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

6 In re
7 ABROGATION OF GENERAL ORDER 37,
8 AND THIRD AMENDED GENERAL
9 ORDER 37; RETENTION OF INTERIM
10 RULE 1020 AND TEMPORARY AMENDED
OFFICIAL FORM 201

**FOURTH AMENDED GENERAL
ORDER 37**

11 On August 23, 2019, the *Small Business Reorganization Act of 2019* (the SBRA) was
12 enacted into law. The SBRA made substantive and procedural changes to the Bankruptcy Code
13 effective as of February 19, 2020, long before the Federal Rules of Bankruptcy Procedure (the
14 “Bankruptcy Rules”) could be amended to implement the SBRA changes under the usual Rules
15 Enabling Act rule-making process. Accordingly, the Advisory Committee on Bankruptcy Rules
16 drafted, published for comment, and subsequently approved interim bankruptcy rules (the “SBRA
17 Interim Rules”), and the Judicial Conference of the United States authorized the SBRA Interim
18 Rules for courts to adopt locally. This Court adopted the SBRA Interim Rules pursuant to
[General Order 37](#) (issued January 30, 2020).¹

19 Pursuant to the SBRA, SubChapter V of Chapter 11 of the Bankruptcy Code was limited
20 to small business debtors (as defined in Bankruptcy Code section 1182) with aggregate,
21 noncontingent, liquidated, secured and unsecured debts not greater than \$2,725,625. Effective
22 March 27, 2020, the *Coronavirus Aid, Relief, and Economic Security Act* (the “CARES Act”)
23 increased this debt ceiling to \$7,500,000. This and other CARES Act changes required an
24 amendment to SBRA Interim Rule 1020, and temporary amendments to Official Forms 101,
25 122A-1, 122B, 122C-1 and 201. To implement these changes the Judicial Conference authorized
26 a CARES Act based amended version of SBRA Interim Rule 1020, and the temporary amended

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28 ¹ A copy of the SBRA Interim Rules is attached to [General Order 37](#).

1 Official Forms for courts to adopt locally. Pursuant to [Amended General Order 37](#) (issued May
2 18, 2020), this Court adopted the CARES Act based Amended Interim Bankruptcy Rule 1020,
3 and the temporary amended Official Forms.

4 Thereafter, on March 27, 2022, the CARES Act provisions that required adoption of
5 Amended Interim Bankruptcy Rule 1020, and the temporary amended Official Forms, expired.
6 Accordingly, pursuant to [Second Amended General Order 37](#) (issued March 28, 2022) this Court
7 rescinded use of the temporary amended Official Forms and abrogated *Amended General Order*
8 *37*, leaving in effect *General Order 37* and thereby the initial SBRA Interim Rules.

9 A short time later, effective June 21, 2022, the *Bankruptcy Threshold Adjustment and*
10 *Technical Corrections Act* (the “BTATC Act”) reinstated the \$7,500,000 debt ceiling in
11 SubChapter V cases, retroactive to March 27, 2022.² This change required the Court to again
12 amend *General Order 37*. Accordingly, pursuant to the [Third Amended General Order 37](#) (issued
13 July 28, 2022) this Court **1)** adopted the BTATC Act based Interim Rule 1020, **2)** approved the
14 use of temporary amended Official Forms 101 and 201, **3)** abrogated *Second Amended General*
15 *Order 37*, and **4)** otherwise retained *General Order 37* in effect.

16 Effective December 1, 2022, upon completion of the Rules Enabling Act rule-making
17 process, the initial SBRA Interim Rules ceased being interim and became regular Bankruptcy
18 Rules. Also effective on December 1, 2022, the Judicial Conference approved making temporary
19 amended Official Form 101 an actual official form (but left in place temporary amended Official
20 Form 201). Accordingly, as of December 1, 2022, the BTATC Act based Interim Rule 1020, and
21 temporary amended Official Form 201 remain in effect.

22 **NOW THEREFORE**, pursuant to 28 U.S.C. § 2071, Rule 83 of the Federal Rules of
23 Civil Procedure, and Rule 9029 of the Federal Rules of Bankruptcy Procedure, the court
24 **ORDERS** as follows:

25 **1)** *General Order 37* is hereby abrogated, and

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² Unless extended, these BTATC Act changes expire on June 21, 2024.

1 2) *Third Amended General Order 37* is hereby abrogated, except that a) the BTATC
2 Act based *Interim Rule 1020* (a copy is attached) and b) the Judicial Conference
3 approved temporary amended [Official Form 201](#) adopted pursuant to the *Third*
4 *Amended General Order 37*, hereby remain adopted in their entirety without change by
5 the judges of this court.³

6 **IT IS SO ORDERED.**

7 Dated: December 6, 2022

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10 Charles Novack
11 Chief Bankruptcy Judge

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26 ³ The temporary amendments to Official Forms 122A-1, 122B and 122C-1 lapsed on March 27, 2022, resulting in
27 these forms reverting to their pre-CARES Act versions. Copies of Official Forms are located at
28 <https://www.uscourts.gov/forms/bankruptcy-forms>. The Committee Notes and Staff Notations to the Official Forms
posted at this link explain the relevant changes.

1 **Interim Rule 1020. Chapter 11 Reorganization Case for**
2 **Small Business Debtors or Debtors Under Subchapter V**

3 (a) ~~SMALL—BUSINESS—DEBTOR~~
4 DESIGNATION. In a voluntary chapter 11 case, the debtor
5 shall state in the petition whether the debtor is a small
6 business debtor or a debtor as defined in § 1182(1) of the
7 Code and, if the latter ~~so~~, whether the debtor elects to have
8 subchapter V of chapter 11 apply. In an involuntary chapter
9 11 case, the debtor shall file within 14 days after entry of the
10 order for relief a statement as to whether the debtor is a small
11 business debtor or a debtor as defined in § 1182(1) of the
12 Code and, if the latter ~~so~~, whether the debtor elects to have
13 subchapter V of chapter 11 apply. The status of the case as
14 a small business case or a case under subchapter V of chapter
15 11 shall be in accordance with the debtor's statement under
16 this subdivision, unless and until the court enters an order
17 finding that the debtor's statement is incorrect.

18 (b) OBJECTING TO DESIGNATION. The United
19 States trustee or a party in interest may file an objection to
20 the debtor's statement under subdivision (a) no later than 30
21 days after the conclusion of the meeting of creditors held
22 under § 341(a) of the Code, or within 30 days after any
23 amendment to the statement, whichever is later.

24 (c) PROCEDURE FOR OBJECTION OR
25 DETERMINATION. Any objection or request for a
26 determination under this rule shall be governed by Rule 9014
27 and served on: the debtor; the debtor’s attorney; the United
28 States trustee; the trustee; the creditors included on the list
29 filed under Rule 1007(d) or, if a committee has been
30 appointed under § 1102(a)(3), the committee or its
31 authorized agent; and any other entity as the court directs.

Committee Note

The Interim Rule is amended in response to the enactment of the Bankruptcy Threshold Adjustment and Technical Correction Act (the “BTATC Act”), Pub. L. No. 117-151, ___ Stat. _____. The BTATC reinstates the definition of “debtor” for determining eligibility to proceed under subchapter V of chapter 11 that was in effect from March 27, 2020 through March 27, 2022, under the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281, as amended. Subdivision (a) of the rule is amended to reflect that change. This Interim Rule will terminate two years after the date of enactment of the BTATC, unless the Act is extended.