



United States Bankruptcy Court Eastern District of California

LOCAL RULES OF PRACTICE

Revised 1/29/10

Revisions to Local Bankruptcy Rule(s) Highlighted in the Table of Contents

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

LOCAL RULES OF PRACTICE

Table of Contents

<u>Rule #</u>	<u>Title</u>	<u>Page</u>
1001-1	Scope of Rules; Short Title	1
1002-1	Intra-district Venue	2
1007-1	List of Creditors and Master Address List	2
1015-1	Related and Joint Cases	3
2002-1	Notice Requirements	3
2015-1	Monthly Operating and Tax Reports	4
3003-1	Filing Proofs of Claim in Chapter 11 Cases	5
3007-1	Objections to Proofs of Claim	6
3015-1	Duties of Chapter 13 Debtors and Chapter 13 Trustees	8
4001-1	Motions for Relief from Stay	9
5005-1	Electronic Record is the Official Record; Filing of Documents	10
5005.5-1	Eligibility and Registration for Electronic Filing; Use of Passwords	11
5008-1	Funds of Chapter 11 Estates	12
5010-1	Motions to Reopen Cases	13
5013-1	Standing of Clerk and Deputy Clerks	13
7003-1	Cover Sheet and Summons in Adversary Proceedings	13
7005-1	Service by Electronic Means	13

<u>Rule #</u>	<u>Title</u>	<u>Page</u>
7026-1	Discovery Limitations	14
7030-1	Deposition Transcripts	15
7038-1	Jury Trial of Right	15
7039-1	Trial by Jury or the Court	16
7041-1	Notification to Calendar Clerk of Matters to be Dismissed	16
7056-1	Motions for Summary Judgment or Summary Adjudication	16
7065-1	Temporary Restraining Orders	17
7090-1	Disposition of Unclaimed Exhibits	18
8020-1	Procedures Following Remand by an Appellate Court	18
9001-1	Definitions	18
9004-1	General Requirements of Form	19
9014-1	Motion Calendar and Procedure	21
9017-1	Alternate Direct Testimony, Exhibits at Trial, and Qualification of Expert Witnesses	27
9019-1	Stipulations	29
9022-1	Notice of Entry of Judgment Pursuant to FRBP 9022	29
Appendix I	31
Appendix II	32
Appendix III	33
Appendix IV	34

LOCAL RULE 1001-1
Scope of Rules; Short Title

(a) Title. These are the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California. They may be cited as "LBR."

(b) Construction. These Local Rules are adopted pursuant to 28 U.S.C. §2075, FRCivP 83 and FRBP 9029. They are intended to supplement and shall be construed consistently with and subordinate to the FRBP and those portions of the FRCivP that are incorporated by the FRBP.

(c) Applicability of Local Bankruptcy and District Court Rules. The FRBP and these Local Rules govern procedure in all bankruptcy cases and bankruptcy proceedings in the Eastern District of California. Except for Rules 173 (Photographing, Recording or Broadcasting of Judicial Proceedings), 180 (Attorneys), 181 (Certified Students), 182 (Attorneys-Appearance and Withdrawal), 183 (Persons Appearing In Propria Persona), 184 (Disciplinary Proceedings Against Attorneys), and 292 (Costs), which are hereby specifically incorporated into these Local Rules, and those Local Rules of Practice of the United States District Court for the Eastern District of California that are restated (renumbered and modified, as appropriate) in these Local Rules, no other Local Rules of Practice of the United States District Court for the Eastern District of California apply.

(d) General and Special Orders, Guidelines, and Policy Statements. Outside the scope of these Rules are matters relating to internal court administration that, in the discretion of the Court en banc, may be accomplished through the use of General Orders. The Clerk shall maintain copies of general and special orders, guidelines, and policy statements that relate to practice before this court and shall make copies available upon request and payment of a nominal charge.

(e) Availability of Local Rules. The Clerk shall maintain in suitable form updated copies of these Rules and shall promptly notify the Supreme Court, the Administrative Office of the United States Courts, the Circuit Council of the Ninth Circuit Court of Appeals, the District Court of the Eastern District of California and local law libraries of any changes in these Rules. The Clerk shall make copies of these Rules available on request upon payment of a nominal charge, if set by General Order. Upon admission to practice in the Eastern District of California, each admittee shall be given a copy of the LBR then in effect.

(f) Procedures Outside the Rules. The Court may make such orders supplementary or contrary to the provisions of these Rules as it may deem appropriate and in the interests of justice in any particular proceeding.

(g) Sanctions for Noncompliance with Rules. Failure of counsel or of a party to comply with these Rules, with the FRCivP or the FRBP, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or Rule or within the inherent power of the Court, including, without limitation, dismissal of any action, entry of default, finding of contempt, imposition of monetary sanctions or attorney's fees and costs, and other lesser sanctions.

LOCAL RULE 1002-1

Intra-district Venue

Petitions for relief under Title 11, United States Code, shall be filed in one of the three divisions of the Eastern District as determined by the following:

(a) Fresno Division. Petitions from the Counties of Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, and Tulare shall be filed with the Office of the Clerk, United States Bankruptcy Court, 2500 Tulare Street, Suite 2501, Fresno, CA 93721-1318.

(b) Modesto Division. Petitions from the Counties of Calaveras, Stanislaus, and Tuolumne shall be filed with the Office of the Clerk, United States Bankruptcy Court, 1130 12th Street, Suite C, Modesto, CA 95354.

(c) Sacramento Division. Petitions from the Counties of Alpine, Amador, Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sutter, Tehama, Trinity, Yolo, and Yuba shall be filed with the Office of the Clerk, United States Bankruptcy Court, 501 I Street, Suite 3-200, Sacramento, CA 95814-2322.

(d) Transfer of Incorrectly Filed Petitions. If the debtor's address on a petition indicates that it should be filed in a division other than the division to which it is presented for filing, the Clerk shall nevertheless accept it, and any other pleadings presented with the petition, for filing on behalf of the proper division. The Clerk shall obtain and place the proper division's case number on the petition and accompanying pleadings and transmit them to the proper division.

(e) Request for Different Venue. If the debtor believes that venue should be in a division other than the division designated for the debtor's address, the debtor may file a motion to transfer the case to another division. The Clerk shall promptly present the motion to any available judge.

LOCAL RULE 1007-1

List of Creditors and Master Address List

(a) Listing of Creditors. Creditors shall be listed on the appropriate schedule in alphabetical order by name and complete address (if an address is unknown, it should be so indicated). Addresses of governmental agencies shall be listed in conformance with the requirements specified in LBR 2002-1.

(b) Master Address List. With every petition for relief under the Bankruptcy Code presented for filing, there shall be submitted concurrently a Master Address List which includes the name, address, and zip code of all of the debtor's known creditors. To accommodate modern technology, the Master Address List shall be prepared in strict compliance with instructions of the Clerk in a format approved by the Court.

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 2002-1
Notice Requirements

(a) Listing the United States as a Creditor; Notice to the United States. When listing an indebtedness to the United States for other than taxes and when giving notice, as required by FRBP 2002(j)(4), the debtor shall list both the U.S. Attorney and the federal agency through which the debtor became indebted. The address of the notice to the U.S. Attorney shall include, in parenthesis, the name of the federal agency as follows:

(1) For Cases filed in the Sacramento Division:

United States Attorney
(For [insert name of agency])

501 I Street, Suite 10-100
Sacramento, CA 95814

(2) For Cases filed in the Modesto and Fresno Divisions:

United States Attorney
(For [insert name of agency])

2500 Tulare Street, Suite 4401
Fresno, CA 93721

For example, a notice to the Department of Education for a case filed in the Modesto division would be addressed as follows:

United States Attorney
(For Department of Education)
2500 Tulare Street, Suite 4401
Fresno, CA 93721

(b) Notice to Other Governmental Agencies. Certain federal and state agencies specify particular addresses to which notice of bankruptcy proceedings shall be directed. The Clerk shall maintain a roster of such agencies and their addresses and shall make such roster available to the Bar and the public to enable compliance with this Rule and the provisions of FRBP 2002(j). When listing an indebtedness to an agency included on this roster, the debtor and the debtor's attorney shall complete the Master Address List (if required) and the schedule of creditors using the address as shown on the agency roster. When listing an indebtedness to an agency not on the roster, the debtor and the debtor's attorney shall use such address as will effect proper notice to the agency.

(c) Notice to the Internal Revenue Service. In addition to addresses specified on the roster of governmental agencies maintained by the Clerk, notices in adversary proceedings and contested matters relating to the Internal Revenue Service shall be sent to all of the following addresses:

(1) United States Department of Justice
Civil Trial Section, Western Region
Box 683, Ben Franklin Station
Washington, D.C. 20044

(2) United States Attorney as specified in LBR 2002-1(a) above; and,

(3) Internal Revenue Service at the addresses specified on the roster of governmental agencies maintained by the Clerk.

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) 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 3003-1
Filing Proofs of Claim in Chapter 11 Cases

Unless otherwise ordered by the Court, and except as provided in FRBP 3003(c)(3), a proof of claim in a chapter 11 case shall be filed within 90 days after the date first set for the meeting of creditors called pursuant to 11 U.S.C. §341(a), unless the claimant is a governmental unit, in which case a proof of claim shall be filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide.

LOCAL RULE 3007-1
Objections to Proofs of Claim

(a) Where necessary to the proper and timely administration of the bankruptcy estate, the debtor, debtor-in-possession, or trustee, as appropriate, shall, and other parties in interest may, examine proofs of claim filed in the case and file objections to those proofs of claim.

(b) Each objection shall include the name of the claimant, the date the proof of claim was filed with the court, the amount of the claim, and the number of the claim as it appears on the claims register maintained by the court. Unless the basis for the objection appears on the face of the proof of claim, the objection shall be accompanied by evidence establishing its factual allegations and demonstrating that the proof of claim should be disallowed. A mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim.

(c) Amount of Notice.

(1) Objections set on 44 days' notice. Unless the objecting party elects to give the notice permitted by LBR 3007-1(c)(2), the objecting party shall file and serve the objection at least forty-four (44) days prior to the hearing date.

(i) Opposition. Opposition, if any, to the sustaining of the objection shall be in writing and shall be served and filed with the court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. Without good cause, no party shall be heard in opposition to an objection at oral argument if written opposition to the objection 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 sustaining of the objection or may result in the imposition of sanctions.

The opposition shall specify whether the responding party consents to the Court's resolution of disputed material factual issues pursuant to FRCivP 43(e) as made applicable by FRBP 9017. If the responding party does not so consent, the opposition shall include a separate statement identifying each disputed material factual issue. The separate statement shall enumerate discretely each of the disputed material factual issues and cite the particular portions of the record demonstrating that a factual issue is both material and in dispute.

- (ii) Reply. The objecting party may, at least seven (7) days prior to the date of the hearing, serve and file with the court a reply to any written opposition filed by a responding party.

If the objecting party does not consent to the Court's resolution of disputed material factual issues pursuant to FRCivP 43(e), the objecting party shall file and serve, within the time required for a reply, a separate statement identifying each disputed material factual issue. The separate statement shall enumerate discretely each of the disputed material factual issues and cite the particular portions of the record demonstrating that a factual issue is both material and in dispute.

Unless the Court determines that an evidentiary hearing is necessary, the evidentiary record closes upon expiration of the time for the filing of the reply.

- (iii) Prior to the noticed hearing date, counsel may bring to the Court's attention relevant judicial opinions published after the date the opposition or reply was filed by filing and serving a Statement of Recent Development, containing a citation to and providing a copy of the new opinion without argument. No memoranda, declarations or documents other than those specified in this Local Rule shall be filed without prior Court approval.

- (2) Objection set on 30 days' notice. Alternatively, the objecting party may file and serve the objection at least thirty (30) days prior to the hearing date. When fewer than forty-four (44) days' notice of a hearing is given, no party in interest shall be required to file written opposition to the objection. Opposition, if any, shall be presented at the hearing on the objection. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.

- (d) An objection to a proof of claim shall be served on the claimant at the address on the proof of claim, not the address listed in the schedules, if different from the claimant's address noted on the proof of claim.

LOCAL RULE 3015-1

Duties of Chapter 13 Debtors and Chapter 13 Trustees

Part I

Duties of Chapter 13 Debtors

(a) Dismissal for Failure to File Schedules, Statement of Affairs or Plan. Failure to file any schedule, Statement of Financial Affairs or a chapter 13 Plan within fourteen (14) days of the date of filing the petition or obtain a Court approved extension as provided for in FRBP 1007 shall be cause for dismissal. The Clerk shall notify each debtor filing a petition for relief without a schedule, statement or plan of this provision.

(b) Commencement of Payments. Each debtor shall begin making payments to the trustee in the amount and on the payment dates proposed in the debtor's plan, commencing with the first plan payment due date that occurs after the petition filing date. The first due date may not be more than thirty (30) days after the petition filing date. Should a payment become due prior to the filing of a plan, said payment may be deferred until after the plan is filed. Any deferred payments shall be paid in full prior to confirmation of the debtor's plan. All plan payments shall be timely and must be made payable to the trustee by cashier's check, money order, business check of the debtor, payroll deduction, or such other method as approved by the trustee.

(c) Debtor May Not Sell, Transfer or Encumber Property of the Estate. No debtor shall sell, transfer or encumber any property of the estate without first obtaining the permission of the trustee. If the equity in a nonexempt asset which is not inventory of a business debtor exceeds \$2,500, the debtor must also obtain the permission of the Court.

(d) Reporting "Windfalls." Each debtor shall report to the trustee any windfall received or expected, including but not limited to, injury settlements, income tax refunds, bonuses, inheritance, and lottery winnings.

(e) Termination of Employment. Each debtor shall notify the trustee within seven (7) days of any termination of employment and shall notify the Court and the trustee of any change in residence address.

Part II

Chapter 13 Trustee's Duties

(f) Administration of Debts. The trustee shall administer all debts except the following:

- (1) Ongoing real property mortgage payments, provided, however, the Court may order that such payments be made through the plan if, at the time of filing the petition, the debtor had any arrearages related to the mortgage;
- (2) An ongoing lease payment;
- (3) A debt paid by a third party; and,

(4) A long-term debt with a contractual life which exceeds the proposed life of the plan.

(g) Trustee's Submission of Order Confirming Plan. Should a debtor fail to submit a proposed Order Confirming Debtor's Plan, the trustee may submit such an order.

(h) Trustee's Fees Before Confirmation. The trustee shall be allowed a fee of up to \$250 from available funds in a case that is closed prior to confirmation due to conversion or dismissal. The fee is based on an average of the actual and necessary costs of administration of all chapter 13 cases.

LOCAL RULE 4001-1
Motions for Relief from Stay

(a) Motions for relief from the automatic stay of 11 U.S.C. § 362(a) shall be set for hearing in accordance with LBR 9014-1. However, if a movant wishes to invoke the time constraints of 11 U.S.C. § 362(e), the motion shall be set for hearing pursuant to paragraph (f)(1) of LBR 9014-1.

(b) Relief from the automatic stay will not be granted if the movant utilizes the notice and opportunity for hearing procedure defined in 11 U.S.C. § 102(1). A hearing must be set on every motion for relief from the automatic stay. See LBR 9014-1.

(c) Relief from Stay Information Sheet. The movant shall file and serve as a separate document a completed Relief from Stay Information Sheet (EDC Approved Form 3-468) with each motion for relief from the automatic stay.

(d) Motions in Chapter 12 and 13 Cases. If relief from the automatic stay is sought in a chapter 12 or 13 case, the motion shall include the following:

- (1) When the motion alleges that the debtor or the trustee has failed to maintain postpetition payments on an obligation secured by real or personal property, including, but not limited to, installment payments and lease payments,
 - (i) the motion shall include a verified statement showing all postpetition payments and other obligations that have accrued and all payments received postpetition, the dates of the postpetition payments, and the obligation(s) to which each of the postpetition payments was applied; and
 - (ii) the motion shall state whether a contract or applicable nonbankruptcy law requires that the debtor be given a statement, payment coupon, invoice, or other comparable document and whether such document was sent to the debtor or the trustee as to any postpetition payment(s) allegedly not made by the debtor or the trustee; and

- (ii) if a document of the kind described in the preceding subparagraph was not sent, or if a contract or applicable nonbankruptcy law does not require one to be sent, the motion shall state whether the debtor or the trustee was advised prior to the filing of the motion of the alleged delinquency and given an opportunity to cure it.
- (2) If the motion asserts that the automatic stay should be modified or terminated because the debtor has failed to make plan payments to the chapter 12 or 13 trustee, the movant shall include in the motion a certification that the movant or its counsel conferred with the chapter 12 or 13 trustee before the motion was filed and confirmed that the alleged delinquency under the plan was outstanding within fourteen (14) days of the filing of the motion. This requirement may be satisfied by downloading from the trustee's Internet site, and attaching to the motion, a report indicating that the alleged delinquency was outstanding within fourteen (14) days prior to the filing of the motion. If the movant does not confer with the trustee, the motion shall detail the attempts made to confer with the trustee or explain why no such attempt was made.

LOCAL RULE 5005-1

Electronic Record is the Official Record; Filing of Documents

(a) Electronic Record is the Official Record. Except for documents filed prior to March 1, 1999, the electronic record maintained by the Clerk in the Court's Electronic Case File (ECF) System is the official court record for all cases and proceedings.

(b) Electronic Filing Mandatory. Except as provided in (c), below, all documents shall be submitted for filing in electronic form in strict compliance with instructions of the Clerk in a format approved by the Court.

(c) Exceptions to and Waivers of Requirement to File Documents in Electronic Form.

- (1) Pro Se Exception. All unrepresented persons, sometimes referenced as *pro se litigants* or as *persons appearing in propria persona*, shall file and serve paper documents.
- (2) Attorney and Trustee Waivers. Attorneys who regularly practice and trustees assigned cases in the Eastern District of California shall register as users of the court's electronic filing system and file documents in electronic form, provided, however, that on a case-by-case basis, an attorney or trustee may apply for a waiver of this requirement. A request for waiver shall be submitted as an ex-parte application supported by a declaration demonstrating cause for relief from the requirement to file in electronic form. The decision to permit the filing of paper documents is in the sole discretion of the Court and may be cancelled at any time upon notice to the attorney.

(3) Sealed Document Exception. Unless otherwise ordered by the Court, requests to file documents under seal pursuant to 11 U.S.C. §107 (b) and (c) and FRBP 9018 shall be filed as paper documents. A paper copy of the order sealing documents shall be attached to the documents under seal and be delivered to the Clerk's Office. The Clerk shall maintain sealed documents in paper form.

(d) Scanning and Disposition of Paper Documents. Paper documents filed pursuant to (c)(1) or (c)(2) of this Rule shall promptly be scanned by the Clerk into electronic form. Once scanned and made part of the ECF system, the paper documents may be discarded.

(e) Violations. The Clerk shall not refuse to file any proffered paper document submitted in violation of this Rule, but following scanning into electronic form, shall bring such paper document to the attention of the Court. Any attorney or trustee who files a document in violation of this Rule may be subject to monetary or non-monetary sanctions.

(f) Time of Filing.

(1) Documents Submitted on Paper. A document submitted on paper shall be deemed filed when the Clerk takes physical possession of such document.

(2) Documents Submitted in Electronic Form. Documents submitted in electronic form shall be deemed filed as of the date and time stated on the Notice of Electronic Filing issued by the Clerk.

(3) Technical Failures Affecting Filing of Documents in Electronic Form. Technical failure shall not alter the registered user's responsibility to comply with all applicable filing deadlines, provided, however, that a registered user whose electronic filing is made untimely as the result of a documented, technical failure of the court's electronic filing system may seek appropriate relief from the Court.

LOCAL RULE 5005.5-1 (Effective April 3, 2006)

Eligibility and Registration for Electronic Filing; Use of Passwords

(a) Eligible Persons. Attorneys admitted to practice in this court (including those admitted *pro hac vice*), attorneys exempt from admission to the bar of this court (including attorneys authorized to represent the United States and attorneys representing child support creditors as authorized by P.L. 103-394, §304(g)), U.S. Trustees and their assistants, trustees, claims agents, and others as the Clerk deems appropriate, shall be eligible to apply for registered user status and be issued a username and password authorizing them to access the court's electronic filing system and submit documents in electronic form. Support staff of registered users are not eligible for a separate username and password, although such staff may attend any electronic filing system training provided by the court and may, with the permission and in the name of a registered user, use the username and password of that registered user to submit documents in electronic form.

(b) Application to be a Registered User. All eligible persons shall complete and submit the online Electronic Filing System Registration Form and User Agreement available on the court's Internet web site (www.caeb.uscourts.gov). All registered users shall also maintain an account in good standing with the PACER Service Center (<http://pacер.psc.uscourts.gov>).

(c) Training. Prior to receiving an electronic filing system username and password, registered users, or a person authorized to act on behalf of a registered user, must complete minimum required electronic filing system training provided by the court or obtain a waiver of the training requirement from the Clerk.

(d) Unauthorized Use of Password Prohibited.

(1) A registered user shall not use his/her username and password to file pleadings or other documents on behalf of someone who is not a registered user.

(2) No person may use a username and password without the permission of the registered user to whom they were issued. Registered users shall protect the security and confidentiality of their username and password and prevent their disclosure to any person other than the registered user's authorized agent.

(e) Duty to Maintain an e-Mail Account; Update e-Mail Address. Each registered user shall maintain an e-mail account and shall update his/her e-Filing user information via the court's web site whenever their e-mail address changes.

LOCAL RULE 5008-1
Funds of Chapter 11 Estates

(a) New Bank Accounts. Immediately upon filing a chapter 11 petition, the debtor shall close all bank accounts. The debtor shall open and maintain a new general bank account in a federally insured depository. If the debtor has an ongoing business with employees, the debtor shall similarly open and maintain a tax account, unless the Court deems it unnecessary. If the debtor maintained a separate payroll account immediately prior to filing, the debtor shall similarly open and maintain a payroll account, unless the Court deems it unnecessary. The signature cards for the new accounts shall clearly indicate that the debtor is a "debtor-in-possession."

(b) Sales of Assets. Unless the Court orders otherwise, the net cash proceeds from the sales of assets pursuant to 11 U.S.C. §363 shall be deposited in separate, interest-bearing blocked accounts at a federally insured depository. All such accounts shall bear the inscription "not to be disbursed or withdrawn except upon further order of the Bankruptcy Court."

(c) Insured Funds. "Federally insured depository" means a financial institution that is insured by the Federal Deposit Insurance Corporation or other federal agency providing deposit protection. Except with respect to funds that are held on deposit with an entity that is included in the U.S. Trustee's list of cooperating depositories, no account shall be maintained with a balance in excess of \$100,000, except as provided in 11 U.S.C. §345(b). If necessary, additional insured accounts shall be opened in different depositories so that any deposit shall not exceed the insured limits of the account.

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 5013-1
Standing of Clerk and Deputy Clerks

The Clerk and Deputy Clerks of this court are authorized to issue Orders to Show Cause or Notices of Intent to dismiss, convert, or appoint a trustee for failure to prosecute or comply with the Bankruptcy Code, FRBP, these Local Rules and any order of this Court.

LOCAL RULE 7003-1
Cover Sheet and Summons in Adversary Proceedings

At the time of filing a complaint commencing an adversary proceeding, the plaintiff shall present to the Clerk a completed Adversary Proceeding Cover Sheet on Form B 104 unless otherwise ordered by the Court. The attorney for the plaintiff shall prepare the appropriate form of summons for execution by the Clerk.

LOCAL RULE 7005-1
Service by Electronic Means

(a) Consent to Service by Electronic Means. A registered user of the court's electronic filing system may consent to receive service by electronic means pursuant to FRCivP 5(b)(2)(D), as made applicable to bankruptcy cases and proceedings by FRBP 7005 by so indicating on his/her online Electronic Filing System Registration Form and User Agreement. This option may be changed by the registered user at any time thereafter by updating their e-Filing user information via the court's web site.

(b) Opting Out of Service by Electronic Means. A registered user of the court's electronic filing system may opt out of receiving service by electronic means by so indicating on his/her online Electronic Filing System Registration Form and User Agreement. This option may be changed by the registered user at any time thereafter by updating their e-Filing user information via the court's web site.

(c) Roster of Those Consenting to Service by Electronic Means. The Clerk shall maintain a roster containing the names and e-mail addresses of registered users who have consented to service by electronic means. The roster shall only be accessible by registered users of the court's electronic filing system and shall be password protected to prevent access by unauthorized persons or entities.

(d) Method of Service.

- (1) Upon Those Parties Consenting to Service by Electronic Means. Service by electronic means pursuant to FRCivP 5(b)(2)(D) shall be accomplished by transmitting an e-mail which includes as a PDF attachment the document(s) served. The subject line of the e-mail shall include the words "Service Pursuant to FRCivP 5", the first text line of the e-mail shall include the case or proceeding name and number and the title(s) of the document(s) served.
- (2) Upon All Other Parties. Service on parties who are not registered users of the court's electronic filing system or who are registered users, but have opted out as provided for in (b) above, must be made in the conventional manner as provided for in FRCivP 5 (b)(2).
- (3) Certificate of Service. The certificate of service shall include all parties served, whether by electronic or conventional means. Where service was accomplished by electronic means, the certificate of service shall include the e-mail addresses to which the document(s) were transmitted, and the party, if any, whom the recipient represents.

LOCAL RULE 7026-1
Discovery Limitations

(a) Pursuant to the provisions of FRCivP 26(a)(1), and unless otherwise ordered by the Court in the specific adversary proceeding, contested petition, or contested matter, the automatic disclosure procedures described therein shall not be required in any action pending in this court, nor shall any automatic disclosures of any type be required in any action pending in this court.

(b) Pursuant to the provisions of FRCivP 26(a)(2)(B), and unless otherwise ordered by the Court in the specific adversary proceeding, contested petition, or contested matter, the expert witness disclosure requirements described therein shall not be required in any action pending in this court, and all disclosure of matters pertaining to expert witnesses shall be performed in accordance with the provisions of a scheduling or other order entered in the specific adversary proceeding, contested petition, or contested matter, or pursuant to the provisions of FRCivP 30, 33, and 34, as applicable.

(c) Pursuant to the provisions of FRCivP 26(a)(3), and unless otherwise ordered by the Court in the specific adversary proceeding, contested petition, or contested matter, the pretrial disclosure requirements described therein shall not be required in any action pending in this court, and all disclosure of matter of the type described therein shall be performed in accordance with the provisions of LBR 9017-1 and any pretrial, scheduling or status order.

(d) Pursuant to the provisions of FRCivP 26(b)(2), and unless otherwise ordered by the Court in the specific adversary proceeding, contested petition, or contested matter, there shall be no presumptive limitations upon the number of oral or written depositions taken (See FRCivP 30(a)(2)(A) and 31(a)(2)(A)) or upon the number of interrogatories to parties served (See FRCivP 33(a)) in any action pending in this court. If any party believes that any such proposed discovery is burdensome, oppressive or otherwise improper, that party shall have the burden of seeking a protective order against such proposed discovery in accordance with the provisions of FRCivP 26(c) and, if applicable, FRCivP 45.

(e) Pursuant to the provisions of FRCivP 26(d) and 26(f), and unless otherwise ordered by the Court in the specific adversary proceeding, contested petition, or contested matter, there is no requirement that parties or counsel engage in any meet-and-confer procedure prior to any scheduling conference or prior to seeking discovery in the first instance.

LOCAL RULE 7030-1
Deposition Transcripts

It shall be the duty of the party requesting a deposition to obtain from the reporter the original transcript thereof in a sealed envelope and to safely retain the same under conditions suitable to protect it from loss, destruction, or tampering until such time as the Court shall order its production.

LOCAL RULE 7038-1
Jury Trial of Right

(a) Right Preserved. FRCivP 38 shall apply in adversary proceedings where there is a right to trial by jury.

(b) Demand. Where demand is made for a jury trial, it shall appear immediately following the title of the complaint or answer containing the demand, or in such other document as may be permitted by FRCivP 38(b). Any notation on the Adversary Proceeding Cover Sheet (Form B 104) concerning whether a jury trial is or is not demanded shall not constitute a demand for a jury trial under these Local Rules.

LOCAL RULE 7039-1
Trial by Jury or the Court

FRCivP 39 applies in adversary proceedings. This Rule shall not be interpreted to suggest that a Bankruptcy Judge will or may preside over a jury trial.

LOCAL RULE 7041-1
Notification to Calendar Clerk of Matters to be Dismissed

For all matters or proceedings that have been calendared for trial, hearing or conference, it is the duty of the plaintiff or moving party to promptly notify the calendar clerk of:

- (1) Matters or proceedings that have been settled by stipulation of the parties;
- (2) Motions that are to be dropped at the request of the moving party; and,
- (3) Matters that have been or are being dismissed.

LOCAL RULE 7056-1
Motions for Summary Judgment or Summary Adjudication

(a) Motions for Summary Judgment or Summary Adjudication. Each motion for summary judgment or summary adjudication shall be accompanied by a “Statement of Undisputed Facts” which shall enumerate discretely each of the specific material facts relied upon in support of the motion and cite the particular portions of any pleading, affidavit, deposition, interrogatory answer, admission or other document relied upon to establish that fact. The moving party shall be responsible for the filing with the court of all evidentiary documents cited in the moving papers.

(b) Opposition. Any party opposing a motion for summary judgment or summary adjudication shall reproduce the itemized facts in the Statement of Undisputed Facts and admit those facts which are undisputed and deny those which are disputed, including with each denial a citation to the particular portions of any pleading, affidavit, deposition, interrogatory answer, admission or other document relied upon in support of that denial. The opposing party may also file a concise “Statement of Disputed Facts,” and the source thereof in the record, of all additional material facts as to which there is a genuine issue precluding summary judgment or adjudication. The opposing party shall be responsible for the filing with the Court of all evidentiary documents cited in the opposing papers. If a need for discovery is asserted as a basis for denial of the motion, the party opposing the motion shall provide a specification of the particular facts on which discovery is to be had or the issues on which discovery is necessary.

(c) Stipulated Facts. All parties-in-interest may jointly file a stipulation setting forth a statement of stipulated facts to which all parties-in-interest agree. As to any stipulated facts, the parties so stipulating may state that their stipulations are entered into only for the purposes of the motion for summary judgment and are not intended to be otherwise binding.

(d) Summary Adjudication. This Rule shall apply to motions for orders specifying material facts that appear without substantial controversy pursuant to FRCivP 56(d), except that the

proposed “Statement of Undisputed Facts” and the “Statement of Disputed Facts” shall be limited to the facts which the moving party asserts are without substantial controversy and the facts the opposing party contends are in dispute.

LOCAL RULE 7065-1
Temporary Restraining Orders

(a) Notice to Affected Parties. Any party seeking a temporary restraining order in the absence of actual notice to the affected parties and/or counsel shall comply with the requirements of FRCivP 65(b). Appropriate notice would inform the affected parties and/or counsel of the intention to seek a temporary restraining order, the date and time for hearing to be requested of the Court, whether the judge will permit a counsel to appear by telephone, and the nature of the relief requested. Once a specific time and location has been set by the Court, additional notice of the time and location of the hearing shall be given.

(b) Documents to be Filed. No hearing on a temporary restraining order will normally be set unless the following documents are filed with the Clerk and, unless impossible under the circumstances, served on the affected parties and/or their counsel:

- (1) An adversary complaint;
- (2) A motion for temporary restraining order;
- (3) A brief on all relevant legal issues presented by the motion;
- (4) A declaration in support of the existence of an irreparable injury;
- (5) A declaration detailing the notice or efforts to effect notice to the affected parties and/or counsel or showing good cause why notice should not be given; and,
- (6) A proof of service.

(c) Contents and Service of Proposed Order. The party seeking the order shall deliver to the Court and, unless impossible under the circumstances, serve the affected parties and/or counsel with a proposed temporary restraining order with, if applicable under FRBP 7065, a provision for a bond. In all circumstances in which a temporary restraining order is requested ex parte, the proposed order shall further notify the affected parties and/or counsel that they may apply to the Court for modification or dissolution on two (2) days notice by personal service or such other notice as the Court may allow.

(d) Modification or Dissolution. When a preliminary injunction or temporary restraining order has been issued, the affected parties may apply to the Court for modification or dissolution of the injunction or order. Such motion shall normally be accompanied by a brief on all relevant legal issues to be presented in support and declarations supporting modification or dissolution and detailing the notice or efforts to notify the other parties and/or counsel.

LOCAL RULE 7090-1
Disposition of Unclaimed Exhibits

If exhibits are not withdrawn within sixty (60) days after notice to the parties to claim the same, the Clerk may dispose of them as the Clerk may deem fit.

LOCAL RULE 8020-1
Procedures Following Remand by an Appellate Court

Whenever a case, proceeding or matter is remanded by an Appellate Court to the Bankruptcy Court for further proceedings, any party to the appeal may move to set the matter for further proceedings by filing a motion pursuant to LBR 9014-1. The Court will not set the matter for further proceedings as a matter of course.

LOCAL RULE 9001-1
Definitions

These definitions supplement the definitions set forth in FRBP 9001 and 9002. For purposes of these Rules, unless the context otherwise requires, the terms below are defined as follows:

- (1) "Briefs" include memoranda, points and authorities, and other written arguments, or compilations of authorities.
- (2) "Case" means the bankruptcy case initiated by the filing of a petition for relief.
- (3) "Courtroom Deputy" means the deputy clerk assigned to the particular judge to whom a case or proceeding has been assigned or the judge before whom a matter or a part thereof is being conducted.
- (4) "Declaration" includes an affidavit prepared in accordance with federal law. See 28 U.S.C. §1746.
- (5) "DIP" means debtor-in-possession.
- (6) "Ex Parte" means without prior notice.
- (7) "FRBP" means the Federal Rules of Bankruptcy Procedure.
- (8) "FRCivP" means the Federal Rules of Civil Procedure.
- (9) "Filed" means delivered into the custody of the Clerk and accepted by the Clerk for inclusion in the official records of the case or proceeding.
- (10) "Motion" includes all motions, applications, objections, or other requests made to the Court for orders or other judicial activity.

- (11) "Order" means any directive by the Court other than a judgment, including oral or telephonic as well as written directives.
- (12) "Proceeding" includes adversary proceeding, any hearing conducted by the Court, and any other continuing matter before the Court arising in the bankruptcy case.

LOCAL RULE 9004-1
General Requirements of Form

(a) General Format of Documents.

- (1) All documents in paper form presented for filing with the court, other than those on Official Bankruptcy Forms and other forms approved by the Court, shall be on white paper, with numbered lines in the left margin, 8½" x 11" in size, and shall otherwise comply with all other applicable provisions of these Rules. Matter contained thereon shall be typewritten or presented by some other clearly legible process, without erasures or interlining which materially defaces the document, and shall appear on one side of each sheet only. Documents shall be double-spaced except for the identification of counsel, titles, headings, footnotes, quotations, exhibits, and descriptions of real property. Each page shall be numbered consecutively at the bottom.
- (2) Electronic Documents. All documents in electronic form presented for filing with the court shall be submitted as a PDF file using the court's electronic filing system and when opened for viewing on the electronic case file system shall conform in all respects to the general appearance of traditional paper documents, prepared in the manner and form described in (1), above.

(b) Counsel Identification. The name, address (including e-mail address, if the document is to be submitted in electronic form), telephone number, and the California State Bar membership number (not applicable to counsel for the United States) of all counsel (or, if in propria persona, of the party) and the specific identification of each party represented by name and interest in the proceeding (e.g., Debtor Smith, Creditor Bank, Plaintiff Roe, Defendant Doe) shall appear in the upper left-hand corner of the first page of each document presented for filing, except that in the instance of multiparty representation reference may be made to the signature page for the complete list of parties represented.

(c) Signatures Generally. All pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing in propria persona. Affidavits and certifications shall be signed by the person offering the evidentiary material contained in the document. The name of the person signing the document shall be typed underneath the signature.

(1) Signatures on Documents Submitted Electronically.

- (a) Signature of the Registered User. The username and password required to access the electronic filing system shall serve as the registered user's signature on all electronic documents filed with the court. They shall also serve as a signature, with the same force and effect as a written signature, for purposes of the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of this court, including FRBP 9011-1 and L.B.R. 9004-1(c), and for any other purpose for which a signature is required in connection with proceedings before the Court. Unless the electronically filed document has been scanned and shows the registered user's original signature or bears a software-generated electronic signature thereof, an "/s/" and the registered user's name shall be typed in the space where the signature would otherwise appear.
- (b) Signatures of Other Persons. Signatures of persons other than the registered user may be indicated by either:
- (1) Submitting a scanned copy of the originally signed document;
 - (2) Attaching a scanned copy of the signature page(s) to the electronic document, or;
 - (3) Through the use of "/s/ Name" or a software-generated electronic signature in the signature block where signatures would otherwise appear. Electronically filed documents on which "/s/Name" or a software-generated electronic signature is used to indicate the signatures of persons other than the registered user shall be subject to the requirements set forth in (c) and (d), below.
- (c) The use of "/s/ Name" or a Software Generated-Electronic Signature. The use of "/s/Name" or a software-generated electronic signature on documents constitutes the registered user's representation that an originally signed copy of the document exists and is in the registered user's possession at the time of filing.
- (d) Retention Requirements When "/s/Name" or a Software-Generated Electronic Signature is Used. When "/s/Name" or a software-generated electronic signature is used in an electronically filed document to indicate the required signature(s) of persons other than that of the registered user, the registered user shall retain the originally signed document in paper form for no less than three (3)

years following the closing of the case. On request of the Court, the registered user shall produce the originally signed document(s) for review. The failure to do so may result in the imposition of sanctions on the Court's own motion, or upon motion of the case trustee, U.S. Trustee, U.S. Attorney, or other party.

- (2) Signature on Facsimile Documents. For the purposes of this Rule, the image of the original manual signature appearing on a facsimile (fax) copy filed pursuant to this Rule shall constitute an original signature for all court purposes. The document, which itself may be in whole or in part a fax copy, must be marked "original" prior to submission to the Clerk's Office for filing. The originator of the document, or in the case of an affidavit or certification, the presenting attorney or party, is required to maintain the document containing the original manual signature until the conclusion of the case or proceeding, including any appeal and remand after appeal. In the event there are multiple signatories to a document, the filing party or attorney shall retain the originally signed document(s). The Court may require that the document containing the original manual signature be filed. This Rule does not provide for documents to be transmitted via fax directly to the Clerk's Office. Documents directly faxed to the Clerk or to a chambers of the Court will not be filed, lodged, received, returned, or acknowledged.

LOCAL RULE 9014-1
Motion Calendar and Procedure

(a) Applicability. Parties shall file, serve, and set for hearing all contested matters, including motions, whether filed in the bankruptcy case or in an adversary proceeding, objections, applications, and other matters for which a hearing is necessary (hereafter referred to collectively as motions), in accordance with this Local Rule, any other applicable Local Rules, and the applicable provisions of Title 11 of the United States Code and the Federal Rules of Bankruptcy Procedure. Except as otherwise provided in LBR 3007-1, this Local Rule shall apply to objections to proofs of claim.

(b) Motion Calendar.

- (1) Each judge of the court shall maintain his or her department's individual motion calendar. All hearings shall be set on the motion calendar of the department to which the case is assigned. A party shall self-set a motion for hearing on the dates and times specified on each department's motion calendar.
- (2) Each judge's motion calendar and instructions for self-setting hearings are posted on the court's Internet site, www.caeb.uscourts.gov, and are also available from the Clerk's Office at the public counters.

(c) Docket Control Number.

- (1) In motions filed in the bankruptcy case, a Docket Control Number (designated as DC No.) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions.
- (2) In motions filed in adversary proceedings, the Docket Control Number shall be placed immediately below the adversary number.
- (3) The Docket 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 Docket Control Number assigned to attorney John D. Doe would be DC No. JDD-1, the second DC No. JDD-2, the third DC 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.

- (4) Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice, shall include the same number. However, motions for reconsideration and countermotions shall be treated as separate motions with a new Docket Control Number assigned in the manner provided for above.

(d) Format and Content of Motions and Notices.

- (1) Format. All pleadings and documents filed in support and in opposition to a motion shall contain in the caption the date and time of the hearing and the courtroom¹ in which the hearing will be held. All pleadings and documents filed in support and in opposition to a motion shall conform with the Court's Guidelines for the Preparation of Documents, effective December 1, 1999, or as thereafter amended.
- (2) Separate Notice. Every motion shall be accompanied by a separate notice of hearing stating the docket control number, the date and time of the hearing, the location of the courthouse¹, the name of the judge hearing the motion, and the courtroom¹ in which the hearing will be held.

¹ See Form EDC 2-071, Courtroom Locations and Nomenclature, Appendix I

- (3) Contents of Notice. The notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition. If written opposition is required, the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition.
 - (4) Service of Notice Only. When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.
 - (5) Legal Authority. Each motion, opposition, and reply shall cite the legal authority relied upon by the filing party.
 - (6) Evidence. Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with FRCivP 56(e).
- (e) Service and Proof of Service.
- (1) Service of all pleadings and documents filed in support of, or in opposition to, a motion shall be made on or before the date they are filed with the court.
 - (2) A proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed.
 - (3) The proof of service for all pleadings and documents filed in support or opposition to a motion shall be filed as a separate document and shall bear the Docket Control Number. Copies of the pleadings and documents served shall not be attached to the proof of service. Instead, the proof of service shall identify the title of the pleadings and documents served.
- (f) Amount of Notice.
- (1) Motions set on 28 days' notice. Unless additional notice is required by the Federal Rules of Bankruptcy Procedure or these Local Rules, or the moving party elects to give the notice permitted by LBR 9014-1(f)(2), the moving party shall file and serve the motion at least twenty-eight (28) days prior to the hearing date.

- (i) If the motion is a motion for relief from the automatic stay, it shall be the duty of the moving party 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).
- (ii) Opposition. Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. Opposition shall be accompanied by evidence establishing its factual allegations. Without good cause, no party shall 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.

The opposition shall specify whether the responding party consents to the Court's resolution of disputed material factual issues pursuant to FRCivP 43(e) as made applicable by FRBP 9017. If the responding party does not so consent, the opposition shall include a separate statement identifying each disputed material factual issue. The separate statement shall enumerate discretely each of the disputed material factual issues and cite the particular portions of the record demonstrating that a factual issue is both material and in dispute. Failure to file the separate statement shall be construed as consent to resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e).

- (iii) Reply. The moving party may, at least seven (7) days prior to the date of the hearing, serve and file with the court a written reply to any written opposition filed by a responding party.

If the moving party does not consent to the Court's resolution of disputed material factual issues pursuant to FRCivP 43(e), the moving party shall file and serve, within the time required for a reply, a separate statement identifying each disputed material factual issue. The separate statement shall enumerate discretely each of the disputed material factual issues and cite the particular portions of the record demonstrating that a factual issue is both material and in dispute. Failure to file the separate statement shall be construed as consent to resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e).

Unless the Court determines that an evidentiary hearing is necessary, the evidentiary record closes upon expiration of the time for the filing of the reply.

- (iv) Prior to the noticed hearing date, counsel may bring to the Court's attention relevant judicial opinions published after the date the opposition or reply was filed by filing and serving a Statement of Recent Development, containing a citation to and providing a copy of the new opinion without argument. No memoranda, declarations or documents other than those specified in this Local Rule shall be filed without prior Court approval.
- (2) Motions set on 14 days' notice. Alternatively, unless additional notice is required by the Federal Rules of Bankruptcy Procedure or these Local Rules, the moving party may file and serve the motion at least fourteen (14) days prior to the hearing date.
- (i) This alternative procedure shall not be used for a motion filed in connection with an adversary proceeding.
 - (ii) The use of this alternative procedure in connection with a motion for relief from the automatic stay shall be deemed a waiver of the time limitations contained in 11 U.S.C. § 362(e).
 - (iii) When fewer than twenty-eight (28) days' notice of a hearing is given, no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.
- (3) Orders Shortening Time. In appropriate circumstances and for good cause shown, the Court may order that the amount of notice of a hearing on a motion be shortened to fewer than fourteen (14) days. Unless otherwise ordered, when the time for service is shortened to fewer than fourteen (14) days, no written opposition is required.

If the motion for which notice is to be shortened has not been filed, a copy of it or a summary shall be filed with the application as a separate exhibit document. If the motion or a summary cannot be filed as an exhibit, the application shall describe the motion with particularity and explain why the moving party is unable either to file the motion or file it as an exhibit to the application.

- (4) "First Day Orders." In chapter 11, 12, and 13 cases, preliminary hearings on motions for "first day orders," including, but not limited to, motions to use cash collateral, borrow money, and pay employees, shall generally be heard by the Court within two (2) days of the filing of the petition. Counsel for the debtor or the trustee shall contact the chambers of the assigned judge immediately upon the filing of the petition to ascertain what notice will be required and the date and time of the hearing.

(g) Evidentiary Hearings.

- (1) If the Court determines that there is a disputed material factual issue that must be resolved before the relief requested in the motion can be granted or denied, testimony shall be taken in accordance with FRCivP 43(a) unless the parties waive such right or consent to proceeding under FRCivP 43(e).
- (2) The Court's procedures for scheduling an evidentiary hearing will be set forth in a General Order. The current General Order is 02-01. It, and any General Order supplanting it, are available from the Clerk's Office at the public counters or on the court's Internet site, www.caeb.uscourts.gov.

(h) Oral Argument; Removal from Calendar; Tentative Rulings. Unless the assigned judge determines that the resolution of the motion does not require oral argument, he or she 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 are resolved without oral argument and can view tentative rulings by checking the court's Internet site at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing. Parties appearing telephonically shall view the tentative ruling prior to the hearing.

(i) Related and Countermotions. Any countermotion or other motion related to the general subject matter of the original motion set for hearing pursuant to this Local Rule may be filed and served no later than the time opposition to the original motion is required to be filed. In the event a counter or 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 and 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 by the Court. Nothing herein shall be construed to require the filing of a counter or related motion.

(j) Continuances. Continuances of hearings must be approved by the Court. A request for a continuance may be made orally at the scheduled hearing or in advance of it if made by written application. A written application shall disclose whether all other parties in interest oppose or support the request for a continuance.

(k) Opportunity for Hearing.

- (a) The notice of opportunity for hearing procedure, as defined in 11 U.S.C. § 102(1), may only be used as permitted in the Court's General Order dealing with chapter 13 practice. In all other matters, if an order is necessary or is desired by the moving party, the motion should be set for hearing pursuant to this Local Rule.
- (b) When the notice of opportunity for hearing procedure is used, the notice 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;
 - (iii) Provide a minimum of fourteen (14) 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 a party-in-interest; and
 - (iv) 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.
- (c) No hearing date shall be set by the moving party unless an objection or a request for hearing is made by a party-in-interest, 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 in accordance with this Local Rule.
 - (d) 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.

(1) Sanctions. Failure to comply with the requirements of this Local Rule or the provisions of other Local Rules applicable to motion practice shall constitute grounds, without limitation, to deny the motion, strike late-filed pleadings and documents, continue the hearing on the motion, deem the moving party to have waived the time limitations of 11 U.S.C. § 362(e), deny the offending party the ability to appear by telephone, or assess other appropriate sanctions.

LOCAL RULE 9017-1

Alternate Direct Testimony, Exhibits at Trial, and Qualification of Expert Witnesses

If ordered by the Court, the following procedures shall apply:

(a) Alternate Direct Testimony Procedure.

- (1) Purpose. The purpose of this procedure is to facilitate pretrial preparation and to streamline the adducement of direct testimony in trial and contested hearings so as to reduce trial time without sacrificing due process and a fair trial. This procedure shall be known as the Alternate Direct Testimony Procedure.
- (2) Applicability. Unless otherwise ordered, the Alternate Direct Testimony Procedure shall be used in all trials and contested hearings not scheduled for the law and motion calendar. The failure of any party to any such trial or contested hearing to object in writing at or before the pretrial conference, if one is held, or if not, on or before the date of the trial setting hearing, shall

be deemed as consent to the use of this alternate testimony procedure for such trial or contested hearing.

- (3) Content and Preparation. For each witness (excluding hostile or adverse witnesses) that an attorney calls on behalf of his/her client's case, there shall be prepared in triplicate a succinct written declaration, executed under penalty of perjury, of the direct testimony which that witness would be prepared to give as though questions were propounded in the usual fashion. Each statement of fact or opinion shall be separate, sequentially numbered and shall contain only matters that are admissible under the Federal Rules of Evidence (e.g., avoiding redundancies, hearsay, and other obvious objectionable statements).

(b) Submission of Testimony Declarations, Exhibits, and Objections. Unless otherwise ordered by the Court, copies of all direct testimony declarations by witnesses and exhibits that are intended to be presented at trial or hearing shall be furnished to opposing counsel as follows:

- (1) Plaintiff's Declarations and Exhibits. The plaintiff shall submit to opposing counsel all such declarations and exhibits comprising the plaintiff's case in chief fourteen (14) days before trial.
- (2) Defendant's Declarations and Exhibits. The defendant shall submit to opposing counsel all such declarations and exhibits comprising the defendant's case seven (7) days before trial.
- (3) Objections to Declarations and Exhibits. Two (2) days before trial or hearing, all such declarations and exhibits, together with any written objections to the admission of any of the exhibits or to any of the declarations or any portion thereof, shall be lodged with the courtroom deputy of the department to which the trial or hearing is assigned. No objections to testimony presented by written declaration or exhibits need be entertained unless in writing and presented as herein specified. The exhibits (no originals) lodged with the courtroom deputy clerk as herein required shall be premarked by counsel (e.g., Plaintiff's Exhibit 1, etc., Defendant's Exhibit A, etc.) and if three (3) or more, shall be accompanied by a cover sheet index containing a brief description of each exhibit.

(c) Utilization of Live Testimony. All cross-examination, rebuttal, surrebuttal and appropriate impeachment evidence shall be given by live testimony. Notwithstanding provisions of this Rule, the Court, in its discretion, may allow live direct testimony.

Comment. This procedure is not used in Department B in Fresno; however, it may be permitted upon request. A modified procedure is used in Department A in Fresno.

(d) Qualifications of Expert Witnesses. Whenever an expert witness is called to testify, it shall be the duty of the party calling such witness to furnish the Court and the opposing party with a declaration of the expert's qualifications. After the expert is sworn and upon verifying the

qualification statement, it shall be admitted into evidence. Thereafter, opposing counsel and/or the Court may examine the witness on voir dire.

LOCAL RULE 9019-1
Stipulations

Except stipulations entered into during the course of a deposition and set forth in the transcript thereof, stipulations shall be:

- (a) In writing, signed by all counsel or parties in propria persona who have appeared in the proceeding and are affected by the stipulation;
- (b) Made in open court and noted by the courtroom deputy clerk upon the minutes or by the court reporter in the notes; or,
- (c) Recited in a pretrial order or other Court order. Stipulations not in conformity with these requirements will not be recognized unless necessary to prevent manifest injustice.

LOCAL RULE 9022-1
Notice of Entry of Judgment Pursuant to FRBP 9022

(a) On Whom Notice Must Be Served. Unless otherwise ordered by the Court, the requirements of FRBP 9022 shall be satisfied by service of the notice of entry of judgment or of order on only those contesting parties who appeared in connection with the judgment or order. Appearances are defined in the Local Rules of Practice of the United States District Court for the Eastern District of California, Rules 83-182 and 83-183, which are made applicable to these rules pursuant to LBR 1001-1(c). Contested matters are governed by FRBP 9014.

(b) Procedure.

- (1) When Proposed Judgment or Order is Lodged By a Party. Except in those circumstances where the clerk is required to provide notice by FRBP 2002(f) and except as provided by subsection (2) below, in all matters heard by the Court, the party lodging the judgment or order shall submit with it a Request for Clerk's Notice of Entry (EDC 3-965 for bankruptcy cases and EDC 3-966 for adversary proceedings) containing the names and mailing addresses of all parties to be served.
- (2) When Judgment or Order is Prepared By the Court. In those instances where the Court has prepared the judgment or order, the clerk shall serve notice of entry on the parties who appeared in connection with the judgment or order pursuant to subsection (c) below, unless the Court otherwise directs.

- (c) Method of Service. The clerk shall serve notice of entry as follows:
- (1) By sending the appropriate Bankruptcy Noticing Center (BNC) notice for service on parties who appeared in connection with the judgment or order.
 - (2) Unless the case is a chapter 9 municipality case, the clerk shall forthwith transmit to the United States Trustee a copy of the judgment or order.

APPENDIX I (Updated 1/15/08)

ADMINISTRATIVE INFORMATION

EDC 2-034	Bankruptcy Court Miscellaneous Fee Schedule
EDC 2-035	Required Documents and Fees
EDC 2-036	Electronic Public Access Fee Schedule
EDC 2-070	United States Bankruptcy Courts Within California
EDC 2-071	Courtroom Locations and Nomenclature
EDC 2-190	Revised Guidelines for Preparation of Master Address Lists
EDC 2-195	Revised Diskette Master Address List Specifications
EDC 2-785	Roster of Public Agencies
EDC 5-100	Notice of Electronic Availability of Bankruptcy Case File Information

The documents listed above are available on the Court's Internet web site at <http://www.caeb.uscourts.gov>. If you do not have Internet access, the documents are available at the Fresno, Modesto, and Sacramento Clerk's Office public lobbies.

APPENDIX II

GUIDELINES AND POLICY STATEMENTS

Guidelines for Payment of Attorneys' Fees in Chapter 13 Cases

Procedures for Disclosure Statement and Confirmation Hearings
Fresno Division, Department A

Notice to Attorneys and Trustees Concerning Use of the “Opportunity for Hearing”
Procedure; All Divisions

Revised Guidelines for the Preparation of Documents

Guidelines for Inter-Division Filings

Guidelines Pertaining to Bankruptcy Petition Preparers in Eastern District
of California Cases

Guidelines for Cash Collateral and Financing Stipulations

Policy Statement Re Applications to Employ Professionals

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APPENDIX III

LOCAL RULES FORMS

B104	Adversary Proceeding Cover Sheet
B254	Subpoena for Rule 2004 Examination
B255	Subpoena in an Adversary Proceeding
B256	Subpoena in a Case under the Bankruptcy Code
EDC 2-100	Verification of Master Address List
EDC 3-080-05	Chapter 13 Plan and Attachments
EDC 3-081-03	Order Confirming Plan, Valuing Collateral and Avoiding Liens
EDC 3-083-03	Wage Order
EDC 3-085	Declaration Requesting Entry of Order Confirming Chapter 13 Plan Without Chapter 13 Trustee's Approval of Form of Order
EDC 3-086	Class I Checklist
EDC 3-087	Authorization to Release Information to the Trustee Regarding Secured Claims Being Paid by the Trustee
EDC 3-095	Application and Declaration Re: Additional Fees and Expenses in Chapter 13 Cases
EDC 3-096	Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys
EDC 3-468-INST	Instructions for Completing Relief From Stay Information Sheet, Form EDC 3-468
EDC 3-468	Relief from Stay Information Sheet
EDC 3-965	Request for Clerk's Notice of Entry
EDC 3-966	Request for Clerk's Notice of Entry in Adversary Proceedings
EDC 6-970A	Order Granting Application For Order of Examination Under Federal Rule of Bankruptcy Procedure 2004(a) [No Document Production]
EDC 6-970B	Order Granting Application For Order of Examination Under Federal Rule of Bankruptcy Procedure 2004(a)

The documents listed above are available on the Court's Internet web site at <http://www.caeb.uscourts.gov>. If you do not have Internet access, the documents are available at the Fresno, Modesto, and Sacramento Clerk's Office public lobbies.

APPENDIX IV (Updated 1/29/10)

SELECTED GENERAL ORDERS AND SPECIAL ORDERS

General Order 10-01	Technical Amendment to Local Bankruptcy Rule 1001-1(c)
Special Order 10-01	Delegation of Authority to the Clerk of the Bankruptcy Court and his Deputies
General Order 09-03	Order Adopting Revision to Interim Rule 1007-1
General Order 09-02	Order Adopting Revisions to Local Bankruptcy Rules
General Order 09-01	Electronic Filing of Documents - Time of Filing Per Local Bankruptcy Rule 5005-1(f)(2)
General Order 08-05	Electronic Availability and Redaction of Electronically Filed Transcripts
General Order 08-04	Order Adopting Interim Rule 1007-1
General Order 08-03	Order Vacating General Order 05-04 (Except with Respect to Interim Rule 5012) and Vacating General Order 06-04
General Order 08-02	Amendment to General Order 05-03, Chapter 13 Cases
General Order 08-01	Amendment to Local Rule 3007-1
General Order 07-04	Technical Amendment to Local Rule 9014-1 (d)(1) & (2)
General Order 07-03	Abrogation of General Order 99-1, Order Concerning Filing of Papers
General Order 07-02	Technical Amendment to Local Rule 7005-1(d)(1)
General Order 07-01	Technical Amendments to Local Rules 5005.5-1 (b) & (e) and 7005-1 (a) & (b)
General Order 06-03	Amendment of Local Bankruptcy Rule 9014-1(f)(3)
General Order 06-02	Amendment of Local Bankruptcy Rules 1007-1, 2002-1 and 9004-1 and Adoption of New Local Bankruptcy Rules 5005-1, 5005.5-1 and 7005-1; Technical Amendment of Local Bankruptcy Rules 1002-1 and 1007-1
General Order 06-01	Amendment to General Order 05-03, Chapter 13 Cases
General Order 05-05	Filing of Employer Payment Advices Pursuant to 11 U.S.C. § 521(a)(1)(B)(iv)
General Order 05-03	Order Concerning Chapter 13 Cases (Applies to chapter 13 cases filed on or after 10/17/05, and cases converted to chapter 13 on or after 10/17/05. For cases filed or converted to chapter 13 prior to 10/17/05, see General Order 97-02, 00-02, 01-02, or 03-03.) As Amended by GO 06-01 and GO 08-02.
General Order 05-01	Technical Amendment to Local Bankruptcy Rules 2002-1(d)
General Order 04-04	Deposits of Registry Funds

General Order 04-03	Revision to Local Bankruptcy Rule 1002-1
General Order 04-02	Abrogation of Local Bankruptcy Rule 2016-1 and Revision to Local Bankruptcy Rule 9022-1
General Order 04-01	Amended and Restated Order Concerning Filing, Signing, and Verifying Documents by Electronic Means [Amends, Restates and Supercedes General Order 03-04]
General Order 03-02	Issuance of Orders to Show Cause for Failure to Timely File Documents; For Failure to Attend Meeting of Creditors; and/or for Failure to Pay Filing or Installment Fees
General Order 02-02	New Local Bankruptcy Rule 3007-1 and Revisions to Local Bankruptcy Rules 4001-1 and 9014-1
General Order 02-01	Order Adopting Procedure Under Federal Rule of Bankruptcy Procedure 9014(d) and Local Bankruptcy Rule 9014-1
General Order 01-03	New Local Rule 7056-1 and Revisions to Local Rules 9004-1 and 9014-1
General Order 00-3	Modification of Dispute Resolution Procedures for Bankruptcy Cases and Adversary Proceedings
General Order 98-5	Complaints Against Pro Se Debtors Pursuant to 11 U.S.C. §§ 523 and 727
General Order 95-1	Adoption of Dispute Resolution Procedures for Bankruptcy Cases and Adversary Proceedings
Special Order 05-01	Acceptance and Filing of Documents on October 15 and 16, 2005

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