Procedures of Judge Bason (Rev. 9/20/23)

The following procedures may be modified at any time without prior notice.

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NOTE: Unless otherwise ordered, all parties may appear via Zoomgov or in person for all non-evidentiary hearings, and must appear in person for evidentiary hearings. *See* Rule 43(a) (incorporated by Rule 9017). Two sample forms of order for video trials are posted on the judge's portion of this Court's website (at www.cacb.uscourts.gov).

Members of the public, including the press, are always welcome in person (except in rare instances when the courtroom is sealed) and they may also listen via telephone to non-evidentiary hearings, but must not view any hearings via video (per mandate of the AO).

Any audio or video recording is strictly prohibited.

I. Urgent matters.

A. Shortened time, generally. (1) File the motion/application papers. (2) Notify chambers by phone. Follow Rule 9075-1(b). Exception: For extraordinarily urgent matters, requiring a hearing on less than 48 hours' notice, call chambers for further instructions per Rule 9075-1(a).

B. Automatically shortened time. You can self-calendar the following motions on at least 14 days' notice (you need not add 3 days for service via U.S. mail) without prior approval:

1. § 362(d): motions for relief from the automatic stay involving: (i) unlawful detainer actions; (ii) other bankruptcy filings or unauthorized transfers affecting the subject property; or (iii) default under an Adequate Protection Order ("APO") (unnecessary if order may be issued *ex parte* under the terms of the APO);
2. § 362(c)/(j): motions to continue/impose a stay (§ 362(c)(3) or (4)), or to confirm the non-existence of the stay under (§ 362(j)); or

3. § 363(b) & (c): initial hearings on motions for use of cash collateral, DIP financing, or budget motions.

Procedures:

1. amend the local notice form to state that oppositions must be filed at least *five calendar days* before your self-calendared hearing date.
2. file your motion with a proof of service on the following persons at least 14 days before the hearing date:
    a. the debtor,
    b. the debtor's attorney,
    c. any trustee, and, for cash collateral, DIP financing and budget motions, the U.S. Trustee, and
    d. any party in interest who may be affected – for example:
        i. § 362(c)(3)&(4): when a debtor seeks to continue or impose the stay, all creditors and parties in interest should be served and the debtor should request imposition of the stay against all persons, because staying some persons and not others is inappropriate except in very rare situations;
        ii. § 362(d)(4)/"*in rem*" relief: the "original" borrower or similar parties (*see* Rule 4001-1(c)(1)); and
        iii. § 363(c) cash collateral: all persons who may assert a cash collateral interest.

Caution: Be sure your service is adequate – see below under "Common Matters" > "Service."

C. Reconsideration motions. (1) Ask other party's consent. If the relief that you want the judge to reconsider was granted at the request of a third party (*e.g.*, if a chapter 13 case was dismissed at the request of the Chapter 13 Trustee), the motion must describe your efforts to obtain that third party's consent to reconsideration and any response. (2) *No self-calendaring, or "negative notice"*. List the hearing date as "TBD" on the motion. Call chambers to advise that the motion has been filed. The judge reviews these motions to determine when and if a hearing will be held. (3) Provide all papers. Your reconsideration motion must include, as an exhibit, a copy of whatever papers you propose to file if the motion is granted (*e.g.*, if the motion seeks reconsideration of dismissal of a case for failure to file timely papers, those missing papers must be attached).

D. Discovery disputes. Do not file written motions to compel or quash discovery. First meet and confer (per Rule 7026-1(c)). Then call the judge's law clerk to arrange a telephonic conference and related procedures (*e.g.*, the judge may permit or require a pre-conference summary of the dispute and/or copies of relevant documents, such as discovery requests or responses). At the telephonic conference the judge will determine whether

to require written motions, briefs, or other documents, or alternatively the judge may rule on oral motions and oppositions without the need for any such papers. *See, e.g., Tamari v. Bache & Co. (Lebanon) SAL,* 729 F.2d 469, 472 (7th Cir. 1984) (written discovery motion not required when party receives adequate notice); *Henry v. Sneiders,* 490 F.2d 315, 318 (9th Cir. 1974) (oral discovery order equally effective as written order); *Avionic Co. v. General Dynamics Corp.*, 957 F.2d 555, 558 (8th Cir. 1992) (same); 7-37 Moore's Federal Practice - Civil § 37.42[3] (2018) (same). *See also* LBR 1001-1(d), FRBP 9006 & 9013, and FRCP 16(b)(3)(B)(v), 26(b)(2)(C), 43(c)&(e) & 52(a) (incorporated by FRBP 7052, 9014(c) & 9017); *and see generally In re Nicholson*, 435 B.R. 622, 635-36 (9th Cir. BAP 2010) (discussing when evidentiary hearing is required), *abrogated on other grounds, as stated in In re Elliott*, 523 B.R. 188 (9th Cir. BAP 2014). Any request for sanctions relating to a discovery dispute must be made by separate noticed motion.

E. Applications for 2004 Examination/Production of Documents. The judge generally will grant *ex parte* applications for 2004 examination and/or the production of documents immediately, without a hearing or any substantial opportunity to object in advance, unless such applications appear deficient on their face. Any party seeking to limit the scope of the examination or quash the order altogether should file an appropriate motion requesting such relief.

F. Temporary Restraining Orders ("TROs"). Parties in interest must receive the TRO papers at least 72 hours prior to any TRO hearing (absent truly exceptional circumstances). Any request for a TRO or other injunctive relief requires an adversary proceeding, so a complaint must be filed prior to the hearing. *See* Rule 7001(7).

G. "First day" matters. For common first day matters see Local Form F 2081-1.1.CH11.STATUS.RPT. Note that the judge's form of bar date order addresses claims under § 503(b)(9). Please pay special attention to Rules 4001(b)-(d), 6003 & 6004, 2014-1, 2081-1 & 4001-2(e), 5075-1 & 6004-1. *Caution:* Please also pay special attention to *notice* to all interested parties and see below under "Common Matters" > "Service." In addition, declaration(s) should provide sufficient information to evaluate the impact on parties in interest, such as: (1) the current cash situation; (2) asset/debt information to the extent that the bankruptcy schedules and Statement of Financial Affairs ("SOFA") either have not been filed or do not reflect actual values or require explanation; (3) connections between the debtor and any prospective purchaser or person providing financing; and (4) unless unknown, the chapter 11 exit strategy of the debtor (*e.g.*, sale as a going concern, liquidation of assets, continuation of business with infusion of capital, etc.).

H. Proposed Orders.

1. Quick. The judge often issues orders immediately (*i.e.*, without waiting the 7 days per Rule 9021-1(b)(3)(B)), *e.g.*, when the order is on a standard form, or otherwise does not appear to warrant any delay. So if you believe that a proposed or issued order goes beyond (a) the judge's ruling or (b) the relief requested in a "scream-or-die" motion, and if you also believe that the matter is too urgent to handle through a written motion, you should call chambers immediately for further instructions.
2. Short. Proposed orders should be short. Stipulations, tentative rulings, or other documents may be incorporated by reference if appropriate (by referring to their docket number). *Do not* attempt to repeat the text of those documents in the proposed order – that just (1) causes extra work for the court and parties who have to read the same text again and (2) leads to transcription errors or omissions.

II. Contacting the court's staff.

You may *not* communicate with court staff regarding any cases (*see* Rule 9003(a) and Rule 5-300(C) of Cal. R. Prof. Conduct) *except* notify the court of:

- **A. emergencies:** that you will file an opposition to an emergency or *ex parte* matter or will contest a proposed form of order (*do not* discuss the contents of the opposition/alternative proposed order);
- **B. settlement:** that a matter has been settled (not necessary if a settlement stipulation/motion has been filed at least 1 week prior to the hearing);
- **C. lodged orders:** that a proposed order has been pending for more than 7 days, or is required before that time; or
- **D. other:** as provided elsewhere in these Procedures.

III. Motion practice.

- **A. Calendaring.** Except for (a) Urgent Matters (see above) and (b) matters that are eligible for self-calendaring (see the judge's posted Self-Calendar Procedures), all matters must be calendared by calling the judge's courtroom deputy.
- **B. NO JUDGE'S COPIES.** The judge prefers to review documents online. Any "judge's copy" will only be recycled, so please do not deliver them.
- **C. Late papers.** If your opposition or reply papers are filed late, you must include a brief explanation (and a request to accept such papers).
- **D. Tentative rulings.** It is your responsibility to check for tentative rulings. Note: Some browsers do not automatically refresh (so you will not see the latest tentative rulings). To fix that issue, try "Ctrl-F5."
    1. When to check for tentatives. Starting approximately 48 hours before the scheduled time of the hearing (not counting weekends/holidays), the court will post tentative rulings on the judge's calendar. If nothing is posted then you should continue checking periodically. *Exceptions:* No tentative rulings are

posted for (a) the chapter 13 confirmation calendar and (b) the Chapter 13 Trustee's motion calendar (generally motions to dismiss).

2. Parties' options in response to tentatives. The tentative ruling will specify whether appearances are required. If no appearance is required but you wish to contest the tentative ruling then you must do the following: (a) telephone the judge's law clerk and (b) notify all other interested parties of your intent to appear at the hearing.

   Deadline: The deadline to do the foregoing is ½ of the time between when the tentative ruling was *first* posted and the hearing – *e.g.*, if the tentative ruling was first posted 48 hours before the hearing, you must notify opposing counsel at least 24 hours before the hearing. If the tentative rulings have been re-posted, Calendar no. 1 will note when the calendar was first posted (and for those matters on which the tentative rulings have been added, the tentative ruling will state that it has been revised).

   If you contest a tentative ruling without following these procedures, your request generally will be denied (in rare instances the judge has been persuaded, despite non-compliance with these procedures, to continue the matter – for that reason parties sometimes arrange to listen in on the hearing in case someone appears).

3. Last minute APOs. *See* below under "APO" about when APOs supersede the tentative ruling.

I. Priority. You may request priority when checking in with the judge's court recorder just before the calendar call – you must provide a reason.

J. Second call. You may request that your matter be heard toward the end of the calendar ("second call") by either (1) calling the judge's law clerk *at least* 15 minutes prior to the start of the hearing or (2) making the request personally to the court recorder before the calendar call. The judge normally will honor requests that are supported by a reasonable explanation, state the estimated time of arrival, and do not unduly inconvenience other parties.

K. Testimony. Declarants normally are not required to be present at hearings on motions. Oral testimony seldom is required or allowed unless the judge has agreed in advance to hear oral testimony. If live testimony is essential (either on direct or cross-examination), be sure first to notify opposing counsel and second to call the judge's law clerk to obtain permission.

L. Use of electronic devices.

1. Zoomgov hearing etiquette: (a) wait until the judge calls on you, so everyone is not talking at once; (b) when you first speak, state your name and, if you are an attorney, whom you represent (do not make your argument until asked to do so); (c) when you make

your argument, please pause from time to time so that, for example, the judge can ask a question or anyone else can make an objection; (d) if the judge does not see that you want to speak, or forgets to call on you, please say so when other parties have finished speaking (do not send a "chat" message, which the judge might not see); and (e) please let the judge know if he mispronounces your name or uses the wrong pronoun.

2. In-person etiquette: Wireless electronic devices (*e.g.*, smart phones or laptops) may be used in the courtroom provided that (a) they are *silent*, (b) they are not used for audio or visual recording (unless explicitly approved by the court), and (c) they are not used to communicate with witnesses during ongoing proceedings. The password for the court's wireless internet service may be obtained from the court recorder. Bluetooth devices should not be activated at or near the lectern.
3. More limitations: At any time, the judge may prohibit or further restrict use of such devices.

M. Fostering attorney development and promoting diversity. The judge has adopted the following procedures. His goals are to foster the professional development of attorneys who may be inexperienced in some matters (*e.g.*, trial practice or oral arguments), and to address possible implicit or explicit biases (*e.g.*, clients who might believe that their chances in court would be improved with an attorney who is male or of a particular background, race, or other characteristic).

1. Two attorneys may argue. Many courts allow only one attorney per party to address the court. The judge generally will permit attorneys to switch back and forth at will (so that the attorney who is less experienced can focus on discreet tasks, and can have the "backup" of a more experienced attorney).
2. Two attorneys may bill. On the one hand, Bankruptcy Courts have an independent duty to scrutinize professionals' fee applications and to look for excessive time or billing rates (among other things). On the other hand, that does not mean that any time two attorneys for a party confer then only one of them may bill, or that any time two attorneys argue in court it must be wasteful. To the contrary, the judge's experience in private practice was that some of the most productive and effective representation of clients' interests occurred when he was conferring with one or more colleagues, or when different trial or hearing functions were allocated to different attorneys. Of course, those things are easily overdone, and professionals always must use good billing judgment (*see, e.g.*, the judge's limits on non-working travel time, set forth elsewhere in these procedures). But the judge encourages

more experienced attorneys to be alert to "win win" opportunities to (a) enhance value by (b) conferring, delegating to, and/or appearing with less experienced colleagues.

IV. Trial practice (including not only trials in adversary proceedings but also any contested matter that will involve live witnesses).

A. Status conferences. Use of court-approved status conference report forms is strongly recommended.

B. Pretrial conferences. Pretrial stipulations must include, at the end, a line stating "SO ORDERED"; that document must be lodged via LOU; and a notice of lodgment must be filed. *See* Rule 7016-1(b)(1)&(3). Most trials in bankruptcy cases are streamlined (to keep costs down, and to avoid delay or impairment of reorganization or other resolution, which typically would harm all parties in interest). Unless otherwise arranged with the judge, the procedure is (1) to have pretrial conferences only a week or so before trial, (2) to accept direct testimony by declaration, subject to live cross examination and redirect (*see In re Gergely*, 110 F.3d 1448, 1451-52 (9th Cir. 1997); *In re Adair*, 965 F.2d 777, 779-80 (9th Cir. 1992)), and (3) to have an expedited schedule for motions, exhibit delivery, etc. as set forth below. You must state in the pretrial stipulation (if not at earlier status conferences) if you prefer different procedures (*e.g.*, live direct testimony).

C. Motions in limine/pretrial motions. Disclose all anticipated motions in the joint pretrial stipulation (Rule 7016-1(b)(2)(F)); file any such motions at least 72 hours before trial (counting only court days); and serve them via email or other immediate means. Unless otherwise ordered, any opposition may be made orally at the commencement of trial, at which time the judge will rule on them.

D. Exhibits. In preparing the exhibit list and actual exhibits (Rule 7016-1(b)(2)(D)):

1. label clearly: *e.g.*, plaintiff 1, 2, 3, etc. and defendant A, B, C … AA, AB, AC, *etc.* (*not* AA, AAA, AAAA, *etc.*) (see Local Forms F 9070-1.1.EXHIBIT.TAG.PLAINTIFF and the equivalent for defendants);
2. avoid duplication: *e.g.*, if defendant's exhibit "G" is the same as plaintiff's exhibit "3" then replace exhibit G with a page stating "see exhibit 3: stipulated into evidence for use by all parties";
3. either electronic (preferred) or paper: electronic records are preferred, but any format is acceptable as long as it is user-friendly and, for electronic records, compatible with the Court's security systems (*e.g.*, for electronic exhibits, PDFs filed via CM/ECF or emailed to Chambers_NBason@cacb.uscourts.gov, and consider combining multiple exhibits with "bookmarks" for each exhibit, or conversely disaggregating files that are too large; as for paper exhibits, it is helpful to use tabs and 3-ring binders);

4. delivery: deliver exhibits (including direct testimony by declaration, unless excused by the court) to other parties **no later than two court days after the pretrial conference is concluded**; and simultaneously deliver exhibits to the Court either via email to Chambers_NBason@cacb.uscourts.gov (the preferred method, by arrangement with chambers) or other approved means (for paper exhibits, two copies are required: one for the judge to mark up, and one for the court's official record);
5. impeachment documents: to present impeachment documents, first show them to opposing counsel (so they can raise any objections) and to the court (via email to Chambers_NBason@cacb.uscourts.gov, or any other method authorized by the judge); then when permitted to show the witness you can either use a "share screen" function or send an electronic version to the witness, or provide a paper copy to the witness;
6. make additional copies of any paper exhibits for use at trial (i) for yourself, (ii) for other counsel (and/or other parties appearing *in pro per*), and (iii) for the witness(es);
7. post-trial: pick up any paper copies of your exhibits (by arrangement with chambers) within 7 days after the later of (i) the expiration of the time period for filing appeals or (ii) resolution of any final appeal (otherwise, the judge may dispose of the exhibits).

E. Calendar changes. Requests for continuances of trial dates, even by stipulation, may be denied. The judge may schedule several cases for trial one week per month, usually starting at 9 a.m. on Monday of the trial week. The court may contact counsel shortly before the scheduled trial date to address the sequence in which the scheduled trials will be held, and other procedural matters. If you reach a settlement, please call the judge's chambers promptly and, on or before the first date set for trial, either confirm in writing that the settlement has been reduced to a writing signed by all parties or their counsel or alternatively put the settlement on the record.

F. Trial. Opening statements are welcome (but usually are not necessary). Counsel should be prepared to complete closing argument as soon as the parties have rested.

G. Fostering attorney development and promoting diversity. See same issue under "Motion Practice" above.

V. Mediation

A. **Assigning matters to mediation.** The Judge frequently orders mediation even when parties do not consent. He does not assign matters to other *Bankruptcy Judges* for mediation unless specific cause is shown for doing so (*e.g.*, if one or more parties/counsel appear to be so entirely unrealistic

about a virtually certain outcome, even after prior attempted mediation, that they may need to hear it from another Bankruptcy Judge).

B. **Acting as mediator.** The judge's policy is to defer to the judge assigning the matter to mediation to determine whether a judge (rather than an attorney or other person) should be assigned as a mediator.

C. **Procedures.** When acting as a mediator the judge establishes procedures in advance, either via email or an initial status conference. Sample procedures are: (1) a short summary from each party emailed at least a week prior to the scheduled mediation (*e.g.*, a 3 page letter brief served on each party plus an addendum of up to 2 pages of "Mediator's Eyes Only" discussion) and (2) key documents (*e.g.*, up to 50 pages of excerpts and/or complete documents, preferably served on all parties, but if appropriate then some or all of the documents can also be "Mediator's Eyes Only"). All parties must sign a confidentiality agreement (local form 708 or an acceptable alternative), and parties who would not otherwise be subject to this district's mediation rules must agree to be bound by them (or an acceptable alternative).

VI. Definitions.

Unless the context suggests otherwise, references to a "chapter" or "section" ("§") refer to the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the "Code"), a "Rule" means the Federal Rules of Bankruptcy Procedure ("FRBP"), Federal Rules of Civil Procedure ("FRCP"), Federal Rules of Evidence ("FRE"), or Local Bankruptcy Rules ("LBR"), and other terms have the meanings provided in the Code and the Rules. A motion for "reconsideration" means a motion under Rule 9023, 9024, 50(b), 52(b), or 54(b) (the latter three incorporated by Rules 7052, 7054, 9014(c), and 9015(c)). The "AO" means the Administrative Office of the U.S. Courts.

VII. Common matters. Most of the following procedures are organized by section of the Code, or Rule number.

A. Service: Please remember that initial motion papers are treated like a complaint for purposes of service (*see* Rules 9014(b) & 7004) and:

1. *Whom* to serve: Non-individuals generally must be served "Attn: Officer or Managing/General Agent" or a similar phrase (Rule 7004(b)(3)), and identify the capacity of each person or entity listed (*e.g.*, "Trustee," "Secured Creditor," or "Top 20 Unsecured Creditors"). Note: Service on nonbankruptcy counsel generally is not sufficient. *See In re Villar*, 317 B.R. 88 (9th Cir. BAP 2004).
2. *Where* to serve: Addresses often can be found on (a) the California Secretary of State website, or (b) under "Government Units' Mailing Addresses" (posted at www.cacb.uscourts.gov under "Bankruptcy Resources"), or (c) for FDIC-insured institutions, at http://research.fdic.gov/bankfind/. **Exceptions:** A party's most recent designated address generally governs, including (a) the address for *notices* (*not* for payment) listed on its proof of claim, or (b) if the party has appeared by an attorney then the attorney should be served (*see* Rule 2002(g)).
3. *How* to serve FDIC-insured entities. Per Rule 7004(h) service must be via *certified mail*, "Attn: *Officer*." (Emphasis added.)
4. Note: Do not rely on the court's limited resources to double-check that your service was adequate. If a party in interest was not *properly* served and was deprived of an opportunity to object to your motion, then relief may include voiding any order granting the motion, reduction in allowed fees, sanctions, etc.

B. § 109(g): dismissal with a bar of 180 days or longer. The judge has in rare instances dismissed cases with a bar of longer than 180 days. *See In re Cuevas* (Case No. 2:14-bk-32359-NB), dkt. 89 at p. 4:11-20 & *passim*.

C. § 302: joint cases; bifurcation. Spouses sometimes separate or divorce during the pendency of a bankruptcy case. The judge issued an order setting forth procedures for a joint chapter 13 case to be "bifurcated" with one spouse contemplating that she would then convert her case to chapter 7, but the bifurcation motion was later withdrawn. *See In re Willis* (Case No. 2:12-bk-25173-NB, dkt. 39, 41, 45, 47, 48).

D. § 327- § 331: Employment and Compensation of Professionals.

1. Form F 2014-1 required. Professionals are *required* to execute local form F 2014-1.STMT.DISINTEREST.PROF (statement of disinterestedness), except when using local forms F 2081-2.5.MOTION.EMPLOY.GEN.COUNSEL or F 2081-2.5.MOTION.EMPLOY.OTHER (the forms are designed for individuals, but the judge encourages their use in non-individual

cases with minor changes such as striking the word "individual" in the title). Note: the judge prefers that local form F 2014-1 not repeat the employment application – instead simply say "see application" or the like (reasons: proposed professionals frequently do not track the language of Rule 2014, so the judge requires use of the form so that someone verifies the elements of that rule under penalty of perjury, and so the court staff does not have to do a line-by-line comparison with each element of the Rule).

2. Standard terms. The judge typically adds the following to orders authorizing employment:

> Notwithstanding any other provisions, Judge Bason's standard terms apply (unless struck through): (a) employment is per 11 U.S.C. § 327 not § 328; (b) payment only per 11 U.S.C. § 330(a) - no lien or superpriority claim is allowed (except as explicitly allowed – *e.g.*, realtor commissions on court-approved sales); (c) maximum 2 hours per day of non-working time (*e.g.*, travel, or waiting for matter to be called) absent an adequate explanation; (d) **no buyers' premium** for auctioneers; (e) **no dual agency**; (f) all matters relating to the professional's engagement, compensation and costs shall be resolved in this court, notwithstanding any provisions for arbitration, choice of venue, or the like, and (g) any indemnification, limitation of damages or the like is ineffective. *See generally In re Circle K Corp.*, 279 F.3d 669 (9th Cir. 2002) *and* 11 U.S.C. § 327(a) (professionals may not "hold or represent an interest adverse to the estate").

   Note: The prohibition on buyers' premiums or dual agency should not be interpreted as making any economic change in the compensation arrangement. The auctioneer/real estate broker and the debtor can adjust what is paid by the debtor such that the net compensation is the same. But, economics aside, the judge has ruled that buyers' premiums and dual agency are prohibited. *See generally In re Ebuehi* (Case No. 2:18-bk-20704-NB), dkt. 281, at PDF pp. 9-10 (explaining problems with dual agency).

3. Conflicts Checks/Ethical Walls: Time spent identifying, clearing and avoiding conflicts generally is not compensable. The judge does not expect counsel to run every creditor and party in interest through a conflicts check, but at a minimum counsel should include in their conflicts check any party who has a major interest in the case (*e.g.*, major unsecured creditors, secured creditors,

major equity security holders / owners, officers and directors, landlords / lessors, and other professionals retained in the case). Counsel should disclose connections and potential conflicts with any such party, including anticipated future conflicts.

4. Retainer paid by third party. Declarations and/or briefs generally are required to address the ethical concerns involved whenever a retainer is paid by a third party. *See* Cal. Rule of Prof'l Conduct 1.8.6; *In re 9469 Beverly Crest, LLC* (Case No. 2:19-bk-20000-NB, dkt.44).
5. Compensation for Loan Modifications. The judge has ruled orally that, if attorney fees for loan modification services are subject to review by the bankruptcy court (including fees that are "no look" absent any objection), then they are not subject to the restrictions in California Civil Code § 2944.7 (prohibiting "any compensation until after the person has fully performed each and every [proposed] service") (emphasis added). *Reasons:* The essence of bankruptcy is debt adjustment (including loan modification), and the Bankruptcy Code contemplates "paying reasonable compensation in advance" for many such services. *Lamie v. U.S. Trustee*, 540 U.S. 526, 537-38 (2004) (emphasis added). If California law were to prohibit such advance payments, that would be contrary to the bankruptcy system, and many consumer bankruptcy fees would be either uncollectible or discharged if attorneys had to wait until the conclusion of their services to attempt to collect. Moreover, the California statute's safeguard against unwarranted fees appears to be unnecessary in the bankruptcy context, given given the careful supervision of fees in the bankruptcy system. Therefore, the judge has ruled that the California statute should be construed not to bar such fees; and alternatively if the statute were construed broadly then it would be void under the supremacy clause of the U.S. Constitution. *See, e.g., Quesada v. Herb Thyme Farms, Inc.*, 62 Cal.4th 298, 312-324 (2015) (discussing construction of State law, and implied preemption); *and compare In re Choe*, 2016 WL 639350 (State Bar Ct., Review Dept.), *at, e.g.*, *5 (flat fee of $20,000 for loan modification was disallowed by bankruptcy judge, who also held that such "egregious" fee violated Civil Code § 2944.7) *and* *21 (rejecting "dishonest attempts to fall within the 'no look' fee amount" and evasion of bankruptcy court review of fees).

E. § 362: Automatic Stay.

1. Adequate Protection Orders ("APOs").
    a. Use the local form APO attachment. The judge requires the use of the local form of adequate protection attachment –

that form may be supplemented or modified, but use of the form facilitates the court's review by showing how the parties have departed from the standard form.

b. No *in rem* APO unless cause shown. Generally, the judge will not approve an APO provision that would be effective despite any subsequent bankruptcy case (unless there is sufficient cause for "*in rem*" relief such as § 362(d)(4)).

c. No *automatic* termination of the stay upon default or conversion to Chapter 7. Generally, the judge will not approve an APO provision that would *automatically* terminate the automatic stay, without any court order, after a default or conversion (at least as against real property, or other property of a type that might have equity by the time of any termination of the stay). The judge generally will limit any such *automatic* termination of the stay by requiring the usual procedures to be followed (*declaration of default*, and lodging a *proposed* order terminating the automatic stay).

d. Last minute APOs. When an agreed APO has been lodged (not just signed and filed on the docket, but lodged with the Court), then appearances are not required at the hearing even if the tentative ruling (posted prior to when the APO was lodged) states that appearances are required.

2. Broad scope of automatic stay. *See In re Korean Western Presbyterian Church of Los Angeles* (Case No. 2:20-bk-11675-NB), dkt. 124 (disputes over governance of debtor were so intertwined with control of debtor's property that they came within scope of § 362(a)(3), and bankruptcy court had "arising in" jurisdiction and authority to determine which faction controlled debtor, but the stay would be modified to permit pending litigation on that issue to proceed in State Court).

3. Relief that applies despite future bankruptcy cases ("*in rem*" or "*ex parte*" relief).

a. Service. *See* Rule 4001-1(c)(1) (service on "original borrower" etc.).

b. Form of order. First, the judge generally will require that the order include a copy of the tentative ruling which typically grants such relief under 11 U.S.C. § 362(d)(4) and/or the reasoning of *In re Vazquez*, 580 B.R. 526 (Bankr. C.D. Cal. 2017) and/or *In re Choong* (Bankr. C.D. Cal., Case No. 2:14-bk-28378-NB, dkt. 31), as applicable. Second, the order usually will provide that the court "does not make" a finding that the debtor was involved in the

scheme unless (i) there is an adequate showing that the debtor was involved, (ii) there is very prominent notice (such as a separate heading in a supporting memorandum of points and authorities) that the movant seeks an express finding that the debtor was involved in the scheme, and (iii) there is no persuasive opposition. The reason for requiring such prominent notice is that "hijacking" cases are prevalent, and an innocent debtor would not know that there is any reason to respond to a motion seeking *in rem* relief as to Blackacre if the debtor has no interest in Blackacre.

4. § 362(b)(3): postpetition transfer of title. If a foreclosure sale occurs pre-petition but the trustee's deed upon sale is recorded within the 15-day period provided by Cal. Civ. C. § 2924h(c) then the post-petition perfection etc. relates back and does not violate the automatic stay. *See* 11 U.S.C. §§ 362(b)(3) & 546(b); *In re Hayden*, 308 B.R. 428 (9th Cir. BAP 2004); *In re Bebensee-Wong*, 248 B.R. 820 (9th Cir. B.A.P. 2000); *In re Garner*, 208 B.R. 698 (Bankr. N.D. Cal. 1997).
5. § 362(c)(3): Termination of automatic stay 30 days after filing 2d bankruptcy case in one year. The judge follows *In re Reswick*, 446 B.R. 362 (9th Cir. BAP 2011) (if automatic stay is not continued beyond 30 days then it terminates in *all* aspects, *i.e.*, not only as to the debtor individually but as to all parties and the bankruptcy estate). *See In re Hernandez*, case no. 2:11-bk-53730-NB, docket #40 (Memorandum Decision). The judge recognizes that termination of the automatic stay may harm creditors, or otherwise undermine important bankruptcy policies, and therefore one of two remedies *may* be appropriate: (a) if it appears that a plan can be confirmed before irreparable harm occurs, then the binding effect of the plan might be a sufficient substitute for the lack of an automatic stay (*see* § 1327(a)), or alternatively (b) the court can dismiss the bankruptcy case on its own motion and (generally) without a bar to filing another bankruptcy case. *See Hernandez* (2:11-bk-53730-NB, dkt. 40) pp. 8:4-10:16.
6. § 362(d): lifting the automatic stay in *other* bankruptcy cases – past or pending. If there is a sufficient pattern of sham transactions then, in rare instances and subject to certain procedural protections which may include an adversary proceeding, the judge has been persuaded that the court has authority to issue a declaratory judgment that any documents that purport to implicate the automatic stay in any past or pending bankruptcy cases are rebuttably presumed to be shams, and therefore the automatic stay does not actually apply, pursuant to FRBP 7001 and 11 U.S.C.

§§ 105(a) and 362(d). *See generally In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009); *In re Ervin* (2:14-bk-18204-NB, docket no. 311).

7. § 362(d): relief from the automatic stay that continues to be effective despite *future* bankruptcy cases ("*in rem"* relief).
    a. "Hijacking" or "dumping" cases. The judge has ruled that the court has the authority to grant "*in rem*" relief (under § 362(d)(4) or other authority) even if the debtor was not a part of the "scheme" to hinder, delay or defraud creditors. *See In re Vazquez*, 580 B.R. 526 (Bankr. C.D. Cal. 2017).
    b. Post-foreclosure. The judge has ruled that, notwithstanding *In re Ellis*, 523 B.R. 673 (9th Cir. BAP 2014), after a foreclosure relief is available under 11 U.S.C. § 362(d)(4). *See In re Choong* (case no. 2:14-bk-28378-NB, docket no. 31).
    c. Situations that are not within § 362(d)(4): The judge has been persuaded in some cases to grant "*in rem*" relief in favor of (i) landlords or (ii) persons with an interest in personal property (*e.g.*, vehicles). The grounds for such relief are the broad power to grant "relief" under § 362(d) including "*ex parte*" relief under Rule 4001, and/or under § 105(a), and/or the court's inherent powers, and/or stare decisis (because courts granted such relief prior to enactment of § 362(d)(4), and nothing in the legislative history indicates an intent to overrule that practice). *See In re Vazquez*, 580 B.R. 526 (Bankr. C.D. Cal. 2017).
8. § 362(d): motions for relief and *In re Smith; In re Perl*. The judge does not follow *In re Smith*, 105 B.R. 50 (Bankr. C.D. Cal. 1989) (neither stay of acts against property nor stay of acts against debtor *in personam* was sufficient to prevent postpetition eviction), for the reasons stated in *In re Ramirez* (Case No. 2:15-bk-13102-NB, dkt. 57), except to the extent required by *In re Perl*, 811 F.3d 1120 (9th Cir. 2016) (debtor had no property interest post-foreclosure after judgment and writ of possession, so automatic stay did not protect debtor from eviction).
9. § 362(d): divorce and relief from the automatic stay. Because of the risks to creditors from any property division or characterization of property (as separate or community property), the judge usually grants only limited relief by modifying the automatic stay such that any proposed disposition of property must be presented as a settlement under Rule 9019. *See In re Sandoval* (Case No. 2:17-bk-10379-NB), dkt. 58, 100.

10. §362(d): mootness. The judge has ruled that a motion for relief from the automatic stay is *not mooted* even when the tentative ruling is that the stay no longer exists, for the following reasons:
    a. Multiple, alternative grounds for relief should all be reached. When a motion seeks the same relief on multiple alternative grounds, all of those grounds usually should be ruled on because a tentative or final ruling on any one ground might be reversed or altered later on. For example, movants often seek a ruling that the automatic stay does not prevent them from pursuing their remedies both (i) because the stay does not apply (*e.g.*, after dismissal of the bankruptcy case, per 11 U.S.C. §§ 349(b)(3), 362(c)) and alternatively (ii) because relief from the stay is appropriate (under 11 U.S.C. § 362(d)). If the first ground later turns out to be reversed or altered (*e.g.*, if a dismissal is vacated), the movant would be prejudiced if this Court had refused to reach the movant's alternative argument that the stay should be lifted. *See also, e.g.*, *In re Krueger*, 88 B.R. 238, 241-42 (9th Cir. BAP 1988) (notwithstanding dismissal, stay held to continue due to lack of proper notice re dismissal).
    b. Annulment, *in rem* relief, etc. Some matters always remain relevant, notwithstanding dismissal, closing of a case, or other grounds on which the stay might not currently exist. *See In re Aheong*, 276 B.R. 233 (9th Cir. BAP 2002).

F. § 362: Loan Modification Management Program. The judge participates in the Loan Modification Management Pilot Program. The judge accepts transfers of cases from judges who are not part of this Court's Loan Modification Management Program, with the consent and written order of that judge.

G. § 363(b): Budget motions. Required for both individuals and businesses. Individual debtors often file budget motions that list $X net income from one or more business(es), without providing any breakdown of the business income and expenses. That information must be provided (the business could be paying exorbitant salaries to insiders, or paying debts that are guaranteed by the debtor while ignoring other debts, or other things that should be disclosed). When a budget motion has these defects, the judge will deny the motion or grant very limited relief. **NOTE:** The judge *requires* the use of local forms F 2081-2.2.MOTION.BUDGET and F 2081-2.2.ORDER.BUDGET for individuals.

H. § 363(c) & § 364: Cash Collateral and Postpetition Financing.

1. Standard provisions. The judge adds standard provisions to proposed orders for (A) use of cash collateral or (B) postpetition

financing by creditor(s) holding prepetition claim(s). A sample is posted on the judge's web page.

2. Tentative ruling adopted. If the tentative ruling is adopted (in whole or in part) a copy should be attached as an exhibit to the proposed order.
3. Cash collateral form. The judge *requires* that individual debtors use local forms F 2081-2.1.MOTION.CASH.COLLATERAL and F 2081-2.1.ORDER.CASH.COLLATERAL. Other entities are encouraged to use those forms when applicable.
4. Cash collateral stipulations. The judge *requires* the use of local form F 4001-2.STMT.FINANCE.

I. § 363(f): Sales free and clear.

1. § 363(f)(1). The judge has ruled that § 363(f)(1) authorizes a sale free and clear of any interest whenever a foreclosure sale would be free and clear of such interest. *See In re Spanish Peaks Holdings II, LLC*, 872 F.3d 892, 900-901 (9th Cir. 2017) ("Section 363(f)(1) authorized the sale of [the debtor's] property free and clear of [leasehold interests]" because, foreclosure sale "would have terminated [such leases and] Section 363(f)(1) does not require an actual or anticipated foreclosure sale. It is satisfied if such a sale would be legally permissible."). Alternatively, 363(f)(1) authorizes a sale free and clear of any interest if a receiver could be authorized to sell free and clear of such interest. *See id. and also County of Sonoma v. Quail*, 56 Cal.App.5th 657, 687 (1st App. Dist., 2020) ("[a] court of equity has the power to order the sale of property free and clear of liens and encumbrances") (citation and internal quotation marks omitted).
2. § 363(f)(5). The judge does not follow *Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC)*, 391 B.R. 25, 40 (B.A.P. 9th Cir. 2008). He has ruled that a sale free and clear is permissible under § 363(f)(5) whenever the interest at issue is subject to monetary valuation. *See In re Trans World Airlines, Inc.*, 322 F.3d 283, 290-91 (3d Cir. 2003) ("*TWA*") (because employees' claims were "subject to monetary valuation," debtor's assets could be sold free and clear of successor liability for such claims under § 363(f)(5)). Alternatively, the judge has ruled that "cramdown" is among the types of legal or equitable proceeding within the statute, or that *Clear Channel* is distinguishable in most cases under the rationale of *In re Jolan*, 403 B.R. 866 (Bankr. W.D. Wash. 2009), because holders of interests can be compelled in numerous other types of legal or equitable proceedings to accept a money satisfaction (which might be $-0- in the case of an interest that is entirely underwater). Those proceedings include a hypothetical foreclosure

by one of the lienholders, or a receivership (which could be initiated at the behest of creditors or by the debtor itself). *See* Cal. Code Civ. Proc. ("CCP") §564(b)(9) (power to appoint receiver to sell property); CCP § 568.5 (receiver empowered to sell property as provided in CCP §§701.510 et seq.); CCP § 701.630 (extinguishment of liens); CCP § 701.680 (binding effect of sale). *See also County of Sonoma v. Quail*, 56 Cal.App.5th 657, 687 (1st App. Dist., 2020) ("[a] court of equity has the power to order the sale of property free and clear of liens and encumbrances") (citation and internal quotation marks omitted). The judge respectfully disagrees with *In re Hassen Imports P'ship,* 502 B.R. 851, 860 et seq. (C.D. Cal. 2013) (hypothetical foreclosure sale did not qualify under section 363(f)(5)). *See generally In re Catalina Sea Ranch, LLC* (Case No. 2:19-bk-24467-NB), dkt. 122 (approving sale to insider, free and clear of successor liability).

J. § 363(m): "Good Faith" Findings. Supporting declaration(s) should address: (1) connections: the bidder's prior, current, or expected connections with any relevant persons (other bidders, the debtor, major creditors or equity security holders in the case, or any of the debtor's officers, directors, agents, or employees, including whether any offers of employment or compensation have been made or will be offered to debtor's present or former officers, directors, agents, or employees), (2) consideration: whether any consideration is contemplated or has been transferred by the bidder in connection with the sale to any person other than the bankruptcy estate, and (3) absence of fraud or collusion between the bidder and any relevant persons (*e.g.*, other bidders, the debtor's officers, directors, agents or employees), or any attempt to take unfair advantage of other bidders. *See generally In re M Capital Corp.*, 290 B.R. 743, 748-49 (9th Cir. BAP 2003). As used in this paragraph, a "bidder" includes all known prospective bidders.

K. § 364: Postpetition/DIP Financing. See § 363(c) above.

L. § 365: Assumption of executory contract. *See generally In re Kennedy* (Case No. 2:20-bk-15954-NB), dkt. 121.

M. § 366: Utilities. The judge *requires* that individual debtors use local forms F 2081-2.4.MOTION.UTILITIES and F 2081-2.4.ORDER.UTILITIES (when a utilities motion is necessary). Other entities are encouraged to use those forms when applicable.

N. § 502: claim objections & cost/benefit analysis. When objecting to claims, be sure to include an analysis of why the costs of preparing and litigating the claim objection (administrative expenses) do not exceed the anticipated benefits (reductions in claims). For example, if the claim at issue is a dischargeable nonpriority claim, and the anticipated dividend is not 100%, then (a) the attorney fees incurred in prosecuting an objection

probably will exceed the benefit to the bankruptcy estate/creditors, (b) Debtor typically is harmed by replacing a (dischargeable) general unsecured claim with an administrative expense, and (c) only the lawyer benefits (at the expense of both creditors and Debtor). *See In re Barba* (Case No. 2:21-bk-18466-NB), dkt. 50.

O. § 502: claim objections and burdens of proof. *See In re Orozco*, 2017 WL 3126797 (Bankr. C.D. Cal.) (Case No. 2:13-bk-15745-NB, dkt. 132), *and In re Beoglyan* (Case No. 2:13-bk-22883-NB, dkt. 141).

P. § 506: debtor who is an unauthorized transferee probably cannot modify lienholder's right to foreclose. The judge has ruled that a debtor could not modify a lienholder's rights against collateral securing a non-debtor's obligations, and therefore the debtor, as an unauthorized transferee, could not prevent foreclosure (once the automatic stay terminated). *See In re Bousheri* (Case No. 2:15-bk-11345-NB), dkt. 79.

Q. §§ 506(b), 1129(b), 1325: "cramdown" interest rates. The judge has expressed the view in various cases that when dealing with relatively small dollar amounts (for which the cost of presenting expert testimony as to interest rates would be prohibitive) the analysis in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004), is appropriate, and conversely when dealing with larger dollar amounts the *Till* analysis probably is not appropriate, and one acceptable method for experts to opine as to the appropriate interest rate is the method described in *In re Boulders on the River, Inc.*, 164 B.R. 99 (9th Cir. BAP 1994); *see In re N. Valley Mall, LLC*, 432 B.R. 825 (Bankr. C.D. Cal. 2010) (discussing continued viability of *Boulders on the River*).

R. § 506(d): Lien Avoidance. Required forms: The judge *requires* use of Local Form F 4003-2.4.JR.LIEN.MOTION, entitled "Debtor's Notice of Motion and Motion to Avoid Junior Lien on Principal Residence [11 U.S.C. § 506(d)]" and Local Form F 4003-2.4.JR.LIEN.ORDER. The judge also *requires* use of Local Form F 3012-1.MOTION.VALUATION, entitled "Notice of Motion and Motion for Order Determining Value of Collateral" and Local Form F 3012-1.ORDER.VALUATION for avoidance of liens not secured by the debtor's principal residence. Please calendar all such motions as soon as possible so as not to delay confirmation hearings. Admissible evidence with appropriate declaration(s) should address: (1) the value of the property (*e.g.*, an appraisal, or a broker's opinion, or a debtor's declaration stating the basis for the debtor's opinion such as familiarity with the residence, the neighborhood, and recent sales) and (2) the principal balance owed on all senior liens (*e.g.*, mortgage statements). Proper date of valuation: The judge has issued a tentative ruling that *the petition date is the appropriate date* (not the current date/confirmation hearing date) to determine if a lien on a principal residence is entirely underwater and can therefore be avoided under *In re Zimmer*, 313 F.3d 1220 (9th Cir. 2002) and *In re Lam*, 211 B.R. 36 (9th

Cir. BAP 1997). *See In re Gutierrez*, 503 B.R. 458 (Bankr. C.D. Cal. 2013). Similar reasoning likely applies to motions to value (effectively, motions to avoid liens secured by property other than the debtor's principal residence). The judge never issued a final decision on that issue because the case was subsequently converted to chapter 7. The judge has also applied this ruling to both chapter 11 and chapter 13 cases. *See also below, under* §§ 1123(b)(5) & 1322(b)(2) ("principal residence" definition). Accordingly, evidence should be as near to the petition date as possible.

S. § 522: exemptions. *See In re Banuelos* (Case No. 2:14-bk-29414-NB), dkt. 78 (apportionment of homestead exemption as between two spouses' separate bankruptcy estates).

T. § 522(f): Judicial Lien Avoidance. The judge *requires* the use of local forms F 4003-2.1.AVOID.LIEN.RP.MOTION and F 4003-2.2.AVOID.LIEN.PP.MOTION.

U. § 523(a)(8): Student Loans/classification & dischargeability. The judge was not prepared to confirm a chapter 13 plan that would have paid student loan debts at the expense of paying much less to other creditors' claims, when the debtor had not provided evidence of exploring other options including seeking forgiveness of student loan debt, seeking to discharge that debt, seeking to have the spouse (who had incurred the debts) join the bankruptcy petition, etc. *See In re Baldwin* (Case No. 2:14-bk-13616-NB), dkt. 49 (9/2/15) (available under "opinions" on the Court's website).

V. Chapter 11: Bar Date. The debtor should NOT serve the notice contemplated by Rule 3001-1. Instead the bar date, and procedures for asserting a claim under § 503(b)(9), will be set forth in the judge's standard form of Order Setting Bar Date, which typically is prepared by the court after the initial chapter 11 status conference (except in subchapter V cases, in which the bar date is set by statute and the LBR).

W. Chapter 11: Plan and Disclosure Statement Procedures.

1. Forms. Parties may use any type of (A) plan, (B) disclosure statement (if applicable), and (C) exhibits (use of the local forms is no longer required), PROVIDED that the plan proponent must **"do the math"** clearly and accurately. Do not just list the alleged net income of the debtor or any rental property or business owned by the debtor. Instead, you must provide a detailed breakdown of gross revenues, all expenses, and calculation of the resulting net income.
2. Examples. The following are illustrations of how to "do the math" (using existing forms, so you don't have to "re-invent the wheel"). CAUTION: Be especially careful about any changes to, or double-counting of, debt or lease payments (*see* "Avoid common errors" below).

a. Liquidation analysis must list (or incorporate by reference) *all* assets listed on the bankruptcy schedules (if those assets are still in the estate). *See, e.g.*, Exhibit "G" in F 3018-1.CH11.PLAN.DS.EXHIBITS.
b. Individual debtors' income projections can use bankruptcy schedules "I" and "J," but those forms usually have to be marked up to show *projected* income and expenses.
c. Rental properties can use a monthly budget such as the one included in Local Form 2081-2.1.MOTION.CASH.COLLATERAL, p. 5, marked up to show *projected* income and expenses.
d. Businesses can use profit and loss statements such as the one included in the United States Trustee's Monthly Operating Report form, marked up to show *projected* income and expenses.

3. Avoid common errors.
   a. Double-counting debts or lease payments. If your calculation of monthly cash flow *includes* debt or lease payments, and your plan *also includes* debt or lease payments, you're double-counting – *e.g.*, for individuals, see bankruptcy schedule "J," lines 4, 5, 17 and 20.
   b. Loan or lease modifications. Be sure to adjust any *historical* cash flow to account for loan or lease modifications – *e.g.*, for individuals, see bankruptcy schedule "J," lines 4, 5, 17 and 20.
4. **DO NOT SERVE** the proposed disclosure statement and plan on anyone (except the U.S. Trustee and parties requesting special notice) until directed to do so. Serving drafts usually does nothing but confuse parties in interest and waste resources.
5. Preliminary review by U.S. Trustee and Court. The judge typically reviews the draft plan documents at the next status conference after they are filed. If the U.S. Trustee wishes to file initial comments at that time, it should do so at least two weeks prior that status conference (but, whether or not any such initial comments are filed, all rights are reserved to object to the proposed disclosure statement or plan when actual deadline(s) for such objections are established).
6. Standard procedures. At that status conference the judge typically (a) grants *conditional* approval of the plan proponent's disclosures (whether they are contained in a Plan or in a separate Disclosure Statement – *i.e.*, in both Subchapter V cases and all other chapter 11 cases) and (b) sets a *combined* hearing on final approval of those disclosures and confirmation of the Plan. Such procedures

are authorized by §§ 105(a)&(d)(2)(B)(vi) (hearing on Plan/Disclosure Statement may be combined), 1125(f) (specific procedures for same in small business case), 1188 (same in subchapter V case), Rules 2002(b), 3017-3017.2, 3018, 3020, 3017-1(a), First Amended General Order 20-01, and, if time is shortened, Rule 9006(c). A sample order adopting such procedures is posted on the judge's portion of the Court's web page.

7. Special procedures. Streamlined procedures are encouraged, both to save costs and because parties in interest may have more meaningful disclosure by providing a short summary combined with ready access to the full documents. For example, the plan proponent should be prepared to address: (i) whether, instead of receiving the full plan and disclosure statement, some or all classes should receive a "court-approved summary" such as a one-page table showing the proposed treatment of each class, with prominent instructions on how to request a copy of the full documents and/or review them online (per 11 U.S.C. § 1125(b) & (c) and Rule 3017(d)(1)); (ii) whether to establish special procedures for transmitting documents and information "to beneficial holders of stock, bonds, debentures, notes, and other securities" (per Rule 3017(e)), (iii) whether to shorten time if a true exigency is shown by competent evidence (per Rule 9006(c)), and (iv) whether to adopt any other special procedures.

X. Chapter 11: Other forms. The judge requires use of Local Form 2081-1.1.C11.STATUS.RPT or, for "Subchapter V" small business debtors, the Subchapter V Status Report (available on this Court's website, www.cacb.uscourts.gov, under "Forms" > "Other Forms"). Parties are encouraged to use the remaining series of local forms F-2081. Those forms apply to individuals, but parties are encouraged to use them (with appropriate amendments clearly shown) even when the debtor is *not* an individual.

Y. § 1112: appointment of trustee. *See In re Korean Western Presbyterian Church of Los Angeles* (Case No. 2:20-bk-11675-NB), dkt. 123 (appointing chapter 11 trustee when one faction seeking control of debtor sought emergency relief without sufficient showing of emergency and without serving other faction with papers, and did not adequately alert court to governance dispute, and when leaving one faction in control would present dangers of dissipation of assets or other harm).

Z. § 1112: "cause" for dismissal, conversion, or appointment of trustee. *See In re Hacienda* (Case No. 2:22-bk-15163-NB), dkt. 199 (declining to dismiss bankruptcy case, despite Debtor's connection to the cannabis industry, where Debtor's stated intention from outset of the case was to

liquidate shares in a publicly traded Canadian company -- whose sole business was the manufacture and distribution of cannabis products – and to distribute the funds to creditors consistent with the provision of the Bankruptcy Code).

AA. § 1122: classification. In a tentative ruling, the judge has held that a debtor could not separately classify a creditor's deficiency claim from other general unsecured claims simply because that creditor also held a guaranty, without regard to whether that guaranty was collectible. The judge never issued any final decision on that issue, because (1) the debtor essentially mooted the issue by proposing a plan of reorganization that did not rely on separate classification of the deficiency claim and (2) the case subsequently was dismissed. But the tentative ruling reflects the judge's current views. *See In re 4th St. E. Investors,* 2012 WL 174550 at *2-*10 (2:12-bk-17951-NB, dkt. 87 at pp. 5:20-15:11) (disagreeing with *In re Loop 76*, 442 B.R. 713 (Bankr. D. Ariz. 2010) ("*Loop I*"), *aff'd, In re Loop 76*, 465 B.R. 525 (9th Cir. BAP 2012) ("*Loop II*")).

BB. § 1123(b)(5): "principal residence" definition. The judge follows BAP authority that the appropriate date for determining whether property is the debtor's principal residence is the petition date (*See In re Gutierrez*, 503 B.R. 458, 462-63 (Bankr. C.D. Cal. 2013)), but, as of the date of these procedures, the judge has not yet ruled what is the appropriate test for defining a "principal residence." *Compare In re Wages*, 508 B.R. 161 (9th Cir. BAP 2014 (majority adopts bright line rule that if any portion of property is principal residence, then entire property is treated as such) *with, e.g., In re Scarborough*, 461 F.3d 406 (3rd Cir. 2006) (bright line rule that if any portion of property is *not* principal residence, then entire property is treated as not being principal residence), *and with, e.g., In re Brunson*, 201 B.R. 351 (Bankr. W.D.N.Y. 1996) (totality of circumstances approach in determining what use of property is sufficient for it to be "principal residence," based largely on use of property as of inception of loan).

CC. § 1129(a)(15): "means test" is not strictly applicable in chapter 11, but provides guidance to what expenses are "reasonably necessary." *See In re Concoff* (case no. 2:13-bk-37328-NB, dkt. 246). This is a tentative ruling, and never became a final ruling in that case. As of the date when these posted procedures were prepared, the judge has not yet made any final ruling on this issue in any case.

DD. § 1129(b)(2)(B)(ii): absolute priority rule. The judge previously has made the following rulings, both orally and in writing. *See In re Lytle* (Case No. 2:20-bk-12166-NB), dkt. 113. First, although this Court has an independent duty to examine the elements of cramdown under § 1129(a)(1) (*cf. United States v. Espinosa*, 130 S.Ct. 1367, 1378-80 (2010) (duty under parallel provisions of 11 U.S.C. 1325(a)(1))), a class of creditors can waive or forfeit the requirements of the absolute priority rule, so if there is no

objection to confirmation and the plan meets the minimum requirements for cramdown then confirmation of the plan is appropriate. *Cf. In re Hamer*, 138 S.Ct. 13, 17 n.1 (2017) (distinguishing forfeiture and waiver); *Wellness Int'l Network, Ltd. v. Sharif*, 135 S.Ct. 1932 (2015) (holding, in different context, that consent need not be express); *In re Pringle*, 495 B.R. 447 (9th Cir. BAP 2013) (same, and analyzing presumed consent). Second, when cramdown is required under § 1129(a)(10) & (b) it is subject to the "new value" "exception" (corrolary) to the absolute priority rule (typically an individual debtor would contribute cash from an exempt retirement account, or from a relative or friend). Third, new value must be (among other things) "reasonably equivalent to the value or interest received" (*In re Bonner Mall P'ship*, 2 F.3d 899, 908 (9th Cir. 1993) (citations omitted)) but by definition $0 is "reasonably equivalent" to whatever residual value exists in *fully encumbered* property (which is what debtors often retain). Fourth, however, new value must be "necessary" and "substantial" (*id.*), which requires whatever cash is "necessary" to the success of the proposed reorganization, as opposed to a "token" cash infusion. *In re Snyder*, 967 F.2d 1126, 1131-32 (7th Cir. 1992) (cited in *Bonner Mall*, 2 F.3d at 908). When a debtor is devoting all or almost all disposable income to the plan then it may be "necessary" for feasibility (§ 1129(a)(11)) to have a cash infusion to cover the type of unanticipated emergency expenses that typically arise, and the judge has accepted this as "substantial" new value even if it does not increase the dividend to unsecured creditors. Note: the judge has questioned, but not ruled on, whether "bids or competing plans" are required, or what that would mean as applied to property that an individual debtor is entitled to exempt. *Compare Bank of Am. Nat. Trust and Sav. Assn. v. 203 North LaSalle St. P'ship*, 526 U.S. 434, 454-58 (1999) (limited partnership, not invidual, bankruptcy case); *Zachary v. California Bank & Trust*, 811 F.3d 1191 (9th Cir. 2016) (individual case, but not addressing that issue). *See also In re Ambanc La Mesa L.P.*, 115 F.3d 650, 656-657 (9th Cir. 1997) (not deciding among various ways to measure if contribution is "substantial," but holding that $32,000 contribution, less than 0.5% of unsecured debt, was *de minimus* as a matter of law). *See also In re Green Pharmaceuticals, Inc.*, 617 B.R. 131 (Bankr. C.D. Cal. 2020) (court may consider other circumstances, such as how much debtor is paying for insiders' auto and life insurance).

EE. Chapter 13: Confirmation Hearings. The judge has adopted the following generally applicable procedures, subject to modification by proper motion/application or oral request at the confirmation hearing.

1. Trustee. The Chapter 13 Trustee assigned to administer the judge's chapter 13 cases is Kathy A. Dockery. The contact information for the Trustee's office is (a) website: www.latrustee.com and (b) telephone: (213) 996-4400.

2. Calendaring. To the extent not otherwise set by court order (*e.g.*, for continued hearings), attorneys for debtors and debtors without counsel should contact the Chapter 13 Trustee to set a hearing to confirm their plan. *Note:* All motions to value and avoid liens must be scheduled for hearing and the order(s) on the motion(s) must be entered *before* confirmation of the chapter 13 plan will be considered.
3. Payments. All required pre-confirmation plan payments must be current or else the case may be dismissed at the confirmation hearing, or before the confirmation hearing upon a declaration by the Chapter 13 Trustee. The judge does not require postpetition mortgage payment declarations.
4. Check-in procedure. The Chapter 13 Trustee's office no longer makes in-person appearances (partly due to COVID-19 issues) so, if an appearance by the debtor or debtor's attorney is required (see below), parties are strongly encouraged to communicate by telephone with the Chapter 13 Trustee's counsel prior to the hearing for an informal meet-and-confer style "check-in."
5. Appearances – when required. Attorneys for debtors and debtors without counsel *must* appear at the confirmation hearing, *except* that the Chapter 13 Trustee may excuse that appearance in the following situations:
    a. No opposition to Chapter 13 Trustee's proposed disposition. The Chapter 13 Trustee will post proposed dispositions on her website and on the poster-board outside the courtroom on chapter 13 days. The judge generally adopts those dispositions if they are unopposed. For example, if the Chapter 13 Trustee recommends confirmation of the plan proposed by the debtor(s), and no party in interest has either filed a written objection or checked in with the Trustee to note their opposition to confirmation, then only the Chapter 13 Trustee is required to appear. If the court orders any alternative disposition (*e.g.*, continuance to address the court's own concerns) then the Trustee (or such other person as the court may designate) will provide any appropriate notice.
    b. Continuances by parties. If there is an oral or written agreement to a continuance by all debtor(s) and by all creditor(s) who have either checked in with the Chapter 13 Trustee or filed and served a written objection, then only the Chapter 13 Trustee is required to appear. The Trustee will notify the court of the proposed continued hearing date. If the court orders any alternative disposition (*e.g.*,

continuance to a different date) then the Trustee (or such other person as the court may designate) will provide any appropriate notice.

FF. § 1322(b)(1): classification. Separate classification (of student loan debt) is discussed in a tentative ruling, which never became the judge's final ruling because the debtor opted to amend his chapter 13 plan to moot the issue. See *In re Baldwin* (2:14-bk-13616-NB) (dkt. 35).

GG. § 1322(b)(2): "principal residence" definition. *See* §1123(b)(5) above.

HH. Chapter "20" (ch.7 case followed by ch.13). The judge has held that a creditor holding a stripped down or stripped off claim is not entitled to share in distributions to unsecured creditors when the *in personam* liability has been discharged in a prior chapter 7 case. *See In re Rosa*, 521 B.R. 337 (Bankr. N.D. Cal. 2014).

II. Rule 7017: real party in interest/standing. The judge has ruled that a creditor may seek relief from the automatic stay or object to its treatment under a proposed chapter 13 plan based on its status as <u>*either*</u> (1) assignee of a promissory note or (2) assignee of the associated deed of trust. *See In re Gallagher*, 2012 WL 2900477 (Bankr. C.D. Cal. July 12, 2012) (following *In re Veal*, 450 B.R. 897 (9th Cir. BAP 2011)); *In re Dahl* (Case No. 2:11-bk-11028-NB), Memorandum Decision (dkt. 75) at 2 n. 1. The judge has also ruled that California Civil Code § 2932.5, which requires that certain interests in real property be recorded prior to exercising a "power of sale," does not require recordation prior to objecting to confirmation of a chapter 13 plan. *Gallagher*, 2012 WL 2900477 at *4. The judge also rejected arguments that (1) a substitute trustee under a deed of trust had to wait until finalization of the assignments to its principal before it could send foreclosure notices (*id.* at *6 - *7 & n. 6), or (2) that a person acting as a lender's agent could not simultaneously act as an agent for the Mortgage Electronic Registration Systems, Inc. ("MERS") (*id.* at *7). The judge ruled that the debtors/borrowers did not have standing to object to alleged violations of a trust agreement and/or pooling and servicing agreement to which they are not a party. *Id.* at *8 *and see Supplemental Memorandum Decision*, *In re Gallagher* (Case No. 2:12-bk-10213-NB) docket #48. *See also Turner v. Wells Fargo Bank NA*, 859 F.3d 1145 (9th Cir. 2017). The judge has ruled that MERS has authority to assign the standard form of deed of trust. *In re Dahl* (Case No. 2:11-bk-11028-NB), Memorandum Decision (dkt. 75).

JJ. Rule 7055: Default Judgments. A plaintiff seeking a default judgment must file and serve an affidavit establishing the dollar amount due or other specifics of the judgment. If the plaintiff is seeking a default judgment by the Court (as opposed to one by the Clerk under Rules 55(b)(1) and 7055) then the plaintiff must self-calendar a hearing on at least 14 days' notice

(plus 3 days for service by mail), and any response is due 7 days prior to the hearing. In many instances the judge will post a tentative ruling to grant the judgment without the need for appearances, but sometimes a "prove up" hearing will be required. If the judge requires live testimony by witnesses for the plaintiff then the defaulting defendant will be entitled to cross-examine the witness but not present its own evidence or witnesses.

KK. Rule 9011, and other Sanctions. See the Sanctions Table posted on the judge's portion of the Court's website (www.cacb.uscourts.gov).

LL. Rule 9019: Settlements.

1. Analysis. A settlement must be in the best interests of the bankruptcy estate, and the Court must determine whether the settlement was negotiated in good faith and is reasonable, fair and equitable, considering the four factors in *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986). While courts generally give significant deference to the business judgment of the bankruptcy trustee or DIP proposing the settlement, the degree of that deference generally depends on the trustee/DIP's demonstrated diligence, good faith, and persuasiveness; and greater scrutiny is required when insiders have negotiated, or benefit from, the proposed settlement. *See In re Law Offices of Brian D. Witzer* (Case No. 2:21-bk-12517-NB), dkt. 450 & 505 (more extensive analysis).
2. Procedures. Declaration(s) should support each of the four factors in *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986). In routine settlements, the factors can be addressed briefly. Motions to approve settlements generally must be filed in the bankruptcy case (not in any adversary proceeding that is being settled), and after a settlement is approved please follow up promptly with a separate dismissal motion/application in the adversary proceeding.

MM. 28 U.S.C. § 1334/Authority/Jurisdiction: *Stern v. Marshall* etc. *See generally In re AWTR Liquidation Inc.*, 547 B.R. 831 (Bankr. C.D. Cal. 2016).

NN. Director and Officer Liability. *See In re AWTR Liquidation, Inc.*, 548 B.R. 300 (Bankr. C.D. Cal. 2016).