

**NAVIGATING A SMALL BUSINESS BANKRUPTCY CASE – THE  
BENEFITS AND THE PERILS**

**JASON G. COHEN**  
Bracewell & Giuliani  
Houston

**JONATHAN L. HOWELL**  
Munsch, Hardt, Kopf and Harr  
Dallas

**MARK WORDEN**  
Fulbright & Jaworski  
Houston

State Bar of Texas  
**NUTS & BOLTS OF BUSINESS BANKRUPTCY**  
September 30, 2009  
Houston

**CHAPTER 3**





**Jason G. Cohen**  
*Associate*  
Houston  
jason.cohen@bgllp.com

### **Experience**

Jason Cohen's practice focuses on corporate financial restructuring, debtor representation, and creditors' rights. Before coming to Bracewell & Giuliani LLP, Mr. Cohen served as a law clerk to the Honorable Marvin Isgur of the U.S. Bankruptcy Court for the Southern District of Texas.

### *Publications and Speeches*

"Feeling Secure?," Starting Out Right, Sponsored by the Young Lawyers Committee of the Bankruptcy Section of the State Bar of Texas, Houston, Texas, May 29, 2009.

Co-author, "Weighing Alternatives In Chapter 11," State Bar of Texas, Advanced Business Bankruptcy Course, May 1, 2008.

"Southern District of Texas Bankruptcy Court Rejects Per Se Rule Imputing Conflicts of Interest to Entire Firms," *Turnaround Management Association Newsletter*, August 21, 2007.

"The New Chapter 13 Practice: Life after BAPCPA," 22d Annual Farm, Ranch and Agri-Business Bankruptcy Institute Conference, 2006.

### **Education**

J.D., with honors, The University of Texas School of Law, 2005  
B.A., magna cum laude, Tulane University, 2000

### **Bar Admissions**

- Texas

### **Court Admissions**

- U.S. District Court for the Northern, Southern, Eastern and Western Districts of Texas



# MUNSCH HARDT KOPF & HARR PC

ATTORNEYS & COUNSELORS



214.855.7501 Direct  
214.978.5337 Fax  
jhowell@munsch.com

3800 Lincoln Plaza  
500 N. Akard Street  
Dallas, Texas 75201-6659

 Download vCard

## RELATED PRACTICES

- Bankruptcy
- Bankruptcy Litigation
- Insolvency, Restructuring & Creditors' Rights

## EDUCATION

- Southern Methodist University  
Dedman School of Law, Juris  
Doctor  
*International Law Review*, Staff  
and Articles Editor and Best  
Case Note Finalist; Dean's List
- Southern Methodist University,  
Bachelor of Arts in Economics

## JONATHAN L. HOWELL

Associate

### OVERVIEW

Jonathan is an Associate in the Insolvency, Restructuring & Creditors' Rights group. Prior to joining Munsch Hardt, he served as the Judicial Law Clerk for the Honorable D. Michael Lynn, United States Bankruptcy Judge for the Northern District of Texas, during which time he played a substantial role in drafting numerous opinions and orders in many complex cases. Before Jonathan's clerkship, he interned for the Honorable Stacey G.C. Jernigan, Bankruptcy Judge for the Northern District of Texas, and the Honorable Ron Clark, District Court Judge for the Eastern District of Texas.

Jonathan has also been involved in editing several legal publications including *Collier on Bankruptcy*, *Collier Handbook: For Debtors in Possession*, *Chapter 11: The Practice of Corporate Reorganization law*, and *Cases and Materials on Civil Procedure*. Recently, he was appointed the Fifth Circuit Note Editor of the American Bar Association's Bankruptcy and Insolvency Litigation Committee.

### MEMBERSHIPS & AFFILIATIONS

- American Bankruptcy Institute
- American Bar Association, Bankruptcy and Insolvency Litigation Committee (Young Lawyer Division Chair) and Litigation Section
- Dallas Association of Young Lawyers, Fellow
- Dallas Bar Association, Bankruptcy and Commercial Law Section
- Dallas/Fort Worth Association of Young Bankruptcy Lawyers, Membership and Mentorship Committees
- State Bar of Texas, Bankruptcy Section, Young Lawyers Committee

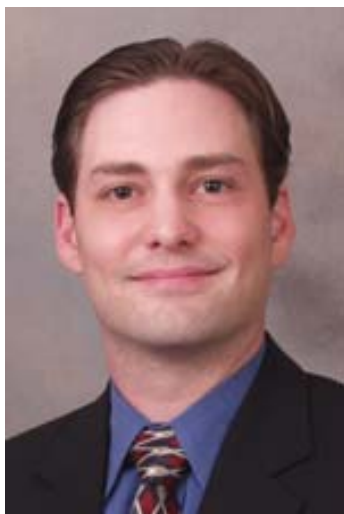
### ADMISSIONS

- Texas
- United States District Courts for the Eastern, Northern, Southern and Western Districts of Texas

#### ARTICLES & SPEECHES

- [August 2009 — Bankruptcy 101: What Every Young Lawyer Should Know About Non-Residential Tenant Bankruptcies](#)
- [June 2009 — A Primer on Commercial Landlord Issues in Bankruptcy](#)
- [November 2008 — Preferences: When is a Payment Made by a Third Party Not Protected by the "Earmarking Doctrine?"](#)
- [July 2008 — Judicial Estoppel: Is Judicial Estoppel Proper when a Debtor Neglects to Enter a Pending Lawsuit as an Asset in Their Bankruptcy Proceedings?](#)
- [April 2008 — Jurisdiction: When Does a Bankruptcy Court Have Subject Matter Jurisdiction Over a Post-Confirmation Proceeding?](#)
- [February 2008 — Ancillary and Other Cross-Border Cases: May a Party-in-Interest Rebut the Presumption that the Debtor's Habitual Residence is the Debtor's Center of Main Interest \(COMI\)?](#)
- [2007 — CHAPTER 11 PLANS: Wiping Out a Lien by Not Expressly Preserving It in a Plan Provision](#)
- [2007 — Single Asset Real Estate: What Constitutes a Single Asset Real Estate Debtor Subject to Expedited Reorganization Procedures Set Forth in Section 362\(d\)\(3\)?](#)

Copyright © 1995-2009 Munsch Hardt All Rights Reserved Worldwide. Attorney Advertising. Munsch Hardt is responsible for the content of this web site.



**Mark Worden**

mworden@fulbright.com  
D: +1 713 651 5589

**Houston**

Fulbright Tower  
1301 McKinney  
Suite 5100  
Houston, TX 77010-3095  
T: +1 713 651 5151  
F: +1 713 651 5246

**Experience**

- *Valuation and Solvency Analysis*
- *Securitization, Perfection and Foreclosure*
- *Plan Development, Asset Sales, and Other Transactions*
- *Complex Bankruptcy Litigation*

**Industries**

- *Banking and Finance*
- *Business Services*
- *Energy and Utilities*
- *Metals and Mining*
- *Oil & Gas*

**Mark Worden**  
**Sr. Associate**

**AREAS OF CONCENTRATION**

- Bankruptcy and Insolvency
- Corporate
- Complex Commercial Litigation
- Securitization

**EXPERIENCE**

Mark Worden joined the Houston office of Fulbright & Jaworski L.L.P. in 2003 . With an undergraduate degree in Finance and a Masters of Business Administration, Mark's practice focuses on complex commercial bankruptcy matters. Some of Mark's representative experience includes matters involving:

Cash Flows and Valuation

- Valuation and Solvency Analysis
- Use of Cash Collateral and Forms of Adequate Protection
- Analysis of Plan Feasibility and Related Business Projections

Transaction and Security Analysis

- Analysis of Credit Documents, Security Interests, and Perfection
- Asset Sales, Postpetition Financing, and Other Transactions
- Preparation of Plans of Reorganization and Related Plan Documents

Complex Litigation

- Enforcement of Security Interests and Relief from the Automatic Stay
- Recovery of Fraudulent Conveyances and Other Avoidance Actions
- Treatment of Derivative Contracts under the Safe Harbor Provisions
- Valuation Disputes and Contested Plan Confirmation
- Corporate Governance

Some examples of Mark's prior representations include acting as:

- Special Counsel to a liquidating investment bank in the sale of its subsidiary, a natural gas and electricity marketer, for approximately \$250 million, and involving issues associated with derivative financial contracts, master netting agreements, and due diligence related to credit defaults and cross-defaults.
- Counsel for the indenture trustee of \$750 million in bonds secured by California Redwood timberlands, and involving interpretation of credit agreements and liens, contested cash collateral use, preparation of a plan and plan documents, valuation of assets and a multi-week valuation trial, analysis of plan feasibility, contested confirmation of five (5) competing plans of reorganization, and multiple appeals to the Fifth Circuit Court of Appeals.

- Counsel to the unsecured creditors committee of a 100 year old Arizona copper producer with over \$1 billion in assets and an estimated \$3 billion in asbestos and environmental liabilities, and involving issues related to estimation of environmental and asbestos claims, approval of numerous asset sales and 9019 settlement agreements, and confirmation of competing plans of reorganization. Also acted as counsel for the unsecured creditors committee with respect to a fraudulent conveyance adversary proceeding against the parent seeking the return of approximately \$6 billion in stock and over \$1 billion in dividends, with issues involving reasonably equivalent value, constructive and actual fraudulent transfers, piercing the corporate veil, breach of fiduciary duties and conspiracy.
- Debtor's Counsel for a Russian oil and gas producer with over \$20 billion in assets, and involving issues related to the emergency injunctive relief, the extraterritoriality of the automatic stay, international jurisdiction of the bankruptcy court, abrogation of foreign sovereign immunity, and debtor eligibility.

**PUBLICATIONS**

- Co-Author, "Recent Developments: A Survey of Business Bankruptcy Cases," *The University of Texas School of Law Jay L. Westbrook Bankruptcy Conference*, November, 2008.
- Co-Author, "Negotiating and Enforcing Contracts with Companies in Distress," *Corporate Counsel Review, Journal of the Corporate Counsel Section State Bar of Texas*, November, 2007.
- Co-Author, "Overview of DIP Financing," *University of Texas School of Law Annual Bankruptcy Conference*, November, 2007.
- "Dissecting Financial Contracts and Their Treatment Post-BAPCPA," *American Bar Association, Young Lawyers Division*, March 2007.
- Co-Author, "Effective Use of Demonstrative Evidence: Examples and Pointers from an Attorney, Valuation Expert, and a Judge," *The University of Texas School of Law and the Association of Insolvency & Restructuring Advisors present VALCON: Legal and Financial Perspectives on Business Valuations & Restructuring*, March 2-3, 2006.

**EDUCATIONAL BACKGROUND**

2003 - J.D., with high honors, University of Oklahoma School of Law  
 2003 - M.B.A., University of Oklahoma, Michael F. Price College of Business  
 1998 - B.B.A., Finance with minor in Accounting, University of Oklahoma

Austin  
 Beijing  
 Dallas  
 Denver  
 Dubai  
 Hong Kong  
 Houston  
 London  
 Los Angeles  
 Minneapolis  
 Munich  
 New York  
 Riyadh  
 San Antonio  
 St Louis  
 Washington, D.C.

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. DEFINITIONS ..... 1

III. PRELIMINARY CONSIDERATIONS ..... 1

    A. Treatment as a Small Business Debtor ..... 1

    B. Retention of Professionals ..... 1

    C. Cash Collateral ..... 2

    D. Initial Meeting with U.S. Trustee and Creditors ..... 2

    E. New Debtor Duties of Reporting and Disclosure ..... 2

        1. Generally ..... 2

        2. Reporting Requirements ..... 3

    F. Serial Filer Rules and the Automatic Stay ..... 3

    G. Claims Bar Date ..... 3

    H. Critical Pre-Petition Creditors ..... 3

IV. DEADLINES AND CONFIRMATION CONSIDERATIONS ..... 3

    A. Deadlines and Exclusivity ..... 3

    B. Conversion or Dismissal ..... 4

    C. Executory Contracts and Unexpired Leases ..... 4

    D. Additional Participation of the UST ..... 4

    E. Plans and Disclosure Statements ..... 4

    F. Plan Confirmation ..... 5

V. POST-CONFIRMATION CONSIDERATIONS ..... 5

    A. Post-Confirmation Plan Modification ..... 5

    B. Motion for Final Decree ..... 5

VI. CONCLUSION ..... 5

ATTACHMENT A ..... 7

ATTACHMENT B ..... 13

ATTACHMENT C ..... 19

ATTACHMENT D ..... 27

ATTACHMENT E ..... 53

ATTACHMENT F ..... 59



# NAVIGATING A SMALL BUSINESS BANKRUPTCY CASE – THE BENEFITS AND THE PERILS

## I. INTRODUCTION

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005) ("BAPCPA") ushered in a number of amendments to the Bankruptcy Code with the goal of requiring additional oversight and restrictions for debtors in order to reduce the occurrence of fraud and abuse in the bankruptcy system. Along those lines, BAPCPA introduced certain small business bankruptcy provisions in an attempt to strike a practical balance between the need for transparency, on the one hand, and practicality, on the other. In particular, BAPCPA significantly increased the amount of reporting requirements and disclosures that must be made by "small business debtors" in order for such debtors to successfully reorganize under chapter 11 of Bankruptcy Code. This article will explore these amendments, as well as the practical approach practitioners should take when dealing with small business debtors.

## II. DEFINITIONS

In introducing certain small business provisions, BAPCPA made several changes to section 101 of the Bankruptcy Code. Prior to BAPCPA, the Code defined "small business" as any person "engaged in commercial or business activities" whose total debts did not exceed \$2 million. BAPCPA repealed this definition and added two new terms in its place: "small business debtor" and "small business case."<sup>1</sup> A "small business debtor" is essentially any person, including an individual, which is engaged in "commercial or business activity," with debt no greater than \$2.19 million. Potential debtors should realize that the new definition does not modify "commercial or business activity" with the word "substantial." This implies that an aggressive creditor may be able to use the language to label any debtor with debt less than, or equal to, \$2.19 million as a "small business debtor."<sup>2</sup> The definition does carry two exceptions: those persons whose primary activity is operating real property, and persons in cases for which the U.S. trustee has appointed a committee for unsecured creditors, unless otherwise ordered by the court.

The definition of "small business case" essentially includes any "small business debtor" already in chapter 11.<sup>3</sup> Thus, small business debtors in other chapters of bankruptcy are not within the definition of "small business case," but all "small business cases" will involve "small business debtors."

## III. PRELIMINARY CONSIDERATIONS

There are a number of critical issues that will be of the utmost importance to a small business debtor immediately upon filing and should thus be contemplated in advance. Filing for bankruptcy may be a "protective" decision, but small businesses in particular must anticipate and plan for these protections in order to remain viable once the bankruptcy case is filed.

### A. Treatment as a Small Business Debtor

Pursuant to the Federal Rules of Bankruptcy Procedure ("FRBP"), "[i]n a voluntary chapter 11 case, the debtor shall state in the petition whether the debtor is a small business debtor. In an involuntary chapter 11 case, the debtor shall file within 15 days after entry of the order for relief a statement as to whether the debtor is a small business debtor."<sup>4</sup> A form Petition is attached hereto as Attachment A.

Thus, a debtor states in its petition whether it is a small business debtor, and the case proceeds under the small business bankruptcy provisions unless the court enters an order finding that the statement was incorrect.<sup>5</sup> The United States trustee or a party in interest may file an objection to the debtor's self-designation of a small business no later than 30 days after the conclusion of the meeting of creditors held under section 341(a) of the Bankruptcy Code, or within 30 days after any amendment to the statement, whichever is later.<sup>6</sup>

If a committee has been appointed in the case, the case can proceed as a small business case only if (1) the court enters an order determining that the committee has not been sufficiently active to provide effective oversight, and (2) the debtor satisfies section 101(51D)'s requirements.<sup>7</sup> Accordingly, post-BAPCPA, treatment under the Bankruptcy Code provisions for small business debtors is no longer within the sole discretion or control of the debtor.

### B. Retention of Professionals

Perhaps the first critical issue any small business debtor will make is the retention of professional. A chapter 11 case can become complex, much more so than a chapter 13 case. Therefore, retaining a team of professionals, including debtor's counsel and accountants, with experience working on cases in chapter 11 can be essential. Additionally, the 2005 amendments addressing small business debtors in particular require a heightened level of reporting and disclosure requirements in addition to the complexities of chapter 11, which will most likely necessitate the retention of multiple professionals in addition to debtor's counsel.<sup>8</sup>

### C. Cash Collateral

Once professionals have been retained, another key issue that should be analyzed by a small business debtor and its counsel before the filing of a petition is the availability of cash collateral. A small business owner must work closely with its counsel to ensure that either its lender or the bankruptcy court will approve its use of cash collateral. This will require counsel to carefully look over all loan documents on file to determine whether the provisions of section 363 apply. In addition, counsel must take special care to ensure that, once the use of cash collateral has been approved, it is used in accordance with section 1112, which lists unauthorized use of cash collateral that is substantially harmful to one or more creditors as grounds for conversion or dismissal. Considering these steps prior to commencing the bankruptcy case is crucial because if cash collateral is not available or is misused, the small business debtor will simply not be able to operate once the chapter 11 petition is filed.

### D. Initial Meeting with U.S. Trustee and Creditors

The U.S. trustee also has an expanded role under the new provisions governing small business cases. The U.S. trustee is responsible for ensuring that the small business debtor understands its post-filing duties, as well as assisting the debtor with its scheduling order. To further these duties, which help ensure the debtor's viability early on in the process, the U.S. trustee is required to conduct an "initial debtor interview."<sup>9</sup> The new rules state that the U.S. trustee is to "investigate the debtor's viability," "inquire [into] the debtor's business plan," and, in some instances, "visit the appropriate business premises of the debtor, ascertain the state of the debtor's books and records, and verify that the debtor has filed its tax returns."<sup>10</sup> The debtor's role in this initial meeting is to explain in plain terms the circumstances which led to filing, and to reassure the U.S. trustee that it has a legitimate plan for emerging from chapter 11 successfully and in a timely fashion. The debtor should be prepared to demonstrate its long-term viability; this includes having a procedure in place for setting up debtor in possession (DIP) bank accounts, as well as a detailed post-filing "code of conduct" for the debtor.<sup>11</sup> This initial meeting is designed to act as a sort of early intervention in the young chapter 11 case. The meeting also provides the debtor with an opportunity to establish a working relationship with the U.S. trustee, and consequently to maintain a productive and communicative partnership on the way to exiting bankruptcy.

### E. New Debtor Duties of Reporting and Disclosure

#### 1. Generally

Every potential small business debtor should carefully review, with its counsel, section 1116 of the Bankruptcy Code prior to the commencement of its case. Specifically, Section 1116 provides that:

"In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall -

(1) append to the voluntary petition or, in an involuntary case, file not later than 7 days after the date of the order for relief -

(A) its most recent balance sheet, statement of operations, cash-flow statement, and Federal income tax return; or

(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;

(2) attend, . . . initial debtor interviews, scheduling conferences, and meetings of creditors convened under section 341 unless the court, after notice and a hearing, waives that requirement upon a finding of extraordinary and compelling circumstances;

(3) timely file all schedules and statements of financial affairs . . . ;

(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

(5) subject to section 363(c)(2), maintain insurance customary and appropriate to the industry;

(6)(A) timely file tax returns and other required government filings; and

(B) subject to section 363(c)(2), timely pay all taxes entitled to administrative expense priority except those being contested by appropriate proceedings being diligently prosecuted; and

(7) allow the United States trustee, or a designated representative of the United States trustee, to inspect the debtor's business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor."<sup>12</sup>

As a result of the more streamlined procedures, small business debtors have a more limited ability to seek extensions for filing schedules and statement of financial affairs. A debtor is only allowed a 30-day extension "absent extraordinary and compelling circumstances . . . ." <sup>13</sup>

**2. Reporting requirements**

To that end, one of the more onerous requirements of BAPCPA for small business debtors in chapter 11 is the reporting requirements codified in section 308 of the Code. Section 308 provides that,

"A small business debtor shall file periodic financial and other reports containing information including -

(1) the debtor's profitability;<sup>14</sup>

(2) reasonable approximations of the debtor's projected cash receipts and cash disbursements over a reasonable period;

(3) comparisons of actual cash receipts and disbursements with projections in prior reports;

(4)(A) whether the debtor is –

(i) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and

(ii) timely filing tax returns and other required government filings and paying taxes and other administrative expenses when due[.]"<sup>15</sup>

If the debtor is not in compliance with the filing requirements regarding its profitability or filing tax returns and paying same, the debtor must state "what the failures are and how, at what cost, and when the debtor intends to remedy such failures."<sup>16</sup>

**F. Serial Filer Rules and the Automatic Stay**

Another critical issue that should be analyzed by a small business debtor and its counsel before the commencement of a chapter 11 case is the applicability of the automatic stay, as the benefits of a small business debtor commencing a bankruptcy case may be short-lived. Section 362(n) of the Bankruptcy Code lays out the serial filer rules for small business debtors. Pursuant to section 362(n), a small business debtor is generally denied the protection of the automatic stay if, from the time its current bankruptcy case was filed, it either (1) was a debtor in another small business case, (2) was a debtor in a small business case that was dismissed within the last two years, or (3) was a debtor in a small business case that was confirmed in the last two years.<sup>17</sup> The only two

exceptions to these rules are when (1) the second filing is a non-collusive involuntary case, or (2) the debtor can establish, by a preponderance of the evidence, that the recent filing was unforeseeable at the time of the previous filing, and the recent filing is likely to result in a confirmable, non-liquidating plan.<sup>18</sup>

**G. Claims Bar Date**

Establishing a date beyond which all claims will be barred is also crucial for small business debtors and their counsel to consider before the commencement of a small business case. If a prospective date is not already established early in the process, the amount of debt that will be addressed under the proposed plan may remain undetermined. Therefore, while the debtor must seek the permission of the court to establish this deadline, the best practice is to establish a bar date as soon as practicable in order to quantify the claims.<sup>19</sup>

**H. Critical Pre-Petition Creditors**

A final consideration that should be taken into account prior to the commencement of a small business case is the designation of certain favored, or "critical," vendors to whom the debtor will try to immediately pay back owed debts.<sup>20</sup> Unlike larger corporations that file for chapter 11 relief, a small business debtor usually has little leverage with its vendors. Providing some accommodation to those vendors whose cooperation is imperative to the success of the reorganization of a small business debtor should therefore be evaluated.<sup>21</sup>

**IV. DEADLINES AND CONFIRMATION CONSIDERATIONS**

**A. Deadlines and Exclusivity**

Because certain filing deadlines are different and extensions are more difficult to obtain, a small business case normally proceeds more quickly than other chapter 11 cases. For example, only the debtor may file a plan during the first 180 days of a small business case.<sup>22</sup> This "exclusivity period" may be extended by the court, but only to 300 days, and only if the debtor demonstrates by a preponderance of the evidence that the court will confirm a plan within a reasonable period of time. When the case is not a small business case, however, the court may extend the exclusivity period "for cause" up to 18 months. An additional shortened deadline for the small business debtor is that the plan must be confirmed within 45 days of its filing.<sup>23</sup>

These deadlines can be extended, but only if:

"(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a

preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time;

(B) a new deadline is imposed at the time the extension is granted; and

(C) the order extending time is signed before the existing deadline has expired."<sup>24</sup>

**B. Conversion or Dismissal**

Filing the periodic reports required under section 308 of the Bankruptcy Code in a timely manner is critical for a small business debtor in chapter 11. Section 1112(b)(1) provides that a court "shall" convert a case or dismiss a case if "cause" is established. "Cause" includes the unexcused failure to submit the required reports.<sup>25</sup>

Further, the court "shall" convert or dismiss the case "absent unusual circumstances specifically identified by the court that establish that such relief is not in the best interests of creditors and the estate," and if the debtor or another party in interest establishes that—

"(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121 (e) and 1129 (e) . . . ; and

(B) the grounds for granting such relief include an act or omission of the debtor . . .

(i) for which there exists a reasonable justification for the act or omission; and

(ii) that will be cured within a reasonable period of time fixed by the court."<sup>26</sup>

Accordingly, judicial discretion regarding whether to convert or dismiss a case has been significantly limited post-BAPCPA. Even further, upon a motion for conversion or dismissal, a court may refrain from converting or dismissing the case only if it makes the specific findings outlined above.

In order to assist the small business debtor, an Official Bankruptcy Form for a monthly operating report has been developed that sets forth all of the information necessary for the debtor to satisfy its obligations under section 308. See Attachment B.<sup>27</sup>

**C. Executory Contracts & Unexpired Leases**

A small business debtor in chapter 11 may take advantage of the Code's provisions regarding, assuming or rejecting executory contracts and

unexpired leases. The form plan for small business debtors (Official Form 25A, attached hereto as Attachment C) provides specific and useful language related to such assumption or rejection.

**D. Additional Participation of the UST**

In contrast to other chapter 11 debtors, the small business debtor is subject to additional oversight by the U.S. trustee. As noted above, early in the case, the small business debtor must attend an "initial interview" with the U.S. trustee at which time the U.S. trustee will evaluate the debtor's viability and inquire about the debtor's business plan.<sup>28</sup> In addition to the initial interview, the U.S. trustee will also monitor the activities of the small business debtor during the case to identify as promptly as possible whether the debtor will be unable to confirm a plan. The U.S. trustee is obligated to promptly move to convert or dismiss a case if a problem is found.<sup>29</sup>

**E. Plans and Disclosure Statements**

In order to assist the small business debtor in satisfying the shortened deadlines under section 1125(f), the court may: (1) determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary; (2) approve a disclosure statement submitted on standard forms approved by the court; and (3) conditionally approve a disclosure statement subject to final approval after notice and a hearing.<sup>30</sup> The procedures associated with conditionally approved disclosure statements are set forth in FRBP 3017.1.

Acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement if the debtor provides adequate information to each holder of a claim or interest that is solicited.<sup>31</sup> To avoid the delay of separately approving a disclosure statement, the hearing on the disclosure statement may be combined with the hearing on confirmation of a plan.<sup>32</sup> Due to these combined proceedings, if changes are required to the disclosure statement, re-solicitation is not uncommon in small business cases.<sup>33</sup>

To further assist the small business debtor, the courts have developed a form plan and disclosure statement. See Attachments C and D.<sup>34</sup> The Committee Note associated with these forms states that, "the form seeks to strike a practical balance between the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information, on the one hand, and economy and simplicity for debtors, on the other."<sup>35</sup> Under the FRBP, the court may confirm a plan that conforms substantially to the appropriate Official Forms or other standard forms approved by the court.<sup>36</sup>

The form is merely illustrative of the type of information that should be included in plans and disclosure statements, subject to alteration based on the facts and circumstances of each case. Included with the disclosure statement form and the plan form are instructions for filling out these forms. See Attachments E and F.<sup>37</sup> To enhance usability, some of the forms can be filled in electronically.

#### F. Plan Confirmation

BAPCPA added section 1129(a)(15) to the Bankruptcy Code, which injects an element of chapter 13 into the confirmation of a small business debtor's plan. Essentially, if an unsecured creditor objects to a plan, an individual debtor in chapter 11 is required to pay unsecured claims in full or the plan must provide for the distribution of all projected disposable income of the debtor to the holders of unsecured claims during the five year period beginning on the date that the first payment is due under the plan (or during the period for which the plan provides payments, if longer than five years). Section 1129(a)(15) refers to section 1325(b)(2) for its definition of "disposable income" so cases applicable to 1325(b)(2) should be applicable to the definition of "disposable income" in this context and practitioners should consult that case law for guidance on this ambiguous term.<sup>38</sup>

Cramdown remains available in a small business case and in fact, language has been added to section 1129(b) which appears to curtail the absolute priority rule with respect to small business debtors (just as the absolute priority rule does not apply in chapter 13). Specifically, section 1129(b)(2)(B)(ii), which, in a regular chapter 11 case, allows cramdown of a class of general unsecured claims only if no junior class receives or retains any interest in property (i.e. equity is dissolved), provides that "except in a case in which the debtor is an individual, the debtor may retain property included in the estate ... subject to [domestic support obligations]."<sup>39</sup>

An individual debtor in a chapter 11 case does *not* receive a discharge upon plan confirmation. Rather, section 1141(d)(5)(A) provides that such a debtor will receive a discharge upon completing all payments under the plan. The exception to this prohibition is in 1145(d)(5)(B), which provides that after confirmation, but prior to completion of all payments under a plan, the court may grant a discharge to a small business debtor, upon notice and hearing, if (i) the value of property distributed under the plan at the time of discharge is at least equal to liquidation value and (ii) modification of the plan is not practicable. Unlike chapter 13's requirements for determining when discharge may be granted without completion of payments, section 1145 does not require that "the debtor's failure to complete

[payments under the plan] is due to circumstances for which the debtor should not justly be held accountable."<sup>40</sup>

### V. POST-CONFIRMATION CONSIDERATIONS

#### A. Post-Confirmation Plan Modification

Section 1127(e) aligns the modification of a small business debtor's plan with the modification of a chapter 13 plan. Pursuant to section 1127(e), if the debtor in a chapter 11 is an individual, the plan may be modified after confirmation and before the completion of payments thereunder, whether or not the plan has been substantially consummated. The plan may be modified upon request by the debtor, trustee, U.S. trustee, or a creditor, such that the amount of payments under the plan is changed, the time period for payments is changed, or payments to a particular creditor are changed. These modification rights differ from those available in traditional chapter 11 cases, whereby only the plan proponent or reorganized debtor can seek to modify a plan, and one may only do so before substantial consummation. Presumably, BAPCPA's intent was to allow creditors to seek a change in a plan if the debtor's circumstances have changed (again, like a chapter 13).

#### B. Motion for Final Decree

Since discharge of a small business debtor in chapter 11 does not occur at confirmation, a small business debtor completing payments under its plan should file a motion for a final decree requesting a discharge and that the case be closed.

### VI. CONCLUSION

A qualifying debtor may seek treatment as a small business debtor in order to avoid the cost, expense, and procedural requirements of a more typical chapter 11 case. However, as a result of this streamlined process, the small business debtor is subject to additional reporting requirements and oversight by the U.S. trustee and must adhere to shorter and stricter deadlines. If counsel is cognizant of the additional requirements imposed on a small business debtor, utilizing the provisions associated with such debtors can result in a more economical and expeditious chapter 11 case.

<sup>1</sup> See 11 U.S.C. § 101(51D) (2009).

<sup>2</sup> See Robert M. Lawless, *Small Business and the 2005 Bankruptcy Law: Should Mom and Apple Pie Be Worried?*, 31 S. Ill. U. L.J. 585, 588-89 (2007) .

<sup>3</sup> See 11 U.S.C. § 101(51C).

<sup>4</sup> FRBP 1020(a).

<sup>5</sup> FRBP 1020(a).

<sup>6</sup> FRBP 1020(b).

<sup>7</sup> FRBP 1020(c).

<sup>8</sup> See Donald R. Lassman, *Individual Chapter 11s Really Do Work*, 27 Am. Bankr. Inst. J. 18 (March 2008).

<sup>9</sup> See Lassman, *supra* note 5, at 64.

<sup>10</sup> *Id.* § 586(a)(7)(A).

<sup>11</sup> See Donald R. Lassman, *Individual Chapter 11s Really Do Work*, 27 Am. Bankr. Inst. J. 18 (March 2008).

<sup>12</sup> 11 U.S.C. § 1116 (emphasis added).

<sup>13</sup> 11 U.S.C. § 1116(3).

<sup>14</sup> For purposes of section 308, the term "profitability" means, with respect to the debtor, the amount of money that the debtor has earned or lost during current and recent fiscal periods. 11 U.S.C. § 308(a).

<sup>15</sup> 11 U.S.C. § 308(b).

<sup>16</sup> 11 U.S.C. § 308(b)(4)(B).

<sup>17</sup> 11 U.S.C. § 362(n)(1).

<sup>18</sup> *Id.* at (n)(2)(A).

<sup>19</sup> See Lassman, *supra* note 8, at 66.

<sup>20</sup> See, e.g., *In re Kmart Corp.*, 359 F.3d 866, 867 (7th Cir. 2004).

<sup>21</sup> See Hon. A. Thomas Small, *If You Fix It, They Will Come—A New Playing Field for Small Business Bankruptcies*, 79 Am. Bankr. L.J. 981 (Fall 2005).

<sup>22</sup> 11 U.S.C. § 1121(e).

<sup>23</sup> 11 U.S.C. § 1129(e).

<sup>24</sup> 11 U.S.C. § 1121(e).

<sup>25</sup> See Lawless, *supra* note 2, at 599-600.

<sup>26</sup> 11 U.S.C. § 1112(b)(2).

<sup>27</sup> Official Bankruptcy Form 25C, available at [http://www.uscourts.gov/bkforms/bankruptcy\\_forms.html#official](http://www.uscourts.gov/bkforms/bankruptcy_forms.html#official).

<sup>28</sup> 28 U.S.C. § 586(a)(7).

<sup>29</sup> 28 U.S.C. § 586(a)(8).

<sup>30</sup> 11 U.S.C. § 1125(f)(a)(1-3).

<sup>31</sup> 11 U.S.C. § 1125(f)(a)(3)(B).

<sup>32</sup> 11 U.S.C. § 1125(f)(a)(3)(C).

<sup>33</sup> *In re Koerkenmeier*, 344 B.R. 603, 609 (Bankr. W.D. Mo. 2006).

<sup>34</sup> Official Bankruptcy Forms 25A and 25B, available at [http://www.uscourts.gov/bkforms/bankruptcy\\_forms.html#official](http://www.uscourts.gov/bkforms/bankruptcy_forms.html#official).

<sup>35</sup> Committee Note to Official Bankruptcy Forms 25A and 25B, available at [http://www.uscourts.gov/bkforms/bankruptcy\\_forms.html#official](http://www.uscourts.gov/bkforms/bankruptcy_forms.html#official).

<sup>36</sup> FRBP 3016(d).

<sup>37</sup> Instructions to Official Bankruptcy Forms 25A and 25B, available at [http://www.uscourts.gov/bkforms/bankruptcy\\_forms.html#official](http://www.uscourts.gov/bkforms/bankruptcy_forms.html#official).

<sup>38</sup> See Daniel Sklar and Holly Kilibarda, § 1129(a)(15): *What's an Individual Debtor to Do?*, 28 Am. Bankr. Inst. J. 1 (July/August 2009) for a recent discussion and case study on disposable income in a small business case.

<sup>39</sup> See *In re Roedemeier*, 374 B.R. 264 (Bankr. D. Kan. 2007) for a discussion of the absolute priority rule in a small business case.

<sup>40</sup> 11 U.S.C. § 1328(b)(1).

## **ATTACHMENT A**



<b>United States Bankruptcy Court</b>		<b>Voluntary Petition</b>
Name of Debtor (if individual, enter Last, First, Middle):		Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):		All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all):		Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all):
Street Address of Debtor (No. and Street, City, and State): <div style="text-align: right;">ZIP CODE</div>		Street Address of Joint Debtor (No. and Street, City, and State): <div style="text-align: right;">ZIP CODE</div>
County of Residence or of the Principal Place of Business:		County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address): <div style="text-align: right;">ZIP CODE</div>		Mailing Address of Joint Debtor (if different from street address): <div style="text-align: right;">ZIP CODE</div>
Location of Principal Assets of Business Debtor (if different from street address above): <div style="text-align: right;">ZIP CODE</div>		

<p><b>Type of Debtor</b> (Form of Organization) (Check <b>one</b> box.)</p> <p><input type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i></p> <p><input type="checkbox"/> Corporation (includes LLC and LLP)</p> <p><input type="checkbox"/> Partnership</p> <p><input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)</p>	<p><b>Nature of Business</b> (Check <b>one</b> box.)</p> <p><input type="checkbox"/> Health Care Business</p> <p><input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51B)</p> <p><input type="checkbox"/> Railroad</p> <p><input type="checkbox"/> Stockbroker</p> <p><input type="checkbox"/> Commodity Broker</p> <p><input type="checkbox"/> Clearing Bank</p> <p><input type="checkbox"/> Other</p> <hr/> <p><b>Tax-Exempt Entity</b> (Check box, if applicable.)</p> <p><input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).</p>	<p><b>Chapter of Bankruptcy Code Under Which the Petition is Filed</b> (Check <b>one</b> box.)</p> <p><input type="checkbox"/> Chapter 7                      <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding</p> <p><input type="checkbox"/> Chapter 9                      <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding</p> <p><input type="checkbox"/> Chapter 11</p> <p><input type="checkbox"/> Chapter 12</p> <p><input type="checkbox"/> Chapter 13</p> <hr/> <p><b>Nature of Debts</b> (Check one box.)</p> <p><input type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as “incurred by an individual primarily for a personal, family, or household purpose.”</p> <p><input type="checkbox"/> Debts are primarily business debts.</p>
--	---	--

<p><b>Filing Fee</b> (Check one box.)</p> <p><input type="checkbox"/> Full Filing Fee attached.</p> <p><input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court’s consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A.</p> <p><input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court’s consideration. See Official Form 3B.</p>	<p><b>Chapter 11 Debtors</b></p> <p><b>Check one box:</b></p> <p><input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D).</p> <p><input type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D).</p> <p><b>Check if:</b></p> <p><input type="checkbox"/> Debtor’s aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,190,000.</p> <p>-----</p> <p><b>Check all applicable boxes:</b></p> <p><input type="checkbox"/> A plan is being filed with this petition.</p> <p><input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).</p>
--	--

<p><b>Statistical/Administrative Information</b></p> <p><input type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors.</p> <p><input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.</p> <p>Estimated Number of Creditors</p> <table style="width:100%; text-align: center;"> <tr> <td><input type="checkbox"/> 1-49</td> <td><input type="checkbox"/> 50-99</td> <td><input type="checkbox"/> 100-199</td> <td><input type="checkbox"/> 200-999</td> <td><input type="checkbox"/> 1,000-5,000</td> <td><input type="checkbox"/> 5,001-10,000</td> <td><input type="checkbox"/> 10,001-25,000</td> <td><input type="checkbox"/> 25,001-50,000</td> <td><input type="checkbox"/> 50,001-100,000</td> <td><input type="checkbox"/> Over 100,000</td> </tr> </table> <p>Estimated Assets</p> <table style="width:100%; text-align: center;"> <tr> <td><input type="checkbox"/> \$0 to \$50,000</td> <td><input type="checkbox"/> \$50,001 to \$100,000</td> <td><input type="checkbox"/> \$100,001 to \$500,000</td> <td><input type="checkbox"/> \$500,001 to \$1 million</td> <td><input type="checkbox"/> \$1,000,001 to \$10 million</td> <td><input type="checkbox"/> \$10,000,001 to \$50 million</td> <td><input type="checkbox"/> \$50,000,001 to \$100 million</td> <td><input type="checkbox"/> \$100,000,001 to \$500 million</td> <td><input type="checkbox"/> \$500,000,001 to \$1 billion</td> <td><input type="checkbox"/> More than \$1 billion</td> </tr> </table> <p>Estimated Liabilities</p> <table style="width:100%; text-align: center;"> <tr> <td><input type="checkbox"/> \$0 to \$50,000</td> <td><input type="checkbox"/> \$50,001 to \$100,000</td> <td><input type="checkbox"/> \$100,001 to \$500,000</td> <td><input type="checkbox"/> \$500,001 to \$1 million</td> <td><input type="checkbox"/> \$1,000,001 to \$10 million</td> <td><input type="checkbox"/> \$10,000,001 to \$50 million</td> <td><input type="checkbox"/> \$50,000,001 to \$100 million</td> <td><input type="checkbox"/> \$100,000,001 to \$500 million</td> <td><input type="checkbox"/> \$500,000,001 to \$1 billion</td> <td><input type="checkbox"/> More than \$1 billion</td> </tr> </table>	<input type="checkbox"/> 1-49	<input type="checkbox"/> 50-99	<input type="checkbox"/> 100-199	<input type="checkbox"/> 200-999	<input type="checkbox"/> 1,000-5,000	<input type="checkbox"/> 5,001-10,000	<input type="checkbox"/> 10,001-25,000	<input type="checkbox"/> 25,001-50,000	<input type="checkbox"/> 50,001-100,000	<input type="checkbox"/> Over 100,000	<input type="checkbox"/> \$0 to \$50,000	<input type="checkbox"/> \$50,001 to \$100,000	<input type="checkbox"/> \$100,001 to \$500,000	<input type="checkbox"/> \$500,001 to \$1 million	<input type="checkbox"/> \$1,000,001 to \$10 million	<input type="checkbox"/> \$10,000,001 to \$50 million	<input type="checkbox"/> \$50,000,001 to \$100 million	<input type="checkbox"/> \$100,000,001 to \$500 million	<input type="checkbox"/> \$500,000,001 to \$1 billion	<input type="checkbox"/> More than \$1 billion	<input type="checkbox"/> \$0 to \$50,000	<input type="checkbox"/> \$50,001 to \$100,000	<input type="checkbox"/> \$100,001 to \$500,000	<input type="checkbox"/> \$500,001 to \$1 million	<input type="checkbox"/> \$1,000,001 to \$10 million	<input type="checkbox"/> \$10,000,001 to \$50 million	<input type="checkbox"/> \$50,000,001 to \$100 million	<input type="checkbox"/> \$100,000,001 to \$500 million	<input type="checkbox"/> \$500,000,001 to \$1 billion	<input type="checkbox"/> More than \$1 billion	<p><b>THIS SPACE IS FOR COURT USE ONLY</b></p>
<input type="checkbox"/> 1-49	<input type="checkbox"/> 50-99	<input type="checkbox"/> 100-199	<input type="checkbox"/> 200-999	<input type="checkbox"/> 1,000-5,000	<input type="checkbox"/> 5,001-10,000	<input type="checkbox"/> 10,001-25,000	<input type="checkbox"/> 25,001-50,000	<input type="checkbox"/> 50,001-100,000	<input type="checkbox"/> Over 100,000																						
<input type="checkbox"/> \$0 to \$50,000	<input type="checkbox"/> \$50,001 to \$100,000	<input type="checkbox"/> \$100,001 to \$500,000	<input type="checkbox"/> \$500,001 to \$1 million	<input type="checkbox"/> \$1,000,001 to \$10 million	<input type="checkbox"/> \$10,000,001 to \$50 million	<input type="checkbox"/> \$50,000,001 to \$100 million	<input type="checkbox"/> \$100,000,001 to \$500 million	<input type="checkbox"/> \$500,000,001 to \$1 billion	<input type="checkbox"/> More than \$1 billion																						
<input type="checkbox"/> \$0 to \$50,000	<input type="checkbox"/> \$50,001 to \$100,000	<input type="checkbox"/> \$100,001 to \$500,000	<input type="checkbox"/> \$500,001 to \$1 million	<input type="checkbox"/> \$1,000,001 to \$10 million	<input type="checkbox"/> \$10,000,001 to \$50 million	<input type="checkbox"/> \$50,000,001 to \$100 million	<input type="checkbox"/> \$100,000,001 to \$500 million	<input type="checkbox"/> \$500,000,001 to \$1 billion	<input type="checkbox"/> More than \$1 billion																						

<b>Voluntary Petition</b> <i>(This page must be completed and filed in every case.)</i>		Name of Debtor(s):	
<b>All Prior Bankruptcy Cases Filed Within Last 8 Years</b> (If more than two, attach additional sheet.)			
Location Where Filed:	Case Number:	Date Filed:	
Location Where Filed:	Case Number:	Date Filed:	
<b>Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor</b> (If more than one, attach additional sheet.)			
Name of Debtor:	Case Number:	Date Filed:	
District:	Relationship:	Judge:	
<p align="center"><b>Exhibit A</b></p> <p>(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)</p> <p><input type="checkbox"/> Exhibit A is attached and made a part of this petition.</p>		<p align="center"><b>Exhibit B</b></p> <p>(To be completed if debtor is an individual whose debts are primarily consumer debts.)</p> <p>I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b).</p> <p><input checked="" type="checkbox"/> _____ Signature of Attorney for Debtor(s) (Date)</p>	
<p><b>Exhibit C</b></p> <p>Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?</p> <p><input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition.</p> <p><input type="checkbox"/> No.</p>			
<p><b>Exhibit D</b></p> <p>(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)</p> <p><input type="checkbox"/> Exhibit D completed and signed by the debtor is attached and made a part of this petition.</p> <p>If this is a joint petition:</p> <p><input type="checkbox"/> Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.</p>			
<p align="center"><b>Information Regarding the Debtor - Venue</b> (Check any applicable box.)</p> <p><input type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.</p> <p><input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.</p> <p><input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.</p>			
<p align="center"><b>Certification by a Debtor Who Resides as a Tenant of Residential Property</b> (Check all applicable boxes.)</p> <p><input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)</p> <p align="right">_____ (Name of landlord that obtained judgment)</p> <p align="right">_____ (Address of landlord)</p> <p><input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and</p> <p><input type="checkbox"/> Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.</p> <p><input type="checkbox"/> Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).</p>			

B 1 (Official Form) 1 (1/08)	
<b>Voluntary Petition</b> <i>(This page must be completed and filed in every case.)</i>	Name of Debtor(s):
<b>Signatures</b>	
<p style="text-align:center;"><b>Signature(s) of Debtor(s) (Individual/Joint)</b></p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct.                  [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.                  [If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b).</p> <p>I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p>X _____ Signature of Debtor</p> <p>X _____ Signature of Joint Debtor</p> <p>_____ Telephone Number (if not represented by attorney)</p> <p>_____ Date</p>	<p style="text-align:center;"><b>Signature of a Foreign Representative</b></p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.</p> <p>(Check only <b>one</b> box.)</p> <p><input type="checkbox"/> I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached.</p> <p><input type="checkbox"/> Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.</p> <p>X _____ (Signature of Foreign Representative)</p> <p>_____ (Printed Name of Foreign Representative)</p> <p>_____ Date</p>
<p style="text-align:center;"><b>Signature of Attorney*</b></p> <p>X _____ Signature of Attorney for Debtor(s)</p> <p>_____ Printed Name of Attorney for Debtor(s)</p> <p>_____ Firm Name</p> <p>_____ Address</p> <p>_____ Telephone Number</p> <p>_____ Date</p> <p><small>*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.</small></p>	<p style="text-align:center;"><b>Signature of Non-Attorney Bankruptcy Petition Preparer</b></p> <p>I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.</p> <p>_____ Printed Name and title, if any, of Bankruptcy Petition Preparer</p> <p>_____ Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social-Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)</p> <p>_____ Address</p> <p>X _____ Date</p> <p>Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social-Security number is provided above.</p> <p>Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual.</p> <p>If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.</p> <p><i>A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.</i></p>
<p style="text-align:center;"><b>Signature of Debtor (Corporation/Partnership)</b></p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.</p> <p>The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p>X _____ Signature of Authorized Individual</p> <p>_____ Printed Name of Authorized Individual</p> <p>_____ Title of Authorized Individual</p> <p>_____ Date</p>	



## **ATTACHMENT B**



B 25C (Official Form 25C) (12/08)

# UNITED STATES BANKRUPTCY COURT

\_\_\_\_\_ District of \_\_\_\_\_

In re \_\_\_\_\_,  
*Debtor*

Case No. \_\_\_\_\_

Small Business Case under Chapter 11

## SMALL BUSINESS MONTHLY OPERATING REPORT

Month: \_\_\_\_\_

Date filed: \_\_\_\_\_

Line of Business: \_\_\_\_\_

NAISC Code: \_\_\_\_\_

IN ACCORDANCE WITH TITLE 28, SECTION 1746, OF THE UNITED STATES CODE, I DECLARE UNDER PENALTY OF PERJURY THAT I HAVE EXAMINED THE FOLLOWING SMALL BUSINESS MONTHLY OPERATING REPORT AND THE ACCOMPANYING ATTACHMENTS AND, TO THE BEST OF MY KNOWLEDGE, THESE DOCUMENTS ARE TRUE, CORRECT AND COMPLETE.

RESPONSIBLE PARTY:

\_\_\_\_\_  
 Original Signature of Responsible Party

\_\_\_\_\_  
 Printed Name of Responsible Party

<b>Questionnaire:</b> <i>(All questions to be answered on behalf of the debtor.)</i>	<b>Yes</b>	<b>No</b>
1. IS THE BUSINESS STILL OPERATING?	<input type="checkbox"/>	<input type="checkbox"/>
2. HAVE YOU PAID ALL YOUR BILLS ON TIME THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
3. DID YOU PAY YOUR EMPLOYEES ON TIME?	<input type="checkbox"/>	<input type="checkbox"/>
4. HAVE YOU DEPOSITED ALL THE RECEIPTS FOR YOUR BUSINESS INTO THE DIP ACCOUNT THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
5. HAVE YOU FILED ALL OF YOUR TAX RETURNS AND PAID ALL OF YOUR TAXES THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
6. HAVE YOU TIMELY FILED ALL OTHER REQUIRED GOVERNMENT FILINGS?	<input type="checkbox"/>	<input type="checkbox"/>
7. HAVE YOU PAID ALL OF YOUR INSURANCE PREMIUMS THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
8. DO YOU PLAN TO CONTINUE TO OPERATE THE BUSINESS NEXT MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
9. ARE YOU CURRENT ON YOUR QUARTERLY FEE PAYMENT TO THE U.S. TRUSTEE?	<input type="checkbox"/>	<input type="checkbox"/>
10. HAVE YOU PAID ANYTHING TO YOUR ATTORNEY OR OTHER PROFESSIONALS THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
11. DID YOU HAVE ANY UNUSUAL OR SIGNIFICANT UNANTICIPATED EXPENSES THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
12. HAS THE BUSINESS SOLD ANY GOODS OR PROVIDED SERVICES OR TRANSFERRED ANY ASSETS TO ANY BUSINESS RELATED TO THE DIP IN ANY WAY?	<input type="checkbox"/>	<input type="checkbox"/>
13. DO YOU HAVE ANY BANK ACCOUNTS OPEN OTHER THAN THE DIP ACCOUNT?	<input type="checkbox"/>	<input type="checkbox"/>

B 25C (Official Form 25C) (12/08)

- 14. HAVE YOU SOLD ANY ASSETS OTHER THAN INVENTORY THIS MONTH?
- 15. DID ANY INSURANCE COMPANY CANCEL YOUR POLICY THIS MONTH?
- 16. HAVE YOU BORROWED MONEY FROM ANYONE THIS MONTH?
- 17. HAS ANYONE MADE AN INVESTMENT IN YOUR BUSINESS THIS MONTH?
- 18. HAVE YOU PAID ANY BILLS YOU OWED BEFORE YOU FILED BANKRUPTCY?

**TAXES**

DO YOU HAVE ANY PAST DUE TAX RETURNS OR PAST DUE POST-PETITION TAX OBLIGATIONS?

IF YES, PLEASE PROVIDE A WRITTEN EXPLANATION INCLUDING WHEN SUCH RETURNS WILL BE FILED, OR WHEN SUCH PAYMENTS WILL BE MADE AND THE SOURCE OF THE FUNDS FOR THE PAYMENT.

*(Exhibit A)*

**INCOME**

PLEASE SEPARATELY LIST ALL OF THE INCOME YOU RECEIVED FOR THE MONTH. THE LIST SHOULD INCLUDE ALL INCOME FROM CASH AND CREDIT TRANSACTIONS. *(THE U.S. TRUSTEE MAY WAIVE THIS REQUIREMENT.)*

**TOTAL INCOME** \$ \_\_\_\_\_

**SUMMARY OF CASH ON HAND**

Cash on Hand at Start of Month \$ \_\_\_\_\_

Cash on Hand at End of Month \$ \_\_\_\_\_

PLEASE PROVIDE THE TOTAL AMOUNT OF CASH CURRENTLY AVAILABLE TO YOU **TOTAL** \$ \_\_\_\_\_

*(Exhibit B)*

**EXPENSES**

PLEASE SEPARATELY LIST ALL EXPENSES PAID BY CASH OR BY CHECK FROM YOUR BANK ACCOUNTS THIS MONTH. INCLUDE THE DATE PAID, WHO WAS PAID THE MONEY, THE PURPOSE AND THE AMOUNT. *(THE U.S. TRUSTEE MAY WAIVE THIS REQUIREMENT.)*

**TOTAL EXPENSES** \$ \_\_\_\_\_

*(Exhibit C)*

**CASH PROFIT**

INCOME FOR THE MONTH *(TOTAL FROM EXHIBIT B)* \$ \_\_\_\_\_

EXPENSES FOR THE MONTH *(TOTAL FROM EXHIBIT C)* \$ \_\_\_\_\_

*(Subtract Line C from Line B)* **CASH PROFIT FOR THE MONTH** \$ \_\_\_\_\_

B 25C (Official Form 25C) (12/08)

**UNPAID BILLS**

PLEASE ATTACH A LIST OF ALL DEBTS (INCLUDING TAXES) WHICH YOU HAVE INCURRED SINCE THE DATE YOU FILED BANKRUPTCY BUT HAVE NOT PAID. THE LIST MUST INCLUDE THE DATE THE DEBT WAS INCURRED, WHO IS OWED THE MONEY, THE PURPOSE OF THE DEBT AND WHEN THE DEBT IS DUE. *(THE U.S. TRUSTEE MAY WAIVE THIS REQUIREMENT.)*

**TOTAL PAYABLES** \$ \_\_\_\_\_

*(Exhibit D)*

**MONEY OWED TO YOU**

PLEASE ATTACH A LIST OF ALL AMOUNTS OWED TO YOU BY YOUR CUSTOMERS FOR WORK YOU HAVE DONE OR THE MERCHANDISE YOU HAVE SOLD. YOU SHOULD INCLUDE WHO OWES YOU MONEY, HOW MUCH IS OWED AND WHEN IS PAYMENT DUE. *(THE U.S. TRUSTEE MAY WAIVE THIS REQUIREMENT.)*

**TOTAL RECEIVABLES** \$ \_\_\_\_\_

*(Exhibit E)*

**BANKING INFORMATION**

PLEASE ATTACH A COPY OF YOUR LATEST BANK STATEMENT FOR EVERY ACCOUNT YOU HAVE AS OF THE DATE OF THIS FINANCIAL REPORT OR HAD DURING THE PERIOD COVERED BY THIS REPORT.

*(Exhibit F)*

**EMPLOYEES**

NUMBER OF EMPLOYEES WHEN THE CASE WAS FILED? \_\_\_\_\_

NUMBER OF EMPLOYEES AS OF THE DATE OF THIS MONTHLY REPORT? \_\_\_\_\_

**PROFESSIONAL FEES**

*BANKRUPTCY RELATED:*

PROFESSIONAL FEES RELATING TO THE BANKRUPTCY CASE PAID DURING THIS REPORTING PERIOD? \$ \_\_\_\_\_

TOTAL PROFESSIONAL FEES RELATING TO THE BANKRUPTCY CASE PAID SINCE THE FILING OF THE CASE? \$ \_\_\_\_\_

*NON-BANKRUPTCY RELATED:*

PROFESSIONAL FEES NOT RELATING TO THE BANKRUPTCY CASE PAID DURING THIS REPORTING PERIOD? \$ \_\_\_\_\_

TOTAL PROFESSIONAL FEES NOT RELATING TO THE BANKRUPTCY CASE PAID SINCE THE FILING OF THE CASE? \$ \_\_\_\_\_

B 25C (Official Form 25C) (12/08)

**PROJECTIONS**

COMPARE YOUR ACTUAL INCOME AND EXPENSES TO THE PROJECTIONS FOR THE FIRST 180 DAYS OF YOUR CASE PROVIDED AT THE INITIAL DEBTOR INTERVIEW.

	Projected	Actual	Difference
INCOME	\$ _____	\$ _____	\$ _____
EXPENSES	\$ _____	\$ _____	\$ _____
CASH PROFIT	\$ _____	\$ _____	\$ _____

TOTAL PROJECTED INCOME FOR THE NEXT MONTH: \$ \_\_\_\_\_

TOTAL PROJECTED EXPENSES FOR THE NEXT MONTH: \$ \_\_\_\_\_

TOTAL PROJECTED CASH PROFIT FOR THE NEXT MONTH: \$ \_\_\_\_\_

**ADDITIONAL INFORMATION**

**PLEASE ATTACH ALL FINANCIAL REPORTS INCLUDING AN INCOME STATEMENT AND BALANCE SHEET WHICH YOU PREPARE INTERNALLY.**

## **ATTACHMENT C**



B25A (Official Form 25A) (12/08)

United States Bankruptcy Court

District of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Small Business Case under Chapter 11

**[NAME OF PROPONENT]’S PLAN OF REORGANIZATION, DATED [INSERT DATE]**

**ARTICLE I**  
**SUMMARY**

This Plan of Reorganization (the “Plan”) under chapter 11 of the Bankruptcy Code (the “Code”) proposes to pay creditors of [insert the name of the debtor] (the “Debtor”) from [specify sources of payment, such as an infusion of capital, loan proceeds, sale of assets, cash flow from operations, or future income].

This Plan provides for \_\_\_\_\_ classes of secured claims; \_\_\_\_\_ classes of unsecured claims; and \_\_\_\_\_ classes of equity security holders. Unsecured creditors holding allowed claims will receive distributions, which the proponent of this Plan has valued at approximately \_\_\_ cents on the dollar. This Plan also provides for the payment of administrative and priority claims [if payment is not in full on the effective date of this Plan with respect to any such claim (to the extent permitted by the Code or the claimant’s agreement), identify such claim and briefly summarize the proposed treatment.]

All creditors and equity security holders should refer to Articles III through VI of this Plan for information regarding the precise treatment of their claim. A disclosure statement that provides more detailed information regarding this Plan and the rights of creditors and equity security holders has been circulated with this Plan. **Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)**

**ARTICLE II**  
**CLASSIFICATION OF CLAIMS AND INTERESTS**

- 2.01 Class 1. All allowed claims entitled to priority under § 507 of the Code (except administrative expense claims under § 507(a)(2), [“gap” period claims in an involuntary case under § 507(a)(3),] and priority tax claims under § 507(a)(8)).
- 2.02 Class 2. The claim of \_\_\_\_\_, to the extent allowed as a secured claim under § 506 of the Code.

**B25A (Official Form 25A) (12/08) - Cont.**

[Add other classes of secured creditors, if any. Note: Section 1129(a)(9)(D) of the Code provides that a secured tax claim which would otherwise meet the description of a priority tax claim under § 507(a)(8) of the Code is to be paid in the same manner and over the same period as prescribed in § 507(a)(8).]

2.03 Class 3. All unsecured claims allowed under § 502 of the Code.

[Add other classes of unsecured claims, if any.]

2.04 Class 4 . Equity interests of the Debtor. [If the Debtor is an individual, change this heading to “The interests of the individual Debtor in property of the estate.”]

**ARTICLE III**  
**TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS,**  
**U.S. TRUSTEES FEES, AND PRIORITY TAX CLAIMS**

3.01 Unclassified Claims. Under section §1123(a)(1), administrative expense claims, [“gap” period claims in an involuntary case allowed under § 502(f) of the Code,] and priority tax claims are not in classes.

3.02 Administrative Expense Claims. Each holder of an administrative expense claim allowed under § 503 of the Code [, and a “gap” claim in an involuntary case allowed under § 502(f) of the Code,] will be paid in full on the effective date of this Plan (as defined in Article VII), in cash, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor.

3.03 Priority Tax Claims. Each holder of a priority tax claim will be paid [specify terms of treatment consistent with § 1129(a)(9)(C) of the Code].

3.04 United States Trustee Fees. All fees required to be paid by 28 U.S.C. §1930(a)(6) (U.S. Trustee Fees) will accrue and be timely paid until the case is closed, dismissed, or converted to another chapter of the Code. Any U.S. Trustee Fees owed on or before the effective date of this Plan will be paid on the effective date.

**ARTICLE IV**  
**TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN**

4.01 Claims and interests shall be treated as follows under this Plan:

**B25A (Official Form 25A) (12/08) - Cont.**

<b>Class</b>	<b>Impairment</b>	<b>Treatment</b>
Class 1 - Priority Claims	[State whether impaired or unimpaired.]	[Insert treatment of priority claims in this Class, including the form, amount and timing of distribution, if any. For example: “Class 1 is unimpaired by this Plan, and each holder of a Class 1 Priority Claim will be paid in full, in cash, upon the later of the effective date of this Plan as defined in Article VII, or the date on which such claim is allowed by a final non-appealable order. Except: _____.”]
Class 2 – Secured Claim of [Insert name of secured creditor.]	[State whether impaired or unimpaired.]	[Insert treatment of secured claim in this Class, including the form, amount and timing of distribution, if any.] [Add class[es] of secured claims if applicable]
Class 3 - General Unsecured Creditors	[State whether impaired or unimpaired.]	[Insert treatment of unsecured creditors in this Class, including the form, amount and timing of distribution, if any.] [Add administrative convenience class if applicable]
Class 4 - Equity Security Holders of the Debtor	[State whether impaired or unimpaired.]	[Insert treatment of equity security holders in this Class, including the form, amount and timing of distribution, if any.]

**ARTICLE V**  
**ALLOWANCE AND DISALLOWANCE OF CLAIMS**

5.01 Disputed Claim. A disputed claim is a claim that has not been allowed or disallowed [by a final non-appealable order], and as to which either: (i) a proof of claim has been filed or deemed filed, and the Debtor or another party in interest has filed an objection; or (ii) no proof of claim has been filed, and the Debtor has scheduled such claim as disputed, contingent, or unliquidated.

5.02 Delay of Distribution on a Disputed Claim. No distribution will be made on account of a disputed claim unless such claim is allowed [by a final non-appealable order].

5.03 Settlement of Disputed Claims. The Debtor will have the power and authority to settle and compromise a disputed claim with court approval and compliance with Rule 9019 of the Federal Rules of Bankruptcy Procedure.

**B25A (Official Form 25A) (12/08) - Cont.**

**ARTICLE VI**  
**PROVISIONS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

6.01 Assumed Executory Contracts and Unexpired Leases.

(a) The Debtor assumes the following executory contracts and/or unexpired leases effective upon the [Insert “effective date of this Plan as provided in Article VII,” “the date of the entry of the order confirming this Plan,” or other applicable date]:

[List assumed executory contracts and/or unexpired leases.]

(b) The Debtor will be conclusively deemed to have rejected all executory contracts and/or unexpired leases not expressly assumed under section 6.01(a) above, or before the date of the order confirming this Plan, upon the [Insert “effective date of this Plan,” “the date of the entry of the order confirming this Plan,” or other applicable date]. A proof of a claim arising from the rejection of an executory contract or unexpired lease under this section must be filed no later than \_\_\_\_\_ (\_\_\_) days after the date of the order confirming this Plan.

**ARTICLE VII**  
**MEANS FOR IMPLEMENTATION OF THE PLAN**

[Insert here provisions regarding how the plan will be implemented as required under §1123(a)(5) of the Code. For example, provisions may include those that set out how the plan will be funded, as well as who will be serving as directors, officers or voting trustees of the reorganized debtor.]

**ARTICLE VIII**  
**GENERAL PROVISIONS**

8.01 Definitions and Rules of Construction. The definitions and rules of construction set forth in §§ 101 and 102 of the Code shall apply when terms defined or construed in the Code are used in this Plan, and they are supplemented by the following definitions: [Insert additional definitions if necessary].

8.02 Effective Date of Plan. The effective date of this Plan is the eleventh business day following the date of the entry of the order of confirmation. But if a stay of the confirmation order is in effect on that date, the effective date will be the first business day after that date on which no stay of the confirmation order is in effect, provided that the confirmation order has not been vacated.

**B25A (Official Form 25A) (12/08) - Cont.**

8.03 Severability. If any provision in this Plan is determined to be unenforceable, the determination will in no way limit or affect the enforceability and operative effect of any other provision of this Plan.

8.04 Binding Effect. The rights and obligations of any entity named or referred to in this Plan will be binding upon, and will inure to the benefit of the successors or assigns of such entity.

8.05 Captions. The headings contained in this Plan are for convenience of reference only and do not affect the meaning or interpretation of this Plan.

[8.06 Controlling Effect. Unless a rule of law or procedure is supplied by federal law (including the Code or the Federal Rules of Bankruptcy Procedure), the laws of the State of \_\_\_\_\_ govern this Plan and any agreements, documents, and instruments executed in connection with this Plan, except as otherwise provided in this Plan.]

[8.07 Corporate Governance. [If the Debtor is a corporation include provisions required by § 1123(a)(6) of the Code.]]

## **ARTICLE IX** **DISCHARGE**

[If the Debtor is not entitled to discharge under 11 U.S.C. § 1141(d)(3) change this heading to “**NO DISCHARGE OF DEBTOR.**”]

9.01. **[Option 1 – If Debtor is an individual and § 1141(d)(3) is not applicable]**  
Discharge. Confirmation of this Plan does not discharge any debt provided for in this Plan until the court grants a discharge on completion of all payments under this Plan, or as otherwise provided in § 1141(d)(5) of the Code. The Debtor will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.

**[Option 2 -- If the Debtor is a partnership and section 1141(d)(3) of the Code is not applicable]**

Discharge. On the confirmation date of this Plan, the debtor will be discharged from any debt that arose before confirmation of this Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code. The Debtor will not be discharged from any debt imposed by this Plan.

**[Option 3 -- If the Debtor is a corporation and § 1141(d)(3) is not applicable]**

**B25A (Official Form 25A) (12/08) - Cont.**

Discharge. On the confirmation date of this Plan, the debtor will be discharged from any debt that arose before confirmation of this Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor will not be discharged of any debt: (i) imposed by this Plan; (ii) of a kind specified in § 1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure; or (iii) of a kind specified in § 1141(d)(6)(B).

**[Option 4 – If § 1141(d)(3) is applicable]**

No Discharge. In accordance with § 1141(d)(3) of the Code, the Debtor will not receive any discharge of debt in this bankruptcy case.

**ARTICLE X  
OTHER PROVISIONS**

**[Insert other provisions, as applicable.]**

Respectfully submitted,

By: \_\_\_\_\_  
The Plan Proponent

By: \_\_\_\_\_  
Attorney for the Plan Proponent

**ATTACHMENT D**



B25B (Official Form 25B) (12/08)

United States Bankruptcy Court

\_\_\_\_\_ District of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Small Business Case under Chapter 11

**[NAME OF PLAN PROPONENT]'S DISCLOSURE STATEMENT, DATED [INSERT DATE]**

*Table of Contents*

[Insert when text is finalized]

**B25B (Official Form 25B) (12/08) – Cont.****I. INTRODUCTION**

This is the disclosure statement (the “Disclosure Statement”) in the small business chapter 11 case of \_\_\_\_\_ (the “Debtor”). This Disclosure Statement contains information about the Debtor and describes the [insert name of plan] (the “Plan”) filed by [the Debtor] on [insert date]. A full copy of the Plan is attached to this Disclosure Statement as Exhibit A. ***Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.***

The proposed distributions under the Plan are discussed at pages \_\_ - \_\_ of this Disclosure Statement. [General unsecured creditors are classified in Class \_\_, and will receive a distribution of \_\_\_ % of their allowed claims, to be distributed as follows \_\_\_\_\_.]

**A. Purpose of This Document**

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case,
- How the Plan proposes to treat claims or equity interests of the type you hold (*i.e.*, what you will receive on your claim or equity interest if the plan is confirmed),
- Who can vote on or object to the Plan,
- What factors the Bankruptcy Court (the “Court”) will consider when deciding whether to confirm the Plan,
- Why [the Proponent] believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

**B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing**

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

1. *Time and Place of the Hearing to [Finally Approve This Disclosure Statement and] Confirm the Plan*

The hearing at which the Court will determine whether to [finally approve this Disclosure Statement and] confirm the Plan will take place on [insert date], at [insert time], in Courtroom \_\_\_\_\_, at the [Insert Courthouse Name, and Full Court Address, City, State, Zip Code].

2. *Deadline For Voting to Accept or Reject the Plan*

**B25B (Official Form 25B) (12/08) – Cont.**

If you are entitled to vote to accept or reject the plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to [insert address]. See section IV.A. below for a discussion of voting eligibility requirements.

Your ballot must be received by [insert date] or it will not be counted.

3. *Deadline For Objecting to the [Adequacy of Disclosure and] Confirmation of the Plan*

Objections to [this Disclosure Statement or to] the confirmation of the Plan must be filed with the Court and served upon [insert entities] by [insert date].

4. *Identity of Person to Contact for More Information*

If you want additional information about the Plan, you should contact [insert name and address of representative of plan proponent].

**C. Disclaimer**

*The Court has [conditionally] approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted. [The Court's approval of this Disclosure Statement is subject to final approval at the hearing on confirmation of the Plan. Objections to the adequacy of this Disclosure Statement may be filed until \_\_\_\_\_.]*

**II. BACKGROUND**

**A. Description and History of the Debtor's Business**

The Debtor is a [corporation, partnership, etc.]. Since [insert year operations commenced], the Debtor has been in the business of \_\_\_\_\_. [Describe the Debtor's business].

**B. Insiders of the Debtor**

[Insert a detailed list of the names of Debtor's insiders as defined in §101(31) of the United States Bankruptcy Code (the "Code") and their relationship to the Debtor. For each insider, list all compensation paid by the Debtor or its affiliates to that person or entity during the two years prior to the commencement of the Debtor's bankruptcy case, as well as compensation paid during the pendency of this chapter 11 case.]

**C. Management of the Debtor Before and During the Bankruptcy**

During the two years prior to the date on which the bankruptcy petition was filed, the officers, directors, managers or other persons in control of the Debtor (collectively the "Managers") were [List the Managers of the Debtor prior to the petition date].

**B25B (Official Form 25B) (12/08) – Cont.**

The Managers of the Debtor during the Debtor’s chapter 11 case have been: [List Managers of the Debtor during the Debtor’s chapter 11 case.]

After the effective date of the order confirming the Plan, the directors, officers, and voting trustees of the Debtor, any affiliate of the Debtor participating in a joint Plan with the Debtor, or successor of the Debtor under the Plan (collectively the “Post Confirmation Managers”), will be: [List Post Confirmation Managers of the Debtor.] The responsibilities and compensation of these Post Confirmation Managers are described in section \_\_\_ of this Disclosure Statement.

**D. Events Leading to Chapter 11 Filing**

[Describe the events that led to the commencement of the Debtor’s bankruptcy case.]

**E. Significant Events During the Bankruptcy Case**

[Describe significant events during the Debtor’s bankruptcy case:

- Describe any asset sales outside the ordinary course of business, debtor in possession financing, or cash collateral orders.
- Identify the professionals approved by the court.
- Describe any adversary proceedings that have been filed or other significant litigation that has occurred (including contested claim disallowance proceedings), and any other significant legal or administrative proceedings that are pending or have been pending during the case in a forum other than the Court.
- Describe any steps taken to improve operations and profitability of the Debtor.
- Describe other events as appropriate.]

**F. Projected Recovery of Avoidable Transfers [Choose the option that applies]**

**[Option 1 – If the Debtor does not intend to pursue avoidance actions]**

The Debtor does not intend to pursue preference, fraudulent conveyance, or other avoidance actions.

**[Option 2 – If the Debtor intends to pursue avoidance actions]**

The Debtor estimates that up to \$\_\_\_\_\_ may be realized from the recovery of fraudulent, preferential or other avoidable transfers. While the results of litigation cannot be predicted with certainty and it is possible that other causes of action may be identified, the following is a summary of the preference, fraudulent conveyance and other avoidance actions filed or expected to be filed in this case:

Transaction	Defendant	Amount Claimed

**[Option 3 – If the Debtor does not yet know whether it intends to pursue avoidance actions]**

The Debtor has not yet completed its investigation with regard to prepetition transactions. If you received a payment or other transfer within 90 days of the bankruptcy, or other transfer avoidable under the Code, the Debtor may seek to avoid such transfer.

#### G. **Claims Objections**

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The procedures for resolving disputed claims are set forth in Article V of the Plan.

#### H. **Current and Historical Financial Conditions**

The identity and fair market value of the estate's assets are listed in Exhibit B. [Identify source and basis of valuation.]

The Debtor's most recent financial statements [if any] issued before bankruptcy, each of which was filed with the Court, are set forth in Exhibit C.

[The most recent post-petition operating report filed since the commencement of the Debtor's bankruptcy case are set forth in Exhibit D.] [A summary of the Debtor's periodic operating reports filed since the commencement of the Debtor's bankruptcy case is set forth in Exhibit D.]

### III. **SUMMARY OF THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS**

#### A. **What is the Purpose of the Plan of Reorganization?**

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

#### B. **Unclassified Claims**

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan Proponent has *not* placed the following claims in any class:

##### 1. *Administrative Expenses*

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

**B25B (Official Form 25B) (12/08) – Cont.**

The following chart lists the Debtor’s estimated administrative expenses, and their proposed treatment under the Plan:

<u>Type</u>	<u>Estimated Amount Owed</u>	<u>Proposed Treatment</u>
Expenses Arising in the Ordinary Course of Business After the Petition Date		Paid in full on the effective date of the Plan, or according to terms of obligation if later
The Value of Goods Received in the Ordinary Course of Business Within 20 Days Before the Petition Date		Paid in full on the effective date of the Plan, or according to terms of obligation if later
Professional Fees, as approved by the Court.		Paid in full on the effective date of the Plan, or according to separate written agreement, or according to court order if such fees have not been approved by the Court on the effective date of the Plan
Clerk’s Office Fees		Paid in full on the effective date of the Plan
Other administrative expenses		Paid in full on the effective date of the Plan or according to separate written agreement
Office of the U.S. Trustee Fees		Paid in full on the effective date of the Plan
<b>TOTAL</b>		

2. *Priority Tax Claims*

Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding 5 years from the order of relief.

**B25B (Official Form 25B) (12/08) – Cont.**

The following chart lists the Debtor’s estimated § 507(a)(8) priority tax claims and their proposed treatment under the Plan:

Description (name and type of tax)	Estimated Amount Owed	Date of Assessment	Treatment
			Pmt interval = [Monthly] payment = Begin date = End date = Interest Rate % = Total Payout Amount = \$
			Pmt interval = [Monthly] payment = Begin date = End date = Interest Rate % = Total Payout Amount = \$

**C. Classes of Claims and Equity Interests**

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

1. *Classes of Secured Claims*

Allowed Secured Claims are claims secured by property of the Debtor’s bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under § 506 of the Code. If the value of the collateral or setoffs securing the creditor’s claim is less than the amount of the creditor’s allowed claim, the deficiency will [be classified as a general unsecured claim].

**B25B (Official Form 25B) (12/08) – Cont.**

The following chart lists all classes containing Debtor’s secured prepetition claims and their proposed treatment under the Plan:

<b><u>Class #</u></b>	<b><u>Description</u></b>	<b><u>Insider? (Yes or No)</u></b>	<b><u>Impairment</u></b>	<b><u>Treatment</u></b>
	<i>Secured claim of:</i> Name =  Collateral description =  Allowed Secured Amount = \$ _____  Priority of lien =  Principal owed = \$ _____ Pre-pet. arrearage = \$ _____  Total claim = \$ _____		[State whether impaired or unimpaired]	[Monthly] Pmt =  Pmts Begin =  Pmts End =  [Balloon pmt] =  Interest rate % =  Treatment of Lien =  [Additional payment required to cure defaults] =
	<i>Secured claim of:</i> Name =  Collateral description =  Allowed Secured Amount = \$ _____ Priority of lien =  Principal owed = \$ _____ Pre-pet. arrearage = \$ _____  Total claim = \$ _____		[State whether impaired or unimpaired]	Monthly Pmt =  Pmts Begin =  Pmts End =  [Balloon pmt] =  Interest rate % =  Treatment of Lien =  [Additional payment required to cure defaults] =

2. *Classes of Priority Unsecured Claims*

Certain priority claims that are referred to in §§ 507(a)(1), (4), (5), (6), and (7) of the Code are required to be placed in classes. The Code requires that each holder of such a claim receive cash on the effective date of the Plan equal to the allowed amount of such claim. However, a class of holders of such claims may vote to accept different treatment.

**B25B (Official Form 25B) (12/08) – Cont.**

The following chart lists all classes containing claims under §§ 507(a)(1), (4), (5), (6), and (a)(7) of the Code and their proposed treatment under the Plan:

Class #	Description	Impairment	Treatment
	Priority unsecured claim pursuant to Section [insert]  Total amt of claims = \$	[State whether impaired or unimpaired]	
	Priority unsecured claim pursuant to Section [insert]  Total amt of claims = \$	[State whether impaired or unimpaired]	

3. *Class[es] of General Unsecured Claims*

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code. [Insert description of §1122(b) convenience class if applicable.]

The following chart identifies the Plan's proposed treatment of Class[es] \_\_ through \_\_, which contain general unsecured claims against the Debtor:

Class #	Description	Impairment	Treatment
	[1122(b) Convenience Class]	[State whether impaired or unimpaired]	[Insert proposed treatment, such as "Paid in full in cash on effective date of the Plan or when due under contract or applicable nonbankruptcy law"]
	General Unsecured Class	[State whether impaired or unimpaired]	Monthly Pmt = Pmts Begin = Pmts End = [Balloon pmt] = Interest rate % from [date] = Estimated percent of claim paid =

4. *Class[es] of Equity Interest Holders*

**B25B (Official Form 25B) (12/08) – Cont.**

Equity interest holders are parties who hold an ownership interest (*i.e.*, equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest holders. In a partnership, equity interest holders include both general and limited partners. In a limited liability company (“LLC”), the equity interest holders are the members. Finally, with respect to an individual who is a debtor, the Debtor is the equity interest holder.

The following chart sets forth the Plan’s proposed treatment of the class[es] of equity interest holders: [There may be more than one class of equity interests in, for example, a partnership case, or a case where the perpetition debtor had issued multiple classes of stock.]

Class #	Description	Impairment	Treatment
	Equity interest holders	[State whether impaired or unimpaired]	

**D. Means of Implementing the Plan**

1. *Source of Payments*

Payments and distributions under the Plan will be funded by the following:

[Describe the source of funds for payments under the Plan.]

2. *Post-confirmation Management*

The Post-Confirmation Managers of the Debtor, and their compensation, shall be as follows:

Name	Affiliations	Insider (yes or no)?	Position	Compensation

**E. Risk Factors**

The proposed Plan has the following risks:

[List all risk factors that might affect the Debtor’s ability to make payments and other distributions required under the Plan.]

**F. Executory Contracts and Unexpired Leases**

**B25B (Official Form 25B) (12/08) – Cont.**

The Plan, in Exhibit 5.1, lists all executory contracts and unexpired leases that the Debtor will assume under the Plan. Assumption means that the Debtor has elected to continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of the type that must be cured under the Code, if any. Exhibit 5.1 also lists how the Debtor will cure and compensate the other party to such contract or lease for any such defaults.

If you object to the assumption of your unexpired lease or executory contract, the proposed cure of any defaults, or the adequacy of assurance of performance, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set an earlier time.

All executory contracts and unexpired leases that are not listed in Exhibit 5.1 will be rejected under the Plan. Consult your adviser or attorney for more specific information about particular contracts or leases.

If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan.

***[The Deadline for Filing a Proof of Claim Based on a Claim Arising from the Rejection of a Lease or Contract Is \_\_\_\_\_. Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.]***

**G. Tax Consequences of Plan**

***Creditors and Equity Interest Holders Concerned with How the Plan May Affect Their Tax Liability Should Consult with Their Own Accountants, Attorneys, And/Or Advisors.***

The following are the anticipated tax consequences of the Plan: [List the following general consequences as a minimum: (1) Tax consequences to the Debtor of the Plan; (2) General tax consequences on creditors of any discharge, and the general tax consequences of receipt of plan consideration after confirmation.]

**IV. CONFIRMATION REQUIREMENTS AND PROCEDURES**

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Code. These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

**B25B (Official Form 25B) (12/08) – Cont.****A. Who May Vote or Object**

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Plan Proponent believes that classes \_\_\_\_\_ are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan. The Plan Proponent believes that classes \_\_\_\_\_ are unimpaired and that holders of claims in each of these classes, therefore, do not have the right to vote to accept or reject the Plan.

1. *What Is an Allowed Claim or an Allowed Equity Interest?*

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest. When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

***The deadline for filing a proof of claim in this case was \_\_\_\_\_.  
[If applicable – The deadline for filing objections to claims is \_\_\_\_\_.]***

2. *What Is an Impaired Claim or Impaired Equity Interest?*

As noted above, the holder of an allowed claim or equity interest has the right to vote only if it is in a class that is *impaired* under the Plan. As provided in § 1124 of the Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

3. *Who is **Not** Entitled to Vote*

The holders of the following five types of claims and equity interests are *not* entitled to vote:

- holders of claims and equity interests that have been disallowed by an order of the Court;
- holders of other claims or equity interests that are not “allowed claims” or “allowed equity interests” (as discussed above), unless they have been “allowed” for voting purposes.
- holders of claims or equity interests in unimpaired classes;

**B25B (Official Form 25B) (12/08) – Cont.**

- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code; and
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan;
- administrative expenses.

***Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation of the Plan [and to the Adequacy of the Disclosure Statement].***

4. *Who Can Vote in More Than One Class*

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

**B. Votes Necessary to Confirm the Plan**

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by “cram down” on non-accepting classes, as discussed later in Section [B.2.].

1. *Votes Necessary for a Class to Accept the Plan*

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least two-thirds (2/3) in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

2. *Treatment of Nonaccepting Classes*

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds nonaccepting classes is commonly referred to as a “cram down” plan. The Code allows the Plan to bind nonaccepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not “discriminate unfairly,” and is “fair and equitable” toward each impaired class that has not voted to accept the Plan.

***You should consult your own attorney if a “cramdown” confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.***

**B25B (Official Form 25B) (12/08) – Cont.****C. Liquidation Analysis**

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. A liquidation analysis is attached to this Disclosure Statement as Exhibit E.

**D. Feasibility**

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan.

1. *Ability to Initially Fund Plan*

The Plan Proponent believes that the Debtor will have enough cash on hand on the effective date of the Plan to pay all the claims and expenses that are entitled to be paid on that date. Tables showing the amount of cash on hand on the effective date of the Plan, and the sources of that cash are attached to this disclosure statement as Exhibit F.

2. *Ability to Make Future Plan Payments And Operate Without Further Reorganization*

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments.

The Plan Proponent has provided projected financial information. Those projections are listed in Exhibit G.

The Plan Proponent's financial projections show that the Debtor will have an aggregate annual average cash flow, after paying operating expenses and post-confirmation taxes, of \$\_\_\_. The final Plan payment is expected to be paid on \_\_\_\_\_.

[Summarize the numerical projections, and highlight any assumptions that are not in accord with past experience. Explain why such assumptions should now be made.]

***You Should Consult with Your Accountant or other Financial Advisor If You Have Any Questions Pertaining to These Projections.***

**V. EFFECT OF CONFIRMATION OF PLAN**

**A. DISCHARGE OF DEBTOR** [If the Debtor is not entitled to discharge pursuant to 11 U.S.C. § 1141(d)(3) change this heading to “**NO DISCHARGE OF DEBTOR.**”]

**[Option 1 – If Debtor is an individual and § 1141(d)(3) is not applicable]**

**B25B (Official Form 25B) (12/08) – Cont.**

Discharge. Confirmation of the Plan does not discharge any debt provided for in the Plan until the court grants a discharge on completion of all payments under the Plan, or as otherwise provided in § 1141(d)(5) of the Code. Debtor will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.

**[Option 2 -- If the Debtor is a partnership and § 1141(d)(3) of the Code is not applicable]**

Discharge. On the effective date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code. However, the Debtor shall not be discharged from any debt imposed by the Plan. After the effective date of the Plan your claims against the Debtor will be limited to the debts imposed by the Plan.

**[Option 3 -- If the Debtor is a corporation and § 1141(d)(3) is not applicable]**

Discharge. On the effective date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor shall not be discharged of any debt (i) imposed by the Plan, (ii) of a kind specified in § 1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure, or (iii) of a kind specified in § 1141(d)(6)(B). After the effective date of the Plan your claims against the Debtor will be limited to the debts described in clauses (i) through (iii) of the preceding sentence.

**[Option 4 – If § 1141(d)(3) is applicable]**

No Discharge. In accordance with § 1141(d)(3) of the Code, the Debtor will not receive any discharge of debt in this bankruptcy case.

**B. Modification of Plan**

The Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or revoting on the Plan.

[If the Debtor is not an individual, add the following: “The Plan Proponent may also seek to modify the Plan at any time after confirmation only if (1) the Plan has not been substantially consummated *and* (2) the Court authorizes the proposed modifications after notice and a hearing.”]

[If the Debtor is an individual, add the following: “Upon request of the Debtor, the United States trustee, or the holder of an allowed unsecured claim, the Plan may be modified at any time after confirmation of the Plan but before the completion of payments under the Plan, to (1) increase or reduce the amount of payments under the Plan on claims of a particular class, (2) extend or reduce the time period for such payments, or (3) alter the amount of distribution to a creditor whose claim is provided for by the Plan to the extent necessary to take account of any payment of the claim made other than under the Plan.”]

**C. Final Decree**

**B25B (Official Form 25B) (12/08) – Cont.**

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Plan Proponent, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion.

**VI. OTHER PLAN PROVISIONS**

[Insert other provisions here, as necessary and appropriate.]

---

[Signature of the Plan Proponent]

---

[Signature of the Attorney for the Plan Proponent]

**B25B (Official Form 25B) (12/08) – Cont.**

**EXHIBITS**

**B25B (Official Form 25B) (12/08) – Cont.**

**Exhibit A – Copy of Proposed Plan of Reorganization**

**B25B (Official Form 25B) (12/08) – Cont.**

**Exhibit B – Identity and Value of Material Assets of Debtor**

**B25B (Official Form 25B) (12/08) – Cont.**

**Exhibit C** – Prepetition Financial Statements  
(to be taken from those filed with the court)

**B25B (Official Form 25B) (12/08) – Cont.**

**Exhibit D** – [Most Recently Filed Postpetition Operating Report][Summary of Postpetition Operating Reports]

B25B (Official Form 25B) (12/08) – Cont.

**Exhibit E – Liquidation Analysis**

***Plan Proponent’s Estimated Liquidation Value of Assets***

**Assets**

a. Cash on hand	\$
b. Accounts receivable	\$
c. Inventory	\$
d. Office furniture & equipment	\$
e. Machinery & equipment	\$
f. Automobiles	\$
g. Building & Land	\$
h. Customer list	\$
i. Investment property (such as stocks, bonds or other financial assets)	\$
j. Lawsuits or other claims against third-parties	\$
k. Other intangibles (such as avoiding powers actions)	\$

***Total Assets at Liquidation Value*** \$

**Less:**

Secured creditors’ recoveries \$

**Less:**

Chapter 7 trustee fees and expenses \$

**Less:**

Chapter 11 administrative expenses \$

**Less:**

Priority claims, excluding administrative expense claims \$

**[Less:**

Debtor’s claimed exemptions] \$

(1) Balance for unsecured claims \$

(2) Total dollar amount of unsecured claims \$

***Percentage of Claims Which Unsecured Creditors Would Receive Or Retain in a Chapter 7 Liquidation:*** \$

***Percentage of Claims Which Unsecured Creditors Will Receive or Retain under the Plan:*** \_\_\_\_\_% [Divide (1) by (2)]

\_\_\_\_\_%

**B25B (Official Form 25B) (12/08) – Cont.**

**Exhibit F** – Cash on hand on the effective date of the Plan

<b>Cash on hand on effective date of the Plan:</b>	\$
<i>Less –</i>	
Amount of administrative expenses payable on effective date of the Plan	-
Amount of statutory costs and charges	-
Amount of cure payments for executory contracts	-
Other Plan Payments due on effective date of the Plan	-
	\$
Balance after paying these amounts.....	

The sources of the cash Debtor will have on hand by the effective date of the Plan are estimated as follows:

\$	Cash in Debtor's bank account now
+	Additional cash Debtor will accumulate from net earnings between now and effective date of the Plan [state the basis for such projections]
+	Borrowing [separately state terms of repayment]
+	Capital Contributions
+	Other
\$	Total [This number should match “cash on hand” figure noted above]

**B25B (Official Form 25B) (12/08) – Cont.**

**Exhibit G – Projections of Cash Flow and Earnings for Post-Confirmation Period**

**ATTACHMENT E**



Form B25B, Instructions (12/1/08)

## **Instructions for Form Disclosure Statement**

### **BACKGROUND AND GENERAL INSTRUCTIONS**

1. This small business chapter 11 disclosure statement form is promulgated pursuant to § 433 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. This form may be used in cases where the debtor (whether an individual or an artificial entity) is a small business debtor within the meaning of § 101(51D) of the Code. This form provides a format for disseminating to parties in interest information about the plan of reorganization in a debtor's small business chapter 11 case, so that those parties can make reasonably informed judgments whether to accept, reject or object to the plan. Because the relevant legal requirements for and effects of a plan's confirmation may vary depending on the nature of the debtor, and because the details of any proposed reorganization necessarily vary, this form is intended to provide a format for disclosure, rather than a specific prescription for the language or content of a disclosure statement in any particular case. The form highlights the factual and legal disclosures required by § 1125 of the Code in connection with the plan's confirmation. It is not intended to restrict the plan's proponent from providing additional information where that would be useful.
2. Proponents are encouraged to present material information in as clear a fashion as possible, including, where feasible, in an accompanying executive summary, approved by the court, that highlights particular creditors' or interest holders' voting status and treatment under the plan.
3. Some language in this form appears in brackets. The bracketed language sometimes instructs the plan's proponent to provide certain information, and sometimes provides optional or alternative language that should be used when and where appropriate. Proponents should make the necessary insertions and/or delete inapplicable language.

### **SPECIFIC INSTRUCTIONS**

#### **INTRODUCTORY SECTION**

4. The introductory section describes the purpose of the disclosure statement, provides procedural information regarding confirmation of the plan, including where to obtain additional information, indicates whether particular claimants or interest holders will be entitled to vote on the plan, and details the procedures and deadlines for filing objections to confirmation of the plan. A copy of the plan should be attached to the debtor's disclosure statement as

Form 25B Instr. (1208) – Cont.

Exhibit A. Where the proposed distribution to unsecured creditors and other classes can be succinctly summarized, describe that distribution in the second introductory paragraph.

5. In some cases, the court will approve the debtor's disclosure statement prior to solicitation of acceptance or rejection of the plan. See Rule 3017. In other cases, the court may conditionally approve the disclosure statement, and combine the hearing on the adequacy of disclosure and the hearing on confirmation of the plan into one hearing. See Rule 3017.1. Use the bracketed language as appropriate in subsections I.B. and I.C.

## BACKGROUND SECTION

6. The second part of disclosure statement provides a history of the debtor's business, both before and during the debtor's bankruptcy case. In this section, the plan proponent should describe the debtor's business, the events that led to the filing of the debtor's bankruptcy petition, and the key events in the debtor's bankruptcy case, and identify the people who managed the debtor during the case and who will manage the debtor after the plan is confirmed. The proponent should disclose its intentions with regard to, and the status of, avoidance actions. If the debtor or proponent intends to bring an avoidance action against a particular creditor or equity interest holder, the disclosure statement should disclose this fact so that the creditor or equity interest holder can use that information to determine the value of its claim or interest when considering whether to accept or reject the plan. If the debtor or plan proponent is uncertain as to what avoidance actions might be brought, that fact should be disclosed as well, so that claimants and equity interest holders can take that information into account, as well, when considering whether to accept or reject the plan.
7. A schedule of the debtor's material assets, along with the basis for their valuation should be attached to the debtor's disclosure statement as Exhibit B. Under § 1116 of the Code, the debtor must also file its most recent prepetition financial statements with the petition. These financial statements should be attached to the debtor's disclosure statement as Exhibit C.
8. Sections 434 and 435 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, and § 308 of the Code require the debtor to file periodic operating reports with the court. The most recent such reports, or a summary of the filed reports, should be attached to the debtor's disclosure statement as Exhibit D.

Form 25B Instr. (1208) – Cont.

## SUMMARY OF PLAN

9. The third part of the disclosure statement describes the treatment of various creditors and equity interest holders who will receive distributions under the plan. Because the treatment of certain claims, such as administrative expense claims, allowed under § 503 of the Code, and priority tax claims, allowed under §507(a)(8) of the Code, is statutorily specified, these claims are not placed into classes. Secured creditors are generally each placed in their own class, with the particular treatment specified for that class. Section 1129(a)(9)(D) of the Code provides that a secured tax claim which would otherwise meet the description of a priority tax claim under § 507(a)(8) of the Code is to be paid in the same manner and over the same period as prescribed in § 507(a)(8) of the Code. While it is not required, the proponent may, where applicable, wish to classify claims under § 507(a)(9) and (10) of the Code. Finally, the disclosure statement should describe the treatment of the general unsecured claimants and equity interest holders. An administrative convenience class may be created pursuant to § 1122(b) of the Code, and other classes of unsecured claims may be created to the extent permitted by applicable case law. Also, while the suggested language of the form contemplates that plan distributions will be in the form of monthly payments, other forms of consideration are permitted and this section of the disclosure statement should be modified to describe clearly the form(s), methods and timing of payments to be made under the particular plan.
10. The disclosure statement should also detail the sources of funds for payments to be made under the plan. These should include the sources of funds for payments to be made on the effective date of the plan (detailed in Exhibit F), and the source of payments that will be made over the life of the plan. The description should be supported by projections about the income and profitability of the debtor. The plan proponent must also fully describe post-confirmation management, as required by § 1129(a)(5) of the Code. The disclosure statement should also describe any risk factors that might influence the debtor's ability to complete the payments or affect the value of the distributions provided for under the plan. Also, the disclosure statement should list any material executory contracts that will be assumed pursuant to the plan, as well as any material contracts that will be rejected. To the extent possible, the tax consequences of the plan should also be summarized.

## CONFIRMATION REQUIREMENTS AND PROCEDURES SECTION

11. The fourth part of the disclosure statement sets forth the procedures and requirements for confirmation. In this regard, the disclosure statement should inform creditors and equity interest holders of (1) which class they are in, (2) whether they are entitled to vote, and (3) the amount of their claim allowed for voting purposes. This may be accomplished in the disclosure statement itself or, as noted above, in a summary statement, approved by the court, and sent to

Form 25B Instr. (1208) – Cont.

the parties in interest along with the disclosure statement. A liquidation analysis of the debtor should be attached to the disclosure statement as Exhibit E. As noted above, the sources of funds for payments to be made on the effective date of the plan should be detailed in Exhibit F, and projections about the profitability and cash flow of the debtor's business after confirmation should be attached to the disclosure statement as Exhibit G.

#### EFFECT OF PLAN CONFIRMATION

12. The fifth part of the disclosure statement describes the effect of plan confirmation. The language used here should be chosen with care, as the effect of confirmation differs depending on whether the debtor is an individual, partnership, or corporation, and on whether the debtor will continue in business post-confirmation or will, instead, be liquidated.
13. If the plan provides that, after its confirmation, property of the estate will vest in and be distributed by someone other than the debtor, the disclosure statement should identify any such property and the person in whom the property will vest.

#### OTHER PROVISIONS

14. Other provisions may be added in Part VI as desired and appropriate.

**ATTACHMENT F**



Form B25A, Instructions (12/1/08)

## **Instructions for Small Business Plan of Reorganization Form**

### **BACKGROUND AND GENERAL INSTRUCTIONS**

1. This small business chapter 11 plan of reorganization form is promulgated pursuant to § 433 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. It may be used in cases where the debtor (whether an individual or an artificial entity) is a small business debtor under § 101(51D) of the Code. This form is intended to be used in conjunction with the small business chapter 11 disclosure statement form (Official Form 25B). Because the type of debtor and the details of the proposed plan will vary from case to case, this form is intended to provide an illustrative format, rather than a specific prescription for the language or content of a plan in any particular case.
2. Some language in this form appears in brackets. The bracketed language sometimes instructs the plan's proponent to provide certain information and sometimes provides optional or alternative language that should be used when and where appropriate. Proponents should make the necessary insertions and/or delete inapplicable language.

### **SPECIFIC INSTRUCTIONS**

#### **SUMMARY**

3. The first article should provide a summary of the debtor's proposed plan. It should describe the manner in which the plan will be consummated and the source of funds for payments to be made under the plan. These sources might include an infusion of capital, loan proceeds, sale of assets, cash flow from operations, or future income. The summary should also describe the treatment of the various classes of claimants under the plan.

#### **CLASSIFICATION OF CLAIMS AND INTERESTS**

4. The second article describes each class of claimants that will receive a distribution under the plan. The first class consists of claimants entitled to priority pursuant to § 507 of the Code other than those entitled to priority under § 507(a)(2), (3), or (8). The next class or group of classes consists of creditor(s) with allowed secured claims. Secured creditors are usually classified individually, with each secured creditor being placed in its own separate class. Classes of secured creditors should be added as necessary. Next, unsecured claimants, not entitled to priority, should be classified. The proponent may, to the extent allowed by law, create additional classes of unsecured claims, including an administrative convenience class pursuant to

Form 25A Inst. (12/08) – Cont.

§1122(b) of the Code. The last class consists of equity security holders of the debtor. If the debtor is an individual, this class consists of the interests of the individual Debtor in property of the estate.

#### TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS, U.S. TRUSTEES FEES, AND PRIORITY TAX CLAIMS

5. The treatment of certain claims, such as administrative expense claims, allowed under § 503 of the Code, and priority tax claims, allowed under §507(a)(8) of the Code, is statutorily specified. These claims are not, therefore, placed into classes. Their treatment is described in the third article.

#### TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN

6. The fourth article specifies the treatment accorded the various classes of claims and interests provided for under the plan.
7. Priority claimants other than those allowed under §§ 503 and 507(a)(8) must be classified and paid in full under the plan unless the claimant agrees otherwise.
8. Each secured creditor is generally placed in its own class, with a particular treatment specified for that class. Section 1129(a)(9)(D) of the Code provides that a secured tax claim which would otherwise meet the description of a priority tax claim under § 507(a)(8) of the Code is to be paid in the same manner and over the same period as prescribed in § 507(a)(8).
9. The plan should describe the treatment of the general unsecured claims. An administrative convenience class may be created pursuant to § 1122(b) of the Code, and other classes of unsecured claims may be created to the extent permitted by applicable law.
10. Finally, the plan should describe the treatment of equity securities.

#### ALLOWANCE AND DISALLOWANCE OF CLAIMS

11. The fifth article addresses the treatment of disputed claims. A “disputed claim” is a claim that has not been allowed or disallowed. No distribution will be made on account of a disputed claim unless such claim is allowed. The debtor will have the power and authority to settle and compromise a disputed claim with court approval and compliance with Rule 9019.

#### PROVISIONS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES

12. The sixth article deals with executory contracts and unexpired leases. The plan proponent should list all executory contracts and unexpired leases that it has already assumed, or which it intends to assume under the plan. All other executory contracts will be deemed rejected.
13. The seventh article describes how the plan will be implemented. It should

Form 25A Inst. (12/08) – Cont.

indicate the source of any funds that will be used to pay claims and interests under the plan, and it should also list the persons who will be serving as the management of the debtor after the plan is confirmed.

#### GENERAL PROVISIONS

14. The eighth article provides certain general provisions. Definitions from the Code are incorporated by reference, and any other definitions required by the plan should be listed in section 7.01 of the plan. If a governing law clause is desired, it should be included here, and if the debtor is a corporation, provisions required by §1123(a)(6) of the Code should be included.

#### DISCHARGE

15. The ninth article describes the effect of discharge under the plan. When and whether the debtor is entitled to a discharge will depend, among other things, upon whether the debtor is an individual, partnership, or corporation, and whether the debtor is continuing in business after consummation of the plan. The proponent should choose the appropriate language from the options provided.

#### OTHER PROVISIONS

16. To the extent that other provisions, not provided in the plan, are desired, they should be placed in the tenth article.

