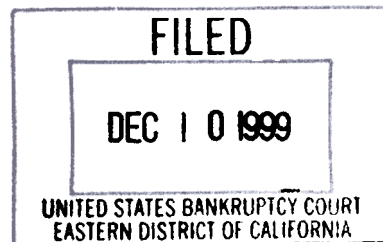


UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

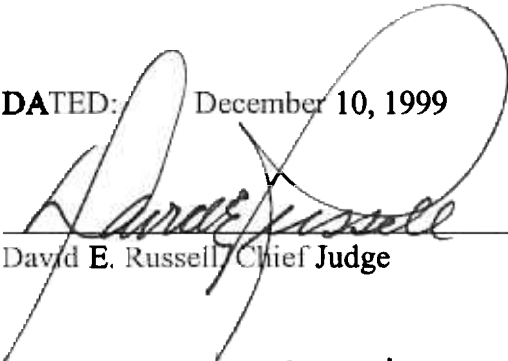


In re: )  
 )  
ADOPTION AND REVISIONS )  
TO LOCAL RULES )  
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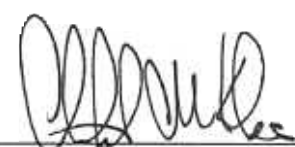
GENERAL ORDER 99-2


Having provided notice and an opportunity to comment as required by Federal Rule of Bankruptcy Procedure (FRBP) 9020, and having considered those comments received, the Court hereby adopts Local Rule 5010-1 and the revisions to Local Rules 1015-1, 2015-1, 2016-1, 4001-1, 5010-1 and 9014-1 as set forth in the attachment hereto.

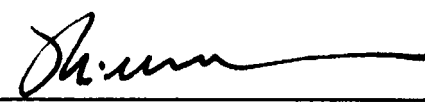
IT IS SO ORDERED.


DATED: December 10, 1999  



David E. Russell, Chief Judge

  
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Christopher M. Klein, Judge

  
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Brett Dorian, Judge

  
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Michael S. Mcmanus, Judge

  
\_\_\_\_\_  
Jane Dickson Mckeag, Judge

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

**LOCAL RULE 1015-1**  
Related and Joint Cases

(a) Notice of Related Cases. When a case on file or about to be filed is related to another case that is pending or that was pending within the last six years, the debtor shall, and a party in interest may, file a Notice of Related Cases, setting forth the title, number and filing date of each related case, together with a brief statement of the relationship.

(b) Cases Deemed Related. Cases deemed to be related within the meaning of this Rule include the following fact situations:

- (1) the debtors in both cases are the same entity;
- (2) the debtors in both cases are husband and wife;
- (3) the debtors in both cases are partners;
- (4) the debtor in one case is a general partner or major shareholder of the debtor in the other case;
- (5) the debtors in both cases have the same partners or substantially the same shareholders; and,
- (6) the cases are otherwise so related as to warrant being treated as related.

(c) Joint Cases. All joint cases commenced by the filing of a single petition under 11 U.S.C. § 302(a) shall be deemed substantively consolidated unless the court orders otherwise. Objections to substantive consolidation may be raised by the court or filed by any party in interest. An objection to substantive consolidation shall be filed and served no later than 45 days after the filing of the petition. The objection shall be filed, served, and set for hearing consistent with these rules (see LBR 9014-1) by the objecting party. The objection, notice of hearing, and all evidence and other papers filed in support of it, shall be served on the debtor(s), the trustee, and the United States Trustee. All remaining parties in interest shall be served with the objection and notice of hearing.

**LOCAL RULE 2015-1**  
Monthly Operating and Tax Reports

(a) Cases in Which Required Monthly operating and tax reports are required from a trustee or debtor in the following cases:

- (1) all cases under chapter 11;
- (2) chapter 7 cases where a business is being operated by a trustee;

- (3) chapter 12 cases if the court so orders; and
- (4) chapter 13 cases where a business is being operated by a debtor, if the court so orders upon motion by the trustee or any party in interest.

(b) Cut off of Books and Records for Reporting Purposes. The books and records of the Debtor shall be closed (cut off) at the close of business on the day immediately preceding the filing of the petition, whether or not a separate estate is created for tax purposes. Pre-petition liabilities shall be segregated and reported separately from post-petition liabilities.

(c) Due Dates and Duration. Monthly reports shall be filed with the Clerk not later than the 15th day of the month following the month of the reported period. Reports shall be filed for the portion of a calendar month from the date of filing, and monthly thereafter through the month in which an order of confirmation, conversion or dismissal is entered. If the portion of a calendar month from the date of filing is seven (7) days or less, the report for such period may be combined with the report due for the following calendar month.

(d) Service of Reports. Not later than five (5) calendar days from the date upon which it is filed with the court, a copy of each monthly report shall be served on the United States Trustee, the case trustee, the chairperson and counsel of any committee of creditors or equity security holders, and any other entity ordered by the Court.

(e) Format of Reports. Monthly operating reports and monthly tax reports shall be made according to the format established by the United States Trustee as approved by the Court.

(f) Modification of Requirements. The Court, may, for cause, modify the provisions of this Rule to accommodate the needs of a particular case as provided in LBR 1001-1(f). Any application to modify shall be served on all parties upon whom the monthly report is required to be served.

#### **LOCAL RULE 2016-1**

##### **Compensation of Debtor-in-Possession (DIP), Officers and Insiders**

(a) Limits on Compensation of DIP, Officers, and Insiders in Chapter 11 Cases. During the first two (2) months after a Chapter 11 petition is filed, the same compensation that was customarily paid prior to the filing of the petition may continue to be paid to an individual DIP, officers, and insiders without prior court approval, providing that the gross sum does not exceed \$3,500 per month to any person. No compensation in excess of the said \$3,500 per month nor in excess of the said two months shall be made unless prior court approval has been obtained by motion on notice to all creditors.

(b) Contents of Motions. Motions for compensation shall provide the following information:

- (1) The financial condition of the estate at or near the date of the Chapter 11 filing and at or near the time the motion is filed (balance sheets and profit and loss statements are preferable, if available); and
- (2) Financial information which explains the sources from which the compensation has been paid in the past and will be paid in the future.

**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;
- (7) include two copies of a completed Relief from Stay Information Sheet (EDC Approved Form 3-468).

(c) Hearing Dates and Notice. See LBR 9014-1, Part II.

(d) 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).

(e) 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.

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

### Part III Alternative Procedure

(a) 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.

(b) 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).

(c) 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 shall include as an exhibit two copies of a completed Relief from Stay Information Sheet (EDC Approved Form 3-468). 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.

(d) 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 either appear at the hearing or file with the Clerk and serve on the moving party a written statement that the motion is opposed.

(e) 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.

(f) 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.

(g) 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.

**LOCAL RULE 5010-1**  
Motions to Reopen Cases

(a) Contents of Motion. A motion to reopen a case shall contain a statement of the grounds for reopening the case, but shall not contain a request for any other relief.

(b) Separate Motions/Adversary Proceedings. Requests for any relief other than reopening, including relief based upon the grounds for reopening the case, shall be made in separate motions or adversary proceedings, which may be filed concurrently with the motion to reopen. If no motion or adversary proceeding is pending 30 days after the case is reopened and if no trustee has been ordered appointed, the case may be closed without further notice.

(c) Ex Parte Consideration. Motions to reopen may be considered ex parte. The movant shall not calendar a hearing date. A hearing will only be held if the court so orders.

**LOCAL RULE 9014-1**  
Motion Calendar and Procedure

**PART I**  
Motion Calendar

(a) Setting Motions for Hearing. Parties shall set for hearing all motions (including motions in adversary proceedings), objections and other matters, for which a hearing is necessary, as required by Part I of this Rule.

(b) Motion Calendar. Each judge of the Court will maintain his or her department's individual motion calendar. Information as to the time and dates of each department's calendar

may be obtained from the Court's web site at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) or from the Clerk. All hearings shall be set on the calendar of the department to which the case is assigned.

(c) **Motion Control Number.** A Motion Control Number (designated as MC No.) shall be included by all parties immediately below the case number on all motions and other papers. In motions filed in adversary proceedings, it shall be placed immediately below the adversary number. The Motion Control Number shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. (Example: the first Motion Control Number assigned to attorney John D. Doe would be MC No. JDD-1, the second MC No. JDD-2, the third MC No. JDD-3, and so on. This sequence would be repeated for each specific bankruptcy case and adversary proceeding in which said attorney or law firm filed motions.) Once a Motion Control Number is assigned, all related papers filed by any party shall have the same number, provided, however, that motions for reconsideration and countermotions shall be treated as separate motions with a new Motion Control Number assigned in the manner provided for above.

(d) **Time and Place of Hearing.** All motions and other papers shall contain in the caption the date, time, and place of the hearing and the department in which the hearing will be held.

(e) **Evidence on Motions.** Factual contentions not appearing of record involved in motions shall be presented and heard upon declarations under penalty of perjury as permitted by FRCivP 43(e), as incorporated in FRBP 9017. Each declaration shall:

- (1) identify the declarant, the party or parties on whose behalf it is submitted and the motion to which it pertains;
- (2) be served and filed with the motion, opposition or reply to which it relates;
- (3) contain only factual evidentiary matter or expert opinion, conform as far as possible with the requirements of FRCivP 56(e) and avoid mere general conclusions or arguments;
- (4) specify the source and basis of any statement made upon information and belief and the reasons why it cannot be made upon personal knowledge;
- (5) identify and authenticate documents and exhibits offered in support of the motion or opposition unless such documents and exhibits are already in the record and specifically referred to in the motion or opposition; and,
- (6) if a declaration of an expert is submitted in support of or in opposition to a motion, it shall include a statement of the qualifications of the expert.

Declarations failing to substantially comply with all of the foregoing requirements may not be admitted into evidence. The judge may, in his or her discretion, require or allow oral examination of witnesses; however, such examination will generally not be permitted except upon prior order of the Court, so that all parties and the Court will be aware that testimony will be presented.

(f) Hearing and Oral Argument; Removal from Calendar; Tentative Rulings. Unless the matter has been removed from calendar, upon the call of the motion, the judge may hear appropriate and reasonable oral argument. Alternatively, the motion may be submitted upon the record and briefs on file if the parties stipulate thereto, or the judge so orders, subject to the power of the judge to reopen the matter for further briefs, oral argument or both.

Parties can ascertain which matters have been removed from calendar and can view tentative rulings by checking the Court's web site at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 p.m. the day before the hearing.

(g) Related and Countermotions. Any countermotion or other motion related to the general subject matter of the original motion that the responding party may desire to make shall be served and filed by such party with the Clerk no later than the time opposition is otherwise required to be filed to the original motion, so that all related motions in the case can be heard and decided at the same time. In the event such countermotion or other related motion is filed by the responding party, the judge may continue the hearing on the original and all related motions so as to give the responding moving parties reasonable opportunity to serve and file oppositions and replies to all pending motions. No written opposition need be filed to any related matter unless the matter is continued upon the moving party's request. Nothing herein shall be construed to require a counter or related motion.

(h) Continuances. Requests for continuances of hearings on the motion calendar may be made to the Court on the scheduled hearing date or may be made in writing by motion and notice thereof. Stipulations for continuance shall be executed by all parties and shall be filed with the Court at least one (1) court day prior to the hearing. Alternatively, stipulations for continuance may be transmitted telephonically to the Clerk (attention: calendar clerk).

(i) Opportunity for Hearing.

(1) The Notice of Opportunity for Hearing (NOH) as defined in 11 U.S.C. § 102(1) shall:

- (i) succinctly describe the action to be taken;
- (ii) state that unless written objections and/or a request for a hearing are served on the moving party and filed with the Clerk on or before the date specified in the notice, the action shall be taken;



provide a minimum of ten (10) days after service (or the longer periods required by, e.g., FRBP 2002 or 3007) for the filing of the request for hearing or objections by an interested party; and,

be filed with the Clerk and served by the moving party on all creditors, the debtor, the trustee or other persons as appropriate or required.

- (2) No hearing date shall be set by the moving party unless an objection or a request for hearing is made by an interested party, in which event, the moving party shall promptly set the matter for hearing by filing a notice of hearing with the Clerk and serving the notice on the objecting or requesting party or parties at least ten (10) days before the hearing date.
- (3) If no objection or request for hearing is timely filed, the moving party may proceed to take any proposed action that does not require court approval. If court approval is required, or if the moving party desires that the Court ratify the proposed action, the moving party shall submit a proposed order, together with a copy of the certificate of service in respect to the NOH and a declaration under penalty of perjury that to the best of his/her knowledge no request for a hearing nor objections have been filed or served on him/her; *provided, however, that each judge shall have discretion to determine whether an order is necessary or appropriate.*

(j) Emergency Motions.

- (1) All motions for emergency orders for substantive or affirmative relief shall be heard in open court or in chambers at such time as is convenient to the judge. All such motions shall be accompanied by a memorandum containing the title and number of the case, the nature of the motion and the name of counsel for the opposite party, if known, and a sworn affidavit or declaration of a witness competent to testify on the matter stating the facts justifying the matter being heard without the normal hearing and service procedure.
- (2) Except for good cause shown, it shall be the duty of the party applying (i) to make a good faith effort to advise counsel for all other parties known to be affected or interested by the proposed order by telephone and confirming letter or fax (if time permits) of the date, time and substance of the proposed order; and (ii) to advise the Court in writing of efforts to contact other counsel or parties, and whether any other counsel or party, after such efforts to advise them, has requested to be present at the time the motion is presented to the Court.

(k) **Orders Shortening Time.** In appropriate circumstances and for good cause shown, the judge may order that the time for serving a motion and the notice of hearing thereon may be shortened. When time for service is shortened to ten (10) calendar days or less, no written opposition is required. When time for service is shortened to eleven (11) calendar days or more, the opposition shall be filed not later than two (2) court days prior to the hearing.

**PART II**  
**Hearing Dates, Notice and Opposition Requirements**

(a) **Scope of Part II.** Part II of this Rule shall apply to all matters scheduled for hearing on a motion calendar.

(b) **Notice.**

- (1) Any motion, together with any accompanying papers and notice of hearing with the date, time, place and department filled in, shall be filed with the Clerk by the moving party. The hearing shall be set for not less than twenty-two (22) calendar days from date of filing and service. Service by the moving party of the notice of hearing, and, when appropriate, the motion and other supporting pleadings, shall be made on or before the date of filing. Proof of service of the notice of hearing, the motion and supporting papers shall be filed with the Clerk concurrently with said pleadings or not more than three (3) court days after the filing of the motion. Proofs of service should be in the form of certificates of service which shall be attached as the last document to the pleadings served. If the proof of service is filed separately, copies of the papers served shall not be attached thereto; rather, the proof of service shall refer to the papers served.
- (2) When notice must be served on all creditors or interested parties, a properly drafted notice, without the motion or supporting papers, which succinctly and sufficiently describes the nature of the relief being requested and sets forth the essential facts necessary for a party to determine whether or not to oppose the motion, need be the only paper served on those parties who have not requested special notice or who are not directly affected by the requested relief.

(c) **Opposition.** Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Clerk by the responding party not less than five (5) court days preceding the date or continued date of hearing. A responding party who has no opposition to the granting of the motion may serve and file a statement to that effect, specifically designating the motion in question. Without good cause, no party will be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

(d) Reply. The moving party may, not less than two (2) court days prior to the date of the hearing, serve and file with the Clerk a reply to any written opposition filed by a responding party. The evidentiary record closes upon the filing of the reply.