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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case
NAME,) No.
)
) Chapter 11
)
Debtor(s).)
_____)

**ORDER ESTABLISHING PROCEDURES FOR DISCLOSURE
STATEMENT HEARING AND CONFIRMATION HEARING¹**

Unless otherwise ordered, the plan proponent shall comply with the following procedures. Section A governs all disclosure statements, regardless of form. For most cases involving individuals or small businesses (as defined in 11 U.S.C. § 101(51C) and (51D)) ("Small Business"), Section B of this order provides abbreviated procedures for hearings in which the plan proponent seeks tentative approval of a disclosure statement and has utilized either the court's Standard-Form Combined Plan and Disclosure Statement (in individual and certain business cases) (the "NDBC Plan/DS") or the national form of a small business plan and disclosure statement (Official

¹ This Order does not apply to cases under the Small Business Reorganization Act of 2019 (New Subchapter V of Chapter 11).
Judge Montali Plan & Disclosure
Statement Order - February 2022 -1-

1 Form Nos. 425A and 425B) (in either case, the "Form DS/Plan").
2 The NDBC Plan/DS and its Instructions, as well as the national
3 forms, are available on the court's website
4 (www.canb.uscourts.gov).

5 Section C sets forth procedures for hearings in more
6 complex chapter 11 cases in which the plan proponent is seeking
7 final approval of a separate disclosure statement in accordance
8 with Fed. R. Bankr. P. 3017. (Such plans and disclosure
9 statements are referred to as a "Traditional DS" or a
10 "Traditional Plan.")

11 **I. DISCLOSURE STATEMENT**

12 **A. GENERAL PROCEDURES FOR ALL DISCLOSURE STATEMENT HEARINGS**

13 1. Upon filing a Traditional DS and a Traditional Plan or
14 a Form DS/Plan, the filer must forward to the court at the same
15 time a hard-copy version marked "Judge's Copy." The face of the
16 document should reflect the date and time of any scheduled
17 hearing for approval of the Traditional DS or for tentative
18 approval of the Form DS/Plan.

19 2. Disclosure statement hearings should not be scheduled
20 on the court's regular law and motion calendar. To schedule a
21 hearing for approval of a Traditional DS, or for tentative
22 approval of a Form DS, the proponent should contact Ms. Lorena
23 Parada at 415-268-2323 or Lorena_Parada@canb.uscourts.gov. A
24 court order is not necessary for scheduling a disclosure
25 statement hearing, notwithstanding Official Form No. 12.

26 **3. Three (3) business days prior to the hearing (and any**
27 **continued hearing), the plan proponent shall advise the law**
28 **clerk by e-mail (Amy_Leitner@canb.uscourts.gov) whether the**

1 **proponent intends to go forward with the hearing. Failure to**
2 **make this 3-day notification may result in a continuance of the**
3 **hearing, or a delay in obtaining court review and approval.**

4 B. PROCEDURES FOR HEARINGS ON FOR TENTATIVE APPROVAL OF
5 DISCLOSURE STATEMENT

6 1. Unless otherwise ordered by the court: (a) individual
7 debtors seeking tentative approval of a disclosure statement
8 must utilize the NDBC Plan/DS and follow the Instructions posted
9 on the court's website; and (b) Small Business debtors seeking
10 tentative approval of a disclosure statement under Fed. R.
11 Bankr. P. 3017.1 must use the Official Form 425A, revised
12 February 2020 and Official Form 425B, revised December 2017.
13 The court may permit some businesses to utilize the NDBC Plan/DS
14 (with modifications).

15 2. The plan proponent may set a hearing for tentative
16 approval of the Form DS/Plan on at least 14 days' notice (filed
17 electronically) and mailed to all non-ECF parties who have
18 appeared in the case and who have requested special notice.
19 Notice need not be served on all creditors. The Form DS/Plan
20 should be filed before or at the same time the notice of hearing
21 is filed.

22 3. After a hearing at which the court tentatively approves
23 the Form Plan/DS, the plan proponent should upload a form of
24 order that is consistent with the Order Tentatively Approving
25 Disclosures in Combined Plan and Disclosure Statement, Fixing
26 Time for Submitting Ballots and Filing Objections to
27 Confirmation of Plan and/or to Final Approval of Disclosure
28

1 Statement and Setting Hearing (available in Judge Montali's
2 forms on the court's website).

3 C. PROCEDURES FOR TRADITIONAL DS HEARINGS

4 1. In cases where a proponent is seeking a final approval
5 of a Traditional DS as adequate under 11 U.S.C. § 1125, the
6 proponent shall provide notice of the hearing to the debtor,
7 creditors, equity security holders, United States Trustee,
8 Securities and Exchange Commission and other parties in interest
9 as provided in Fed. R. Bankr. P. 3017(a) and B.L.R. 3017-1. The
10 notice shall contain the information required by Official Form
11 No. 12 and shall state that the deadline for the filing of
12 objections is seven days prior to the hearing. The Traditional
13 Plan and the Traditional DS shall be served, with the notice,
14 only on the United States Trustee and the persons mentioned in
15 the second sentence of Fed. R. Bankr. P. 3017(a). Proof of
16 service of the foregoing documents must be filed at least three
17 (3) business days prior to the hearing.

18 2. The plan proponent may establish that the disclosure
19 statement meets the applicable requirements of 11 U.S.C.
20 §§ 1125(a) and (b) by offer of proof, declaration or, if the
21 court so permits or requires, live testimony. **In all cases, the**
22 **debtor and a competent witness must be present.** Briefs are not
23 required.

24 3. At the conclusion of the disclosure statement hearing,
25 counsel for the plan proponent shall be prepared to advise the
26 court of the amount of court time the confirmation hearing will
27 require. If a contested confirmation hearing is anticipated,
28 the court will set an evidentiary hearing and will establish

1 procedures for the filing of briefs, exchange and marking of
2 exhibits, disclosure of witnesses and discovery.

3 4. A proponent seeking a continuance of a disclosure
4 statement hearing should appear at the scheduled hearing to make
5 that request, as the hearing will have been noticed out to all
6 creditors. For that reason, the court will not grant advance
7 telephonic requests for continuances. Nonetheless, if a
8 proponent does not anticipate seeking court approval of the
9 disclosure statement at the hearing, the proponent should notify
10 the court as soon as possible.

11 5. The court will not approve a disclosure statement for
12 a plan which, on its face, does not conform to the requirements
13 of the Bankruptcy Code. Accordingly, counsel for the plan
14 proponent who attends the hearing must be familiar with the
15 disclosure statement, the plan, the debtor and chapter 11 of the
16 Bankruptcy Code. In particular, plans should not classify
17 expenses of administration (11 U.S.C. § 503(b)) or unsecured
18 priority tax claims (11 U.S.C. § 507(a)(8)) as those claims are
19 to remain unclassified and are to be treated under 11 U.S.C.
20 § 1129(a)(9)(A) and (C). Further, real property tax claims
21 should normally be classified as senior secured claims.
22 Disclosure statements should contain correct statements of the
23 voting requirements of 11 U.S.C. § 1126(c) with respect to
24 impaired classes of claims and interests.

25 6. Upon approval of the Traditional DS, the plan
26 proponent shall submit to the court a proposed Order Approving
27 Disclosure Statement and Fixing Time conforming to Official Form
28 No. 13, with any modifications required by the court.

1 **clerk by e-mail (Amy_Leitner@canb.uscourts.gov) whether the**
2 **proponent intends to go forward with the hearing.**

3 6. **Uncontested Hearings.** If the plan has been accepted
4 by the requisite majorities and no objections to confirmation
5 have been filed, the plan proponent may establish that the plan
6 meets the applicable requirements of chapter 11 by offer of
7 proof, declaration or, if the court so permits or requires, live
8 testimony. **In all cases, a competent witness must be present.**

9 Unless covered by the proponent's presentation and confirmation
10 brief, the proponent can expect the court to inquire, inter
11 alia, as to the ability of the plan proponent to meet any
12 Effective Date funding requirements, the status of any unpaid
13 trade debt, taxes or other obligations which arose after the
14 filing of the petition (see 11 U.S.C. § 1129(a)(9)(A)), the
15 continued accuracy of any projections or liquidation analyses
16 previously included in the disclosure statement, and how those
17 factors bear upon the feasibility of the plan under 11 U.S.C.
18 § 1129(a)(11) and the chapter 7 equivalency requirements of 11
19 U.S.C. § 1129(a)(7). Confirmation briefs are not required, but
20 may be filed at least three (3) days before the hearing (with
21 copies served on the United States Trustee, counsel for the
22 Official Creditors' Committee, or if no such committee has been
23 appointed, the creditors included on the list filed pursuant to
24 Fed. R. Bankr. P. 1007(b), and any parties objecting to
25 confirmation, with a hard-copy version marked "Judge's Copy"
26 submitted to chambers.)

27 7. **Contested Hearings.** In the event the plan proponent
28 receives an unanticipated objection to confirmation or an

1 unanticipated plan rejection by a class of impaired claimants,
2 and the proponent nevertheless intends to request confirmation,
3 the proponent must make a good faith effort to meet and confer
4 with the objecting claimant (or the claimant's counsel, if
5 represented) prior to the confirmation hearing to identify all
6 disputed legal and factual issues and to discuss the conduct of
7 the confirmation hearing. The plan proponent should advise the
8 court concerning the existence of unresolved disputes when
9 notifying the court in accordance with paragraph C(5). Unless
10 scheduling procedures were previously established at the
11 disclosure statement hearing, the court will determine at the
12 confirmation hearing whether the hearing should proceed with
13 respect to the disputed matters, the undisputed matters, neither
14 or both. If necessary, the court will establish appropriate
15 scheduling procedures.

16 8. **Continuances.** A proponent seeking a continuance of a
17 confirmation hearing should appear at the scheduled hearing to
18 make that request, as the hearing will have been noticed out to
19 all creditors. For that reason, the court will not grant
20 advance telephonic requests for continuances. Nonetheless, if a
21 proponent does not anticipate seeking confirmation at the
22 hearing, it should notify the court as soon as possible.

23 9. **Final Decree.** The plan proponent should comply with
24 B.L.R. 3022-1. At the confirmation hearing, the proponent of
25 the plan shall advise the court when the proponent anticipates
26 that the plan will be substantially consummated and all post-
27 confirmation activity completed. The court may set deadlines
28 for filing reports pursuant to Fed. R. Bankr. P. 3022, filing an

