

**WHAT YOU NEED TO KNOW WHEN YOUR  
CASE OR ADVERSARY PROCEEDING IS  
ASSIGNED TO  
JUDGE PETER H. CARROLL**

The purpose of this memorandum is to help you navigate the minefield of Local Bankruptcy Rules (LBRs) and forms, Court Manual requirements, and variant judicial practices in this district to obtain a successful result in any matter arising in a bankruptcy case or adversary proceeding assigned to me for adjudication. I require compliance with the LBRs, Court Manual, and the use of mandatory court forms, except as set forth herein.

**I. EX PARTE APPLICATIONS**

Ex parte applications are rarely appropriate. See Gumport v. China Trust & Inv. Corp. (In re Intermagnetics Am., Inc.), 101 B.R. 191 (C.D. Cal. 1989). An ex parte application determined to be substantively or procedurally improper will be denied without prejudice to the relief being sought by a properly noticed motion.

**II. JUDGE’S COPIES**

The court enforces LBR 5005-2(d) and Section 3.5(d) of the Court Manual regarding a “Judge’s Copy.” In addition to the documents listed in § 2.2 of Appendix F to the Court Manual and notwithstanding anything in § 2.1 to the contrary, please do NOT serve a “Judge’s Copy” of any of the following documents: (1) case commencement documents for a case filed under ANY chapter of the Bankruptcy Code; (2) a motion or matter to be determined after notice and an opportunity to request a hearing pursuant to LBR 9013-1(o); (3) any declaration regarding non-opposition to such a motion or matter; (4) a proposed order or judgment uploaded electronically using the court’s Lodged Order Upload (LOU) program, and (5) any notice of lodgment of such an order or judgment.

**III. MOTIONS & CONTESTED MATTERS**

A. Evidentiary Requirements.

All motions and applications must be supported by admissible evidence establishing a prima facie case for the relief sought. See LBR 9013-1(i). Admissible evidence includes: (1) a declaration of facts executed under penalty of perjury by an individual with personal knowledge of such facts; (b) authenticated

exhibits; and (c) a request for judicial notice of facts that are adjudicative facts within the scope of F.R.Evid. 201. A motion submitted without supporting admissible evidence will likely be denied, even if no opposition is filed.

A moving party asserting a security interest and lien in property of the debtor or estate must provide evidence of such perfected security interest and lien. In cases in which the original note and deed of trust have been assigned, a copy of each assignment or other document necessary to establish the standing of the movant to seek the relief requested must be provided in support of the motion.

In matters where an appraisal is submitted in support of a motion, the appraisal must be authenticated by a declaration of the appraiser or the appraisal will not be considered.

#### B. Failure to File a Written Response.

The failure to file a timely written response to a motion will be deemed by the court to be consent to the granting or denial of the motion, as the case may be. See LBR 9013-1(h).

#### C. Evidentiary Hearings.

If no disputed issues of material fact exist, the court will rule on a motion at the hearing based on the evidentiary record.<sup>1</sup>

If the evidentiary record is such that the motion cannot be decided without resolving a disputed issue of material fact, the court will treat the initial hearing as a status conference and the matter will be continued to another date for an evidentiary hearing.

#### D. Motion Without a Hearing.

If a motion is filed pursuant to LBR 9013-1(o) and does not require a hearing absent an objection and request for hearing, the moving party must file a

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<sup>1</sup> If a written response to a motion is not timely filed, the evidentiary record closes 14 days prior to the date of the hearing. See LBR 9013-1(f) & (i). If a written response to a motion is timely filed, the evidentiary record closes 7 days prior to the date of the hearing. See LBR 9013-1(g) & (i). Verification of a motion is not considered evidence in support of the motion. LBR 9013-1(i).

declaration stating no opposition to the motion has been served within the objection period. LBR 9013-1(o)(3). A proposed order granting the motion must be uploaded electronically via LOU in accordance with LBR 9021-1 and the LOU Procedures contained in Section 4 of the Court Manual. An order will not be signed absent such a declaration on file with the court.

#### E. Service of Pleadings.

The failure to properly serve a motion or notice of hearing in accordance with applicable rules will result in the matter being taken off calendar pending proper service.

#### F. Continuance of a Hearing or Withdrawal of a Motion.

If the movant wishes to take off calendar, withdraw or continue an unopposed motion, the movant may do so by simply advising chambers of this fact as early as possible. The court normally posts dispositions without oral argument and tentative rulings on matters not less than 48 hours prior to the scheduled hearing date.

If the parties by agreement wish to continue or take off calendar an opposed motion, the parties may do so by simply advising chambers of this fact as early as possible. No written stipulation is necessary.<sup>2</sup>

In all other instances, absent an agreement, a party seeking the continuance of a hearing on a motion must comply with LBR 9013-1(m)(1).

### **IV. MOTIONS TO DETERMINE VALUE OF COLLATERAL**

#### A. General.

Valuation pursuant to 11 U.S.C. § 506(a) and FRBP 3012 is a contested matter initiated by the filing of a motion. Valuation does not require the filing of an adversary proceeding because the court is not determining the nature, extent, validity or priority of the security interest or lien on collateral. The court is merely valuing the collateral securing a claim. See In re Pereira, 394 B.R. 501, 504-05

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<sup>2</sup> This procedure does not apply to the scheduled trial of an adversary proceeding. See Section XII(G), infra.

(Bankr. S.D. Cal. 2008); Scott v. Countrywide Home Loans, Inc. (In re Scott), 376 B.R. 285, 291 (Bankr. D. Idaho 2007).

Because § 506(a) requires that a secured creditor's status be determined in conjunction with either a disposition of the collateral or the hearing on any plan affecting the creditor's interest, a motion to value must be determined prior to or in conjunction with confirmation of the plan. 11 U.S.C. § 506(a).

In chapter 11 cases, the rights of the holder of the claim, other than a claim secured only by a security interest in real property that is the debtor's principal residence, are modified under § 1123(b)(5) and the claim is treated, as modified, under § 1129(b)(1)(A). The junior lienholder's deed of trust will remain of record until the plan is completed. An adversary proceeding may be necessary upon completion of the plan if the lienholder refuses to re-convey the deed of trust. See FRBP 7001(2) & (9).

Property is valued as of the petition date. See, e.g., BAC Home Loans Servicing, LP v. Abdelgadir (In re Abdelgadir), 455 B.R. 896, 903 (9th Cir. BAP 2011) ("[T]he determinative date for whether a claim is secured by a debtor's principal residence is, like all claims, fixed at the petition date."); Benafel v. One West Bank, FSB (In re Benafel), 461 B.R. 581, 587 (9th Cir. BAP 2011) (adopting the rule in Abdelgadir, but recognizing as a correct approach the valuation of a secured creditor's claim at confirmation).

## B. Forms.

You may use the following form: F3012-1, Notice of Motion and Motion for Order Determining Value of Collateral.

DO NOT USE THE FOLLOWING LBR FORMS:

F4003-2.4, Debtor's Notice of Motion and Motion to Avoid Junior Lien on Principal Residence [11 U.S.C. § 506(d)].

F4003-2.4, Order on Motion to Avoid Junior Lien on Principal Residence [11 U.S.C. § 506(d)].

F4003-2.4, Declaration Re Debtor's Motion to Avoid Junior Lien on Principal Residence.

F4003-2.4, Order Re: Motion to Avoid Junior Lien on Principal Residence (After Plan Completion/Discharge) [11 U.S.C. § 506(d)].

F4003-2.5, Debtor's Complaint to Avoid Junior Lien on Principal Residence.

F4003-2.5, Debtor's Motion for Default Judgment Re Complaint to Avoid Junior Lien on Principal Residence.

F4003-2.5, Default Judgment Re Complaint to Avoid Junior Lien on Principal Residence.

A memorandum of points and authorities is not necessary.

C. Service.

A motion to value is a contested matter which must be served "in the manner provided for service of a summons and complaint by Rule 7004." FRBP 9014(b).

If the lienholder is a corporation, partnership or other unincorporated association, the motion and notice of hearing must be served to the attention of an officer, a managing or general agent, or other agent authorized by appointment or law to receive service of process for the respondent creditor. See Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 94-95 (9th Cir. BAP 2004) ("Only if the notice is 'directed to a corporation and the attention of an officer or agent as identified in Rule 7004(b)(3),' can it be considered to have been received by a person who is charged with responding to the service." (citation omitted)); cf. ECMC v. Repp (In re Repp), 307 B.R. 144, 152 (9th Cir. BAP 2004) ("Unlike Rule 7004's service requirement for adversary proceedings, the Rule 2002(b) notice requirement regarding chapter 13 plans need only be mailed to nobody-in-particular at the address provided by the debtor . . . , unless the creditor has designated a mailing address in a filed proof of claim or request for notice.").

If the lienholder is an insured depository institution, the motion and notice of hearing must be served by certified mail addressed to an officer of the institution absent an applicable exception under FRBP 7004(h).

If service of the motion and notice of hearing do not comply with FRBP 7004 and 9014(b), the motion will be taken off calendar.

#### D. Evidence.

Debtor should testify in a short declaration BOTH as to the value of the subject property and the amount owed on each of the notes secured by the first and junior liens.

Authenticated statements should be attached to the debtor's declaration reflecting the current principal balance on each note secured by the subject property.

Debtor, as the owner of the subject property, can testify as to its value. F.R.Evid. 701; see So. Central Livestock Dealers, Inc. v. Security State Bank, 644 F.2d 1056, 1061 (5th Cir. 1980). An authenticated appraisal of the subject property does not need to be filed in support of the motion.

If the motion is unopposed and there is no contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor's opinion of value as a lay witness under F.R.Evid. 701 must be supported by facts establishing that the debtor's opinion of value is rationally based on the debtor's perception as owner of the property. A debtor's testimony is hearsay to the extent that the debtor relies on unauthenticated out-of-court statements or exhibits to establish the value of the property (e.g., Zillow.com). See generally, B. Russell, Bankruptcy Evidence Manual § 701:2, at 1389-90 (2008-2009 Ed.).

Value is not a judicially noticeable fact under F.R.Evid. 201. The court will not take judicial notice of a value placed on the subject property in the debtor's schedules, unless the debtor's admission in the schedules varies from the debtor's testimony as the owner of the subject property.

In the event the motion is opposed, the court will give the debtor and any respondent the opportunity to obtain an appraisal of the subject property.

#### E. Order.

Please submit electronically via LOU a proposed order at the conclusion of the hearing on the motion. You may use the following form: F3012-1, Order Re: Notice of Motion and Motion for Order Determining Value of Collateral.

**If the subject of the valuation motion was a wholly unsecured junior lien on the debtor's principal residence, you must submit the court's own form of Order Granting Motion to Determine Value of Collateral in Conjunction With Plan which is available in Word on the court's website.**

## **V. SELF-CALENDARING**

The court uses a self-scheduling system to permit the scheduling of hearings on matters to be heard on regular notice without prior approval from chambers. The Notice Re Self-Scheduling System for Judge Peter H. Carroll's Cases is posted outside the courtroom and available on the court's website.

## **VI. TELEPHONIC APPEARANCES**

Telephonic appearances are permitted in all matters, except the following:

1. Trials and evidentiary hearings (all counsel and witnesses must appear in person);
2. Chapter 11 status conferences (debtor and debtor's counsel must appear in person, unless excused by the court; other parties may appear telephonically);
3. Chapter 9, 11 & 12 confirmation hearings (debtor, debtor's counsel, and all objecting creditors must appear in person);
4. Hearings on orders to show cause;
5. Reaffirmation hearings, and
6. Any matter designated by the court as requiring a personal appearance.

The court's Notice Re Judge Peter H. Carroll's Procedures for Telephonic Appearances is posted outside the courtroom and available on the court's website.

## **VII. DISPOSITIONS WITHOUT ORAL ARGUMENT AND TENTATIVE RULINGS**

If a matter has been adequately noticed and the evidentiary record has closed,<sup>3</sup> the court may issue a "Tentative Ruling" or decide the matter without oral argument by issuing a "Final Ruling" as set forth in the court's Notice Re Judge Peter H. Carroll's Procedures for Dispositions Without Oral Argument and

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<sup>3</sup> See footnote 1 supra.

Tentative Rulings posted outside the courtroom and available on the court's website.

Dispositions without oral argument and tentative rulings will not be issued on the following matters: (1) confirmation hearings in Chapter 9, 11 & 12 cases; (2) status conferences; (3) trials and evidentiary hearings; (4) hearings on orders to show cause; (5) emergency motions; and (6) reaffirmation hearings.

Unless otherwise ordered by the court, the prevailing party on any matter, whether resolved by Final Ruling or after oral argument, must submit a proposed order to the court in accordance with LBR 9021-1. The proposed order should be submitted electronically via LOU.

## **VIII. EMERGENCY MOTIONS & MOTIONS FOR ORDERS SHORTENING TIME**

Except as provided for herein, the court enforces LBR 9075-1 regarding an emergency motion or an application seeking a hearing on shortened notice.

### Emergency Motion.

If an emergency motion is filed requesting a hearing on less than 48 hours' notice, the motion and supporting declaration(s) must contain sufficient information to establish cause why a hearing is needed within 48 hours.

If an emergency motion has not been filed and a party contacts chambers requesting a hearing on less than 48 hours' notice, the party must provide chambers with sufficient information to establish cause (1) why a hearing is needed within 48 hours and (2) why the court should set the hearing before the motion is filed supported by a declaration establishing the need for a hearing on less than 48 hours' notice.

### Motion for Order Shortening Time.

An application for an order setting a hearing on shortened notice must be accompanied by a proposed order submitted electronically via LOU that identifies: (1) the date and time of the hearing; (2) the parties to be served; (3) the deadline for service; (4) the manner of service; and (5) the deadline for a response to the motion to be heard on shortened time.

Please do not use the F9075-1.1 Order Granting Application and Setting Hearing on Shortened Notice/Denying Application for Order Setting Hearing on Shortened Notice unless the proposed order is completed and accurately contains the above information at the time it is lodged with the court.

## **IX. REOPENING CASES**

When seeking to reopen a bankruptcy case, the motion should be filed and served on the United States trustee and any former trustee in the case and a proposed order lodged electronically via LOU. **DO NOT SET THE MOTION FOR HEARING.** The court will consider the motion without a hearing. LBR 5010-1(e). Unless the case is being reopened to administer estate assets, the proposed order should include the following language: **“No trustee is to be appointed in the reopened case absent further order of the court.”**

## **X. OMNIBUS OBJECTIONS TO CLAIMS**

The court does not enforce LBR 3007-1(a)(5) nor follow the procedures for multiple objections to claims set forth in Section 2.7 of the Court Manual. The court will work with counsel to determine the most efficient and cost effective procedure for noticing and adjudicating omnibus claims objections in a particular case. Contact chambers to discuss an appropriate procedure with one of my law clerks.

Please be aware that the court does not consider lack of documentation, of and by itself, as a substantive ground under § 502(b) to disallow a proof of claim, absent evidence of a demand for documentation by the objecting party and no response by the claimant. See *Campbell v. Verizon Wireless S-CA (In re Campbell)*, 336 B.R. 430, 436 (9th Cir. BAP 2005).

## **XI. CHAPTER 11 CASES**

### **A. Status Conferences.**

Status Conference Order. Upon the assignment of a chapter 11 case, the court enters an Order To (1) Disclose Single Asset Real Estate; (2) File Status Report; (3) Attend Status Conference; and (4) File Monthly Operating Reports (“Status Conference Order”) and serves a copy of the Status Conference Order on the debtor and debtor’s counsel. It is important that the debtor and debtor’s counsel read the Status Conference Order and follow the instructions contained in

the order. The failure to do so will result in a dismissal of the case or conversion of the case to a case under chapter 7.

Status Conference. Debtor and debtor's counsel must personally appear at the initial status conference and all continued status conferences unless excused by the court.

Status Conference Reports. Debtor must timely file and serve a comprehensive status report pursuant to the Status Conference Order. The status report must disclose sufficient information to permit the court to understand the financial problems which precipitated the filing of the petition, the debtor's anticipated plan of reorganization, and the types of contested matters and adversary proceedings that may be filed. The court uses this information to set appropriate deadlines in the case. After the initial status conference, debtor must file and serve an updated status report not later than 7 days prior to each continued status conference unless excused by the court.

Conversion, Dismissal or Appointment of a Trustee. At the status conference or any continuation thereof, the court may sua sponte order that the case be converted to another chapter or dismissed, or that a chapter 11 trustee be appointed.

#### B. Claims Deadline.

It is not necessary to file a motion to set a deadline to file proofs of claim. The court will set a deadline to file proofs of claim at the status conference. Immediately after the status conference, debtor's counsel must upload a proposed order setting the deadline fixed by the court.

Upon entry of the order, debtor's counsel must give notice of the claims deadline to all creditors and parties in interest using F3003-1, Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case and file a proof of service with the court in accordance with LBR 3003-1.

#### C. Disclosure Statements and Plans of Reorganization.

The court does not permit the combining of the plan and disclosure statement into one document.

#### D. Disclosure Statement Hearings.

A hearing on approval of a disclosure statement must be set on at least 42 days' notice, unless the court prescribes a shorter period. LBR 3017-1(a). Prior to the disclosure statement hearing the court reviews each proposed disclosure statement (whether or not objections have been filed). Therefore, if a disclosure statement is met with an objection or otherwise requires revisions, counsel should notify chambers as early as possible (preferably not later than the Monday before the scheduled hearing) if the hearing on the disclosure statement must be continued pending revisions and notify the United States trustee and objecting parties of the date and time of the continued hearing.

When a disclosure statement is amended in response to objections that have been filed or deficiencies noted by the court, a "red-lined" version of the amended disclosure statement should be filed with the court and circulated to the United States trustee and all objecting parties not later than the Monday prior to the scheduled disclosure statement hearing. If further objections cannot be resolved by stipulation and/or further amendment of the proposed amended disclosure statement, the court will consider any unresolved objections at the disclosure statement hearing.

Once a disclosure statement is approved, the court will schedule a confirmation hearing and set the following deadlines: (1) service of the order approving the disclosure statement and setting a hearing on confirmation, together with the disclosure statement, plan of reorganization, and ballot; (2) service of a ballot accepting or rejecting the proposed plan; (3) filing and service of objections to confirmation; and (4) filing and service of a ballot summary, together with a declaration establishing the applicable elements of 11 U.S.C. § 1129 for plan confirmation, and a memorandum of points and authorities in support of confirmation.

Immediately after the hearing, the plan proponent must upload electronically via LOU a proposed order approving the disclosure statement that conforms to Official Form 13 and containing the dates supplied by the court at the disclosure statement hearing.

#### E. Confirmation Hearings.

The court will not confirm a chapter 11 plan absent evidence that the plan meets each of the confirmation requirements of 11 U.S.C. § 1129(a) and, when applicable, 11 U.S.C. § 1129(b).

Counsel are cautioned that the failure of a class to vote does not constitute acceptance of the plan. Bell Road Inv. Co. v. M. Long Arabians (In re M. Long Arabians), 103 B.R. 211, 215-16 (9th Cir. BAP 1989). A class must vote affirmatively to accept the plan. See In re Townco Realty, Inc., 81 B.R. 707, 708 (Bankr. S.D. Fla. 1987).

Generally, objections to confirmation are resolved at the confirmation hearing based on the papers and evidentiary record. However, if the objections to confirmation present disputed issues of material fact that cannot be resolved absent an evidentiary hearing, the court will treat the confirmation hearing as a scheduling conference, establish a briefing schedule, if appropriate, and set an evidentiary hearing at a later date at which testimony may be presented.

#### F. Post-confirmation Status Reports and Status Conference.

The confirmation order must contain the language set forth in LBR 3020-1(b) regarding the filing of post-confirmation status reports. Please do not include the optional language in LBR 3020-1(b) regarding a post-confirmation status conference. A post-confirmation status conference will not be held absent further order of the court.

#### G. Final Decree.

Once the estate is fully administered, a motion seeking entry of a final decree must be filed and served on all parties upon whom the plan was served in the manner provided by LBR 9013-1(o). An estate is fully administered when (a) the order confirming the plan is final; (b) the plan has become effective; (c) the debtor or its successor-in-interest has assumed the business or the management of property dealt with by the plan; (d) there are no adversary proceedings or contested matters pending before the court; and (e) all other proceedings requiring action by the court have been completed. See FRBP 3022.

## H. Individual Chapter 11 Cases.

Forms to Use. The following LBR Forms may be used in individual chapter 11 cases:

F2081-1, Individual Debtor's Disclosure Statement in Support of Plan of Reorganization.

F2081-1, Individual Debtor's Chapter 11 Plan of Reorganization.

F2081-2.1, Notice of Motion and Motion in Individual Case for Order Authorizing Use of Cash Collateral.

F2081-2.1, Order Re: Notice of Motion and Motion in Individual Case for Order Authorizing Use of Cash Collateral.

F2081-2.2, Notice of Motion and Motion in Individual Chapter 11 Case for Order Approving a Budget for the Use of the Debtor's Cash and Postpetition Income.

F2081.2.2, Order Re: Notice of Motion and Motion in Individual Chapter 11 Case for Order Approving a Budget for the Use of the Debtor's Cash and Postpetition Income.

F2081-2.3, Notice of Motion and Motion in Individual Chapter 11 Case for Order Authorizing Debtor-in-Possession to: (1) Pay Prepetition Employment Payroll; (2) Honor Prepetition Employment Procedures; and (3) Continue Paying Taxes.

F2081-2.3, Order Re Motion to: (1) Authorize Payment of Prepetition Payroll; (2) Honor Prepetition Employment Procedures; and (3) Continue Paying Taxes.

F2081-2.4, Notice of Motion and Motion in Individual Chapter 11 Case for Order Authorizing Debtor to Provide Adequate Assurance of Payment to Utility Service Providers.

F2081-2.4, Order Re Notice of Motion and Motion in Individual Chapter 11 Case for Order Authorizing Debtor to Provide Adequate Assurance of Payment to Utility Service Providers.

These forms may be found on the court's website, [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov).

Employment of Professionals. An application seeking to employ a professional person must comply with 11 U.S.C. §§ 327, 328, FRBP 2014(a) and 6005, and LBR 2014-1(b). Do not use the following LBR Forms to employ a professional person:

F2081-2.5, Notice of Motion and Motion in Individual Chapter 11 Case for Order Authorizing Debtor in Possession to Employ General Bankruptcy Counsel; and to File Interim Fee Applications.

F2081-2.5, Notice of Motion and Motion in Individual Chapter 11 Case for Order Authorizing Debtor in Possession to Employ Professional (Other Than General Bankruptcy Counsel).

F2081-2.5, Order Re Motion in Individual Chapter 11 Case to Authorize Debtor-in-Possession to Employ General Counsel.

F2081-2.5, Order Re Motion in Individual Chapter 11 Case to Authorize Debtor-in-Possession to Employ Professional Other Than General Counsel.

Claims Deadline. It is not necessary to file a motion to set a deadline to file proofs of claim. See Section XI(B), *supra*.

Motion to Use Cash Collateral. A separate F2081-2.1 motion should be filed and served for each real property owned by the debtor which the debtor seeks court permission to use cash collateral. The proof of service must establish that each person or entity holding a lien on such property was given notice of the motion and the date and time of the hearing in accordance with FRBP 4001(d), 9014(c) and 7004. Please do not file one motion which seeks authorization to use the cash collateral of different lenders on multiple unrelated properties.

Valuation. See Section IV, *supra*.

Absolute Priority Rule. The court follows the holding in Zachary v. California Bank & Trust, \_\_\_ F.3d \_\_\_, 2016 WL 360519 (9th Cir. 2016).

Confirmation Order. An order confirming a Chapter 11 Plan in an Individual Case must contain the following language:

Notwithstanding any provision in the disclosure statement or plan to the contrary and unless otherwise ordered by the court, the estate will be deemed fully administered for purposes of FRBP 3022 upon substantial consummation of the confirmed plan and the court, on its own motion or on the motion of the debtor or other party in interest, shall enter an order administratively closing the case.

## **XII. ADVERSARY PROCEEDINGS**

### **A. Initial Disclosures.**

Upon the filing of a complaint initiating an adversary proceeding, the court issues an Order Re: Rule 26(f) Meeting, Initial Disclosures, and Rule 16(b) Scheduling Conference (“Rule 26 Order”). It is important that the plaintiff and defendant read the Rule 26 Order and follow the instructions contained in the order. The Rule 26 Order must be served with the summons and complaint. The failure to comply with the Rule 26 Order may subject the responsible party and/or counsel to sanctions.

### **B. Default Judgments.**

Entry of default and motion for default judgment involves a “two-step process.” See All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88-89 (9th Cir. BAP 2007).

If an answer or other response is not timely filed and served, the plaintiff should request entry of default by the clerk. F.R.Civ.P. 55(a). Plaintiff must file and serve F 7055-1.1, Request for Clerk to Enter Default, together with a declaration establishing that the defendant is not in the military service and entitled to the benefits of the Servicemembers Civil Relief Act (Pub. L. 108-189 (50 U.S. Code App. §§ 501-594)).

Once default is entered, the plaintiff should file and serve F7055-1.2, Motion for Default Judgment. F.R.Civ.P. 55(b)(2). The motion must be supported by a memorandum of points and authorities, together with admissible evidence establishing a prima facie case for the judgment sought.

A proposed judgment must be lodged electronically via LOU with the filing of the motion.

Do not notice a hearing on a Motion for Default Judgment. The court will consider and rule on a motion for default judgment without a hearing. You will be contacted by chambers if the court believes a hearing is necessary, or that further evidence must be submitted by supplemental declaration.

C. Status Reports & Status Conferences.

The parties are expected to file a comprehensive joint status report using the F7016-1, Status Report form not later than 7 days prior to the initial status conference. The joint status report must confirm that initial disclosures were made by each party in compliance with F.R.Civ.P. 26. The court uses information contained in the joint status report to set appropriate deadlines in the case.

Each party must disclose in the initial joint status report whether the party consents to the bankruptcy court's entry of a final judgment and/or order in the adversary proceeding.

After the initial status conference, the parties must file and serve an updated status report not later than 7 days prior to each continued status conference unless excused by the court.

The court strictly enforces LBR 7016-1. The failure to timely file a joint status report or to attend a status conference may result in the imposition of one or more of the sanctions provided in LBR 7016-1(f) and (g).

D. Scheduling Order.

Generally, the court sets deadlines for the joinder of parties, amendment of pleadings, discovery, and dispositive motions at the initial status conference. The deadlines are reduced to a Scheduling Order which is prepared by the court, entered in the case, and served on the parties following the status conference.

E. Motions. See Section III, supra.

F. Order Setting Trial Date and Establishing Procedures for Conduct of Trial.

A joint pretrial stipulation is required in all adversary proceedings, unless otherwise ordered by the court. The contents of the joint pretrial stipulation must comply with LBR 7016-1(b)(2).

At a continued status conference after expiration of the discovery deadline, the court will enter an Order Setting Trial Date and Establishing Procedures for Conduct of Trial (“Trial Order”). The Trial Order will contain deadlines for the submission of witness lists, exhibit binders, trial briefs, the filing of a joint pretrial stipulation pursuant to LBR 7016-1(b), and the lodging electronically via LOU of a proposed order approving the parties’ joint pretrial stipulation in accordance with LBR 7016-1(b)(3)(B).

The deadlines set forth in the Trial Order are strictly enforced by the court.

G. Continuances. The continuance of a trial date is rarely granted.

H. Settlements.

The court will not take a trial off calendar due to a settlement unless a written stipulation for settlement executed by the parties or their counsel is delivered to chambers before the date of trial.

If time restraints prevent reducing a settlement to writing prior to trial, all the parties, or their counsel, must (a) advise chambers of the settlement and (b) appear at the time set for trial to recite the stipulation on the record.

### **XIII. COURTROOM ETIQUETTE**

Unless court is in session, please check in with the Court Recorder prior to your scheduled hearing. Do not approach or speak with the Court Recorder while a hearing is in progress.

The court demands civility from all persons in the courtroom – attorneys, parties, witnesses and observers alike. Incivility is not tolerated.

### **XIV. COMMUNICATIONS WITH CHAMBERS’ STAFF**

A. Ex parte Communications. FRBP 9003(a) prohibits ex parte communications with the court concerning matters affecting a particular case or proceeding. Rule 5-300(C) of the California Rules of Professional Conduct specifies that for disciplinary purposes, a contact with the judge’s law clerk constitutes a contact with the judge. No attorney may initiate contact with the judge or chambers’ staff concerning substantive issues or matters arising in or affecting a particular case or proceeding.

B. Case Management Issues. Counsel are encouraged to contact chambers' staff regarding case management issues, including but not limited to, when: (a) there is a settlement, continuance, or withdrawal of a calendared matter; (b) a form of order is opposed; (c) an emergency motion or application for an order shortening time is being submitted; (d) a chapter 11 plan proponent does not intend to go forward with a disclosure statement or a confirmation hearing; and (e) questions arise regarding procedural issues in preparation for trial. A movant need not contact chambers to obtain a hearing date for a motion set on regular notice under LBR 9013-1.<sup>4</sup>

C. Orders. Except as provided in LBR 5005-4, all proposed orders must be uploaded electronically via LOU. Do not attach a proof of service or Notice of Entered Order to a proposed order lodged with the court. If the underlying motion was opposed, you may separately file a notice of lodgment using the appropriate F 9021-1.2 form to demonstrate service of the proposed order on the opposing party. See LBR 9021-1(b)(3).

Please do not deliver a judge's copy of an electronically filed proposed order to chambers.

Generally, an order lodged electronically via LOU is entered within 48 hours of receipt by the court. If you have properly lodged a proposed order electronically via LOU and it has not been entered within 5 days thereafter, please call chambers regarding the status of the order.

When a proposed order is lodged in paper form, a conformed copy of the proposed order marked "Lodged" must be delivered to chambers on the day the proposed order is lodged with the court. Because the processing time for paper orders is significantly longer than electronic orders, a party lodging a proposed order in paper form should allow at least two weeks for the order to be processed and entered on the docket. It is highly recommended that an attorney practicing in this court become an electronic filer, even if the attorney meets the limited exemption provided by LBR 5005-4(c)(2).

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<sup>4</sup> See Section V, supra.