

**CHAPTER 13 ADMINISTRATION GUIDELINES
SOUTHERN DISTRICT OF CALIFORNIA***

A. Policy Regarding Debtor's Attendance At Meeting Of Creditors:

Debtors are expected to attend the initial Meeting of Creditors and, unless excused by the Trustee, any continued Meeting of Creditors. The Chapter 13 Trustee does not have the authority to excuse the debtor from attending his or her *initial* Meeting of Creditors. Special accommodations that are acceptable to the United States Trustee may be available where the debtor is unable to attend his or her initial Meeting of Creditors due to the following:

1. The debtor is incarcerated; or
2. The debtor is unavailable due to extended military assignment (i.e., at sea or stationed overseas); or
3. The debtor is seriously ill and the Trustee has received evidence of such from the debtor's attending physician.

Please notify the U.S. Trustee of the date, time and location of the 341 Meeting (or continued 341 Meeting) and the specific circumstances respecting why the debtor cannot attend the Meeting of Creditors. The Chapter 13 Trustee should be copied on such email request.

B. Identification: At the §341(a) Meeting, pursuant to 11 USC § 521 (h)(1) and (2), each individual debtor must present original government issued photo identification and original government issued social security card. *The United States Trustee will not accept income tax returns to confirm the debtor(s) social security number.*

Acceptable forms of picture identification (ID) include: driver's license, U.S. government ID, state ID, passport (and current U.S. visa, if not a U.S. citizen), military ID, resident alien card, and identity card issued by a national government authority.

Acceptable forms of proof of Social Security number include: social security card, pay advice, W-2 Form, IRS Form 1099 and Social Security Administration (SSA) Statement. The Chapter 13 Trustee does have discretion to accept copies of W-2 forms, Form 1099 or a recent payroll stub.

C. Attorney Responsibilities: Attorney representing debtors at the Meeting of Creditors must have the debtor's file and backup documents and be familiar with the case to assist the debtors in responding to questions of the Trustee and/or creditors.

The use of special appearance counsel for a debtor is highly discouraged. In the rare instance where an attorney makes a special appearance for debtor's counsel, the attorney appearing specially on behalf of a debtor must fulfill the following requirements for the matter to proceed to examination:

1. Must be fully prepared and knowledgeable of the particular facts and issues in the debtor's case;
2. Must be in possession of the original file of the debtor in the case;
3. Must have discussed the case with the attorney of record;
4. Must have met with the debtor prior to the time of the scheduled creditor meeting at a place and time other than the 341(a) room environs just prior to the 341(a) Meeting.

If the special appearance attorney cannot comply with all of the above conditions the meeting may be continued for the attorney of record to appear.

D. Supporting Documentation Must Be Sent to the Trustee As Soon After Case Filing As Possible But At Least Seven (7) Days Prior to the 341(a) Meeting:

1. Proof of Income: Copies of all pay advices, or other documentation of the debtor upon which the computation of trailing six (6) month income was based (if debtor is self-employed copies of profit & loss statements and bank statements). **If debtor(s) are wage-earners – the last paycheck in the pay period seven months prior to filing and the last paycheck for December (where applicable) end of year prior to filing and the last paycheck in the month prior to filing with YTD information.**
2. Value of Vehicles: Written documentation as to the basis for valuation of motor vehicles. In this regard a Statement of Value can be easily obtained via Internet at www.kbb.com or www.nadaguides.com and is the preferred source of valuation.
3. Value of Real Property: A Broker's Price Opinion is the preferred method of providing current valuation of real property. Debtors and debtors' attorney are directed to the Internet where it is possible obtain comparable sales as to San Diego County properties by going to the County of San Diego web site (www.sdcounty.ca.gov), clicking on "Property Sales Search" on the debtor's street, etc., and entering the street name (not the full address) to discover recent sales. If the County Assessor information does not have a current date, the Trustee may request the use of additional sites such as Homes.com (www.homes.com). Comparable reports are acceptable only if reasonable ranges of value are presented with recent identifiable *comparable* properties.
4. Trust Documents: Copies of any Trust instruments and all amendments in which the debtor has an interest of any type, i.e., beneficial or fiduciary;
5. Proof of Insurance-Motor Vehicles and Real Property: Copy of proof of insurance, (i.e., declarations page, etc.) documenting the extent of coverage on motor vehicles and real property. The Proof of Liability Insurance card is insufficient to demonstrate full coverage;
6. Business Operations: Six (6) months Profit and Loss Statements and corresponding bank statements demonstrating receipts and disbursements for the previous six (6) months prior to filing; copy of proof of insurance for any debtor operating a business including liability, casualty, workers compensation and error and omissions if self employment continues, business questionnaire (**Exhibit "A"**) and last two (2) years of business tax returns. For defunct corporations, copy of corporate status from Department of Corporations.

7. Domestic Support Orders (DSO): In order for the Trustee to fulfill his or her duties pursuant to 11 USC §§704(10)(a) and 1302(d), please provide the name, address and telephone number of the support claimant, as well as a copy of the Domestic Support Order. The debtor should affirm in writing that such information is correct. **Where applicable, provide a copy of the Marital Settlement Agreement and Qualified Domestic Relations Order. All DSO creditors must be scheduled on Schedule E even if payments are current.**
8. Tax Returns: Copies of last two years federal income tax returns and last **W2 and/or 1099s, if any. If applicable, copies of last two years of business tax returns.**
9. Retirement accounts: Copy of most recent statement showing balances held in retirement accounts and, most importantly, the current balance of any loans against 401(k) or similar retirement accounts. **When completing Form 122C-1 the mandatory deduction for retirement loan accounts is the payoff balance divided by 60 months.**
10. Payoff balances – real and personal property: The most recent billing statement/ invoice showing the principal balance due on any arrears, equity line, vehicle loan, etc. **When completing the Form 122C-1 the deduction is the payoff balance on the real property arrears and/or personal property divided by 60.**
11. Disclosure of When Debtor Incurred Debt: Schedules D, E, & F require the debtor to provide “date claim was incurred.”
12. Claim of Exemption: CCP 703.140(a)(2) requires a married debtor filing without the spouse to elect the exemptions under CCP 704 et.seq., unless the non-filing spouse executes a written waiver. A sample Waiver form is attached as **Exhibit “B.”** The Waiver is to be filed with the Court and served upon the Trustee.
13. Questionnaires to be Completed and Delivered at Creditors Meeting: A Questionnaire has been developed for individual debtors (**Exhibit “C”**) and LLC/Partnership/Corporate debtor (**Exhibit “D”**) to address certain inquiries that the Trustees believe will facilitate the examination of debtors.

Debtors must personally execute (fill out) the appropriate Questionnaire and deliver such to the Trustee at the Creditor Meeting.

14. Unincorporated Self-Employed, Professionals, and Business Cases:
 - a. Evidence of current insurance coverage in connection with the operation the business;
 - b. Evidence of current Worker Compensation insurance in connection with the operation of the business, if applicable
 - c. Evidence of current Error and Omissions insurance coverage, if applicable.

15. Where the Chapter 13 debtor is a Partner/Member of an LLC or Shareholder:
- a. Tax returns of the entity for the past two years;
 - b. Income and Expense and Balance Sheet for past one (1) year;
 - c. Bank Statements and check register for past six (6) months.

E. Guidelines for Pre-Confirmation (PCMs) and Post-Confirmation Chapter 13 Plan

Modification Forms (CSD 2200): These forms are intended to be used for simple interlineations to a Plan where notice to creditors is not required. If the proposed modification will adversely affect any party, a new modified Plan must be filed and served in accordance with local rules.

Examples when a modification will benefit all parties include but are not limited to:

- (i) Increasing the Plan payment;
- (ii) Increasing the percentage and/or pro rata to be paid on allowed unsecured claims;
- (iii) Providing interest to be paid on all unsecured claims; and,
- (iv) Increasing the interest rate to a secured claim where the percentage to be paid on unsecured claims was (0%) zero.

Examples when a modification will not benefit all parties include but are not limited to:

- (i) Decreasing the Plan payment or percentage to unsecured claims;
- (ii) Excluding a claim from the Plan;
- (iii) Adding a claim to any numbered paragraph of the Plan and,
- (iv) Any change which will result in extending the commencement of distributions to any other claims.

The following will minimize the need for an objection when the debtor files a *Post Confirmation modified plan* which reduces plan payment or the benefit to unsecured creditors:

1. Copy of most recently filed Federal income tax return.
2. Paystubs of both spouses.
3. If debtor has any Self-Employment activity: copy of business bank statements for each account that the debtor or spouse is signatory for the trailing 6 month period.
4. With respect to any increase to expenses copies of supporting bills or written evidence thereof for the preceding 4 month period.
5. Based on particular fact the Trustee may request that an amended Schedule I and J is appropriate.

F. Policy on Barebones Filings: When the Chapter 13 Schedules and Plan are received by the Chapter 13 Trustees concurrently with the Petition, the Clerk of Court via the National Noticing Center (i) serves notice to the creditors that a Petition has been filed; (ii) serves a photocopy of the Plan; (iii) indicates the §341(a) Hearing Date; and (iv) provides a blank Proof of Claim form for each creditor.

than the Petition. Under those circumstances, the Clerk of Court only notices that a Petition has been filed. It is up to the debtor or his/her attorney to ensure service of: (1) a copy of the Plan; (2) notice of a pending 341(a) hearing; and (3) a blank Proof of Claim upon added creditors at least 28 days prior to the scheduled 341(a) hearing date. A Proof of Service will need to be submitted to the Trustee's office prior to the §341(a) hearing.

As numerous reported cases have made it clear, the debtor bears the burden of proof that a Plan is being proposed in good faith. A debtor who does not wish to notice a Plan to parties in interest is, in both offices' view, not acting in good faith.

G. Calculation of First Payment Date in Bare Bone Filing: With respect to a bare bone filing, the first payment is due 30 days after the case is filed §1326(a)(1)(A).

H. Pay Stubs-Notation of Pay Period: Paycheck stubs for the last 60-day period are required of all debtors with W-2 incomes. Unless it is clear from the documents, please indicate on the paycheck stub whether the pay period is weekly, bi-weekly, bi-monthly, etc. Note – in Chapter 13 cases, pay information for the six (6) month preceding the filing is required. Not every pay stub is needed if year-to-date (YTD) information can be used to calculate the six months of income (see Paragraph **D 1** above). **Separate pay advices covering a 60-day period must be submitted if the year to date is less than 70 days.**

I. Excluding a Creditor: If you properly exclude a secured creditor from the plan, the Trustee may want a step-up in plan payment after the obligation to such excluded creditor is paid. Only fully secured creditors can normally be excluded, provided however if the claim is impaired, the Trustee will request that the claim be provided for in the Plan. *In re Fulkrod v. Barmettler*, 126 B.R. 584 (9th Cir. BAP 1991).

J. Reject and Return/ Surrender of Collateral: These expenses may not be claimed in B22 Part IV at line 47 or 48.

K. Self-Employed Debtors:

1. **Trustee's Pre-Confirmation Report- §1302(c) Statement of Investigation:**
Following submission of review of the above information, the Trustee may file with the Court a Statement of Investigation indicating the scope of his review and any items which remain outstanding.

Size Threshold: Generally, the Trustee will not file the Statement unless the debtor is self- employed, *incurs trade debt* and at least 51% of his or her gross earnings are derived from self-employment.

2. **Debtor's Completion of Semi-Annual Business Operating Report:** Where requested by the Chapter 13 Trustee, the debtor shall also respond and complete the Annual Business Operating Report **Exhibit "E"**. Such completed Report shall be returned to the Trustee within sixty (60) days of the end of the designated reporting period for that given case. The Trustee may bring a motion for material breach in the event the debtor fails to deliver to the Trustee such completed Report. See 11 U.S.C. §1307.

Size Threshold: A self-employed debtor with monthly gross earnings of \$30,000 or

more, or who employs more than ten employees, may be required to complete such Report annually. Other self-employed debtors may also be requested to complete the Annual Business Operating Report during the pendency of their case.

L. Ex-Parte Attorney Fee Application:

1. Dismissed Cases: Where a case has been dismissed for failure of the debtor to appear at the §341(a) Meeting, or continued meeting, the debtor's attorney must submit any Ex-Parte Attorney Fee Application within two (2) days of the hearing at which the case was dismissed. Such application shall seek the acquiescence of the Chapter 13 Trustee who may indicate that he has "no opposition" to such request. The Chapter 13 Trustee will only hold funds on hand where he has (i) been timely served such fee application and (ii) has indicated "no opposition" on such application. In the absence of the foregoing, the debtor's counsel may seek payment of awarded fees from the debtor directly.
2. FRBP 2002(a)(6) provides for at least 20 days notice to Creditors and the Trustee for requests for compensation if the request exceeds \$1,000. The Chapter 13 Trustee will review and sign-off on ex-parte fee applications that seek less than a \$1,000 for matters such as Relief From Stay Motions, Motions to Dismiss, Objections to Claims, etc. that settle prior to a hearing. The application must pray for a fee that meets the Southern District of California Bankruptcy Court Guidelines re Chapter 13 Attorney Fees or include an itemized account of services performed and time expended.

M. Motions to Dismiss for Non-Payment—Debtor Cure: If a Motion to Dismiss has been filed, and subsequently the debtor becomes current before the response date, *it is the debtor and Debtor's counsel's responsibility to notify the Trustee's office that the debtor is no longer in arrears and to request that the Motion to Dismiss be withdrawn.* Trustee may request current pay information on a declaration by the Debtor prior to withdrawing the motion. Once a Motion to Dismiss has been filed, in the absence of it being withdrawn, the debtor must request a hearing date. Where the debtor fails to request a hearing date or has failed to obtain in writing or by e-mail Trustee's agreement to withdraw the Motion, a dismissal order will still be submitted to the Court notwithstanding any cure by the Debtor of Plan payments.

N. Request for Discharge and Certification of Eligibility for Completed Case:

After the Trustee files his Interim Final report (but not before), the debtor should file a Notice of Motion for Discharge and Certification of Eligibility for Discharge with service upon all interested parties. Form CSD 2120 should be used.

O. Chapter 13 Trustees' Checklist For E-Applications For Confirmation & Fees

Application for Confirmation of Plan; Order Confirming Plan and Allowing Attorney's Fee: LBR 3015-9 requires the Attorney for the Debtor to prepare and upload the proposed Order Confirming the Chapter 13 Plan to the Chapter 13 Trustee at the conclusion of the §341(a) meeting. If a hearing on an objection to confirmation results in the plan being confirmed, Debtor's Attorney is required to upload the proposed Confirmation Order to the Chapter 13 Trustee at the conclusion of the hearing. The Order Confirming the Plan is also a fee application, therefore the Chapter 13 Trustee will not submit an order to the Court that provides for fees in excess of the U.S. Trustee guidelines. If the order provides for fees in excess of the guidelines fees, the order will be returned to the Attorney for the appropriate

correction(s). If no order is received that can be submitted to the Court, the Trustee will upload an order confirming the plan that is silent as to a fee award and the Attorney will then be required to bring an appropriate fee application. Please review the Court's website and online CM/ECF Manual on instructions for the uploading (or electronic filing) of Confirmation Orders. Forms CSD 1177 or 1178 should be used as updated by the Court on March 13, 2013 and March 11, 2013 respectively.

The following is a checklist to minimize errors in submitting E-Confirmation Orders:

1. Utilize CSD Form 1177;
2. Please review the PACER docket to insure the following:¹
 - A. The §341 Meeting of Creditors has been concluded;
 - B. There are no pending Objections to Confirmations filed by the Creditor(s) and/or by the Chapter 13 Trustee;
 - C. Please use the correct case number, judge's initials and debtors' name as it appears on the PACER docket;
 - D. Please insure the header information on page 2 of the E-Confirmation Order is consistent with page 1. (I.e. Joint-Debtor's name as well as the case number should be in the header of the second page);
 - E. Please insure the Rights & Responsibilities² as well as the 2016b Disclosure of Compensation is on the Docket;
 - a. If there has been a substitution of an attorney as Counsel of Record, the 2016b and R&R on the docket should be consistent with the current Counsel of Record.
 - F. If the case is Motion to Value related – please insure the Order(s) on the Motion to Value are entered on the PACER docket.
 - a. E-Confirmation Orders that incorporate Orders on Motion to Value listing a creditor inconsistent with the named creditor in Paragraph 3.2 of the Plan will be rejected by the Court³:
 - G. Please note the date of the underlying plan and any and all dates of the Pre-Confirmation Modification forms.

¹ A number of the issues outlined are in response to the "Defective Order" notices issued by the Trustee and/or the Court.

² Effective December 1, 2017, U.S. Bankruptcy Court Southern District of California has issued Revised Guidelines Regarding Chapter 13 Attorney Fees and Revised Rights and Responsibilities.

- a. The plan date is the mandatory plan date referenced on page 1, upper left in the mandated plans dated 12/1/17 (CSD 1300).
 - b. Pre-Confirmation Modification (PCM) form date is the date of the Pre-Confirmation Modification Form. This date is not necessarily the date the PCM is signed, nor the date the PCM form is filed with the Court.
 - c. If there is an Amended Plan filed subsequent to the Pre-Confirmation Modification forms filed with the Court, please note the Amended Plan will supersede the prior plan and its corresponding PCM forms.
- H. **Please do not** advise the Trustee by email that you have uploaded an E-Confirmation Order as it may slow down processing of your Order.
- I. If the E-Confirmation Order is defective, Counsel will receive a written comment respecting the defect and how to cure it.

Completing the E-Confirmation Order Section I:

1. **Section I, Part A:** Use the filed date of the Rights & Responsibilities;
2. **Section I, Part C:**
 - a. **C.1:** *The agreed initial fee for attorney services:* This amount should be consistent with the filed Rights & Responsibilities and 2016b Disclosure of Compensation:
 - b. **C.2:** *Additional fees not part of initial fee:*
 - If no additional fees are requested insert "0"
 - If additional fees are requested:
 - Please describe and identify using the docket number of the Order for each relief from stay or adversary proceeding number as relevant:
 - Where the Motion to Value has been granted and costs are approved, please insure the entered MTV Order provides for the amount of the costs sought;
 - If a Motion to Extend/Impose the Automatic Stay filed, Opposition filed for Motion for Relief from Automatic Stay, Order on the Objection to Proof of Claim entered, please refer to the filed Rights & Responsibilities for the guideline fee amounts;
 - c. **C.3:** *Total fees received to date:* Please reconcile the amount of Attorney Fees pre-paid and compare with Form 2016(b).

- d. **C.4: Total unpaid balance of fees:** Please reconcile the agreed initial fee with the additional fees less the total fees received to date.

Please insure the additional amount of fees you are seeking is consistent with the Rights and Responsibilities on the PACER docket.

Completing the E-Confirmation Order Section II:

1. **Section II, Part A:** “Debtors’ Plan dated _____”
Please use the page 1 plan date of the underlying Plan (or Amended Plan);
2. **Section II, Part A:** “...as amended by pre-confirmation modification(s) (PCM Forms) dated _____”
 - A. Please use all PCMs dates if there is more than one (1) PCM form; “for Trustee Skelton, the latest PCM should have added all relevant provisions from earlier PCMs.”
 - B. Use the date of the modification, not the date the PCM was filed with the Court;
 - a. Confirm the date on the Plan and/or PCM in the E-Confirmation Order reconciles with that of the filed pleadings. (A common error is to reference the docket entry date or to include the date of the initial plan that has been superseded by a subsequent amended plan).
 - C. If there is no PCM applicable – please insert the words “Not Applicable” or “N/A” in both fields.
3. **Section II, Part D:** Confirm the actual Order(s) for the Motion to Value (Lien Strip) Order have been entered on the docket. You must use the docket entry # of the entered MTV Order(s). The Court’s Tentative Ruling granting the Motion to Value does not suffice as an Order.
4. The Confirmation Order cannot contain any blank fields. Please ensure all fields are completed or contain “N/A” for not applicable.