

FILED

UNITED STATES BANKRUPTCY COURT  
2020 APR -1 P 4: 37  
FOR THE DISTRICT OF SOUTH CAROLINA  
U.S. BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

IN RE:

Supplemental Interim Procedures for Relief  
to Mitigate the Effects of COVID-19 for  
All Chapter 13 Cases Assigned to  
Judge John E. Waites,

Debtor(s).

**OPERATING ORDER 20-07<sup>1</sup>**  
**(Interim Procedures for Judge Waites'**  
**Cases Only)**

To supplement Operating Order 20-06, the undersigned, in cooperation with Chapter 13 Trustees Wyman and Stephenson, implements the following additional procedures on an interim basis to the cases assigned to Judge John E. Waites.<sup>2</sup> **This Operating Order is in effect until further order of this Court but applies only to chapter 13 cases before Judge Waites.**

**Requests for Moratoriums**

- **Motions for moratorium in conduit cases:** In cases with a confirmed plan providing for payment to a mortgage creditor through the conduit procedure, requests for moratoriums may be submitted through the filing of a form motion.<sup>3</sup> A copy of the form motion is attached to this order as **Exhibit A**. This form motion must be served on all interested parties and filed in CM/ECF under the "Motion for Moratorium" event.
- **Delay of dismissal when moratorium motion is pending:** For all cases, upon the filing of a motion for moratorium, the Trustee shall delay seeking dismissal for non-payment until the Court has determined the motion for moratorium.

<sup>1</sup> This Operating Order supplements the District-wide procedures stated in Operating Order 20-06 for the chapter 13 cases assigned to Judge John E. Waites.

<sup>2</sup> This Operating Order supplements and does not replace the undersigned's Chambers Guidelines, which remain in effect for all cases assigned to him. To the extent this Operating Order conflicts with Chambers Guidelines, this District's local bankruptcy rules and forms or prior operating orders regarding procedures, this Operating Order controls.

<sup>3</sup> For the cases assigned to Judge Waites only, this Order suspends the requirements of section IV.F.10 and footnote 10 of Operating Order 18-03 (*In re Conduit Mortgage Payments in Chapter 13 Cases*), which provides that a moratorium in a conduit case must be sought through the filing of an amended plan and that a debtor cannot retroactively modify past plan payments through a moratorium.

## Loss Mitigation/Mortgage Modification

- **Request for LM/MM in a Conduit Case:** In a case with a confirmed plan providing for payment to a mortgage creditor through the conduit procedure, requests for loss mitigation/mortgage modification (“LM/MM”) may be submitted by motion.
  - Upon the filing of the motion for LM/MM, payments by the Chapter 13 Trustee to any mortgage creditor affected by the LM/MM motion will terminate. While LM/MM is pending, the debtor shall pay directly to the mortgage creditor any adequate protection or trial period plan payments in compliance with Chambers Guidelines.
  - In addition, the Trustee and debtor’s counsel shall submit a consent order setting the amount of any continuing plan payment to the Trustee during the LM/MM review for the benefit of other creditors not affected by the LM/MM motion.
  - Upon approval of the trial period plan, the debtor shall file an amended plan providing for LM/MM and any further direct payments to the mortgage creditor.
  - Upon denial of LM/MM, the debtor shall file an amended plan providing for direct payments to be made by the debtor or otherwise treating the mortgage debt.
  - Upon pursuing LM/MM, no further treatment shall be provided under a conduit plan or through payments by the Trustee to the mortgage creditor.

## 11 U.S.C. § 362 Settlement Orders

- **Elimination of *ex parte* relief language:** On an interim basis, all proposed settlement orders submitted to resolve a 11 U.S.C. § 362(d) motion shall not include a provision providing for *ex parte* relief upon default of the settlement order. A further hearing will be scheduled upon a default of a settlement order. Therefore, the parties should include the below language in the settlement order:<sup>4</sup>

*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.*

- For the convenience of counsel, revised form § 362 settlements orders are attached to this Operating Order to be used in the cases assigned to the undersigned:<sup>5</sup>

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<sup>4</sup> Failure to include this language will result in the Court rejecting the proposed settlement order.

<sup>5</sup> Due to this change in language, use of the CM/ECF event “Request for Settlement Order on Motion for Relief from Stay (Judge Waites)” is discontinued on a temporary basis. Proposed settlement orders must be submitted using the “Proposed Order” event in CM/ECF.

- **Exhibit B** of this Operating Order replaces Exhibit J of Chambers Guidelines
  - **Exhibit C** of this Operating Order replaces Exhibit K of Chambers Guidelines
  - **Exhibit D** of this Operating Order replaces Exhibit L of Chambers Guidelines
  - **Exhibit E** of this Operating Order replaces Exhibit M of Chambers Guidelines.
- **Payment of post-petition fees as a basis for relief:** Proposed settlement orders shall not include provisions providing for relief from stay for the failure to pay post-petition fees, expenses, and charges that are to be noticed under Fed. R. Bankr. P. 3002.1(c).
  - **Hearing upon default of previously entered settlement orders:** On an interim basis, for previously entered settlement orders that provide for *ex parte* relief upon a default, the Court, on an interim basis, will schedule a further hearing to determine if relief is appropriate if the affidavit of default provides that the default is recent or appears to be the result of COVID-19.

/s/ John E. Waites  
United States Bankruptcy Judge

**AND IT IS SO ORDERED.**

Columbia, South Carolina  
April 1, 2020

**EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

IN RE:

(Set forth here all names including married, maiden, and trade names used by debtor within the last 8 years.)

DEBTOR(S)

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

Last four digits of Social-Security or Individual Tax-Payer-Identification (ITIN) No(s)., (if any):  
\_\_\_\_\_

CASE NO:

CHAPTER 13

NOTICE OF MOTION TO MODIFY PLAN TO ALLOW  
A MORATORIUM OF PAYMENTS (CONDUIT PLAN)

AND OPPORTUNITY FOR HEARING

The Court has confirmed a chapter 13 plan in this case. The debtor moves, pursuant to 11 U.S.C. § 1329(a), and Fed. R. Bankr. P. 3015(h), to modify the confirmed plan as below.

TAKE NOTICE that any response, return, and/or objection to this motion should be filed with the Court no later than 21 days after the service of this Motion to Modify Plan, as computed under Fed. R. Bankr. P. 9006(a), on the chapter 13 trustee, the debtor(s), and any attorney for the debtor(s).

TAKE FURTHER NOTICE that no hearing will be held on this motion, except at the direction of 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 \_\_\_\_\_ m., at \_\_\_\_\_, \_\_\_\_\_, South Carolina. No further notice of this hearing will be given.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

IN RE:

CASE NO:

CHAPTER 13

DEBTOR(S)

MOTION TO MODIFY PLAN TO ALLOW  
A MORATORIUM OF PAYMENTS

(CONDUIT PLAN)

Debtor hereby requests a moratorium of payments because of a reduction of income or increase of expenses related to the COVID-19 virus.

Debtor requests that THREE PAYMENTS due to the Trustee pursuant to Part 2.1 of the confirmed plan be deferred. Debtor does not request a change in the total amount paid ('plan base'), nor an increase in the total number of payments to be made ('plan term'), but that the payments skipped will be cured in equal monthly payments over the remainder of the confirmed plan term.

To allow this moratorium of payments, the provisions of Part 8 of the confirmed plan, relating to the conduit payment of the Debtor's mortgage, are modified as follows:

**Cure of post-petition mortgage delinquency.**

The debtor's post-petition mortgage arrearage will be paid in full through disbursements by the trustee.

Name of Creditor	Description of Collateral (note if principal residence; include county tax map number and complete street address)	Estimated amount of post- petition arrearage	Number of Months being paid as post- petition arrearage	Monthly payment on post-petition arrearage
		\$	Three (3)	\$ Or more

\* Unless otherwise ordered by the court, the arrearage will be calculated from the months listed above, with payment amounts reflected in the Official Form 410A Mortgage Proof of Claim Attachment and any Notice of Mortgage Payment Change.

Wherefore, the debtor prays that this court issue its order granting a moratorium in payments to the Chapter 13 trustee for THREE MONTHS, after which the debtor shall resume payments to the trustee.

Respectfully submitted,

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Attorney/*Pro Se* Debtor(s)

\_\_\_\_\_  
Typed Printed Name

\_\_\_\_\_  
Address/Telephone/Facsimile/E-mail

\_\_\_\_\_  
District Court ID Number

#### CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached Notice of Motion and Opportunity for Hearing and Motion to Modify Plan for Moratorium (Conduit Plan) was duly served upon the parties below named, either by depositing said papers in the United States Mail, on this date, with first class postage duly affixed and a return address clearly indicated on said envelope to the address below indicated or electronically through CM/ECF.

VIA US MAIL: See attached Court mailing matrix

ELECTRONICALLY:

**INSERT CHAPTER 13 TRUSTEE  
CONTACT INFORMATION**

US Trustee Region 4  
1835 Assembly Street #953  
Columbia, SC29201-2448

I so certify:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Printed Name and Position, if not attorney

\_\_\_\_\_  
Address/Telephone/Facsimile/E-mail

**EXHIBIT B**

**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 C of Operating Order 20-07 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, 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 or the party obligated to pay.

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

**EXHIBIT C**

**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>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 D**

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

IN RE:

[Debtor(s) Name],

Debtor(s).

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

Chapter \_\_\_\_

**SETTLEMENT ORDER  
ON MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
(LM/MM)**

This matter comes before the Court on the motion for relief from the automatic stay filed by \_\_\_\_\_ ("Movant"). The 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 ADDRESS]

According to the certifications of facts, the value/equity in the subject property above the Movant's lien is \$\_\_\_\_\_.<sup>1</sup>

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

Debtor(s)' loan with the Movant shall be considered for loss mitigation/mortgage modification ("LM/MM") using the Default Mitigation Management portal. Movant shall review Debtor(s) for all possible LM/MM options available to Debtor(s). The parties shall comply with the requirements and deadlines set forth in the Guidelines for Judge Waites.

Upon either a denial of LM/MM, Debtor(s)' non-acceptance of a LM/MM offer, or the termination of LM/MM by order of the Court; the Movant may file an affidavit of default and proposed order lifting the automatic stay. However, in matters involving a denial or Debtor(s)' non-acceptance of LM/MM, the affidavit may not be submitted until final disposition of all available types of LM/MM.

In the event that Movant files an affidavit of default, a hearing will be scheduled to determine whether relief from stay is warranted.

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<sup>1</sup> The amount of equity stated is the total equity or value above the Movant's lien in the Property without regard to any claimed exemptions or junior liens.

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:**

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

\_\_\_\_\_  
Attorney for Debtor(s)  
District Court I.D. \_\_\_\_\_

**CERTIFICATION:**

Prior to consenting to this settlement order, obligations set forth in this Order and the forthcoming Consent Order Requiring Loss Mitigation/Mortgage Modification, including the deadlines to submit documentation and the consequences of default were reviewed with and agreed to by Debtor(s) or other obligated party.

\_\_\_\_\_  
Attorney for Debtor(s)  
District Court I.D. \_\_\_\_\_

**EXHIBIT E**

**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  
(Insurance)**

This matter comes before the Court on the motion for relief from the automatic stay filed by \_\_\_\_\_ (“Movant”) based (in whole or in part) upon Debtor’s failure to maintain insurance or timely reimburse Movant for such costs. 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]

According to the certifications of facts, the value/equity in the subject property above the movant’s lien is \$\_\_\_\_\_.

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

If there was no insurance at the time of the motion, Debtor agrees to present evidence of current insurance within 10 days of the entry of this Order or be deemed in default under the terms of this settlement order.

Furthermore, in accordance with the terms of the loan agreement, Movant has incurred post petition fees and expenses in the amount of \$\_\_\_\_\_ associated with the motion and with obtaining insurance or force placing insurance on behalf of Debtor. These post petition fees and expenses consists of:

- Premiums for insurance/forced place insurance in the amount of \$\_\_\_\_\_.
- Attorney’s fees and costs in the amount of \$\_\_\_\_\_.
- Other costs (specify below) in the amount of \$\_\_\_\_\_.

Debtor shall cure the aforementioned post petition fees and expenses through the following Cure Payments:

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

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

Cure Payments shall be paid directly to Movant at:

[Address for Payment]

Further, the parties agree that Movant may request proof of insurance in the future through a written notice to Debtor and Debtor's counsel. Failure to provide proof of insurance or to reasonably reimburse Movant for forced place insurance within 20 days after service of the written notice shall be a default under the terms of this settlement order.

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 or the party obligated to pay.

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