

LOCAL RULES OF THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

GUIDELINES FOR FIRST DAY MOTIONS

1. The court recognizes that certain matters must be addressed immediately after the commencement of a chapter 11 case in order to ensure the least possible disruption to the debtor's ongoing business operations and thereby enhance the chances for success in chapter 11. Matters that typically require expedited consideration include, without limitation, requests to pay prepetition payroll, to honor customer deposits and obligations, to authorize maintenance of existing bank accounts and cash management systems, and to determine adequate assurance for utility companies. When expedited relief is sought by the debtor-in-possession at the outset of the case in the form of motions ("First Day Motions"), the debtor-in-possession shall serve written pleadings on parties or counsel for parties in interest, including the United States Trustee, any committee of creditors or equity security holders established prior or subsequent to the chapter 11 filing or, if none, the twenty largest unsecured creditors and any secured creditor whose collateral includes cash collateral or whose lien(s) might be affected by the relief sought.
2. When made in advance of the chapter 11 filing, service of the moving papers may be by Express or Overnight Mail. When made after the chapter 11 filing, service shall be made by facsimile, personal service or other electronic means (by consent) provided, however, that Express or Overnight Mail may be used where a party is unable to notify by facsimile, personal service or other electronic means (by consent).
3. The First Day Motion, declaration, and order for the relief requested should be filed in the clerk's office with a note that it be directed to the judge's law clerk. The words "First Day Motion" shall appear in the caption of all emergency motions and orders thereon.
4. The debtor-in-possession shall advise the judge's law clerk and the United States Trustee by telephone of the filing of any First Day Motion(s).
5. First Day Motions with respect to the use of cash collateral and/or post-petition financing shall comply with Fed. R. Bankr. P. 4001(b) or (c).
6. Authorization for payment of insiders of the debtor may be obtained pursuant to First Day Motions. Any such motion shall state the nature and extent of the duties to be performed by the person to be compensated and the business justification for the amount of the compensation proposed and shall be limited in duration to sixty (60) days. A personal financial declaration with the information required by Local Bankruptcy Rule 4002-2(b)(2-4) is required if the insider applicant has a 20% or greater ownership interest in the debtor or is a sole member of the Board of Directors.
7. The court reserves discretion to grant or deny a First Day Motion without further hearing. A denial without a hearing is not a disposition on the merits.
8. Any party in interest who opposes a First Day Motion shall immediately notify the judge's law clerk of its position by telephone. No opposition shall be filed to a First Day Motion unless the court otherwise directs.

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9. Within two (2) business days after the entry of any First Day Order, the debtor-in-possession shall serve a conformed copy of the order on any committee of creditors or equity security holders established prior or subsequent to the chapter 11 filing or, if none, the twenty largest unsecured creditors and any secured creditor whose collateral includes cash collateral or whose lien(s) might be affected by the relief sought, on the United States Trustee and on such other entities as the court may direct. A proof of service shall be filed with the court no later than the next business day following the date of service.

10. Any party in interest may file a motion to modify any First Day Order under this rule, other than any order entered pursuant to 11 U.S.C. §§ 363 and 364 with respect to the use of cash collateral and/or approval of post-petition financing, within thirty (30) days of the entry of such order, unless otherwise ordered by the court. Any such motion for modification shall be given expedited consideration by the court. In any such motion for modification, the debtor-in-possession shall have the burden of proof with respect to the propriety of the relief granted in the original First Day Order.

LOCAL RULES OF THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**GUIDELINES FOR MOTIONS TO USE CASH COLLATERAL
OR TO OBTAIN CREDIT**

This court is often requested to rule on requests by debtors (and sometimes chapter 11 trustees) for authority to use cash collateral or obtain credit. In an effort to provide guidance to debtors and secured creditors, the court has adopted the following guidelines. As a preliminary matter, all financing motions should be by motion pursuant to Fed. R. Bankr. P. 2002, 4001, and 9014 and Local Bankruptcy Rule 9014 and should provide a summary of the essential terms of the proposed use of cash collateral and/or financing (e.g.; the maximum borrowing available on a final basis, the interim borrowing limit, borrowing conditions, points or other costs, interest rate, maturity, events of default, use of funds limitations, and protections afforded under 11 U.S.C. §§ 363 and 364). The debtor should be prepared to present a budget at the interim hearing on such cash collateral usage and/or financing that would support the need for such interim funding. The budget should cover the period for which cash collateral use is sought.

In addition, the court will typically NOT authorize (particularly in interim orders) use of cash collateral and/or financing agreements that contain any one or more of the following:

1. Provisions that grant cross-collateralization protection (other than replacement liens) to the prepetition secured creditor (i.e.; clauses that secure prepetition debt by post-petition assets in which the secured creditor would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law).
2. Provisions or findings of fact that bind the estate or all parties in interest with respect to the validity, perfection or amount of the secured creditor's prepetition lien or debt or the waiver of claims against the secured creditors without first giving parties in interest at least seventy-five (75) days from the entry of the interim order and the official committee of unsecured creditors, if formed, no less than sixty (60) days notice from the later of the date of its formation or the date of its retention of counsel to investigate such matters, unless otherwise directed by the court.
3. Provisions that seek to waive rights under 11 U.S.C. § 506(c).
4. Provisions that grant immediately to the prepetition secured creditor liens on the debtor's claims and causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548, and 549.
5. Provisions that "roll over" prepetition debt of the prepetition secured creditor to post-petition debt.
6. Provisions which provide carveouts for administrative expenses that do not treat all professionals equally or on a pro rata basis.
7. Provisions in any agreement for use of cash collateral, financing or conditioning the automatic stay that in effect operate to divest the debtor-in-possession of any discretion in the formulation of a plan or administration of the estate or limit access to the court to seek any relief under other applicable provisions of law. Such provisions include, without limitation, agreements with respect to the

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treatment of claims.

If a party believes that compelling circumstances justify a departure from these guidelines, the motion must: (a) recite whether the proposed form of order and/or underlying cash collateral stipulation or loan agreement contains any provision of the type indicated above, (b) identify the location of any such provision in the proposed form of interim order, cash collateral stipulation and/or loan agreement, and (c) justify for the inclusion of such provision. In particular, the motion shall, in checklist fashion set forth below, identify departures from the guidelines:

Description of Provision	Page No.	Line No. (If Applicable)
<input type="checkbox"/> Cross-collateralization clauses	_____	_____
<input type="checkbox"/> Provisions or findings of fact that bind the estate or all parties in interest with respect to the validity, perfection or amount of the secured party's lien or debt	_____	_____
<input type="checkbox"/> Provisions that seek to waive rights under 11 U.S.C. § 506(c)	_____	_____
<input type="checkbox"/> Provisions that grant immediately to the prepetition secured creditor liens on the debtor's claims and causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548, and 549	_____	_____
<input type="checkbox"/> Provisions that "roll over" prepetition debt of the prepetition secured creditor to post-petition debt	_____	_____
<input type="checkbox"/> Provisions which provide carveouts for administrative expenses that do not treat all professionals equally or on a pro rata basis	_____	_____
<input type="checkbox"/> Provisions that operate, as a practical matter, to divest the debtor-in-possession of any discretion in the formulation of a plan or administration of the estate or limit access to the court to seek any relief under other applicable provisions of law	_____	_____

If the above-described checklist is not submitted, counsel for the proponent of the cash collateral or relief from stay stipulation, must certify that no such provisions are contained in the agreement submitted for approval.

LOCAL RULES OF THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**GUIDELINES FOR THE SALE OF SUBSTANTIALLY ALL ASSETS
UNDER § 363 WITHIN 60 DAYS OF THE FILING OF THE PETITION****1. DECLARATION OF COUNSEL FOR DEBTOR-IN-POSSESSION.**

In connection with any hearing to approve the sale of substantially all assets within sixty (60) days of the filing of the petition, the request for the special setting of a hearing or the sale motion itself when regularly noticed, should comply with Local Bankruptcy Rules 2002 and 6004 unless otherwise ordered by the court and be supported by a separate declaration by counsel for the debtor-in-possession covering the following points:

- A. Retention of Counsel. The date counsel was retained by the debtor, the approximate number of hours of professional time expended prepetition, compensation paid to counsel prepetition including source of payment and the approximate amount of accrued but unpaid compensation.
- B. Communications with Creditors. A description of any written communications of the debtor with creditors during the prepetition reorganization process. Copies of letters should be attached. If letters contain confidential information, counsel may apply to the court to submit such documents under seal pursuant to Local Bankruptcy Rules 9018-1 and 9018-2.
- C. Communications with Shareholders or Partners. A description of any written communications with shareholders or partners of a partnership during the prepetition reorganization process. Copies of letters should be attached. If letters contain confidential information, counsel may apply to the court to submit such documents under seal pursuant to Local Bankruptcy Rules 9018-1 and 9018-2.
- D. Creditors' Committee. If a creditors' committee existed prepetition, indicate the date and manner in which the committee was formed.
- E. Counsel for Committee. If the prepetition creditors' committee retained counsel, indicate the date counsel was engaged and the selection process.
- F. Sale Contingencies. Statement of all contingencies to the sale agreement together with a copy of the agreement.
- G. Creditor Contact List. If no committee has been formed, a list of contact persons together with fax and phone numbers for each of the largest 20 unsecured creditors.
- H. Administrative Debts. Assuming the sale is approved, an estimate of administrative debts to be incurred prior to closing and the source of payment for such debts.

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- I. Proceeds of Sale. An estimate of the gross proceeds anticipated from the sale together with an estimate of the net proceeds coming to the estate with an explanation of the items making up the difference.
- J. Debt Structure of Debtor. A brief description of the debtor's debt structure including the amount of the debtor's secured debt, priority claims and general unsecured claims.
- K. Disposition of Proceeds. A statement setting forth, to the best of declarant's knowledge, the likely distribution of proceeds to secured claimants, administrative claimants, priority claimants and general unsecured creditors.

2. DECLARATION OF RESPONSIBLE INDIVIDUAL FOR DEBTOR-IN-POSSESSION.

Counsel's declaration referred to in paragraph 1 above should be accompanied by a declaration from the responsible individual covering the following matters:

- A. Alternatives to Sale. A description of the efforts, if any, to pursue other alternatives such as financing, capital infusion, etc., including the period of time involved and the results achieved.
- B. Marketing of Assets. A description of the manner in which the assets were marketed for sale including the period of time involved and the results achieved.
- C. Decision to Sell. The date on which the debtor agreed to sell the assets.
- D. Asset Valuation. Disclosure of the debtor's prior valuations, within the last year, of the assets to be sold, if any (i.e.; book value, appraisals, financial statements, etc.).
- E. Tax Consequences of the Sale. A statement by a qualified person describing the tax consequences of the proposed sale.
- F. Relationship of Buyer. A statement identifying the buyer and setting forth, to the best of declarant's knowledge, all of the buyer's (including its officers, directors and shareholders) connections with the debtor, creditors, any other party in interest, their respective attorneys, accountants, the United States Trustee or any person employed in the office of the United States Trustee.
- G. Post Sale Relationship with Debtor. A statement setting forth, to the best of declarant's knowledge, any relationship or connection the debtor (including its officers, directors, shareholders, and employees) will have with the buyer after the consummation of the sale, assuming it is approved.

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- H. Relationship with Secured Creditors. If the sale involves the payment of all or a portion of secured debt(s), a statement of all connections between debtor's officers, directors, employees or other insiders and each secured creditor involved (for example, release of insider's guaranty).
- I. Insider Compensation. Disclosure of current compensation received by officers, directors, key employees or other insiders pending approval of the sale. Declaration shall include the dates the orders approving compensation were entered, the terms of the orders, and whether the current compensation differs from the approved terms.

3. DECLARATION OF COUNSEL FOR CREDITORS' COMMITTEE.

Any counsel who has represented a prepetition creditors' committee should submit a declaration covering the following points:

- A. Retention of counsel. Same as paragraph 1.A above.
- B. Communications with Creditors. Same as paragraph 1.B above.
- C. Communications with Shareholders or Partners. Same as paragraph 1.C above.
- D. Involvement in Sale. A description of the committee's and counsel's involvement in the negotiation of the sale.

4. HEARING AND NOTICE REGARDING BID PROCEDURES MOTIONS AND SALE MOTIONS.

Generally, the sale of substantially all assets must proceed in two steps as follows:

- A. Sale Procedures Motions. In all assets sales where a debtor-in-possession seeks to set a procedure for overbids, including credit bidding, other than as provided in paragraph 8 below or to pay damages to a prospective purchaser as defined in paragraph 9 below, a motion to approve sale procedures must be filed and hearing held before notice of the sale is given.
- B. Notice of Sale. All notices of sale given to creditors and other parties in interest must contain the information required by paragraphs 1.H through 1.K and paragraphs 2.A through 2.H above, in addition to any other orders made as a result of a Sale Procedures Motion. Unless the court orders otherwise, all sales will be governed by these guidelines, including auctions or presentation of competing bids.

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5. GOOD FAITH FINDING.

There must be an evidentiary basis for a finding of good faith under § 363(m). Evidence can be presented in the form of a declaration from the prospective purchaser.

6. COMPETING BIDS.

Unless the court orders otherwise, competing bids may be presented at the time of the hearing.

7. FINANCIAL ABILITY TO CLOSE.

Unless the court orders otherwise, any competing bidder must be prepared to demonstrate to the satisfaction of the court its ability to consummate the transaction if it is the successful bidder.

8. OVERBIDS.

Unless the court orders otherwise, each overbid must be at least 5% more than the amount of the original offer. The amount of the original offer is determined without regard to any commission or payment to a broker or agent.

9. DAMAGES PAYABLE TO PROSPECTIVE PURCHASER.

Whether denominated liquidated damages, breakup fee, topping fee or other designation, no damages of any kind are payable to a prospective purchaser or its agents absent approval of the court. If a provision for damages is contained in the original purchase agreement, the provision should provide that it must be approved separately from the agreement itself as part of the Sale Procedure Motion.

A request for the approval of a damage provision shall be supported by, in addition to any other required papers, a declaration from counsel for the debtor-in-possession setting forth the precise conditions under which damages would be payable and the factual basis on which the seller determined the provision was reasonable. Counsel for the proposed buyer may, but is not required to, submit a similar declaration.

LOCAL RULES OF THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**GUIDELINES FOR PREPACKAGED CHAPTER 11 CASES****1. GOALS.**

The purpose of this guideline is to establish a uniform approach for commencing and administering "prepackaged chapter 11 cases" in the United States Bankruptcy Court for the Southern District of California. Specifically, this guideline defines a "prepackaged chapter 11 case" and attempts to provide bankruptcy practitioners with help in dealing with practical matters which either are not addressed at all by statute or rules or are addressed indirectly in a piecemeal fashion by statutes, general rules, and/or local rules that were not enacted specifically with prepackaged chapter 11 cases in mind. Although each case is different, many issues are common to all prepackaged cases. Judicial economy, as well as procedural predictability for debtors and creditors, will be enhanced by promulgation of uniform guidelines to deal with these common issues. The guidelines are advisory only; the court retains the power to depart from them.

2. DEFINITION OF PREPACKAGED CHAPTER 11 CASE.

For purposes of these guidelines, a "prepackaged chapter 11 case" is one in which the debtor negotiates terms of a plan and solicits acceptances thereof prior to filing the petition. In these circumstances, the debtor shall file a motion scheduling a confirmation hearing for the prepackaged plan ("Prepackaged Scheduling Motion") as set forth below.

3. CRITERIA FOR PREPACKAGED CHAPTER 11 CASE; CONTENTS OF PREPACKAGED SCHEDULING MOTION.

- A. Content of Prepackaged Scheduling Motion. The Prepackaged Scheduling Motion shall:
- (1) represent that (a) the solicitation of votes to accept or reject the debtor's plan required for confirmation of that plan was completed prior to commencement of the debtor's chapter 11 case, and that no additional solicitation of votes on that plan is contemplated by the debtor, or (b) the solicitation of all votes to accept or reject the debtor's plan required for confirmation of that plan has been deemed adequate by the court pursuant to paragraph 3.C.(2) below such that no additional solicitation will be required;
 - (2) represent that the requisite acceptances of such plan have been obtained from each class of claims or interests as to which solicitation is required except as provided in paragraph 3.A.(3) below; and
 - (3) with respect to any class of interests that has not accepted the plan, whether or not it is deemed not to have accepted the plan under § 1126(g), represent that the debtor is requesting confirmation under § 1129(b); and
 - (4) request entry of an order scheduling the hearing (a) on confirmation of the plan and (b) to determine whether the debtor has satisfied the requirements of either

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11 U.S.C. § 1126 (b)(1) or 11 U.S.C. § 1126(b)(2), for a date that is not more than ninety (90) days following the petition date.

- (5) The motion shall be supported by a declaration and have attached (a) a summary of the votes accepting or rejecting the debtor's plan; and (b) copies of any solicitation used to solicit those votes.
- B. Confirmation Pursuant to 11 U.S.C. § 1129(b)(2)(C). A chapter 11 case may constitute a "prepackaged chapter 11 case" for purposes of these guidelines notwithstanding the fact that the debtor proposes to confirm the plan pursuant to 11 U.S.C. § 1129(b)(2)(C) as to a class of interests.
- C. Filing of Petition After Solicitation has Commenced but Before Expiration of Voting Deadline. Unless the court orders otherwise, if a chapter 11 case is commenced by or against the debtor, or if a chapter 7 case is commenced against the debtor and converted to a chapter 11 case by the debtor pursuant to 11 U.S.C. § 706(a), after the debtor has transmitted all solicitation materials to holders of claims and interests whose vote is sought but before the deadline for casting acceptances or rejections of the debtor's plan (the "Voting Deadline"),
- (1) the debtor and other parties in interest shall be permitted to accept but not solicit ballots until the Voting Deadline; and
 - (2) after notice and a hearing the court shall determine the effect of any and all such votes.
- D. Applicability of Guidelines to Cases Involving Cramdown of Classes of Claims and "Prepackaged Chapter 11 Cases". The court may, upon request of the debtor or other party in interest in an appropriate case, apply some or all of these guidelines to
- (1) cases in which the debtor has satisfied the requirements of paragraph 3.A.(1) above but intends to seek confirmation of the plan pursuant to 11 U.S.C. § 1129(b) as to a class of claims (a) which is deemed not to have accepted the plan under 11 U.S.C. § 1126(g); (b) which is receiving or retaining property under or pursuant to the plan but whose members' votes were not solicited prepetition and whose rejection of the plan has been assumed by the debtor for purposes of confirming the plan; or (c) which is receiving or retaining property under or pursuant to the plan and which voted prepetition to reject the plan, as long as no class junior to such rejecting class is receiving or retaining any property under or pursuant to the plan; and
 - (2) "partial prepackaged chapter 11 cases" — i.e.; cases in which acceptances of the debtor's plan were solicited prior to the commencement of the case from

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some, but not all, classes of claims or interests whose solicitation is required to confirm the debtor's plan.

4. PREFILING NOTIFICATION TO THE UNITED STATES TRUSTEE AND THE CLERK OF COURT.

- A. Notice of Proposed Filing to the United States Trustee. At least five (5) business days prior to the anticipated filing date of the prepackaged chapter 11 case, the debtor should (1) notify the United States Trustee of the Debtor's intention to file a prepackaged chapter 11 case and (2) supply the United States Trustee with one (1) copy of the debtor's plan and disclosure statement (or other solicitation document).
- B. Notice of Proposed "First Day Orders" to the United States Trustee. If possible, drafts of all motions pursuant to which the debtor seeks entry of orders on or shortly after the filing of the petition ("First Day Motion"), with the proposed orders attached as exhibits, should be furnished to the United States Trustee at least two (2) business days in advance of the filing of the petition or as soon as practicable after the filing of an involuntary petition.
- C. Notice of Proposed Filing to the Clerk of Court. At least two (2) business days prior to the anticipated filing of the prepackaged chapter 11 case, counsel should contact the Clerk of Court to discuss the anticipated filing, the amount of the debtor's assets, number and type of creditors, procedures for handling public inquiries (i.e.; the names, addresses and telephone numbers of the persons to whom such inquiries should be directed), procedures for handling claims and proofs of claim or interest. The Clerk of Court will not assign the case to or discuss the case with a judge until the petition is filed.

5. FILING OF PREPACKAGED CHAPTER 11 CASE.

As soon as practicable following filing of a prepackaged chapter 11 case, the debtor shall furnish to the judge assigned to the case a copy of the plan, the disclosure statement (or other solicitation document), a summary of balloting as required by Local Bankruptcy Rule 3018, First Day Motions, and any other filed motion. To the extent that documents filed by the debtor at or following the commencement of the debtor's chapter 11 case differ in substance from the versions supplied to the United States Trustee under paragraphs 4.A and 4.B above, the debtor shall furnish to the United States Trustee one (1) copy of any such documents that have been modified, preferably black lined to show changes.

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**GUIDELINES FOR ESTABLISHING INTERIM COMPENSATION
PROCEDURES FOR PROFESSIONALS**

The Bankruptcy Code (11 U.S.C. § 331) limits the frequency with which professionals employed under 11 U.S.C. § 327 or § 1103 may apply for compensation for services rendered and reimbursement for expenses to once every 120 days after the date of the order for relief unless the court otherwise permits.

These guidelines are intended to assist professionals in obtaining orders setting forth procedures for interim compensation provided that professionals satisfy the requirements of Knudsen Corp v. U.S. Trustee, 84 B.R. 668 (9th Cir. B.A.P. 1988).

1. NOTICE.

Notice of a hearing on a motion to approve interim compensation procedures should be given to the United States Trustee, all creditors and equity holders, the debtor, and parties requesting special notice in accordance with Local Bankruptcy Rule 2002-3.

2. CONTENT OF MOTION.

The motion to approve interim compensation procedures should describe in detail the proposed procedures.

3. GUIDELINES.

The court will generally approve interim procedures which:

- A. Provide for the monthly payment of fees and reimbursement of expenses (subject to the other guidelines set forth herein).
- B. Require service of copies of the invoices for which fees and costs are requested on the debtor, the United States Trustee, all official committees (or, if none appointed, the 20 largest unsecured creditors), and parties requesting special notice.
- C. Provide those served in paragraph 3.B with an opportunity to object within ten (10) days after the service of the invoices by notifying the applicant in writing and setting forth the specific grounds for the objection;
- D. Provide the applicant with the option to either request a hearing on the objection or hold back the amount of fees and/or expenses that are the subject of the objection until the hearing on the application for interim compensation.
- E. Provide for an award of 80% of the fees requested with a hold-back of 20% of such fees and for an award of 100% of expenses; provided that the 20% hold-back of fees may include any fees to which an objection was raised.

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- F. Require that an application for an interim award of compensation and expenses, in compliance with applicable federal and local bankruptcy rules and the Guidelines of the Office of the United States Trustee for the Southern District of California, be filed with the court and noticed for hearing in accordance with Local Bankruptcy Rule 2002-3 approximately once every 120 days.
- G. State that neither the United States Trustee nor any party in interest shall be barred from raising objections to any charge or expense in any professional fee application filed with the court on the ground that no objection was raised with respect to the invoice.
- H. Provide that if the applicant fails to comply with the 120-day fee application procedure set forth in paragraph 3.F, said applicant shall not be entitled to continue to utilize the interim fee compensation procedure previously approved.