Proofs of Claim

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Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 (Spouse, if filing) _____

United States Bankruptcy Court for the: _____ District of _____

Case number _____

Official Form 410

Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. **Who is the current creditor?**
   _____
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**
   ☐ No
   ☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent? (if different)**
Name	Name
Number Street	Number Street
City State ZIP Code	City State ZIP Code
Contact phone	Contact phone
Contact email	Contact email

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):
   _

4. **Does this claim amend one already filed?**
   ☐ No
   ☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☐ No
   ☐ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?

- ☐ No
- ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

7. How much is the claim? $_____ **Does this amount include interest or other charges?**

- ☐ No
- ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim?

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

_____

9. Is all or part of the claim secured?

- ☐ No
- ☐ Yes. The claim is secured by a lien on property.

Nature of property:

- ☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
- ☐ Motor vehicle
- ☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%

- ☐ Fixed
- ☐ Variable

10. Is this claim based on a lease?

- ☐ No
- ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. Is this claim subject to a right of setoff?

- ☐ No
- ☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

- ☐ No
- ☐ Yes. *Check one:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$
☐ Up to $3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$
☐ Wages, salaries, or commissions (up to $15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- ☐ I am the creditor.
- ☐ I am the creditor's attorney or authorized agent.
- ☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- ☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date _____
MM / DD / YYYY

_____
Signature

Print the name of the person who is completing and signing this claim:

Name _____
First name Middle name Last name

Title _____

Company _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____
Number Street

_____
City State ZIP Code

Contact phone _____ Email _____

Should the attorney, filing on behalf of their client, be signing this form?

Proofs of Claim – 11 U.S.C. § 101(5)(A)&(B)

- §101(5)(A)
  - "right to payment…"
- §101(5)(B)
  - "right to an equitable remedy"
- Bar Date: The last allowable date to file a proof of claim



Types of Claims

- Secured, Unsecured, or a combination
- Administrative
- Priority
- Contingent, Liquidated, or Insider (or not)
- Reimbursement, Contribution, or Indemnification
- Recovery of property
- Creditor and or Equity Claim
- Executory Contract or Unexpired Lease

Can a Claim be an interest?

Who may file

- A Creditor

- An Agent if:
  - Indenture Trustee
  - Co-Debtor or Guarantor
  - On Behalf of a Creditor

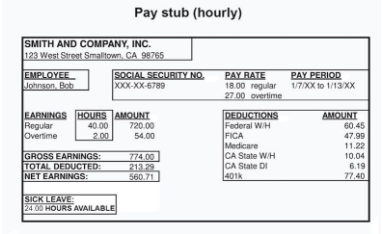
What happens when attorneys sign a POC for a client?



Priority Claims – §507(a)

- Domestic Support
- Administrative
- Wage, Salaries, and or Commissions
- Employee Benefit Plans
- Taxes
- Drunk drivers




Pay stub (hourly)

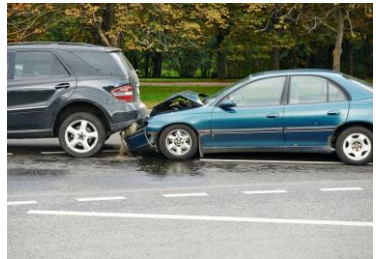
SMITH AND COMPANY, INC.
123 West Street Smalltown, CA 98765

EMPLOYEE	SOCIAL SECURITY NO.	PAY RATE	PAY PERIOD
Johnson, Bob	XXX-XX-6789	18.00 regular 27.00 overtime	1/7/XX to 1/13/XX

EARNINGS	HOURS	AMOUNT
Regular	40.00	720.00
Overtime	2.00	54.00
GROSS EARNINGS:		774.00
TOTAL DEDUCTED:		213.29
NET EARNINGS:		560.71

DEDUCTIONS	AMOUNT
Federal W/H	60.45
FICA	47.99
Medicare	11.22
CA State W/H	10.04
CA State DI	6.19
401k	77.40

SICK LEAVE:
24.00 HOURS AVAILABLE



Administrative Claims – §503(b)

- Estate preservation
- Professional fees
- Involuntary petitions
- Substantial contributions
- Witness fees & milage
- Post-assumption rejection damages
- Costs of closing (Healthcare business)
- Value of goods received 20 days pre-bk filing

Legal Definition – FRBP 3001

"A proof of claim is a written statement setting forth a creditor's claim."

- POC should "conform"
- POC executed by the creditor or authorized agent
- Claims based on a writing (e.g. written contract)

What if you lost the written basis for claim, do you have no grounds to file?

Individual Debtor – FRBP 3001(c)(1)-(2)

- Include an itemized statement of interest, fees, expenses etc.
- Secured by security interest: state necessary default amount
- If secured by Debtor's Residence, include escrow statement



Consumer Credit Agreement – FRBP 3001(c)(3)

- “Debtor’s Real Property”
- Credit Card
- Other store-brand Cards



Consider the distinction for Debtor’s property between 3001(c)(2) and 3001(c)(3)

Filing Proofs of Claim – FRBP 3002

- Sets filing deadlines
- Extensions may be available – FRBP 3002(c)(6)

Are liens voided if a Creditor does not file a proof of claim?

Exceptions to Statutory Deadlines – FRBP 3002

- Governmental units
- Infants and incompetents
- Rejection of an executory contract or unexpired lease



Filed Untimely – FRBP 3004, 3005

Why would the Debtor (or Trustee) want to file a Proof of Claim on behalf of a Creditor?

- 11 U.S.C. §501 – no deadline provided

30 Day Extensions:

- The Debtor or Trustee may file for the Creditor (Rule 3004)

- Any entity liable with the Debtor or which secured the creditor (Rule 3005)

Claim Objections

- Evidentiary Effect (Rule 3001(F)):
  - "shall constitute prima facie evidence of the validity and amount…"

    Garner v. Shier (In re Garner), 246 B.R. 617 (BAP 9th Cir. 2000)

- If the POC has the presumption of prima facie validity, then the objector must overcome the presumption



Claim Objections Arguments

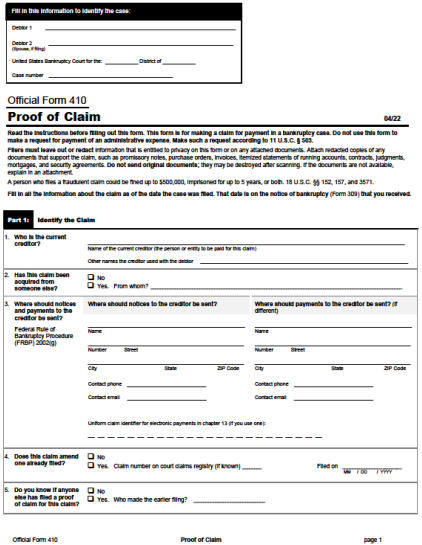
- Step 1: Examine the POC

- Step 2: §502(b) – Basis for objection
  - Unenforceable
  - Unmatured Interest
  - Unreasonable Insider/Attorney Fees
  - Unmatured Debt and excepted from discharge
  - Real Property Lease Termination
  - Late POC filed
  - Avoidable Transfers
  - Reimbursement or Contribution

Claim Objections Arguments

- Step 2: §502(b) (Continued) (Common Objections)
  - Statute of Limitations
  - Lack of sufficient documentation
  - Incorrect claim amount
  - Not the Debtor's problem
  - Duplicative
  - Failure to comply with statutes and rules
  - Invalid claim
  - Priority Claims exceeding maximum amount

Claim Objection: Example



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United States Bankruptcy Court for the: _____ District of _____

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Official Form 410 Proof of Claim page 1

Claim Objection – Rule 11 Motion

- Can you bring a Claim Objection under a Rule 11 Motion?
- Basis for Requesting Rule 11 Sanctions:
  - Failure to do due diligence
  - Insufficient inquiry
  - Improper purpose
  - Unwarranted/frivolous filing
- Cases Sanctioning Attorneys in Connection with Proofs of Claim:
  - In re Obasi, No. 10-10494 (SHL), (Bankr. SDNY 2011)
  - Cash-N-Advance v. Dansereau (In re Dansereau), No. 02-50930 (5th Cir. 2003)
  - In re Lewis, 637 B.R. 861 (Bankr. W.D. Ark. 2022)
  - In re Davis, No. 09-42865 (E.D. Tex. 2012)
  - In re Pearson, No. 19-27718 (Bankr. D. Utah 2023)

Claim Objection – Impact

When is the best time, over the course of a case, to object to a creditor's proof of claim?

- Claims are allowed unless objected to. Then they are disallowed
- Claimant cannot vote on the Plan (§502)
- Claimant may not receive distribution under the Plan with a disallowed claim
- Claimant may be a party in interest

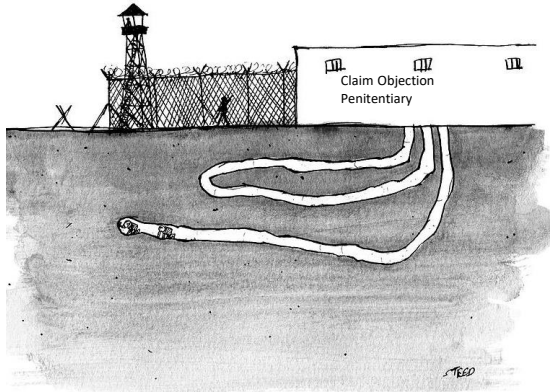
eligible to object.



Claim Objection – Temporary Allowance

"Notwithstanding objection to a claim… the Court…may temporarily allow the claim…in an amount which the court deems proper…" Rule 3018(a)

- Standard tests
  - Equitable purpose
  - It is important to creditors
- Move quickly!



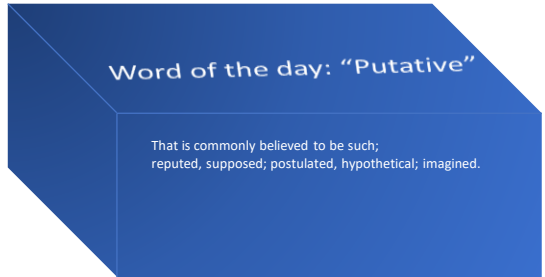
POC Class

- Class Claims can be permissible (FRCP Rule 23)
- 4-Part test under FRCP Rule 23
  - Make sure to include evidence
- Different POC Filings if a Putative or Certified Class Claim



Scenario – Putative Class

- Attorney believes they represent the putative class members
- The attorney must file a motion under Rule 23
- If the attorney does not…



Scenario – Certified Class

- The attorney still must qualify under Rule 23
- Agency relationship, the Authority, to sign POC is granted by the Bankruptcy Court
- Calendar equilibrium: Chapter 11 Debtor's Counsel seeks earliest bar date… but this enhances Putative class argument…

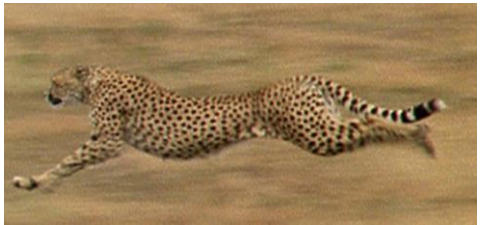


Late Filed POC

- Chapter 7? Chapter 11?

- Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380 (1993). Rule 3003(c)
  - In re Dix, 95 B.R. 134 (BAP 9th Cir. 1988)
  - Four Part Standard
  - Determining Neglect (Rule 9006)

- Move quickly!



Informal POC

- Explicit demand showing the Claim nature and amount
- Evidence of an intent to hold the Debtor liable
- In re Edwards Theatres Circuit, 70 Fed.Appx. 950 (9th Cir. 2003)
  - Writing with such statement
  - Footnote in pleading
  - Letter or email
  - A combination of documents

You are free to go now, live long and find prosperity

Presented by: Steven R. Fox
Slides created by: Matthew Fox



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