

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
WESTERN DIVISION**

In Re:	)	
	)	
(Second) Western Division Administrative	)	
Order Regarding (I) Attorney's Fees Under	)	Administrative Order No. 20-03
§ 4.3 of the Local Form Plan, and (II) the	)	(Western Division Only)
Sequence of Payments Under Part 7 of the	)	
Local Form Plan	)	

**(SECOND) WESTERN DIVISION ADMINISTRATIVE ORDER REGARDING (I)  
ATTORNEY'S FEES UNDER § 4.3 OF THE LOCAL FORM PLAN AND (II) THE  
SEQUENCE OF PAYMENTS UNDER PART 7 OF THE LOCAL FORM PLAN**

(A) **Applicability.** This administrative order ("AO 20-03") applies in all chapter 13 bankruptcy cases (each, a "Chapter 13 Case") filed in the Western Division (the "Western Division") of the United States Bankruptcy Court for the Northern District of Alabama (the "District") on or after the date hereof (February 10, 2020). AO 20-03 also applies in any pending Western Division Chapter 13 Case in which the hearing on confirmation (hereinafter referred to as "Confirmation") of the Debtor(s)<sup>1</sup> chapter 13 plan or amended plan (hereinafter referred to as a "Plan") is scheduled (or rescheduled) for a date that is more than 30 days after the date hereof (i.e., after March 11, 2020). In the event a Chapter 13 Case is transferred from the Western Division to another division within the District (or to another district) prior to Confirmation, AO 20-03 shall cease to apply in the Chapter 13 Case. The provisions of AO 20-03 shall not be given preclusive effect in the event a creditor, or other party in interest, timely objects to Confirmation (or to Plan modification proposed post-Confirmation) or in the event the Debtor(s), creditor, Trustee,<sup>2</sup> or other party in interest moves for relief from a provision of AO 20-03.

(B) **Authority.** AO 20-03 is authorized by Rule 9029 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Rules 1001-1 and 3015-15. (*See also* Local Form Plan<sup>3</sup> § 4.3 and pt. 7).

(C) **AO 17-07 Superseded and Replaced, in Part.** If AO 20-03 applies to a Chapter 13 Case by operation of part A hereof (or court order),<sup>4</sup> then (1) AO 20-03 supersedes and replaces parts I and II of Western Division Administrative Order No. 17-07 ("AO 17-07"); (2) the reference in § 4.3 of the Debtor(s)' Plan to the "applicable administrative order regarding fees entered in the

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<sup>1</sup> As used herein, the term "Debtor(s)" refers to the debtor(s) in a Chapter 13 Case.

<sup>2</sup> As used herein, the term "Trustee" refers to the chapter 13 trustee serving in a Chapter 13 Case.

<sup>3</sup> As used herein, the term "Local Form Plan" refers to the local form chapter 13 plan adopted by the District in accordance with Bankruptcy Rule 3015.1. (*See* Local Rule 3015-1.) Citations to the Local Form Plan are provided for illustrative purposes and refer to the version of the Local Form Plan in effect as of the date hereof.

<sup>4</sup> In any Western Division Chapter 13 Case in which a Plan has been confirmed but not completed, the Debtor(s) may request, by motion, to modify the Plan to make AO 20-03 the applicable administrative order under § 4.3 or part 7 of the Plan (each, a "Motion to Substitute AO 20-03"). Motions to Substitute AO 20-03 may be granted if, after notice and opportunity for hearing, no interested party objects.

division where the case is pending" shall refer to AO 20-03, not AO 17-07 (*see* Local Form Plan § 4.3); (3) the reference, in part 7 of the Debtor(s)' Plan, to the "administrative order for the division in which this case is pending" shall refer to AO 20-03, not AO 17-07 (*see* Local Form Plan pt. 7); and (4) subpart III.B of AO 17-07 shall not apply. Except as otherwise set forth herein, and unless ordered otherwise, part III of AO 17-07 shall continue to apply in Chapter 13 Cases to which AO 20-03 is made applicable by operation of part A hereof (or court order), and capitalized terms used in subpart III of AO 17-07 that are defined in subparts I and II of AO 17-07 shall continue to have the meanings ascribed to them in subparts I and II of AO 17-07.

**(D) Payment of Compensation Under § 4.3 of the Local Form Plan**

**(1) Allowance of Compensation and Compensation Payment Period.**

Whether allowed by the order confirming the Debtor(s)' Plan or by separate order, the term "Compensation" (as used herein) refers to compensation awarded the Debtor(s)' attorney in a Chapter 13 Case<sup>5</sup> that is to be paid from disbursements by the Trustee under § 4.3 of the Debtor(s)' confirmed Plan (if any).<sup>6</sup> As used herein, "Compensation Period" refers to the date of Confirmation through and including the date of the post-Confirmation distribution by the Trustee that pays the Compensation (if any) in full.

**(2) The AO Compensation Option.** This part (D)(2) of AO 20-03 is deemed incorporated (by reference) in a Plan if the Debtor(s) select the option, in § 4.3 of the Plan, to pay the balance of the requested Debtor(s)' attorney fee "in accordance with any applicable administrative order regarding fees entered in the division where the case is pending" (the "AO Compensation Option"). (*See* Local Form Plan § 4.3.) If the AO Compensation Order is selected in a Plan (and the Plan is confirmed), then, during the Compensation Period, the Trustee shall disburse to the Debtor(s)' attorney, in payment of the Compensation, the balance of the Regular Funds (as said term is hereinafter defined) received by the Trustee that remain after the Trustee disburses any payments having a higher rank in the applicable sequence of payments (the "AO Compensation Payments").

**(3) The Plan Compensation Option.** In lieu of selecting the AO Compensation Option, the Debtor(s), in § 4.3 of their Plan,<sup>7</sup> may provide for the Trustee to pay all or a portion of the Compensation from monies on hand at the time of Confirmation and/or grant the Debtor(s)' attorney a Monthly Fixed Payment (as said term is hereinafter defined) on the unpaid balance of the Compensation (the "Plan Compensation Payments").

**(E) Sequence of Payments Under Part 7 of the Local Form Plan**

**(1) Default Payment Sequence for Regular Funds.** Unless otherwise

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<sup>5</sup> AO-20 does not apply to compensation awarded to the Debtor(s)' special counsel, if any.

<sup>6</sup> If, post-Confirmation, the Debtor(s)' bankruptcy counsel is allowed compensation not provided for by § 4.3 of the Debtor(s)' Plan ("Additional Compensation"), the order allowing the Additional Compensation may increase the Compensation being paid under § 4.3 of the Plan by the amount of the Additional Compensation. (*See generally* Local Rule 2016-1(l)-(n).)

<sup>7</sup> Nothing herein is intended to preclude the Debtor(s) from including a non-standard Plan provision (in part 9 of the Debtor(s)' Plan), specifying how the Debtor(s)' bankruptcy counsel is to be compensated.

ordered, the Trustee shall make monthly disbursements of the funds received by the Trustee under § 2.1, § 2.2, or § 2.3 of a Plan (collectively, the "Regular Funds") in accordance with the following sequence of payments (the "Default Payment Sequence"):

(a) First, the Trustee shall collect the percentage fee(s) *then due* the Trustee from the Regular Funds, until paid in full. (See, e.g., Local Form Plan § 4.1.)

(b) Second, if the Plan proposes to pay the Chapter 13 Case filing fee (the "Filing Fee") through the Plan, the Trustee shall disburse the Filing Fee installment payments *then due* to the clerk of court, until paid in full. (See, e.g., Local Form Plan § 4.2; *see also* Local Rule 1006-1.)

(c) Third, the Trustee shall disburse adequate protection payments and Pre-Confirmation Conduit Payments<sup>8</sup> payable to creditors with allowed claims,<sup>9</sup> if any, until the adequate protection payments and Pre-Confirmation Conduit Payments *then due* are paid in full. (See, e.g., Local Form Plan § 2.5, § 3.1, § 3.2, § 3.3, and pt. 9.)

(d) Fourth, the Trustee shall disburse the AO Compensation Payments payable to the Debtor(s)' attorney, if any, until the *entire Compensation* is paid in full or (alternatively) disburse the Plan Compensation Payments payable to the Debtor(s)' attorney, if any, until the amounts *then due* are paid in full. (See, e.g., Local Form Plan § 4.3.)

(e) Fifth, the Trustee shall disburse Current Installment Payments<sup>10</sup> on long-term secured debts provided for by the Plan for which the Trustee is the disbursing agent, if any, until the Current Installment Payments *then due* are paid in full. (See, e.g., Local Form Plan § 3.1 and pt. 9.)

(f) Sixth, the Trustee shall disburse Current Installment Payments on assumed, unexpired leases and executory contracts provided by the Plan for which the Trustee is the disbursing agent, if any, until the Current Installment Payments *then due* are paid in full. (See, e.g., Local Form Plan § 6.1 and pt. 9.)

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<sup>8</sup> The term "Pre-Confirmation Conduit Payments" refers to regular, periodic payments owed by the Debtor(s) that (A) first become due postpetition and pre-Confirmation, (B) are to be paid by the Debtor(s) to a creditor through disbursements by the Trustee under the Debtor(s)' Plan, and (C) are authorized by the operative Plan (or court order) to be disbursed by the Trustee pre-Confirmation. If the operative Plan or a court order provides for Pre-Confirmation Conduit Payments, the Trustee is authorized to make the Pre-Confirmation Conduit Payments, provided the creditor has properly filed a proof of claim. The Trustee also is authorized to collect the Trustee's percentage fee on Pre-Confirmation Conduit Payments at the time of disbursement. Nothing herein should be construed as requiring Debtor(s) to propose Pre-Confirmation Conduit Payments.

<sup>9</sup> If the court enters an order providing for pre-Confirmation adequate protection payments to a creditor and, after entry of the order, the Debtor(s) file an amended Plan that proposes to alter the amount of the court-ordered adequate protection payments, the Trustee shall continue to pay the court ordered amount unless and until such amended Plan is confirmed.

<sup>10</sup> As used herein, the term "Current Installment Payments" refers regular, periodic payments owed by the Debtor(s) that first become due postpetition (other than Pre-Confirmation Conduit Payments) that are to be paid by the Debtor(s) to a creditor while the Debtor(s)' Chapter 13 Case is pending, either by disbursements made by the Trustee to the creditor under the Debtor(s)' Plan or by payments made directly to the creditor by the Debtor.

(g) Seventh, the Trustee shall disburse Current Installment Payments on long-term unsecured debts provided for by the Plan for which the Trustee is the disbursing agent, if any, until the Current Installment Payments *then due* are paid in full. (*See, e.g., Local Form Plan § 5.4 and pt 9.*)

(h) Eighth, the Trustee shall disburse the Monthly Fixed Payments<sup>11</sup> payable to holders of allowed claims being paid through the Plan *with* interest (including any allowed arrearage claims being paid through the Plan *with* interest), if any, until the amounts *then due* are paid in full. (*See, e.g., Local Form Plan § 3.2, § 3.3, § 3.4, § 5.5,*<sup>12</sup> *and pt. 9.*)

(i) Ninth, the Trustee shall disburse the Monthly Fixed Payments payable to holders of allowed claims being paid through the Plan *without* interest (including any allowed arrearage claims being paid through the Plan *without* interest), if any, until the amounts *then due* are paid in full. (*See, e.g., Local Form Plan § 3.1, § 4.4, § 4.5, § 5.4, § 5.5, § 6.1, and pt. 9.*)

(j) Tenth, the Trustee shall disburse the amounts to be paid to holders of allowed priority claims for domestic support for which no Monthly Fixed Payment is granted, if any, until paid in full.<sup>13</sup> (*See, e.g., Local Form Plan § 4.5.*)

(k) Eleventh, the Trustee shall disburse the amounts to be paid to holders of other allowed priority unsecured claims separately classified by the Plan but for which no Monthly Fixed Payment is granted, if any, until paid in full. (*See, e.g., Local Form Plan § 4.4.*)

(l) Twelfth, the Trustee shall disburse the amounts to be paid to holders of allowed nonpriority unsecured claims separately classified by the Plan but for which no Monthly Fixed Payment is granted, if any, until paid in full. (*See, e.g., Local Form Plan § 5.5.*)

(m) Thirteenth, the Trustee shall disburse the amounts to be paid to holders of allowed nonpriority unsecured claims not separately classified by the Plan, if any, until paid in full. (*See, e.g., Local Form Plan § 5.1, § 5.2, and § 5.3.*)

**(2) Alternate Payment Sequence for Regular Funds.** If the Debtor(s) in a Chapter 13 Case wish to propose an alternate sequence of payments for Regular Funds (an "Alternate Payment Sequence"), the Debtor(s) may do so in part 9 of their Plan (for non-standard provisions) or file (and serve on the Matrix<sup>14</sup>) a separate motion to establish the sequence of payments for Regular Funds. The court will require that the Debtor(s)' Plan or motion describe any Alternate Payment Sequence with specificity, and the Alternative Payment Sequence will not

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<sup>11</sup> As used herein, the term "Monthly Fixed Payments" refers to equal, monthly payments granted to a creditor under the Debtor(s) Plan to pay the creditor's allowed claim on the terms of the Plan. Current Installment Payments are not considered Monthly Fixed Payments.

<sup>12</sup> In § 5.5 of the Debtor(s)' Plan, the Debtor(s) may grant a Monthly Fixed Payment to the holder of a separately classified, nonpriority unsecured claim under the column headed "Treatment."

<sup>13</sup> Debtor(s) are encouraged, but not required, to grant Monthly Fixed Payments to holders of priority claims for domestic support.

<sup>14</sup> As used herein, "Matrix" refers to the official creditor mailing matrix for a Chapter 13 Case, which is accessible via the court's electronic filing system.

take effect until approved by court order (after sufficient notice and opportunity for hearing). As such, notwithstanding a Plan's inclusion of an Alternate Payment Sequence, pre-Confirmation disbursements by the Trustee, if any, shall be made in accordance with the Default Payment Sequence until the Plan is confirmed (or a separate order approving the Alternate Payment Sequence is entered).

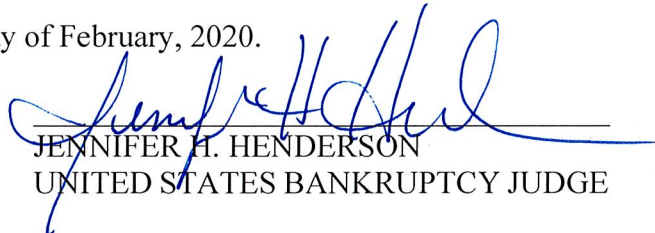
**(3) Disbursements Proportionate Within Sequence Position.** If, on a disbursement date, the available Regular Funds are not enough for the Trustee to make all payments to creditors then due under the Debtor(s)' Plan (collectively, the "Due Payments"), the Trustee shall allocate the Regular Funds in accordance with the applicable sequence of payments. If, on a disbursement date, the available Regular Funds are not enough for the Trustee to make all Due Payments having the same rank in the applicable payment sequence, the Trustee shall disburse the Regular Funds allocable to such rank on a proportionate basis.

**(4) Distribution Sequence for Additional Funds.** Unless otherwise ordered, the Trustee shall disburse funds received by the Trustee pursuant to § 2.4 or part 9 of a Plan (collectively, "Additional Plan Funds"), if any, in the distribution sequence specified by the Plan.<sup>15</sup> (See Local Form Plan § 2.4 and pt. 9.) If the Plan does not include a sequence of payments for Additional Plan Funds, Additional Plan Funds received by the Trustee shall be held pending further order of the court. If the Trustee receives funds other than under a Plan, the Trustee shall hold the funds pending further order of the court and may file a motion for authority to disburse such funds.

**(5) Disbursements Less than \$15.00.** The Trustee is authorized, but not required, to disburse any payment to a creditor that is less than \$15.00.<sup>16</sup>

**(6) Objecting to the Sequence of Payments Proposed by a Plan.** If the Trustee, a creditor, or other interested party opposes the sequence of payments proposed in the Debtor(s)' Plan (whether it is the Default Payment Sequence incorporated by reference in part 7 or an Alternate Payment Sequence specified in part 9), the party must timely file an objection to Confirmation in the Debtor(s)' Chapter 13 Case.

**DONE AND ORDERED** this the 10th day of February, 2020.

  
JENNIFER H. HENDERSON  
UNITED STATES BANKRUPTCY JUDGE

<sup>15</sup> If the Debtor(s)' Plan provides for Additional Plan Funds in § 2.4, the Debtor(s) may include a sequence of payments for such funds in § 2.4.

<sup>16</sup> See Fed. R. Bankr. P. 3010(b). Pursuant to Bankruptcy Rule 3010(b), funds not distributed shall accumulate and shall be paid whenever the accumulation aggregates \$15.00 (and any funds remaining disbursed with the final payment).