Judge Bason's Procedures (Rev. 7/20/16)

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

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I. Urgent matters.

A. Shortened time, generally. (1) File the motion/application papers. (2) Notify chambers by phone. Follow Rule 9075-1.

B. Automatic stay and cash collateral.

1. Permissible matters. 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:
   a. § 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
   b. § 362(c)/(j): motions to continue the automatic stay or impose a stay under § 362(c)(3) or (4), or to confirm the non-existence of the stay under § 362(j).
   c. § 363(b) & (c): initial hearings on motions for use of cash collateral, DIP financing, or budget motions.
2. Procedures.
   a. amend the local notice form to state that oppositions must be filed at least *five calendar days* before your self-calendared hearing date.
   b. file your motion with a proof of service on the following persons at least 14 days before the hearing date:
      i. the debtor,
      ii. the debtor's attorney,
      iii. any trustee, and, for cash collateral motions, the U.S. Trustee, and
      iv. any party in interest who may be affected – for example:

1. § 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;
2. § 362(d)(4)/"*in rem*" relief: the "original" borrower named in the loan documents is a party in interest who must be served; and
3. § 363(c) cash collateral: all persons who may assert a cash collateral interest.

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

C. Reconsideration motions. *Do not* self-calendar or request a specific hearing date. Call chambers to advise that the motion has been filed. The judge reviews these motions to determine the necessity and timing of a hearing.

D. Discovery disputes. The judge generally will hold a telephonic conference to resolve discovery disputes in lieu of formal motions to compel or quash discovery. Call the judge's law clerk to arrange the 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). Any request for sanctions relating to a discovery dispute must be made by separate noticed motion.

E. 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).

F. "First day" matters. See Judge Bason's form of Case Status Report for common first day matters and local forms that the judge *requires*. Note that Judge Bason's 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 Issues, 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.).

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 14 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. Late papers.** If your opposition or reply papers are filed late, you must include a brief explanation (and a request to accept such papers).
- **C. Tentative rulings.** It is your responsibility to check for tentative rulings.
  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) most motions brought by the Chapter 13 Trustee (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 no later than 24 hours (counting only business days) before the hearing: (a) telephone the judge's law clerk and (b) notify all other interested parties of your intent to appear at the hearing. If you contest a tentative ruling without following these procedures, your request generally will be denied.
- **D. Priority.** You may request priority when checking in with the judge's court recorder just before the calendar call – you must provide a reason. A priority matter should not take longer than five minutes.
- **E. 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.

F. 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.

G. Use of electronic devices.

1. Wireless electronic devices may be used in the courtroom (*e.g.*, smart phones or laptops) 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.
2. At any time, the judge may prohibit or further restrict use of such devices.

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

A. 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 (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).

B. 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.

C. Exhibits. In preparing the list of exhibits (Rule 7016-1(b)(2)(D)) and assembling the actual exhibits, apply the following guidelines:

1. label clearly: *e.g.*, plaintiff 1, 2, 3, etc. and defendant A, B, C … AA, AB, AC, *etc.* (*not* AA, AAA, AAAA, *etc.*);

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 paper or electronic: 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 paper exhibits, tabs and 3-ring binders are helpful, and for PDFs please coordinate with chambers and/or the court's technical staff, and consider combining multiple exhibits, with "bookmarks" for each exhibit, or conversely disaggregating files that are too large);
4. delivery: deliver exhibits (including direct testimony by declaration, unless excused by the court) to other parties, and two copies to chambers (one for the judge to mark up, and one for the court's official record), **no later than the day after the pretrial conference is concluded**;
5. make additional copies of 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);
6. post-trial: pick up 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).

D. Calendar changes. Requests for continuances, even by stipulation, rarely will be granted. The judge normally will schedule several cases for trial one week per month, 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.

E. 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.

V. Common matters.

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

7. *Whom* to serve: Entities generally must be served "Attn: Officer or Managing/General Agent" or a similar phrase per Rule 7004(b)(3), and identify the capacity of each person or entity listed.

8. *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 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)).
9. *How* to serve FDIC-insured entities. Per Rule 7004(h) service must be via *certified mail*, "Attn: *Officer*." (Emphasis added.)
10. 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. § 327- § 331: Employment and Compensation of Professionals.

1. Form F2014-1 required. Professionals are *required* to execute local form F2014-1 (statement of disinterestedness). Alternatively, in an individual Chapter 11 case it is permissible to use local forms F2081-2.5.MOTION.EMPLOY.GEN.COUNSEL or F2081-2.5.MOTION.EMPLOY.OTHER. Note: local form F2014-1 does not have to repeat what is in any accompanying employment application - it can simply say, "see application" or the like - but proposed professionals frequently do not track the language of Rule 2014, so the judge requires use of the form so that 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 of non-working travel time per day without 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").

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 potential conflicts with any such party, including anticipated future conflicts.

C. § 362: Automatic Stay. (1) Stipulations. Generally, the judge will not approve a stipulation for relief from stay that purports to be effective in any subsequent case filed by the debtor. (2) Relief in future cases ("in rem" or "ex parte" relief). Serve your motion on the persons who will be most affected (if known). For example, if you believe that the "original borrower" under loan documents has made an unauthorized transfer of the real property collateral to the debtor, and you seek relief under § 362(d)(4), then that relief is largely against that "original borrower" so for due process reasons the judge requires that you serve that person as well as the debtor. (3) Motions to continue the automatic stay (§ 362(c)(3)). The judge follows *In re Reswick*, 446 B.R. 362 (9th Cir. BAP 2011).

D. § 363(b): Budget motions. 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.

E. § 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. Parties are encouraged to use local form F2081-1.1.ORDER.CASH.COLLATERAL when applicable.

F. § 363(f): Sales free and clear. Regarding § 363(f)(5), Judge Bason 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 that statute 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, Judge Bason has ruled 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 both cramdown and numerous types of nonbankruptcy 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). *But cf. 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)).

G. § 363(m): "Good Faith" Findings. Supporting declaration(s) should address: (1) <u>connections</u>: 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) <u>consideration</u>: 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) <u>absence of fraud or collusion</u> 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.

H. § 364: Postpetition Financing. See § 363(c) above.

I. § 502: claim objections & cost/benefit analysis. When objecting to claims, be sure to consider whether the costs of preparing and litigating the claim objection (administrative expenses) do not exceed the anticipated benefits (reductions in claims). For example, if the anticipated dividend is small or 0%, your claim objection to any general unsecured claim should

clearly explain how it is justified to incur the attorney fees for that objection.

J. § 506(d): Lien Avoidance. Required forms: The judge *requires* use of Local Form 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 4003-2.4.ORDER. The judge also *requires* use of Local Form F 3012-1.MOTION.VALUATION, entitled "Notion 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). Judge Bason has issued a tentative ruling that *the petition date is the appropriate date* for such determinations and has applied that ruling in both chapter 11 and chapter 13 cases (see Rulings Of Common Interest below). Evidence should be as near to that date as possible.

K. 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 Judge Bason's standard form of Order Setting Bar Date, which typically is prepared by the court after the initial chapter 11 status conference.

L. Chapter 11: Plan and Disclosure Statement Procedures.

1. Forms Required. The judge *requires* use of local forms F 3018-1.CH11.PLAN, F 3017-1.CH11.DISCLSR.STMT, and F 3018-1.CH11.PLAN.DS.EXHIBITS, unless otherwise ordered.
2. **DO NOT SERVE** the proposed disclosure statement and plan on anyone until directed to do so (serving multiple drafts usually does nothing but confuse parties in interest and waste resources).
3. 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 (*before* the regular deadline), it should do so at least two weeks prior that status conference (but, whether or not any comments are filed, all rights are reserved to object to the proposed disclosure statement or plan when deadline(s) for such objections are established).
4. Standard procedures. At that status conference the judge typically sets procedures including a combined hearing on final approval of a plan and disclosure statement (per § 105(d)(2)(B)(vi), FRBP

2002(b), 3017(a), and LBR 3017 1(a)). A sample order adopting such procedures is posted on the judge's web page. The ballot summary (F 3018-2.PLAN.BALLOT.SUMMARY) is due three (3) court days before the confirmation hearing (notwithstanding LBR 3018 1). The judge does not require any written motion or memorandum/brief in support of confirmation, but the deadline for Debtor to file and serve a reply to any written objections is seven days prior to the hearing. Debtor need not be present at the hearing(s) on the adequacy of the disclosure statement and confirmation of the proposed plan, because absent objection this court anticipates accepting offers of proof instead of live testimony on any required elements to confirm the plan under Section 1129(a) or (b).

5. 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 half-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.

M. Chapter 11: Other forms. Parties are encouraged to use the 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.

N. Chapter 13: Confirmation Hearings. As noted in Rule 3015-1(d), "[t]he judges of this district do not have a uniform policy governing calendaring and appearance at a [chapter 13] confirmation hearing." 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. If an appearance by the debtor or debtor's attorney is required (see below), then the Chapter 13 Trustee generally conducts an informal meet-and-confer style "check-in" with parties approximately one hour prior to the confirmation hearing. Parties in interest are strongly advised to use this check-in procedure and should contact the Trustee's office for further information.
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.

O. 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.

P. Rule 9019: Settlements. 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 main bankruptcy case, and after a settlement is approved please follow up promptly with a separate dismissal motion/application in the adversary proceeding.

Q. Proposed Orders.

1. Quick. The Judge generally issues orders immediately (*i.e.*, without waiting the 7 days per Rule 9021-1(b)(3)(B)), so if you object to a proposed form of order you should call chambers immediately and then lodge your own proposed order or arrange a telephonic hearing.
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.

R. Mediation. The Judge 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).

S. Status conferences (main case and adversary proceedings).
(1) Appearances. The debtor or debtor's principal must appear in person at the first chapter 11 case status conference, but thereafter only the debtor's attorney must appear unless otherwise ordered. (2) Status Report. In

adversary proceedings, use of court-approved status conference report forms is strongly recommended.

VI. Judge Bason's Rulings of Common Interest.

A. § 109(g): dismissal with a bar of 180 days or longer. Judge Bason 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*.

B. § 302: joint cases; bifurcation. Spouses sometimes separate or divorce during the pendency of a bankruptcy case. Judge Bason 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).

C. § 362(b)(3): postpetition transfer of title. Judge Bason previously followed *In re Gonzalez*, 456 B.R. 429 (Bankr. C.D. Cal. 2011), but has since ruled that 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 encompasses the delivery, acceptance, and recordation of the deed all of which relates back to 8:00 a.m. on the date of the foreclosure sale and does not violate the automatic stay. *See* 11 U.S.C. §§ 362(b)(3) & 546(b); *In re Garner*, 208 B.R. 698 (Bankr. N.D. Cal. 1997); *In re Bebensee-Wong*, 248 B.R. 820 (9th Cir. B.A.P. 2000); *In re Hayden*, 308 B.R. 428 (9th Cir. BAP 2004).

D. § 362(c)(3): termination of automatic stay 30 days after filing 2d bankruptcy case in one year. Judge Bason 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). Judge Bason 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: (1) 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 (2) the court can dismiss the bankruptcy case on its own motion and without a bar to filing another bankruptcy case. *See Hernandez* (2:11-bk-53730-NB, dkt. 40) pp. 8:4-10:16.

E. § 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, Judge Bason 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).

F. § 362(d): lifting the automatic stay in *other* bankruptcy cases filed in *future* (*in rem* relief). (a) "Hijacking" or "dumping" cases. Judge Bason 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 4th St. E. Investors, Inc.*, 474 B.R. 709 (Bankr. C.D. Cal. 2012). (b) Post-foreclosure. Judge Bason 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): Judge Bason 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 Choong* (case no. 2:14-bk-28378-NB, docket no. 31).

G. § 362(d): motions for relief and *In re Smith; In re Perl*. Judge Bason previously did 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). Judge Bason has not yet addressed whether he will now follow *Smith* in view of *In re Perl*, 811 F.3d 1120 (9th Cir. 2016) (debtor had no property interest post-foreclosure, so automatic stay did not protect debtor from eviction).

H. § 506: appropriate date for lien avoidance motion analysis. In a tentative ruling, Judge Bason has held that the petition date – not the current date/confirmation hearing date – is the appropriate date to determine if a lien on a principal residence is entirely underwater and therefore can 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). Judge Bason never issued a final decision on that issue because the case subsequently was converted to chapter 7. Judge Bason has applied this ruling in both chapter 11 and chapter 13 cases. *See also below, under* §§ 1123(b)(5) & 1322(b)(2) ("principal residence" definition).

I. **§ 506: debtor who is an unauthorized transferee probably cannot modify lienholder's right to foreclose.** Judge Bason 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

J. **§§ 506(b), 1129(b), 1325: "cramdown" interest rates.** Judge Bason 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*).

K. **§ 1122: classification.** In a tentative ruling, Judge Bason 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. *See In re 4th St. E. Investors, Inc.*, 2012 WL 174550 (case no. 2:12-bk-17951-NB, docket #87) (Tenative Ruling) (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*")). Judge Bason never issued any final decision on that issue, because (1) the debtor in the *4th St. E. Investors* case 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 Judge Bason's current views. *See 4th St. E. Investors*, 2012 WL 174550 at *2-*10 (2:12-bk-17951-NB, dkt. 87 at pp. 5:20-15:11).

L. **§ 1123(b)(5): "principal residence" definition.** Judge Bason 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, Judge Bason has not yet ruled what is the appropriate test for defining a "principal residence." *Compare In re Wages*, 508 B.R. 161 (9th Cir. B.A.P. 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).

M. § 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. As of the date when these posted procedures were prepared, Judge Bason has not yet made any final ruling on this issue in any case.

N. § 1129(b)(2)(B)(ii): absolute priority rule. The absolute priority rule applies to individuals in chapter 11 cases. *See Zachary v. California Bank & Trust*, 811 F.3d 1191 (9th Cir. 2016) (overruling *In re Friedman*, 466 B.R. 471 (9th Cir. BAP 2012)). Judge Bason previously has made the following oral rulings, in confirmation hearings at which there is (i) a consenting impaired class and (ii) no objection to confirmation but (iii) a failure of one or more impaired classes to vote at all. First, the Court was required to address whether the requirements for confirmation are met even in the absence of any objection. Second, cramdown was required under § 1129(a)(10) & (b) subject to the "new value" "exception" (corrolary) to the absolute priority rule (typically the 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 $0 is "reasonably equivalent" to whatever residual value exists in fully encumbered property (which typically is what individual debtors retain). Fourth, new value also must be "necessary" and "substantial" (*id.*), which does not necessarily require a meaningful increase in the dividend to unsecured creditors. It 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 an individual 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 Judge Bason has accepted this as "substantial" new value. Note: In other proceedings, Judge Bason 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).

O. § 1322(b)(1): classification. Separate classification (of student loan debt) is discussed in a tentative ruling, which never became Judge Bason'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).

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

Q. Chapter "20" (ch.7 case followed by ch.13). Judge Bason 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).

R. Rule 17(a): real party in interest/standing. Judge Bason 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 *either* (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. Judge Bason 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. Judge Bason 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). Judge Bason ruled that the debtors/borrowers did not have standing to object to alleged violations of a trust agreement to which they are not a party (and which governs the securities related to the pool of deeds of trust that includes their loan). *Id.* at *8 *and see Supplemental Memorandum Decision, In re Gallagher* (Case No. 2:12-bk-10213-NB) docket #48. Judge Bason has also 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).

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

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

VII. 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, or 52(b) (incorporated by Rules 7052 and 9014(c)).