, and their

<sup>15</sup> The online document preparation systems and portal described herein are provided by Default Mitigation Management, LLC ("DMM"). DMM is identified for use due to its experience and reasonable cost (\$40 for each Debtor's Prepared Package and \$40 for the portal submission by each party). Free training on the use of the portal provided by DMM is available to attorneys licensed for practice in this Court and all Mortgage Creditors. 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 even such providers shall be listed on the Court's website.

<sup>16</sup> Enter **scbkdocs40** for the \$40.00 rate.



counsel, if known, and file with the Court, a Notice and Motion for Loss Mitigation/Mortgage Modification according to the form attached as **Exhibit H**.<sup>17</sup>

For pre-confirmation motions, the notice and motion should be served no later than 14 days after the filing of a Chapter 13 plan unless extended by the Court. If the Loss Mitigation/Mortgage Modification process is not likely to conclude before the confirmation hearing, the Debtor should also consider the use of the plan language in paragraph no. 2 (below).

For post confirmation motions, there is no deadline for the filing of the Notice and Motion. However, the Notice and Motion must indicate whether there have been any previous loss mitigation/mortgage modification efforts during the course of the bankruptcy case or a prior bankruptcy case and should be filed in time to allow completion of the procedures before case closing.

- c. **Chapter 7 or 11 Cases:** The Notice and Motion for Loss Mitigation/Mortgage Modification should be filed before discharge of the Debtor and in time to allow completion of the procedures before case closing.
- d. The applicable Mortgage Creditor, co-borrowers, and other obligors shall have 14 days from the date of service of the Notice and Motion to object. In the absence of an objection, the Court may grant, without a hearing, an Order Requiring Loss Mitigation/Mortgage Modification (hereinafter, "the Order"). 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.
- e. Debtor's Counsel shall timely serve the Order on affected parties and file a Certificate of Service. Once the Order is issued, all communication between the parties regarding the loss mitigation review should be sent through a secure portal for document exchange. DMM provides a secure portal at <https://www.dclmwp.com> ("Portal"). Following entry of an Order Requiring Loss Mitigation/Mortgage Modification, Debtor's Counsel shall immediately register on the Portal.<sup>18</sup>
- f. Within 7 days after entry of the Order, the Mortgage Creditor (if not previously registered on the Portal) shall register to use the Portal 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 Loss Mitigation. Debtor's Counsel shall report any failure to timely register to use the Portal to the Court.
- g. Within the later of 14 days after the entry of the Order or 7 days after the Mortgage Creditor has registered on the Portal, Debtor's Counsel shall:
  - 1. Upload the Debtor's Prepared Package as well any other forms required by the Mortgage Creditor to the Portal; and
  - 2. Remit any required fees to DMM or other portal provider.

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<sup>17</sup> The Court may order use of the Loss Mitigation/Mortgage Modification Portal *sua sponte* or upon the parties' agreement in order to benefit case administration.

<sup>18</sup> Failure to timely register or other unexcused delay by any party or counsel will result in a hearing being scheduled to consider sanctions, including attorney's fees.

- h. The Mortgage Creditor shall, within 7 days after Debtor's Counsel has submitted the Debtor's Prepared Package and any additional required documentation to the Portal:
  - 1. Acknowledge receipt of the information on the Portal;
  - 2. Provide on the Portal all contact information of the representative in charge of the Debtor's account
  - 3. Assign to the Portal the Mortgage Creditor's designated counsel;<sup>19</sup> and
  - 4. Notify Debtor's Counsel of any additional or updated information required to process the application.
- i. The Mortgage Creditor shall have a total of 120 days from entry of the Order to respond to the Loss Mitigation request by advising on all means of Loss Mitigation, including mortgage modification, or verify a denial.
- j. If necessary, any party may request, or the Court may direct, the *ex parte* appointment of a mediator to facilitate discussions and resolve disputes raised by the parties. In such instance, the no look fee discussed in paragraph m below may be increased. Costs for a mediator shall not, without Court order, exceed \$300.00 per 1 hour session, and shall be equally divided and paid in advance of the session by the parties. In the event a mediator is appointed, the mediator shall have 7 days to register to the Portal at no cost. Once registered, Debtor's Counsel shall assign said mediator to the account on the Portal so that said mediator may review the file and have access to the account on the Portal. Each mediation session shall be conducted via telephone on a conference call established by Debtor's Counsel, and last no longer than one hour. Debtor's Counsel shall publish the phone number to the Portal not later than 3 days before the scheduled mediation. An expedited hearing may be requested by any party on issues not resolved by mediation.
- k. The Mortgage Creditor is obligated to inform the Court, the Debtor, Debtor's Counsel, and any participating co-borrower or obligor within 7 days if the loan is sold or securitized to another company during the Loss Mitigation/Mortgage Modification process. The transferee or 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 transferee may review all previously submitted transmissions and continue with the process.
- l. Upon acceptance of the Debtor in a Trial Period Plan, Debtor's Counsel **shall** timely submit a proposed order according to Exhibit L for consideration and approval by the Court.
- m. Counsel assisting the Debtor with the Loss Mitigation/Mortgage Modification Program shall be permitted to charge an attorney's fee for services provided under the Loss Mitigation/Mortgage Modification Program. 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, with **\$1000** of that fee allowed to be distributed in the initial distribution by the Trustee or paid directly by the Debtor from post petition income. Alternatively, an

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<sup>19</sup> The Mortgage Creditor's designated counsel shall be the attorney who files a notice of appearance in the case or any motion, objection or other document on behalf of the Mortgage Creditor to ensure timely responses to inquiries from the Court.

application seeking additional compensation may also be submitted for expedited consideration. The fee provides additional compensation for all services through the completion of the Loss Mitigation/Mortgage Modification process and includes:

- a. Assembling and submitting Debtor's Prepared Package;
- b. Filing of the Motion for Loss Mitigation/Mortgage Modification and proposed Order;
- 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;
- e. Filing of the proposed Interim Order Granting Approval of Trial Period Plan, Consent Order Allowing Mortgage Loan Modification, or a Mortgage Loan Modification/Loss Mitigation Report.<sup>20</sup>

The fee may be charged upon the filing of an Attorney Fee Disclosure Statement. Upon submission of an Order Approving Trial Period Plan (attached as **Exhibit L**) or Mortgage Loan Modification/Loss Mitigation Report (attached as **Exhibit J**) indicating the final disposition of loss mitigation efforts, Debtor's counsel certifies that the aforesaid listed services were or will be performed and therefore the fee is justified.

Special counsel with expertise in the Loss Mitigation/Mortgage Modification Program may be employed by the Debtor with notice to the Court using the form attached as **Exhibit K**.<sup>21</sup> In such event, the allowed initial distribution amount to that counsel shall be \$1000.

4. **Within a Chapter 13 plan:** In order to avoid delay in confirmation and distribution to creditors, the use of the Loss Mitigation/Mortgage Modification Program **may** also be evidenced by a Chapter 13 Plan, subject to objection, by including the following language:
  - a. **Option One (The Debtor is capable of making regular contract payments)**

No less than 7 days before the confirmation hearing, the Debtor, acting through Debtor's Counsel, will submit a complete application to [Mortgage Creditor] seeking loss mitigation or a consensual modification of the Debtor's mortgage loan through an applicable program, such as the Home Affordable Modification Program (HAMP). The subject mortgage loan is secured by real property located at:  
[Real Property Description]

Beginning on [date], the Debtor will pay regular contract payments directly to [Mortgage Creditor]. The Debtor will also be responsible for payment of any arrearage directly to [Mortgage Creditor] if not cured through a loss mitigation or loan modification process. No payment will be made by the Trustee on this secured claim.

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<sup>20</sup> Upon motion, the Court may approve a no look fee in a lesser amount if counsel is not used to submit documents or to communicate with the Mortgage Creditor.

<sup>21</sup> In the event that the no-look fee for Loss Mitigation/Mortgage Modification purposes is to be paid to separate counsel from the attorney representing the Debtor in the filing and administration of the bankruptcy case, the attorneys' fees shall be paid in equal amounts in each distribution from the Trustee, unless otherwise agreed by counsel.

Upon acceptance of the Debtor in a Trial Period Plan, Debtor's Counsel shall submit a proposed Order Approving Trial Period Agreement (using Form attached as **Exhibit L**). Upon completion of the Trial Period Plan or to seek final approval of the loss mitigation/mortgage modification, Debtor's Counsel shall submit a proposed Consent Order Allowing Mortgage Modification. If the loss mitigation or loan modification request is denied, Debtor's Counsel shall timely file a Mortgage Loan Modification/Loss Mitigation Report indicating that denial with the Court.

b. Option Two (The Debtor is unable to make regular contract payments)

The Debtor is unable to resume regular contract payments to [Mortgage Creditor] at this time, and therefore, the Debtor's plan relies upon loss mitigation or a consensual mortgage loan modification.

No less than 7 days before the confirmation hearing, the Debtor, acting through Debtor's Counsel, will submit a complete application to [Mortgage Creditor] seeking loss mitigation or a consensual modification of the Debtor's mortgage loan through an applicable program, such as the Home Affordable Modification Program (HAMP). The subject mortgage loan is secured by real property located at:

[Real Property Description]

Upon acceptance of the Debtor in a Trial Period Plan, Debtor's Counsel shall submit a proposed Order Approving Trial Period Plan (using form attached as Exhibit L), and the Debtor will commence payments directly to [Mortgage Creditor] in an amount equal to the payment called for under the Trial Period Plan of the applicable modification program.

If the mortgage loan modification is approved, the Debtor 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 the secured claim. Upon completion of the Trial Period Plan or to seek final approval of the loss mitigation/mortgage modification, Debtor's Counsel shall submit a proposed Consent Order Allowing Mortgage Modification. If the loss mitigation or loan modification request is denied, Debtor's Counsel shall timely file a Mortgage Loan Modification/Loss Mitigation Report indicating that denial with the Court.

In the event that (1) the request for mortgage loan modification (and any necessary documentation) is not submitted or is denied or (2) the Debtor fails to timely make the above referenced Trial Period Plan Payments, the Mortgage Creditor may, after 10 days' written notice to the Debtor, 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.

5. Order Approving Trial Period Plan. Upon acceptance of the Debtor in a Trial Period Plan, an Order for Approval shall be submitted to the Court using the form attached as **Exhibit L**.

6. **Consent Order Required for Final Approval of Loss Mitigation/Mortgage Modification:**

- a. Since Loss Mitigation/Mortgage Modification affects case administration, property of the estate and the Debtor's payment obligation under an applicable plan, any final agreement for loss mitigation or a mortgage modification shall be submitted for approval by the Court by way of a proposed Consent Order Allowing Mortgage Loan Modification, which specifies the terms of the loss mitigation or modification agreement and includes in its provisions:<sup>22</sup>
1. That there will be no extension of additional funds beyond what is already owed;
  2. That payments to other lien holders under the Plan will not be affected;
  3. That the proposed modification has no detrimental effect on other creditors and is believed to be in the best interest of the debtor(s) and the estate;
  4. Whether any payments from the Chapter 13 Trustee to the Mortgage Creditor whose loan is to be modified will continue or terminate upon entry of the order;
  5. Relief from the automatic stay has not been previously granted to any secured creditor on the property affected by the Loss Mitigation/Mortgage Modification;
  6. A statement setting forth or attaching a short summary of the specific benefits received as a result of Loss Mitigation or mortgage modification, including deferral or forgiveness of arrearage/debt or change in interest rate, term, or payment amount; and
  7. The Debtor certifies that the costs of DMM and the attorney's fees specifically attributable to services required in the use of the Loss Mitigation/Mortgage Modification Portal have been previously paid by the Debtor or through the Trustee's distributions.
- b. 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.
- c. Dismissal of the bankruptcy case or relief from the automatic stay as to the affected property may not be a condition of loss mitigation, including modification of mortgage loan, unless ordered by the Court after consideration at an actual hearing.

**Reporting and Events**

Reports required by any of the above procedures shall be reported by filing the document attached as **Exhibit J**, using the CM/ECF event, *Mortgage Loan Modification Report*. The Notice and Motion for Loss Mitigation/Mortgage Modification should be filed using the *Loss Mitigation/Mediation* event. A proposed Consent Order Allowing Mortgage Loan Modification shall be submitted under the CM/ECF event, *Proposed Consent Order Modifying Mortgage (no motion filed)*.

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<sup>22</sup> If a final agreement is subject to the Debtor's successful completion of the Trial Period Plan, an order in the form of **Exhibit L** should be separately submitted.



## 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>23</sup> Counsel should also ensure that there are enough copies of the exhibits for all opposing counsel, *pro se* parties, and any witness providing testimony regarding the exhibits. To avoid confusion, the exhibits of the party initiating the matter should be premarked using letters (e.g., Movant's or Plaintiff's Exhibit A, B, C, etc.), and the responding party's exhibits should be premarked using numbers (e.g., Respondent's or Defendant's Exhibit 1, 2, 3, etc.) The parties should exchange exhibits and confer **prior** to the hearing to determine whether they will be able to stipulate to the admission of exhibits set forth in the Joint Statement of Dispute or Joint Pretrial Order.

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<sup>23</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.**

## **VII. Joint Pretrial Orders**

Pretrial orders, the requirements of which are detailed in prior scheduling orders issued in the proceeding, are to be submitted timely on CM/ECF. The parties need not agree on every matter contained therein in order to submit the order as joint. If there is disagreement on a matter, the joint pretrial order may reflect the disagreement. The original and one copy of all paper exhibits as well as an itemized list of exhibits shall be submitted to the courtroom deputy at the same time as the Joint Pretrial Order.

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

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

## TELEPHONE/VIDEO CONFERENCE PARTICIPATION IN HEARINGS

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



## **JUDICIAL LIEN AVOIDANCE**

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

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

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

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

In reviewing motions to avoid judicial liens, the following factors are examined:

- Whether a judgment constitutes a lien (the debtor owns real property upon which the judgment has attached or whether a judgment has attached to the debtor's personal property).
- Whether the debtor is entitled to claim an exemption on Schedule C for the applicable property and whether the applicable property is listed on Schedule A. (If no exemption is claimed on Schedule C, a hearing is required in order for the debtor to present evidence demonstrating his or her entitlement to the exemption.)
- Whether the numerical amounts provided on the motion are consistent with the Schedules and Statement of Financial Affairs.
- Whether the judgment is listed in Debtor's Schedules and Statement of Financial Affairs.
- Whether the total amount of all other liens on property includes all mortgages and/or senior judicial liens, where applicable (see Exhibits A and C to SC LBR 4003-2).

If it is necessary to file a motion to avoid a judicial lien in a closed case, a motion to reopen the case may not be necessary. Likewise, if it is necessary to amend a schedule in direct relation to a lien avoidance issue, a motion to reopen may not be necessary. Nothing herein should be construed to waive any notice requirements with respect to the motion to avoid judicial lien or amendment of schedules.

**EXHIBIT A**

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Debtor.

C/A No.

(JOINT) STATEMENT OF DISPUTE  
AND STIPULATION

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

1. Issues to be decided by the Court.
2. Position of Party/Parties (state w/ specificity).
3. Names of Witnesses to be called at the hearing.
4. Exhibits/Evidence to be presented (state whether admission is stipulated or any grounds for objection).
5. Statutory, Case Law or other Applicable Authority.
6. Estimated Length of Hearing.
7. Telephone and Facsimile Number, Electronic Mail address of Counsel/Party/Parties.
8. Final Authority. Unless otherwise indicated by a separately filed motion, filed simultaneously herewith, which requests that the Court determine whether this proceeding is subject to the entry of final orders or judgments by this Court, the parties submitting this Joint Statement of Dispute consent to this Court entering final orders and judgments in this proceeding.

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

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

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

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

## EXHIBIT B

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

Consent Calendar	
Confirmation Hearings	Application for Fees/Compensation*
Objections to Amended Plan (after confirmation hearing)	Motions to Withdraw as Attorney
Motions to Value*	Application for Administrative Expense*
Motions to Assume or Reject*	Motions to Approve Settlement*
Motions to Avoid Judicial Lien*	
Motions for Moratorium*	
	Objection to Exemptions (if by Trustee, passive*)
Motions to Change Venue*	Motions to Value Tax Claim & Establish Priority
Motions to Divide Case or for Joint Administration*	First Motion to Extend Time to Object to Discharge or Dischargeability of Debt*
Motion for Exemption or Waiver from Credit Counseling or Financial Management Course*	Request for Chapter 13 Discharge (BAPCPA) pursuant to SC LBR 3015-5(a)*
	Trustee's Motion to Dismiss or Convert *
Motions to Obtain Credit*	Motions to Reconsider Dismissal or Reopen
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*	
Dispute Calendar	
Claims Objections*	
Requests to Convert or Dismiss Case by Creditor or Other Non-Trustee Party	
Motion for Hardship Discharge and Notice/ Request pursuant to SC LBR 3015-5(b)	
Motion to Allow Continued Administration of Case After Death and/or Designate Person to Act for Debtor	
Motion to Convert/Dismiss by Debtor (previous conversion)	
Motions to Employ Nunc Pro Tunc	
<b>"CATCH ALL" – motions not otherwise listed on the consent calendar.</b>	
§ 362 Calendar	

Motions for Relief from the Automatic Stay or Agreements related thereto\*\*\*

Co-debtor Stay Motions\*\*

Motions to Extend/Impose the Automatic Stay\*\*\*

Motions to Reconsider Relief from Stay

Matters arising under Rule 3002.1\*

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

\*\*The scheduling of motions for relief from or to extend/impose the automatic stay shall be governed by SC LBR 4001-1 and, where applicable, the § 362 calendar published on the Court's web page. Co-debtor stay relief motions should also be scheduled on the dates and times provided for other types of stay relief motions on the § 362 calendar.

**EXHIBIT C**

**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.**



**EXHIBIT D**

**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>1</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> 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. 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 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:

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

Chapter \_\_\_\_\_

Debtor(s).

**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**

**UNITED STATES BANKRUPTCY COURT**

**FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

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

[Debtor Name],

Chapter 13

Debtor(s).

**SETTLEMENT ORDER  
ON  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
(Value/Equity Exists  
Above Movant's Lien)<sup>1</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>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:

<sup>1</sup> This form is to be used if the value/equity above the movant's lien in the property exceeds \$5,000.00.

<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.



☐ 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.

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**

**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 H**

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

IN RE:

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

[Debtor Name],

Chapter \_\_\_\_\_

Debtor(s).

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

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

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

*[Identify the Property]*

*[Loan Number]*

*[Mortgage Creditor's Name and Address]*

The Debtor requests an order directing the parties to participate in the Loss Mitigation/Mortgage Modification Portal Program as set forth in Judge Waites' Chambers Guidelines, available at <http://www.scb.circ4.dcn/ChambersJW.htm>, and requiring the parties and counsel to use the mortgage modification portal operated by Default Mitigation Management, LLC while participating in Program.

Prior to filing this Motion, Debtor's Counsel completed the Debtor's Prepared Package and collected all of the required supporting documentation as required by the Document Preparation Software and is prepared to submit the supporting documentation along with the modification forms to the Portal.

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

- ☐ The Mortgage Creditor is registered with the approved loss mitigation 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 7 days after entry of the Order.
- ☐ The Mortgage Creditor is not registered. The Debtor requests 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 7 days after the Mortgage Creditor has registered.

The Debtor ☐ has or ☐ has not previously sought loss mitigation/mortgage modification through any procedure/process during this or a prior bankruptcy case. List case number(s): \_\_\_\_\_

If a previous attempt at loss mitigation/mortgage modification was made or is ongoing, briefly describe it and any change of circumstances which makes this attempt more likely to succeed:

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.

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Attorney Name & Fed. ID #

Address

Email



**EXHIBIT I**

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

IN RE:

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

[Debtor Name],

Debtor(s).

Chapter \_\_\_\_

**ORDER REQUIRING  
LOSS MITIGATION/MORTGAGE  
MODIFICATION**

A Motion for Loss Mitigation/Mortgage Modification was filed by [Debtor Name] ("Debtor") on [Date] \_\_\_\_\_, 2014 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, it is hereby

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

- (1) Debtor's Counsel shall immediately serve this Order on the applicable parties and register on the Portal.
- (2) If not previously registered, the Mortgage Creditor and its designated counsel shall, within seven (7) days, register for the Portal<sup>3</sup> and ensure that it has provided to the approved Portal provider all application forms and documentation requirements necessary for consideration of all types of Loss Mitigation, including mortgage modification.
- (3) Debtor's Counsel shall upload the prepared mortgage modification package described in Chambers Guidelines to the Portal within the later of fourteen (14) days after the entry of this Order or 7 days after the Mortgage Creditor registers to the Portal. Debtor's counsel shall timely report to the Court any failure to register.

<sup>3</sup> The Portal is available at <https://www.dcmwp.com>.

- (4) Once the Order has issued, all communication between the parties regarding the loss mitigation review should be sent through the Portal. Communication and negotiation by the Debtor shall be through Debtor's Counsel.
- (5) Within seven (7) days after the Debtor's submission to the Mortgage Creditor on the portal, the Mortgage Creditor shall take the following actions on the Portal:
  - a. Acknowledge receipt of the Debtor's package;
  - b. Provide the Debtor and Debtor's Counsel with notice of any additional or updated documentation necessary for consideration of Loss Mitigation, including mortgage modification;
  - c. Assign its designated counsel to the account on the Portal; and
  - d. Provide the name, address and direct telephone number of the person responsible for the review on the Portal.
- (6) A mortgage modification or other form of loss mitigation shall be agreed to or denied within 120 days of the entry of this Order unless extended by this 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 participation in any Trial Period Plan and, separately, any final agreement providing for any loss mitigation/mortgage modification using forms and procedures outlined in Judge Waites' Chambers Guidelines referenced above. Loss Mitigation, including modification of the mortgage loan, may not be conditioned upon dismissal of the bankruptcy case or relief from the automatic stay, unless allowed by the Court after an actual hearing; and it is further

**ORDERED** that, absent entry of a Consent Order Allowing Mortgage Loan Modification, a final report must be submitted within thirty (30) days of the expiration of the Loss Mitigation efforts and no later than 180 days after the entry of this Order.

**AND IT IS SO ORDERED.**

**EXHIBIT J**

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

IN RE:

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

[Debtor Name],

Chapter \_\_\_\_

Debtor(s).

**MORTGAGE LOAN  
MODIFICATION/LOSS MITIGATION  
REPORT**

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

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

Last Four Digits of Account Number of Loan: \_\_\_\_\_

Date of Entry of Order Requiring Loss Mitigation/Mortgage Modification: \_\_\_\_\_

Date of Entry of Consent Order Allowing Mortgage Loan Modification (*if any*): \_\_\_\_\_

***State the result/status of the parties' efforts to negotiate mortgage loan modification/loss mitigation  
(please check the appropriate box below):***

☐ Loan modification.

☐ Short sale.

☐ Loan refinance.

☐ Surrender of property.

☐ Forbearance.

☐ No agreement has been reached.

☐ Trial Period Plan

Other: \_\_\_\_\_

***State the specific benefit, if any, received as a result of the loss mitigation:***

☐ Payments reduced from \$ \_\_\_\_\_ to \$ \_\_\_\_\_.

☐ Interest reduced from \_\_\_\_% to \$ \_\_\_\_%.

☐ Principal reduced from \$ \_\_\_\_\_ to \$ \_\_\_\_\_.

☐ Term of repayment extended by \_\_\_\_ years.

☐ Other \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ No benefit.

Dated:

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

**EXHIBIT K**

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

IN RE:

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

[Debtor Name],

Chapter \_\_\_\_

Debtor(s).

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

The undersigned attorney files this Limited Notice of Appearance on behalf of [Debtor Name] ("Debtor") in this case for the sole purpose of seeking Loss Mitigation/Mortgage Modification for Debtor. 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 from post petition income. 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, the Chapter 13 Trustee and any affected creditor by first class U.S. Mail at the following addresses:



**EXHIBIT L**

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

IN RE:

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

[Debtor Name],

Chapter \_\_\_\_

Debtor(s).

**INTERIM ORDER GRANTING  
APPROVAL OF TRIAL PERIOD PLAN**

This case came 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:

1. The request is granted.
2. 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 **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]
3. 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