

(PROPOSED) LOCAL RULE 9010-1

**Attorneys Who are Not Registered Users of the Court's
Electronic-filing System.**

Any attorney appearing in a case and/or adversary proceeding who is not a registered user of the court's electronic filing system, LBR 5005-1, shall immediately file a Notice of Appearance, EDC Form 9010, with the Clerk of the Court. Upon receipt, the Clerk of the Court shall add the attorney identified in the Notice of Appearance, EDC Form 9010, to the Clerk of the Court's Matrix for the case and/or adversary proceeding. Fed. R. Bankr. P. 9010(b), 9036.

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

In re:	NOTICE OF APPEARANCE
Debtor(s)	Case Number:

TO THE CLERK OF THE COURT AND ALL INTERESTED PARTIES:

Pursuant to Fed. R. Bankr. P. 9010(b), _____,
(name of attorney)

who is an attorney and is not a registered e-Filer of this court, hereby appears on behalf of

_____, and files this notice of appearance.
(name of represented party)

Name:	
State Bar Number: <i>(if applicable):</i>	
Address:	
Phone Number:	

Dated: _____ By: _____

LOCAL RULE 9014-1

Motion and Other Contested Matter 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 website (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 DCN) 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 DCN JDD-1, the second DCN JDD-2, the third DCN 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 and stipulations resolving that motion, 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) Contents. Except as otherwise provided in these rules, every application, motion, contested matter or other request for an order, shall be comprised of a motion, or other request for relief, notice, evidence, and a certificate of service. Unless otherwise ordered, the moving party may, but need not, file a memorandum of points and authorities in support of the motion. Opposition to any request for relief shall be governed by the same principles.
- 2) 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 courtroom in which the hearing will be held and shall otherwise comply with LBR 9004-1, General Requirements of Form.
- 3) Component Parts.
 - A) Motion or Other Request for Relief. The application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability.
 - B) Notice.
 - (i) The notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition.
 - (ii) 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.
 - (iii) The notice of hearing shall advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view [any] pre-hearing dispositions by checking the Court's website at www.caeb.uscourts.gov after 4:00 P.M. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.
 - (iv) 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.

C) Memorandum of Points and Authorities. If filed, the memorandum of points and authorities shall be a succinct and reasoned explanation of the moving party's entitlement to relief. Memorandum of points and authorities in excess of 10 pages shall include a table of contents and table of authorities.

D) Evidence. Every motion or other request for relief 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 Fed. R. Civ. P. 56(c)(4).

4) Separate Documents. Except as provided herein, each of the documents described in subpart (d)(1) hereof shall be filed as a separate document. A motion or other request for relief and a memorandum of points and authorities thereto may be filed together as a single document when not exceeding six (6) pages in length, including the caption page.

5) Joinder.

A) Except as otherwise provided herein, every application, motion, contested matter, or other request for an order shall be filed separately from every other request. All requests for relief shall state with particularity the grounds therefor and shall set forth the relief or order sought. Other documents, exhibits, or supporting pleadings shall not be incorporated by reference.

B) Notwithstanding the foregoing, the following requests for relief may be joined in a single motion, Fed. R. Civ. P. 18, *incorporated by* Fed. R. Bankr. P. 7018, 9014(c):

(i) relief in the alternative based on the same statute or rule;

(ii) authorization for sale of real property and allowance of fees and expenses for a professional authorized by prior order to be employed for the sale of such property, 11 U.S.C. §§ 327, 328, 330, 363, Fed. R. Bankr. P. 6004;

(iii) authorization to employ a professional, i.e., auctioneer, for sale of estate property at public auction, and allowance of fees and expenses for such professional, 11 U.S.C. §§ 327, 328, 330, 363, Fed. R. Bankr. P. 6004-6005;

(iv) motion for stay relief and/or abandonment of property of the estate, 11 U.S.C. §§ 362, 554, Fed. R. Bankr. P. 4001, 6007;

(v) approval of compromise and compensation of special counsel previously authorized to be employed relating to the underlying compromise, Fed. R. Bankr. P. 9019; 11 U.S.C. §§ 327, 328, 330; and

(vi) as otherwise expressly provided by these Rules.

C) Where a party in interest joins requests for relief that party shall: (1) expressly and separately describe in the title of the motion, and all ancillary pleadings, each relief sought, e.g.,

Motion for Authorization to Sell Real Property

and

Motion For Compensation of Real Estate Broker (2/2/22 Employment Order)

(2) provide notice to opposing parties consistent with the longest notice period applicable to the relief sought; and (3) at the time of filing tender to the Clerk of the Court the aggregate of all filing fees due each request for relief, notwithstanding the joinder of requests for relief into a single motion.

(e) *Service and Proof of Service.* Except as provided in Federal Rule of Civil Procedure 5(d)(1)(B), a certificate of service, compliant with LBR 7005-1, shall be filed in support of each motion, opposition, reply or other pleading; if the motion, opposition, reply or other pleading is only served on registered users of the court's electronic-filing system, Fed. R. Bankr. P. 9036-1(b)(1),(c), no Certificate of Service is required.

- 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 is required by the Federal Rules of Bankruptcy Procedure, 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).

- B) 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 Fed. R. Civ. P. 43(c) as made applicable by Fed. R. Bankr. P. 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 Fed. R. Civ. P. 43(c).

- C) 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 Fed. R. Civ. P. 43(c), 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 Fed. R. Civ. P. 43(c).

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.

- D) 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.

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

- B) 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).
 - C) 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 Fed. R. Bankr. P. 4001(b) and Fed. R. Bankr. P. 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. 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 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 Fed. R. Civ. P. 43(a) unless the parties waive such right or consent to proceeding under Fed. R. Civ. P. 43(c).
- 2) 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 Fed. R. Civ. P. 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/prehearingdispositions.aspx>. 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 thirty (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 Fed. R. Evid. 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 Fed. R. Bankr. P. 9014(c), the following mandatory disclosures under Fed. R. Civ. P. 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 Fed. R. Civ. P. 26(a)(1), except Fed. R. Civ. P. 26(a)(1)(C) and (D). A party must make the initial disclosures at or within fourteen (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 Fed. R. Civ. P. 26(a)(2), except Fed. R. Civ. P. 26(a)(2)(C). A party must make disclosure of expert witnesses under Fed. R. Civ. P. 26(a)(2)(A), accompanied by a written report prepared and signed by each expert witness pursuant to Fed. R. Civ. P. 26(a)(2)(B), at or within fourteen (14) days after the scheduling conference, unless a different time is set by stipulation or court order.
 - (iii) The "pretrial disclosures" required under Fed. R. Civ. P. 26(a)(3)(A) shall be made by a party at least thirty (30) days before the date of the evidentiary hearing, unless a different time is set by stipulation or court order. Within fourteen (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 Fed. R. Civ. P. 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 website 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 Motions 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. In all other matters, if an order is necessary or is desired by the moving party, the motion shall 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, for example, Fed. R. Bankr. P. 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.