



Court News

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Suggestions and comments are always welcome.

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TEN TIPS ABOUT THE NEW RULES AND FORMS EFFECTIVE DECEMBER 1, 2017

By the Honorable Neil W. Bason

Significant changes to the Federal Rules of Bankruptcy Procedure (FRBP) and associated forms will be effective on December 1, 2017. The Local Bankruptcy Rules (LBR) and Local Forms are also being changed, partly to conform to the national requirements and partly to improve our procedures.

Here are ten tips about these changes. Tips # 1-3 apply in all cases. The other tips are specific to chapter 13, except as noted in the last Tip.

1. Signatures – Get Original “Wet Ink” Signatures, File a Scanned PDF Copy, and Keep Them In Your Files

The court is eliminating the Electronic Filing Declaration (“EFD”). Instead, LBR 9011-11 will require (a) that all signatures be scanned into PDF format filing and (b) that you keep original “wet ink” signatures for five years after the closing of the case or adversary proceeding. Exceptions: as with current practice, if you are registered with the court’s CM/ECF system you can continue to type your own “/s/” signature, and so can your employees – e.g., your secretary can sign the proof of service with his or her typed “/s/” signature.

Explanation: The EFD has outlived its usefulness – it was adopted when it was difficult to scan signatures and insert them into PDF documents, but the technology has improved since then. Also, the court has discovered some attorneys re-using EFDs for multiple documents.

2. Proofs Of Claim – File Them Early And Often

FRBP 3002 will set a deadline of **70 days after the petition date** for the filing of proofs of claim in most cases (much shorter than the old deadline of 90 days after the first date set for the meeting of creditors). One exception is that holders of liens on a principal residence can file an initial claim with minimal attachments and then file a supplement up to 120 days after the petition date. Also, as usual, there is no pre-set deadline in chapter 11 cases: you should ask the court to set a deadline.

Secured creditors are now required to file proofs of claim. But failure to do so does not affect their liens, so **debtors might want to file a claim for the lienholder** within the 30 day period after the bar date per FRBP 3004.

3. Objections to Claims – Serve Them Correctly

Most objections to filed proofs of claim can be served via first-class mail to the person listed to receive notices on the proof of claim. See FRBP 3007. Exceptions:

Federal government: For service on the U.S. (including the IRS or other agencies), service must be “in the manner provided for service of a summons and complaint by [FRBP] 7004(b) (4) or (5)” – generally, to the local U.S. Attorney, the Attorney General, and the officer or agency involved, whose addresses are available at “Government Units’ Mailing Addresses” (posted at www.cacb.uscourts.gov under “Bankruptcy Resources”).

Banks: For service on an “insured depository institution” (most banks), service must be “in the manner provided by [FRBP] 7004(h)” – generally certified mail to the attention of a bank

¹All citations to a section (§) are to the Bankruptcy Code (11 U.S.C. §§ 101 et seq.) and, unless the context suggests otherwise, all citations to the rules and forms are to the versions that will be effective on December 1, 2017.

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For more information,
visit our web site at www.cacb.uscourts.gov.

COURT CLOSED

Friday, November 10—
Veterans Day (observed)

Thursday, November
23—Thanksgiving Day

Friday, November 24—
Day after Thanksgiving

Monday, December 25—
Christmas

Monday, January 1,
2018—New Year's Day

EMERGENCY MATTERS ONLY:

Tuesday, December 26

Tuesday, January 2, 2018



Accessing Court Information by Twitter

The Court has tweeted over 3,500 times since 2011, and its Twitter account has over 750 followers. The Court tweets announcements, Notices of Sale, Public Notices, and other timely information. In March 2015, the Court began tweeting judicial opinions.

You do not need a Twitter account to view the Court's tweets—just click on the Twitter logo on the home page of the (www.cacb.uscourts.gov). The postings are arranged in chronological order, making it easy to quickly catch up with what is going on at the Court. If you have a Twitter account, follow @cacbnews.

WEBSITE FEEDBACK

The U.S. Bankruptcy Court for the Central District of California continues to enhance its website based on feedback from users. Please let us know your thoughts about what is working well and what could be improved at www.cacb.uscourts.gov/contact.

officer. You can check whether a claimant is “an insured depository institution,” find out the names of its officers, and obtain an address at which to serve them at <https://banks.data.fdic.gov/bankfind-suite/bankfind>. See FRBP 3007(a)(2).

4. **Chapter 13 – § 341(a) Meetings and Confirmation Hearings**

You will need to serve the notice of the § 341(a) meeting and the confirmation hearing at least (a) **14 days** before the § 341(a) meeting and (b) **35 days** before the confirmation hearing. See FRBP 2002(a)(9)&(b)(3) & 3015(f), LBR 3015 1(b)(3), (d)(1) & (g)(1). Unless otherwise ordered by the court, a confirmation hearing will be held no earlier than 20 days after the commencement of the § 341(a) meeting of creditors. LBR 3015 1(d)(1).

5. **Chapter 13 – New Plan – Only For Cases Filed 12/1/17 or Later**

If you are seeking to confirm a plan, or to modify a confirmed plan, in a case that was filed before December 1, 2017, you must **not** use the new forms. Instead use the old form of chapter 13 plan, which will continue to be available on the court's website (along with the new form for use in cases filed on or after December 1, 2017).

6. **Chapter 13 – New Plan – Up-Front Disclosures re: Liens (and Other Nonstandard Provisions)**

The new chapter 13 plan (Local Form F 3015-1.01.CHAPTER13.PLAN) requires that the debtor disclose up front (in §§ 1.2-1.4 of the plan) any “nonstandard” provisions including whether the debtor proposes:

- (a) to value collateral and/or avoid liens (§§ 506, 522(f)) either by motion (the usual practice) or by using the plan itself as a motion (see the last Tip below),
- (b) to pay less than the full amount of a “domestic support obligation” (spousal or child support) that has been assigned to a governmental unit (§ 1322(a)(4)), or
- (c) to include any other provisions that change or add to the Local Form plan.

7. **Chapter 13 – New Plan – Secured and Priority Claims (Classes 1-4)**

As with current practice, priority claims including the debtor's attorney's fees and the chapter 13 trustee's fees are in Class 1, principal residence secured claims are in Class 2, other long-term secured debt is in Class 4 (e.g., the mortgage on a rental property), and secured claims that can be paid in full within 5 years are in Class 3 (typically a vehicle). The new plan divides Class 3 in two: Class 3A is for secured claims that can be bifurcated (vehicles that were purchased more than 910 days prepetition) and Class 3B is for secured claims ineligible for bifurcation (vehicles purchased within those 910 days, or other secured debts incurred within one year prepetition). See § 1325(a) (“hanging” paragraph after paragraph “(9)”).

8. **Chapter 13 – New Plan - “Pot,” “Percent,” and “Residual” Plans, and Possibly More Than One Class of Nonpriority Unsecured Creditors (Class 5)**

The plan lets the debtor select how nonpriority unsecured creditors will be paid:

- (a) “pot” plan (a commitment to pay a fixed dollar amount into a pot, to be shared among all such creditors);
- (b) “percentage” plan (a commitment to pay such creditors a fixed percentage of their claims); or
- (c) “residual” plan. **The vast majority of cases will be a residual plan:** creditors are paid whatever is left over after paying senior obligations (secured claims, priority claims, debtors' attorney fees, and the chapter 13 trustees' fees).

Generally, a “pot” or “percentage” plan will only be appropriate to set a “floor” for payments – e.g., if the debtor lacks enough projected disposable income to pay creditors the full value of non-exempt equity in their home, and therefore must commit to pay a higher dollar amount or percentage (often 100%) by some means, such as refinancing or selling the home, in order to meet the “best interests” test (§ 1325(a)(4)). **Caution:** Committing to pay a fixed dollar amount or a fixed percentage can be a problem if the debtor's more senior obligations are higher than expected (e.g., if secured claims, or attorney fees are higher than projected), or, for a fixed percentage, if general unsecured claims are higher than projected.

The Plan also contemplates the possibility of more than one class of nonpriority unsecured claims. Of course, any such proposed classification should comply with applicable law. See, e.g., *In re Sperna*, 173 B.R. 654 (9th Cir. BAP 1994); *In re Wolff*, 22 B.R. 510, 512 (9th Cir. BAP 1982).

9. Chapter 13 – New Plan - Surrendered Collateral (Class 6) and Executory Contracts/Unexpired Leases

The plan now gives the debtor the option to surrender collateral (Class 6) and give the secured creditor relief from the automatic stay without having to file a motion. But if creditors do not want to wait for confirmation then they might still file motions for relief from the stay, or seek a stipulation for such relief.

The debtor must specify (in Class 7) whether to “reject” or “assume” each contract or lease. Assumption requires a cure payment to be paid when the plan is confirmed or “promptly” after. See § 365(b)(1)(A). Don’t forget to include the “cure” payments in the Plan Summary (p. 12 of the plan).

10. Valuing collateral and/or avoiding liens (§§ 506, 522(f))

LBR 3015 1(b)(7) will provide: “[u]nless otherwise ordered by the court, the debtor shall file any document to value collateral pursuant to 11 U.S.C. § 506(a) and/or any document to avoid a judgment lien pursuant to 11 U.S.C. § 522(f) **within 28 days** of commencement of the case.” In addition, new provisions of FRBP 3012, 3015, 3015.1, 4003 and 5009 contemplate that collateral may be valued and liens may be avoided under §§ 506, 522(f) in a variety of ways:

(a) **Motion (the usual practice – applies in all chapters);**

The court is revising the Local Form motions – both to make them more uniform with each other and to give them the same “look and feel” as the attachments to the chapter 13 plan that deal with liens. But the substance and procedure only changes in one narrow respect: the new form of chapter 13 plan requires an **Attachment A** that lists which liens will be/are affected, and the debtor must **fill out part IV.A. & B. of the plan**. (This goes hand in hand with the disclosures in §§ 1.1-1.2 of the plan.)

(b) **Objection** to the creditor’s filed proof of claim (only for determining the dollar amount of secured claims under § 506 – not for lien avoidance under § 522(f)); or

(c) **Using the chapter 13 plan itself as a motion (optional alternative – special procedures apply).**

Check your judge’s procedures and your chapter 13 trustee’s policies before considering this alternative. The procedures are new and untested, and individual judges’ and trustees’ practices may vary considerably. The following is a general guide.

When using plan as a motion under §§ 506 or 522(f), the plan has to be served on the affected lienholders per FRBP 7004, together with a special notice/cover sheet (F3015-1.02.NOTICE341LIENCNRM) and the same evidence as you would use for a motion. The debtor also has to make the appropriate disclosures in §§ 1.1-1.2 of the plan, and fill out part IV.C. of the plan.

If there is any objection then check your judge’s procedures about when and how this aspect of the plan will be heard: the judge might hold hearings at the same time as the regular §§ 506/522(f) motions, or might hear the dispute as part of an initial confirmation hearing, or might establish other procedures.

Once that aspect of the plan is decided, one of two procedures will apply. If the court does not change your proposed valuations then you do not need to file an amended plan – your existing plan can be confirmed (subject to any non-506/522(f) objections). On the other hand, if the court finds valuation(s) different from what you have proposed then you will need to file and serve an amended plan incorporating the new valuation(s), with amended Attachment(s) B, C, or D as applicable (but instead of supporting evidence, you can attach a sheet stating “Valuation per court ruling” or the equivalent).

The chapter 13 trustee will then copy your Attachments B, C, and/or D and attach them to the confirmation order, which will also serve as your §§ 506/522(f) order.

In sum, most valuations and/or lien avoidance under §§ 506 and 522(f) will be done the same way they’ve always been done (via motion practice and/or claim objection). The forms will look a bit different, but the procedures and substance will be the same.

Conclusion

We hope that the new local rules and forms will make it easier for the bar, the trustees, the public, and the court to implement the new national rules, and will lead to greater uniformity and efficiency within this district. The judges greatly appreciate the help we received from representatives of the bar and the trustees, as well as the Clerk’s office, toward those goals.

Top 20 Cases of Interest*

Anchor R & R LLC

SA-17-10703-TA, Chapter 11, Filed 02/24/17. Assets \$10-50 million and Liabilities \$1-10 million. Mandate on appeals ruling dismiss for lack of prosecution, all appeals filed before 10/1/17 have been finalized filed 10/6/17.

British Motorcars Ventura, Inc. DBA Land Rover Jaguar Ventura

ND-17-10489-PC, Chapter 11, Filed 03/22/17. Assets \$1-10 million and Liabilities \$1-10 million. Order confirming debtor's first amended plan entered 10/10/17; hearing re: fee applications scheduled for 11/15/17 at 10 a.m.

Cartel Management, Inc

LA-17-11179-DS, Chapter 11, Filed 01/03/17. Assets \$0.5-\$1 million and Liabilities \$1-10 million. Order entered on 9/19/17 (1) granting motion to extend the exclusivity periods for the debtors to file a plan of reorganization and obtain acceptance thereof and (2) continuing status conference to 2/21/18 at 2 p.m. Monthly Operating Report Number 8 for the month ending 8/31/17 was filed on 9/28/17.

Cathy Jean, Inc.

SA-16-16-14633-TA, Chapter 7, Filed 11/09/16. Schedules not filed; Hearing held per order on stipulation re: withdrawal of motion for designation under Bankr 1007(k) of party to file schedules statements and other documents listed under involuntary case continued to 6/27/17 at 11 a.m. notice waived by attorney Ringstad for Jones.

ColorFX, Inc.

SV-17-10830-VK, Chapter 11, Filed 03/31/17. Assets \$1-10 million and Liabilities \$1-10 million. Scheduling and case management conference continued to 12/21/17 at 1 p.m.

Hoag Urgent Care Tustin Inc.

(Lead case to JNTADMIN cases) Hoag Urgent Care -Huntington Harbour, Hoag Urgent Care -Orange Inc., Hoag Urgent Care -Anaheim Hills, Inc., Cypress Urgent Care, Inc. Laguna Dana Urgent Care Inc. SA-17-13077-TA SA-17-13078-TA SA-17-13079-TA SA-17-13080-TA SA-17-13089-TA SA-17-13090-TA, Chapter 11, Filed 8/2/17, Assets \$1-10 million and Liabilities \$1-10 million. Motion/Application on shorting notice granted to dismiss debtor Opus Bank's notice of motion and motion to dismiss the debtor's bankruptcy case hearing set for 10/12/17 at 2 p.m.; Motion order, (1) Recharacterizing certain unexpired personal property leases and financing arrangement, and (2) Extending deadline to perform any and all obligations under these purported leases filed 10/2/17, hearing set 10/25/17 at 10 a.m. Crtrm 5B and Application to Employ hearing set 10/25/17 at 10 a.m.; Stipulation filed 10/5/17.

Zetta Jet USA, Inc.

LA-17-21386-SK, Chapter 11, Filed 09/15/17. Assets \$50-100 million and Liabilities \$50-100 million. Application filed on 10/18/17 for an order authorizing and approving the employment of Pachulski Stang Ziehl & Jones LLP as counsel for the Official Committee of Unsecured Creditors, effective 10/12/17. Order entered on 10/19/17 approving application of debtors and debtors in possession to employ Levene, Neale, Bender, Yoo & Brill L.L.P. as bankruptcy counsel. Order entered on 10/20/17 granting motion for entry of an order limiting notice and related relief.

Zetta Jet PTE Ltd.

LA-17-21387-SK, Chapter 11, Filed 09/15/17. Assets \$50-100 million and Liabilities \$50-100 million. Order entered on 9/22/17 granting motion to approve joint administration of cases. The lead case being in re Zetta Jet USA, Inc., a California corporation, case number 2:bk-17-21386-SK. Order entered on 9/25/17 (1) Setting status conference to 11/30/17 at 8:30 a.m (2) Requiring debtor-in-possession to appear and file report re: status of reorganization (3) Giving notice of probable use of court-appointed expert for contested valuation requests (4) Mandating use of specific forms by non-individual and individual debtors and (5) Establishing procedure for motion for order approving adequacy of disclosure statement; and motion for order confirming plan.

K&A Global Management Company

SV-16-13295-MT, Chapter 11, Filed 11/17/16. Assets \$1-10 million and Liabilities \$1-10 million. Scheduling and case management conference continued to 10/25/17 at 9:30 a.m.

Lincoln James Investment Properties, LLC

RS-17-17285-WJ, Chapter 11, Filed 08/30/17. Assets \$1-10 million and Liabilities \$1-10 million. Voluntary petition filed 8/30/17; meeting of creditors scheduled for 9/26/17 @ 2:30 p.m.; Notice of bar date for filing proofs of claim in a chapter 11 case filed 9/21/17 - Bar date: 12/29/17 for creditors; Governmental units: 2/26/18; Amended Schedule D filed 9/22/17; Amended Statement of Financial Affairs filed 10/5/17.

Lindley Fire Protection Co. Inc.

SA-17-10929-CB, Chapter 11, Filed 03/12/17. Assets \$1-10 million and Liabilities \$1-10 million. Voluntary dismissal of motion filed by U.S. Trustee filed 8/25/17 hearing held off calendar 9/6/17; Status report filed 9/11/17; Hearing continued motion for relief from stay personal property set for 10/4/17 at 10 a.m.; Hearing continued motion re: chapter 11 first day motion set for 10/4/17; Hearing continued to 10/12/17 at 10 a.m. on motion re: chapter 11 first day motion; Status reports filed 10/5/17 and monthly operating report filed 10/9/17.

Menco Pacific Inc

SV-16-12791-MT, Chapter 11, Filed 09/26/16, Assets \$1-10 million and Liabilities \$1-10 million. Scheduling and case management conference continued to 11/1/17 at 9:30 a.m. Order approving stipulation for entry of judgment in Superior Court entered on 9/25/17. Order denying in part and granting in party debtor's motion for order awarding attorney's fees against International Fidelity Insurance Company pursuant to contract entered on 10/10/17.

Miyagi Sushi, Inc.

RS-16-16990-MJ, Chapter 11, Filed 08/07/16, Assets \$50-100 million and Liabilities \$500-1 million. Small business monthly operating report for period 8/1/17 - 8/31/17 filed 9/15/17.

Nasty Gal Inc.

LA-16-24862-BB, Chapter 11, Filed 11/09/16, Assets \$10- 50 million and Liabilities \$10-50 million. Order entered on 10/12/17 approving stipulation between Province Inc., as trustee of the NG DIP Liquidating Trust, and the Center for Environmental Health to continue hearing to 11/29/17 at 10 a.m. on the NG DIP Liquidating Trust's objection to Proof of Claim No. 316-1. Notice of lodgment of order re: final applications for compensation and reimbursement of expenses of professionals filed on 10/18/17.

Ronald Gillyard

SV-17-11693-VK, Chapter 11, Filed 06/27/17, Assets \$1- 10 million and Liabilities \$1-10 million. Order dismissing case entered on 10/12/17.

Shepherd University

LA-17-19964-BB, Chapter 11, Filed 08/14/17, Assets \$1- 10 million and Liabilities \$1-10 million. Stipulation by U.S. Trustee and Shepherd University directing the appointment of an examiner was filed on 10/17/17. Hearing for the motion for authority to obtain credit under section 364 filed by Shepherd University continued to 12/6/17. 10/30/17 is the deadline to set claims bar date notice. Claims bar date set for 12/22/17.

Solid Landing Behavioral Health Inc.

(Lead case to JNTADMIN cases) Cedar Creek Recovery Inc, EMS Toxicology, Silver Rock Recovery, Sure Haven Inc. SA-17-12213, SA-17-12218, SA-17-12221, SA-17-12222, SA-17-12223, Chapter 11, Filed 6/1/17, Assets \$50- 100 million and Liabilities \$10-50 million. Hearing held and order granting motion for relief from the automatic stay personal property; Hearing set on motion for relief from stay -action in non-bankruptcy forum continued hearing set for 10/25/17 at 10 a.m. Crtrm 5D; Status report filed 10/4/17; U.S. Trustee filed motion to dismiss or convert case filed 10/4/17 hearing set for 11/8/17 at 10 a.m.; Application of compensation filed and hearing set 10/25/17 at 10 a.m.; Stipulation by Solid Landing Behavioral Health filed 10/5/17.

Tours Incorporated, Inc.

SV-17-10256-MT, Chapter 11, Filed 1/31/17. Assets \$1-10 million and Liabilities \$1-10 million. Scheduling and case management conference continued to 12/6/17 at 9:30 a.m. Order granting motion to set last day to file proofs of claim entered 9/29/17. Amended plan and amended disclosure statement filed on 10/4/17.

WHAA LLC

RS-17014661-MW, Chapter 11, Filed 6/2/17, Assets \$1-10 million and Liabilities \$1-10 million. Status conference scheduling order entered 9/12/17 continuing matter to 12/7/17 @ 9 a.m., courtroom 225 Riverside; Notice of bar date for filing proof of claim filed 9/15/17 - Bar date: 11/15/17 for creditors; Governmental units: 11/29/17; Monthly operating report #3 for month ending 8/31/17 filed 9/21/17; Meeting of creditors continued to 10/26/17 @ 2:30 p.m.

WJA Asset Management, LLC

(Lead case to JNTADMIN cases) 5827 Winland Hills Drive Development Fund, Alabama Housing Fund, CA Express Fund, CA See Jane Go Fund, CA Whirl Fund, Clairton Residential Renewal, Equity Indexed Managed Fund, Luxury Asset Purchasing International, LVNV Multi Family, PMB Managed Fund, Prosper Managed Fund, TD Opportunity Fund, TD Reo Fund, Urban Produce Fund, Whirl Fund, WJA Express Fund, WJA Real Estate Opportunity Fund I, WJA Real Estate Opportunity Fund II, WJA Secure Real Estate Fund, WJA Secure Income Fund, William Jordan Investments; CA Real Estate Opportunities Fund I, CA Real Estate Opportunity Fund II, California Indexed Growth Fund, Secure California Income Fund, CA Real Estate Opportunity Fund III. SA-17-11996, SA-17-11997, SA-17-11998, SA-17-11999, SA-17-12000, SA-17-12001, SA-17-12002, SA-17-12003, SA-17-12004, SA-17-12005, SA-17-12006, SA-17-12008, SA-17-12009, SA-17-12010, SA-17-12011, SA-17-12012, SA-17-12013, SA-17-12015, SA-17-12016, SA-17-12018, SA-17-12019, SA-17-12124, SA-17-12125, SA-17-12126, SA-17-12127, SA-17-12285, Chapter 11, Filed 5/18/2017 & 5/25/2017 & 6/6/17, Assets \$1-5 million and Liabilities \$1-10 million. Motion to extend exclusivity period for filing chapter 11 plan and disclosure statement requesting a hearing filed 9/15/2017; Monthly operating reports filed; Declaration that no party request a hearing on motion filed 9/22/17 & 10/9/17; Motion to abandon motion for order authorizing abandonment of personal property located 23046 Avenida de la Carlota suite 150 Laguna Hills, CA filed 9/29/17; Status report second chapter 11 with proof of service filed 10/5/17; Status conference hearing continued to 10/19/17 at 11 a.m. Crtrm 5C.

*Based on a combination of asset and liability levels, number of creditors, high activity, and/or name recognition.