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TO: Chapter 13 Practitioners

FROM: Hon. Caryl E. Delano 

DATE: December 4, 2023

SUBJECT: Administrative Order FLMB-2023-3 Prescribing Procedures for Chapter 13 Cases Filed on or After December 4, 2023; Revised Model Plan; Revised Order Confirming Plan.

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Effective December 4, 2023, the Court entered an amended *Administrative Order Prescribing Procedures for Chapter 13 Cases* and has adopted a revised *Model Plan* and *Order Confirming Plan*, all of which are posted in the Court's Procedure Manual available on The Source at [www.flmb.uscourts.gov](http://www.flmb.uscourts.gov). The revisions were made to conform the Administrative Order, the Model Plan, and the Order Confirming Plan to our current Chapter 13 procedures; to facilitate more uniform Chapter 13 procedures throughout the Middle District; and to make the procedures more understandable for practitioners, debtors, and creditors.

On November 6, 2023, drafts of the proposed revisions to the Chapter 13 forms were emailed to all CM/ECF Users and posted on the Court's website for public comment through December 20, 2023. I would like to thank our judges, the Chapter 13 Trustees, the members of the Ad Hoc Chapter 13 Committee, and the attorneys who submitted comments to the proposed forms for their participation in this process.

Chapter 13 practitioners are strongly encouraged to start using the revised Model Plan as soon as possible. A fillable PDF form will be available in the Procedure Manual shortly and I am advised that Best Case is in the process of revising its form Model Plan.

The vast majority of the revisions are stylistic. The following is a summary of the substantive revisions. I have highlighted the substantive revisions made after the November 6 posting.

### **Summary of Substantive Revisions to the Administrative Order Governing Procedures in Chapter 13 Cases**

Paragraph 1 – Debtors' attorneys (and Trustees for unrepresented debtors) must file a proof of service of the Administrative Order on the Debtor.

Paragraph 4 – provides the Trustees’ website addresses for debtors to locate information regarding their plan payments.

Paragraph 6.B.(iii) – provides that adequate protection payments on loans for which the Plan provides for MMM must be in an amount sufficient to cover monthly HOA and ad valorem property taxes.

Paragraph 6.B.(iv) – If the Plan provides for mortgage modification mediation and the mediation does not result in a modified mortgage, Debtor must file an amended Plan within 14 days of the mediator’s final report or notice of denial of a modification.

Paragraph 7 – clarifies that creditors’ and lessors’ acceptance of direct payments via ACH transfer does not violate the automatic stay and that if the Plan provides for the Debtor to make a direct payment to the creditor/lessor, the automatic stay is terminated upon the filing of the Plan.

Paragraph 8.F. – If Debtor timely pays Plan Payments in an amount sufficient for the Trustee to disburse adequate protection payments to secured creditors/lessors as set forth in the Plan, such adequate protection payments are deemed contractually timely as to the secured creditor/lessor.

Paragraphs 11 and 12 clarify the process for the refund of undisbursed payments if the case is dismissed or converted and the deadline for filing administrative expense claims, including claims by Debtor’s attorney for fees.

Paragraph 14 – the reimposition of the automatic stay is effective upon Debtor’s filing and service of an amended Plan that provides for a secured creditor or lessor and any known successor in interest to the creditor or lessor.

Paragraph 16.A. – provides that “Debtor must be able to testify at the meeting of creditors scheduled under § 341(a) and Rule 2003(a) that Debtor has filed all tax returns for all taxable periods ending during the four-year period ending on the petition date.”

Paragraphs 26, 27, and 28 – address extensions of time to object to Debtor’s claimed exemptions.

Paragraph 29 – upon request, Debtor must provide information regarding Debtor’s interest in a business, corporation, or trust.

Paragraph 30 – clarifies Debtor’s duty to disclose to the Trustee and file appropriate amendments to report changes in financial circumstances.

### **Summary of Substantive Revisions to the Model Plan**

Section A – a check box has been added on the first page to indicate that student loans are provided for in Section E, Nonstandard Provisions.

Section 5(c) – consistent with the Administrative Order, adequate protection payments on loans for which the Plan provides for MMM must be in an amount sufficient to cover monthly HOA and ad valorem property taxes.

Section 5(g) applies to secured claims being paid through the Plan under § 1322(b)(2) and also under § 1322(c)(2) for claims secured by Debtor's principal residence that mature during the Plan.

### **Summary of Substantive Revisions to the Order Confirming Plan**

Revisions to the Order Confirming Plan are largely stylistic and include a re-ordering of the paragraphs to more closely track the Chapter 13 process (e.g., Debtor's obligations under the confirmed Plan; the Trustee's distribution of payments and claims allowance; payment of administrative expenses if the case is dismissed or converted; and discharge provisions). Substantive provisions include the following:

Paragraph 11 provides that Debtor's timely Plan Payments to the Trustee are deemed to be paid contractually on time as to secured creditors if their payments are included in Plan Payments.

Paragraphs 11-15 clarify the disallowance of claims and distributions by the Trustee.

Paragraphs 22 and 23 clarify the process for the refund of undisbursed plan payments if the case is dismissed or converted to another chapter (including Chapter 12) and the deadline for filing administrative expense claims, including claims by Debtor's attorney for fees if they seek payment from the Chapter 13 Trustee.

Paragraph 9 clarifies the Debtor's duty to disclose changes in financial circumstances and assets.

The "Appendix" to the Order Confirming the Plan (relating to the filing of tax returns and payment of taxes) has been deleted.