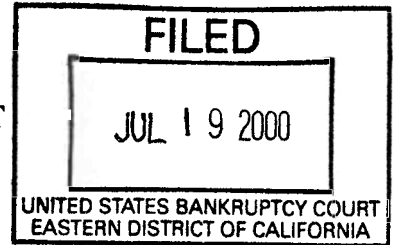


UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA



In re: )  
)  
**REVISION TO LOCAL RULE 4001-1** )  
)  
\_\_\_\_\_ )

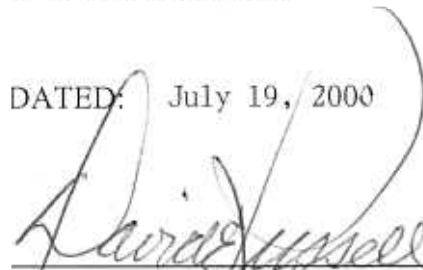
**GENERAL ORDER NO. 00-5**


Notice and opportunity for public comment having been given in accordance with Federal Rule of Bankruptcy Procedure 9020, and those comments received having been duly reviewed and considered by the Court,


IT IS HEREBY ORDERED that Local Rule of Practice 4001-1, Motions for Relief from Stay, is amended as set forth on the attachment hereto.


IT IS SO ORDERED.

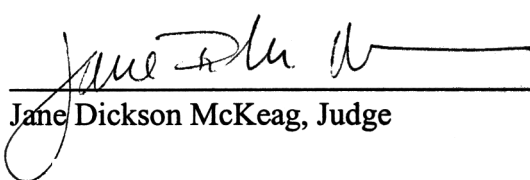
DATED: July 19, 2000

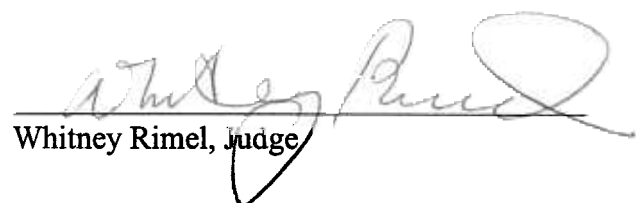
  
\_\_\_\_\_  
David E. Russell, Chief Judge

  
\_\_\_\_\_  
Christopher M. Klein, Judge

  
\_\_\_\_\_  
Brett Dorian, Judge

  
\_\_\_\_\_  
Michael S. McManus, Judge

  
\_\_\_\_\_  
Jane Dickson McKeag, Judge

  
\_\_\_\_\_  
Whitney Rimel, Judge

Attachment

**LOCAL RULE 4001-1**  
Motions for Relief from Stay

Part I  
Procedure and Alternatives

The provisions of Part I of LBR 9014-1 apply to motions for relief from the automatic stay of 11 U.S.C. §362(a). Movants who wish to invoke the time constraints of 11 U.S.C. §362(e) must file their motions under Part II of this rule. Movants who do not wish to invoke the time constraints of 11 U.S.C. §362(e) may file their motions under either Part II or Part III of this Rule.

Part II  
Motions Filed with Supporting Evidence

- (a) The provisions of LBR 9014-1 apply, except that motions under LBR 4001-1 may not be brought utilizing the notice of opportunity for hearing procedure of LBR 9014-1, Part I(i).
- (b) Contents of Motion. A Part II motion for relief shall:
  - (1) Be supported by admissible written evidence;
  - (2) Include the name of the debtor and any trustee appointed in the case;
  - (3) Title the motion as a Part II motion for relief;
  - (4) State with particularity the grounds for the motion and the relief or order sought;
  - (5) State the probable value and description of the subject property and the amount of any known encumbrances thereon;
  - (6) If the motion is brought for "cause" rather than for "lack of equity," state the specific facts that constitute "cause" for relief; and,
  - (7) In a Chapter 13 case, if the motion alleges failure to make postpetition payments with respect to real or personal property, including but not limited to real estate, vehicle, or lease payments, creditor shall include a verified statement showing all postpetition charges, all payments received postpetition, dates thereof, and the charges to which each of the payments was applied.
- (c) Relief from Stay Information Sheet Movant shall file as a separate document two copies of a completed Relief from Stay Information Sheet (EDC Approved Form 3-468).
- (d) Hearing Dates and Notice. See LBR 9014-1, Part II.

(e) Compliance with 11 U.S.C. §362(e). It shall be the duty of the moving party seeking relief from the automatic stay to set a hearing within thirty (30) days of the filing of the motion. The failure of the moving party to set the hearing within thirty (30) days shall be deemed a waiver of the time constraints of 11 U.S.C. §362(e).

(f) Failure to comply with the requirements set forth herein and in other applicable provisions of these Local Rules shall constitute grounds, without limitation, to deny the motion, continue the hearing on the motion, deem the motion as brought under Part III of this Rule, deny the moving party the ability to appear by telephone, or assess sanctions.

(g) The hearing on motions under this Part II are final hearings under 11 U.S.C. §362(e).

### Part III Alternative Procedure

(h) Alternative to Part II Motion for Relief. In lieu of the "complete" and "formal" Part II motion for relief from stay, the moving party may file a motion under this Part III.

(i) Waiver of 11 U.S.C. §362(e). The use of the alternative Part III motion for relief from the automatic stay shall be deemed a waiver of 11 U.S.C. §362(e).

(j) Contents of Motion. A motion for relief from stay under this Part III shall be in writing, signed in the manner provided by FRBP 9011, and filed with the Clerk. The motion shall state with particularity the relief requested and the grounds for the requested relief. The motion need not contain additional citation of authority. Notwithstanding LBR 9014-1, Part I(e), declarations and other written evidence need not be filed with the motion.

(k) Relief from Stay Information Sheet. Movant shall file as a separate document two copies of a completed Relief from Stay Information Sheet (EDC Approved Form 3-468).

(l) Notice. The notice of hearing shall have the date, time, place, and department filled in setting the hearing for not less than ten (10) days from date of service. The motion, Relief from Stay Information Sheet, and proof of service shall be filed within three (3) days of service. The notice of hearing shall clearly state that the motion has been brought under this Part III, that the hearing will be a preliminary hearing, and that parties opposing the motion must appear at the hearing.

(m) Opposition to the Motion. Unless the Court orders otherwise, no opposition to a Part III motion need be filed prior to the preliminary hearing. If the motion is to be opposed, the respondent and/or counsel shall appear at the preliminary hearing and advise the Court and moving party that the motion is opposed and indicate the basis of the opposition.

(n) Preliminary Hearing.

- (1) Initial hearings under this Part III shall be held as preliminary hearings, without substantive argument. The Court may grant the requested relief if the respondent does not wish to contest the motion or if there is no appearance by the respondent. Failure of a respondent and/or counsel to appear at the preliminary hearing will be deemed a waiver of opposition to the motion.
- (2) If the respondent desires to contest the motion, the Court shall set a schedule for filing briefs, declarations, and other written evidence, and the date for the final hearing.

(o) Final Hearing. The final hearing on a motion under this Part III shall be subject to the same general requirements and conditions as the hearing under Part II of this Rule.