

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re)
)
) **GENERAL ORDER**
CHAPTER 13 CASES) No. 01-02
)
_____)

Paragraph 1. Applicability

(a) This order relates to chapter 13 cases filed in or transferred to the Eastern District of California and supersedes any previous orders in conflict with its provisions. This order applies to chapter 13 cases filed on or after March 1, 2001. Paragraphs 7, 8, 9, and 10, however, apply to all pending cases.

(b) The definitions set forth in the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California ("Local Rules") effective July 21, 2000, and all subsequent amendments, apply to all terms used in this order.

(c) To the extent this order conflicts with the provisions of the Local Rules, the provisions of this order shall take precedence. In all other respects, the Local Rules shall apply in all chapter 13 cases.

(d) By this general order, and the form chapter 13 plan required by it, the court seeks to streamline the procedures for chapter 13 plan confirmation and the adjudication of related matters, such as lien avoidance and valuation of assets, maximize the likelihood of successful financial reorganization and performance of chapter 13 plans, insure nondiscriminatory and fair treatment of claims, and provide for the prompt approval and payment of professional fees. The court determines that the procedures and forms mandated in this general order are reasonably calculated to obtain these goals and fairly balance the administrative necessities imposed on the court and the chapter 13 trustee ("the Trustee") by a large and complex chapter 13 caseload with the due process rights of the debtor and creditors.

Paragraph 2. Mandatory Forms

(a) All chapter 13 debtors shall utilize the standard form chapter 13 plan attached as Exhibit 1 to this order and entitled "Chapter 13 Plan." This standard form chapter 13 plan also

includes optional motions to value collateral and motions to avoid liens pursuant to 11 U.S.C. § 522(f)(1)(A) & (B). This plan shall be completed and filed within 15 days of the filing of the petition as required by Federal Rule of Bankruptcy Procedure ("FRBP") 3015(b) and Local Rule 3015-1(a). No changes, interlineations, or alterations of any kind may be made to the printed material in the plan. Should any be made, they will be given no force or effect. Any changes to the printed material must be set out in writing in the Additional Provisions portion of the plan. The plan and any included motions (Attachments M-1, M-2, or M-3), shall constitute the debtor's chapter 13 plan. Nothing in the plan or in this general order precludes a debtor from proposing, for good cause, amendments or modifications to the form attached as [Exhibit 1](#).

(b) The debtor may include in or file with the plan any motions pursuant to section 522(f) (all references to sections are to sections of the Bankruptcy Code) to avoid judicial liens (Attachment M-1), or nonpossessory, nonpurchase-money liens (Attachment M-2). While the debtor may make a section 522(f) motion after confirmation of the plan, to the extent a lien is not avoided at or prior to confirmation of the plan, the underlying claim must be treated as secured in the plan and paid accordingly unless and until a section 522(f) motion is granted. In such a case, the court will determine whether amounts paid on account of the secured claim must be disgorged by the creditor.

(c) The debtor may include in, or file with, the plan all motions to value collateral and determine secured claims (Attachment M-3) pursuant to subsections (a) and (d) of section 506 and FRBP 3012. While the debtor may make a valuation motion after confirmation of the plan, to the extent collateral is not valued at or prior to confirmation of the plan, the amount of secured claim will be the amount claimed by the creditor unless and until a valuation motion is granted. In such a case, the court will determine whether some or all of the amounts paid on account of the secured claim must be disgorged by the creditor.

(d) The debtor shall lodge with the Trustee at the section 341 meeting of creditors a proposed order confirming the chapter 13 plan. This order shall substantially comply with the form of the order appended hereto as [Exhibit 2](#).

Paragraph 3. Service of Plan and Motions

(a) The debtor or the debtor's attorney shall serve the plan, all motions to value collateral, all motions to avoid liens, statements, and schedules on the Trustee. The Trustee shall serve all creditors and other persons entitled to notice with a copy of the debtor's plan or a summary of it as the court may direct.

(b) If the debtor has included in the plan or otherwise filed any motions to avoid liens pursuant to section 522(f) or motions to value collateral pursuant to subsections (a) and (d) of section 506 and FRBP 3012, the debtor or debtor's attorney shall serve the motions and the plan at least ten (10) calendar days before the meeting of creditors held pursuant to section 341(a) upon the respondent creditor(s) as required by section 342(c), FRBP 7004, and Local Rules 2002-1 and 9014-1. The plan shall be accompanied by a separate notice which contains the address of the debtor and the debtor's attorney and states: "You are hereby notified that the debtor has filed a proposed chapter 13 plan which includes a motion seeking to [describe the relief sought in the motion]. If you oppose the motion and/or wish to object to confirmation of the chapter 13 plan, it is incumbent on you to file an objection and set it for hearing in the United States Bankruptcy Court, Eastern District of California, [Sacramento Division, located at U.S. Courthouse, 501 I Street, seventh floor, Courtroom 28, Sacramento, California 95814 **or** Modesto Division, located at 1130 12th Street, Suite C, Modesto, California 95352 **or** Fresno Division, located at U.S. Courthouse, 1130 O Street, second floor, Courtroom (insert "A" for cases assigned to Judge Rimel or "B" for cases assigned to Judge Lee), Fresno, California]. An objection to the plan and/or the motion must be filed not later than 14 days after the conclusion of the meeting of creditors held pursuant to section 341(a) of the Bankruptcy Code. Further, the party filing the objection shall set it for hearing not later than 45 days following the conclusion of the meeting of creditors. To set a hearing, parties shall utilize the court's self-set calendaring procedure which is available on the court's website, www.caeb.uscourts.gov, or at the court's public counters. The meeting of creditors will take place on [insert date and time]. The objection, all evidence supporting the objection, and a notice containing the date, time, and place of the hearing on the objection shall be served on the Trustee, debtor, and debtor's attorney at the address(es) stated in this notice at least 22 days prior to the hearing."

Paragraph 4. Attorney Representation and Attorneys' Fees

(a) Any attorney who is retained to represent a debtor in a chapter 13 case is responsible for representing the debtor on all matters arising in the case, including, without limitation, motions for relief from the automatic stay, motions to avoid liens, objections to claims, and adversary proceedings.

(b) Attorneys seeking to withdraw from representation of a debtor shall comply with Rule 83-182 of the Local Rules of the United States District Court, Eastern District of California.

(c) Compensation paid to attorneys for the representation of debtors shall be determined according to the Guidelines for Payment of Attorneys' Fees in Chapter 13 Cases or, when the attorney elects not to comply with the Guidelines for Payment of Attorneys' Fees in Chapter 13 Cases, the Guidelines for Compensation and Expense Reimbursement of Professionals, sections 329 and 330, FRBP 2002, 2016, and 2017, and other applicable authority.

(d) After the filing of the petition, a debtor's attorney shall not accept or demand from the debtor any payment for services or cost reimbursement without first obtaining a court order authorizing the fees and/or costs and specifically permitting direct payment of those fees and/or costs by the debtor.

(e) All attorneys shall file and serve on the United States Trustee and the Trustee the initial and supplemental disclosures of compensation required by FRBP 2016(b).

Paragraph 5. Plan Payments

(a) Plan payments shall be made monthly and are due on the twenty-fifth day of each month beginning the month after the petition is filed. Prior to confirmation, all plan payments to the Trustee shall be by cashier's check or money order except in cases filed in the Fresno Division where all plan payments, both pre-confirmation and post-confirmation, shall be by Wage Order. In cases filed in the Sacramento and Modesto Divisions, only post-confirmation plan payments shall be made by Wage Order. Exemplars of the wage orders required by each of the chapter 13 trustees with the Eastern District of California are attached as [Exhibit 3](#).

(b) Post-petition payments made directly by the debtor, or by a third person making payments on behalf of the debtor, shall be paid when due and whether or not the plan has been confirmed. Direct payment of amounts coming due after the filing of the petition are required for claims classified in Classes 1 and 4. All other payments required by the plan shall be paid by the Trustee to the claim holders.

(c) In cases filed in the Fresno Division, the debtor or the debtor's attorney shall lodge a Wage Order with the court at the time the chapter 13 plan is filed. Upon issuance of the order, the debtor or the debtor's attorney shall serve the Wage Order on the debtor's employer and the Trustee.

(d) In cases filed in the Modesto and Sacramento Divisions, the debtor or the debtor's attorney shall lodge a Wage Order with the order confirming the plan. Upon issuance of the order confirming the plan, the debtor or the debtor's attorney shall serve the Wage Order on the debtor's employer and the Trustee.

(e) If there is more than one employer and it is necessary to deduct wages from the wages received from more than one employer in order to collect the entire plan payment, a Wage Order shall be lodged for each employer.

(f) It is the responsibility of the debtor and the debtor's attorney to insure that the Wage Order is issued and served. If the Wage Order will not timely or completely fund a plan payment, the debtor shall make the necessary payment directly to the Trustee by cashier's check or money order. It is also the responsibility of the debtor and the debtor's attorney to modify the Wage Order in those cases where the plan payment changes or fluctuates.

(g) Notwithstanding subparagraph 5(a), those debtors who believe there is good reason to not make plan payments by a Wage Order shall make their plan payments by cashier's check or money order. They shall explain their reasons for not using a Wage Order to the Trustee at the meeting of creditors. If the Trustee nevertheless believes a Wage Order is appropriate, the Trustee may request dismissal of the case pursuant to Paragraph 8 of this general order. In response to such motions, debtors may request that they be excused from the requirement of a Wage Order.

(h) If the Trustee finds that a Wage Order will be administratively difficult to implement, the Trustee may dispense with the requirement and accept plan payments by money order or cashier's checks directly from the debtor.

Paragraph 6. Claim Objections, Plan Modifications and Filing of Claims

(a) Prior to the expiration of the deadline to object to proofs of claims (see subparagraph (b) below), the Trustee shall pay claims as specified in the confirmed plan unless the Trustee is served with an objection to a claim which is set for hearing within 60 days of its service. Until the objection is adjudicated or settled, the Trustee shall cease paying dividends on account of the objectionable claim. If the objection is overruled, at the request of the claimant or the Trustee, the court may make provision for payment of any dividends not paid while the objection was pending.

(b) Any other objections to claims shall be filed, served, and set for hearing no later than 90 days after service by the Trustee of the Notice of Filed Claims. The Notice of Filed Claims shall be filed and served by the Trustee upon the debtor and the debtor's attorney, if any, no later than the longer of 250 days after the order for relief or 180 days after plan confirmation. Any proof of claim not timely objected to shall continue to be paid by the Trustee pursuant to the terms of the confirmed plan.

(c) Nothing herein shall prevent the debtor, the Trustee, or any other party in interest from objecting to a proof of claim after the expiration of the deadline for objections specified in subparagraph (b) above. However, any objection filed after the expiration of that deadline shall not, if sustained, result in any order that the claimant refund amounts paid on account of its claim.

(d) If the Notice of Filed Claims includes allowed claims which are not provided for in the plan or which make the plan no longer feasible, the debtor shall file a motion to modify the plan to make the necessary adjustments, changes, deletions, or other modifications and/or any valuation motions and section 522(f) motions not made in connection with the original plan. These motions shall be filed, served, and set for hearing no later than 120 days after service by the Trustee of the Notice of Filed Claims.

(e) Nothing herein shall prevent the debtor, the Trustee, or the holder of an allowed unsecured claim from requesting plan modifications at other times.

(f) If a creditor fails to file a proof of claim within the time required by FRBP 3002(c) or section 502, the debtor or the Trustee may (but are not required to) file a proof of claim on behalf of the creditor pursuant to FRBP 3004. The time for the filing of such a claim is extended to 90 days after service on the debtor or his counsel of the Notice of Filed Claims.

(g) If the court enters an order valuing a creditor's collateral and the creditor has filed or later files a proof of a secured claim in an amount greater than the value established for the collateral, the allowed secured claim shall be the value of the collateral determined by the court. It is unnecessary for the Trustee or the debtor to file a claim objection in addition to the motion valuing the collateral. If the creditor has filed or later files a proof of a secured claim in an amount lesser than the value established for the collateral, the allowed secured claim shall be the amount claimed by the creditor.

(h) If the court enters an order avoiding the judicial lien or nonpossessory, nonpurchase money security interest of a creditor and the creditor has filed or later files proof of a secured claim which identifies as security only the avoided lien or security interest, the claim shall be allowed as a general unsecured claim. It is unnecessary for the Trustee or the debtor to file a claim objection in addition to the lien avoidance motion.

Paragraph 7. Payment Defaults

If the debtor fails to make any plan payment pursuant to a confirmed plan, including direct payments to creditors, the

Trustee may mail to the debtor and the debtor's attorney written notice of the default. If the debtor believes that there is no such default, the debtor shall set a hearing within 30 days of the mailing of the notice with 14 days notice to the Trustee. If the court concludes that there has been a default, the case will be dismissed. Alternatively, debtors may acknowledge that payments have not been made and, within 30 days of the mailing of the notice, either cure the default by payment or by filing a modified plan and a motion to confirm the modified plan. If the debtor's financial condition has changed, amended Schedules I and J shall be filed with the motion to modify. Debtors shall have 30 days from the filing of the motion and proposed modified plan to obtain court approval of the modified plan. If the debtor fails to timely set a hearing on the Trustee's notice, or cure the default by payment, or file a proposed modified plan and motion, or perform the modified plan pending its approval, or obtain approval of the modified plan, the case will be dismissed without a hearing on the Trustee's application.

Paragraph 8. Motions to Dismiss

For motions filed by the Trustee pursuant to section 1307(c), Local Rule 9014-1 is modified to permit a hearing on a motion on as little as 14 days notice to the debtor and the debtor's attorney. Written opposition to the motion need not be filed by the debtor.

Paragraph 9. Automatic Stay

(a) A secured creditor who is receiving payments from the Trustee through the plan and who obtains an order granting relief from the automatic stay to foreclose on its collateral, shall serve an endorsed copy of the stay relief order on the Trustee by either utilizing Local Rule 9022-1 or otherwise mailing an endorsed copy.

(b) When the stay relief order unconditionally permits the creditor to foreclose or repossess its collateral, the Trustee shall cease making payments on the creditor's secured claim if he has received a copy of the endorsed order more than five (5) court days prior to a scheduled plan distribution unless the order granting relief from the automatic stay provides otherwise.

(c) If the court reimposes the automatic stay or issues an injunction preventing the foreclosure or repossession, the Trustee shall recommence making payments on the creditor's secured claim if he has received a copy of the endorsed order or injunction more than five (5) court days prior to a scheduled plan distribution unless the order or injunction provides otherwise.

(d) A creditor secured by real property that is the debtor's principal residence shall continue to mail to the debtor, the automatic stay notwithstanding, the customary monthly statement or payment coupon unless and until a plan is confirmed which provides for surrender of the real property to the creditor.

Paragraph 10. Sale of Property and New Debt

(a) **Vehicle Loans.** If the Trustee consents, the court may approve an ex parte motion by the debtor to finance the purchase of a motor vehicle. The debtor's motion and the Trustee's approval is their certification to the court that: (1) all payments required by the plan are current; (2) the plan is not in default; (3) Schedules I and J filed within 30 days of the motion reflect that the debtor has the ability to pay all future plan payments and projected living and business expenses, as well as repay the new debt; (4) 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; (5) the only security for the new debt will be the motor vehicle to be purchased by the debtor; and (6) the new debt does not exceed \$15,000.00.

(b) **Home Loans.** If the Trustee consents, the court may approve an ex parte motion by the debtor to finance the purchase of a residence. The debtor's motion and the Trustee's approval is their certification to the court that: (1) all payments required by the plan are current; (2) the plan is not in default; (3) Schedules I and J filed within 30 days of the motion reflect that the debtor has the ability to pay all future plan payments and projected living and business expenses, as well as repay the new debt; (4) 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; (5) the only security for the new debt will be the residence to be purchased by the debtor; and (6) 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 \$1,500.00.

(c) **Refinance of Existing Home Loans.** If the Trustee consents, the court may approve an ex parte motion by the debtor to refinance existing debt(s) encumbering the debtor's residence. The debtor's motion and the Trustee's approval is their certification to the court that: (1) all payments required by the plan are current; (2) the plan is not in default; (3) Schedules I

and J filed within 30 days of the motion reflect that the debtor has the ability to pay all future plan payments and projected living and business expenses, as well as repay the new debt; (4) the new debt is a single loan incurred only to refinance existing debt encumbering the debtor's residence; (5) the only security for the new debt will be the debtor's existing residence; (6) 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 plan; (7) 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 \$1,500.00. The court will not approve ex parte motions to obtain secured credit pursuant to 11 U.S.C. § 364(d).

(d) **Sale of Property.** If the Trustee consents, 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. The debtor's motion and the Trustee's approval is their certification to the court that: (1) the sale price represents a fair value for the subject property; (2) 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; (3) all costs of sale, such as escrow fees, title insurance, broker's commissions, will be paid in full from the sale proceeds; (4) the sale price is all cash; (4) the debtor will not relinquish title to or possession of the subject property prior to payment in full of the purchase price; and (5) 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 (4) and (5) 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, or if the debtor wishes to incur new debt or transfer property on terms and conditions not authorized by subparagraphs (a), (b), (c), or (d) of this paragraph, 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 Local Rule 9014-1.

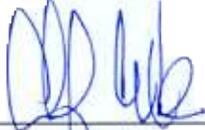
So ordered.



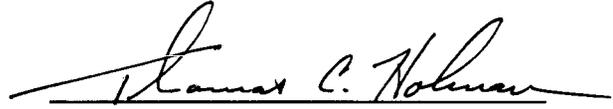
Michael S. McManus
Chief Bankruptcy Judge



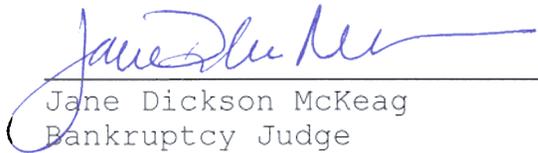
Whitney Rimel
Bankruptcy Judge



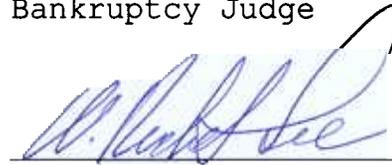
Christopher M. Klein
Bankruptcy Judge



Thomas C. Holman
Bankruptcy Judge



Jane Dickson McKeag
Bankruptcy Judge



W. Richard Lee
Bankruptcy Judge