

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West "F" Street, San Diego, California 92101-6991

EXCERPTS FROM LOCAL BANKRUPTCY RULES
SPECIFICALLY RELATING TO RELIEF FROM STAY MOTIONS

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RULE 4001. RELIEF FROM AUTOMATIC STAY; JOINDER OF
PARTIES IN INTEREST; USE OF CASH COLLATERAL

4001-1. APPLICABILITY OF RULE AND ASSIGNMENT OF IDENTIFICATION NUMBER TO
RELIEF FROM STAY MOTIONS.

(a) APPLICABILITY OF RULE. This rule read in conjunction with Fed. R. Bankr. P. 4001 prescribes procedures for filing motions for relief from the automatic stay pursuant to 11 U.S.C. § 362. This rule does not govern motions for use of cash collateral or to obtain credit. Such motions are governed by Fed. R. Bankr. P. 4001(b), (c) and (d) and Local Bankruptcy Rule 9014.

(b) ASSIGNMENT OF IDENTIFICATION NUMBER TO MOTIONS FOR RELIEF FROM STAY. Prior to serving the motion and the notice of motion required by this rule, the moving party shall assign an identification number to the action, inserted two lines below the case number. This number shall appear on all copies of the motion and notice of motion which are served on any party and on all subsequent pleadings relating to the motion.

- (1) The Relief from Stay Number [designated as "RS No."] shall consist of not more than three initials of the attorney for moving party and the number which is one number higher than the number of relief from stay motions previously filed by said attorney in conjunction with that specific bankruptcy case. [Example: the first R.S. Motion Control Number assigned by Attorney John D. Doe in the "Smith" bankruptcy case would be JDD1, the second JDD2, the third JDD3, and so on.]
- (2) This numbering sequence would be repeated for each specific bankruptcy case in which said attorney files a relief from stay motion.

4001-2. CONTENT OF MOTION FOR RELIEF FROM STAY; SERVICE.

(a) A motion for stay relief shall substantially conform to Local Forms CSD 1160, *MOTION FOR RELIEF FROM AUTOMATIC STAY (REAL PROPERTY OR PERSONAL PROPERTY)*, or CSD 1163, *MOTION FOR RELIEF FROM AUTOMATIC STAY (UNLAWFUL DETAINER)* and shall:

- (1) name, as respondents, the debtor, the trustee, and other entities entitled to receive notice of default or notice of sale under applicable non-bankruptcy law governing foreclosure of real or personal property which is the subject of the motion, or the agents for such parties;
- (2) state with particularity the relief or order sought, and the grounds for such relief or order;
- (3) state the status of any pending foreclosure or repossession;

- (4) if the basis of the motion is lack of equity or adequate protection, and value is relevant, state by declaration the provable value of the subject property and the amount of any known encumbrances. The declaration shall also contain a statement as to the competency of the declarant and the foundation for any opinion therein; and
- (5) if the motion is brought for cause, state by declaration or other verified pleading the specific facts that constitute such cause.

(b) Failure to set forth the information required by this rule may be grounds for denial of the relief requested.

(c) The moving party shall serve the motion, together with Local Form CSD 1185, *NOTICE OF FILING OF A MOTION FOR RELIEF FROM AUTOMATIC STAY*, on the parties named in Local Bankruptcy Rule 4001-2(a)(1) above. In a chapter 11 or 12 case, a copy of the motion shall also be served on the United States Trustee.

4001-3. TIME FOR FILING OBJECTIONS TO MOTION; DUTY OF OBJECTING PARTY TO
GIVE NOTICE.

(a) Objections to a motion for relief from stay, together with Local Form CSD 1186, *REQUEST FOR HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY AND NOTICE OF HEARING*, shall be served upon the movant, named respondents and the United States Trustee within eleven (11) days from the date of service of the motion for relief from stay and notice. The original and two (2) copies of the pleadings shall be filed with the clerk within the same 11-day period. If served by mail, opposing party shall have fourteen (14) days to serve and file such opposition as provided by Fed. R. Bankr. P. 9006(f). If the objection relates to real or personal property, the objection shall substantially conform to Local Form CSD 1161, *OPPOSITION TO MOTION FOR RELIEF FROM AUTOMATIC STAY (REAL PROPERTY OR PERSONAL PROPERTY)*.

(b) Prior to serving the objection, it shall be the duty of the objecting party to obtain from the court a date and time for a hearing on the objections. Such information shall be listed on Local Form CSD 1186, *REQUEST FOR HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY AND NOTICE OF HEARING*, and in the caption of the objection.

4001-4. CONTENT OF DECLARATION IN OPPOSITION TO MOTION.

Any declaration filed in opposition to a motion for relief from stay shall be signed and verified in the manner prescribed by Fed. R. Bankr. P. 9011 and shall:

- (a) identify the interest of the opposing party in the property;
- (b) state with particularity the grounds for the opposition;
- (c) state the provable value of the property specified in the motion and the amount of equity which would be realized by the debtor after deduction of all encumbrances; and
- (d) contain a statement as to competence of the declarant and the foundation for any opinion therein.

4001-5. CONTENT OF ORDER.

- (a) NONCONTESTED MOTION. If no objection to the motion for stay relief is timely filed

and served, the moving party may submit to the court an appropriate order which substantially conforms to Local Forms CSD 1162, *ORDER ON NONCONTESTED MOTION FOR RELIEF FROM AUTOMATIC STAY (REAL PROPERTY OR PERSONAL PROPERTY)*, or CSD 1165, *ORDER ON NONCONTESTED MOTION FOR RELIEF FROM AUTOMATIC STAY (UNLAWFUL DETAINEE)*. The order shall have attached thereto as Exhibit "A" a file-stamped copy of the notice and proof of service required by Local Bankruptcy Rule 4001-2(c) and shall state:

- (1) the date the motion was filed;
- (2) the particularity of the relief to be granted; and,
- (3) if pertaining to real property, provide a full legal description and any street address for the property.

(b) **CONTESTED MOTION.** At the conclusion of the hearing on a contested motion for stay relief, the prevailing party shall submit an order in accordance with Local Bankruptcy Rule 7054-3.

(c) **STIPULATED MOTION.** An order approving a motion for approval of a stipulation for relief from stay shall comply with Local Bankruptcy Rule 4001-5(a) and, in chapter 11 cases, provide evidence of compliance with Fed. R. Bankr. P. 4001(d)(1) and (2).

4001-6. SERVICE OF ORDER.

Upon receipt of the entered order and in addition to serving the parties listed in Local Bankruptcy Rule 7054-3(b)(2), the party obtaining stay relief shall mail a conformed copy of the entered order to any persons affected by the order and shall file proof of service with the court no later than the next business day following the date of service.

4001-7. POINTS AND AUTHORITIES.

A motion for relief from the automatic stay, or opposition to the same, need not be accompanied by points and authorities. If points and authorities are filed, they may be incorporated, if so desired, into one captioned pleading containing the supporting or opposing papers.

4001-8. CONTENT OF NOTICE; EX PARTE RELIEF.

Service of Form CSD 1185 is excused when an ex parte motion for relief from stay is otherwise in compliance with the provisions of Fed. R. Bankr. P. 4001(a)(2).

4001-9. DUTY TO CONFER.

The moving and objecting parties shall confer, at least three (3) business days prior to the hearing, to discuss the potential for resolving the matter.

RULE 7054. FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDERS AND JUDGMENTS

7054-1. APPLICABILITY OF RULE.

This rule is to be read in conjunction with Fed. R. Bankr. P. 7054 and 9021 and governs the

preparation, submission and approval of findings of fact, conclusions of law, judgments, and orders.

7054-2. DUTY OF PREVAILING PARTY.

Unless the court directs otherwise, the prevailing party will prepare and submit any judgments or orders and, if required, separate findings of fact and conclusions of law, in the manner provided in Local Bankruptcy Rule 7054-3. The pleadings must also comply with Local Bankruptcy Rule 9004. If the prevailing party fails to comply with this obligation within fourteen (14) days after the date of the ruling made by the court, the court may reject the proposed order.

7054-3. PROCEDURES FOR SUBMISSION OF ORDERS AFTER HEARING.

(a) **PROCEDURE BY CONSENT.** The party preparing the order or judgment, and, if required, separate findings of fact and conclusions of law may submit the same to the opposing parties for their approval as to form and content. The opposing parties shall indicate their approval by promptly endorsing the lower-left corner of the signature page(s) and returning the original documents to the preparing party. The preparing party shall then submit the original documents to the court for signature and entry without having to comply with Local Bankruptcy Rule 7054-3(b). If approval is not obtained from the opposing parties, the preparing party shall then submit the original documents to the court in the manner set forth in Local Bankruptcy Rule 7054-3(b).

(b) PROCEDURE BY LODGMENT - CONTESTED ORDER OR JUDGMENT.

(1) **NOTICE OF LODGMENT.** The party preparing the order or judgment and, if required, separate findings of fact and conclusions of law shall file the same together with a notice of lodgment. The notice shall conform to Local Bankruptcy Rule 9004 and shall be accompanied by a proof of service on all opposing parties as provided in Fed. R. Bankr. P. 7005. The notice shall inform the opposing parties that any objections to the form and content of the proposed order or judgment must be filed and served within seven (7) days from the date of service of the originals. Fed. R. Bankr. P. 9006(f) shall not apply. Assembly sequence for documents is as follows:

- (A) the order or judgment and two (2) copies;
- (B) findings of fact and conclusions of law, if any, and two (2) copies;
- (C) an original notice of lodgment with a copy of the proposed order or judgment and, if required, separate findings of fact and conclusions of law attached as Exhibit "A" and "B", if applicable, followed by a proof of service, and two (2) copies; and
- (D) an original Notice of Entry with the pre-addressed, postage-paid envelopes required by subsection (2) below.

(2) NAMES AND ADDRESSES OF OPPOSING PARTIES.

- (A) The preparing party shall submit to the clerk, in addition to any proposed findings of fact, conclusions of law, and order or judgment, the original of Local Adversary Form CSD 3050, *NOTICE OF ENTRY OF JUDGMENT OR ORDER* or Local Case Form CSD 1190, *NOTICE OF ENTRY*. The Notice of Entry shall contain the names and addresses of opposing parties, their attorneys of record and, if the

judgment or order affects property of the debtor or the estate, the names and addresses of the debtor, any trustee, their attorneys of record, the United States Trustee, and any co-owner of the property. The date of entry of the judgment or order shall remain blank.

(B) In addition to the Notice of Entry, the party shall also submit pre-addressed and postage-paid envelopes for each of the parties to receive notice of entry.

(3) **OBJECTIONS TO LODGED DOCUMENTS.** Any party who opposes the entry of the lodged order, judgment, or separate findings of fact and conclusions of law shall file an objection and an alternate order, judgment, or separate findings of fact and conclusions of law with the court. The alternate order, judgment, or separate findings of fact and conclusions of law shall be filed and served on the preparing party within five (5) business days from the date of service of the original notice of lodgment and shall conform to Local Bankruptcy Rule 9004. Fed. R. Bankr. P. 9006(f) shall not apply. Notice of Lodgment of alternate order is not required. No further pleadings will be considered except upon leave of court.

RULE 9004. GENERAL REQUIREMENTS OF FORM

9004-1. APPLICABILITY OF RULE.

Fed. R. Bankr. P. 9004, read in conjunction with applicable Local Bankruptcy Rules, governs the preparation and filing of papers, except as otherwise required by the court. "Papers" as used in this rule include but are not limited to pleadings, documents, notices, exhibits and proofs of claim.

9004-2. ATTORNEY IDENTIFICATION AND SIGNATURE.

(a) **STATE BAR MEMBERSHIP NUMBER.** Attorneys presenting papers for filing shall insert their State Bar membership number immediately to the right of their name at the top of the title page. On proofs of claim, the number shall appear to the right of their name.

(b) **RESPONSIBILITY OF LEAD ATTORNEY.** For notice purposes, where there is more than one attorney of record, the attorney whose name first appears under the attorney identification section on the title page of a paper shall be known as the "lead attorney" and is the person upon whom the court will serve any notices and other papers. The lead attorney shall be responsible for promptly delivering copies of these notices and papers to any co-counsel.

9004-3. PAPERS PRESENTED TO THE COURT - FORM AND FORMAT.

(a) **LEGIBILITY.** All papers shall be typewritten or hand-printed or prepared by a photocopying or other duplicating process that will produce clear and permanent copies equally legible to printing, in black or dark blue ink. The typeface shall be no smaller than pica size, with not more than ten (10) typed characters per inch.

(b) **SIGNATURES.** All original papers shall be signed by the individual attorney for the party presenting them, or by the unrepresented party. The name of the person signing the paper shall be typed underneath the signature. Copies shall be conformed to the original.

(c) **PAPER SIZE.** The original of all papers shall be submitted on opaque, unglazed, white paper of standard quality not less than 13-pound weight. The paper shall be 8-1/2 by 11

inches with not more than twenty-eight (28) lines per page. Pre-printed forms provided by the clerk must be reproduced "heel-to-toe" so that they may be easily read without removal from the file; otherwise, only one side of the paper will be used. Papers shall be double-spaced except for the identification of counsel, title of the action, category headings, footnotes, quotations, exhibits and descriptions of real property. Quotations from cited cases or other authorities shall be clearly indented not less than five (5) spaces or more than twenty (20) spaces and may be single-spaced.

(d) **TITLE PAGE.** In the space commencing two (2) inches from the top and to the left of center-page, there shall be typed or printed single-spaced the following information:

- (1) name of counsel and State Bar membership number presenting a paper, or if not represented by an attorney, the name of the party;
- (2) office address, including the street address in addition to any post office box. If no office address, state residence address.
- (3) Area code and telephone number of the party presenting the paper.
- (4) Two (2) lines below the telephone number, the name and interest of the party on whose behalf the paper is presented shall be identified; in the instance of multi-party representation, reference may be made to the bottom of the signature page for including a complete list of co-counsel, including their State Bar membership numbers and addresses and telephone numbers, and parties represented.
- (5) Two (2) lines below the last information required by subsection (4) herein, centered on the page, insert the name of the court, as follows:

UNITED STATES BANKRUPTCY COURT
Southern District of California

(e) **CONTINUATION PAGES.**

- (1) When a proposed order, judgment, or findings of fact and conclusions of law contains more than the title page, the following information is required to be inserted at the lower-left corner of each continuation page:
 - (A) the name of the debtor or, for adversary proceedings, the name of the first plaintiff; and
 - (B) the case number and either the relief from stay number or the adversary proceeding number, if any; and
 - (C) the title of the order or judgment.
- (2) If the signature page, at least three (3) lines of text shall continue from the previous page.
- (3) Two (2) lines below the signature line at the left margin, insert information regarding the submitting attorney as follows:

"Signature by the attorney constitutes a certification under Fed. R. Bankr. P. 9011 that the relief provided by the order is the relief granted by the court.

Submitted by:

Firm name

By: _____
Attorney for [party]"

(f) PAGINATION. All papers shall be numbered consecutively at the bottom of each page, including any attached exhibits.

(g) STIPULATIONS:

- (1) shall conclude with the heading "ORDER"; and
- (2) beneath the heading shall appear the words, "IT IS SO ORDERED"; and
- (3) provide a line for the date and the signature of the bankruptcy judge, as provided in Local Bankruptcy Rule 9004-3(h).
- (4) Any stipulation which extends time or provides for a continuance shall contain the reason for the change of date.

(h) SIGNATURE LINE FOR JUDGE. A signature line shall be provided with the words "Judge, United States Bankruptcy Court" typed beneath the line.

(i) EXHIBITS ATTACHED TO PAPERS. Exhibits shall not exceed 8-1/2 by 11 inches in size whenever practicable. Larger exhibits shall be folded in such a manner as not to exceed 8-1/2 by 11 inches. An exhibit smaller than 8-1/2 by 11 inches shall be attached to a 8-1/2 by 11 inch sheet.

- (1) Unless the physical nature of the exhibit makes it impractical, an exhibit shall be securely fastened to the paper to which it relates. The exhibit shall be so attached that it will be easily read without detaching the exhibit from the paper.
- (2) The exhibit number shall be placed immediately above or below the page number of each page of the exhibit. Exhibits shall be tabbed in sequential order.

(j) PAPERS TO BE PRE-PUNCHED. The original of all papers presented for filing or lodging shall be pre-punched with two normal-size holes (approximately 1/4" diameter), centered 2-3/4 inches apart, 1/2 to 5/8 inch from the top edge of the paper. All pages shall be firmly bound at the top left corner.

(k) SUBMITTING PAPERS FOR FILING. All papers submitted to the clerk for filing shall be flat and unfolded (except where necessary for presentation of exhibits). Blue backing sheets are prohibited.

(l) COPIES. Copies shall be marked "COPY" in the bottom margin on the face page and shall be conformed to the original in content, pagination, exhibits, additions, deletions, and interlineations. Conformed copies need not be executed.

(m) REQUIRED NUMBER OF COPIES. Unless otherwise prescribed by these rules, there shall be submitted:

- (1) The original and two (2) copies of the pleadings that accompany an ex parte or emergency order.
- (2) The original and one (1) copy of the order or judgment and any separate findings of fact and conclusions of law, if the consent procedure authorized by Local Bankruptcy Rule 7054-3(a) is used.
- (3) The original and two (2) copies of the order or judgment and any separate findings of fact and conclusions of law and notice of lodgment, if the lodgment procedure authorized by Local Bankruptcy Rule 7054-3(b) is used.
- (4) The original and two (2) copies of an objection to a lodged order, judgment, or separate findings of fact and conclusions of law as provided in Local Bankruptcy Rule 7054-3(b)(3).
- (5) The original and two (2) copies of any notice of hearing required by Local Bankruptcy Rules 2002-3, 3015 and 9014 and related pleadings.
- (6) The original and two (2) copies of any request for hearing required by Local Bankruptcy Rules 2002-2, 3007, 3013, 4001, 5010, and 9013 and related pleadings.
- (7) The original and two (2) copies of any opposition, objection, reply memorandum or joinder required by Local Bankruptcy Rules 3015, 4001, 5011, 9006-1(d), 9013 and 9014 and related pleadings.
- (8) The original and one (1) copy of all other pleadings.

(n) RETURN OF COURT CONFORMED COPY. The requested number of copies includes one to be file stamped by the clerk and returned to the party presenting the paper. If the copy is to be returned by messenger, a messenger slip shall be provided for that purpose. If the copy is to be returned by United States mail, a self-addressed, postage-paid envelope large enough to hold the copy shall be provided. When presenting ex parte motions and orders, two (2) messenger slips or envelopes shall be provided.

9004-4. CAPTION AND TITLE OF PAPERS FILED.

(a) REQUIRED CAPTION. In addition to the information generally required by Fed. R. Bankr. P. 1005 (for notices), 7010 (for adversary proceedings) and 9004(b) (for bankruptcy cases), the caption of each paper shall commence two (2) lines beneath the name of the court and set forth:

- (1) the case number, followed by the initials of the currently assigned judge and chapter number, and, if the document is to be filed in the adversary proceeding, the adversary proceeding number;
- (2) any relief from stay identification number, as required by Local Bankruptcy Rule 4001-1(b), inserted two (2) lines below the bankruptcy case (the designator "RS No." shall precede the number);
- (3) a concise description of the nature of the paper (e.g., Notice of Motion for Summary Judgment, Complaint to Determine Dischargeability of Debt); and
- (4) the date, time and name of the judge, if the paper (other than a notice of

hearing) is to be considered at a future hearing. This information shall be inserted two (2) lines below the case number, adversary proceeding number, or "RS" number.

(b) RESPONSIBILITY OF ATTORNEY TO PROVIDE PROPER CASE NAME AND NUMBER. The attorney presenting a paper for filing shall bear sole responsibility for ensuring that the case name, case number, adversary number, if any, and any required identification number for relief from stay matters match. The court may refuse to consider papers entered on the wrong docket or misfiled because of erroneous or omitted information provided by the attorney.

RULE 9009. LOCAL FORMS

9009-1. AVAILABILITY OF FORMS.

Appendix C contains copies of the forms routinely used by attorneys or that are referenced by these Local Bankruptcy Rules. Upon request and without cost, the clerk shall provide any local form used by this court. All forms shall be subsequently duplicated by the user as needed.