

## Local Bankruptcy Rules: California (S.D. Cal.)

by Ashley M. McDow and Shane J. Moses, Foley & Lardner, LLP, with Practical Law Bankruptcy & Restructuring

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A Practice Note summarizing selected local rules of the US Bankruptcy Court for the Southern District of California (S.D. Cal.).

### Automatic Stay

#### Background/Federal Requirements

An automatic stay:

- Except as provided in section 362(b) and (c) of the Bankruptcy Code, is triggered immediately on filing of the bankruptcy petition.
- Automatically stops substantially all acts and proceedings against the debtor and its property.
- Is a nationwide injunction barring almost all actions against the debtor and its property, including the exercise of remedies regarding collateral, enforcement of prepetition judgments, litigation, collection efforts, and acts to create, perfect, and enforce liens granted before the petition date.
- Generally applies only to prepetition events and does not, for instance, bar suits against a debtor based on a cause of action arising postpetition. The stay's broad scope applies to all creditors, whether secured or unsecured, and to all of the debtor's property, wherever located.
- Forbids creditors from pursuing both formal and informal actions and remedies against the debtor and its property. It also covers remedies that could be exercised outside of the US.

For more information about the stay, see [Practice Note, Automatic Stay: Overview](#).

#### Local Rules

##### Motion for Relief from the Automatic Stay

Regarding procedural requirements, S.D. Cal. Local Bankruptcy Court Rule 4001-1(b) provides that:

- Before serving and filing the motion and the notice of motion, the movant must assign a relief from stay number (RS No.), inserted two lines below the case number.
- This RS No. must appear on all copies of the motion and notice of motion that are served on any party and on all subsequent documents relating to the motion.
- The RS No. must consist of not more than three initials of the attorney for movant and the number that is one number higher than the number of relief from stay motions previously filed by the attorney regarding that specific case (for example, the first RS No. assigned by Attorney John D. Doe in the Smith case would be JDD-1, the second JDD-2, the third JDD-3, and so on).

The memorandum of points and authorities in support of the motion for relief from stay must not exceed 25 pages (S.D. Cal. LBR 9013-7(d)(1)). If it exceeds ten pages, it must include a table of contents and table of cited authorities (neither of which count toward the page limitation) (S.D. Cal. LBR 9013-7(d)(3)).

Regarding content requirements, a motion for relief from stay must use or substantially conform to S.D. Cal. Local Bankruptcy Form CSD 1160 (Real Property/Personal Property) or S.D. Cal. Local Bankruptcy Form CSD 1163 (Unlawful Detainer), as appropriate, and must:

- Name the debtor, co-debtor, and trustee as respondents.
- State with particularity the relief or order sought and the grounds for this relief or order.
- State the status of any pending foreclosure, repossession, or unlawful detainer proceeding.
- If the motion is filed in a Chapter 11 or 13 case and non-payment of any postpetition payment is a ground for relief, provide an accounting of:



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- each postpetition payment received;
  - the amount and date received; and
  - the date posted to the account.
- Where the value of an asset is relevant, provide admissible evidence of value and any known encumbrances.
  - If the motion is brought for cause, provide admissible evidence of the specific facts that constitute this cause.

(S.D. Cal. LBR 4001-2(a)(1)-(6).)

Regarding service and notice requirements, the movant must serve the motion, together with the Notice of Filing of Motion for Relief From Automatic Stay (S.D. Cal. Local Bankruptcy Form CSD 1185), on:

- The debtor.
- The co-debtor.
- Any counsel for the debtor.
- Any counsel for the co-debtor.
- Any counsel for the trustee.
- The US Trustee.
- Other entities or individuals entitled to receive notice of default or notice of sale under applicable non-bankruptcy law governing foreclosure of real or personal property that is the subject of the motion.
- Any parties entitled to service under Federal Rule of Bankruptcy Procedure 4001(a)(1).

(S.D. Cal. LBR 4001-2(b).) The movant is not required to obtain a hearing date before filing the motion.

Service of S.D. Cal. Local Bankruptcy Form CSD 1185 is excused when an ex parte motion for relief from stay is otherwise in compliance with the provisions of Federal Rule of Bankruptcy Procedure 4001(a)(2) (S.D. Cal. LBR 4001-7).

Except as expressly provided in the Administrative Procedures or in exceptional circumstances that prevent a user from filing electronically, the motion must be electronically filed with the court through the Electronic Filing System used by the bankruptcy court (S.D. Cal. LBR 5005-1(b)).

Any opposition must be:

- Filed and served not later than 11 days after service of the notice of motion and motion for relief from stay (S.D. Cal. LBR 4001-3(a)).
- Served on:

- the movant;
- named respondents; and
- the US Trustee.

Before serving the opposition, the opposing party must obtain a hearing date. (S.D. Cal. LBR 4001-3(a), (b).)

- Filed and served with S.D. Cal. Local Bankruptcy Form CSD 1186, and if the opposition relates to real or personal property, the opposition must substantially conform to S.D. Cal. Local Bankruptcy Form CSD 1161 (S.D. Cal. LBR 4001-3(a)).
- Limited to 25 pages (S.D. Cal. LBR 9013-7(d)(1)). If the opposition exceeds ten pages, it must include a table of contents and table of cited authorities (neither of which count toward the page limitation).

Any declaration filed in support of an opposition to a motion for relief from stay must:

- Identify the interest of the opposing party in the property.
- State with particularity the grounds for the opposition.
- Provide admissible evidence of value and any known encumbrances on the asset that is the subject of the motion, if value is relevant.

(S.D. Cal. LBR 4001-4.)

Replies must:

- Be filed and served the earlier of:
  - seven days after service of the opposition; or
  - three business days before the hearing date.(S.D. Cal. LBR 9013-6(c).)
- Be served on:
  - the debtor and its counsel;
  - the co-debtor and its counsel;
  - the trustee and its counsel;
  - the US Trustee;
  - other entities or individuals entitled to receive notice of default or notice of sale under applicable non-bankruptcy law governing foreclosure of real or personal property that is the subject of the motion; and
  - any parties entitled to service under Federal Rule of Bankruptcy Procedure 4001(a)(1) as set out in S.D. Cal. Local Bankruptcy Court Rule 9013-6(c).

(S.D. Cal. LBR 4001-3(c).)

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- Not include reply memoranda exceeding ten pages (S.D. Cal. LBR 9013-7(d)(2)).

Regarding proposed order requirements:

- For uncontested motions, after expiration of the last date for serving and filing objections, if no objections have been filed under S.D. Cal. Local Bankruptcy Court Rule 9013-6(a)(3), the movant must promptly submit to the court an appropriate order or, if applicable, the report required by S.D. Cal. Local Bankruptcy Court Rule 6004-2 or the notice required by S.D. Cal. Local Bankruptcy Court Rule 6007-3. If an order is required, the order must substantially conform to S.D. Cal. Local Bankruptcy Form CSD 1162 or S.D. Cal. Local Bankruptcy Form CSD 1165 and set out:
  - the date the motion was filed with the clerk and the date the notice of motion or intended action was served, including reference to the notice’s docket entry number;
  - a complete and concise statement of the relief to be granted;
  - a statement that the movant has received no documents in opposition; and
  - the full legal description and any street address for the property if the motion pertains to real property, including the foreclosure of real property.

(S.D. Cal. LBR 4001-5(a); S.D. Cal. LBR 9013-10(a)(1)-(4).)

- For contested motions, within 14 days of the date of the ruling on the motion, the prevailing party must submit an order according to S.D. Cal. Local Bankruptcy Court Rule 7054-3 (S.D. Cal. LBR 4001-5(b); S.D. Cal. LBR 7054-2).
- For stipulated motions, an order approving a motion for approval of a stipulation for relief from the automatic stay must comply with the local rules governing submission of orders on uncontested motions (S.D. Cal. LBR 4001-5(a)). In Chapter 11 cases, evidence of compliance with Federal Rule of Bankruptcy Procedure 4001(d)(1) and (2) must also be submitted (S.D. Cal. LBR 4001-5(c)).
- Within 14 days after the date of a ruling, the prevailing party must prepare and submit a proposed order and, if required, separate final or proposed findings of fact and conclusions of law in the manner provided in S.D. Cal. Local Bankruptcy Court Rule 7054-3 (S.D. Cal. LBR 7054-2).

Regarding lodgement of proposed orders:

- Where any opposing party does not approve the form of any final or proposed order, judgment, findings of fact, or conclusion of law (Proposed Order) or where the prevailing party elects not to seek approval, the Proposed Order must be lodged (Lodged Order) and

a Notice of Lodgment conforming to the S.D. Cal. Administrative Procedures must be filed that includes a copy of the Proposed Order as an exhibit. The Notice of Lodgment must inform the opposing party that any objection to the form or content of the Lodged Order and an alternative Proposed Order must be filed and served within seven days from the date of service of the Proposed Order. (S.D. Cal. LBR 7054-3(b); S.D. Cal. Local Bankruptcy Form CSD 1159D; S.D. Cal. Local Bankruptcy Form CSD 1159E.)

- Any party who opposed the Lodged Order must file any objection or alternate Proposed Order and a document that identifies by redline or other reasonable method the changes from the Lodged Order within seven days from the date of service of the original Notice of Lodgment. A copy of the proposed Alternative Order must be attached as an exhibit to the objection. No further documents regarding the Lodged Order will be considered except on leave of court. (S.D. Cal. LBR 7054-3(c).)
- Where all opposing parties approve the form of a Proposed Order, compliance with S.D. Cal. Local Bankruptcy Court Rule 7054-3(b) is excused. The parties must indicate approval about the form of the Proposed Order by signing “approved as to form” at the end of the text of the Proposed Order. (S.D. Cal. LBR 7054-3(a).)
- Electronically submitted orders cannot be combined with the application or motion into one document. The application or motion must be entered on the docket before 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. (S.D. Cal. Administrative Procedure 2.10.)
- Electronic orders must be uploaded using the Orders Upload option in CM/ECF and formatted as provided in S.D. Cal. Local Bankruptcy Court Rule 9013-10. Exhibits required by S.D. Cal. Local Bankruptcy Court Rule 9013-10 may be referenced according to the specific Docket Entry No. assigned to the document at the time of its entry. (S.D. Cal. Administrative Procedure 2.10.)

Regarding form of proposed orders, the first page of any electronically uploaded order must substantially conform with the appropriate order template maintained by the court for:

- Standard orders (S.D. Cal. Local Bankruptcy Form CSD 1159A).
- Orders shortening time (S.D. Cal. Local Bankruptcy Form CSD 1159B).
- Lodged orders (S.D. Cal. Local Bankruptcy Form CSD 1159C).

Deviations from the required format are not permitted. Notifications of defects in an order will be provided by email.

S.D. Cal. Administrative Procedure 2.10 requires that:

- The signature line be fixed at 4.5 inches from the left edge of the document and three inches from the bottom edge of the document.
- Signature-approving orders be affixed electronically on the signature line.

Unless the entered order is separately served by CM/ECF or the Bankruptcy Noticing Center, the party obtaining relief is responsible for serving the entered order on the persons affected by the order and must file a proof of service with the court no later than the next business day following the date of service (S.D. Cal. LBR 9013-10(c)).

### **Motion to Extend or Impose the Automatic Stay**

The notice required under section 362(c)(3)(B) of the Bankruptcy Code (S.D. Cal. Local Bankruptcy Form CSD 1158) must be filed and served within seven days after the petition date and at least 28 days before the hearing date (along with the motion and all documents set out in S.D. Cal. Local Bankruptcy Court Rule 9013-7(a)) (S.D. Cal. LBR 9013-4(a)(9), S.D. Cal. LBR 2002-1(b)(1), and S.D. Cal. LBR 9013-6(a)(1)).

Regarding opposition:

- Any party opposing the motion must serve that opposition, together with all documents set out in S.D. Cal. Local Bankruptcy Court Rule 9013-7(b), no later than 14 days after service of the notice of the motion (S.D. Cal. LBR 9013-6(a)(3)).
- The opposition must be in writing and must be filed and served. The opposition must include a complete statement of the reasons in opposition to or in support of the motion and evidence as necessary supporting the reasons, including declarations. (S.D. Cal. LBR 9013-7(b)(1).)
- The court may treat a failure to timely file opposition to a motion or application by any party in interest, including the US Trustee and the Chapter 13 trustee, as the non-objecting party's consent to the granting of the motion and waiver of oral argument. The court may vacate any then-pending hearing and promptly enter an order granting the requested relief. (S.D. Cal. LBR 9013-7(b)(2).)

Replies must be filed and served the earlier of:

- Seven days after service of the opposition.
- Three business days before the hearing date.

(S.D. Cal. LBR 9013-6(c).)

Reply memoranda must not exceed ten pages (S.D. Cal. LBR 9013-7(d)(2)).

Proposed orders are governed by the same rules and procedures as motions for relief from stay (see Motion for Relief from the Automatic Stay).

### **Motion to Impose the Automatic Stay**

The notice required under section 362(c)(4)(B) of the Bankruptcy Code must be filed and served within 30 days after the petition date, and a party in interest must give at least 14 days' notice of the hearing on a motion brought under section 362(c)(4)(B) (S.D. Cal. LBR 2002-1(b)(3), (4)).

Any party opposing the motion must serve that opposition, together with all documents set out in S.D. Cal. Local Bankruptcy Court Rule 9013-7(b), no later than 14 days after service of the notice of the motion.

The opposition must be in writing and must be filed and served. The opposition must include a complete statement of the reasons in opposition to or in support of the motion and evidence as necessary supporting the reasons, including declarations (S.D. Cal. LBR 9013-7(b)(1)).

The court may treat a failure to timely file opposition to a motion or application by any party in interest, including the US Trustee and the Chapter 13 trustee, as the non-objecting party's consent to the granting of the motion and waiver of oral argument. The court may vacate any then-pending hearing and promptly enter an order granting the requested relief. (S.D. Cal. LBR 9013-7(b)(2).)

Replies must be filed and served the earlier of:

- Seven days after service of the opposition.
- Three business days before the hearing date.

(S.D. Cal. LBR 9013-6(c).)

Reply memoranda must not exceed ten pages (S.D. Cal. LBR 9013-7(d)(2)).

Proposed orders are governed by the same rules and procedures as motions for relief from stay (see Motion for Relief from the Automatic Stay).

### **Motion for Order Confirming Automatic Stay Is Not in Effect**

Motions for an order confirming that the automatic stay is not in effect under section 362(c)(4)(A) of the Bankruptcy Code are governed by the local rules governing motions for relief from the automatic stay (S.D. Cal. LBR 4001-1 and see Motion for Relief from the Automatic Stay).

### Bankruptcy Appeals

#### Procedural Rules Applicable to Bankruptcy Appeals

Section 158 of the Judicial Code (28 U.S.C. § 158) generally governs bankruptcy appeals, but counsel must also review:

- The [Federal Rules of Bankruptcy Procedure](#).
- The [Federal Rules of Appellate Procedure](#).
- The [Official Bankruptcy Forms](#).
- The [S.D. Cal. Local Civil Rules and General Orders](#).
- The [S.D. Cal. Local Bankruptcy Court Rules and Administrative Procedures and General Orders](#).
- The [Rules of the US Court of Appeals for the Ninth Circuit](#).
- The [Rules of the US Bankruptcy Appellate Panel of the Ninth Circuit \(BAP Rules\)](#).
- The BAP's [Litigant's Manual](#).
- The civil chambers procedures of the assigned judge, which are available on the [judges' web pages](#).

Consider whether the bankruptcy order is final or interlocutory (see [Bankruptcy Appeals Checklist: Final Versus Interlocutory Orders and Practice Note, Appealing a Bankruptcy Court Order: Overview: Appeals "As of Right" Versus Appeals "By Permission"](#)). If it is interlocutory, review Federal Rule of Bankruptcy Procedure 8004 on motions for leave to appeal an interlocutory order (see [Interlocutory Appeals and Bankruptcy Appeals Checklist: Permission for Interlocutory Appeals](#)).

For more information on:

- Timing on filing the notice of appeal, review Federal Rule of Bankruptcy Procedure 8002 (see [Bankruptcy Appeals Checklist: Timing Issues](#)).
- Instructions on filing and the contents of the notice of appeal, review Federal Rule of Bankruptcy Procedure 8003 and Official Bankruptcy Form B417A (see [Notice of Appeal](#)).
- The effect of appeal on bankruptcy jurisdiction, see [Bankruptcy Appeals Checklist: Effect of Appeal on Bankruptcy Jurisdiction](#).
- Extending the time to file a notice of appeal, review Federal Rule of Bankruptcy Procedure 8002(d)(2) (see [Bankruptcy Appeals Checklist: Extension of Time to File Notice of Appeal](#)).

- Disputes relating to the record on appeal, review Federal Rule of Bankruptcy Procedure 8009 (see [Bankruptcy Appeals Checklist: Correcting or Modifying the Record](#)).
- Appeals related to pending cases, provide the information required on the civil cover sheet (see [S.D. Cal.: Civil Cover Sheet](#)).
- Filing fees, see [Docket Fee](#).
- Docketing of appeal in the district court or the BAP, review Federal Rule of Bankruptcy Procedure 8003(d) (see [Bankruptcy Appeals Checklist: Docketing of Appeal in the District Court or BAP](#)).
- Obtaining a stay of a bankruptcy court order or judgment pending appeal, review Federal Rule of Bankruptcy Procedure 8007 (see [Bankruptcy Appeals Checklist: Stay Pending Appeal](#)).
- Designating the record on appeal and the statement of the issues on appeal, review Federal Rule of Bankruptcy Procedure 8009 (see [Bankruptcy Appeals Checklist: Designation of the Record and Statement of Issues and Record on Appeal](#)).
- Designating sealed documents, review Federal Rule of Bankruptcy Procedure 8009(f) (see [Bankruptcy Appeals Checklist: Sealed Documents](#)).
- The duties of the parties to provide a transcript, review Federal Rule of Bankruptcy Procedure 8009(b) (see [BAP Rule Regarding Transcripts, Bankr. S.D. Cal.: Order Court Transcripts, and Bankruptcy Appeals Checklist: Transcripts](#)).
- Certifying an appeal directly to the Ninth Circuit, review 28 U.S.C. Section 158, Federal Rule of Bankruptcy Procedure 8006, and Official Bankruptcy Form B424 (see [Appeals to Ninth Circuit, Bankruptcy Appeals Checklist: Direct Appeals to the Circuit Court of Appeals, and Practice Note, Appealing a Bankruptcy Court Order: Overview: Appealing a Bankruptcy Court Order Directly to the Court of Appeals in Limited Circumstances](#)).
- Alternatives to an appeal, including motions for amended or new findings or to seek relief from a bankruptcy court order or judgment, review Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 (see [Alternatives to Appeal](#)).
- Notice to the bankruptcy court of preliminary appellate motions, review Federal Rule of Bankruptcy Procedure 8010(c) (see [Bankruptcy Appeals Checklist: Notice to Bankruptcy Court of Preliminary Appellate Motions](#)).
- District court review of a judgment the bankruptcy court lacked constitutional authority to enter, review Federal

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Rule of Bankruptcy Procedure 8018.1 (see [Bankruptcy Appeals Checklist: Challenges to Bankruptcy Court Authority](#)).

- Page or word limitations and other rules relating to appellate briefs, review Federal Rules of Bankruptcy Procedure 8013, 8014, 8015, 8016, and 8017 and Official Bankruptcy Form B417C (see [Time for Filing Briefs and Bankruptcy Appeals Checklist: Other Appeal Responsibilities](#)). See also the policies and procedures of the assigned judge regarding page limitations, courtesy copies, and other requirements. In the BAP, the page or word limits for briefs are as provided in the Federal Rules of Bankruptcy Procedure and are summarized in Appendix V to the BAP Litigant's Manual. The BAP will enter a briefing order at the beginning of the case, which may modify the page or word limits.
- Appeals to the BAP, review 28 U.S.C. Section 158(b) (see [Appeals to BAP](#) and [Practice Note, Appealing a Bankruptcy Court Order: Overview: Appealing a Bankruptcy Court Decision to a BAP](#)).

For more information on bankruptcy appeals generally, see [Practice Note, Appealing a Bankruptcy Court Order: Overview](#) and [Bankruptcy Appeals Checklist](#).

### Automatic Referral to Bankruptcy Appellate Panel and Election to District Court

In the S.D. Cal., an appeal is automatically directed to the BAP unless one of the parties elects to have an appeal heard by the district court (see [Appeals to BAP](#)). Under S.D. Cal. General Order No. 312-E, the BAP may hear and determine only those appeals in which all parties to the appeal consent. To have the appeal heard by the district court, a party must affirmatively opt out by filing a formal election. The appellant's election should be included in the notice of appeal, either by checking the box in part 4 of the official notice of appeal and statement of election form (see [Notice of Appeal](#)). The appellee's election to the district court is required not later than 30 days after service of the notice of appeal. The BAP Litigant's Manual notes that:

- The BAP has held that the 30-day period runs from the bankruptcy court's transmission of the notice of appeal, not the date of the notice of appeal.
- The three-day extension for mailing provided in Federal Rule of Bankruptcy Procedure 9006(f) applies.

(BAP Litigant's Manual, p. 7-8.)

In addition to election by any party, the BAP may independently transfer any appeal to the district court

"to further the interests of judgment, such as when a timely statement of election has been filed in a related appeal, or for any other reason the Panel deems appropriate" (9th Cir. BAP R. 8005-1).

### Notice of Appeal

Regardless of whether a bankruptcy court order is final or interlocutory, a party seeking to appeal must file a notice of appeal that substantially conforms to Official Bankruptcy Form B417A, attaching a copy of the order, judgment, or decree (Fed. R. Bankr. P. 8003(a)(3)). The notice of appeal must be electronically filed in the bankruptcy court from which the appeal is taken within 14 days following entry of the judgement, order, or decree appealed from (Fed. R. Bankr. P. 8002(a)(3), subject to tolling under Fed. R. Bankr. P. 8002(b)). The S.D. Cal. Local Bankruptcy Court Rules do not modify the Federal Rules of Bankruptcy Procedure regarding the timing provided by the Federal Rules of Bankruptcy Procedure.

The appellant must also:

- Include in the notice of appeal the names of all parties to the order, judgment, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys, if any.
- Pay the docket fee when the notice of appeal is filed (see [Bankr. S.D. Cal.: Filing Fees](#)).
- Complete the civil cover sheet (see [S.D. Cal.: Civil Cover Sheet](#)).

The S.D. Cal. has a local version of the federal notice of appeal form for appeals from bankruptcy cases (S.D. Cal. Local Bankruptcy Form CSD 417A) and for adversary proceedings (S.D. Cal. Local Bankruptcy Form CSD 417A\_Adv).

The appellant should attach to the notice of appeal a copy of the judgment, order, or decree that is appealed (9th Cir. BAP R. 8003-1 and see [Appeals to BAP](#)). 9th Cir. BAP R. 8003-1 provides that:

- The notice of appeal is filed with the bankruptcy court and forwarded to the BAP by the clerk of the bankruptcy court.
- If the notice of appeal is filed before the order or judgment being appealed has been entered, the appellant must forward a copy of the order or judgment to the BAP clerk immediately after it is entered.

### Docket Fee

The filing fee for a notice of appeal can be found on the bankruptcy court's website (see [Bankr. S.D. Cal.: Filing](#)

**Fees**). Payments may be made by cash, US Postal Service money orders, cashier's checks issued by an acceptable financial institution, attorney or law firm checks (payable to the US Bankruptcy Court), most major credit cards, or debit card payments using Pay.gov Forms. The court does not accept personal checks or credit cards from debtors to pay filing fees. These fees are not refunded if the appeal is dismissed or denied.

An appellant that cannot afford to pay the fee may apply to the district court for in forma pauperis (IFP) status (see [US Courts: Fee Waiver Application Forms](#)).

### Interlocutory Appeals

To appeal from an interlocutory order, the appellant must file a motion for leave to appeal with the notice of appeal (Fed. R. Bankr. P. 8004(b)). The motion for leave is filed in the bankruptcy court with the notice of appeal but is directed to the BAP ([BAP Litigant's Manual, p. 15](#)).

The BAP Rules and S.D. Cal. Local Bankruptcy Court Rules do not modify the Federal Rules of Bankruptcy Procedure regarding appeals of interlocutory orders. However, litigants should be aware that the BAP Litigant's Manual contains extensive discussion of the appropriate grounds for appeal of interlocutory orders, with citations to applicable BAP decisions ([BAP Litigant's Manual, p. 10-14](#)).

### BAP Rule Regarding Transcripts

The BAP expressly requires that the excerpts of record under Federal Rule of Bankruptcy Procedure 8018 include "transcripts necessary for adequate review in light of the standard of review to be applied to the issues before the Panel" (9th Cir. BAP R. 8009-1). In particular, this should include transcripts reflecting oral tentative rulings or oral findings of fact and conclusions of law. While this rule addresses the excerpts of record under Federal Rule of Bankruptcy Procedure 8018, the numbering of the local rule makes clear that the BAP expects that the relevant transcripts should be identified regarding the designation of record under Federal Rule of Bankruptcy Procedure 8009.

### Alternatives to Appeal

There are alternatives that parties may wish to exhaust before filing an appeal, such as filing a motion to reconsider or for a rehearing with the bankruptcy court. Federal Rule of Civil Procedure 59, made applicable to bankruptcy proceedings under Federal Rule of Bankruptcy Procedure 9023, permits a party to make a motion to alter or amend a judgment. Federal Rule of Bankruptcy Procedure 9024 permits a party to move for reconsideration.

The Ninth Circuit has held that the major grounds justifying reconsideration are:

- An intervening change in controlling law.
- The availability of new evidence.
- The need to correct clear error of law or prevent manifest injustice.

(See *Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001).)

Parties considering these devices should review Federal Rules of Bankruptcy Procedure 9023 and 9024. A party may also file a motion seeking new or amended findings with the bankruptcy court within 14 days of the entry of the court's order (Fed. R. Bankr. P. 7052).

Parties should review Federal Rule of Bankruptcy Procedure 8002(b) related to the timing for filing a notice of appeal (see [Practice Note, Appealing a Bankruptcy Court Order: Overview: Later Motions May Extend the Time to Appeal](#)).

### Time for Filing Briefs

If the appeal is being heard by the district court, the time for filing appellant's, appellee's, and reply briefs for consideration by the district court is 40 days, 30 days, and 14 days, respectively, unless otherwise ordered by the court (S.D. Cal. General Order No. 312-E).

The BAP Rules do not modify the provisions of Federal Rule of Bankruptcy Procedure 8018 regarding briefing deadlines (see Appeals to BAP). However, the BAP will enter a briefing order at the beginning of the case setting the time for filing briefs.

9th Cir. BAP R. 8018(a)-1 provides specific rules regarding the content of motions for extension of time to file briefs.

### Appeals to BAP

Litigants appealing from a bankruptcy court decision to the BAP are strongly encouraged to carefully review the BAP's Litigant's Manual. The BAP Litigant's Manual is extremely comprehensive and clear.

Appeals to the BAP are subject to the BAP Rules, including:

- 9th Cir. BAP R. 8003-1, which provides that the appellant must attach a copy of the entered order from which the appeal was taken to the notice of appeal.
- 9th Cir. BAP R. 8009-1, which expressly requires that the excerpts of record under Federal Rule of Bankruptcy Procedure 8018 include "transcripts necessary for adequate review in light of the standard of review to be

applied to the issues before the Panel.” In particular, this should include transcripts reflecting oral tentative rulings or oral findings of fact and conclusions of law.

- 9th Cir. BAP R. 8011(a)-2, which provides that fax filing is not permitted without permission.
- 9th Cir. BAP R. 8013(d)-1, which provides that emergency motions must:
  - include a declaration showing the existence and nature of immediate and irreparable harm; and
  - be accompanied by an appendix with certain required documents.
- 9th Cir. BAP R. 8015(a)-1, which includes required certification:
  - about interested parties; and
  - of related cases.
- 9th Cir. BAP R. 8018(a)-1, which requires that motions for extensions of time to file a brief be:
  - filed before expiration of the timeline to be extended; and
  - accompanied by a certificate of service and appropriate declaration.

A late-filed brief will not be accepted for filing unless it is accompanied by a motion for an extension of time and the motion is granted. Sanctions may be imposed, such as the waiver of oral argument, monetary sanctions, or dismissal.

- 9th Cir. BAP R. 8018(a)-2, which provides that the BAP may dismiss after notice for appellant’s failure to timely file an opening brief or otherwise comply with orders. The BAP may reconsider dismissal if a written request is made within 14 days of entry of the dismissal order.
- 9th Cir. BAP R. 8018(b)-1, which addresses the form and organization of the appendix.
- 9th Cir. BAP R. 8019-1, which provides that the clerk provide notice of oral argument, unless the BAP determines that oral argument is not needed:
  - sua sponte; or
  - on motion for submission of the appeal on the briefs.
- 9th Cir. BAP R. 8019-2, which provides the procedures for:
  - requesting an en banc hearing; and
  - the BAP’s decision to hear an appeal *en banc*.
- 9th Cir. BAP R. 8026-1, which provides that where Part VIII of the Federal Rules of Bankruptcy Procedure or

the Rules of the US Bankruptcy Appellate Panel of the Ninth Circuit are silent, the BAP may apply:

- the Rules of the US Court of Appeals for the Ninth Circuit; and
- the Federal Rules of Appellate Procedure.
- 9th Cir. BAP R. 9010-1, which addresses counsel’s duties, withdrawal, and substitution, including a requirement of a Notice of Appearance for any attorney not identified in the Notice of Appeal or Notice of Substitution.
- 9th Cir. BAP R. 9010-2, which permits individuals only to appear pro se and requires:
  - *pro se* parties to ensure perfection and prosecution of appeal according to applicable rules; and
  - notice of change in address.

### Appeals to Ninth Circuit

Neither the Ninth Circuit nor the S.D. Cal. have any local rules addressing direct appeals from the bankruptcy court to the Ninth Circuit under 28 U.S.C. Section 158(d)(2) beyond the provisions of Federal Rule of Bankruptcy Procedure 8006 and the Federal Rules of Appellate Procedure.

## Bankruptcy Exemptions

### Background/Federal Requirements

An individual debtor is entitled to claim certain property as exempt from the bankruptcy estate, which means the property cannot be used to satisfy claims against the estate. Bankruptcy exemptions do not operate automatically, and all property remains property of the estate until the debtor claims it exempt and the objection period expires. A properly claimed exemption will immunize exempt property from seizure or attachment for satisfaction of debts incurred before the debtor’s bankruptcy proceeding. Bankruptcy exemptions are intended to ensure that a debtor can emerge from bankruptcy with enough possessions to make a fresh start.

Under section 522(b) of the Bankruptcy Code, an individual debtor can choose which exemption system is most favorable for the debtor’s circumstances. The debtor can use exemptions granted either:

- Under the federal Bankruptcy Code.
- By the state of the debtor’s domicile, with exemptions provided under other federal laws.



The debtor cannot choose exemptions from both the federal Bankruptcy Code and the state law scheme. The debtor must choose one or the other.

For more information on bankruptcy exemptions, see [Practice Note, Bankruptcy Exemptions for Individual Debtors: Overview](#).

### Bankruptcy Rule 4003(a)

The debtor must list all exempt property on Schedule C: The Property You Claim as Exempt (Individuals) (Official Bankruptcy Form B106C). If the debtor fails to timely file a list of exemptions, a dependent of the debtor may file the list within 30 days after the expiration of the time allowed by Federal Rule of Bankruptcy Procedure 1007 (Fed. R. Bankr. P. 4003(a)).

### Bankruptcy Rule 4003(b)

A party in interest may object to an exemption claim:

- Within 30 days of the conclusion of the section 341 meeting of creditors.
- If the debtor amends or supplements the list of exemptions, within 30 days of that amendment or supplement.

An extension of time to object to an exemption claim may be granted for cause only if the extension is requested before the expiration of the time to object (Fed. R. Bankr. P. 4003(b)(1)).

The trustee can object to an exemption on the basis that the claim was fraudulent for up to one year after the closing of the case (Fed. R. Bankr. P. 4003(b)(2)).

An objection based on the state homestead exemption under section 522(q) of the Bankruptcy Code must be filed before the closing of the case (Fed. R. Bankr. P. 4003(b)(3)).

Copies of any objection are given to:

- The trustee.
- The debtor.
- The debtor's attorney.
- The person filing the list of exemptions and that person's attorney.

(Fed. R. Bankr. P. 4003(b)(4).)

### Bankruptcy Rule 4003(c)

It is the objecting party's initial burden to demonstrate that the exemption is not valid (Fed. R. Bankr. P. 4003(c)).

### Bankruptcy Rule 4003(d)

To avoid a lien under section 522(f) of the Bankruptcy Code, the debtor must commence a contested matter, governed by Federal Rule of Bankruptcy Procedure 9014, or serve a Chapter 12 or Chapter 13 plan on an affected creditor in the manner of service of a summons and complaint provided by Federal Rule of Bankruptcy Procedure 1004 (Fed. R. Bankr. P. 4003(d)).

## Local Rules

### California Exemption Statutes

Section 703.140(a) of the California Code of Civil Procedure provides for a debtor in a bankruptcy case to elect exemptions under two alternative systems (rather than using the exemptions under section 522 of the Bankruptcy Code). These two systems are in:

- Section 703.140(b) of the California Code of Civil Procedure, which includes a wild card exemption for personal property but a small real property exemption.
- Sections 704.010 to 704.230 of the California Code of Civil Procedure, which provide a larger exemption for real property but no wild card exemption. However, under Section 703.140(a)(2) of the California Code of Civil Procedure, the system under Section 703.140(b) can only be elected by a married debtor whose spouse does not file bankruptcy if both spouses waive in writing the right to claim the exemptions under Sections 704.010 to 704.230 during the pendency of the bankruptcy case.

### Notice of Objections to Debtor's Claim of Exemptions

Although there are no S.D. Cal. local rules or guidelines regarding bankruptcy exemptions specifically, S.D. Cal. Local Bankruptcy Form CSD 1140 (Notice of Objections to Debtor's Claim of Exemptions) must be used by any party in interest seeking to object to any exemptions claimed by the debtor.

## Cash Collateral

### Background/Federal Requirements

The bankruptcy court, after notice and a hearing, may approve a debtor's request for use of cash collateral (§ 363(a), (c)(2), Bankruptcy Code). A debtor-in-possession or trustee seeking permission to use cash collateral must comply with:

## Local Bankruptcy Rules: California (S.D. Cal.)

- Section 363 of the Bankruptcy Code (see Section 363(c) of the Bankruptcy Code).
- Federal Rule of Bankruptcy Procedure 4001(b) (see Bankruptcy Rule 4001(b)).
- Any applicable local bankruptcy court rules (see Local Rules).

This Note assumes that the prepetition lender is not providing DIP financing and, therefore, does not discuss any provisions that normally apply when the prepetition lender is the DIP lender.

For more information on the use of cash collateral in bankruptcy, see [Practice Note, Cash Collateral: Overview](#).

### Section 363(c) of the Bankruptcy Code

A debtor-in-possession can continue to use noncash property that has been pledged as collateral in the ordinary course, such as equipment, inventory, or other tangible assets, without the need to obtain permission from the bankruptcy court (§ 363(c)(1), Bankruptcy Code). However, a debtor-in-possession that seeks to use its lender's cash collateral must obtain either:

- The consent of all lenders holding security interests in the cash collateral.
- An order from the bankruptcy court permitting use of cash collateral, usually based on a showing that the secured creditor is adequately protected (see [Practice Note, Cash Collateral: Overview: Adequate Protection](#)).

(§ 363(c)(2), Bankruptcy Code.)

The limitations on the use of cash collateral, such as lender consent or bankruptcy court approval, help ensure that the secured lender's interest in cash collateral is adequately protected and that the lender is afforded due process.

To use cash collateral, the following requirements must be satisfied:

- **Notice and a hearing.** The court must determine that reasonable notice has been given to parties in interest regarding the motion and hearing, to the extent one is necessary (§ 363(c)(2), (3), Bankruptcy Code). The court may hold an interim cash collateral hearing on the first day of the case to avoid immediate and irreparable harm to the debtor but cannot hold a final hearing earlier than 14 days from the date the cash collateral motion is filed (Fed. R. Bankr. P. 4001(b)(1), (3) and see *In re Dynaco Corp.*, 158 B.R. 552 (Bankr. D. N.H. 1993); *In re Post-Tron Sys. Corp.*, 106 B.R. 345, 346 (Bankr. D. R.I. 1989)).

- **Adequate protection.** On request of a party with an interest in the debtor's cash collateral, the debtor must show that such party's interest is adequately protected from any diminution in the value of its collateral caused by using cash collateral (§ 363(e), Bankruptcy Code). The adequate protection provided depends on the circumstances of the case (see [Practice Notes, Cash Collateral: Overview: Adequate Protection and Adequate Protection: Overview](#)).

Though not required, a debtor may submit a written declaration from a business person or a financial advisor to the debtor in support of the debtor's need to use its lender's cash collateral (see [Standard Document, Declaration: General \(Federal\)](#)). It is common practice and sometimes required by local bankruptcy court rules for the declarant, a business person from the debtor (who may also be the declarant), and a lender representative to attend the cash collateral hearing or be reasonably available by telephone to address questions and, if necessary, authorize revisions to the proposed use of cash collateral.

### Bankruptcy Rule 4001(b)

A request to use cash collateral in any jurisdiction must comply with Bankruptcy Rule 4001(b), which contains requirements regarding:

- The contents of a cash collateral motion (see Contents of the Cash Collateral Motion).
- Service of the cash collateral motion (see Service of the Cash Collateral Motion).
- Notice and hearing on the cash collateral motion (see Notice and Hearing on the Cash Collateral Motion).

### Contents of the Cash Collateral Motion

In all jurisdictions, a cash collateral motion must be:

- Brought as a contested matter under Federal Rule of Bankruptcy Procedure 9014 (Bankruptcy Rule 9014).
- Accompanied by a proposed form of order.

(Fed. R. Bankr. P. 4001(b)(1)(A).)

The cash collateral motion must include a concise statement of the relief requested that summarizes and identifies the location within the relevant documents of all the material provisions of the proposed cash collateral agreement and form of order, including:

- The name of each secured lender with an interest in the cash collateral.
- The purposes for using the cash collateral.

## Local Bankruptcy Rules: California (S.D. Cal.)

- The material terms of the agreement, including the duration of the debtor's use of cash collateral.
- Any liens, cash payments, or adequate protection that the secured lender is to receive or an explanation of why each secured creditor's interest is adequately protected.

(Fed. R. Bankr. P. 4001(b)(1)(B).)

### Service of the Cash Collateral Motion

The cash collateral motion must be served on:

- Any entity with an interest in the cash collateral.
- Any committee or its authorized agent formed under:
  - section 705 of the Bankruptcy Code in a Chapter 7 case; or
  - section 1102 of the Bankruptcy Code in a Chapter 11 case (see [Practice Notes, Chapter 11 Creditors' Committees](#) and [Chapter 11 Equity Committees](#)).
- The top 20 unsecured creditors identified on the list filed under Federal Rule of Bankruptcy Procedure 1007(d) if the case is a Chapter 9 municipality case or a Chapter 11 case in which no committee has been appointed (see [Standard Document, List of Largest Unsecured Creditors](#)).
- Any other entity that the court may direct.

(Fed. R. Bankr. P. 4001(b)(1)(C).)

A cash collateral motion is a contested matter for which a motion must be made under Bankruptcy Rule 9014 (Fed. R. Bankr. P. 4001(b)(1)(A)). Under Bankruptcy Rule 9014, the debtor must serve the motion in the same manner provided for service of a summons and complaint under Federal Rule of Bankruptcy Procedure 7004.

The debtor need not submit a written declaration in support of its cash collateral motion, but may choose to do so if the circumstances of the case and the need for use of cash collateral warrant further support. If the motion is supported by an affidavit or declaration, the debtor must serve them together and any written response must be served no later than one day before the hearing, unless otherwise permitted by the court (Fed. R. Bankr. P. 9006(d); see Section 363(c) of the Bankruptcy Code).

### Notice and Hearing on the Cash Collateral Motion

The court may hold an interim hearing to authorize the immediate access to cash collateral to the extent necessary to avoid immediate and irreparable harm to the estate, but it cannot hold a final hearing earlier than 14 days from the date the debtor serves the cash collateral motion (Fed. R. Bankr. P. 4001(b)(2)).

The debtor must give notice of the cash collateral hearing to all parties it must serve with the cash collateral motion and to any other entities as the court may direct (Fed. R. Bankr. P. 4001(b)(3) and see [Service of the Cash Collateral Motion](#)).

## Local Rules

The S.D. Cal. applies the same guidelines to cash collateral motions and to motions to obtain credit for DIP financing (see [Local Rules](#)). The court's guidelines are located in Appendix D2 to the S.D. Cal. Local Bankruptcy Court Rules ([Financing Guidelines](#)).

In addition to the applicable provisions of the Federal Rules of Bankruptcy Procedure and section 363 of the Bankruptcy Code, the [Financing Guidelines](#) require that cash collateral requests be filed under S.D. Cal. Local Bankruptcy Court Rule 9013-1 to S.D. Cal. Local Bankruptcy Court Rule 9013-10 (which generally govern motion practice and contested matters).

The [Financing Guidelines](#) also provide specific requirements for cash collateral motions, such as that:

- Motions must provide a summary of the essential terms of the proposed use of cash collateral, which must specifically include:
  - the maximum borrowing available on a final basis;
  - the interim borrowing limit before entry of a final order;
  - all borrowing conditions;
  - both interest rate and points or other costs and fees;
  - maturity date and provisions;
  - events of default;
  - any limitations on use of funds; and
  - any protections to the lender afforded under section 364, including replacement liens and administrative priority.
- The movant must present a budget or projections in support of its cash collateral motion that justifies the interim funding. The budget should cover the period for which cash collateral use is sought.
- The court will typically **not** authorize cash collateral agreements that contain:
  - cross-collateralization of prepetition debt with postpetition assets (other than standard replacement liens) (see [Practice Note, Cash Collateral: Overview: Cross-Collateralization](#));

## Local Bankruptcy Rules: California (S.D. Cal.)

- provisions binding the parties or estate regarding validity, perfection, or amount of petition liens or waiving claims against a secured lender (this relief should be sought by a regularly noticed motion served on all creditors and parties in interest);
- waiver by the estate of rights under section 506(c) (right to recover the reasonable costs of preserving property) (see [Practice Note, The Section 506\(c\) Surcharge on Collateral: Section 506\(c\) Waivers](#));
- provisions that grant liens on avoidance actions;
- professional fee carve-outs that do not treat all professionals on a pro rata basis (see [Practice Note, Order of Distribution in Bankruptcy: “Carve-out” for Professional Fees in a DIP Financing](#)); or
- provisions divesting the debtor of discretion in formulating a plan or administering assets.

The motion must specifically identify any departures from the Financing Guidelines (for example, inclusion of any of the above provisions) in the form of a checklist. The checklist format is provided in the Financing Guidelines. **The motion must contain either the checklist or a certification of counsel that none of the identified provisions are included.**

If the motion departs from the Financing Guidelines, the motion must:

- State that the proposed order contains a provision of a type identified in the Financing Guidelines.
- Identify the location of each provision in the proposed order and stipulation.
- Provide a justification of the provision.

The following table summarizes the requirements of the Financing Guidelines.

Provision	S.D. Cal. Bankruptcy Court Financing Guidelines
Essential terms governing the proposed use of cash collateral	<p>Should be summarized in the motion.</p> <p>The summary should include:</p> <ul style="list-style-type: none"> <li>• The maximum borrowing available on a final basis.</li> <li>• The interim borrowing limit before entry of a final order.</li> <li>• All borrowing conditions.</li> <li>• Both interest rate and points or other costs and fees.</li> <li>• Maturity date and provisions.</li> <li>• Events of default.</li> <li>• Any limitations on use of funds.</li> <li>• Any protections to the lender afforded under section 363.</li> </ul>
Priming liens	<p>Liens on avoidance actions arising under sections 544, 545, 547, 548, and 549 of the Bankruptcy Code generally are not permitted. Any lien on avoidance actions must be specifically identified in the checklist and justified in the motion.</p> <p>There are no other special provisions regarding priming liens on other assets.</p>
Carve-outs	<p>Carve-outs for administrative expenses generally are permitted but should treat all professionals on a pro rata basis (see <a href="#">Practice Note, Order of Distribution in Bankruptcy: “Carve-out” for Professional Fees in a DIP Financing</a>). Any carve-out that does not treat all professionals on a pro rata basis must be specifically identified in the checklist and justified in the motion.</p>
Cross-collateralization	<p>Cross-collateralization of prepetition debts with postpetition assets generally is not permitted, other than standard replacement liens (see <a href="#">Practice Note, Cash Collateral: Overview: Cross-Collateralization</a>). Any other cross-collateralization of prepetition debts must be specifically identified in the checklist and justified in the motion.</p>

## Local Bankruptcy Rules: California (S.D. Cal.)

Provision	S.D. Cal. Bankruptcy Court Financing Guidelines
Court's power and discretion; fiduciary duties; control regarding plan	Provisions that limit the debtor's fiduciary duties or divest the debtor of any discretion in the formulation of a plan or administration of the estate or otherwise limit access to the bankruptcy court to seek any relief under other applicable provisions of law generally are prohibited. These provisions must be specifically identified in the checklist and justified in the motion.
Funding obligations	Should be summarized in the motion.
Termination or default	Should be summarized in the motion.
Change-of-control	Should be summarized in the motion.
Required sale of estate property	Any requirement for sale of estate property (or any prohibition on sale) would divest the debtor of discretion in administration of the estate. These provisions therefore must be specifically identified in the checklist and justified in the motion.
Investigation period relating to prepetition liens and claims	Provisions binding the estate or any parties regarding the validity, perfection, or amount of a secured creditor's prepetition lien are not permitted as part of interim relief. This relief must be sought by a regularly noticed motion, with notice to all creditors and parties in interest.  If these provisions are included in a cash collateral motion, they must be specifically identified in the checklist and justified in the motion.
Section 506(c) waivers	Section 506(c) waivers generally are not permitted, and these waivers must be specifically identified in the checklist and justified in the motion (see <a href="#">Practice Note, The Section 506(c) Surcharge on Collateral: Section 506(c) Waivers</a> ).

## Chapter 15

### Background/Federal Requirements

Chapter 15 of the Bankruptcy Code, enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), is designed to help the US recognize foreign insolvency proceedings and increase international cooperation among courts in multinational insolvency cases to more effectively address cross-border insolvency issues. Chapter 15 expands the scope of its predecessor, section 304 of the Bankruptcy Code, which is now repealed. It codifies the Model Law on Cross-Border Insolvency in substantially the same way it was written by the United Nations Commission on International Trade Law (UNCITRAL). In the US, Chapter 15 is the exclusive remedy for a foreign representative seeking injunctive relief against litigation in US courts that would interfere with a foreign bankruptcy proceeding.

The following Bankruptcy Rules apply in Chapter 15 cases:

- Federal Rule of Bankruptcy Procedure 1002.
- Federal Rule of Bankruptcy Procedure 1004.2.

- Federal Rule of Bankruptcy Procedure 1007(a)(4).
- Federal Rule of Bankruptcy Procedure 1010.
- Federal Rule of Bankruptcy Procedure 1011.
- Federal Rule of Bankruptcy Procedure 1012.
- Federal Rule of Bankruptcy Procedure 2002(q).
- Federal Rule of Bankruptcy Procedure 2015(d).
- Federal Rule of Bankruptcy Procedure 3002.
- Federal Rule of Bankruptcy Procedure 5012.

For more information on Chapter 15, see [Practice Note, Chapter 15 Overview: US Bankruptcy Cases Ancillary to Foreign Proceedings](#).

### Local Rules

S.D. Cal. Local Bankruptcy Court Rule 2002-1 governs the notice requirements in Chapter 15 cases. While this rule expressly applies to notice to parties, including "Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief Is Sought in Ancillary and Other Cross-Border Cases," it does not provide any specific

provisions applicable to Chapter 15. It instead provides that “[n]otice requirements under this Local Rule are governed by FRBP 2002” (S.D. Cal. LBR 2002-1(a)).

## Claims Trading

### Background/Federal Requirements

Bankruptcy claims trading generally involves the buying and selling of claims against companies seeking relief under the Bankruptcy Code. Estimates of the size of the bankruptcy claims trading market vary widely and range in recent years from over \$40 billion in 2018 to an estimated \$25 billion in 2016. The vast majority of the claims trading market centers on those claims which are, at least to some degree, liquidated and undisputed. Buyers and sellers trade secured claims, trade claims, and counterparty claims.

The claims trading market is not limited to traditional buy and hold investors. Particularly in large Chapter 11 cases, claims are often traded and re-traded many times by large scale market players and those who practice arbitrage, either as part of a buy low, sell high strategy, or as part of a larger strategic effort to exercise control in a debtor’s case.

For more information on claims trading, see [Practice Note, Bankruptcy Claims Trading: Basic Concepts](#).

### Bankruptcy Rule 3001(e)(1)

If a proof of claim has not been filed before the time of the transfer, then the buyer may file a proof of claim if the claim has been transferred other than for security. A claim is transferred other than for security if it is not transferred for the purpose of providing collateral. (Fed. R. Bankr. P. 3001(e)(1).)

### Bankruptcy Rule 3001(e)(2)

If a claim, other than one based on a publicly traded note, bond, or debenture, has been transferred other than for security **after** a proof of claim has been filed, the buyer must file evidence of the transfer. Once the evidence has been filed, the court clerk notifies the seller by mail of the filing. The seller then has 21 days after the mailing of the notice to object. The court holds a hearing if the seller files a timely objection. If the court finds that the claim has been transferred other than for security, it enters an order substituting the buyer for the seller as the new owner of the claim on the books and records of the bankruptcy court. If the seller does not file an objection, the buyer is

automatically substituted for the seller. (Fed. R. Bankr. P. 3001(e)(2).)

### Bankruptcy Rule 3001(e)(3)

If a claim, other than one based on a publicly traded note, bond, or debenture, has been transferred for security **before** a proof of claim has been filed, either the buyer or the seller or both can file proof of claim for the full amount of the transfer. A claim is transferred for security if it is transferred to provide collateral. The proof of claim must be supported by a statement setting out the terms of the transfer. (Fed. R. Bankr. P. 3001(e)(3) and see Bankruptcy Rule 3001(e)(1).)

### Bankruptcy Rule 3001(e)(4)

If a claim, other than one based on a publicly traded note, bond, or debenture, has been transferred for security **after** a proof of claim has been filed, the buyer must file evidence of the transfer (Fed. R. Bankr. P. 3001(e)(4) and see Bankruptcy Rule 3001(e)(2)).

## Local Rules

The S.D. Cal. does not have any local rules concerning claims trading.

## Closing and Reopening a Chapter 7 Case

### Background/Federal Requirements

#### Closing the Case

The court closes a Chapter 7 bankruptcy case either:

- When the Chapter 7 trustee has fully administered the case.
- If the debtor fails to file a statement of completion of a personal financial management course before the 60th day after the initial date set for the section 341 meeting of creditors.

(Fed. R. Bankr. P. 5009(a), (b).)

A case is fully administered when:

- The Chapter 7 trustee files a final report and account.
- Neither the US Trustee nor a party in interest objects to the final report in 30 days from its filing.
- The Chapter 7 trustee has addressed all administrative claims.

For more information on closing a case, see [Practice Note, Closing and Reopening a Chapter 7 Bankruptcy Case: Closing a Fully Administered Chapter 7 Case](#) and [Closing a Chapter 7 Case for Failure to File Statement of Completion of Personal Financial Management Course](#).

The Chapter 7 trustee files a notice of the filing of the final report and account providing:

- The date and time of a hearing to consider:
  - the final report; and
  - requests for allowance of compensation requested by the Chapter 7 trustee and its professionals.
- The total amount of:
  - receipts and disbursements;
  - other paid claims; and
  - allowed general unsecured claims.
- The time and date of any hearing on the abandonment of estate property.

(See [Practice Note, Closing and Reopening a Chapter 7 Bankruptcy Case: Final Report and Account](#).)

### Reopening a Chapter 7 Case

The court has discretion to reopen a closed case under section 350(b) of the Bankruptcy Code on a motion by:

- The debtor.
- A party in interest, including the Chapter 7 trustee.

(Fed. R. Bankr. P. 5010.)

The court only appoints a Chapter 7 trustee if the court determines that a trustee is necessary to either:

- Protect the interests of:
  - creditors; and
  - the debtor.
- Insure efficient administration of the estate.

(Fed. R. Bankr. P. 5010.)

For more information on reopening a Chapter 7 case, see [Practice Note, Closing and Reopening a Chapter 7 Bankruptcy Case: Reopening a Closed Chapter 7 Case](#).

## Local Rules

### Closing a Chapter 7 Case

The S.D. Cal. does not have any special rules relating to closing a Chapter 7 case.

### Reopening a Chapter 7 Case

A motion to reopen a closed bankruptcy case must be:

- In writing, filed, and served and must include a complete statement of the relief requested and evidence as necessary supporting that relief, including declarations (S.D. Cal. LBR 5010-1; S.D. Cal. LBR 9013-7(a)(1)).
- Accompanied by S.D. Cal. Local Bankruptcy Form CSD 1182, proof of service on all parties affected by the motion to reopen, and the appropriate fee (S.D. Cal. LBR 5010-1; S.D. Cal. Local Bankruptcy Form CSD 1489).

Certain motions do not require a party to give notice before filing but must be accompanied by an order submitted to the court according to the Administrative Procedures. These motions include motions to reopen a case:

- To file Debtor's Certification About Personal Financial Management Course (Official Bankruptcy Form B423) and Certificate of Debtor(s) Education.
- To file Certification Regarding Domestic Support Obligations, Section 522(q), and Eligibility for Discharge (S.D. Cal. Local Bankruptcy Form 2120, S.D. Cal. Local Bankruptcy Form 2121, and S.D. Cal. Local Bankruptcy Form 2122).
- And appoint a trustee on identification of unsecured assets.

(S.D. Cal. LBR 9013-3(j)-(l).)

After expiration of the last day for serving and filing objections or after hearing, the movant must submit an order reopening the case on S.D. Cal. Local Bankruptcy Form CSD 1490 according to:

- S.D. Cal. Local Bankruptcy Court Rule 7054-3, if contested.
- S.D. Cal. Local Bankruptcy Court Rule 9013-10(a), if uncontested.

(S.D. Cal. LBR 5010-2.)

## Complex Chapter 11 Case Procedures

### Background/Federal Requirements

Many bankruptcy courts have adopted case management procedures and processes designed to facilitate the filing and administration of complex Chapter 11 cases, or megacases, to ensure the least possible disruption to the debtor's business and to enhance the chances for

success. These procedures make courts more responsive, predictable, and accessible.

Complex Chapter 11 cases are typically defined as those exhibiting a combination of one or more of the following factors, including:

- Debt over a specified amount.
- More than a certain number of creditors or other parties in interest.
- Publicly traded debt or equity.
- The need for simplification of noticing and hearing procedures to reduce delays and expense.

Complex Chapter 11 case procedures provide processes and requirements for certain aspects of the case, including:

- Expedited first day hearings.
- Preset omnibus hearing dates on a weekly, bi-weekly, or monthly basis.
- Operational guidelines for:
  - paying professional fees;
  - selling assets; and
  - obtaining DIP financing.

If counsel believe their case should be classified as a complex Chapter 11 case, they typically must file with the petition a notice, request, or motion to have the case designated as complex. The court, in its discretion, weighs the factors in deciding whether to designate a case as complex. If the court approves the designation, then the case is designated as complex, and the complex Chapter 11 case procedures apply.

### Local Rules

The S.D. Cal. does not have any local rules concerning complex Chapter 11 case procedures.

## DIP Financing

### Background/Federal Requirements

The bankruptcy court, after notice and a hearing, may approve a debtor's DIP financing arrangements (§ 364(c), (d), Bankruptcy Code). A debtor-in-possession or trustee seeking DIP financing must comply with:

- Section 364 of the Bankruptcy Code (see Proofs of Claim and Objections to Claims).

- Federal Rule of Bankruptcy Procedure 4001(c) (see Bankruptcy Rule 4001(c)).
- Any applicable local bankruptcy court rules (see Local Rules).

This Note assumes that the DIP financing does not include provisions regarding use of cash collateral.

For more information on DIP financing, see [Practice Note, DIP Financing: Overview](#) and [Timeline of DIP Financing Process](#).

### Section 364(d) of the Bankruptcy Code

A DIP financing request in any jurisdiction must provide:

- **Notice and a hearing.** The court must determine that reasonable notice has been given to parties in interest and that there has been a hearing, to the extent one is necessary (§ 364(c), (d), Bankruptcy Code and see Notice and Hearing on the DIP Financing Motion).
- **A showing of the inability to obtain credit on less onerous terms.** The debtor must demonstrate that it made efforts to obtain financing elsewhere on better terms (§ 364(c), (d)(1)(A), Bankruptcy Code). The debtor's efforts do not have to be exhaustive, just sufficient under the circumstances, which means that for:
  - non-priming DIPs, the debtor tried but was unable to obtain financing on an unsecured, administrative priority basis (see [Practice Note, DIP Financing: Overview: Non-Priming DIPs](#) and [Box: Unsecured Postpetition Financing](#)); and
  - priming DIPs, the debtor tried but was unable to obtain a non-priming DIP (see [Practice Note, DIP Financing: Overview: Priming DIPs](#)).

The debtor commonly submits a written declaration of a business person or a financial advisor in support of its motion that discusses the debtor's efforts to obtain financing on better terms (see [Standard Document, Declaration: General \(Federal\)](#)). It is also common practice and sometimes required by local bankruptcy court rules for the declarant, a business person from the debtor (who may also be the declarant), and a lender representative to attend the hearing or be reasonably available by telephone to address questions and, if necessary, authorize revisions to the proposed financing.

- **Adequate protection.** This requirement only applies to priming DIPs. The debtor must show that the holder of the existing lien on property on which a senior or



equal lien is granted is adequately protected from any diminution in the value of its collateral caused by the priming of its lien (§ 364(d)(1)(B), Bankruptcy Code). This requirement is usually difficult to satisfy if the primed lender objects, unless there is a substantial equity cushion for the objecting lender (see [Practice Note, DIP Financing: Overview: Perspective of the Primed Lender](#)). The adequate protection provided depends on the circumstances of the case (see [Practice Note, Adequate Protection: Overview: What Is Adequate Protection?](#)).

### Bankruptcy Rule 4001(c)

A DIP financing request in any jurisdiction must comply with Bankruptcy Rule 4001(c), which sets out requirements regarding:

- The contents of a DIP financing motion (see [DIP Financing Motion Attachments and Contents](#)).
- Service of the DIP financing motion (see [Service of the DIP Financing Motion](#)).
- Notice and hearing on the DIP financing motion (see [Notice and Hearing on the DIP Financing Motion](#)).

### DIP Financing Motion Attachments and Contents

A DIP financing motion must be accompanied by:

- A copy of the proposed DIP financing credit agreement.
- The proposed form of order.

(Fed. R. Bankr. P. 4001(c)(1)(A).)

The DIP financing motion must include a concise statement of the relief requested, summarizing, and setting out the location within relevant documents of, all the material provisions of the proposed credit agreement and form of order, including:

- The interest rate.
- Maturity.
- Events of default.
- Liens.
- Borrowing limits.
- Borrowing conditions.

(Fed. R. Bankr. P. 4001(c)(1)(B).)

If the proposed credit agreement or form of order includes any of the provisions below, the concise statement must also:

- Briefly list or summarize each provision.
- Identify their location in the proposed agreement or form of order.
- Identify any provision that is proposed to remain in effect if interim approval is granted, but final relief is denied, as provided under Bankruptcy Rule 4001(c)(2).

(Fed. R. Bankr. P. 4001(c)(1)(B).)

The motion must also describe the nature and extent of each of the following provisions:

- A grant of priority or a lien on property of the estate under:
  - section 364(c) of the Bankruptcy Code, which addresses non-priming DIPs (see [Practice Note, DIP Financing: Overview: Non-Priming DIPs](#)); or
  - section 364(d) of the Bankruptcy Code, which addresses priming DIPs (see [Practice Note, DIP Financing: Overview: Priming DIPs](#)).

(Fed. R. Bankr. P. 4001(c)(1)(B)(i).)

- The method of providing adequate protection or priority for a prepetition claim, including:
  - granting a lien on property of the estate to secure the claim (see [Practice Note, Adequate Protection: Overview: Additional or Replacement Lien](#)); or
  - using property of the estate or credit obtained under section 364 of the Bankruptcy Code to make cash payments on account of the claim (see [Practice Note, Adequate Protection: Overview: Cash Payment or Periodic Cash Payments](#)).

(Fed. R. Bankr. P. 4001(c)(1)(B)(ii).)

- A determination of the validity, enforceability, priority, or amount of a prepetition claim or of any lien securing the claim (Fed. R. Bankr. P. 4001(c)(1)(B)(iii)).
- A waiver or modification of the automatic stay (Fed. R. Bankr. P. 4001(c)(1)(B)(iv) and see [Practice Note, Automatic Stay: Overview: Relief from the Stay and Waivers of the Stay](#)).
- A waiver or modification of any party's authority or right to:
  - file a plan (see [Practice Note, Chapter 11 Plan Process: Overview: Who May File a Plan?](#));
  - seek an extension of the debtor's exclusivity period to file a plan (see [Practice Note, Chapter 11 Plan Process: Overview: Contesting Exclusivity](#));

## Local Bankruptcy Rules: California (S.D. Cal.)

- request the use of cash collateral under section 363(c) of the Bankruptcy Code (see [Practice Note, Cash Collateral: Overview](#)); or
- request authority to obtain credit under section 364 of the Bankruptcy Code (see [Practice Note, DIP Financing: Overview](#)).

(Fed. R. Bankr. P. 4001(c)(1)(B)(v).)

- The setting of a deadline for:
  - filing a plan of reorganization;
  - approval of a disclosure statement;
  - a hearing on confirmation; or
  - entry of a confirmation order.

(Fed. R. Bankr. P. 4001(c)(1)(B)(vi) and see [Practice Note, Chapter 11 Plan Process: Overview](#).)

- A waiver or modification of the applicability of nonbankruptcy law relating to:
  - the perfection of a lien on property of the estate; or
  - the foreclosure or other enforcement of the lien.

(Fed. R. Bankr. P. 4001(c)(1)(B)(vii).)

- A release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to file an action (Fed. R. Bankr. P. 4001(c)(1)(B)(viii)).

- The indemnification of any entity (Fed. R. Bankr. P. 4001(c)(1)(B)(ix)).

- A release, waiver, or limitation of any right to surcharge collateral under section 506(c) of the Bankruptcy Code (Fed. R. Bankr. P. 4001(c)(1)(B)(x) and see [Practice Note, The Section 506\(c\) Surcharge on Collateral](#)).

- The granting of a lien on any claim or cause of action arising under:

- section 544 of the Bankruptcy Code (transfers avoidable under applicable state law);
- section 545 of the Bankruptcy Code (avoidable statutory liens);
- section 547 of the Bankruptcy Code (transfers avoidable as preferences);
- section 548 of the Bankruptcy Code (transfers avoidable as fraudulent conveyances);

- section 549 of the Bankruptcy Code (transfers avoidable as postpetition transactions);
- section 553(b) of the Bankruptcy Code (setoffs made during the 90-day period before bankruptcy that improve a creditor's position);
- section 723(a) of the Bankruptcy Code (claims against general partners who are personally liable for any deficiency of the partnership debtor's property to meet claims against the partnership); and
- section 724(a) of the Bankruptcy Code (avoidable liens that secure a fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, but not to the extent that these liens secure claims for actual pecuniary loss).

### Service of the DIP Financing Motion

The DIP financing motion must be served on:

- Any committee or its authorized agent formed under:
  - section 705 of the Bankruptcy Code in a Chapter 7 case; or
  - section 1102 of the Bankruptcy Code in a Chapter 11 case (see [Practice Notes, Chapter 11 Creditors' Committees and Chapter 11 Equity Committees](#)).
- If the case is a Chapter 9 municipality case or a Chapter 11 case in which no committee has been appointed under section 1102, the top 20 unsecured creditors identified on the list filed under Federal Rule of Bankruptcy Procedure 1007(d) (see [Standard Document, List of Largest Unsecured Creditors](#)).
- Any other entity that the court may direct.

(Fed. R. Bankr. P. 4001(c)(1)(C).)

A DIP financing motion is a contested matter for which a motion must be made under Federal Rule of Bankruptcy Procedure 9014 (Fed. R. Bankr. P. 4001(c)(1)(A)). Under Bankruptcy Rule 9014, the motion must be served in the manner provided for service of a summons and complaint by Federal Rule of Bankruptcy Procedure 7004.

If the motion is supported by an affidavit, the debtor must serve them together and any written response must be served no later than one day before the hearing, unless otherwise permitted by the court (Fed. R. Bankr. P. 9006(d)). The debtor commonly submits a written declaration of a business person or financial advisor in

support of its DIP financing motion (see Section 364(d) of the Bankruptcy Code).

### Notice and Hearing on the DIP Financing Motion

The court may hold an interim hearing to authorize the immediate access to financing to the extent necessary to avoid immediate and irreparable harm to the estate, but it cannot hold a final hearing earlier than 14 days from the date the debtor serves the DIP financing motion (Fed. R. Bankr. P. 4001(c)(2)).

The debtor must give notice of the hearing to all parties it must serve with the DIP financing motion and to any other entities as the court may direct (Fed. R. Bankr. P. 4001(c)(3) and see Service of the DIP Financing Motion).

### Local Rules

The S.D. Cal. applies the same guidelines to obtain credit for DIP financing and to cash collateral motions (see Local Rules). The court's guidelines are located in Appendix D2 to the S.D. Cal. Local Bankruptcy Court Rules (Financing Guidelines).

In addition to the applicable provisions of the Federal Rule of Bankruptcy Procedure and section 364 of the Bankruptcy Code, the Guidelines in Appendix D2 require that DIP financing requests be filed under S.D. Cal. Local Bankruptcy Court Rule 9013-1 to S.D. Cal. Local Bankruptcy Court Rule 9013-10 (which generally govern motion practice and contested matters).

The Financing Guidelines also provide specific requirements for DIP financing motions, such as that:

- Motions must provide a summary of the essential terms of the proposed DIP financing, which must specifically include:
  - the maximum borrowing available on a final basis;
  - the interim borrowing limit before entry of a final order;
  - all borrowing conditions;
  - both interest rate and points or other costs and fees;
  - maturity date and provisions;
  - events of default;
  - any limitations on use of funds; and
  - any protections to the lender afforded under section 364, including replacement liens and administrative priority.

- The movant must present a budget or projections in support of its DIP financing motion that justifies the interim funding sought.
- The court will typically **not** authorize DIP financing agreements that contain:
  - cross-collateralization of prepetition debt with postpetition assets (other than standard replacement liens) (see [Practice Note, DIP Financing: Overview: Increased Collateral Securing Prepetition Debt](#));
  - provisions binding the parties or estate regarding validity, perfection, or amount of petition liens or waiving claims against a secured lender (this relief should be sought by a regularly noticed motion served on all creditors and parties in interest);
  - waiver by the estate of rights under section 506(c) (right to recover the reasonable costs of preserving property) (see [Practice Note, The Section 506\(c\) Surcharge on Collateral: Section 506\(c\) Waivers](#));
  - provisions that grant liens on avoidance actions;
  - roll over or roll up of prepetition debt into postpetition debt (see [Practice Note, Roll-Up DIP Financing](#));
  - professional fee carve-outs that do not treat all professionals on a pro rata basis (see [Practice Note, Order of Distribution in Bankruptcy: “Carve-out” for Professional Fees in a DIP Financing](#)); or
  - provisions divesting the debtor of discretion in formulating a plan or administering assets.

The motion must specifically identify any departures from the Financing Guidelines (for example, inclusion of any of the above provisions) in the form of a checklist. The checklist format is provided in the Financing Guidelines.

**The motion must contain either the checklist or a certification of counsel that none of the identified provisions are included.**

If the motion departs from the Financing Guidelines, the motion must:

- State that the proposed order contains a provision of a type identified in the Financing Guidelines.
- Identify the location of each provision in the proposed order, stipulation, and loan agreement.
- Provide a justification of the provision.

The following table summarizes the requirements of the Financing Guidelines.

## Local Bankruptcy Rules: California (S.D. Cal.)

Provision	S.D. Cal. Bankruptcy Court Financing Guidelines
Essential terms governing the proposed DIP financing	<p>Should be summarized in the motion.</p> <p>The summary should include:</p> <ul style="list-style-type: none"> <li>• The maximum borrowing available on a final basis.</li> <li>• The interim borrowing limit before entry of a final order.</li> <li>• All borrowing conditions.</li> <li>• Both interest rate and points or other costs and fees.</li> <li>• Maturity date and provisions.</li> <li>• Events of default.</li> <li>• Any limitations on use of funds.</li> <li>• Any protections to the lender afforded under section 364, including replacement liens and administrative priority.</li> </ul>
Priming liens	<p>Liens on avoidance actions arising under sections 544, 545, 547, 548, and 549 of the Bankruptcy Code generally are not permitted. Any lien on avoidance actions must be specifically identified in the checklist and justified in the motion.</p> <p>There are no other special provisions regarding priming liens on other assets.</p>
Carve-outs	<p>Carve-outs for administrative expenses generally are permitted but should treat all professionals on a pro rata basis (see <a href="#">Practice Note, Order of Distribution in Bankruptcy: “Carve-out” for Professional Fees in a DIP Financing</a>). Any carve-out that does not treat all professionals on a pro rata basis must be specifically identified in the checklist and justified in the motion.</p>
Cross-collateralization	<p>Cross-collateralization of prepetition debts with postpetition assets generally is not permitted, other than standard replacement liens (see <a href="#">Practice Note, DIP Financing: Overview: Increased Collateral Securing Prepetition Debt</a>). Any other cross-collateralization of prepetition debts must be specifically identified in the checklist and justified in the motion.</p>
Roll-ups	<p>A roll-up of prepetition debt into postpetition debt generally is not permitted (see <a href="#">Practice Note, Roll-Up DIP Financing</a>). Any roll-up must be specifically identified in the checklist and justified in the motion.</p>
Court’s power and discretion; fiduciary duties; control regarding plan	<p>Provisions that limit the debtor’s fiduciary duties or divest the debtor of any discretion in the formulation of a plan or administration of the estate or otherwise limit access to the bankruptcy court to seek any relief under other applicable provisions of law generally are prohibited. These provisions must be specifically identified in the checklist and justified in the motion.</p>
Funding obligations	<p>Should be summarized in the motion.</p>
Termination or default	<p>Should be summarized in the motion.</p>
Change-of-control	<p>Should be summarized in the motion.</p>
Required sale of estate property	<p>Any requirement for sale of estate property (or any prohibition on sale) would divest the debtor of discretion in administration of the estate. These provisions therefore must be specifically identified in the checklist and justified in the motion.</p>

Provision	S.D. Cal. Bankruptcy Court Financing Guidelines
Investigation period relating to prepetition liens and claims	Provisions binding the estate or any parties regarding the validity, perfection, or amount of a secured creditor's prepetition lien are not permitted as part of interim relief. This relief must be sought by a regularly noticed motion, with notice to all creditors and parties in interest.  If these provisions are included in a DIP financing motion, they must be specifically identified in the checklist and justified in the motion.
Section 506(c) waivers	Section 506(c) waivers generally are not permitted, and these waivers must be specifically identified in the checklist and justified in the motion (see <a href="#">Practice Note, The Section 506(c) Surcharge on Collateral: Section 506(c) Waivers</a> ).

## Domestic Support Obligations

### Background/Federal Requirements

A domestic support obligation, defined in section 101(14A) of the Bankruptcy Code, is a debt that is:

- Owed to or recoverable by:
  - the debtor's spouse (§ 101(14A)(A)(i), Bankruptcy Code);
  - the debtor's former spouse (§ 101(14A)(A)(i), Bankruptcy Code);
  - the debtor's child (§ 101(14A)(A)(i), Bankruptcy Code);
  - the parent, legal guardian, or responsible relative of the debtor's child (§ 101(14A)(A)(i), Bankruptcy Code); or
  - a governmental unit (§ 101(14A)(A)(ii), Bankruptcy Code).
- In the nature of alimony, maintenance, or child support (§ 101(14A)(B), Bankruptcy Code).
- Included in:
  - a separation agreement (§ 101(14A)(C)(i), Bankruptcy Code);
  - a divorce decree (§ 101(14A)(C)(i), Bankruptcy Code);
  - a property settlement agreement (§ 101(14A)(C)(i), Bankruptcy Code);
  - a court order (§ 101(14A)(C)(ii), Bankruptcy Code); or
  - a lawful determination by a governmental unit (§ 101(14A)(C)(iii), Bankruptcy Code).
- Not assigned to any nongovernmental entity except to collect the debt (§ 101(14A)(D), Bankruptcy Code).

A domestic support obligation:

- Can accrue before, on, or after the petition date and can accrue interest under applicable non-bankruptcy law (§ 101(14A), Bankruptcy Code).
- Cannot be discharged under any chapter of the Bankruptcy Code, including Chapters 7, 11, 12, or 13.

(§ 523(a)(5), Bankruptcy Code.)

A Chapter 12 or 13 debtor must remain current on postpetition domestic support obligations to receive a discharge under Chapters 12 and 13 (§§ 1228(a) and 1328(a), Bankruptcy Code). An individual Chapter 11 debtor must remain current on postpetition domestic support obligations as a condition to confirmation of its plan (§ 1129(a)(14), Bankruptcy Code).

### Official Bankruptcy Form B2830

Official Bankruptcy Form B2830 is used to certify under section 1328(a) of the Bankruptcy Code that the debtor either:

- Owed no domestic support obligation when the bankruptcy petition was filed and was not required to pay any domestic support obligation since then.
- Was required to pay a domestic support obligation and has paid all amounts:
  - required under the Chapter 13 plan; and
  - that became due between the petition date and the day of the certification.

The debtor must also certify that the debtor has either:

- Not claimed an exemption under section 522(b)(3) of the Bankruptcy Code or state or local law, as specified in section 522(p)(1) and (2) of the Bankruptcy Code:

- in property that the debtor or a dependent uses as a residence, claims as a homestead, or acquired as a burial plot; and
- that exceeds \$170,350 in value.
- Claimed an exemption under section 522(b)(3) or state or local law, as specified in section 522(p)(1) and (2):
  - in property that the debtor or a dependent uses as a residence, claims as a homestead, or acquired as a burial plot; and
  - that exceeds \$170,350 in value.

The [Instructions to Official Bankruptcy Form 2830](#) provide that:

- In a joint case, each debtor must file the certifications.
- The debtor must make the certifications after it has completed the plan payments.

### Local Rules

#### Debtor's Certification Regarding Domestic Support Obligations in Individual Chapter 11 or Chapter 13 Cases

S.D. Cal. Local Bankruptcy Court Rule 4004-1 requires that a Chapter 11 individual debtor or a Chapter 13 debtor who has domestic support obligations file a certification substantially conforming to S.D. Cal. Local Bankruptcy Form CSD 2120 (for Chapter 13 debtors) or S.D. Cal. Local Bankruptcy Form CSD 2121 (for individual Chapter 11 debtors) to obtain a discharge.

In joint cases, each debtor may complete and file a separate form or may complete and file a single form signed by both debtors (S.D. Cal. LBR 4004-1).

#### Individual Chapter 11 Plan Confirmation: Attestation Regarding Domestic Support Obligations

Appendix D6 to the S.D. Cal. Local Bankruptcy Court Rules provides that in an individual Chapter 11 case, an individual debtor seeking confirmation of a (combined) plan and disclosure statement must include in the supporting declaration:

- An attestation about whether the debtor owes any domestic support obligations.
- Whether the debtor has paid all amounts that first became payable after the date of filing of the debtor's bankruptcy petition.

## First Day Declarations

### Background/Federal Requirements

The first day declaration is an independent document executed by a key executive or senior officer of the debtor, providing an explanation of the debtor's business, the events leading to the Chapter 11 case, the basis for the relief sought in the first day motions, and often the debtor's future intentions for the Chapter 11 case.

The transition into bankruptcy can be difficult for most companies, as their board of directors and management are forced to accept new limitations on their authority to operate the business and adapt to their new fiduciary duties to the debtor's secured creditors and unsecured creditors. The transition is equally difficult for a debtor's employees, lessors, creditors, and customers.

A first day declaration can help mitigate these concerns by providing an explanation for the events that led to the bankruptcy and a road map for the Chapter 11 case.

For more information on first day declarations, see [Practice Note, Chapter 11 First Day Declaration](#).

### Local Rules

The S.D. Cal. does not have any local rules concerning first day declarations.

## First Day Motions

### Background/Federal Requirements

A Chapter 11 debtor typically files several motions on or soon after the petition date to seek relief necessary to ease the debtor's transition into bankruptcy. These first day motions address both administrative and operational issues and may seek relief on an interim or final basis.

For more information on first day motions, see [Practice Note, First Day Motions: Overview](#) and [First Day Relief: Debtor Checklist](#).

### Local Rules

The Guidelines for First Day Motions are found in Appendix D1 of the S.D. Cal. Local Bankruptcy Court Rules.

### Typical First Day Motions

Typical first day motions in the S.D. Cal. include motions to:

## Local Bankruptcy Rules: California (S.D. Cal.)

- Pay prepetition payroll.
- Honor customer deposits and obligations.
- Authorize maintenance of existing bank accounts and cash management systems.
- Determine adequate assurance for utility companies.
- Obtain authorization for payment of insider compensation. These motions must state:
  - the nature and extent of the duties to be performed by these insiders; and
  - the business justification for the amount of the compensation proposed.

In an individual Chapter 11 case, orders granting insider compensation as a first day motion are effective only for 45 days from the petition date if the debtor files the notice described in S.D. Cal. Local Bankruptcy Court Rule 4002-2(d) within seven days of the petition date (S.D. Cal. LBR 4002-2(c)). After the initial 45-day period, requests for insider compensation are governed by S.D. Cal. Local Bankruptcy Court Rule 4002-2(a).

### Procedure

First day motions, declarations, other supporting documents, and proposed orders for the relief sought should be electronically filed, and the words "First Day Motion" **must** appear in the caption of all first day motions and orders.

Counsel for the debtor must immediately advise the judge's law clerk and the US Trustee by telephone of any first day motion filings.

First day motions concerning the use of cash collateral or DIP financing must comply with Federal Rule of Bankruptcy Procedure 4001(b) and (c).

The court may grant or deny a first day motion without a hearing, and this denial is not a disposition on the merits.

### Service

The debtor must serve parties or counsel for parties in interest, including:

- The US Trustee.
- Any committee of creditors or equity security holders established before or after the Chapter 11 filing (or, if there is no committee, the 20 largest unsecured creditors).
- Any secured creditor whose collateral or lien, including cash collateral, might be affected by the relief sought.

Before the filing of the Chapter 11 case, service of first day motions **may** be by:

- Express mail.
- Email.
- Overnight mail.

After the filing of the Chapter 11 case, service of first day motions **must** be by:

- Email.
- Fax.
- Personal service.
- Other electronic means. However, express or overnight mail may be used where a party cannot be contacted by fax, personal service, or other electronic means.

### Opposition

No opposition to a first day motion may be filed unless authorized by the court. If a party opposes a first day motion, they must immediately notify the judge's law clerk of their position by telephone.

### Orders

Within two business days after the entry of any order granting a first day motion, the debtor must serve by email **and** overnight delivery a conformed copy of this order on:

- The US Trustee.
- Any creditors or equity security holders committee (or, if no committee has been appointed, on the 20 largest unsecured creditors).
- Any secured creditor whose collateral, including cash collateral, or lien might be affected by the relief sought.
- Any and all other entities directed by the court.

Proof of service of the orders must be filed with the court no later than the next business day following the date of service.

Other than concerning an order authorizing the use of cash collateral or approving DIP financing, any party may file a motion to modify a first day order within 30 days of the entry of that order, unless otherwise ordered by the court. In this motion, the debtor has the burden of proof regarding the propriety of the relief granted in the original first day order. Motions for modifications will receive expedited consideration by the court.

### Post-Confirmation Requirements

#### Background/Federal Requirements

Local bankruptcy court rules may contain post-confirmation requirements for Chapter 11 cases, including liquidating cases. These requirements can include:

- Submission of a post-confirmation timetable and proposed order.
- Filing of periodic post-confirmation reports.
- Filing a closing or final report.
- A motion for a final decree.

#### Local Rules

The S.D. Cal. does not have any local rules concerning post-confirmation requirements.

### Prepacks

#### Background/Federal Requirements

Prepackaged bankruptcies, typically known as “prepacks,” have become more popular since the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). The BAPCPA has promoted the use of prepacks and has made traditional Chapter 11 bankruptcy cases more difficult and expensive. A prepack is a Chapter 11 bankruptcy in which the debtor negotiates the terms of and solicits votes on a plan before it files its Chapter 11 bankruptcy petition. Prepacks allow a company to emerge more quickly and efficiently from bankruptcy, while reducing the risks and uncertainties involved with negotiating a traditional plan during bankruptcy proceedings.

For more information on prepacks, see [Practice Note, The Prepackaged Bankruptcy Strategy](#) and [Timeline of a Prepackaged Bankruptcy Case](#).

#### Local Rules

Appendix D4 to the S.D. Cal. Local Bankruptcy Court Rules provides advisory guidelines (which the court may depart from) for a prepackaged Chapter 11 case (Prepack Guidelines).

#### Applicability of Guidelines

The debtor (or other party in interest) may move the court to apply some of or all these Prepack Guidelines to:

- Prepackaged Chapter 11 cases involving cramdown under section 1129(b) of the Bankruptcy Code. These are cases where the debtor has satisfied the requirements of paragraph 3.A.(1) of the Prepack Guidelines but intends to seek confirmation of the plan under section 1129(b), including regarding a class of claims that is:
  - deemed not to have accepted the plan under section 1126(g) of the Bankruptcy Code;
  - receiving or retaining property under the plan but whose members’ votes were not solicited prepetition and whose rejection of the plan has been assumed by the debtor for confirming the plan; or
  - receiving or retaining property under the plan and that voted prepetition to reject the plan, if no class junior to this rejecting class is receiving or retaining any property under the plan.
- Partial prepackaged Chapter 11 cases. These are cases where acceptances of the debtor’s plan were solicited before the commencement of the case from some but not all classes of claims or interests whose solicitation is required to confirm the debtor’s plan.

#### Notifications to Be Given Before Filing of Prepackaged Chapter 11 Case

At least five business days before the anticipated filing date of the prepackaged Chapter 11 case, the debtor must:

- Notify the US Trustee of the debtor’s intention to file a prepackaged Chapter 11 case.
- Supply the US Trustee with a copy of the debtor’s plan and disclosure statement or other solicitation materials.

Drafts of all first day motions to be filed on or shortly after the filing of the petition, with proposed orders attached as exhibits, must be furnished to the US Trustee at least two business days before the filing of the petition or as soon as practicable after the filing of an involuntary petition.

At least two business days before the anticipated filing of the prepackaged Chapter 11 case, counsel for the debtor should contact the clerk of court to discuss:

- The amount of the debtor’s assets.
- The number and type of creditors.
- The procedures for handling public inquiries (such as a website with information about the Chapter 11 case or the names, email addresses, physical addresses, and telephone numbers of the persons to whom information requests should be directed).
- Procedures for handling proofs of claim or interest.



The clerk of court will **not** assign the case to or discuss the merits of the case with a judge until the petition is filed.

### Commencement of Prepackaged Chapter 11 Case

As soon as practicable following the commencement of a prepackaged Chapter 11 case, the debtor must file:

- The plan.
- The disclosure statement or other solicitation documents.
- A summary of balloting as required by S.D. Cal. Local Bankruptcy Court Rule 3018-1.
- First day motions (see Local Rules).
- Any other filed motion.

To the extent that any of these documents differ in substance from the versions supplied to the US Trustee before the filing (see Notifications to Be Given Before Filing of Prepackaged Chapter 11 Case), the debtor must furnish to the US Trustee a copy of any documents that have been modified, with a redline to show changes.

Unless the court orders otherwise, if a Chapter 11 case is commenced by or against the debtor or if a Chapter 7 case is commenced against the debtor and that case is converted to a Chapter 11 case by the debtor after the debtor has transmitted all solicitation materials to holders of claims and interests whose vote on a proposed plan is sought, before the deadline for voting expires:

- The debtor must be permitted to accept but not solicit ballots until the voting deadline.
- After notice and a hearing, the court must determine the effect of these votes.

### Prepackaged Scheduling Motion

In a prepackaged Chapter 11 case, the debtor must file a motion scheduling a confirmation hearing for the prepackaged plan, which must:

- Represent that the solicitation of votes to accept or reject the debtor's plan:
  - was completed before the Chapter 11 case was filed and that no additional solicitation of votes on that plan is contemplated; or
  - has been deemed adequate by the court so that no additional solicitation will be required.
- Represent that the requisite acceptances of this plan have been obtained from each class of claims or

interests about which solicitation is required by the Bankruptcy Code except as provided directly below.

- Concerning any class of claims or interests that has not accepted the plan, represent whether each class is deemed not to have accepted the plan under section 1126(g) of the Bankruptcy Code or not and state whether the debtor is requesting confirmation under section 1129(b) of the Bankruptcy Code.
- Request entry of an order scheduling the hearing on confirmation of the plan and to determine whether the debtor has satisfied the requirements of section 1126(b)(1) or (2) of the Bankruptcy Code, for a date not later than 90 days after the petition date.
- Must identify the location of any provision in the plan that contains:
  - third-party releases;
  - exculpation or indemnity clauses; or
  - key employee incentive plans (KEIPs), key employee retention plans (KERPS), or severance packages.

## Professional Fee Requests

### Background/Federal Requirements

There are three components to getting paid as a professional to a Chapter 11 estate:

- The bankruptcy court must approve the professional's retention on notice to the US Trustee and key creditors. For information on getting retained as a professional to the DIP, see [Practice Note, Getting Retained as a Professional to the Debtor-in-Possession](#).
- Once a retention is approved, professionals have ongoing fiduciary duties and statutory obligations. For information on a DIP professional's ongoing duties and obligations, see [Practice Note, Fiduciary Duties and Statutory Obligations of Professionals to the Debtor-in-Possession](#).
- A DIP professional's fees and expenses must be approved under section 330 of the Bankruptcy Code and, if applicable, section 328 of the Bankruptcy Code (see [Practice Note, Getting Paid as a Professional to a Chapter 11 Debtor or Trustee](#)).

The fees and expenses of a professional retained under section 327 of the Bankruptcy Code are subject to court approval under sections 330 and 331 of the Bankruptcy Code. Section 328(a) of the Bankruptcy Code provides a mechanism for seeking preapproval of reasonable

terms and conditions for compensation of professionals employed under section 327 (see [Practice Note, Getting Retained as a Professional to the Debtor-in-Possession: Preapproval of Fee Arrangements](#)).

Individual judges and local court rules also contain requirements relating to fee requests. The US Trustee has also issued fee guidelines with detailed requirements (see [Practice Note, Getting Paid as a Professional to a Chapter 11 Debtor or Trustee: US Trustee Fee Guidelines](#)).

Under section 503(b)(2) of the Bankruptcy Code, compensation awarded under section 330(a) is classified as an administrative claim.

For more information on professional fee requests, see [Practice Note, Getting Paid as a Professional to a Chapter 11 Debtor or Trustee](#).

### Local Rules

#### General Rules Governing Fee Applications

S.D. Cal. Local Bankruptcy Court Rule 2016-2 and S.D. Cal. Local Bankruptcy Court Rule 2016-3 provide the general rules governing applications for allowance of compensation and expenses for professionals, the most material of which are that:

- Fee applications for professionals must conform to Federal Rule of Bankruptcy Procedure 2016 (S.D. Cal. LBR 2016-2(a)).
- Fee applications must comply with the local US Trustee Guidelines (see US Trustee Local Guidelines), including a categorized listing of services rendered and summary of hours and amount for each billing category in substantially the form of S.D. Cal. Local Bankruptcy Form CSD 1143 (except in Chapter 13 cases) (S.D. Cal. LBR 2016-2(b)).
- The initial fee application must include both the date of entry of the professional's employment order and the effective date of the order (S.D. Cal. LBR 2016-2(b)).
- In addition to the requirements for all fee applications, a final fee application must include:
  - a specific request for final approval of prior interim awards and payments; and
  - a request for payment of amounts previously allowed but unpaid, which should detail the amount allowed, the application of any retainer, and the amount remaining unpaid.

(S.D. Cal. LBR 2016-3; [Guidelines for Fulfilling the Requirements of the US Trustee](#) (UST Local Guidelines).)

#### US Trustee Local Guidelines

The US Trustee provides only limited local guidelines for compensation and reimbursement, which primarily incorporate the guidelines published by the national US Trustee Program. The local guidelines are Guideline No. 4 in the [Guidelines for Fulfilling the Requirements of the United States Trustee](#) (UST Local Guidelines).

The UST Local Guidelines provide that fee applications should comply with the applicable national guidelines, which for:

- Most cases and for non-attorneys in all cases is Appendix A Guidelines for Reviewing and Applications for Compensation filed under 11 U.S.C. § 330 (US Trustee Guidelines) (61 Fed. Reg. 24,890 (May 17, 1996)).
- Attorneys in larger Chapter 11 cases is the Large Case Guidelines (78 Fed. Reg. 36,248 (June 17, 2013)) (see Large Cases).

The UST Local Guidelines provide that use of project billing (use of categories) is not required if the total amount sought is less than \$7,500, unless the US Trustee or the court require otherwise (UST Local Guideline, 4.B).

The US Trustee will object to:

- In-house copy charges above the lesser of:
  - actual cost; or
  - 20 cents per page.
- Fax charges above the lesser of:
  - \$1.00 per page outgoing; or
  - 20 cents per page incoming.

(UST Local Guideline, 4.C.)

#### Cases with Multiple Professionals

In cases with multiple professionals, the debtor or the trustee must coordinate the service of a single combined notice of hearing for both interim and final applications for all professionals employed by the bankruptcy estate (S.D. Cal. LBR 2016-1).

#### Large Cases

Attorney fee applications in large cases are governed by US Trustee Program's 2013 Appendix B Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 for Attorneys in Larger Chapter 11 Cases (Large Case Guidelines) (78 Fed. Reg. 36,248 (June 17, 2013)) (S.D. Cal. LBR 2016-2(c)).

Large cases are defined as cases with \$50 million or more in both assets and liabilities, aggregating jointly administered cases. Single asset real estate cases are excluded. (UST Local Guidelines, n.2.)

S.D. Cal. Local Bankruptcy Court Rule 2016-2(c) refers to the US Trustee Guidelines for the definition of large cases. This appears to be an error because those guidelines were published before the Large Case Guidelines and do not have any reference to large cases. However, the UST Local Guidelines do provide the definition (see US Trustee Local Guidelines).

### Chapter 13 Cases

In a Chapter 13 case, the application of debtor's counsel for compensation is included in the local form confirmation order, which is S.D. Cal. Local Bankruptcy Form CSD 1177. This is used if the fees are not more than provided in the Court guidelines. (S.D. Cal. LBR 2016-2(e); [Chapter 13 Administration Guidelines Southern District of California](#).)

The current Chapter 13 fee guidelines are located in S.D. Cal. General Order No. 173-D, dated November 13, 2020 (note that the Chapter 13 Administration Guidelines reference "fees in excess of the US Trustee guidelines," but this appears to be an error because the US Trustee Guidelines do not provide any specific amounts for Chapter 13 fees and the application standard fees are found in the court's General Order).

To the extent the fees sought exceed the presumptive amounts or otherwise are not included in the confirmation order, debtor's counsel should separately file a fee application consistent with S.D. Cal. Local Bankruptcy Court Rule 2016-2 and S.D. Cal. Local Bankruptcy Court Rule 2016-3 (S.D. Cal. LBR 2016-2(e)).

### Required Forms

The two required forms are:

- S.D. Cal. Local Bankruptcy Form CSD 1143 (Fee Application: Exhibit "A" – Summary by Category). All applications (except Chapter 13) must include a summary of hours and fees by category in the form of S.D. Cal. Local Bankruptcy Form CSD 1143. The S.D. Cal. Local Bankruptcy Court Rules do not require actual use of S.D. Cal. Local Bankruptcy Form CSD 1143 if the application "is accompanied by an analysis that substantially conforms" to the form. (S.D. Cal. LBR 2016-2(b).)
- S.D. Cal. Local Bankruptcy Form CSD 1144 (Order Approving Interim or Final Application for Compensation

and Reimbursement of Expenses). All orders for interim or final compensation must substantially conform to S.D. Cal. Local Bankruptcy Form CSD 1144. (S.D. Cal. LBR 2016-4.)

### Interim Compensation Guidelines for Professionals

Appendix D5 to the S.D. Cal. Local Bankruptcy Court Rules sets out guidelines for requesting procedures for interim compensation. Interim compensation procedures allow for compensation for professionals on a more regular basis than would otherwise be allowed under section 331 of the Bankruptcy Code. In the Ninth Circuit, interim compensation procedures frequently are referred to as *Knudsen* procedures after the governing Ninth Circuit BAP case, *Knudsen Corp. v. US Trustee*, 84 B.R. 668 (9th Cir. B.A.P. 1998).

Notice of a hearing on a motion to approve interim compensation procedures should be given to:

- The US Trustee.
- All creditors and equity holders.
- The debtor.
- Parties requesting special notice according to S.D. Cal. Local Bankruptcy Court Rule 9013-4.

(S.D. Cal. LBR Appendix D5.)

The motion seeking interim compensation procedures should describe the requested procedures in detail. The court will generally approve interim procedures with:

- Monthly payment of fees and reimbursement of expenses (subject to the remaining requirements).
- Service of invoices, including supporting time detail, on:
  - the US Trustee;
  - all official committees or, if none appointed, the 20 largest unsecured creditors; and
  - parties requesting special notice.
- 14 days' notice and an opportunity to object following service, with the objection to be made in writing to the applicant and setting out the specific grounds for objection.
- The option for the applicant receiving an objection to:
  - request a hearing on the objection; or
  - simply hold back the amounts objected to until the next fee application.

- A 20% hold-back on fees, meaning that 80% of fees and 100% of expenses can be paid. To the extent there is an objection, the 20% hold-back can include the objected amounts (for example, an objection to fees does not require holding back more than the standard 20% unless the amount objected to exceeds 20%).
- A requirement that interim fee applications in compliance with all applicable rules must be filed and noticed for hearing about once every 120 days. The procedures should specifically provide that if a professional fails to comply with this requirement, that professional will not be entitled to continue to use the interim compensation procedures.
- An express statement that neither the US Trustee nor any other party in interest may be barred from raising objections to any charge or expense in any professional fee application filed with the court on the ground that no objection was raised concerning an interim invoice.

(S.D. Cal. LBR Appendix D5.)

### Compensation to Agents and Brokers

To the extent the aggregate compensation and expenses of an agent or broker exceeds \$1,500, a trustee or debtor must give notice required by S.D. Cal. Local Bankruptcy Court Rule 2002-2(a)(6) (for example, a Notice of Intended Action). The compensation and expenses may be paid without further notice, subject to final review under section 330 of the Bankruptcy Code (S.D. Cal. LBR 2014-2(b)).

### Postpetition Retainers

Under the UST Local Guidelines (see US Trustee Local Guidelines), postpetition retainers cannot be paid to counsel absent a court order expressly authorizing payment.

## Professional Retention Applications

### Background/Federal Requirements

A debtor-in-possession (DIP) must obtain bankruptcy court approval in order to retain professionals. Those professionals must demonstrate disinterestedness and a lack of any interest adverse to the estate. Court approval of the retention of the DIP's professionals is subject to significant disclosure obligations and conflict-of-interest rules.

To ensure the disinterestedness of the DIP's professionals, conflicts of interest are more strictly interpreted in bankruptcy than in other areas of the law. Certain conflicts

that a client can waive after full disclosure outside of bankruptcy (such as simultaneous representation of a client and a client's creditor) cannot be waived in bankruptcy. Even potential conflicts must be avoided. The Bankruptcy Code's strict conflict-of-interest requirements help ensure undivided loyalty and promote public confidence in the bankruptcy process.

For more information on the rules and procedures related to the DIP's retention of professionals, see [Practice Note, Getting Retained as a Professional to the Debtor-in-Possession](#).

### Local Rules

Applications to employ professionals are governed by:

- S.D. Cal. Local Bankruptcy Court Rule 2014-1.
- S.D. Cal. Local Bankruptcy Court Rule 2014-2 (regarding agents and brokers) (see Employment of Agents and Brokers).
- Guideline 3 in the [US Trustee Guidelines for Fulfilling the Requirements of the United States Trustee](#) (UST Local Guidelines).

### Timing of Application

For professionals retained at the outset of the case, Chapter 11 debtors must file applications for retention of all debtor professionals **not later than 30 days from the petition date**. The application should seek employment effective as of the outset of the case. (S.D. Cal. LBR 2014-1(a).)

The application for employment of any other professional retained by the debtor after the petition date or for other estate professionals (such as those employed by a committee or trustee) should be filed within 30 days from commencement of employment (S.D. Cal. LBR 2014-1(b)).

If the application is not filed within 30 days of the petition date (if the professional was retained at the outset) or 30 days from the commencement of employment (for committee or trustee professionals or debtor professionals entering a case at a later date), a noticed motion for *nunc pro tunc* approval is required (S.D. Cal. LBR 2014-1(a), (b)). This must be set for hearing under S.D. Cal. Local Bankruptcy Court Rule 9013-4(a)(17). The application must expressly state the fees and expenses accrued between the commencement of employment and the date of the application.

The UST Local Guidelines specifically refer applicants seeking *nunc pro tunc* approval to:

## Local Bankruptcy Rules: California (S.D. Cal.)

- *In re Atkins*, 69 F.3d 970 (9th Cir. 1995).
- *In re THC Financial Corp.*, 837 F.2d 389 (9th Cir. 1988).
- *In re Crook*, 79 B.R. 475 (B.A.P. 9th Cir. 1987).
- *In re Mahoney, Trocki & Associates*, 54 B.R. 823 (Bankr. S.D. Cal. 1985).

(UST Local Guidelines, 3.B.) The motion for *nunc pro tunc* approval should specifically address the bases for approval under these cases.

### Contents of Application

The application to employ a professional should include:

- The name and occupation of the person or firm to be employed (UST Local Guidelines, 3.A.1).
- The factual basis for employment, the specific services to be performed, and the reason for selection of the professional (with an attached statement of past experience, such as a CV or biography) (UST Local Guidelines, 3.A.2, 3.A.4).
- The terms and conditions of employment, including:
  - dates and amounts of all payments received;
  - the source of payments;
  - current hourly rates; and
  - other charges.

(UST Local Guidelines, 3.A.3.)

- A declaration of disinterestedness, setting out, to the best of the professional's knowledge, all the professional's connections to:
  - the debtor;
  - creditors;
  - any other parties in interest;
  - the professionals of the above parties;
  - the US Trustee; and
  - any person employed by the US Trustee.

The declaration should also state whether the professional holds any interest adverse to the estate of the debtor. (S.D. Cal. LBR 2014-1(a), (b); UST Local Guidelines, 3.A.6.) While S.D. Cal. Local Bankruptcy Court Rule 2014-1 requires the declaration, the UST Local Guidelines provide the specific requirements for the content of the declaration.

- A disclosure of compensation under Federal Rule of Bankruptcy Procedure 2016(b), if applicable (S.D. Cal. LBR 2014-1(d); UST Local Guidelines, 3.A.3).

- A copy of any retainer agreement, guarantee, security agreement, or other agreement relevant to the employment (S.D. Cal. LBR 2014-1(d); UST Local Guidelines, 3.A.3).
- The signature of an authorized person. As applicable, this should be:
  - an officer, general partner, or other principal of a corporate debtor;
  - an individual debtor;
  - the trustee; or
  - the chair of the committee.

The application should not be signed solely by the professional seeking employment. (UST Local Guidelines, 3.A.5.)

- A proposed order (S.D. Cal. LBR 2014-1(a), (b)).

### Multiple Counsel

If multiple firms are being employed as co-counsel by the debtor, trustee, or committee, the applications to employ should state:

- Facts supporting the need for multiple counsel.
- The services to be performed by each.
- An affirmative statement by each counsel that there will be no duplication of services.

(UST Local Guidelines, 3.C.)

### Arbitration and Other Prohibited Provisions

An application to employ professionals "must not contain an arbitration provision or other provisions inconsistent with employment as a bankruptcy professional" (S.D. Cal. LBR 2014-1(d)).

### Employment of Agents and Brokers

As with other professionals, a copy of the employment contract for an agent or broker to sell estate property must be attached (S.D. Cal. LBR 2014-2(a)).

The contract with an agent or broker must:

- Provide that it is effective only on court approval.
- Be for a term not longer than six months.
- "Not contain an arbitration provision or other provisions inconsistent with employment as a bankruptcy professional."

(S.D. Cal. LBR 2014-2(b).)

### Submission to US Trustee

Under S.D. Cal. Local Bankruptcy Court Rule 9034-1, all professional employment applications must be submitted to the US Trustee to obtain a US Trustee Statement of Position (S.D. Cal. LBR 2014-2). The application, including all supporting declarations and the proposed order, must be submitted to the US Trustee on the same day that it is filed with the court. The application should be submitted by email to [ustp.region15sop@usdoj.gov](mailto:ustp.region15sop@usdoj.gov) and should clearly set out a reply email or mailing address (S.D. Cal. LBR 9034-1(b)).

The US Trustee has 14 days from the filing and service of an employment application to file a Statement of Position, which may include a request for hearing (S.D. Cal. LBR 9034-1(e)).

If the US Trustee does not file a Statement of Position within 14 days or files a Statement of Position that does not object, the applicant may submit an order for employment (which should reference the docket number of the Statement of Position if one was filed) (S.D. Cal. LBR 9034-1(g)).

If the US Trustee files a Statement of Position that raises an objection to the requested employment but does not request a hearing, the application may:

- Submit an order requesting approval and referencing the docket entry for the Statement of Position (uploading an order without addressing the US Trustee's objection generally is not recommended).
- File supplemental documents in response to the Statement of Position (if, for example, the Statement of Position indicates that additional disclosures would resolve the issue).
- Schedule a hearing and file and serve a notice of hearing.

(S.D. Cal. LBR 9034-1(g).)

If the US Trustee files a Statement of Position that requests a hearing, it is up to the applicant to schedule a hearing and file and serve a notice of hearing (S.D. Cal. LBR 9034-1(h)).

### Substitution

A substitution of an attorney for the debtor or the trustee must comply with the rules regarding employment (S.D. Cal. LBR 2014-1(d)). In addition to filing a substitution of counsel form (S.D. Cal. Local Bankruptcy Form CSD 3011), the successor counsel must file an application for employment under the S.D. Cal. Local Bankruptcy Court Rules (UST Local Guidelines, 3.E).

### Postpetition Retainers

Under the UST Local Guidelines, postpetition retainers cannot be paid to counsel absent a court order expressly authorizing payment (UST Local Guidelines, 3.D).

## Proofs of Claim and Objections to Claims

### Background/Federal Rules

A proof of claim is a written statement setting out a creditor's claim and asserting its right to receive a distribution from the bankruptcy estate. It must "conform substantially" to Official Bankruptcy Form B410 (Fed. R. Bankr. P. 3001(a)). The purpose of a proof of claim is to give notice of the claim to the court, the debtor, the trustee, and other creditors.

A properly prepared proof of claim constitutes prima facie evidence of the validity and amount of the claim (Fed. R. Bankr. P. 3001(f)) and is deemed allowed, unless a party in interest (such as the debtor) objects (§ 502(a), Bankruptcy Code). This means any distribution of the debtor's assets made on account of a claim is based on the filed proof of claim if it is not challenged (or survives a challenge).

For more information on proofs of claim, see [Practice Notes, Filing a Proof of Claim in a Chapter 11 Bankruptcy Case](#) and [Filing a Proof of Claim: Pitfalls and Precautions](#).

For more information on objections to claims, see [Practice Note, Objections to Claims: Overview](#).

### Local Rules

Objections to claims are governed by S.D. Cal. Local Bankruptcy Court Rule 3007-1. Except where an adversary proceeding is required, an objection to a claim must be filed as a motion using S.D. Cal. Local Bankruptcy Form CSD 2015 (Objection to Claim and Notice Thereof) (S.D. Cal. LBR 3007-1(a)).

S.D. Cal. Local Bankruptcy Form CSD 2015 requires the objecting party to provide:

- The claim number (S.D. Cal. LBR 3007-1(b)), name of the creditor, and dollar amount of the claim.
- The basis of objection by checking the appropriate box on the form. If the basis is inclusion of postpetition interest or charges or "other," supporting affidavits or declarations are required. If the basis is "other," the objecting party must also briefly state the basis. The objecting party will likely want to attach a statement

setting out the grounds for objection for most claims where the basis is “other.”

### Opposition to Claim Objection

Notice of the objection is included in S.D. Cal. Local Bankruptcy Form CSD 2015. The moving party on the claim objection is not required to set the objection for hearing. Any party opposing the claim objection must:

- Obtain a hearing date from the courtroom deputy.
- Serve and file:
  - a Declaration in Opposition to Motion; and
  - a Request and Notice of Hearing on S.D. Cal. Local Bankruptcy Form CSD 1184.

The Declaration in Opposition to Motion must specifically state:

- the interest of the opposing party; and
- the grounds for opposition to the claim objection (which must be stated with particularity).
- Serve the Declaration and Notice on the moving party within 30 days of the service date of the claim objection (subject to extension under Federal Rule of Bankruptcy Procedure 9006, depending on the manner of service). The Declaration and Notice must both be filed not later than the next business day following service.

(S.D. Cal. Local Bankruptcy Form CSD 2015.)

### Adversary Proceeding

If an objection to a claim is joined with a demand for relief of a type specified in Federal Rule of Bankruptcy Procedure 7001 about which an adversary proceeding is required, the objection will be governed by S.D. Cal. Local Bankruptcy Court Rule 7003-1 pertaining to adversary proceedings (S.D. Cal. LBR 3007-1(a)).

## Reaffirmation of Debt

### Background/Federal Requirements

A debtor may choose to keep a loan in place rather than discharge the loan in bankruptcy, especially if the debtor wants to retain the property, such as a vehicle or a family home, that is subject to a security interest. To retain property that acts as collateral for a loan, the debtor can enter into a new contract for the loan with the creditor called a reaffirmation agreement. Under a reaffirmation agreement, the debtor:

- Reaffirms personal liability on the debt that would be otherwise discharged under section 524(a)(1) of the Bankruptcy Code.
- Retains the property.
- Continues to make payments on the loan to prevent the creditor from foreclosing on its underlying collateral.

Reaffirmation is governed by section 524 of the Bankruptcy Code. A reaffirmation agreement must strictly comply with the requirements of section 524(c), (d), and (m) of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 4004(c)(1)(J), (K), and (c)(2) and 4008 to be valid.

For more information on reaffirmation of debt in bankruptcy, see [Practice Note, Reaffirmation of Debt in Chapter 7 Bankruptcy](#).

### Bankruptcy Rule 4004(c)(1)(J)

If a motion to enlarge the time to file a reaffirmation agreement is pending (Fed. R. Bankr. P. 4008(a)), the bankruptcy court will not grant a Chapter 7 discharge, even if the time for filing an objection to discharge has expired (Fed. R. Bankr. P. 4004(c)(1)(J)).

### Bankruptcy Rule 4004(c)(1)(K)

If a presumption has arisen that the reaffirmation agreement is an undue hardship on the debtor under section 524(m) of the Bankruptcy Code and the court has not concluded the hearing on this presumption, the bankruptcy court will not grant a Chapter 7 discharge, even if the time for filing an objection to discharge has expired (Fed. R. Bankr. P. 4004(c)(1)(K)).

### Bankruptcy Rule 4004(c)(2)

A reaffirmation agreement must be entered into before discharge (§ 524(c)(1), Bankruptcy Code). However, the agreement does not need to be approved by the court before discharge. For this reason, Federal Rule of Bankruptcy Procedure 4004(c)(2) allows a delay in the entry of the discharge order for 30 days on the debtor’s motion and for further time on a motion made within the 30-day period.

### Bankruptcy Rule 4008(a)

The reaffirmation agreement must be filed with the court no more than 60 days after the first date set for the meeting of creditors (§ 524(c)(3)(A)-(C), Bankruptcy Code; Fed. R. Bankr. P. 4008(a)). The court can, at any time and in its discretion, enlarge the time to file the reaffirmation agreement (Fed. R. Bankr. P. 4008(a)).

When filed, the reaffirmation agreement must be accompanied by:

- The reaffirmation cover sheet (Fed. R. Bankr. P. 4008(a); Official Bankruptcy Form B427).
- If applicable, an attorney declaration.

### Bankruptcy Rule 4008(b)

The debtor's signed statement in support of the reaffirmation agreement is accompanied by a statement of the total income and expenses stated on the debtor's Schedules I (Official Bankruptcy Form B106I) and J (Official Bankruptcy Form B106J and Official Bankruptcy Form B106J-2). If there is a difference between the income and expenses stated on the debtor's statement in support of the reaffirmation agreement and Schedules I and J, the debtor's statement in support of the reaffirmation agreement should include an explanation of that difference (Fed. R. Bankr. P. 4008(b)).

### Local Rules

There are no local rules or guidelines governing or relating to reaffirmation of debt. S.D. Cal. Local Bankruptcy Form CSD 1226 (Reaffirmation Agreement with Cover Sheet) must be used by any party seeking to reaffirm a debt.

## Removal, Remand, and Abstention in Bankruptcy

### Background/Federal Requirements

Removal, remand, and abstention are important tools to be considered during a bankruptcy proceeding for transferring claims to another court or to prevent that court from determining an issue that it should not hear and decide.

A party can unilaterally remove an action pending in state court to a district court having jurisdiction, where it can then be transferred to the bankruptcy court, if appropriate (28 U.S.C. §§ 1441, 1446, and 1452(a)). After removal, on motion of a non-removing party, the court can remand the matter back to state court (28 U.S.C. §§ 1447 and 1452(b)) or the court, on its own motion or a motion of a party, can abstain from hearing a matter because the state court is capable of hearing and deciding the matter. Abstention is either mandatory or permissive (28 U.S.C. § 1334).

For more information on removal, remand, and abstention in bankruptcy cases, see [Practice Note, Notice of Removal, Remand, and Abstention in Bankruptcy](#).

### Local Rules

#### Removal

A notice of removal must be filed with the court and include an adversary proceeding cover sheet in addition to the requirements of Federal Rule of Bankruptcy Procedure 9027(a)(1). The adversary proceeding cover sheet is S.D. Cal. Local Bankruptcy Form B 1040 (S.D. Cal. LBR 9027-1).

If a notice of removal or answer contains a demand for a jury trial, the words "JURY DEMAND" must appear immediately after the title of the document. Notation of the jury demand solely on S.D. Cal. Local Bankruptcy Form B 1040 is not sufficient to constitute a demand for jury trial (S.D. Cal. LBR 9027-2).

#### Remand

A motion for remand under Federal Rule of Bankruptcy Procedure 9027(d) must be filed with the clerk of the court (S.D. Cal. LBR 9027-3).

A hearing is required for a motion for remand (S.D. Cal. LBR 9013-4(a)(19)). Under S.D. Cal. Local Bankruptcy Court Rule 9013-6, the movant should notice the motion for hearing when the motion is filed.

#### Abstention

S.D. Cal. Local Bankruptcy Court Rule 5011-2 provides that:

- A motion for abstention under 28 U.S.C. Section 1334(c) must be filed with the clerk of the court and is governed by Federal Rule of Bankruptcy Procedure 9027(d).
- A hearing is required for a motion for abstention. Under S.D. Cal. Local Bankruptcy Court Rule 9013-6, the movant should notice the motion for hearing when the motion is filed.

## Retaining a Claims Agent

### Background/Federal Requirements

To relieve administrative pressure on both debtors and the bankruptcy clerk, Congress enacted 28 U.S.C. Section 156(c) to permit outside vendors (claims agents), at the expense of the bankruptcy estate, to assume certain specified administrative functions mandated by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

Section 156(c) limits the function of the claims agent to that of a delegatee of the clerk of court to perform the following tasks:



- Managing the claims process.
- Providing noticing services.
- Disseminating information to the public and responding to requests for case information.

Claims agents, however, may also be retained as administrative agents under section 327 of the Bankruptcy Code to provide services beyond the constraints of 28 U.S.C. Section 156(c), including:

- Assisting with the preparation of schedules of assets and liabilities (schedules) and statements of financial affairs (statements) (see [Practice Note, Schedules and Statements of Financial Affairs: Overview](#)).
- Aggregating, sorting, and analyzing proofs of claims.
- Assisting with the reconciliation of claims and the analysis of executory contracts and unexpired leases, including issues such as the cure, assumption, and rejection of contracts and leases.
- Soliciting and tabulating votes on plans of reorganization.
- Making distributions according to the terms of the plan.

For more information on the role and responsibilities of a claims agent, see [Practice Note, The Retention and Role of a Claims Agent in Bankruptcy](#).

### Local Rules

The S.D. Cal. does not have any special rules relating to claims agents.

## Retention of Local Counsel

### Background/Federal Requirements

As a general rule, attorneys not admitted in the jurisdiction where a bankruptcy case is pending must be admitted *pro hac vice* to appear before the bankruptcy court in that case. To be admitted *pro hac vice*, an attorney must often certify or attest to certain facts, including that the attorney is:

- Eligible for admission to the bankruptcy court.
- Admitted and in good standing as a member of the bar in the attorney's state of practice.
- Willing to submit to the disciplinary jurisdiction of the bankruptcy court for any alleged misconduct in the course of the case for which the attorney is admitted.
- Generally familiar with the court's local rules.

Applicable rules also frequently require the attorney seeking *pro hac vice* admission to pay a fee.

Counsel must review rules and practices of the relevant jurisdiction in which a case is filed or will be filed to determine whether to retain local counsel and to understand the requirements for *pro hac vice* admission.

### Local Rules

The S.D. Cal. Bankruptcy Court incorporates by reference and adopts S.D. Cal. Local Civil Rule 2.1, S.D. Cal. Local Civil Rule 2.2, and S.D. Cal. Local Civil Rule 83.3 governing the appearance of attorneys in bankruptcy cases and actions (S.D. Cal. LBR 9010-1).

Admission to and continuing membership in the bar of the S.D. Cal. Bankruptcy Court and the S.D. Cal. District Court is limited to attorneys of good moral character who are active members in good standing of the State Bar of California (S.D. Cal. CivLR 83.3(c)(1)(a)).

Attorneys in good standing of and eligible to practice before the bar of any US court or of the highest court of any state, territory, or insular possession of the US may practice in the S.D. Cal. Bankruptcy and District Courts if it is a matter in which the attorney is employed or retained by the US or its agencies (S.D. Cal. CivLR 83.3(c)(3)).

### Pro Hac Vice

*Pro hac vice* applications under S.D. Cal. Local Civil Rule 83.3(c)(4) for appearance in bankruptcy cases and actions must be presented to the clerk. The application must be accompanied by the required fee. Checks must be made payable to Clerk, United States District Court. (S.D. Cal. LBR 9010-3.)

Attorneys not admitted to the California State Bar who reside in California, are regularly employed in California, or are regularly engaged in business, professional, or other activities in California are barred from appearing before the S.D. Cal. District Court as well as the S.D. Cal. Bankruptcy Court unless authorized by the US Constitution or Acts of Congress (S.D. Cal. CivLR 83.3(c)(4)).

A judge assigned to a particular matter may, in the judge's discretion, require an attorney who maintains an office outside of the S.D. Cal. to designate local counsel as co-counsel (S.D. Cal. CivLR 83.3(c)(5)).

## Section 363 Sales

### Background/Federal Requirements

After notice and a hearing, the bankruptcy court may approve a section 363 sale of a debtor's assets, other than

## Local Bankruptcy Rules: California (S.D. Cal.)

in the ordinary course of business (§ 363(b), Bankruptcy Code). A debtor-in-possession or trustee seeking approval of a section 363 sale must comply with:

- Section 363(b) of the Bankruptcy Code (see Section 363(b) Requirements and Section 363(b)(1)(A) and (B): Sale of PII Requirements).
- Federal Rule of Bankruptcy Procedure 2002 (see Bankruptcy Rule 2002 Notice Requirements).
- Federal Rule of Bankruptcy Procedure 6004 (see Bankruptcy Rule 6004 Requirements and Bankruptcy Rule 6004(g): Sale of PII Requirements).
- Section 365 of the Bankruptcy Code, to the extent that the sale involves the assumption, assignment, or rejection of any executory contracts or unexpired leases, (see Section 365 Requirements).
- Any applicable local bankruptcy court rules (see Section 363 Sales: Local Rules).

Debtors-in-possession and trustees have great discretion over the method of conducting the sale and are not required to use any specific sale or bidding procedures (§ 363(b), Bankruptcy Code). However, they must comply with certain procedural requirements under Bankruptcy Rules 2002 and 6004 regardless of the form of sale and any applicable local bankruptcy court rules.

For more information on section 363 sales, see:

- [Practice Note, Buying Assets in a Section 363 Bankruptcy Sale: Overview.](#)
- [Timeline of a Section 363 Sale.](#)
- [Article, Strategies for Purchasing and Selling Assets in Chapter 11.](#)

### Section 363(b) Requirements

After a notice and a hearing, the trustee (including a debtor-in-possession) may use, sell, or lease property of the estate outside of the ordinary course of business. Therefore, the debtor must provide adequate and reasonable notice of a proposed sale (§ 363(b), Bankruptcy Code and see Bankruptcy Rule 2002 Notice Requirements).

Courts have also held that the sale must:

- Be in the best interests of the **estate** and its creditors. The debtor generally has a fiduciary duty to obtain the highest or best price for the assets (see *Cello Bag Co., Inc. v. Champion Int'l Corp.* (In re Atlanta Packaging Prods., Inc.), 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)). To satisfy this requirement, the sale is usually subject

to an auction. The highest price is not always the best price, and it is unnecessary to show that the purchase price was the highest possible price obtainable under the circumstances.

- Be proposed in good faith (see *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 150 (3d Cir. 1986)).
- Have a legitimate business justification (see *Committee of Equity Sec. Holders v. Lionel Corp.* (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983)).

Section 363(b) sales of all or substantially all of the debtor's assets also require a court to find that the sale is not a *sub rosa* plan (see [Practice Note, Buying Assets in a Section 363 Bankruptcy Sale: Overview: Sales of All or Substantially All Assets](#)). A *sub rosa* plan is a transaction that has the practical effect of predetermining the essential terms of a plan of reorganization.

For more information on section 363 requirements, see [Practice Note, Buying Assets in a Section 363 Bankruptcy Sale: Overview: Legal Requirements](#).

### Section 363(b)(1)(A) and (B): Sale of PII Requirements

Because of privacy issues, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) restricted the use, lease, and sale of personally identifiable information (PII). These restrictions do not apply to other forms of estate property.

Specifically, a debtor cannot sell or lease PII outside the ordinary course of business unless either:

- The sale or lease does not violate the debtor's privacy policy. The transfer of PII is allowed if permitted by the debtor's privacy policy and the transfer complies with all the terms of the privacy policy.
- A consumer privacy ombudsman is appointed under section 332 of the Bankruptcy Code and the court approves the sale or lease after considering:
  - the facts, circumstances, and conditions of the sale or lease; and
  - finding that the sale or lease does not violate applicable non-bankruptcy law.

(§ 363(b)(1), Bankruptcy Code.)

For additional requirements for the sale of PII, see Bankruptcy Rule 6004(g): Sale of PII Requirements.

For more information on the sale of PII, see [Practice Note, Property of the Estate: Special Intangible Property Interests: Customer Data](#).

### Bankruptcy Rule 2002 Notice Requirements

Bankruptcy Rule 2002 sets out notice requirements for section 363 sales regarding:

- **Length and method of notice.** The clerk of the bankruptcy court or another person directed by the court must give parties at least 21 days' notice of the sale by mail, unless the court limits or shortens the time or directs another method of giving notice (Fed. R. Bankr. P. 2002(a)(2)).
- **Content of notice.** The notice must include:
  - the time and place of any public sale;
  - the terms and conditions of any private sale;
  - the time fixed for filing objections; and
  - a general description of the property to be sold. The notice of a proposed sale of PII must state whether the sale is consistent with the debtor's privacy policy (see Section 363(b)(1)(A) and (B): Sale of PII Requirements).

(Fed. R. Bankr. P. 2002(c)(1).)

- **Parties served.** The notice of the sale must be served on:
  - the debtor;
  - the trustee, if any;
  - all creditors;
  - any indenture trustees;
  - any official creditors' committees and equity committees, or their authorized agents;
  - the Securities and Exchange Commission (SEC), if appropriate;
  - the Commodity Futures Trading Commission, in a commodity broker case;
  - the Internal Revenue Service (IRS);
  - the US attorney for the district where the case is pending, if a debt is owed to the US other than for taxes, and on the department, agency, or instrumentality of the US through which the debtor became indebted;
  - the Secretary of the Treasury, if the US has a stock interest;
  - the US Trustee;
  - equity security holders, in sales of all or substantially all assets, unless the court orders otherwise; and
  - entities who have requested notice under Federal Rule of Bankruptcy Procedure 2002.

(Fed. R. Bankr. P. 2002(a)(2), (d), (g), (i), (j), (k).)

- **Additional parties served.** Notice must also be served on:

- the consumer privacy ombudsman, if applicable (§ 332(a), Bankruptcy Code and see Section 363(b)(1)(A) and (B): Sale of PII Requirements and Bankruptcy Rule 6004(g): Sale of PII Requirements);
- all parties to executory contracts or unexpired leases to be assumed and assigned, or rejected as part of the sale (Fed. R. Bankr. P. 6006(c) and see Section 365 Requirements);
- all parties known or reasonably believed to have asserted a lien, encumbrance, claim, or other interest in the assets to be sold (Fed. R. Bankr. P. 6004(c) and see Bankruptcy Rule 6004 Requirements);
- the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, if the sale implicates the antitrust laws of the US (§ 363(b)(2), Bankruptcy Code); and
- the Committee on Foreign Investment in the US if the sale implicates the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) (for more information on FIRRMA, see [Legal Update, FIRRMA Signed into Law, Expanding Scope of CFIUS Review](#)).

### Bankruptcy Rule 6004 Requirements

Bankruptcy Rule 6004 sets out requirements for:

- **Notice.** Notice of a proposed sale of estate property outside of the ordinary course of business must be given consistent with Bankruptcy Rule 2002 (Fed. R. Bankr. P. 6004(a) and see Bankruptcy Rule 2002 Notice Requirements).
- **Objections.** Objections to the proposed sale must be filed and served at least seven days before the date of the sale or within the time fixed by the court (Fed. R. Bankr. P. 6004(b)). An objection gives rise to a contested matter governed by Federal Rule of Bankruptcy Procedure 9014 (Bankruptcy Rule 9014).
- **Sale free and clear of liens.** A sale free and clear of liens or other interests under section 363(f) of the Bankruptcy Code is a contested matter for which a motion must be made under Bankruptcy Rule 9014 and served on the parties who have liens or other interests in the property to be sold (Fed. R. Bankr. P. 6004(c)). The notice must include the date of the sale hearing and the deadline to file and serve objections on the debtor or the trustee. Under Bankruptcy Rule 9014, the motion must be served in the manner provided for service of a summons and complaint by Federal Rule of Bankruptcy Procedure 7004.

- **Hearing.** If a timely objection is made, the hearing date may be set out in the original notice of the sale (Fed. R. Bankr. P. 6004(e)). No hearing is required if there are no objections. If the original sale notice does not contain a hearing date, the objecting party commonly obtains a hearing date and time from the court and states it on the objection.
- **Public or private sale.** The sale may be by private sale or public auction. On the completion of the sale, unless it is impracticable, the trustee or the debtor must file and transmit to the US Trustee an itemized statement of:
  - the property sold;
  - the name of each purchaser; and
  - the price received for each item or lot or for the property as a whole if sold in bulk.(Fed. R. Bankr. P. 6004(f)(1).)

If an auctioneer sells the property, then the auctioneer must file the statement and provide a copy to the US Trustee and the debtor or the trustee.
- **Execution of instruments.** The debtor or the trustee must execute any instrument necessary or ordered by the court to effectuate the transfer to the purchaser (Fed. R. Bankr. P. 6004(f)(2)).
- **Stay of sale order.** Sale orders are stayed for 14 days, unless the court orders otherwise (Fed. R. Bankr. P. 6004(h)). This gives any objecting parties time to seek a further stay while they appeal the sale order. Courts can waive or reduce the 14-day appeal period, on request of the parties, if there is a reason to close the sale early.

### Bankruptcy Rule 6004(g): Sale of PII Requirements

A motion to sell PII outside of the terms of the debtor's privacy policy:

- Must include a request for an order directing the US Trustee to appoint a consumer privacy ombudsman under section 332 of the Bankruptcy Code, whom it must appoint at least seven days before the sale hearing.
- Is a contested matter governed by Bankruptcy Rule 9014 and must be transmitted to the US Trustee and served on:
  - any official creditors' and equity committees;
  - the creditors included on the list of the 20 largest creditors filed under Federal Rule of Bankruptcy Procedure 1007(d), if no creditors' committee has

been appointed (see [Standard Document, List of Largest Unsecured Creditors](#)); and

- any other entity that the court may direct.

(Fed. R. Bankr. P. 6004(g)(1).)

If a consumer privacy ombudsman is appointed, then at least seven days before the sale hearing, the US Trustee must file a notice of the appointment, including:

- The name and address of the person appointed.
- A verified statement of that person setting out their connections with:
  - the debtor;
  - creditors;
  - any other party in interest;
  - the respective attorneys and accountants of the above entities;
  - the US Trustee; and
  - any person employed in the office of the US Trustee.

(Fed. R. Bankr. P. 6004(g)(2).)

Section 363(b)(1)(A) and (B) of the Bankruptcy Code contains additional requirements for the sale of PII (see Section 363(b)(1)(A) and (B): Sale of PII Requirements).

For more information on the sale of PII, see [Practice Note, Property of the Estate: Special Intangible Property Interests: Customer Data](#).

### Section 365 Requirements

Executory contracts and unexpired leases may be assumed by the debtor and assigned to buyers either as a stand-alone section 363 sale of just contracts and leases or as part of a larger section 363 sale of other assets.

To assume and assign an unexpired lease or executory contract:

- The debtor must cure all defaults, including all non-monetary defaults, or provide adequate assurance that the default will be cured promptly, except for incurable non-monetary breaches of unexpired real property leases and defaults based on breaches of ipso facto provisions (§ 365(b)(1)(A), (2), Bankruptcy Code).
- The debtor must compensate or provide adequate assurance that it will promptly compensate the non-debtor for any actual monetary loss caused by the default (§ 365(b)(1)(B), Bankruptcy Code).

## Local Bankruptcy Rules: California (S.D. Cal.)

- The purchaser must provide adequate assurance of future performance, even if there are no defaults (§ 365(b)(1)(C), (f)(2)(B), Bankruptcy Code).

Federal Rule of Bankruptcy Procedure 6006(c) and Bankruptcy Rule 9014 govern the timing and procedure for giving notice of the proposed assumption, assignment, or rejection of a lease or executory contract, including providing notice to the other parties to the lease or contract, as well as to the US Trustee.

For more information on the assignment of executory contracts and unexpired leases, see [Practice Note, Executory Contracts and Leases: Overview: Assignment](#).

### Local Rules

In the S.D. Cal., the two separate sets of provisions that apply to sale of property not in the ordinary course of business are:

- S.D. Cal. Local Bankruptcy Court Rule 6004-1 to S.D. Cal. Local Bankruptcy Court Rule 6004-3, which generally supplement the requirements of Federal Rule of Bankruptcy Procedure 6004 for any use, sale, or lease of property not in the ordinary course of business.
- Appendix D3 to the S.D. Cal. Local Bankruptcy Court Rules, which governs any sale of substantially all assets of the estate within 60 days of the petition date.

### Publication of Sale Advertisement

If the court requires publication of an advertisement regarding the sale, the advertisement must be published in publications most likely to reach interested purchasers (S.D. Cal. LBR 6004-1(a)). Appendix E to the S.D. Cal. Local Bankruptcy Court Rules provides a list of acceptable publications and states that the court may, “for the convenience of the parties in interest or in the interest of justice,” designate any other newspaper (S.D. Cal. LBR 6004-1(b)).

If the anticipated cost of publication will exceed 5% of the anticipated sale proceeds, this requirement may be excused by an ex parte motion (S.D. Cal. LBR 6004-1(a)). Counsel generally should determine the costs of advertisement and address this in the motion for sale. However, this ex parte process can be used in the alternative if the sale has already been approved before it becomes apparent that the cost of advertising will be excessive.

The US Trustee has 14 days from the filing and service of an employment application to file a statement of position, which may include a request for hearing (S.D. Cal. LBR 9034-1(e)).

### Notice Required

A motion for sale may be noticed under a notice of intended action and does not require a hearing if it:

- Does not include PII (governed by S.D. Cal. LBR 6004-3).
- Is not a sale free and clear of liens (which requires service under Federal Rule of Bankruptcy Procedure 7004).
- Is not a sale of substantially all assets of the estate (governed by S.D. Cal. LBR Appendix D3).

(S.D. Cal. LBR 2002-2(a)(2); S.D. Cal. LBR Appendix D3.)

A notice of intended action, including for a sale when allowed under S.D. Cal. Local Bankruptcy Court Rule 2002-2(a)(2), must substantially comply with S.D. Cal. Local Bankruptcy Form CSD 1180. The form itself is not mandatory if there is substantial compliance with the form (S.D. Cal. LBR 2002-2(c)).

Even when the notice of intended action rule applies, a motion must still be filed, with declarations providing appropriate supporting evidence (S.D. Cal. LBR 2002-2(c); S.D. Cal. LBR 9013-7(a)(1)).

If there is no objection to a notice of intended action for a sale, no order is required to consummate the non-contested sale (S.D. Cal. LBR 6004-2).

S.D. Cal. Local Bankruptcy Court Rule 2002-2(a)(2) does not permit a notice of intended action where either:

- The proposed sale is free and clear of liens.
- The sale or lease includes PII.

In either case, the movant should notice the motion for hearing. Sales free and clear require a hearing under Federal Rule of Bankruptcy Procedure 6004(c), and sales or leases including PII require a hearing regarding the rules for appointment of a consumer privacy ombudsman (see Sale of Personally Identifiable Information (PII)).

The applicable form for a notice of hearing and motion for service on all parties is S.D. Cal. Local Bankruptcy Form CSD 1181.

### Report of Sale

Even if a sale is non-contested and completed without a court order, the trustee must file a report of the non-contested sale under Federal Rule of Bankruptcy Procedure 6004(f)(1) within a reasonable amount of time (S.D. Cal. LBR 6004-2).

S.D. Cal. Local Bankruptcy Court Rule 6004-2 provides that:

## Local Bankruptcy Rules: California (S.D. Cal.)

- The report should include a description of the property sold in the form of Exhibit A to S.D. Cal. Local Bankruptcy Form CSD 2024. This form is specifically for use by a trustee but provides the appropriate information to be included in a report of sale filed by a debtor.
- The report should attach a copy of the escrow statement (if applicable) or other documents showing the distribution of the total proceeds of the sale.

### Sale of Personally Identifiable Information (PII)

Where a proposed sale or lease of property includes PII governed by sections 363(b)(1)(B) and 332 of the Bankruptcy Code, S.D. Cal. Local Bankruptcy Court Rule 6004-3 requires that the motion to sell or lease be accompanied by a separate motion for appointment of a consumer privacy ombudsman.

Within 24 hours, the movant must provide telephonic notice to the US Trustee of the motion for appointment of the consumer privacy ombudsman. The motion cannot be filed with the notice of intended action procedure (S.D. Cal. LBR 2002-2(a)(2)).

The US Trustee must file a notice of the appointment of a privacy ombudsman at least 14 days before the hearing on the sale motion (S.D. Cal. LBR 6004-3(b)). The ombudsman must file a report at least seven days before the hearing on the proposed sale or lease (S.D. Cal. LBR 6004-3(c)). While a notice of hearing is not expressly required by the local rule, the movant should request one under S.D. Cal. Local Bankruptcy Court Rule 9013-4(b)(3) because the timing for appointment of the ombudsman is based on the hearing date.

### Sale of Substantially All Assets

Appendix D3 to the S.D. Cal. Local Bankruptcy Court Rules (Guidelines for the Sale of Substantially All Assets of a Chapter 11 Estate Under § 363 Within 60 Days of the Filing of the Petition) governs both motions:

- To sell substantially all assets within 60 days of the filing of a Chapter 11 petition (Sale Motions).
- For sale, bid, or auction procedures regarding a sale of this nature (Sale Procedure Motions).

While Appendix D3 expressly applies to Sale Motions and Sale Procedure Motions within 60 days of the petition date, counsel should comply with the same procedures in any Chapter 11 sale of substantially all assets.

Any Sale Motion governed by Appendix D3 must include (or attach):

- A copy of the purchase agreement or a form of agreement substantially similar to the one the debtor reasonably believes it will execute (S.D. Cal. LBR Appendix D3 ¶ 2(A)).
- A proposed form of order (S.D. Cal. LBR Appendix D3 ¶ 2(B)).
- A request for appointment of a consumer privacy ombudsman, if required under section 332 of the Bankruptcy Code and S.D. Cal. Local Bankruptcy Court Rule 6004-3 (S.D. Cal. LBR Appendix D3 ¶ 2(C); see Sale of Personally Identifiable Information (PII)).
- A description of material terms of the sale (S.D. Cal. LBR Appendix D3 ¶ 2(D)).

Appendix D3 contains a list of specific types of provisions that must be highlighted in the Sale Motion if they are included in the proposed order or purchase agreement. These are set out in more detail in the table below. If any of these provisions are to be included, the Sale Motion must:

- Identify all provisions included.
- Identify the location of each provision in the proposed order or purchase agreement.
- Provide a justification of each provision.

(S.D. Cal. LBR Appendix D3 ¶ 2(D).)

#### Material Terms and Provisions to Be Highlighted

#### S.D. Cal. Local Bankruptcy Court Guidelines for the Sale of Substantially All Assets of a Chapter 11 Estate Under § 363 Within 60 Days of the Filing of the Petition

Sale to insider.

- Identify the insider.
- Describe the insider's relationship to the debtor.
- Set out any measures taken to ensure the fairness of the sale process and the proposed transaction.

(S.D. Cal. LBR Appendix D3 ¶ 2(D)(i).)

## Local Bankruptcy Rules: California (S.D. Cal.)

Material Terms and Provisions to Be Highlighted	S.D. Cal. Local Bankruptcy Court Guidelines for the Sale of Substantially All Assets of a Chapter 11 Estate Under § 363 Within 60 Days of the Filing of the Petition
Agreements with management.	<ul style="list-style-type: none"> <li>• Disclose the material terms of any agreements with management or key employees regarding compensation or future employment.</li> <li>• Disclose the measures that have been taken to ensure the fairness of the sale and the proposed transaction in light of these agreements.</li> </ul> <p>(S.D. Cal. LBR Appendix D3 ¶ 2(D)(ii).)</p>
Releases.	<ul style="list-style-type: none"> <li>• Highlight any provisions under which an entity is being released or claims against any entity are being waived or otherwise satisfied.</li> <li>• Although Appendix D3 refers to releases of “an entity,” this should be considered to apply to any releases of individuals.</li> </ul> <p>(S.D. Cal. LBR Appendix D3 ¶ 2(D)(iii).)</p>
Private sale/no competitive bidding.	<ul style="list-style-type: none"> <li>• Disclose whether an auction is contemplated.</li> <li>• Highlight any provision in which the debtor has agreed not to solicit competing offers for the property subject to the Sale Motion or to otherwise limit shopping of the property.</li> </ul> <p>(S.D. Cal. LBR Appendix D3 ¶ 2(D)(iv).)</p>
Closing and other deadlines.	<ul style="list-style-type: none"> <li>• Highlight any deadlines for the closing of the proposed sale’s closing or any deadlines that are conditions to closing the proposed transaction.</li> </ul> <p>(S.D. Cal. LBR Appendix D3 ¶ 2(D)(v).)</p>
Good faith deposit.	<ul style="list-style-type: none"> <li>• Highlight whether the proposed purchaser has submitted or will be required to submit a good faith deposit.</li> <li>• If a deposit is required, highlight the conditions under which the deposit may be forfeited.</li> </ul> <p>(S.D. Cal. LBR Appendix D3 ¶ 2(D)(vi).)</p>
Interim arrangements with proposed buyer.	<ul style="list-style-type: none"> <li>• Highlight any provision under which a debtor is entering into any interim agreements or arrangements with the proposed purchaser, such as interim management arrangements.</li> <li>• Provide the terms of these agreements.</li> <li>• If these agreements are out of the ordinary course, they are also subject to notice and hearing under section 363(b) of the Bankruptcy Code.</li> </ul> <p>(S.D. Cal. LBR Appendix D3 ¶ 2(D)(vii).)</p>
Use of proceeds.	<ul style="list-style-type: none"> <li>• Highlight any provision under which a debtor proposes to release sale proceeds on or after the closing without further court order.</li> <li>• Highlight any provisions providing for a definitive allocation of sale proceeds among various sellers or collateral (where there are multiple sellers of the collateral).</li> </ul> <p>(S.D. Cal. LBR Appendix D3 ¶ 2(D)(viii).)</p>

## Local Bankruptcy Rules: California (S.D. Cal.)

Material Terms and Provisions to Be Highlighted	S.D. Cal. Local Bankruptcy Court Guidelines for the Sale of Substantially All Assets of a Chapter 11 Estate Under § 363 Within 60 Days of the Filing of the Petition
Tax exemption.	<ul style="list-style-type: none"> <li>Highlight any provisions seeking to have the sale declared exempt from taxes under section 1146(a) of the Bankruptcy Code, including identifying the type of tax for which the exemption is sought (for example, recording tax, stamp tax, use tax, or capital gains tax). It is insufficient to simply refer to “transfer” taxes and the states where the affected property is located.</li> </ul> <p>(S.D. Cal. LBR Appendix D3 ¶ 2(D)(x).)</p>
Record retention.	<ul style="list-style-type: none"> <li>Highlight whether the debtor will retain or have reasonable access to its books and records to enable it to administer its bankruptcy case.</li> </ul> <p>(S.D. Cal. LBR Appendix D3 ¶ 2(D)(x).)</p>
Sale of avoidance actions.	<ul style="list-style-type: none"> <li>Highlight any provisions under which the debtor seeks to sell or otherwise limit its rights to pursue avoidance claims under Chapter 5 of the Bankruptcy Code.</li> </ul> <p>(S.D. Cal. LBR Appendix D3 ¶ 2(D)(xi); see <a href="#">Practice Notes, Fraudulent Conveyances in Bankruptcy: Overview</a> and <a href="#">Preferential Transfers: Overview and Strategies for Lenders and Other Creditors.</a>)</p>
Requested findings regarding successor liability.	<ul style="list-style-type: none"> <li>Highlight any provisions limiting the purchaser’s successor liability, including findings regarding successor liability.</li> </ul> <p>(S.D. Cal. LBR Appendix D3 ¶ 2(D)(xii).)</p>
Sales free and clear of unexpired leases.	<ul style="list-style-type: none"> <li>Highlight any provisions by which the debtor seeks to sell property free and clear of a possessory leasehold interest, license, or other right.</li> </ul> <p>(S.D. Cal. LBR Appendix D3 ¶ 2(D)(xiii).)</p>
Credit bid.	<ul style="list-style-type: none"> <li>Highlight any provisions by which the debtor seeks to allow, disallow, or affect in any manner credit bidding under section 363(k) of the Bankruptcy Code.</li> </ul> <p>(S.D. Cal. LBR Appendix D3 ¶ 2(D)(xiv); see <a href="#">Practice Note, Credit Bidding in Section 363 Bankruptcy Sales.</a>)</p>
Relief from Bankruptcy Rule 6004(h).	<ul style="list-style-type: none"> <li>Highlight any provisions whereby the debtor seeks relief from the 14-day stay imposed by Bankruptcy Rule 6004(h).</li> </ul> <p>(S.D. Cal. LBR Appendix D3 ¶ 2(D)(xv); see Bankruptcy Rule 6004 Requirements.)</p>

### Sale Procedures Motion for Sale of Substantially All Assets

A Sale Procedures Motion for a sale of substantially all assets within 60 days of a Chapter 11 petition is governed by Appendix D3, regardless of whether it is filed in anticipation of or in conjunction with the Sale Motion. Any motion seeking approval of sale, bid, or auction procedures would be a Sale Procedures Motion (S.D. Cal. LBR Appendix D3 ¶ 1). As with a Sale Motion, while Appendix D3 expressly applies to sales within 60 days of the petition date, counsel should comply with the same procedures in any Sale Procedures Motion for sale of substantially all assets later in the case.

The provisions of Appendix D3 for a Sale Procedures Motion apply to a motion seeking approval of an order for auction or bidding procedures (Sale Procedures Order), including if the request to approve procedures is included as part of the Sale Motion (S.D. Cal. LBR Appendix D3 ¶ 3).

As with a Sale Motion, while Appendix D3 expressly applies to sales within 60 days of the petition date, counsel should comply with the same procedures in any Sale Procedures Motion for sale of substantially all assets later in the case.

Unless otherwise ordered by the court, the Sale Procedures Order must:



## Local Bankruptcy Rules: California (S.D. Cal.)

- Specify the date, time, and place of the auction and the method provided for notice of the scheduled date, time, and place and of any changes thereto.
- Provide that each bidder participating at the auction must confirm that it has not engaged in any collusion concerning the bidding or the sale.
- State that the auction will be conducted openly and all creditors will be permitted to attend.
- Provide that bidding at the auction will be transcribed or videotaped.

(S.D. Cal. LBR Appendix D3 ¶ 3(A)(v)(1).) The numbering of this section of Appendix D3 governing Auction Provisions is inexplicably a subsection of the provisions on closing with backup bidders, which is almost certainly inadvertent.

Appendix D3 contains a list of specific types of provisions that must be highlighted in the Sale Procedures Motion, as set out in the table below.

Material Terms and Provisions to Be Highlighted	S.D. Cal. Local Bankruptcy Court Guidelines for the Sale of Substantially All Assets of a Chapter 11 Estate Under § 363 Within 60 Days of the Filing of the Petition
Provisions governing qualification of bidders.	<p>The motion should highlight any provisions governing qualifications to bid, including any requirements for the proposed bidder to:</p> <ul style="list-style-type: none"> <li>• Deliver financing information by a stated deadline to the debtor or other key parties (ordinarily excluding other bidders).</li> <li>• Demonstrate its financial ability to close a sale.</li> <li>• Maintain the confidentiality of information obtained from the debtor or other parties (including any requirement to execute a non-disclosure agreement) (see <a href="#">Practice Note, Confidentiality Issues Arising Under Section 363 of the Bankruptcy Code</a>).</li> <li>• Make a non-binding expression of interest or execute a binding agreement.</li> </ul> <p>(S.D. Cal. LBR Appendix D3 ¶ 3(A)(i).)</p>
Provisions governing qualified bids.	<p>The motion should highlight any provisions governing what is a qualified bid, including:</p> <ul style="list-style-type: none"> <li>• Any deadlines for submitting a qualified bid.</li> <li>• The ability of a bidder to modify a bid not deemed qualified after the deadline.</li> <li>• Requirements about the form of bids, including whether bids must: <ul style="list-style-type: none"> <li>– include a markup against a stalking horse or other form of agreement or term sheet;</li> <li>– be for the entire proposed package of assets or may be for less than all the assets originally proposed; and</li> <li>– remain open for any specified period of time (such as through the end of the auction or past the auction if selected as a backup bid).</li> </ul> </li> <li>• Any requirement to include a good faith deposit, including the amount required and the conditions under which the deposit will be non-refundable.</li> </ul> <p>(S.D. Cal. LBR Appendix D3 ¶ 3(A)(ii).)</p>

Material Terms and Provisions to Be Highlighted	S.D. Cal. Local Bankruptcy Court Guidelines for the Sale of Substantially All Assets of a Chapter 11 Estate Under § 363 Within 60 Days of the Filing of the Petition
<p>Protections for stalking horse or initial bidder.</p>	<p>The motion should highlight any provisions providing any form of bid protections to the stalking horse or initial bidder, including:</p> <ul style="list-style-type: none"> <li>• No-shop or no-solicitation provisions.</li> <li>• Break-up or topping fees and expense reimbursement. Any agreement to provide or seek an order authorizing break-up or topping fees (either as a percentage or fixed amount) or expense reimbursement and the conditions under which this fee or expense reimbursement would be paid. The motion should also address how the break-up fee or expense reimbursement is treated at auction, such as whether the initial bidder is entitled to receive a credit in that amount, and whether this fee or reimbursement is waived on the initial bidder submitting a further bid.</li> <li>• Bidding increments (initial overbid and successive bidding increments).</li> </ul> <p>(S.D. Cal. LBR Appendix D3 ¶ 2(D)(iii).)</p>
<p>Modification of bidding and auction procedures.</p>	<ul style="list-style-type: none"> <li>• The motion should highlight any provisions that would allow the debtor to modify any bidding procedures without a further court order (for example, the ability to waive or change deadlines, waive qualified bid requirements, or change the auction procedures during an auction).</li> </ul> <p>(S.D. Cal. LBR Appendix D3 ¶ 2(D)(iv).)</p>
<p>Closing with alternative backup bidders.</p>	<ul style="list-style-type: none"> <li>• The motion should highlight any provision that would authorize the debtor to accept and close on an alternative qualified bid should the successful bidder fail to close.</li> </ul> <p>(S.D. Cal. LBR Appendix D3 ¶ 2(D)(v).)</p>

### Declaration of Responsible Individual

A Sale Motion or Sales Procedures Motion must be supported by a declaration (or declarations) submitted on behalf of the debtor (S.D. Cal. LBR Appendix D3 ¶ 4). Although Appendix D3 references a declaration of the “responsible individual,” the declarant should have the requisite knowledge, which could require multiple declarants in some circumstances.

In addition to providing support for all other required elements of the motion, the declaration must include:

- A description of any efforts to pursue other alternatives, including financing and capital infusion. This description should include the time period involved and the results achieved.
- A description of how the assets were marketed, including the period of time and results achieved (this generally includes the number of parties expressing interest and offers received).
- The date on which the debtor agreed to sell the assets and the basis for that decision.
- Disclosure of any valuations received or obtained within the year before the petition date. This would include book value and value on financial statements (to the extent those do not reflect market value, the declaration should explain this).
- A statement by a qualified person describing the tax consequences of the sale (which might necessarily be separate from the declaration).
- The identity of the buyer and a statement setting out, to the best of the declarant’s knowledge, all the buyer’s (and its insiders’) connections with:
  - the debtor;
  - creditors;
  - any other party in interest;
  - the respective attorneys and accountants of the above parties;
  - the US Trustee; and
  - any person employed in the office of the US Trustee.

Although Appendix D3 describes this as an element of the debtor's declaration, it may be advisable to obtain a declaration of the buyer addressing these issues.

- A statement setting out any relationship or connection the debtor and its insiders will have with the buyer after the consummation of the sale if approved.
- If the sale involves payment of all or a portion of secured debt, a statement of all connections between the debtor's insiders and each secured creditor involved, as well as the sale's effect on the insiders (including, for example, release of an insider's guaranty or a reduction in guaranty liability).
- Disclosure of postpetition compensation received by any insider, pending approval of the sale. This declaration must include:
  - the dates the orders approving compensation were entered;
  - the orders' terms; and
  - whether the current compensation differs from the approved terms.

(S.D. Cal. LBR Appendix D3 ¶ 4.)

### Appointment, Duty, and Compensation of Auctioneers

The S.D. Cal. has specific provisions relating to auctioneers and sales by auctioneers.

An application and order for the appointment of an auctioneer must comply with Federal Rule of Bankruptcy Procedure 6005 and conform to S.D. Cal. Local Bankruptcy Form CSD 2044 and S.D. Cal. Local Bankruptcy Form CSD 2045 (S.D. Cal. LBR 6005-1(a)).

The trustee or debtor must attach to the application:

- A detailed explanation of anticipated expenses.
- A declaration of the proposed auctioneer as required by Federal Rule of Bankruptcy Procedure 2014(a) (disinterestedness) and Federal Rule of Bankruptcy Procedure 2016(a) (payments).
- A statement of the maximum amount of compensation to be paid for services.

(S.D. Cal. LBR 6005-1(b)(1)-(3).)

Immediately after completing the auction and before receiving any compensation or reimbursement of expenses, the auctioneer must serve on the trustee or debtor and file with the court the auctioneer's report required by Federal Rule of Bankruptcy Procedure 6004(f) (S.D. Cal. LBR 6005-2).

To the extent the aggregate compensation and expenses of the auctioneer exceeds \$1,000, a trustee or debtor must give notice required by S.D. Cal. Local Bankruptcy Court Rule 2002-2(a)(6). The compensation and expenses otherwise may be paid without further notice, subject to final review under section 330 of the Bankruptcy Code (S.D. Cal. LBR 6005-3).

## Setting Bar Dates in Chapter 11 Cases

### Background/Federal Requirements

A bankruptcy court presiding over a Chapter 11 case must issue an order setting a deadline by which all creditors must file proofs of claim to evidence and preserve a claim against the debtor (Fed. R. Bankr. P. 3003). This deadline is known as a bar date. Both unsecured creditors and secured creditors holding claims against the bankruptcy estate must either be scheduled as creditors by the debtor (with no designation of being disputed, contingent, or unliquidated) or file a proof of claim by the bar date to receive a distribution under a plan of reorganization or a plan of liquidation.

By fixing a bar date, a debtor can begin the process of analyzing creditors' claims and determine how to expeditiously administer and conclude its Chapter 11 case.

The Federal Rules of Bankruptcy Procedure, together with the local rules of the bankruptcy court where the bankruptcy case is filed, dictate the requirements for setting bar dates and providing notice to creditors. Many bankruptcy courts across the country have adopted their own local procedural guidelines for debtors seeking entry of an order setting a bar date. Debtors and their counsel must check the local rules of the bankruptcy court when preparing to request that the court set a bar date. Some local rules permit bar date motions to be decided without a hearing provided notice is given and parties in interest do not request a hearing.

For more information on the purpose of bar dates and the various bar dates in Chapter 11 cases, see [Practice Note, Bar Dates in a Chapter 11 Bankruptcy Case](#).

### Local Rules

#### Non-Governmental Units

Unless otherwise ordered by the court and except as provided in Federal Rule of Bankruptcy Procedure 3003(c)(3), proofs of claim or interest must be filed under Federal Rule

of Bankruptcy Procedure 3003 within 70 days after the date of the order for relief (generally the petition date, except in the case of an involuntary bankruptcy proceeding) (S.D. Cal. LBR 3003-1).

### Governmental Units

If the claimant is a governmental unit, the proof of claim or interest must be filed within 180 days after the date of the order for relief or at a later time as the Federal Rules of Bankruptcy Procedure or the court may provide (S.D. Cal. LBR 3003-1).

### Modifying Deadlines

Any party in interest may file a motion, on notice to all parties in interest, seeking an order from the court altering the above deadlines on a showing of good cause (S.D. Cal. LBR 3003-2).

### Procedure

Motions for orders fixing the claims bar date may be filed without notice and must be accompanied by an order submitted to the court according to the Administrative Procedures (S.D. Cal. LBR 9013-3(b)).

### Mass Tort Claimants

The S.D. Cal. does not have local rules regarding bar date notices to mass tort claimants.

## Subchapter V of Chapter 11

### Background/Federal Requirements

Congress enacted the Small Business Reorganization Act (SBRA), which added a new subchapter V to Chapter 11 of the Bankruptcy Code (Subchapter V), effective February 19, 2020. Subchapter V provides small businesses with aggregate liabilities of up to \$2,725,625 (or \$7,500,000 under the COVID-19 Bankruptcy Relief Extension Act of 2021 until March 27, 2022) with an opportunity to resolve outstanding liabilities in a streamlined cost-effective Chapter 11 bankruptcy proceeding.

The SBRA amends the definition of small business debtor in section 101(51D) of the Bankruptcy Code, changing the requirements for an individual or entity to qualify as a small business debtor. The amendments to the definition apply to both Subchapter V and small business cases as defined under section 101(51C) of the Bankruptcy Code.

An individual or entity that qualifies as a small business debtor as defined in section 101(51D) may now:

- Elect to proceed under new Subchapter V of Chapter 11 under new section 103(i) of the Bankruptcy Code.
- Elect to proceed as a small business case under the existing small business case provisions and requirements under section 101(51C) of the Bankruptcy Code, which was amended to specifically exclude a Subchapter V case from the definition of small business case.
- File a traditional (non-small business debtor) Chapter 11 case.

The small business debtor must make its election on the bankruptcy petition. (Fed. R. Bankr. P. 1020(a).) In a Chapter 11 case, the debtor must file a statement with the bankruptcy court within 14 days of entry of the order for relief that it qualifies as a small business debtor and whether it elects to have Subchapter V apply (Fed. R. Bankr. P. 1020(a)). A debtor's Chapter 11 case becomes a small business case or a case under Subchapter V by virtue of the debtor's election unless and until the bankruptcy court enters a finding that the debtor's designation is not correct (Fed. R. Bankr. P. 1020(a)). Federal Rule of Bankruptcy Procedure 1009 provides that any voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed. The debtor must give notice of the amendment to the trustee and to any affected entity.

All parties in interest, including the US Trustee, may object to the debtor's small business debtor or Subchapter V designation. However, the objection must be filed no later than 30 days after:

- The conclusion of the section 341 meeting.
- Any amendment to the debtor's designation.

(Fed. R. Bankr. P. 1020(b).)

The local rules of the bankruptcy court where the bankruptcy case is filed may provide specific guidance for Subchapter V cases. For more information on small business bankruptcy, see [Practice Note, Small Business Bankruptcy Under the SBRA: Overview](#).

### Local Rules

The S.D. Cal. does not have any local rules concerning Subchapter V.

## Unclaimed Funds

### Background/Federal Requirements

The treatment of unclaimed property in a bankruptcy case is addressed by section 347 of the Bankruptcy

## Local Bankruptcy Rules: California (S.D. Cal.)

Code. Unclaimed funds arise in bankruptcy cases when distributions to creditors are returned and remain unclaimed. Most unclaimed funds arise when checks to creditors are not cashed. Ownership of unclaimed funds depends on the nature of the bankruptcy proceeding.

In a Chapter 7, 12, or 13 case, the trustee must stop payment on any check that remains unpaid 90 days after final distributions (§ 347(a), Bankruptcy Code). These unclaimed funds are turned over to the court to hold for the creditor's benefit for five years, after which time they escheat to the US Treasury (28 U.S.C. §§ 2041 to 2044).

In a Chapter 9 or 11 case, unclaimed property is typically addressed by the terms of the confirmed plan. Section 347(b) of the Bankruptcy Code provides a backstop for property that is not addressed by the plan and remains unclaimed at the expiration of the time allowed for distributions. This unclaimed property is either:

- Returned to the debtor or the entity that acquired the debtor's assets under the plan after five years (§ 347(b), Bankruptcy Code).
- In certain circumstances, deposited with the court.

When unclaimed funds are deposited with the bankruptcy court, they can only be released by court order. Motions for the release of unclaimed funds must comply with 28 U.S.C. Section 2042.

For more information on unclaimed funds in bankruptcy cases, see [Practice Note, Unclaimed Property in Bankruptcy](#).

### Local Rules

Instructions for filing requirements for payment of unclaimed funds can be found on S.D. Cal. Local Bankruptcy Form CSD 1340\_Instructions. The Applicant is the party filing the application, and the Claimant is the party asserting a right to the unclaimed funds. The Applicant and the Claimant may be the same person or entity.

Parties seeking payment of unclaimed funds must:

- File an Application for Payment of Unclaimed Funds in substantial conformance with S.D. Cal. Local Bankruptcy Form CSD 1340.
- Serve a copy of the application on the US Attorney at 880 Front St. Ste 6293, San Diego, CA, 92101.
- Mail the application, supporting documentation, and certificate of service to the court at:

U.S. Bankruptcy Court

Southern District of California

Attn: Financial Administrator

325 West F St.

San Diego, CA 92101

### Additional Requirements

The existence of additional requirements depends on whether:

- The Claimant is a foreign or domestic (US) person for tax purposes.
- The Claimant is the owner of record (the original payee entitled to the funds appearing on the court records).
- The Claimant is a successor claimant entitled to the unclaimed funds because of assignment, purchase, merger, acquisition, or succession by other means.
- The Applicant is Claimant's attorney or other representative.

Funds are payable to the Claimant, and together with the Application for Payment of Unclaimed Funds, Claimant's tax identification number (TIN) must be provided to the court on a certification form signed by the Claimant.

Additional information regarding unclaimed funds may be found on the court's [website](#).

### Searching Unclaimed Funds

A party who seeks payment of unclaimed funds may use the [Unclaimed Funds Locator](#) on the US Courts [website](#) and select "CASB – Southern District of California" from the dropdown list to enter the applicable search criteria. The court even offers a public computer terminal at 325 West F St., San Diego, CA 92101, and allows parties to contact the clerk's office at 619-557-6777 to verify unclaimed funds balances.

## Withdrawal of the Reference

### Background/Federal Requirements

General orders of reference issued by a district court enable the district court to automatically refer cases under 28 U.S.C. Section 1334(b) to the bankruptcy court for that district (28 U.S.C. § 157(a)). If there are issues in a case that has been automatically referred to the bankruptcy court that are beyond the scope of the bankruptcy court's expertise, the district court can, on its

own motion or the motion of a party in interest, withdraw the reference and bring the case back to the district court (28 U.S.C. § 157(d)).

Withdrawal of the reference is mandatory or discretionary. A party seeking discretionary withdrawal must show cause for that withdrawal. A party seeking mandatory withdrawal must show that the case requires consideration of bankruptcy laws and other federal laws regulating organizations or activities affecting interstate commerce.

For more information on withdrawal of the reference, see [Practice Note, Withdrawal of the Reference](#).

### Local Rules

#### Timing/Procedure

A motion to withdraw reference of a case or action referred to the court according to 28 U.S.C. Section 157(a) must be filed initially with the clerk (S.D. Cal. LBR 5011-1(a)).

The motion to withdraw and the response thereto must list all actions and related cases pending in the court and their assigned number and must state:

- Whether the request is to withdraw reference of the entire case or action or only a part thereof.
- Whether the matter to be withdrawn involves similar issues presently pending or previously determined by the court in the same or related case.
- Whether substantial discovery has been completed in the case or action.
- Whether the presentation of evidence has begun before the court.
- Whether movant is a creditor and is listed in the debtor's schedules.
- When the movant first became aware of the case or action and its interest therein.

(S.D. Cal. LBR 5011-1(d)(1)-(6).)

Responses to a motion to withdraw reference must be filed with the clerk within 14 days from service of the motion (S.D. Cal. LBR 5011-1(b)).

Replies must be filed within seven days after service of the response with the clerk. Once the seven-day period expires, the motion and any responses and replies will be forwarded to the district court clerk for issuance of a case number and assignment to a district judge. All further documents about the motion must be filed with the district court clerk. (S.D. Cal. LBR 5011-1(c).)

### Interplay with the Local Rules of the District Court of the Southern District of California

S.D. Cal. Local Civil Rule 7.1 expressly applies to motions to withdraw the reference unless otherwise ordered by the court (S.D. Cal. CivLR 7.1(a)).

### Other Topics

#### Format of Documents Filed in the Bankruptcy Court

##### Required Caption

In addition to the information generally required by Federal Rule of Bankruptcy Procedure 1005 (for notices), Federal Rule of Bankruptcy Procedure 7010 (for adversary proceedings) and Federal Rule of Bankruptcy Procedure 9004(b) (for bankruptcy cases), the caption of each document must begin two lines beneath the name of the court and set out:

- The case number, followed by the initials of the currently assigned judge, the chapter number, and, if the document is to be filed in the adversary proceeding, the adversary proceeding number.
- Any relief from stay identification number, as required by S.D. Cal. Local Bankruptcy Court Rule 4001-1(b), inserted two lines below the bankruptcy case (the designator "RS No." must precede the number).
- A concise description of the nature of the document (for example, Notice of Motion for Summary Judgment, Complaint to Determine Dischargeability of Debt).
- 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 two lines below the case number, adversary proceeding number, or RS number.

(S.D. Cal. Administrative Procedure 2.3(a).)

##### 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. (S.D. Cal. Administrative Procedure 2.4.)

##### Line Spacing

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 five spaces or more than 20 spaces and may be single-spaced. (S.D. Cal. Administrative Procedure 2.5.)

### US Trustee Operating Guidelines and Reporting Requirements

The US Trustee, a representative of the US Department of Justice, oversees the administration of bankruptcy cases and supervises a panel of private bankruptcy trustees for Chapter 11 and Chapter 7 cases (28 U.S.C. § 586(a)). In particular, the US Trustee must extensively monitor a debtor in possession's Chapter 11 estate (see [Practice Note, Property of the Estate: Overview](#)).

The Executive Office for US Trustees in Washington, D.C. supervises the US Trustee Program and provides general policy and legal guidance to US Trustees, as well as substantive and administrative support. There are 21 regional US Trustee offices throughout the US, and each has instituted its own guidelines derived from the policies of the Executive Office for US Trustees as well as the US Trustee's duties listed in the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the US Code. While the guidelines are similar in each region, they differ in various ways, including the timing for a debtor's compliance and the amount of detailed information required from each debtor.

The US Trustee's office for Region 15 serves the federal bankruptcy courts located in:

- California (Southern District).
- Hawaii.

- Guam.
- Northern Mariana Islands.

This Note discusses the general operating guidelines and procedural requirements enacted by the US Trustee for Region 15 (Region 15 Guidelines) as they apply to Chapter 11 cases filed in the S.D. Cal.

The US Trustee's operating guidelines covering cases filed in the S.D. Cal. are publicly available and can be obtained from the website for the US Trustee's office for Region 15 (see [US Trustee Operating Guidelines, Region 15](#)). The website also includes separate [Chapter 11 guidelines for small business cases](#), as well as other Chapter 11 documents.

For more information on the US Trustee's role in Chapter 11 cases and the general US Trustee requirements for Chapter 11 debtors, see [Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors](#).

### First Day Requirements

Once the debtor files its Chapter 11 petition, it immediately owes certain fiduciary duties to the estate. For this reason, US Trustees in nearly all districts across the country have implemented guidelines requiring a Chapter 11 debtor-in-possession to monitor its postpetition activities and preserve the enterprise value for the benefit of the estate.

The following table summarizes the US Trustee guidelines for Chapter 11 cases filed in the S.D. Cal. concerning a debtor's initial Chapter 11 obligations and reporting requirements during the first few days of a case (see [Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: First Day Duties of the Debtor](#)). These guidelines may be waived on request to the US Trustee.

## Region 15 US Trustee Operating Requirements

### Requirements Immediately After Filing Petition

#### Books and Records

The debtor must:

- Close out the prepetition books and records of the debtor as of the petition date.
- Open new postpetition books and records immediately thereafter, covering the postpetition period of the debtor.

(See [Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Postpetition Books and Records](#).)

### Region 15 US Trustee Operating Requirements

#### Bank Accounts

The debtor must:

- Close all prepetition bank accounts and other deposits of which the debtor has possession, custody, control, ownership, use, or access.
- Regarding DIP accounts:
- ensure they are at an [authorized depository](#) designated by the US Trustee; and
- clearly indicate on the signature cards that the debtor is a “chapter 11 debtor-in-possession.” The checks must be sequentially numbered and have the case name, the case number, the words “Debtor-in-Possession,” and the type of account (for example, general, payroll, tax, or cash collateral) substantially in the form provided in section B.2 of the Region 15 Guidelines.

To the extent it is not practicable to comply with the above guidelines, for example, in larger cases with complex cash management, the debtors should file a first day motion seeking to preserve the debtors’ existing cash management system and to be excused of the above requirements. Even if accounts are being preserved, they still should be labeled as DIP accounts.

(See [Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Bank Accounts](#).)

#### Business Credit Card Accounts

The debtor must:

- Close all business credit card accounts immediately after filing the petition.
- Attach a copy of the closing statement for each account to the monthly operating report for the appropriate month.

### Reporting Within Seven Days After Filing Petition

#### Evidence of Insurance

The debtor must:

- Within seven calendar days after the petition date, provide the US Trustee with certificates of insurance or other verified documents showing that each policy of insurance required for the estate is in full force and effect. The documents provided should disclose:
  - the type and extent of coverage for each policy;
  - the effective date;
  - the names of the insurance carrier and broker; and
  - the agent’s name and phone number.
- Maintain certain insurance coverage, including:
  - general comprehensive/public liability (CGL);
  - casualty coverage (for tangible assets capable of loss by fire, weather, theft, or vandalism);
  - workers’ compensation (see [Practice Note, Workers’ Compensation: Common Questions](#));



## Local Bankruptcy Rules: California (S.D. Cal.)

### Region 15 US Trustee Operating Requirements

	<ul style="list-style-type: none"> <li>– vehicle (to the extent the debtor owns vehicles); and</li> <li>– product liability (if applicable).</li> </ul> <ul style="list-style-type: none"> <li>• Add the US Trustee, with the case number and US Trustee address, as an additional interest holder on the policy and on any cancellation notice.</li> <li>• Before the time any policy or coverage is set to expire, provide the above information about a renewal or new policy.</li> </ul> <p>(See <a href="#">Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Insurance.</a>)</p>
Projected Operating Statement	Within seven days after filing of the petition, the debtor must submit to the US Trustee a projected operating statement, in the form of a projected Profit & Loss Statement with itemized income and expenses, for the first 90 days of operation in Chapter 11.
Recent Income Tax Returns	Within seven days after filing the petition, the debtor must provide the US Trustee with copies of its state and federal income tax returns filed for the two years before the filing (see <a href="#">Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Taxes.</a> )
Real Property Questionnaire	<p>Within seven days after filing the petition, the debtor must provide the US Trustee with a completed Real Property Questionnaire for each parcel of real property owned or leased by the debtor.</p> <p>The Real Property Questionnaire form is attached to the Region 15 Guidelines.</p>

### Requirements During the First Month of the Case and Ongoing Requirements

The following table summarizes the US Trustee guidelines for Chapter 11 cases filed in the S.D. Cal.

and related local bankruptcy rules concerning a debtor's initial Chapter 11 obligations and reporting requirements later in the case.

### Region 15 US Trustee Operating Requirements

#### Reporting Within 30 Days After Filing Petition

Physical Inventory	Within 30 days after filing the petition, the debtor must provide the US Trustee with a physical inventory <b>as of the petition date</b> , including an itemized cost value.
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#### Ongoing Reporting

Monthly Operating Reports	<p>The debtor must:</p> <ul style="list-style-type: none"> <li>• File a monthly operating report (MOR) with the bankruptcy court no later than 20 calendar days after the close of each month.</li> <li>• Attach to the MOR: <ul style="list-style-type: none"> <li>– monthly bank statements for all accounts and bank reconciliations; and</li> <li>– federal payroll tax deposit receipts, if applicable.</li> </ul> </li> <li>• Serve a copy of the MOR on the US Trustee.</li> </ul>
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### Region 15 US Trustee Operating Requirements

	<p>Effective June 21, 2021, all debtors except those who are small businesses or who under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) elect relief under Subchapter V of Chapter 11 must use <a href="#">streamlined, data-embedded, uniform forms</a> for filing monthly operating reports.</p> <p>(See <a href="#">Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Monthly Operating Reports.</a>)</p>
Insurance Renewals and New Policies	<p><b>Before the time any policy or coverage is set to expire</b>, the debtor must provide the certificates of insurance or other documents about a renewal or new policy with all the information required to be submitted initially.</p>
Post-Confirmation Reports	<p>After confirmation of a plan, until the court grants a final decree, the debtor must:</p> <ul style="list-style-type: none"> <li>• File a quarterly post-confirmation report with the bankruptcy court no later than 20 calendar days after the close of each calendar quarter.</li> <li>• Be prepared to substantiate anything reported on the Post-Confirmation Report to the US Trustee. Requested substantiation could include items like disbursement registers or bank statements.</li> </ul> <p>Effective June 21, 2021, all debtors except those who are small businesses or who under the CARES Act elect relief under Subchapter V of Chapter 11 must use <a href="#">streamlined, data-embedded, uniform forms</a> for filing post-confirmation reports.</p> <p>(See <a href="#">Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Post-Confirmation Reports.</a>)</p>
Change of Address or Telephone Number	<p>The debtor must notify the US Trustee within 48 hours of any change of address of either the debtor or the debtor's attorney.</p> <p>The debtor must also file a change of address form with the bankruptcy court.</p>

### Reporting on Conversion to Chapter 7

Final Report and Account	<p>The debtor or any Chapter 11 trustee must:</p> <ul style="list-style-type: none"> <li>• File, within five days after conversion to Chapter 7, with the court and serve on the US Trustee a final report and account, including a verified schedule of all property of the estate as of the date of conversion.</li> <li>• Within 15 days after conversion to Chapter 7, file with the court and serve on the US Trustee a schedule of unpaid debtors incurred after commencement of the Chapter 11 case through conversion, with the name and address of each creditor, as required by Federal Rule of Bankruptcy Procedure 1019 and S.D. Cal. Local Bankruptcy Court Rule 1019-1.</li> </ul> <p>The form of final report and account is attached to the Region 15 Guidelines.</p>
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### Initial Debtor Interview

The US Trustee Program's general guidelines require that an employee of the US Trustee conduct a personal interview with the debtor and the debtor's counsel, commonly referred to as the initial debtor interview (IDI). This initial debtor interview:

- Provides the US Trustee with crucial information so that the US Trustee can assess the accuracy of the debtor's schedules and statements and the debtor's financial ability to confirm a plan.
- Informs the debtor of its new fiduciary obligations and of the US Trustee's role in the administration of Chapter 11 cases.

(See [Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Initial Debtor Interview](#).)

In the S.D. Cal., the US Trustee may require the Chapter 11 debtor and its counsel to attend an IDI, which is generally held seven to ten calendar days after the filing of a voluntary petition. The purpose of the IDI is to discuss:

- The debtor's particular financial situation.
- The debtor's operating framework under Chapter 11.
- The US Trustee's operating and reporting requirements.

The US Trustee will notify the debtor and the debtor's counsel by mail if an IDI is set.

### General Restrictions on Operations

The Region 15 Guidelines list general restrictions for operating in Chapter 11, in addition to the reporting requirements set out above. These generally only require compliance with the provisions of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure.

### Postpetition Taxes, Wages, and Expenses of Administration

The debtor must remain current on all taxes, wages, and expenses of administration and must collect and pay all taxes as a fiduciary (Region 15 Guidelines, E.3).

### Employment of Professionals

Court approval is required for employment of any attorney, accountant, or other professional. No payment may be made postpetition to any professional without notice to all creditors and the opportunity for a hearing. (Region 15 Guidelines, E.4 and see [Practice Notes, Getting Retained as a Professional to the Debtor-in-Possession](#) and [Getting Paid as a Professional to a Chapter 11 Debtor or Trustee](#).)

### Payment of Insiders

No compensation or remuneration may be paid to any officer, director, or shareholder of a corporation, to any partner of a partnership, or to an individual debtor without first complying with the provisions of S.D. Cal. Local Bankruptcy Court Rule 4002-2 (Region 15 Guidelines, E.5).

S.D. Cal. Local Bankruptcy Court Rule 4002-2 requires that before any compensation being paid or increased in a Chapter 11 case, the debtor must file a notice of setting/increasing insider compensation. If no objection is received within 14 days (for an initial setting of compensation) or 30 days (for a subsequent increase), the compensation may be paid (S.D. Cal. LBR 4002-2(a), (d)).

Any party objecting to a notice of insider compensation must obtain a hearing date and file an objection, a notice of hearing, and a proof of service (S.D. Cal. LBR 4002-2(d)(6)).

There are additional provisions specific to individual Chapter 11 cases in S.D. Cal. Local Bankruptcy Court Rule 4002-2(c) and (d).

### Payment of Prepetition Debt

Payment of prepetition debt generally is prohibited without prior court approval (the Region 15 Guidelines do not expound on or modify the general law on prepetition debts) (Region 15 Guidelines, E.6).

### Modifications Regarding Individual Cases

The Region 15 Guidelines provide that the US Trustee may at any time amend or modify the requirements for a particular case (Region 15 Guidelines, F).

### Additional Requirements

Additional information that may be required by the US Trustee includes audited or unaudited financial statements, state or federal payroll, income, and sales tax returns, trust agreements, or conveyances. The US Trustee may also require examination of the debtor's books, records, and bank statements. (Region 15 Guidelines, F.)

### Request to Modify

Any request by the debtor to amend or modify the requirements of the Region 15 Guidelines must be submitted in writing. No modification is effective unless approved in writing by the US Trustee. (Region 15 Guidelines, F.)

### US Trustee Quarterly Fees

Each Chapter 11 debtor is responsible for paying a quarterly fee to the US Trustee Program (28 U.S.C. § 1930(a)(6)) except in small business cases under Subchapter V of Chapter 11. Quarterly fees accrue throughout the Chapter 11 case until the case is:

- Closed.
- Dismissed.
- Converted to another chapter.

The fees are payable on a fiscal quarterly schedule. Failure to pay quarterly fees may result in the court converting or dismissing the Chapter 11 case (§ 1112(b)(4)(K), Bankruptcy

## Local Bankruptcy Rules: California (S.D. Cal.)

Code). A court cannot confirm a Chapter 11 plan unless the plan provides for payment of all unpaid quarterly fees accrued by the effective date (§ 1129(a)(12), Bankruptcy Code). For more information on the required fees, see [Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: US Trustee Fee Guidelines](#).

In Region 15:

- The quarterly fee is calculated by totaling the debtor's total disbursements for the three-month calendar quarter or portion thereof according to a [statutory fee schedule](#).
- A minimum fee of \$250 is due even if the debtor makes no disbursements during a calendar quarter.
- The debtor must pay any accrued interest regarding delinquent quarterly fees (31 U.S.C. § 3717).
- Quarterly fees may be paid:
  - online by [pay.gov](#); or
  - by mail by completing the tear-off portion of the billing statement or payment stub, including the ten-digit account number, and sending the check to the address listed in the statement.

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