

**United States Bankruptcy Court
Eastern District of California**

PROPOSED LOCAL BANKRUPTCY RULES

The United States Bankruptcy Court for the Eastern District of California proposes to amend its Local Bankruptcy Rules. The following is an edited version of the existing rules with proposed changes highlighted in yellow. Text with a line drawn through it will be deleted; text with a line drawn under it will be added.

Comments on the proposed amendments are invited and may be submitted via email to caeb_comments@caeb.uscourts.gov or in writing to: Local Rules Amendments, c/o Wayne Blackwelder, U.S. Bankruptcy Court, 501 I Street, Suite 3-200, Sacramento, CA 95814. Comments must be received by 9:00 a.m. on Monday, November 1, 2011.

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. The following Local Rules of Practice of the United States District Court for the Eastern District of California ~~do not~~ apply in all bankruptcy cases and proceedings: 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)~~, and 293 (Awards of Attorneys' Fees), ~~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, Except for these enumerated 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 and Special Orders, which orders shall be available on the court's website (www.caeb.uscourts.gov). The Clerk shall ~~maintain~~ copies of general and special orders, guidelines, and policy statements that relate to practice before this court and shall make paper copies of these General Orders available upon request and payment of a nominal charge.

- (e) *Availability of Local Rules.* The Clerk shall maintain on the court's Internet web site (www.caeb.uscourts.gov) the current version 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 paper 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) *Modification of Requirements.* The Court may sua sponte or on motion of a party-in-interest for cause, modify the provisions of these Rules in a manner not inconsistent with the Federal Rules of Bankruptcy Procedure to accommodate the needs of a particular case or proceeding. 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.

Comment: The change to Subpart (c) eliminates applicability of LDR 182 (Attorneys - Appearance and Withdrawal); appearances and withdrawal will be governed by new LBR 2017-1. The change to Subpart (c) adds Local District Court Rule 293 to the list of District Court rules applicable in bankruptcy cases and proceedings. Changes to Subparts (d) and (e) reflect the advent of the Internet and the ready availability of court information from the court's web site (www.caeb.uscourts.gov). The change to Subpart (f) recognizes that the Federal Rules of Bankruptcy Procedure govern all proceedings before the court and that local practices must be in conformance therewith. Other changes are stylistic.

LOCAL RULE 1002-1

Intra-district Case Assignment Venue

Petitions for relief under Title 11, United States Code, shall be assigned to 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 assigned to the Fresno Division, 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 assigned to the Modesto Division, 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 assigned to the Sacramento Division 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 assigned to 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 a petition venue should be assigned to 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.

Comment: Change recognizes advent of electronic case files and electronic filing (see LBR 5005-1, Electronic Record is the Official Record; Filing of Documents), where the majority of documents are filed in electronic form via the Internet directly into the court's Electronic Case Files system instead of a physical address.

LOCAL RULE 1007-1

Lists, Schedules, Statements, and Other Documents of Creditors and Master Address List

- (a) *Listing of Creditors on Schedules D, E, and F.* 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 (EDC 2-190, Guidelines for Preparation of Master Address Lists) in a format approved by the Court.
- (c) *Employment Payment Advices.*
- (1) Copies of employer payment advices or other evidence of payments from an employer required by 11 U.S.C. §521(a)(1)(B)(iv) shall not be filed with the court. Instead, the documents shall be provided by the debtor to the assigned case trustee not later than seven (7) days before the date first set for the meeting of creditors.

- (2) Not later than 30 days from the date first set for the meeting of creditors called pursuant to 11 U.S.C. §341, a party-in-interest may demand the debtor provide copies of the documents submitted to the trustee. The debtor shall, within 14 days of such demand, provide the requested copies.

Comment: The name of the Rule is changed to reflect the addition of Subpart (c), Employer Payment Advices. The change to Subpart (a) clarifies that the requirements set forth apply only to the listing of creditors in Schedules D, E, and F; different standards apply for listing of creditors on mailing lists (see LBR 2002-1, Notice Requirements). The change to Subpart (b) provides a cross reference to the Guidelines for Preparation of Master Address Lists. The new Subpart (c) incorporates the requirements of former General Order 05-05, Filing of Employer Payment Advices Pursuant to 11 U.S.C. § 521(a)(1)(b)(iv). Other changes are are stylistic.

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 **eight 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.

Comment: The change to Subpart (a) is to conform to the revision to 11 U.S.C. § 727 (a)(8) made by Public Law No. 109-8 (2005) (BAPCPA).

LOCAL RULE 2002-1 Notice Requirements

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

- | | |
|---|--|
| (1) For Cases assigned to filed in the Sacramento Division: | (2) For Cases assigned to filed in the Modesto and Fresno Divisions: |
|---|--|

United States Attorney
(For [insert name of agency])
501 I Street, Suite 10-100
Sacramento, CA 95814

United States Attorney
(For [insert name of agency])
2500 Tulare Street, Suite 4401
Fresno, CA 93721

For example, the address listed for the U.S. Attorney for a debt owed notice to the Department of Education for a case assigned to 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 be available to the Bar and the public on the court's website (www.caeb.uscourts.gov) to enable compliance with this Rule and the provisions of FRBP 2002(j). The clerk shall make paper copies of the roster available upon request. 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 debt 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.

Comment: The change to Subpart (a)(1) is to conform to the revision in LBR 1002-1, Intra-District Case Assignment; the change to Subpart (b) recognizes the advent of the Internet and the ready availability of information from the Court's website (www.caeb.uscourts.gov); other changes are stylistic.

LOCAL RULE 2014-1
Employment of Professional Persons
Disclosure of Connections

To insure public confidence in the integrity of the bankruptcy process, the verified statement that must accompany an Application for Employment of Professional Persons pursuant to FRBP 2014(a), shall, after disclosure of any actual connections, close with the statement: "Except as set forth above, I have no connection with the debtor, creditors, or any party in interest, their respective attorneys, accountants, or the U.S. Trustee, or any employee of the U.S. Trustee." Applications for Employment which are not accompanied by a verified statement containing such a statement may be denied without prejudice.

Comment: New Rule. Incorporates provisions of former Policy Statement re Applications to Employ Professionals, Dated October, 1992.

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 ~~15~~¹⁴th 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)~~ ^{seven (7)} 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.

Comment: The time requirements of Subparts (c) and (d) are revised to be consistent with current 7 day increments in the Federal Rules of Bankruptcy Procedure.

LOCAL RULE ~~5008-1~~ 2015-2
Funds Monies of Chapter 11 Estates

- (a) New Bank, Deposit, and Investment Accounts. For all monies of the bankruptcy estate, immediately upon filing a Chapter 11 petition, the debtor-in-possession shall close all bank, deposit, and investment accounts. The debtor-in-possession 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-in-possession 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-in-possession 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 the 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 monies of the estate funds that are deposited or invested held on deposit with an entity that is included on in the U.S. Trustee's list of cooperating depositories or with a federally insured depository in an amount which does not exceed the federal insurance or guaranty, no monies of the estate account shall be maintained with a balance in excess of \$100,000, the maximum FDIC insurance limit except in an account shall be deposited or invested 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.

Comment: Formerly LBR 5008-1. Revised to clarify requirements applicable to monies of Chapter 11 estates. Definition of "Federally insured depository" moved to LBR 9001-1, Definitions. Part (c) is revised to reflect current FDIC insurance limit; absent further extension by Congress, the limit is set to revert back to the former ceiling of \$100,000 effective January 1, 2014.

LOCAL RULE 2016-1

Attorneys' Fees in Chapter 13 Cases

- (a) *Compensation.* Compensation paid to attorneys for the representation of debtors shall be determined according to the Guidelines for Payment of Attorneys' Fees in Chapter 13 Cases, unless a party-in-interest objects or when the attorney elects not to comply with the Guidelines for Payment of Attorneys' Fees in Chapter 13 Cases, in which instance, sections 329 and 330 of the Bankruptcy Code, FRBP 2002, 2016, and 2017, and other applicable authority shall govern.
- (b) *Court Approval Required .* After the filing of the petition, a debtor's attorney shall not accept or demand from the debtor any payment for services or cost reimbursement without first obtaining a court order authorizing the fees and/or costs and specifically permitting direct payment of those fees and/or costs by the debtor.
- © *Service of Disclosures of Compensation.* All attorneys shall file and serve on the United States Trustee and the Trustee the initial and supplemental disclosures of compensation required by FRBP 2016(b).

Comment: New Rule; incorporates provisions contained in Paragraph 4 of former General Order 05-03.

LOCAL RULE 2017-1

Attorneys - Appearances, Scope of Representation, and Withdrawal

(a) *Scope of Representation in Bankruptcy Cases and Proceedings.*

(1) An attorney who is retained to represent a debtor in a bankruptcy case constitutes an appearance for all purposes in the case, including, without limitation, motions for relief from the automatic stay, motions to avoid liens, objections to claims, and reaffirmation agreements. However, an appearance in the bankruptcy case for a party does not require the attorney to appear for that party in an adversary proceeding.

(2) An attorney appearing in a bankruptcy case or in an adversary proceeding may not withdraw from representation, or decline to act on behalf of the client, without first complying with the withdrawal requirements of Subpart (e) of this Rule. Any contract or agreement which purports to limit the scope of an attorney's representation, except as permitted by Subpart (a)(1) of this rule, will not be recognized by the court.

(b) *Appearance as Attorney of Record.*

(1) *Appearance Required.* Except as permitted in Subpart (c) of this Rule, no attorney may participate in any action unless the attorney has appeared as an attorney of record. A single client may be represented by more than one attorney of record to the extent authorized by the applicable Rules of Professional Conduct.

(2) *Manner of Making Appearance.* Appearance as an attorney of record is made:

(A) by signing and filing an initial document;

(B) by causing the attorney's name to be listed in the upper left hand corner of the first page of the initial document;

(C) by physically appearing at a court hearing in the matter, formally stating the appearance on the record, and then signing and filing a confirmation of appearance within seven (7) days; or

(D) by filing and serving on all parties a substitution of attorneys as provided in Subpart (h) of this Rule.

(c) *Attorneys Within Organizations.* Appearances as an attorney of record shall not be made in the name of a law firm, organization, public entity, agency, or department. See Fed. R. Civ. P. 11. When an attorney is employed or retained by a law firm, organization, public entity, agency, or department, however, the attorney may participate in an action, without filing a substitution of attorneys, if another person employed or retained by the same law firm, organization, public entity, agency, or department is attorney of record in the action.

(d) Counsel for Service.

(1) Designation of Counsel for Service. When multiple attorneys from a single law firm, organization, public entity, agency, or department are listed in the upper left hand corner of the first page of each filed document, one of the listed attorneys shall be designated as counsel for service. That designation shall be accomplished by so designating in the counsel identification in the upper left hand corner of the first page of the initial document or by filing and serving a document entitled "Designation of Counsel for Service," which will state the name, address, and telephone number of the designated counsel for service and will be signed by that counsel. The Clerk will serve court orders on the designated counsel for service. The identity of counsel for service in a particular action may be changed by filing and serving on all parties a document entitled "Change in Designation of Counsel for Service" stating the name, address, and telephone number of new and old counsel for service, identifying new counsel for service and bearing the signature of the new counsel for service.

(2) Service in the Absence of a Designation. If no designation of counsel for service has been made in a particular instance, the Clerk may select the attorney for service from the listing in the upper left hand corner of the first page of the initial filed document or from the signature block.

(e) Withdrawal. Unless otherwise provided herein, an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those Rules. The authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder. Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit.

(f) Withdrawal Following Limited Appearance. Any attorney who has appeared on behalf of a party in an action solely for the purpose of contesting an application for a temporary restraining order or other preliminary injunctive relief may withdraw from that action within fourteen (14) days after making that appearance, or at such other time as the Court may determine, by filing a notice and affidavit that the attorney is no longer counsel of record for the party. Such application shall establish that the attorney has returned all documents and other items received in connection with the action and shall set forth the last known address and telephone number of the party.

(g) Change of Address. Each appearing attorney and pro se party is under a continuing duty to notify the Clerk and all other parties of any change of address or telephone number of the attorney or the pro se party. Absent such notice, service of documents at the prior address of the attorney or pro se party shall be fully effective. Separate notice shall be filed and served on all parties in each action in which an appearance has been made.

- (h) Substitution of Attorneys. An attorney who has appeared in an action may substitute another attorney and thereby withdraw from the action by submitting a substitution of attorneys that shall set forth the full name and address of the new individual attorney and shall be signed by the withdrawing attorney, the new attorney, and the client. All substitutions of attorneys shall require the approval of the Court.
- (i) Local Co-Counsel. A Judge to whom an action is assigned has discretion in that action, and upon notice, to require an attorney appearing in this Court who maintains an office outside this District to designate a member of the Bar of this Court who does maintain an office within this District as co-counsel with the authority to act as attorney of record for all purposes. In such a case, the attorney shall file with such designation the address, telephone number and consent of the designee.
- (j) Formal Notice of Association of Counsel. Any attorney not substituted in as counsel of record under Subpart (h) of this Rule and not authorized to participate under other provisions in this Rule must file a notice of association, signed by an attorney of record and the associating attorney, and served on all parties.

Comment: New Rule. Establishes standards and requirements applicable to all attorneys who practice in the court.

LOCAL RULE 3001-1

Proof of Claim

- (a) Claim Based On A Writing. When a claim, or an interest in property of the debtor securing the claim, is based on a writing, a duplicate of the writing [i.e. NOT the original document(s)] shall be attached to the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim. When a claim is based on an open-end or revolving consumer credit agreement, the last account statement sent to the debtor prior to the filing of the petition shall also be filed with the proof of claim.
- (b) Additional Requirements in an Individual Debtor Case; Sanctions for Failure to Comply.
In a case in which the debtor is an individual:
- (1) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim;
 - (2) If a security interest is claimed in property of the debtor, the proof of claim shall include a statement of the amount necessary to cure any default as of the date of the petition;
 - (3) If a security interest is claimed in property that is the debtor's principal residence and an escrow account has been established in connection with the claim, the proof of claim shall be accompanied by an escrow account statement prepared as

of the date the petition was filed and in a form consistent with applicable nonbankruptcy law;

- (4) If the holder of a claim fails to provide any information required by this Subpart (b), the holder shall be precluded from presenting the omitted information, in any form as evidence in any hearing or submission in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless. In addition to or in lieu of this sanction, the court may, after notice and hearing, award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

Comment: New Rule; incorporates provisions of Paragraph 6 of Former General Order 05-03. If a claim is based on a writing, a copy – NOT THE ORIGINAL – of the writing should be attached to the proof of claim, i.e. it should not be filed as a separate document.

LOCAL RULE 3002-1 **Notice of Payment Changes**

- (a) Notice of Payment Changes. In a chapter 13 case, if a claim secured by a security interest in the debtor's principal residence is provided for under the debtor's plan pursuant to § 1322(b)(5) of the Bankruptcy Code, the holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee notice of any change in the payment amount, including any change that results from an interest rate or escrow amount adjustment, no later than thirty (30) days before a payment at a new amount is due.
- (b) Form and Content. A notice filed and served pursuant to subpart (a) of this rule shall (1) conform substantially with EDC Form X-XXX (eff. X-X-11) to which shall be attached the notice required under applicable nonbankruptcy law and the underlying agreement, (2) be filed as a supplement to the holder's proof of claim, and (3) not be subject to FRBP 3001(f).
- (c) Notice of Fees, Expenses, and Charges. In a chapter 13 case, if a claim secured by a security interest in the debtor's principal residence is provided for under the debtor's plan pursuant to § 1322(b)(5) of the Code, the holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice that itemizes all fees, expenses, or charges incurred in connection with the claim after the bankruptcy case was filed, and that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be filed as a supplement to the holder's proof of claim and served no later than 180 days after the date when the fees, expenses, or charges are incurred. The notice shall not be subject to Rule 3001(f). On motion of the debtor or trustee filed no later than one year after service of the notice, the court shall, after notice and hearing, determine whether payment of the fees, expenses, or charges is required by the underlying agreement and applicable nonbankruptcy law to cure the default or maintain payments in accordance with § 1322(b)(5) of the Code.

- (d) *Notice of Final Cure Payment.* No later than 30 days after making final payment of any cure amount on a claim secured by a security interest in the debtor's principal residence, the trustee in a chapter 13 case shall file and serve upon the holder of the claim, the debtor, and debtor's counsel a notice stating that the amount required to cure the default has been paid in full. If the debtor contends that final cure payment has been made and the trustee does not timely file and serve the notice required by this subdivision, the debtor may file and serve upon the holder of the claim and the trustee a notice stating that the amount required to cure the default has been paid in full.
- (e) *Response To Notice of Final Cure Payment.* No later than 21 days after service of the notice under subdivision (d) of this rule, the holder of a claim secured by a security interest in the debtor's principal residence shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default and (2) whether, consistent with § 1322(b)(5) of the Code, the debtor is otherwise current on all payments. If applicable, the statement shall itemize any required cure or postpetition amounts that the holder contends remain unpaid as of the date of the statement. The statement shall be filed as a supplement to the holder's proof of claim and shall not be subject to Rule 3001(f).
- (f) *Motion and Hearing.* On motion of the debtor or trustee filed no later than 21 days after service of the statement under subdivision (e) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts in full.
- (g) *Failure to Notify.* If the holder of a claim secured by a security interest in the debtor's principal residence fails to provide any information required by subdivision (a), (c), or (e) of this rule, the holder shall be precluded from presenting the omitted information, in any form, as evidence in any hearing or submission in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless. In addition to or in lieu of this sanction, the court may, after notice and hearing, award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

Comment: New Rule.

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.~~

(a b) Each An objection to a proof of claim 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.

(b 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(b c)(2), the objecting party shall file and serve the objection at least forty-four (44) days prior to the hearing date.

(A 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(c 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.

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

Comment: Subparts are renumbered to conform to FRBP numbering scheme. The former Subpart (a) is eliminated as unnecessary. Subpart (c) is changed to clarify noticing requirements.

LOCAL RULE 3015-1 Chapter 13 Debt Adjustment Cases

Part I

Duties of Chapter 13 Debtors

~~(a) *Applicability.* This Rule applies to chapter 13 cases filed on or after October 17, 2005. Subparts h, i, j, k, l, m, however, apply to all cases under chapter 13 regardless of when they were filed.~~

(a) *Mandatory Form Plan.* All chapter 13 debtors, as well as the trustee and holders of unsecured claims, when proposing a plan pursuant to 11 U.S.C. § 1329(a) shall utilize the standard form chapter 13 plan, EDC 3-080 (eff. X-X-11).

(b) *Chapter 13 Debtor's Duties.* In addition to the duties imposed on a chapter 13 debtor by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and elsewhere in these Local

Bankruptcy Rules, the following duties are imposed on chapter 13 debtors:

- (1) *Transfers of property.* The debtor shall not transfer, encumber, sell, or otherwise dispose of any personal or real property with a value of \$1,000 or more other than in the ordinary course of business without prior court authorization. To obtain court authorization, the debtor shall comply with Local Bankruptcy Rule 3015-1(i).
- (2) *New debt.* Except as provided in sections 364 and 1304, the debtor shall not incur new debt exceeding \$1,000 without prior court authorization. To obtain court authorization, the debtor shall comply with Local Bankruptcy Rule 3015-1(i). A new consumer debt of less than \$1,000 shall not be paid through this plan absent compliance with section 1305(c).
- (3) *Insurance.* The debtor shall maintain insurance as required by any law or contract and the debtor shall provide evidence of that insurance as required by section 1326(a)(4).
- (4) *Compliance with applicable non-bankruptcy law.* The debtor's financial and business affairs shall be conducted in accordance with applicable non-bankruptcy law including the timely filing of tax returns and payment of taxes.
- (5) *Periodic reports.* Upon the trustee's request, the debtor shall provide the trustee with a copy of any tax return, W-2 form, and 1099 form filed or received while the case is pending, and furnish the trustee with periodic financial information regarding the debtor's business or financial affairs.
- (6) *Documents required by Trustee.* The debtor shall provide to the trustee not later than the 14 days after the filing of the petition with written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency [see 42 U.S.C. §§ 464 & 466], and a Class 1 Checklist, form EDC 3-086, and Authorization to Release Information , form EDC 3-087, for each Class 1 claim.

(c) *Procedure to Confirm Original Plan*

- (1) *Filing the Plan.* The debtor shall file a chapter 13 plan within 14 calendar days of the filing of the petition.
- (2) *Serving the Plan on the Trustee.* The debtor shall serve the chapter 13 plan on the trustee. The plan, together with the Domestic Support Obligation Checklist, form EDC 3-088, and the Class 1 Checklist and Authorization to Release Information required by Local Bankruptcy Rule 3015-1(b)(6), must be received by the Trustee no later than 14 calendar days after the filing of the petition.
- (3) *Trustee's Service of the Plan on Creditors.* The trustee shall serve all creditors and other persons entitled to notice with a copy of the debtor's chapter 13 plan. However, if the trustee does not receive the debtor's chapter 13 plan by the

fourteenth day after the filing of the petition, the debtor shall seek confirmation of the chapter 13 plan by complying with the requirements of Local Bankruptcy Rule 3015-1(d)(1).

(4) *Objecting to Plan Confirmation.* Creditors, as well as the trustee, may object to the confirmation of the chapter 13 plan. An objection and a notice of hearing must be filed and served upon the debtor, the debtor's attorney, and the trustee within 7 calendar days after the first date set for the meeting of creditors held pursuant to 11 U.S.C. § 341(a). The objection shall be set for hearing on the confirmation hearing date and time designated in the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines as the confirmation hearing. The objection shall comply with Local Bankruptcy Rule 9014-1(a)-(e), (f)(2), & (g)-(l), including the requirement for a Docket Control Number on all documents relating to the objection. The notice of hearing shall inform the debtor, the debtor's attorney, and the Trustee that no written response to the objection is necessary. Absent a timely objection and a properly noticed hearing on it, the court may confirm the chapter 13 plan without a hearing.

(d) *Procedure to Confirm Modified Plans*

(1) *Modified Plans Proposed Prior to Confirmation.* If the debtor modifies the chapter 13 plan before confirmation pursuant to section 1323, the debtor shall file and serve the modified chapter 13 plan together with a motion to confirm it. Notice of the hearing on the motion shall comply with FRBP 2002(b). Notice of the hearing and the deadline for objections shall be given pursuant to Local Bankruptcy Rule 9014-1(f)(1). Local Bankruptcy Rule 9014-1(f)(1) requires 28 calendar days' notice of the hearing and notice that opposition must be filed 14 calendar days prior to the hearing. In order to comply with both FRBP 2002(b) and Local Bankruptcy Rule 9014-1(f)(1), parties in interest must be served at least 42 calendar days prior to the hearing.

(2) *Modified Plans Proposed After Confirmation.* If the debtor, trustee, or the holder of an allowed unsecured claim modifies the chapter 13 plan after confirmation pursuant to section 1329, a modified chapter 13 plan together with a motion to confirm it shall be filed and served on all parties in interest. Notice of the hearing shall comply with FRBP 3015(g). Notice of the hearing and the deadline for objections shall be given pursuant to Local Bankruptcy Rule 9014-1(f)(1). Local Bankruptcy Rule 9014-1(f)(1) requires 28 calendar days' notice of the hearing and notice that opposition must be filed 14 calendar days prior to the hearing. In order to comply with both FRBP 3015(g) and Local Bankruptcy Rule 9014-1(f)(1), parties in interest must be served at least 35 calendar days prior to the hearing.

(3) *Minor Modifications.* The court may approve, on the written stipulation of the debtor and the Trustee, nonmaterial modifications of the chapter 13 plan. To be regarded as nonmaterial, the modification must not delay or reduce the dividend payable on account of any claim or otherwise modify the claim of any creditor absent the affected creditor's written consent.

(e) Lodging Confirmation Order. When no objection is filed to the proposed chapter 13 plan, a confirmation order shall be lodged within 14 days of the expiration of the deadline for filing objections. If an objection is filed but is overruled, an order confirming the plan and overruling the objection within 14 days after conclusion of the hearing on the objection.

(f) Plan Payments

(1) Due Date. Plan payments shall be made monthly and must be received by the trustee on the twenty-fifth day of each month beginning the month after the petition is filed. All plan payments to the trustee by the debtor shall be by cashier's check or money order.

(2) Adequate Protection Payments. Prior to confirmation, the trustee shall pay on account of each allowed claim secured by a purchase money security interest in personal property an adequate protection payment if required by section 1326(a)(1)(C). The adequate protection payment shall equal the monthly dividend stated in the proposed plan. Adequate protection payments shall be disbursed by the trustee in connection with his customary month-end disbursement cycle beginning the month after the case was filed. If a claimant is paid an adequate protection payment prior to plan confirmation, that claimant shall not be paid a monthly dividend for the same month after confirmation.

(3) Trustee's Fees on Certain Plan Payments. The trustee may collect, with the authorization of the United States Trustee, the percentage fee fixed under 28 U.S.C. § 586(e)(1)(B) on all post-petition contract installment payments paid to holders of secured claims, whether made before or after confirmation of the chapter 13 plan, as well as on all adequate protection payments made by the trustee to holders of secured claims.

(4) Late Charges.

(A) If the Trustee is unable to pay timely a post-petition contract installment payment due to the holder of a Class 1 secured claim in the first month following the filing of the petition, the trustee shall pay from the debtor's plan payments the applicable late charge prior to the completion of the plan whether or not it is demanded in a proof of claim.

(B) A late charge may not be imposed on a post-petition contract installment payment paid or tendered during the contractual grace period even though an earlier installment, or any late charge thereon, may not have been paid when due. For purposes of determining whether a late charge may be imposed, any post-petition contract installment payment tendered by the Trustee shall be applied by the holder of the Class 1 claim to the most recent post-petition contract installment payment to fall due.

(5) Wage Order. After confirmation of a plan, in the discretion of the trustee, the trustee may obtain the issuance of a wage order in order to obtain plan payments from the debtor's employer.

(g) Dismissal Due to Plan Payment Defaults

(1) If the debtor fails to make a payment pursuant to a confirmed plan, including a direct payment to a creditor, the trustee may mail to the debtor and the debtor's attorney written notice of the default.

(2) If the debtor believes that the default noticed by the trustee does not exist, the debtor shall set a hearing within 28 calendar days of the mailing of the notice of default and give at least 14 calendar days' notice of the hearing to the trustee pursuant to Local Bankruptcy Rule 9014-1(f)(2). At the hearing, if the trustee demonstrates that the debtor has failed to make a payment required by the confirmed plan, and if the debtor fails to rebut the trustee's evidence, the case shall be dismissed at the hearing.

(3) Alternatively, the debtor may acknowledge that the plan payment(s) have not been made and, within 30 calendar days of the mailing of the notice of default, either (A) make the delinquent plan payment(s) and all subsequent plan payments that have fallen due, or (B) file a modified plan and a motion to confirm the modified plan. If the debtor's financial condition has materially changed, amended Schedules I and J shall be filed and served with the motion to modify the chapter 13 plan.

(4) If the debtor fails to set a hearing on the trustee's notice, or cure the default by payment, or file a proposed modified chapter 13 plan and motion, or perform the modified chapter 13 plan pending its approval, or obtain approval of the modified chapter 13 plan, all within the time constraints set out above, the case shall be dismissed without a hearing on the Trustee's application.

(5) Rather than utilize the notice of default procedure authorized by this paragraph, the trustee may file, serve, and set for hearing a motion to dismiss the case. Such a motion may be set for hearing pursuant to either Local Bankruptcy Rule 9014-1(f)(1) or (f)(2).

(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.

(i) Court Approval of Sales, Transfers, and Credit

(1) Vehicle Loans. The court may approve an ex parte motion by the debtor to finance the purchase of a motor vehicle if the trustee's written consent is filed with or as part of the motion. The debtor's motion and the trustee's approval is their certification to the court that:

- (A) All payments required by the chapter 13 plan are current;
- (B) The chapter 13 plan is not in default;
- (C) Schedules I and J were filed within the prior 30 calendar days and they demonstrate that the debtor has the ability to pay all future plan payments and projected living and business expenses, as well as repay the new debt;
- (D) The new debt is a single loan incurred to purchase a motor vehicle that is reasonably necessary for the maintenance or support of the debtor or a dependent of the debtor or, if the debtor is engaged in business, is necessary for the continuation, preservation, and operation of the debtor's business;
- (E) The only security for the new debt will be the motor vehicle to be purchased by the debtor; and,
- (F) The new debt does not exceed \$15,000.00.

(2) *New Home Loans.* The court may approve an ex parte motion by the debtor to finance the purchase of a residence if the trustee's written consent is filed with or as part of the motion. The debtor's motion and the trustee's approval is their certification to the court that:

- (A) All payments required by the chapter 13 plan are current;
- (B) The chapter 13 plan is not in default;
- (C) Schedules I and J were filed within the prior 30 calendar days and they demonstrate that the debtor has the ability to pay all future plan payments and projected living and business expenses, as well as repay the new debt;
- (D) The new debt is a single loan incurred to purchase a residence that is reasonably necessary for the maintenance or support of the debtor and his or her family;
- (E) The only security for the new debt will be the residence to be purchased by the debtor; and,
- (F) The monthly payment (the principal and interest payment on account of the new debt plus all impounds, taxes, insurance, association fees, and bonds and other assessments) will not exceed the greater of the debtor's current such monthly payment or rental payment or \$2,000.00.

(3) *Refinance of Existing Home Loans.* The court may approve an ex parte motion by the debtor to refinance existing debt(s) encumbering the debtor's residence if the trustee's written consent is filed with or as part of the motion. The debtor's motion and the trustee's approval is their certification to the court that:

- (A) All payments required by the chapter 13 plan are current;
- (B) The chapter 13 plan is not in default;
- (C) Schedules I and J were filed within the prior 30 calendar days and they demonstrate that the debtor has the ability to pay all future plan payments and projected living and business expenses, as well as repay the new debt;
- (D) The new debt is a single loan incurred only to refinance existing debt encumbering the debtor's residence;
- (E) The only security for the new debt will be the debtor's existing residence;
- (F) All creditors with liens and security interests encumbering the debtor's residence will be paid in full from the proceeds of the new debt and in a manner consistent with the chapter 13 plan;
- (G) The monthly payment (the principal and interest payment on account of the new debt plus all impounds, taxes, insurance, association fees, and bonds and other assessments) will not exceed the greater of the debtor's current such monthly payment(s) on the existing debt(s) being paid or \$2,000.00. The court will not approve ex parte motions to obtain secured credit pursuant to section 364(d).

(4) *Sale of Property.* The court may approve an ex parte motion by the debtor to sell real or personal property with a value of \$1,000.00 or more other than in the ordinary course of business if the trustee's written consent is filed with or as part of the motion. The debtor's motion and the trustee's approval is their certification to the court that:

- (A) The sale price represents a fair value for the subject property;
- (B) All creditors with liens and security interests encumbering the subject property will be paid in full before or simultaneously with the transfer of title or possession to the buyer;
- (C) All costs of sale, such as escrow fees, title insurance, and broker's commissions, will be paid in full from the sale proceeds;
- (D) The sale price is all cash;
- (E) The debtor will not relinquish title to or possession of the subject property prior to payment in full of the purchase price; and
- (F) The sale is an arm's length transaction.

“Trading in” a vehicle as part of the purchase price for a new vehicle complies with the requirements of (E) and (F) of this subparagraph. The court will not approve ex parte motions to sell property pursuant to section 363(f).

(5) Other New Debt and Transfers. If the trustee will not give the consent required by subparagraphs (1), (2), (3), and (4) of this subsection, or if the debtor wishes to incur new debt or transfer property on terms and conditions not authorized by those subparagraphs, the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the court’s calendar with the notice required by FRBP 2002 and Local Bankruptcy Rule 9014-1.

(j) Valuation and Lien Avoidance Motions. If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to section 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the court may deny confirmation of the plan.

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.

Comment: Rule substantially revised to incorporate provisions of former General Order 05-03.

LOCAL RULE 4001-1

Motions for Relief from Stay; Use of Cash Collateral; Post-Petition Credit

(a) Procedures Applicable to Motions for Relief from Stay in all Chapters.

~~(a)(1)~~ 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. Motions seeking ~~However, if a movant wishes~~ to invoke the time constraints of 11 U.S.C. § 362(e), the motion must shall be set for hearing pursuant to paragraph (f)(1) of LBR 9014-1.

~~(b)(2)~~ 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)(3)~~ With all Motions for Relief from Stay, ~~¶~~ the movant shall file and serve as a separate document a completed Relief from Stay Information Summary Sheet (EDC Approved Form 3-468) with each motion for relief from the automatic stay.

~~(b)(d)~~ Additional Procedures Applicable to Motions for Relief from Stay 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) If 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, the motion shall:

~~(B)(A)~~ 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,

~~(C)(B)~~ 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 for ~~as to~~ any postpetition payment(s) allegedly not made by the debtor or the trustee; and,

~~(D)(C)~~ 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, 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, ~~and~~.

(2) If When the motion alleges 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.

(c) (d) *Motions Regarding Use of Cash Collateral and Post-Petition Financing Agreements.*

- (1) Motions for authorization to use cash collateral, or for approval of a cash collateral or post-petition financing agreement, shall be set for hearing in accordance with LBR 9014-1.
- (2) Authorization to use cash collateral, or to obtain post-petition financing, will not be granted if the movant uses the notice and opportunity for hearing procedure defined in 11 U.S.C. § 102(1).
- (3) The motion must recite whether the agreement contains any provision described below, identify any such provision and explain the justification for the provision.
 - (A) Cross-collateralization clauses, i.e., clauses that secure prepetition debt by postpetition assets in which the secured party would not otherwise have a security interest by virtue of its prepetition security agreement. See Bankruptcy Code section 552.
 - (B) Provisions or findings of fact that bind the estate or all parties in interest with respect to the validity, perfection or amount of the secured party's lien or debt.
 - (C) Provisions or findings of fact that bind the estate or all parties in interest with respect to the relative priorities of the secured party's lien and liens held by persons who are not party to the stipulation. (This would include, for example, an order approving a stipulation providing that the secured party's lien is a "first priority" lien.)
 - (D) Waivers of Bankruptcy Code section 506(c), unless the waiver is effective only during the period in which the debtor is authorized to use cash collateral or borrow funds.
 - (E) Provisions that operate to divest the debtor in possession of any discretion in the formulation of a plan or administration of the estate or limit access to the court to seek any relief under other applicable provisions of law.
 - (F) Releases of liability for the creditor's alleged prepetition torts or breaches of contract.

- (G) Waivers of avoidance actions arising under the Bankruptcy Code.
 - (H) Automatic relief from the automatic stay upon default, conversion to chapter 7, or appointment of a trustee.
 - (I) Waivers of the procedural requirements for foreclosure mandated under applicable nonbankruptcy law.
 - (J) Adequate protection provisions that create liens on claims for relief arising under the Bankruptcy Code (see sections 506(c), 544, 545, 547, 548, and 549).
 - (K) Waivers, effective on default or expiration, of the debtor's right to move for a court order pursuant to Bankruptcy Code section 363(c)(2)(B) authorizing the use of cash collateral in the absence of the secured party's consent.
 - (L) Findings of fact on matters extraneous to the approval process. (For example, in connection with an application to borrow on a secured basis, a finding that the debtor cannot obtain unsecured credit would be acceptable, whereas a "finding" that the lender acted in good faith in declaring the prepetition loan in default would not be acceptable.)
- (4) The following provisions may be included in a cash collateral or post-petition financing agreement without the need for special identification or explanation:
- (A) Withdrawal of consent to use cash collateral or termination of further financing, upon occurrence of a default or conversion to chapter 7.
 - (B) Securing any postpetition diminution in the value of the secured party's collateral with a new lien on postpetition collateral of the same type as the secured party had prepetition, provide such lien shall be subordinated to the compensation and expense reimbursement (excluding professional fees) allowed to any trustee thereafter appointed in the case.
 - (C) Securing new advances or value diminution with a lien on other assets of the estate, provided the lien shall be subordinated to all the expenses of administration (including professional fees) of any trustee thereafter appointed in the case.
 - (D) Reservations of rights under Bankruptcy Code section 507(b), provided the agreement may not modify the Code's priorities in the event of a conversion to chapter 7. See Bankruptcy Code section 726(b).
 - (E) Reasonable reporting requirements.
 - (F) Reasonable budgets and use restrictions.
 - (G) Expiration date for the agreement.

(d) (c) Certification of Service of Motions for Relief From Stay, For Use of Cash Collateral and To Approve Post-Petition Financing Agreements in Chapter 11 Cases. In chapter 11 cases, the party seeking relief shall certify that the twenty largest unsecured creditors as listed in the debtor's Schedule B-4 have been served with a copy of any the Motions for Relief From Stay, For Use of Cash Collateral and to Approve a Post-Petition Financing Agreement, or if a committee of unsecured creditors has been formed, that all committee members and committee counsel have been served.[see FRBP 4001(a)(1)].

Comment: Renumbered to conform to the FRBP numbering scheme. Subpart (c) (d) is added to incorporate the provisions of the current Guidelines for Cash Collateral and Financing Stipulations dated June 16, 1994. Subpart (d) (c) is added to certify that the party seeking relief from the Automatic Stay has complied with FRBP 4001(a)(1). Other changes are stylistic.

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 Subpart (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 Subpart (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.

Comment: The change to Subpart (c)(2) is made to allow for flexibility in granting waivers of the requirement to file documents in electronic form. For cause shown, waivers may be granted with respect to individual documents, entire cases, or multiple cases, depending upon circumstances.

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://pacer.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 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 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.~~

Comment: Renumbered LBR 2015-2

LOCAL RULE 5009-1
Closing Procedures in Chapter 13 Cases

- (a) Notice to Debtor of Completed Plan. When the chapter 13 trustee determines that the debtor has completed all payments required by the plan, the trustee shall file with the court and serve on the debtor and the debtor's attorney a "Notice to Debtor of Completed Plan Payments and of Obligation to File Documents," EDC 5-200.
- (b) Debtor Certifications to Obtain Discharge. No later than 30 days after the date of a "Notice to Debtor of Completed Plan Payments and of Obligation to File Documents," the debtor shall file with the court and serve on the trustee a "Debtor's 11 U.S.C. § 1328 Certificate," EDC 3-190, and if applicable a "Statement of Chapter 13 Debtor Regarding 11 U.S.C. § 522(q) Exemptions," EDC 3-191.
- (c) Notice of Impending Chapter 13 Discharge . When the debtor has certified that (1) the debtor has completed an instructional course concerning personal financial management, (2) the debtor has not received a prior bankruptcy discharge within the time periods specified in 11 U.S.C. § 1328(f), (3) the debtor has paid all domestic support obligations, and (4) the debtor does not owe debts of the type described in 11 U.S.C. § 522(q) while claiming exemptions in real property, personal property, or a cooperative used as a residence or claimed as a homestead, or in a burial plot that exceed in the aggregate \$146,450, or that exemptions in excess of \$146,450 are reasonably necessary for the support of the debtor or the debtor's dependents, the court clerk shall serve a "Notice of Intent to Enter Chapter 13 Discharge," EDC 5-300, on the trustee, the United States Trustee, the debtor, the debtor's attorney, all creditors, and persons requesting notice. The clerk shall serve the Notice upon court approval of the trustee's final report and account.
- (d) Objecting to Debtor's Eligibility for Discharge. If a party in interest wishes to object to any or all of the four certifications referenced in the "Notice of Intent to Enter Chapter 13 Discharge," the party in interest must file and serve an Objection within 14 days of the date of that Notice. If an Objection is not filed, served, and set for hearing as directed in the "Notice of Intent to Enter Chapter 13 Discharge," the court may enter the debtor's discharge without further notice or hearing.
- (e) Order Closing Case Without Discharge. An "Order Closing Chapter 13 Case Without Discharge," EDC 6-100, will be entered:
- (1) When the debtor fails to certify that (1) the debtor has completed an instructional course concerning personal financial management, (2) the debtor has not received a prior bankruptcy discharge within the time periods specified in 11 U.S.C. § 1328(f), (3) the debtor has paid all domestic support obligations, and (4) the debtor does not owe debts of the type described in 11 U.S.C. § 522(q) while claiming exemptions in real property, personal property, or a cooperative used as a residence or claimed as a homestead, or in a burial plot that exceed in the aggregate \$146,450, or that such exemptions in excess of \$146,450 are reasonably necessary for the support of the debtor or the debtor's dependents; or

(2) When a party in interest successfully objects to one or more of the certifications referenced in the “Notice of Intent to Enter Chapter 13 Discharge.”

(f) *Motions for Discharge after Case Closed Without Entry of Discharge.* When a chapter 13 case is closed without entry of a discharge, subject to payment of the fee to reopen the case, a motion seeking entry of discharge will be considered by the court provided the motion is set for hearing in accordance with LBR 9014-1(f)(1) or (f)(2) on notice to the trustee, the United States Trustee, all creditors, and other persons requesting notice.

Comment: New rule. Implements changes to chapter 13 case discharge and closing procedures mandated by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub.L. 109-8, 119 Stat. 23, enacted April 20, 2005).

LOCAL RULE 5010-1 Motions to Reopen Cases

(a) *Ex Parte Motion Permitted.* A motion to reopen a case may be made on an considered ex parte basis. Unless the Court orders otherwise, no hearing shall be set. The movant shall not calendar a hearing date. A hearing will only be held if the Court so orders.

(b) *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.

(c) *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.

(d) *Closing of Reopened Case.* 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 by the clerk without further notice.

Comment: Changes are stylistic.

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.

Comment: Eliminated; internal court administrative procedures should be dealt with through the use of standing orders, not the local rules.

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 file 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.

Comment: Provision regarding preparation of summons by attorneys eliminated as unnecessary; with advent of electronic documents and filing, summons is prepared by the clerk of court; use of the term of art "file" is substituted for the colloquial "present".

LOCAL RULE 7004-1
Process, Service of Summons, and Complaints

- (a) In all adversary proceedings in Chapter 7 cases filed pursuant to either or both 11 U.S.C. §523 and 11 U.S.C. §727 where the debtor or debtors are not represented by counsel, the plaintiff shall serve with the summons and complaint a copy of NOTICE TO PRO SE DEBTOR(S), EDC Form 3-100, together with a sufficient number of copies for service, filing, and conforming of the ANSWER, EDC Form 3-101, with the caption information completed.
- (b) When service of the NOTICE TO PRO SE DEBTOR(S) and ANSWER is required pursuant to this Rule, the plaintiff shall file a declaration that copies of the NOTICE TO PRO SE DEBTOR(S) and the ANSWER, in the required number of copies, have been served together with the summons and complaint.

Comment: New rule to incorporate provisions of former General Order 95-5, Complaints Against Pro Se Debtors Pursuant to 11 U.S.C. §§ 523 and 727.

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)(ED), 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)(~~ED~~) 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.

Comment: Technical correction.

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.

Comment: Eliminated as unnecessary.

LOCAL RULE 7056-1

Motions for Summary Judgment or Partial Summary Adjudication Judgment

- (a) *Motions for Summary Judgment or Partial Summary Adjudication Judgment.* Each motion for summary judgment or partial summary adjudication judgment 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 partial summary adjudication judgment 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) *Partial Summary Adjudication Judgment.* 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.

Comment: Revised to conform terminology with FRCivP 56, as made applicable in bankruptcy cases and proceedings by FRBP 7056.

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 7067-1
Deposits of Registry Funds

- (a) Deposits. When funds are sought to be deposited in the registry account of the Court, the party or parties shall make application to the Court for an order to invest the funds. The form of order submitted shall be in accordance with Subpart (e) of this Rule.
- (b) Placement of Deposit. An order directing the Clerk of Court to deposit funds in the registry account of the Court may specify the name of the bank or financial institution where the funds are to be invested, the type of account and terms of the investment. If this information is not provided, the Clerk will exercise his or her discretion to determine the financial institution, type of account and terms of investment.
- (c) Approved Depository. Funds can only be deposited with the Treasurer of the United States or a designated depository, provided that such designated financial institution has pledged sufficient securities to secure the total sum of deposits in excess of FDIC coverage.
- (d) Registry Funds Fees. The court order directs the Clerk of Court to deduct a fee from the income earned on the investment, not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office. The fee is limited to 10% of the earned income, when the funds are less than \$100 million and held in the court for up to five years. If funds are held for more than five years or over \$100 million, the percentage is reduced in accordance with the current schedule which is available from the Clerk upon request.
- (e) Order for Disbursement of Registry Funds. Payment of funds from any funds deposited pursuant to this Rule shall be by order of the Court only. The form of order submitted shall contain the names of the parties to whom funds are to be paid, the amounts to be paid and a statement acknowledging the fee for the interest earned will be deducted before payment of funds will be distributed.
- (f) Copy of Order. Counsel obtaining an order as described above will serve a copy on the Clerk of Court, when the order has been signed.

Comment: New rule; incorporates requirements of former General Order 04-04, Deposits of Registry Funds

LOCAL RULE 7090-1
Disposition of Unclaimed Exhibits

If exhibits offered at trial are not reclaimed ~~withdrawn~~ within sixty (60) days after entry of judgment or order following completion of trial, and the judgment or order is final and non-appealable, notice to the parties to claim the same, the Clerk may dispose of them as the Clerk may deem fit.

Comment: Revised to place burden on party to reclaim exhibits used at trial. The Clerk is not required to send notice to reclaim exhibits.

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:

- (a)(1) "Briefs" include memoranda, points and authorities, and other written arguments, or compilations of authorities.
- (b)(2) "Case" means the bankruptcy case initiated by the filing of a petition for relief.
- (c) "Clerk" means the clerk of the bankruptcy court appointed pursuant to 28 U.S.C. §156(b).
- (d) "Contested matter(s)" include motions, objections, applications, and other matters for which a hearing is necessary, and are collectively referred to herein as "motions." Contested matters are governed by FRBP 9014.
- (e)(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.
- (f)(4) "Declaration" includes an affidavit prepared in accordance with federal law. See 28 U.S.C. §1746.
- (g)(5) "DIP" means debtor-in-possession.
- (h)(6) "Ex Parte" means without prior notice.

(i) "Federally insured depository" means a financial institution that is insured by the Federal Deposit Insurance Corporation or other federal agency providing deposit protection.

(j)(7) "FRBP" means the Federal Rules of Bankruptcy Procedure.

(k)(8) "FRCivP" means the Federal Rules of Civil Procedure.

(l)(9) "Filed" means delivered into the custody of the Clerk, either by electronic means or by physical delivery in paper form as provided for in LRB 5005-1, and accepted by the Clerk for inclusion in the official records of the case or proceeding.

(m) "Judgment" is defined in FRBP 7054, incorporating FRCivP 54, and includes a decree and any order from which an appeal lies.

(n)(10) "Motion" includes all motions, applications, objections, or other requests made to the Court for orders or other judicial activity.

(o)(11) "Order" means any directive by the Court, including oral or telephonic as well as written directives, other than that is not a judgment, including oral or telephonic as well as written directives.

(p)(12) "Proceeding" includes adversary proceeding, any hearing conducted by the Court, and any other continuing matter before the Court arising in the bankruptcy case.

Comment: Definition of "Federally insured depository" relocated from LBR 2015-2(c) (formerly LBR 5008-1(c)) to this rule; numbering of Subparts changed to conform to FRBP numbering scheme.

LOCAL RULE 9004-1

General Requirements of Form

(a) *General Format of Documents.* All pleadings and documents shall conform with the Court's Guidelines for the Preparation of Documents. The Clerk shall maintain on the court's Internet Web Site (www.caeb.uscourts.gov) the current version of these Guidelines and shall make paper copies available upon request without charge. The Clerk shall not refuse to file any proffered document submitted in violation of this Rule, but shall bring such 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.

(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)~~(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)~~(B) Signatures of Other Persons. Signatures of persons other than the registered user may be indicated by either:

- (i) Submitting a scanned copy of the originally signed document;
- (ii) Attaching a scanned copy of the signature page(s) to the electronic document, or;

- (iii) 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)(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)(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, U.S. Trustee, U.S. Attorney, or other party, 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.

- (d) *Signature on Facsimile Documents and on Software-Generated Documents.* For the purposes of this Rule, the image of ~~the~~ an original manual signature appearing on a facsimile (fax) copy, or appearing in a software-generated copy such as a document created in the “portable document format” (.pdf), 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.

(e) *Proposed Orders and Judgments.*

(1) *Content and Format* Proposed orders and judgments presented to the Court for signature shall:

(A) *be submitted as separate documents;*

- (B) not include the word “Proposed” in the title of the order;
 - (C) be complete in all respects using “best estimates” where necessary.
 - (D) on the final page contain at least one line of substantive text (i.e., the final page of a proposed order or judgment must not include only “boilerplate” words such as “...it is so ordered” or similar) and at least two inches of space below the final line of text for placement of a date and the judge’s signature;
 - (E) in all other respects be formatted in strict compliance with the Court’s Guidelines for the Preparation of Documents.
- (2) *Exhibits.* If a proposed order includes references to an exhibit or exhibits, the exhibit(s) shall be attached to the proposed order or judgment. An exhibit shall not be filed as a separate document.

Comment: Subpart (a) is revised to require that all pleadings and other documents be prepared in accordance with the Court’s Guidelines for the Preparation of Documents. The Clerk is directed to accept any document which is not prepared in compliance with the Guidelines and thereafter bring the non-compliant document to the attention of the court for whatever corrective action is deemed appropriate under the circumstances, including possible monetary and non-monetary sanctions. Subpart (d) is revised to reflect advent of “PDF” documents. Subpart (e) governing proposed orders and judgments is added. Numbering and formatting is revised to conform to the FRBP format and numbering scheme.

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 **and shall otherwise comply with LBR 9004-1, General Requirements of Form. 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.
- (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

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

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 a different amount of time additional notice is required by the Federal Rules of Bankruptcy Procedure, or these Local Rules, or by order of the court, 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.

(A) 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).

(Bii) *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(cc) 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(cc).

(Cii) *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(cc), 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(cc).

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.

(Div) 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.

(At) This alternative procedure shall not be used for a motion filed in connection with an adversary proceeding.

(Bii) 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).

(Ciii) 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) Notice Requirements for Preliminary Hearings on "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 comply with FRBP 4001(b) and FRBP 6003. Such motions will generally be heard by the Court within two (2) days of a request for such preliminary hearing or as soon thereafter as reasonably possible the filing of the petition. Counsel for the debtor or the trustee shall contact the chambers of the assigned judge as soon as it is known that a hearing will be needed 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(ec).

- (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. Telephonic appearances are not allowed at evidentiary hearings.~~
- (3) An opposition and/or reply to a motion shall state whether a party consents to the use of affidavits in accordance with FRCivP 43(c). Any party that fails to file the separate statement of disputed material facts as required by LBR 9014-1 will thereby consent to proceed on the basis of the written record without live testimony.
- (4) If a party does not consent to proceed on the basis of the written record without live testimony, the court may determine in advance of or at the scheduled hearing date on the motion whether an evidentiary hearing is required to resolve disputed material factual issues. The disposition of these motions will be available on the court day prior to the scheduled hearing, according to the practice of the assigned judge, on the court's website at <http://www.caeb.uscourts.gov/calendar/tentative.asp>. The disposition will ordinarily consist of one of the following:
- (A) The court may determine that no evidentiary hearing is required because no material factual dispute exists. The motion will then proceed on the scheduled hearing date on the basis of the written record.
- (B) The court may treat the motion as a "short cause" matter (expected to last no more than 30 minutes) and set the matter for hearing on a short cause calendar with other short cause matters. Witnesses on short cause matters will be limited to those individuals whose declarations were filed in connection with the motion. Unless the court orders otherwise, the direct testimony of a witness will not be admitted into evidence unless the witness is present at the hearing for interrogation by the court under Federal Rule of Evidence 614(b) and for cross-examination. Matters set on a short cause calendar will not be continued except by order of the court.
- (C) The court may treat the motion as a "long cause" matter. The scheduled hearing date will be used as a scheduling conference, during which the court will establish deadlines for, inter alia, discovery and the presentation of evidence, including the use of alternative direct testimony, exhibits, and expert witnesses pursuant to LBR 9017-1, and set a date for an evidentiary hearing. Pursuant to FRBP 9014(c), the following mandatory disclosures under FRCivP 26(a) shall apply to a motion or other contested matter treated as a "long cause" matter, as follows:
- (i) Initial disclosures shall be made in accordance with FRCivP 26(a)(1), except FRCivP 26(a)(1)(C) and - (D). A party must make the initial disclosures at or within 14 days after the scheduling conference, unless a different time is set by stipulation or court order.

(ii) Disclosure of expert witnesses shall be made in accordance with FRCivP 26(a)(2), except FRCivP 26(a)(2)(C). A party must make disclosure of expert witnesses under FRCivP 26(a)(2)(A), accompanied by a written report prepared and signed by each expert witness pursuant to FRCivP 26(a)(2)(B), at or within 14 days after the scheduling conference, unless a different time is set by stipulation or court order.

(iii) The “pretrial disclosures” required under FRCivP 26(a)(3)(A) shall be made by a party at least 30 days before the date of the evidentiary hearing, unless a different time is set by stipulation or court order. Within 14 days after such disclosures are made, unless the court sets a different time, a party may serve and promptly file any objection to the disclosures, as set forth in FRCivP 26(a)(3)(B).

(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. Failure to comply with this provision may be grounds for denial of the motion without prejudice.

(k) Opportunity for Hearing.

(1) When an Order is Necessary or Desired. The notice of opportunity for hearing procedure, as defined in 11 U.S.C. § 102(1), may only be used as permitted in LBR 3015-1 (c) and (d) relating to confirmation of chapter 13 plans. 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 ~~shall~~ ~~should~~ be set for hearing pursuant to this Local Rule.

(2) When an Order is Not Necessary or Desired. When the notice of opportunity for hearing procedure is used and no order is necessary or desired, the notice shall:

(A) succinctly describe the action to be taken;

(B) 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;

(C) 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

(D) 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.

(3) Hearing Date. 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.

(4) Procedure in Absence of Objection. 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.

(l) 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.

Comment: Requirement in Subpart (d)(1) that documents conform to the Court's Guidelines for the Preparation of Documents moved to LBR 9004-1, General Requirements of Form. The change to Subpart (f)(4) ("First Day Orders") provides a cross reference to applicable FRBP rules and recognizes the priority such matters will be given on the Court's calendar. Subpart (g) is substantially revised to incorporate provisions of former General Order 02-01. Formatting and numbering is revised to conform to the FRBP format and numbering scheme. Other changes are stylistic.

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 trials and contested hearings contested matters requiring an evidentiary hearing, 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 If ordered by the Court, the Alternate Direct Testimony Procedure shall be used in all a trials and contested hearings not scheduled for the law and motion calendar or contested matters requiring an evidentiary hearing. The failure of any A party to any such trial or contested hearing such contested matter that intends to use the Alternate Direct Testimony Procedure shall request to object in writing at or in writing before the pre-trial or scheduling conference, if one is held, or if not, on or before the date of the trial setting hearing during which a trial or evidentiary hearing is scheduled, shall be deemed as consent to the use of this Alternate Direct Testimony Procedure for such trial or contested hearing.

(3) *Content and Preparation of Alternate Direct Testimony Declarations.* 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 Alternate Direct Testimony Declarations, Exhibits, and Objections.* Unless otherwise ordered by the Court, copies of all alternate 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.~~

Comment: Subpart (d) is deleted as it is superceded by newly created LBR 9014-1 (g)(4)(C)(ii).

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 LBR 2017-1 and Rule ~~83-~~183 of 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 is 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, t 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.

~~(cb)~~ Method of Service.

The clerk shall serve notice of entry on the parties who appeared in connection with the judgment or order pursuant to subsection (c) below, by sending the appropriate Bankruptcy Noticing Center (BNC) notice for service on parties who appeared in connection with the judgment or order unless the Court otherwise directs.

- ~~(2)(c)~~ Service of Judgment or Order on United States Trustee. 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.

Comment: Change recognizes technological advances which have occurred. The clerk is now able to serve notices of entry via the Bankruptcy Noticing Center (BNC) easily and economically.

LOCAL RULE 9037-1

Electronic Availability and Redaction of Electronically Filed Transcripts

- ~~(a)~~ A transcript provided to the court by a court reporter shall be available at the Clerk's Office for inspection only, for a period of ninety (90) days after it is filed. No portion of the transcript will be copied or printed at the Clerk's Office during the 90-day restriction period.
- ~~(b)~~ During the 90-day restriction period, a copy of the transcript may be obtained from the court reporter at the rate established by the Judicial Conference. The transcript will be available within the court for internal use, available at the public terminals at the courthouse, and remotely electronically available to attorneys who have purchased a copy from the court reporter. The name(s) of the purchasing attorney(s) shall be provided to the Clerk of Court

(Clerk) by the court reporter via electronic mail sent to an e-mail address designated for this purpose by the Clerk. Members of the general public, including unrepresented parties who purchase the transcript, will not be given remote electronic access to the transcript or any redacted version filed with the court during the 90-day restriction period.

(c) After the 90-day restriction period has ended, the transcript (or redacted version if one has been filed) will be available for viewing and copying at the Clerk's Office public terminals and remotely available for viewing, downloading, and printing through the Judiciary's PACER system.

(d) Each party's attorney is required to review a transcript for information that should be redacted under the Judicial Conference's privacy policy and as more particularly described in Fed. R. Bankr. P. 9037. References to social security numbers, individual taxpayer identification numbers and financial account numbers shall include only the last four digits of such numbers. Birth dates shall include the year of birth only. The names of individuals, other than debtors, known to be and identified as minors shall include the minor's initials only.

(e) With the exception of transcripts, redaction of the information described in Fed. R. Bankr. P. 9037(a) is the responsibility of the person filing the document. When a transcript is filed, the attorneys and unrepresented parties who entered an appearance at the hearing are solely responsible for redaction of the information described in Fed. R. Bankr. P. 9037(a). Court reporters are not responsible for identifying a need for redaction or for redacting transcripts absent a request by an attorney or an unrepresented party. The court's responsibility is to follow Judicial Conference guidelines for providing public access to the transcript and for restricting access in accordance with the privacy policy. The Clerk is not required to review documents filed with the court for compliance with Rule 9037.

(f) The date the transcript is filed is the starting date for all deadlines related to restriction and redaction of the transcript.

(g) Notice of the filing of a transcript (including notice of the deadlines related to restriction and redaction of the transcript) shall be provided by the Clerk to the attorneys and unrepresented parties who entered an appearance at the hearing.

(h) Within seven (7) calendar days of a court reporter's filing of the transcript, an attorney or unrepresented party must file a Notice of Intent to Request Redaction that substantially complies with form EDC 3-300 with the Clerk if he or she intends to request redaction of information from the transcript, and serve copies on the court reporter and the other attorneys and unrepresented parties who entered an appearance at the hearing. An attorney or unrepresented party is responsible for reviewing the opening and closing statements made on behalf of the party he or she represents, any statements made by the party, and the testimony of any witness called by the party. If no Notice of Intent to Request Redaction is filed during this seven-day period, the court will conclude that redaction of personal data is not necessary, and will make the transcript remotely electronically available to the public through PACER after the 90-day restriction period.

(i) Once an attorney or unrepresented party has filed a Notice of Intent to Request Redaction, he or she has twenty-one (21) calendar days from the date of filing of the transcript to review the transcript and file a Redaction Request and List of Items to be Redacted that substantially complies with form EDC 3-301 with the Clerk and serve copies on the court reporter and the other attorneys and unrepresented parties who entered an appearance at the hearing that indicates the type of personal data identifier to be redacted, where it appears in the transcript by page and line, and how it is to be redacted. The Court may order this time extended, for good cause shown. If an attorney or unrepresented party files a Notice of Intent to Request Redaction but fails to timely file a Redaction Request and List of Items to be Redacted or a motion to extend time, no redactions will be made and the original transcript will be remotely publicly available after the 90-day restriction period.

(j) The court reporter must redact the identifiers, as directed by the attorney or unrepresented party, and then re-file the redacted transcript within thirty-one (31) calendar days of the filing of the original transcript. Also during this time period, an attorney or unrepresented party may, by motion for a protective order, request that additional information be redacted. No remote electronic access to the transcript will be allowed (other than to attorneys who paid for the original transcript) until the Court has ruled on any such motion.

(k) If a redacted transcript is filed with the Clerk, the Clerk shall permanently restrict access to the original transcript and the redacted transcript will be remotely electronically available through PACER after 90 calendar days from the date of filing of the original transcript. If the original transcript is filed without redaction, the original transcript will be remotely electronically available through PACER after 90 calendar days.

(l) Charges for access through PACER apply during and after the 90-day restriction period. Charges are not capped at 30 pages. The user will incur PACER charges each time the transcript is accessed even though he or she may have purchased it from the court reporter and obtained remote access. A free copy of the transcript is not available via remote access.

Comment: New rule incorporating former General Order 08-05, Electronic Availability and Redaction of Electronically File Transcripts. The rule adopts the Judicial Conference policy regarding availability and redaction of electronically filed transcripts and is intended to protect privacy of parties involved in court proceedings.

APPENDIX I

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	Guidelines for Preparation of Master Address Lists
EDC 2-785	Roster of Governmental Agencies

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

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

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 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 (<i>See NOTE below.</i>)
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 3-088	Domestic Support Obligation Checklist
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 3-100	Notice to Pro Se Debtor(s)
EDC 3-101	Answer
EDC 3-190	Debtor's 11 U.S.C. §1328 Certificate
EDC 3-191	Statement of Chapter 13 Debtor Regarding 11 U.S.C. 522(q) Exemptions

NOTE: **A DRAFT revised Chapter 13 Plan, form EDC 3-080, is ATTACHED for reference.**

APPENDIX III

LOCAL RULES FORMS (continued)

EDC 3-468	Relief from Stay Summary Sheet
EDC 3-468-INST	Instructions for Completing Relief From Stay Summary Sheet
EDC 5-200	Notice to Debtor of Completed Plan Payments and of Obligation to File Documents
EDC 5-300	Notice of Intent to Enter Chapter 13 Discharge
EDC 6-100	Order Closing Chapter 13 Case Without Discharge
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)

*Unless highlighted, the documents listed above and on the previous page 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. **Because they relate to proposed LBR 5009-1, Closing Procedures in Chapter 13 Cases, the highlighted documents are not available on the Court's Internet website. Together with the revised Chapter 13 Plan, they are attached in DRAFT form for your convenience.***

APPENDIX IV

SELECTED GENERAL ORDERS AND SPECIAL ORDERS

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 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 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 00-3	Modification of Dispute Resolution Procedures for Bankruptcy Cases and Adversary Proceedings
General Order 95-1	Adoption of Dispute Resolution Procedures for Bankruptcy Cases and Adversary Proceedings

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

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

Name of Debtor:

Case No.

Last four digits of Soc. Sec. No.:

Last four digits of Soc. Sec. No.:

CHAPTER 13 PLAN

YOU WILL BE NOTIFIED OF THE DATE, TIME, AND LOCATION OF A HEARING TO CONFIRM THIS PLAN AND OF THE DEADLINE TO OBJECT TO ITS CONFIRMATION. IN THE ABSENCE OF A TIMELY WRITTEN OBJECTION, THE PLAN MAY BE CONFIRMED WITHOUT A HEARING. IT WILL BE EFFECTIVE UPON ITS CONFIRMATION.

Section 1. Plan Payments and Plan Duration

1.01. Monthly plan payments. To complete this plan, Debtor shall submit to the supervision and control of Trustee on a monthly basis the sum of \$_____ from future earnings. This monthly plan payment is subject to adjustment pursuant to section 2.08(b)(4) below and it must be received by Trustee not later than the 25th day of each month beginning the month after the case is filed. The monthly plan payment includes all monthly contract installments due on Class 1 secured claims and adequate protection payments due on certain Class 2 secured claims, if any.

1.02. Other payments. In addition to the submission of future earnings, Debtor will make payment(s) derived from property of the bankruptcy estate, property of Debtor, or from other sources, as follows: _____

1.03. Duration of payments. The monthly plan payments will continue for ____ months unless all allowed unsecured claims are paid in full within a shorter period of time. If necessary to complete the plan, monthly payments may continue for an additional 6 months, but in no event shall monthly payments continue for more than 60 months.

Section 2. Claims and Expenses

A. Proofs of Claim

2.01. With the exception of the payments required by sections 2.02, 2.03, 2.11, and 3.01, a claim will not be paid pursuant to this plan unless a timely proof of claim is filed by or on behalf of a creditor, including a secured creditor.

2.02. Monthly contract installments and other charges falling due after the filing of the case shall be paid to Class 1 and 4 claim holders and to the nondebtor party to assumed executory contracts/unexpired leases whether or not the plan is confirmed or proofs of claim have been filed.

2.03. Post-petition amounts due on account of a domestic support obligation, a loan from retirement or thrift savings plan, or an executory contract/unexpired lease being assumed, shall be paid by Debtor directly to the person entitled to such payments whether or not the plan is confirmed or a proof of claim has been filed.

2.04. The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim.

B. Administrative Expenses

2.05. Trustee's fees. Pursuant to 28 U.S.C. § 586(e), Trustee shall receive up to 10% of plan payments, whether made before or after confirmation, but excluding direct payments on Class 4 claims.

2.06. Debtor's attorney's fees. Debtor paid an attorney \$_____ prior to the filing of the case. Subject to prior court approval, additional fees of \$_____ shall be paid through this plan. Debtor's attorney will seek the court's approval by [choose one]: complying with the court's Chapter 13 Fee Guidelines; or filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017.

2.07. Administrative expenses. In accordance with sections 4.02 and 4.03 below, \$ _____ of each monthly plan payment shall be paid on account of: (a) compensation due a former chapter 7 trustee; (b) approved administrative expenses; and (c) approved additional attorney's fees. Approved administrative expenses shall be paid in full through this plan except to the extent a claimant agrees otherwise or 11 U.S.C. § 1326(b)(3)(B) is applicable.

C. Secured Claims

2.08. Class 1 includes all delinquent secured claims that mature after the completion of this plan.

(a) Cure of arrear. All arrears on Class 1 claims shall be paid in full by Trustee. The cure will be paid in the equal monthly installments specified in the table below as the "arrearage dividend."

(1) The cure shall include interest unless a "0%" rate is specified below. If the provision for interest is left blank, interest will accrue at the rate of 10%.

(2) The arrearage dividend must be applied by the Class 1 creditor to the arrears. If this plan provides for interest on the arrears, the arrearage dividend shall be applied first to such interest, then to the arrears.

(b) Post-petition charges. Trustee shall pay all monthly contract installments and other charges falling due after the filing of the case to the holder of each Class 1 claim.

(1) If Debtor makes a partial plan payment that is insufficient to pay post-petition monthly contract installments due on all Class 1 claims, installments will be paid in the order such claims are listed below.

(2) Trustee will not make a partial payment on account of a post-petition monthly contract installments.

(3) If Debtor makes a partial plan payment, or if it is not paid on time, and Trustee is unable to pay timely a post-petition monthly contract installment, Debtor's cure of this default shall include any late charge.

(4) The automatic stay is modified to permit the holders of Class 1 claims to send statements, impound, and escrow notices, and notices concerning interest rate adjustments or the assessment of fees and costs to Debtor. However, the trustee will not pay post-petition payment adjustments, fees, charges, or assessments until they are demanded in a proof of claim filed in accordance with Local Bankruptcy Rule 3001.2. If such a proof of claim is filed and allowed, the plan payment shall be adjusted accordingly by Debtor.

(5) Monthly contract installments paid by Trustee and received by the holder of a Class 1 claim shall be applied as if the claim were current and no arrearage existed on the date the case was filed.

(c) No claim modification. Each Class 1 creditor shall retain its lien. Other than to cure of the arrearage, this plan does not modify Class 1 claims.

Class 1 Creditor's Name/ Collateral Description	Amount of Arrears	Interest Rate on Arrears	Arrearage Dividend	Monthly Contract Installment Amount
1.				
2.				
3.				
Totals: \$				\$

2.09. Class 2 includes all secured claims that are modified by this plan, or that have matured or will mature before the plan is completed.

(a) Payment of claim. Trustee shall pay each Class 2 claim the equal monthly amount specified below as the monthly dividend. Subject to section 2.09(c), Class 2 claims will be paid in full. The payment of a Class 2 claim shall include interest unless a "0%" rate is specified below. If no rate is specified, a 10% rate will be imputed..

(b) Adequate protection payments. Prior to confirmation, Trustee shall pay on account of each allowed Class 2 claim secured by a purchase money security interest in personal property an adequate protection payment if required by section 1326(a)(1)(C). The adequate protection payment shall equal the monthly dividend. Adequate protection payments shall be disbursed by Trustee in connection with his customary month-end disbursement cycle beginning the month after the case was filed. If a Class 2 claimant is paid an adequate protection payment, that claimant shall not be paid a monthly dividend for the same month.

(c) Claim amount. The amount of a Class 2 claim is determined by applicable nonbankruptcy law. However, subject to the two limitations below, Debtor may reduce the claim to the value of the collateral securing it by filing, serving, setting for hearing, and prevailing on a motion to determine the value of that collateral. The hearing must be concluded before or in conjunction with the confirmation of the plan.

(1) Debtor is prohibited from reducing a claim if the claim holder has a purchase money security interest and the claim either was incurred within 910 days of the filing of the case and is secured by a motor vehicle acquired for the personal use of Debtor, or was incurred within 1-year of the filing of the case and is secured by any other thing of value.

(2) Debtor is prohibited from modifying the rights of a holder of a claim secured only by a security interest in real property that is Debtor's principal residence.

(d) Lien retention. Each Class 2 creditor shall retain its existing lien. However, upon completion of the plan and entry of Debtor's discharge, the creditor shall reconvey, cancel, and terminate its lien.

Class 2 Creditor's name and description of collateral	Purchase money security interest in personal property? YES/NO	Amount claimed by creditor	Value of creditor's interest in its collateral	Interest Rate	Monthly Dividend
A. Class 2 claims not reduced based on value of collateral					
1.					
2.					
B. Class 2 claims reduced based on value of collateral					
1.					
2.					
C. Class 2 claims reduced to \$0 based on value of collateral					
1.			\$0.00	0	\$0.00
2.			\$0.00	0	\$0.00
				Total \$	

2.10. Class 3 includes all secured claims satisfied by the surrender of collateral. Upon confirmation of the plan, all bankruptcy stays are modified to allow a Class 3 secured claim holder to exercise its rights against its collateral.

Class 3 Creditor's Name/Collateral Description	Estimated Deficiency	Is Deficiency a Priority Claim? YES/NO
1.		
2.		

2.11. Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not the plan is confirmed. Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract.

Class 4 Creditor's Name	Monthly Contract Installment	Maturity Date
1.		
2.		

2.12. Secured claims not listed as Class 1, 2, 3, or 4 claims are not provided for by this plan. The failure to provide for a secured claim in one of these classes may be cause to terminate the automatic stay.

D. Unsecured Claims

2.13. Class 5 consists of unsecured claims entitled to priority pursuant to 11 U.S.C. § 507. These claims will be paid in full except to the extent the claim holder has agreed to accept less or 11 U.S.C. § 1322(a)(4) is applicable. When section 1322(a)(4) is applicable to a claim, the claim holder and the treatment of the claim shall be specified in the Additional Provisions. The failure to provide the foregoing treatment for a priority claim is a breach of this plan.

Class 5 Creditor's Name	Type of Priority	Claim Amount
1.		
2.		
3.		

2.14. Class 6 includes designated unsecured claims, such as co-signed unsecured debts, that will be paid in full even though all other nonpriority unsecured claims may not be paid in full.

Class 6 Creditor's Name	Reason for Special Treatment	Claim Amount
1.		
2.		

2.15. Class 7 consists of all other unsecured claims not listed as Class 5 or 6 claims. These claims will receive no less than a _____% dividend. These claims, including the under-collateralized portion of secured claims not entitled to priority, total approximately \$_____.

Section 3. Executory Contracts And Unexpired Leases

3.01. Debtor assumes the executory contracts and unexpired leases listed below. Debtor shall pay directly to the other party to the executory contract or unexpired lease, before and after confirmation, all post-petition payments. Unless a different treatment is required by 11 U.S.C. § 365(b)(1) and is set out in the Additional Provisions, pre-petition arrears shall be paid in full. The monthly dividend payable on account of those arrears is specified in the table below.

3.02. Any executory contract or unexpired lease not listed in the table below is rejected. Upon confirmation of the plan, all bankruptcy stays are modified to allow the nondebtor party to an unexpired lease to obtain possession of leased property, to dispose of it under applicable law, and to exercise its rights against any nondebtor in the event of a default under applicable law or contract.

Name of Other Party to Executory Contract/ Unexpired Lease	Regular Payment	Pre-petition Arrears	Arrearage Dividend
1.			
2.			
			Total \$

Section 4. Payment of Claims and Order of Distribution

4.01. After confirmation, payments to holders of allowed claims and approved expenses will be made monthly.

4.02. Distribution of plan payment. Debtor's monthly plan payment must total: **(a)** Trustee's fees; **(b)** post-petition monthly contract installments due on Class 1 claims; **(c)** the monthly dividend specified in section 2.07 for administrative expenses; and **(d)** the monthly dividends payable on account of Class 2 claims and executory contract and unexpired lease arrearage claims. To the extent plan payments are not needed to pay the foregoing dividends, they shall be paid pro rata, first to Class 1 arrearage claims, second to Class 5 priority claims, third to Class 6 unsecured claims, and fourth to Class 7 unsecured claims. Over the plan's duration, these distributions must equal the total dividends required by sections 2.05, 2.07, 2.08, 2.09, 2.13, 2.14, and 2.15.

4.03. Priority of payment among administrative expenses. The portion of the monthly plan payment allocated in section 2.07 for administrative expenses, shall be distributed first to any former chapter 7 trustee up to the monthly amount required by section 1326(b)(3)B), and second to holders of approved administrative expenses on a pro rata basis.

Section 5. Miscellaneous Provisions

5.01. Vesting of property. Property of the estate [choose one] shall shall not revert in Debtor upon confirmation of the plan. In the event the case is converted to a case under Chapters 7, 11, or 12 of the Bankruptcy Code or is dismissed, the property of the estate shall be determined in accordance with applicable law.

5.02. Debtor's duties. In addition to the duties imposed upon Debtor by the Bankruptcy Code, the Bankruptcy Rules, and applicable nonbankruptcy law, the court's Local Bankruptcy Rules impose additional duties on Debtor, including without limitation, obtaining prior court authorization prior to transferring property or incurring additional debt, maintaining insurance, providing Trustee copies of tax returns, W-2 forms, 1099 forms, and quarterly financial information regarding Debtor's business or financial affairs, and providing Trustee not later than the 14 days after the filing of the case with the Domestic Support Obligation Checklist for each domestic support obligation and a Class 1 Worksheet and Authorization to Release Information for each Class 1 claim.

5.03. Remedies upon default. If Debtor defaults under this plan, or if the plan will not be completed within six months of its stated term, not to exceed 60 months, Trustee or any other party in interest may request appropriate relief by filing a motion and setting it for hearing pursuant to Local Bankruptcy Rule 9014-1. This relief may consist of, without limitation, dismissal of the case, conversion of the case to chapter 7, or relief from the automatic stay to pursue rights against collateral. If the court terminates the automatic stay to permit a Class 1 or 2 secured claim holder to proceed against its collateral, unless the court orders otherwise, Trustee shall make no further payments on account of such secured claim and any portion of such secured claim not previously satisfied under this plan shall be satisfied as a Class 3 claim. Any deficiency remaining after the creditor's disposition of its collateral shall be satisfied as a Class 7 unsecured claim subject to the timely filing of a proof of claim.

Section 6. Additional Provisions

This plan is the court's standard plan form. Other than to insert text into designated spaces, expand tables to include additional claims, or change the title to indicate that the plan is a modified plan, the preprinted text of this form has not been altered. In the event there is an alteration, it will be given no effect. The signatures below are certifications that the standard plan form has not been altered.

Despite the foregoing, as long as consistent with the Bankruptcy Code, Debtor may propose additional provisions that modify the preprinted text. All additional provisions shall be on a separate piece of paper appended at the end of this plan. Each additional provision shall be identified by a section number beginning with section 6.01 and indicate which section(s) of the standard plan form have been modified.

Additional Provisions [choose one] are are not appended to this plan.

Dated:

Debtor

Debtor

Dated:

Debtor's Attorney

**United States Bankruptcy Court
Eastern District of California**

IN RE)
)
)
 Debtor.)
_____)
)

CASE NO.

CHAPTER 13

**NOTICE TO DEBTOR OF COMPLETED PLAN
PAYMENTS AND OF OBLIGATION TO FILE DOCUMENTS**

Subject to the later filing of a final report and account, the Chapter 13 Trustee has determined that the Debtor has completed the payments required by the confirmed plan. Therefore, this notice is given by the Trustee to begin the Court's review of the case to determine each Debtor's entitlement to a Chapter 13 bankruptcy discharge.

To receive a discharge:

1. Each Debtor must complete and file with the Court the attached *Debtor's 11 U.S.C. § 1328 Certificate* concerning domestic support obligations, prior bankruptcy discharges, and exemptions claimed in property as described in 11 U.S.C. § 522(p)(1)(A), (B), (C), and (D) which exceed the amount set forth in 11 U.S.C. § 522(q).
2. If not previously filed, each Debtor must file a certificate of completion of an approved instructional course concerning personal financial management.
3. If applicable, each Debtor must file the attached *Statement of Chapter 13 Debtor Regarding 11 U.S.C. § 522(q) Exemptions*.

Each Debtor has 30 days from the date of this notice to file the required documents. If a Debtor fails to file all of the documents, the Court may close the case without granting a discharge to that Debtor. Reopening the case in order to file these documents and obtain a discharge requires payment of a reopening fee equal to the case filing fee.

The Chapter 13 Trustee's Final Report and Account will be filed after all disbursements made to creditors have been negotiated. Each Debtor and all creditors will be served with the report and account and given the opportunity to object to it. Once the report and account is approved, provided each Debtor has filed the required documents demonstrating eligibility for a discharge, the Court will issue a discharge order.

Respectfully submitted,

Chapter 13 Trustee

My Current Employer is:

Name: _____

Address: _____

- B.** 1. I **have NOT** received a discharge in a Chapter 7, 11 or 12 bankruptcy case filed within 4-years prior to filing this case.
2. I **have** received a discharge in a Chapter 7, 11 or 12 bankruptcy case filed within 4-years prior to filing this case.
- C.** 1. I **have NOT** received a discharge in another Chapter 13 bankruptcy case filed within 2-years prior to filing this case.
2. I **have** received a discharge in another Chapter 13 bankruptcy case filed within 2-years prior to filing this case.
- D.** 1. I **have NOT** claimed exemptions in real property, personal property, or a cooperative used as a residence or claimed as a homestead, or in a burial plot, that exceed in the aggregate \$146,450. See 11 U.S.C. § 522(p)(1)(A), (B), (C), & (D).
2. I **have** claimed exemptions in real property, personal property, or a cooperative used as a residence or claimed as a homestead, or in a burial plot, that exceed in the aggregate \$146,450 but I owe no debts of the type described in 11 U.S.C. § 522(q).
3. I **have** claimed exemptions in real property, personal property, or a cooperative used as a residence or claimed as a homestead, or in a burial plot, that exceed in the aggregate \$146,450 even though I owe debts of the type described in 11 U.S.C. § 522(q). If this box is checked, I have filed with this Certificate, a Certificate of Chapter 13 Debtor Regarding 11 U.S.C. § 522(q) Exemptions.

By signing this Certificate, I acknowledge that all of the statements contained herein are true and accurate and that the Court may rely on the truth of each of these statements in determining whether to grant me a discharge in this case. The Court may revoke my discharge if my statements are not accurate.

DATE: _____

Debtor

**United States Bankruptcy Court
Eastern District of California**

IN RE:) **CASE NO.**
)
)
 Debtor.) **CHAPTER 13**
)
 _____)

**STATEMENT OF CHAPTER 13 DEBTOR
REGARDING 11 U.S.C. § 522(q) EXEMPTIONS**

In accordance with 11 U.S.C. § 522(q), Fed. R. Bankr. P. 1007(b)(8), and Local Bankruptcy Rule 5009-1, a chapter 13 debtor who claims exemptions in real property, personal property, and/or a cooperative used as a residence or claimed as a homestead, or in a burial plot, which exceed in the aggregate \$146,450, must file this Certificate with the Court. See 11 U.S.C. § 522(p)(1)(A), (B), (C), and (D) and (q). The Certificate must be filed after making the last plan payment or, if applicable, prior to the deadline set by court when it authorizes a hardship discharge under 11 U.S.C. § 1328(b). **Failure to timely file this Certificate may bar or delay entry of a discharge.**

1. I have claimed exemptions in the aggregate amount of \$ _____.

PLEASE CHECK ALL BOXES THAT APPLY:

Yes No

2. I have been convicted (or there is a proceeding currently pending against me in which I may be convicted) of a felony offense punishable by a maximum term of imprisonment of more than one year.
3. I owe a debt (or there is pending against me a proceeding in which I may be found liable for a debt) due to a violation of a Federal Securities law (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), including, but not limited to, the Securities Act of 1933 (15 U.S.C. § 77a et seq.); the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.); the Sarbanes-Oxley Act of 2002 (Pub. L. No. 107-204, 116 Stat.); the Trust Indenture Act of 1939 (15 U.S.C. § 77aaa et seq.); the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.); the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-1 et seq.); and the Securities Investor Protection Act of 1970 (15 U.S.C. § 78aaa et seq.); any State securities laws; or any regulation or order issued under Federal securities laws or State securities laws.

Yes No

4. I owe a debt (or there is pending against me a proceeding in which I may be found liable for a debt) due to fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of a security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933.
5. I owe a debt (or there is pending against me a proceeding in which I may be found liable for a debt) due to a civil remedy under section 1964 of Title 18.
6. I owe a debt (or there is pending against me a proceeding in which I may be found liable for a debt) due to a criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.
7. Although I answered YES to one or more of questions 2 through 6, I am entitled to the exemptions I have claimed and I should receive a discharge because the exemptions are reasonably necessary to support me (and my dependent(s), if any).

I declare under penalty of perjury that the foregoing is true and correct.

Date

Debtor's Signature

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

IN RE:) **CASE NO.**
)
) **CHAPTER 13**
)
) **Debtor.**)
_____)

NOTICE OF INTENT TO ENTER CHAPTER 13 DISCHARGE

The Court has approved the Chapter 13 Trustee’s Final Report and Account, determining that the Debtor has completed payments pursuant to the terms of the confirmed chapter 13 plan and that those payments have been disbursed to creditors.

Therefore, pursuant to Local Bankruptcy Rule 5009-1, notice is given:

1. Each Debtor has certified that an instructional course concerning personal financial management has been completed;
2. Each Debtor has certified that they have not received a prior bankruptcy discharge within the time periods specified in 11 U.S.C. § 1328(f);
3. Each Debtor has certified that there are no unpaid domestic support obligations; and
4. Each Debtor either has certified that they do not owe debts of the type described in 11 U.S.C. § 522(q) while claiming exemptions in real property, personal property, or a cooperative used as a residence or claimed as a homestead, or in a burial plot that exceed in the aggregate \$146,450, or has certified that exemptions in excess of \$146,450 are reasonably necessary for the support of the Debtor or the Debtor’s dependents.

If you wish to contest the Debtor’s certifications you must file and serve an Objection within 14 days of the date of this Notice. The Objection must be filed with a Notice of Hearing indicating that the court will consider your Objection at a hearing to be held on **[insert date and time]** at the United States Bankruptcy Court, **[insert court address and courtroom number]**. The Objection and the Notice of Hearing must be filed and served with a certificate of service attesting that the Debtor, the Debtor’s attorney, and the Chapter 13 Trustee have been served with the Objection and the Notice of Hearing. If an Objection and Notice of Hearing are not filed and served timely, the Court may conclude that each Debtor is entitled to a discharge pursuant to 11 U.S.C. § 1328.

Dated:

Wayne Blackwelder
Clerk, U.S. Bankruptcy Court

File objections and notice at:
[insert court address]

Serve the objection and notice on:
[insert addresses of trustee, debtor, and debtor’s attorney]

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

IN RE:) **CASE NO.**
)
)
)
 Debtor.)
 _____)

ORDER CLOSING CHAPTER 13 CASE WITHOUT DISCHARGE

As specified below, this case is ORDERED closed without the entry of a chapter 13 discharge because:

- Debtor has not certified completion of an instructional course concerning financial management in accordance with 11 U.S.C. § 1328(g).
- Debtor has not filed a *Debtor's 11 U.S.C. § 1328 Certificate* in accordance with Local Bankruptcy Rule 5009-1.
- Debtor has not filed a *Certificate of Chapter 13 Debtor Regarding 11 U.S.C. § 522(q) Exemptions* in accordance with 11 U.S.C. § 1328(h) and Local Bankruptcy Rule 5009-1 despite claiming aggregate exemptions in real property, personal property, or a cooperative used as a residence or claimed as a homestead, or in a burial plot, exceeding \$146,450 even though Debtor owes debts of the type described in 11 U.S.C. § 522(q).
- Debtor has claimed aggregate exemptions in real property, personal property, or a cooperative used as a residence or claimed as a homestead, or in a burial plot, that exceed \$146,450, and that are not necessary to the support of Debtor or Debtor's dependents, even though Debtor owes debts of the type described in 11 U.S.C. § 522(q).
- Debtor's domestic support obligations have not been paid as required by 11 U.S.C. § 1328(a).
- Debtor has received a discharge in a Chapter 7, 11 or 12 bankruptcy case filed within 4-years of this case.
- Debtor has received a discharge in a prior Chapter 13 bankruptcy case filed within 2-years of this case.