Local Bankruptcy Rules: California (C.D. Cal.)

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Status: **Maintained** | Jurisdiction: **California, United States**

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

Effective December 9, 2021, the C.D. Cal. replaced the Court Manual with The Central Guide, an online tool intended to assist lawyers, legal assistants, trustees, and the public in properly presenting requests for orders and other documents in the C.D. Cal. bankruptcy court. The C.D. Cal. bankruptcy court is in the final stages of removing the Court Manual and all references thereto from its website. Until that process is complete, the C.D. Cal. clerk of court revised the Court Manual in December 2024 primarily to reflect changes to contact information for all judges and court personnel.

The Central Guide is comprised of:

- Section 1, entitled Common Bankruptcy Procedures & Information, which provides hyperlinks to common protocols and procedures located on the court's website.
- Section 2, entitled Serving Documents & Giving Notice, which provides tips and hyperlinks to important procedures for serving documents and providing notice to parties.
- Section 3, entitled Judges' Procedures-Judges' Webpages, which provides hyperlinks and describes judges' procedures and information found:
  - on individual webpages of each bankruptcy judge who serves in the C.D. Cal.; and
  - in common website areas because the procedures apply to all judges.
- Section 4, entitled Match Local Bankruptcy Rules with Forms, which provides references to Local Bankruptcy Rules (C.D. Cal. LBR) and forms that relate to specific C.D. Cal. LBRs. When reading a specific C.D. Cal. LBR, search this section for that specific C.D. Cal. LBR link and follow the directions found at that C.D. Cal. LBR link. In the event of an inconsistency between The Central Guide and the C.D. Cal. LBRs or Federal Rules of Bankruptcy Procedure, the rules control. Some judges have procedures that supplement or differ from procedures set out in the online guide. For each judge's specific requirements, visit that judge's webpage located under "Judges" on the court's website.

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 suit 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

Virtually all motions related to the automatic stay and all orders granting these motions must use the court-mandated forms.

The court-mandated 4001-1 series of form motions must be used for any motion requesting:

- Relief from the automatic stay.
- Extension of the stay.
- Imposition of the stay.
- Confirmation that the stay is terminated or no longer in effect.

(C.D. Cal. LBR 4001-1(b)(1).)

The failure to use the mandatory forms may result in the court denying the motion or imposing sanctions.

The court-mandated 4001-1 series of form orders must be used for an order granting:

- Relief from the automatic stay.
- Extension of the stay.
- Imposition of the stay.
- Confirming that the stay is terminated or no longer in effect.

(C.D. Cal. LBR 4001-1(b)(2)(A).)

The court-mandated 4001-1 series of form orders must be used for any order granting a motion regarding the stay, as settled by stipulation (C.D. Cal. LBR 4001-1(b)(2)(B)). These orders are exempt from the requirements of C.D. Cal. Local Bankruptcy Court Rule 9021-1(b)(2). However, compliance with C.D. Cal. LBR 9011-1 and the Case Management/Electronic Case Filing (CM/ECF) Procedures contained in The Central Guide is required regarding signatures of parties and counsel to the stipulated terms, as is the case for all other pleadings filed in the C.D. Cal.

C.D. Cal. LBR 9011-1 and The Central Guide provide that:

- An /s/ is an authorized signature **only for**:
  - the attorney who files a document electronically, using that attorney's CM/ECF password to carry out the filing; and
  - the person who signs the proof of service of the document that is being filed electronically.
- The signature of a person other than the registered CM/ECF user or an employee of a registered CM/ECF user who is electronically filing and serving the document must be handwritten in ink (holograph), electronically scanned, and filed in PDF format as specified by the clerk of court. A holographic signature is required for all signatures for all other persons or attorneys, including clients of attorneys, and other attorneys who sign a stipulation or who sign off on a proposed form of order. There are no exceptions.
- The registered CM/ECF user (for example, attorney, paralegal, or secretary) electronically filing the document must:
  - maintain the executed original for five years after the closing of the case or adversary proceeding; and
  - make the executed original available for review on request of the court or the parties.

Bankruptcy Appeals

In 2014, Federal Rules of Bankruptcy Procedure 8001 to 8028 were amended to provide more detailed rules governing bankruptcy appeals. The C.D. Cal. Local Bankruptcy Court Rules governing bankruptcy appeals therefore now merely refer to these national rules, making bankruptcy appellate procedure more uniform across the country (C.D. Cal. LBR 8000-1(a)). Practitioners should still refer to the C.D. Cal. District Court Local Rules and the BAP Rules regarding specific rules governing appeals in these respective courts (C.D. Cal. LBR 8000-1(b), (c)).

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 C.D. Cal. Local Civil Rules and General Orders.
- The C.D. Cal. Local Bankruptcy Court Rules 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).
- The procedures and schedules of the assigned judge.

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 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 C.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 Bankr. C.D. Cal.: 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, Official Bankruptcy Form B424, and C.D. Cal. Local Bankruptcy Court Rule 8000-1(d) (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 and C.D. Cal. Local Bankruptcy Court Rule 9013-4 (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).
- Page or word limitations and other rules relating to appellate briefs, review Federal Rules of Bankruptcy Procedure 8013, 8014, 8015, 8016, and 8017 (see Bankruptcy Appeals Checklist: Other Appeal Responsibilities). See also the policies and procedures of the assigned judge regarding page limitations, courtesy copies, and other requirements.
- Appeals to the district court, review Chapter 4 of the C.D. Cal. District Court Local Rules (see Appeals to District Court).
- 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 information on bankruptcy appeals generally, see Practice Note, Appealing a Bankruptcy Court Order: Overview and Bankruptcy Appeals Checklist.

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.

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. C.D. Cal.: Filing Fees).
- Complete the civil cover sheet (see C.D. Cal.: Civil Cover Sheet).

Docket Fee

The filing fee for a notice of appeal can be found on the bankruptcy court's website (see Bankr. C.D. Cal.: Filing Fees). Payments may be made by cash, US Postal Service money orders, cashier's checks issued by an acceptable financial institution, or attorney or law firm checks (payable to the US Bankruptcy Court). However, due to the COVID-19 outbreak, the court is not accepting cash at this time. All attorney or law firm checks must include a current preprinting name, street address, telephone number, and California attorney bar number. The C.D. Cal. court also accepts American Express, Discover, MasterCard, and Visa, but the payments must be made in person by the cardholder, except for electronically filed documents. The C.D. Cal. does not accept personal checks or credit cards from debtors or cash payments sent by mail. 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).

Alternatives to Appeal

There are alternatives that parties may wish to exhaust before filing an appeal, such as filing a motion to reconsider or reargue 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 and C.D. Cal. Local Bankruptcy Court Rule 9013-4. C.D. Cal. Local Bankruptcy Court Rule 9013-4 provides a non-exhaustive yet extensive list of the grounds, procedure, documents, transcripts, other evidence and declarations that must be provided and the deadline to submit this information when seeking a new trial or hearing on contested matters. 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).

Appeals to District Court

Appeals to the district court are governed by Chapter 4 of the C.D. Cal. District Court Local Rules. C.D. Cal. L. Bankr. R. 2.1 provides that certification about interested parties and notice of related cases, as prescribed in C.D. Cal. L.R. 7.1-1 and C.D. Cal. L.R. 83-1.3, must be filed by the appellant with the notice of appeal. C.D. Cal. L. Bankr. R. 5.2 provides that motions to withdraw the election for the bankruptcy appeal to be heard by the district court and to refer the matter to the BAP must be filed in the district court according to C.D. Cal. L.R. 7-1 to C.D. Cal. L.R. 7-20.

Appeals to BAP

Appeals to the BAP are subject to the Rules of the United States Bankruptcy Appellate Panel of the Ninth Circuit (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. 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 must 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 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

As provided in the Federal Rules of Appellate Procedure, certain appeals can be made directly from the C.D. Cal. Bankruptcy Court to the Ninth Circuit (see Direct Appeals to Ninth Circuit). C.D. Cal. Local Bankruptcy Court Rule 8000-1(d) provides that any direct appeal to the Ninth Circuit (28 U.S.C. § 158(d)(2)) is governed by Federal Rule of Bankruptcy Procedure 8006.

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 has two state exemption systems to choose from.

Exemptions granted by the state of California can be found at California Code of Civil Procedure (CCP) §§ 703.140 and 704.010 to 704.230. Debtors with substantial home equity generally prefer § 704 exemptions while § 703 exemptions are more beneficial for debtors who have valuable property other than home equity. In addition to CCP exemptions, debtors might also use any applicable amounts in the federal nonbankruptcy exemptions.

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:

- 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 Cash Collateral: 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), (c)(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)(2) 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.
- 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 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

Contents of Cash Collateral Motion

C.D. Cal. Local Bankruptcy Court Rule 4001-2 provides that any motion to obtain credit or to approve the use of cash collateral, DIP financing, or cash management under sections 363 or 364 of the Bankruptcy Code or a related stipulation must be accompanied by a mandatory court-approved C.D. Cal. Local Bankruptcy Form 4001-2.

This form requires that the debtor disclose whether the proposed form of order on the motion or the stipulation contains certain provisions or findings of fact that track Federal Rule of Bankruptcy Procedure 4001(c)(1)(B)(i)–(xi) and (d)(1)(B), including the page number where it appears and, if applicable, the line number (see DIP Financing Motion Attachments and Contents).

C.D. Cal. Local Bankruptcy Form 4001-2 also requires that the motion or the stipulation disclose:

- Disparate treatment for creditors' committee professionals compared to the debtor's professionals regarding a professional fee carve-out.
- The pay down of prepetition principal owed to a creditor.
- Findings of fact on matters extraneous to the approval process.

Final Hearings

C.D. Cal. Local Bankruptcy Court Rule 4001-2 provides that the final hearing on a financing motion typically will be held at least 14 days after the appointment of the creditors' committee.

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

Motions for adoption of a Chapter 15 administrative order must be heard and ruled on by the court on noticed motion (C.D. Cal. LBR 9013-1(o)(2)(K)).

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 an estimated $25 billion in 2016 to over $40 billion in 2018 to about $200 billion in 2024. 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 C.D. Cal. does not have any local rules regarding 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 an Individual Chapter 7 Bankruptcy Case: Closing a Fully Administered Chapter 7 Case and 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 an Individual Chapter 7 Bankruptcy Case: Closing a Fully Administered Chapter 7 Case.)

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 an Individual Chapter 7 Bankruptcy Case: Reopening a Closed Chapter 7 Case.

Local Rules

Closing a Case

The C.D. Cal. does not have any local rules regarding closing a case except after a case is reopened.

Reopening a Case

A motion to reopen a closed bankruptcy case must be supported by a declaration establishing a reason

or cause to reopen. The motion cannot contain a request for any other relief. (C.D. Cal. LBR 5010-1(a).) A request for any relief other than the reopening of a case, including relief based on the grounds for reopening the case, must be made in a separate motion or adversary proceeding, which may be filed concurrently with the motion to reopen (C.D. Cal. LBR 5010-1(b)(1)). The movant must give notice of the motion to any former trustee in the case and the US Trustee (C.D. Cal. LBR 5010-1(c)). The motion will be assigned to the judge to whom the case was last assigned if still in office. The motion otherwise will be assigned at random by the clerk to a judge to hear and rule on the request. (C.D. Cal. LBR 5010-1(f).) If no motion or adversary proceeding is pending 30 days after the case is reopened and no trustee has been ordered appointed, the case may be closed without further notice (C.D. Cal. LBR 5010-1(g)).

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 believes 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

On July 31, 2023, the Chief Bankruptcy Judge for the C.D. Cal. signed and entered C.D. Cal. General Order 23-02, entitled In re: Complex Chapter 11 Case Definition and Pre-Filing Procedure. The General Order sets out pre-filing procedures for complex Chapter 11 bankruptcy cases. The General Order is intended to most efficiently administer Chapter 11 cases and ensure that the court will timely hear urgent first day matters requiring a hearing within 48 hours of a petition filing and that certain scheduling for these hearings can occur before the petition is filed.

The General Order defines a Complex Case as a case or group of affiliated cases in which either:

- The total liabilities of the debtor (a single debtor or a group of affiliated debtors whose cases are intended to be jointly administered) exceeds $10 million.
- There are more than 50 parties in interest.
- Any claims against or interests in the debtors are publicly traded, all as reported on the debtors' bankruptcy petitions.

Debtor must make the Complex Case election before they file a case. If the debtors have more than $10 million but less than $20 million in liabilities, the election as a Complex Case is optional. For cases where the debtors have $20 million or more in liabilities, the Complex Case designation is mandatory.

The General Order provides for an extensive pre-filing procedure that debtors must follow if they want to

obtain before filing a petition an expedited hearing date and any instructions about other first day matters, such as the mode, method, and manner of notice that must be provided and to which creditors or other parties in interest.

The C.D. Cal. presently has no local rules specifically applicable to complex Chapter 11 cases. Local practitioners anticipate that the Court's Rules Committee will subsequently implement new C.D. Cal. Local Bankruptcy Court Rules to complement the General Order by establishing post-filing procedures for Complex Cases intended to help streamline Chapter 11 cases, increase efficiency, reduce expenses and procedural uncertainty, and promote the filing of large Chapter 11 cases of local businesses in the C.D. Cal.

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 Section 364(d) of the Bankruptcy Code).
- Federal Rule of Bankruptcy Procedure 4001(c) (see Bankruptcy Rule 4001(c)).
- Any applicable local bankruptcy court rules (see DIP Financing: 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 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 Constitutes 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);
  - 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 non-bankruptcy 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 and to any other entities as the court may direct (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

C.D. Cal. Local Bankruptcy Court Rule 4001-2 governs interim cash collateral and borrowing motions together (see Cash Collateral: Local Rules). Besides this rule, there are no additional local rules pertaining to DIP financing.

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 use 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 use 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

A Chapter 13 debtor must comply with C.D. Cal. Local Bankruptcy Court Rule 3015-1(b)(6) in a case where there is a domestic support obligation, which provides that:

- Where a domestic support obligation exists, the debtor must provide to the Chapter 13 trustee before or at the meeting of creditors:
  - the name, current address, and current telephone number of the holder of the claim; and
  - any applicable case number and account number.
- Throughout the duration of the case, the debtor must inform the Chapter 13 trustee of any new or changed information regarding this requirement.
- If a domestic support obligation arises after the filing of the petition, the debtor must provide the required information to the Chapter 13 trustee as soon as practicable but no later than 28 days after the duty arises to pay the domestic support obligation.

C.D. Cal. Local Bankruptcy Court Rule 3015-1(f) provides that:

- A Chapter 13 plan may provide for current payments of domestic support obligations directly to the creditor.
- The plan may provide for payment of a domestic support obligation arrearage and that this arrearage must be paid through the Chapter 13 trustee.

Electronic Court Filing and Transmission of Highly Sensitive Documents

Background/Federal Requirements

Cybersecurity is an important issue for bankruptcy professionals and how they counsel debtor, creditor, and other bankruptcy clients. The debtor and estate professionals collect large amounts of personally identifiable information (PII) and other sensitive data that has significant value to hackers and other cyberattackers.

After the disclosure of widespread cybersecurity breaches of both private sector and government computer systems, in 2021 US federal courts began implementing new security procedures to protect highly sensitive confidential documents (HSDs) filed with the courts. Many US bankruptcy courts have entered orders requiring parties to file HSDs outside of the electronic court filing (CM/ECF) system.

Under the new procedures, HSDs filed with federal courts will be accepted for filing in paper form or by a secure electronic device, such as a thumb drive, and stored in a secure stand-alone computer system. These sealed HSDs will not be uploaded to CM/ECF. This new practice will not change current policies regarding public access to court records, since sealed records are confidential and currently are not available to the public.

Federal courts, including bankruptcy courts, will issue standing or general orders regarding the new HSD procedures. While the procedures apply to all HSDs filed with a court, not all sealed filings are considered an HSD. The specific bankruptcy court orders will address the type of filings a court does and does not consider to be HSDs.

For more information, see Practice Note, Cybersecurity in Bankruptcy.

Local Rules

At this time, the C.D. Cal. does not have any local rules concerning HSDs. In practice, instructions and orders are obtained on a case-by-case basis from the judge assigned to the case. For example, a confidential document may be filed under seal, subject to section 107 of the Bankruptcy Code, on prior written order of the court. If a filing under seal is requested, a written motion requesting this relief and a proposed order must be presented to the judge in the manner set out in Section 4 of The Central Guide (C.D. Cal. LBR 5003-2(c)).

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

C.D. Cal. Local Bankruptcy Court Rule 9075-1(a)(4) provides that any declaration in support of an emergency motion must:

- Justify setting the hearing on less than 48 hours' notice.
- Support granting the motion on the merits.

The C.D. Cal. Local Bankruptcy Court Rules do not explicitly allow for the waiver of these requirements, but there are several local rules that specify that the rule is a requirement unless otherwise ordered by the court (for example, C.D. Cal. LBR 9075-1(a)(2) (how to obtain hearing date and time); C.D. Cal. LBR 9075-1(a)(5) (telephonic notice requirements); C.D. Cal. LBR 9075-1(a)(6) (service of motion requirements); C.D. Cal. LBR 9075-1(a)(7) (deadline to file motion)).

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

C.D. Cal. Local Bankruptcy Court Rule 2081-1 specifies typical motions requiring emergency or expedited relief and the required content for these motions. All emergency motions must be accompanied by supporting declaration and comply with the content, notice, and procedural requirements set out in C.D. Cal. Local Bankruptcy Court Rule 9075-1 (C.D. Cal. LBR 9013-1).

Each judge has a designated primary and secondary contact for obtaining a hearing date and time for an emergency motion under C.D. Cal. Local Bankruptcy Court Rule 9075-1(a)(2) (see The Central Guide: Section 3: Judges' Procedures-Judges' Webpages).

Before telephoning chambers, the moving party should:

- Consult the presiding judge's webpage on the court's website to determine whether the presiding judge has additional procedures or instructions for obtaining a hearing on an emergency motion.
- Be prepared to provide notice of an emergency hearing by phone and overnight mail service, email, or fax service.

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 C.D. Cal. Local Bankruptcy Court Rules contain post-confirmation rules that apply in all Chapter 11 cases.

After confirmation of a Chapter 11 plan, the reorganized debtor must file and serve post-confirmation status reports on the US Trustee and the 20 largest unsecured creditors setting out:

- The progress that has been made toward substantial consummation of the confirmed plan.
- A schedule listing for each debt and each class of claims:
  - the total amount required to be paid under the plan;

  - the amount required to be paid as of the date of the report;
  - the amount actually paid as of the date of the report; and
  - the deficiency, if any, in required payments.
- A schedule of any and all post-confirmation tax liabilities that have accrued or come due and a detailed explanation of payments thereon.
- Projections about the reorganized debtor's, post-confirmation trustee's, or other responsible party's continuing ability to comply with the terms of the plan.
- An estimate of the date for plan consummation and application for final decree.
- Any other relevant information needed to explain the progress toward completion of the confirmed plan.

(C.D. Cal. LBR 3020-1(b).)

Reporting entities whose equity securities are registered under Section 12(b) of the Securities Exchange Act of 1934 may provide information from their latest 10Q or 10K filing with the SEC, if it is responsive to these requirements (C.D. Cal. LBR 3020-1(b)).

Unless otherwise ordered, the first post-confirmation status report must be filed within 120 days of entry of the order confirming the plan. Subsequent reports will be due on the 15th day of the month following each successive 120-day reporting period until a final decree is entered. (C.D. Cal. LBR 3020-1(c).)

The failure to timely file post-confirmation status reports is cause for dismissal or conversion to a Chapter 7 case under section 1112(b) of the Bankruptcy Code (C.D. Cal. LBR 3020-1(d)).

The C.D. Cal. Local Bankruptcy Court Rules contain post-confirmation rules that apply solely in Subchapter V cases, with different rules, procedures, and applicable reporting differences (see Subchapter V of Chapter 11: Local Rules: Post-Confirmation Reporting Requirements).

Motion for Final Decree and Closing a Chapter 11 Case

After an estate is fully administered in a Chapter 11 reorganization case, a reorganized debtor, Chapter 11 trustee, or Subchapter V trustee-in-possession may file a motion for a final decree using the procedure of C.D. Cal. Local Bankruptcy Court Rule 9013-1(d) or C.D. Cal. Local Bankruptcy Court Rule 9013-1(o). Notice of the motion must be served on all parties on whom the plan was served (C.D. Cal. LBR 3022-1(a)). In Subchapter V cases, a final report and accounting must be filed before filing a motion for a final decree (C.D. Cal. LBR 3022-2 and see Subchapter V of Chapter 11: Local Rules: Full Administration in a Subchapter V Case).

If a Chapter 11 estate is substantially consummated but not fully administered, the reorganized debtor, Chapter 11 trustee, or Subchapter V trustee-in-possession may file a motion for an order closing the case on an interim basis using the procedure of C.D. Cal. Local Bankruptcy Court Rule 9013-1(d) or C.D. Cal. Local Bankruptcy Court Rule 9013-1(o) (C.D. Cal. LBR 3022-1(b)).

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

C.D. Cal. Local Bankruptcy Court Rule 2081-1(b) provides that if voting was conducted on a Chapter 11 plan before the commencement of the case under section 1126(b) of the Bankruptcy Code, then a hearing on a motion for an order confirming that plan must be scheduled, if practicable, no more than 30 days after the order for relief.

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

C.D. Cal. Local Bankruptcy Court Rule 2016-1 governs applications for the compensation of professionals and provides that:

- If the court has authorized employment of more than one professional, a professional who files an application for interim fees must give other the other professionals employed in the case no less than 45 days' notice of the date and time of the hearing, and this notice must contain specific language as set out in C.D. Cal. Local Bankruptcy Court Rule 2016-1(a)(2).
- The debtor's or trustee's counsel typically contact all other retained professionals before filing the 45 days' notice to confirm availability regarding the proposed hearing on interim fee applications.
- A fee application must be supported by a separately filed declaration from the client indicating that the client has reviewed the fee application and has no objection to it. If the client refuses to provide a declaration, the professional must file a declaration describing the steps that were taken to obtain the client's declaration and the client's response (C.D. Cal. LBR 2016-1(a)(1)(J)).

C.D. Cal. Local Bankruptcy Form 2016-1.1 and C.D. Cal. Local Bankruptcy Form 2016-1.2 are optional notice of hearing on fee applications and applications for payment of fee applications.

C.D. Cal. Local Bankruptcy Form 2016-1.3 is a mandatory form order approving fee applications.

No-Look Attorneys' Fees

For information on no-look fees (often called flat fees or presumptively reasonable fees) for attorney services in Chapter 13 cases in the C.D. Cal., see Practice Note, Fee Arrangements in Chapter 13 Bankruptcy Cases: Box: Chapter 13 No-Look Attorney Fees by Jurisdiction.

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

Required Contents of the Application

Requests to employ professionals must be made by application under the procedures described in C.D. Cal. Local Bankruptcy Court Rule 2014-1. This rule requires timely applications for the employment of a professional person under sections 327, 328, 1103(a), or 1114 of the Bankruptcy Code to:

- State the specific facts and terms of employment required to be disclosed in the application and notice.
- Be accompanied by a supporting declaration, including evidence of disinterestedness.

(C.D. Cal. LBR 2014-1(b); C.D. Cal. Local Bankruptcy Form 2014-1.)

Local Practitioner Considerations

Most professionals submit an application for employment and notice of application with no hearing set and with an opportunity to object and request a hearing on the application (C.D. Cal. LBR 2014-1(b)(4), (5); C.D. Cal. LBR 9013-1(o)).

Professionals are strongly encouraged to file and serve applications to be employed no later than 30 days after providing services to the debtor's estate. Failure to do so could result in a need to seek employment under a higher *nunc pro tunc* standard.

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 B 410 (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

The C.D. Cal. Local Bankruptcy Court Rules provide detailed procedures for objections to claims and for service and notice of claim objections (C.D. Cal. LBR 3007-1).

It is common practice for a debtor or trustee to file omnibus claims objections, thereby objecting to many claims on a single calendar. The C.D. Cal. Local Bankruptcy Court Rules provide that a maximum of 20 claims can be objected to on a single calendar (C.D. Cal. LBR 3007-1(a)(5)). To exceed 20 claims objections, the objector must comply with supplemental procedures contained in The Central Guide: Section 3: TCG Supplement for Filing Claims and Setting Hearings on Objections to Claims, which provides a detailed procedure for preparation of a supplement to the court's calendar listing of matters scheduled for hearing as well as a sample of a calendar supplement. Many judges have their own procedure for how they prefer omnibus claims objections to be handled. Objecting parties should

consult the judge's section of the court's website and call the courtroom deputy for the particular judge to confirm or clarify the accuracy of what is posted on the website.

The C.D. Cal. Local Bankruptcy Court Rules that pertain to claims objections are designed to eliminate confusion, especially to the lay person claimant whose claim is being objected to, and provide sufficient, clear, and specific notice of the basis for the claim objection. For example:

- Claims objections must be set for hearing on no less than 30 days' notice (C.D. Cal. LBR 3007-1(b)(1)). Notice of the objection to claim must be on or conforming to court-mandated form C.D. Cal. Local Bankruptcy Form 3007-1.1 (C.D. Cal. LBR 3007-1(b)(3)).
- An objection to claim must be supported by admissible evidence sufficient to overcome the evidentiary effect of a properly documented proof of claim executed and filed according to Federal Rule of Bankruptcy Procedure 3001 (C.D. Cal. LBR 3007-1(c)(1)). A copy of the complete proof of claim, including attachments or exhibits, must be attached to the objection to claim together with the objector's declaration stating that the copy of the claim attached is a true and complete copy of the proof of claim on file with the court or, if applicable, of the informal claim to which objection is made (C.D. Cal. LBR 3007-1(c)(2)).
- If the basis for the objection is that there are duplicate proofs of claim, the objection must include a complete copy of each proof of claim (C.D. Cal. LBR 3007-1(c)(5)).
- If the basis for the objection is that the proof of claim was filed after the bar date, the objection must include a copy of:
  - the bar date order, if any;
  - the notice of bar date; and
  - proof of service of the notice of bar date.

  (C.D. Cal. LBR 3007-1(c)(4).)

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 sections 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

If filing a reaffirmation agreement in the C.D. Cal., parties must follow C.D. Cal. Local Bankruptcy Court Rule 4008-1, which states that:

- A reaffirmation agreement must conform to Official Bankruptcy Form B2400A/B ALT. If the reaffirmation agreement concerns a secured debt, a complete and legible copy of the security agreement, including the front and back of each page, must be attached.
- Where the debtor is not represented by an attorney or where the attorney is unwilling or unable to sign Part C: Certification by Debtor's Attorney, the debtor must move for approval of the reaffirmation agreement by the court by completing Part E: Motion for Court Approval of Official Bankruptcy Form 2400A/B ALT.
- A reaffirmation agreement and a motion for approval of the reaffirmation agreement under section 524 of the Bankruptcy Code must be filed by the debtor or creditor within 60 days following the conclusion of the meeting of creditors unless otherwise ordered by the court.
- The clerk will set a hearing on the motion for approval of the reaffirmation agreement and give notice to the debtor and creditor of the date, time, and place of this hearing if:
  - the debtor was not represented by an attorney or the attorney representing the debtor was unwilling or unable to sign Part C: Certification by Debtor's Attorney; or
  - a presumption of undue hardship arising under section 524(m)(1) of the Bankruptcy Code is not rebutted by the debtor to the satisfaction of the court.
- The court will not grant a motion to approve a reaffirmation agreement unless the debtor appears in person at the hearing to respond to questions by the court.
- If a hearing is required, the court will prepare and deliver an order either granting or denying the motion for approval of the reaffirmation agreement.
- Under all other circumstances, unless otherwise ordered by the court, court approval is not required where the debtor was represented by an attorney during the negotiation of the reaffirmation agreement.

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 either the district court or the bankruptcy court. After removal, on motion of a non-removing party, the court can remand the matter back to state court 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.

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

Local Rules

C.D. Cal. Local Bankruptcy Court Rule 9027-1 provides that:

- The party filing a notice of removal must prepare a notice of status conference regarding removal of action using the court-mandated forms and present it to the clerk concurrently with the filing of the notice of removal (C.D. Cal. LBR 9027-1(b)(1)).
- Unless otherwise ordered by the court, the clerk must set a status conference not later than 45 days after the date that the clerk issues and files a notice of status conference (C.D. Cal. LBR 9027-1(b)(2)).
- The party filing a notice of removal must serve the notice of status conference within 14 days after the date the notice was issued and filed on:
  - all other parties to the removed action;
  - any trustee; and
  - the US Trustee.

  (C.D. Cal. LBR 9027-1(b)(3).)
- A motion for remand must be filed no later than 30 days after the date of filing of the notice of removal and served under C.D. Cal. Local Bankruptcy Court Rule 9013-1(d) (C.D. Cal. LBR 9027-1(c)).
- The party filing a notice of removal must, within 30 days after filing the notice of removal, and unless otherwise ordered by the court, file copies, in chronological order according to the date filed, of:
  - the docket of the removed action; and
  - every document on the docket, whether the document was filed by a party or entered by the court.

  (C.D. Cal. LBR 9027-1(d).)

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 delegee 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

C.D. Cal. Local Bankruptcy Court Rule 5075-1 provides the procedure for a motion, referred to as a motion for an administrative order, requesting the employment of persons or entities to perform certain duties of the clerk's office, the debtor, or the debtor-in-possession, such as:

- Processing proofs of claim and maintaining the claims register.
- Serving notices.
- Scanning documents.
- Providing photocopies of documents filed in the case.

A motion for an administrative order must include a completed:

- Declaration to be Filed with Motion Establishing Administrative Procedures Re 28 U.S.C. § 156(c) (C.D. Cal. Local Bankruptcy Form 5075-1.1).
- Mega Case Procedures Checklist (Checklist), which must be attached to the completed declaration. The movant's counsel must consult with the clerk's office to complete the Checklist to the satisfaction of the clerk's office.

A copy of the motion, including the declaration and Checklist, must also be provided to the clerk's office at the time the motion is filed. Unless the judge orders otherwise, any motion that is not accompanied by the completed Checklist may be denied by the court, and any previously scheduled hearing may be vacated. Some of the items in the Checklist are guidelines, and others are requirements.

While not contained in the C.D. Cal. Local Bankruptcy Court Rules, there are unique practices in the C.D. Cal. that are not used in other districts. As one example, claims agents work directly with the clerk's office to update the claims docket. Practitioners are advised to contact the clerk's office to determine whether other unwritten practices may be used for their subject case.

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 retention of local counsel is expressly required for attorneys not admitted in California (C.D. Cal. LBR 2090-1(b)(3)). No restrictions are imposed on attorneys admitted in California who reside out of the C.D. Cal. (C.D. Cal. LBR 2090-1).

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 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 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 *Comm. 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 (see Section 365 Requirements) (Fed. R. Bankr. P. 6006(c));
  - 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 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 carry out 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).
- 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

Contents of Sale Motion

C.D. Cal. Local Bankruptcy Court Rule 6004-1(c)(2)(A) provides that a sale motion must be supported by evidence establishing:

- The value of the property.
- That the terms and conditions of the proposed sale, including the price and all contingencies, are in the best interest of the estate.

If the proposed sale is not subject to overbid, the declaration must include a certification that:

- The movant has not been contacted by any potential overbidder.
- In the movant's business judgment, there are no viable alternative purchasers.

(C.D. Cal. LBR 6004-1(c)(2)(B).)

Sale Procedures Motion

C.D. Cal. Local Bankruptcy Court Rule 6004-1(b)(1) provides that a sale procedures motion may be scheduled on at least seven days' notice to applicable parties.

The notice must:

- Describe the proposed bidding procedures.
- Include a copy of the proposed purchase agreement or, if not available, describe the terms of the sale.
- Describe the marketing efforts undertaken and the anticipated marketing plan or explain why no marketing is required.
- Provide that opposition is due on or before one day before the hearing.

(C.D. Cal. LBR 6004-1(b)(2).)

If a break-up fee or other overbid protection is requested, it must be supported by evidence establishing that the fee:

- Will enhance the ultimate sale price.
- Is reasonable.

(C.D. Cal. LBR 6004-1(b)(6).)

Notice of Hearing

C.D. Cal. Local Bankruptcy Court Rule 6004-1 provides:

- Detailed requirements for the notice of hearing (C.D. Cal. LBR 6004-1(c)(3)).
- That the movant must submit C.D. Cal. Local Bankruptcy Court Form 6004-2 (Notice of Sale of Estate Property) for the clerk to publish notice of the sale on the court's website (C.D. Cal. LBR 6004-1(f)).

Negative Notice

A sale motion may be determined on negative notice, with an opportunity for hearing, except for sales:

- Of substantially all assets in a Chapter 11 or Chapter 12 case.
- Subject to overbid.

(C.D. Cal. LBR 6004-1(c)(1).)

Report of Sale

A report of the sale must be filed and served within 21 days after the date of sale (C.D. Cal. LBR 6004-1(g)).

Publicly Traded Assets

C.D. Cal. Local Bankruptcy Court Rule 6004-1(e) provides a special set of rules concerning a sale of publicly traded assets. If the property consists of assets sold in public markets whose prices are published on national or regional exchanges, such as securities, bonds, commodities, or precious metals, the trustee or debtor-in-possession may sell these assets in a market transaction after providing at least 14 days' written notice by mail to creditors and interested parties who are entitled to notice, unless the court for cause sets a hearing on shortened notice or otherwise modifies or limits notice under C.D. Cal. Local Bankruptcy Court Rule 9075-1.

The notice must:

- Identify:
  - the asset;
  - the market through which the asset will be sold; and
  - the published price on the date of the notice.

  (C.D. Cal. LBR 6004-1(e)(1).)
- Disclose the name and address of the sales agent and the amount of the commission to be paid on account of the sale, if a commission is to be paid to a sales agent (C.D. Cal. LBR 6004-1(e)(2)).
- State that any objection and request for hearing must be filed and served no later than 14 days after

the service of the notice, unless the notice specifies a longer period or unless otherwise ordered by the court, and that in the absence of an objection, the property may be sold without further notice (C.D. Cal. LBR 6004-1(e)(3)).

If a movant fails to timely file and serve an objection and request for hearing, the trustee or debtor-in-possession may proceed with the sale according to the notice. An order is not required nor will an order be entered (C.D. Cal. LBR 6004-1(e)(4).)

If a movant timely files and serves an objection and request for hearing, the trustee or debtor-in-possession must comply with C.D. Cal. Local Bankruptcy Court Rule 9013-1(o)(4) (C.D. Cal. LBR 6004-1(e)(5)).

The trustee or debtor-in-possession need not file an employment application on behalf of a sales agent registered with the Security Investors Protection Corporation, but the sales agent must execute a declaration of disinterestedness, which must be filed by the trustee or debtor-in-possession with the notice (C.D. Cal. LBR 6004-1(e)(6)).

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

In Chapter 11 cases except for Subchapter V cases, the claims bar date will be set by the court either on its own motion or on a motion filed under C.D. Cal. Local Bankruptcy Court Rule 9013-1(q)(9). A motion to set a bar date may be determined without a hearing and without additional notice because the parties requiring notice already receive notice by a Notice of Electronic Filing (NEF) to a person or entity registered to use the court's Case Management/Electronic Case Files (CM/ECF) system (C.D. Cal. LBR 9013-1(q)(9)).

Unless otherwise ordered, in Chapter 11 cases except for Subchapter V cases (see Setting Bar Dates in Subchapter V Cases), the debtor-in-possession or Chapter 11 trustee, as applicable, must file and serve the bar date notice on all parties entitled to notice within seven days of the entry of the order setting the bar date (C.D. Cal. LBR 3003-1(b)(1)). Any entity providing a notice of the claims bar date must use mandatory court-approved C.D. Cal. Local Bankruptcy Form 3003-1 (C.D. Cal. LBR 3003-1(c)).

The C.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 $3,024,725 (or $7,500,000 under the Bankruptcy Threshold Adjustment and Technical Corrections Act, which expired on June 21, 2024) 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.

In a voluntary Chapter 11 case, the small business debtor must make its election on the bankruptcy petition. (Fed. R. Bankr. P. 1020(a).) In an involuntary 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 Subchapter V: Overview.

Local Rules

Section 1111(b) Election and Disclosure Statements

The C.D. Cal. Local Bankruptcy Court Rules contain special rules for disclosure statements and plans that apply in Subchapter V cases. C.D. Cal. Local Bankruptcy Court Rule 3014-1 provides for different deadlines for a secured creditor to make the election under section 1111(b) of the Bankruptcy Code depending on whether the court has ordered that section 1125 of the Bankruptcy Code does or does not apply. C.D. Cal. Local Bankruptcy Court Rule 3017-2 provides for procedures to obtain conditional approval of a disclosure statement when the court has ordered that section 1125 applies.

Pre-Confirmation Reporting Requirements

The C.D. Cal. Local Bankruptcy Court Rules contain pre-confirmation reporting requirements that apply solely in Subchapter V cases.

Unless otherwise ordered by the court, not later than 14 days before the date of the first-scheduled status conference, the debtor must:

- Meet and confer with the Subchapter V trustee and any creditor asserting a secured claim regarding assurances that any allowed fees and expenses of the trustee will be paid, including any initial or monthly retainer and a proposed carve-out from the collateral securing the creditor's claim.
- File a completed Subchapter V Status Report using C.D. Cal. Local Bankruptcy Form 2015-3.1, executed by both the debtor and the debtor's counsel, if any, which must include, in the section addressing any additional information the debtor wants to disclose to the court, any request by the trustee for any retainer or other assurances of payment and the position of the debtor and of any secured creditor about this retainer or other assurances.
- Serve a copy of the Subchapter V Status Report on the trustee, the US Trustee, and all parties in interest.

At any status conference, the court may rule on any request of the trustee to order a retainer or any other proposed assurance that the trustee will be paid any allowed fees and expenses. The trustee is not required to make that request in any separate document if it is included in the debtor's status report, but the trustee may file a separate application for an order establishing a retainer or other assurances of payment, which must be served on the debtor, any creditors asserting a secured claim, the US Trustee, and any other persons the court may require. In ordering any retainer or other assurances of payment, the court may consider:

- The risk that the case will be converted or dismissed.
- Whether the estate has unencumbered assets from which to pay the trustee.
- The amount of work that the trustee must or should undertake.
- Any other relevant facts and circumstances.

Any retainer remains the property of the bankruptcy estate and must be held by the trustee and not be disbursed unless otherwise ordered by the court. (C.D. Cal. LBR 2016-1(e).)

Subchapter V debtors must file monthly operating reports (MORs) required for all Chapter 11 debtors. If the debtor is removed as debtor-in-possession, the obligation to file MORs is the obligation of the Subchapter V trustee-in-possession unless the court orders otherwise (C.D. Cal. LBR 2015-3(c)).

On written motion filed by a party in interest, including the Subchapter V trustee, the court may direct the debtor to file a complete physical inventory of the debtor's property as of the date:

- The petition was filed.
- The case was converted to Subchapter V.

(C.D. Cal. LBR 2015-3(d).)

Unless otherwise ordered by the court, not later than 14 days before the deadline to file any proposed plan, the Subchapter V trustee must:

- File a completed Notice of Subchapter V Trustee's Estimated Fees and Expenses for Purposes of Plan Confirmation (C.D. Cal. Local Bankruptcy Form 2015-3.2).
- Serve a copy of the Subchapter V Trustee's Estimated Fees and Expenses on:
  - the debtor;
  - counsel for the debtor; and
  - the US Trustee.

(C.D. Cal. LBR 2015-3(e).)

Post-Confirmation Reporting Requirements

The C.D. Cal. Local Bankruptcy Court Rules (C.D. Cal. LBR 3020-2) contain post-confirmation rules that apply solely in Subchapter V cases, with different rules, procedures, and applicable reporting differences.

On confirmation of a consensual plan, unless the confirmation order provides otherwise:

- The debtor must file and serve post-confirmation quarterly reports according to C.D. Cal. Local Bankruptcy Court Rule 3020-1(b) and (c). If the debtor is removed as debtor-in-possession, the Subchapter V trustee-in-possession must file and serve post-confirmation quarterly reports unless the court orders otherwise.
- Not later than 14 days after the date of the entry of the order confirming the plan, the debtor must file a report stating whether the plan has been substantially consummated and, if not, providing a projected date when substantial consummation is expected to occur and the steps necessary for substantial consummation to occur.
- If the projected date for substantial consummation must be extended, the debtor must file a supplemental report specifying the new projected date, the progress made toward consummation of the plan, the steps necessary for substantial consummation to occur, and the reasons for the delay. The supplemental report must be filed and served as soon as possible but at least not later than 14 days after the previously projected date of substantial consummation.
- Not later than 14 days after the debtor's consensual plan has been substantially consummated, the debtor must file a notice of substantial consummation and serve this notice on the Subchapter V trustee, the US Trustee, and the 20 largest unsecured creditors.
- On substantial consummation of a consensual plan, the Subchapter V trustee's services will terminate automatically unless otherwise provided in the plan or ordered by the court.

On confirmation of a non-consensual plan, unless the confirmation order provides otherwise, the Subchapter V trustee must:

- Collect plan payments and make distributions to creditors unless otherwise provided for in the plan.
- File and serve post-confirmation quarterly reports according to C.D. Cal. Local Bankruptcy Court Rule 3020-1(b) and (c).

Full Administration in a Subchapter V Case

In Subchapter V cases, a final report and accounting must be filed before filing a motion for a final decree (C.D. Cal. LBR 3022-2).

Setting Bar Dates in Subchapter V Cases

In Subchapter V cases, unless otherwise ordered, the claims bar date will be 70 days after or, for claims by governmental units, 180 days after the latest of:

- The date of entry of the order for relief.
- The date of conversion of the case to Subchapter V of Chapter 11.
- The date of the amendment of the petition to designate the case as a Subchapter V case.

(C.D. Cal. LBR 3003-1(a)(2).)

In the case of conversion or re-designation of a case to Subchapter V, any previously set bar date will govern unless otherwise ordered (C.D. Cal. LBR 3003-1(a)(2)).

Unless otherwise ordered, in Subchapter V cases, the debtor-in-possession or Subchapter V trustee-in-possession, as applicable, must file and serve the bar date notice within seven days of:

- The date of entry of the order for relief.
- The date of conversion of the case to Subchapter V of Chapter 11.
- The date of the amendment of the petition to designate the case as a Subchapter V case.

(C.D. Cal. LBR 3003-1(b)(2).)

Unclaimed Funds

Background/Federal Requirements

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

An entity seeking the release of unclaimed funds under 28 U.S.C. Section 2042 must file an application for payment of unclaimed funds in compliance with C.D. Cal. LBR 9013-1 using the new national Application for Payment of Unclaimed Funds (Form 1340). The failure to comply with this requirement may result in denial of the application without a hearing (C.D. Cal. LBR 3011-1(a)).

An application for payment of unclaimed funds must be served on the US Attorney for the C.D. Cal. The application will be denied if not served properly on the US Attorney for the C.D. Cal. (C.D. Cal. LBR 3011-1(b).)

A motion to release unclaimed funds may be determined without a hearing and without additional notice because the parties requiring notice already

receive notice by a Notice of Electronic Filing (NEF) to a person or entity registered to use the court's case management/electronic case files (CM/ECF) system (C.D. Cal. LBR 9013-1(p)).

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 either 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

A motion to withdraw the reference of a case or proceeding must be filed with the clerk of the district court (C.D. Cal. LBR 5011-1(b)).

The local rules are unclear concerning how to file the motion. To file a motion to withdraw the reference, you must file it as a Civil Complaint in the form and manner set out in C.D. Cal. L.R. 11-3. The complaint must be accompanied by:

- A Summons (C.D. Cal. Local Civil Form AO-440).
- A Civil Cover Sheet (C.D. Cal. Local Civil Form CV-71).
- A Certification and Notice of Interested Parties (C.D. Cal. Local Civil Form CV-30).

To file a motion to withdraw the reference as a civil complaint, on the C.D. Cal.'s CM/ECF website:

- Select "Civil Events."
- Under the tab "Initial Pleadings and Service," select "Complaints and Other Initiating Documents."
- Select "Motion to Withdraw Bankruptcy Reference (Attorney Civil Case Opening)."

Under the C.D. Cal. District Court Local Rules:

- Counsel contemplating the filing of any motion must first contact opposing counsel to discuss thoroughly, preferably in person, the substance of the contemplated motion and any optional resolution.
- The conference must take place at least seven days before the filing of the motion.
- If the parties cannot reach a resolution that eliminates the necessity for a hearing, counsel for the moving party must include in the notice of motion a statement, such as "This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on [DATE]" (C.D. Cal. L.R. 7-3).

Once the clerk of the district court assigns a judge, a mandatory chambers copy (which is an exact duplicate of an electronically filed document submitted in paper format), unless otherwise ordered by the assigned judge, must be delivered:

- To the chambers of the assigned judge or another designated location.
- No later than noon on the following business day.

Mandatory chambers copies must comply with C.D. Cal. L.R. 11-3. One mandatory chambers copy of every electronically filed document must be delivered to the chambers of the assigned judge (C.D. Cal. L.R. 5-4.5).

Other Topics

Signatures

All pleadings filed in the C.D. Cal. must comply with C.D. Cal. LBR 9011-1 and The Central Guide, which require that:

- An /s/ is an authorized signature **only for**:
  - the attorney who files a document electronically, using that attorney's CM/ECF password to carry out the filing; and
  - the person who signs the proof of service of the document that is being filed electronically.
- The signature of a person other than the registered CM/ECF user or an employee of a registered CM/ECF

user who is electronically filing the document must be handwritten in ink (holographic), electronically scanned, and filed in PDF format as specified by the clerk of court. A holographic signature is required for all signatures for all other persons or attorneys, including clients of attorneys, and other attorneys who sign a stipulation or who sign off on a proposed form of order, subject to C.D. Cal. Local Bankruptcy Court Rule 9011-1(b) regarding software generated signatures (see Software Generated Signatures).

- The registered CM/ECF user (for example, an attorney, paralegal, secretary) electronically filing the document must:
  - maintain the executed original for five years after the closing of the case or adversary proceeding; and
  - make the executed original available for review on request of the court or the parties.

Software Generated Signatures

Software generated signatures may also be used in strict compliance with C.D. Cal. Local Bankruptcy Court Rule 9011-1(b)(4) when a document will be filed using CM/ECF and the attorney who files the document obtains oral verification to file the software generated signature.

Software generated signatures are not permitted for:

- Bankruptcy petitioners on any bankruptcy petition.
- Individual debtors on the Statement About Your Social Security Numbers.
- Debtors on the Declaration About an Individual Debtor's Schedules (Official Bankruptcy Form B106Dec) or Declaration Under Penalty of Perjury for Non-Individual Debtors (Official Bankruptcy Form B202).
- All debtors on statements and schedules required to be filed to comply with a debtor's duties under section 521(a) of the Bankruptcy Code.

(C.D. Cal. LBR 9011-1(b)(4).)

Any other signatures may be software generated signatures if:

- The software that generates the signature (for example, DocuSign) includes:
  - authentication requirements (for example, the document can only be signed using a link sent to the signer's email account and an image of the signer's government ID must be captured by the software provider during the process of signing up for use of the software);
  - encryption of each software generated signature;
  - secure storage of data (for example, encryption);
  - a strong audit trail (including records of when the document was sent, viewed, printed, and signed, the machine identification (ID) of the user's computer, and the Internet Protocol (IP) address); and
  - an option for the person who is electronically signing the document to download the document that contains the signer's software generated signature, to retain it for the signer's records.
- All the above software requirements meet or exceed industry best practices. The court will maintain a list of entities, available in The Central Guide, that have provided sufficient verification to the court of the safeguards listed above. The verification requirements may include:
  - a declaration by the software provider;
  - an audit paid for by the software provider; or
  - other methods of verification acceptable to the court.

  The court does not endorse nor recommend any provider of software generated signatures. It is the software provider, not the filer, who is responsible for verifying the safeguards listed above.
- Each filed document bearing one or more software generated signatures is accompanied by a declaration of an attorney admitted to practice in the C.D. Cal. or authorized to appear *pro hac vice* under C.D. Cal. Local Bankruptcy Court Rule 2090-1(b)-(e) that states:
  - "I declare, under penalties of perjury under the laws of the United States, that I have obtained oral verification from [NAME OF PERSON WHOSE SOFTWARE GENERATED SIGNATURE APPEARS ON THE ACCOMPANYING DOCUMENT] that they intended to sign this document electronically. [SIGNATURE OF ATTORNEY]"; or
  - an explanation of why the attorney is not providing this verification (for example, that signer is represented by a different attorney, who has not provided a declaration regarding the signer's oral verification in time to file the declaration with the filed document).

(C.D. Cal. LBR 9011-1(b)(4)(A), (B).)

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 16 serves the federal bankruptcy courts located in the C.D. Cal.

This Note discusses the general operating guidelines and procedural requirements enacted by the US Trustee for Region 16 (Region 16 Guidelines) as they apply to Chapter 11 cases filed in the C.D. Cal.

The US Trustee's operating guidelines covering cases filed in the C.D. Cal. are publicly available and can be obtained from the website for the US Trustee's office for Region 16 (see US Trustee Operating Guidelines, Region 16).

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 C.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 or court order.

US Trustee Operating Requirements	C.D. Cal. Bankruptcy Court Requirements
Books and Records	The debtor must: • Close out all existing books and records as of the petition date or the date an order is entered converting the case to Chapter 11. • Immediately open a new set of books and records to reflect postpetition business. (See Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Postpetition Books and Records.)
Bank Accounts	The debtor must: • Close all existing prepetition bank accounts that the debtor owns, has access to, or exercises possession, custody, or control over. • Immediately open and maintain separate new: – general accounts; – payroll accounts;

US Trustee Operating Requirements	C.D. Cal. Bankruptcy Court Requirements
	– tax accounts; and – other necessary accounts (for example, cash collateral). Regarding the debtor-in-possession accounts: • All DIP accounts must be maintained at an approved depository throughout the pendency of the case. Under section 345 of the Bankruptcy Code, all depositories must maintain collateral, unless an order of the court provides otherwise, in an amount of at least 115% of the aggregate bankruptcy funds on deposit in each bankruptcy estate that exceeds the FDIC insurance limit, by surety bond or a deposit of securities. • If the debtor opens or closes any accounts during the case, the US Trustee must be notified immediately in writing. • Each account must indicate that the account is a "debtor-in-possession account" and must include the Chapter 11 case number and the bankruptcy judge's initials in the account name. This information must also be included on the face of the checks for each account. • Within seven days of the petition date, the debtor must provide: – a voided check from each debtor-in-possession account to the US Trustee; – a Declaration Regarding Compliance describing all prepetition accounts by depository name, account number, and account name and verifying that all prepetition accounts have been closed; and – proof from the bank that it closed prepetition accounts and opened new accounts, and the initial deposit amount for each new account must be set out in the Declaration Regarding Compliance. (See Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Bank Accounts.)
Insurance	The debtor must: • Maintain insurance coverage, as appropriate to the debtor's business, including: – general comprehensive public liability; – property (personal and theft); – workers' compensation (see Practice Note, Workers' Compensation: Common Questions); – vehicle; – product liability; – flood insurance; – directors and officers insurance; – professional malpractice; and – other coverage customary in the debtor's business or required by law. • Instruct insurance companies to add the US Trustee as an additional interested party on each policy. The notice must reference:

US Trustee Operating Requirements	C.D. Cal. Bankruptcy Court Requirements
	– the US Trustee; – the office address for the division in which the case is filed; and – the full case number. • If insurance coverage expires or ends, immediately provide the US trustee with adequate proof of replacement coverage. • Within seven days of the petition date, provide the US Trustee with proof of its insurance coverage, which must consist of the declaration pages containing at a minimum: – the name of the insured party; – the name of additional interest parties, including the US Trustee; – the types and extent of coverage; – the policy expiration date; and – the account or policy number (or other identifying information). • Notify their insurance carriers to have the US Trustee removed from the policy on plan confirmation, entry of an order of final decree, dismissal, or conversion. (See Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Insurance.)
Taxes	The debtor must: • Pay all taxes, including state and local taxes, from the tax account. • Transfer sufficient funds from the payroll account to the tax account to cover payroll taxes. • Timely file tax returns and reports, accompanied by evidence that the debtor has paid the tax liability in full. • Serve the US Trustee with a copy of each tax return and verification of payment. (See Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Taxes.)

Additional US Trustee Procedural Requirements

In addition to the significant first day requirements, the Region 16 Guidelines require debtors to provide additional information relating to the debtor's finances and operations within the first seven days of the date the petition is filed, the case is converted, or an order for relief is entered (Attorney's 7 Day Package) to the US Trustee at ustp.region16.ch11@usdoj.gov.

The Attorney's 7 Day Package Checklist contains a list of the documents that must be included in the 7 Day Package. For each document required and each subcategory identified on the form (Form USTLA 4), the debtor must select at least one category to indicate whether the document is attached or has been previously submitted or an explanation why the document is not attached.

Within seven days of the petition date, the debtor must provide the US Trustee with copies of:

- A Real Property Questionnaire. If the debtor:
  - leases, owns, has an interest in, or is in the process of purchasing a total of four real properties or less, the debtor must submit a separate Real Property Questionnaire (Form USTLA 5) for **each** parcel of real property;
  - owns a personal residence, the debtor must complete the Real Property Questionnaire For Principal Residence (Form USTLA 5.1);
  - owns or has an interest in five or more real properties, the debtor should not complete the Real Property Questionnaire unless otherwise instructed by the US Trustee. The debtor instead must complete the Owned Property Summary Sheet (Form USTLA 5.2) and list all properties owned by the debtor; and
  - leases five or more real properties, the debtor should not complete the Real Property Questionnaire unless otherwise instructed by the US Trustee. The debtor instead must complete the Leased Property Summary Sheet (Form USTLA 5.3) and list all properties the debtor leases.
- Prepetition financial statements. Copies of debtor's most recent audited and unaudited financial statements.
- Tax returns. Copies of the debtor's income state and federal tax returns for the two years before the petition date in a separate electronic file.
- Proof of required certificates and licenses. Copies of any certificates and licenses required in any business operated by the debtor.
- A projected cash flow statement. The debtor must submit a projected cash flow statement covering the first 90 days of operation that must contain a detailed income and expense statement.
- A statement of major issues and timetable report. A *pro se* debtor or debtor's counsel must submit a thorough report that:
  - provides a brief description of the structure of the corporation, partnership, or business;
  - identifies its officers, shareholders (if a corporation), principals, owners, and managers with contact information;
  - lists the nature of the debtor's business, major events, disputes, and a proposed timetable to resolve each of the problems described in the report; and
  - includes the expected date for filing the disclosure statement and plan.
- An Employee Benefit Plan Questionnaire. Copies of debtor's Employee Benefit Plan Questionnaire (Form USTLA 8), which identifies whether or not it is a public corporation and lists benefits.
- A list of insiders. The debtor must submit a list of all insiders as defined in section 101(31) of the Bankruptcy Code.
- Proof of recording of the Chapter 11 petition. The debtor must record a copy of the Chapter 11 petition with the recorder of each county for each real property owned by the debtor or in which the debtor has an ownership interest and provide proof of recordation to the US Trustee.
- A Declaration Regarding Compliance with United States Trustee Guideline and Requirements for Chapter 11 Debtors in Possession. The debtor must submit the Declaration Regarding Compliance (Form USTLA 3), signed under penalty of perjury by an officer of the debtor or by the individual debtor (not the debtor's attorney).
- Domestic Support Obligations (DSOs). Debtors with domestic support obligations must comply with section 1106(a)(8) of the Bankruptcy Code concerning providing notices to claim holders and the state child support agency. Debtors must provide proof that all notices required under section 704(10) of the Bankruptcy Code have been given to the appropriate parties.

Initial Debtor Interview and First Meeting of Creditors

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. 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.)

Federal Rule of Bankruptcy Procedure 2003 and sections 341 and 343 of the Bankruptcy Code govern the date, place, and order of section 341 meetings in all districts that have a US Trustee.

For more information on section 341 meetings, see Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Section 341 Meeting.

In the C.D. Cal., the debtor must attend the initial debtor interview, the first meeting of creditors, and other meetings required by the US Trustee.

Monthly Operating Reports

The debtor-in-possession must file operating reports each month throughout the pendency of the Chapter 11 case. The timely filing of reports of operations is crucial to the efficient administration of Chapter 11 cases. These reports are designed to provide the US Trustee, the court, creditors, and other parties in interest with reliable information concerning the debtor's current financial performance. US Trustees use the information contained in the reports to identify cases lacking a realistic prospect of reorganization and to evaluate the feasibility of a proposed plan of reorganization (see Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Monthly Operating Reports).

In the C.D. Cal., monthly operating reports (MORs) contain information regarding bank accounts that the debtor has possession, custody, control, access, or signatory authority over, even if the account is not in the debtor's name and whether or not the account contains only postpetition income.

The following table summarizes the requirements for filing MORs in the C.D. Cal.

US Trustee Operating Requirement	C.D. Cal. Bankruptcy Court Requirements
Format	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 streamlined, data-embedded, uniform forms for filing monthly operating reports. These forms have been updated, effective November 30, 2021.
Timing	MORs must be filed by the 21st day of each month for the prior monthly reporting period.
Filing	The debtor must electronically file an original monthly operating report with the clerk of the bankruptcy court.
Service	A copy of the operating report must be served on: • The US Trustee. • Any official committees. • Any governmental unit responsible for collection or determination of any tax arising out of the debtor's operations. • Any requesting party in interest.

Small Business Cases and Subchapter V Cases

Small business debtors and Subchapter V debtors should file with the court the National Small Business Operating Report (Official Bankruptcy Form B425C) on the 21st day of each month for the preceding calendar month.

Post-Confirmation Operating Reports

After confirmation of a plan, a debtor no longer must file operating reports on a monthly basis. The debtor instead must file a post-confirmation operating report on a fiscal quarterly basis

(see Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Post-Confirmation Reports).

The following table summarizes the requirements for filing post-confirmation operating reports in the C.D. Cal.

US Trustee Operating Requirement	C.D. Cal. Bankruptcy Court Requirements
Format	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 streamlined, data-embedded, uniform forms for filing post-confirmation reports. These forms have been updated, effective November 30, 2021.
Timing	The report is based on a calendar fiscal quarter, which the debtor must file by the 21st day of the month following the end of the fiscal quarter reporting period. For example, the debtor must file the report on April 21 for the first quarter of the year. The debtor must file the report until the bankruptcy court enters a final decree, dismisses the case, or converts the case to another chapter in bankruptcy.

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)). Quarterly fees accrue throughout the course of 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 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).

The quarterly fee is based on the amount of disbursements made by the debtor during the calendar quarter, with a minimum fee of $250. The US Trustee Program amends the quarterly fee schedule from time to time (see US Trustee Quarterly Fee Guideline Schedule). For more information on the fees required, see Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: US Trustee Fee Guidelines.

In Region 16:

- Chapter 11 debtors must pay a quarterly fee to the US Trustee every calendar quarter (including any fraction thereof).
- The amount of the quarterly fee varies, depending on the dollar amount of disbursements made during the calendar quarter.
- The minimum fee must be paid even if no disbursements were made during the calendar quarter.
- The fees are **due** by the end of each calendar quarter. However, they are not considered late until the last day of the month following the end of each calendar quarter.
- Interest may be charged on any outstanding balance at the prevailing statutory rate.
- As of January 1, 2020, quarterly fees may be paid online.

Insider Compensation

Before any insiders (as defined in section 101(31) of the Bankruptcy Code), including the owners, partners, officers, directors, or shareholders of the debtor and relatives of insiders, may receive compensation from a Chapter 11 estate, the debtor must submit a Notice of Setting/Increasing Insider Compensation (Form USTLA 12). The notice must:

- Attach proof of the insider's compensation received from the debtor during the 12-month period immediately preceding the Chapter 11 filing, such as Forms W-2 or 1099 or other related payroll or compensation forms.
- Be served on the creditors' committee or the 20 largest unsecured creditors and any secured creditors. The proof of service must be submitted to the US Trustee **by both mail and email to the Trial Attorney assigned to the case**.

No compensation may be paid out until 15 days after service of the notice and no objection to the Notice of Setting/Increasing Insider Compensation has been received or filed with the court.

On-Site Audits and Inspections

The US Trustee may conduct on-site audits and inspections of the debtor's books, records, and facilities to verify information.

Trust Agreements

The debtor must submit copies of any trust agreements to which the debtor is a party or under which the debtor holds, has possession of, or operates any personal or real property or business as a trustee or otherwise.

Physical Inventory of Goods, Machinery, and Equipment

The debtor must conduct a physical inventory, including an itemized cost value, of all goods, machinery, and equipment on hand as of the petition date, and a copy of the inventory must be submitted to the US Trustee. If the inventory cannot be completed immediately, normally not more than 30 days after filing the petition, a notation should be made on the cover sheet.

Notice of Address Change

The debtor must notify the US Trustee and the bankruptcy court of any change of address or telephone within seven days after the change.

Use, Sale, or Lease of Estate Property

If the court has authorized the use, sale, or lease of property of the estate outside the ordinary course of business of the debtor and a related escrow is contemplated, a copy of the escrow instructions must be submitted to the US Trustee. Within ten days after the close of escrow or completion of the sale, a certified copy of the escrow closing statement or, where no escrow was used, a sworn declaration showing the distribution of the proceeds of any sale of estate property must be submitted to the US Trustee.