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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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EASTERN DISTRICT OF CALIFORNIA

In re

ORDER ADOPTING REVISIONS TO
LOCAL BANKRUPTCY RULES

General Order 25-05

Notice and opportunity for public comment having been given in accordance with Federal Rule of Bankruptcy Procedure 9029, and those comments received having been duly reviewed and considered by the Court;

IT IS HEREBY ORDERED that the Local Bankruptcy Rules of the United States Bankruptcy Court, Eastern District of California, are amended to amend Local Bankruptcy Rule 3015-1 as reflected in the attached redlined version.

DATED



Fredrick E. Clement
Chief Bankruptcy Judge



Ronald H. Sargis
Bankruptcy Judge



Christopher D. Jaime
Bankruptcy Judge



René Lastreto II
Bankruptcy Judge



Jennifer E. Niemann
Bankruptcy Judge

LOCAL RULE 3015-1
Chapter 13 Debt Adjustment Cases

- (a) Mandatory Form Plan. All chapter 13 debtors, as well as the trustee and holders of unsecured claims, when proposing a plan pursuant to 11 U.S.C. §§ 1321, 1323, and 1329(a), shall utilize Form EDC 3-080, the standard form *Chapter 13 Plan*.
- (b) Chapter 13 Debtor's Duties. In addition to the duties imposed on a chapter 13 debtor by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and elsewhere in these Local Bankruptcy Rules, the following duties are imposed on chapter 13 debtors:
- 1) Transfers of Property. The debtor shall not transfer, encumber, sell, or otherwise dispose of any personal or real property with a value of \$1,000.00 or more other than in the ordinary course of business without prior Court authorization. To obtain Court authorization, the debtor shall comply with LBR 3015-1(i).
 - 2) New Debt. Except as provided in 11 U.S.C. §§ 364 and 1304, the debtor shall not incur new debt exceeding ~~\$1,000.00~~ \$3,000.00 with an interest rate of more than 15.00% without prior Court authorization. To obtain Court authorization, the debtor shall comply with LBR 3015-1 ~~(f)~~ (h). A new consumer debt of less than ~~\$1,000.00~~ \$3,000.00 shall not be paid through this plan absent compliance with 11 U.S.C. § 1305(c).
 - 3) Insurance. The debtor shall maintain insurance as required by any law or contract and the debtor shall provide evidence of that insurance as required by 11 U.S.C. § 1326(a)(4).
 - 4) Compliance with Applicable Nonbankruptcy Law. The debtor's financial and business affairs shall be conducted in accordance with applicable nonbankruptcy law including the timely filing of tax returns and payment of taxes.
 - 5) Periodic Reports. Upon the trustee's request, the debtor shall provide the trustee with a copy of any tax return, W-2 form, and 1099 form filed or received while the case is pending, and furnish the trustee with periodic financial information regarding the debtor's business or financial affairs.
 - 6) Documents Required by Trustee. The debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist*, or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee*.
- (c) Procedure to Confirm Original Plan.
- 1) Filing the Plan. The debtor shall file Form EDC 3-080, *Chapter 13 Plan*, within fourteen (14) days of the filing of the petition.

- 2) *Serving the Plan on the Trustee.* The debtor shall serve the chapter 13 plan on the trustee. The plan, together with Form EDC 3-088, *Domestic Support Obligation Checklist*, Form EDC 3-086, *Class 1 Checklist*, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee*, must be received by the trustee no later than fourteen (14) days after the filing of the petition.
- 3) *Trustee's Service of the Plan on Creditors.* The trustee shall serve all creditors and other persons entitled to notice with a copy of the debtor's chapter 13 plan. However, if the trustee does not receive the debtor's chapter 13 plan by the fourteenth (14th) day after the filing of the petition, the debtor shall seek confirmation of the chapter 13 plan by complying with the requirements of LBR 3015-1(d)(1).
- 4) *Objecting to Plan Confirmation.* Creditors, as well as the trustee, may object to the confirmation of the chapter 13 plan. An objection and a notice of hearing must be filed and served upon the debtor, the debtor's attorney, and the trustee within seven (7) days after the first date set for the meeting of creditors held pursuant to 11 U.S.C. § 341(a). The objection shall be set for hearing on the confirmation hearing date and time designated in the *Notice of Chapter 13 Bankruptcy Case*. The objection shall comply with LBR 9014-1(a)-(e), (f)(2), and (g)-(l), including the requirement for a Docket Control Number on all documents relating to the objection. The notice of hearing shall inform the debtor, the debtor's attorney, and the trustee that no written response to the objection is necessary. Absent a timely objection and a properly noticed hearing on it, the Court may confirm the chapter 13 plan without a hearing.

(d) *Procedure to Confirm Modified Plans.*

- 1) *Modified Plans Proposed Prior to Confirmation.* If the debtor modifies the chapter 13 plan before confirmation pursuant to 11 U.S.C. § 1323, the debtor shall file and serve the modified chapter 13 plan together with a motion to confirm it. Notice of the motion shall comply with Fed. R. Bankr. P. 2002(a)(9), which requires twenty-one (21) days of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), parties in interest shall be served at least thirty-five (35) days prior to the hearing.
- 2) *Modified Plans Proposed After Confirmation.* If the debtor, trustee, or the holder of an allowed unsecured claim modifies the chapter 13 plan after confirmation pursuant to 11 U.S.C. § 1329, the plan proponent shall file and serve the modified chapter 13 plan together with a motion to confirm it. Notice of the motion shall comply with Fed. R. Bankr. P. 3015(h), which requires twenty-one (21) days of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 3015 (h) and LBR 9014-1(f)(1), parties in interest shall be served at least thirty-five (35) days prior to the hearing.

- 3) Limited Notice for Modified Plans Proposed After Confirmation (Fed. R. Bankr. P. 3015(h)). Modified chapter 13 plans that neither increase the duration of a plan, nor decrease the dividend due creditors holding general unsecured claims, i.e., Chapter 13 plan, EDC 3-080, § 3.14 claims, are deemed to not affect the claims of those creditors. Fed. R. Bankr. P. 3015(h). As a result, a modified chapter 13 plan that neither increases the duration of the plan, nor decreases the dividend due creditors holding general unsecured claims, and the motion to modify the plan, as well as all supporting documents, need only be served on:

- (i) the U.S. Trustee;
- (ii) the Chapter 13 trustee;
- (iii) the debtor(s) and counsel;
- (iv) creditors holding allowed secured claims;
- (v) creditors holding allowed priority unsecured claims;
- (vi) creditors holding leases or executory contracts that have been assumed; and
- (vii) creditors who have filed requests for notice.

Subject to LBR 2002-3, any plan that reduces the duration of the plan must be served on all creditors and parties in interest. Fed. R. Bankr. P. 2002; 3015(h).

All other proposed modified plans and the motion to modify the plan, as well as all other supporting documents must be served on: (1) the U.S. Trustee; (2) the Chapter 13 trustee; (3) indenture trustees; (4) the debtor(s) and counsel; and (5) all creditors who have filed proofs of claim and creditors who are then still permitted to file a proof of claim having been granted an extension to file claims pursuant to Fed. R. Bankr. P. 3002(c)(1) or (c)(2).

- 4) Minor Modifications. The Court may approve, on the written stipulation of the debtor and the trustee, nonmaterial modifications of a confirmed chapter 13 plan. To be regarded as nonmaterial, the modification must not delay or reduce the dividend payable on account of any claim or otherwise modify the claim of any creditor absent the affected creditor's written consent.
- (e) Lodging Confirmation Order. When no objection is filed to the proposed chapter 13 plan, a confirmation order shall be lodged within fourteen (14) days of the expiration of the deadline for filing objections. The confirmation order shall identify the plan by the date it was filed. If an objection is filed but is overruled, an order confirming the plan and overruling the objection shall be lodged within fourteen (14) days after conclusion of the hearing on the objection. The order shall conform substantially with Form EDC 3-081, *Order Confirming Plan*.
- (f) Plan Payments.
- 1) Due Date. Plan payments shall be made monthly and must be received by the trustee on the twenty-fifth (25th) day of each month beginning the month after the order for relief under chapter 13. All plan payments to the trustee by the debtor shall be by cashier's check, money order, or electronic transfer approved by the trustee.

- 2) *Adequate Protection Payments.* Prior to confirmation, the trustee shall pay on account of each allowed claim secured by a purchase money security interest in personal property an adequate protection payment if required by 11 U.S.C. § 1326(a)(1)(C). The adequate protection payment shall equal the monthly dividend stated in the proposed plan. Adequate protection payments shall be disbursed by the trustee in connection with his or her customary month-end disbursement cycle beginning the month after the case was filed. If a claimant is paid an adequate protection payment prior to plan confirmation, that claimant shall not be paid a monthly dividend for the same month after confirmation.
- 3) *Trustee's Fees on Certain Plan Payments.* The trustee may collect, with the authorization of the U.S. Trustee, the percentage fee fixed under 28 U.S.C. § 586(e)(1)(B) on all receipts used to pay post-petition contract installment payments paid to holders of secured claims, whether made before or after confirmation of the chapter 13 plan, as well as on all adequate protection payments made by the trustee to holders of secured claims.
- 4) *Late Charges.*
 - A) If the trustee is unable to pay timely a post-petition contract installment payment due to the holder of a Class 1 secured claim in the first month following the filing of the petition, the trustee shall pay from the debtor's plan payments the applicable late charge prior to the completion of the plan whether or not it is demanded in a proof of claim.
 - B) A late charge may not be imposed on a post-petition contract installment payment paid or tendered during the contractual grace period even though an earlier installment, or any late charge thereon, may not have been paid when due. For purposes of determining whether a late charge may be imposed, any post-petition contract installment payment tendered by the trustee shall be applied by the holder of the Class 1 claim to the most recent post-petition contract installment payment to fall due.
- 5) *Wage Order.* After confirmation of a plan, in the discretion of the trustee, the trustee may obtain the issuance of a *Wage Order* (Form EDC 3-083) in order to obtain plan payments from the debtor's employer.

(g) *Dismissal Due to Plan Payment Defaults.*

- 1) If the debtor fails to make a payment pursuant to a confirmed plan, including a direct payment to a creditor, the trustee may mail to the debtor and the debtor's attorney written notice of the default.
- 2) If the debtor believes that the default noticed by the trustee does not exist, the debtor shall set a hearing within twenty-eight (28) days of the mailing of the notice of default and give at least fourteen (14) days' notice of the hearing to the trustee pursuant to LBR 9014-1(f)(2). At the hearing, if the trustee demonstrates that the debtor has failed to make a payment required by the confirmed plan, and if the debtor fails to rebut the trustee's evidence, the case shall be dismissed at the hearing.
- 3) Alternatively, the debtor may acknowledge that the plan payment(s) has(have) not been made and, within thirty (30) days of the mailing of the notice of default, either (A) make the delinquent plan

payment(s) and all subsequent plan payments that have fallen due, or (B) file a modified plan and a motion to confirm the modified plan. If the debtor's financial condition has materially changed, amended Schedules I and J shall be filed and served with the motion to modify the chapter 13 plan.

- 4) If the debtor fails to set a hearing on the trustee's notice, or cure the default by payment, or file a proposed modified chapter 13 plan and motion, or perform the modified chapter 13 plan pending its approval, or obtain approval of the modified chapter 13 plan, all within the time constraints set out above, the case shall be dismissed without a hearing on the trustee's application.
- 5) Rather than utilize the notice of default procedure authorized by this paragraph, the trustee may file, serve, and set for hearing a motion to dismiss the case. Such a motion may be set for hearing pursuant to either LBR 9014-1(f)(1) or (f)(2).

(h) Court Approval of Sales, Transfers, and Credit.

- 1) Prior to Completion of Payments Under the Plan. Except for transfers made in the ordinary course by a business debtor, prior to completion of payments under the applicable plan, the debtor shall not sell or transfer property or incur debt except as provided herein.

A) Vehicle Loans. The court may approve an *ex parte* motion by the debtor to finance the purchase of a motor vehicle if the trustee's written consent is filed with or as part of the motion. The debtor's motion and the trustee's approval are their certification to the Court that:

- (i) All payments required by the chapter 13 plan are current;
- (ii) The chapter 13 plan is not in default;
- (iii) A declaration, which may be in the format of Schedules I and J, by the debtor has been filed within the prior thirty (30) days that demonstrates an ability to pay all future plan payments, projected living and business expenses, and the new debt;
- (iv) The new debt is a single loan incurred to purchase a motor vehicle that is reasonably necessary for the maintenance or support of the debtor or a dependent of the debtor or, if the debtor is engaged in business, is necessary for the continuation, preservation, and operation of the debtor's business;
- (v) The only security for the new debt will be the motor vehicle to be purchased by the debtor;
and
- (vi) The new debt does not exceed \$20,000.00.

B) New Home Loans. The Court may approve an *ex parte* motion by the debtor to finance the purchase of a residence if the trustee's written consent is filed with or as part of the motion. The debtor's motion and the trustee's approval are their certification to the Court that:

- (i) All payments required by the chapter 13 plan are current;
 - (ii) The chapter 13 plan is not in default;
 - (iii) A declaration, which may be in the format of Schedules I and J, by the debtor has been filed within the prior thirty (30) days that demonstrates an ability to pay all future plan payments, projected living and business expenses, and the new debt;
 - (iv) The new debt is a single loan incurred to purchase a residence that is reasonably necessary for the maintenance or support of the debtor and his or her family;
 - (v) The only security for the new debt will be the residence to be purchased by the debtor; and
 - (vi) The monthly payment (the principal and interest payment on account of the new debt plus all impounds, taxes, insurance, association fees, and bonds and other assessments) will not exceed the greater of the debtor's current such monthly payment or rental payment or \$2,500.00.
- C) Refinance of Existing Home Loans. The Court may approve an *ex parte* motion by the debtor to refinance existing debt(s) encumbering the debtor's residence if the trustee's written consent is filed with or as part of the motion. The debtor's motion and the trustee's approval are their certification to the Court that:
- (i) All payments required by the chapter 13 plan are current;
 - (ii) The chapter 13 plan is not in default;
 - (iii) A declaration, which may be in the format of Schedules I and J, by the debtor has been filed within the prior thirty (30) days that demonstrates an ability to pay all future plan payments, projected living and business expenses, and the refinanced debt;
 - (iv) The new debt is a single loan incurred only to refinance existing debt encumbering the debtor's residence;
 - (v) The only security for the new debt will be the debtor's existing residence;
 - (vi) All creditors with liens and security interests encumbering the debtor's residence will be paid in full from the proceeds of the new debt and in a manner consistent with the chapter 13 plan;
 - (vii) The monthly payment (the principal and interest payment on account of the new debt plus all impounds, taxes, insurance, association fees, and bonds and other assessments) will not exceed the greater of the debtor's current such monthly payment(s) on the existing debt(s) being paid or \$2,500.00. The Court will not approve *ex parte* motions to obtain secured credit pursuant to 11 U.S.C. § 364(d).

D) Sale of Property. The Court may approve an *ex parte* motion by the debtor to sell real or personal property with a value of \$1,000.00 or more other than in the ordinary course of business if the trustee's written consent is filed with or as part of the motion. The debtor's motion and the trustee's approval are their certification to the Court that:

- (i) The sale price represents a fair value for the subject property;
- (ii) All creditors with liens and security interests encumbering the subject property will be paid in full before or simultaneously with the transfer of title or possession to the buyer;
- (iii) All costs of sale, such as escrow fees, title insurance, and broker's commissions, will be paid in full from the sale proceeds;
- (iv) The sale price is all cash;
- (v) The debtor will not relinquish title to or possession of the subject property prior to payment in full of the purchase price; and
- (vi) The sale is an arm's length transaction.

"Trading in" a vehicle as part of the purchase price for a new vehicle complies with the requirements of (v) and (vi) of this Subparagraph. The Court will not approve *ex parte* motions to sell property pursuant to 11 U.S.C. § 363(f).

E) Other New Debt and Transfers. If the trustee will not give the consent required by Subparagraphs (A), (B), (C), or (D) of this Paragraph (1) or if the debtor wishes to incur new debt or transfer property on terms and conditions not authorized by those Subparagraphs, the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1.

2) After Completion of Plan Payments. Except for transfers made in the ordinary course by a business debtor, after completion of payments under the plan but prior to the closing of the case, the debtor shall not sell or transfer property or incur debt except as provided herein.

A) Ex Parte Motion. The debtor may request by *ex parte* motion that the court authorize the debtor to sell or transfer property or to incur debt, without regard to the limitations provided in Subpart (i)(1), if the trustee's written consent is filed with or as part of the motion. The debtor's motion and the trustee's approval are their certification to the court that:

- (i) All payments required by the chapter 13 plan have been paid to the trustee;
- (ii) Debtor has completed and filed the certificate for the required post-petition education [11 U.S.C. § 1328(g)] or such requirement has been waived by order of the court;

- (iii) Debtor has filed the certifications required in 11 U.S.C. § 1328(a) or such requirement has been waived by order of the court.
- B) Noticed Motion. If the trustee does not provide approval for an *ex parte* motion under Subpart (i)(2)(A), the debtor may file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1.
- (i) Valuation and Lien Avoidance Motions. If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan.