

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

In re)
CHAPTER 13 CASES) DISTRIBUTION ORDER REGARDING
) MODEL CHAPTER 13 PLAN
) FEBRUARY 1, 2016
)
) APPLICABLE TO CASES PENDING IN
) SAN JOSE DIVISION

This Order applies in the San Jose Division for Chapter 13 cases or plans filed on or after February 1, 2016, using the Model Chapter 13 Plan.

(1) The Chapter 13 Standing Trustee (the “Trustee”) may collect and receive the percentage fixed fee under 28 U.S.C. §586(e) on all post-petition payments received before or after confirmation excluding direct payments made pursuant to the plan.

(2) Before confirmation, the Trustee shall pay each allowed Class 2 claim secured by a purchase money security interest in personal property an adequate protection payment as required by 11 U.S.C. § 1326(a)(1)(C). The Trustee shall disburse these adequate protection payments in accordance with the Trustee’s customary monthly disbursement schedule within 30 days after a proof of claim is filed.

(3) After confirmation, the Trustee shall make monthly payments in the following priority:

- (a) Fixed monthly payments for Mortgage Modification Mediation Program claims provided for in Section 5.01 of the plan.

1 (b) Allowed Administrative Expenses:

- 2 (i) Unpaid compensation to a former chapter 7 trustee as
3 authorized by 11 U.S.C. § 1326(b)(3)(B);
4 (ii) Fixed monthly payments for administrative claims provided for
5 in Section 2.03 of the plan, and any additional fees ordered.

6 (c) Allowed Claims:

- 7 (i) Fixed monthly payments to Class 1 arrearage claims, Class 2
8 claims, and arrearage claims in Section 3.01 of the plan;
9 (ii) Class 5 claims;
10 (iii) Class 6 claims;
11 (iv) Class 7 claims.

12 (4) To the extent that payments received by the Trustee within a month are
13 insufficient to pay all fixed monthly payments within a priority grouping specified in
14 Paragraphs 3(b) and 3 (c)(i) of this order, the Trustee shall pay the holders of allowed claims
15 and expenses within that priority grouping based on the amount of the accumulated interest
16 due on their claims. The Trustee shall then use her discretion to distribute any available funds
17 to claims within that priority grouping based upon any unpaid portion of the fixed monthly
18 payment provided in the plan. To the extent that payments received by the Trustee within a
19 month exceed the amount required to pay all fixed monthly payments, the Trustee shall
20 disburse the excess funds to priority groupings specified in Section 3(b) and 3(c)(i), pro-rata
21 based on their claim balance.

22 (5) Pro rata payments.

- 23 (a) The Trustee shall pay pro rata the holders of allowed claims in Class 5
24 in the order prescribed by the Bankruptcy Code.
25 (b) The Trustee shall pay pro-rata the holders of allowed claims in Class 6
26 and Class 7 based on the amount specified in the proof of claim until such
27 claims are paid as provided in the plan.

28 (6) The debtor shall make any payments that become contractually due post-
petition as set forth in the plan whether or not a proof of claim is filed or the plan is
confirmed.

1 (7) Notwithstanding Section 2.04 of the plan regarding the start date for payments
2 on Class 1 arrearage claims, the Trustee will use a payment start date that is no sooner than 30
3 days from the confirmation date.

4 (8) The following shall apply to all plans that include payments in Section 5.01 of
5 the plan as part of the Mortgage Modification Mediation Program (the “MMM Program”):

6 (a) The Trustee shall not make a partial distribution on account of a post-
7 petition payment specified in Section 5.01 of the plan;

8 (b) If the debtor makes a partial plan payment, or if the plan payment is not
9 paid on time, and the Trustee is unable to make timely a post-petition payment
10 specified in Section 5.01 of the plan, then the debtor’s cure of this default shall
11 include any applicable late charge;

12 (c) The automatic stay is modified to permit holders of claims specified in
13 Section 5.01 of the plan to send statements, impound, and escrow notices, and
14 notices concerning interest rate adjustments or the assessment of fees and costs
15 to the debtor. However, the Trustee will not make post-petition payment
16 adjustments or pay post-petition fees, charges, or assessments until they are
17 demanded in accordance with Federal Rule of Bankruptcy Procedure 3002.1:

18 (i) If the holder of a claim specified in Section 5.01 of the plan
19 provides the debtor and the Trustee with notice of a payment change in
20 accordance with Federal Rule of Bankruptcy Procedure 3002.1(b), then
21 the debtor shall adjust the plan payment accordingly;

22 (ii) If the holder of a claim specified in Section 5.01 of the plan
23 provides the debtor and the Trustee with notice of post-petition fees,
24 expenses, and charges in accordance with Federal Rule of Bankruptcy
25 Procedure 3002.1(c), then the debtor shall modify this plan if the debtor
26 wishes to provide for such fees, expenses, and charges.

27 (d) Post-petition payments made by Trustee and received by the holder of a
28 claim specified in Section 5.01 of the plan shall be applied as if the claim were
current and no arrearage existed on the date the case was filed;

(e) Upon confirmation of a plan, to the extent that there is any unpaid
amount held by the Trustee on account of fixed monthly payments to the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

holder of a claim specified in Section 5.01 of the plan that were not previously distributed pursuant to an interim order authorizing pre-confirmation distributions or otherwise provided for in the order confirming plan, those funds shall be paid first to the holder of claims set forth in Paragraph 3 (b) of this order until such claims are paid in full, and then the balance, if any, as set forth in this distribution order.

Dated: February 1, 2016 Stephen L. Johnson
Stephen L. Johnson
United States Bankruptcy Judge

Dated: February 1, 2016 M. Elaine Hammond
M. Elaine Hammond
United States Bankruptcy Judge

Dated: February 1, 2016 Hannah L. Blumenstiel
Hannah L. Blumenstiel
United States Bankruptcy Judge