

# TIRED OF RUNNING AFTER DEBTORS?

Your Guide To An Efficient  
Commercial Debt Collection

Ms  
Current Name  
Street Name, 1  
70000 City Name  
Tel. 0000 5555555  
E-Mail: emailname@server

## DEBT COLLECTION

**URGENT: PLEASE RECTIFY THIS MATTER IMMEDIATELY**

Despite numerous previous reminders, the below amount due remains unpaid. As such, we demand you making this payment in full by end of Business Monday.

**AMOUNT DUE: \$1204.53**

**PLEASE REMIT PAYMENT TO:** Company Name, 123 Street Name

We regret to advise that unless payment is received by Business Monday, this matter will be passed over to our debt collection agency. This could result in legal action, therefore we ask to contact us immediately to resolve this matter by the mentioned date.

You have the right to dispute this debt amount by submitting written notice to us within seven (7) days of receiving this letter. If this letter is not disputed within the seven (7) day time-frame, collection will be considered accepted by the debtor.

This letter is

**Art Matthews, Esq.**

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**Art Matthews, Esq.**

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## TESTIMONIALS

*“Dealing with Art was a pleasure. Over the last 35 years of owning numerous companies unfortunately I have had far too many instances where I found myself in need of an attorney. These issues were typical of being self-employed and owning numerous companies with anywhere from one to 500 employees. From employment matters to stockholder issues in addition to the normal day to day business issues that never seem to end. Art was recommended to me by a friend, once I contacted The Mathews Law Firm and started the process, I was immediately comfortable with his services. We reached a very quick settlement, I feel I was treated with respect, keep in the loop and not taken advantage of by being overcharged which is how I’ve always felt when dealing with a law firm that bills by the hour. Since my first matter with his firm, I have already used him a second time. I am 100% sure going forward when I need another attorney Art will be the person I call, without hesitation! I would recommend Art Matthews to my friends and family whenever asked for a referral which I would never do with any other attorney that I have ever used.”*

**- Michael S.**

\*\*\*\*\*

*“Our company is a \$4.6 billion dollar multinational dairy cooperative and have been working with The Matthews Law firm for a few years. Art and his staff are diligent, bilingual and have assisted our business to recover from many accounts. Their efforts have contributed to the success of our credit department by keeping our bad debt and legal expenses at acceptable levels. They have also assisted by giving us advice with bankruptcy matters and other business issues. We are a company that is very familiar with the judicial and bankruptcy process and are very selective with regard to using professionals. I would highly recommend using The Matthews Law Firm to assist your company.”*

**- Ray G.**

\*\*\*\*\*

*“I have used the Matthews Law Firm for over 25 years always with great results. Art Matthews is a skilled litigator and knows how to aggressively protect his client’s interests while billing reasonably and fairly. Art’s business background comes in handy when evaluating the nuances of complex matters and his credit experience makes him well suited for debt collections matters. I’d highly recommend the Matthews Law Firm.”*

**- President, National Staffing Company**

\*\*\*\*\*

*"I have been working with Art Matthews for a few years. He is very knowledgeable and helpful and always treats me with respect. He keeps me up to date with my case. I highly recommend him as an excellent attorney. I highly recommend Art Matthews as an attorney. He represented me in a couple of cases. His knowledge and experience always helped me to win or settle a case."*

**- Zsuzsanna G.**

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## ABOUT THE AUTHOR



I have been a practicing attorney for over 30 years (since 1989) and am licensed in both California and New York. Over the years, my practice has focused to a great extent on business-to-business collections (i.e., helping companies and individuals collect unpaid receivables, promissory notes, unpaid loans, and the like). My firm has developed substantial expertise in this area after facing pretty much every situation you might run across and we use that expertise to help our clients solve their collection problems.

The purpose of this book is to give both clients and prospective clients some basic information on how

the collection process works, plus different collection tools that are out there. If you're someone who is owed money, this book can, at the very least, help you understand the process so that when we do speak, you're better educated and can ask the right questions.

This content is limited primarily to California law and primarily to collection of unsecured debts or money judgments as opposed to seizing or foreclosing on tangible property. Also, there might be some overlap with the laws and procedures in other states.

After this basic primer on collections, if a reader cannot collect a debt on their own, they will likely need to hire an attorney like me to move forward and apply the enforcement tools that California law provides.

## CHAPTER 1

# WHO DO YOU ASSIST WHEN IT COMES TO DEBT COLLECTION?



The people/clients we work with run the gamut from business owners, C-level executives, companies of all sizes and collection managers. Larger companies may have a dedicated collection manager that we work with, while we might deal directly with the CFO of a small to mid-size company. Depending on how large a matter it is, we might work directly with the owner/principal. Ultimately, we're available to

anyone who needs our services, even an individual who lends money to a friend for an investment and isn't paid back.

### ***When Do You Generally Get Involved in the Debt Collection Process?***

I would say that almost one hundred percent of the time clients have first attempted to collect the debt on their own before involving an attorney. When the due date comes, they email or call the debtor to ask what's going on and why they haven't paid, instead of instantly phoning me. Some clients are more aggressive than others, while some let quite a bit of time lapse before they attempt to collect a debt. Generally, I get involved after the client has made some attempt or attempts to collect the debt weeks, months, or even years before they reach out to me.

We have many attorneys who refer us cases in which their client has obtained a judgment but the attorney has not been able to collect or simply does not know how. Therefore, our involvement can begin a

few weeks after a debt becomes due or after the debt has already been converted to a judgment.

### ***What Debt Collection Problems Arise From Commercial and Consumer Transactions?***

Our firm focuses mainly on business-to-business debts, rather than business-to-consumer debts. As I said, our services run the gamut and can begin at any point in time, whether that's right after a debt becomes due or post-judgment. For those clients who are having problems locating a debtor, we work with investigators who help us not only find them, but also discover what assets and liabilities they have.

Many of our clients prefer to work something out informally with their customers, and we're sensitive to that. If a client doesn't want to file a lawsuit, we'll attempt to negotiate a settlement without having to go to court. We might put the debtor on a voluntary repayment plan if they can't pay the entire balance in full. We'll draft a written agreement that is generally more enforceable than what the client may have in place. Some clients only have invoices or

purchase orders; while we can collect on those, it's better to have an agreement that lays out all the terms and provides for the recovery of attorney's fees if the debtor doesn't pay under the agreement.

If negotiating a settlement without going to court fails and the client is willing to proceed, we will file a lawsuit against the debtor, especially when it's a large enough dollar amount or when the client feels strongly about continuing collection efforts. At this point, we're moving toward a judgment or hoping to settle now that we have more leverage over the debtor with the pending lawsuit. It's often easier to secure a settlement after the lawsuit is filed than beforehand. Also, just because we file the lawsuit doesn't mean we have to go all the way to conclusion. We can stop at any time if the other side is willing to pay or work out a settlement or if the client simply decides that is what they want to do.

When we can't work out a settlement, then we push to get a judgment against the business or individual. A judgment is just a piece of paper signed by the judge or by the clerk (if it's a clerk's judgment)

that says the losing party owes the money. The court doesn't go and collect the money for you—that is a misconception that many people have. They think, “Oh, if I get a judgment, I'm going to automatically get paid,” but that's not the case. Securing a judgment can be only half the battle.

Once we have a judgment, if the other side doesn't simply open their checkbook and write us a check, we have to figure out ways to enforce the judgment, which is the rest of the battle. There are many different tools we can employ under California law to enforce a judgment. Whether we're dealing with an individual or a business and what type of assets they have will determine which tools are appropriate to utilize.

One of the easiest and most cost-effective tools we use is a bank levy. The only outside information we need is where the debtor banks. For that reason, we recommend that clients retain a check copy if the debtor has made any payments. Credit apps will also usually provide where the debtor banks. We attempt bank levies first in many cases and they are often very effective.

In California, we can also recover accounts receivables that are owed to your debtor, so if we know the identity of a debtor's customer, we can levy on the customer and force them to pay us instead of paying the debtor. In addition to bank and accounts receivable levies, there are also levies on real property, wages, vehicles and other property as well as other enforcement tools we use to collect.

## **CHAPTER 2**

# **ATTORNEY'S ROLE IN NEGOTIATING AND DEFENDING CREDITOR'S CLAIMS**



Most of the time, our role is to pursue collection of the debt. In doing so, these duties often include locating debtors and discovering their assets and liabilities. We will also attempt to negotiate a pre-litigation settlement or voluntary repayment plan with the debtors on behalf of our client. If necessary, we will file suit against debtors who fail to timely pay their

debts and we utilize available pre- and post-judgment remedies. Additionally, we work to enforce a judgment obtained against debtor or, where a debtor files bankruptcy, we can represent the creditor's interests in federal bankruptcy court.

While we are performing these roles for our clients (and though not as common), a client might also have someone who is pursuing collections against them. Our client might have a legitimate reason why they have not paid, but the fact remains that they are still being sued or harassed. When this occurs, we can step in and assist debtor clients by negotiating and, if necessary, defending creditor claims (e.g., by attempting to defeat claims or setting up repayment plans that assist debtors in maintaining acceptable credit ratings and paying valid debts). From a practical perspective, successful debt defense assists a debtor by resolving a debt that negatively impact their lives or business. Our firm does asset protection work, as well, so we help clients use certain asset protection tools to protect their individual assets and, if possible, those of their business if they are or become liable to a creditor.

## *What Are the Different Types of Claims That You Generally Work on Behalf of Your Clients?*

There are generally two types of debt: they are either secured or unsecured. Secured means it is backed up, so to speak, by tangible or intangible property (e.g., a residence, an office building, the assets of the business, the inventory of the business, the bank accounts of the business, etc.). In our practice, we deal mostly with collection of unsecured debts. For example, let's say you sent out an invoice, shipped a product, and believed in good faith that you would be paid, but the money does not come; or you made a \$100,000 loan as an investment in a business and have not been repaid. Those are examples of unsecured debts.

With unsecured debts, we cannot just foreclose or seize an item of collateral. Instead, we generally have to go to court and take steps to collect. Once we have a judgment, we can convert the unsecured claim to a secured claim by recording an appropriate lien, either with the county recorder for real property or with the Secretary of State for personal property.

There are also consumer versus commercial claims. The focus of this book is on commercial (i.e., business-to-business) claims, as the vast majority of our debt collection practice deals with business-related claims. Business claims generally involve greater sums of money than consumer debts. They are generally easier to collect than consumer debts because businesses do not have the same exemptions and defenses that consumers do.

Specifically, consumer debts may be more difficult to collect than commercial debts due to the liberal exemptions California law affords individual debtors to protect their assets and earnings from creditors. Additionally, with consumer debts, it can often be difficult to locate a debtor. Individual debtors are more likely to “skip” (i.e., move without leaving a forwarding address). Consumer debtors also commonly have insufficient assets and income from which to satisfy debts, which presents a far greater problem in the consumer context. Lastly, consumer debts are more difficult to collect on because consumer

debtors are more likely than businesses to file Chapter 7 bankruptcy petitions in order to obtain a discharge of unsecured debts.

While I've handled all types of claims, I have always enjoyed working on business-to-business claims the most, which is why we are focused on those types of debts at my firm

### ***What Type of Information Do You Need to Determine Whether the Debt is Worth Pursuing?***

What is the amount of the debt? What do we know about the debtor's finances/assets? Are there any claims that the debtor might assert back against our potential client; i.e., will we likely have to both assert a claim and defend against a counterclaim? Is the counterclaim more than the claim our client is attempting to collect? How old is the debt? Are there any personal guarantees? These are all factors we look at in determining whether or not a debt is worth pursuing. If there are already several lawsuits ahead of us, maybe it is evidence that the debtor is not able to pay its debts or is insolvent.

Sometimes clients do not care and want to pursue their claim. So long as they engage in the collections process with their eyes wide open, then that is their choice. Obviously, we try and do what is best for our clients, and we would likely counsel against pursuing a claim if it is uncollectible.

### ***What is The Role of a Collection Agency in the Debt Collection Process?***

Before coming to us, our clients will sometimes hire a collection agency to collect a debt, which is fine. Collection agencies are limited, however, in what they can do. They're not licensed attorneys, so they can't file a lawsuit for you. They're limited to writing letters to the debtor and calling them to try to convince them to pay. Sometimes it works, sometimes it doesn't. Sophisticated debtors know that a collection agency cannot sue them, whereas if they are hearing from a law firm, they know that they might be sued if they do not pay.

We have an advantage over collection agencies in that respect. We can do everything they can do and

then go beyond that to file lawsuits and enforce judgments, if necessary. I believe that using collection agencies is fine on smaller debts (under \$5,000), but we can generally accomplish far more than agencies on larger debts.

### ***How Large Should a Debt be Before It's Reasonable to Hire an Attorney and File a Lawsuit?***

Dollar-wise, I believe that businesses with debts of \$5,000 or less should consider using a collection agency or go to Small Claims Court. In California, corporations and LLC's can generally go to Small Claims Court to pursue debts that are \$5,000 or less (unless a business needs to file more than two claims per year). On these smaller debts, we can generally serve the same function as an agency and write letters and communicate by telephone to try and collect. However, it doesn't make a lot of sense for us to pursue these smaller claims in court because there's simply not even enough money involved to justify that level of involvement.

## CHAPTER 3

# STEPS AN ATTORNEY WILL TAKE IN THE DEBT COLLECTION PROCESS



When a client contacts us about an unpaid account or a debt that needs to be collected, we will first talk to them on the phone. We have some clients with multiple accounts for whom we've developed pre-arranged procedures, so we don't need to talk to them on the phone every time. We like to hear what the situation is, whether there are any disputes the other side is raising regarding why they haven't paid.

Are they ignoring you? Are they claiming they have no money? If the facts warrant that we pursue the matter, we'll ask the client to provide us with documentation (e.g., purchase orders, contracts, invoices, check copies, credit applications, tax ID numbers, etc.).

Once we have this documentation, we will review it to determine whether it is a secured or unsecured debt, which will guide us on how we proceed. We also verify how old the debt is. In California, the breach of a written agreement or unpaid account must be pursued within four years, meaning you can't wait more than four years from the date the debt became due or the last payment was received to file suit or the lawsuit can be thrown out of court because the statute of limitations has run. We have unfortunately had clients approach us with debts that are more than four years old and have had to break the news that that their claim is time-barred. Statute of limitation are firm deadlines so clients should not wait long to pursue an unpaid debt.

If the documentation includes a written contract, we will review it to determine if there is an arbitration clause, a mediation clause, or both. Some of our clients would rather go to arbitration, which is private, than file a lawsuit in court which becomes a public record. This step helps us determine where we'll be if we have to take legal action; some contracts even tell us where we have to sue (for instance, it might be Northern California instead of Orange County, Los Angeles County, or Southern California). We obviously have to make sure we are filing the lawsuit in the right place.

Then, we will identify all of the responsible parties. Hopefully, there is a personal guarantee, meaning one of the owners/principals is responsible to pay the balance, not just the business. That usually makes the debt more collectible, especially if you are dealing with a company that is going out of or has already gone out of business. When we have an individual who is also responsible, we can pursue their personal assets which can give us significant leverage.

## *Collection Without Filing Suit*

### **When Should This Be an Option? What Is That Process?**

We almost always try to collect without filing suit. The exception would be when we have a client who comes to us and says, "I've been trying to collect this for two years. I don't even want you to write a letter. I just want you to sue them." Perhaps 95% of the time, we begin with a written demand letter to the debtor so that they know the client is serious and has retained an attorney. While we take direction from our client regarding content, these letters usually say something to the effect of: "This is the amount you owe. Our client has tried amicably to resolve the debt, but you have not paid. Demand is made that you pay within ten days, or we'll likely be instructed to file a lawsuit." Additionally, making a written demand may be a prerequisite to suit in certain situations (i.e., where a promissory note or other obligation has a due on demand provision).

Sometimes the debtor responds to our letter, and sometimes they do not. If the first letter is ignored, we might send a final demand letter, which gives them less time to respond before we move forward with a lawsuit. We attach a copy of the original demand letter and any other supporting documentation we previously provided. This final demand is the “pay now or we sue” letter.

If possible, you want to have multiple touches because some debtors will just ignore us for a while. We’ll also pick up the phone and call the debtor if we’re not getting any kind of a response to our demands. Some debtors ignore our letters but will talk to us on the phone and work out a resolution of the debt.

### ***Why Should A Creditor Consider A Settlement?***

At any point in this process, we hope to secure a settlement before a lawsuit is required. When we can work out a settlement – whether it involves a payment plan, a discount, or other modification to the original terms – we will usually draft a settlement agreement

for everyone to sign that has terms that protect our client (e.g., releases of any claims against our client, specific payment terms and an attorney's fee clause). This makes the debt easily enforceable in case there is a default by the debtor in the future.

In my opinion, a voluntary repayment program is almost always preferable to litigation, especially in cases where the claim is disputed, the debtor has few or no nonexempt assets, or is on the verge of bankruptcy or (in the case of a business) shutting down.

As creditor's counsel, we will generally take one or more of the following actions to ensure that the debtor follows through on its promises:

- If the debtor defaults, we will file suit on the written agreement which prevents the debtor from raising defenses they might have had to the original obligation.
- If possible, we will secure a personal guarantee from an owner or principal of the debtor, particularly where the debtor is a small

corporation or LLC. Creditors with personal guaranties often obtain payment ahead of other creditors.

Obtaining a security interest on the debtor's personal property or trust deed on real property will secure the debtor's obligation to pay provided that the debtor has equity in such property.

### *A Couple of Other Issues:*

- Remittances: when an attorney is working on a contingency basis (the attorney is entitled to a percentage of the recovery) all payments received on behalf of a debtor should be deposited into the attorney's client trust account and promptly remitted to the client on clearance of funds. The client should also be provided an accounting as to how much was received and how much was retained by the attorney for fees or costs.
- "Payment in full" checks: Debtors sometimes send creditors a check for less than the full

balance due and include a notation that cashing the check will be deemed “payment in full.”

Unfortunately, the effect on a creditor's rights in these situations is uncertain because of conflicting provisions under the California Civil Code and Commercial Code. We generally advise our clients not to accept payment in full checks unless they are prepared to accept the amount tendered in full settlement. This is another reason why having an experienced attorney is crucial to protecting your rights.

## **CHAPTER 4**

# **WHEN DO YOU START THE JUDGMENT ENFORCEMENT PROCESS?**



If we send demand letters, make phone calls, and still cannot resolve a debt—whether the debtor is ignoring us, unwilling to pay, or otherwise being unreasonable—the next step is to discuss filing a lawsuit with our client. There are certain factors to consider before we file a lawsuit. Primarily, do we think the debt is collectible? In some cases, it may not

be worth a client's time, money, or effort to pursue a debt. That can happen where the debtor is going out of business and where there is no guarantor, where the debtor has already been served with other lawsuits, where there are tax liens, or where the debtor is insolvent. Sometimes the best decision is to just write off a bad debt.

Obviously, we hope that is not the case, but it does not do us or our client any good to pursue uncollectible amounts, especially (as in most collection cases) we are working on a contingency basis where we are paid only if we recover. If we suspect there are collectability issues, we can have an asset investigator run a report on the assets and liabilities of the business (including the existence of other lawsuits). We will do that if we are unable to secure this information directly from the debtor.

Even a debt is collectible, we also need to consider whether our attorney's fees are recoverable. For example, if we are suing for \$10,000; the client probably does not want to spend \$11,000 to collect the

\$10,000 that is owed. However, if we agree to work on a contingency basis, that is not an issue because the client is not advancing attorney's fees. They will be paying out-of-pocket costs, but these are generally less than \$1,000-1,500 in most collection matters.

So, that is another pre-lawsuit consideration. If we're working on an hourly basis, can we get our attorney's fees back? Does it make economic sense for the client to pursue this?

Lastly, we look for any issues with our documents. Is the debt too old? Is there a valid defense? Is it possible that we sue, only to have the debtor file a cross-complaint against our client? If there is a chance the client might file a lawsuit and get sued right back, it might be best to just let it go especially on smaller claims. Maybe we will push for an early settlement instead or perhaps a mutual release agreement with the debtor and just walk away if that is the correct thing to do for the client.

Overall, we work through the process on a case-by-case basis, depending on how much is at stake and how aggressive the client wants us to be.

### *Enforcement of Judgments*

Let's say we wrote demand letters and made phone calls but were unable to resolve the debt. The client gave us the go-ahead to file a lawsuit, the debtor responded or didn't respond; either way, we won the case and obtained a judgment. If the debtor still hasn't paid, what do we do next?

That's where the California Enforcement of Judgments Law ("EJL") comes into play. The EJL provides different tools that we can use to collect on judgments against both businesses and individuals. Depending on whom we are dealing with, we will analyze the situation and then use the appropriate enforcement tool(s).

If we have a judgment against a personal guarantor who is an individual, we can put on a lien on their home, if it is located within California. When

the individual later attempts to sell or refinance the home, our lien will need to be paid. Over the years, I have had many judgments satisfied in that manner. Judgment debtors are notified in writing when a lien is applied and this sometimes causes them to call us looking to settle.

We can perform a bank levy, which is generally one of the first tools we recommend, whether it is a business or an individual. If we don't have the debtor's banking information, we can have our investigator try and locate it. Although discussed in greater detail below, one of the great things about a bank levy is that it is relatively low cost and the debtor doesn't know in advance that it is coming. We'll have the sheriff serve the bank(s) where they have an account— which often leads to a panicked phone call from the debtor once they realize that their funds have been frozen. By this time, the levy has already occurred and it is too late for them to attempt to withdraw their funds.

Bank levies are a great opening shot and even if we do not collect the full amount using that tool, it

generates a settlement in many cases. The debtor will either voluntarily repay the remaining balance at that point or work out a payment plan. Either way, they are now definitely incentivized to comply because they have received a sample of what we can do if they do not.

### ***What Does the Client Need to Know When It Comes to the Steps of the Levy Process?***

Other than the fact that it is a legal process, clients should be aware that it is not extremely time-consuming but can still take time. For example, most bank levies take between 30-60 days to process. We cannot make the Sheriff go faster and some Sheriff's offices are much slower than others. We know who we are dealing with, so we try to set realistic expectations for our client by letting them know in advance how much time we think it will take.

## CHAPTER 5

# HOW DOES THE INTEREST RATE APPLY TO YOUR POTENTIAL RECOVERY?



Judgments in California accrue interest at 10% per year, so the amount due grows pretty rapidly. At this rate of interest, a judgment will double in size every ten years.

This relatively generous post-judgment interest rate is another tool that we can use for settlement

leverage. A client might say, “Okay, I have \$25,000 that was not paid back. The judgment is now \$40,000 with interest, but do I need the entire \$40,000? My cost of funds was probably less than ten percent a year, so I’ll take \$30,000 or \$35,000.” The client is still making more than what they lent or what they were owed. The fact that interest accrues so quickly scares debtors, which gives us more leverage to secure payment.

### ***What Does It Mean for a Judgment to Be Partially Satisfied?***

Let’s say a debtor owes \$25,000. They have paid \$10,000, which payment(s) are applied first to accrued interest and post-judgment costs so the amount they now owe is the original principal balance less whatever amount from the payment(s) was applied to principal. The judgment has been partially satisfied to the extent of any principal reduction.

### ***Costs of Suit and Attorney’s Fees***

Under California law, a creditor can generally recover those costs of suit set forth in the Code of Civil

Procedure. They generally include filing and motion fees, service of process costs, jury fees, deposition costs and witness fees. Keep in mind that this is a non-exclusive list. These costs can be included in the judgment.

Whether a creditor is entitled to recover attorney's fees in business cases depends on whether there is a signed contract that provides for the recovery of attorney's fees. You would be surprised how many of our clients have contracts that do not have an attorney's fee clause or they simply do not have a written contract and are surprised to hear that attorney's fees are not automatically recoverable.

When we work with clients on recovery matters, we are acting as their collections lawyer, however, that does not prevent us from recommending certain provisions that should be included in their contracts or modifications to their internal processes that should be made to maximize revenues.

## ***For How Long Is a Judgment Enforceable After it is Entered by the Court?***

Judgments don't last forever, unless you take action to make sure they are timely renewed. In California, a judgment is initially enforceable for ten years and can be renewed for successive ten-year periods, however, you cannot let the ten-year period run before renewing. If you do so, it is too late and the judgment is no longer enforceable. Additionally, any liens that were filed or recorded would also be void.

We obviously hope not to be working on uncollected judgments close to the ten-year mark, but clients often approach us with these situations from time to time.. We therefore advise clients to renew their judgments well before the ten-year mark rather than filing an application to renew with only days or weeks to spare before the deadline as

some courts are terribly slow at processing these documents. Or, if there is an issue and the renewal

documents are rejected, you could run afoul of the ten-year renewal deadline.

Additionally, if there is a judgment lien recorded on any real property interest under the original judgment, we will need to record certified copies of the application to renew before expiration of the 10-year period to retain the lien's priority position.

Similar requirements apply to execution liens and enforcement procedures then pending. To avoid problems, we recommend our clients take action at least six months before a judgment is set to expire.

### ***What Property Is Subject to Enforcement Procedures?***

When it comes to a corporation or LLC, essentially all property it has is generally subject to enforcement, unless a prior lien on the businesses' property has been perfected. Sole proprietorships can utilize the same exemptions as an individual debtor (see below).

For example, if a debtor received a bank loan and the bank filed a lien against all of the debtor's assets, we may not be able to seize property that is subject to the bank's lien. Generally, though, we can seize funds in a debtor's bank account. In these situations, we can run a UCC-1 search before or after suit is filed to determine what, if any, liens exist against the business. If we determine that all the assets of a business have been liened and there are limited funds in a bank account, we will counsel our client on the potential risks of moving forward with the legal process given that the debt may be uncollectible.

As discussed above, with businesses, the general rule is that there are no exempt assets, only limitations on enforcement from prior liens. However, if we are suing an individual, there are numerous exemptions available that are largely outside the scope of this book. Two examples are that an individual debtor can exempt up to \$600,000 of equity in their home and approximately \$2,000 from a bank account. If we are trying to garnish an individual debtor's wages, we can

generally garnish up to 25% of their pay. There exists a fairly lengthy list of exemptions that an individual judgment debtor can utilize to make it more difficult—though certainly not impossible—to collect.

## CHAPTER 6

# HOW MUCH OF THE PLAN TO ENFORCE A JUDGMENT DOES A CLIENT NEED TO KNOW ABOUT?



Clients are entitled to know as much of the plan to enforce a judgment as they would like. Some clients really want to get into the weeds on details, while others feel otherwise and tell us to go do what you have to do. Most clients lean toward the latter. They know their business, and they don't really want to become a lawyer, so they trust us to do what we have to do to collect.

For those who do want to know more about the process, an effective plan to collect on a money judgment should facilitate quick satisfaction of the judgment by enabling the attorney to:

- Locate available assets;
- Impose judicial liens on such assets at the earliest possible time;
- Obtain possession of specific property prior to judgment; and
- Select the proper enforcement method to reach other assets.

### ***Do Judgment Liens on Property Apply in Commercial Cases?***

If a creditor client has a judgment, we usually record a notice of judgment lien with the Secretary of State so that if the business pursues a secured loan or files bankruptcy, our lien should appear and make other potential creditors or the bankruptcy court aware of our lien's existence. Now, our lien may not be in first position, for the cost of filing a judgment lien (\$5 to \$10), it really is a no-brainer.

## *Is There a Way to Improve a Lien's Priority?*

With a few exceptions, liens are given priority according to the date they were filed or recorded. As is often said, "first in time, first in right."

## *Enforcement of Judgment by Writ of Execution*

Once we have a judgment, one of the first things we do is request that the clerk of the court where the judgment was entered issue a "writ of execution." Issuance of a writ of execution is a prerequisite to essentially all levies (e.g., bank, accounts receivable, wage garnishment, real property, etc.). The writ of execution provides the levying officer (usually the County Sheriff) with authority to levy on the property that the judgment creditor wants to seize.

In the case of a bank levy, we will generally send the Writ (along with written instructions we've prepared) to the levying officer in the County where the bank or bank branch to be levied upon is located, or, in certain circumstances, to a registered process server.

The levying officer/registered process server then visit the bank and serve a “Notice of Levy.” Once served, the Notice requires the bank to freeze any and all accounts they have in the name of the judgment debtor as of that day, up to the amount of the judgment. The bank is then required within ten days to pay over to the levying officer any amounts withheld along with a written report detailing how much, if anything, was in the account.

Once in receipt of the funds, the levying officer generally takes can take 30 days or more to remit the funds to the creditor. The bank account may not have sufficient funds to satisfy the entire judgment, so when there is not enough, we can attempt multiple bank levies. However, sometimes the debtor has closed their account or there are no funds available in which case the bank is required to note this in its report to the levying officer.

That is an example of one type of levy. Other types of levies that arise often in the commercial

context are accounts receivable and keeper levies and real property wage garnishments.

### ***How Might a Writ of Execution Be Used to Levy on Tangible Property?***

When it comes to a business, we can levy on almost anything of value that is physical in nature (e.g., a boat or a car) under a writ of execution.

When a creditor levies on tangible property that can be moved, such as a vehicle, it is seized by the levying officer, then sold at a public auction with the net proceeds after payment of any liens against the vehicle and fees, turned over to the creditor.

The process with respect to levies on real property, such as a debtor's residence or investment property, is similar, however, since the asset cannot be moved, it is liened and then sold by the levying officer at a public auction with the net proceeds (those amounts remaining after payment of all mortgages and senior liens). A levy on real property can be complicated and difficult to complete especially in the case of a debtor's

residence where significant procedural hurdles and exemptions come into play.

The good news is that in many cases, even a threat to sell a debtor's real property often forces the debtor to settle rather than risk losing the property.

### ***What Are Special Enforcement Procedures?***

Special enforcement procedures are different tools used to enforce a judgment. They are not necessarily under a writ of execution, so they are not technically considered a form of garnishment.

One special enforcement procedure is an examination of the debtor and third parties, which is similar to a post-judgment deposition. If properly served, the debtor is required to come to court to answer questions about their assets, if and where they are employed, where they bank, whether they own any real property, etc.

We can also subpoena the debtor to bring financial records about the business or in the case of

an individual debtor, about them and their spouse (we can also garnish a spouse's wages or levy on many joint assets. California is a community property state, so one spouse is liable for the debts of the other incurred during the marriage. This examination is primarily an information-gathering tool. We may not necessarily be seizing assets that day, however, we are usually gaining information that will help us collect in the future.

If the debtor does not appear for this examination, the court can issue a contempt order, meaning a warrant is issued for their arrest. The warrant is generally held to see if the debtor appears at the continued examination, which is usually in about one month's time. Debtors that fail to appear for the exam the first time and are sent notice that a warrant has been issued often show up the second time to avoid the possibility of arrest.

Another special enforcement procedure is the use of post-judgment interrogatories and/or a demand for production of documents that are served on the

debtor. In my opinion, these are not very effective. In fact, it is rare when a debtor actually responds. Most debtors ignore them because the only remedy for a non or defective response is for the creditor to file a motion to compel with the court and obtain monetary sanctions that are added to the judgment. Frankly, a determined debtor that does not want to pay will not be concerned if a few dollars are added to the judgment amount for non-compliance.

A third special enforcement tool is an assignment order, which applies to future payments. "If a judgment debtor has a right to a future payment, a court may order an assignment of all or part of such right to a judgment creditor." This tool can be highly effective.

### ***Can You Add Someone Who's Not Originally on the Judgment?***

We can sometimes amend a judgment to add a non-party alter ego. Let's say we have a judgment against a company and subpoena the company's financial records. If we discover that a principal of the

company was, for example, commingling company funds with their own or using the company to pay a significant portion of their personal expenses, we can ask the court to find that the principal is the “alter ego” of the debtor. If the court agrees, they can be added to the judgment and their personal assets will be held equally responsible for payment of the judgment.

We have found that even the threat of such a motion can force a settlement.

### *The Advantages to Judgment Enforcement*

As discussed above, most property interests are subject to execution. Except in the case of individual debtors, execution may be used to reach virtually all of a judgment debtor's property interests. This includes a judgment debtor's interest in real property and in most tangible and intangible personal property. An execution levy may also reach a debtor's property interests in the possession or control of a third person, or a debt owed the judgment debtor by a third person.

An additional advantage is that a levy will lien the property. The levying officer executes the writ by taking the property into custody (actually or constructively) and the execution levy creates a lien on the real or personal property levied upon. And, for priority purposes, the lien “relates back” to the date a prior effective judgment or attachment lien was created.

In addition to the advantages previously mentioned, the debtor's interest in the property may be sold at an execution sale and the proceeds are then applied to fully or partially satisfy the judgment.

Last but not least, collection efforts often encourage settlement. Even if a judgment is not satisfied by an execution sale, levying on a debtor's property will almost always get their attention and demonstrate that our client is serious about collecting its judgment. In turn, this may encourage the debtor to negotiate a settlement of the judgment.

## *Drawbacks of Enforcement*

There are potential drawbacks to judgment enforcement of which readers should be aware. For example, when we obtain a judgment against a business or an individual and attempt to enforce the judgment by one of the various enforcement tools available, there's usually nothing we can do to stop the debtor from filing a bankruptcy. In most cases, a debtor has other debts as well, so while they may not be filing solely because of our judgment, enforcement might push them over the edge. However, if we do nothing, we likely will not collect anything. I always want clients to be aware that sometimes you can push a debtor too far and they will file bankruptcy. However, they were likely going to file at some point anyways, so, in my opinion, it is better to know sooner rather than later.

Another possible disadvantage to enforcement efforts relates to the fact that in doing so, it is up to the creditor to identify/locate the debtor's assets. A writ of execution creates a lien only by levying upon specified, known property of the debtor. Obtaining this

information can, in certain cases, be difficult, costly and time-consuming.

Also, an execution levy can be expensive. If tangible personal property is seized, it must be stored securely and then held pending sale by the levying officer. Levying officers may require a substantial deposit to cover these costs. However, most enforcement costs can be added to the judgment.

### ***How Does Enforcement of Foreign Judgments Work?***

Subject to taking proper steps first, judgments in any of the fifty states are enforceable in any of the other states. For example, if a creditor has a judgment issued by a Wyoming Court and the debtor lives in California or has assets in California, we can “domesticate” the Wyoming judgment in a California court so that it is fully enforceable here. Alternatively, if we have a California judgment but the debtor has moved to or has assets in another state, we can work with an attorney in that state to domesticate the California judgment in the courts of that other state.

The bottom line is that whether we are domesticating an out-of-state judgment in California or a California judgment in another state, we have to go through the proper steps before enforcement proceedings can begin.

With respect to civil judgments issued by U.S. Federal Courts, the same domestication rules don't apply since Federal Courts (although located in all 50 states) are essentially a single United States court for judgment enforcement purposes. Therefore, federal court judgments need only be "registered" in a federal court located in the state where the debtor has moved or has assets. Registering a federal court judgment is generally a faster and somewhat less involved process than domesticating an out-of- state judgment.

### ***What Is a Turnover Order?***

To illustrate, let's say a creditor has a judgment and you bring the debtor in for a judgment debtor examination, which is essentially a post-judgment deposition that takes place in court, during which the creditor is permitted to ask the debtor about their assets

and where are they located. If the debtor shows up to court wearing an expensive watch, I can ask the judge to order the debtor to turn over the watch to me. This obviously doesn't happen very often, but the same would apply if they showed up with \$2,000 in cash in their pocket or a fancy ring on their finger (though wedding rings would be exempt). When I am representing a judgment debtor, I tell them to appear for the examination wearing simple clothes with no cash, watches or jewelry on their person. Turnover orders can be obtained in other contexts as well and are generally used to obtain possession of smaller items of value.

### ***What is a Seizure Order?***

Seizure orders, while permitted under California law, are fairly infrequent occurrences. These orders allow a creditor to seize certain personal property owned by a judgment debtor. However, seizure orders are infrequently acted upon due to the expense of doing so and the additional fact that levying officers will, understandably, not put their lives or those of third parties at risk to enforce a money

judgment. They are generally used to obtain possession of larger items such as cars, RV's, boats, etc.) What is an Assignment Order?

An "assignment order" requires the debtor to assign ongoing payments to you. This is often used for continuing royalty payments, sales commissions, or rent.

### ***What is a Till Tap or Keeper Levy?***

If the judgment debtor is a business that generates significant amounts of cash, we can levy on those cash proceeds in a couple of different ways.

A "till tap" is when the levying officer goes to the business and collects all cash on the premises at that point in time, up to the amount of the judgment. We try and have the Sheriff visit the business at the time of day when it is likely to have the most cash.

A "keeper" is when we send the levying officer to a business for hours or even days and collect all cash and checks that arrive at the business during that

period. Given the lengthy nature of this procedure, the levying officer will generally charge a much higher fee than for a till tap. If the business is a type that brings in a lot of cash, a keeper can help you collect some or all of your judgment. I have found that, even in cases where the keeper does not collect the entire judgment amount, this procedure often causes the debtor to call us looking to settle given that it is likely bad for business to have a representative from the Sheriff's department at the business for extended periods of time.

## CHAPTER 7

# WHAT ARE ORDERS TO PRESERVE THE VALUE OF ASSETS LEVIED UPON?



Orders to preserve the value of assets arise in situations involving businesses that are being run poorly or on real property that is not being properly maintained or in both cases where principals of the judgment debtor may be siphoning assets for their personal benefit. For example, if you are a commercial lender who lent money on a piece of real property (you

may or may not have security against it), but the debtor is letting the property go to waste. You could ask the court to appoint a third-party receiver (sometimes this person will be an attorney). By court order, the receiver is given the right to take over the business or, more often, they're given the right to control certain parts of the business or manage it so it doesn't fall into disrepair. If a debtor is improperly siphoning off the assets, you could have a receiver appointed to prevent that from happening, which would preserve the assets of the business for all creditors.

### ***What Are the Duties and Liabilities of a Third Party After a Levy?***

A third party could be a bank that is served with a bank levy and is obligated to withhold money and pay it to the levying officer. Or it could be an employer that is required to withhold a percentage of the debtor's wages each pay period. It could also be a company that owes accounts receivable to a judgment debtor. The general rule is that third parties must comply with a levy or be potentially liable for damages.

## CHAPTER 8

# WHAT HAPPENS IF A DEBTOR FILES BANKRUPTCY?



An old saying I am sure that most everyone has heard is that “you can’t squeeze blood out of a turnip.” We have hopefully learned about the potential of a bankruptcy before we’ve spent too much time, effort and money. In some situations, the debtor might have been very solvent when we first started the collections process, but as time went on, their financial situation changed for the worse and they gave up and filed

bankruptcy. The discussion below focuses on Chapter 7 or liquidation bankruptcies.

If our client is an unsecured creditor, they will be last in line when it comes time to liquidate the debtor's assets, assuming there are any. If, however, we are a secured creditor – e.g., if our client had a prior security interest or we were able to file/record a judgment lien—that status elevates us above unsecured creditors and gives us a much better chance of receiving at least a percentage of our claim through the bankruptcy liquidation process.

However, the vast majority of Chapter 7 bankruptcies are termed “no-asset” bankruptcies because there are simply no non-exempt assets for the bankruptcy trustee to liquidate. In this case, it does not matter if you are considered a secured or unsecured creditor; you are generally not going to receive anything.

If the debtor is a business that needs time to reorganize, they might file a Chapter 11 bankruptcy . If

you are a secured creditor in that type of case, you are usually in a more favorable position to receive a distribution than if you are only an unsecured creditor.

***If You are Able to Collect a Debt on Behalf of Your Client but the Debtor Then Files Bankruptcy, Could They Try to Claw Back on That Payment?***

This can happen if the debtor files bankruptcy within 90 days of our client's receipt of a payment from the debtor. Let's say we conduct a bank levy and collect a significant sum. If the debtor files bankruptcy 80 days later, the bankruptcy trustee could attempt to claw back that payment since it was received within 90 days of the bankruptcy filing. Payments received during this 90-day window are considered "preference" payments under bankruptcy law. Of course, creditors have certain defenses to these claims and, as a practical matter, they are usually settled at a significant discount.

The more common situation is when a client has received preference payments without our involvement and the debtor then files for bankruptcy. In this case,

our client generally receives a letter from the assigned bankruptcy trustee demanding a return of all preference payments. We also handle those types of cases on behalf of our clients, and generally, they are settled for much less than what the trustee was originally demanding.

## CHAPTER 9

### WHAT YOU CAN DO IF THE DEBTOR IS DISPOSING OF ASSETS DURING THE DEBT COLLECTION PROCESS?



In California, there exists a voidable transfer law that allows the court to set aside transfers of money or property if we can show these transfers fall within certain criteria and were used primarily to frustrate our efforts to collect.

For example, if a debtor owns a piece of real property and deeds it to their uncle for no

consideration, that is pretty clearly a voidable transfer if the purpose of the transfer was to make it more difficult for creditors to collect. Fortunately, there is almost always a paper trail in these situations.

However, the time and effort required to prevail on a voidable transfer claim can be significant, and therefore, I would not recommend pursuit of this type of claim unless the amount due is at least \$100,000. If that is the case, then it might make sense to dig in and determine how someone who had assets is now insolvent.

### ***Have You Ever Seen a Debtor Close Up Shop and Disappear? What Can Be Done in That Situation?***

If we do not have a personal guarantee or evidence of alter ego liability and are dealing with a business that simply closed with no remaining assets, there is frankly not a lot we can do. We saw an increase in these situations during the COVID pandemic as small companies, especially those in the hospitality or restaurant industry, could not stay in

business during the lengthy closures that were forced upon them and had to close their doors. Unfortunately, business closures are a reality of the collections process but hopefully our client pursued its claims in a timely manner and collected what is owed before the business closed.

## CHAPTER 10

# WHAT SETS YOUR FIRM APART IN COLLECTING DEBT?



While every law firm can say they are experienced, we truly are. Our practice has focused on collections for over 30 years and I have presented seminars on the collections process to other attorneys.

There are many attorneys who are very competent in prosecuting a lawsuit and obtaining a judgment, but they don't know the ins and outs of how to then collect on the judgment. They might write a

demand letter to the debtor but if the debtor does not voluntarily pay, it may be best to turn to an experienced collections attorney who is well-versed in the California Enforcement of Judgments Law and is familiar with the legal tools that it provides to help collect a debt.

Also, we usually often work on a contingency basis on collections matters, so we are not asking our client to pay us regardless of performance. Instead, we are performance-based and are only entitled to payment if we collect, which means we have skin in the game with our client.

I think those two things – the level of experience we have and the fact that we are willing to defer payment of our fee until we achieve a positive result for our client – set us apart. Plus, we're a small firm, so when you have a matter, you get me. I do have a team of attorneys and paralegals, as well, but I am involved throughout the process to make sure we are doing everything possible to collect.

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# NOTES



# TIRED OF RUNNING AFTER DEBTORS?

## Your Guide To An Efficient Commercial Debt Collection



### ART MATTHEWS, ESQ.

Art Matthews has practiced law in California since 1989 and earned his law degree from the University of Southern California where he won honors for Moot Court advocacy. He also earned a Bachelor of Science Degree in Business Administration from the University of Southern California in 1986. He is also admitted to practice in the State of New York.

Art's passion is helping business owners protect what they've worked so hard to build. Over the years, he has represented and protected businesses large and small in numerous business, contract, collections, employment and real estate matters. Art started his legal career with the law firm of Voss, Cook, and Casselberry & Thel in Newport Beach, California. In 1999, he co-founded the Orange County law firm of Burnett & Matthews LLP, an AV-rated firm where he practiced with Michael W. Burnett, a real estate transactional attorney with over 25 years' experience. In 2007, Art formed his own firm, Matthews Law Firm, Inc. where he continues to practice in the above areas. Read Art is known as an aggressive advocate and advisor but one who understands the realities of practicing law and keeping clients satisfied in today's economic climate. He has also served as a mediator on behalf of both the Los Angeles and Riverside County Superior Courts.

*"Our company is a \$4.6 billion dollar multinational dairy cooperative and have been working with The Matthews Law firm for a few years. Art and his staff are diligent, bilingual and have assisted our business to recover from many accounts. Their efforts have contributed to the success of our credit department by keeping our bad debt and legal expenses at acceptable levels. They have also assisted by giving us advice with bankruptcy matters and other business issues. We are a company that is very familiar with the judicial and bankruptcy process and are very selective with regard to using professionals. I would highly recommend using The Matthews Law Firm to assist your company."*

– Ray G.

*"I have used the Matthews Law Firm for over 25 years always with great results. Art Matthews is a skilled litigator and knows how to aggressively protect his client's interests while billing reasonably and fairly. Art's business attorney for my case. He is professional and someone that you can count on in pursuing your case till the end."*

– Andy L.

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