

## **Instructions for Preparing N.D. California Form Plan of Reorganization For Cases under Subchapter V of Chapter 11**

*These instructions explain how to complete the Northern District of California Form Plan of Reorganization for use in cases filed under Subchapter V of Chapter 11 (the “Form Plan”). Use of the Form Plan is strongly encouraged, unless ordered otherwise by the presiding judge. The Form Plan is only for use in SBRA cases. For non-SBRA cases, parties are encouraged to use the court’s Standard-Form Combined Plan and Disclosure Statement, which is posted on the court’s website.*

### **Background for Cases Filed Under Subchapter V**

#### **A. Description and History of Debtor’s Business**

In addition to the information required by 11 U.S.C. § 1190, Debtor should explain the circumstances that led to the filing, the extent to which those circumstances have changed, major events in the case, and how the Plan addresses the financial problem that led to the filing. The statement should be informative rather than argumentative.

#### **B. Liquidation Analysis**

This section requires a comparison of how much creditors will receive under the proposed Plan with the amount they would receive if the case were a Chapter 7 liquidation. The Form Plan includes a liquidation analysis worksheet as Exhibit A.

#### **C. Ability to Make Future Plan Payments and Operating without Further Reorganization**

This section addresses the financial feasibility of the Plan. Using Exhibit B to the Form Plan, please explain how Debtor proposes making the payments required by the Plan by providing a projection of disposable income, as defined by 11 U.S.C. § 1191(d). Please note that Exhibit B includes 2 sections: one for use in individual cases and one for use in corporate cases. Delete the section that does not apply to your case. You must also complete and file Exhibit C to the Form Plan, which is a projection of feasibility on the Effective Date of the Plan.

### **Article 1: Summary**

This article summarizes the Plan. Insert source(s) of payment for Plan, number and type of classes, and proposed dividend (expressed as “cents on the dollar”) to unsecured, nonpriority creditors.

### **Article 2: Classification of Claims and Interests**

Use this article to identify the classes of claims being treated under the Plan.

**2.01 Class 1 (Classified) Priority Claims** include claims entitled to priority under § 507(a) (e.g., customer deposits and employee wage and benefit claims). The required treatment for such claims is specified at 11 U.S.C. § 1129(a)(9)(B).

Set forth each type of priority claim treated in this Plan in a separate section. For example,

2.01(a) Employee Wage Claims (see 11 U.S.C. § 507(a)(4))

2.01(b) Customer Deposits (see 11 U.S.C. § 507(a)(7))

**2.02 Class 2 Secured Claims** include claims that are secured by an interest in debtor's property. The Plan should separate each secured creditor into a different class (e.g., Class 2.1 (Bank), Class 2.2 (Credit Union), Class 2.3 (Auto Lender)).

*Each* secured claim should be treated separately under the Plan.

**2.03 Class 3 Nonpriority Unsecured Claims** includes claims that are neither secured nor entitled to priority of payment.

**2.04 Class 4 Equity Interests** includes any interest of partners, shareholders, or members. These are ownership interests in Debtor and will not apply in an individual case.

### **Article 3: Treatment of Administrative Expense Claims, Priority Tax Claims, and Quarterly and Court Fees**

**3.01 Unclassified claims** – Claims specified in 11 U.S.C. § 1123(a)(1) are not classified. These include: administrative expense claims (11 U.S.C. § 503(b)), “gap” period claims in involuntary cases (11 U.S.C. § 303), and priority tax claims (11 U.S.C. § 507(a)(8)).

**3.02 Administrative expense claims** – specify treatment of administrative expense claims allowed under 11 U.S.C. § 503(b), including professional fees (11 U.S.C. § 503(b)(2)), goods and services received by debtor within 20 days of petition (11 U.S.C. § 503(b)(9)). Under the SBRA, these claims should be treated in one of two ways:

Claims will be paid in full in cash on the effective date, or as otherwise agreed by the creditor; **or**

Claims will be paid over the life of the Plan. Specify timing of payment (e.g., monthly, quarterly), and amount. (11 U.S.C. § 1191(e)).

**3.03 Priority tax claims** – specify treatment of tax claims entitled to priority treatment under 11 U.S.C. § 507(a)(8), which must be paid in accordance with 11 U.S.C. § 1129(a)(9)(C).

### **Article 4: Treatment of Claims and Interests Under the Plan**

#### **4.01 Claims and interests shall be treated as follows under this Plan:**

**Class 1 Priority claims** – specify treatment of priority claims, which are defined at 11 U.S.C. § 507(a) and include customer deposits, employee wage and benefit claims. The treatment required for these claims is specified at 11 U.S.C. § 1129(a)(9)(B) and includes deferred cash payments (consensual plan), or payment in full in cash on the effective date

(non-consensual plan). Attaching a schedule showing the name of the creditor, the payment start date, and the amount of payment is strongly encouraged.

**Class 2 Secured claim of** – specify treatment of secured claims. Possible treatments include:

- Property to be surrendered
- Creditor's rights unchanged (e.g., paid per terms of promissory note)
- Debtor to make regular payments and pay arrears over time
- Debtor to value property under 11 U.S.C. § 506(a) and pay secured claim over time
- Debtor to value property and terminate lien
- Debtor to adjust terms and pay amount due over time

Remember to classify each secured claim in a different class even if the proposed treatment is the same. Attaching a schedule showing the name of the creditor, the payment start date, and the amount of payment is strongly encouraged.

**Class 3 Non-priority unsecured creditors** – specify proposed treatment, which should be consistent with Article 1. Generally, payment should be structured to pay a percentage of unsecured claims (percent plan) or a sum certain which pays claims pro-rata (pot plan). Add a convenience class if applicable. Please attach a schedule showing the name of each creditor, the amount of their claim, the estimated total dividend amount, the payment start date, and the amount of each payment.

**Class 4 Equity security holders of the Debtor** – specify proposed treatment for owners of the enterprise.

#### **Article 5: Allowance and Disallowance of Claims**

These provisions are self-explanatory.

Debtor will not pay disputed claims until the dispute is resolved. In case of a disputed claim, Debtor must securely hold funds that would otherwise be paid to disputed claimholders. Once the dispute is resolved, the funds can be paid to the claimholder, or distributed as otherwise provided. The Plan should specify whether funds attributable to disallowed claims will be retained by Debtor or will be distributed pro-rata to other creditors.

#### **Article 6: Provisions for Executory Contracts and Unexpired Leases**

The Plan should include a list of executory contracts and unexpired leases. It should state the proposed treatment of the executory contract or unexpired lease (e.g., assumed, assumed and assigned, or rejected), as well as the amount of any default to cure and the timing and manner of such cure.

**Article 7: Means of Implementation of the Plan**

This provision calls for a narrative response describing how the Plan will operate. It should be supplemented with financial information from Debtor's **Monthly Operating Reports** indicating Debtor's profitability during the Chapter 11 process, and should be consistent with the information set forth in Exhibits B and C to the Form Plan.

**Article 8: General Provisions**

These provisions are self-explanatory.