

REASONS FOR COMMON RECOMMENDATION PROVISIONS

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RECOMMENDATION LANGUAGE	REASON(S) FOR
The principal amount to be paid to [creditor] is to be reduced to the amount stated in the creditor's proof of claim, to be paid at the rate of interest stated in the Plan, as agreed with the creditor, or per Court order.	The Trustee wants to make sure the creditor is paid only the proof of claim amount and the interest is paid pursuant to what was noticed to the creditor.
The best interest of creditors test amount is [amount] and the order confirming is to state that unsecured claims are to be paid this amount before the Plan is deemed completed. Plan funding to be made adequate.	It is required that unsecured creditors in a Chapter 13 bankruptcy receive at least as much as they would have in a Chapter 7 bankruptcy according to §1325(a)(4).
Pursuant to the decision in <u>Wiegand</u> , 386 B.R. 238 (9 th Cir. BAP 2008), the inclusion of expenses on Line 3c in the 22C Form is improper. This means that the income is above the applicable median family income and, therefore, the balance of the 22C Form must be completed and filed.	Form 22C conflicts with §1325(b)(2)(B).
The Debtors' Schedule I discloses that one of the Debtors has a payroll deduction for the repayment of a 401(k) loan. The Trustee requires receipt of the loan documents as the disposable income requirement of § 1325(b) is at issue. The Trustee will require an increase in plan payments if the loan is paid off during the life of the Plan.	If the loan is paid off during the life of the plan then, at that time, DMI will increase. As a result, plan payments must increase accordingly.
Attorney fee language is not in accordance with Judge's requirements.	Judge Marlar has had issues with attorney fee language in SOC's and wants the orders to contain certain language.

<p>The attorney fee and costs requested by counsel exceed the standard amount in this district for a flat fee case. The Trustee objects and requires that counsel file and notice to all creditors a separate fee application for approval by the Court or reduce the fee and costs, including any amounts paid pre petition, to a total of \$4,500.</p>	<p>Typically, the Trustees will object to a fee amount over the limits and request that the attorney file a fee application.</p>
<p>The attorney's Rule 2016(b) Statement discloses a pre-petition payment of attorney fees from the Debtor(s), yet the Statement of Financial Affairs # 9 has no disclosure of the payment. The Statement of Financial Affairs # 9 must be amended.</p>	<p>SoFA is intended to provide a complete pre-filing financial history for the debtors. The 2016(b) Statement is not a substitute for disclosure on SoFA.</p>
<p>The Trustee conditionally objects to the attorney fees requested in the Plan. The fee application in the Plan fails to provide for all services (other than representation in adversary proceedings) listed in paragraph (F)(1) of the Attorney Application for Payment of Attorney Fees. The fee amount is to be adjusted or appropriate language in the Order Confirming Plan is to state that all services listed in paragraph (F)(1), except for adversary proceedings, are included in the flat fee amount.</p>	<p>This recommendation is based on G.O. 106 guidelines for flat fees and minimum required services.</p>
<p>The Application for Payment of Attorney Fees carves out some pre-confirmation services as not included in the Flat Fee amount but, instead, for which the attorney will charge an hourly rate. Regardless of the fee arrangement, counsel is to represent the debtor(s) throughout the case until the Court issues an order permitting counsel to withdraw or the case is closed.</p>	<p>This recommendation is based on G.O. 106 which outlines requirements for attorney fees and services.</p>
<p>Counsel places too many plan provisions in the Additional Provisions of the Model Plan. One purpose of the Court's adoption of a Model Plan form is to minimize superfluous provisions to streamline review of the Plan by parties in interest. If counsel persists in placing excessive provisions in the Plans, the Trustee will objection to confirmation and get the Court to rule on the matter.</p>	<p>G.O. 104 requires the use of model chapter 13 plan.</p>

<p>Debtor has payments for a domestic support obligation deducted from wages. For the Trustee to fulfill his duties under 11 U.S.C. § 1302(b)(6) and (d), the Trustee requires the Debtor to file an amended Schedule E and declaration to include the name, address, telephone number, and atlas number for each recipient of a domestic support obligation. The Debtor may include any governmental agency that receives the payments, but the Trustee requires the information for the ultimate recipient of the payments.</p>	<p>§ 1302(b)(6) and (d) require the trustee to provide written notice to the claim-holder and to the state child support enforcement agency. It is required that the trustee include the claim-holder's name, address, and telephone number in notices to the relevant enforcement agency.</p>
<p>Debtor has a domestic support obligation. Pursuant to 11 U.S.C. § 1325(a)(8), the order confirming plan must state: "The debtor has paid all amounts that are required to be paid under a domestic support obligation and that first became payable after the date of the filing of the petition." Moreover, with the proposed order confirming plan, the Trustee requires that the Debtor give the Trustee verification of being current in post-petition DSO payments.</p>	<p>§1325(a)(8) states that a court shall confirm a plan if the debtor has paid all amounts that are required to be paid under a DSO.</p>
<p>The Internal Revenue Service has filed a proof of claim under § 1305(a)(1) for a post-petition tax liability. The Trustee has no objection to the order confirming plan provide for full payment of the claim <i>provided</i> the plan funding is increased by the same amount plus the trustee's statutory fee. If the order confirming plan fails to provide for payment of the claim as stated above, the Trustee will make no payment on it.</p>	
<p>The proof of claim filed by the [IRS or ADOR] asserts a secured claim in tax refund(s). This discrepancy must be resolved before confirmation of the Plan. Unless the order confirming the Plan provides that the creditor be allowed to setoff the refund(s), the Trustee requires that: (a) the Debtor(s) file an objection to the proof of claim; or (b) the holder of the claim endorse the order confirming the Plan.</p>	<p>This is where the IRS or ADOR have filed a secured claim to offset the tax refund it is holding. Most of the time, the SOC will provide that the tax creditor can setoff the refund.</p>

<p>The proof of claim filed by the [tax agency] dated [dated] shows an estimated [federal or state] income tax liability of \$[amount], for year(s) [year(s)] which the [tax agency] advises is based upon an ongoing audit of the related tax return(s). The amount of additional tax due (if any) will not be determined for a period of six months to one year, according to [tax agency]. The Order Confirming the Plan must include a contingent provision that any additional priority tax liability arising from the audit must be paid in full by a modified Plan or amended Order Confirming the Plan.</p>	<p>An ongoing audit may result in a higher priority tax claim. Allowing a contingent provision will allow the plan to be confirmed with the assurances that the SOC or Plan will be modified in the future if the priority tax debt is higher.</p>
<p>Pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not entitled to a discharge in this case due to the fact that the Debtor received a discharge in a Chapter 7 case filed within the four-year period prior to the petition date in this case. The proposed order confirming plan must include a provision whereby the Debtor acknowledges the unavailability of a discharge in this case.</p>	
<p>The Statement of Financial Affairs # 8 or an income tax return discloses gambling losses. The Trustee advises the Debtor(s) that post-petition gambling losses must be limited to the amount of recreation expense in Schedule J and the Trustee will oppose any motion for moratorium or waiver or payment due to gambling losses. The Trustee requires that any proposed order confirming plan provide that “The Debtor(s) shall not seek a plan modification or motion for moratorium due to post-petition gambling debt or the diversion of income for gambling activities.”</p>	

<p>The Debtor schedules an interest in a pending personal injury claim. The Trustee requires information regarding the current status of the case, an estimate of the value of the claim, and the expected date when the case will be resolved. The Trustee advises the Debtor that any settlement is subject to Bankruptcy Court approval and that all or a portion of any settlement or recovery may be required to be turned over to the Trustee for the benefit of creditors. The Debtor's attorney must contact the Trustee's staff attorney, Scott Lieske, to prepare an Application to Appoint Special Counsel. Finally, the proposed Order Confirming Plan must include a provision that any funds from the claim will be applied first to unsecured, priority claims, then to unsecured, nonpriority claims, then finally as advance Plan payments, but the term of the Plan will not be reduced to fewer than 36 months unless all claims are paid in full.</p>	<p>§541 and § 1306 (a) outline property of the estate.</p>
<p>The Order Confirming Plan must provide that nonexempt property does not vest in the Debtor(s) upon confirmation and it remains property of the bankruptcy estate.</p>	<p>§541 and § 1306 (a) outline property of the estate. § 1306 (b) requires the debtor to remain in possession of this property except as provided in a confirmed plan or order confirming plan.</p>
<p>The Trustee requires copies of two recent consecutive pay stubs after the petition date to verify scheduled income, plan payment feasibility, and compliance with the disposable income utilization requirement of the Code.</p>	<p>The Trustee would have previously requested income verification at the meeting of creditors and in the Trustee's Questionnaire. There is no reason why the income verification has not been provided by the time the Trustee does the Recommendation.</p>
<p>A self-employed debtor is usually required by federal law to file quarterly estimated tax vouchers and to pay in full the estimated income tax due for the given quarter. Trustee requires a copy of such voucher as filed for the quarter ending __, together with proof of payment [copy of canceled (paid) check (front and back) or copy of other form of payment]. Similar documentation may be requested for future quarters.</p>	<p>The Trustee wants to confirm that the debtor is starting to withhold the proper amount of self employment taxes. Many times, a debtor is in financial trouble because of not withholding self employment taxes.</p>

<p>If the debtor is not required to pay self-employment taxes, the Trustee requires a copy of the income tax return for the previous year to confirm no self employment taxes are owed.</p>	<p>The purpose of this request is to ensure that no post-petition taxes are incurred.</p>
<p>Schedule B contains an incomplete or generic listing of business equipment. The Trustee requests that the Debtor(s) provide him with a detailed inventory of the business assets. The itemized inventory is to consist of: (1) equipment, machinery, vehicles, tools, office furniture and other nonexpendable property; (2) parts, supplies and other expendable items, at cost; (3) items held for resale, at cost; and (4) accounts receivable, at invoiced amounts. Also, for the duration of this case, a debtor engaged in business is required to keep a record of receipts and the disposition of money and property.</p>	<p>Property on Schedules B and C must be specifically listed. Generic lumping of property is not acceptable. Many times, a debtor will not list the specific business equipment but just a statement "business equipment." If it appears all of the property is properly disclosed on Schedule B (no generic listing), then the Trustee may not make this request.</p>
<p>A self-employed debtor is required to file Business Operating Statements with the Court and to provide copies to the Trustee. Statements for [month] and [month], are past due and must be received in the Trustee's office not later than [date]. Debtor is reminded that this is a monthly filing requirement and therefore the [future month] Statement must be received not later than [date].</p>	<p>Even though the debtor would have been told at the meeting of . creditors to file BOS, many times the debtor must take the form and then forget about it.</p>
<p>[Creditor] has filed an objection to the Plan. The attorney for the Debtor(s) must notify the Trustee if the objection has been resolved or, if the objection is unresolved, file the appropriate motion to get the Court to hold a hearing on the objection. If resolution of the objection changes Plan funding requirements, the Trustee requires receipt of an amended Plan analysis (Local Form 13-2) with any proposed order confirming the Plan. If a motion is filed to get a hearing before the Court, the time to submit a proposed Order confirming the Plan to the Trustee is extended.</p>	<p>The debtor has the burden of going forward with confirming the plan. Once the appropriate pleading has been filed then the matter is then up to the Court:.</p> <p>Also, if resolution has taken place without a hearing, creditor must sign off on SOC or withdraw objection.</p>

<p>The proof of claim filed by [creditor] differs from the creditor's treatment under the Plan or is not provided for by the Plan. This discrepancy must be resolved before confirmation of the Plan. The Trustee requires that: (a) the Debtor(s) file an objection to the proof of claim; (b) the holder of the claim endorse the order confirming; (c) the order confirming to provide for the creditor pursuant to the proof of claim; or (d) an amended Plan be filed to provide for payment on the claim. If resolution of the claim changes Plan funding requirements, the Trustee requires receipt of an amended Plan analysis (Local Form 13-2) with any proposed order confirming the Plan.</p>	<p>This is usually where the Plan fails to make any provision for the payment to a creditor but the creditor has filed a secured or priority proof of claim. By taking care of such problems early on in the case, the debtor, debtor's attorney and the trustee rarely have to address such problems later on.</p>
<p>Counsel has been informed by the Trustee's office that the debtor needs to do one of the following: 1) File an objection to the [tax agency's] proof of claim; 2) File tax returns showing inadequate income; or 3) Submit a sworn affidavit to the [tax agency] and the Trustee stating with proof that the Debtor is not required to file returns.</p>	<p>The debtor probably states that he or she earned insufficient income to be required to file tax returns. However, the proof of claim must be withdrawn or the Court sustains an objection to it before confirmation.</p>
<p>The 2016(b) Statement filed by the Debtors' counsel differs from the Fee Application contained in the Plan. The Trustee objects to the Application of Fees, if the fee agreement signed by the Debtor(s) differs from the Application for payment of Administrative Fees. The Trustee requires a copy of the attorney fee agreement.</p>	<p>The Plan and 2016(b) must be consistent with each other. If the two documents remain inconsistent, then the Trustee would either not pay on the attorney fees or pay the lesser amount.</p>
<p>The Petition fails to state if any prior bankruptcy cases were filed in the last six years or are pending. The Petition must be amended. If there are any previous or pending Bankruptcy cases, the location, case number and date filed must be disclosed. If there are no previous or pending cases, the Petition must state "None."</p>	<p>The Petition must disclose prior bankruptcy cases in the last six years regardless of status.</p>

The Court claims docket has no designation as to whether the proof of claim filed by [creditor] claims secured or priority status. The creditor failed to serve a copy of the claim on the Trustee and, presumably, counsel for the Debtor(s), in violation of Rule 2083-10 (? or 2084-19?), L.R.B.P. The Trustee presumes the creditor's claim is secured and, therefore, differs from the creditor's treatment under the Plan or is not provided for by the Plan. The claim discrepancy must be resolved before the Trustee recommends confirmation of the Plan. As to the claim: (a) If the claim is filed as an unsecured, nonpriority claim, then the Debtor(s) must provide a copy of the claim to the Trustee; (b) If the claim is filed as secured but the Debtor(s) believe that the debt is unsecured, then the Debtor(s) must file an objection to the claim; or (c) If the claim is other than an unsecured, nonpriority claim, then the Trustee requires that: (1) the holder of the claim endorses the order confirming the plan; (2) the order confirming the plan provides for payment of the claim pursuant to the claim; or (3) the Debtor(s) file(s) an amended Plan to provide for some payment on the secured claim. If the proof of claim is filed as secured, the Trustee requests that counsel provide a copy of the claim so he can inform the creditor of the Local Rule.

Sometimes, the Clerk's office will fail to designate the nature of a claim. Depending on the creditor involved, the Trustee will assume that the claim is filed as priority or secured. Therefore, some action needs to be taken.

The Plan provides for direct payment to secured creditor [creditor]. The Trustee objects and requires that payments to creditors secured by personal property be paid through the Trustee, unless there is a compelling reason for the direct payment. The Trustee requires a revised Plan or the order confirming to provide for payment through the Trustee unless a compelling reason is stated in writing.

With a few exceptions, the Trustees require payments on secured claims, besides post-petition mortgage payments, be made through him.

<p>The Plan proposes payment of a secured claim to [creditor] who has filed no secured proof of claim. The Trustee requires that the Debtor(s) provide verification of the creditor's security interest by providing him with a copy of the security documents, such as a security agreement, UCC-1, title, deed of trust or the like. Moreover, the Trustee requires that the Order Confirming Plan provide as follows: "The Trustee has authority to pay on the secured debt owed to [creditor] even though the creditor has filed no secured proof of claim, but the Plan and this Order are not an informal proof of claim for any creditor."</p>	<p>The Trustee wants the debtor to provide for all secured claims so that such issues do not arise after the Court confirms the plan.</p> <p>The Trustee wants to verify the security interest in the claim. As to secured claims only, the Trustee will pay on the claim.</p> <p>This provision has no application to unsecured claims.</p> <p>Model Plan for has a provision that if a creditor fails to file a secured POC or files a wholly unsecured claim, the debtor may delete the proposed payment from the order confirming plan.</p>
<p>The Trustee requests a copy of the Debtor's state and federal income tax returns for [year] and the turnover of any net tax refunds not received as of the petition date as nonexempt disposable income. If the Debtor spent the income tax refunds, then the Debtor must provide a written statement of how the refunds were spent and the Order confirming plan must provide for increased Plan yield to meet the best interests of creditors test.</p>	<p>Pursuant to § 521, the Trustee is asking for the returns and the turnover of tax refunds as additional disposable income.</p>
<p>Plan fails to include an analysis of payment distribution as required by Local Rule of Bankruptcy Procedure 2083-4(a)(3). Plan Analysis Form 13-2 to be filed with the Court, copy to the Trustee.</p>	<p>The plan analysis is deficient in form.</p>
<p>The Plan fails to provide information regarding the value of the real property, as required by Local Rule of Bankruptcy Procedure 2083-4(a)(1). The Order confirming must include the required information.</p>	<p>This information is required by the Local Rule so that creditors can weigh the information as to filing an objection to the plan.</p>
<p>Statement of Financial Affairs, Item #1, fails to include [year] income. Statement to be amended to include the required information.</p>	<p>See Official Form 7.</p>

<p>The Statement of Financial Affairs,# 3, fails to disclose payments to [creditor] even though the monthly payments were current when the petition was filed. The Statement, # 3, must be amended to disclose prepetition payments to all creditors.</p>	<p>See Official Form 7.</p>
<p>The attorney's Rule 2016(b) Statement discloses a prepetition payment of attorney fees from the Debtor(s), yet the Statement of Financial Affairs# 9 has no disclosure of the payment. The Statement of Financial Affairs# 9 must be amended.</p>	<p>See Official Form 7.</p>
<p>Other requirements:</p>	
<p>(a) Due to the possibility of errors on the claims docket, it is the attorney's responsibility to review all proofs of claim filed with the Court and resolve any discrepancies between the claims and the Plan prior to submitting any proposed Order Confirming Plan to the Trustee.</p>	<p>Debtors are required for moving their cases forward and that includes resolving claim issues. The claims docket often does not show all claims filed.</p>
<p>(b) Requests by the Trustee for documents and information are not superseded by the filing of an amended plan or motion for moratorium.</p>	<p>Requests for information must be met even though the debtor has filed an amended plan or such.</p>
<p>(c) The Trustee will object to any reduction in the Plan duration or payout in a proposed Order Confirming Plan unless an amended or modified plan is filed and noticed out.</p>	<p>Creditors must be notified of changes that impact their claims or amount to be paid on them.</p>
<p>(d) The Trustee requires that any proposed Order Confirming Plan state: "The Plan and this Order shall not constitute an informal proof of claim for any creditor."</p>	<p>This provision is to prevent creditors from arguing that the plan or SOC are an informal claim for the creditors. Unsecured creditors must timely file their claims.</p>

<p>The Trustee requires receipt of a statement from a competent authority that withholding, as reflected in paystubs provided to the Trustee, is sufficiently accurate to preclude the post-petition accrual of a tax debt or a refund. Plan payment feasibility and compliance with the disposable income utilization requirement of the Code must be verified.</p>	<p>Debtor's returns showed too large of a tax refund or liability. Debtors should adjust their tax withholdings such that they have a minimal refund or liability.</p>
<p>The Trustee notes that payment for support is reported on Schedule J. Trustee requires that the debtor(s) provide a copy of the Court order for said support and documented evidence that all post-petition payments on said obligation have been paid.</p>	<p>Verification of such expenses is done by the Trustee.</p>
<p>Standard requirements:</p>	
<p>To expedite the order review process, counsel must use the recommended form for the order confirming plan found at http://www.chapter13.info/forms.asp, form link: http://www.chapter13.info/Userfiles/user1886/model-SOC-form.pdf</p>	
<p>The order confirming plan must be accompanied by a cover letter that goes over the Trustee's Recommendation items by each paragraph. If counsel fails to use the order form and provide such letter, the Trustee will reject the proposed order outright and the time to comply with any recommendation is not extended.</p>	
<p>Any order confirming plan to provide that the Debtors will give the Trustee a copy of the 2011-2014 federal and state income tax returns, including all attachments, forms, schedules and statements within fifteen days of filing them.</p>	

<p>Nothing in the Plan or Order Confirming Plan is to alter counsel's obligation to represent the Debtors. Counsel is to represent the Debtor(s) in all matters regardless of the fee agreement until the Court issues an order permitting counsel to withdraw or the case is closed. (Per GO 106)</p>	
<p>According to paragraph II.H.3. of the "Administrative Procedures for Electronically Filed Cases," as governed by Local Rule 5005-2(e), the Debtors' attorney is to retain the original signatures of all signatories to the Stipulated Order Confirming Plan (other than that of the Trustee). Pursuant to Local Rule 2084-13(c), the Trustee will upload the proposed Order Confirming a plan or granting a motion for a moratorium.</p>	
<p>Trustee can dismiss the case for non-payment: Short recommendation filed for 3 month delinquency in plan payments and/or unfiled tax returns.</p>	<p>After entering into an agreement with the court and/or attorney, the case can be reviewed for dismissal due to plan payment delinquency.</p>