UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHAPTER II
RULES FOR ADMIRALTY AND MARITIME CLAIMS AND ASSET FORFEITURE ACTIONS

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CHAPTER II

RULES FOR ADMIRALTY AND MARITIME CLAIMS AND ASSET FORFEITURE ACTIONS

The reference in parentheses following the local rule number is the corresponding Rule or Supplemental Rule of the Federal Rules of Civil Procedure.

RULE A (RA-A) - SCOPE AND DEFINITIONS

A.1 (RA-A.1) SCOPE

These local rules may be referred to as "local admiralty rules." They apply only to civil actions that are governed by Supplemental Rule A of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (Supplemental Rule or Rules). All other local rules are applicable in these cases, but to the extent that another local rule is inconsistent with the applicable local admiralty rules, the local admiralty rules shall govern.

A.2 (RA-A.2) OFFICERS OF THE COURT

As used in the local admiralty rules, "Judicial Officer" means a United States District Judge or a United States Magistrate Judge, "Clerk of the Court" means the Clerk of the District Court and includes deputy clerks of court; and "Marshal" means the United States Marshal and includes deputy marshals.

A.3 (83, RA-A.1) CITATION

The local admiralty rules may be cited by the letters "LAR" and the capital letter and numbers in parentheses that appear at the beginning of each section. The capital letter is intended to associate the local admiralty rule with the Supplemental Rule that bears the same capital letter.

RULE B (RB-B) - ATTACHMENT AND GARNISHMENT

B.1 (83, RB-B.1) IDENTIFICATION OF STATE LAW INVOKED

When the plaintiff invokes a state procedure in order to attach or garnish as permitted by the Rules or the Supplemental Rules, the process of attachment or

garnishment shall identify the state law upon which the attachment or garnishment is based.

B.2 (RB-B.1) AFFIDAVIT THAT DEFENDANT IS NOT FOUND WITHIN THE DISTRICT

The affidavit required by Supplemental Rule B(1) to accompany the complaint shall list the efforts made by and on behalf of plaintiff to find and serve the defendant within the district. The phrase "not found within the district" in Supplemental Rule B(1) means that, in an *in personam action*, the defendant cannot be served with the summons and complaint as provided in F.R.Civ.P. 4(e)(2) or 4(h)(1).

RULE C (RC-C) - ACTIONS IN REM: SPECIAL PROVISIONS

C.1 (RC-C.1) UNDERTAKINGS IN LIEU OF ARREST

If, before or after commencement of suit, plaintiff accepts any written undertaking to respond on behalf of the vessel or other property sued in return for foregoing the arrest or stipulating to the release of such vessel or other property, the undertaking shall become a defendant in place of the vessel or other property sued and be deemed referenced as the name of the vessel or other property in any pleading, order or judgment in the action referenced in the undertaking. The preceding shall apply to any such undertaking, subject to its own terms and whether or not it complies with Rule 65-2 *et seq.* of Chapter I of these Rules, or has been approved by a Judge or Clerk.

C.2 (RC-C.2) INTANGIBLE PROPERTY

The summons issued pursuant to Supplemental Rule C(3)(c) shall direct the person having control of intangible property to show cause no later than fourteen (14) days after service why the intangible property should not be delivered to the Court to abide the judgment. A judicial officer for good cause shown may lengthen or shorten the time. Service of the summons has the effect of an arrest of the intangible property and brings it within the control of the Court. Service of the summons to show cause requires a garnishee wishing to retain possession of the property to establish grounds for doing so, including specification of the measures taken to segregate and safeguard the intangible property arrested. The person who is served may deliver or pay over to the Marshal the intangible property proceeded against to the extent sufficient to satisfy the plaintiff's claim. If such delivery or payment is made, the person served is excused from the duty to show cause. A

person who asserts a right of possession or ownership of the property may show cause as provided in Supplemental Rule C(6)(a) why the property should not be delivered to the Court.

C.3 (RC-C.3) NOTICE OF ACTION AND ARREST

(a) Publication.

The notice required by Supplemental Rule C(4) shall be published once and plaintiff's attorney shall file a copy of the notice as it was published with the Clerk. The notice shall contain:

(i) The Court, title, and number of the action;

(ii) The date of the arrest;

(iii) The identity of the property arrested;

(iv) The name, address and telephone number of the attorney for plaintiff;

(v) A statement that the claim of a person who is entitled to possession or who claims an interest pursuant to Supplemental Rule C(6)(a) must be filed with the Clerk and served on the attorney for plaintiff within fourteen (14) days after publication;

(vi) A statement that an answer to the complaint must be filed and served within thirty (30) days after publication, and that otherwise, default may be entered and condemnation ordered;

(vii) A statement that applications for intervention under Federal Rule 24 by persons claiming maritime liens or other interests shall be filed within the time fixed by the Court; and,

(viii) The name, address and telephone number of the Marshal.

(b) Filing of Proof of Publication.

Plaintiff shall cause to be filed with the Clerk not later than thirty (30) days after the date of publication sworn proof of publication by or on behalf of the publisher of the newspaper in which notice was published, together with a copy of the publication or reproduction thereof.

C.4 (RC-C.4) DEFAULT IN ACTION IN REM

(a) Notice Required.

A party seeking a default judgment in an action in rem must show that due notice of the action and arrest of the property has been given:

(1) by publication as required in Local Admiralty Rule C.3;

(2) by service upon the master or other person having custody of the property; and

(3) by first-class mail to every other person who has not appeared in the action and is known to have an interest in the property.

(b) Persons with Recorded Interest.

(1) If the defendant property is a vessel documented under the laws of the United States, plaintiff must attempt to notify by first-class mail all persons named in the United States Coast Guard certificate of ownership.

(2) If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act, plaintiff must attempt to notify by first-class mail the persons named in the records of the issuing authority.

(3) If the defendant property is of such character that there exists a governmental registry of recorded property interests or security interests in the property, the plaintiff must attempt to notify by first-class mail all persons named in the records of each such registry.

(c) Failure to Give Notice.

Failure to give notice as provided by this Rule shall be grounds for setting aside the default under applicable rules but shall not affect title to property sold pursuant to order of sale or judgment.

C.5 (RC-C.5) ENTRY OF DEFAULT AND DEFAULT JUDGMENT

After the time for filing an answer has expired, the plaintiff may apply for entry of default under F.R.Civ.P. 55(a). Default will be entered upon showing that:

(a) Notice has been given as required by Local Admiralty Rule C.4(a); and

(b) Notice has been attempted as required by Local Admiralty Rule C.4(b), where appropriate; and

(c) The time for answer has expired; and

(d) No one has appeared to claim the property. Judgment may be entered under F.R.Civ.P. 55(b) at any time after default has been entered.

RULE D (RD-D) - POSSESSORY, PETITORY AND PARTITION ACTIONS

D.1 (RD-D.1) RETURN DATE

In an action under Supplemental Rule D, a judicial officer may order that the claim and answer be filed on a date earlier than twenty-one (21) days after arrest. The order may also set a date for expedited hearing of the action.

RULE E (RE-E) - ACTIONS IN REM AND QUASI IN REM: GENERAL PROVISIONS

E.1 (RE-E.1) ITEMIZED DEMAND FOR JUDGMENT

The demand for judgment in every complaint filed under Supplemental Rule B or C except a demand for a salvage award shall allege the dollar amount of the debt or damages for which the action was commenced. The demand for judgment shall

also allege the nature of other items of damage. The amount of the special bond posted under Supplemental Rule E(5)(a) may be based upon these allegations.

E.2 (83, RE-E.1) ITEMIZED DEMAND FOR SALVAGE AWARD

In an action for a salvage reward, the complaint shall allege the dollar value of the vessel, cargo, freight, and other property salved, and the dollar amount of the reward claimed.

E.3 (RE-E.2) VERIFICATION AND PLEADINGS

Every complaint in Supplemental Rule B, C and D actions shall be verified upon oath or solemn affirmation, or in the form provided by 28 U.S.C. § 1746, by a party or by an authorized officer of a corporate party. If no party or authorized corporate officer is present within the district, verification of a complaint may be made by an agent, attorney in fact, or attorney of record, who shall state the sources of the knowledge, information and belief contained in the complaint; declare that the document verified is true to the best of that knowledge, information, and belief; state why verification is not made by the party or an authorized corporate officer; and state that the affiant is authorized so to verify. A verification not made by a party or authorized corporate officer will be deemed to have been made by the party as if verified personally. If the verification was not made by a party or authorized corporate officer, any interested party may move, with or without requesting a stay, for the personal oath of a party or an authorized corporate officer, which shall be procured by commission or as otherwise ordered.

E.4 (83-RE.3) REVIEW BY JUDICIAL OFFICER

(a) Authorization to Issue Process.

Before the Clerk will issue a summons and process of arrest, attachment or garnishment to any party, including intervenors, under Supplemental Rules B and C, the pleadings, the affidavit required by Rule B, and accompanying supporting documents must be reviewed by a judicial officer. If the judicial officer finds the conditions set forth in Rules B or C appear to exist, as appropriate, the judicial officer shall authorize the Clerk to issue process. Supplemental process or alias process may thereafter be issued by the Clerk upon application without further order of the Court.

(b) Exigent Circumstances.

If the plaintiff or plaintiff's attorney certifies by affidavit or declaration pursuant to 28 U.S.C. § 1746 submitted to the Clerk that exigent circumstances make review impracticable and sets forth in detail the facts that establish the exigent circumstances, the Clerk shall issue a summons and warrant of arrest or process of attachment and garnishment.

(c) Personal Appearance.

Unless otherwise required by the judicial officer, the review by the judicial officer will not require the presence of the applicant or the applicant's attorney but shall be based upon the pleadings and other documents submitted on behalf of that party.

(d) Order.

Upon approving the application for arrest, attachment or garnishment, the judicial officer will issue an order to the Clerk authorizing the Clerk to issue an order for arrest, attachment, or garnishment. The proposed form of order authorizing the arrest, attachment, or garnishment, and the order for arrest, attachment, or garnishment shall be submitted with the other documents for review.

(e) Request for Review.

Except in case of exigent circumstances, application for review shall be made by filing a Notice of Request for Review In Accordance With Supplemental Rule B or C with the Clerk and stating therein the process sought and any time requirements within which the request must be reviewed. The Clerk shall contact the judicial officer to whom the matter is assigned (or if that officer is not available, another judicial officer) to arrange for the necessary review. It will be the duty of the applicant to ensure that the application has been reviewed and, upon approval, presented to the Clerk for issuance of the appropriate order.

E.5 (83-E.3) PROCESS HELD IN ABEYANCE

If a party does not wish the process to be issued at the time of filing the action, the party shall request that issuance of process be held in abeyance. It will not be the responsibility of the Clerk or the Marshal to ensure that process is issued at a later date.

E.6 (83-C.3) SERVICE BY MARSHAL REQUIRED

Only a Marshal shall serve a warrant of arrest or process of maritime attachment or garnishment on a vessel, cargo or other tangible property. Upon completion of service, the Marshal shall file proof thereof in the appropriate form.

E.7 (83) INSTRUCTIONS TO THE MARSHAL

The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the Marshal.

E.8 (83) PROPERTY IN POSSESSION OF UNITED STATES OFFICER

When the property to be attached or arrested is in the custody of an employee or officer of the United States, the Marshal will deliver a copy of the complaint and warrant of arrest or summons and process of attachment or garnishment to that officer or employee, if present, and otherwise to the custodian of the property. The Marshal will instruct the officer or employee or custodian to retain custody of the property until ordered to do otherwise by a judicial officer.

E.9 (83-E.2) SECURITY FOR COSTS

In an action under the Supplemental Rules, a party may move upon notice to all parties for an order to compel an adverse party to post security for costs with the Clerk pursuant to Supplemental Rule E(2)(b). Unless otherwise ordered, the amount of security shall be $500.00. The party so ordered shall post the security within seven (7) days after the order is entered. A party who fails to post security when due may not participate further in the proceedings. A party may move for an order increasing the amount of security for costs.

E.10 (83-E.4) ADVERSARY HEARING

Upon application of any interested party, the adversary hearing following arrest or attachment or garnishment under Supplemental Rule E(4)(f) shall be conducted promptly by a judicial officer. The Court may order such notice as it deems appropriate.

E.11 (83) APPRAISAL

An order for appraisal of property so that security may be given or altered will be entered by the Clerk at the request of any interested party. If the parties do not agree in writing upon an appraiser, a judicial officer will appoint the appraiser. The appraiser shall be sworn to the faithful and impartial discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths. The appraiser shall give twenty-four (24) hours notice of the time and place of making the appraisal to counsel of record. The appraiser shall promptly file the appraisal with the Clerk and serve it upon counsel of record. The appraiser's fee will be paid by the moving party, unless otherwise ordered or agreed but it is a taxable cost of the action.

E.12 (83) SECURITY DEPOSIT FOR ARREST OR ATTACHMENT OF VESSELS

The first party who seeks arrest or attachment of a vessel or property aboard a vessel shall deposit with the Marshal the sum estimated by the Marshal to be sufficient to cover the expenses of the Marshal including, but not limited to, dockage, keepers, maintenance, and insurance for at least fourteen (14) days. The Marshal is not required to execute process until the deposit is made. The party shall advance additional sums from time to time as directed by the Marshal to cover the Marshal's estimated expenses until the property is released or disposed of as provided in Supplemental Rule E. A party who fails to advance such additional sums may not participate further in the proceedings except by order of the Court. The Marshal may, upon notice to all parties, petition the Court for an order to release the vessel if additional sums are not advanced within seven (7) days after the request, or seek such other appropriate relief as the Court deems proper.

E.13 (83) INTERVENOR'S CLAIMS

(a) Presentation of Claim.

When a vessel or other property has been arrested, attached, or garnished, and is in the hands of the Marshal or substitute custodian, anyone having a claim against the vessel or property is required to present the claim by filing an intervening complaint in paper format and obtain a warrant of arrest or process of maritime attachment and garnishment, and not by filing an original complaint, unless otherwise ordered by a judicial officer. The intervening party shall file a Notice of Request for Review pursuant to Local Admiralty Rule E.4(e). Upon obtaining judicial approval for issuance of process, the intervening party shall forthwith deliver a conformed

copy of the complaint in intervention and the intervenor's warrant of arrest or process of attachment or garnishment to the Marshal, who shall deliver the same to the vessel or custodian of the property. Intervenors shall thereafter be subject to the rights and obligations of parties, and the vessel or property shall stand arrested, attached, or garnished by the intervenor. An intervenor shall not be required to advance a security deposit to the Marshal.

(b) Sharing Marshal's Fees and Expenses.

An intervenor shall owe a debt to the first plaintiff, enforceable on motion, consisting of the intervenor's share of the Marshal's fees and expenses in the proportion that the intervenor's claim bears to the sum of all the claims. If a party plaintiff permits vacation of an arrest, attachment or garnishment, remaining plaintiffs share the responsibility to the Marshal for fees and expenses in proportion to the remaining claims and for the duration of the Marshal's custody because of each claim.

E.14 (83) CUSTODY OF PROPERTY

(a) Safekeeping of Property.

When a vessel, cargo or other property is brought into the Marshal's custody by arrest or attachment, the Marshal shall arrange for adequate safekeeping, which may include the placing of keepers on or near the vessel. A substitute custodian in place of the Marshal may be appointed by order of the Court. The custodian shall have liability of not less than $10,000.00. Notice of the application to appoint a substitute custodian must be given to all parties and the Marshal. The application must show the name of the proposed substitute custodian, the location of the vessel during the period of custody, and the proposed insurance coverage.

(b) Insurance.

The Marshal may procure insurance to protect the Marshal, his deputies, keepers, and substitute custodians, from liabilities assumed in arresting and holding the vessel, cargo, or other property, and in performing whatever services may be undertaken to protect the vessel, cargo, or other property and to maintain the Court's custody. The party applying for removal of the vessel, cargo or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium, shall reimburse the Marshal therefor. The premiums charged for the liability insurance are taxable as administrative costs while the vessel, cargo, or other property is in the custody of the Court.

(c) Vessel Operations.

Following arrest or attachment of a vessel, no cargo handling, repairs, or movement may be made without an order of Court. The applicant for such an order shall give notice to the Marshal and to all parties of record. Upon proof of adequate insurance coverage of the applicant to indemnify any liability of the Marshal, the Court may direct the Marshal to permit cargo handling, repairs, movement of the vessel, or other operations. Before or after the Marshal has taken custody of a vessel, cargo or other property, any party of record may move for an order to dispense with keepers or to remove or place the vessel, cargo, or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the Marshal and to all parties of record. The judicial officer will require that adequate insurance on the property will be maintained by the successor to the Marshal, before issuing the order to change arrangements.

(d) Claims by Suppliers for Payment of Charges.

A person who furnishes supplies or services to a vessel, cargo, or other property in custody of the Court who has not been paid and claims the right to payment as an expense of administration shall file an invoice with the Clerk in the form of a verified claim in paper format at any time before the vessel, cargo, or other property is released or sold. The supplier must serve copies of the claim on the Marshal, substitute custodian if one has been appointed, and all parties of record. The Court may consider the claims, individually or schedule a single hearing for all claims.

E.15 (83-E.9) SALE OF PROPERTY

(a) Notice.

Notice of sales of arrested or attached property shall be published in one or more newspapers to be specified in the order for sale. Unless otherwise ordered by a judge upon a showing of urgency or impracticality or unless otherwise provided by law, such notice shall be published for at least seven (7) days before the date of sale.

(b) Payment of Bid.

Unless otherwise provided in the order, in all public auction sales by the Marshal under orders of sale in admiralty and maritime claims, the Marshal shall require of the last and highest bidder at the sale a minimum deposit in cash, certified

check or cashier's check, of the full purchase price if it does not exceed $500 and otherwise $500 or ten percent (10%) of the bid, whichever is greater. The balance, if any, of the purchase price shall be paid in cash, certified check or cashier's check before confirmation of the sale or within seven (7) days of the dismissal of any opposition which may have been filed, exclusive of Saturdays, Sundays and legal holidays. Notwithstanding the above, a plaintiff or intervening plaintiff foreclosing a properly recorded and endorsed preferred mortgage on, or other valid security interest in the vessel may bid, without payment of cash, certified check or cashier's check, up to the total amount of the secured indebtedness as established by affidavit filed and served by that party on all other parties not later than fourteen (14) days prior to the date of sale.

(c) Report and Confirmation.

At the conclusion of the sale, the Marshal shall forthwith file a written report to the Court setting forth the notice given; the fact of sale; the date of the sale; the names, addresses, and bid amounts of the bidders; the price obtained; and any other pertinent information. The Clerk of the Court shall endorse upon such report the time and date of its filing. If within seven (7) days, no written objection is filed, the sale shall stand confirmed as of course, without the necessity of any affirmative action thereon by the Court and the Clerk upon request shall so state to the Marshal in writing; except that no sale shall stand confirmed until the buyer has complied fully with the terms of his purchase. If no opposition to the sale is filed, the expenses of keeping the property pending confirmation of sale shall be charged against the party bearing expenses before the sale (subject to taxation as costs), except that if confirmation is delayed by the purchaser's failure to pay any balance which is due on the price, the cost of keeping the property subsequent to the seven (7) day period hereinabove specified shall be borne by the purchaser.

(d) Penalty for Late Payment of Balance.

A successful bidder who fails to pay the balance of the bid within the time allowed under these rules or a different time specified by the Court shall also pay the Marshal the costs of keeping the property up to the date the bidder pays the balance and takes delivery of the property. Unless otherwise ordered by the Court, the Marshal shall refuse to release the property until this additional charge is paid.

(e) Penalty for Default in Payment of Balance.

A successful bidder who fails to pay the balance of the bid within the time allowed is in default and the Court may at any time thereafter order a sale to the second highest bidder or order a new sale as appropriate. Any sum deposited by the bidder in default shall be applied to pay any additional costs incurred by the Marshal by reason of the default, including costs incident to resale. The balance of the deposit, if any, shall be retained in the registry subject to further order of the Court, and the Court shall be given written notice of its existence whenever the registry deposits are reviewed.

(f) Opposition to Sale.

A party filing an opposition to the sale, whether seeking the reception of a higher bid or a new public sale by the Marshal, shall give prompt notice to all other parties and to the purchaser. Unless the party has previously appeared in the case, the opposition shall be filed in paper format. Such party shall also, prior to filing an opposition, secure the Marshal's endorsement upon it acknowledging deposit with the Marshal of the necessary expense of keeping the property for at least seven (7) days. Pending the Court's determination of the opposition, such party shall also advance any further expense at such times and in such amounts as the Marshal shall request, or as the Court orders upon application of the Marshal or the opposing party. Such expense may later be subject to taxation as costs. In the event of failure to make such advance, the opposition shall fail without necessity for affirmative action thereon by the Court. If the opposition fails, the expense of keeping the property during its pendency shall be borne by the party filing the opposition.

(g) Disposition of Deposits.

(i) Objection Sustained

If an objection is sustained, sums deposited by the successful bidder will be returned to the bidder forthwith. The sum deposited by the objector will be applied to pay the fees and expenses incurred by the Marshal in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed for the expense of keeping the property from the proceeds of a subsequent sale.

(ii) Objection Overruled.

If the objection is overruled, the sum deposited by the objector will be applied to pay the expense of keeping the property from the day the objection was filed until the day the sale is confirmed, and any balance remaining will be returned to the objector forthwith.

RULE F (RF-F) - LIMITATION OF LIABILITY

F.1 (83-F.1) SECURITY FOR COSTS

The amount of security for costs under Supplemental Rule F(1) shall be $1,000 unless otherwise ordered and it may be combined with the security for value and interest.

F.2 (83) ORDER OF PROOF AT TRIAL

Where the vessel interests seeking statutory limitation of liability have raised the statutory defense by way of answer or complaint, the plaintiff in the former or the damage claimant in the latter shall proceed with its proof first, as is normal at civil trials.

RULE G (83, RG-G) – MISCELLANEOUS

G.1 (83) DESERTING SEAMEN CASES[1]

(a) Service.

Upon filing a verified petition for return of wages deposited in the registry of the Court pursuant to the provisions of 46 U.S.C. § 11505, a copy of the petition shall be served forthwith on the United States Attorney and a copy mailed to the Attorney General of the United States, after which a sworn return of such service and mailing shall be filed.

[1]G.1 amended, effective 12/1/2012.

(b) Time to Plead.

The United States has twenty-one (21) days after receipt of a copy of the petition by the United States Attorney in which to file its responsive pleading and claim.

G.2 (83) RATE OF PREJUDGMENT INTEREST ALLOWED

Unless a judge directs otherwise or as provided by statute, prejudgment interest shall be awarded at the rate authorized in 28 U.S.C. § 1961, providing for interest on judgments.

G.3 (83) ASSIGNMENT OF ACTIONS

If the judge to whom a case under the Local Admiralty Rules has been assigned is not readily available, any matter pertaining to arrest, attachment, garnishment, security or release may be presented to any other judicial officer in the district without reassigning the case.

END OF CHAPTER II -
RULES FOR ADMIRALTY AND MARITIME CLAIMS AND ASSET FORFEITURE ACTIONS