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UNITED STATES BANKRUPTCY COURT for the NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES COURTHOUSE AND FEDERAL BUILDING
280 SOUTH FIRST STREET, ROOM 3035
SAN JOSE, CALIFORNIA 95113-3099

STEPHEN L. JOHNSON
UNITED STATES [BANKRUPTCY JUDGE](#) 

Practices and Procedures Honorable Stephen L. Johnson

In addition to enforcing the Bankruptcy Local Rules for the Northern District of California ("B.L.R."), the Civil Local Rules of the United States District Court ("Civil L.R.") and the Federal Rules of Bankruptcy Procedure ("Rules"), Judge Johnson's PRACTICES AND PROCEDURES are intended to assist counsel with practical procedures for litigation in his courtroom. Counsel and litigants appearing before the Court therefore should be aware of the following:

1. General Provisions

Counsel are expected to consult and comply with all provisions of the B.L.R. and Rules relating to motions, briefs, continuances, and all other matters. The failure to comply with any of the rules and orders may be deemed sufficient grounds for monetary sanctions, dismissal, entry of default, or other appropriate sanctions.

1. Communication with Court

Ex parte communication with the Court, including contact with the judge's staff or law clerk, is not permitted. See Rule 9003(a) and California Rule of Professional Conduct 5-300(C). The proper means of communicating with the Court is through Courtroom Deputy Tanya Bracegirdle. She can be reached at 408-278-7556 or tanya_bracegirdle@canb.uscourts.gov, and will respond to calendaring questions, order status, and requests for expedited hearings. When contacting Ms. Bracegirdle, parties and counsel should identify their telephone, fax, and e-mail addresses. Parties and counsel should not contact the Court or chambers staff directly. This prohibition extends to e-mail, telephone, and fax.

1. Telephonic Hearings

Counsel may appear telephonically as described in the [Policy and Procedures for Appearances by Telephone](#).

1. Calendaring Matters

General Calendaring - The Court utilizes an Open Calendar Procedure for most regularly noticed hearings. Complete details regarding the Open Calendar Procedure for Judge Johnson are available at [Judge Johnson's Open Calendar Procedure](#). For hearings that are not shown on the open calendar procedure contact Courtroom Deputy Tanya Bracegirdle.

Expedited Matters - To calendar a matter on shortened time, an application for an order shortening time which complies with B.L.R. 9006-1 and Rule 9006(c) must be filed together with a copy of the moving papers and a proposed order on the motion to shorten time. The application should indicate a suggested hearing schedule and the movant's proposal for providing notice to affected parties. If the motion to shorten time is merited, the Court will issue an order (a) setting the date and time of the hearing, (b) establishing requirements for notice to affected parties, and (c) indicating how opposition to the motion should be made. Written opposition to a motion made on shortened time generally is not required to be filed prior to the first hearing, and a party generally may appear at the hearing to oppose the motion orally.

TROs - Requests for temporary restraining orders will only be calendared after an adversary complaint has been filed. Counsel must include an application for an expedited hearing (see Expedited Matters above) with the request for a TRO and a copy of the complaint. Any application for an expedited hearing must comply with BLR 9006-1 and Rule 9006.

1. Continuances

Unopposed continuances - Motions directed to specific parties may be continued as allowed by the B.L.R. or by stipulation. Courtroom Deputy Tanya Bracegirdle must be notified 72 hours in advance of any scheduled hearing of such continuance. The moving party shall file and serve a notice of the continued hearing. If the moving party fails to file a notice of the continued hearing by the time of the hearing, the motion may be denied for lack of prosecution. Motions or applications noticed to creditors generally, including asset sales, motions to convert or dismiss, etc., shall be continued on the record at the time set for

hearing in the notice. Courtroom Deputy Tanya Bracegirdle must be notified 72 hours in advance of such continuances.

Opposed continuances – A party requesting a continuance that is opposed must comply with B.L.R. 9006-1.

Trials – Generally speaking, trials will not be continued for anything less than a compelling reason. A request for continuance must be made by noticed motion or by a written stipulation stating the reason for the requested continuance. Parties requesting a continuance of a trial should comply with B.L.R. 9006-1. The agreement of parties to continue a trial does not bind the Court.

1. Conduct of Adversary Proceedings

Parties are advised that adversary proceedings are governed by scheduling orders entered by the Court under Rule 7016(b) (incorporating Federal Rule of Civil Procedure 16). Pursuant to the Order Setting the Telephonic Case Management Conference, case management conference statements must be filed at least 7 days before each conference and continuances must be requested in writing at least 7 days prior to the conference date.

Parties should be aware that the Court may set matters for trial at the Initial Case Management Conference or any continued conference. Short cause matters (e.g., actions for credit card abuse under 11 U.S.C. § 523(a)(2)) are likely to be set for trial immediately.

Parties may stipulate to continue the Initial Case Management Conference for up to 60 days. Any such stipulation must be filed no less than 7 days prior to the Initial Case Management Conference. Appearance at the Initial Case Management Conference is not necessary so long as a signed order continuing the matter is docketed on the Court's ECF system in advance of the hearing. If no order is docketed, the parties should appear.

In connection with trial setting, the parties are advised to review [Judge Johnson's form Scheduling Order](#), available on the Court's website. The form order indicates the kind of matters (e.g., discovery cut-off, expert reports) for which deadlines are appropriate and will be set. Counsel should be prepared to advise the Court regarding their availability for trial.

See ¶15 above regarding trial continuances.

1. Discovery Disputes

The parties shall not file formal discovery motions. The Court will hold a telephonic conference to resolve a discovery dispute in lieu of formal motions to compel or quash discovery. See B.L.R. 1001-2(a)(46) and Civil L.R. 37-1(a) and (b)). Parties should comply with the procedures set forth in Civil L.R. 37-1 (particularly with respect to required conferences and meet and confer rules. See Civil L.R. 1-5(n)). To schedule a telephonic conference regarding a discovery dispute, counsel should contact Courtroom Deputy Tanya Bracegirdle. The Court may request the parties to file a joint letter brief if the matter cannot be resolved

without paper.

During depositions, a party may contact the Court if another party persistently obstructs the deposition or the deponent refuses to answer a material question on the basis of any ground other than privilege or the work product doctrine. Contact should be directed through Courtroom Deputy Tanya Bracegirdle.

Any request for sanctions relating to a discovery dispute must be made by separate noticed motion. Rules 7037(a), 9014, 9020.

1. **Submission of Orders After Hearing**

Counsel should comply with the provisions of B.L.R. 9021-1(c) and 9022-1.

1. **Objections to Claims**

Unless otherwise ordered, all hearings on objections to claims are preliminary hearings, without testimony. If the objection cannot be summarily resolved, the Court will order a trial at which evidence will be taken.

1. **Chapter 11** **Cases**

Status and Prospects - The Court calendars regular conferences on the status of each pending chapter 11 case. All chapter 11 debtors are required to file a Status Conference Statement at least 7 days prior to the conference. The status conference statement should give a brief description of the [debtor](#) 's business, the events leading to the bankruptcy filing, and the debtor's prospects for exiting chapter 11 by confirmed [plan](#) , conversion, or dismissal. The [Chapter 11 Status Conference Checklist](#), available on the Court's website, describes the Court's expectations.

Disclosure Statements - The proponent of a [disclosure statement](#)  shall inform the Courtroom Deputy Tanya Bracegirdle via phone or email at least 5 days prior to the hearing to approve a disclosure statement if the party intends to go forward with the hearing. Failure to notify the Court shall result in the removal of the disclosure statement hearing from the calendar.

Asset Sales - The San Jose Division of the U.S. Bankruptcy Court for the Northern District of California has adopted [Guidelines for Early Disposition of Assets in Chapter 11 Cases; Pre-Packaged Plans; and the Sale of Substantially All Assets Under § 363](#). Please refer to these Guidelines when preparing for a [contested matter](#)  involving any of these issues.

U.S. Trustee  Motions to Convert or Dismiss - Once he has filed a motion to convert or dismiss a chapter 11 case, the [United States Trustee](#)  is directed not to withdraw that motion without advance approval of the Court.

1. Final Decree in Chapter 11 Cases

Chapter 11 debtors in possession and trustees are expected to apply for final decrees as soon as claims disputes and any other litigation in Bankruptcy Court are resolved. The Court expects all counsel for Chapter 11 debtors to understand fully the provisions of Rule 3022 and the Advisory Committee notes thereto.

If a final decree is sought within one year of [confirmation](#)ⁱ, it may be obtained by ex parte application along with a declaration of a principal of the debtor setting forth the date that the plan was confirmed and representing that the plan payments called for by the plan have been commenced and that the debtor is substantially in compliance with the requirements of the plan.

If more than one year has passed since confirmation, a final decree must be sought by motion on at least 15 days' notice to the creditors' committee and its counsel, if any, the U.S. Trustee, and any persons who filed requests for notice. If there is no committee, the 20 largest unsecured creditors must be served. The motion must contain the following statement, in capital letters:

IF THE DEBTOR IS NOT CURRENT IN PLAN PAYMENTS, YOU MAY OBJECT TO ENTRY OF A FINAL DECREE AND ASK THE COURT TO ORDER THE [LIQUIDATION](#)ⁱ OF THE DEBTOR'S ASSETS. IF THE DEBTOR FALLS BEHIND IN PLAN PAYMENTS AFTER THE ENTRY OF A FINAL DECREE, YOU MAY ASK THE COURT TO REOPEN THE CASE AND ORDER LIQUIDATION.

If a motion to reopen a case is made, the filing fee shall be paid by the debtor unless the Court finds that the motion was not substantially justified.

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