

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



**Administrative Procedures**

February 1, 2020

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June 1, 2016, October 3, 2016, December 1, 2016,  
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# **Administrative Procedures**

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## Section 1: Introduction

### Overview

These Administrative Procedures provide requirements for practice before the Court in the areas of filing, including electronic filing, payment, Document preparation, service, notice, signatures, and general practice.

#### 1.1 Authorization for Electronic Filing

Local Bankruptcy Rule 5005-1(b) requires that all Documents to be filed or lodged with the Court must be electronically filed through the Court's Case Management/ Electronic Case Files System ("CM/ECF" or "System"). These procedures define the users of the System for purposes of filing as all attorneys admitted to the bar of this Court (including those admitted *pro hac vice*), panel and standing trustees, professionals, and examiners. Those who file fewer than ten (10) documents or other papers within a calendar year are exempt from this requirement. Filers who meet the criteria as set forth above, but who experience exigent circumstances that preclude their effective/efficient use of the System, may petition the Court for relief from participation as a Registered User. The Court will address these petitions/requests on a case-by-case basis.

All attorneys admitted to the bar of this Court (including those admitted *pro hac vice*), panel and standing trustees, professionals, and examiners are eligible for full access to CM/ECF. Eligibility of attorneys to participate in the System is governed by Local Bankruptcy Rule 9010. Creditor representatives and personal financial management course providers are eligible for limited access at the discretion of the Clerk and as the Court deems appropriate.

#### 1.2 Electronic Filing

Unless otherwise expressly provided in these Administrative Procedures or where exceptional circumstances prevent a Registered User from filing electronically, all documents required to be filed with the Court by a Registered User in connection with a case, must be electronically filed. All documents must be filed as a Portable Document Format (PDF) file. Electronic filing must be completed before midnight Pacific Standard Time in order to be considered timely filed that day. Detailed procedures may be found in the Attorney/Trustee Manual available on the Court's website.

The person electronically filing a document is responsible for designating a title for the document. To the extent possible, all documents filed electronically must be titled using one of the Docket Events from the Document Event Directory in the Attorney/Trustee Manual located on the Court's website.

### **1.3 Scope of Electronic Filing**

All Documents filed with the Court must be filed through the System, except as otherwise provided for in these *Administrative Procedures*.

### **1.4 The Official Record**

As provided in LBR 5005-1, the official court record is the electronic file maintained on the Court's servers. This includes documents filed by electronic means as well as documents filed in paper form and then scanned into the CM/ECF system.

Electronic transmission of a document to CM/ECF consistent with the Administrative Procedures, together with the transmission of a Notice of Electronic Filing from the Court, constitutes filing of the document for all purposes of the Federal Rules of Bankruptcy Procedure and the Local Rules of this Court, and constitutes entry of the document on the docket kept by the Clerk under FRBP 5003.

### **1.5 System Availability, Assistance and Technical Specifications**

CM/ECF is designed to provide service 24 hours a day, 7 days a week.

The Clerk's Office has established a Systems Help Desk (619-557-7415) to respond to questions regarding the CM/ECF system. The Systems Help Desk is staffed business days from 9:00 a.m. to 4:00 p.m. If you have case specific questions, call 619-557-5620 or call the case administrator directly. The Clerk's Office phone list can be obtained on the Court's website ([www.casb.uscourts.gov](http://www.casb.uscourts.gov)) go to Bulletin Board Court Phone List. Current technical specifications for CM/ECF can be found at the Court's official website. Specifications may change periodically. Registered Users may refer to the website for the most current requirements.

### **1.6 Registration and Training**

Registration must be in a form prescribed by the Clerk. Anyone eligible for a CM/ECF password must complete the online registration form and the training on the Court's website. A Training Help Line (619-557-7535) has been established to answer questions regarding registration and training for the System.

Eligible users who successfully complete the training will receive a login and password. This login and password will be e-mailed directly to the Registered User by the Clerk's Office.

### **1.7 Logins and Passwords**

No Registered User must knowingly permit, cause to permit, utilize or cause another to utilize the CM/ECF password unless such person is an authorized agent.

Any Registered User may withdraw from participation in CM/ECF by providing the Clerk of Court, Chief Deputy Clerk or systems department with notice of such withdrawal. Such notice must be in writing. Upon receipt, the Clerk's Office will immediately cancel the Registered User's password and will delete the Registered User's email address from any applicable electronic service list.

### **Full Access – Attorneys, Trustees, Professionals & Examiners**

A full access password to participate in the electronic retrieval and filing of documents may be issued to the following:

- Each attorney admitted to practice in the Southern District of California,
- Panel and standing trustees, and
- Professionals and examiners.

### **Limited Access - Creditor Representative**

A limited access password may be obtained by creditor representatives to participate in the CM/ECF system. This limited access allows the filing of (a) creditor request for notice and/or notice of appearances; (b) proofs of claim; (c) withdrawals or transfers of claim; (d) reaffirmation agreements; and (e) motions to restrict public access to proofs of claim.

### **Limited Access – Personal Financial Management Course Providers**

A limited access password may be obtained by personal financial management course providers to participate in the CM/ECF system. This limited access allows the filing of financial management completion certificates.

## **1.8 Signatures**

All original Documents must be signed including the Petition, Schedules, and Statements. The name of the person signing the Document must be typed underneath the signature.

The Registered User filing a document electronically must insure that the electronic version conforms to the original, signed Document or, in the case of the document described in LBR 5005-4(e)(2), must retain documentation of the consent to filing of the document.

LBR 5005-4 governs logins, passwords, and signatures.

### **5005-4. Logins, Passwords, and Signatures.**

(a) Registered User's Signature. The Registered User login and password

serve as the user's signature on all electronic Documents filed with the Court. The login and password also serve as a signature for purposes of FRBP 9011, the Local Bankruptcy Rules, the Administrative Procedures, and any other purpose for which a signature is required in connection with proceedings before the Court.

(b) Form of Signature. Each Document filed electronically must include a signature block in compliance with the Administrative Procedures. Each electronically filed Document shall bear the typed name of the person purporting to have signed the document. The name of the attorney or party who signed the original must be typed in the space where the signature would otherwise appear preceded by an "/s/" or "s/", or appear as a scanned image; an example of the correct format for an electronic signature is as follows: "/s/" or "s/" Adam Attorney, "/s/" or "s/" Sally Declarant.

(c) Debtor's Signature. In addition to the signature requirements of the Administrative Procedures, the signature of the debtor or joint debtor authorizing the electronic filing of the bankruptcy case must be accomplished by the electronic filing of an executed Local Form CSD 1801 on the Petition Date. Local Form CSD 1801 as well as CSD 1099 and CSD 1100 must provide the original debtor signature(s) in a scanned format.

(d) Signatures of Other Persons. Signatures of persons signing a document other than the registered user or the debtor as discussed in LBR 5005-4(c) may be indicated either by:

- (1) submitting a scanned copy of the originally signed document;  
or
- (2) through the use of "/s/ Name" in the signature block where signatures would otherwise appear indicating that the original has been signed before filing.

(e) Stipulations and Orders. Physical, facsimile, or electronic scanned signatures are permitted. Stipulations and Orders (approved as to form) requiring signatures of more than one party must be electronically filed either by:

- (1) scanning and submitting the stipulation or order containing all necessary signatures; or
- (2) certifying within the document that the content of the document is acceptable to all persons required to sign the document (the filer must electronically file the document indicating the signatories as "s/Jane Doe," "s/John Smith," etc., for each electronic signature); or
- (3) in any other manner approved by the Court.

(f) Unauthorized Use Prohibited. A Registered User may not knowingly permit or cause a password to be used by anyone other than an authorized law firm or office employee. The Registered User is responsible for all Documents filed using their assigned CM/ECF login as if they filed the Documents themselves.

## 1.9 Service and Notice

Each Registered User of the System is responsible for assuring that their e-mail address is accurate, that the account is monitored regularly, and that e-mail notices are opened in a timely manner. Detailed procedures for System email account maintenance may be found in the Attorney/Trustee Manual available on the Court's website.

Creditor lists are readily available through ECF. Parties may obtain and print creditor lists without requiring assistance from the Court.

LBR 5005-5 governs consent to electronic service.

(a) General. Except as discussed in LBR 5005-5(b) below, Registered Users are deemed to have:

- (1) requested and agreed to electronic service and notice; and
- (2) waived the right to receive any other form of service and notice.

This request, agreement, and waiver satisfy FRBP 9036 and include notices under FRBP 9022.

(b) Exceptions. The deemed request, agreement, and waiver discussed in LBR 5005-5(a) does not apply to FRBP 7004 Service or to service under FRBP 9016 of a subpoena directed to a Registered User.

LBR 5005-6 and 9006-2 governs Proof of Service.

**5005-6. Service.** A Proof of Service where required by these Local Bankruptcy Rules must be included with Documents filed electronically, indicating that service was accomplished through an NEF for parties and counsel who are participants in the System and indicating how service was accomplished on any party or counsel who is not a participant in the System.

### **9006-2. Proof Of Service.**

(a) Filing. Proof of Service of all Documents served must be filed with the Clerk's office on the next Court day following the date of service of the Documents and must indicate the date and manner of service by attaching or including:

- (1) written acknowledgment of service by the attorney or authorized Individual served; or
- (2) attorney's certificate or Declaration of the Individual who mailed or served the Documents.

(b) **Validity of Service.** The validity of the service is not affected by the failure to file the Proof of Service.

(c) **Required Information.** A Proof of Service of a Document must identify the following:

- (1) documents(s) served;
- (2) service date;
- (3) name of the Individual or Entity served and that Individual's or Entity's:
  - (A) mailing or street address if served by mail or hand delivery;
  - (B) email address if served electronically; or
  - (C) fax number if served by fax transmission;
- (4) name of the party if service was made on a party's attorney; and
- (5) method of service (personal, hand delivery, first class mail, the System, or other delivery method with written consent).

(d) **Written Consent to Electronic Service.** If service is made by electronic means, other than through the System, the Proof of Service must include a statement that the party being served consented to the particular method of service. Facsimile and email service require such consent.

(e) **Service by the System.** If service is made using the System, the party filing the Proof of Service may rely on the NEF to indicate that service was made, except as set forth in LBR 2002-1 where the Clerk will file the proof of service and LBR 5005-6 where service is made on parties who are not participants in the System. The NEF, however, is not a substitute for a Proof of Service.

## 1.10 Fees

For electronic filings that require a fee, payment must be made online using an authorized credit card. The requisite fee must be paid within 24 hours or the Registered User will be locked out of CM/ECF until the fee is paid. For filings in paper at the front counter of the Clerk's Office that require a fee, the filing fee tendered by or on behalf of the debtor must be in the form of a cashier's check, money order, or check of the attorney for the debtor, or may be in cash (**exact change only**), if the petition is presented in person. Personal checks of the debtor will not be accepted. The Clerk's office will not be responsible for cash sent through the mail. Any party submitting payment for filing fees which are returned or denied for insufficient funds will be required to pay an additional charge of \$53.00.

The Clerk, under a delegation of authority, approves installment plans of two payments with the final payment due 30 days after the filing of the petition. The application to pay filing fees in installments must substantially conform to Local Form CSD 1006.

## 1.11 Retention

LBR 5005-8 governs retention.

**5005-8. Retention Requirement.** The Registered User must maintain in paper form or in a scanned format any Document that is filed using their login and password that contains an original signature, other than that of the Registered User, or proof of the consent in the case of a Document filed under LBR 5005-4(e), until 5 years after the case is closed or the adversary proceeding is terminated. The Registered User must provide the original paper or printed copy for review upon request.

## 1.12 Correcting Filing or Docket Errors

Once a document is submitted and becomes part of the case docket, corrections to the docket may be made only by the Clerk's Office. The System will not permit the filing party to make changes to a filing once the transaction has been accepted.

The filing party must contact the Clerk's Office as soon as an error has been discovered and provide the case number and document number. If appropriate, the Clerk's Office will make a docket entry indicating that the document was filed in error. The filing party will be advised if the document needs to be re-filed.

If the Clerk's Office discovers filing or docketing errors, the filer will be advised of what further action, if any, is required to address the error. However, if the error is minor, the Clerk's Office may correct the error, with or without notifying the parties.

In the event that it appears a document has been filed in the wrong case, the

Clerk's Office will docket an entry indicating this possible error and notify the filing party. If it is confirmed as an error, the party will be directed to re-file the document in the correct case. The Clerk's Office will not delete any documents filed by a party unless ordered by the Court.

### **1.13 Public Access to the System**

Any person or organization other than Registered Users must register with PACER and receive a login and password in order to access Court records online. Information regarding PACER may be found on the Court's Internet website at *casb.uscourts.gov*.

Electronic access to Court records is also available at the Clerk's Office during regular business hours, Monday through Friday.

Copies and certified copies of electronically filed documents may be purchased at the Office of the Clerk, 325 West F Street, San Diego, California 92101-6991. The fee for copying and certification will be in accordance with 28 U.S.C. 1930.

### **1.14 Technical Failures**

A Registered User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the Court.

## **Section 2: Preparation of Documents**

The following provides guidance for the preparation of Documents to be filed with the court. A paper size of 8-1/2 by 11 inches with not more than 28 lines per page is assumed for all electronic and paper filings.

### **2.1 Attorney Identification**

STATE BAR MEMBERSHIP NUMBER. Attorneys presenting documents for filing must 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 must appear to the right of their name.

### **2.2 Title Page**

In the space commencing 2 inches from the top and to the left of center-page, there must be typed or printed single-spaced the following information:

- (a) Name of counsel and State Bar membership number presenting a document, or if not represented by an attorney, the name of the

party;

- (b) Office address, including the street address in addition to any post office box. If no office address, state residence address.
- (c) Area code and telephone number of the party presenting the document.
- (d) Two lines below the telephone number, the name and interest of the party on whose behalf the document is presented must 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.
- (e) Two lines below the last information required by subsection (d), centered on the page, insert the name of the court, as follows:

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

### **2.3 Caption and Title of Documents Filed**

#### **(a) Required Caption**

In addition to the information generally required by FRBP 1005 (for notices), 7010 (for adversary proceedings) and 9004(b) (for bankruptcy cases), the caption of each document must commence 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 2 lines below the bankruptcy case (the designator "RS No." must precede the number);
3. a concise description of the nature of the document (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 document (other than a notice of hearing) is to be considered at a future hearing. This information must be inserted 2 lines below the case number, adversary proceeding number, or "RS" number.

## (b) Responsibility of Filer to Provide Proper Case Name and Number

The filer presenting a document for filing will 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 documents entered on the wrong docket or misfiled because of erroneous or omitted information provided by the filer.

## 2.4 Pagination

All documents must be numbered consecutively at the bottom of each page, including any attached exhibits. The exhibit number must be placed immediately above or below the page number of each page of the exhibit.

## 2.5 Line Spacing of Documents

Documents must 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 must be clearly indented not less than 5 spaces or more than 20 spaces and may be single-spaced.

## 2.6 Legibility of Documents

All documents must be prepared by electronic means or software that will produce clear and permanent copies equally legible to printing, in black or dark blue ink using Base 14 fonts, which are preinstalled on most computers. These approved fonts include **Courier** (Regular, Bold, Italic, and Bold Italic), **Arial MT** (Regular, Bold, Oblique, and Bold Oblique), and **Times New Roman PS MT** (Roman, Bold, Italic, and Bold Italic). Documents prepared by pro se filers may be hand-printed on opaque, unglazed, white paper of standard quality not less than 13-pound weight and must be in black or dark blue ink clearly written and equally legible to printing.

## 2.7 Length of Brief in Support of or in Opposition to Motion

LBR 9013-7(d) governs length of papers.

(d) Length of Papers; Tables.

- (1) Briefs and memoranda in support of or in opposition to any pending motion or application must not exceed 25 pages.
- (2) Reply memoranda must not exceed 10 pages.
- (3) Briefs and memoranda exceeding 10 pages must include a table of contents and table of cited authorities.

## 2.8 Amendment of Voluntary Petition, Lists, Schedules and Statements

LBR 1009 governs the amendment of Voluntary Petitions, Lists, Schedules and Statements.

**1009-1. Notice and General Requirements.** When a debtor files post-Petition amendments to the lists, schedules, and statements required by FRBP 1007 any such amendment must: (i) substantially conform to Local Form CSD 1100; (ii) be served as required by LBR 1007-4; (iii) comply with LBR 1001-6(i); and (iv) include a notice that substantially conforms to Local Form CSD 1101.

**1009-2. Special Requirements for Mailing Addresses.** The debtor must comply with LBR 1007-1 when filing amendments to the schedule of liabilities.

## 2.9 Privacy

Unless otherwise ordered by the Court, parties must refrain from including, or must partially redact where inclusion is necessary, the following personal identifiers from all documents filed with the Court, including exhibits thereto:

- Social Security numbers. If an individual's Social Security number must be provided, only the last 4 digits of that number should be used.
- Names of minor children. If the name of a minor child must be provided, only the initials of that child should be used.
- Dates of birth. If an individual's date of birth must be provided, only the year should be used.
- Financial account numbers. If financial account numbers must be provided, only the last 4 digits of these numbers should be used.

The responsibility for redacting personal identifiers rests solely with the parties. The Clerk's Office will not review documents for compliance with this rule.

## 2.10 Orders

Electronically submitted orders may not be combined with the application or motion into one document. The application or motion must be entered on the docket prior to uploading the order electronically and the resulting *Docket Entry No.* must be noted on the order template. Orders uploaded through CM/ECF will be entered on the case docket at the time of signature.

Electronic orders must be uploaded using the Orders Upload option in CM/ECF and formatted as provided in LBR 9013-10. Stipulated, emergency, ex parte, non-

contested, and lodged orders may be uploaded electronically as outlined below.

The first page of any electronically uploaded order must substantially conform with the appropriate order template (CSD 1001A-C, CSD 1159 A-C, or CSD 3000A-C) maintained by the Court for standard orders, orders shortening time, and lodged orders. The signature line must be fixed at 4.5 inches from the left edge of the document and 3 inches from the bottom edge of the document. Signature approving orders will be affixed electronically on the signature line. Deviations from the required format are not permitted. Notification of defects in an order will be provided by e-mail.

Exhibits required by LBR 9013-10 may be referenced according to the specific Docket Entry No. assigned to the document at the time of its entry.

### **2.11 Document Exhibits**

Registered Users must submit in electronic form all documents referenced as exhibits or attachments, unless the Court permits otherwise. Only excerpts of the referenced documents that are directly germane to the matter under consideration by the Court are to be submitted. Excerpted material must be clearly and prominently identified as such. Registered Users who submit excerpts under these Administrative Procedures do so without prejudice to their right to timely submit additional excerpts or the complete documents that they believe are directly germane. The Court may require parties to submit additional excerpts or the complete document. Evidentiary and trial exhibits must be provided directly to the appropriate courtroom deputy and not submitted to the Clerk's Office.

Exhibits are to be numbered sequentially at the top and bottom of the first page and attached to the document they support. If an exhibit separator page is used, it must identify the succeeding exhibit at the top and bottom of the separator page. Exhibit files should be no larger than 15 megabytes.

Each document containing exhibits must have, as a cover page to the exhibits, a list indicating the name and page number of each of the succeeding exhibits.

The Registered User is required to verify the legibility of the scanned exhibits prior to electronically submitting them to the Court. Parties should scan documents in black and white, unless color is a critical feature of the information.

### **2.12 Hyperlinks**

In order to preserve the integrity of the Court record, attorneys wishing to insert hyperlinks in filings must continue to use the traditional citation method for the cited authority, in addition to the hyperlink. The Judiciary's policy on hyperlinks is that a hyperlink contained in a filing is no more than a convenient mechanism for accessing material cited in the document. A hyperlink reference is extraneous to any filed document and is not part of the Court's record.

The Court accepts no responsibility for, and does not endorse, any product, organization, or content at any hyperlinked site, or at any site to which that site may be linked. The Court accepts no responsibility for the availability or functionality of any hyperlink.

## **2.13 Sequence of Pleadings**

An initiating document must be electronically filed and docketed separately. Examples of an initiating document include a motion, application, plan, objection to claim, notice of appeal, amendment and balance of schedules.

Separate PDF files of any supporting document(s) should be browsed and attached to the initiating document. Examples of supporting documents include memorandums of points and authorities and declarations.

Most subsequent documents filed (i.e. oppositions, Request and Notice of Hearing (CSD 1175, 1184 or 1186), and replies, etc.) must be referred/related during the filing process to the initiating documents. Any supporting document(s) for these filings should be browsed and attached to the subsequent document.

## **Section 3: Presentation of Documents**

The Clerk's office provides a variety of services; however they are not permitted to assist with the preparation of the voluntary petition, schedules, or other documents, nor can they provide legal advice. All parties must comply with the Local Bankruptcy Rules for the Southern District of California, the U.S. Bankruptcy Code, and the Federal Rules of Bankruptcy Procedure. This section provides general information of what is required to file a bankruptcy case.

### **3.1 Filing of Petition, Schedules, Statements, and Other Documents**

#### **(a) Documents filed with the Petition.**

- Petition 101 or 201;
- Official Bankruptcy form 121 entitled "Statement of Social Security Number" (for individuals only; docketed separately if electronically filed);
- List of Creditors as a Text file (.txt) containing the names and addresses of creditors and other parties in interest submitted pursuant to Local Bankruptcy Rule 1007-1. (If electronically filed, this is separately uploaded to the system);
- List of 20 largest unsecured creditors, exclusive of insiders (chapter 11 cases only); and

- Chapter 11 small business debtors must file either:

The most recent balance sheet, statement of operations, cash-flow statement, and Federal income tax returns required by 11 U.S.C. § 1116(1)(a); or

A statement indicating that the documents listed in subsection (a) above have not been prepared or filed as required by 11 U.S.C. §1116(1)(B). (If filed electronically, docketed separately).

**(b) Depending upon your circumstances, the following documents may or may not be needed. If the form is needed, it must be filed at the same time as the Voluntary Petition, but filed separately.**

- Application to Pay Filing Fees in Installments (CSD 1006) (for individual debtors only);
- Application for Waiver of Chapter 7 Filing Fee (CSD 1020) (for individual debtors only);
- Declaration and Signature of Non-Attorney Bankruptcy Petition, Bankruptcy Petition Preparer's Notice, Declaration, and Signature, [See Official Bankruptcy Form 119] (only in cases for unrepresented debtors);
- Motion for Exemption from Credit Counseling (CSD 1027); or
- Statement of Exigent Circumstances and Motion Request to Extend Time (CSD 1025).

**(c) The following must be filed with the voluntary petition for individuals or non-individuals or within 14 days after the petition is filed.**

- Declaration Re: Electronic Filing (CSD 1801) Due within 14 days of filing. CSD 1099 - Balance of Schedules, Statements, and/or Chapter 13 Plan (CSD 1300) (If any schedules or statements are filed 14 days after the petition.);
- Summary of Schedules (106Sum or 206Sum);
- Schedule of Real and/or Personal Property (106 A/B or 206 A/B);
- Schedule of Property Claimed as Exempt (106C);
- Schedule of Creditors Who Hold Claims Secured By Property (106D or 206D);
- Schedule of Creditors Who Have Unsecured Claims (106E/F or 206E/F);
- Schedule of Executory Contracts & Unexpired Leases (106G or 206G);
- Schedule of Co-Debtor (106H or 206H);
- Current Income of Individual Debtor(s) (106I);

- Current Expenses (106J);
- Expenses for Separate Household of Debtor 2 (106J-2 if applicable);
- Statement of Financial Affairs (107 or 207);
- Statement of Intention for Individuals Filing Under Chapter 7 (108)  
(Note: This form is filed within 30 days or by the date set for the 341 meeting of creditors, whichever is earlier);
- Chapter 7 Statement of Current Monthly Income (122A-1);
- Chapter 7 Statement of Exemption from Presumption of Abuse (122A-1Supp);
- Chapter 7 Means Test Calculation (122A-2);
- List of equity security holders (chapter 11 cases only);
- Attorney Fee Disclosure Statement required by FRBP 2016(b);
- Chapter 11 Statement of Your Current Monthly Income (122B);
- Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period (122C-1); and
- Chapter 13 Calculation of Your Disposable Income (122C-2).

### **3.2 Filing of An Adversary Proceeding**

#### **(a) Adversary Proceeding Cover Sheet (Form 1040).**

A party filing an adversary proceeding must complete and file Form 1040, the Adversary Proceeding Cover Sheet. The cover sheet is required when the adversary proceeding is filed electronically through the System or in paper at the Front Counter.

#### **(b) Complaint.**

The format of the complaint must comply with the Administrative Procedures requirements for the formatting of documents filed with the Court as identified in Section 2 “Preparation of Documents.” The complaint must also comply with the applicable Local Bankruptcy Rules including LBR 7008.

#### **(c) Summons In An Adversary Proceeding and Proof of Service – (CSD Form 2500A).**

The System will generate a summons for service when the adversary is filed electronically. If presented for filing at the front counter, the summons and proof of service must be prepared and filed in accordance with the requirements identified in FRBP 7004 and must also comply with Local Bankruptcy Rule 7004-1 if not served timely.

#### **(d) Third Party Claims.**

For issuance of a third party summons in an adversary proceeding, use CSD Form 2500D, "Third Party Summons In An Adversary Proceeding."

### 3.3 Payment Advices

LBR 1007-5 governs payment advices.

**1007-5. Payment Advices.** The debtor must submit the evidence of payment required by FRBP 1007(b)(1)(E) to the chapter 7, 12, or 13 trustee assigned to the debtor's case or to the U.S. Trustee in a chapter 11 case, preferably through the EDOC System. A debtor should not file this evidence with the Court.

### 3.4 Copies

When filed in paper, an original and 1 copy to be conformed is required. If the copy is to be returned by United States mail, a self-addressed, postage-paid envelope large enough to hold the copy must be provided.

### 3.5 Sealed Documents

A motion and order to file document(s) under seal may be filed electronically. No document filed under seal should be submitted until after the order granting the motion has been entered. Subsequent documents, upon approval of the order, may also be filed electronically under seal.

If the document(s) is filed in paper to be filed under seal it must contain the following caption: "THIS DOCUMENT IS FILED UNDER SEAL PURSUANT TO COURT ORDER" and be placed in a large sealed envelope. A copy of the order must be attached to the envelope and delivered to the Clerk's Office. Subsequent documents, upon approval of the order, may also be filed under seal. *Review the Sealed Document procedure in the CM/ECF Online Manual for specific instructions for filing sealed documents electronically.*

### 3.6 Facsimile Filings

All Documents presented for filing by a fax filing agent must comply with the Administrative Procedures requirements for preparation of Documents in Section 2 above and the sending party is required to maintain a transmission record in the event fax filing later becomes an issue. A transmission record means the document printed by the sending facsimile machine stating the telephone number of the receiving machine, the number of pages sent, the transmission time, and an indication of errors in transmission.

LBR RULE 5008 governs facsimile filings.

**5008-1. Filing.**

(a) A fax filing agency will file all fax transmitted papers on behalf of the parties or their counsel. No papers may be transmitted directly to the Clerk by facsimile for filing. Any papers so transmitted will be rejected and not filed.

(b) The fax filing agency acts as the agent of the filing party and not as agent of the Court. A paper is deemed filed when it is submitted by the fax filing agency, received in the Clerk's office, and filed by the Clerk. Mere transmission to or receipt by the fax filing agency is not a filing.

(c) The fax filing agency must meet all technical requirements under the Administrative Procedures.

**5008-2. Original Signature.** The image of the original manual signature on the fax copy of the paper will constitute an original signature for all Court purposes. The original signed paper must not be substituted except by Court order. The original signed paper must be maintained pursuant to LBR 5005-8.

**Section 4: Deposit & Disbursement of Funds into Interest  
Bearing Accounts and Registry Funds**

General Order 183 outlines the procedural rules for the deposit and investment of registry funds. The Court Registry Investment System ("CRIS"), administered by the Administrative Office of the United States Courts is the authorized investment mechanism. Registry (or Interpleader) funds are typically funds involving a bankruptcy estate that are under dispute between 2 parties. These funds are deposited with the Clerk until a Judge signs an order releasing these funds and entered on the case docket. The process of depositing interpleader funds is initiated by an order with the information identified below.

**4.1 Deposit of Funds; Content of Order**

Those parties seeking interpleader of certain funds must personally serve a copy of the order on the clerk or chief deputy clerk. The order must contain the following provisions:

"IT IS ORDERED, that the clerk deposit the amount of \$\_\_\_\_\_ in an interest bearing account in the Court Registry Investment Fund, and said funds to remain invested pending further order of the court.

IT IS FURTHER ORDERED that the clerk is directed to deduct from the income earned on the investment a fee, not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office, whenever such income becomes available for deduction in the investment so held and without further order of the court.

IT IS FURTHER ORDERED that counsel presenting this order must personally serve a copy thereof on the clerk or the chief deputy clerk prior to making the deposit. Absent personal service, the clerk is hereby relieved of any personal liability relative to compliance with this order.

#### **4.2 Disbursements of Registry funds; Content of Order.**

The clerk will disburse funds on deposit in the registry of the court only pursuant to court order. The disbursement order must contain a provision relieving the clerk from liability for loss of interest, if any, for early withdrawal of the funds. The order must state the name and taxpayer identification number for each party who is to receive funds and the percentage of the balance and interest each is to receive. Funds will be disbursed only after the time for appeal of the related judgment or order has expired, or upon approval by the court of a written stipulation by all parties.

### **Section 5: Mediation Panel Procedures**

The following procedures detail the administration of the Mediation Program; as well as the process for Mediation.

LBR 7016-11 governs Mediation.

**7016-11. Mediation.** Parties may participate in mediation pursuant to the provisions of the Administrative Procedures. Upon conclusion of the mediation:

- (a) If the parties reach agreement, the parties must designate a party to document the settlement.
- (b) The mediator must prepare and file, within 14 days, Local Form CSD 4004, indicating whether a settlement was reached, and if so, whether there was compliance with the settlement and mediation requirements of the Administrative Procedures.

#### **5.1 List of Mediators**

The court maintains a list of qualified persons who agree to serve as mediators in contested matters and adversary proceedings pending before the court.

## 5.2 Voluntary Mediation Panel

To volunteer for this program, a person should submit an application to the Clerk. The application must set forth the qualifications described in subsection (a) or (b) and must conform in format to Local Form CSD 4001, *APPLICATION TO JOIN VOLUNTARY MEDIATION PANEL*. A list of eligible mediators is available on the Court's website, from the Clerk's Office, and/or from the Courtroom Deputy.

### (a) Attorney Qualifications

In order to qualify for service on the Voluntary Mediation Panel, an attorney must certify to the court that the attorney meets the following minimum qualifications:

- i. the attorney is an active member of the State Bar of California and is duly licensed to practice before the courts of the State of California and the Federal courts for the Southern District of California;
- ii. the attorney has been admitted to practice in a federal court for at least 4 years; and
- iii. the attorney has served as the attorney of record for at least 3 bankruptcy cases from commencement through conclusion (i.e.; confirmation of a plan or discharge) or has served as the attorney of record for a party in interest for at least 3 or more adversary proceedings or contested matters from commencement through completion (i.e.; judgment, order, or stipulated settlement); or has had other substantially equivalent bankruptcy experience.

### (b) Non-Attorney Qualifications

In order to qualify for service on the Voluntary Mediation Panel, a non-attorney must certify to the court that the following qualifications are met:

- i. the person is a member of the panel of trustees or examiners maintained by the Office of the United States Trustee; or
- ii. has served in at least 3 bankruptcy matters as either a bankruptcy examiner or Certified Public Accountant (licensed in the State of California) for a trustee debtor in possession; or has substantially equivalent bankruptcy experience.

### **(c) Mediator Compensation**

After completing a half-day mediation session, nothing herein prevents the parties, and the mediator, from agreeing that the mediator be compensated at an agreed upon hourly rate.

## **5.3 Assignment to Mediation**

(a) A case may be assigned to mediation by order of the court at a status conference or other hearing. If a case is assigned to mediation, the parties attending the status conference must be presented with the current lists of eligible mediators. If the parties cannot agree, the court will appoint a mediator and alternates from the lists.

(b) Local Form CSD 4002, *ORDER APPOINTING MEDIATOR AND ASSIGNMENT TO MEDIATION*, must be used to assign a matter to mediation. The original will be retained in the court's file. The clerk will mail a copy to the mediator and to each party.

(c) If the parties believe that the matter involves novel issues of law or complex factual issues, the parties may request the sitting judge to appoint another Bankruptcy judge to serve as mediator. The Court, in its own discretion, will make the determination whether a bankruptcy judge should preside over the mediation.

## **5.4 Mediation Procedure**

### **(a) Time and Place**

The mediator will fix the time and place for the mediation conference, and any adjourned session. The time and place selected must be reasonably convenient for the parties, and the parties must be given at least 14 days written notice of the initial conference, unless another shorter time frame is agreed to by all parties. The conference must be scheduled as soon as practicable, but in no event more than 45 days after the mediator has been notified of the appointment. The mediator may, upon written stipulation of the parties, grant one or more continuance(s) of the conference, provided that the continuance granted does not extend the date of the conference to a date more than 75 days after the mediator has been notified of the appointment.

### **(b) Submission of Mediation Letter or Brief**

Each party must provide the mediator with a completed mediation letter or brief (unless this requirement is waived by mediator). The mediation letter or brief must describe the nature of the dispute; the evidence supporting that party's position as well as the evidence in opposition to that party's position; describe any settlement offers that have been made by either party; and a legal argument in support of that party's

position. The completed mediation letter or a brief must be provided to the mediator and served on all other parties not less than 7 calendar days prior to the date noticed for the mediation conference as set forth in subsection (a) above or within such time as provided by the mediator; however, if a party or parties determine their mediation letter or brief to be confidential, they must designate it as such and at the time they submit it to the Mediator, notify the other party or parties, by email, that it has been submitted confidentially.

**(c) Attendance and Preparation Required**

The attorney who is primarily responsible for each party's case must personally attend the mediation conference and any adjourned sessions of that conference. The attorney for each party must come prepared to discuss the following in detail and in good faith:

- all liability issues;
- all damage issues; and
- the position of their client relative to settlement.

**(d) Parties to Be Available**

All individual parties who reside within the County of San Diego must personally attend the mediation conference unless excused by the mediator for cause. Parties, other than individuals, whose principal place of business is located in San Diego County, must have a representative appear with authority to settle. Individuals and other parties who neither reside in San Diego County nor have their principal place of business located therein, must be available for conference with their counsel by telephone although that party's attorney must be in attendance. The mediator must decide when the parties are to be present in the conference room.

**(e) Failure to Attend**

Willful or unexcused failure to attend the mediation conference must be reported to the court by the mediator and may result in the imposition of sanctions by the court.

**(f) Proceedings Privileged**

All proceedings or writings of the mediation conference, including the case questionnaire, mediator's settlement recommendation, plus any statement made by any party, attorney or other participant, must in all respects be privileged and not reported, recorded, placed in evidence, made known to the trial court or jury or construed for any purpose as an admission against interest. No party will be bound by anything said or done at the conference unless a settlement is reached, in which event the agreement upon a settlement must be reduced to writing and will be binding upon parties to that agreement. Federal Rule of Evidence 408 applies herein. A report of a

failure to attend a mediation conference does not fall within this privilege. A written settlement agreement prepared in the course of, or pursuant to the mediation in accordance with Section 5.5 herein is not privileged, made inadmissible, or protected from disclosure.

**(g) Duty of Counsel**

The client must be advised of the fact that the mediator is a qualified person and has volunteered to act as an impartial mediator, without compensation, in an attempt to help the parties reach an agreement and avoid the time, expense and uncertainty of trial. If the mediator makes any oral or written suggestions as to the advisability of a change in any party's position with respect to settlement, the attorney for that party must promptly transmit that suggestion to the client.

**(h) Duty of Mediator**

The mediator will have the duty and authority to establish the time schedule and procedure for mediation activities, including a schedule for the parties to act upon the mediator's recommendation, having in mind that the purpose of this order is prompt dispute resolution. The mediator will have no obligation to make any written comments or recommendations, but may have the discretion to provide a written settlement recommendation in memorandum. No copy of any such memorandum will be filed with the clerk or made available in whole or in part, directly or indirectly, either to the court and/or the jury.

**5.5 Procedure upon Completion of Mediation Session**

Upon the conclusion of the mediation session where all parties are in attendance, the following procedures must be followed:

(a) No party will be bound by anything said or done at the conference unless a binding settlement is reached, subject only to Court approval, in which event either: (i) the agreement upon a settlement must be reduced to a writing, signed by the parties, and providing that it is enforceable or binding or words to that effect; or (ii) The terms of the oral agreement are recited on the record by a court reporter or reliable means of audio recording in the presence of the parties and the mediator, and the parties express on the record that they agree to the terms recited. The party preparing the settlement agreement must submit the agreement, once fully executed by all parties, to the Court for approval. If the parties have not reached a resolution upon the conclusion of the mediation session, the parties shall determine whether to continue the mediation session to a date convenient to all parties and the mediator or (iii) terminate the mediation. Further, if there is no communication between the mediator and any of the parties to the mediation relating to the dispute for 10 calendar days, the mediations shall be deemed terminated. The mediator and the parties may, by

written agreement, shorten or extend this time. An email between counsel to the parties shall be sufficient to shorten or extend time.

(b) The mediator must prepare and file with the Clerk, within 14 days of the termination of the mediation, a Local Form CSD 4004, *MEDIATOR'S CERTIFICATE OF COMPLIANCE*, indicating whether a settlement was reached, and, if so, whether there was compliance with the settlement and mediation requirements of this rule.

## Section 6: Definitions

**CASE MANAGEMENT/ELECTRONIC CASE FILES SYSTEM (System)** is the Internet-based system for filing documents and maintaining Court case files in the United States Bankruptcy Court for the Southern District of California.

**DOCUMENTS** include pleadings, motions, exhibits, declarations, affidavits, memoranda, papers, orders, notices, and any other filing by or with the Court.

**ELECTRONIC FILING** is submitting a document directly from the Registered User's computer in "Portable Document Format" (.pdf), using the System to file that document with the Court.

**INITIATING DOCUMENTS** include petitions, motions, applications, plans, objections to claim, notices of appeal, reopens, amendments, balance of schedules, and fees.

**NEF (NOTICE OF ELECTRONIC FILING)** is a notice automatically generated by the System at the time a document is filed with the Court. The notice sets forth the date and time of filing, the name of the attorney and/or party filing the document, the type of document, the text of the docket entry, the name of the party and/or attorney receiving the notice, and an electronic link (hyperlink) to the filed document which allows recipients to retrieve the document automatically. The NEF is electronically sent to all registered users in the case, with the exception of limited access filers.

**PACER** (Public Access to Court Electronic Records) is an automated system that allows a subscriber to view, print and download Court case file information over the Internet for a fee.

**PDF (PORTABLE DOCUMENT FORMAT or .pdf)** is a proprietary file format developed by Adobe Systems, Inc. A document file created with a word processor, or a paper document which has been scanned, must be converted to Portable Document Format to be electronically filed with the Court. Electronic documents can be converted to pdf directly from the original software application (e.g., Microsoft Word® or Corel WordPerfect®, petition software). Documents which exist only in paper form must be scanned into .pdf format for electronic filing.

**REGISTERED USER** is an individual who has been issued a login and password by the Court to electronically file documents.

**SUBSEQUENT DOCUMENTS** include oppositions, Requests and Notices of Hearing (CSD 1175, 1184 or 1186), and replies. These documents must refer to the initiating documents with any supporting document(s) as attachments.

**TEXT** files (.txt) are used for submitting debtors' information for opening a bankruptcy case. Text files are also the format used for creating the creditor's matrix.

**UPLOADED DOCUMENTS** such as Orders and Trustee Reports, are not be filed on the case docket until reviewed.