AMERICAN BANKRUPTCY INSTITUTE

2018 Rocky Mountain Bankruptcy Conference

Effective Motion Practice: Pointers, Checklists, Templates, Best Practices and More

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Hon. Joel T. Marker
U.S. Bankruptcy Court (D. Utah); Salt Lake City

Hon. Thomas B. McNamara
U.S. Bankruptcy Court (D. Colo.); Denver

Michael J. Pankow
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CONCURRENT SESSION

2018

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EFFECTIVE MOTION PRACTICE

I. Introduction and Introductions

II. "Practice" and Practical Application

III. Chapter 11 Cases

a. Checklist/Timeline

b. Templates/Examples of First-Day Motions

c. Forms

d. Orders re: Case Management and Status Conference

IV. Recent Local Rules Changes (Colorado and Utah)

V. Asset Sale Scenario

a. Motion

b. Notice of Hearing

c. Related Relief for Executory Contracts/Leases?

d. Affidavit

e. Supporting Documents

f. Evidence

i. Experts?

ii. Discovery?

g. Auction?

h. Hearing Preparation

i. Hearing Presentation

j.

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Outline of ABI Presentation at Rocky Mountain Conference
Denver
January 25-26, 2018

Chapter 11 Checklist

David E. Leta

	Applicable Code or FRBR	Applicable Utah Local Rule	Applicable Official Form
WHEN REPRESENTING A CORPORATE/LLC/PARTNERSHIP DEBTOR:			
1) Preparing to file the Case			
a) Understand the Debtor's Business i) What are the key generators of revenue; (1) Are these generators secure and reliable ii) What are the key expenses; (1) How much flexibility does the Debtor have in these expenses iii) What events have caused the Debtor to consider Chapter 11 relief; iv) What does the Debtor hope to accomplish in Chapter 11; (1) What is the desired end game?			

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	Applicable Code or FRBR	Applicable Utah Local Rule	Applicable Official Form
(a) Structured liquidation; (b) Downsize the business; (c) Infusion of new capital; (d) Right-size the debt to value v) Conduct a site visit vi) Ask management to complete a questionnaire with historical and financial information.			See sample in folder
b) Financing the Case i) How does the Debtor expect to operate in Chapter 11 and pay administrative expenses? (1) Unencumbered cash; (2) Non-essential unencumbered assets that can be sold quickly; (3) Use of cash collateral; (a) With consent; (b) Without consent (4) DIP financing (5) Available sources for payment of professional retainers			
c) Obtaining appropriate authority to File from Debtor's			

	Applicable Code or FRBR	Applicable Utah Local Rule	Applicable Official Form
governing body i) Review of Bylaws, Operating Agreement or Partnership Agreement ii) Approval of terms of engagement of counsel iii) Preparation of appropriate consent / authorization resolution (1) Authorizing Debtor to seek bankruptcy relief under specific chapter (2) Identification of key person who will represent the Debtor in the case and sign documents, i.e. CEO, Pres., CRO, other. (3) Identification of key person who will be responsible for financial reporting and compliance, i.e. CFO, comptroller, external professional, etc. iv) Review of UST guidelines with Debtor's management v) Review of UST checklist with Debtor's management			See sample in folder www.justice.gov/sites/default/files/ust-regions/legacy/2014//09/30/Ch11_Guidelines_and_Requirements_LA.pdf www.utb.uscourts.gov/sites/default/files/forms/11checklist.updated.3-20-15.pdf

	Applicable Code or FRBR	Applicable Utah Local Rule	Applicable Official Form
d) Review of Debtor's Financial History i) Most recent audited / unaudited financial statements for current period and past year ii) Most recent tax returns iii) Pending litigation iv) Loan documentation (1) Collateral (2) Priority vis-à-vis other lenders (3) Check perfection and priority of liens v) Non-residential real property leases vi) Personal property leases vii) Casualty Insurance Policies and status viii) D&O, E&O Environmental Policies ix) Key contracts (vendors, employees, etc)			
2) Initial filings:			
a) Venue	28 USC. § 1408		
i) Change of venue	28 USC § 1412		

	Applicable Code or FRBR	Applicable Utah Local Rule	Applicable Official Form
ii) Dismissal	28 USC § 1406		
b) Petition			201
i) Tax ID number of the Debtor;	11 USC § 301 1002(a)		
ii) Estimated dollar amount of assets and liabilities;			
iii) Estimated total number of creditors	28 USC § 1930 - 1006		
iv) Fees			
c) List of 20 largest unsecured creditors (excluding insiders), with addresses, phone numbers, email addresses and amounts owed; [within 2 days OFR or with petition]	1007(d)		204
d) List of Equity Holders [within 14 days after OFR];	1007(a)(3)		
i) Corporate Ownership Statement – any entity that owns 10% or more of any class of Debtor's equity interests	7001.1		26
e) List of all creditors, with names and addresses	1007(a)(i)		
f) For "Small Business Debtors"			
i) Qualifications:	11 USC § 1116; and 101(51D)		25A; 25B; 25C
(1) commercial or business activities;			
(2) aggregate noncontingent liquidated secured and unsecured debts of $2,566,050 (periodically adjusted	1020		

	Applicable Code or FRBR	Applicable Utah Local Rule	Applicable Official Form
for inflation) or less (excluding debts owed to affiliates or insiders) (3) not a single asset real estate company ii) Append to petition: (1) Most recent balance sheet, statement of operations, cash-flow statement and federal income tax return (or sworn statement that such documents do not exist)			
g) First Day Motions i) Declaration in support of First Day Relief;	2016(b); 2014		See samples in forms folder
ii) Application to Employ Counsel and other professionals (financial advisors, accountants, investment bankers, tax preparers, brokers, appraisers): (1) Terms of engagement (2) Resumes (3) Hourly rates (4) Declaration of disinterestedness		2090-1 to 2091-2	20A See samples in forms folder
iii) Motion for Joint Administration (where there are multiple debtors filing in the same jurisdiction)		1015-1	
iv) Cash Management Motion, with proposed interim order			
v) DIP Motion, with proposed interim order and budget		4001-2	

	Applicable Code or FRBR	Applicable Utah Local Rule	Applicable Official Form
vi) Motion to continue insurance programs, with proposed interim order			
vii) Motion to pay Utilities, with proposed interim order			
(1) Account numbers			
(2) Amount owed as of petition date			
(3) Amount of deposit, if any			
(4) Projected monthly debt during case;			
(5) Proposed adequate assurance payment (deposit or other security to cover 1-2 months projected usage)			
viii) Motion to pay pre-petition wages, with proposed interim order			
(1) Up to $12,850 (as adjusted for inflation) per employee incurred within 180 days before bankruptcy			
(2) ID all affected employees, with amounts			
(3) Insure payment of related taxes.			
ix) Motion to continue payments to employee benefit plans			
x) Motion to honor customer programs, i.e. gift certificates, lay-away programs, pre-payments / purchase deposits;			
xi) Motion to pay critical vendors, with proposed interim order			
xii) Motion to reject leases and contracts;			

	Applicable Code or FRBR	Applicable Utah Local Rule	Applicable Official Form
xiii) Motion to pay pre-bankruptcy Sales, use and franchise taxes (collected and held in trust by Debtor) xiv)Motion for Authority to pay pre-petition shipping charges; xv) Motion to establish procedure for asserting reclamation claims; xvi)Motion regarding information provided to creditors' committee – to protect confidential and proprietary information and limit disclosure xvii) Motion to authorize employee incentive programs xviii) Motion to limit notice; (1) Small sales or surplus property (2) Certain types of administrative matters xix)Motion for Use of Cash Collateral, with proposed interim order and budget xx) Motion to extend time to file Schedules and SOFA, with proposed interim order xxi)Motion for Expedited Initial Hearing on First Day Motions, with proposed interim order xxii) Applications to Employ [but Court will not enter an Order on those applications during the first 21 days post-petition]	Rule 6003		
h) Notice of initial hearing on First Day Motions			

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	Applicable Code or FRBR	Applicable Utah Local Rule	Applicable Official Form
i) Communicate with chambers re case and scheduling of hearing on First Day Motions.			
3) Information for UST – within 7 days after the Petition is filed:	4002	2081-1	
a) Copies of any permits, licenses, and policies of insurance (showing expiration dates, nature and amount of coverage, deductibles, named insured, the insurer and contact information for insurance agent).			
4) **Preparation of Schedules and SOFA** – within 14 days after petition is filed – unless deadline has been extended	1007(a) & (b)	1007-1	206-207
5) Preparation for and attend initial meeting with UST		2081-1; 4002-1	
6) Preparation for and attend 341 meeting – 21 – 40 days after OFR	2003	2003-1	309F
7) Preparation for and initial meeting with Unsecured Creditors Committee and its counsel	2007		
8) Initial Financial Statement	2015(6)	2081-1	
9) Initial Financial Report – within 21 days after Petition	2015(6)		
a) Latest fiscal year financial statements or Tax Returns;			

	Applicable Code or FRBR	Applicable Utah Local Rule	Applicable Official Form
b) Balance sheet as of month end immediately preceding filing;			
c) Profit and loss statement for month and year immediately preceding filing;			
d) Insurance and Environmental Risk Questionnaire, with proof of i) General liability insurance; ii) Casualty insurance; iii) Worker's compensation insurance; iv) Vehicle insurance; v) Other business related insurance policies vi) Notification to UST in event of cancellation			
e) Projected revenue, expenses and cash-flow for first 180 days of post-petition operations;			
f) Name and address of financial institution, account number and sample voided check for each debtor bank account, including i) General operating account; ii) Any trust accounts; iii) Tax withholding accounts.			
g) Collateralization certificate from each bank holding debtor funds signed by a bank representative			

	Applicable Code or FRBR	Applicable Utah Local Rule	Applicable Official Form
10) **Monthly Operating Reports** – due 14 days after the end of each month There is a different MOR for small business cases which is shorter and easier to complete	2015(6)	2081-1	
a) Cash receipts and disbursements			
b) Cash reconciliation			
c) Comparative balance sheet as of the month-end and the petition date;			
d) Profit and loss statement			
e) Supporting schedules i) Post-petition taxes payable; ii) Insurance schedule; iii) Accounts receivable and post-petition payable aging summary iv) Schedule of payment to attorneys and other professionals v) Payment to principals and executives			
f) Quarterly fee summary (to determine amounts due to UST);			
g) Narrative of significant events during the reporting period;			
h) Copies of bank statements for all accounts;			

	Applicable Code or FRBR	Applicable Utah Local Rule	Applicable Official Form
i) Bank statement reconciliations for all accounts			
11) **Reports regarding entities in which the Debtor holds an interest** – 7 days before first meeting of creditors, and every 6 months thereafter:	2015.3		
a) Financial report regarding valuation and profitability of each entity in which the debtor holds at least a 20% interest (except if the entity is publically traded or in bankruptcy)			
12) Disclosures required by the bankruptcy court:			
a) Single asset real estate (90 days to file a plan or pay interest);	§101(51B); §362(d)(3); Form 201¶7		
b) Status report			
13) Performance under Personal Property Leases			
a) Deadlines (60 days after OFR)	§365(d)(5)		
b) Interim performance/adequate protection.	§361		
14) Assumption of non-residential real property leases			
a) Deadlines (120 days after OFR, up to max of 210 days without landlord consent)	§365(d)(4)		

	Applicable Code or FRBR	Applicable Utah Local Rule	Applicable Official Form
b) Interim performance (on and after OFR, unless extended for up to 60 days)	§365(d)(3)		
15) Assumption / Assignment / Rejection of Executory Contracts			
a) Deadlines (prior to plan confirmation)	§365(d)(2); R. 6006		
16) Sales of Assets			
a) Authority to sell surplus property			
b) Sales in the ordinary course of business	§363(b) & (c)(1)		
c) Sales outside the ordinary course of business	§363(f); R.6004		
i) Listing agents and brokers	R.6005	6005-1	
(1) Retention			
ii) Marketing			
iii) Stalking horse bidders			
(1) Breakup fees			
(2) Overbid protections			
(3) Form contract			
(4) Earnest money			
(a) When non-refundable			

	Applicable Code or FRBR	Applicable Utah Local Rule	Applicable Official Form
iv) Auctions			
(1) Bidding procedures notice			
(2) Notice			
17) Removal of pending litigation			
i) Removal and remand	9027		
ii) Deadlines (90 days after OFR if action filed before BK; 30 days after receipt of claim/summons, if action filed after BK)			
iii) Extensions	9006		
18) Adversary Proceedings		7003-1 to 7069-1	
i) Lien validity and priority	7001; 3012; §544		
ii) Affirmative relief			
(1) Preferences	§547		
(2) Voidable transfers	§544 & 548		
(3) State law causes of action	§544		
(4) Applicable deadline (see specific statutes)			
19) Plan and disclosure statement	3016, 3017, 3017.1		

	Applicable Code or FRBR	Applicable Utah Local Rule	Applicable Official Form
i) Exclusivity	§1121		
ii) Deadlines, including special deadlines relating to confirmation in a small business case (120 days after OFR; 180 days in SBC)			
iii) Extensions	§1121; R. 9003		
20) Post Confirmation Reporting			

WHEN REPRESENTING AN INDIVIDUAL DEBTOR IN CHAPTER 11:

Individual Chapter 11 debtors must make additional filings not required of a corporate debtor, some of which are specified in section 521 of the Bankruptcy Code, Federal Rule of Bankruptcy Procedure 1007 and Local Rule 1007-1. The following is not a complete list:

1) *Due with Petition*			101-108
a) a statement of social security number;			
b) a listing of the exemptions claimed by the individual debtor(s) (Schedule C);			
c) a schedule of current income and current expenditures, and a statement disclosing any anticipated increase in income or expenditures over the 12-month period following the petition date (Schedules I and J, and J-2 if applicable);			
d) copies of payment advices or other evidence of payment			

	Applicable Code or FRBR	Applicable Utah Local Rule	Applicable Official Form
received within 60 days before the petition date, by the debtor;			
e) a record of any interest that the debtor has in an account or program of the type specified in § 521(c) of the Bankruptcy Code; and			
f) a statement of the amount of monthly net income, itemized to show how the amount is calculated. At a minimum, we will need the following information to calculate the monthly net income: i) evidence of income from all sources received during the 6 full calendar months prior to filing; ii) evidence of health, disability and term life insurance premiums (if not itemized on paycheck stubs); iii) evidence of retirement plan and health savings account contributions (if not itemized on paycheck stubs); iv) amount of monthly mortgage payments, including interest and escrow details; v) balances owed on auto loans or other secured debt payments, including the rates of interest; and vi) amount of court-ordered payments for child support or alimony.			Form 22B or 122B
2) ***Due at or before the Meeting of Creditors*** 7 days before the meeting of creditors (documents listed in paragraphs a through e), and other documents to be provided at or before the			

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	Applicable Code or FRBR	Applicable Utah Local Rule	Applicable Official Form
meeting (documents listed in paragraphs f and g):			
a) proof of all charitable contributions made within 60 days before the date of the filing of the petition;		2083-1(d) (which applies to chapter 13 cases but also appears, at least in part, to impose requirements upon chapter 11 individual debtors)	
b) a copy of the most recent county property tax assessment for all real property listed on Schedule A;			
c) a profit and loss statement if a debtor had self-employment income for the 60 days prior to filing, including income reported on an IRS Form 1099;			
d) a business questionnaire for each business operated by the debtor 60 days prior to filing on a form supplied by the trustee; and			
e) copies of tax returns		6070-1(c)(2)	
f) evidence of current postpetition income such as the most recent payment advice; and			
g) statements for each of the debtors' checking, savings, brokerage, and money market accounts and mutual funds for the time period that includes the date of the filing of the petition.			

	Applicable Code or FRBR	Applicable Utah Local Rule	Applicable Official Form
WHEN REPRESENTING A SECURED CREDITOR:			
1) Documentation			
a) Check on the validity, perfection and priority of creditor's claim;			
b) Check on the accuracy of the amount alleged to be due;			
c) Determine valuation of collateral, or best estimate			
d) Determine if there are cash collateral issues			
e) Determine rights arising out of loan documents: i) Default interest ii) Late fees iii) Attorney's fees iv) Yield premium maintenance rights			
2) Determine potential for preference or voidable transfer risk			
3) Request for Adequate Protection	§361		

	Applicable Code or FRBR	Applicable Utah Local Rule	Applicable Official Form
4) Notice of interest in Cash Collateral and lack of consent	§363(c)(2)		
5) Proof of Claim	3001; 3002	3003-1	410
a) Is a filing necessary			
b) Jurisdictional issues			
c) Check debtor's schedules	§1111(a)		
6) Proceedings to determine priority	R. 3012; 7001		
7) Protecting interests in connection with use in ordinary course	§361		
8) Protecting interest in connection with sales	§363		
9) Confirmation issues	§1129		
WHEN REPRESENTING A LESSOR / LANDLORD:			
1) Documentation			
a) Check on nature and extent of lease			

	Applicable Code or FRBR	Applicable Utah Local Rule	Applicable Official Form
i) Real property ii) Personal property iii) Status of leasehold as of the petition date (1) Terminated (2) Monetary defaults (3) Non-monetary defaults iv) the validity, perfection and priority of creditor's claim;			
2) Motion to assume or reject	§365(a)		
3) Motion for adequate protection pending assumption / rejection	§361; 365		
4) Deadlines (confirmation of a plan; but note interim deadlines for specific performance in §365(d))			
WHEN REPRESENTING A GENERAL UNSECURED CREDITOR:			
1) Documentation			
a) Check on the validity and amount of claim;			

	Applicable Code or FRBR	Applicable Utah Local Rule	Applicable Official Form
b) Determine if there are setoff or recoupment rights			
c) Determine if there are affirmative counterclaims or defenses			
d) Determine if goods were delivered to the debtor close to the petition date and status of payment re same			
e) Determine nature of credit arrangement i) Sale on open account; ii) Consignment (1) Proper perfection? iii) Discounts			
2) Determine potential for preference or voidable transfer risk	§547		
3) Proof of Claim	3001; 3002	3003-1	410
a) Is a filing necessary			
b) Jurisdictional issues			
c) Check debtor's schedules			
4) Non-dischargeability; denial of discharge	§523; 727; Rules		

	Applicable Code or FRBR	Applicable Utah Local Rule	Applicable Official Form
	4004 & 4007		
a) Deadlines: (60 days after first date set for 341 meeting)			
5) Membership on Official Committee	§1102		
6) Confirmation issues	§1129		
WHEN REPRESENTING A THIRD-PARTY DEFENDANT IN AN ADVERSARY PROCEEDING:			
1) Jurisdiction			
a) Check on availability of jurisdictional defenses			
b) Determine if there are affirmative counterclaims or other defenses			
c) Determine applicability of deadlines and statutes of limitation			

Chapter 11 Questionnaire[1]

I. BACKGROUND INFORMATION

A. Current Business Operations

1. Where is the company incorporated?

2. Where is the principal place of business?

3. Who are the members of the Board of Directors of each corporation (including affiliates and subsidiaries)?

4. Who are the officers of each corporation (including affiliates and subsidiaries)?

B. Organization and Financial Results

1. What is operational structure (for example, parent companies and affiliates)? List the corporate name and Tax ID number for each corporation (including affiliates and subsidiaries).

2. What does each affiliate do?

3. Does each affiliate have its own Board of Directors and Officers? List the members of the Board and officers of each company.

4. Net revenue for last three (3) years.

5. Value of the company's assets (most recent valuation).

6. Total current and long-term liabilities with a description of both.

7. Provide copies of the minutes of the corporations (including affiliates and subsidiaries) from the past two (2) years.

C. Events Leading to Chapter 11 Filing

1. Losses for last three (3) years.

2. Any other information leading to Chapter 11 filing?

[1] This Questionnaire was created by the Honorable Joel T. Marker while in private practice.

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II. CREDITOR INFORMATION

A. Number of creditors.

1. How many secured creditors?

2. How many unsecured?

B. Which creditors are critical vendors? For example, which vendors are absolutely necessary to the survival of the company? (List of critical vendors would be helpful).

C. What types of services or goods do the critical vendors provide? For example, general service providers (transportation, warehousing, etc.) and gap vendors (creditors in which goods have been ordered from but not yet delivered).

D. Are there feasible alternative sources available for the critical vendors?

E. Amounts owed to the critical vendors.

F. Who are the equity security holders? Provide a list of each.

III. CASH MANAGEMENT

A. Bank Accounts

1. How many bank accounts does the company have? (Please provide a complete list with account numbers).

2. What is each account used for? For example, payroll, medical claims, general vendor payments, etc.

B. Sources of Cash

1. What are all of the sources of cash for the company (for example, client payments, accounts receivable, money loaned, etc.)?

2. Where does cash go when the company receives it (For example, does each store have an account that is swept into a concentration account? Are there petty cash accounts? Are there segregated accounts for the company's secured lenders?)

3. How is cash disbursed (for example, through different zero balance accounts earmarked for specific purposes)?

C. Credit Facility

1. Provide copies of all loan documents with secured creditors.

2. Give a general description of the credit facility with the senior lender.

3. How much is outstanding to the senior lender?

4. What is the collateral for the debt to the senior lender?

5. Generally, how does the senior lender provide funding? For example, is there a revolving credit facility? If so, how is it calculated? If available, provide copies of the most recent borrowing base certificates.

6. Does the senior lender require funds to be segregated into a concentration account?

7. Is there a subordinated lender? If so, who is it, what are the terms, and how much is outstanding?

8. What is the collateral, assuming it is secured, that secures the debt to the subordinated lender?

D. Overnight Investments

1. Does the company utilize overnight investments?

2. If so, generally describe the overnight investment procedure and guidelines.

E. Business Forms

1. What type of preprinted business forms does the company have? For example, stationery, invoices, checks, etc.?

2. What type of supply of the business forms does the company have?

IV. SALES AND USE TAX INFORMATION

A. Types of trust fund taxes collected and remitted by the company?

B. Amount, on average, of trust fund taxes collected and remitted to taxing authorities each month.

V. INSURANCE PREMIUM INFORMATION

A. How many and what type of insurance policies does the company have?

B. Are the premiums for the insurance policies financed? If so, are all the policies financed?

C. What company finances the premiums?

D. What is the amount financed, the monthly payment, and the length of the premium financing agreement?

E. What is the deductible on the insurance policies?

VI. EMPLOYEE WAGE, SALARY AND BENEFIT INFORMATION

A. Employee Information

1. Number of employees.

2. What are the different positions for the employees? For example, administrative personnel, sales persons, etc.

3. Number of employees that are salaried and paid hourly (or other arrangements).

4. How are employees paid? Weekly, Bi-Weekly, Semi-Monthly, Monthly?

5. Are employees paid by direct deposit? If so, how many receive direct deposit and how many receive actual physical checks?

6. How many employees, if any, receive more than $4,300 during any pay period?

7. Is payroll current? Are any employees owed past due amounts?

B. Paid Time Off

1. What is the policy for providing paid time off ("PTO") to employees? For example, are employees allowed vacation days, sick days, etc.

2. How does PTO accrue?

3. Does the company pay for accrued but unused PTO?

C. Reimbursable Business Expenses

1. What type of expenses are reimbursable to employees?

2. How much, on average, does the company pay in reimbursable business expenses?

3. How much outstanding, on average, does the company have in unpaid reimbursable business expenses? For example, is there a one or two month delay in employees submitting vouchers for reimbursement?

D. Health Insurance & Dental Insurance

1. What type of coverage does the company provide? For example, self-insured, HMO, PPO, etc.

2. Who is covered?

3. If the company is self-insured, how does the reimbursement process work? Is there a claims agent?

4. On average, how many claims, in number and amount, are made each week? How long does it take to reimburse the claims?

5. How much, on average, does the company pay in premiums each month? How much of the premium is collected from the employees?

E. Life Insurance and/or AD&D Insurance

1. What type of coverage does the company provide?

2. Who is covered?

3. Who is the insurance carrier?

4. What is the potential exposure for the company, if any?

5. How much, on average, does the company pay in premiums each month? How much of the premium is collected from the employees?

F. Disability

1. What type of coverage does the company provide?

2. Who is covered?

3. Who is the insurance carrier?

4. What is the potential exposure for the company, if any?

5. How much, on average, does the company pay in premiums each month? How much of the premium is collected from the employees?

G. Workers' Compensation

1. What type of coverage does the company provide?

2. Who is covered?

3. Who is the insurance carrier?

4. What is the potential exposure for the company, if any?

5. How much, on average, does the company pay in premiums each month? How much of the premium is collected from the employees?

H. Miscellaneous Benefits or Deductions

1. Does the company provide 401(k) benefits? Is the plan a defined benefit or defined contribution plan?

2. Who administers the 401(k) plan?

3. Does the company match employee contributions?

4. How much, on average, does the company withdraw from its employees' paychecks for 401(k) contributions each month?

5. Does the company provide optional life/dependent life insurance? If so, how much, on average, does the company withdraw from its employees' paychecks for such coverage?

6. Does the company provide flex medical spending accounts for its employees? If so, how much, on average, does the company withdraw from its employees' paychecks for such coverage?

7. Does the company provide group auto insurance? If so, how much, on average, does the company withdraw from its employees' paychecks for such coverage?

8. Does the company provide group homeowners' insurance? If so, how much, on average, does the company withdraw from its employees' paychecks for such coverage?

9. How much, on average, does the company withdraw from its employees' paychecks for garnishments or other court ordered deductions (such as bankruptcy wage deduction orders or child support orders)?

10. Does the company have any union contracts? If so, please provide copies of each.

I. Employee Retention

1. Does the company have an existing employee retention program?

2. Does the company plan on implementing an employee retention program for key employees in an effort to retain the key employees in the wake of a bankruptcy case?

3. If so, please provide a copy of any such program that is in place or is being considered.

VII. LEASES AND EXECUTORY CONTRACTS

A. Nonresidential Real Property Leases?

1. Please provide a list of the nonresidential real property leases and also provide a current copy of each lease.

B. Other leases

1. Is the company a party to any other leases? List all leases, locations, terms and lease summaries.

2. If so, please provide a current copy of each lease.

C. Executory Contracts

1. List all executory contracts and indicate if any such executory contract will expire shortly after filing bankruptcy.

2. Provide copies of all executory contracts.

VIII. MISCELLANEOUS ISSUES

A. Professionals

1. Please provide a list of the professionals that are currently being utilized by the company. This includes any attorneys, accountants, consultants, etc.

2. For each professional, please provide the average monthly payment by the company.

IX. UTILITIES

A. List all utilities used by the corporation including the mailing address and account number of each such utility.

X. ORDINARY COURSE PROFESSIONALS

A. List all professionals used in the ordinary course of the corporation's business.

B. List the services provided by each of the above-listed ordinary course professionals.

C. List the average monthly compensation paid to each such ordinary course professional.

XI. MAILING MATRIX

A. List of accounts payable with creditor names (list from largest to smallest, with the amount owed to each).

B. List of all the creditors with full and complete mailing addresses (list should include all trade creditors, all employees, all creditors)

XII. INTELLECTUAL PROPERTY

A. List all intellectual property utilized including trademarks, copyrights, patents, and/or licenses.

B. Indicate whether the above-referenced intellectual property is owned, licensed, exclusive, non-exclusive.

C. Does the corporation have a domain name? Is it registered with Network Solutions, Inc. in the name of the corporation?

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M E M O R A N D U M
DRAFT

TO:

FROM:

RE: Summary of Information Needed for Chapter 11 Cases

DATE: February _, 2006

A significant amount of information is required to prepare for the commencement of a case under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). In order to assist us in connection with the potential filing of your Chapter 11 case, we need to gather and analyze certain information needed to complete the basic petitions, related documents and motions necessary to commence a Chapter 11 case.

This memorandum provides various questionnaires to assist us in gathering the first round of information. The memorandum is organized as follows: Section I (purpose of, and information needed to complete, the voluntary petition(s) and related documents to commence the Chapter 11 cases); and Section II (purpose of, and information to complete, the basic motions required to continue the business operations of _____ (the "Company") during the first several days of the Chapter 11 cases).

For each questionnaire referenced in Section I and Section II, please provide an appropriate contact person within the Company (along with contact information) who will prepare the requested information. Separate questionnaires should be completed for each filing entity (i.e., the Company and each of its subsidiaries, if any, that are anticipated to seek Chapter 11 protection), as applicable. For purposes of this memorandum, each legal entity that is anticipated to seek Chapter 11 protection will be referred to as a "Filing Entity."

I. PETITIONS AND RELATED DOCUMENTS

A. Voluntary Petitions

Each Filing Entity seeking Chapter 11 protection must file with the clerk of the Bankruptcy Court a voluntary Chapter 11 petition to commence its Chapter 11 case (the filing date is referred to as the "Petition Date"). When the petition is filed, the date and time of filing is indicated on the petition, and therefore a copy of the petition provides evidence of the exact moment of the commencement of the Chapter 11 cases. The time of the filing is important because all debts incurred prior to the filing are deemed pre-petition obligations that will be treated pursuant to a plan of reorganization. The debts incurred after the filing are considered "administrative expense" obligations that are entitled to a higher priority right to payment, and such debts are often subject to payment in full. The information needed to complete the petitions for each legal entity is set forth in the Petition Questionnaire, which is attached hereto as **Tab 1**.

B. Board Resolutions

Each Filing Entity must file a resolution of its Board of Directors (the "Resolution"). The Resolution provides evidence that the individual signing the petition was authorized by the Board of Directors to place the Filing Entity into bankruptcy.

C. Exhibit A to Voluntary Petition

Only companies that have securities that are registered with the Securities and Exchange Commission (the "SEC") and file periodic reports (e.g., 10-K and 10-Q) therewith are required to file Exhibit A. The information needed to complete Exhibit A is set forth in the Exhibit A Questionnaire, which is attached hereto as **Tab 2**.

D. List of 20 Largest Unsecured Creditors

Each Filing Entity must file a list of its 20 largest unsecured creditors unless the interconnected nature of the Filing Entities' businesses justifies filing a consolidated list of 30 to 50 unsecured creditors. This list will include (i) general unsecured creditors, (ii) the indenture trustee in connection with debt securities (if any), and (iii) secured creditors only to the extent that the secured creditors will have deficiency claims. The United States Trustee (the "U.S. Trustee") will contact each creditor on this list to solicit their service on an official committee of unsecured creditors (the "Committee"). Each of the 20 largest creditors will receive notice of all motions and applications filed with the Bankruptcy Court prior to the formation of the Committee. The information needed to complete the list of the 20 largest creditors is set forth in the 20 Largest Creditors Questionnaire, which is attached hereto as **Tab 3**.

E. Creditors and Equity Security Holders Lists

Generally, each Filing Entity must file with its voluntary Chapter 11 petition a list of the names and mailing addresses of all of its creditors, and a list of the names and addresses of all of its equity security holders, and within the first 15 days of the filing, each Filing Entity must file separate schedules of assets and liabilities. As discussed more fully below, we will file on the first day of the Chapter 11 cases a motion seeking an extension of time to file these documents (the "Schedules Extension Motion"). The order on the Schedules Extension Motion extends the deadline to file these documents for up to 60 days depending on which district the Chapter 11 cases are filed. The information needed to complete the lists of creditors and equity security holders is set forth in the Creditors List and Equity Security Holders List Questionnaires, which are attached hereto under **Tab 4**.

II. FIRST DAY MOTIONS

A. Affidavit Supporting First Day Motion

The Affidavit provides materials that will assist in developing a brief story of the Filing Entities' businesses, history, and events leading to the filing of the Chapter 11 petitions. Additionally, it provides factual support for the first day motions described herein. The information needed to complete the Affidavit is set forth in the Background Questionnaire, which is attached hereto as **Tab 5**.

B. Joint Administration Motion

Where there is more than one Filing Entity, the Joint Administration Motion seeks authority from the Bankruptcy Court, among other things, to file single motions for various types of relief that may affect all or some of the Filing Entities. This eliminates the need to file duplicative motions each time relief is sought. After the Bankruptcy Court enters an order approving the joint administration of Filing Entities' Chapter 11 cases, the Filing Entities will be referred to collectively as the "**Debtors**" in subsequent motions unless the relief sought is intended to affect only one of the Debtors. No specific information is required from the Filing Entities for this motion.

C. Schedules Extension Motion

The Schedules Extension Motion seeks to provide the Filing Entities with sufficient time to prepare their list of creditors and schedules of assets and liabilities. The Schedules Extension Motion is routinely granted in large Chapter 11 cases. No specific information is required from the Filing Entities for this Motion.

D. Employee and Wage Motion

The Employee and Wage Motion seeks authority, among other things, to pay employees accrued but unpaid wages, commissions, and benefits as of the Petition Date up to a cap of $10,000 per employee. Although it is common for Bankruptcy Courts to limit such payments to the $10,000 cap, some Bankruptcy Courts have recently permitted larger payments. The policy behind this motion is that some employees may leave the Filing Entities if they do not receive their pre-petition compensation. The information needed to complete this motion is set forth in the Employee Questionnaire, which is attached hereto as **Tab 6**.

E. Cash Management Motion

The Cash Management Motion seeks authority, among other things, to (i) continue the Company's centralized cash management system (without closing existing, and opening new, bank accounts), (ii) continue to invest overnight cash balances pursuant to established investment guidelines, and (iii) implement a procedure for designating that the Debtors are "Debtors-in-Possession" on their checks and other business forms. Without approval of this motion, the U.S. Trustee requires the Filing Entities to (i) close all existing bank accounts, (ii) open new accounts with approved banks, (iii) invest available funds in investment accounts backed by the United States government (or to provide a bond), and (iv) replace all existing checks and business forms with new forms bearing the designation "Debtor-in-Possession." The information needed to complete this motion is set forth in the Cash Management Questionnaire, which is attached hereto as **Tab 7**.

F. Essential Vendors Motion

The Essential Vendors Motion seeks authority, among other things, to pay some or all of certain important vendors' pre-petition invoices in exchange for the vendors' agreement to continue providing critical goods and services on agreed-upon credit terms. In some Chapter 11 cases, certain vendors threaten to stop providing goods or services after a company files for

bankruptcy relief unless the company agrees to pay the creditor some or all of the vendors' pre-petition claims. To prevent business interruption, under certain circumstances, the Filing Entities may obtain special authorization from the Bankruptcy Court to pay particular vendors.

To qualify for essential vendor payment, the vendor must provide goods or services that are crucial to the Filing Entities' businesses, and either (i) are unavailable from another vendor, or (ii) if available from another vendor, the cost of switching vendors must be more than the payment of the original vendor's pre-petition claim. In addition, the essential vendor cannot be obligated to perform under a contract (i.e., the Filing Entity does not have the ability to encourage continued performance under an executory contract by threatening a breach of contract suit). The information needed to complete this motion is set forth in the Essential Vendors Questionnaire, which is attached hereto as **Tab 8**.

Please be aware that although your analysis may reveal vendors that you deem to be essential, requests of this type have recently come under significant scrutiny. A recent decision from the 7th Circuit (which includes Illinois) greatly heightened the standard for receiving authority to pay amounts owed to "essential" vendors. After reviewing your responses to the Essential Vendors Questionnaire, we will work with you to first decide whether an Essential Vendors Motion is appropriate, and, if it is, to craft the Motion to ensure that any business interruption is minimized and the Filing Entities' business needs are met to the fullest extent possible.

G. Customer Accommodation Policy Motion

The Customer Accommodation Policy Motion seeks authority, among other things, to honor certain pre-petition policies that the Filing Entities have with their customers that would ordinarily be contrary to general bankruptcy principles (e.g., returns, charge-backs, warranties, etc.). Often, the failure to honor these policies will lead to a deterioration of the Filing Entities' reputation and damage their businesses to an extent greater than the cost of honoring the pre-petition obligation. To the extent such policies are relevant, the information needed to complete this motion is set forth in the Customer Accommodation Policy Questionnaire, which is attached hereto as **Tab 9**.

H. Utilities Information

The Utilities Motion seeks to prevent utilities from altering or discontinuing services based on unpaid amounts, and it requests the Bankruptcy Court to establish procedures for determining requests by utilities for assurance of future performance. Please provide information on all utilities (e.g., water, electric, telephone, internet and natural gas). The information needed is set forth in the Utilities Questionnaire, which is attached hereto as **Tab 10**.

I. Insurance Information

The Filing Entities may need to seek relief in order to ensure the seamless continuation of their various forms of insurance coverage. Please provide information on all business insurance. The information needed is set forth in the Business Insurance Questionnaire, which is attached hereto as **Tab 11**.

J. Consignment Information

The Filing Entities may need to seek relief in order to continue its consignment relationships and limit the risk of consignors seeking to take back their consigned goods. Please provide information with respect to the Filing Entities' consignment relationships. The information needed is set forth in the Consignment Questionnaire, which is attached hereto as **Tab 12**.

K. Letters of Credit Information

Please provide information on all letters of credit. The information needed is set forth in the Letters of Credit Questionnaire, which is attached hereto as **Tab 13**.

L. Bond Information

Please provide information on all bonds, if any are outstanding. The information needed is set forth in the Bond Questionnaire, which is attached hereto as **Tab 14**.

M. Pending Litigation Information

Please provide information on all pending litigation. The information needed is set forth in the Pending Litigation Questionnaire, which is attached hereto as **Tab 15**.

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DUE DILIGENCE CHECKLIST

TAB 1

Petition Questionnaire
(to be completed separately by each Filing Entity)

Name of Filing Entity						
All other names used by the Filing Entity in the last 6 years						
Employer identification number (Federal Tax I.D. No.)						
State of incorporation						
Mailing address						
County of residence or principal place of business						
Estimated number of creditors	1-15 ☐	16-49 ☐	50-99 ☐	100-199 ☐	200-999 ☐	1000-over ☐
Estimated assets (range)	$1,000,001 to $10 million ☐	$10,000,001 to $50 million ☐	$50,000,001 to $100 million ☐	More than $100 million ☐		
Estimated liabilities (range)	$1,000,001 to $10 million ☐	$10,000,001 to $50 million ☐	$50,000,001 to $100 million ☐	More than $100 million ☐		
Name and title of signatory						

TAB 2

Exhibit A Questionnaire
(to be completed separately by each Filing Entity that is registered with the SEC and files periodic reports with the SEC)

Name of Filing Entity					
If the Filing Entity's securities are registered with the SEC, the SEC file number					
Financial information contained herein is as of	_____, 2005				
Total debts	**$**_____				
For each set of debt securities held by more than 500 holders:					
Name of debt security	Secured ☐	Unsecured ☐	Subordinated ☐	Amount $_____	Number of holders (approximate) _____
Name of debt security	Secured ☐	Unsecured ☐	Subordinated ☐	Amount $_____	Number of holders (approximate) _____
Name of debt security	Secured ☐	Unsecured ☐	Subordinated ☐	Amount $_____	Number of holders (approximate) _____
Name of debt security	Secured ☐	Unsecured ☐	Subordinated ☐	Amount $_____	Number of holders (approximate) _____
Number of shares of preferred stock authorized, issued and outstanding					
Number of shares of common stock authorized, issued and outstanding					
Brief description of the Filing Entity's business (one sentence)					
List of entities and individuals owning (directly or indirectly) 5% or more of the voting securities of the Filing Entity (with power to vote), including other affiliates:					

Name of equity security	Name of individual or entity	Name of voting security	Numbers of shares	Percentage of total shares
Name of equity security	Name of individual or entity	Name of voting security	Numbers of shares	Percentage of total shares
Name of equity security	Name of individual or entity	Name of voting security	Numbers of shares	Percentage of total shares
Name of equity security	Name of individual or entity	Name of voting security	Numbers of shares	Percentage of total shares

TAB 3

20 Largest Creditors Questionnaire
(to be completed separately by each Filing Entity)

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

Following is the list of the Filing Entity's creditors holding the 20 largest unsecured claims. The list does not include (1) insiders, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims.

(1) **Name of creditor and complete mailing address including zip code** (list by claim value in descending order starting with the largest)	(2) **Name, telephone number and complete mailing address, including zip code of employee, agent, or department of creditor familiar with claim**	(3) **Nature of claim (trade debt, bank loan, government contract, etc.)**	(4)[1] **C U D S**	(5) **Amount of claim (if secured also state value of security)**

[1] If the claim is contingent ("C"), disputed ("D"), unliquidated ("U"), or subject to setoff ("S"), place the first letter of such status in the box. A claim can have more than one designation.

TAB 4

Creditors and Equity Security Holders List Questionnaire
(to be completed separately by each Filing Entity)

Provide an alphabetized creditor list and equity holder list for each Filing Entity, including the creditors'/equity holders' names and full mailing addresses. This can be in the form of a Word Table or an Excel Spreadsheet. This list should be scrutinized to ensure that the addresses are complete.

Creditor Name and full address	Creditor Name and full address	Creditor Name and full address

Equity Holder name and full address	Equity Holder name and full address	Equity Holder name and full address

TAB 5

Background Questionnaire
(to be completed separately by each Filing Entity)

Name of Filing Entity	
Attach most recent Balance Sheet for the Filing Entity (or for the Company, if consolidated)	
Attach copies of most recent documents or financial reports that have been publicly filed by the Filing Entity (or by the Company, if consolidated)	
Attach any other descriptions of the Filing Entity's business, history and events leading to the restructuring	

TAB 6

Employee Questionnaire
(to be completed separately by each Filing Entity)

1. Which entity pays the Filing Entity's employees?	
2. Number of employees, total payroll amount on weekly, bi-weekly basis, semi-monthly, monthly or a combination thereof	
3. Provide schedule of salary and wage policies, commissions, vacation, severance, savings plans, insurance plans and other benefits programs	Paste Word text as Exhibit A hereto, or email such file separately to **[email address to be supplied]**
4. Amounts currently owing to providers of benefits, but not withheld from employees pay:	
health and welfare contributions	
retirement plans	
401(k) employer contributions	
other benefits	

5. Payroll. Amounts currently owing to employees or withheld from employees' pay:	
wages and salaries	**$**
commissions	$
employee business expenses (e.g., travel, meals, lodging)	$
expected federal withholding taxes (FICA, FIT, etc.)	$
expected state and local withholding taxes	$
union dues	$
401(k) employee contributions	$
other such withholding items	$
6. Does the Filing Entity use employees from temporary agencies?	
7. If so, list temporary employment agencies.	
Name and address of employment agency	Approximate amount currently owing to agency: $
Name and address of employment agency	Approximate amount currently owing to agency: $
Name and address of employment agency	Approximate amount currently owing to agency: $
8. Does the Filing Entity need to continue use of temporary employees on a going-forward basis?	
9. Can temporary employment agencies be replaced if they discontinue service because of delayed payment as a result of the proposed restructuring (often they can, and if certain temporary employees are critical because of skills or knowledge, sometimes they can be hired by alternative agency)?	

10. Does the Filing Entity use a payroll processing service such as ADP or does it process its payroll itself?	
11. Which bank accounts/payroll accounts used for these purposes – identify banks administering these accounts	
Payroll Bank Name and full mailing address	Account number:
Payroll Bank Name and full mailing address	Account number:
Payroll Bank Name and full mailing address	Account number:

12. Number of employees covered by workers compensation by each location	Location name and address	Number of employees

13. Employee Relations Insurance Carriers (e.g., Workers' Compensation, Medical Dental, Disability, Life, and Other Employee-Related Insurance) including Address, Telephone and Telecopier Numbers	Type of Coverage	Coverage Limits	Deductible	Security (e.g., Letters of Credit or Bonds)

14. Describe how insurance claims are administered.	

15. Describe how and when premiums are paid. Are pre-payments made?	
16. Estimated annual premium payments	
17. Are there any outstanding premium payments owing that have not been paid?	
18. Identify workers' compensation insurance broker, if any (name and full address), and if and how broker gets paid.	
19. Are surety bonds posted? If so, who is the surety and what are the parameters of the bond(s)? What are the bond carrier fees?	
20. Are there any letters of credit outstanding in respect of workers' compensation obligations?	
21. Summary of workers' compensation claims currently pending	

TAB 7

Cash Management Questionnaire

(to be prepared by Company, assuming it maintains a centralized cash management system on behalf of the Filing Entities. Please notify us if that assumption is incorrect)

Provide chart of all bank accounts in cash management system showing how cash flows in and out from accounts, and any restrictions on accounts in connection with cash collateral requirements by secured lenders	This chart should preferably be a Word document; however, a chart in Excel will suffice if it is already prepared. (Sidley Austin Brown & Wood can assist in creating such a chart and can provide examples, if necessary.) The chart should be attached as an exhibit to this document (if in Word) or as a separate document, and then emailed to **[email address to be supplied]**.	
Does the Company maintain a written corporate policy with respect to investments and investment accounts?	If so, attach Word document of policy hereto as an exhibit, or send as a separate documents as set forth above.	
Investment accounts maintained by filing entities (accounts numbers, types of investment accounts, balances)		
List the name of each bank and its full address	Account number	Average Balance Over Past 30 Days
Bank #1:		$
Describe how funds are invested:		
Bank #2:		$
Describe how funds are invested:		
Bank #3:		$
Describe how funds are invested:		

TAB 8

Essential Vendors Questionnaire
(to be completed separately by each Filing Entity)

Please provide a list of vendors for whom the Filing Entities deem they must pay some or all of such vendors' unpaid invoices in order to avoid a material business interruption.

To receive "essential vendor" treatment in a restructuring, the vendor must provide goods or services that are crucial to the Filing Entities' businesses, and either (i) are unavailable from another vendor, or (ii) if available from another vendor, the cost of switching vendors would be more than the cost of prompt payment of original vendor's invoice. In addition, the essential vendor cannot be obligated to perform under a contract.

Essential vendors' name, full address, telephone and fax number	**Description of goods of services provided**	**Justification for essential vendor treatment** (e.g., sole source, replacement will cause delays that will cost more than pre-petition claim, substitute vendors provide inferior goods or services, etc.)	**Amount of outstanding invoices**
Name: Address: Telephone: Facsimile: Contact person:			$
Name: Address: Telephone: Facsimile: Contact person:			$
Name: Address: Telephone: Facsimile: Contact person:			$

TAB 9

Customer Accommodation Policy Questionnaire
(to be completed separately by each Filing Entity)

Name of policy	Description of policy	Description of impact on business if policy were not continued	Estimated going forward liability for continuing policy
			$
			$
			$
			$
			$
			$
			$
			$
			$
			$
			$
			$
			$
			$
			$

TAB 10

Utilities Questionnaire
(to be completed separately by each Filing Entity)

List All Utility Companies with Address, Telephone and Telecopier Number	Type of Service	Security Deposit posted, if any	Approximate Unpaid Balance	Average Monthly Billing
			$	$
			$	$
			$	$
			$	$
			$	$
			$	$
			$	$
			$	$
			$	$
			$	$
			$	$
			$	$
			$	$
			$	$
			$	$
			$	$

TAB 11

Business Insurance Questionnaire
(to be completed separately by each Filing Entity)

Insurance Carriers including full Address, Telephone and Telecopier Numbers	Type of Coverage	Coverage Limits	Deductible	Annual Premium	Security (e.g., Letters of Credit or Bonds)

TAB 12

Consignment Questionnaire
(to be completed separately by each Filing Entity)

List All Consignors, with Address, Telephone and Telecopier Number	Type of Goods Consigned	Describe Terms of Consignment	Approximate Unpaid Balance	Value of Current Inventory Provided by Consignor	Y/N: Has Consignor Filed Financing Statement?

TAB 13

Letters of Credit Questionnaire
(to be completed separately by each Filing Entity)

Issuer	Beneficiaries	Guarantors	Amount	Expiration	Purpose

TAB 14

Bonds Questionnaire
(to be completed separately by each Filing Entity)

Issuer	Beneficiaries	Guarantors	Parties To Indemnification Agreements In Connection With Bond	Purpose	Amount
					$
					$
					$
					$
					$
					$
					$
					$
					$

TAB 15

Pending Litigation
(to be completed separately by each Filing Entity)

Name of Action	Name and Full Address of Party, Telephone and Telecopier Numbers	Description of Adverse Claim	Amount of Claim	Name and Full Address of Court Where Action is Pending (if suit has been filed)
			$	
			$	
			$	
			$	
			$	
			$	
			$	
			$	
			$	

Attorney
Firm
Address
City, State Zip Code
Telephone:
Facsimile:
Email:

Counsel for ABC, LLC

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH, CENTRAL DIVISION

In re **ABC, LLC**, Debtor.	Bankruptcy Case No. _____ (Chapter 11) Honorable _____

APPLICATION OF ABC, LLC TO EMPLOY _____ AS BANKRUPTCY COUNSEL

Debtor ABC, LLC ("**ABC**") files this application (the "**Application**"), pursuant to Section 327 of Bankruptcy Code and Rule 2014 of the Federal Rules of Bankruptcy Procedure, seeking the entry of an order authorizing the employment and retention of _____ ("_____" or the "**Firm**") as bankruptcy counsel to ABC in this Case. In support of this Application, _____ relies on the Verified Statement of _____ (the "**Verified Statement**"), attached hereto as **Exhibit A**, and filed contemporaneously herewith and respectfully represents as follows:

I. JURISDICTION AND BACKGROUND

1. The Court has jurisdiction to hear this Application pursuant to 28 U.S.C. §§ 157 and 1334. This Application is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The bases for the relief requested in this Application are Sections 327(a) and 328(a) of title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.,* the "**Bankruptcy Code**") and Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the "**Rules**").

3. On _____ (the "Relief Date" or "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11, U.S.C. in this court and, on such date became a debtor-in-possession under Chapter 11 of the Bankruptcy Code.

4. No trustee, examiner, creditors' committee, or other official committee has been appointed in this chapter 11 case.

5. Information about the Debtor's business operations, capitalization and prepetition indebtedness, as well as the events leading to the Relief Date, can be found in the Declaration of _____ in Support of First Day Pleadings (the "First Day Declaration"). The Debtor relies on the First Day Declaration in seeking the relief requested herein and incorporates the First Day Declaration herein by reference.

6. ABC now seeks an order authorizing the employment and retention of _____ as its general bankruptcy counsel to ABC for the above-referenced Chapter 11 case.

II. RELIEF REQUESTED

7. By this Application, ABC seeks the entry of an order, pursuant to Section 327(a) and 328(a) and Rules 2014(a) and 2016, authorizing the employment and retention of _____ as its general bankruptcy counsel.

8. By separate application, ABC also seeks to employ and retain _____ ("_____") as general bankruptcy counsel to ABC. _____ and _____ will make every effort to avoid and/or minimize duplication of services in this case.

9. ABC submits that expedited relief is necessary so that it will have appropriate representation in the immediate preparation of statements and schedules to be filed with the Court and address issues related to certain "first day" motions and debtor-in-possession

financing, and therefore requests that this Application be set for hearing on an expedited basis, if possible.

III. RETENTION OF _____

A. Necessity for Employment

10. ABC seeks to retain _____ as its general bankruptcy counsel because _____ has expertise in and extensive knowledge of business bankruptcy issues, having represented numerous debtors and creditors in commercial bankruptcies both locally and nationally. Additionally, _____ has experience in other commercial law areas which may be related to the matters that could arise in this case. _____ is also familiar with the ABC's business and affairs. Accordingly, ABC believes that _____ is well-qualified to represent it in this chapter 11 case. Attached hereto as **Exhibit B** is a verified statement from _____ setting forth the efforts ABC took to vet and retain appropriate counsel for this Case.

11. The employment of _____ is appropriate and necessary to enable ABC to reorganize, restructure or otherwise address its pending business issues in these proceedings.

B. Services To Be Rendered

12. The professional services that _____ will render to ABC may include, but shall not be limited to, the following:

(a) advising ABC with respect to its rights, powers and duties as a debtor and debtor-in-possession in the continued management and operation of its business and properties;

(b) attending meetings and negotiating with representatives of creditors and other parties-in-interest;

(c) advising and consulting ABC regarding the conduct of this case, including potential legal and administrative requirements of operating in chapter 11;

(d) advising ABC on matters relating to the evaluation of the assumption, rejection or assignment of unexpired leases and executory contracts;

(e) taking all necessary action to protect and preserve ABC's estate, including the prosecution of actions on its behalf, the defense of any actions commenced against the estate, negotiations concerning all litigation in which ABC may be involved and objections to claims filed against the estate;

(f) appearing before this Court, any appellate courts, and the Office of the United States Trustee for the District of _____ (the "**UST**"), and protecting the interests of ABC's estate before such courts and the UST;

(g) performing all other necessary legal services and providing all other necessary legal advice to ABC in connection with the bankruptcy case.

13. Assuming the Court approves the Application, _____ has agreed to act on behalf of, and to render such services to, ABC.

IV. DISINTERESTEDNESS OF _____

14. To the best of ABC's knowledge, neither _____ nor its attorneys have any undisclosed connection with ABC, any of its creditors, any other party in interest, or any other interest adverse to the estate. In the Verified Statement, _____ has disclosed any connections it has with ABC, creditors, any other parties in interest, their respective attorneys and accountants, the UST or any person employed in the office of the UST, and those disclosed connections are incorporated herein. Specifically, in addition to any social connections with the attorneys and accountants employed in the office of the UST, and those attorneys and accountants that are involved with ABC's case, _____ also has the following known connections:

(a) [Describe any potential connections with personnel at the Court or the UST, such as this example:] _____, an associate attorney at ABC, is the _____ of _____, an attorney for the United States Trustee in _____. _____ will have no involvement in _____'s representation of ABC in this Case;

(b) _____ has regularly represented, been co-counsel with, or been adverse to the other law firms that ABC understands are involved in this matter, including without limitation, _____, _____, _____, _____, _____ and _____.

15. Accordingly, ABC believes that _____, its partners, counsel, and associates are "disinterested persons" within the meaning of Section 101(14), as modified by Section 1107(b), and that _____'s representation of ABC is permissible under Sections 327(a) and 328(a) and is in the best interests of the estate.

16. _____ is conducting a continuing inquiry into any matters that would affect its disinterested status. In the event additional disclosure is necessary, _____ will file a supplemental verified statement setting forth any facts and circumstances relevant thereto.

V. PROFESSIONAL COMPENSATION

17. Pursuant to Section 328(a), ABC may retain _____ on any reasonable terms and conditions, including on retainer and payment on an hourly basis. On _____, the board of ABC formally approved the retention of _____ as general bankruptcy counsel, effective as of the date of the filing of the Petition. On _____ ABC paid _____ an initial retainer of $_____ for services during the Case (the "**Initial Retainer**"). For services rendered during the Case, _____ will file a fee application and seek approval of the same from the Court, after appropriate notice. To the extent the Court allows fees and costs to _____ for services during the Case that exceed the retainer, those fees will be treated and paid as a priority claim under 11 U.S.C. § 507(b)(3). To the extent such allowed fees and costs during the Case are less than the retainer, the unused portion of the retainer will be held by _____, with further application of the same to be subject to subsequent approval of this Court.

18. _____'s fees and costs will not be capped by the retainer. Instead, _____ will be entitled to those fees and costs approved by the Court. _____'s attorneys and other professionals shall perform services for ABC and shall be paid their customary rates on an hourly basis at the rates set forth below, and _____ shall also be reimbursed according to _____'s customary reimbursement policies and in accordance with the applicable provisions of the Bankruptcy Code

and Rules, for all actual and necessary services performed and expenses incurred after the Petition Date. ABC submits that this proposed retention and compensation arrangement is reasonable and that the same should be approved by the Court.

19. The terms of this engagement were negotiated by ABC and _____ at arm's-length and in good faith. ABC and _____ respectfully submit that the terms of _____'s retention are customary and reasonable for similar engagements, both out-of-court and in comparable chapter 11 cases, and in the best interests of ABC's estate, its creditors, and all parties-in-interest.

20. The _____ attorneys staffed on this case, subject to modification depending upon further development, are as set forth below:

Name	**Title**	**Hourly Rate**
	Partner	
	Partner	
	Associate	
	Associate	
	Paralegal	

In addition to those identified above, ABC is informed that other attorneys and professionals employed by _____ may serve ABC from time to time in connection with the matters herein described, and that such attorneys or professionals will charge their customary hourly rates for services rendered to ABC. _____ will endeavor to efficiently perform the legal work for ABC, so as to avoid any unnecessary cost. The hourly rates set forth above are the same as those approved by ABC when it agreed to retain _____ . Pursuant to the terms of the engagement, the hourly rates of all professionals employed by _____ may vary during the pendency of the case pursuant to _____'s billing practices, as _____'s hourly rates are usually adjusted annually as of _____. In this Case, however, there will be no adjustment until _____.

21. _____ categorizes its billings by subject matter, in compliance with the Office of the UST's *Guidelines for Reviewing Applications for Compensation (Appendix A)* (the "**Guidelines**") and the categories of debtor bankruptcy representation approved by the American Bar Association. _____ agrees to charge, and _____ has agreed to pay, subject to this Court's approval under Sections 330 and 331, the Guidelines, and Rule 2016, _____'s hourly rates, as of the Relief Date, which are adjusted from time to time. _____ is customarily reimbursed for all actual and necessary expenses it incurs in connection with its representation of a client in a given matter. Such expenses may include without limitation, travel costs, telecommunications, express mail, messenger service, photocopying costs, document processing, computerized research charges, court fees, and transcript costs.

22. _____ does not know yet whether the assets of the Debtor's bankruptcy estate exceed $50 million. Should it be determined subsequently that the Debtor's assets do exceed $50 million, then _____ will supplement this Application, if and as necessary, to add appropriate language that complies with the UST Fee Guidelines for Large Chapter 11 Cases.

23. _____ maintains detailed records of any actual and necessary expenses for which it may seek reimbursement. The _____ professionals rendering services will also keep detailed records in connection with such services as required by the Bankruptcy Code. Time will be recorded in increments of $1/10^{th}$ of an hour, and all attorneys and paralegals will be required to keep detailed time records in connection with services rendered herein.

24. _____ acknowledges that all amounts paid to _____ during this chapter 11 case are subject to final allowance by this Court. _____ therefore intends to apply to this Court for allowance of compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, the Rules, the Guidelines, and any orders relevant thereto for all services performed and expenses incurred after the Petition Date.

25. _____ has not entered into any agreement to share compensation as may be awarded to it for services in these cases except as permitted under Section 504.

VI. NOTICE

26. Notice of this Application has been provided to: (a) the Office of the UST, and (b) any parties-in-interest who have filed a notice of appearance and request for service to date. In light of the nature of the relief requested, ABC submits that no other or further notice is necessary.

27. No prior motion or application for the relief requested herein has been made to this or any other court.

WHEREFORE, ABC respectfully requests that the Court enter an order: (i) approving ABC's employment and retention of _____ as general bankruptcy counsel pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Fed. R. Bankr. P. 2014(a) from the Petition Date and (ii) granting such further relief as this Court deems just and proper.

DATED: _____

ABC, LLC

_____

By: _____

Its: _____

Agreed to:

_____

/s/_____

_____

_____

_____

Counsel for ABC, LLC

CERTIFICATE OF SERVICE – BY NOTICE OF ELECTRONIC FILING (CM/ECF)

I hereby certify that on the ____ day of _____, 20___, I electronically filed the foregoing document with the United States Bankruptcy Court for the District of Utah by using the Court's CM/ECF system. I further certify that the parties of record in this case, as identified below, are listed as registered CM/ECF users and will be served through the CM/ECF system:

CERTIFICATE OF SERVICE – BY MAIL, OTHER

I further certify that on the ____ day of _____, 20___, I caused the foregoing document to be sent by first class United States mail, postage fully prepaid, to the following at the addresses set for the below:

/s/_____

Attorney
Firm
Address
City, State Zip Code
Telephone:
Facsimile:
Email:

Counsel for ABC, LLC

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH, CENTRAL DIVISION

In re **ABC, LLC**, Debtor.	Bankruptcy Case No. _____ (Chapter 11) Honorable _____

MOTION FOR INTERIM AND FINAL ORDERS APPROVING THE CONTINUED USE OF THE DEBTOR'S CASH MANAGEMENT SYSTEM

ABC, LLC, as debtor and debtor-in-possession (the "Debtor"), hereby moves (the "Motion") the Court for the entry of an interim order (the "Interim Order") attached hereto as **Exhibit A** and a final order (the "Final Order") attached hereto as **Exhibit B** (i) approving the Debtor's continued use of its current cash management system, existing bank accounts and business forms, including authorizing the Debtor to open and close bank accounts; (ii) granting the Debtor a 45-day extension to comply with the requirements of Bankruptcy Code section 345(b) and interim approval of the Debtor's current investment and deposit guidelines; (iii) authorizing the bank participating in the cash management system (_____ Bank, N.A., the "Bank") to honor certain transfers and charge bank fees and certain other amounts; and (iv) granting certain related relief. In support of this Motion, the Debtor respectfully states as follows:

JURISDICTION, VENUE AND BASIS FOR RELIEF

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion are proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a), 345, and 363 of title 11 of the United States Code (11 U.S.C. §§ 101 *et. seq.*, the "Bankruptcy Code") and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

BACKGROUND

3. On August 4, 2016 (the "Relief Date"), the Debtor filed its voluntary petition for relief under Chapter 11 of Title 11, U.S.C. in this Court

4. The Debtor is a debtor-in-possession under Chapter 11 of the Bankruptcy Code.

5. No trustee, examiner, creditors' committee, or other official committee has been appointed in this chapter 11 case.

6. Information about the Debtor's business operations, capitalization and prepetition indebtedness, as well as the events leading to the Relief Date, can be found in the Declaration of _____ in Support of First Day Pleadings (the "First Day Declaration"). The Debtor relies on the First Day Declaration in seeking the relief requested herein and incorporates the First Day Declaration herein by reference.

THE CASH MANAGEMENT SYSTEM

7. Before the commencement of this chapter 11 case, the Debtor, in the ordinary course of its business, used a centralized cash management system to collect, transfer and disburse funds generated by its operations and to accurately record all such transactions as they were made (the "Cash Management System"). The Cash Management System provides a unified system for the Debtor that allows for an integrated method of accounting for revenues and expenses to be collected and paid.

8. The Cash Management System comprises three bank accounts (the "Bank Accounts") maintained at the Bank, only one of which is still used by the Debtor in operating its business.

9. Each Bank Account is described below:

a. Operating Account – Checking account number _____ (the "Operating Account") is the Debtor's lone operating account and is used for all cash management activities. The Operating Account receives all deposits, including payments from any of the Debtor's customers, and is also used for all disbursements, including payment of the Debtor's employees.

b. [Describe any other bank accounts]

REQUEST FOR RELIEF

10. By this Motion, the Debtor respectfully requests, among other things, a waiver of certain of the operating guidelines established by the Office of the U.S. Trustee (the "U.S. Trustee") that otherwise would require the Debtor to close the Bank Accounts, open new "Debtor-in-Possession" accounts and order new business forms and stationery. Specifically, the Debtor requests that the Court enter the Interim Order and the Final Order (i) approving the Debtor's continued use of its current Cash Management System and Bank Accounts and business forms, including authorizing the Debtor to open and close bank accounts; (ii) granting the Debtor a 45-day extension to comply with the requirements of Bankruptcy Code section 345(b) and interim approval of the Debtor's current investment and deposit guidelines; (iii) authorizing all the Bank to honor certain transfers and charge bank fees and certain other amounts; and (iv) granting certain related relief.

BASIS FOR RELIEF REQUESTED

11. The U.S. Trustee has established certain operating guidelines for debtors-in-possession in order to supervise the administration of chapter 11 cases. These guidelines require

chapter 11 debtors to, among other things: (a) close all existing bank accounts and open new debtor-in-possession bank accounts; (b) establish one debtor-in-possession account for all estate monies required for the payments of taxes, including payroll taxes; (c) maintain a separate debtor-in-possession account for cash collateral; and (d) obtain checks for all debtor-in-possession accounts which bear the designation "Debtor-in-Possession," the bankruptcy case number and the type of accounts. Similarly, Bankruptcy Code section 345, amongst other requirements, provides that debtors-in-possession must require their depository banks to post bonds sufficient to insure all debtor deposits not insured by the Federal Deposit Insurance Corporation. Enforcing these requirements in this case, however, would place an enormous burden on the Debtor.

A The Debtor Should Be Authorized to Continue to Use The Cash Management System

12. The Cash Management System employed by the Debtor constitutes ordinary, usual, and essential business practices and is similar to those used by other major corporate enterprises. The Cash Management System provides significant benefits to the Debtor, including the ability to control corporate funds centrally and to ensure the availability of funds when necessary. Compelling the Debtor to adopt a new, segmented cash management system during its stay in chapter 11 would be expensive and would create unnecessary administrative problems. Any disruption of the Cash Management System would have an adverse effect upon the Debtor's ability to pay the costs and expenses of administering the Debtor's chapter 11 case as a debtor-in-possession. Consequently, maintenance of the Cash Management System is essential and is in the best interests of all creditors and other parties-in-interest.

B The Debtor Should Be Granted Authority to Maintain The Bank Accounts

13. The Debtor seeks a waiver of the requirements that it close the Bank Accounts and open new postpetition bank accounts. If enforced in this chapter 11 case, such requirements

would cause significant disruption to the Debtor's business, causing delays in payments to administrative creditors and others and impairing the Debtor's efforts to maximize the value of its estate. As described above, the Bank Accounts are central to an established Cash Management System that the Debtor needs to maintain to ensure smooth collections and disbursements in the ordinary course of business.

14. The Debtor requests that the Bank Accounts be deemed debtor-in-possession accounts and, as a result, that the Debtor be authorized to continue to use them with the same account numbers, styles, and document forms as the Debtor used prior to the Relief Date. If necessary, the Debtor also should be permitted to open new accounts whenever needed, provided that the Debtor gives the U.S. Trustee notice of such newly-opened accounts. The Debtor represents that if the relief requested in this Motion is granted, it will not pay, and the Bank will be directed not to pay, any debts incurred before the Relief Date, other than as authorized by the Court. Importantly, the Debtor possesses the capacity to draw the necessary distinctions between prepetition and postpetition obligations and payments without closing the Bank Accounts and opening new ones.

C Section 345(b) Deposit Guidelines

15. The Debtor believes the requirements of Bankruptcy Code section 345(b) are satisfied for each Bank Account because the Debtor believes that the Bank has executed a Uniform Depository Agreement ("UDA") with the U.S. Trustee that brings the Bank Accounts into compliance, as well as for certain Bank Accounts, the Debtor maintains deposit balances within the limits of insurance by the Federal Deposit Insurance Corporation.

16. By this Motion, the Debtor is requesting a forty-five (45) day extension of the time to comply with Bankruptcy Code section 345(b) with respect to the Bank Accounts, to the extent applicable. During the extension period, the Debtor proposes to engage the U.S. Trustee in discussions to determine what modifications to its deposit practices, if any, would be

appropriate under the circumstances. The Debtor believes that the benefits of the requested extension far outweigh any harm to its estate. *See In re Serv. Merch. Co.*, 240 B.R. 894, 896-97 (Bankr. M. D. Tenn. 1999) (finding cause to extend the time to comply with section 345(b) where failure to do so would "needlessly handcuff" the debtor's reorganization efforts).

D The Debtor Should Be Authorized to Continue Using Debit, Wire, and Automatic Clearing House Payments

17. The Debtor should be granted further relief from the U.S. Trustee operating guidelines to the extent that they require the Debtor to make all disbursements by check. In particular, the U.S. Trustee operating guidelines require that all receipts and disbursements of the estate funds occur by check with a notation representing the reason for the disbursement. It is sometimes necessary for the Debtor to conduct transactions by debit, wire, and other similar methods. To deny the Debtor the opportunity to conduct transactions by debit, wire, and other similar methods would unnecessarily disrupt the Debtor's business operations and create additional costs.

E The Debtor Should Be Granted Authority to Continue Using Existing Business Forms

18. To minimize expenses, the Debtor further requests that it be authorized to continue to use its correspondence and business forms, including, but not limited to, purchase orders, multi-copy checks, letterhead, envelopes, promotional materials, and other business forms (collectively, the "Business Forms"), substantially in the forms existing immediately before the Relief Date, without reference to its status as debtor-in-possession; provided, however, that any new check stock ordered by the Debtor shall contain the designation "Debtor in Possession." It is anticipated that parties doing business with the Debtor will be aware of its status as a debtor-in-possession. A requirement that the Debtor change its business forms would be expensive and burdensome to the Debtor's estate and extremely disruptive to operations. In light of the above, the costs and potential disruption are not justified.

F Banks Must Be Permitted To Honor Certain Transfers and Charge Bank Fees and Certain Other Amounts

19. Contemporaneously with the filing of this Motion, the Debtor has filed various motions for authorization to pay certain prepetition obligations. With respect to some of these obligations, prior to the Relief Date, the Debtor issued checks that have yet to clear the banking system. With respect to other obligations, the Debtor intends to issue checks postpetition on account of such prepetition debt once the Court enters an order permitting the Debtor to take such action. The Debtor intends to inform the Bank which prepetition checks the Bank should honor pursuant to orders of the Court authorizing such payment.

20. As a result of the foregoing, the Debtor requests that the Bank be authorized to accept and honor all representations from the Debtor regarding which checks, drafts, wires or ACH transfers should be honored or dishonored consistent with any order of the Court, whether such checks, drafts, wires or ACH transfers are dated prior to, on or subsequent to the Relief Date. Pursuant to the relief requested in this Motion, the Bank will not be liable to any party on account of (i) following the Debtor's instructions or representations as to any order of the Court, (ii) honoring any prepetition check or item in a good faith belief that the Court has authorized such prepetition check or item to be honored, or (iii) an innocent mistake made despite implementation of reasonable item-handling procedures. Such relief is reasonable and appropriate because the Bank is not in a position to independently verify or audit whether a particular item may be paid in accordance with a Court order or otherwise.

21. Finally, the Debtor requests authority for the Bank to charge and the Debtor to pay both prepetition and postpetition service and other fees, costs, charges and expenses to which the Bank may be entitled under the terms of and in accordance with its contractual arrangements with the Debtor (collectively, the "Bank Fees"). The Debtor further requests that the Bank be authorized to charge back returned items to the Bank Accounts in the normal course of business.

G Legal Support for Relief Requested

22. Bankruptcy courts routinely grant chapter 11 debtors the types of relief sought in this Motion, treating a request for such authority as a relatively "simple matter." *In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr S.D. Ohio 1987). Bankruptcy Code section 363(c)(1) authorizes a debtor-in-possession to "use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). The purpose of Bankruptcy Code section 363(c)(1) is to provide a debtor-in-possession with the flexibility to engage in the ordinary transactions required to operate its business without unneeded oversight by its creditors or the court. *See, e.g., Med. Malpractice Ins. Ass'n v. Hirsch (In re Lavigne),* 114 F.3d 379, 384 (2d Cir. 1997); *Chaney v. Official Comm. of Unsecured Creditors of Crystal Apparel, Inc. (In re Crystal Apparel, Inc.),* 207 B.R. 406, 409 (S.D.N.Y. 1997).

23. Included within the purview of Section 363(c) is a debtor's ability to continue the "routine transactions" necessitated by a debtor's cash management system. *Amdura Nat'l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.),* 75 F.3d 1447, 1453 (10th Cir. 1996).

24. The Court may also exercise its equitable powers to grant the relief requested herein. Bankruptcy Code section 105(a) empowers the Court to "issue any order, process, or judgment that is necessary to carry out the provisions of this title." 11 U.S.C. § 105(a). Thus, section 105(a) essentially codifies the bankruptcy court's inherent equitable powers and "grants bankruptcy courts the 'equitable power to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.'" *Schwartz v. Aquatic Dev. Group, Inc. (In re Aquatic Dev. Group, Inc.)*, 352 F.3d 671, 680 (2d Cir. 2003) (citation omitted) (Straub, J., concurring). Continuing use of the Cash Management System and Bank Accounts without interruption is vital to the efficient and economic administration of the Debtor's estate. Therefore, it is within the Court's equitable power under Bankruptcy Code section 105(a) to approve the relief sought herein.

REQUESTS FOR IMMEDIATE RELIEF AND WAIVER OF STAY

25. Pursuant to Bankruptcy Rules 6003(b) and 6004(h), the Debtor seeks (i) the immediate entry of an order authorizing the Debtor to continue its use of the Bank Accounts, Cash Management System and Business Forms and the payment of Bank Fees pursuant to Bankruptcy Rule 6003(b) and (ii) a waiver of any stay of the effectiveness of such an order.

26. Bankruptcy Rule 6003(b) provides, in relevant part, that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding . . . a motion to pay all or part of a claim that arose before the filing of the petition." Accordingly, where the failure to grant any such requested relief would result in immediate and irreparable harm to the Debtor's estate, the Court may allow the Debtor to pay all or part of a claim that arose before the Relief Date prior to the twenty-first day following the Relief Date. Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise."

27. The continued use of the Bank Accounts, Cash Management System and Business Forms and the payment of Bank Fees are necessary to prevent immediate and irreparable damage to the Debtor's operations. Accordingly, the Debtor submits that ample cause exists to justify: (i) the immediate entry of the Interim Order granting the relief sought herein on an interim basis pursuant to Bankruptcy Rule 6003(b); and (ii) a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h).

RESERVATION OF RIGHTS

28. Nothing contained herein is intended or should be construed as: (i) an admission as to the validity, priority or amount of any claim against the Debtor; (ii) a waiver of the Debtor's rights to dispute any claim on any grounds; (iii) a promise to pay any claim; or (iv) an

implication or admission that any claim is of the type specified or defined in this Motion; (v) a request or authorization to assume any agreement, contract or lease pursuant to Bankruptcy Code section 365; (vi) a waiver of the Debtor's rights under the Bankruptcy Code or any other applicable law; or (vii) a concession by the Debtor that any liens (contractual, common law, statutory or otherwise) satisfied pursuant to this Motion are valid, and the Debtor expressly reserves it right to contest the extent, validity and perfection or seek avoidance of all such liens.

NOTICE

29. Notice of this Motion will be provided to: (i) the Office of the United States Trustee for the District of Utah; (ii) the Debtor's largest twenty (20) unsecured creditors as identified in its chapter 11 petition; (iii) the Bank at which the Bank Accounts are maintained and (iv) all parties requesting notice in this case pursuant to Rule 2002. Due to the nature of the relief requested herein, the Debtor respectfully submits that no further notice of this Motion is necessary.

NO PRIOR REQUEST

30. No prior request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter the Interim Order and Final Order and grant such relief as the Court deems just and proper.

DATED this _____ day of _____, 20__.

_____

/s/_____

_____

Counsel for ABC, LLC

CERTIFICATE OF SERVICE – BY NOTICE OF ELECTRONIC FILING (CM/ECF)

I hereby certify that on the ____ day of _____, 20___, I electronically filed the foregoing document with the United States Bankruptcy Court for the District of Utah by using the Court's CM/ECF system. I further certify that the parties of record in this case, as identified below, are listed as registered CM/ECF users and will be served through the CM/ECF system:

CERTIFICATE OF SERVICE – BY MAIL, OTHER

I further certify that on the ____ day of _____, 20___, I caused the foregoing document to be sent by first class United States mail, postage fully prepaid, to the following at the addresses set for the below:

/s/_____

Attorney
Firm
Address
City, State Zip Code
Telephone:
Facsimile:
Email:

Counsel for ABC, LLC

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH, CENTRAL DIVISION

In re **ABC, LLC**, Debtor.	Bankruptcy Case No. _____ (Chapter 11) Honorable _____

DECLARATION OF _____ IN SUPPORT OF CHAPTER 11 PETITION AND MOTIONS FOR FIRST DAY RELIEF

Under 28 U.S.C. § 1764, _____, the President and Chief Executive Officer of ABC, LLC declares as follows under penalty of perjury:

1. I am the President and Chief Executive Officer of ABC, LLC ("**ABC**" or "**the Company**"), a _____ limited liability company. I have served as President and CEO of ABC since _____. My responsibilities include recommending and implementing the overall strategic direction of the Company, as well as overseeing the Company's day-to-day operations.

2. I have been a full time employee of ABC since _____. I have served in the following positions and roles at the Company: Vice President of Operations and General Manager, President and CEO.

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3. Prior to joining ABC, I was a full time employee of _____ ("_____"), where I served in various positions, including:

_____.

4. ABC is a limited liability company organized under the _____ Limited Liability Act. The company was formed for the purpose of

_____.

5. I am familiar with ABC's day to day operations, business, finances, financial affairs and books and records.

6. On _____, (the "**Petition Date**") the Company filed voluntary petition for relief under Chapter 11 of Title 11, U.S.C. in the United States Bankruptcy Court for the District of _____, (the "Court") Case No. _____ (the "Case"), resulting in the entery of an Order for Relief on that same day (the "**Relief Date**").

B. Status of Bankruptcy Case

7. The Company continues to operate its business and manage its properties as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. No trustee, examiner, creditors' committee, or other official committee has been appointed in this chapter 11 case.

9. I am authorized to submit this declaration (the "**First Day Declaration**") on behalf of the Company and in support of the relief requested in the "first day" pleadings, which are being filed concurrently herewith (collectively, the "**First Day Pleadings**"). ABC seeks the relief set forth in the First Day Pleadings to maximize the adverse effects of the commencement of the chapter 11 case on its business. I have reviewed the First Day Pleadings and it is my belief that the relief sought therein is essential to ensure uninterrupted operation of ABC's business and to successfully maximize and preserve the value of the Company for all stakeholders.

10. Except as otherwise indicated, all of the facts set forth in this First Day Declaration are based upon my personal knowledge, my review of the Company's relevant books and records, information provided to me by the Company's management, or my opinion based upon my understanding of and familiarity with the Company's assets. References to the Bankruptcy Code and all related legal matters, including information relative to the chapter 11 bankruptcy process, are based upon my understanding of those matters in reliance upon explanations provided to me by counsel.

11. If called upon to testify, I would testify competently to the facts set forth in this First Day Declaration.

12. Part I of this First Day Declaration provides an overview of the Company's corporate structure, business and prepetition indebtedness. Part II describes the circumstances leading to the commencement of the voluntary chapter 11 filing. Part III sets forth the relevant facts in support of the First Day Pleadings.

PART I

I. ABC's Business Operations

A. Corporate Structure

13. ABC is a limited liability company organized and existing under the laws of the State of _____.

14. ABC was organized on _____. The Company has _____ members, all of whom are parties to the certain Limited Liability Company Agreement of ABC, LLC dated as of _____ (the "**Operating Agreement**"). The members of ABC are: (i) _____; (ii) _____; and (iii) _____. A true and correct copy of the organizational structure of the Company is attached hereto as **Exhibit A**.

15. [Describe any specific facts about the corporate structure that are unique to this debtor]

B. Corporate Operations

16. [Describe, in detail, the nature and extent of the Debtor's operations, including location, type, size, products, revenues, officers, number of employees, special operations, unique permits, special regulatory aspects, etc.]

C. The Prepetition Secured Indebtedness Asserted Against the Company

17. Subject to a full reservation of rights, claims, causes of actions, defense and challenges, including but not limited to the nature, extent, validity, priority and perfection of any secured claims asserted against the Company, prior to the Petition Date, several different lenders asserted varying secured claims and liens against the Company, including:

a. [Describe the nature, type, amount and collateral for the major secured claims]

b. A true and correct summary of the Company's debt structure is attached hereto as **Exhibit B**.

18. **Intercreditor Agreement** – [Describe in detail, if one exists]

19. **Subordination Agreement** – [Describe in detail, if one exists].

20. **Other Secured Debt and Security Interests** – [Describe in detail any other secured claims not otherwise described above, i.e. mechanic's liens, statutory liens, etc.]

D. General Unsecured Debt

21. The Company estimates its outstanding unsecured debt obligations as of the Relief Date of approximately $_____. The Company reserves all of its rights regarding the nature, validity and amount of these claims.

E. Priority of Secured Debt

22. The Company continues to review the nature, extent, validity and priority of the asserted prepetition secured claims and debt asserted against the Company. The Company continues to reserve all rights, defenses, causes of action, claims and challenges it may have or

hold against any of its prepetition secured lenders, prepetition creditors and prepetition equity interests and owners.

F. Priority of Secured Debt

23. [Describe in detail, with full reservation of rights]

II. Circumstances Leading to the Commencement of the Chapter 11 Case

24. [Describe in detail, and in chronological order, the events leading up to the filing of the petition for relief]

25.

PART II

III. Relief Sought In The First Day Motions

26. The Debtor has filed the First Day Pleadings and related orders (the "**Proposed Orders**") seeking various forms of relief intended to stabilize the Debtor's business operations and facilitate the efficient administration of this chapter 11 case. The First Day Pleadings include:

- Motion for Interim and Final Orders Approving The Continued Use Of The Debtor's Cash Management System (the "**Cash Management Motion**");
- Motion For Interim And Final Orders Establishing Adequate Assurance Procedures With Respect To Debtor's Utility Companies (the "**Utility Motion**");
- Motion For Interim And Final Orders Authorizing The Debtor To Continue Its Insurance Programs And Pay Related Obligations (the "**Insurance Motion**");
- Motion for Order Authorizing Payment of Prepetition Wages, Compensation, Employee Benefits and Related Relief (the "**Wages Motion**");
- Motion for Entry of an Order Extending Time to File Schedules and Statements (the "**Schedules and Statements Motion**"); and
- Motion for Interim and Final Orders (I) Authorizing the Debtor to Obtain Postpetition Financing; (II) Authorizing the Use of Cash Collateral; and (III) Granting Adequate

Protection; and (IV) Scheduling a Final Hearing (the "**Interim DIP Financing Motion**").

27. The First Day Pleadings seek authority to, among other things, (a) ensure the continuation of the Debtor's cash management system; (b) prohibit the Debtor's utility companies from terminating service; (c) ensure continuation of the Debtor's insurance coverage; (d) honor employee-related wages and benefits obligations; (e) extend the time to file the Debtor's schedules and statements; and (e) provide the Debtor with interim financing to operate its business and to maintain its assets, subject to a final hearing.

28. I believe that the relief requested in the First Day Pleadings is necessary to give the Debtor an opportunity to work towards a successful chapter 11 case that will benefit all of the Debtor's stakeholders.

29. Many of the First Day Pleadings request authority to pay certain prepetition claims. I understand that Rule 6003 of the Federal Rules of Bankruptcy Procedure provides, in relevant part, that the Court shall not consider motions to pay prepetition claims during the first twenty-one (21) days following the filing of a chapter 11 petition, "except to the extent relief is necessary to avoid immediate and irreparable harm." In light of this requirement, the Debtor has narrowly tailored the relief it seeks through the First Day Pleadings to those circumstances where the failure to pay such claims would cause immediate and irreparable harm to the Debtor and its estate. Other relief will be deferred for consideration at a later hearing. For the avoidance of doubt, the Debtor seeks authority, but not direction, to pay amounts or satisfy obligations with respect to the relief requested in the First Day Pleadings.

30. I have reviewed each of the First Day Pleadings, Proposed Orders and exhibits thereto. In my opinion, approval of the relief sought in each of the First Day Pleadings (i) is vital to enabling the Debtor to make the transition to, and operate in, chapter 11 with minimum

interruption and disruption to its business or loss of productivity or value and (ii) is critical to ensuring that the Debtor is able to successfully maximize value for the benefit of its estate.

31. **Cash Management Motion.** By this Motion, the Debtor respectfully requests, among other things, a waiver of certain of the operating guidelines established by the Office of the U.S. Trustee (the "**U.S. Trustee**") that otherwise would require the Debtor to close the Bank Accounts, open new "Debtor-in-Possession" accounts and order new business forms and stationery. Specifically, the Debtor requests that the Court enter the Interim Order and the Final Order (i) approving the Debtor's continued use of its current Cash Management System and Bank Accounts and business forms, including authorizing the Debtor to open and close bank accounts; (ii) granting the Debtor a 45-day extension to comply with the requirements of Bankruptcy Code section 345(b) and interim approval of the Debtor's current investment and deposit guidelines; (iii) authorizing all Banks to honor certain transfers and charge bank fees and certain other amounts; and (iv) granting certain related relief.

32. **Utility Motion.** By this Motion, the Debtor respectfully requests that the Court enter the Interim Order and the Final Order (i) establishing procedures for determining requests for additional assurance of payment by the Utility Companies; (ii) prohibiting the Utility Companies from altering, refusing or discontinuing services to, or discriminating against the Debtor; (iii) approving an adequate assurance deposit as adequate assurance of postpetition payment to the Utility Companies; and (v) granting certain related relief.

33. **Wages Motion.** By the Motion, the Debtor requests that this Court enter the Order authorizing, but not directing, the Debtor, to pay the Prepetition Compensation, Prepetition Business Expenses, Prepetition Benefits, and Prepetition Deductions (collectively, the "**Prepetition Employee Obligations**"). The Debtor submits that it is in the best interest of its estate for this Court to authorize the Debtor to make such payments and honor obligations owed to, or for the benefit of, the Employees so as to enable the Debtor to maintain morale, retain its

remaining Employees during this critical time, and minimize the personal hardship such Employees would suffer if prepetition employee-related obligations are not paid when due or honored as expected.

34. **Schedules and Statements Motion.** Pursuant to Bankruptcy Rules 1007(a)(5) and (c), this Court is authorized to grant the Debtor additional time to file its Schedules and Statements for cause beyond the automatic fourteen (14) day extension provided under such rule. The Debtor respectfully submits that adequate cause exists for granting the extension requested herein.

35. Although the Schedules and Statements were not filed with the Debtor's petition, annexed to the petitions are lists containing the names and addresses of the Debtor's 20 largest unsecured creditors and a creditor matrix containing all of the names and addresses of the Debtors' known creditors and other parties-in-interest in these cases as required by Bankruptcy Rule 1007(a).

36. The Debtor has been unable to complete its Schedules and Statements at this early stage in the proceedings because of the various, complex and resource intensive issues attendant to responding to the Involuntary Petition. Now that the Relief Date has occurred, the Debtor will need sufficient time to prepare in light of (a) the level of sophistication of its capital structures and financial affairs; (b) the limited staffing available to perform the required internal review of the Debtor's books and records and accounts and affairs; (c) the diversion of resources necessary to attend to numerous issues in connection with the prosecution of these cases; and (d) the accelerated pace at which the Debtor's time-sensitive bankruptcy efforts have proceeded, including preparing for the voluntary filing once in receipt of the necessary consents. Because these factors will prevent the Debtor from assembling the information necessary to complete and file its Schedules and Statements prior to the current deadline, sufficient cause exists to grant the extension. Moreover, the requested extension will enhance the accuracy of the Schedules and

Statements and avoid the necessity of substantial subsequent amendments. Accordingly, the Debtor respectfully requests that the Court extend the time period within which the Debtor is required to file its Schedules and Statements through and including September 19, 2016.

37. **The Interim DIP Financing Motion.** By this Motion, the Debtor requests entry of an interim order authorizing the Debtor to borrow under the proposed DIP Facility, which consists of a $_____ DIP Facility Commitment, of which amounts $_____would be made available to the Debtor upon entry of the Interim Order. The Debtor is also asking the court to schedule a date for a final hearing on the proposed DIP Facility. The relief requested is appropriate as: (i) the Debtor and its estate will suffer immediate and irreparable harm if the interim relief requested herein, including authorization for the Debtor to use the Cash Collateral and to borrow under the DIP Facility, is not granted promptly after the Relief Date; (ii) to continue to operate its business, maintain operations, and fund its cash management system to a sufficient level, the Debtor requires access to the Cash collateral and DIP Facility; (iii) absent authorization both to use the Cash Collateral and to borrow under the DIP Facility, the Debtor will immediately lack the funds needed to continue business operations while pursuing an orderly and value-maximizing bankruptcy plan process; and, (iv) the Debtor has an immediate and urgent need for access to liquidity to, among other things, continue the operation of its business to move the case forward and preserve and maintain the Debtor's enterprise value for the benefit of all parties in interest.

CONCLUSION

38. The Debtor's ultimate goal in this chapter 11 case is the maximization of estate value through a sale of substantially all of its assets. In the near term, however, to minimize any loss of value on its business during the chapter 11 case, the Debtor's immediate objective is to maintain a business-as-usual atmosphere during the early stages of this chapter 11 case, with as little interruption or disruption to the Debtor's operations as possible. I believe that if the Court

grants the relief requested in each of the First Day Pleadings, the prospect for achieving these objectives will be substantially enhanced.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that to the best of my knowledge, and after reasonable inquiry, the foregoing is true and correct.

Dated: _____

_____

President and Chief Executive Officer of
ABC, LLC

CERTIFICATE OF SERVICE – BY NOTICE OF ELECTRONIC FILING (CM/ECF)

I hereby certify that on the ____ day of _____, 20___, I electronically filed the foregoing document with the United States Bankruptcy Court for the District of Utah by using the Court's CM/ECF system. I further certify that the parties of record in this case, as identified below, are listed as registered CM/ECF users and will be served through the CM/ECF system:

CERTIFICATE OF SERVICE – BY MAIL, OTHER

I further certify that on the ____ day of _____, 20___, I caused the foregoing document to be sent by first class United States mail, postage fully prepaid, to the following at the addresses set for the below:

/s/_____

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
ABC, LLC.,[1]	Case No. _____
Debtor.	

DEBTOR'S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS: (I) AUTHORIZING USE OF CASH COLLATERAL; (II) GRANTING ADEQUATE PROTECTION; (III) MODIFYING THE AUTOMATIC STAY; AND (IV) SCHEDULING A FINAL HEARING

The debtor and debtor in possession in the above-captioned case (the "Debtor"), hereby files this motion seeking entry of an interim order, substantially in the form annexed as **Exhibit A** hereto (the "Interim Order"): (i) authorizing the Debtor's use of cash collateral (as defined in section 363(a) of the Bankruptcy Code, "Cash Collateral"); (ii) providing adequate protection to the Debtor's prepetition secured noteholders for any diminution in value of their respective interests in the Cash Collateral or other prepetition collateral; (iii) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the Interim Order; (iv) authorizing immediate cash payment and turnover of sale proceeds to the Debtor's prepetition secured lenders; and (v) scheduling a final hearing (the "Final Hearing") to consider the relief requested herein and the entry of a Final Order (as defined herein) and approving the form of notice with respect to the Final Hearing. In support of this motion, the Debtor relies on and incorporates by reference the Declaration of _____, _____ of the Debtor, in Support of First Day Pleadings (the "_____ Declaration"), filed with the Court concurrently herewith. In further support of this motion, the Debtor, by and through its undersigned proposed counsel, respectfully represents:

[1] The last four digits of the Debtor's federal tax identification number are ____.

I. JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b).

2. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105(a), 361, 362, 363, and 507, of title 11 of the United States Code (the "Bankruptcy Code"). Such relief is warranted pursuant to Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules").

II. RELIEF REQUESTED

4. The Debtor requests entry of interim and final orders:

a. Authorizing the Debtor's use of Cash Collateral of the Prepetition Secured Parties (as defined below);

b. granting adequate protection to the Prepetition Secured Parties for the diminution in value of their interests in the Prepetition Collateral (as defined below) in the form of liens, allowed superpriority administrative expense claims, and certain specified payments;

c. vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the Interim Order;

d. authorizing the Debtor to make an immediate cash payment of $12.5 million and the immediate turnover of sale proceeds to the Prepetition Secured Parties upon the closing of any asset sales;

e. scheduling a Final Hearing to consider entry of an order granting the relief requested herein on a final basis (the "Final Order") and approve the form and notice with respect to the Final Hearing; and

f. waiving any applicable stay and provide for immediate effectiveness of the Interim Order.

5. The Supporting Noteholders (as defined below) have consented to the Debtor's use of the Cash Collateral pursuant to the Approved Budget (as defined in the proposed Interim Order), which has been deemed acceptable to the Supporting Noteholders in their sole discretion,

and expressly subject to the provision of adequate protection and other terms as set forth in the Interim Order.

III. BACKGROUND

6. On the date hereof (the "Petition Date"), the Debtor commenced this case by filing a voluntary petition for relief under chapter 11 the Bankruptcy Code.

7. The Debtor has continued in possession of its property and has continued to operate and manage its businesses as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or committee has been appointed in the Debtor's chapter 11 case.

8. The Debtor has historically _____. The Debtor's technology _____.

9. More recently, the Debtor has focused its efforts on _____. The Debtor plans to focus its operations solely _____. The Debtor expects that _____.

10. The factual background relating to the Debtor's commencement of this chapter 11 case is set forth in detail in the _____ Declaration.

A. Prepetition _____% Secured Notes

11. Pursuant to that certain Indenture dated as of _____ (as amended, restated, supplemented, or otherwise modified from time to time, the "Indenture"), on _____, the Debtor issued to certain holders (the "Noteholders") $_____ million in aggregate principal amount of convertible senior secured notes due _____ bearing interest at a rate of _____% per year, payable semi-annually, in arrears on _____ and _____ of each year (the "Notes"). The Debtor's obligations under the Notes were guaranteed by _____. _____ is the trustee under the Indenture (the "Indenture Trustee" and, together with the Noteholders, the "Prepetition Secured Parties").

12. Prepetition, the Debtor used approximately $_____ million of the net proceeds for the issuance of the Notes to purchase approximately $_____ million aggregate principal amount

of the 20____ Notes (as defined in the _____ Declaration), with the remainder of the net proceeds used for general corporate purposes, working capital and capital expenditures in China.

13. To secure the obligations owing under the Indenture, pursuant to the Pledge and Security Agreement and the Collateral Trust Agreement, each dated as of _____, and related documents, the Debtor granted the Indenture Trustee, on behalf of the Noteholders, first-priority liens (the "Prepetition Liens") on substantially all of the assets owned by the Debtor, subject to certain exceptions (the "Prepetition Collateral"). Currently, approximately $_____ million in principal amount remains outstanding under the Notes.

B. The Debtor's Urgent Need for Use of Cash Collateral

14. The Debtor requires use of Cash Collateral to pay operating expenses, including payroll, as reflected in the Approved Budget annexed as Exhibit 1 to the proposed Interim Order, funding deposits, and providing adequate assurance with respect to utilities. The Debtor also requires access to Cash Collateral to pay the costs associated with its chapter 11 case. Currently, the Debtor lacks sufficient unencumbered funds with which to operate its business on an ongoing basis. The limited cash on hand, including collections on accounts receivables, proceeds from the sales of inventory, cash equivalents, investment property, and securities, which are the Debtor's only source of funds with which to pay operating expenses, are subject to the liens of the Prepetition Secured Parties.

15. The Debtor has reformulated the direction of its future business. As a result, the Debtor intends to sell all or substantially all of its assets to a third party during its chapter 11 case (the "Sale Process"). Concurrently with the filing of this motion, the Debtor has filed a motion to establish procedures in connection with the sale of all or substantially all of the Debtor's assets. The Debtor has an urgent and immediate need for cash to continue to operate pending the Sale Process and its chapter 11 case.

16. The Debtor's ability to use Cash Collateral to pay budgeted operating expenses during the pendency of its chapter 11 case is essential to the Debtor's business, including for the maintenance of its business relationships, meeting payroll, and the sale of its assets through an

orderly Sale Process in order to maximize the return on such assets for the benefit of its creditors. As the Debtor has no unencumbered funds, the Debtor requires use of such Cash Collateral to fund the day-to-day expenses of its operations, its efforts to conduct the Sale Process, and to meet the costs and expenses of this chapter 11 case. Unless the Court authorizes use of Cash Collateral, the Debtor will be unable to pay for services and expenses necessary to preserve and maximize the value of its assets, and will need to immediately cease operations and terminate the employment of hundreds of employees. The Debtor believes that any such a result would lead to a substantially lower return on the value of the Debtor's assets. Thus, authorization to use Cash Collateral, pending the Final Hearing, is in the best interests of the Debtor's estate and creditors.

17. As it became apparent to the Debtor that it would need to file for protection under the Bankruptcy Code, the Debtor entered into negotiations with certain unaffiliated Noteholders (the "Supporting Noteholders") regarding, among other things, an agreement on the consensual use of Cash Collateral. These negotiations resulted in the agreed to form of the Interim Order attached hereto as Exhibit A.

C. Terms of Cash Collateral Use[2]

18. The following summarizes the general terms and conditions agreed to by the Supporting Noteholders and the Debtor for the consensual use of Cash Collateral:[3]

Use of Cash Collateral	Subject to the terms of the Interim Order, upon entry of the Interim Order, the Debtor is authorized to use Cash Collateral in which the Prepetition Secured Parties may have an interest: (i) in accordance with the terms, conditions, and limitations set forth in the Interim Order and the Approved Budget (including any Permitted Variances); (ii) up to $_____ to fund the Utility Deposit Account (as such term is defined in the Utility Motion); and (iii) pay to the Indenture Trustee, for the benefit of the Noteholders, Cash Collateral in the amount of $_____ million. Any dispute in connection with the use of Cash Collateral shall be heard by the

[2] The terms of the Debtor's proposed use of the Cash Collateral are summarized in this motion for convenience purposes only. The proposed Interim Order should be referenced for the complete terms and conditions of the Debtor's proposed use of the Cash Collateral.

[3] Capitalized terms used herein that are not otherwise defined in this motion shall have the meaning ascribed to such terms in the Interim Order.

	Court. Interim Order ¶¶ 2, 7(b). Upon the occurrence of the Termination Date: (i) the Debtor's right to use Cash Collateral shall automatically terminate; (ii) all Adequate Protection Obligations owed to the Prepetition Secured Parties shall be immediately due and payable; and the Indenture Trustee may: (a) set off and apply immediately any and all amounts in accounts maintained by the Debtor with the Indenture Trustee against the Adequate Protection Obligations and Indenture Obligations owed to the Prepetition Secured Parties and otherwise enforce rights against the Collateral for application towards the Adequate Protection Obligations and Indenture Obligations; (b) take any and all actions necessary to take control of all Cash Collateral; and (c) upon five (5) business days' notice to the Debtor, the Committee (if any) and the U.S. Trustee, take any other actions or exercise any other rights or remedies permitted under the Interim Order or applicable law to effect the repayment and satisfaction of the Adequate Protection Obligations and Indenture Obligations owed to the Prepetition Secured Parties.
Termination Date / Termination Events	Notwithstanding anything in the Interim Order to the contrary, the use of Cash Collateral authorized by the Interim Order will terminate without prior notice or order of the Court or any further action by the Prepetition Secured Parties, upon the occurrence of the "Termination Date." The Termination Date shall occur (notice of which shall be provided thereafter to the Debtor, the U.S. Trustee, and any official committee appointed in the case) on the earliest to occur of (each of the following, a "Termination Event"): i. _____, unless extended pursuant to the RSA ii. Upon the expiration of the Approved Budget unless a Supplemental Approved Budget has been agreed upon by the Debtor and the Requisite Supporting Noteholders, in their sole discretion, *provided, however*, that the Requisite Supporting Noteholders shall accept a reasonable updated budget solely to the extent and for the period contemplated by section 2(a)(ii) of the RSA; iii. The date of the Final Hearing (which date shall not be later than twenty-five (25) calendar days after the Petition Date) if a Final Order (provided that such Final Order has not been reversed, vacated, stayed, unless such stay has been vacated, or appealed, unless such appeal has been dismissed or otherwise finally resolved) authorizing the use of Cash Collateral, substantially in accordance with the terms of the Interim Order and otherwise reasonably

	acceptable to the Requisite Supporting Noteholders, is not entered within twenty-five (25) calendar days of the Petition Date; iv. Five (5) business days after the date the Requisite Supporting Noteholders or the Indenture Trustee, at the direction of the Noteholders, provides the Debtor with written notice of the Debtor's failure to comply with any of the terms or conditions of the Interim Order; v. The date an application, motion or other pleading is filed by the Debtor seeking to amend, modify, supplement or extend the Interim Order without the prior written consent of the Requisite Supporting Noteholders; or the date of entry of any order reversing, amending, supplementing, staying, vacating or otherwise modifying the Interim Order without the prior written consent of the Requisite Supporting Noteholders; vi. The date any material provision of the Interim Order shall for any reason cease to be valid and binding or the Debtor shall so assert in any pleading filed in any court; vii. The date an application is filed by the Debtor for the approval of any superpriority claim or any lien in the Chapter 11 Case which is *pari passu* with or senior to the Adequate Protection Liens, Superpriority Claim, or Prepetition Liens without the prior written consent of the Indenture Trustee and the Requisite Supporting Noteholders; viii. The effective date of any confirmed chapter 11 plan in the Chapter 11 Case; ix. Unless otherwise agreed in writing by the Requisite Supporting Noteholders, the date of the consummation of a sale or other disposition of all or substantially all of the assets of the Debtor; x. Unless otherwise agreed in writing by the Requisite Supporting Noteholders five (5) business days after a notice of the termination of the RSA; xi. The date of the entry of an order granting relief from the automatic stay to the holder or holders of any security interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any asset of the Debtor

	with a value in excess of $1,000,000; xii. The date: (a) the Debtor's case is dismissed or converted to a case under chapter 7 of the Bankruptcy Code or the Debtor shall file a motion or other pleading seeking the dismissal or conversion of the Debtor's chapter 11 case pursuant to Bankruptcy Code section 1112 or otherwise; or (b) a trustee or an examiner with expanded powers is appointed or elected or the Debtor applies for, consents to, or acquiesces in, any such appointment without the prior written consent of the Requisite Supporting Noteholders; xiii. The date of the commencement of any action by the Debtor against the Indenture Trustee or any of the Noteholders with respect to the Indenture Obligations or the Prepetition Liens; or xiv. The withdrawal, amendment, modification of, or filing of a pleading by the Debtor seeking to withdraw, amend or modify the proposed sale process and bidding procedures (as described in the sale motion filed on the Petition Date), in a manner not reasonably acceptable to the Requisite Supporting Noteholders. Interim Order ¶ 5.
Adequate Protection	The Prepetition Secured Parties are to be provided with the following forms of adequate protection: a) payment of reasonable fees and expenses incurred by: (i) the Supporting Noteholders (with respect to expenses only, not including advisors unless otherwise set forth herein); (ii) _____, as counsel to the Supporting Noteholders; (iii) _____, as local counsel to the Supporting Noteholders; (iv) _____, as financial advisor to the Supporting Noteholders; (v) the Indenture Trustee; (vi) _____, as counsel to the Indenture Trustee, (vii) such local counsel as the Indenture Trustee may retain; and (viii) such other professionals and/or consultants retained by the Supporting Noteholders and the Indenture Trustee (each of the professionals in (ii) through (viii) being the "Noteholder Professionals"), in each case including, without limitation, in connection with protecting the rights and interests of the Supporting Noteholders and the Indenture Trustee in connection with the Chapter 11 Case and in connection with any and all actions related to the sales process, provided that if the payment of such aggregate reasonable fees and

	expenses of the Noteholder Professionals causes the Debtor's expenditures to exceed amounts permitted by the Approved Budget, such excess payments shall not constitute a Termination Event; b) not later than two (2) business days following the entry of the Interim Order, payment from Cash Collateral in the amount of $_____, which funds shall reduce the total allowed claim of the Indenture Trustee; and c) subject to the Carve-Out, valid, enforceable, nonavoidable and fully perfected first priority postpetition security interests in and liens (effective and perfected upon the date of entry of the Interim Order and without the necessity of execution by the Debtor of mortgages, security agreements, pledge agreements, financing statements, and other agreements or instruments) on all of the Collateral; and first-priority superpriority administrative expense claims under Bankruptcy Code section 507(b) with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code (collectively, the "Proposed Adequate Protection"). Interim Order ¶ 7.
Collateral Rights	Upon the sale of the Debtor's assets, and subject to certain limitations, the Interim Order provides that the "Debtor is authorized and directed, without further notice or order of this Court, to promptly pay the Indenture Trustee, for the benefit of the Noteholders, 100% of the net cash proceeds resulting therefrom no later than the second business day following receipt of such proceeds, solely to the extent that" after giving effect to such payment, the Debtor will have sufficient funds to satisfy certain pre-negotiated expenses. Interim Order ¶ 16(c)
Carve Out	"Carve-Out" means: (i) the unpaid fees of the Clerk of the Bankruptcy Court and the U.S. Trustee pursuant to 28 U.S.C. §1930(a)(6); (ii) fees in an amount not to exceed the Debtor Professional Fee Cap of $_____ million and the Committee Professional Fee Cap of $_____, less any amount already paid to the Debtor Professionals and the Committee Professionals, respectively, to the extent allowed at any time by the Bankruptcy Court, whether by interim order, procedural order or otherwise, all unpaid fees, disbursements, costs and expenses incurred by the

	Debtor Professionals or Committee Professionals, which are incurred prior to the Termination Date; and (iii) fees and expenses of the Debtor Professionals in an aggregate amount not to exceed $_____, which are incurred on and after the Termination Date, provided such fees and expenses (in the aggregate) are ultimately allowed by the Bankruptcy Court, each subject to the rights of any party in interest to object to the allowance of any such fees and expenses. Interim Order ¶¶ 6(a), 9. Up to $_____ of Cash Collateral in the aggregate may be used to pay the allowed fees and expenses of counsel retained by the Committee incurred directly in connection with investigating, but not preparing, initiating or prosecuting, any Claims and Defenses against the Prepetition Secured Parties or with regard to the Indenture Obligations or Prepetition Liens. Interim Order ¶ 6(c).
Determination of the Validity, Enforceability, Priority, and Amount of the Prepetition Obligations	Subject to the right of a: (i) Committee, within sixty (60) days after the date of formation; and (ii) parties in interest, within seventy-five (75) days after entry of the Interim Order, to investigate potential Claims and Defenses, the Debtor acknowledges the validity, enforceability, priority and amount of the Prepetition Liens and Indenture Obligations. Upon the expiration of the relevant investigation period, the Prepetition Liens and Indenture Obligations shall no longer be subject to challenge. Interim Order ¶ F(i)(c), (ii).
Releases	The Debtor acknowledges that it does not have claims, objections, challenges, causes of actions, including without limitation, avoidance claims under chapter 5 of the Bankruptcy Code against the Prepetition Secured Parties ore the Released Parties arising out of or related to the Indenture Obligations or the Prepetition Loan Documents. Interim Order ¶ F(iv). In addition, the Debtor, on behalf of itself and its estate (including any successor trustee or other estate representative in the chapter 11 case or successor case) and any party acting by, through, or under the Debtor or its estate, releases the Released Parties from all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations existing as of the Petition Date. Interim Order 11.
Section 506(c)	Subject to entry of a Final Order and the Carve-Out, no administrative expense claims, including fees and expenses of professionals, shall be charged or assessed against or recovered from the Prepetition Collateral or Collateral or attributed to the Prepetition Secured Parties with respect to their respective interests in the Prepetition Collateral or Collateral pursuant to the provisions

	of section 506(c) of the Bankruptcy Code or otherwise by, through, or on behalf of the Debtor, without the prior written consent of the affected Prepetition Secured Parties, and no such consent shall be implied from any action, inaction or acquiescence by, either with or without notice to, the Prepetition Secured Parties. Interim Order ¶¶ I, 6(b).

D. Provisions that Potentially Implicate Local Rule 4001-2

19. Local Rule 4001-2 requires that all cash collateral and financing requests under sections 363 and 364 of the Bankruptcy Code: (a) recite whether the proposed form of order and/or underlying cash collateral stipulation or loan agreement contains certain provisions set forth in Local Rule 4001-2(a)(i); (b) identify the location of any such provision in the proposed form of order, cash collateral stipulation and/or loan agreement; and (3) justify the inclusion of such a provision. The provisions requiring disclosure pursuant to Local Rule 4001¬2, their location in any order, cash collateral stipulation and/or loan agreement and the justification of the same provisions are as follows:

a. Local Rule 4001-2(a)(i)(A) requires the disclosure of any provision that would grant cross-collateralization protection (other than replacement liens or other adequate protection) to the prepetition secured creditors. The Interim Order includes no such provisions.

b. Local Rule 4001-2(a)(i)(B) requires the disclosure of any provisions or findings of fact that would bind the estate or all parties in interest with respect to the validity, perfection or amount of the secured creditor's prepetition lien or debt or the waiver of claims against the secured creditor without first giving parties-in-interest at least 75 days notice from entry of the order and the creditors' committee, if formed, at least 60 days from the date of its formation to investigate such matters. Although the Debtor has stipulated that the Prepetition Liens and Indenture Obligations were, as of the Petition Date, valid and enforceable and the Debtor has waived any right to challenge the Prepetition Liens or the Indenture Obligations (Interim Order ¶ F), the Interim Order preserves the rights of a Committee and parties in interest to investigate these stipulations consistent with the notice periods set out in the rule. (Interim Order ¶ 10(a)) Thus, the provision does not fall within the scope of Local Rule 4001-2(a)(i)(B).

c. Local Rule 4001-2(a)(i)(C) requires the disclosure of provisions that seek to waive, without notice, whatever rights the estate may have

under sections 506(c) of the Bankruptcy Code. The Interim Order does not grant the Prepetition Secured Parties a waiver of section 506(c) of the Bankruptcy Code. The Interim Order provides that the Indenture Trustee and Noteholders are entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code, only after notice and subject to entry of a Final Order. (Interim Order ___ I, 6(b)). Thus, the provision does not fall within the scope of Local Rule 4001-2(a)(i)(C).

d. Local Rule 4001-2(a)(i)(D) requires the disclosure of provisions that immediately grant to the prepetition secured creditor liens on the Debtor's claims and causes of action arising under sections 544, 545, 547, 548 and 549 of the Bankruptcy Code. The Interim Order does not grant the Prepetition Secured Parties a lien on Avoidance Actions. The Interim Order provides that the Adequate Protection Liens granted will include proceeds of Avoidance Actions, but not the underlying causes of action, subject to entry of a Final Order. (Interim Order ¶ 7(c)). Thus, the provision does not fall within the scope of Local Rule 4001-2(a)(i)(C).

e. Local Rule 4001-2(a)(i)(E) requires the disclosure of provisions that deem prepetition secured debt to be postpetition secured debt or that use postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt, other than as provided in section 552(b) of the Bankruptcy Code. The Interim Order includes no such provisions.

f. Local Rule 4001-2(a)(i)(F) requires the disclosure of provisions that provide disparate treatment for the professionals retained by a creditors' committee from that provided for the professionals retained by the Debtor with respect to a professional fee carveout. The Interim Order provides that: (i) so long as the Termination Date has not occurred, the Debtor shall have a Debtor Professional Fee Cap of $8.2 million, and that the Committee shall have a Committee Professional Fee Cap of $50,000; and (ii) on and after the Termination Date, the fees and expenses of the Debtor Professionals cannot exceed $500,000 in the aggregate. (Interim Order ___ 6(a), 9(a)). The amounts of the carve-outs are the result of vigorous negotiations with the Supporting Noteholders, and were the best achievable under the circumstances.

g. Local Rule 4001-2(a)(i)(G) requires the disclosure of any provision that primes any secured lien without the consent of the lienor. The Interim Order includes no such provisions.

IV. BASIS FOR RELIEF REQUESTED

A. Authority to Use Cash Collateral and Provide Adequate Protection

20. Section 363(c)(2) of the Bankruptcy Code provides that a debtor may not use, sell or lease cash collateral unless "(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2). The Supporting Noteholders have consented to the Debtor's use of Cash Collateral, subject to the terms set forth in the proposed Interim Order.

21. Section 363(e) of the Bankruptcy Code provides that "on request of an entity that has an interest in property . . . to be used, sold or leased, by the trustee, the court . . . shall prohibit or condition such use, sale or lease as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e). Although the Bankruptcy Code does not define "adequate protection," section 361 of the Bankruptcy Code sets forth a non-exclusive list of examples as to how adequate protection may be provided, including cash payments and replacement liens. *See Resolution Trust Corp. v. Swedeland Dev. Group, Inc. (In re Swedeland Dev. Group, Inc.)*, 16 F.3d 552, 564 (3d Cir. 1994); In re Beker Indus. Corp., 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986). The determination of what constitutes adequate protection is made on a case-by-case basis. *See Swedeland,* 16 F.3d at 564. The purpose of adequate protection is to preserve a secured creditor's position and to protect the secured creditor from diminution of the value of its interest in collateral during the bankruptcy process. *See Beker Indus.*, 58 B.R. at 736; *see also In re Ledgmere Land Corp.*, 116 B.R. 338, 343 (Bankr. D. Mass. 1990).

22. In order to protect the Prepetition Secured Parties from any diminution in value of their interests in the Cash Collateral during the pendency of the Debtor's chapter 11 case and avoid needless litigation with the Prepetition Secured Parties, the Debtor has agreed to provide to the Prepetition Secured Parties the Proposed Adequate Protection.

23. The Supporting Noteholders have consented to the Proposed Adequate Protection as set forth in the Interim Order. The Proposed Adequate Protection is justified in order to

protect the Prepetition Secured Parties from any diminution in value of the their interest in the Cash Collateral resulting of the use of the Cash Collateral, the Carve Out, and the imposition of the automatic stay. The Proposed Adequate Protection will sufficiently protect the Prepetition Secured Parties' interests in the Prepetition Collateral.

24. Furthermore, as reflected in the Approved Budget, the Debtor needs the liquidity from the use of the Cash Collateral, which it expects to generate in order to conduct its postpetition operations, including conducting the Sale Process, in a manner that minimizes disruption, while maximizing the value of its assets. Without the use of Cash Collateral, the Debtor will not be able to pay its direct operating expenses, with devastating effects to its restructuring efforts.

25. The Debtor submits that the terms of the use of Cash Collateral are fair and reasonable, and have been negotiated by the parties in good faith and at arms' length. Accordingly, the Court should approve the Debtor's use of the Cash Collateral pursuant to the terms set forth in the Interim Order.

B. Interim Relief Should be Granted

26. Bankruptcy Rule 4001(b) provides that a final hearing on a motion for authorization to use cash collateral may not be commenced earlier than 14 days after service of the motion. Upon request, however, the court may conduct a preliminary expedited hearing before such 14-day period expires and may authorize the use of cash collateral to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

27. Pursuant to Bankruptcy Rule 4001(b), the Debtor requests that the Court conduct an expedited preliminary hearing on this motion and: (a) authorize the Debtor to use the Cash Collateral of the Prepetition Secured Parties in order to (i) maintain and finance the ongoing operations of the Debtor and (ii) avoid immediate and irreparable harm and prejudice to the Debtor's estate and all parties in interest; and (b) schedule a Final Hearing.

28. The Debtor will be immediately and irreparably harmed absent authorization from the Court to use Cash Collateral on an interim basis pending a Final Hearing. It is critical that the

Debtor maintains the confidence of employees, suppliers and customers, and to meet its obligations while it conducts an orderly Sale Process and successfully restructures its business. Continued cash availability is essential to the Debtor's ability to achieve these goals. The denial of use of Cash Collateral for these purposes would result in the immediate shut-down of the Debtor's operations, and would have a destructive effect on the value of the Debtor's assets which, at that point, could only be sold at fire sale prices, if at all.

29. Accordingly, this Court should enter an order authorizing the Debtor's use of Cash Collateral pursuant to the terms set forth in the proposed Interim Order pending the Final Hearing and schedule the Final Hearing pursuant to Bankruptcy Rule 4001.

V. NO PRIOR REQUEST

30. No previous request for the relief sought herein has been made by the Debtor to this or any other court.

VI. NOTICE WITH RESPECT TO INTERIM HEARING

31. Notice of this Application has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) counsel to any known secured creditors of record; (c) _____, Attn: _____ (_____@_____.com), as counsel to the Indenture Trustee; (d) _____, Attn: _____ (_____@_____.com), as counsel to the Supporting Noteholders; (e) the creditors holding the twenty (20) largest unsecured claims against the Debtor, or their legal counsel (if known); and (f) the Internal Revenue Service (collectively, the "Notice Parties"). The Debtor submits that, under the circumstances, no other or further notice is required.

VII. NOTICE WITH RESPECT TO FINAL HEARING

32. No trustee, examiner or statutory committee has yet been appointed in these chapter 11 cases. Pursuant to Bankruptcy Rule 4001, the Debtor respectfully request that the Court authorize it to provide notice of the Final Hearing, on or before _____, by serving a notice of the Interim Order and the proposed Final Order by first-class mail (or for those set up to receive electronic transmissions, by electronic transmission), on: (a) the Notice Parties; (b)

counsel to a creditors' committee, if appointed; and (c) persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure.

VIII. CONCLUSION

WHEREFORE, the Debtor requests entry of the annexed Interim Order and, after the Final Hearing, the Final Order, granting the relief requested herein and such other and further relief as it deems just and proper.

Dated: _____
Wilmington, Delaware

[LAW FIRM]

_____
Attorney (Bar No. ____)
Address
City, State Zip Code
Phone: (###) ###-####
Fax: (###) ###-####
E-mail: _____

Proposed Counsel for Debtor and Debtor in Possession

4834-8236-2965

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
ABC, LLC,	Case No. 11-12590 (MFW)
Debtor.	

INTERIM ORDER (I) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE, (II) PROVIDING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES PURSUANT TO SECTIONS 105, 361, 362, 363 AND 507 OF THE BANKRUPTCY CODE, (III) MODIFYING THE AUTOMATIC STAY, AND (IV) SCHEDULING A FINAL HEARING

Upon the motion (the "Motion"), dated _____, of ABC, LLC ("ABC"), as debtor and debtor in possession (the "Debtor"), for interim and final orders authorizing it to, among other things, (i) use Cash Collateral (as defined below) pursuant to section 363 of title 11 of the United States Code (the "Bankruptcy Code"), and (ii) provide adequate protection including modification of the automatic stay pursuant to Bankruptcy Code sections 105(a), 361, 362, 363, and 507; rules 2002, 4001, 6004(h), 7062, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); and local rules 4001-2 and 2002-1(b) of the Delaware Local Rules of Bankruptcy Procedure (the "Delaware Rules"), and having sought the following relief:

(a) This Court's authorization, pursuant to Bankruptcy Code section 363, to use Cash Collateral (which Cash Collateral shall be used only in accordance with the budget, which budget shall be acceptable to the Requisite Supporting Noteholders (as defined herein) in their sole discretion and subject only to the Permitted Variances (as defined herein), annexed hereto as Exhibit 1 (as such budget may be extended, varied, supplemented, or otherwise modified in

accordance with the provisions of this Interim Order (defined below) or the Final Order (defined below), the "Approved Budget"), which Approved Budget shall be deemed increased, to the extent such amounts are not already reflected in the Approved Budget, by (i) the fees and expenses provided for in paragraph 7(a), (ii) the fees and expenses of the Committee up to the Committee Professional Fee Cap, and (iii) the amount of severance and employee benefits payable with respect to terminated employees, as contemplated by footnote 6 of the Term Sheet (as defined and incorporated in the RSA (as defined below)), provided that to the extent payments are made as set forth in subparagraph (iii), the Wind-Down Budget (as defined in the Noteholder APA (as defined in the RSA)) shall be reduced accordingly), and provide certain adequate protection to the Prepetition Secured Parties (as defined below) against the diminution in the value of their interest in the Prepetition Collateral, the use, sale or lease of the Prepetition Collateral and/or the imposition of the automatic stay pursuant to Bankruptcy Code section 362; and

(b) This Court's approval pursuant to Bankruptcy Code sections 105, 361, 362, 363 and 507 of the form and manner of adequate protection being granted to the Prepetition Secured Parties who have been granted prepetition liens and security interests under the following documents (collectively, the "Prepetition Loan Documents"):

(i) The Indenture dated as of April 26, 2010 (as amended, restated, supplemented or otherwise modified from time to time, the "Indenture"), among ABC as issuer, _____ as trustee (the "Indenture Trustee"), and the guarantors from time to time party thereto, pursuant to which ABC incurred indebtedness to certain holders (the "Noteholders" and collectively with the Indenture Trustee, the "Prepetition Secured Parties") for certain notes issued in an initial aggregate principal amount at maturity of $_____ million (the "Notes");

(ii) The Pledge and Security Agreement, dated as of _____ (as the same may have been amended, supplemented, or modified from time to time, the "Security Agreement"), among ABC, LLC, the other grantors party thereto as grantors, and the Indenture Trustee, in its capacity as collateral agent; and

(iii) The Collateral Trust Agreement, dated as of _____ (as the same may have been amended and supplemented, or modified from time to time), among ABC, LLC, the guarantors from time to time party thereto, and the Indenture Trustee.

(c) This Court's scheduling an interim hearing (the "Interim Hearing") pursuant to Bankruptcy Rule 4001(a), (b) and (d) and Delaware Rule 4001-2 to consider the entry of an interim order in the form hereof (this "Interim Order") which, among other things, authorizes the use of Cash Collateral and grants adequate protection to the Prepetition Secured Parties, as provided in this Interim Order;

(d) This Court's modification of the automatic stay imposed by Bankruptcy Code section 362 to the extent necessary to implement and effectuate the terms of this Interim Order;

(e) This Court's scheduling, pursuant to Bankruptcy Rule 4001(a), (b) and (d), a hearing (the "Final Hearing") to consider entry of a final order (the "Final Order") which, among other things, grants, on a final basis, authorization for the Debtor to use the Cash Collateral and adequate protection to the Prepetition Secured Parties as provided in the Final Order;

(f) This Court's finding, pursuant to Bankruptcy Rules 2002 and 4001(b)(1), and the Delaware Rule 4001-2 and 2002-1(b) that notice of the Interim Hearing is sufficient having been given to (i) the Office of the United States Trustee (the "U.S. Trustee"), (ii) counsel to any known secured creditors of record, (iii) counsel to the Indenture Trustee, (iv) the twenty (20) largest unsecured creditors of the Debtor, (v) counsel to the Supporting Noteholders, (vi) any known party asserting a Lien against any of the Debtor's assets, and (vii) the Internal Revenue Service (collectively, the "Notice Parties"); and such notice being sufficient and adequate, and no other or further notice being required; and

The Interim Hearing having been held on _____; and based upon all of the pleadings filed with this Court, the evidence presented at the Interim Hearing and the entire record herein; and this Court having heard and resolved or overruled all objections to the interim relief requested in the Motion; and this Court having noted the appearances of all parties in interest; and it appearing that the relief requested in the Motion, as modified herein on an interim

basis, is necessary to avoid immediate and irreparable harm to the Debtor's estate prior to a final hearing, and otherwise is fair and reasonable, and in the best interests of the Debtor, its estate, and its creditors; and after due deliberation and consideration, and sufficient cause appearing therefor:

BASED ON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. Disposition. The Motion is granted on an interim basis in accordance with the terms of this Interim Order. Any objections to the Motion with respect to the entry of the Interim Order that have not been withdrawn, waived or settled, and all reservation of rights included therein, are hereby denied and overruled.

B. Petition Date. On _____ (the "Petition Date"), the Debtor commenced its chapter 11 case (the "Chapter 11 Case") by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is operating its business and managing its affairs as a debtor in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No trustee, examiner or committee has been appointed in the Chapter 11 Case.

C. Jurisdiction; Venue. This Court has jurisdiction over the Chapter 11 Case, the parties, and the Debtor's property pursuant to 28 U.S.C. §§157(b)(2)(D) and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(D). Venue for the Chapter 11 Case and the Motion is proper under 28 U.S.C. §§ 1408 and 1409.

D. Statutory Committee. As of the date herein, the Office of the United States Trustee has not appointed an official committee of unsecured creditors (the "Committee") or any other official committee pursuant to Bankruptcy Code section 1102.

E. Prepetition Liens. To secure the Indenture Obligations (as defined below) under the Indenture, the Debtor granted the Indenture Trustee, on behalf of the Noteholders, valid first priority liens (the "Prepetition Liens") upon and in substantially all of the Debtor's assets, and all proceeds and products of such assets (the "Prepetition Collateral").

F. Debtor's Stipulations. Subject to paragraph 10(a) of this Interim Order, and after consultation with its attorneys and financial advisors, the Debtor acknowledges, admits, represents, stipulates, and agrees that:

(i) **Prepetition Indebtedness:**

(a) As of the Petition Date, the Debtor was liable to the Prepetition Secured Parties in respect of obligations under the Indenture for (i) the aggregate principal amount of not less than $165 million on account of outstanding notes under the Indenture (plus accrued and unpaid interest thereon) and (ii) unpaid fees, expenses, disbursements, indemnifications, obligations, and charges or claims of whatever nature, whether or not contingent, whenever arising, due or owing under the Prepetition Loan Documents or applicable law (collectively, the "Indenture Obligations").

(b) As of the Petition Date, all of the Indenture Obligations are unconditionally due and owing by ABC to the Prepetition Secured Parties.

(c) As of the Petition Date, all claims in respect of the Indenture Obligations (i) constitute legal, valid, binding and nonavoidable obligations of the Debtor and (ii) are not, and shall not be, subject to any avoidance, disallowance, disgorgement, reductions, setoff, offset, recharacterization, subordination (whether equitable, contractual or otherwise), counterclaims, cross-claims, defenses or any other challenges of any kind or nature under the Bankruptcy Code or any other applicable law or regulation.

(ii) The Prepetition Liens (i) constitute valid, binding, enforceable, nonavoidable, and properly perfected liens on the Prepetition Collateral that, prior to the entry of this Interim Order, were senior in priority over any and all other liens on the Prepetition Collateral, subject only to those liens explicitly permitted by the Prepetition Loan Documents (to the extent any such Permitted Liens were valid, properly perfected, non-avoidable liens senior in priority to the Prepetition Liens on the Petition Date) (the "Permitted Priority Liens"), if any; (ii) shall not be subject to avoidance, reductions, recharacterization, subordination (whether equitable, contractual or otherwise), counterclaims, cross-claims, defenses or any other

challenges under the Bankruptcy Code or any other applicable law or regulation; and (iii) are subject and subordinate only to (a) the Carve-Out (as defined below) and (b) Permitted Priority Liens, if any.

(iii) None of the Prepetition Secured Parties are or shall be deemed to be control persons or insiders of the Debtor by virtue of any of the actions taken by such parties in respect of or in connection with the Indenture Obligations or the Prepetition Loan Documents.

(iv) As of the Petition Date, the Debtor has not brought, is not aware of, and has no claims, objections, challenges, causes of action, including without limitation, avoidance claims under chapter 5 of the Bankruptcy Code against the Prepetition Secured Parties or the Released Parties (as defined below) arising out of or related to the Indenture Obligations or the Prepetition Loan Documents.

(v) As of the Petition Date, there were no other perfected liens on or security interests in the Prepetition Collateral except for the Prepetition Liens and the Permitted Priority Liens.

G. Cash Collateral. For purposes of this Interim Order, the term "Cash Collateral" shall mean and include all "cash collateral," as defined in Bankruptcy Code section 363, in which the Prepetition Secured Parties have a lien, security interest or other interest (including, without limitation, any adequate protection liens or security interests), in each case whether existing on the Petition Date, arising pursuant to this Interim Order, or otherwise. The Debtor represents and stipulates that all of the Debtor's cash, cash equivalents, negotiable instruments, investment property and securities, including the cash, cash equivalents, negotiable instruments, investment property and securities in its deposit accounts, wherever located constitute the Cash Collateral (or part of the Prepetition Collateral) of the Prepetition Secured Parties.

H. Use of Cash Collateral. The Debtor has an immediate and critical need to use the Cash Collateral to operate its businesses and effectuate a reorganization of its business, which will be used in accordance with the terms of this Interim Order and subject to the Approved Budget. Without the use of Cash Collateral, the Debtor will not have sufficient liquidity to be

able to continue to operate its business. The adequate protection provided herein and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code and are necessary in order to obtain such consent or nonobjection of certain parties and to adequately protect the consenting and non-consenting parties' interests in the Prepetition Collateral. Absent authorization to immediately use Cash Collateral, the Debtor's estate and its creditors would suffer immediate and irreparable harm.

I. Sections 506(c) and 552(b). In light of the Indenture Trustee's and the Noteholders' agreement to subordinate their liens and claims to the Carve-Out, to permit the use of the Prepetition Collateral and to permit the use of their Cash Collateral for payments made in accordance with the Approved Budget and the terms of this Interim Order, subject to entry of a Final Order, each of the Indenture Trustee and the Noteholders are entitled to (a) a waiver of any "equities of the case" claims under Bankruptcy Code section 552(b) and (b) a waiver of the provisions of Bankruptcy Code section 506(c).

J. Good Cause. Good cause has been shown for entry of this Interim Order. The Debtor has an immediate and critical need to use Cash Collateral in order to continue to operate its businesses in the ordinary course in accordance with the Approved Budget, cash collateralize issued and outstanding letters of credit, preserve the value of the Debtor's business, and effectuate a reorganization of its business. The Debtor's use of Cash Collateral has been deemed sufficient to meet the Debtor's immediate postpetition liquidity needs, subject to the terms of this Interim Order and the Approved Budget. Good, adequate and sufficient cause has, therefore, been shown for the immediate grant of the relief sought in the Motion, as modified herein.

K. Consent to Use of Cash Collateral. The Indenture Trustee and the Noteholders represented by _____ (the "Supporting Noteholders") have consented to the Debtor's use of Cash Collateral solely on the terms and conditions set forth in this Interim Order, and in accordance with the Approved Budget.

L. Restructuring Support Agreement. The Debtor and the Supporting Noteholders have entered into that certain Restructuring Support Agreement (the "RSA"), which contains the

parties' agreements and undertakings with respect to the Debtor's restructuring.

M. Good Faith. Based on the record before the Court, the terms of the use of the Cash Collateral as provided in this Interim Order are fair, reasonable, are the best available under the circumstances, have been fully disclosed, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, have been negotiated at arms' length and in good faith and are in the best interests of the Debtor, its estate and its creditors.

N. Immediate Entry of Interim Order. The Debtor has requested immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2). The Motion and this Interim Order comply with Delaware Rule 4001-2. The permission granted herein to use Cash Collateral is necessary to avoid immediate and irreparable harm to the Debtor. This Court concludes that entry of this Interim Order is in the best interests of the Debtor's estate and creditors as its implementation will, among other things, allow for access to the liquidity necessary for the continued flow of supplies and services to the Debtor necessary to sustain the operation of the Debtor's existing business and further enhance the Debtor's prospects for a successful restructuring. Based upon the foregoing findings, acknowledgements, and conclusions, and upon the record made before this Court at the Interim Hearing, and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED:

1. Motion Granted. The Motion is granted on an interim basis, subject to the terms set forth herein. Any objections to the Motion that have not previously been withdrawn or resolved are hereby overruled on their merits. This Interim Order shall be valid, binding on all parties in interest, and fully effective immediately upon entry notwithstanding the possible application of Bankruptcy Rules 6004(h), 7062, and 9014.

2. Authorization to Use Cash Collateral. Subject to the terms of this Interim Order, upon entry of this Interim Order, the Debtor is authorized to use Cash Collateral in which the Prepetition Secured Parties may have an interest, in accordance with the terms, conditions, and limitations set forth in this Interim Order and the Approved Budget (including any Permitted

Variances), and amounts necessary to fund the Utility Deposit Account (as such term is defined in the Debtor's Motion for Order Under Section 366 of the Bankruptcy Code (A) Prohibiting Utility Providers from Altering, Refusing or Discontinuing Service; (B) Deeming Utilities Adequately Assured of Future Performance; and (C) Establishing Procedures for Determining Adequate Assurance of Payment (the "Utility Motion")) not to exceed $_____. Any dispute in connection with the use of Cash Collateral shall be heard by this Court.

3. Supplemental Approved Budget.

(a) Not later than one month prior to the expiration of the Approved Budget, the Debtor shall provide counsel to the Indenture Trustee and counsel to the Supporting Noteholders an updated budget for an additional 13-week period in substantially the same format as Exhibit 1, which, upon acceptance by the Requisite Supporting Noteholders (as defined in the RSA) in their sole discretion (provided that the Requisite Supporting Noteholders shall accept a reasonable updated budget solely to the extent and for the period contemplated by section 2(a)(ii) of the RSA), shall become the Approved Budget for such period for purposes of this Interim Order (each, a "Supplemental Approved Budget"); provided, however, that a Supplemental Approved Budget may otherwise be proposed and accepted in the sole discretion of the Requisite Supporting Noteholders at any time. In the event the Debtor and the Requisite Supporting Noteholders, fail to agree on a Supplemental Approved Budget, the Debtor's right to use Cash Collateral shall terminate in accordance with paragraph 5(a)(ii) herein.

(b) The Prepetition Secured Parties shall have no obligation with respect to the Debtor's use of the Collateral (as defined below), Prepetition Collateral or Cash Collateral, and shall not be obligated to ensure or monitor the Debtor's compliance with the Approved Budget or to pay (directly or indirectly from their Collateral or Prepetition Collateral) any expenses incurred or authorized to be incurred pursuant to the Approved Budget. Cash Collateral used under this Interim Order shall only be used by the Debtor in accordance with the Approved Budget and this Interim Order. Subject to the Carve-Out, the Prepetition Secured Parties' consent to the Approved Budget shall not be construed as consent to the use of any Cash Collateral

beyond the Termination Date, regardless of whether the aggregate funds shown on the Approved Budget have been expended.

4. Permitted Variance. Notwithstanding the Approved Budget, so long as no Termination Event has occurred, the Debtors shall be authorized to use Cash Collateral with respect to any one line item in the Approved Budget, in an amount that would not cause the Debtor to use Cash Collateral in an amount greater than one-hundred ten percent (110%) of the Approved Budget with respect to such line item measured on a four-week rolling basis; provided, however, that in no event shall the collective variances to the Approved Budget cause the Debtor to use Cash Collateral in an amount greater than one hundred percent (100%) of the Approved Budget for such applicable period (a "Permitted Variance"). If the aggregate amount of Cash Collateral actually used by the Debtors, measured on a four-week rolling basis, is less than the aggregate amount of Cash Collateral available for use by the Debtor in the Approved Budget during such period, then the Debtor may carry over any such unused amount to future periods in the Approved Budget and allocate such unused amounts to any line item in the Approved Budget; provided, however, that in no event shall the Debtor use Cash Collateral in an amount greater than one hundred percent (100%) of the Approved Budget for that period of time from the Petition Date through the Monday of the preceding week.[1]

5. Termination of Cash Collateral Usage.

(a) Notwithstanding anything in this Interim Order to the contrary, the use of Cash Collateral authorized herein shall terminate without prior notice or order of the Court or any further action by the Prepetition Secured Parties, upon the occurrence of the "Termination Date." The Termination Date shall occur (notice of which shall be provided thereafter to the Debtor, the U.S. Trustee, and any official committee appointed in the case) on the earliest to occur of (each of the following, a "Termination Event"):

i. November 15, 2011, unless extended pursuant to the RSA;

[1] For the avoidance of doubt, the Debtor shall not be entitled to allocate such funds to Severance or Restructuring Professionals, as such terms are used on the attached Exhibit 1.

ii. Upon the expiration of the Approved Budget unless a

iii. Supplemental Approved Budget has been agreed upon by the Debtor and the Requisite Supporting Noteholders, in their sole discretion, provided, however, that the Requisite Supporting Noteholders shall accept a reasonable updated budget solely to the extent and for the period contemplated by section 2(a)(ii) of the RSA;

iv. The date of the Final Hearing (which date shall not be later than twenty-five (25) calendar days after the Petition Date) if a Final Order (provided that such Final Order has not been reversed, vacated, stayed, unless such stay has been vacated, or appealed, unless such appeal has been dismissed or otherwise finally resolved) authorizing the use of Cash Collateral, substantially in accordance with the terms of this Interim Order and otherwise reasonably acceptable to the Requisite Supporting Noteholders,[2] is not entered within twenty-five (25) calendar days of the Petition Date;

v. Five (5) business days after the date the Requisite Supporting Noteholders or the Indenture Trustee, at the direction of the Noteholders, provides the Debtor with written notice of the Debtor's failure to comply with any of the terms or conditions of this Interim Order;

vi. The date an application, motion or other pleading is filed by the Debtor seeking to amend, modify, supplement or extend this Interim Order without the prior written consent of the Requisite Supporting Noteholders; or the date of entry of any order reversing, amending, supplementing, staying, vacating or otherwise modifying this Interim Order without the prior written consent of the Requisite Supporting Noteholders;

vii. The date any material provision of this Interim Order shall for any reason cease to be valid and binding or the Debtor shall so assert in any pleading filed in any court;

viii. The date an application is filed by the Debtor for the approval of any superpriority claim or any lien in the Chapter 11 Case which is *pari passu* with or senior to the Adequate Protection Liens, Superpriority Claim, or Prepetition Liens without the prior written consent of the Indenture Trustee and the Requisite Supporting Noteholders;

[2] The budget attached to the Final Order shall be the Approved Budget, unless the Requisite Supporting Noteholders, in their sole discretion, agree otherwise.

ix. The effective date of any confirmed chapter 11 plan in the Chapter 11 Case;

x. Unless otherwise agreed in writing by the Requisite Supporting Noteholders, the date of the consummation of a sale or other disposition of all or substantially all of the assets of the Debtor;

xi. Unless otherwise agreed in writing by the Requisite Supporting Noteholders five (5) business days after a notice of the termination of the RSA;

xii. The date of the entry of an order granting relief from the automatic stay to the holder or holders of any security interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any asset of the Debtor with a value in excess of $1 million;

xiii. The date (a) the Chapter 11 Case shall be dismissed or converted to a case under chapter 7 of the Bankruptcy Code or the Debtor shall file a motion or other pleading seeking the dismissal or conversion of the Chapter 11 Case pursuant to Bankruptcy Code section 1112 or otherwise; or (b) a trustee or an examiner with expanded powers is appointed or elected in the Chapter 11 Case or the Debtor applies for, consents to, or acquiesces in, any such appointment without the prior written consent of the Requisite Supporting Noteholders;

xiv. The date of the commencement of any action by the Debtor against the Indenture Trustee or any of the Noteholders with respect to the Indenture Obligations or the Prepetition Liens; or

xv. The withdrawal, amendment, modification of, or filing of a pleading by the Debtor seeking to withdraw, amend or modify the proposed sale process and bidding procedures (as described in the sale motion filed on the first day of the Chapter 11 Case), in a manner not reasonably acceptable to the Requisite Supporting Noteholders.

(b) The Requisite Supporting Noteholders may waive the occurrence of the Termination Date. The Debtor's authority to use Cash Collateral shall automatically terminate upon the occurrence of the Termination Date, unless waived in writing by the Requisite Supporting Noteholders, all without further order or relief from the Court. Upon the occurrence of the Termination Date, all Adequate Protection Obligations (as defined below) shall be immediately due and payable, subject to prior provision for the Carve-Out, and the Prepetition

Secured Parties shall have all rights and remedies provided in this Interim Order and under applicable law. Notwithstanding anything herein or the occurrence of the Termination Date, all of the rights, remedies, benefits, and protections provided to the Prepetition Secured Parties under this Interim Order shall survive the Termination Date.

6. Restriction on Use of Cash Collateral.

(a) From and after the Petition Date, all proceeds of the Prepetition Collateral, including, without limitation, all of the Debtor's existing or future Cash Collateral, shall not, directly or indirectly, be used for any payments, expenses or disbursements of the Debtor except for (i) those payments, expenses and/or disbursement that are expressly permitted under this Interim Order or other order entered by this Court (entered pursuant to motions which are reasonably acceptable to the Requisite Supporting Noteholders and which orders shall be reasonably acceptable to the Requisite Supporting Noteholders) and in all cases which are consistent with the Approved Budget and amounts necessary to fund the Utility Deposit Account (as such term is defined in the Utility Motion) not to exceed $_____; (ii) compensation and reimbursement of fees and expenses payable pursuant to Bankruptcy Code sections 330 and 331 to professionals or professional firms retained by the Debtor pursuant to Bankruptcy Code sections 327, 328, 330, 331, or 503 (the "Debtor Professionals") and permitted or awarded pursuant to an order of this Court, subject to an aggregate cap of $_____ million, (the "Debtor Professional Fee Cap"); (iii) compensation and reimbursement of fees and expenses not to exceed $_____ (the "Committee Professional Fee Cap"),[3] which are payable pursuant to Bankruptcy Code sections 330 and 331 and payable to any attorneys, advisors, investment bankers and other professionals retained by the Committee (the "Committee Professionals") and permitted or awarded pursuant to an order of this Court, provided that if the payment of the fees and expenses of the Committee Professionals up to the Committee Professional Fee Cap causes the Debtor's expenditures to exceed amounts permitted by the Approved Budget, such excess

[3] For the avoidance of doubt, in no event shall the sum of fees and expenses paid to the Committee Professionals during the Chapter 11 Case before and, if applicable, after a Termination Date exceed the Committee Professional Fee Cap.

payments shall not constitute a Termination Event; and (iv) the payment of reasonable fees and expenses of the Indenture Trustee and the Supporting Noteholders, as provided for herein, including, but not limited to the reasonable fees and expenses of the Noteholder Professionals (as defined herein); provided, however, that the foregoing shall not be construed as consent to the allowance of any of the amounts referred to in the preceding clauses (ii) or (iii) and shall not affect the right of any party in interest to object to the allowance and payments of any such amounts.

(b) Subject to the Carve-Out and entry of a Final Order, no administrative expense claims, including fees and expenses of professionals, shall be charged or assessed against or recovered from the Prepetition Collateral or Collateral or attributed to the Prepetition Secured Parties with respect to their respective interests in the Prepetition Collateral or Collateral pursuant to the provisions of Bankruptcy Code section 506(c) or otherwise by, through, or on behalf of the Debtor, without the prior written consent of the affected Prepetition Secured Parties, and no such consent shall be implied from any action, inaction or acquiescence by, either with or without notice to, the Prepetition Secured Parties. Except as set forth herein, the Prepetition Secured Parties have not consented or agreed to the additional use of the Prepetition Collateral or the Collateral and nothing contained herein shall be deemed a consent by the Prepetition Secured Parties to any charge, lien, assessment or claim against the Prepetition Collateral or the Collateral. The Prepetition Secured Parties shall not be subject in any way whatsoever to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral or the Prepetition Collateral.

(c) Subject to paragraph 10(a) of this Interim Order, no Cash Collateral, Prepetition Collateral or proceeds thereof, or any portion of the Carve-Out may be used directly or indirectly by the Debtor, any official committee appointed in the case, including the Committee, and any trustee appointed in the Chapter 11 Case or any successor case, or any other person, party or entity to (i) investigate, object, contest, or raise any defense to the validity, perfection, priority, extent, or enforceability of the Indenture Obligations including the liens with

respect thereto or any action purporting to do any of the foregoing; (ii) investigate, assert or prosecute any Claims and Defenses (as defined below) against the Prepetition Secured Parties or their respective predecessors-in-interest, agents, affiliates, representatives, attorneys, or advisors or any action purporting to do the foregoing; (iii) prevent, hinder, or otherwise delay the Prepetition Secured Parties' assertion, enforcement, or realization on the Indenture Obligations, Cash Collateral, the Prepetition Liens, the Adequate Protection Obligations, or the Adequate Protection Liens in accordance with the Interim Order; (iv) seek to modify any of the rights granted to the Prepetition Secured Parties hereunder; (v) apply to the Court for authority to approve superpriority claims or grant liens in the Collateral or any portion thereof that are senior to, or on parity with, the Adequate Protection Liens, Superpriority Claims or Prepetition Liens, unless all Indenture Obligations under the Prepetition Loan Documents, this Interim Order and the Final Order have been refinanced or paid in full in cash or otherwise agreed to in writing by the Requisite Supporting Noteholders in their sole discretion; or (vi) seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments are agreed to in writing by the Requisite Supporting Noteholders or provided for by the Approved Budget; provided, however, that up to $_____ of Cash Collateral in the aggregate may be used to pay the allowed fees and expenses of counsel retained by the Committee incurred directly in connection with investigating, but not preparing, initiating or prosecuting, any Claims and Defenses against the Prepetition Secured Parties or with regard to the Indenture Obligations or Prepetition Liens.

7. Adequate Protection. The Prepetition Secured Parties are entitled, pursuant to Bankruptcy Code sections 361 and 363(c) and (e) to adequate protection of their interests in the respective Prepetition Collateral, including Cash Collateral, equal to the aggregate diminution in value of the Prepetition Secured Parties' interests in the Prepetition Collateral (the "Adequate Protection Obligations"). As such, the Indenture Trustee, for the benefit of itself and the Noteholders, is entitled to receive adequate protection to the extent of any diminution in value of their interest in the Prepetition Collateral (including the Cash Collateral) resulting from the use of Cash Collateral, the use, sale or lease of Prepetition Collateral, the subordination of the

Prepetition Liens to the Carve-Out, as described herein, or the imposition of the automatic stay (collectively, the "Diminution in Value") pursuant to Bankruptcy Code sections 361, 362 and 363. Accordingly, the Prepetition Secured Parties are hereby provided with the following forms of adequate protection:

(a) Fees and Expenses. The Debtor is authorized and directed to pay, when due and payable and without regard to whether such fees and expenses were incurred prepetition or postpetition, the reasonable fees and expenses incurred by: (i) the Supporting Noteholders (with respect to expenses only, not including advisors unless otherwise set forth herein); (ii) _____, as counsel to the Supporting Noteholders; (iii) _____, as local counsel to the Supporting Noteholders; (iv) _____, as financial advisor to the Supporting Noteholders; (v) the Indenture Trustee; (vi) _____ as counsel to the Indenture Trustee, (vii) such local counsel as the Indenture Trustee may retain; and (viii) such other professionals and/or consultants retained by the Supporting Noteholders and the Indenture Trustee (each of the professionals in (ii) through (viii) being the "Noteholder Professionals"), in each case including, without limitation, in connection with protecting the rights and interests of the Supporting Noteholders and the Indenture Trustee in connection with the Chapter 11 Case and in connection with any and all actions related to the sales process, provided that if the payment of such aggregate reasonable fees and expenses of the Noteholder Professionals causes the Debtor's expenditures to exceed amounts permitted by the Approved Budget, such excess payments shall not constitute a Termination Event. After delivery of a statement of fees and expenses (redacted for privilege) the Debtor is authorized and directed to pay all fees, costs, and expenses in accordance with the terms of this Interim Order, without the Supporting Noteholders or the Indenture Trustee having to file any further application with this Court for approval or payment of such fees, costs or expenses. Any such fees, costs and expenses incurred by the Noteholder Professionals shall be paid within five (5) business days of delivery of an invoice to the Debtor. All amounts paid as adequate protection are deemed permitted uses of Cash Collateral.

(b) Cash Payment. Not later than two (2) business days following the entry of this Interim Order, the Debtor shall pay to the Indenture Trustee, for the benefit of the Noteholders, Cash Collateral in the amount of $_____ million, which funds shall reduce the total allowed claim of the Indenture Trustee.

(c) Adequate Protection Liens and Adequate Protection Superpriority Claim for Prepetition Secured Parties. Subject to the Carve-Out, the Indenture Trustee, for the benefit of the Noteholders, is hereby granted: (i) valid, enforceable, nonavoidable and fully perfected, first-priority postpetition security interests in and liens (effective and perfected upon the date of entry of this Interim Order and without the necessity of execution by the Debtor of mortgages, security agreements, pledge agreements, financing statements, and other agreements or instruments) (the "Adequate Protection Liens") on all of the Collateral; and (ii) first-priority superpriority administrative expense claims under Bankruptcy Code section 507(b) (the "Superpriority Claim") with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry of a Final Order), 507(a), 507(b), 546(c), 546(d), 552 (subject to entry of a Final Order), 726 (to the extent permitted by law), 1113 and 1114, whether or not such expenses or claims arise in the Chapter 11 Case or in any subsequent case or proceedings under the Bankruptcy Code that may result therefrom, to secure in each case an amount equal to the aggregate Diminution in Value (which shall be calculated in accordance with Bankruptcy Code section 506(a)) in the interests of the Indenture Trustee and the Noteholders in the Prepetition Collateral (including the Cash Collateral) including, without limitation, any such diminution in value resulting from (a) depreciation, physical deterioration, use, sale, loss or decline in market value of the Prepetition Collateral; (b) the Carve-Out; or (c) imposition of the automatic stay under section 362 of the Bankruptcy Code or otherwise. For purposes of this Interim Order, the term "Collateral" shall include, without limitation, any and all prepetition and postpetition property, assets and interests

in property and assets of the Debtor (or any successor trustee or other estate representative in the Chapter 11 Case or successor case), and all "property of the estate" (within the meaning of the Bankruptcy Code) of the Debtor (or any successor trustee or other estate representative in the chapter 11 case or successor case), of any kind or nature whatsoever, real or personal, tangible or intangible or mixed now existing or hereafter acquired or created, whether existing prior to the Petition Date or arising after the Petition Date, including, without limitation, all accounts, inventory, contracts, investment property, instruments, documents, chattel paper, patents, trademarks, copyrights, licenses, general intangibles, payment intangibles, machinery and equipment, real property (including all facilities), capital stock of each subsidiary of the Debtor, deposit accounts, commercial tort claims and other causes of action, Cash Collateral, proceeds of the Avoidance Actions (subject to the entry of a Final Order) and all proceeds of any of the collateral described above. The Adequate Protection Liens and Superpriority Claim shall be subject and subordinate only to: (i) the Permitted Priority Liens, and (ii) solely upon the occurrence of the Termination Date, payment of the Carve-Out in accordance with the terms and conditions set forth in this Interim Order. For the avoidance of doubt, the use of Cash Collateral, for any purpose, shall constitute a Diminution in Value of the Prepetition Secured Parties' Collateral, and shall entitle the Prepetition Secured Parties to dollar-for-dollar Adequate Protection Liens in accordance with the terms of this Interim Order. Nothing herein shall impair or modify the application Bankruptcy Code section 507(b) in the event that the adequate protection provided to the Indenture Trustee or the Noteholders hereunder is insufficient to compensate for any Diminution in Value of their interests in the Prepetition Collateral during the Chapter 11 Case or any successor case.

8. Additional Reporting Obligations. The Debtor shall prepare and furnish to counsel to the Indenture Trustee and counsel to the Supporting Noteholders, in form and substance reasonably acceptable to the Indenture Trustee and the Requisite Supporting Noteholders, a weekly report of receipts, disbursements, and a reconciliation of actual receipts and disbursements with those set forth in the Approved Budget, on a line-by-line basis showing

any percentage variance to the proposed corresponding line item of the Approved Budget (i) for such weekly period and (ii) on a cumulative basis for the period of the Approved Budget or such other budget period, as applicable, and showing a calculation of the covenants and the Debtor's compliance or noncompliance, which shall be certified by the chief financial officer or chief executive officer (the "Budget Reconciliation"). Beginning on _____ and every week thereafter, the Debtor shall also provide counsel to the Indenture Trustee and counsel to the Supporting Noteholders with (a) a list of any and all prepetition claims paid during the preceding week, each with a notation regarding which order authorized such payments, and (b) the cumulative total of all prepetition claims paid, each with a notation regarding which order authorized such payments (the "Other Reporting Obligations"). Such Budget Reconciliation and Other Reporting shall be provided to counsel to the Indenture Trustee and counsel to the Supporting Noteholders so as actually to be received within three (3) business days following the end of the week. The Debtor and its professionals shall make themselves available to discuss the Budget Reconciliation and any other weekly reports provided pursuant to this Interim Order with the professionals retained by the Supporting Noteholders on a weekly basis and/or on such other basis as may be reasonably requested by the Supporting Noteholders and its professionals. The Debtor shall also provide such other financial and other reporting information as may be reasonably requested by the Indenture Trustee or the Supporting Noteholders.

9. Carve-Out.

(a) As used in this Interim Order, "Carve-Out" means: (i) the unpaid fees of the Clerk of the Bankruptcy Court and the U.S. Trustee pursuant to 28 U.S.C. §1930(a)(6); (ii) fees in an amount not to exceed the Debtor Professional Fee Cap and the Committee Professional Fee Cap less any amount already paid to the Debtor Professionals and the Committee Professionals, respectively, to the extent allowed at any time by the Bankruptcy Court, whether by interim order, procedural order or otherwise, all unpaid fees, disbursements, costs and expenses incurred by the Debtor Professionals or Committee Professionals, which are incurred prior to the Termination Date; and (iii) fees and expenses of the Debtor Professionals in an

aggregate amount not to exceed $_____ (the "Termination Carve-Out"), which are incurred on and after the Termination Date, provided such fees and expenses (in the aggregate) are ultimately allowed by the Bankruptcy Court, each subject to the rights of any party in interest to object to the allowance of any such fees and expenses.[4] For the avoidance of doubt, and without limiting the foregoing, so long as the Termination Date shall not have occurred, (A) the Debtor is authorized, subject to applicable court orders, to pay any expense that falls within the Carve-Out; and (B) Cash Collateral may be used for (i) payment of fees and expenses of the Debtor Professionals and the Committee Professionals up to the Debtor Professional Fee Cap and the Committee Professional Fee Cap, respectively, each as allowed and payable under Bankruptcy Code sections 330 and 331 and (ii) payments contemplated to be made pursuant to "first day" orders pursuant to "first day" motions in form and substance reasonably acceptable to the Requisite Supporting Noteholders and payments otherwise agreed to by the Requisite Supporting Noteholders, provided, however, that in each case such payments shall be in accordance with the Approved Budget or otherwise in accordance with this Interim Order.

(b) No liens, claims, interests or priority status, other than the Carve-Out and the Permitted Priority Liens, having a lien or administrative priority superior to or *pari passu* with that of the Prepetition Liens, the Superpriority Claims or Adequate Protection Liens granted by this Interim Order, shall be granted while any portion of the Indenture Obligations remain outstanding or in effect without the prior written consent of the Requisite Supporting Noteholders.

(c) If (i) no Termination Event occurs (other than as described in subparagraph (ii) of this paragraph 9(c)), or (ii) there is a Termination Event pursuant to

[4] For the avoidance of doubt, in no event shall the amount of fees, disbursements, costs and expenses paid (a) to the Professionals prior to a Termination Date, plus the amount paid pursuant to the Termination Carve-Out exceed the aggregate of the Debtor Professional Fee Cap and the Committee Professional Fee Cap; (b) to the Debtor Professionals prior to a Termination Date, plus the amount paid to debtor Professionals pursuant to the Termination Carve-Out exceed the Debtor Professional fee Cap; or (c) to the Committee Professionals prior to a Termination Date, plus the amount paid to Committee Professionals pursuant to the Termination Carve-Out exceed the Committee Professional Fee Cap.

paragraph 5(a)(i), (ii), (viii) or (ix), then, notwithstanding anything else herein to the contrary, the liens and claims of the Noteholders (including, without limitation, the Adequate Protection Liens) shall be subordinated to the Wind-Down Budget (as defined in the Noteholder APA), and the Debtor shall be authorized and entitled to disburse the Wind-Down Budget for the purposes thereof from and after the closing of the asset sales as contemplated by the RSA.

10. Investigation Period.

(a) The Adequate Protection Liens, the Superpriority Claims, and the Prepetition Liens shall be senior to, and no Collateral or Prepetition Collateral may be used to pay, any claims for services rendered by any of the professionals retained by the Debtor (or any successor trustee or other estate representative in the Chapter 11 Case or any successor case), any creditor or party in interest, any Committee or any other party in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, investigation, objection, defense or other contested matter against the Prepetition Secured Parties in connection with (i) invalidating, setting aside, avoiding, subordinating, recharacterizing, or challenging, in whole or in part, any claims or liens arising under or with respect to the Prepetition Loan Documents, the Indenture Obligations, the Prepetition Liens, the Collateral, or the Prepetition Collateral, or (ii) preventing, hindering, or delaying, whether directly or indirectly, the Prepetition Secured Parties' assertions or enforcement of their liens, security interests, or realization upon any of the Collateral or the Prepetition Collateral. Notwithstanding anything herein to the contrary, the Committee shall have sixty (60) days after formation of the Committee, and parties in interest shall have seventy-five (75) days after entry of this Interim Order (or any subsequent date that may be agreed to in writing by the Requisite Supporting Noteholders and the Indenture Trustee, each in its sole discretion) (the "Investigation Termination Date") to investigate the validity, perfection, enforceability, and extent of the Indenture Obligations and Prepetition Liens and any potential claims of the Debtor or its estate against the Prepetition Secured Parties in respect of the Indenture Obligations and Prepetition Lender Liens, "lender liability" claims and causes of action, any actions, claims or defenses

under chapter 5 of the Bankruptcy Code or any other claims and causes of action (all such claims, defenses and other actions described in this paragraph are collectively defined as the "Claims and Defenses").

(b) Any challenge to the Indenture Obligations or Prepetition Liens or the assertion of any other claims or causes of action of the Debtor or its estates against the Prepetition Secured Parties must be made by a party in interest with standing who timely and properly commences an adversary proceeding on or before the Investigation Termination Date. If no such action is properly filed on or before the Investigation Termination Date, all holders of claims and interests as well as other parties in interest shall be forever barred from bringing or taking any such action, and the Debtor's stipulations made herein and the release set forth in this Interim Order shall be binding on all parties in interest. If such an action is timely and properly brought, any claim or action that is not brought shall be forever barred. In the event of a timely and successful challenge by plaintiff in such an action, this Court shall fashion the appropriate remedy with respect to the Prepetition Secured Parties after hearing from all parties.

(c) Nothing in this Interim Order vests or confers on any Committee or any other party standing or authority to bring, assert, commence, continue, prosecute, or litigate any cause of action belonging to the Debtor or its estate, including, without limitation, the Claims and Defenses with respect to the Prepetition Loan Documents, the Prepetition Liens or the Indenture Obligations.

11. Release. Subject to the rights set forth in paragraph 10(a) of this Interim Order, the Debtor, on behalf of itself and its estate (including any successor trustee or other estate representative in the Chapter 11 Case or successor case) and any party acting by, through, or under the Debtor or its estate, forever and irrevocably (i) release, discharge, waive, and acquit the Prepetition Secured Parties, their participants and each of their respective affiliates, and each of their respective former, current or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors in interest

(collectively, the "Released Parties") of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations existing as of the Petition Date, including, without limitation, any so-called "lender liability" or equitable subordination claims or defenses, with respect to or relating to the Indenture Obligations, the Prepetition Liens, the Prepetition Loan Documents, any and all claims and causes of action arising under title 11 of the United States Code, and any and all claims regarding the validity, priority, perfection or avoidability of the liens or secured claims of the Prepetition Secured Parties; and (ii) waive any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability and nonavoidability of the Indenture Obligations and the Prepetition Liens.

12. Cash Management. The Debtor shall not seek approval of any cash management system without the prior approval of the Requisite Supporting Noteholders, which consent shall not be unreasonably withheld, and any order approving such cash management system shall be reasonably acceptable to the Requisite Supporting Noteholders. The Requisite Supporting Noteholders acknowledge that they have consented to the Debtor's use of a cash management system that is consistent with the cash management system described in the Debtor's "first day" motion to approve its prepetition cash management system.

13. Equities of the Case. Subject to and effective upon entry of the Final Order and in light of the subordination of their liens to the Carve-Out, the Prepetition Secured Parties shall be entitled to all benefits of Bankruptcy Code section 552(b) and the "equities of the case" exception under Bankruptcy Code section 552(b) shall not apply to such parties with respect to the proceeds, product, offspring, or profits of any of their collateral.

14. Additional Perfection Measures.

(a) Pursuant to this Interim Order, the Adequate Protection Liens are, and are deemed to be, valid, enforceable, and perfected liens, effective as of the Petition Date, and (notwithstanding any provisions of any agreement, instrument, document, the Uniform Commercial Code, or any other relevant law or regulation of any jurisdiction) no further notice,

filing, possession, control, or other act shall be required to effect such perfection, and all liens on any deposit accounts or securities shall, pursuant to this Interim Order be, and they hereby are deemed to confer "control" for purposes of sections 8-106, 9-104, and 9-106 of the New York Uniform Commercial Code as in effect as of the date hereof or similar applicable laws in favor of the Prepetition Secured Parties).

(b) None of the Debtor, the Indenture Trustee, or the Noteholders shall be required to enter into or obtain landlord waivers, mortgagee waivers, bailee waivers, warehouseman waivers or other waiver or consent to enter into control agreements, or to file or record financing statements, mortgages, deeds of trust, leasehold mortgages, notices of lien or similar instruments in any jurisdiction (including, trademark, copyright, trade name or patent assignment filings with the United States Patent and Trademark Office, Copyright Office or any similar agency with respect to intellectual property, or filings with any other federal agencies/authorities), or obtain consents from any licensor or similarly situated party-in-interest, or take any other action in order to validate and to perfect the Adequate Protection Liens.

(c) The Indenture Trustee may, but shall not be obligated to, obtain consents from any landlord, licensor or other party in interest, file mortgages, financing statements, notices of lien or similar instruments, or otherwise record or perfect such security interests and liens, in which case:

i. all such documents shall be deemed to have been recorded and filed as of the time and on the date of entry of this Interim Order; and

ii. no defect in any such act shall affect or impair the validity, perfection and enforceability of the liens granted hereunder.

(d) In lieu of obtaining such consents or filing any such mortgages, financing statements, notices of lien or similar instruments, the Indenture Trustee may, but shall not be obligated to, file a true and complete copy of this Interim Order in any place at which any such instruments would or could be filed, together with a description of Collateral or Prepetition Collateral, as applicable, and such filings by the Indenture Trustee shall have the same effect as

if such mortgages, deeds of trust, financing statements, notices of lien or similar instruments had been filed or recorded at the time and on the date of entry of this Interim Order.

15. Automatic Stay Modified. The automatic stay provisions of Bankruptcy Code sections 362 are hereby vacated and modified to the extent necessary to permit the Indenture Trustee, to exercise, upon the occurrence of the Termination Date, all rights and remedies provided for hereunder, and to take any or all of the following actions without further order of or application to this Court: (i) terminate the Debtor's use of Cash Collateral; (ii) declare all Adequate Protection Obligations owed to the Prepetition Secured Parties to be immediately due and payable; (iii) set off and apply immediately any and all amounts in accounts maintained by the Debtor with the Indenture Trustee against the Adequate Protection Obligations and Indenture Obligations owed to the Prepetition Secured Parties and otherwise enforce rights against the Collateral for application towards the Adequate Protection Obligations and Indenture Obligations; (iv) take any and all actions necessary to take control of all Cash Collateral; and (v) upon five (5) business days' notice to the Debtor, the Committee and the U.S. Trustee, take any other actions or exercise any other rights or remedies permitted under this Interim Order or applicable law to effect the repayment and satisfaction of the Adequate Protection Obligations and Indenture Obligations owed to the Prepetition Secured Parties. The rights and remedies of the Prepetition Secured Parties specified herein are cumulative and not exclusive of any rights or remedies that they may otherwise have.

16. Collateral Rights.

(a) In the event that any party who has both received notice of the Interim Hearing and holds a lien or security interest in Collateral or Prepetition Collateral that is junior and/or subordinate to the Adequate Protection Liens or the Prepetition Liens in such Collateral or Prepetition Collateral receives or is paid the proceeds of such Collateral or Prepetition Collateral, or receives any other payment with respect thereto from any other source, such junior or subordinate lienholder shall be deemed to have received, and shall hold, the proceeds of any such

Collateral in trust for the Prepetition Secured Parties and shall immediately turn over such proceeds to the Indenture Trustee for the benefit of the Noteholders.

(b) If the Indenture Trustee or the Noteholders shall at any time exercise any of their respective rights and remedies hereunder or under applicable law in order to effect payment or satisfaction of the Adequate Protection Obligations and Indenture Obligations owed to the Prepetition Secured Parties or to receive any amounts or remittances due hereunder, including, without limitation, foreclosing upon and selling all or a portion of the Collateral (all solely to the extent not inconsistent with the requirements of this Interim Order), the Indenture Trustee shall have the right without any further action or approval of this Court to exercise such rights and remedies as to all or such part of the Collateral as the Indenture Trustee may determine. No holder of a lien shall be entitled to object on the basis of the existence of any such lien to the exercise by the Indenture Trustee of its respective rights and remedies under this Interim Order or other applicable law to effect satisfaction of the Indenture Obligations or Adequate Protection Obligations owed to the Prepetition Secured Parties or to receive any amounts or remittances due hereunder, provided that the Indenture Trustee has complied with paragraph 15 of this Interim Order. All proceeds and payments delivered to the Indenture Trustee pursuant to this paragraph 16 may be applied to the Indenture Obligations or Adequate Protection Obligations owed to the Noteholders, as determined by the Indenture Trustee, in accordance with the Indenture, and in no event shall the Prepetition Secured Parties be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any such collateral or otherwise.

(c) The Debtor shall not sell, lease, transfer or otherwise dispose of its interest in the Collateral outside the ordinary course of business, or seek authority of this Court to do any of the foregoing, without the prior written consent of the Requisite Supporting Noteholders (which consent shall not be unreasonably withheld), except to the extent provided by the RSA. In the event of any such sale, lease, transfer, license, or other disposition of property of the Debtor that constitutes Collateral outside the ordinary course of business (to the extent permitted by this

Interim Order) the Debtor is authorized and directed, without further notice or order of this Court, to promptly pay to the Indenture Trustee, for the benefit of the Noteholders, 100% of the net cash proceeds resulting therefrom no later than the second business day following receipt of such proceeds, solely to the extent that, after giving effect to such payment, there remains in the Debtor's estate cash in an amount equal to the sum of: (a) any amounts that remain unspent pursuant to the Approved Budget; (b) the Carve-Out; and (c) any other amounts contemplated by the RSA as requiring payment (including, without limitation, amounts identified in the Term Sheet (as defined and incorporated in the RSA) or the Noteholder APA (as defined in the RSA)).

(d) In the event of any casualty, condemnation, or similar event with respect to property that constitutes Collateral, the Debtor is authorized and directed to pay to the Indenture Trustee, for the benefit of the Noteholders, 100% of any insurance proceeds, condemnation award, or similar payment no later than the third business day following receipt of payment by the Debtor, solely to the extent that, after giving effect to such payment, there remains in the Debtor's estate cash in an amount equal to the sum of: (a) any amounts that remain unspent pursuant to the Approved Budget; (b) the Carve-Out; and (c) any other amounts contemplated by the RSA as requiring payment (including, without limitation, amounts identified in the Term Sheet or the Noteholder APA).

17. Credit Bid Rights. The Prepetition Secured Parties shall have the right to "credit bid" the Indenture Obligations under the Prepetition Loan Documents and the Adequate Protection Liens granted hereunder during any sale of any of the Collateral, including without limitation, in connection with sales occurring pursuant to Bankruptcy Code section 363 or included as part of any plan subject to confirmation under Bankruptcy Code section 1129.

18. Successors and Assigns. The provisions of this Interim Order shall be binding upon the Debtor, the Prepetition Secured Parties, and each of their respective successors and assigns, and shall inure to the benefit of the Debtor, the Prepetition Secured Parties and each of their respective successors and assigns including, without limitation, any trustee, responsible officer, estate administrator or representative, or similar person appointed in a case for the

Debtor under any chapter of the Bankruptcy Code. The provisions of this Interim Order shall also be binding on all of the Debtor's creditors, equity holders, and all other parties in interest including any official committee appointed in the Chapter 11 Case.

19. Binding Nature of Agreement. Except with respect to a sale of the Debtor's assets approved by the Prepetition Secured Parties, the rights, remedies, powers, privileges, liens, and priorities of the Prepetition Secured Parties under this Interim Order shall not be modified, altered or impaired in any manner by any subsequent order (including a confirmation order), by any plan of reorganization or liquidation in the Chapter 11 Case, by the dismissal or conversion of the Chapter 11 Case or in any subsequent case under the Bankruptcy Code unless and until the Indenture Obligations have first been indefeasibly paid in full in cash and completely satisfied in accordance with the Prepetition Loan Documents.

20. No Modification of Interim Order. The Debtor irrevocably waives any right to seek any amendment, modification or extension of this Interim Order without the prior written consent of the Requisite Supporting Noteholders and no such consent shall be implied by any action, inaction or acquiescence of the Indenture Trustee or the Noteholders.

21. Priorities Among Prepetition Secured Parties. Notwithstanding anything to the contrary herein or in any other order of this Court, in determining the relative priorities and rights of the Prepetition Secured Parties (including, without limitation, the relative priorities and rights of the Prepetition Secured Parties with respect to the adequate protection granted hereunder), such relative priorities and rights shall continue to be governed by the Prepetition Loan Documents, to the extent otherwise applicable.

22. No Waiver. This Interim Order shall not be construed in any way as a waiver or relinquishment of any rights that the Prepetition Secured Parties may have to bring or be heard on any matter brought before this Court.

23. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly (i) the Indenture Trustee's or any Noteholder's right to seek any other or supplemental

relief in respect of the Debtor, including the right to seek additional adequate protection, (ii) any of the rights of the Indenture Trustee or any of the Noteholders under the Bankruptcy Code or under applicable nonbankruptcy law. Nothing contained herein shall be deemed a finding by the Court or an acknowledgement by the Indenture Trustee or the Noteholders that the adequate protection granted herein does in fact adequately protect the Indenture Trustee or the Noteholders against any Diminution in Value of their interests in the Prepetition Collateral.

24. No Waiver by Failure to Seek Relief. The delay or failure of the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim Order, the Prepetition Loan Documents, or applicable law, as the case may be, shall not constitute a waiver of any of the rights thereunder, or otherwise of the Prepetition Secured Parties.

25. Priority of Terms. To the extent of any conflict between or among (a) the Motion, any other order of this Court, or any other agreements, on the one hand, and (b) the terms and provisions of this Interim Order, on the other hand, unless such term or provision herein is phrased in terms of "as defined in" or "as more fully described in" the Prepetition Loan Documents, the terms and provisions of this Interim Order shall govern.

26. No Third-Party Beneficiary. Except as explicitly set forth herein, no rights are created hereunder for the benefit of any third party, any creditor or any direct, indirect or incidental beneficiary.

27. Survival. Except as otherwise provided herein, (a) the protections afforded to the Prepetition Secured Parties under this Interim Order, and any actions taken pursuant thereto, shall survive the entry of an order (i) dismissing the Chapter 11 Case or (ii) converting the Chapter 11 Case into a case under Chapter 7 of the Bankruptcy Code, and (b) the Adequate Protection Liens and the Superpriority Claims shall continue in the Chapter 11 Case, in any such successor case or after any such dismissal. Except as otherwise provided herein, the Adequate Protection Liens and the Superpriority Claims shall maintain their priorities as provided in this Interim Order and the Final Order, and not be modified, altered or impaired in any way by any

other financing, extension of credit, incurrence of indebtedness, or any conversion of the Chapter 11 Case into a case pursuant to Chapter 7 of the Bankruptcy Code or dismissal of the Chapter 11 Case, or by any other act or omission until the Indenture Obligations are indefeasibly paid in full in cash or receive treatment as otherwise agreed to by the Requisite Supporting Noteholders.

28. Final Hearing Date. The Final Hearing to consider the entry of the Final Order approving the relief sought in the Motion shall be held on , _____, at __:___.m. (as the same may be adjourned or continued by this Court) before The Honorable _____, at the United States Bankruptcy Court for the District of Delaware.

29. Adequate Notice. The Debtor shall promptly mail copies of this Interim Order, proposed Final Order and notice of the Final Hearing to the Notice Parties, any known party affected by the terms of the Final Order, and any other party requesting notice after the entry of this Interim Order. Any objection to the relief sought at the Final Hearing shall be made in writing setting forth with particularity the grounds thereof, and filed with this Court and served so as to be actually received no later than five business (5) days prior to the Final Hearing by the following: (i) _____, Attn: _____ (_____@_____.com) and _____ (_____@_____.com), and _____, Attn: _____ (_____@_____.com), counsel to the Debtor; (ii) _____, Attn: _____ (_____@_____.com) and _____, Attn: _____ (_____@_____.com), and _____, Attn: _____ (_____@_____.com), counsel to the Supporting Noteholders; (iii) counsel to any statutory committee appointed in the case, (iv) _____, Attn: _____ (_____@_____.com), as counsel to the Indenture Trustee, and (iv) the Office of the United States Trustee, J. 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19081 (Attn: _____ _____ (_____ @usdoj.gov)).

30. Entry of Interim Order; Effect. This Interim Order shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof, notwithstanding the possible application of Fed. R. Bankr. P. 6004(h), 7062, 9014, or otherwise, and the Clerk of

this Court is hereby directed to enter this Interim Order on this Court's docket in the Chapter 11 Case.

31. Retention of Jurisdiction. This Court shall retain jurisdiction overall all matters pertaining to the implementation, interpretation and enforcement of this Interim Order.

32. Binding Effect of Interim Order. The terms of this Interim Order shall be binding on any trustee appointed under Chapter 7 or Chapter 11 of the Bankruptcy Code.

33. Waiver of Requirement to File Proofs of Claim. Neither the Indenture Trustee nor the Noteholders shall be required to file proofs of claim with respect to any of the Indenture Obligations.

Dated: _____, 2011
Wilmington, Delaware

_____
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Approved Budget

4834-8236-2965

Attorney
Firm
Address
City, State Zip Code
Telephone:
Facsimile:
Email:

Counsel for ABC, LLC

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH, CENTRAL DIVISION

In re **ABC, LLC**, Debtor.	Bankruptcy Case No. _____ (Chapter 11) Honorable _____

MOTION FOR ENTRY OF AN ORDER EXTENDING TIME TO FILE SCHEDULES AND STATEMENTS

ABC, LLC, as debtor and debtor-in-possession (the "Debtor"), hereby moves (the "Motion") the Court for the entry of an (the "Order") attached hereto as **Exhibit A**, extending the time period for the Debtor to file its schedules of assets and liabilities and statements of financial affairs (collectively, the "Schedules and Statements") through and including _____, , which is beyond the automatic fourteen (14) day extension provided under Bankruptcy Rule 1007(c). In support of this Motion, the Debtor respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion are proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105 and 521 of title 11 of the United States Code (11 U.S.C. §§ 101 *et. seq.*, the "Bankruptcy Code") and Rules

1007(a)(5) and (c) and 9006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

BACKGROUND

1. On _____ (the "Relief Date" or "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11, U.S.C. in this court and, on such date became a debtor-in-possession under Chapter 11 of the Bankruptcy Code.

2. No trustee, examiner, creditors' committee, or other official committee has been appointed in this chapter 11 case.

3. Information about the Debtor's business operations, capitalization and prepetition indebtedness, as well as the events leading to the Relief Date , can be found in the Declaration of _____ in Support of First Day Pleadings (the "First Day Declaration"). The Debtor relies on the First Day Declaration in seeking the relief requested herein and incorporates the First Day Declaration herein by reference.

RELIEF REQUESTED

4. By this Motion the Debtor requests a brief extension of the deadline to file its Schedules and Statements through and including _____, without prejudice to the Debtor's right to apply to this Court, upon appropriate notice, for further extension(s) of the time to file the Schedules and Statements, or to seek a waiver of the requirement for filing certain Schedules and Statements.

BASIS FOR RELIEF

5. Pursuant to Bankruptcy Rules 1007(a)(5) and (c), this Court is authorized to grant the Debtor additional time to file its Schedules and Statements for cause beyond the automatic fourteen (14) day extension provided under such rule**.** The Debtor respectfully submits that adequate cause exists for granting the extension requested herein.

6. Debtor is currently preparing a list of Debtor's 20 largest unsecured creditors and a creditor matrix containing all of the names and addresses of the Debtors' known creditors and other parties-in-interest in these cases as required by Bankruptcy Rule 1007(a).

7. The Debtor has been unable to complete its Schedules and Statements at this early stage in the proceedings because of the various, complex and resource intensive issues attendant to responding to the Involuntary Petition. Now that the Relief Date has occurred, the Debtor will need sufficient time to prepare in light of (a) the level of sophistication of its capital structures and financial affairs; (b) the limited staffing available to perform the required internal review of the Debtor's books and records and accounts and affairs; (c) the diversion of resources necessary to attend to numerous issues in connection with the prosecution of these cases; and (d) the accelerated pace at which the Debtor's time-sensitive bankruptcy efforts have proceeded, including preparing for the voluntary filing once in receipt of the necessary consents. Because these factors will prevent the Debtor from assembling the information necessary to complete and file its Schedules and Statements prior to the current deadline, sufficient cause exists to grant the extension. Moreover, the requested extension will enhance the accuracy of the Schedules and Statements and avoid the necessity of substantial subsequent amendments. Accordingly, the Debtor respectfully requests that the Court extend the time period within which the Debtor is required to file its Schedules and Statements through and including September 6, 2016.

NOTICE AND PRIOR MOTIONS

8. Notice of this Motion will be provided to: (i) the Office of the United States Trustee for the District of Utah; (ii) the Debtor's largest twenty (20) unsecured creditors; (iii) the Debtor's cash management banks and (iv) all parties requesting notice in this case pursuant to Rule 2002. Due to the nature of the relief requested herein, the Debtor respectfully submits that no further notice of this Motion is necessary.

NO PRIOR REQUEST

9. No prior request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court enter the Order and grant such other relief as the Court deems just and proper.

DATED this _____ day of _____, 20__.

_____

/s/_____

_____

Counsel for ABC, LLC

CERTIFICATE OF SERVICE – BY NOTICE OF ELECTRONIC FILING (CM/ECF)

I hereby certify that on the ____ day of _____, 20___, I electronically filed the foregoing document with the United States Bankruptcy Court for the District of Utah by using the Court's CM/ECF system. I further certify that the parties of record in this case, as identified below, are listed as registered CM/ECF users and will be served through the CM/ECF system:

CERTIFICATE OF SERVICE – BY MAIL, OTHER

I further certify that on the ____ day of _____, 20___, I caused the foregoing document to be sent by first class United States mail, postage fully prepaid, to the following at the addresses set for the below:

/s/_____

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
ABC, LLC, et al.,[1]	Case No. _____
Debtors.	Joint Administration Pending

DEBTORS' MOTION FOR ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 362, AND 546 (I) ESTABLISHING PROCEDURES FOR ADDRESSING RECLAMATION DEMANDS, (II) AUTHORIZING DEBTORS TO RETURN GOODS PURSUANT TO 11 U.S.C. § 546(h) AND (III) PROHIBITING PARTIES FROM INTERFERING WITH THE DELIVERY OF GOODS

The debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors") hereby move (the "Motion") for entry of an order, under sections 105(a), 362, and 546 of title 11 of the United States Code (the "Bankruptcy Code"), (i) establishing procedures for addressing reclamation demands; (ii) authorizing, but not directing, the Debtors to return goods to vendors under Bankruptcy Code section 546(h); and (iii) prohibiting parties from interfering with delivery of goods. In support of the Motion, the Debtors rely upon and incorporate by reference the Declaration of _____ in Support of Chapter 11 Petitions and First Day Pleadings (the "First Day Declaration"), filed with the Court concurrently herewith. In further support of the Motion, the Debtors, by and through their undersigned proposed counsel, respectfully represent:

JURISDICTION

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The legal predicates for the relief requested herein are Bankruptcy Code sections 105(a), 362, and 546.

[1] The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: ABC, LLC (____), DEF, LLC (____), GHI, LLC (____), and JKL, LLC (____). The Debtors' address is _____.

4814-1548-8853

BACKGROUND

2. On the date hereof (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these bankruptcy cases, is set forth in detail in the First Day Declaration, filed concurrently herewith and fully incorporated herein by reference.[2]

3. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

RELIEF REQUESTED

4. By this Motion, the Debtors seek entry of an order:

(a) Establishing procedures for reconciliation of claims made by suppliers and vendors (together, the "Vendors") who make written reclamation demands for materials, supplies, goods, products and related items (collectively, the "Goods") delivered prior to the Petition Date;

(b) Authorizing, but not directing, the Debtors, under Bankruptcy Code section 546(h), to return Goods purchased from Vendors by the Debtors prior to the Petition Date, for credit against such Vendors' prepetition claims, in accordance with prepetition practice; and

(c) Prohibiting Vendors and other third parties from reclaiming or preventing delivery of Goods or products to the Debtors and confirming that, pursuant to Bankruptcy Code sections 105 and 362, third parties are stayed and prohibited from interfering with the delivery of goods and products to the Debtors.

BASIS FOR RELIEF

5. Allowing Vendors to reclaim or prevent delivery of Goods to the Debtors would create a risk of having inadequate in-store inventory and could disrupt the Debtors' wind-down process, which would be especially damaging because any delay would frustrate the Debtors' ability to capitalize on the upcoming holiday shopping season. During this critical time, the

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

Debtors must dedicate substantial attention and resources to the wind-down process. Absent the relief requested in this Motion, however, the Debtors would be required to expend substantial time and limited resources (a) establishing their right to retain the Goods; (b) contesting or litigating reclamation demands; and/or (c) enforcing their rights with respect to Goods in transit. As a result, there would be a delay and/or disruption in the continuous flow of Goods to the Debtors, causing considerable harm to the Debtors' efforts to maximize the value of their estates. Consequently, the relief requested herein is in the best interests of the Debtors, their estates, their creditors, their shareholders and all parties in interest.

A. Procedures for Reconciliation of Reclamation Demands

6. As a result of the commencement of these cases, the Debtors believe they may receive some written reclamation demands from Vendors with respect to the Goods. The Debtors believe some Vendors, after learning of the commencement of these cases, may attempt to interfere with the delivery of Goods to the Debtors or attempt forcibly to repossess delivered Goods from the Debtors' facilities pursuant to their alleged reclamation rights.

7. The Debtors believe allowing Vendors to exercise reclamation rights without first establishing fair and uniform procedures would severely disrupt the Debtors' wind-down efforts. Further, if the proposed procedures are not approved, the Debtors will wind up facing reclamation claims (each a "Reclamation Demand") on an *ad hoc basis* and, as a result, find the attention of their management and operational personnel diverted. Establishment of uniform reclamation procedures will avoid piecemeal litigation of Reclamation Demands and the inevitable strain on the Debtors that would accompany such litigation.

8. Accordingly, the Debtors propose the following procedures for processing and reconciling Reclamation Demands:

(a) Any Vendor making a Reclamation Demand must satisfy all procedural and timing requirements under applicable state and federal law and demonstrate the Vendor has satisfied all legal elements entitling it to a right of reclamation.

(b) Any person making a Reclamation Demand (the "Reclamation Claimant")

must send the Reclamation Demand to the following addressees: ABC's Claims Processing Center, c/o _____, with a copy to (i) ABC, LLC, _____, Attn.: _____; and (ii) _____, Attn: _____.

(c) All Reclamation Demands must include the information required by the Uniform Commercial Code or Bankruptcy Code section 546(c) with respect to the Goods for which the Reclamation Demand is asserted, and the following: (i) a statement by the claimant as to whether it has or will assert an administrative claim pursuant to Bankruptcy Code section 503(b)(9) for the value of Goods the claimant provided to the Debtors within the twenty (20) days immediately prior to the Petition Date (a "Section 503(b)(9) Claim"); and (ii) to the extent known, the amount of any Section 503(b)(9) Claim.

(d) On or before the day that is one hundred and twenty (120) days following the Petition Date (the "Reclamation Notice Deadline"), the Debtors shall file a notice (the "Reclamation Notice") listing each Reclamation Claimant and the allowed amount, if any, of such Reclamation Claimant's Reclamation Demand (the "Allowed Reclamation Amount"). The Reclamation Notice shall be served upon the following parties: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to each statutory committee appointed in these chapter 11 cases; and (iii) the Reclamation Claimants at the addresses indicated in their Reclamation Demands.

(e) If the Debtors fail to file the Reclamation Notice by the Reclamation Notice Deadline, any Reclamation Claimant may file, depending on the relief sought, an adversary proceeding or a motion on its own behalf to seek relief with respect to its Reclamation Demand, but may not file an adversary proceeding or any such motion until expiration of the Reclamation Notice Deadline.

(f) Any party who wishes to object to the information set forth in the Reclamation Notice must file and serve, no later than 20 days after the Reclamation Notice is filed (the "Objection Deadline"), an objection (the "Reclamation Notice Objection") including the following information: (i) a copy of the Reclamation Demand and evidence of the date on which it was mailed to the Debtors, (ii) the name of the Debtor that ordered the Goods, (iii) copies of any purchase orders and invoices relating to the Goods, (iv) evidence demonstrating the dates on which the Goods were shipped to and received by the Debtors, and (v) a statement describing with specificity why the Reclamation Notice is incorrect and stating the legal basis, if any, for the Reclamation Notice Objection. The Reclamation Notice Objection shall be served on (i) ABC, LLC, _____, Attn: _____; (ii) _____, Attn: _____; (iii) _____, Attn: _____; (iv) Office of the United

States Trustee, J. Caleb Boggs Federal Bldg., 844 North King Street, Room 2207, Lockbox 35, Wilmington, DE 19801, Attn: _____; and (v) counsel to any statutory committee appointed in these cases (collectively, the "Notice Parties").

(g) Any Reclamation Demand that is included in the Reclamation Notice and is not the subject of a Reclamation Notice Objection filed and served by the Objection Deadline, shall be deemed a valid Reclamation Demand allowed or disallowed in the amount identified in the Reclamation Notice; provided, however, that all issues relating to the treatment of any such allowed Reclamation Demand shall be reserved.

(h) Notwithstanding, and without limiting, the foregoing, the Debtors are authorized, but not required, to negotiate with any Vendor and to seek an agreement with any Vendor to resolve that Vendor's Reclamation Demand. In the event such an agreement is reached, the Debtors shall prepare a notice of settlement (the "Settlement Notice"), and file and serve on the Notice Parties such Settlement Notice. Parties in interest shall have 10 days from the date on which the Settlement Notice is filed to object to the Settlement Notice (a "Settlement Objection").

(i) If no Settlement Objection with respect to a Settlement Notice is timely filed and served, the Reclamation Demand at issue shall be deemed valid and allowed, disallowed, or otherwise treated in accordance with the Settlement Notice without further order of the Court. If a Settlement Objection with respect to a Settlement Notice is timely filed and served, the parties may negotiate a consensual resolution of such objection to be incorporated in a stipulation filed with the Court (a "Settlement Stipulation"). Upon the filing of a Settlement Stipulation, the applicable Reclamation Demand shall be allowed and treated in accordance with the terms of the Settlement Stipulation without further order of the Court. If no consensual resolution of a Settlement Objection is reached within 30 days after the date of the Settlement Objection, unless such period is extended by mutual agreement of the Debtors and the party filing the Settlement Objection, the Debtors shall thereafter file a motion requesting that the Court resolve the Settlement Objection.

(j) No later than 90 days following the Objection Deadline (or such date as agreed to by the Debtors and the Vendor), the Debtors shall file a motion seeking Court determination of any Reclamation Demands subject to a pending Reclamation Notice Objection that has not been otherwise resolved. The matter shall be set for the next regularly scheduled omnibus hearing, in accordance with appropriate notice, unless another hearing date is agreed to by the parties or ordered by the Court.

(k) Nothing in the Reclamation Procedures shall modify the automatic stay of section 362(a) of the Bankruptcy Code with respect to any Goods. Without

limiting the foregoing, no Vendor shall be entitled to obtain possession of any Goods without first filing a motion with the Court for relief from the automatic stay or obtaining the prior express written consent of the Debtors. The Debtors and all other parties in interest reserve all rights to object to any such motion for relief from the automatic stay.

B. Return of Goods

9. In the ordinary course of business, the Debtors receive various Goods that may not be up to standards, defective, or otherwise not suitable or necessary for their retail operations. In some cases, the Debtors return the Goods to Vendors. Notwithstanding the filing of these cases, and the distinction between prepetition and postpetition claims, the Debtors request that they be permitted, in their discretion, to return Goods that were delivered postpetition based on prepetition purchase orders for credit against such prepetition purchase orders, if the Debtors determine that such Goods of are little or no value to the Debtors' estates.

10. The Debtors submit that an order approving returns to Vendors for credit against their prepetition claims, subject to the limitations imposed by any orders of this Court and the prior rights of holders of security interests in such Goods or the proceeds of such Goods under the Debtors' prepetition financing agreements, to the extent of such interests, is in the best interests of the Debtors' estates. Such relief will enable the Debtors to (a) obtain proper credit for otherwise unusable Goods, cost-effectively and without undue financial risk; and (b) effectively manage inventory, enhancing the value of the Debtors' estates.

C. Confirming Stay of Third Parties

11. Bankruptcy Code section 362 prohibits third parties from taking actions to, among other things, obtain or exercise control over property of the estate. Moreover, Bankruptcy Code section 105 permits this Court to enter any order necessary or appropriate to carry out the provisions of the Bankruptcy Code. The Debtors propose the reclamation procedures set forth herein be the sole and exclusive method of resolving Reclamation Demands. Accordingly, the Debtors request all Vendors be prohibited from seeking any other means for the resolution or other treatment of Reclamation Demands, including, without limitation:

(i) commencing adversary proceedings against the Debtors in connection with any reclamation claims except as permitted by the procedures set forth herein; (ii) seeking to regain possession of any Goods except as permitted by the procedures set forth herein; or (iii) interfering with the delivery of any Goods to the Debtors.

APPLICABLE AUTHORITY

A. The Procedures For Reconciliation Of Reclamation Demands Are Appropriate Under Bankruptcy Code Sections 105 And 546(c) And Necessary To Prevent An Inadvertent Duplicative Payment Of Claims Under Bankruptcy Code Section 503(b)(9).

12. As set forth above, the procedures proposed herein are necessary for the Debtors to process and review, in an efficient and cost-effective manner, the Reclamation Demands of Reclamation Claimants. Bankruptcy Code section 105 permits the Court to "issue any order . . . that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). In the event that numerous Reclamation Demands are received, as the Debtors anticipate, the Debtors and their professionals would be unnecessarily distracted from the wind-down process to the detriment of the Debtors and their estates. Moreover, as noted above, in light of the many pressing demands that the Debtors and their professionals will have in the weeks following the Petition Date, the procedures set forth herein will allow the Debtors to fully evaluate any Reclamation Demands received and coordinate this evaluation with the Debtors' review of any 503(b)(9) Claims.

B. Bankruptcy Code Section 546(h) Permits The Debtors To Return Goods As Requested In The Motion.

13. Bankruptcy Code section 546(h) permits a debtor, "with the consent of a creditor and subject to the prior rights of holders of security interests in such goods or proceeds of such goods," to "return goods shipped to the debtor by the creditor before the commencement of the case," for credit against the creditor's prepetition claim, provided that the Court determines (on a

motion made no later than 120 days after the order for relief and after notice and hearing) that such return is in the best interests of the estate. 11 U.S.C. § 546(h) (emphasis added).

14. The purpose of Bankruptcy Code section 546(h) is to "relieve the bankruptcy estate of the burden of keeping unwanted or unsaleable goods, and relieve the estate of unnecessary liabilities." 138 Cong. Rec. S8217, at S8266 (daily ed. June 16, 1992) (statement of Sen. Heflin). Through the Motion, the Debtors seek only the relief to which they are entitled under Bankruptcy Code section 546(h). Accordingly, the Debtors should be permitted to return Goods, in their discretion, as permitted by the Bankruptcy Code and as set forth herein.

C. Bankruptcy Code Sections 105 And 362 Support Entry Of An Order Prohibiting Reclamation Claimants From Seeking To Reclaim Goods That Have Already Been Delivered Or Interfering With Goods Already In Transit To The Debtors, Absent Further Relief From The Court.

15. Bankruptcy Code section 546(c)(1) authorizes vendors who have delivered goods to a debtor in the ordinary course of business to reclaim such goods, subject to certain limitations, if: (a) the debtor was insolvent when the goods were received; (b) the goods were received by the debtor within 45 days before the petition date; (c) the seller demanded reclamation in writing; and (d) such demand was made within 45 days after the debtor received possession of the goods (or within 20 days if the 45-day period would expire after the Petition Date). See 11 U.S.C. § 546(c)(1).

16. However, Bankruptcy Code section 546 does not include a waiver of the automatic stay protection afforded by Bankruptcy Code section 362. Accordingly, the automatic stay prohibits reclamation efforts without leave of court. See 11 U.S.C. § 362; see also In re Waccamaw's Homeplace, 298 B.R. 233, 237 (Bankr. D. Del. 2003) ("Obviously, with the filing of the petition, the automatic stay of § 362(a) barred any seller from taking any possessory action.").

17. As set forth herein, the Debtors are waiving none of their defenses to any Reclamation Demands. However, provided that Reclamation Claimants first obtain relief from

the automatic stay, as required by the Bankruptcy Code, the procedures will not prevent such claimants from exercising or attempting to exercise their purported rights to reclaim possession of Goods under Bankruptcy Code section 546(c).

18. The relief requested herein is commonly granted in this District. See, e.g., In re Solyndra LLC, Case No. 11-12799 (MFW) (Bankr. D. Del. Oct. 17, 2011); In re New Page Corp., Case No. 11-12804 (KG) (Bankr. D. Del. Oct. 4, 2011); In re Ultimate Acquisition Partners, LP, No. 11-10245 (MFW) (Bankr. D. Del. Feb. 23, 2011); In re Plumbing Holdings Corp., Case No. 09-14413 (CSS) (Bankr. D. Del. Jan. 11, 2010); In re Proliance Int'l, Inc., Case No. 09-12278 (CSS) (Bankr. D. Del. July 29, 2009); In re Sun-Times Media Grp., Inc., No. 09¬ 11092 (CSS) (Bankr. D. Del. Apr. 28, 2009); In re Tweeter Home Entm't Grp., Inc., Case No. 07-10787 (PJW) (Bankr. D. Del. June 14, 2007); and In re Radnor Holdings Corp., Case No. 06¬ 10894 (PJW) (Bankr. D. Del. Aug. 23, 2006).[3]

RESERVATION OF RIGHTS

19. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an assumption or rejection of any executory contract or unexpired lease pursuant to Bankruptcy Code section 365; or (e) otherwise affect the Debtors' rights under Bankruptcy Code section 365 to assume or reject any executory contract with any party subject to this Motion.

WAIVER OF ANY APPLICABLE STAY

20. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate without interruption and to

[3] Because of the voluminous nature of the orders cited herein, they are not attached to the Motion. Copies of these orders, however, are available on request.

preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

NOTICE

21. Notice of this Motion will be given to: (i) the United States Trustee for the District of Delaware; (ii) counsel to the agent for the prepetition lenders; (iii) the parties included on the Debtors' lists of twenty (20) largest unsecured creditors; and (iv) all parties entitled to notice pursuant to Local Bankruptcy Rule 9013-1(m).

NO PRIOR REQUESTS

22. No previous request for the relief sought herein has been made to Court this or any other court.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an Order, substantially in the form annexed hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: Wilmington, Delaware
_____

/s/_____
Attorney (I.D. No. 2855)
Law Firm
Address
City, State, Zip Code
Telephone: (###) ###-####
Facsimile: (###) ###-####
Email: _____

Proposed Counsel for Debtors and Debtors in Possession

4814-1548-8853

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
ABC, LLC, et al.,	Case No. _____
Debtors.[1]	Joint Administration Pending
	Related Docket No. ___

ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 362, AND 546 (I) ESTABLISHING PROCEDURES FOR ADDRESSING RECLAMATION DEMANDS, (II) AUTHORIZING DEBTORS TO RETURN GOODS UNDER 11 U.S.C. § 546(h) AND (III) PROHIBITING PARTIES FROM INTERFERING WITH THE DELIVERY OF GOODS

Upon the motion (the "Motion")[2] of the Debtors for an order, under Bankruptcy Code sections 105(a), 362, and 546, (i) establishing procedures for addressing reclamation demands; (ii) authorizing, but not directing, the Debtors to return goods to vendors under Bankruptcy Code section 546(h); and (iii) prohibiting parties from interfering with delivery of goods; and upon the First Day Declaration; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation thereon and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED as set forth herein.

2. The procedures for the processing and reconciliation of Reclamation Demands, if any, set forth in the Motion, including the following are hereby approved:

(a) Any Vendor making a Reclamation Demand must satisfy all procedural and timing requirements under applicable state and

[1] The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: ABC, LLC (____), DEF, LLC (____), GHI, LLC (____), and JKL, LLC (____). The Debtors' address is _____.

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

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federal law and demonstrate the Vendor has satisfied all legal elements entitling it to a right of reclamation.

(b) Any person making a Reclamation Demand (the "Reclamation Claimant") must send the Reclamation Demand to the following addressees: ABC's Claims Processing Center, c/o_____, with a copy to (i) ABC, LLC, _____, Attn.: _____; and (ii) _____, Attn: _____

(c) All Reclamation Demands must include the information required by the Uniform Commercial Code or Bankruptcy Code section 546(c) with respect to the Goods for which the Reclamation Demand is asserted, and the following: (i) a statement by the claimant as to whether it has or will assert an administrative claim pursuant to Bankruptcy Code section 503(b)(9) for the value of Goods the claimant provided to the Debtors within the twenty (20) days immediately prior to the Petition Date (a "Section 503(b)(9) Claim"); and (ii) to the extent known, the amount of any Section 503(b)(9) Claim.

(d) On or before the day that is one hundred and twenty (120) days following the Petition Date (the "Reclamation Notice Deadline"), the Debtors shall file a notice (the "Reclamation Notice") listing each Reclamation Claimant and the allowed amount, if any, of such Reclamation Claimant's Reclamation Demand (the "Allowed Reclamation Amount"). The Reclamation Notice shall be served upon the following parties: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to each statutory committee appointed in these chapter 11 cases; and (iii) the Reclamation Claimants at the addresses indicated in their Reclamation Demands.

(e) If the Debtors fail to file the Reclamation Notice by the Reclamation Notice Deadline, any Reclamation Claimant may file, depending on the relief sought, an adversary proceeding or a motion on its own behalf to seek relief with respect to its Reclamation Demand, but may not file an adversary proceeding or any such motion until expiration of the Reclamation Notice Deadline.

(f) Any party who wishes to object to the information set forth in the Reclamation Notice must file and serve, no later than 20 days after the Reclamation Notice is filed (the "Objection Deadline"), an objection (the "Reclamation Notice Objection") including the following information: (i) a copy of the Reclamation Demand and evidence of the date on which it was mailed to the Debtors, (ii) the name of the Debtor that ordered the Goods, (iii) copies of any

purchase orders and invoices relating to the Goods, (iv) evidence demonstrating the dates on which the Goods were shipped to and received by the Debtors, and (v) a statement describing with specificity why the Reclamation Notice is incorrect and stating the legal basis, if any, for the Reclamation Notice Objection. The Reclamation Notice Objection shall be served on (i) ABC, LLC, _____, Attn: _____; (ii) _____, Attn: _____; (iii) _____, Attn: _____. and _____; (iv) Office of the United States Trustee, J. Caleb Boggs Federal Bldg., 844 North King Street, Room 2207, Lockbox 35, Wilmington, DE 19801, Attn: _____; and (v) counsel to any statutory committee appointed in these cases (collectively, the "Notice Parties").

(g) Any Reclamation Demand that is included in the Reclamation Notice and is not the subject of a Reclamation Notice Objection filed and served by the Objection Deadline, shall be deemed a valid Reclamation Demand allowed or disallowed in the amount identified in the Reclamation Notice; provided, however, that all issues relating to the treatment of any such allowed Reclamation Demand shall be reserved.

(h) Notwithstanding, and without limiting, the foregoing, the Debtors are authorized, but not required, to negotiate with any Vendor and to seek an agreement with any Vendor to resolve that Vendor's Reclamation Demand. In the event such an agreement is reached, the Debtors shall prepare a notice of settlement (the "Settlement Notice"), and file and serve on the Notice Parties such Settlement Notice. Parties in interest shall have 10 days from the date on which the Settlement Notice is filed to object to the Settlement Notice (a "Settlement Objection").

(i) If no Settlement Objection with respect to a Settlement Notice is timely filed and served, the Reclamation Demand at issue shall be deemed valid and allowed, disallowed, or otherwise treated in accordance with the Settlement Notice without further order of the Court. If a Settlement Objection with respect to a Settlement Notice is timely filed and served, the parties may negotiate a consensual resolution of such objection to be incorporated in a stipulation filed with the Court (a "Settlement Stipulation"). Upon the filing of a Settlement Stipulation, the applicable Reclamation Demand shall be allowed and treated in accordance with the terms of the Settlement Stipulation without further order of the Court. If no consensual resolution of a Settlement Objection is reached within 30 days after the date of the Settlement Objection, unless such period is extended by mutual agreement of the Debtors and the party filing the Settlement Objection, the Debtors shall

thereafter file a motion requesting that the Court resolve the Settlement Objection.

(j) No later than 90 days following the Objection Deadline (or such date as agreed to by the Debtors and the Vendor), the Debtors shall file a motion seeking Court determination of any Reclamation Demands subject to a pending Reclamation Notice Objection that has not been otherwise resolved. The matter shall be set for the next regularly scheduled omnibus hearing, in accordance with appropriate notice, unless another hearing date is agreed to by the parties or ordered by the Court.

(k) Nothing in the Reclamation Procedures shall modify the automatic stay of section 362(a) of the Bankruptcy Code with respect to any Goods. Without limiting the foregoing, no Vendor shall be entitled to obtain possession of any Goods without first filing a motion with the Court for relief from the automatic stay or obtaining the prior express written consent of the Debtors. The Debtors and all other parties in interest reserve all rights to object to any such motion for relief from the automatic stay.

3. The foregoing procedures are the sole and exclusive method for resolution and payment of Reclamation Demands. All Vendors are prohibited from seeking any other means for the resolution or treatment of their Reclamation Demands, including, without limitation: (i) commencing adversary proceedings against the Debtors in connection with any Reclamation Demands except as specifically provided herein; (ii) seeking to obtain possession of any Goods except as specifically provided herein; or (iii) interfering with the delivery of Goods to the Debtors.

4. Nothing contained herein or in the Motion shall limit the Debtors' ability to make payments to creditors in accordance with any other orders of this Court, regardless of whether such creditors have asserted Reclamation Demands.

5. The Debtors have not waived, and have expressly reserved, their right to assert any and all defenses to any Reclamation Demands.

6. Reclamation Demands that are determined, in accordance with the procedures set forth herein, to be valid Reclamation Demands pursuant to the Bankruptcy Code, shall be allowed in the amount established in accordance with the procedures set forth herein; provided,

that all issues relating to the treatment of any such allowed Reclamation Demand shall be reserved.

7. Nothing in the Motion or this order shall be deemed to constitute the postpetition assumption of any executory contract between the Debtors and any third-party.

8. The Debtors are authorized, but not obligated, under Bankruptcy Code section 546(h), subject to the limitations imposed by any orders of this Court and the prior rights of holders of security interests in such Goods or the proceeds of such Goods under the Debtors' prepetition financing agreements, to the extent of such interests, to return to Vendors the Goods that were delivered prepetition for an offset of the purchase price of such Goods against the Vendors' prepetition claims.

9. Nothing in this Order or the above procedures is intended to prohibit, hinder, or delay any Reclamation Claimant from asserting or prosecuting any of its rights to seek to reclaim Goods provided to the Debtors, subject to the provisions of Bankruptcy Code sections 105, 362, and 546(c), or from filing a claim under Bankruptcy Code section 503(b)(9) consistent with applicable orders of this Court.

10. Notwithstanding Bankruptcy Rule 6004(h), this order shall be effective and enforceable immediately upon entry hereof.

11. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this order.

Dated: Wilmington, Delaware
_____, 2011

_____
Honorable
UNITED STATES BANKRUPTCY JUDGE

4814-1548-8853

Attorney
Firm
Address
City, State Zip Code
Telephone:
Facsimile:
Email:

Counsel for ABC, LLC

IN THE UNITED STATES BANKRUPTCY COURT

DISTRICT OF _____

In re **ABC, LLC**, Debtor.	Bankruptcy Case No. _____ (Chapter 11)
In re **DEF, LLC**, Debtor.	Bankruptcy Case No. _____ (Chapter 11)
In re **GHI, LLC**, Debtor.	Bankruptcy Case No. _____ (Chapter 11)
In re **KLM, LLC**, Debtor.	Bankruptcy Case No. _____ (Chapter 11)

MOTION OF THE DEBTORS FOR ORDER DIRECTING JOINT ADMINISTRATION OF RELATED CHAPTER 11 CASES FOR PROCEDURAL PURPOSES ONLY

4846-8223-8037

The above-captioned debtors and debtors in possession (collectively, the "Debtors"), hereby move (the "Motion")[1] the Court for the entry of an order, pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule _____ of the *Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of* _____("Local Rules"), authorizing and directing the joint administration of the Debtors' related chapter 11 cases for procedural purposes only. In support of this Motion, the Debtors state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are section 105(a) of title 11 of the United States Code (the "*Bankruptcy Code*"), Bankruptcy Rule 1015(b), and Local Rule 1015-1.

BACKGROUND

4. On _____ (the "Petition Date"), the Debtors commenced these cases by filing voluntary petitions for relief under chapter 11 the Bankruptcy Code.

5. The Debtors have continued in possession of their property and have continued to operate and manage their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. No request has been made for the appointment of a trustee or an examiner in these cases, and no official committee has yet been appointed by the Office of the United States Trustee.

7. The Debtors are [generally describe nature of Debtors' businesses and how they are related].

[1] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the _____ Declaration.

8. The factual background regarding the Debtors, including their current and historical business operations and the events precipitating their chapter 11 filings, are set forth in detail in the *Declaration of _____ in Support of First Day Motions* (the "_____ Declaration") filed concurrently herewith and fully incorporated herein by reference.

REQUESTED RELIEF

9. By this Motion, the Debtors seek entry of an order directing the joint administration of their chapter 11 cases and the consolidation thereof for procedural purposes only. The Debtors also request that the caption of their chapter 11 cases be modified to reflect their joint administration as follows:

IN THE UNITED STATES BANKRUPTCY COURT

DISTRICT OF _____

In re **ABC, LLC**, *et al*.[2] Debtors-in-Possession.	Bankruptcy Case No. _____ (Chapter 11) Jointly Administered Cases

10. In addition, the Debtors request that the Court direct the Clerk to make a notation substantially similar to the following on the docket of each Debtor:

> An order (the "Joint Administration Order") has been entered in this case directing the joint administration of the chapter 11 cases listed below for procedural purposes only. The docket in case no. _____ (___) should be consulted for all matters affecting this case. The following chapter 11 cases are jointly administered pursuant to the Joint Administration Order:

2. The Debtors in these cases along with the last four digits of each Debtors' federal tax identification numbers and their respective addresses, are: ABC, LLC (_____), _____; DEF, LLC (_____), _____; GHI, LLC (_____), _____; KLM, LLC (_____), _____; .

11. Finally, the Debtors request that the Court permit use of a combined service list and correspondingly combined notices.

BASIS FOR RELIEF

12. Bankruptcy Rule 1015(b) provides that, if two or more petitions are pending in the same court by or against a debtor and an affiliate, joint administration is permissible. *See* Fed. R. Bankr. P. 1015(b). Additionally, Rule _____ of the Local Rules permits entry of such an order without notice or a hearing so long as the Debtors demonstrate that such treatment is warranted.

13. Joint administration is warranted in these chapter 11 cases because (a) the Debtors' financial affairs and business operations are closely related, (b) such administration will ease the administrative burden on the Court and other parties, and (c) joint administration will protect creditors from lurking conflicts of interest.

14. With respect to the proximity of relations, the Debtors are under common ownership and management. They also share many creditors and parties in interest. As a result, joint administration will prevent duplicative efforts and unnecessary expenses, without any risk of prejudice. *See, e.g., In re Visteon Corp.,* 09-11786 (CSS) (Bankr. D. Del. 2009) (jointly administering the cases of 31 affiliated debtor entities); *In re Source Interlink Cos.,* 09-11424 (KG) (Bankr. D. Del. 2009) (jointly administering the cases of 18 affiliated debtor entities).

15. The Debtors anticipate that numerous notices, applications, motions, other pleadings, hearings, and orders in these cases will affect all of the Debtors. Each affiliated debtor has its own case docket, and the failure to administer these cases jointly would result in numerous duplicative pleadings filed for each issue and served upon separate service lists. Such duplication of substantially identical documents would be extremely wasteful and would unnecessarily overburden the Clerk of this Court (the "Clerk") with the volume of paper.

16. Joint administration will permit the Clerk to use a single general docket for each of the Debtors' cases and to combine notices to creditors and other parties in interest of the Debtors' respective estates. Joint administration also will protect parties in interest by ensuring that such parties in interest in each of the Debtors' respective chapter 11 cases will be apprised of the various matters before the Court in all of these cases.

17. The Debtors request that the official caption to be used by all parties in all pleadings in the jointly administered cases be in the form set forth in paragraph 9 of this Motion.

18. The Debtors submit that use of the simplified caption, without reference in the caption to the additional Debtor and its state of incorporation, will eliminate cumbersome and confusing procedures and ensure a uniformity of pleading identification.

19. The rights of the respective creditors of each of the Debtors will not be adversely affected by joint administration of these cases inasmuch as the relief sought is purely procedural and is in no way intended to affect substantive rights. Each creditor and party in interest will maintain whatever rights it has against the particular estate in which it allegedly has a claim or right. Indeed, the rights of all creditors will be enhanced by the reduction in costs resulting from joint administration. The Court also will be relieved of the burden of entering duplicative orders and keeping duplicative files. Supervision of the administrative aspects of these chapter 11 cases by the Office of the United States Trustee also will be simplified.

NOTICE

20. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (i) the Office of the United States Trustee and (ii) the Debtors' prepetition secured lenders. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

21. No prior request for the relief sought in this Motion has been made to this Court or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an order: (a) authorizing the joint administration of the Debtors' cases for procedural purposes only (b) directing the Clerk to make the docket entries set forth herein, and (c) granting such other and further relief as is proper.

DATED this _____ day of _____, 20__.

_____

/s/_____
_____
_____
_____

Proposed Counsel for Debtors and Debtors in Possession

Attorney
Firm
Address
City, State Zip Code
Telephone:
Facsimile:
Email:

Counsel for ABC, LLC

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH, CENTRAL DIVISION

In re **ABC, LLC**, Debtor.	Bankruptcy Case No. _____ (Chapter 11) Honorable _____

[EMERGENCY] MOTION FOR ORDER AUTHORIZING PAYMENT OF PREPETITION CRITICAL VENDOR CLAIMS

ABC, LLC, debtor and debtor-in-possession ("Debtor") in the above-captioned Chapter 11 bankruptcy proceeding ("Case"), hereby moves the Court for an order, substantially in the form attached hereto as **Exhibit A** ("Critical Vendor Order"), pursuant to Bankruptcy Code[1] §§ 105(a) and 363(b), Bankruptcy Rules 6003 and 6004, and Local Bankruptcy Rule 4001-4, authorizing, but not requiring, Debtor to honor and pay prepetition claims of certain critical vendors (each, a "Critical Vendor Claim" and collectively, the "Critical Vendor Claims"). This Motion is supported by the following Memorandum of Points and Authorities, the Omnibus Declaration of _____ ("Omnibus Declaration") filed in support of Debtor's First Day Motions on _____ ("Petition Date"), the papers and pleadings on file with the Court in this Case, and any oral arguments the Court may entertain at the hearing on this Motion.

[1] All references to "chapter" and "section" herein shall be to the "Bankruptcy Code" appearing in Title 11 of the U.S. Code; all references to a "Bankruptcy Rule" shall refer to the Federal Rules of Bankruptcy Procedure.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).

2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are Bankruptcy Code §§ 105(a) and 363(b), Bankruptcy Rules 6003 and 6004, and Local Bankruptcy Rule 4001-4.

BACKGROUND

4. On _____, (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11, Title 11 of the United States Code ("Bankruptcy Code"), in the United States Bankruptcy Court for the District of _____ ("Court"). Pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code, the Debtor is managing its assets and properties as debtor-in-possession.

5. No trustee, examiner, creditors' committee, or other official committee has been appointed in this chapter 11 case.

6. Information about the Debtor's business operations, capitalization and prepetition indebtedness, as well as the events leading to the Relief Date, can be found in the Declaration of _____ in support of First Day Pleadings (the "First Day Declaration"). The Debtor relies on the First Day Declaration in seeking the relief requested herein and incorporates the First Day Declaration herein by reference.

THE NEED FOR REQUESTED RELIEF

7. In the ordinary course of its business, Debtor relies on third-party vendors and suppliers to provide various services and materials used at the Debtor's business (each, a "Critical Vendor," and collectively, the "Critical Vendors"), without whom the Debtor could not sustain its operations. Debtor has established relationships with these Critical Vendors over the

years and believes that these relationships ensure continued access to consistent labor and materials and otherwise provide substantial savings and benefits. These Critical Vendors provide the myriad products and services that are necessary for operations at the Debtor's business. The products and services the Critical Vendors provide include, among other things, _____.

8. The Critical Vendors with whom Debtor has built long term relationships give Debtor a level of certainty that materials of a specified quality will be provided, and services of a consistent quality will be rendered, in accordance with the various requirements and deadlines of the Debtor. Accordingly, any disruption in the services or materials such vendors provide would have a detrimental impact upon the quality of services provided by the Debtor. Such a disruption would lead to an immediate erosion in confidence and have a devastating effect on the Debtor's reputation, which could be impossible to restore. Debtor owes certain of the aforementioned Critical Vendors amounts for prepetition goods and services. Without the continued support of, and the goods and services to be provided by, the Critical Vendors, Debtor may not be able to continue operating without critically suffering from added expense and delay.

9. Debtor believes that certain of the Critical Vendors, despite the protections of administrative priority status, may refuse to provide goods and services postpetition to Debtor if it does not pay all or part of the Critical Vendor Claims.

RELIEF REQUESTED

10. By this Motion, Debtor respectfully requests entry of a Critical Vendor Order authorizing Debtor to pay, in its discretion, all or part of the Critical Vendor Claims, in the aggregate amount of _____, subject to certain conditions and procedures described below.

11. Additionally, Debtor requests that financial institutions be authorized to receive, process, honor, and pay all checks presented for payment and electronic payment requests related

to the Critical Vendor Claims described in this Motion, whether such checks were presented or electronic requests were submitted prior to or after the Petition Date.

12. Each of the Critical Vendors provides Debtor with goods and services that are essential to Debtor's continuing operations. A comprehensive matrix of the vendors that Debtor is likely to identify as "Critical," is attached to this motion as **Exhibit B** (the "Critical Vendor Matrix"). The Critical Vendor Matrix also includes a brief description of the goods and services that each vendor provides.

13. If one or more of the Critical Vendors refuse to continue providing its goods or services to Debtor, the magnitude of the potential injury to Debtor's business, and to the creditors of the estate, will greatly exceed the amount of unpaid claims held by the Critical Vendors as a whole.

14. Debtor proposes to make full or partial payment to the Critical Vendors pursuant to this Motion, only to the extent it deems necessary, in the exercise of its business judgment, to ensure that the applicable Critical Vendor continues to provide essential goods and services to Debtor on a postpetition basis.

15. To further assure that Debtor's business operations are minimally impacted during this Case, and in light of the severe consequences Debtor may suffer if the Critical Vendors refuse to provide postpetition goods and services, Debtor proposes that the Court approve and adopt the following procedures (the "Critical Vendor Procedures"):

> (a) The payment of any Critical Vendor Claim would be conditioned on the express agreement (the "Vendor Agreement") of a Critical Vendor to continue to provide reasonable and customary price, service, quality, and payment terms to Debtor on a postpetition basis ("Customary Trade Terms"), or upon other terms more favorable to Debtor than Customary Trade Terms. A letter substantially in the form of the Vendor Agreement, attached hereto as **Exhibit C,** along with a copy of the Critical Vendor Order granting the relief requested in this Motion would be sent to the Critical Vendors. The letter would include, without limitation, the following information and terms:

(i) The amount of the Critical Vendor's estimated prepetition claim, accounting for any setoffs, other credits, or discounts thereto, which would be mutually determined in good faith by the Critical Vendor and Debtor (but such amount would be used only for the purposes of determining the Critical Vendor Claim under the Critical Vendor Order and would not be deemed a claim allowed by the Court for any other purpose in this Case, and the rights of all interested persons to object to such claims would be fully preserved until further order of the Court);

(ii) The Critical Vendor's agreement to provide goods and services to Debtor based upon Customary Trade Terms or upon such other terms more favorable to Debtor than Customary Trade Terms as Debtor and the Critical Vendor may agree;

(iii) The Critical Vendor's acknowledgement that it has reviewed the terms and provisions of the Critical Vendor Order, and consents to be bound thereby;

(iv) A Critical Vendor's agreement that it will not separately seek payment for any reclamation claims or claims under Bankruptcy Code § 503(b)(9) outside the terms of the Critical Vendor Order unless the Critical Vendor's participation in the program to pay Critical Vendor Claims pursuant to the Critical Vendor Order is terminated; provided, however, that such claims would, if thereafter raised by the Critical Vendor as permitted by the Critical Vendor Order, be treated as though raised on the date of the Critical Vendor Order; and

(v) The Critical Vendor's agreement that any payments received by such Critical Vendor under the Critical Vendor Order would be applied first to claims for the value of goods received by Debtor within 21 days prior to the Petition Date that were sold to Debtor in the ordinary course of business, and then to any other claims.

(b) Such a letter, once agreed and accepted by a Critical Vendor, would be the Vendor Agreement between the parties that governs their relationship during this Case. Debtor further would retain the right, on a case-by-case basis, to obtain other written acknowledgement from the Critical Vendors of the terms to which the parties have agreed.

(c) If a Critical Vendor refuses to supply goods or services to Debtor on Customary Trade Terms (or fails to comply with other terms to which the parties have agreed), following its receipt of payment on the Critical Vendor Claim, or fails to comply with the applicable Vendor Agreement in any way, Debtor may, in its discretion and without further order of this Court, declare that Critical Vendor in breach of its Vendor Agreement with Debtor. To the extent the Critical Vendor fails to cure such default or reach an alternative agreement with Debtor, Debtor may seek appropriate relief from the

Court, including, without limitation, injunctive relief to compel performance pursuant to the Vendor Agreement. Further, such Critical Vendor would stipulate and agree that injunctive relief specifically enforcing the Critical Vendor Agreement would be appropriate. In addition, if a Critical Vendor refuses to comply with the Customary Trade Terms (or fails to comply with other terms to which the parties have agreed), any payment made to that Critical Vendor on account of that Critical Vendor's prepetition claim would be deemed to have been in payment of any then outstanding postpetition obligations owed to that Critical Vendor, and that Critical Vendor would be required to repay immediately to Debtor any payment previously made to it on account of its prepetition claim pursuant to this Motion, to the extent the aggregate amount of such payments exceeds the postpetition obligations then outstanding, without the right of any setoffs, claims, provision for payment of reclamation or trust fund claims, or otherwise.

(d) Debtor would maintain a summary list of all payments made to the Critical Vendors, and would provide updated copies of such list on a monthly basis to the United States Trustee, any official committees appointed in this Chapter 11 Case, and to any other entity that the Court requires.

16. Debtor submits that the relief requested herein is essential, appropriate and in the best interests of Debtor, its creditors and all parties in interest.

LEGAL ARGUMENT

Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, a debtor is a fiduciary "holding the bankruptcy estate and operating the business for the benefit of its creditors and (if the value justifies) equity owners." *In re CoServ, LLC*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the fiduciary duties of any debtor in possession is the obligation to "protect and preserve the estate, including an operating business's going-concern value." *CoServ*, 273 B.R. at 497. Some courts have noted that there are instances in which a debtor can fulfill this fiduciary duty "only … by the preplan satisfaction of a prepetition claim." *Id*.

There are several precedents for the relief requested in this Motion. First, it is appropriate and necessary for the Court to allow a Debtor to pay the pre-petition obligations set forth herein under this District's test for critical vendor status. Second, under the "doctrine of necessity," this Court may issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of" of the Bankruptcy Code pursuant to Section 105(a). Third,

consistent with a debtor's fiduciary duties, this Court may authorize payment of prepetition obligations under section 363(b) of the Bankruptcy Code, where a sound business purpose exists for doing so.

A. The Debtor Has Met This District's Three-Part Critical Vendor Test for Payment of Pre-Petition Claims

To establish critical vendor status, this District has stated that the Debtor must meet a three-part test:

> First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's pre-petition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

In re Berry Good, LLC, 400 B.R. 741, 747 (Bankr. D. Ariz. 2008) (quoting *CoServ*, 273 B.R. 487, 498 (Bankr. N.D. Tex. 2002)). The Critical Vendors meet all three prongs of the test.

To begin, if the Critical Vendors cease providing goods and services post-petition, the stoppage could have a substantial adverse impact on the ability to maximize the value of the estate's assets for the benefit of Debtor's creditors. There is a real danger that the Critical Vendors will stop providing services post-petition if they are not paid pre-petition, because _____. Thus, it is critical that the pre-petition claims be paid to maintain the Debtor's supply chain for reorganization. Second, the probability of harm if the Critical Vendors are not paid is very high. Indeed, Debtor anticipates that some, if not all, of the Critical Vendors will stop supplying goods and services to the Debtor if payments are not made in the ordinary course. Accordingly, there is imminent and pending harm to the Debtor if this Motion is not approved on an expedited basis. Third, there is no alternative source by which Debtor can obtain the Critical Vendors' services and goods, due to _____. Accordingly, there are no other practical

alternatives to dealing with the Critical Vendors. Because Debtor has satisfied the *Berry Good* test, the Motion should be granted.

B. This Court May Rely On Its General Equitable Powers To Grant This Motion.

The Court may authorize payment of prepetition claims in appropriate circumstances based on Section 105(a) of the Bankruptcy Code. The purpose of section 105(a) is to empower a bankruptcy court to take whatever action "is appropriate or necessary in aid of the exercise of [its] jurisdiction." 2 COLLIER ON BANKRUPTCY ¶ 105.01 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Section 105(a) authorizes the bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [Title 11]." *Walls v. Wells Fargo Bank, N.A*., 276 F.3d 502, 506 (9th Cir. 2002); *Am. Hardwoods, Inc. v. Deutsche Credit Corp. (In re Am. Hardwoods, Inc.)*, 885 F.2d 621, 625 (9th Cir. 1989) (section 105 endows the bankruptcy court with general equitable powers, where not inconsistent with more specific law). In that vein, Section 105 provides "a statutory basis for the payment of prepetition claims." *In re Just for Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999); *In re Tropical Sportswear Int'l Corp.,* 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005) ("Bankruptcy courts recognize that section 363 is a source for authority to make critical vendor payments, and section 105 is used to fill in the blanks.").

The Ninth Circuit Court of Appeals recognized the importance of paying certain prepetition claims in a reorganization case, even when the claimants are provided an advantage over other creditors, stating in dicta in *Burchinal v. Central Washington Bank (In re Adams Apple, Inc.)*, "[c]ases have permitted unequal treatment of pre-petition debts when necessary for rehabilitation, in such contexts as . . . debts to providers of unique and irreplaceable supplies . . ." 829 F.2d 1484, 1490 (9th Cir. 1987); *see also Just for Feet*, 242 B.R. at 824-25 (approving the payment of prepetition claims to certain critical vendors); *In re Cooper Commons, LLC*, 424

F.3d 963, 969 (9th Cir. 2005) (citing *Adams Apple* for its rejection of the fundamental tenet of bankruptcy law that like creditors must always be treated alike) (opinion amended and superseded on separate grounds by *In re Cooper Commons, LLC*, 430 F.3d 1215 (9th Cir. 2005). The rationale acknowledged by the *Adams Apple* court is that a debtor's rehabilitation in reorganization cases is the paramount policy and goal of Chapter 11. 829 F.2d at 1490; *see also Just For Feet,* 242 B.R. at 825-26 ("The necessity of payment doctrine recognizes that paying certain pre-petition claims may be necessary to realize the goal of chapter 11—a successful reorganization.") (citations omitted).

Moreover, courts have permitted postpetition payment of prepetition claims under Section 105(a) where nonpayment would trigger a withholding of goods or services essential to a debtor's business reorganization. *See In re UNR Indus., Inc.*, 143 B.R. 506, 520 (Bankr. N.D. Ill. 1992) (permitting the debtor to pay prepetition claims of suppliers or employees whose continued cooperation is essential to the debtor's successful reorganization) (reversed on other grounds by *In re UNR Indus., Inc.*, 173 B.R. 149 (N.D. Ill. 1994); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176-77 (Bankr. S.D.N.Y. 1989) (finding that section 105 empowers bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor); *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) ("[U]nder 11 U.S.C. § 105 the court can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor."); *In re Chateaugay Corp.*, 80 B.R. 279, 287 (S.D.N.Y. 1987) (explaining that a bankruptcy court may exercise its equity powers under section 105 to authorize the payment of prepetition claims where such payment is necessary to "permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately"). Thus, Section 105(a) of the Bankruptcy Code permits a court to authorize preplan payment of prepetition obligations when essential to the continued operations

of a debtor's business in furtherance of its reorganization effort, as is the case here; as such, the Motion should be granted.

C. The Court May Rely on Section 363(b) of the Bankruptcy Code to Grant This Motion.

The Court may also authorize Debtor to pay Critical Vendor Claims under Section 363(b) of the Bankruptcy Code. Section 363(b) provides, in pertinent part, that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(l). Under this section, a court may authorize a debtor to pay certain prepetition claims. *See Ionosphere*, 98 B.R. at 175 (authorizing payment of prepetition wages pursuant to Section 363(b) of the Bankruptcy Code); *In re UAL Corp.*, 2002 WL 34344254, at *1 (Bankr. N.D. Ill. 2002) (authorizing payment of prepetition claims under section 363 of the Bankruptcy Code as an out-of-ordinary-course transaction); *Tropical Sportswear,* 320 B.R. at 20 ("Bankruptcy courts recognize that section 363 is a source for authority to make critical vendor payments . . .").

In order to pay critical vendor claims under Section 363(b), "the debtor must articulate some business justification, other than mere appeasement of major creditors." *Ionosphere*, 98 B.R. at 175 (finding that a sound business justification existed to justify payment of prepetition wages); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc., (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying on section 363 of the Bankruptcy Code to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors); *Tropical Sportswear,* 320 B.R. at 17-18 (authorizing payment to critical vendors for prepetition amounts and finding that a sound business justification existed for payment because the vendors would not do business with the debtors absent critical vendor status, and the disfavored creditors were not any worse off due to the critical vendor order).

As discussed more fully herein, Debtor's request to pay the Critical Vendors meets this standard because the failure to satisfy the Critical Vendor Claims would likely have a material adverse impact on the day-to-day operations of Debtor's business. Without the ability to provide services, Debtor's revenues would dwindle, along with the possibility for recovery by Debtor's creditors and its estate. Debtor has determined, in the exercise of its sound business judgment, that payment of Critical Vendor Claims is essential (i) for maintenance of Debtor's day-to-day operations, (ii) to ensure that the value of Debtor's business as a going concern is preserved through the pendency of this Case, and (iii) to guarantee Debtor's ability to rehabilitate for the benefit of all stakeholders.

Instituting normal industry trade credit terms will improve Debtor's chances of successfully reorganizing by, among other things, allowing Debtor to continue purchasing goods and services on credit, preserving Debtor's working capital and liquidity and enabling Debtor to maintain its competitiveness. Hence, allowing Debtor to selectively pay the prepetition claims of Critical Vendors, in exchange for favorable credit terms, will serve the purposes of facilitating Debtor's reorganization and maximizing value for creditors. As stated above, Debtor is not able to compel the Critical Vendors to perform pursuant to contracts or otherwise, and many of the Critical Vendors could take advantage of their commercial arrangements. For example, notwithstanding the automatic stay, vendors could attempt to coerce Debtor to pay claims by placing Debtor on cash-on-delivery trade terms.

D. The Court Can And Should Waive Any Application of Bankruptcy Rules 6004 and 6004(h).

The Debtor submits that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtor, for the reasons set forth herein and in the Omnibus Declaration, Bankruptcy Rule 6003 has been satisfied and the relief requested herein should be granted. *See* Bankruptcy Rule 6003(b) (providing that the Court shall grant relief

regarding a motion incurring an obligation of estate property only if necessary to avoid immediate and irreparable harm). The Debtor needs immediate authority to honor and pay the prepetition claims of certain Critical Vendors, so that the Debtor can continue its day-to-day operations and ultimately achieve a successful reorganization. Without this authorization, the Debtor may be forced to terminate its employees and close the Debtor's business. The Debtor thus has satisfied Bankruptcy Rule 6003(b).

To successfully implement the foregoing, Debtor seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay under Bankruptcy Rule 6004(h). Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Debtor submits that the facts of this Case warrant a waiver of Bankruptcy Rule 6004(h) in this instance in order to avert any disruption to Debtor's operations that would occur in the absence of immediate relief. As noted herein, Debtor's ability to continue operations and provide services is dependent on the continued delivery of goods and services provided by its Critical Vendors. Accordingly, Debtor requests that the Court waive Bankruptcy Rule 6004(h) such that an order consistent with the Motion be immediately effective upon entry.

RESERVATION OF RIGHTS

Nothing contained in this Motion is, or should be construed as, (a) an admission as to the validity of any claim against Debtor; (b) a waiver of Debtor's right to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an assumption or rejection of any executory contract or unexpired lease pursuant to Bankruptcy Code Section 365; or (e) otherwise affecting Debtor's rights under Bankruptcy Code Section 365 to assume or reject any executory contract with any party subject to this Motion.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, Debtor respectfully requests that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, authorizing, but not requiring, Debtor to honor and pay the prepetition claims of certain Critical Vendors, and granting such other and further relief as this Court deems appropriate.

DATED this _____ day of _____, 20__.

_____

/s/_____

_____

Counsel for ABC, LLC

CERTIFICATE OF SERVICE – BY NOTICE OF ELECTRONIC FILING (CM/ECF)

I hereby certify that on the ____ day of _____, 20___, I electronically filed the foregoing document with the United States Bankruptcy Court for the District of Utah by using the Court's CM/ECF system. I further certify that the parties of record in this case, as identified below, are listed as registered CM/ECF users and will be served through the CM/ECF system:

CERTIFICATE OF SERVICE – BY MAIL, OTHER

I further certify that on the ____ day of _____, 20___, I caused the foregoing document to be sent by first class United States mail, postage fully prepaid, to the following at the addresses set for the below:

/s/_____

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re: **ABC, LLC,**[1] Debtor.	Chapter 11 Case No. 11-_____

MOTION OF DEBTOR FOR AN ORDER UNDER 11 U.S.C. §§ 105(a), 363(b), 1107(a), AND 1108 AND BANKRUPTCY RULES 6003 AND 6004(h) AUTHORIZING PAYMENT OF CERTAIN PREPETITION CUSTOMS DUTIES, BROKERS' FEES, SHIPPING AND WAREHOUSING CHARGES (INCLUDING DEMURRAGE AND TERMINAL CHARGES), AND RELATED POSSESSORY LIENS

The debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case (the "Bankruptcy Case") hereby seeks the entry of an order (the "Order"), attached in the form attached hereto as Exhibit A, pursuant to sections 105(a), 363(b), 1107(a), and 1108 of title 11 of chapter 11 of the United States Code, 11 U.S.C. § 101, et seq., as amended (the "Bankruptcy Code") and Rules 6003 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (i) authorizing, but not directing, the Debtor to pay certain prepetition customs duties, brokers' fees, shipping and warehousing charges (including demurrage and terminal charges) and related possessory liens in the ordinary course of business in amount not to exceed $_____; and (ii) authorizing and directing the Debtor's banks and other financial

[1] Law Firm
Attorney (Bar No. _____) (Admission Pro Hac Vice Pending)
Address
City, State Zip Code
Telephone: (####) ###-####

- and -

Law Firm
Attorney (Bar No. _____)
Address
City, State Zip Code
Telephone: (###) ###-####
Proposed Co-Counsel to the Debtor
and Debtor-in-Possession

4853-0341-2309

institutions to receive, honor, process and pay, to the extent of funds on deposit, any and all checks or electronic transfers requested by the Debtor relating to the payment of certain prepetition customs duties, brokers' fees, shipping and warehousing charges (including demurrage and terminal charges), and related possessory liens (the "Motion"). In support of the Motion, the Debtor represents as follows:

BACKGROUND

1. On the date hereof (the "Petition Date"), the Debtor commenced the Bankruptcy Case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

2. No trustee or examiner has been appointed in the Bankruptcy Case. No official committee of unsecured creditors of the Debtor has yet been appointed. The Debtor continues to manage and operate its business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Debtor was founded in _____ in _____ with four retail furniture stores. With over $_____ million in net sales for its fiscal year ending _____, the Debtor is one of the thirty largest furniture retailers in the United States.

4. Currently, the Debtor is headquartered in Richmond, Virginia and operates a chain of sixty-three retail furniture stores, including both large-format stores and clearance centers (collectively the "Retail Stores") in eight states: Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Florida, Alabama, and Texas. In addition, the Debtor has seven warehouses and distribution centers (the "Warehouses") located in Maryland, North Carolina, Texas, and Virginia that service the Retail Stores.

5. Prior to the Petition Date, the Debtor commenced "store closing sales" at five of its Retail Stores, located in Hoover, Alabama; Fayetteville, North Carolina; Houston, Texas, Norfolk, Virginia, and Baltimore, Maryland.

6. General information about the Debtor, its business, its capital structure, the events leading to the filing of its Bankruptcy Case, and the relief sought by the Debtor in its various First Day Pleadings is contained in the *Declaration of _____, _____ of _____,*

in Support of Chapter 11 Petition and First Day Pleadings (the "_____ Declaration") filed contemporaneously herewith.

JURISDICTION

7. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b).

8. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

9. The statutory predicates for the relief sought herein are sections 105(a), 363(b), 1107(a), and 1108 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004(h).

RELIEF REQUESTED

10. By this Motion, the Debtor seeks entry of an order authorizing, but not requiring, it to pay prepetition customs duties (the "Customs Duties") to the relevant governmental authorities (the "Customs Authorities"), customs brokers' fees (the "Brokers' Fees") to the Debtor's customs brokers (the "Customs Brokers"), shipping and delivery fees and warehousing expenses (including demurrage and terminal charges) (the "Shipping and Warehousing Charges") to third party shippers, haulers, common carriers, and other transporters (the "Shippers"), and warehousemen (the "Warehousemen"), and any related possessory liens that the Debtor determines, in the exercise of its business judgment, are necessary or appropriate to obtain the release of goods in the possession of such parties and to satisfy the liens, if any, in respect of amounts owed to such parties. The Debtor estimates that the prepetition Customs Duties, Brokers' Fees, and Shipping and Warehousing Charges to be paid under this Motion are collectively no more than $430,000 and seeks authorization to pay prepetition Customs Duties, Brokers' Fees, and Shipping and Warehousing Charges in an amount not to exceed $430,000 in its discretion.

11. The Debtor proposes that any payments made under the Motion be subject to the following conditions:

(a) The Debtor, in its sole discretion, shall determine which parties, if any, are entitled to payment under the order granting this Motion (the "Order"); and

(b) Before making a payment to a party pursuant to the Order, the Debtor may, in its absolute discretion, settle all or some of the prepetition claims of such party for less than its face amount without further notice or hearing.

12. The Debtor also requests that all banks and other financial institutions (the "Financial Institutions") upon which checks to the Customs Authorities, Customs Brokers, Shippers, and Warehousemen are drawn be authorized and directed to receive, process, honor, and pay any and all such checks, whether presented prior to or after the Petition Date, upon each such bank receiving notice of such authorization. In addition, the Debtor requests authority to issue post-petition checks as necessary to replace any prepetition checks issued with respect to the Customs Duties, Brokers' Fees, and Shipping and Warehousing Charges that may be dishonored.

BASIS FOR RELIEF REQUESTED

13. In the ordinary course of its business, the Debtor purchases goods, merchandise and products from vendors throughout the United States, Canada, and Asia. The Debtor estimates than on an annual basis it imports $_____ million of merchandise from locations outside of the United States.

A. Customs Duties and Brokers' Fees.

14. The Debtor imports a number of furniture pieces and other merchandise from factories located in Asia. This merchandise is subject to Customs Duties, including merchandise-processing fees, imposed by the laws of the United States. The Debtor coordinates most United States-side customs-related activities in-house. However, it relies on certain third party Customs Brokers such as _____, _____, and _____, to take all actions necessary, including making payments, to obtain the release of merchandise made overseas for delivery to the Debtor. In exchange, the Debtor pays a fee to the Customs Brokers based on the type of

services provided, and size and origin of the shipment. The Debtor estimates it owes approximately $_____ for unpaid prepetition Customs Duties and Brokers' Fees and seeks authorization to pay unpaid prepetition Customs Duties and Brokers' Fees in an amount not to exceed $_____.

15. Prompt payment of the Customs Duties and Brokers' Fees promotes the uninterrupted flow of inventory, which is critical to the Debtor's operations. The amount of Customs Duties and Brokers' Fees fluctuates depending upon the amount of goods clearing customs.

B. Shippers, Warehousemen, and Shipping and Warehousing Charges.

16. In the normal course of its business, the Debtor incurs certain fees and charges to several Shippers to ship and transport goods and merchandise to the Distribution Centers through established distribution networks in Asia and the United States. These Shippers include, but are not limited to, _____, _____, _____, and _____. The Debtor may also incur fees (including demurrage and terminal charges) to Shippers and/or Warehousemen in the event merchandise being shipped from a factory is stored for a period of time prior to being delivered to the Distribution Centers.

17. The Debtor's monthly Shipping and Warehousing Charges are roughly $_____ per month, and average $____ million to $____ million per year. The Debtor estimates it owes approximately $_____ for unpaid prepetition Shipping and Warehousing Charges. The Debtor seeks authorization to pay unpaid prepetition Shipping and Warehousing Charges in an amount not to exceed $_____.

APPLICABLE AUTHORITY

18. Section 105(a) of the Bankruptcy Code provides that the Court "may issue any order ... that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). A bankruptcy court's use of its equitable powers to "authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). Pursuant

to § 105(a) of the Bankruptcy Code, the Court "can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor." In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992); see, e.g., In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981); In re Just for Feet, Inc., 242 B.R. 821, 825 (D. Del. 1999); Pension Benefit Guarantee Corp. v. Sharon Steel Corp. (In re Sharon Steel Corp.), 159 B.R. 730, 736 (Bankr. W.D. Pa. 1993).

19. Section 363(b) of the Bankruptcy Code provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). Under this section, a court may authorize a debtor to pay certain pre-petition claims. See, Ionosphere Clubs, 98 B.R. at 175 (authorizing payment of pre-petition claims where the Debtor articulates "some business justification, other than the mere appeasement of major creditors"); see also, In re James A. Phillips, Inc., 29 B.R. 391, 397 (S.D.N.Y. 1983) (pursuant to § 363 of the Bankruptcy Code the Court authorized a contractor to pay pre-petition claims of some suppliers who were potential lien claimants because the payments were necessary for the general contractors to release funds owed to the debtor).

20. When considering a debtor's request to make a payment to a prepetition creditor under Bankruptcy Code section 363, courts consider whether the relief is necessary, also known as the "doctrine of necessity." Under the doctrine of necessity, a bankruptcy court may exercise its equitable power to authorize a debtor to pay the pre-petition claims of creditors whose services are essential to the Debtor's reorganization efforts. See, e.g., In re Synteen Technologies, Inc., 2000 WL 33709667 at *2 (Bankr. D.S.C. 2000)[2] (approving payment to be made to a vendor of pre-petition amount owed in the debtor's business judgment, over the objection of a creditor; vendor provided the debtor with a specialized product that was essential to the debtor's current customer orders); In re Eagle-Picher Indus., Inc., 124 B.R. 1021, 1023 (Bankr. S.D.Ohio 1991) (payment must be "necessary to avert a serious threat to the Chapter 11

[2] A copy of this opinion is attached here to as **Exhibit B**.

process"). Further, under the "necessity of payment" doctrine "if payment of a claim that arose prior to reorganization is essential to the continued operation of the [business] during the reorganization, payment may be authorized even if it is made out of corpus." Synteen Technologies, 2000 WL 33709667 at *2 (citing In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981)). The "necessity of payment" doctrine "recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor." Synteen Technologies, id. (citing Ionosphere Clubs, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989)); see also, In re C.A.F. Bindery, 199 B.R. 828, 835 (Bankr. S.D.N.Y. 1996); In re Structurlite Plastics Corp., 86 B.R. 922, 931 (Bankr. S.D.Ohio 1988) (payment of prepetition claims are authorized when necessary to "permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately"); In re Chateaugay Corp., 80 B.R. 279 (S.D.N.Y. 1987). This rule is consistent with the paramount goal of Chapter 11, i.e., "facilitating the continued operation and rehabilitation of the debtor...." Ionosphere Clubs, 98 B.R. at 176.

21. In United American, the court developed a three prong test for determining when the "Doctrine of Necessity" should be applied: "(1) the vendor must be necessary for the successful reorganization of the debtor; (2) the transaction must be in the sound business judgment of the debtor; and (3) the favorable treatment of the critical vendor must not prejudice other unsecured creditors." In re United American, Inc., 327 B.R. 776, 782 (Bankr.E.D.Va. 2005). The relief sought in the Motion meets each element of this test.

22. First, it is essential for the Debtor's business operations and efforts that the Debtor maintain a reliable and efficient supply network. Because the Debtor is dependent on third parties for the delivery of merchandise from factories to its Distribution Centers, it is essential that the Debtor's bankruptcy case not be a reason or excuse for any such party to cease timely performing or delaying delivery services or to retain goods in its possession on account of unpaid pre-petition claims. If the Debtor is unable to receive deliveries on a timely and uninterrupted basis, the Debtor's operations may be impeded with devastating consequences. Disruption in the

continuous flow of the Debtor's merchandise from its overseas and United States based suppliers will result in the Debtor being unable to fulfill customer orders and cause a significant loss of credibility and customer goodwill. This circumstance will directly result in a loss of revenue, thereby causing substantial harm to the Debtor's reorganization efforts and ability to maximize the value of its assets for the benefit of the estate.

23. Second, payment of the Customs Duties, Brokers' Fees, and Shipping and Warehousing Charges is necessary and appropriate because the failure to satisfy these claims could have a material adverse effect on the Debtor's day-to-day business operations and relationships with its customers and vendors, as well as its efforts to reorganize in this chapter 11 case. Moreover, the Debtor would not be able to make cost-effective, viable alternative arrangements in a timely manner. The Debtor believes that, if prompt payment of Customs Duties, Brokers' Fees, and Shipping and Warehousing Charges is not made in the ordinary course of business, the Customs Authorities, Customs Brokers, Shippers, and Warehousemen may immediately cease to provide services to the Debtor and some may potentially assert liens on the merchandise at issue, thereby threatening to severely hinder, delay or cripple the Debtor's supply and delivery system.

24. Third, the Debtor submits that the aggregate amount to be paid to the Customs Authorities, Customs Brokers, Shippers, and Warehousemen is relatively small compared to the importance and necessity of such service providers to the Debtor's business operations and to the direct and indirect losses that the Debtor will suffer if such parties refuse to deliver inventory or other goods and materials to the Debtor. Absent the relief requested by this Motion, the Debtor will be required to expend substantial time and resources: (i) convincing those parties holding the Debtor's merchandise that they should not assert a lien or hold this property in transit; (ii) attempting to persuade certain Customs Authorities, Customs Brokers, Shippers, and Warehousemen to release goods held and to continue making future shipments; (iii) locating replacement vendors for parties that cease doing business with the Debtor; and (iv) convincing such parties of the Debtor's authority and ability to make certain payments.

25. Finally, any delay in paying Shipping and Warehousing Charges with respect to merchandise that is in the possession of a particular Shipper or Warehouseman as of the Petition Date will likely result in the assertion, under applicable law, of possessory liens upon the merchandise by that party (including demurrage and terminal charges). See, e.g., U.C.C. § 7¬ 307(1) ("A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to its transportation or reasonably incurred in its sale pursuant to law."); and U.C.C. § 7-209(a) ("A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in its sale pursuant to law."). Thus, the Debtor will have no alternative but to pay the Shipping and Warehousing Charges in full in order to release any liens securing payment of such charges.

26. The Debtor also believes that obtaining immediate authorization to pay the Customs Duties, Brokers' Fees, and Shipping and Warehousing Charges is vital to its continued viability. Specifically, the Debtor believes that any delay or interruption in the supply chain to its Distribution Centers (and ultimately customers), however temporary it might be, would immediately jeopardize the Debtor's continued ability to operate its business and generate revenue.

27. For these reasons, the Debtor submits that the relief sought in this motion meets the elements of United American test for applying the Doctrine of Necessity and should be granted.

REQUEST FOR IMMEDIATE RELIEF AND WAIVER OF STAY TO AVOID IMMEDIATE AND IRREPARABLE HARM

28. The Debtor seeks immediate authorization for the relief contemplated by this Motion. Pursuant to Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Court cannot grant relief regarding "a motion to use, sell, lease or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition" within twenty-one days of the filing of the petition unless the relief is "necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003(b). For the reasons set forth above, the Debtor submits that the requirements of Bankruptcy Rule 6003(b) are met and that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtor and its estate.

29. In addition, by this Motion, the Debtor seeks a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of fourteen days after entry of the order, unless the court orders otherwise." For the reasons set forth above, the Debtor submits that ample cause exists to justify a waiver of the fourteen day stay imposed by Bankruptcy Rule 6004(h).

RESERVATION OF RIGHTS

30. Nothing contained herein is intended or should be construed as (i) an admission as to the validity of any claim against the Debtor; (ii) a waiver of the Debtor's right to dispute any claim; or (iii) an approval or assumption of any agreement, contract or lease, pursuant to section 365 of the Bankruptcy Code.

NOTICE

31. Notice of this Motion will be given to (i) the Office of the United States Trustee for the Eastern District of Virginia; (ii) counsel to the Debtor's prepetition lenders; (iii) the Debtor's twenty-five (25) largest unsecured creditors; and (iv) all Customs Authorities, Customs Brokers, Shippers, and Warehousemen as defined in the Motion.

WAIVER OF MEMORANDUM OF LAW

32. Pursuant to Rule 9013-1(G) of the Local Rules of the Bankruptcy Court and because there are no novel issues of law presented in the Motion and all applicable authority is set forth in the Motion, the Debtor respectfully requests that the Court waive the requirement that this Motion be accompanied by a separate memorandum of law.

NO PRIOR REQUEST

33. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtor respectfully requests that the Court enter an order, in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief the Court may deem necessary and proper.

Dated: _____
Richmond, Virginia

Respectfully submitted,

/s/_____
Law Firm
Attorney (Bar No. _____)
(Admission Pro Hac Vice Pending)
Address
City, State Zip Code
(###) ###-####

- and -

LAW FIRM
Attorney (Bar No. _____)
Address
City, State Zip Code
(###) ###-####

Proposed Counsel to the Debtor and Debtor in Possession

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re: **ABC, LLC,**[1] Debtor.	Chapter 11 Case No. 11-_____

ORDER UNDER 11 U.S.C. §§ 105(a), 363(b), 1107(a), AND 1108 AND BANKRUPTCY RULES 6003 AND 6004(h) AUTHORIZING PAYMENT OF CERTAIN PREPETITION CUSTOMS DUTIES, BROKERS' FEES, SHIPPING AND WAREHOUSING CHARGES (INCLUDING DEMURRAGE AND TERMINAL CHARGES), AND RELATED POSSESSORY LIENS

Upon the Motion[2] for an order pursuant to Bankruptcy Code sections 105(a), 363(b), 1107(a), and 1108 and Bankruptcy Rules 6003 and 6004(h): (i) authorizing, but not directing, the Debtor to pay certain prepetition Customs Duties, Brokers' Fees, and Shipping and Warehousing Charges in the ordinary course of business; and (ii) authorizing and directing Financial Institutions to receive, honor, process and pay, to the extent of funds on deposit, any and all checks or electronic transfers requested by the Debtor relating to the payment of certain prepetition Customs Duties, Brokers' Fees, and Shipping and Warehousing Charges; the Court

[1] Law Firm
Attorney (Bar No. _____) (Admission Pro Hac Vice Pending)
Address
City, State Zip Code
Telephone: (####) ###-####

- and -

Law Firm
Attorney (Bar No. _____)
Address
City, State Zip Code
Telephone: (###) ###-####
Proposed Co-Counsel to the Debtor
and Debtor-in-Possession

[2] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

4853-0341-2309

finds that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); venue of this case and the Motion are proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; the requirements of Federal Rules of Bankruptcy Procedure 6003 and 6004(h) have been satisfied; and notice of the Motion and the hearing thereon was sufficient under the circumstances; and upon consideration of the Brubaker Declaration; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtor, its estate, creditors, and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby **ORDERED**, **ADJUDGED**, and **DECREED** that:

1. The Motion is granted.

2. The Debtor is authorized, but not required, in its discretion, to pay in the ordinary course of the Debtor's business pre-petition Customs Duties, Brokers' Fees, and Shipping and Warehousing Charges in an aggregate amount not to exceed $_____.

3. The Financial Institutions are authorized, when requested by the Debtor in its sole discretion, to process, honor, and pay any and all checks or electronic fund transfers drawn on the Debtor's bank accounts to pay any payments approved by this Order, including, without limitation, those related to the pre-petition Customs Duties, Brokers' Fees, and Shipping and Warehousing Charges whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

4. The Financial Institutions may rely on the representations of the Debtor with respect to whether any check or other transfer drawn or issued by the Debtor relating to the pre-petition Customs Duties, Brokers' Fees, and Shipping and Warehousing Charges prior to the Petition Date should be honored pursuant to this Order, and any such bank shall not have any liability to any party for relying on such representations by the Debtor as provided for in this Order.

5. Nothing in the Motion or this Order, nor the Debtor's payment of any amounts pursuant to this Order, shall be deemed or construed as: (i) an admission as to the validity of any claim against the Debtor; (ii) a waiver of the Debtor's rights to dispute any claim; or (iii) an approval or assumption of any agreement, contract or lease, pursuant to section 365 of the Bankruptcy Code.

6. The Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Order.

7. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

8. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. The requirement under Local Rule 9013-1(G) of the Local Rules for the United States Bankruptcy Court for the Eastern District of Virginia to file a memorandum of law in connection with the Motion is hereby waived.

10. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

ENTERED:

_____

UNITED STATES BANKRUPTCY JUDGE

4853-0341-2309

WE ASK FOR THIS:

_____

Law Firm
Attorney (Bar No. _____) (Admission Pro Hac Vice Pending)
Address
City, State Zip Code
Telephone: (####) ###-####

- and -

Law Firm
Attorney (Bar No. _____)
Address
City, State Zip Code
Telephone: (###) ###-####
Proposed Co-Counsel to the Debtor
and Debtor-in-Possession

CERTIFICATION UNDER LOCAL RULE 9022-1(C)

I hereby certify that notice of the Debtor's intent to seek entry of the foregoing proposed order was provided to the parties identified in the Motion and copy of this proposed order was provided to the Office of the United States Trustee for the Eastern District of Virginia prior to submission to this Court.

_____

4853-0341-2309

EXHIBIT B

UNPUBLISHED DECISION

Not Reported in B.R., 2000 WL 33709667
(Bkrtcy.D.S.C.)
(Cite as: 2000 WL 33709667 (Bkrtcy.D.S.C.))

Only the Westlaw citation is currently available.

United States Bankruptcy Court, D. South Carolina.
In re: SYNTEEN TECHNOLOGIES, INC. Debtor.

No. 00–02203–W.
April 14, 2000.

ORDER

WAITES, Bankruptcy J.

*1 THIS MATTER comes before the Court upon Synteen Technologies, Inc.'s ("Debtor") Motion for Order Authorizing Debtor to Pay Certain Pre-Petition Claims ("Motion") filed on March 10, 2000. A preliminary hearing was held on March 16, 2000, and by Order entered March 24, 2000, the Court granted in part and denied in part Debtor's Motion. The Court denied at that time Debtor's request to pay the pre-petition claim of Marchem Dublon, Inc. (:Marchem"), pending a final hearing on the Motion. Rutland Plastics Technologies, Inc. ("Rutland") objected to the Motion and was presented at the final hearing to prosecute its objection. After considering the pleadings filed, the evidence was presented at the hearing on the Motion, and the arguments of counsel, the Court makes the following findings of Fact and Conclusions of Law Pursuant to Rule 52 of the Federal Rules of Civil Procedure, made applicable by Rule 7052 of the Federal Rules of Bankruptcy Procedure.[FM1]

> FN1. The Court Notes that to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

FINDINGS OF FACT

1. On March 10, 2000, Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Debtor is operating its business as debtor-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108[FM2] of the Bankruptcy Code.

> FN2. Further references to the Bankruptcy Code shall be by section number only.

2. Notice of the hearing on Debtor's Motion appears to have been properly served on all creditors and parties in interest.

3. Debtor is a company with forty-four (44) employees and engaged in the business of manufacturing and distributing technical industrial textiles in the North American market. Debtor converts fiberglass and polyester yarns into fabric which is then used as a reinforcement mesh in synthetic stucco; as the primary reinforcement in soil stabilization applications (collectively "geogrid"); in asphalt overlay applications; in welding and other high temperature applications, such as insulation; and as a reinforcement in single-ply roofing membranes.

4. In its Motion, Debtor seeks to pay the prepetition claim on Marchem in the amount of $47,177.89. Marchem provides a coating for Debtor's geogrid which was developed specifically for Debtor.

5. If Marchem's pre-petition claim is not paid immediately, Marchem indicated that it will cease providing its products to Debtor.

6. Debtor's production of geogrid constitutes forty percent (40%) of its overall business.

7. Pursuant to an oral agreement between Debtor and Marchem, Marchem agreed not to provide the coating to any of Debtor's competitors; however, under the agreement, Debtor is not required to purchase a set amount of product from Marchem.

8. Rutland is an unsecured trade creditor of Debtor in the approximate amount of $34,749.60. Rutland manufactures a coating similar in nature to Marchem's and has provided such product to Debtor in the past.

9. Rutland and Marchem are essentially competitors in the market place. Not only do Marchem and Rutland compete for customers, but, in the past, they have also competed for qualified employees. In fact, Marchem's sales/marketing representative which deals with Debtor's account formerly serviced Debtor in the same capacity for Rutland.

10. *2 As of the date of the hearing, Debtor had a limited supply of Marchem's product, less than a week's worth. Debtor needs more of Marchem's coating in order to fill a major order; furthermore, because the business is entering its busy seasons, its continuing operations would be seriously jeopardized if it were forced to suffer delay in the provisions of the coating.

11. Rutland indicates that it can meet the specifications of Marchem's product with its own

new product for Debtor's use within two to four weeks.

12. Rutland filed an Objection to the Motion for Entry of Order Authorizing Debtor to Pay Certain Pre-Petition Claims on March 22, 2000.[FM3]

> FN3. Prior to filing the formal objection, on or about March 16, 2000, Rutland filed a letter with the Court indicating that they objected to the proposed payment of the pre-petition claim of Marchem.

CONCLUSIONS OF LAW

Section 363(b)(1) of the Bankruptcy Code provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." In addition, bankruptcy courts have inherent equitable power under § 105(a) to "issue any order, process, or judgment that is necessary to carry out the provisions of this title." While authorization to pay a pre-petition claim is an extraordinary relief, the equitable powers as specified in § 105(a) give bankruptcy courts the permission to allow payment of a pre-petition claim "when essential to the continued operation of the debtor." In re NVR L.P., 147 B.R. 126, 127 (Bankr.E.D.Va.1992). As the court in In re NVR noted, however, "section 105 may not be used as a vehicle to discriminate among priority claims when there is no compelling business need for such discrimination." Id.[FM4]

> FN4. The parties agree that precedent in the Fourth Circuit does not establish a *per se* rule against the authorization to pay pre-petition claims. *See, e.g., Official Committee of Equity Security Holders v. Mabey (In re A.H. Robbins Co., Inc.)*, 382 F.2d 299, 302 (4th Cir. 1987).

Generally, in order for the court to authorize the payment of a pre-petition claim, the movant must meet the "necessity of payment" rule which "recognizes the existence of the judicial power to authorize a Debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of Debtor."[FM5] In *re Inosphere*, 98 B.R. 174, 176 (Bankr.S.D.N.Y.1989); *see also* In *re Boston and Maine Corp.*, 634 F.2d 1359, 1382 (1st Cir.1980) (recognizing the existence of judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to debtor's continued operation); In *re Eagle-Picher Ind., Inc.*, 124 B.R. 1021, 2023 (Bankr.S.D.Ohio1991) ("In applying the view of the law which we adopt, we consider that to justify payment of a pre-petition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the Chapter 11 process); In *re Inosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr.S.D.N.Y.1989) (quoting In *re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3rd Cir.1981) ("The 'necessity of payment' doctrine … '[permits] immediate payment of claims of creditors where those creditors will not supply services of material essential to the conduct of the business until their pre-reorganization claims shall have been paid." '). The "rule of necessity" is not one of mere convenience; and, in proposing payment of a pre-petition obligation, the movant must show a "compelling business justification" that is in the best interest of both the debtor and other creditors. In *re NVR*, 147 B.R. at 127. Courts usually take into consideration whether the payment of the obligation at issue is critical to the reorganization of debtor's business or fundamentally necessary to the continuation of debtor's operations. Id.

> FN5. In analyzing the Fourth Circuit decision of In *re A.H. Robbins Co., Inc.*, 832 F.2d at 302, the court in In *re NVR* noted in a footnote:
>
> > The Fourth Circuit has interpreted § 105(a) as generally not permitting a distribution to unsecured creditors in a Chapter 11 proceeding except under and pursuant to a plan of reorganization that has been properly presented and approved. However, it is unclear whether the broad language in Mabey failed to address the "necessity of payment" exception deliberately or by happenstance. This court assumes the latter for purposes of this opinion since the "necessity of payment" rule was not directly at issue in Mabey.
>
> In *re NVR*, 147 B.R. at 127 n.2.

*3 In the case now before the Court, Debtor has proved that a compelling business justification warrants payment of Marchem's claim. Rutland objected on the ground that Debtor has failed to show that it cannot obtain a similar or identical product from another vendor without necessity of paying pre-petition claims. Rutland further argued that it had previously sold similar coating products to Debtor and presently offers to supply Debtor with either the product it formerly produced for Debtor or with any modified version of the product that Debtor might require, without payment of the pre-petition claim held by Rutland.

First, the Court finds that Marchem's coating and the coating that Rutland has previously sold to Debtor do differ. Testimony offered by Debtor at the hearing on the Motion indicated that Debtors' management believes that Marchem's coating is more durable and resistant and

is better suited for Debtor's application than Rutland's present product. As to Rutland's argument that it can produce a comparable product to Marchem's and provide Debtor a sample of the coating in approximately two to four weeks; the Court concludes that such a time delay in the provision of the product would interrupt the continuing operations of Debtor which in turn would harm the bankruptcy estate and all creditors.

At the hearing on the Motion, counsel for Marchem indicated that the demand that it be paid its pre-petition claim before it will further provide Debtor its products was unequivocal. Evidence indicates that Marchem's pre-petition claim represents the first significant billing due to Marchem since its new relationship with Debtor; therefore, the claim is seen as more critical to their business dealings. The Court finds that Debtor has a genuine need for Marchem's product and ongoing contracts with clients currently require additional coating from Marchem in order for Debtor to fulfill its obligations. Due to the technical and specialized nature of the products in question, the Court shall not second guess Debtor's business judgment and effect mandate that Debtor use another supplier's coating. Debtor has decided that the Marchem product is a superior product and essential to Debtor's business.[FM6] Furthermore, Debtor cannot afford any delays at this time, given the fact that it presently needs the coating in order to fill its customers' current orders. It is therefore,

> FN6. The Court would caution that its recognition of a debtor's business judgment in the context of the payment of pre-petition claims is not a blank check. A debtor has a fiduciary duty to all creditors of the bankruptcy estate. To fulfill its duty when faced with a demand by an essential supplier for payment of a pre-petition claim, a debtor must attempt to negotiate the most lenient payment terms possible. As such, even though the Court has authorized payment of the Marchem pre-petition claim, Debtor, in fulfilling its fiduciary duty to protect all creditors, should use its best efforts in good faith to negotiate with Marchem in an attempt to pay the pre-petition amount over time. a lump-sum payment, in fact, would most likely strain Debtor's finances. Debtor also has a fiduciary duty to continue examining comparable products and to look for better products at a more affordable price.

ORDERED that Debtor is authorized to pay the pre-petition claim of Marchem in the amount of $47.177.89.[FM7]

> FN7. After the ruling in this matter but prior to the entry of this Order, counsel for Debtor advised the Court, by letter dated April 4, 2000, that Marchem had modified its demand to have its claim paid in full in order for it to further provide its products to Debtor. The letter informed the Court the, as a result of Debtor's negotiations with Marchem concerning the payment of the Marchem's pre-petition claim, Marchem had agreed to accept immediate payment of 50% of its pre-petition claim, approximately in the amount of $34,589, with the remaining claim to be paid through the Chapter 11 Plan. On this basis, Marchem agreed to continue to provide Debtor with its coating on a "cash in advance" basis.

AND IT IS SO ORDERD.

Bkrtcy.D.S.C.,2000.
In re Synteen Technologies, Inc.
Not Reported in B.R., 200 WL 33709667
(Bkrtcy.D.S.C.)

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and Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	Chapter 11
ABC, LLC, et al.,[1]	Case No. 11-_____(__)
Debtors.	(Joint Administration Pending)

DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105(a) AND 363 REQUESTING (I) AUTHORITY TO PAY CERTAIN PREPETITION CLAIMS OF DISTRIBUTION NETWORK VENDORS AND OTHER LIEN CLAIMANTS, AND (II) DIRECTION OF BANKS AND OTHER FINANCIAL INSTITUTIONS TO HONOR RELATED CHECKS AND ELECTRONIC PAYMENT REQUESTS

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

ABC, LLC ("ABC"), and its debtor subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), submit this motion (the "Motion") for the entry of an order pursuant to sections 105(a) and 363 of the Bankruptcy Code (defined below): (i) authorizing the Debtors to pay certain prepetition claims of vendors and providers within the distribution network for the Debtors' inventory; and (ii) granting certain related relief. The Debtors respectfully represent as follows:

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: ABC, LLC (____); DEF, LLC (____); GHI, LLC (____); and JKL, LLC.

BACKGROUND

1. On the date hereof (the "Commencement Date"), each of the Debtors commenced a voluntary case under chapter 1 1 of title 1 1 of the United States Code (the "Bankruptcy Code"). The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

DEBTORS' BUSINESS

A. Operations

2. The Debtors are a leading operator of _____. In addition, the Debtors operate a proprietary e-commerce web site, www._____.com, launched in _____, which includes both in-store and online e-commerce components.

3. As of _____, the Debtors employed a total of approximately _____ full-time employees, approximately _____ part-time employees, and approximately _____ contingent employees (who are required to work one shift per month, and usually do so at special events), all of whom are located _____. The Debtors' employees are not subject to any collective bargaining agreements.

B. Financials

4. For the fiscal year ended _____, the Debtors recorded net sales of approximately $_____ billion. As of _____, the Debtors had incurred net year-to-date losses of approximately $_____ million.

5. Additional information regarding the Debtors' business, capital structure, and the circumstances leading to these chapter 11 cases is contained in the *Declaration of* _____

Pursuant to Local Bankruptcy Rule 1007-2 in Support of First Day Motions (the "First Day Declaration") filed contemporaneously herewith.

JURISDICTION

6. The Court has subject matter jurisdiction to consider and determine this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

7. An integral component of the Debtors' retail operations is the efficient flow of inventory (the "Retail Inventory") to the Debtors' distribution centers, stores and customers. Accordingly, the Debtors rely heavily on numerous common carriers, movers, shippers, warehousemen, customs brokers and certain other third-party vendors and service providers (collectively, the "Distribution Network Vendors") to ship, transport, store, move through customs and deliver inventory through established distribution networks. The Distribution Network Vendors maintain _____ and other inventory vital to the Debtors' operations. As of the Commencement Date, many of the Distribution Network Vendors had claims for storage, transportation and related services previously provided to the Debtors (collectively, with any related taxes and custom duties, the "Distribution Network Vendor Claims").

8. If the Debtors fail to pay the Distribution Network Vendor Claims, the Debtors believe that many of the Distribution Network Vendors may stop providing their essential services to the Debtors. The Debtors believe that any such interruption in obtaining the services and cooperation of the Distribution Network Vendors would: (i) delay shipments of inventory to the Debtors' distribution centers, stores and customers; (ii) damage the Debtors' business

reputation; (iii) undermine the Debtors' ability to maintain the selection of inventory necessary to retain customer and store loyalty (and thus impair the Debtors' ability to generate ongoing operating revenue); and (iv) adversely and irreparably affect the Debtors' restructuring efforts. Even if suitable alternatives to the existing Distribution Network Vendors are available, the time necessary to identify these replacement providers and integrate them into the Debtors' operations likely would cause a significant disruption to the Debtors' operations. During any such transition period, the Debtors would lose access to valuable inventory held by the Distribution Network Vendors.

9. The Distribution Network Vendors also may be able to assert state law possessory liens against the Debtors' property that they hold or control. Because the perfection and maintenance of the liens held by the Distribution Network Vendors in most cases is dependent upon possession, it is anticipated that the Distribution Network Vendors will refuse to deliver or release the Debtors' inventory before the Distribution Network Vendor Claims have been satisfied and their liens extinguished. Such a material disruption in the operation of the Debtors' distribution network and inventory availability system would delay the shipment of inventory to the Debtors' distribution centers, stores and customers. A s such, the Debtors have determined, in the exercise of their business judgment, that payment of the Distribution Network Vendors is necessary to avoid costly disruptions to the Debtors' operations and preserve their ability to maintain the appropriate levels of inventory mix expected by their customers.

10. The Debtors have reviewed actual monthly disbursements made prior to the Commencement Date for, or related to, the Distribution Network Vendor Claims. During the period _____ through _____, the Debtors' average payments for, or related to,

Distribution Network Vendor Claims were approximately $_____ million per month. Although it is difficult to estimate with precision the Distribution Network Vendor Claims outstanding at any given moment, the Debtors estimate that the amount of outstanding prepetition Distribution Network Vendor Claims owed to the Distribution Network Vendors aggregated approximately $_____ million as of the Commencement Date. Because the Debtors typically receive invoices from the Distribution Network Vendors on a one-to-four-week delay, the Debtors believe that they have not yet received all invoices for prepetition amounts owed to the Distribution Network Vendors. The Debtors do not believe that the total amount of outstanding prepetition Distribution Network Vendor Claims will exceed $_____ million. The Debtors hereby request authority to pay all outstanding prepetition Distribution Network Vendor Claims.

11. In addition, the Debtors request authority, but not direction, to pay certain miscellaneous lien claims, including, but not limited to, mechanics' liens and materialman's liens (the "Miscellaneous Lien Claims"), on a case-by-case basis and at the Debtors' sole discretion, that either have resulted or reasonably could result in a lien being asserted against the Debtors' property.

12. The Debtors further request the authority to pay outstanding prepetition amounts owed to _____. ("_____Freight"), a third-party vendor that is vital to the Debtors' ability to manage, process and pay the Distribution Network Vendor invoices. Given the large-scale nature of their retail operations, the Debtors employ _____ to aggregate and manage all payments to the Debtors' Distribution Network Vendors. _____ receives all invoices from the Debtors' Distribution Network Vendors, reconciles the invoices, submits them to the

Debtors with a request for funding and a payment date, and disburses the funds to the Distribution Network Vendors. The services provided by _____ are integral to the Debtors' operations. The Debtors believe that the inability to pay and employ _____ could cause a serious disruption in their shipments of inventory to the Debtors' distribution centers, stores and customers that could last for up to 3 -4 weeks. The Debtors paid _____ a processing fee of $_____/invoice in _____. As of the Commencement Date, the Debtors owe approximately $_____ to _____. By this Motion, the Debtors seek authority from the Court to pay all prepetition accrued but unpaid service and administrative fees due to _____, and to continue such payments to _____ in the ordinary course of the Debtors' business.

13. The Debtors further request that this Court authorize and direct all banks and other financial institutions (each a "Bank" and collectively, the "Banks") on which checks are drawn or electronic funds are transferred with respect to Distribution Network Vendor Claims or Miscellaneous Lien Claims to receive, process, honor, and pay, to the extent of funds on deposit, any and all such checks or electronic transfers, whether such checks or transfers were issued before or after the Commencement Date, upon the receipt by each Bank of such notice of authorization without further order of the Court. A proposed form of order approving the relief requested herein on an interim basis is annexed hereto as Exhibit A (the "Interim Order") and, pending a final hearing on the Motion, on a final basis as Exhibit B (the "Final Order").

BASIS FOR RELIEF

A. The Distribution Network Vendors and Miscellaneous Lien Claimants May Have Possessory Liens on Retail Goods in their Possession

14. If the Distribution Network Vendors and Miscellaneous Lien claimants (the "Miscellaneous Lien Claimants") are not paid by the Debtors, the Debtors believe the Retail Inventory held by the Distribution Network Vendors and Miscellaneous Lien Claimants may be subject to possessory liens under applicable state law. Typically, state laws grant an entity that transports or warehouses goods a possessory lien on such goods in order to secure payment for such charges and related expenses, if such entity retains possession of the goods at issue.[2]

15. Indeed, the act of perfecting such state law liens, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay. 11 U.S.C §362 (b)(3). Section 546(b)(1)(A) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession's avoidance powers "are subject to any generally applicable law that ... permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection." 11 U.S.C. § 546(b)(1)(A).

16. Accordingly, notwithstanding the automatic stay imposed by section 362(a) of the Bankruptcy Code, the Distribution Network Vendors and Miscellaneous Lien Claimants may (i) be entitled to assert and perfect liens against Retail Inventory that would entitle them to payment ahead of other general unsecured creditors, and (ii) hold Retail Inventory subject to the asserted

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[2] For example, section 7-307 of New York's Uniform Commercial Code provides, in pertinent part:

> "A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law."

N.Y. U.C.C. § 7-307(1).

liens pending payment, to the direct detriment of the Debtors, their estates, and other parties in interest.

17. Further, section 9-310 of the Uniform Commercial Code grants creditors holding possessory liens a priority in payment over consensual lien creditors. Thus, as secured creditors under the Bankruptcy Code, the Distribution Network Vendors and Miscellaneous Lien Claimants may be entitled to receive priority payment as compared to general unsecured creditors pursuant to any confirmed chapter 11 plan. Consequently, payment of such amounts would give the Distribution Network Vendors and Miscellaneous Lien Claimants no more than that to which they are already entitled. On the other hand, absent payment of the amounts owed, millions of dollars of Retail Inventory are in danger of being retained by the Distribution Network Vendors as security for payment of any outstanding amounts.

18. In addition, pursuant to section 363(e) of the Bankruptcy Code, the Distribution Network Vendors and Miscellaneous Lien Claimants, as bailees, may be entitled to adequate protection of a valid possessory lien. Section 363(e) of the Bankruptcy Code provides that on request of an entity that has an interest in property, the court may prohibit or condition the use, sale or lease of such property, "as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e). Given that the value of the Retail Inventory in the possession of the Distribution Network Vendors or the Miscellaneous Lien Claimants will generally far exceed the value of their respective claims, creditors will not be harmed -- and, in fact, will be benefited -- by the satisfaction of certain prepetition claims of such parties because such payments will help preserve the going-concern value of the Debtors' business.

B. **Payment of the Distribution Network Vendor Claims and Miscellaneous Lien Claims Comports With the Debtors' Business Judgment and is Authorized Under Sections 363 and 105(a) of the Bankruptcy Code**

19. Section 363(b)(1) of the Bankruptcy Code provides that, after notice and a hearing, the trustee "may use sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). A bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). "Under Section 105, the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor." *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *Ionosphere Clubs*, 98 B.R. at 177).

20. Federal courts have consistently permitted postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor's estate for the benefit of all creditors. *See, e.g., Miltenberger v. Logansport R. Co.*, 106 U.S. 286, 312 (1882) (payment of pre-receivership claim prior to reorganization permitted to prevent "stoppage of [crucial] business relations"); *Dudley v. Mealey*, 147 F.2d 268 (2d Cir. 1945), *cert. denied*, 325 U.S. 873 (1945) (Second Circuit extends doctrine for payment of prepetition claims beyond railroad reorganization cases); *Mich. Bureau of Workers' Disability Comp. v. Chateaugay Corp.* (*In re Chateaugay Corp.*), 80 B.R. 279, 285-86 (S.D.N.Y. 1987), *appeal dismissed*, 838 F.2d 59 (2d Cir. 1988) (approving lower Court order authorizing payment of prepetition wages, salaries, expenses, and benefits); *In re Boston & Maine Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980)

(recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to debtors' continued operation).

21. The doctrine of necessity functions in a chapter 11 case as a mechanism by which the Bankruptcy Court can exercise its equitable power to facilitate a successful reorganization by allowing payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. *See In re Just for Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999) (recognizing that "[c]ertain pre-petition claims by employees and trade creditors ... may need to be paid to facilitate a successful reorganization").

22. The doctrine is frequently invoked early in a chapter 11 case. The Court in *In re Structurlite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988), indicated its accord with "the principle that a Bankruptcy Court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to 'permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately'" (quoting *In re Chateaugy Corp.*, 80 B.R. at 287). The Bankruptcy Court stated that "a *per se* rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code." *Id.* at 932. The rationale for the doctrine of necessity rule is consistent with the paramount goal of chapter 11 -- "facilitating the continued operation and rehabilitation of the debtor." *Ionosphere Clubs*, 98 B.R. at 176.

23. This Motion satisfies the foregoing criteria, as the relief sought herein plainly is essential to the Debtors' reorganization, and payment of the Distribution Network Vendor Claims is warranted as a reasonable exercise of the Debtors' business judgment. It is essential that the Debtors be permitted immediately to pay the Distribution Network Vendor Claims to

insure that the flow of _____ and inventory throughout the Debtors' distribution network (including inventory being delivered from the Debtors to their customers) remains constant, timely and efficient. Should the Debtors' flow of inventory be interrupted for even a brief time, the Debtors could suffer disruptions of their businesses at multiple locations, with a corresponding loss of customer confidence. The Debtors cannot afford any material disruptions of their business operations or present anything less than a "business as usual" appearance to the public.

24. Moreover, because the amount of most of the Distribution Network Vendor Claims are for less than the value of the property securing those claims, it appears that most of the Distribution Network Vendors are (or will allege that they are) fully secured creditors. In general, pursuant to section 506 of the Bankruptcy Code, fully secured creditors are entitled to receive (i) payment in full of their prepetition claims and (ii) the postpetition interest accruing on such claims up to the value of the collateral. Consequently, payment of the Distribution Network Vendor Claims now will (i) in most cases give the Distribution Network Vendors no more than they otherwise would be entitled to receive on account of their claims in the chapter 11 process and (ii) save the Debtors the cost of interest that otherwise may accrue on the Distribution Network Vendor Claims. Accordingly, the Debtors' general creditors are not prejudiced by the relief sought herein.

25. The Debtors, moreover, intend to reserve the right to make any such payments in their sole discretion, and to require, as a condition to payment, that each Distribution Network Vendor agree to: (i) release any liens it may have; and (ii) on a prospective basis, provide credit, pricing or payment terms equal to, or better than, those provided to the Debtors prepetition. By

reserving the right to require, as a condition to any payment on account of any Distribution Network Vendor Claim, that the Distribution Network Vendors agree to release any Liens and provide credit terms equivalent to those provided prepetition, the Debtors anticipate that they will be able to enhance their liquidity during these chapter 11 cases to the benefit of their estates and creditors.[3]

26. In light of the foregoing, the Debtors respectfully submit that the relief requested herein is: (i) necessary and essential for the Debtors' reorganization; (ii) in the best interests of the Debtors, their estates and their creditors; and (iii) necessary to prevent immediate and irreparable harm to the Debtors and their estates.

27. Payment of the Distribution Network Vendor Claims is not simply necessary for the continued operations of the Debtors but critical to the survival of the Debtors' business. The sale of the Retail Inventory -- especially _____, which are the lifeblood of the Debtors' operations -- depend upon the Debtors' ability to receive the Retail Inventory in a timely fashion. Moreover, the Debtors believe in their sound business judgment that continuation of their positive relationships with the Distribution Network Vendors and Miscellaneous Lien Claimants is imperative to their continued operations and greatly increases the likelihood of a successful reorganization.

28. The Debtors submit that payment of the prepetition Distribution Network Vendor Claims will benefit the Debtors and their creditors by allowing the Debtors to receive the Retail Inventory necessary to operate their business, and will not prejudice unsecured creditors since

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[3] As such, the payment of the Distribution Network Vendor Claims is further justified pursuant to section 364 of the Bankruptcy Code because any postpetition credit provided by the Distribution Network Vendors may constitute trade financing to the Debtors pursuant to that section. *See* 11 U.S.C. § 364.

the Debtors will only pay those claimants that they believe in their business judgment to be secured by valid liens, or that they believe are capable of being secured by perfecting liens in the Debtors' property. In addition, payment of the Miscellaneous Lien Claims will save the Debtors the considerable time and expense of having to negotiate or litigate for the return of, or right to use, property of these estates that may be subject to such lien claims. As such, the Debtors respectfully submit that the Court should exercise its equitable power to grant the relief requested herein.

29. Courts have previously authorized the payment of charges similar to the Distribution Network Vendor Claims in other large chapter 11 cases in this district.[4] *See, e.g., In re The Great Atl. & Pac. Tea Co., Inc.*, Ch. 11 Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 13, 2011) [Docket No. 500]; *In re General Motors Corp.*, Ch. 11 Case No. 09-50026 (REG) (Bankr. S.D.N.Y. June 1, 2009) [Docket No. 170]; *In re Finlay Enterprises., Inc.*, Ch. 11 Case No. 09-14873 (JMP) (Bankr. S.D.N.Y. Sept. 3, 2009) [Docket No. 193]; *In re U.S. Shipping Partners L.P.*, Ch. 11 Case No. 09-12711 (RDD) (Bankr. S.D.N.Y. May 22, 2009) [Docket No. 81]; *In re Lenox Sales, Inc.*, Ch. 11 Case No. 08-14679 (ALG) (Bankr. S.D.N.Y. Nov. 5, 2008) [Docket No.33]; *In re Lexington Precision*, Ch. 11 Case No. 08-11153 (MG) (Bankr. S.D.N.Y. Apr. 2, 2008) [Docket No. 79]; *In re Silicon Graphics, Inc.*, Ch. 11 Case No. 06-10977 (BRL) (Bankr. S.D.N.Y. May 10, 2006) [Docket No. 372]; *In re Footstar, Inc.*, Ch. 11 Case No. 04-22350 (ASH) (Bankr. S.D.N.Y. Mar. 31, 2004) [Docket No. 257]; *In re Loral Space & Communications Ltd.*, Ch. 11 Case No. 03-13532 (RDD) (Bankr. S.D.N.Y July 16, 2003) [Docket No. 41].

[4] Because of the voluminous nature of the unreported orders cited herein, such orders are not annexed to the Motion. Copies of these orders are available upon request of Debtors' counsel.

30. Nothing in this Motion shall be an admission as to any possessory lien or right of setoff. Moreover, authorization of the payment of all prepetition Distribution Network Vendor Claims or Miscellaneous Lien Claims requested herein shall not be deemed to constitute postpetition assumption or adoption of any related agreements pursuant to section 365 of the Bankruptcy Code. The Debtors reserve all of their rights under the Bankruptcy Code with respect thereto.

31. Based upon the foregoing, the Debtors submit that the relief requested herein is essential, appropriate, in the best interest of their estates and creditors, and should be granted.

C. **Applicable Banks Should Be Directed to Honor and Process Checks and Transfers Related to the Distribution Network Vendor Claims**

32. In furtherance of the relief requested herein, the Debtors request that the Court authorize and direct the Banks to receive, honor, process, and pay, to the extent of funds on deposit, any and all checks or electronic transfers requested or to be requested by the Debtors relating to the Distribution Network Vendor Claims or Miscellaneous Lien Claims, including those checks or electronic transfers that have not cleared the Banks as of the Commencement Date, without the need for further Court approval.

33. The Debtors also seek authority to replace any prepetition checks or electronic transfers relating to the Distribution Vendor Network Claims or Miscellaneous Lien Claims that maybe dishonored or rejected. Each of the checks or electronic transfers can be readily identified as relating directly to the authorized payment of the Distribution Network Vendor Claims or Miscellaneous Lien Claims. The Debtors believe that prepetition checks and electronic transfers, other than those for Distribution Network Vendor Claims or Miscellaneous Lien Claims, or those authorized by another order of the Court, may not be honored inadvertently. The Debtors also

request that the Banks be authorized and directed to rely on the representations of the Debtors as to which checks and electronic transfers are in payment of the Distribution Network Vendor Claims or Miscellaneous Lien Claims.

D. Deemed Compliance and/or Waiver with Applicable Bankruptcy Rules

1. The Requested Relief Satisfies Bankruptcy Rule 6003

34. Bankruptcy Rule 6003 provides that, except to the extent the relief requested is necessary to avoid immediate and irreparable harm to the Debtors' estates, the court shall not, within twenty-one (21) days after the filing of the petition, grant relief regarding a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition. As detailed above and as set forth in the First Day Declaration, the Debtors submit that such relief is necessary to avoid immediate and irreparable harm to the Debtors and their estates and, accordingly, submit that Bankruptcy Rule 6003 is satisfied.

2. **Waiver of Bankruptcy Rules 6004(a) and (h)**

35. Unless the Court orders otherwise, Bankruptcy Rule 6004(a) requires the Debtors to provide 21 days notice to all creditors and certain other parties in interest of the use of property outside the ordinary course of business. Moreover, unless the Court orders otherwise, Bankruptcy Rule 6004(h) automatically stays for fourteen (14) days any order granting such relief. As described above and in the First Day Declaration, the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors that would otherwise be caused by a delay in the delivery of the Retail Goods. Accordingly, the Debtors request the Court

waive (i) the notice requirements under Bankruptcy Rule 6004(a), and (ii) the stay of the order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

NOTICE

36. No trustee or examiner has been appointed in these chapter 11 cases. The Debtors have served notice of this Motion on: (i) the Office of the United States Trustee for the Southern District of New York (Attn: _____ and _____); (ii) those creditors holding the thirty largest unsecured claims against the Debtors' estates; (iii) counsel for the DIP Agents: (x) _____ (Attn: _____ and _____), counsel for the Working Capital Agent, (y) _____ (Attn: _____), counsel for _____; (iv) _____, attorneys for certain landlords (Attn_____, _____, and _____); (v) _____, attorneys for certain trade vendors (Attn: _____, _____, _____, and _____); (vi) _____, attorneys for _____ (Attn: _____); and (vii) _____, attorneys for _____ (Attn: _____ and _____) (collectively, the "Notice Parties"). The Debtors submit that no other or further notice need be provided.

37. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: _____
New York, New York

LAW FIRM

By: /s/_____
Attorney (_____@_____.com)

4847-8841-4806

Address
City, State Zip Code
Telephone: (###) ###-####
Facsimile: (###) ###-####

Attorneys for Debtors
and Debtors-in-Possession

EXHIBIT A

PROPOSED INTERIM ORDER

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	**Chapter 11**
ABC, LLC, et al.,[1]	**Case No. 11-_____(___)**
Debtors.	**(Joint Administration Pending)**

INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 363 (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF DISTRIBUTION NETWORK VENDORS AND OTHER LIEN CLAIMANTS, AND (II) DIRECTING BANKS AND OTHER FINANCIAL INSTITUTIONS TO HONOR RELATED CHECKS AND ELECTRONIC PAYMENT REQUESTS

Upon the Motion,[2] dated _____, of ABC, LLC ("ABC"), and its debtor subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), pursuant to sections 105(a) and 363 of the Bankruptcy Code requesting (i) authorization to pay certain Distribution Network Vendor Claims and Miscellaneous Lien Claims, and (ii) authorizing and directing Banks to honor related checks and electronic payment requests, and (iii) scheduling a final hearing (the "Final Hearing") to consider the relief requested on a final basis, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b);

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: ABC, LLC (____); DEF, LLC (____); GHI, LLC (____); and JKL, LLC.

[2] Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Motion.

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and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the "Interim Hearing"); and upon the record of the Interim Hearing and all of the proceedings had before the Court; and upon the First Day Declaration; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, and creditors, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as provided herein on an interim basis.

2. The Debtors are authorized, but not directed, to make payments in the interim period of all valid, undisputed Distribution Network Vendor Claims that are past due or become due during the interim period and Miscellaneous Lien Claims, whether relating to the period prior to or after the Commencement Date, as the Debtors determine, in the exercise of their business judgment, to be necessary or appropriate to obtain the release of Retail Inventory or liens against real or personal property of the Debtors.

3. All applicable Banks are hereby authorized and directed, at the Debtors' instruction, to receive, honor, process, and pay, to the extent of funds on deposit, any and all checks or electronic transfers drawn on the Debtors' bank accounts relating to the Distribution Network Vendor Claims or Miscellaneous Lien Claims, including those checks or electronic transfers that have not cleared the Banks as of the Commencement Date.

4. The Debtors are authorized to replace any prepetition checks or electronic transfers relating to the Distribution Network Vendor Claims or Miscellaneous Lien Claims that maybe dishonored or rejected.

5. The Debtors are authorized to pay _____ all prepetition accrued but unpaid service and administrative fees due to _____, and to continue such payments to _____ in the ordinary course of the Debtors' business thereafter.

6. The Banks may rely on the representations of the Debtors as to which checks or electronic transfers are in payment of the Distribution Network Vendor Claims or Miscellaneous Lien Claims.

7. Nothing in this Order or the Motion shall be construed as prejudicing the rights of the Debtors to dispute or contest the amount of or basis for any claims against the Debtors arising in connection with, or relating to, the Distribution Network Vendor Claims or Miscellaneous Lien Claims.

8. Nothing contained in the Motion or this Order shall be deemed: (i) an assumption, adoption, authorization to assume, or rejection of any executory contract or agreement between the Debtors and any third party pursuant to section 365 of the Bankruptcy Code; (ii) a requirement that the Debtors make any of the payments authorized herein; or (iii) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

9. The requirements of Bankruptcy Rule 6003(b) are satisfied.

10. The requirements of Bankruptcy Rule 6004(a) are waived.

11. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

12. The Final Hearing to consider entry of an order granting the relief requested in the Motion on a final basis shall be held on _____, 20___ at _:__ [ ].m. (Prevailing Eastern Time) before the Honorable [ ]; and any objections to entry of such order shall be in writing, filed with the Court in accordance with General Order M-242 and served upon the attorneys for the Debtors, the Notice Parties, and any official committee of unsecured creditors appointed in these chapter 11 cases, in each case so as to be received no later than [ ] p.m. (Prevailing Eastern Time) on [ ], 20___.

13. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: _____, 20___
New York, New York

_____
UNITED STATES BANKRUPTCY JUDGE

4847-8841-4806

EXHIBIT B

PROPOSED FINAL ORDER

4847-8841-4806

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	Chapter 11
ABC, LLC, et al.,[1]	Case No. 11-_____(___)
Debtors.	(Joint Administration Pending)

FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105 (a) AND 363 (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN PREPETITION CLAIMS F DISTRIBUTION NETWORK VENDORS AND OTHER LIEN CLAIMANTS, AND (II) DIRECTING BANKS AND OTHER FINANCIAL INSTITUTIONS TO HONOR RELATED CHECKS AND ELECTRONIC PAYMENT REQUESTS

Upon the Motion,[2] dated February 16, 2011, of ABC, LLC, and its debtor subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), pursuant to sections 105(a) and 363 of the Bankruptcy Code requesting (i) authorization to pay certain Distribution Network Vendor Claims and Miscellaneous Lien Claims, and (ii) authorizing and directing Banks to honor related checks and electronic payment requests and (iii) scheduling a final hearing (the "Final Hearing") to consider the relief requested on a final basis, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and grant the requested relief in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: ABC, LLC (____); DEF, LLC (____); GHI, LLC (____); and JKL, LLC.

[2] Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Motion.

28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, and it appearing that no further notice need be provided; and the Court having held a hearing to consider the requested relief; and a hearing to consider approval of the Motion on an interim basis having been held (the "Interim Hearing"); and the Court having entered an interim order (the "Interim Order") granting the relief requested in the Motion, pending the Final Hearing; and it appearing that due and proper notice of the Final Hearing has been given and that no other or further notice need be provided; and upon the record of the Interim Hearing and the Final Hearing and all of the proceedings had before the Court; and upon the First Day Declaration; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates and creditors, and all parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as provided herein on a final basis.

2. The Debtors are authorized, but not directed, to make payments in respect of all valid, undisputed Distribution Network Vendor Claims and Miscellaneous Lien Claims, whether relating to the period prior to or after the Commencement Date, as the Debtors determine, in the exercise of their business judgment, to be necessary or appropriate to obtain the release of Retail Goods or liens against real or personal property of the Debtors.

3. All applicable Banks are hereby authorized and directed, at the Debtors' instruction, to receive, honor, process, and pay, to the extent of funds on deposit, any and all checks or electronic transfers drawn on the Debtors' bank accounts relating to the Distribution

Network Vendor Claims or Miscellaneous Lien Claims, including those checks or electronic transfers that have not cleared the Banks as of the Commencement Date.

4. The Debtors are authorized to replace any prepetition checks or electronic transfers relating to the Distribution Network Vendor Claims or Miscellaneous Lien Claims that maybe dishonored or rejected.

5. The Debtors are authorized to pay _____ all prepetition accrued but unpaid service and administrative fees due to _____, and to continue such payments to _____ in the ordinary course of the Debtors' business thereafter.

6. The Banks may rely on the representations of the Debtors as to which checks or electronic transfers are in payment of the Distribution Network Vendor Claims or Miscellaneous Lien Claims.

7. Nothing in this Order or the Motion shall be construed as prejudicing the rights of the Debtors to dispute or contest the amount of or basis for any claims against the Debtors arising in connection with, or relating to, the Distribution Network Vendor Claims or Miscellaneous Lien Claims.

8. Nothing contained in the Motion or this Order shall be deemed: (i) an assumption, adoption, authorization to assume, or rejection of any executory contract or agreement between the Debtors and any third party pursuant to section 365 of the Bankruptcy Code; (ii) a requirement that the Debtors make any of the payments authorized herein; or (iii) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

9. The requirements of Bankruptcy Rule 6003(b) are satisfied.

10. The requirements of Bankruptcy Rule 6004(a) are waived.

11. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

12. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: _____, 20___
New York, New York

_____
UNITED STATES BANKRUPTCY JUDGE

4847-8841-4806

Attorney
Firm
Address
City, State Zip Code
Telephone:
Facsimile:
Email:

Counsel for ABC, LLC

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH, CENTRAL DIVISION

In re **ABC, LLC**, Debtor.	Bankruptcy Case No. _____ (Chapter 11) Honorable _____

MOTION FOR INTERIM AND FINAL ORDERS AUTHORIZING THE DEBTOR TO CONTINUE ITS INSURANCE PROGRAMS AND PAY RELATED RELIEF

ABC, LLC, as debtor and debtor-in-possession (the "Debtor"), hereby moves (the "Motion") the Court for the entry of an interim order (the "Interim Order") attached hereto as **Exhibit A** and a final order (the "Final Order") attached hereto as **Exhibit B** pursuant to sections 105(a) and 363 of the Bankruptcy Code: (i) authorizing the Debtor to (a) continue its Insurance Policies (as defined below) and (b) pay certain prepetition and postpetition obligations related thereto; and (ii) granting certain related relief. In support of this Motion, the Debtor respectfully represents as follows:

JURISDICTION, VENUE AND BASIS FOR RELIEF

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion are proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a) and 363 of title 11 of the United States Code (11 U.S.C. §§ 101 *et. seq.*, the "Bankruptcy Code") and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

BACKGROUND

3. On _____ (the "Relief Date" or "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11, U.S.C. in this court and, on such date became a debtor-in-possession under Chapter 11 of the Bankruptcy Code.

4. No trustee, examiner, creditors' committee, or other official committee has been appointed in this chapter 11 case.

5. Information about the Debtor's business operations, capitalization and prepetition indebtedness, as well as the events leading to the Relief Date , can be found in the Declaration of _____ in Support of First Day Pleadings (the "First Day Declaration"). The Debtor relies on the First Day Declaration in seeking the relief requested herein and incorporates the First Day Declaration herein by reference.

THE DEBTOR'S INSURANCE POLICIES

6. In the ordinary course of business, the Debtor maintains no less than eight (8) insurance policies that are administered by multiple third-party insurance carriers (collectively, the "Insurance Carriers"). These policies provide coverage for, among other things, the Debtor's general liability, automobile, workers' compensation,[1] umbrella, excess, pollution, property, and director and officer liability (collectively, the "Insurance Policies"). A schedule of current Insurance Policies, reflecting the type of coverage, the Insurance Carrier, the policy number and the policy term, is attached hereto as **Exhibit C** and incorporated herein by reference.

[1] Concurrently with the filing of this Motion, the Debtor has also filed a motion seeking authority to satisfy certain obligations relating to prepetition employee wages and benefits, including authority to continue and pay obligations under the workers' compensation coverage.

7. On a yearly basis during _____, the Debtor will pay an aggregate amount of approximately $_____ on account of annual premiums under the Insurance Policies. The annual premium for the director and officer liability for the current year is approximately $_____ and has [describe status]. The Debtor finances its remaining premium obligations through _____("____"). The premium finance loan enables the Debtor to spread payments over the course of the year instead of paying the entire premium up front. The Debtor provided _____ a down payment, which covered payment for the first and last month. The Debtor is required to make an additional (ten) 10 monthly payments in the amount of approximately $_____ each. The Debtor has made payment through _____.

8. The Debtor typically obtains the Insurance Policies through its insurance broker _____, Inc. and obtains its director and officer liability coverage through its insurance broker _____(collectively, the "Insurance Broker"). The Insurance Broker assists the Debtor with the procurement and negotiation of the Insurance Policies, enabling the Debtor to obtain Insurance Policies on advantageous terms at competitive rates and in a cost-effective manner. In connection with the Insurance Policies, the Insurance Broker is compensated through commissions from insurers (the "Brokerage Fees") as a flat annual fee or part of the premiums on the Insurance Policies. The Brokerage Fees are typically paid at the time of placement or renewal of an Insurance Policy.

9. As of the Relief Date, the Debtor does not believe there are any accrued but unpaid obligations, including premium obligations, on account of the Insurance Policies. Nevertheless, out of an abundance of caution, the Debtor seeks authority to honor any amounts owed on account of the Insurance Policies in the ordinary course of business to ensure uninterrupted coverage under the Insurance Policies.

10. Continuation of insurance coverage is essential to the preservation of the value of the Debtor's businesses, properties, and assets. Moreover, in many cases, coverage provided by

the Insurance Policies is required by the regulations, laws, and contracts that govern the Debtor's commercial activities, including the requirements of the Office of the United States Trustee. Accordingly, the Debtor requests the Court's authority to maintain its existing Insurance Policies, pay prepetition obligations (if any) related thereto, and renew, revise, extend, supplement, change or enter into new Insurance Policies in the ordinary course of business.

REQUEST FOR RELIEF

11. By this Motion, the Debtor respectfully requests that the Court enter the Interim Order and the Final Order authorizing the Debtor to (i) continue its Insurance Policies on an uninterrupted basis in accordance with the same practices and procedures in effect prior to the Relief Date, and to renew, revise, extend, supplement or change its Insurance Policies or obtain replacement coverage, as needed in the ordinary course of business, without further approval from this Court; (ii) pay, in its sole discretion, all undisputed premiums, claims, deductibles, fees, and other obligations relating to the Insurance Policies, as applicable, that relate to the period before or after the Relief Date and are due and payable (collectively, the "Insurance Obligations"); (iii) liquidate in an appropriate forum or settle such Insurance Obligations as necessary and (iv) granting certain related relief.

BASIS FOR RELIEF REQUESTED

12. Pursuant to Bankruptcy Code section 503(b)(1), a debtor may incur and the court may allow "the actual, necessary costs and expenses of preserving the estate." Further, Bankruptcy Code section 363(b)(1) provides that "[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Bankruptcy Code section 105(a) further provides that a court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code, pursuant to the "doctrine of necessity."

13. The "doctrine of necessity" functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code and further supports the relief requested herein. *See In re Fin. News Network Inc.*, 134 B.R. 732, 735–36 (Bankr. S.D.N.Y. 1991) (stating that "[t]he 'doctrine of necessity' stands for the principle that a bankruptcy court may allow pre-plan payments of prepetition obligations where such payments are critical to the debtor's reorganization.").

14. The Debtor submits that the relief requested in this Motion is necessary for the Debtor to continue its operations during the course of the chapter 11 case and proceed with its chapter 11 case. For instance, the guidelines for chapter 11 trustees, promulgated by the Department of Justice, Executive Office for the United States Trustee, require debtors to maintain appropriate levels of insurance.[2] Additionally, Bankruptcy Code section 1112(b)(4)(C) states that "failure to maintain appropriate insurance that poses a risk to the estate or to the public," is "cause" for mandatory conversion or dismissal of a chapter 11 case. 11 U.S.C. § 1112(b)(4)(C). Further, if the Insurance Policies were to lapse, the Debtor would be required to obtain replacement insurance, likely at a cost greater than the cost of the current Insurance Policies.[3] As such, the Debtor submits that the relief sought herein is in the best interests of the Debtor and its estates.

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[2] See U.S. Department of Justice, Executive Office of United States Trustees, Chapter 11 Trustee Handbook (May 2004), at 26-27 ("In securing the assets of the estate, the chapter 11 trustee is required to . . . maintain appropriate insurance for the estate. . . . [T]o the extent necessary, and if reasonably available, the chapter 11 trustee must maintain the following types of insurance adequate to protect the estate: general comprehensive liability; fire and theft; workers' compensation; vehicle; product liability; flood and/or windstorm insurance; and other insurance as customary or prudent in the debtor's business or as required by law.").

[3] In addition, the Debtor may need to renew or replace certain of its Insurance Policies while this case is pending. If the Debtor does not honor its obligations under the Insurance Policies, the Insurance Carriers may be reluctant to continue doing business with the Debtor.

15. To the extent any of the Insurance Policies or related agreements are deemed to constitute an executory contract within the meaning of Bankruptcy Code section 365, the Debtor does not, at this time, seek to assume any such contract. Accordingly, if the Court authorizes the payments described above, such payments should not be deemed to constitute a postpetition assumption or adoption of the programs, policies, or agreements as executory contracts. The Debtor reserves all of its rights under the Bankruptcy Code with respect to the Insurance Policies, and the authorization to pay amounts due under the Insurance Policies should not affect the Debtor's right to contest the amount or validity of these obligations.

16. In addition, by this Motion, the Debtor requests that all applicable banks and other financial institutions (collectively, the "Banks") be authorized, when requested by the Debtor, to receive, process, honor and pay any and all checks presented for payment of, and to honor all fund transfer requests made by the Debtor related to the Insurance Obligations, whether such checks were presented or fund transfer requests were submitted prior to or after the Relief Date, provided that sufficient funds are available in the applicable accounts to make the payments. The Debtor represents that these checks are drawn on specific disbursement accounts and can be readily identified as relating directly to the authorized payment of the Insurance Obligations.

REQUESTS FOR IMMEDIATE RELIEF AND WAIVER OF STAY

17. Pursuant to Bankruptcy Rules 6003(b) and 6004(h), the Debtor seeks (i) immediate entry of an order that, *inter alia*, grants the Debtor the authority to continue its Insurance Policies and pay the Insurance Obligations and (ii) a waiver of any stay of the effectiveness of such an order.

18. Bankruptcy Rule 6003(b) provides, in relevant part, that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding . . . a motion to pay all or part of a claim that arose before the filing of the petition." Accordingly, where the failure to grant any

such requested relief would result in immediate and irreparable harm to the Debtor's estate, the Court may allow the Debtor to pay all or part of a claim that arose before the Relief Date prior to the twenty-first day following the Relief Date. Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise."

19. Payment of the Insurance Obligations is necessary to prevent the immediate and irreparable damage to the value of the Debtor's business, property and assets that could result from a loss of insurance. Accordingly, the Debtor submits that ample cause exists to justify: (i) the immediate entry of the Interim Order granting the relief sought herein on an interim basis pursuant to Bankruptcy Rule 6003(b) and (ii) a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h).

RESERVATION OF RIGHTS

20. Nothing contained herein is intended or should be construed as: (i) an admission as to the validity, priority or amount of any claim against the Debtor; (ii) a waiver of the Debtor's rights to dispute any claim on any grounds; (iii) a promise to pay any claim; or (iv) an implication or admission that any claim is of the type specified or defined in this Motion; (v) a request or authorization to assume any agreement, contract or lease pursuant to Bankruptcy Code section 365; (vi) a waiver of the Debtor's rights under the Bankruptcy Code or any other applicable law; or (vii) a concession by the Debtor that any liens (contractual, common law, statutory or otherwise) satisfied pursuant to this Motion are valid, and the Debtor expressly reserves it right to contest the extent, validity and perfection or seek avoidance of all such liens.

NOTICE

21. Notice of this Motion will be provided to: (i) the Office of the United States Trustee for the District of Utah; (ii) the Debtor's largest twenty (20) unsecured creditors as identified in its chapter 11 petition; (iii) the Insurance Carriers; (iv) the Insurance Broker; (v) the

Debtor's cash management banks and (vi) all parties requesting notice in this case pursuant to Rule 2002. Due to the nature of the relief requested herein, the Debtor respectfully submits that no further notice of this Motion is necessary.

NO PRIOR REQUEST

22. No prior request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter the Interim Order and the Final Order and grant such relief as the Court deems just and proper.

DATED this _____ day of _____, 20__.

_____

/s/_____

_____

Counsel for ABC, LLC

CERTIFICATE OF SERVICE – BY NOTICE OF ELECTRONIC FILING (CM/ECF)

I hereby certify that on the ____ day of _____, 20___, I electronically filed the foregoing document with the United States Bankruptcy Court for the District of Utah by using the Court's CM/ECF system. I further certify that the parties of record in this case, as identified below, are listed as registered CM/ECF users and will be served through the CM/ECF system:

CERTIFICATE OF SERVICE – BY MAIL, OTHER

I further certify that on the ____ day of _____, 20___, I caused the foregoing document to be sent by first class United States mail, postage fully prepaid, to the following at the addresses set for the below:

/s/_____

[Attorney (email)]
[Law Firm]
[Address]
[City, State, Zip Code]
Telephone: (###) ###-####
Facsimile: (###) ###-####

Attorneys for Debtors
and Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	**Chapter 11**
ABC, LLC., *et al.*,[1]	**Case No. _____ (___)**
Debtors.	**(Joint Administration Pending)**

DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105(a) AND 503(b)(1) FOR AUTHORIZATION TO HONOR CERTAIN PREPETITION CUSTOMER PROGRAMS

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

ABC, LLC ("ABC") and its affiliated debtors, as debtors and debtors in possession (collectively, the "Debtors"), submit this motion (the "Motion") and respectfully represent as follows:

BACKGROUND

1. On the date hereof (the "Commencement Date"), each of the Debtors commenced a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Contemporaneously

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: ABC, LLC (____); DEF, LLC (____); GHI, LLC (____); and JKL, LLC (____).

herewith, the Debtors filed a motion seeking joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

DEBTORS' BUSINESS

A. Operations

2.

3.

B. Financials

4.

5.

JURISDICTION

6. The Court has subject matter jurisdiction to consider and determine this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

7. The Debtors, in the ordinary course of their business and as is common for retailers, engage in certain marketing and sales practices that are generally (i) targeted to develop and sustain positive reputations for their stores and merchandise in the marketplace, and (ii) designed to attract new customers to the Debtors' stores and to enhance store loyalty and sales among the Debtors' existing customer base. The Debtors request entry of an order, substantially in the form of Exhibit A annexed hereto, authorizing, but not directing, the Debtors to continue their Customer Programs (as defined herein) in the ordinary course of business and to perform and honor their prepetition obligations thereunder.[2]

[2] Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against any of the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any executory contract or unexpired lease under section 365 of the Bankruptcy Code. Likewise, if this Court

THE DEBTORS' CUSTOMER PROGRAMS

8. The Debtors' customer-targeted practices (collectively, the "Customer Programs") include, but are not limited to, those practices described in the following paragraphs. Continuance of the Customer Programs in the ordinary course is integral to the Debtors' seamless transition into chapter 11 and will facilitate a successful reorganization. The Debtors believe they must quickly assure customers that the goods and services they have come to expect under the Customer Programs will not be interrupted or otherwise changed as a result of the Debtors' restructuring efforts. By this Motion, the Debtors seek authority to continue the Customer Programs in the ordinary course of business, but also reserve the right to alter, amend and/or revoke such programs in their sole discretion and in the ordinary course of business.

9. The following are general descriptions of the Debtors' principal Customer Programs:

A. Debtors' Rewards Program

10.

11.

12.

13.

B. Debtors' Gift Cards

14. The Debtors issue _____ gift cards in a variety of denominations (collectively, the "Gift Cards"). Gift Cards typically are issued in exchange for cash, and are redeemable by purchasers or recipients in exchange for the Debtors' merchandise (with a limited number of restrictions). The Debtors are not subject to service fees or expiration dates. As of the Debtors' fiscal year-end on _____, the aggregate amount on Gift Cards outstanding was

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grants the relief sought herein, any payment made pursuant to the Court's order granting the relief requested in this Motion is not intended and should not be construed to be an admission as to the validity of any claim, or a waiver of the Debtors' right to subsequently dispute such claim.

approximately $_____. However, taking breakage into account (*i.e.*, the amount of traditionally unredeemed Gift Cards), the Debtors estimate that only approximately $_____ of this amount will be redeemed.

C. Return Policies

15. Consistent with industry practices, the Debtors traditionally have maintained merchandise return, refund, replace and exchange policies. Merchandise purchased from the Debtors' stores generally may be returned to the Debtors' stores for a full refund, issued in the same form as the original purchase, within thirty days of purchase when accompanied by an original sales receipt. The Debtors' return policy is different, however, when the returned merchandise is accompanied by a gift receipt. In this circumstance, the Debtors allow their customers sixty days to return merchandise to their stores, but the Debtors issue the refund in the form of a Gift Card. Likewise, customers that return merchandise to the Debtors' stores with no receipt receive merchandise credit.[3] The Debtors also allow their customers to exchange (for the identical item of merchandise) _____ purchased in the Debtors' stores, subject to the same time and receipt requirements set forth above.

16. The Debtors' return policies differ slightly when a customer purchases merchandise from the Debtors' online store. The Debtors give their customers thirty days to return merchandise. If a customer returns merchandise purchased online directly to the Debtors' online store (and includes the original packing slip), the customer will receive a full refund in the form of the original payment method. If a customer returns merchandise ordered online to one of the Debtors' retail outlets, however, the Debtors will issue the refund in the form of a Gift Card. Finally, when a customer receives merchandise that was purchased online as a gift, the

[3] However, customers that purchase merchandise in the Debtors' retail stores pursuant to "store closing ales" (per the Debtors' motion filed contemporaneously herewith), will not be permitted to return such merchandise, with or without receipts.

customer may either: (i) return the merchandise to the Debtors' online store, whereby the original purchaser of the merchandise will receive a full refund in the same form as the original purchase; or (ii) return the merchandise at one of the Debtors' retail outlets and either exchange the merchandise or receive a store credit for the merchandise's value.

17. These policies provide the Debtors' customers with comfort that they will be able to return merchandise if, for example, the merchandise purchased is damaged or defective, etc. Certain items, including out-of-print items, magazines, and items marked "final sale" or "non-returnable item" are not subject to the refund policies discussed above.

D. Credit Card Processing Agreements

18. The Debtors are party to processing agreements (collectively, the "Processing Agreements") with four (4) merchants (collectively, the "Merchant Processors") that enable the Debtors to accept credit cards as payment for their merchandise. These Processing Agreements are essential to the Debtors' business, as they allow the Debtors' customers the flexibility to purchase merchandise on credit. This flexibility is essentially taken for granted by modern retail customers, and its loss would significantly impair the Debtors' ability to serve, attract and retain those customers. Additionally, the Debtors utilize the services of two (2) processors which facilitate credit card payments by means of front end fraud detection before the payments are accepted (the "Facilitating Processors, and together with the Merchant Processors, the "Processors").

19. The Merchant Processors net their fees from daily settlements, as discussed in more detail below, whereas the Facilitating Processors are paid monthly. The Debtors estimate that as of the Commencement Date, approximately $_____ in fees to the Processors are accrued and unpaid, most of which are to be paid within two to three days after the Commencement Date. Because credit card sales account for approximately ___% of the Debtors' total sales, it is critical that there be no disruptions in these payments. The Debtors

seek authority from the Court to pay all prepetition accrued but unpaid fees due to the Processors, and to continue such payments to Processors in the ordinary course of the Debtors' business.

20. Under the Processing Agreements, upon the return to the Debtors of merchandise purchased using a credit card, the Debtors are obligated to refund to the Merchant Processors the purchase price of the returned merchandise plus certain adjustments (collectively, the "Chargebacks"). Generally, the Debtors' Chargeback obligations to the Merchant Processors are satisfied by a reduction of payments currently owing to the Debtors under the Processing Agreements (collectively, the "Processor Payments") in the amount of the outstanding Chargebacks.

21. It is possible that certain Chargebacks incurred by the Debtors immediately prior to the Commencement Date may not have been fully netted out against Processor Payments the Debtors received prior to the Commencement Date. Moreover, although the Debtors believe that any Chargebacks arising after the Commencement Date would be postpetition obligations of the Debtors, it may be argued that Chargebacks arising after the Commencement Date nevertheless would be prepetition obligations where the merchandise returned was purchased from the Debtors prior to the Commencement Date. In such circumstances, to the extent that the netting of the parties' obligations would not constitute recoupment, the setoff of Chargebacks against Processor Payments arguably may be foreclosed by the automatic stay imposed by section 362(a) of the Bankruptcy Code. By this Motion, the Debtors seek authority to pay all Chargebacks obligations, and to continue to pay Chargebacks in the ordinary course of business.

E. Employee and Airport Discounts

22. Pursuant to the Debtors' policies, a 33% shopping discount on most store and kiosk items, and for most orders placed at _____.com, is granted to all employees that are classified as having regular status employment. Additionally, the Debtors provide all of their

employees that complete _____ training with membership in _____, which effectively raises the employee discount to 40% for such employees.

23. With respect to the Debtors' _____-branded airport stores, all such stores offer 10% discounts to airport employees (following standard company exclusion policies).[4] Most of these discounts are contractually required by the airport stores' leases. Additionally, airports provide an everyday 10% discount for military personnel.

F. Quantity Discount Program

24. All customers of the Debtors are eligible for quantity discounts on the purchase of ten or more copies of the same item, based on the following schedule: _____.

G. Educator Discount Program

25. Teachers, librarians, or homeschoolers for students in preschool through 12th grade who can show proof of employment are eligible for a 25% Educator Discount Card applicable on purchases of _____ for use in the classroom or for classroom preparation. Several times a year, the Debtors extend the discount to Educator Discount Card holders' personal purchases. Approximately _____ educators held Educator Discount Cards as of the Commencement Date.

H. Business and Educator Services Discount

26. The Debtors maintain a discount program specifically for business or educational purchasers. Individuals may apply through their organization for either a (i) deferred billing account card, or (ii) discount card. Either card permits the member organization to receive a discount of up to 25% towards the purchase of _____ at any of the Debtors' _____ branded outlets. As of the Commencement Date, there were approximately

[4] The Debtors may offer a higher discount without exclusions in John F. Kennedy International Airport, in accordance with their lease.

_____ individual and organizational members of the Business and Educator Services Program with deferred billing accounts.[5]

I. Debtors' Coupons and Promotional Codes

27. In the ordinary course of their businesses, the Debtors commonly offer discount coupons, promotional codes and various rebate promotions (the "Debtors' Coupons"). The failure of the Debtors to honor the Debtors' Coupons could result in a loss of goodwill and jeopardize customer loyalty. As such, it is essential that the Debtors maintain the ability to honor coupons that the Debtors issued prior to the Commencement Date.

BASIS FOR RELIEF

A. Ample Support Exists to Authorize Continuation of the Customer Programs

28. As stated, the Debtors seek authorization, pursuant to sections 15(a) and 503(b)(1) of the Bankruptcy Code, to maintain and continue their Customer Programs, and to honor their undisputed prepetition obligations in respect thereof, in the ordinary course of business without interruption in accordance with prepetition practices.

29. Sections 1107(a) and 1108 of the Bankruptcy Code authorize a debtor in possession to continue to operate its business. *See* 11 U.S.C. §§ 1107(a), 1108. Pursuant to section 503(b)(1) of the Bankruptcy Code, a debtor may incur, and the Court, after notice and a hearing, shall allow as administrative expenses, among other things, "the actual, necessary costs and expenses of preserving the estate." *Id*. § 503(b)(1). The Debtors believe the use of estate funds to continue the Customer Programs is permitted by section 503(b)(1) as necessary costs of preserving the Debtors' estates. Honoring the Customer Programs is critical to the Debtors' ability to retain valuable relationships which, in turn, will help strengthen and preserve the Debtors' business and maintain their brand value.

[5] The Debtors do not track the number of accounts that receive a discount card.

30. Additionally, section 507(a)(7) of the Bankruptcy Code establishes a priority for "unsecured claims of individuals, to the extent of $2,600 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided." *Id*. § 507(a)(7). The Debtors submit that the holders of certain Gift Cards issued prepetition may be entitled to priority claims under section 507(a)(7) of the Bankruptcy Code if the Court does not authorize the Debtors to honor such Gift Cards. *See In re WW Warehouse, Inc.*, 313 B.R. 588, 594 (Bankr. D. Del. 2004) (finding that gift certificate holders are entitled to priority status). As priority claimholders, holders of these Gift Cards would be paid in full before any general unsecured obligations of the Debtors are satisfied. Accordingly, the relief requested may affect only the timing of the Debtors' performance of their obligations to honor these Gift Cards and will not prejudice the rights of general unsecured creditors or other parties in interest.

31. Furthermore, to supplement the explicit powers described above, section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). A Bankruptcy Court's use of its equitable powers to "authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). The Debtors submit that the continuation of the Customer Programs without interruption is imperative to their effective reorganization and to maximizing the value.

32. In a long line of well-established cases, federal courts have consistently permitted postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor's estate for the benefit of all creditors. *See, e.g., Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286, 311-12 (1882) (payment of pre-receivership claim prior to

reorganization permitted to prevent "stoppage of continuance of such [crucial] business relations"); *Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945), *cert. denied* 325 U.S. 873 (1945) (extending doctrine for payment of prepetition claims beyond railroad reorganization cases); *Mich. Bureau of Workers' Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279. 285-86 (S.D.N.Y. 1987) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits).

33. The "doctrine of necessity" functions in chapter 11 cases as a mechanism by which the Bankruptcy Court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. *See In re Boston &* Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors' continued operation). The doctrine is frequently invoked early in chapter 11 cases, particularly in connection with the payment of prepetition claims, and the rationale for the doctrine of necessity rule is consistent with the paramount goal of chapter 11—"facilitating the continued operation and rehabilitation of the debtor." *Ionosphere Clubs*, 98 B.R. at 176. Accordingly, pursuant to section 105(a) of the Bankruptcy Code, this Court is empowered to grant the relief requested herein.

34. The continuity, viability, and revitalization of the Debtors' business as well as their brand as one of the leading retail providers of media merchandise are dependent upon the development and maintenance of the loyalty of their customers. It is essential that the Debtors be permitted to continue their Customer Programs and honor their prepetition obligations thereunder. If the Debtors are unable to do so, their operations and brand will be irreparably harmed by the loss of certain of their customers and such customers' loyalty, to competitors. Certain competitors maintain customer programs that are similar, if not identical, to certain of those offered by the Debtors. Therefore, the Debtors' inability to honor their Customer

Programs would place them at a severe disadvantage relative to these competitors and would be severely detrimental to the Debtors' reorganization efforts.

35. The continuation of Customer Programs, which have proven beneficial, is necessary to reassure customers, preserve goodwill, and maintain critical business relationships. The Debtors submit that the resulting benefit of continued customer satisfaction and loyalty during the pendency of these chapter 11 cases will far exceed the costs associated therewith. Considering the potential for loss of competitiveness absent the relief requested herein, and the resulting impact on the Debtors' business, the Debtors submit that authorization to continue the Customer Programs in the ordinary course of business and to perform and honor the Debtors' prepetition obligations thereunder, as deemed appropriate in the Debtors' business judgment, is in the best interest of all parties in interest in these cases, and should be approved in all respects.

36. Courts in this district and others have granted relief similar to that requested herein in chapter 11 cases where retaining the loyalty and patronage of customers was critical to a successful reorganization.[6] *See, e.g., In re The Great Atl. & Pac. Tea Co.,* Ch. 11 Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 13, 2011) [Docket No. 498]; *In re Blockbuster Inc.*, Case No. 10-14997 (BRL) (Bankr. S.D.N.Y. Sept. 23, 2010) [Docket No. 39]; *In re Finlay Enters., Inc.*, Ch. 11 Case No. 09-14873 (JMP) (Bankr. S.D.N.Y. Sept. 3, 2009) [Docket No. 196]; *In re Extended Stay Inc.*, Ch. 11 Case No. 09-13764 (JMP) (Bankr. S.D.N.Y. July 17, 2009) [Docket No. 178]; *In re General Motors Corp.*, Ch. 11 Case No. 09-50026 (REG) (Bankr. S.D.N.Y. June 1, 2009) [Docket No. 167]; *In re Lenox Sales, Inc.,* Ch. 11 Case. No. 08-14679 (ALG) (Bankr. S.D.N.Y. Dec. 16, 2008) [Docket No. 124]; *In re Stone Barn Manhattan, LLC) (Steve & Barry's I)*, Ch. 11 Case No. 08-12579 (ALG) (Bankr. S.D.N.Y. July 30, 2008) [Docket No. 287]; *In re Lexington Precision Corp.*, Ch. 11 Case No. 08-11153 (MG) (Bankr. S.D.N.Y. Apr. 22, 2008)

[6] Because of the voluminous nature of the unreported orders cited herein, such orders are not annexed to the Motion. Copies of these orders are available upon request of Debtors' counsel.

[Docket No. 78]; *In re New York Racing Assoc., Inc.*, Ch. 11 Case No. 06-12618 (JMP) (Bankr. S.D.N.Y. Nov. 3, 2006) [Docket No. 19]; *In re Silicon Graphics, Inc.*, Ch. 11 Case No. 06-10977 (BRL) (Bankr. S.D.N.Y. May 10, 2006) [Docket No. 44]; *In re Atkins Nutritionals, Inc.*, Ch. 11 Case No. 05-15913 (ALG) (Bankr. S.D.N.Y. Aug. 1, 2005) [Docket No. 35]; *In re Movie Gallery, Inc.*, Ch. 11 Case No. 10-30696 (DOT) (Bankr. E.D. Va. Feb. 8, 2010) [Docket No. 123]; *In re Movie Gallery, Inc.*, Ch. 11 Case No. 07-33849 (DOT) (Bankr. E.D. Va. Oct. 18, 2007) [Docket No. 120].

37. Based on the foregoing, the Debtors submit that the relief requested is necessary and appropriate, in the best interests of all stakeholders in these chapter 11 cases, and should be granted in all respects.

B. Request for Authority for Banks to Honor and Pay Checks Issued and Electronic Funds Transfers requested With Respect to Prepetition Customer Programs Obligations

38. As part of their cash management system, the Debtors maintain disbursement accounts (collectively, the "Disbursement Accounts")[7] at various banks and other financial institutions (collectively, the "Banks"). The Debtors draw upon funds in these Disbursement Accounts to satisfy obligations arising from Customer Programs. The Debtors request that the Court authorize and direct the Banks and any other applicable financial institutions to receive, process, honor, and pay any and all checks drawn or electronic funds transferred to pay obligations arising under the Customer Programs, whether such checks were presented prior to or after the Commencement Date. The Debtors also seek authority to issue new postpetition checks, or affect new electronic funds transfers, on account of such claims to replace any prepetition checks or electronic funds transfer requests that may be dishonored or rejected as a result of the commencement of these chapter 11 cases.

[7] The Debtors' cash management system is described in the cash management motion filed contemporaneously herewith.

C. Deemed Compliance With and/or Waiver of Applicable Bankruptcy Rules

1. The Requested Relief Satisfies Bankruptcy Rule 6003(b)

39. Bankruptcy Rule 6003 provides that, except to the extent the relief requested is necessary to avoid immediate and irreparable harm to the debtor's estate, the court shall not, within twenty-one (21) days after the filing of the petition, grant relief regarding a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition. While the Debtors do not believe Bankruptcy Rule 6003 is applicable to the relief requested herein, out of an abundance of caution, the Debtors submit that, as detailed above and as set forth in the First Day Declaration, such relief is necessary to avoid immediate and irreparable harm to the Debtors and their estates. Accordingly, Bankruptcy Rule 6003, to the extent applicable, is satisfied.

2. Waiver of Bankruptcy Rules 6004(a) and (h)

40. Unless the Court orders otherwise, Bankruptcy Rule 6004(a) requires the Debtors to provide twenty-one (21) days notice to all creditors and certain other parties in interest of the use of property outside the ordinary course of business. Moreover, unless the Court orders otherwise, Bankruptcy Rule 6004(h) automatically stays for fourteen (14) days any order granting such relief. While the Debtors do not believe Bankruptcy rules 6004(a) and (h) are applicable to the relief requested herein, out of an abundance of caution, the Debtors submit that, as described above and in the First Day Declaration, the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors that would otherwise be caused by a delay in granting the relief requested herein. Therefore, to the extent applicable, the Debtors request the Court waive (i) the notice requirements under Bankruptcy Rule 6004(a) and (ii) the stay of the order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

NOTICE

41. No trustee or examiner has been appointed in these chapter 11 cases. The Debtors have served notice of this Motion on: (i) the Office of the United States Trustee for the Southern District of New York (Attn: _____ and _____); (ii) those creditors holding the thirty largest unsecured claims against the Debtors' estates; (iii) counsel for the DIP Agents: (x) _____ (Attn: _____ and _____), counsel for the Working Capital Agent, (y) _____ (Attn: _____), counsel for _____; (iv) _____, attorneys for certain landlords (Attn: _____, _____, and _____); (v) _____, attorneys for certain trade vendors (Attn: _____, _____, _____ and _____); (vi) _____, attorneys for _____ (Attn: _____); and (vii) _____, attorneys for _____ (Attn: _____ and _____) (collectively, the "Notice Parties"). The Debtors submit that no other or further notice need be provided.

42. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: _____
New York, New York

[Law Firm]

By: /s/_____
[Attorney Name (email)]
[Address]
[City, State Zip Code]
Telephone: (###) ###-####
Facsimile: (###) ###-####

Attorneys for Debtors
and Debtors-in-Possession

4812-6717-0901

EXHIBIT A

PROPOSED ORDER

4812-6717-0901

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	**Chapter 11**
ABC, LLC., *et al.*,[1]	**Case No. _____ (___)**
Debtors.	**(Joint Administration Pending)**

order PURSUANT TO 11 U.S.C. §§ 105(a) AND 503(b)(1) AUTHORIZING DEBTORS TO HONOR CERTAIN PREPETITION CUSTOMER PROGRAMS

Upon the Motion[2] dated _____, of ABC, LLC ("ABC") and its debtor subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), pursuant to sections 105(a) and 503(b)(1) of the Bankruptcy Code, requesting authorization to (i) continue prepetition Customer Programs and (ii) honor their undisputed prepetition obligations thereunder in the ordinary course of business, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and grant the requested relief in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Debtors having provided notice of the Motion and Hearing (as defined below) to the Notice Parties; and the Court having held a hearing to consider the requested relief (the "Hearing"); and upon the record of the Hearing, and all of the proceedings before the Court, and upon the First

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: ABC, LLC (____); DEF, LLC (____); GHI, LLC (____); and JKL, LLC (____).

[2] Capitalized terms used herein, and not otherwise defined, shall have the meanings ascribed to them in the Motion.

Day Declaration, the Court finds and determines that the requested relief is in the best interests of the Debtors, their estates, creditors, and all parties in interest; the Debtors have provided due and proper notice of the Motion and Hearing and no further notice is necessary; the legal and factual bases set forth in the Motion establish just and sufficient cause to grant the requested relief herein; IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.

2. Pursuant to sections 105(a) and 503(b)(1) of the Bankruptcy Code, the Debtors are authorized, but not obligated, to continue their Customer Programs in the ordinary course of their business in the same manner and on the same basis as the Debtors implemented and maintained the same prior to the commencement of these chapter 11 cases and pay and honor all obligations thereunder whether arising prior to or after the Commencement Date; provided, however, that the relief granted herein shall not constitute an approval or assumption of any Customer Program or related agreement or policy pursuant to section 365 of the Bankruptcy Code.

3. The Debtors are authorized, but not obligated, to pay all accrued but unpaid fees due to Processors, and to continue to pay Processors' fees in the ordinary course of business.

4. The Debtors are authorized, but not obligated, to pay all Chargeback obligations, and to continue to pay Chargebacks in the ordinary course of business.

5. The Debtors' Banks and all other applicable banks or financial institutions are authorized, consistent with the terms of any cash management order entered in these chapter 11 cases, when requested by the Debtors in the Debtors' sole discretion, to receive, process, honor, and pay all checks drawn or direct deposit and funds transfer instructions made relating to the Debtors' accounts and any other transfers that are related to the Customer Programs and the costs and expenses incident thereto; provided, that sufficient funds are available in the accounts to make such payments; provided further, that (i) any such bank or financial institution may rely on

the representations of the Debtors regarding which checks that were drawn or instructions that were issued by the Debtors before the Commencement Date should be honored postpetition pursuant to this Order and (ii) any such bank or financial institution shall not have any liability to any party for relying on the representations of the Debtors as provided herein.

6. The Debtors are authorized to issue postpetition checks, or to affect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in respect of prepetition obligations relating to the Customer Programs that were dishonored or rejected as a consequence of the commencement of these chapter 11 cases.

7. Nothing in this Order or the Motion shall be construed as prejudicing any rights the Debtors may have to contest the amount or basis of any prepetition or postpetition obligations relating to the Customer Programs.

8. Bankruptcy Rule 6003(b) has been satisfied.

9. The requirements of Bankruptcy Rule 6004(a) are hereby waived.

10. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

11. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: _____
New York, New York

_____
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION
www.flsb.uscourts.gov

In re:	Case No.: _____
ABC, LLC,	Chapter 11 Case
Debtor. _____/	
In re:	Case No.: _____
DEF, LLC,	Chapter 7 Case
Debtor. _____/	
In re:	Case No.: _____
GHI, LLC,	Chapter 7 Case
Debtor. _____/	

***EX PARTE* MOTION BY _____ BANK AND TRUST COMPANY TO FILE MOTION REGARDING CONFIDENTIAL COMMERCIAL INFORMATION PROTECTED UNDER 11 U.S.C. § 107(b) UNDER SEAL**

_____ BANK AND TRUST COMPANY ("**Bank**"), by and through undersigned counsel, and pursuant to Local Rule 5003-1(D) and Local Rule 9013-1(C), moves this Court for entry of an order, substantially in the form attached hereto as Exhibit A, authorizing Bank to file under seal its *Motion for Order (A)Directing That All of Bank's Confidential Commercial Information Disclosed in Connection with Any Proceeding in this Court be Protected Against Public Dissemination Under 11 U.S.C. § 107(b) and Fed. R. Bankr. P. 9018, and (B) Establishing Procedures to Grant Parties-in-Interest Limited Access to Confidential Commercial Information* ("**Section 107 Motion**"), and in support thereof, states as follows:

4821-5963-4774

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1408.

3. The bases for the relief requested herein are section 107(b) of title 11 of the United States Code ("**Bankruptcy Code**"), Rule 9018 of the Federal Rules of Bankruptcy Procedure ("**Bankruptcy Rules**"), and Rule 5003-1(D)(2) of the Local Rules of the United States Bankruptcy Court for the Southern District of Florida ("**Local Rules**").

Basis for Relief Requested

4. A bankruptcy court may, upon request, "protect an entity with respect to a trade secret or confidential research, development, or commercial information." 11 U.S.C. § 107(b)(1). Bankruptcy Rule 9018 defines the procedures by which a party may move for relief under section 107(b), providing that "[o]n motion or on its own initiative, with or without notice, the court may make any order which justice requires . . . to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information."

5. Local Rule 5003-1(D) provides that a motion seeking to file a document under seal may be filed contemporaneously or in advance of the sealed document.

6. Bank seeks to file its Section 107 Motion seeking relief under § 107(b) of the Bankruptcy Code under seal as it includes confidential information that is subject of the protection within the meaning and scope of Section 107 of the Bankruptcy Code.

7. Bank requests that the Section 107 Motion and ensuing Order be permanently sealed under either further Order of this Court, or until the administrative closing of this case.

WHEREFORE, Bank respectfully requests that the Court enter an Order, in substantially the form attached as Exhibit A, authorizing Bank to file the Section 107 Motion under seal and directing the Clerk to maintain the Section 107 Motion under seal until either

further Order of this Court, or until the administrative closing of this case, and granting such further relief as the Court deems proper.

Respectfully submitted this _____ day of _____, 20____.

Respectfully submitted,

LAW FIRM
Co-Counsel for _____ *Bank and Trust Company*
Address
City, State _____
Telephone: (###) ###-####
Facsimile: (###) ###-####

_____
By: */s/*_____
Attorney (Bar #)
_____@_____.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on _____, 20___, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, and that true and correct copies were served by CM/ECF on all parties registered to receive electronic notices in each respective case, as indicated on the attached Service Lists..

By: */s/*_____

SERVICE LIST

Case No.: _____
United States Bankruptcy Court, Southern District of Florida

The following parties are registered to receive Notice of Electronic Filing and should have been served through CM/ECF.

Mailing Information for Case _____

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

Mailing Information for Case _____

Electronic Mail Notice List

The following is the list of parties who are currently on the list to receive email notice/service for this case.

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION
www.flsb.uscourts.gov

In re:	Case No.: _____
ABC, LLC,	Chapter 11 Case
Debtor. _____/	
In re:	Case No.: _____
DEF, LLC,	Chapter 7 Case
Debtor. _____/	
In re:	Case No.: _____
GHI, LLC,	Chapter 7 Case
Debtor.	

ORDER GRANTING *EX PARTE*
MOTION BY _____ BANK AND TRUST COMPANY
TO FILE MOTION REGARDING CONFIDENTIAL COMMERCIAL
INFORMATION PROTECTED UNDER 11 U.S.C. § 107(b) UNDER SEAL

THIS MATTER came before the Court upon _____ BANK AND TRUST COMPANY's ("**Bank**") *Ex Parte* Motion (the "**Motion to Seal**") to File its Motion Regarding Confidential Commercial Information Protected Under 11 U.S.C. §107(b) Under Seal (the "**Section 107 Motion**"). The Court, having reviewed the Motion to Seal, and being duly advised, finds is appropriate to grant the Motion to Seal. Accordingly, it is ---

1. The Motion to Seal is GRANTED.

2. Counsel for Bank is authorized to file, and the Clerk of Court shall accept, the Section 107 Motion and any related Confidential Commercial Information under seal.

4821-5963-4774

3. The Section 107 Motion and any related Confidential Commercial Information shall remain sealed after the closing of this case, and shall remain sealed unless and until further order by this Court.

# # #

Submitted by and Copy To:

Attorney
Florida Bar No. _____
_____@_____.com
LAW FIRM
Co-Counsel for _____ *Bank and Trust Company*
Address
City, State _____

Attorney
Firm
Address
City, State Zip Code
Telephone:
Facsimile:
Email:

Counsel for ABC, LLC

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH, CENTRAL DIVISION

In re **ABC, LLC**, Debtor.	Bankruptcy Case No. _____ (Chapter 11) Honorable _____

MOTION FOR INTERIM AND FINAL ORDERS ESTABLISHING ADEQUATE ASSURANCE PROCEDURES WITH RESPECT TO DEBTOR'S UTILITY COMPANIES

ABC, LLC, as debtor and debtor-in-possession (the "Debtor"), hereby moves (the "Motion") the Court for the entry of an interim order (the "Interim Order") attached hereto as **Exhibit A** and a final order (the "Final Order") attached hereto as **Exhibit B** pursuant to Bankruptcy Code section 366: (i) establishing procedures for determining requests for additional assurance of payment by utility companies currently providing, or which will provide, services to the Debtor (collectively, the "Utility Companies" and each, individually, a "Utility Company"); (ii) prohibiting the Utility Companies from altering, refusing or discontinuing services to, or discriminating against the Debtor; (iii) approving an adequate assurance deposit as adequate assurance of postpetition payment to the Utility Companies; and (iv) granting certain related relief. In support of this Motion, the Debtor respectfully represents as follows:

JURISDICTION, VENUE AND BASIS FOR RELIEF

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion are proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a) and 366 of title 11 of the United States Code (11 U.S.C. §§ 101 *et. seq.*, the "Bankruptcy Code") and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

BACKGROUND

3. On _____ (the "Relief Date" or "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11, U.S.C. in this court and, on such date became a debtor-in-possession under Chapter 11 of the Bankruptcy Code.

4. No trustee, examiner, creditors' committee, or other official committee has been appointed in this chapter 11 case.

5. Information about the Debtor's business operations, capitalization and prepetition indebtedness, as well as the events leading to the Relief Date , can be found in the Declaration of _____ in Support of First Day Pleadings (the "First Day Declaration"). The Debtor relies on the First Day Declaration in seeking the relief requested herein and incorporates the First Day Declaration herein by reference.

THE UTILITY COMPANIES

6. The Debtor currently uses various types of utility services, including, but not limited to, electric, propane, telecommunications, water and sewer (collectively, the "Utility Services") provided by the Utility Companies including the Utility Companies identified on **Exhibit C** attached hereto (the "Utility Service List").[1] The Debtor estimates that its average

[1] For each Utility Company, **Exhibit C** identifies, to the extent known: (i) the name and type of service of the Utility Company; and (ii) the account number(s), if any, under which the Utility Company provides services to the Debtor. The inclusion of any entity on, or any omission of any entity from, **Exhibit C** is not an admission by the Debtor that such entity is or is not a utility within the meaning of Bankruptcy Code section 366,

monthly obligations to the Utility Companies on account of services rendered has historically been approximately $_____, with that number expected to [increase / decrease] during the chapter 11 case.

7. Uninterrupted service from the Utility Companies is essential to the Debtor's ongoing operations and to preserving value for all interested stakeholders. For the Debtor to preserve the value of its estate, its business must continue to operate without interruption; any temporary or permanent discontinuation of utility services could irreparably disrupt the Debtor's business operations and diminish recoveries to the Debtor's stakeholders. To ensure the continuation of services, the Debtor seeks to provide the adequate "assurance of payment" as set forth herein and intends to pay any postpetition obligations to the Utility Companies in a timely fashion and in the ordinary course.

THE ADEQUATE ASSURANCE DEPOSIT

8. Pursuant to Bankruptcy Code section 366(c)(2), a utility may alter, refuse or discontinue a chapter 11 debtor's utility service if the utility does not receive from the debtor adequate "assurance of payment" within thirty (30) days of the commencement of the debtor's chapter 11 case. Bankruptcy Code section 366(c)(1)(A) defines the phrase "assurance of payment" to mean, among other things, a cash deposit. Accordingly, the Debtor proposes to deposit, as adequate assurance, approximately $_____ into a newly created, segregated, interest bearing account (the "Adequate Assurance Deposit") within 20 days of the Relief Date. The Adequate Assurance Deposit is approximately two weeks of the Debtor's estimated utility expenses.

9. The Debtor submits that the Adequate Assurance Deposit, together with the Debtor's ability to pay for future utility services in the ordinary course of business

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and the Debtor reserves its rights with respect thereto. In addition, the Debtor is requesting that this Motion apply to all its utility companies, whether or not any given utility company is included on the Utility Service List.

(the "Proposed Adequate Assurance"), constitutes sufficient adequate assurance of future payment to the Utility Companies to satisfy the requirements of Bankruptcy Code section 366. Nonetheless, if any Utility Company believes additional assurance is required, they may request such assurance pursuant to the procedures described below.

THE ADEQUATE ASSURANCE PROCEDURES

10. To address the right of any Utility Company under Bankruptcy Code section 366(c)(2) to seek additional adequate assurance satisfactory to it, the Debtor proposes that the following procedures (the "Adequate Assurance Procedures") be adopted:

a. Absent compliance with the Adequate Assurance Procedures, the Utility Companies are forbidden to discontinue, alter or refuse service on account of any unpaid prepetition charges, or require additional adequate assurance of payment other than the Proposed Adequate Assurance pending entry of the Final Order.

b. Any Utility Company desiring assurance of future payment for utility service beyond the Proposed Adequate Assurance must serve a request (an "Additional Assurance Request") so that it is received by the Debtor no later than thirty days after the Relief Date (the "Request Deadline") at the following addresses: (a) the Debtor, _____, _____, _____, _____, _____ (Attn: _____) and (b) co-counsel to the Debtor, _____, _____, _____ (Attn: _____) and _____, _____, _____, _____ (Attn: _____); (the "Notice Parties").

c. Any Additional Assurance Request must: (i) be made in writing; (ii) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Company; (iii) set forth the location(s) for which utility services are provided and the relevant account number(s); (iv) describe any deposits, prepayments or other security currently held by the requesting Utility Company; and (v) describe any payment delinquency or irregularity by the Debtor for the postpetition period, if any, and (vi) explain why the requesting Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.

d. If a Utility Company fails to serve a timely Additional Assurance Request, it shall be: (i) deemed to have received adequate assurance of payment

"satisfactory" to such Utility Company in compliance with Bankruptcy Code section 366; and (ii) forbidden to discontinue, alter, refuse service to, or discriminate against the Debtor on account of any unpaid prepetition charges, or require additional assurance of payment.

e. Upon the Debtor's receipt of an Additional Assurance Request at the addresses set forth above, the Debtor shall have the greater of (i) twenty-one (21) days from receipt of such Additional Assurance Request or (ii) thirty (30) days from the Relief Date (collectively, the "Resolution Period") to negotiate with the requesting Utility Company to resolve its Additional Assurance Request. The Resolution Period may be extended by agreement of the Debtor and the applicable Utility Company without application to or approval of the Court.

f. The Debtor, in its discretion, may resolve any Additional Assurance Request by mutual agreement with the requesting Utility Company without further order of the Court, and may, in connection with any such resolution, in its discretion, provide the requesting Utility Company with additional or different assurance of future payment in a form satisfactory to the Utility Company, including, but not limited to, cash deposits, prepayments and/or other forms of security, if the Debtor believes such additional assurance is reasonable.

g. If the Debtor determines that an Additional Assurance Request is not reasonable and the parties are not able to resolve such request during the Resolution Period, the Debtor will request a hearing before the Court to determine the adequacy of assurances of payment made to the requesting Utility Company (the "Determination Hearing"), pursuant to Bankruptcy Code section 366(c)(3)(A).[2]

h. Pending the resolution of the Additional Assurance Request at a Determination Hearing, the Utility Company making such a request may not discontinue, alter or refuse service to the Debtor on account of unpaid charges for prepetition services or an alleged lack of adequate assurance of payment.

SUBSEQUENT MODIFICATIONS OF UTILITY SERVICE LIST

11. The Debtor made a good-faith effort to identify the requisite Utility Companies and include them on the Utility Service List. Nonetheless, to the extent that the Debtor

[2] Bankruptcy Code section 366(c)(3)(A) provides that "[o]n request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment . . . ." 11 U.S.C. § 366(c)(3)(A).

subsequently identifies additional Utility Companies, the Debtor seeks authority, in its sole discretion, to amend the Utility Service List to add or remove any Utility Companies. The Debtor further requests that the order approving the relief requested in the Motion apply to any such subsequently identified Utility Company, regardless of when any Utility Company is added to the Utility Service List. The Debtor will serve a copy of the order approving the relief requested in this Motion on any Utility Company subsequently added to the Utility Service List. Any such subsequently added Utility Company shall have fourteen (14) days from the date of service of such order to make an Additional Assurance Request. Further, the Debtor shall have the period specified in the proposed Adequate Assurance Procedures to resolve any subsequently added Utility Company's Additional Assurance Request by mutual agreement without further order of the Court or to schedule a Determination Hearing with the Court. The Debtor requests that all Utility Companies, including subsequently added Utility Companies, be prohibited from altering, refusing or discontinuing utility services to the Debtor absent further order of the Court.

REQUEST FOR RELIEF

12. By this Motion, the Debtor respectfully requests that the Court enter the Interim Order and the Final Order (i) establishing procedures for determining requests for additional assurance of payment by the Utility Companies; (ii) prohibiting the Utility Companies from altering, refusing or discontinuing services to, or discriminating against the Debtor; (iii) approving an adequate assurance deposit as adequate assurance of postpetition payment to the Utility Companies; and (iv) granting certain related relief.

BASIS FOR RELIEF REQUESTED

13. Pursuant to Bankruptcy Code section 366(c)(2), a utility may alter, refuse or discontinue a chapter 11 debtor's utility service if the utility does not receive from the debtor or the trustee adequate "assurance of payment" within thirty (30) days of the commencement of the

debtor's chapter 11 case.[3] The policy underlying Bankruptcy Code section 366 is to protect a debtor from utility service cutoffs upon the filing of a bankruptcy case, while at the same time providing utility companies with adequate "assurance of payment" for postpetition utility service. *See* H.R. Rep. No. 95-595, at 350 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6306. Bankruptcy Code section 366(c)(1) defines "assurance of payment" to mean several enumerated forms of security (*e.g.*, cash deposits, letters of credit, prepayment for utility service) while excluding from the definition certain other forms of security (*e.g.*, administrative expense priority for a utility's claim). In addition, Bankruptcy Code section 366(c)(3)(B) provides that a court may not consider certain facts (*e.g.*, a debtor's prepetition history of making timely payments to a utility) in making a determination of adequate assurance of payment.

14. While Bankruptcy Code section 366(c) clarifies what does and does not constitute "assurance of payment" and what can be considered in determining whether such assurance is adequate, Congress, in enacting that section, did not divest the Court of its power to determine what amount, if any, is necessary to provide adequate assurance of payment to a Utility Company. Indeed, Bankruptcy Code section 366(c) not only fails to establish a minimum amount of adequate "assurance of payment," but explicitly empowers the Court to determine the appropriate level of adequate assurance required in each case and permits a party in interest to

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[3] There is an apparent discrepancy between subsections (b) and (c) of Bankruptcy Code section 366 because these two subsections set forth different time periods during which a utility is prohibited from altering, refusing or discontinuing utility service. Specifically, Bankruptcy Code section 366(b) allows a utility to alter, refuse or discontinue service "if neither the trustee nor the debtor, within *20 days* after the date of the order for relief, furnishes adequate assurance of payment," while Bankruptcy Code section 366(c)(2) allows a utility in "a case filed under chapter 11" to alter, refuse or discontinue service to a chapter 11 debtor "if during the *30-day period* beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service . . . ." (emphases added).

Under the statutory construction canon *lex specialis derogat legi generali* ("specific language controls over general"), the language of section 366(c)(2) controls here because the Debtor is a chapter 11 debtor. See 3 Collier on Bankruptcy ¶ 366.03[2] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) ("It is unclear how the 30-day period [in Bankruptcy Code section 366(c)(2)] meshes with the normal 20-day period in section 366(b). The better view is that, because section 366(c) is more specifically applicable to chapter 11 cases, the 30-day period, rather than the 20-day period in section 366(b), should apply.").

request modification of the amount of adequate assurance after notice and a hearing. *See* 11 U.S.C. § 366(c)(3)(A) ("On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment . . . .").

15. Thus, for instance, there is nothing within Bankruptcy Code section 366 that prevents a court from ruling that, on the facts of the case before it, the amount required to adequately assure future payment to a utility company is nominal, or even zero. Prior to the enactment of Bankruptcy Code section 366(c), courts enjoyed precisely the same discretion to make such rulings pursuant to Bankruptcy Code section 366(b), and frequently did. *See Virginia Elec. & Power Co. v. Caldor, Inc.– NY*, 117 F.3d 646, 650 (2d Cir. 1997) ("Even assuming that 'other security' should be interpreted narrowly, we agree with the appellees that a bankruptcy court's authority to 'modify' the level of the 'deposit or other security,' provided for under § 366(b), includes the power to require no 'deposit or other security' where none is necessary to provide a utility supplier with 'adequate assurance of payment.'").

16. Moreover, the requirement under the Bankruptcy Code is only that the assurance of payment be "adequate." Courts construing Bankruptcy Code section 366(b) have long recognized that "adequate" assurance of payment does not constitute an absolute guarantee of the debtor's ability to pay. *See, e.g., In re Caldor, Inc.– NY*, 199 B.R. 1, 3 (S.D.N.Y. 1996) ("Section 366(b) requires [a] [b]ankruptcy [c]ourt to determine whether the circumstances are sufficient to provide a utility with 'adequate assurance' of payment. The statute does not require an 'absolute guarantee of payment.'") (citation omitted), *aff'd sub nom. Virginia Elec. & Power Co. v. Caldor, Inc. – NY*, 117 F.3d 646 (2d Cir. 1997); *In re Adelphia Bus. Solutions, Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002) (same); *Steinebach v. Tucson Elec. Power Co. (In re Steinebach)*, 303 B.R. 634, 641 (Bankr. D. Ariz. 2004) ("Adequate assurance of payment is not, however, absolute assurance . . . all § 366(b) requires is that a utility be protected from an unreasonable risk of non-payment."); *In re Penn Jersey Corp.*, 72 B.R. 981, 982 (Bankr. E.D. Pa.

1987) (stating that Bankruptcy Code section 366(b) "contemplates that a utility receive only such assurance of payment as is sufficient to protect its interests given the facts of the debtor's financial circumstances").[4] Therefore, despite its language allowing a utility to take adverse action against the debtor should the debtor fail to provide adequate assurance of future payment "satisfactory to the utility," Bankruptcy Code section 366 does not require that the assurance provided be "satisfactory" once a debtor seeks to have a court determine the appropriate amount of adequate assurance.

17. The Debtor submits that the entry of the Interim and Final Orders is consistent with, and fully satisfies, the requirements of Bankruptcy Code section 366. Far from offering the Utility Companies nominal (or even no) additional assurance of payment, the Debtor proposes to (i) place a cash deposit into an account for the Utility Companies' benefit and (ii) establish procedures pursuant to which the Utility Companies can seek greater or different security. Such assurance of payment should significantly alleviate, if not eliminate, any concern of non-payment on the part of the Utility Companies, and is thus clearly "adequate."

REQUESTS FOR IMMEDIATE RELIEF AND WAIVER OF STAY

18. Pursuant to Bankruptcy Rules 6003(b) and 6004(h), the Debtor seeks (i) immediate entry of an order that, *inter alia,* prohibits the Utility Companies from altering, refusing or discontinuing services to, or discriminating against the Debtor, and approves an adequate assurance deposit as adequate assurance of postpetition payment to the Utility Companies and (ii) a waiver of any stay of the effectiveness of such order.

19. Bankruptcy Rule 6003(b) provides, in relevant part, that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21

[4] Courts have recognized that "[i]n deciding what constitutes 'adequate assurance' in a given case, a bankruptcy court must 'focus upon the need of the utility for assurance, and to require that the debtor supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.'" *Caldor*, 117 F.3d at 650 (emphasis in original) (quoting *Penn Jersey*, 72 B.R. at 985).

days after the filing of the petition, grant relief regarding . . . a motion to pay all or part of a claim that arose before the filing of the petition." Accordingly, where the failure to grant any such requested relief would result in immediate and irreparable harm to the Debtor's estate, the Court may allow the Debtor to pay all or part of a claim that arose before the Relief Date prior to the twenty-first day following the Relief Date. Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise."

20. It is imperative that the Utility Companies continue to provide utility services in the ordinary course of business. Failure to do so likely would result in immediate and irreparable harm to the Debtor's operations, customer relationships, revenues, and profits. The adequate assurance deposit is necessary to assure continued utility service and prevent immediate and irreparable damage to the Debtor's operations. Accordingly, the Debtor submits that ample cause exists to justify: (i) the immediate entry of the Interim Order granting the relief sought herein on an interim basis pursuant to Bankruptcy Rule 6003(b); and (ii) a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h).

RESERVATION OF RIGHTS

21. Nothing contained herein is intended or should be construed as: (i) an admission as to the validity, priority or amount of any claim against the Debtor; (ii) a waiver of the Debtor's rights to dispute any claim on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any claim is of the type specified or defined in this Motion; (v) a request or authorization to assume any agreement, contract or lease pursuant to Bankruptcy Code section 365; (vi) a waiver of the Debtor's rights under the Bankruptcy Code or any other applicable law; or (vii) a concession by the Debtor that any liens (contractual, common law, statutory or otherwise) satisfied pursuant to this Motion are valid, and the Debtor expressly reserves it right to contest the extent, validity and perfection or seek avoidance of all such liens.

NOTICE

22. Notice of this Motion will be provided to: (i) the Office of the United States Trustee for the District of Utah; (ii) the Debtor's largest twenty (20) unsecured creditors as identified in its chapter 11 petition; (iii) the Utility Companies identified on **Exhibit C**; (iv) the Debtor's cash management bank and (v) all parties requesting notice in this case pursuant to Rule 2002. Due to the nature of the relief requested herein, the Debtor respectfully submits that no further notice of this Motion is necessary.

NO PRIOR REQUEST

23. No prior request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter the Interim Order and the Final Order and grant such other relief as the Court deems just and proper.

DATED this _____ day of _____, 20__.

_____

/s/_____

_____

Counsel for ABC, LLC

CERTIFICATE OF SERVICE – BY NOTICE OF ELECTRONIC FILING (CM/ECF)

I hereby certify that on the ____ day of _____, 20___, I electronically filed the foregoing document with the United States Bankruptcy Court for the District of Utah by using the Court's CM/ECF system. I further certify that the parties of record in this case, as identified below, are listed as registered CM/ECF users and will be served through the CM/ECF system:

CERTIFICATE OF SERVICE – BY MAIL, OTHER

I further certify that on the ____ day of _____, 20___, I caused the foregoing document to be sent by first class United States mail, postage fully prepaid, to the following at the addresses set for the below:

/s/_____

Attorney
Firm
Address
City, State Zip Code
Telephone:
Facsimile:
Email:

Counsel for ABC, LLC

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH, CENTRAL DIVISION

In re **ABC, LLC**, Debtor.	Bankruptcy Case No. _____ (Chapter 11) Honorable _____

MOTION FOR ORDER AUTHORIZING PAYMENT OF PREPETITION WAGES, COMPENSATION, AND EMPLOYEE BENEFITS AND RELATED RELIEF

ABC, LLC, as debtor and debtor-in-possession (the "Debtor" or "Company"), hereby moves (the "Motion") the Court for the entry of an (the "Order") attached hereto as **Exhibit A**, (i) authorizing, but not directing, the Debtor to pay: (a) prepetition wages, salaries, and paid time off (collectively, the "Prepetition Compensation"); (b) unreimbursed or unpaid, as applicable, prepetition business expenses (collectively, the "Prepetition Business Expenses"); (c) prepetition contributions to, and benefits under, employee benefit plans (collectively, the "Prepetition Benefits"); (d) prepetition withholdings (the "Prepetition Deductions") to the appropriate parties; and (ii) granting certain related relief. In support of this Motion, the Debtor respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion are proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a), 363, and 507(a) of title 11 of the United States Code (11 U.S.C. §§ 101 *et. seq.*, the "Bankruptcy Code") and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

BACKGROUND

3. On _____ (the "Relief Date" or "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11, U.S.C. in this court and, on such date became a debtor-in-possession under Chapter 11 of the Bankruptcy Code.

4. No trustee, examiner, creditors' committee, or other official committee has been appointed in this chapter 11 case.

5. Information about the Debtor's business operations, capitalization and prepetition indebtedness, as well as the events leading to the Relief Date , can be found in the Declaration of _____ in Support of First Day Pleadings (the "First Day Declaration"). The Debtor relies on the First Day Declaration in seeking the relief requested herein and incorporates the First Day Declaration herein by reference.

BACKGROUND RELATED TO EMPLOYEES

6. As of the Relief Date, the Debtor's workforce consists of _____ (___) employees (the "Employees").[1] The Employees perform a variety of essential functions. Five of the Employees are located at the Debtor's administrative office in _____, Utah. Those

[1] Until recently, the Debtor employed approximately 213 total employees. In January of 2016, the Debtor reduced its work-force to a total of 181 employees and in May of 2016, further reduced its work-force to the remaining 25 Employees.

Employees handle the administrative, human resource, safety, accounting, in-house legal services, security and information technology functions for the Company. The remaining Employees are located at the Debtor's processing facility located in _____, Utah and handle the operations of that facility, such as maintenance, electrical, and processing functions.

Prepetition Compensation

7. The Employees are paid biweekly by direct deposit. The Employees were last paid immediately prior to the Petition Date for amounts owed for the pre-Petition Date services. The next payroll is due on _____. Although the Debtor does not believe that there will be any unpaid, pre-Petition Date wages and salaries, by this Motion, the Debtor seeks authority to honor any liabilities to its Employees on account of unpaid wages and salaries (the "Wages").

8. In addition to Wages, the Debtor offers the Employees other forms of compensation, including paid vacation time, holiday time, sick time, and other paid time off (collectively, "Paid Time Off" and collectively with the Wages, the "Prepetition Compensation").

9. All full time Employees are eligible for paid vacation time ("Vacation Time"), which accrues biweekly. Vacation Time accrues at a rate of _____ hours per pay period, which is the equivalent of ____ hours per year (*i.e.*, ___ weeks). Vacation Time [carries over / does not carry over], but is subject to a maximum balance of ____ hours (*i.e.*, __ weeks). Employees are paid for unused Vacation Time upon termination. The Debtor paid Vacation Time to employees that were separated from the company during the work-force reductions in _____ and _____of this year. The _____ remaining employees received payment on their accrued Vacation Time with the payroll paid out on _____. In light of those payments, the Debtor estimates that, as of the Petition Date, the current Employees had accrued less than $_____ of unused Vacation Time.

10. The Debtor also allows the Employees limited paid time off when ill ("Sick Time"). Employees are allotted ___ sick days or personal days annually. Unused Sick Time [can / cannot] be carried forward from year to year, and the Debtor does not compensate terminated employees for unused Sick Time, regardless of the reason for termination.

11. In addition, the Debtor permits its Employees Paid Time Off for a variety of other customary reasons, including, among other reasons, holidays and jury service. In general, Paid Time Off for these reasons does not accrue and cannot be carried forward.

12. The Debtor anticipates that its Employees will utilize any accrued Paid Time Off in the ordinary course of business without resulting in any material cash flow requirements beyond the Debtor's normal payroll obligations. Use of Paid Time Off remains subject to ordinary course restrictions.

Prepetition Business Expenses

13. The Debtor has policies whereby its Employees seek reimbursement of Prepetition Business Expenses, which are various business-related expenses incurred by the Employees within the scope of their employment. The Prepetition Business Expenses include a vehicle reimbursement program for usage of personal vehicles for company business, with an average cost to the Debtor of approximately $_____ per month. Debtor estimates that accrued and unpaid Prepetition Business Expenses, other than the vehicle expense reimbursement, will total less than $_____ as of the Petition Date.

Prepetition Benefits

14. Generally, the Debtor's Employees are offered the following Prepetition Benefits: (i) medical insurance, including prescription, dental and vision coverage; (ii) basic life insurance; (iii) 401(k) benefits and (iv) workers' compensation benefits.

A. Medical Insurance

15. Employees are eligible to receive medical insurance (the "Health Plan") that includes dental, prescription, and vision coverage administered by _____ Administrators ("_____").

16. In connection with the medical insurance plan, Employees are eligible to enroll and participate in either the preferred provider organization plan or the health savings account, which provides Employees with more choice and control over how their health care dollars are spent.

17. Employees pay approximately ___% of the medical plan premium and ___% of the dental plan premium. The Debtor contributes the remaining approximately ___% of the medical, ___% of the dental, and ____% of the vision care plan.

18. The Debtor's aggregate contributions to the Health Plan per month are approximately $_____. The Debtor makes the Health Plan payment on a monthly basis and is current on payment through _____. The Debtor has not made the payment for the month(s) of _____.

B. Basic Life Program

19. The Debtor provides Employees with basic life insurance ("Basic Life Program") through _____. The Debtor pays _____% of the premium for a $_____ policy on each Employee. The Basic Life Program is not portable and an Employee cannot take the policy with him or her when the Employee separates from the Debtor. Debtor estimates that accrued and unpaid expenses under the Basic Life Program total $_____ as of the Petition Date.

C. Retirement Plan

20. The Debtor offers a 401(k) retirement plan (the "401(k) Plan") to their Employees. Participants in the 401(k) Plan may contribute up to the maximum federally-

permitted amount of their eligible compensation. The Debtor [does / does not] provide any matching contributions. The Debtor believes that it is current on all administrative or other costs owed in connection with the 401(k) Plan.

D. Worker's Compensation

21. The Debtor provides workers' compensation benefits through _____ Casualty Insurance Company (the "Workers Compensation Program"). Failure to maintain the Workers' Compensation Program and satisfy other workers' compensation obligations could result in administrative or legal proceedings against the Debtor and its officers and directors. Accordingly, the Debtor seeks authority to continue paying and/or contesting in good faith, as appropriate in the Debtor's business judgment, all workers' compensation obligations (including amounts related to the Workers' Compensation Program) that arose prior to the Relief Date as they become due in the ordinary course of the Debtor's business. Debtor estimates that accrued and unpaid expenses under the Workers' Compensation Program totals approximately $_____ as of the Relief Date.

Prepetition Deductions

22. The Debtor routinely withholds from Employee paychecks amounts that the Debtor is required to transmit to third parties. Examples of such Prepetition Deductions include Social Security, FICA, federal and state income taxes. The Prepetition Deductions constitute money held in trust and therefore are not property of the Debtor's estate. Thus, the Debtor believes that it has authority to direct such funds to the appropriate parties in the ordinary course of business. Nonetheless, out of an abundance of caution, the Debtor requests authority to direct such Prepetition Deductions to the appropriate parties.

RELIEF REQUESTED

23. By the Motion, the Debtor requests that this Court enter the Order authorizing, but not directing, the Debtor, to pay the Prepetition Compensation, Prepetition Business Expenses,

Prepetition Benefits, and Prepetition Deductions (collectively, the "Prepetition Employee Obligations"). The Debtor submits that it is in the best interest of its estate for this Court to authorize the Debtor to make such payments and honor obligations owed to, or for the benefit of, the Employees so as to enable the Debtor to maintain morale, retain its remaining Employees during this critical time, and minimize the personal hardship such Employees would suffer if prepetition employee-related obligations are not paid when due or honored as expected.

BASIS FOR RELIEF REQUESTED

24. A failure to honor the Prepetition Employee Obligations would have devastating consequences for the Debtor's ability to operate its business during the chapter 11 case and will virtually preclude pursuit of a chapter 11 bankruptcy plan. Authorization to pay the Prepetition Employee Obligations is, therefore, necessary to maximize the value of the Debtor's estate for all creditors and stakeholders. Accordingly, the Debtor submits that the relief requested herein is in the best interest of the Debtor, its estate, creditors, stakeholders, and other parties in interest, and therefore, should be granted.

25. The Court has several legal bases upon which to grant the requested relief, including Bankruptcy Code sections 105(a), 363, and 507 and the "necessity of payment" doctrine.

26. First, the Debtor's proposed payment of Prepetition Employee Obligations should be authorized pursuant to Bankruptcy Code section 105 and under the "doctrine of necessity." Bankruptcy Code section 105(a) provides that a court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code, pursuant to the "doctrine of necessity." The "doctrine of necessity" functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code and supports the relief requested herein. *See In re Fin. News Network Inc.*, 134 B.R. 732, 735–36 (Bankr. S.D.N.Y.

1991) (stating that "[t]he 'doctrine of necessity' stands for the principle that a bankruptcy court may allow pre-plan payments of prepetition obligations where such payments are critical to the debtor's reorganization.").

27. In light of the critical need for the Debtor to preserve the going concern value of its business in order to maximize value for all stakeholders, payment of the Prepetition Employee Obligations as requested herein is proper in accordance with Bankruptcy Code section 105. The Debtor's ability to maximize value depends, in large part, upon the retention and motivation of the Employees whose efforts will be critical to the successful reorganization process. If amounts owed are not received, insurance reimbursements are not made, or other benefits delayed, the Employees will suffer undue personal hardship, and any disruption from Employee resignations or lack of morale could have an adverse effect on the Debtor's reorganization efforts. The Debtor believes that it is therefore critical that it be authorized to pay each of its Employees the compensation amounts that have been earned under the Debtor's prepetition contractual obligations or practices.

28. Second, to the extent payment of the Prepetition Employee Obligations would constitute a use of property outside the ordinary course of business, the payment of these obligations is justified pursuant to Bankruptcy Code section 363(b). Although Bankruptcy Code section 363 does not set forth a standard for determining when it is appropriate for a court to authorize use of a debtor's assets, in applying this section, courts have deferred to the sound business judgment of the debtor. *See In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a judge determining a section 363(b) application must find from the evidence presented before him a good business reason to grant such application); *In re Lionel Corp*., 722 F.2d 1063, 1071 (2d Cir. 1983) (same); *In re Ionosphere Clubs, Inc.,* 98 B.R. at 175 (same); *see also Stephens Indus. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986) (holding that "bankruptcy

court can authorize a sale of all of a chapter 11 debtor's assets under § 363(b)(1) when a sound business purpose dictates such action").

29. Once a debtor has articulated a valid business justification, "[t]he business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.'" *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.),* 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). The business judgment rule applies in chapter 11 cases. *See Integrated Res*., 147 B.R. at 656 (noting that "Delaware business judgment rule principles have 'vitality by analogy' in Chapter 11"); *see also Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.),* 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) ("[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a Debtor's management decisions.").

30. Payment of the Prepetition Employee Obligations to preserve and protect the Debtor's business and its ability to ultimately reorganize, retain their currently working employees, and maintain positive employee morale is a sufficient business justification for such an authorization, even if such payment were deemed to be outside the ordinary course of business. *See Ionosphere Clubs*, 98 B.R. at 175. Accordingly, this Court should grant the requested relief under Bankruptcy Code section 363.

31. Third, the Debtor estimates that substantially all of the amounts they seek to pay by the Motion are entitled to priority under Bankruptcy Code sections 507(a)(4) and (a)(5). The Prepetition Employee Obligations are thus priority status and, as such, must be paid in full under any plan. *See* 11 U.S.C. § 1129(a)(9)(B). Consequently, the payment of the Prepetition Employee Obligations at this time would not prejudice the rights of other creditors, but merely

would accelerate payments that otherwise would become due during the administration of the chapter 11 case.

32. Finally, a portion of the Prepetition Employee Obligations constitutes funds held in trust for payment to third parties. The payment of the Prepetition Deductions will not prejudice the Debtor's estate because such withholdings are held in trust for the benefit of the related payees and, thus, do not constitute property of the Debtor's estate under Bankruptcy Code section 541. See 11 U.S.C. § 541(d); *Begier v. IRS*, 496 U.S. 53 (1990). Failure to pay these amounts could subject the Debtor and its officers and directors to liability. *See, e.g.*, John F. Olsen, et. al., *Director & Officer Liability: Indemnification and Insurance* § 3:21 (2003) ("[S]ome states hold corporate officers personally liable for any sales tax and penalty owed and not paid by the corporation regardless of cause."). As a consequence, the Debtor does not have an equitable interest in such Prepetition Deductions and, assuming they could be adequately identified and traced, such trust funds would not constitute property of the Debtor's estate and would not be subject to the automatic stay. Further, because the Prepetition Deductions are not property of the Debtor's estate, these funds may not be available for the satisfaction of creditors' claims. Accordingly, the Debtor should be able to pay the Prepetition Deductions to the appropriate third parties.

Postpetition Continuation of Ordinary Course Employee Programs

33. The Debtor seeks an order authorizing, but not obligating, the Debtor to continue its ordinary course Employee compensation (including, without limitation, wages and salaries), and Employee benefit programs during the postpetition reorganization process. Though the Debtor believes that such programs constitute ordinary course of business expenses authorized under the Bankruptcy Code and applicable law, out of an abundance of caution, the Debtor seeks authorization to continue such programs during the pendency of this chapter 11 case. As a precaution, the proposed Order provides that the relief granted therein shall not constitute or be

deemed an assumption of any of the employment and service agreements to which the Debtor is a party or any of the Debtor's Employee benefit policies, plans, programs, practices, or procedures under Bankruptcy Code section 365.

Direction to Banks

34. In addition, the Debtor requests entry of an order (a) authorizing all applicable banks and other financial institutions (collectively, the "Banks"), when requested by the Debtor in its sole discretion, to receive, process, honor, and pay any and all checks, drafts, and other forms of payment, including fund transfers, on account of the Prepetition Employee Obligations, whether such checks or other requests were submitted before, on, or after the Petition Date; (b) authorizing the Banks to rely on the representations of the Debtor as to which checks are subject to the Motion, provided that any such Bank shall not have any liability to any party for relying on such direction and representations by the Debtor or for inadvertently honoring or dishonoring any check or fund transfer; and (c) authorizing the Debtor to issue new postpetition checks or effect new postpetition fund transfers to replace any checks, drafts, and other forms of payment which may be inadvertently dishonored or rejected.

RESERVATION OF RIGHTS

35. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Debtor; (b) a waiver of the Debtor's rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an assumption or rejection of any executory contract or unexpired lease pursuant to Bankruptcy Code section 365; or (e) otherwise affect the Debtor's rights under Bankruptcy Code section 365 to assume or reject any executory contract with any party subject to the Motion.

REQUESTS FOR IMMEDIATE RELIEF AND WAIVER OF STAY

36. Pursuant to Bankruptcy Rules 6003(b) and 6004(h), the Debtor seeks (i) immediate entry of an order that, *inter alia*, authorizes the Debtor to pay the Prepetition

Employee Obligations and continue its ordinary course Employee compensation (including, without limitation, wages and salaries), and Employee Benefit Programs and (ii) a waiver of any stay of the effectiveness of such an order.

37. Bankruptcy Rule 6003(b) provides, in relevant part, that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding … a motion to pay all or part of a claim that arose before the filing of the petition." Accordingly, where the failure to grant any such requested relief would result in immediate and irreparable harm to the Debtor's estate, the Court may allow the Debtor to pay all or part of a claim that arose before the Relief Date prior to the twenty-first day following the Relief Date. Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise."

38. The payment of the Prepetition Employee Obligations and continuation of its ordinary course Employee compensation and Employee Benefit Programs is necessary to prevent immediate and irreparable damage to the Debtor's operations. Accordingly, the Debtor submits that ample cause exists to justify: (i) immediate entry of the Interim Order granting the relief sought herein on an interim basis pursuant to Bankruptcy Rule 6003(b) and (ii) a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h).

NOTICE AND PRIOR MOTIONS

39. Notice of this Motion will be provided to: (i) the Office of the United States Trustee for the District of Utah; (ii) the Debtor's largest twenty (20) unsecured creditors as identified in its chapter 11 petition; (iii) the Debtor's cash management banks and (iv) all parties requesting notice in this case pursuant to Rule 2002. Due to the nature of the relief requested herein, the Debtor respectfully submits that no further notice of this Motion is necessary.

NO PRIOR REQUEST

40. No prior request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court enter the Order and grant such other relief as the Court deems just and proper.

DATED this _____ day of _____, 20__.

_____

/s/_____

_____

Counsel for ABC, LLC

CERTIFICATE OF SERVICE – BY NOTICE OF ELECTRONIC FILING (CM/ECF)

I hereby certify that on the ____ day of _____, 20___, I electronically filed the foregoing document with the United States Bankruptcy Court for the District of Utah by using the Court's CM/ECF system. I further certify that the parties of record in this case, as identified below, are listed as registered CM/ECF users and will be served through the CM/ECF system:

CERTIFICATE OF SERVICE – BY MAIL, OTHER

I further certify that on the ____ day of _____, 20___, I caused the foregoing document to be sent by first class United States mail, postage fully prepaid, to the following at the addresses set for the below:

/s/_____

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

In re: JAMES LEE and SABRINA LEE, Debtors.	Bankruptcy Number: 17-20000 Chapter 11 Judge Joel T. Marker

ORDER TO (1) DISCLOSE SINGLE ASSET REAL ESTATE; (2) FILE STATUS REPORT; (3) ATTEND PRELIMINARY STATUS CONFERENCE; AND (4) FILE MONTHLY OPERATING REPORTS

A. DEADLINES

The Debtors must:

1. Declare whether the Debtors hold, own, or possess any legal or equitable interest in single asset real estate (see 11 U.S.C. §§ 362(d)(3) and 101(51B)) not later than **November 30, 2017**.

2. File and serve a preliminary status report not later than **November 30, 2017**.

B. PRELIMINARY STATUS CONFERENCE

A preliminary status conference is set for **December 14, 2017 at 10:30 a.m.** before the Honorable Joel T. Marker in the United States Bankruptcy Court, Courtroom #341, 350 South Main Street, Salt Lake City, UT 84101.

C. DEBTORS' DECLARATION CONCERNING SINGLE ASSET REAL ESTATE

The Debtors must file a declaration whether the Debtors have any legal or equitable interest in "single asset real estate," as defined in 11 U.S.C. § 101(51B), by the date set forth above.

A party in interest may contest the Debtors' claim that they do or do not own single asset real estate by motion set for hearing in accordance with applicable Federal Rules of Bankruptcy Procedure and Local Rule 9013-1. Any response, as well as any reply, must be filed and served in accordance with Local Rule 9013-1. However, any motion contesting the Debtors' declaration regarding single asset real estate must be set for hearing by the objecting party not later than 90 days after the date of the petition.

D. CHAPTER 11 PRELIMINARY STATUS REPORT

1. **Service of the Preliminary Status Report.** The Debtors must, by the date set forth above, file a preliminary status report and serve it on the same persons and entities served with this Order and file proof of service with the Court.

2. **Contents of the Preliminary Status Report.** The preliminary status report must contain an overview of the case, including the following matters, under the following headings, and in the following order:

a. **History of the Debtors.** The event(s) that caused the Debtors to file the petition;

b. **Type of Plan.** Whether the plan will be one of liquidation or reorganization;

c. **Cramdown.** Whether the Debtors intend to confirm the plan under 11 U.S.C. §§ 1129(a)(8) or 11 U.S.C. 1129(b);

d. **Valuation of Assets.** Whether the Debtors anticipate any litigation concerning the valuation of the assets;

e. **Cash Collateral and Adequate Protection.** Whether the Debtors anticipate any motions concerning cash collateral and adequate protection issues;

f. **Adversary Proceedings.** Whether the Debtors anticipate filing any adversary proceedings that will be necessary to confirm or implement a plan. The Debtors must include a general description of the underlying facts that will give rise to the proceedings as well as the Bankruptcy Code sections under which the proceedings will be filed and who the anticipated parties will be;

g. **Environmental Issues.** Whether the estate includes any property that could potentially give rise to claims or litigation based upon federal or state environmental laws;

h. **Objections to Claims.** Whether the Debtors will object to any claims, the number of objections that will be filed, and the aggregate amount of the disputed claims;

i. **Post-Confirmation Sale of Assets.** Whether the plan will include the post-confirmation sale of any assets that will require the involvement of the Court;

j. **Anticipated Professional Fees.** Listed by profession, name, and expected amount of compensation;

k. **Small Business Case.** Whether the Debtors are a "small business debtor" requiring treatment as a "small business case." *See* 11 U.S.C. §§ 101(51C) and (51D), 1102(a)(3), 1121(e), 1125(f) and 1129(e). If so, whether the Debtors have complied, and continue to comply, with all of the duties under 11 U.S.C. § 1116 in addition to the duties required of chapter 11 debtors-in-possession; and

l. **Requirements of Chapter 11 Debtors-in-Possession.** Whether the Debtors have complied, and continue to comply, with all of the duties under 11 U.S.C. §§ 521, 1106, and 1107, and the requirements of Local Rule 2081-1.

3. **Purpose of Preliminary Status Report.** The Court expects to receive sufficient information to understand the financial problems which precipitated the filing of the petition, the Debtors' anticipated plan of reorganization, and the types of contested matters and adversary proceedings that will likely be filed. With this information the Court may set the deadlines described below and determine if it will give preliminary approval of a disclosure statement without a hearing and give final approval of the disclosure statement at the hearing to confirm the plan. In appropriate circumstances, the Court may also permit the plan and disclosure statement to be combined into one document. Filing a preliminary status report with perfunctory conclusions and no meaningful factual detail does not comply with this Order.

4. **Sanctions for Failing to Comply.** Failure to comply with this Order may result in sanctions including dismissal, conversion, or the appointment of a trustee.

E. CHAPTER 11 PRELIMINARY STATUS CONFERENCE

1. **Appearance Mandatory. The Debtors and Debtors' counsel are ORDERED to appear *personally* at the preliminary status conference.**

2. **Matters to be Addressed.** At the preliminary status conference, the Court may enter orders and set deadlines as follows:

a. **Combined Plan and Disclosure Statement.** If appropriate, the Court may permit the Debtors to combine the plan and disclosure statement into one document. In such a case, the Court preliminarily approves the disclosures contained in the combined document. After

preliminary approval, the combined document may be served and set for a hearing to consider final approval of the disclosures and confirmation of the plan.

b. **Preliminary Approval of Disclosure Statement.** If the Court does not permit the plan and disclosure statement to be combined into one document, it may permit the Debtors to obtain preliminary approval of a separate disclosure statement without a hearing. In such instances, after preliminary approval, the disclosure statement and plan may be served and set for a hearing to consider final approval of the disclosure statement and confirmation of the plan.

c. **Date for Filing of the Plan and Disclosure Statement.** The Court may set a deadline for the Debtors' filing of a proposed disclosure statement and plan. The Court anticipates that these documents will be filed in most cases within 90 days after the preliminary status conference.

d. **Date of Hearing on the Disclosure Statement.** If the Court will not preliminarily approve the disclosure statement, it may set a deadline for a hearing to consider approval of the disclosure statement.

e. **Date of Hearing to Confirm the Plan.** A deadline may be set for confirmation of the plan and, if the Court will preliminarily approve the disclosure statement, for final approval of the disclosure statement.

f. **Executory Contracts.** The Court may set a deadline for the Debtors to accept or reject executory contracts and unexpired leases.

3. **Telephonic Appearances.** A party in interest *other* than the Debtors and the Debtors' counsel may appear by telephone provided that the necessary arrangements for a telephonic appearance are made prior to the status conference. Telephonic appearances are optional.

4. **Motions to Dismiss, Convert, or Appoint Trustee at the Preliminary Status Conference.** At the preliminary status conference or any continuation thereof, the Court may *sua sponte* order that the case be converted to another chapter or dismissed, or that a chapter 11 trustee be appointed.

Any party may request at the preliminary status conference, or any continuation thereof, that the case be converted to another chapter or dismissed, or that a chapter 11 trustee be appointed, provided that a motion requesting such relief is filed and served on persons or entities entitled to notice at least 10 days prior to the preliminary status conference. Opposition may be presented orally at the preliminary status conference.

F. MONTHLY OPERATING REPORTS.

The Debtors are ORDERED to file with the Court a copy of each monthly operating report submitted to the United States Trustee from the date of the petition until the date a plan is confirmed or the case is converted to another chapter or dismissed. Each such monthly operating report must be filed on the date such document is submitted to the United States Trustee, but not later than the 14th day of the month following expiration of the month which is the subject of the statement or report, in accordance with Local Rule 2081-1(b).

_____END OF DOCUMENT_____

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
The Honorable Thomas B. McNamara

In re: @, Debtor@.	Bankruptcy Case No. @-@ TBM Chapter 11

ORDER AND NOTICE OF CHAPTER 11 STATUS CONFERENCE

THIS MATTER comes before the Court *sua sponte*. The Court has conducted a preliminary review of the file and has determined that a Status Conference should be set pursuant to 11 U.S.C. § 105(d)(1). At the conference Debtor shall:

a) be prepared to inform the Court generally about the nature of the Debtor@ assets and liabilities, source or sources of income, any business they conduct, and the reasons for filing bankruptcy;

b) be prepared to discuss generally the Debtor@ intended plan of reorganization, changes in operations, insurance coverage, tax liability, restructuring of debt, use of cash collateral, and other matters pertinent to the Debtor financial affairs, business or reorganization;

c) as applicable, be prepared to advise the Court regarding the Debtor@ operating financial projections for the period preceding the filing of a plan, a budget for the professionals in the case, and any particularities of the case which require resolution;

d) be prepared to propose a schedule for the filing of a disclosure statement, the filing of a plan of reorganization, a bar date for filing proofs of claims and objections to claims and, if applicable, anticipated avoidance actions or other adversary proceedings which are critical to the reorganization;

e) be prepared to advise the Court whether the Debtor@ anticipates filing a separate disclosure statement or a simply a plan that provides sufficient information that a separate disclosure statement is not necessary pursuant to 11 U.S.C. §1125(f)(1);

f) be prepared to advise the Court whether the Debtor@ is/are required to file the Periodic Report Regarding Value, Operations and Profitability of Entities in Which the Debtor Estate Holds a Substantial or Controlling Interest (Official Form 26) pursuant to Fed. R. Bankr. P. 2015.3;

g) be prepared to advise the Court as to whether the Debtor@ qualify as a "small business" pursuant to 11 U.S.C. § 101 (51C) or whether the case is a "single asset real estate case" as defined by 11 U.S.C. § 101 (51B);

h) if the Debtor@ is/are a "small business" pursuant to 11 U.S.C. § 101 (51C), be prepared to advise the Court whether the Debtors have filed and will continue to file a Small Business Monthly Operating Report (Official Form 25C) as required by 11 U.S.C. §308 and Fed. R. Bankr. P. 2015(a)(6).

i) if the Debtor@ is/are a "small business" pursuant to 11 U.S.C. § 101(51C), be prepared to advise the Court whether the Debtors anticipate filing a separate disclosure statement or simply a plan that provides sufficient information that a separate disclosure statement is not necessary pursuant to 11 U.S.C. §1125(f)(1);

j) if the Debtor@ is/are a "small business" pursuant to 11 U.S.C. § 101(51C), be prepared to advise the Court of any current or prospective failures to fully and timely comply with 11 U.S.C. § 1116;

k) be prepared to advise the Court regarding the status of any pending motions; and

l) be prepared to identify any other issues that may require prompt attention of the Court or otherwise may be necessary to ensure expeditious and economical resolution of this case.

IT IS THEREFORE ORDERED that:

a) The Debtor@ shall appear before the Honorable Thomas B. McNamara on **@ @ @, 2015**, **at @:@ @.m., in Courtroom E**, United States Bankruptcy Court, U. S. Custom House, 721 19th Street, Denver, Colorado 80202, for a Status Conference. Failure of the Debtor@ to appear shall result in the setting of a hearing to show cause why appropriate sanctions should not be imposed for failing to appear, which sanctions may include dismissal of the case.

b) FORTHWITH, the **Debtor@ shall: (1) serve a copy of this Order on the United States Trustee, all creditors, other parties-in-interest, and those who have filed an entry of appearance and request for notice in this case; and (2) file a certificate of service with the Court, evidencing compliance with this Order, prior to the scheduled hearing.**

DATED this @ day of @, 2017.

BY THE COURT:

_____

Honorable Thomas B. McNamara,
United States Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
The Honorable Thomas B. McNamara

In re: @, Debtor@.	Bankruptcy Case No. @-@ TBM Chapter 11

ORDER AND NOTICE OF CHAPTER 11 STATUS CONFERENCE

THIS MATTER comes before the Court *sua sponte*. The Court has conducted a preliminary review of the file and has determined that a Status Conference should be set pursuant to 11 U.S.C. § 105(d)(1). At the conference the Debtor shall:

a) be prepared to inform the Court generally about the nature of the Debtor@ assets and liabilities, source or sources of income, any business it conducts, and the reasons for filing bankruptcy;

b) be prepared to discuss generally the Debtor@ intended plan for reorganization, changes in operations, insurance coverage, tax liability, restructuring of debt, use of cash collateral and other matters pertinent to the Debtor's financial affairs, business or reorganization;

c) as applicable, be prepared to advise the Court regarding the Debtor@ operating financial projections for the period preceding the filing of a plan, a budget for the professionals in the case and any particularities of the case which require resolution;

d) be prepared to propose a schedule for the filing of a disclosure statement, the filing of a plan of reorganization, a bar date for filing proofs of claims and objections to claims and, if applicable, anticipated avoidance actions or other adversary proceedings which are critical to the reorganization;

e) be prepared to advise the Court whether the Debtor@ anticipates filing a separate disclosure statement or a simply a plan that provides sufficient information that a separate disclosure statement is not necessary pursuant to 11 U.S.C. §1125(f)(1);

f) be prepared to advise the Court whether the Debtor@ is/are required to file the Periodic Report Regarding Value, Operations and Profitability of Entities in Which the Debtor's Estate Holds a Substantial or Controlling Interest (Official Form 26) pursuant to Fed. R. Bankr. P. 2015.3;

g) be prepared to advise the Court as to whether the Debtor@ qualifies as a "small business" pursuant to 11 U.S.C. § 101 (51C) or whether the case is a "single asset real estate case" as defined by 11 U.S.C. § 101 (51B); and

h) if the Debtor@ is/are a "small business" pursuant to 11 U.S.C. §101 (51C), be prepared to advise the Court whether it has filed and will continue to file a Small Business Monthly Operating Report (Official Form 25C) as required by 11 U.S.C. §308 and Fed. R. Bankr. P. 2015(a)(6);

i) if the Debtor@ is/are a "small business" pursuant to 11 U.S.C. § 101(51C), be prepared to advise the Court whether the Debtors anticipate filing a separate disclosure statement or simply a plan that provides sufficient information that a separate disclosure statement is not necessary pursuant to 11 U.S.C. §1125(f)(1);

j) if the Debtor@ is/are a "small business" pursuant to 11 U.S.C. § 101(51C), be prepared to advise the Court of any current or prospective failures to fully and timely comply with 11 U.S.C. § 1116;

k) be prepared to advise the Court regarding the status of any pending motions; and

l) be prepared to identify any other issues that may require prompt attention of the Court or otherwise may be necessary to ensure expeditious and economical resolution of this case.

IT IS THEREFORE ORDERED that:

a) The Debtor shall appear before the Honorable Thomas B. McNamara on **@ @ @, 2015**, **at @:@ A.m., in Courtroom E**, United States Bankruptcy Court, U. S. Custom House, 721 19th Street, Denver, Colorado 80202, for a Status Conference. Failure of the Debtor to appear shall result in the setting of a hearing to show cause why appropriate sanctions should not be imposed for failing to appear, which sanctions may include dismissal of the case.

b) FORTHWITH, **Debtor@ shall: (1) serve a copy of this Order on the United States Trustee, all creditors, other parties-in-interest, and those who have filed an entry of appearance and request for notice in this case; and (2) file a certificate of service with the Court, evidencing compliance with this Order, prior to the scheduled hearing.**

DATED this @day of @, 2017.

BY THE COURT:

_____

Honorable Thomas B. McNamara,
United States Bankruptcy Court Judge

DEBTOR: _____

CASE NUMBER: _____

INITIAL FINANCIAL REPORT
CHAPTER 11

COVER SHEET

_____
Date of Report

THIS REPORT IS DUE 21 DAYS AFTER THE PETITION FILING DATE

Mark One Box for Each Required Document:

Debtor must attach each of the following documents or a satisfactory explanation for failure to attach a document. **Submit original report to U.S. Trustee.** Do not file report with Clerk of Court.

Document Attached	Previously Submitted	Explanation Attached	REQUIRED DOCUMENTS
☐	☐	☐	1. Latest Fiscal Year Financial Statements or Tax Returns
☐	☐	☐	2. Balance Sheet as of Month End Immediately Preceding Filing
☐	☐	☐	3. Profit and Loss Statement for Month and Year Immediately Preceding Filing
☐	☐	☐	4. Insurance & Environmental Risk Questionnaire - Proof of:
☐	☐	☐	a. General Liability Insurance
☐	☐	☐	b. Property (Fire, Theft, etc.) Insurance
☐	☐	☐	c. Workers' Compensation Insurance
☐	☐	☐	d. Vehicle Insurance
☐	☐	☐	e. Other:
☐	☐	☐	5. Projected Revenue, Expenses and Cash Flow for First 180 Days of Post Petition Operations (Form IR-1)
			6. Name and Address of Financial Institution, Account Number and Sample Voided Check for Each Debtor in Possession Bank Account
☐	☐	☐	a. General Account
☐	☐	☐	c. Tax Account (if required)

I declare under penalty of perjury that the following Initial Financial Report, and any attachments thereto, are true and correct to the best of my knowledge and belief.

Executed on: _____ **Debtor(s):** _____

By: _____

Position: _____

Email & Phone: _____

Form 1
Rev. 12/10/2009

DEBTOR: _____

CASE NUMBER: _____

MONTHLY OPERATING REPORT
CHAPTER 11

Form 2-A
COVER SHEET

For Period Ending _____

Accounting Method: ☐ Accrual Basis ☐ Cash Basis

THIS REPORT IS DUE 14 DAYS AFTER THE END OF THE MONTH

Mark One Box for Each Required Document:

Debtor must attach each of the following reports/documents unless the U. S. Trustee has waived the requirement in writing. File the original with the Clerk of Court. Submit a duplicate, with original signature, to the U. S. Trustee.

Report/Document Attached	Previously Waived	REQUIRED REPORTS/DOCUMENTS
☐	☐	1. Cash Receipts and Disursements Statement (Form 2-B)
☐	☐	2. Balance Sheet (Form 2-C)
☐	☐	3. Profit and Loss Statement (Form 2-D)
☐	☐	4. Supporting Schedules (Form 2-E)
☐	☐	5. Quarterly Fee Summary (Form 2-F)
☐	☐	6. Narrative (Form 2-G)
☐	☐	7. Bank Statements for All Bank Accounts IMPORTANT: Redact account numbers and remove check images
☐	☐	8. Bank Statement Reconciliations for all Bank Accounts

I declare under penalty of perjury that the following Monthly Operating Report, and any attachments thereto are true, accurate and correct to the best of my knowledge and belief.

Executed on: _____ **Print Name:** _____

Signature: _____

Title: _____

Rev. 12/10/2009

DEBTOR: _____ **CASE NO:** _____

Form 2-B
CASH RECEIPTS AND DISBURSEMENTS STATEMENT

For Period: _____ to _____

CASH FLOW SUMMARY	Current Month	Accumulated
1. Beginning Cash Balance	$ _____ (1)	$ _____ (1)
2. Cash Receipts		
Operations		
Sale of Assets		
Loans/advances		
Other		
Total Cash Receipts	$ _____	$ _____
3. Cash Disbursements		
Operations		
Debt Service/Secured loan payment		
Professional fees/U.S. Trustee fees		
Other		
Total Cash Disbursements	$ _____	$ _____
4. Net Cash Flow (Total Cash Receipts less Total Cash Disbursements)	_____	_____
5 Ending Cash Balance (to Form 2-C)	$ _____ (2)	$ _____ (2)

CASH BALANCE SUMMARY	Financial Institution	Book Balance
Petty Cash	_____	$
DIP Operating Account	_____	
DIP State Tax Account	_____	
DIP Payroll Account	_____	
Other Operating Account	_____	
Other Interest-bearing Account	_____	
TOTAL (must agree with Ending Cash Balance above)		$ _____ (2)

(1) Accumulated beginning cash balance is the cash available at the commencement of the case. Current month beginning cash balance should equal the previous month's ending balance.

(2) All cash balances should be the same.

DEBTOR: _____ **CASE NO:** _____

Form 2-B
CASH RECEIPTS AND DISBURSEMENTS STATEMENT

For Period: _____ to _____

CASH RECEIPTS DETAIL **Account No:** _____

(attach additional sheets as necessary)

Date	Payer	Description	Amount
			$

Total Cash Receipts $ _____ (1)

(1) Total for all accounts should agree with total cash receipts listed on Form 2-B, page 1

DEBTOR: _____ **CASE NO:** _____

Form 2-B
CASH RECEIPTS AND DISBURSEMENTS STATEMENT
For Period: _____ to _____

CASH DISBURSEMENTS DETAIL **Account No:** _____
(attach additional sheets as necessary)

Date	Check No.	Payee	Description (Purpose)	Amount
				$

Total Cash Disbursements $ _____ (1)

(1) Total for all accounts should agree with total cash disbursements listed on Form 2-B, page 1

DEBTOR: _____ **CASE NO:** _____

Form 2-C

COMPARATIVE BALANCE SHEET

For Period Ended: _____

	Current Month	Petition Date (1)
ASSETS		
Current Assets:		
Cash (from Form 2-B, line 5)	$	$
Accounts Receivable (from Form 2-E)		
Receivable from Officers, Employees, Affiliates		
Inventory		
Other Current Assets :(List)		
Total Current Assets	$	$
Fixed Assets:		
Land	$	$
Building		
Equipment, Furniture and Fixtures		
Total Fixed Assets		
Less: Accumulated Depreciation	( )	( )
Net Fixed Assets	$	$
Other Assets (List):		
TOTAL ASSETS	$	$
LIABILITIES		
Post-petition Accounts Payable (from Form 2-E)	$	$
Post-petition Accrued Profesional Fees (from Form 2-E)		
Post-petition Taxes Payable (from Form 2-E)		
Post-petition Notes Payable		
Other Post-petition Payable(List):		
Total Post Petition Liabilities	$	$
Pre Petition Liabilities:		
Secured Debt		
Priority Debt		
Unsecured Debt		
Total Pre Petition Liabilities	$	$
TOTAL LIABILITIES	$	$
OWNERS' EQUITY		
Owner's/Stockholder's Equity	$	$
Retained Earnings - Prepetition		
Retained Earnings - Post-petition		
TOTAL OWNERS' EQUITY	$	$
TOTAL LIABILITIES AND OWNERS' EQUITY	$	$

(1) Petition date values are taken from the Debtor's balance sheet as of the petition date or are the values listed on the Debtor's schedules.

Rev. 12/10/2009

DEBTOR: _____ **CASE NO:** _____

Form 2-D
PROFIT AND LOSS STATEMENT
For Period _____ **to** _____

	Current Month	Accumulated Total (1)
Gross Operating Revenue	$	$
Less: Discounts, Returns and Allowances	( )	( )
Net Operating Revenue	$	$
Cost of Goods Sold		
Gross Profit	$	$
Operating Expenses		
Officer Compensation	$	$
Selling, General and Administrative		
Rents and Leases		
Depreciation, Depletion and Amortization		
Other (list): _____		
_____		
Total Operating Expenses	$	$
Operating Income (Loss)	$	$
Non-Operating Income and Expenses		
Other Non-Operating Expenses	$	$
Gains (Losses) on Sale of Assets		
Interest Income		
Interest Expense		
Other Non-Operating Income		
Net Non-Operating Income or (Expenses)	$	$
Reorganization Expenses		
Legal and Professional Fees	$	$
Other Reorganization Expense		
Total Reorganization Expenses	$	$
Net Income (Loss) Before Income Taxes	$	$
Federal and State Income Tax Expense (Benefit)		
NET INCOME (LOSS)	$	$

(1) Accumulated Totals include all revenue and expenses since the petition date.

Rev. 12/10/2009

DEBTOR: _____ **CASE NO:** _____

Form 2-E
SUPPORTING SCHEDULES
For Period: _____ **to** _____

POST PETITION TAXES PAYABLE SCHEDULE

	Beginning Balance (1)	Amount Accrued	Amount Paid	Date Paid	Check Number	Ending Balance
Income Tax Withheld:						
Federal	$	$	$			$
State						
FICA Tax Withheld						
Employer's FICA Tax						
Unemployment Tax						
Federal						
State						
Sales, Use & Excise Taxes						
Property Taxes						
Accrued Income Tax:						
Federal						
State						
Other: _____						
TOTALS	$ _____	$ _____	$ _____			$ _____

(1) For first report, Beginning Balance will be $0; thereafter, Beginning Balance will be Ending Balance from prior report.

INSURANCE SCHEDULE

	Carrier	Amount of Coverage	Expiration Date	Premium Paid Through
Workers' Compensation		$		$
General Liability		$		$
Property (Fire, Theft)		$		$
Vehicle		$		$
Other (list):		$		$
		$		$

DEBTOR: _____ **CASE NO:** _____

Form 2-E
SUPPORTING SCHEDULES
For Period: _____ to _____

ACCOUNTS RECEIVABLE AND POST PETITION PAYABLE AGING

Due	Accounts Receivable	Post Petition Accounts Payable
Under 30 days	$	$
30 to 60 days		
61 to 90 days		
91 to 120 days		
Over 120 days		
Total Post Petition		
Pre Petition Amounts		
Total Accounts Receivable	$	
Less: Bad Debt Reserve		
Net Accounts Receivable (to Form 2-C)	$	
	Total Post Petition Accounts Payable	$

**** Attach a detail listing of accounts receivable and post-petition accounts payable***

SCHEDULE OF PAYMENTS TO ATTORNEYS AND OTHER PROFESSIONALS

	Month-end Retainer Balance	Current Month's Accrual	Paid in Current Month	Date of Court Approval	Month-end Balance Due *
Debtor's Counsel	$	$	$		$
Counsel for Unsecured Creditors' Committee					
Trustee's Counsel					
Accountant					
Other: _____					
Total	$	$	$		$

***Balance due to include fees and expenses incurred but not yet paid.**

*SCHEDULE OF PAYMENTS AND TRANSFERS TO PRINCIPALS/EXECUTIVES***

Payee Name	Position	Nature of Payment	Amount
			$

****List payments and transfers of any kind and in any form made to or for the benefit of any proprietor, owner, partner, shareholder, officer or director.**

DEBTOR: _____ **CASE NO:** _____

Form 2-F
QUARTERLY FEE SUMMARY *
For the Month Ended: _____

Month	Year		Cash Disbursements **		Quarterly Fee Due	Check No.	Date Paid
January		$					
February							
March							
TOTAL 1st Quarter		$		$			
April		$					
May							
June							
TOTAL 2nd Quarter		$		$			
July		$					
August							
September							
TOTAL 3rd Quarter		$		$			
October		$					
November							
December							
TOTAL 4th Quarter		$		$			

FEE SCHEDULE (as of JANUARY 1, 2008)

Subject to changes that may occur to 28 U.S.C. §1930(a)(6)

Quarterly Disbursements	Fee	Quarterly Disbursements	Fee
$0 to $14,999.....	$325	$1,000,000 to $1,999,999.....	$6,500
$15,000 to $74,999.....	$650	$2,000,000 to $2,999,999.....	$9,750
$75,000 to $149,999.....	$975	$3,000,000 to $4,999,999.....	$10,400
$150,000 to $224,999.....	$1,625	$5,000,000 to $14,999,999 …….	$13,000
$225,000 to $299,999.....	$1,950	$15,000,000 to $29,999,999….	$20,000
$300,000 to $999,999.....	$4,875	$30,000,000 or more	$30,000

* This summary is to reflect the current calendar year's information cumulative to the end of the reporting period

** Should agree with line 3, Form 2-B. Disbursements are net of transfers to other debtor in possession bank accounts

Failure to pay the quarterly fee is cause for conversion or dismissal of the chapter 11 case. [11 U.S.C. Sec. 1112(b)(10)]
In addition, unpaid fees are considered a debt owed to the United States and will be assessed interest under 31 U.S.C. §3717

Page 1 of 1

Rev. 12/10/2009

DEBTOR: _____ **CASE NO:** _____

Form 2-G

NARRATIVE

For Period Ending _____

Please provide a brief description of any significant business and legal actions taken by the debtor, its creditors, or the court during the reporting period, any unusual or non-recurring accounting transactions that are reported in the financial statements, and any significant changes in the financial condition of the debtor which have occurred subsequent to the report date.

Rev. 12/10/2009

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

UNITED STATES BANKRUPTCY COURT

District of Utah

In re _____ , Case No. _____

Debtor

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

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

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? $ _____

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.

DEBTOR: _____ **POST CONFIRMATION QUARTERLY REPORT**

CH. 11 CASE NO: _____ **FOR QUARTER ENDED:** _____

SUMMARY OF DISBURSEMENTS MADE DURING QUARTER:

1.	CASH BALANCE, BEGINNING OF QUARTER	$ _____
2.	CASH RECEIPTS DURING QUARTER FROM ALL SOURCES	_____
3.	CASH DISBURSEMENTS DURING QUARTER, INCLUDING PLAN PAYMENTS	(_____)
4.	CASH BALANCE, END OF QUARTER (OR AS OF REPORT DATE FOR FINAL REPORT	$ _____

SUMMARY OF AMOUNTS DISBURSED UNDER PLAN:

			Paid During Quarter	Total Paid to Date	Total Pyts. Projected Under Plan
1.	**ADMINISTRATIVE EXPENSES**				
	Plan Trustee Compensation	$	_____	$ _____	$ _____
	Plan Trustee Expense		_____	_____	_____
	Attorney Fees - Trustee		_____	_____	_____
	Attorney Fees - Debtor		_____	_____	_____
	Other Professionals		_____	_____	_____
	Other Administrative Expenses		_____	_____	_____
	TOTAL ADMINISTRATIVE EXPENSES	$	_____	$ _____	$ _____
2.	SECURED CREDITORS	$	_____	_____	_____
3.	PRIORITY CREDITORS	$	_____	_____	_____
4.	UNSECURED CREDITORS	$	_____	_____	_____
5.	EQUITY SECURITY HOLDERS	$	_____	_____	_____
6.	Attach additional sheets as nece	$	_____	_____	_____
TOTAL PLAN PAYMENTS		$	_____	$ _____	$ _____

		Amount	Date	Check No.
QUARTERLY FEE PAID:	$	_____	_____	_____

PLAN STATUS:

		Yes	No
1.	Have all payments been made as set forth in the confirmed plan? (If no, attach explanation.)	☐	☐
2.	Are all post-confirmation obligations current? (If no, attach explanation.)	☐	☐

3. Projected date of application for final decree: _____

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING POST CONFIRMATION QUARTERLY REPORT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Attach additional sheets as necessary

_____
Reorganized Debtor

By: _____

_____
Title

Email & Phone: _____ Form 3
Rev. 6/1/2006

CHAPTER 11 QUARTERLY FEES

The chapter 11 debtor in possession or chapter 11 trustee is responsible for paying this fee. The amount of the fee depends or disbursements made during the calendar quarter.

Fee payments are due no later than the last day of the month following the quarterly reporting period. In order for a plan to be confirmed in the case, the plan must provide that payment of quarterly fees will continue until a final decree is entered and the case is closed.

IMPORTANT UPDATE (As of Oct 1, 2007): Under the Debt Collection act of 1982 , 31 U.S.C. § 3717, the United States Trustee will charge interest on delinquent quarterly fee balances which are considered [post-petition] debts owed to the United States. The minimum rate charged is equal to the U.S. Treasury's "Current Value of Funds Rate," published annually by the Secretary of Treasury in the Federal Register and available on the Treasury's Financial Management Service's Web site at www.fms.treas.gov/debt.

FEE SCHEDULE (JAN. 1, 2008)

Disbursement Range	Quarterly Fee
$0 to $14,999.99	$325
$15,000 to $74,999.99	$650
$75,000 to $149,999.99	$975
$150,000 to $224,999.99	$1,625
$225,000 to $299,999.99	$1,950
$300,000 to $999,999.99	$4,875
$1,000,000 to $1,999,999.99	$6,500
$2,000,000 to $2,999,999.99	$9,750
$3,000,000 to $4,999,999.99	$10,400
$5,000,000 to $14,999,999.99	$13,000
$15,000,000 to $29,999,999.99	$20,000
$30,000,000 or more	$30,000

Failure to pay the quarterly fee is cause for conversion or dismissal of the chapter 11 case. [11 U.S.C. § 1112(b)(4)(K)].

Checks are to be made payable to The United States Trustee and mailed to the address set forth below. Fees are **not** to be mailed or delivered to the local Office of the United States Trustee. If any check is returned "unpaid" for any reason, all subsequent payments must be made by way of cashier's check, certified check, or money order.

To ensure proper credit, it is imperative that the debtor in possession and chapter 11 trustee write the case number on each check and remit the payment with the coupon provided with the quarterly billing. A separate check and coupon is required for each quarterly payment even if more than one quarterly fee is paid at the same time.

Send all payments to: US TRUSTEE PAYMENT CENTER
P.O. Box 70937
Charlotte, NC 28272-0937

NOTICE

DISCLOSURE OF INTENT TO USE TAXPAYER IDENTIFYING NUMBER FOR THE PURPOSE OF COLLECTING AND REPORTING DELINQUENT QUARTERLY FEES OWED TO THE UNITED STATES TRUSTEE PURSUANT TO 28 U.S.C. § 1930(a)(6)

Please be advised that, pursuant to the Debt Collection Improvements Act of 1996, Public Law 104-134, Title III, § 31001(i)(3)(A), 110 Stat. 1321-365, codified at 31 U.S.C. § 3701, the United States Trustee intends to use the debtor's Taxpayer Identification Number ("TIN") as reported by the debtor or debtor's counsel in connection with the chapter 11 bankruptcy proceedings for the purpose of collecting and reporting on any delinquent debt, including chapter 11 quarterly fees, that are owed to the United States Trustee.

The United States Trustee will provide the debtor's TIN to the Department of Treasury for its use in attempting to collect overdue debts. Treasury may take the following steps: (1) submit the debt to the Internal Revenue Service Offset Program so that the amount owed may be deducted from any payment made by the federal government to the debtor, including but not limited to tax refunds; (2) report the delinquency to credit reporting agencies; (3) send collection notices to the debtor; (4) engage private collection agencies to collect the debt; and, (5) engage the United States Attorney's office to sue for collection. Collection costs will be added to the total amount of the debt.

Revised 01/10/08

Federal Register / Vol. 61, No. 97 / Friday, May 17, 1996 / Rules and Regulations 24889

19 CFR Part 145

Customs duties and inspection, Imports, Mail, Postal service, Prohibited merchandise, Restricted merchandise, Reporting and recordkeeping requirements, Seizure and forfeiture.

19 CFR Part 161

Customs duties and inspection, Imports, Law enforcement.

Amendments to the Regulations

For the reasons stated above, parts 12, 145, and 161 of the Customs Regulations (19 CFR parts 12, 145, and 161), are amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 continues and a specific authority citation for new § 12.150 is added to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Section 12.150 also issued under 19 U.S.C. 1595a and 1618; 22 U.S.C. 401.

2. Part 12 is amended by adding a centerheading and new § 12.150 to read as follows:

Merchandise Subject to Economic Sanctions

§ 12.150 Merchandise prohibited by economic sanctions; detention; seizure or other disposition; blocked property.

(a) *Generally.* Merchandise from certain countries designated by the President as constituting a threat to the national security, foreign policy, or economy of the United States shall be detained until the question of its release, seizure, or other disposition has been determined under law and regulations issued by the Treasury Department's Office of Foreign Assets Control (OFAC) (31 CFR Chapter V).

(b) *Seizure.* When an unlicensed importation of merchandise subject to OFAC's regulations is determined to be prohibited, no entry for any purpose shall be permitted and, unless the immediate reexportation or other disposition of such merchandise under Customs supervision has previously been authorized by OFAC, the merchandise shall be seized.

(c) *Licenses.* OFAC's regulations may authorize OFAC to issue licenses on a case-by-case basis authorizing the importation of otherwise prohibited merchandise under certain conditions. If such a license is issued subsequent to the attempted entry and seizure of the merchandise, importation shall be conditioned upon the importer:

(1) Agreeing in writing to hold the Government harmless, and

(2) Paying any storage and other Customs fees, costs, or expenses, as well as any mitigated forfeiture amount or monetary penalty imposed or assessed by Customs or OFAC, or both.

(d) *Blocked property.* Merchandise which constitutes property in which the government or any national of certain designated countries has an interest may be blocked (frozen) pursuant to OFAC's regulations and may not be transferred, sold, or otherwise disposed of without an OFAC license.

(e) *Additional information.* For further information concerning importing merchandise prohibited under economic sanctions programs currently in effect, the Office of Foreign Assets Control of the Department of the Treasury should be contacted. The address of that office is 1500 Pennsylvania Ave., N.W., Annex 2nd Floor, Washington, D.C. 20220.

PART 145—MAIL IMPORTATIONS

1. The general authority citation for Part 145 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624;

* * * * *

§ 145.56 [Amended]

2. Section 145.56 is amended by removing the words ''North Korea, North Vietnam, Cuba, or Rhodesia'' and adding, in their place, the words ''certain designated countries''; and by adding the parenthetical words ''(See also 19 CFR 12.150)'' at the end of the section before the period.

PART 161—GENERAL ENFORCEMENT PROVISIONS

1. The general authority citation for Part 161 is revised, and a specific authority citation for section 161.2 is added, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1600, 1619, 1624, 1646a;

Section 161.2 also issued under 12 U.S.C. 95a; 18 U.S.C. 545; 19 U.S.C. 1595(a); 22 U.S.C. 401, 1934, 2349aa8–9;

42 U.S.C. 1804, 1807; 50 U.S.C. 1641 *et seq.,* 1701 *et seq.;*

50 U.S.C. App. 1–44, 2411.

* * * * *

2. Section 161.2 is amended by adding paragraph (a)(3) and removing the parenthetical authority citations at the end of the section. The revision reads as follows:

§ 161.2 Enforcement for other agencies.

(a) * * *

(1) * * *

(2) * * *

(3) Importations, exportations, and transactions involving identified goods, services, and technology with any of those countries designated as subject to economic sanctions under the laws and regulations administered by the Office of Foreign Assets Control of the Department of the Treasury.

* * * * *

Michael H. Lane,

Acting Commissioner of Customs.

Approved: April 8, 1996.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–12373 Filed 5–16–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF JUSTICE

28 CFR Part 58

United States Trustees; Guidelines Relating to the Bankruptcy Reform Act of 1994

AGENCY: Department of Justice.

ACTION: Final internal procedural guidelines.

SUMMARY: The Department of Justice is establishing internal procedural guidelines for reviewing applications for compensation and reimbursement of expenses filed by case trustees and professionals under section 330 of Title 11, United States Code. These procedural guidelines are not intended to supersede local rules, but are to be read as complementing the procedures set forth in local rules.

To keep all published rules, regulations, and guidelines pertaining to the United States Trustee Program in one section of the Code of Federal Regulations, the title to 28 CFR 58 will be amended to include the Bankruptcy Reform Act of 1994.

EFFECTIVE DATE: January 30, 1996.

FOR FURTHER INFORMATION CONTACT: Martha L. Davis, General Counsel, or Kathleen Dunivin Schmitt, Attorney, (202) 307–1399. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This action is in response to the Bankruptcy Reform Act of 1994, which amended 28 U.S.C. 586(a)(3)(A) to direct United States Trustees to review applications for compensation and reimbursement of expenses in accordance with procedural guidelines adopted by the Executive Office for United States Trustees. The guidelines are to be applied uniformly by the United States Trustees, except when circumstances warrant different treatment.

Executive Order 12866

These guidelines have been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Director, Executive Office for United States Trustees, has determined that these guidelines are not a ''significant regulatory action'' under Executive Order 12866 section 3(f), Regulatory Planning and Review. These guidelines pertain to the internal management of the Department and as such are not subject to central Office of Management and Budget review pursuant to section 6 of Executive Order 12866. Accordingly, these guidelines have not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

Regulatory Flexibility Act

The Director, Executive Office for United States Trustees, in accordance with the Regulatory Flexibility Act (5 U.S.C. § 605(b)), has reviewed these guidelines and by approving them certifies that these guidelines will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 58

Bankruptcy, Trusts, and Trustees.

For the reasons set forth in the preamble, the Department of Justice proposes to amend 28 CFR part 58 as follows:

PART 58—REGULATIONS RELATING TO THE BANKRUPTCY REFORM ACTS OF 1978 AND 1994

1. The heading of Part 58 is revised to read as set forth above.

2. The authority citation for Part 58 continues to read as follows:

Authority: 28 U.S.C. 509, 510, 586(e), 588(d).

3. Appendix A is added to Part 58 to read as follows:

Appendix A to Part 58—Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. 330

(a) *General Information.* (1) The Bankruptcy Reform Act of 1994 amended the responsibilities of the United States Trustees under 28 U.S.C. 586(a)(3)(A) to provide that, whenever they deem appropriate, United States Trustees will review applications for compensation and reimbursement of expenses under section 330 of the Bankruptcy Code, 11 U.S.C. 101, et seq. (''Code''), in accordance with procedural guidelines (''Guidelines'') adopted by the Executive Office for United States Trustees (''Executive Office''). The following Guidelines have been adopted by the Executive Office and are to be uniformly applied by the United States Trustees except when circumstances warrant different treatment.

(2) The United States Trustees shall use these Guidelines in all cases commenced on or after October 22, 1994.

(3) The Guidelines are not intended to supersede local rules of court, but should be read as complementing the procedures set forth in local rules.

(4) Nothing in the Guidelines should be construed:

(i) To limit the United States Trustee's discretion to request additional information necessary for the review of a particular application or type of application or to refer any information provided to the United States Trustee to any investigatory or prosecutorial authority of the United States or a state;

(ii) To limit the United States Trustee's discretion to determine whether to file comments or objections to applications; or

(iii) To create any private right of action on the part of any person enforceable in litigation with the United States Trustee or the United States.

(5) Recognizing that the final authority to award compensation and reimbursement under section 330 of the Code is vested in the Court, the Guidelines focus on the disclosure of information relevant to a proper award under the law. In evaluating fees for professional services, it is relevant to consider various factors including the following: the time spent; the rates charged; whether the services were necessary to the administration of, or beneficial towards the completion of, the case at the time they were rendered; whether services were performed within a reasonable time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and whether compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in non-bankruptcy cases. The Guidelines thus reflect standards and procedures articulated in section 330 of the Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure for awarding compensation to trustees and to professionals employed under section 327 or 1103. Applications that contain the information requested in these Guidelines will facilitate review by the Court, the parties, and the United States Trustee.

(6) Fee applications submitted by trustees are subject to the same standard of review as are applications of other professionals and will be evaluated according to the principles articulated in these Guidelines. Each United States Trustee should establish whether and to what extent trustees can deviate from the format specified in these Guidelines without substantially affecting the ability of the United States Trustee to review and comment on their fee applications in a manner consistent with the requirements of the law.

(b) *Contents of Applications for Compensation and Reimbursement of Expenses.* All applications should include sufficient detail to demonstrate compliance with the standards set forth in 11 U.S.C. § 330. The fee application should also contain sufficient information about the case and the applicant so that the Court, the creditors, and the United States Trustee can review it without searching for relevant information in other documents. The following will facilitate review of the application.

(1) Information about the Applicant and the Application. The following information should be provided in every fee application:

(i) Date the bankruptcy petition was filed, date of the order approving employment, identity of the party represented, date services commenced, and whether the applicant is seeking compensation under a provision of the Bankruptcy Code other than section 330.

(ii) Terms and conditions of employment and compensation, source of compensation, existence and terms controlling use of a retainer, and any budgetary or other limitations on fees.

(iii) Names and hourly rates of all applicant's professionals and paraprofessionals who billed time, explanation of any changes in hourly rates from those previously charged, and statement of whether the compensation is based on the customary compensation charged by comparably skilled practitioners in cases other than cases under title 11.

(iv) Whether the application is interim or final, and the dates of previous orders on interim compensation or reimbursement of expenses along with the amounts requested and the amounts allowed or disallowed, amounts of all previous payments, and amount of any allowed fees and expenses remaining unpaid.

(v) Whether the person on whose behalf the applicant is employed has been given the opportunity to review the application and whether that person has approved the requested amount.

(vi) When an application is filed less than 120 days after the order for relief or after a prior application to the Court, the date and terms of the order allowing leave to file at shortened intervals.

(vii) Time period of the services or expenses covered by the application.

(2) Case Status. The following information should be provided to the extent that it is known to or can be reasonably ascertained by the applicant:

(i) In a chapter 7 case, a summary of the administration of the case including all moneys received and disbursed in the case, when the case is expected to close, and, if applicant is seeking an interim award, whether it is feasible to make an interim distribution to creditors without prejudicing the rights of any creditor holding a claim of equal or higher priority.

(ii) In a chapter 11 case, whether a plan and disclosure statement have been filed and, if not yet filed, when the plan and disclosure statement are expected to be filed; whether all quarterly fees have been paid to the United States Trustee; and whether all monthly operating reports have been filed.

(iii) In every case, the amount of cash on hand or on deposit, the amount and nature of accrued unpaid administrative expenses, and the amount of unencumbered funds in the estate.

(iv) Any material changes in the status of the case that occur after the filing of the fee

application should be raised, orally or in writing, at the hearing on the application or, if a hearing is not required, prior to the expiration of the time period for objection.

(3) Summary Sheet. All applications should contain a summary or cover sheet that provides a synopsis of the following information:

(i) Total compensation and expenses requested and any amount(s) previously requested;

(ii) Total compensation and expenses previously awarded by the court;

(iii) Name and applicable billing rate for each person who billed time during the period, and date of bar admission for each attorney;

(iv) Total hours billed and total amount of billing for each person who billed time during billing period; and

(v) Computation of blended hourly rate for persons who billed time during period, excluding paralegal or other paraprofessional time.

(4) Project Billing Format. (i) To facilitate effective review of the application, all time and service entries should be arranged by project categories. The project categories set forth in Exhibit A should be used to the extent applicable. A separate project category should be used for administrative matters and, if payment is requested, for fee application preparation.

(ii) The United States Trustee has discretion to determine that the project billing format is not necessary in a particular case or in a particular class of cases. Applicants should be encouraged to consult with the United States Trustee if there is a question as to the need for project billing in any particular case.

(iii) Each project category should contain a narrative summary of the following information:

(A) a description of the project, its necessity and benefit to the estate, and the status of the project including all pending litigation for which compensation and reimbursement are requested;

(B) identification of each person providing services on the project; and

(C) a statement of the number of hours spent and the amount of compensation requested for each professional and paraprofessional on the project.

(iv) Time and service entries are to be reported in chronological order under the appropriate project category.

(v) Time entries should be kept contemporaneously with the services rendered in time periods of tenths of an hour. Services should be noted in detail and not combined or ''lumped'' together, with each service showing a separate time entry; however, tasks performed in a project which total a de minimis amount of time can be combined or lumped together if they do not exceed .5 hours on a daily aggregate. Time entries for telephone calls, letters, and other communications should give sufficient detail to identify the parties to and the nature of the communication. Time entries for court hearings and conferences should identify the subject of the hearing or conference. If more than one professional from the applicant firm attends a hearing or conference, the applicant should explain the need for multiple attendees.

(5) Reimbursement for Actual, Necessary Expenses. Any expense for which reimbursement is sought must be actual and necessary and supported by documentation as appropriate. Factors relevant to a determination that the expense is proper include the following:

(i) Whether the expense is reasonable and economical. For example, first class and other luxurious travel mode or accommodations will normally be objectionable.

(ii) Whether the requested expenses are customarily charged to non-bankruptcy clients of the applicant.

(iii) Whether applicant has provided a detailed itemization of all expenses including the date incurred, description of expense (e.g., type of travel, type of fare, rate, destination), method of computation, and, where relevant, name of the person incurring the expense and purpose of the expense. Itemized expenses should be identified by their nature (e.g., long distance telephone, copy costs, messengers, computer research, airline travel, etc,) and by the month incurred. Unusual items require more detailed explanations and should be allocated, where practicable, to specific projects.

(iv) Whether applicant has prorated expenses where appropriate between the estate and other cases (e.g., travel expenses applicable to more than one case) and has adequately explained the basis for any such proration.

(v) Whether expenses incurred by the applicant to third parties are limited to the actual amounts billed to, or paid by, the applicant on behalf of the estate.

(vi) Whether applicant can demonstrate that the amount requested for expenses incurred in-house reflect the actual cost of such expenses to the applicant. The United States Trustee may establish an objection ceiling for any in-house expenses that are routinely incurred and for which the actual cost cannot easily be determined by most professionals (e.g., photocopies, facsimile charges, and mileage).

(vii) Whether the expenses appear to be in the nature nonreimbursable overhead. Overhead consists of all continuous administrative or general costs incident to the operation of the applicant's office and not particularly attributable to an individual client or case. Overhead includes, but is not limited to, word processing, proofreading, secretarial and other clerical services, rent, utilities, office equipment and furnishings, insurance, taxes, local telephones and monthly car phone charges, lighting, heating and cooling, and library and publication charges.

(viii) Whether applicant has adhered to allowable rates for expenses as fixed by local rule or order of the Court.

Exhibit A—Project Categories

Here is a list of suggested project categories for use in most bankruptcy cases. Only one category should be used for a given activity. Professionals should make their best effort to be consistent in their use of categories, whether within a particular firm or by different firms working on the same case. It would be appropriate for all professionals to discuss the categories in advance and agree generally on how activities will be categorized. This list is not exclusive. The application may contain additional categories as the case requires. They are generally more applicable to attorneys in chapter 7 and chapter 11, but may be used by all professionals as appropriate.

Asset Analysis and Recovery: Identification and review of potential assets including causes of action and non-litigation recoveries.

Asset Disposition: Sales, leases (§ 365 matters), abandonment and related transaction work.

Business Operations: Issues related to debtor-in-possession operating in chapter 11 such as employee, vendor, tenant issues and other similar problems.

Case Administration: Coordination and compliance activities, including preparation of statement of financial affairs; schedules; list of contracts; United States Trustee interim statements and operating reports; contacts with the United States Trustee; general creditor inquiries.

Claims Administration and Objections: Specific claim inquiries; bar date motions; analyses, objections and allowances of claims.

Employee Benefits/Pensions: Review issues such as severance, retention, 401K coverage and continuance of pension plan.

Fee/Employment Applicants: Preparation of employment and fee applications for self or others; motions to establish interim procedures.

Fee/Employment Objections: Review of and objections to the employment and fee applications of others.

Financing: Matters under §§ 361, 363 and 364 including cash collateral and secured claims; loan document analysis.

Litigation: There should be a separate category established for each matter (e.g., XYZ Litigation).

Meetings of Creditors: Preparing for and attending the conference of creditors, the § 341(a) meeting and other creditors' committee meetings.

Plan and Disclosure Statement: Formulation, presentation and confirmation; compliance with the plan confirmation order, related orders and rules; disbursement and case closing activities, except those related to the allowance and objections to allowance of claims.

Relief From Stay Proceedings: Matters relating to termination or continuation of automatic stay under § 362.

The following categories are generally more applicable to accountants and financial advisors, but may be used by all professionals as appropriate.

Accounting/Auditing: Activities related to maintaining and auditing books of account, preparation of financial statements and account analysis.

Business Analysis: Preparation and review of company business plan; development and review of strategies; preparation and review of cash flow forecasts and feasibility studies.

Corporate Finance: Review financial aspects of potential mergers, acquisitions and disposition of company or subsidiaries.

Data Analysis: Management information systems review, installation and analysis, construction, maintenance and reporting of significant case financial data, lease rejection, claims, etc.

Litigation Consulting: Providing consulting and expert witness services relating to various bankruptcy matters such as insolvency, feasibility, avoiding actions, forensic accounting, etc.

Reconstruction Accounting: Reconstructing books and records from past transactions and bringing accounting current.

Tax Issues: Analysis of tax issues and preparation of state and federal tax returns.

Valuation: Appraise or review appraisals of assets.

Dated: April 25, 1996.

Joseph Patchan,

Director.

[FR Doc. 96–11799 Filed 5–16–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach, CA 96–008]

RIN 2115–AA97

Safety Zone; Long Beach Harbor, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule with request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the United States in the vicinity of the South East side of Pier ''J'' in the Long Beach Outer Harbor, California. The event requiring the establishment of this safety zone is the Pier ''J'' breakwater construction project. Duration of this project is estimated to be 11 months. A safety zone is necessary to safeguard recreational and commercial craft from the dangers of the construction project and to prevent interference with the vessels engaged in these operations. The safety zone includes all waters within the boundaries defined by the line connecting the following coordinates:

Latitude	*Longitude*
33° 44.5′N.	118° 11.2′W.
33° 44.5′N.	118° 10.9′W.
33° 44.3′N.	118° 10.8′W.
33° 44.0′N.	118° 10.8′W.
33° 44.0′N.	118° 11.1′W.

Entry into, transit through, or anchoring within the safety zone by vessels or persons other than those engaged in the construction project, or vessels servicing the Maersk terminal is prohibited unless authorized by the Captain of the Port.

DATES: Effective Date: This rule is effective at 12:01 a.m. PDT on April, 24, 1996 and will remain in effect until 12:01 a.m. PST on March 31, 1997, unless cancelled earlier by the Captain of the Port Los Angeles-Long Beach, Ca.

Comments: Comments on this regulation must be received by June 17, 1996.

ADDRESSES: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, 165 N. Pico Avenue, Long Beach, Ca 90802. Comments received will be available for inspection and copying within the Port Safety Division at MSO Los Angeles-Long Beach. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Daniel J. Walsh, Port Safety and Security Division, Marine Safety Office Los Angeles-Long Beach, (310) 980–4454.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Following normal rulemaking procedures could not be done in a timely fashion in that the Coast Guard was not approached concerning the necessity for implementation of a safety zone until late in the planning process. The actual stipulations of the safety zone were not finalized until a date fewer than 30 days prior to the start of the project.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **ADDRESSES** in this preamble. Those providing comments should identify the docket number (COTP Los Angeles-Long Beach, CA; 96–008) for the regulation and also include their name, address, and reason(s) for each comment presented. Persons wanting acknowledge of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

Based upon the comments received, the scope of the regulation may be changed.

Discussion of Regulation

The project to construct a breakwater around the Pier ''J'' Maersk terminal entrance has already been initiated. A safety zone is necessary to safeguard recreational and commercial craft from the dangers of the construction project and to prevent interference with vessels engaged in these operations. This safety zone will be enforced by U.S. Coast Guard personnel. The Coast Guard Auxiliary and the Long Beach Lifeguards will assist in the enforcement of the safety zone. Persons and vessels are prohibited from entering into, transiting through, or anchoring within the safety zone unless authorized by the Captain of the Port of his designated representative.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary. The safety zone does not extend into the vessel traffic lanes. It will have little or no impact on commercial vessels transiting through the harbor.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632). As discussed in the ''Regulatory Evaluation'' section, because it expects the impact of this regulation to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the

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not associated with the information collection; (c) for reasons other than to provide information or keep records for the Government; or (d) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 6, 2013.

Deanna Meyer-Pietruszka,

Chief, Office of Policy, Regulations, and Analysis.

[FR Doc. 2013–14093 Filed 6–14–13; 8:45 am]

BILLING CODE 4810–MR–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–13–014]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 20, 2013 at 2:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None
2. Minutes
3. Ratification List
4. Vote in Inv. Nos. 731–TA–1202 and 1203 (Final)(Xanthan Gum from Austria and China). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before July 2, 2013.
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 12, 2013.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–14432 Filed 6–13–13; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Appendix B Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under United States Code by Attorneys in Larger Chapter 11 Cases

AGENCY: Executive Office for United States Trustees, Justice.

ACTION: Notice of internal procedural guidelines.

SUMMARY: In 1996, in accordance with Congress's mandate in 28 U.S.C. 586(a)(3)(A), the United States Trustee Program (''USTP'') established Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses filed under 11 U.S.C. 330. *See* 28 CFR Part 58, Appendix A (''Appendix A guidelines''). The USTP has drafted additional guidelines for reviewing applications for compensation and reimbursement of expenses filed by attorneys in larger chapter 11 cases with $50 million or more in assets and $50 million or more in liabilities, aggregated for jointly administered cases. Single asset real estate cases, as defined in 11 U.S.C. 101(51B), filed under chapter 11 are excluded from these guidelines.

These guidelines that apply to the USTP's review of applications for compensation filed by attorneys in larger chapter 11 cases will be published in the **Federal Register** and entitled Appendix B—Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. 330 by Attorneys in Larger Chapter 11 Cases (''Appendix B guidelines''). Until the USTP adopts other superseding guidelines, the Appendix A guidelines will continue in effect for the USTP's review of applications filed under section 330 in: (1) Larger chapter 11 cases by those professionals seeking compensation who are not attorneys; (2) all chapter 11 cases with less than $50 million in assets and $50 million in liabilities, aggregated for jointly administered cases; (3) all chapter 11 single asset real estate cases; and (4) all cases under other chapters of the Bankruptcy Code.

The USTP will continue to review and update these guidelines, as appropriate.

DATES: *Effective Date:* November 1, 2013.

FOR FURTHER INFORMATION CONTACT: Nan Roberts Eitel, Associate General Counsel for Chapter 11 Practice, Executive Office for United States Trustees, 441 G St. NW., Suite 6150, Washington, DC 20530.

SUPPLEMENTARY INFORMATION: The authority for these guidelines is 28 U.S.C. 586(a)(3)(A), which provides that United States Trustees may review ''in accordance with procedural guidelines adopted by the Executive Office of the United States Trustee (which guidelines shall be applied uniformly by the United States Trustee except when circumstances warrant different treatment) applications filed for compensation and reimbursement under section 330 of title 11 . . . .'' *Id.* The guidelines are to be applied by the USTP; however, they are not exclusive and do not limit the United States Trustee's discretion to object to or comment on a particular application.

Because the Appendix B guidelines, like the Appendix A guidelines, constitute procedural guidelines that apply to the USTP's review of fee applications, they are not subject to the Administrative Procedure Act's formal notice and comment provisions. Nonetheless, to engage the bankruptcy community, the USTP followed an extensive notice and comment-like process by reaching out to various bankruptcy judges and the National Bankruptcy Conference before drafting the Appendix B guidelines, posting a draft of the Appendix B guidelines to its public Web site for public comment, holding a public meeting, and posting a revised draft of the Appendix B guidelines responding to the comments to its public Web site for further public comment before finalizing.

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II. Exhibit A: Customary and Comparable Compensation Disclosures With Fee Applications
III. Exhibit B: Summary of Professionals Included in This Fee Application
IV. Exhibit C: Budget and Staffing Plan
V. Exhibit D: Summary of Compensation Requested by Project Category
VI. Exhibit E: Summary Cover Sheet of Fee Application
VII. Exhibit F: Analysis of Comments Received and Summary of Significant Changes in Response to Comments

Appendix B—Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. 330 by Attorneys in Larger Chapter 11 Cases

A. General Information

1. United States Trustees may review ''in accordance with procedural guidelines adopted by the Executive Office of the United States Trustee (which guidelines shall be applied uniformly by the United States trustee except when circumstances warrant different treatment), applications filed for compensation and reimbursement under section 330 of title 11 . . . .'' 28 U.S.C. 586(a)(3)(A)(i). United States Trustees may also file ''with the court comments with respect to such application and, if the United States Trustee considers it to be appropriate, objections to such application.'' *Id.* The Executive Office for United States Trustees (''Executive Office'') adopted procedural guidelines, which apply to all cases commenced on or after October 22, 1994. *See* 28 CFR Part 58, Appendix A.

2. Because the circumstances in larger chapter 11 cases warrant different treatment, the Executive Office adopted these Appendix B guidelines (''Guidelines'') to apply only when United States Trustees review applications for compensation filed by attorneys employed under sections 327 or 1103 of the United States Bankruptcy Code, 11 U.S.C. 101, *et seq.* (''Code''), in chapter 11 cases where the debtor's petition lists $50 million or more in assets and $50 million or more in liabilities, aggregated for jointly administered cases and excluding single asset real estate cases as defined in 11 U.S.C. 101(51B) (''threshold'').

3. The United States Trustees will use these Guidelines to review applications for compensation filed by attorneys employed under sections 327 or 1103 of the Code in all chapter 11 cases that meet the threshold and that are filed on or after October 1, 2013. The Guidelines generally will not apply to counsel retained as an ordinary course professional pursuant to appropriate court order or local rule (''ordinary course professional''), unless the professional is required to file a fee application under such court order or local rule.

4. The Guidelines express the USTP's policy positions, and the USTP will use these Guidelines in the absence of controlling law or rules in the jurisdiction. Thus, the Guidelines do not supersede local rules, court orders, or other controlling authority. However, these Guidelines do not limit the USTP's ability to seek changes in controlling laws or rules through litigation, appeals, and other actions.

5. Only the court has authority to award compensation and reimbursement under section 330 of the Code. The Guidelines focus on the disclosure of information relevant to the court's award of compensation and reimbursement of expenses under section 330 of the Code. The Guidelines reflect standards and procedures in section 330 of the Code and Bankruptcy Rule 2016. Applications containing the information requested in these Guidelines will assist review by the court, the parties, and the United States Trustee.

6. Because the review of fee applications under section 330 of the Code is inextricably intertwined with the terms and conditions of employment approved by the court when the applicant is retained, these Guidelines also address disclosure of certain information in applications for retention filed under sections 327 and 1103 of the Code.

7. Nothing in the Guidelines should be construed:

a. To limit the United States Trustee's discretion to request additional information necessary for the review of a particular fee application or to refer any information provided to the United States Trustee to any law enforcement authority of the United States or a state.

b. To limit the United States Trustee's discretion to determine whether to file comments or objections to fee applications.

c. To create any private right of action on the part of any person enforceable against the United States Trustee or the United States.

B. United States Trustee's Goals and Considerations In Reviewing and Commenting On Fee Applications

1. *Goals:* In determining whether to object to or comment on fee applications, the United States Trustee will be guided by the following goals. These goals, however, are not exclusive and in no way limit the discretion of the United States Trustee to object or comment. In applying the Guidelines, the United States Trustee seeks:

a. To ensure that bankruptcy professionals are subject to the same client-driven market forces, scrutiny, and accountability as professionals in non-bankruptcy engagements.

b. To ensure adherence to the requirements of section 330 of the Code so that all professional compensation is reasonable and necessary, particularly as compared to the market measured both by the applicant's own billing practices for bankruptcy and non-bankruptcy engagements and by those of other comparable professionals.

c. To increase disclosure and transparency in the billing practices of professionals seeking compensation from the estate.

d. To increase client and constituent accountability for overseeing the fees and billing practices of their own professionals who are being paid by the estate.

e. To encourage the adoption of budgets and staffing plans developed between the client and the applicant to bring discipline, predictability, and client involvement and accountability to the compensation process.

f. To decrease the administrative burden and increase the efficiency of review of fee applications.

g. To assure that, even in the absence of an objection, the burden of proof to establish that fees and expenses are reasonable and necessary remains on the applicant seeking compensation and reimbursement.

h. To increase public confidence in the integrity and soundness of the bankruptcy compensation process.

2. *Considerations on fees:* The Guidelines are intended to elicit information that will aid the United States Trustee, the parties, and the court in determining whether the fees and expenses sought in a fee application are reasonable and necessary as required by section 330 of the Code. In applying section 330 to the review of fee applications, the United States Trustee will consider the following:

a. *Section 330 factors:* The factors expressly set forth in section 330 of the Code, including:

i. The time spent.

ii. The rates charged.

iii. Whether the services were necessary to the administration of, or beneficial towards the completion of, the case at the time they were rendered.

iv. Whether services were performed within a reasonable time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed.

v. The demonstrated skill and experience in bankruptcy of the applicant's professionals.

vi. Whether compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under title 11.

The United States Trustee may object to the extent that the applicant fails to provide sufficient information to satisfy its burden under section 330.

b. *Comparable services standard:* Whether the applicant provided

sufficient information in the application to establish that the compensation sought is reasonable as compared to the market measured by the billing practices of the applicant and its peers for bankruptcy and non-bankruptcy engagements. The United States Trustee will ordinarily object to fees that are above the market rate for comparable services. Exhibit A is a model form that may be useful in providing this information.[1]

c. *Staffing inefficiencies:* Whether there was duplication of effort or services, or whether the seniority or skill level of the applicant's professional was commensurate with the complexity, importance, and nature of the issue or task. The United States Trustee may object if any duplication is unjustified or unjustifiable, including if multiple professionals unnecessarily attend hearings or meetings. The United States Trustee may also object if the skill level of the professional rendering a particular service is not commensurate with the task. The United States Trustee encourages applicants to consider how to assign and staff more routine and ''commoditized'' work, such as avoidance actions and claims objections, and to consider whether lower cost co-counsel should be retained for discrete types of work, while being careful to avoid duplication, overlap, and inefficiencies. Factors the USTP will consider in determining whether to object to the retention or compensation of co-counsel are described more specifically in ¶ F. Nothing in the Guidelines should be construed as precluding the retention and payment of ''ordinary course professionals,'' subject to appropriate motions and orders in a particular case. Nothing in the guidelines should be construed as precluding the retention of special counsel under section 327(e) or local counsel under section 327(a).

d. *Rate increases:*[2] Whether the application contains rates higher than those disclosed and approved on the application for retention or any supplemental application for retention or agreed to with the client. Exhibit B is a model form that may be useful in providing this information. The United States Trustee may object if the applicant fails to justify any rate increases as reasonable. Boilerplate language in the retention application filed under section 327 of the Code is insufficient.

e. *Transitory professionals:* Whether any of the applicant's professionals billed only a few hours to the matter with insufficient evidence of benefit to the estate. The United States Trustee may object if the applicant fails to justify the necessity or benefit of these professionals' services.

f. *Routine billing activities:* Whether an applicant billed for routine billing activities that typically are not compensable outside of bankruptcy. Most are not compensable because professionals do not charge a client for preparing invoices, even if detailed. *Reasonable* charges for preparing interim and final fee applications, however, are compensable, because the preparation of a fee application is not required for lawyers practicing in areas other than bankruptcy as a condition to getting paid. Activities that the United States Trustee may object to as non-compensable include but are not limited to:

i. Excessive redaction of bills or invoices for privileged or confidential information. Professionals and paraprofessionals whose compensation will be paid by the bankruptcy estate know at the inception that their billing records must be publicly filed and should draft time entries and prepare invoices to both minimize redactions and avoid vague descriptions. The time spent for redactions should be reasonably proportional to the overall fees sought.

ii. Reviewing or revising time records.

iii. Preparing, reviewing, or revising invoices.

iv. Preparing, reviewing, or revising monthly fee statements, notices or other informal interim compensation requests to the extent duplicative of the preparation of the related interim or final fee application filed with the court under section 330 of the Code (or vice versa).

v. Preparing the final fee application to the extent duplicative of the preparation of interim fee applications.

g. *Contesting or litigating fee objections:* Whether the fee application seeks compensation for time spent explaining or defending monthly invoices or fee applications that would normally not be compensable outside of bankruptcy. Most are not compensable because professionals typically do not charge clients for time spent explaining or defending a bill. The USTP's position is that awarding compensation for matters related to a fee application after its initial preparation is generally inappropriate, unless those activities fall within a judicial exception applicable within the district (such as litigating an objection to the application where the applicant substantially prevails). Thus, the United States Trustee may object to time spent explaining the fees, negotiating objections, and litigating contested fee matters that are properly characterized as work that is for the benefit of the professional and not the estate.

h. *Block billing or lumping:* Whether the entries in the application are recorded in increments of .1 of an hour and whether discrete tasks are recorded separately. The United States Trustee will object to block billing or lumping. Each timekeeper, however, may record one daily entry that combines tasks for a particular project that total a de minimis amount of time if those tasks do not exceed .5 hours on that day.

i. *Vague or repetitive entries:* Whether the application contains sufficient information to identify the purpose of the work or the benefit to the estate. The United States Trustee may object to vague or repetitive entries that are otherwise unjustified. Phrases like ''attention to'' or ''review file,'' without greater specificity or more detail, are generally insufficient.

j. *Overhead:* Whether the application includes activities that should be considered part of the applicant's overhead and not billed to the estate. Tasks that the United States Trustee may object to as overhead include clerical tasks and word processing. The United States Trustee may also object to fees for summer clerks or summer associates, which are more properly the firm's overhead for recruiting and training.

k. *Non-working travel:* Whether the application includes time billed for non-working travel at the full rate. The United States Trustee may object if the applicant seeks compensation at a professional's full rate for time spent traveling without actively working on the bankruptcy case or while working on other unrelated matters.

l. *Geographic variations in rates:* Whether the applicant increased the hourly rates of its professionals and paraprofessionals based solely on the geographic location of the bankruptcy case. The United States Trustee will not object to ''non-forum'' rates of professionals when the ''non-forum'' rates are based on the reasonable rates where the professionals maintain their primary office, even if the locally

[1] The model forms included as exhibits to the Guidelines are templates offered as guidance to facilitate preparation and review of requested information.

[2] ''Rate increases'' as used in the Guidelines exclude annual ''step increases'' historically awarded by the firm in the ordinary course to attorneys throughout the firm due to advancing seniority and promotion. Applicants should not characterize actual rate increases that are unrelated to an attorney's advancing seniority and promotion as ''step increases'' in an effort to thwart meaningful disclosure or billing discipline. If a firm does not distinguish between ''step increases'' and other types of rate increases, it should disclose and explain all rate increases as requested.

prevailing rates where the case is pending are lower (*i.e.,* a professional may bill the same reasonable rate in any forum). Conversely, the United States Trustee will object if professionals increase their rates based on the forum where the case is pending when they bill lower rates where they maintain their primary offices.

m. *Budgets and staffing plans:* Whether the fee application sufficiently explains: (i) Any substantial increase (e.g., 10% or more) in the amount requested in the fee application as compared to any client-approved budget; and (ii) any increase in the number of professionals and paraprofessionals billing to the matter during the application period as compared to any client-approved staffing plan. The United States Trustee ordinarily will seek the use of fee and expense budgets and staffing plans, either with the consent of the parties or by court order as soon as feasible after the commencement of the case, as described more specifically in ¶ E. In reviewing the fee application, the United States Trustee will consider any budget and staffing plan filed retrospectively with the application. Exhibit C is a model budget (Exhibit C–1) and staffing plan (Exhibit C–2), and Exhibit D–1 is a model form that may be useful in reporting fees sought in comparison to client-approved budgets.

n. *Verified and other statements:* Whether the client has provided a verified statement with the applicant's retention application regarding its budgeting, review, and approval process for fees and expenses, and whether the applicant has made similar representations and disclosures in the retention application and fee application.

3. *Considerations on expenses:* In applying section 330 to the review of applications for reimbursement of reasonable, actual, and necessary expenses, the United States Trustee will consider the following:

a. *Proration:* Whether the applicant has prorated shared expenses where appropriate between the estate and other cases and has adequately explained the basis for any such proration. For example, applicants should prorate travel expenses that are applicable to more than one case.

b. *Reasonable:* Whether the expense is reasonable and necessary. For example, travel should be in coach class. First class and other above standard travel or accommodations will normally be objectionable.

c. *Customary:* Whether the requested expenses are customarily charged to the applicant's non-bankruptcy clients and by other comparable professionals. The United States Trustee will ordinarily object to expenses that are not customary, absent a specific and adequate justification.

d. *Actual:* Whether the expenses incurred or paid by the applicant reflect the actual cost of such expenses to the applicant and whether any mark-up is justified. Mark-ups will ordinarily be objectionable.

e. *Overhead:* Whether the expenses are or should be non-reimbursable overhead costs incident to the operation of the applicant's office and not particularly attributable to an individual client or case. Without limitation, the United States Trustee will ordinarily consider the following expenses to be overhead: Word processing, proofreading, secretarial and other clerical services, rent, utilities, office equipment and furnishings, insurance, taxes, telephone charges (other than actual charges for multi-party conference calls incurred by counsel in connection with the case), and library and publication charges.

f. *Local rule or order:* Whether the applicant has adhered to allowable rates or charges for expenses as may be fixed by any local rule or order of the court. Expenses that are not allowable will normally be objectionable.

g. *Unusual:* Whether unusual expenses are supported by detailed explanations and allocated, where practicable, to specific projects. The United States Trustee may object if unusual expenses are unsupported or unjustified.

h. Receipts: Whether receipts for larger or unusual expenses are available for review upon request.

C. Contents and Format of Applications for Compensation and Reimbursement Of Expenses

1. *General:* All applications should include sufficient detail to demonstrate compliance with the standards of 11 U.S.C. 330. The fee application should also contain sufficient information about the case and the applicant so that the court, the parties, and the United States Trustee can review it without searching for relevant information in other documents. The information sought below will facilitate review of the application and should be provided in every fee application.

2. *Information to be provided about the applicant and the scope of the application:*

a. Name of applicant.

b. Name of client.

c. Petition date.

d. Retention date.

e. Date of order approving employment.

f. Time period covered by application.

g. Terms and conditions of employment and compensation, including source of compensation, existence of and terms controlling any retainer, and any budgetary or other limitations on fees.

h. Whether the application is interim under section 331 or final under section 330.

i. The date and terms of any order allowing filing of interim applications more frequently than every 120 days, if applicable.

j. Whether the applicant seeks compensation under a provision of the Code other than section 330.

k. For each professional and paraprofessional who billed on the matter during the application period:

i. Name.

ii. Title or position.

iii. Primary department, group, or section.

iv. Date of first admission to the bar, if applicable.

v. Total fees billed included in application.

vi. Total hours billed included in application.

vii. Current hourly rate contained in this application.

viii. Hourly rate contained in the first interim application.

ix. The number of rate increases since the inception of the case.

Exhibit B is a model form that may be useful in providing the information requested in ¶ C.2.k.

l. If the applicant has increased rates during the case, the application should disclose the effect of the rate increases. For comparison purposes, the applicant should calculate and disclose the total compensation sought in the fee application using the rates originally disclosed in the retention application. Exhibit E is a model form that may be useful in providing the requested calculation.

3. *Information to be provided about customary and comparable compensation:*

a. The blended hourly rate either billed or collected during the preceding year for the applicant's timekeepers.

i. The application should disclose the blended hourly rate for the aggregate of either:

(a) All of the applicant's domestic timekeepers; or

(b) All timekeepers in each of the applicant's domestic offices in which timekeepers collectively billed at least 10% of the hours to the bankruptcy case during the application period.

ii. The application should also segregate the timekeepers in ¶ C.3.a.i. by the various categories of professionals and paraprofessionals maintained by the applicant (e.g., partner, counsel, sr. counsel, associate, etc.), and disclose the blended hourly rate for each category of timekeeper.

iii. To calculate the blended hourly rate billed, divide the dollar value of hours billed by the number of hours billed (regardless of when the work was performed) for the relevant timekeepers during the applicable time period. To calculate the blended hourly rate collected, divide the revenue collected by the number of hours billed for the relevant timekeepers during the applicable time period.

iv. In calculating the blended hourly rate:

(a) Full service law firms should generally exclude all bankruptcy engagements or all data from timekeepers practicing primarily in a bankruptcy group or section.

(b) Law firms that practice exclusively or primarily in bankruptcy should exclude all estate-billed bankruptcy engagements.

(c) The applicant may exclude:

(1) Pro bono engagements.

(2) Other engagements for clients who are employees or charitable organizations that are billed at materially discounted rates.

(d) The applicant should include discounted or alternative fee arrangements, other than those engagements in ¶ C.3.a.iv.(c). For any fee arrangements not billed by the hour to the client but for which the applicant tracks hours and revenue by hours worked, the applicant should include this information in the calculation. If the applicant's calculation includes any fee arrangements not billed by the hour, the applicant should concisely explain the methodology it used to calculate the blended hourly rates.

v. The ''preceding year'' can be either the applicant's prior completed fiscal year or a rolling 12 month year.

b. The blended hourly rate billed to the bankruptcy case during the application period for all of the applicant's timekeepers.

i. The application should disclose the blended hourly rate billed in the aggregate for all timekeepers who billed to the matter.

ii. The application should also segregate the timekeepers by the various categories of professionals and paraprofessionals maintained by the applicant (e.g., partner, counsel, sr. counsel, associate, etc.), and disclose the blended hourly rate billed for each category of timekeeper.

iii. To calculate the blended hourly rate billed, divide the dollar value of hours billed by the number of hours billed (regardless of when the work was performed) for the relevant timekeepers during the application period.

Exhibit A is a model form that may be useful in providing this information.

c. Applicants can propose detailed and specific disclosures, other than those requested at ¶ C.3.a.–b., that are tailored to the applicant's circumstances and ability to gather and organize internal information, but the United States Trustee may object to the adequacy of the disclosure if it is insufficient to enable the United States Trustee to evaluate whether the requested compensation is comparable and customary.

4. *''Safe harbor'':* An applicant's disclosure of blended hourly rates in accordance with ¶ C.3.a.–b. will provide a limited ''safe harbor'' from additional requests from the United States Trustee for information about customary and comparable compensation under section 330(a)(3)(F) of the Code. This ''safe harbor'' is without prejudice to the United States Trustee's ability to seek additional information based upon the particular facts and circumstances of the case, to file an objection, or to offer evidence on comparable compensation from other sources.

5. *Statement from the applicant:* The applicant should answer the questions below in the fee application. Many questions require only a yes or no answer. The applicant, however, is free to provide additional information if it chooses to explain or clarify its answers.

a. Did you agree to any variations from, or alternatives to, your standard or customary billing rates, fees or terms for services pertaining to this engagement that were provided during the application period? If so, please explain.

b. If the fees sought in this fee application as compared to the fees budgeted for the time period covered by this fee application are higher by 10% or more, did you discuss the reasons for the variation with the client?

c. Have any of the professionals included in this fee application varied their hourly rate based on the geographic location of the bankruptcy case?

d. Does the fee application include time or fees related to reviewing or revising time records or preparing, reviewing, or revising invoices? (This is limited to work involved in preparing and editing billing records that would not be compensable outside of bankruptcy and does not include reasonable fees for preparing a fee application.). If so, please quantify by hours and fees.

e. Does this fee application include time or fees for reviewing time records to redact any privileged or other confidential information? If so, please quantify by hours and fees.

f. If the fee application includes any rate increases since retention:

i. Did your client review and approve those rate increases in advance?

ii. Did your client agree when retaining the law firm to accept all future rate increases? If not, did you inform your client that they need not agree to modified rates or terms in order to have you continue the representation, consistent with ABA Formal Ethics Opinion 11–458?

6. *Information about budget and staffing plans:* If the applicant consents to, or the court directs the use of budgets and staffing plans, as described more generally in ¶ E, the applicant should attach the client-approved budget and client-approved staffing plan to the fee application for the time period covered by the fee application. Both original and any amended budgets and staffing plans should be included.

a. The budget and staffing plan for the fee application period should be filed when the fee application is filed, not when the client and the applicant agree on the budget and staffing plan. For example, the budget disclosed with each interim fee application should relate to work already performed and reflected in that application. Thus, if the client approved four, 30-day budgets that collectively covered a 120-day interim application period, then these four budgets should be attached.

b. Budgets may be redacted as necessary to protect privileged and confidential information, and such redactions may be compensable if the disclosure of the privileged or confidential information cannot otherwise be avoided through careful drafting. But the time spent for redactions should be reasonably proportional to the overall fees sought. Redactions may be unnecessary if the applicant uses the model budget in Exhibit C–1, which budgets total hours and fees by project category, *see* ¶ C.8., and without descriptive entries.

c. The fee application should also include a summary of fees and hours budgeted compared to fees and hours billed for each project category. Exhibit D–1 is a model form that may be useful in reporting fees sought in comparison to the budget.

d. The applicant should provide an explanation if the fees sought in the fee application exceed the budget during the application period by 10% or more.

e. The applicants should provide an explanation if fees are sought in the fee application for a greater number of professionals than identified in the staffing plan.

7. *Information about prior interim applications:*

a. With respect to each prior interim application, counsel should provide the following information:

i. Date(s) filed and period covered.

ii. Fees and expenses requested.

iii. Fees and expenses approved.

iv. Approved fees and expenses paid.

v. Approved fees and expenses remaining unpaid.

vi. Date(s) of previous order(s) on interim compensation or reimbursement of expenses.

b. Counsel should provide the following information on a cumulative basis since case inception:

i. Fees and expenses requested.

ii. Fees and expenses approved.

iii. Approved fees and expenses paid.

iv. Approved fees and expenses remaining unpaid.

v. Fees and expenses disallowed or withdrawn.

8. *Project categories for billing records:* To facilitate effective review of the application, all time and service entries should be arranged by project categories.

a. Only one category should be used for a given activity. Professionals should make their best effort to be consistent in their use of categories, whether within a particular firm or by different firms working on the same case. It would be appropriate for all professionals to discuss the categories in advance and agree generally on how activities will be categorized.

b. The project categories set forth below should be used to the extent applicable. The following list of project categories is not exclusive, and applicants are encouraged to consult with the United States Trustee regarding the need to formulate case-specific project billing with respect to a particular case.

i. Asset Analysis and Recovery: Identification and review of potential assets including causes of action and non-litigation recoveries.

ii. Asset Disposition: Sales, leases (section 365 matters), abandonment and related transaction work related to asset disposition.

iii. Assumption and Rejection of Leases and Contracts: Analysis of leases and executory contracts and preparation of motions specifically to assume or reject.

iv. Avoidance Action Analysis: Review of potential avoiding actions under Sections 544–549 of the Code to determine whether adversary proceedings are warranted.

v. Budgeting (Case): Preparation, negotiation, and amendment to budgets for applicant.

vi. Business Operations: Issues related to debtor-in-possession operating in chapter 11 such as employee, vendor, tenant issues and other similar problems.

vii. Case Administration: Coordination and compliance activities not specifically covered by another category.

viii. Claims Administration and Objections: Specific claim inquiries; bar date motions; analyses, objections and allowances of claims.

ix. Corporate Governance and Board Matters: Preparation for and attendance at Board of Directors meetings; analysis and advice regarding corporate governance issues, including trustee, examiner, and CRO issues; review and preparation of corporate documents (e.g., articles and bylaws, etc.).

x. Employee Benefits and Pensions: Review and preparation related to employee and retiree benefit issues, including compensation, bonuses, severance, insurance benefits, and 401K, pensions, or other retirement plans.

xi. Employment and Fee Applications: Preparation of employment and fee applications for self or others; motions to establish interim procedures.

xii. Employment and Fee Application Objections: Review of and objections to the employment and fee applications of others.

xiii. Financing and Cash Collateral: Matters under sections 361, 363 and 364 including cash collateral and secured claims; loan document analysis.

xiv. Litigation: Contested Matters and Adversary Proceedings (not otherwise within a specific project category), each identified separately by caption and adversary number, or title of motion or application and docket number, and using the Uniform Task Based Management System (''UTBMS'') Litigation Task Code Set.[3]

xv. Meetings and Communications with Creditors: Preparation for and attendance at section 341(a) meeting and any other meetings with creditors and creditors' committees.

xvi. Non-Working Travel: Non-working travel where the court reimburses at less than full hourly rates.

xvii. Plan and Disclosure Statement: Formulation, presentation and confirmation; compliance with the plan confirmation order, related orders and rules; disbursement and case closing activities, except those related to the allowance and objections to allowance of claims.

xviii. Real Estate: Review and analysis of real estate-related matters, including purchase agreements and lease provisions (e.g., common area maintenance clauses).

xix. Relief from Stay and Adequate Protection: Matters relating to termination or continuation of automatic stay under 11 U.S.C. 362 and motions for adequate protection under 11 U.S.C. 361.

xx. Reporting: Statement of financial affairs, schedules, monthly operating reports, and any other accounting or reporting activities; contacts with the United States Trustee not included in other categories.

xxi. Tax: Analysis of tax issues and preparation of federal and state tax returns.

xxii. Valuation: Appraise or review appraisals of assets.

c. The applicant should provide a brief narrative summary of the following information for each project category:

i. A description of the project, its necessity and benefit to the estate, and its status, including all pending litigation for which compensation and reimbursement are requested.

ii. The identity of each person providing services on the project.

iii. A statement of the number of hours spent and the amount of compensation requested for each professional and paraprofessional on the project.

9. *Time and service entries within each project category:*

a. Time and service entries should be reported in chronological order within each project category.

b. Each time or service entry should include:

i. The timekeeper's name.

ii. Time spent on task.

iii. Hourly rate.

iv. Fees sought for each entry.

v. Description of task or service.

c. Time should be recorded contemporaneously in increments of no more than one tenth (.1) of an hour. A disproportionate number of entries billed in half- or whole-hour increments may indicate that actions are being lumped or not accurately billed.

d. Services should be described in detail and not combined or ''lumped'' together, with each service showing a separate time entry. Each timekeeper, however, may record one daily entry that combines tasks for a particular project that total a de minimis amount of time if those tasks do not exceed .5 hours on that day.

[3] See UTBMS.com for information on uniform task codes commonly used in legal billing.

e. Entries should give sufficient detail about the work, identifying the subject matter of the communication, hearing, or task and any recipients or participants.

f. If more than one professional attends a hearing or conference, the applicant should explain the need for multiple attendees.

10. *Electronic billing records:* The billing records (detailed time and service entries) substantiating the application should be provided in an open and searchable electronic data format: (i) With the application to the court, the debtor-in-possession (or trustee), official committees, the United States Trustee, and the fee review committee, fee examiner, and fee auditor; and (ii) upon request, to any other party in interest.[4] The applicant may provide the electronic data in the manner in which it maintains it. An applicant that does not maintain billing data electronically is encouraged to consult with the United States Trustee about providing paper copies of such information. The applicant's submission of electronic data does not relieve the applicant of its obligations under the Code, local rules, and any applicable compensation or case management orders, including providing paper copies if required.

11. *Case status:* The following information should be provided to the extent possible:

a. A brief summary of the case, discussing key steps completed and key steps remaining until the case can be closed.

b. The amount of cash on hand or on deposit, the amount and nature of accrued unpaid administrative expenses, and the amount of unencumbered funds in the estate.

c. Any material changes in the status of the case that occur after the filing of the fee application should be raised at the hearing on the application or, if a hearing is not required, prior to the expiration of the time period for objection.

12. *Expense Categories:* To facilitate effective review of the application, all expense entries should be arranged by expense categories.

a. The expense categories set forth below should be used to the extent applicable:

i. Copies.
ii. Outside Printing.
iii. Telephone.
iv. Facsimile.
v. Online Research.
vi. Delivery Services/Couriers.
vii. Postage.
viii. Local Travel.
ix. Out-of-town Travel:
(a) Transportation.
(b) Hotel.
(c) Meals.
(d) Ground Transportation.
(e) Other (please specify).
x. Meals (local).
xi. Court Fees.
xii. Subpoena Fees.
xiii. Witness Fees.
xiv. Deposition Transcripts.
xv. Trial Transcripts.
xvi. Trial Exhibits.
xvii. Litigation Support Vendors.
xviii. Experts.
xix. Investigators.
xx. Arbitrators/Mediators.
xxi. Other (please specify).

b. Although certain expense categories may appear in the category list, the United States Trustee may still object to the inclusion of any expenses that should properly be deemed an applicant's overhead. *See* ¶ B.3.e.

c. Unusual items require more detailed explanations and should be allocated, where practicable, to specific projects.

13. *Contents of application for reimbursement of reasonable, actual, and necessary expenses:* Any expense for which reimbursement is sought must be reasonable, actual, and necessary, and must be of the kind customarily billed to non-bankruptcy clients.

a. Expenses should be reported in chronological order within each expense category.

b. Each expense should include the following information:

i. Amount.
ii. Description and pertinent detail (e.g., copy costs, messengers, computer research, type of travel, type of fare, rate, destination, etc.).
iii. Date incurred.
iv. Who incurred the expense, if relevant.
v. Reason for expense.

14. *Summaries:*

a. All applications should contain a summary cover sheet that provides the information below. Exhibit E is a model form that may be useful in transmitting this information.

i. Name of applicant.
ii. Name of client.
iii. Time period covered by this application.
iv. Total compensation sought this period.
v. Total expenses sought this period.
vi. Petition date.
vii. Retention date.
viii. Date of order approving employment.
ix. Total compensation approved by interim order to date.
x. Total expenses approved by interim order to date.
xi. Total allowed compensation paid to date.
xii. Total allowed expenses paid to date.
xiii. Blended rate in this application for all attorneys.
xiv. Blended rate in this application for all timekeepers. *See* Exhibit A.
xv. Compensation sought in this application already paid pursuant to a monthly compensation order but not yet allowed.
xvi. Expenses sought in this application already paid pursuant to a monthly compensation order but not yet allowed.
xvii. Number of professionals included in this application.
xviii. If applicable, the number of professionals included in this application not included in a staffing plan approved by the client.
xix. If applicable, difference between fees budgeted and compensation sought for this period.
xx. Number of professionals billing fewer than 15 hours to the case during this period.
xxi. If the applicant has increased rates during the case, the application should disclose the effect of the rate increases. For comparison purposes, the applicant should calculate and disclose the total compensation sought in the application using the rates originally disclosed in the retention application.

b. All applications should summarize fees and hours by project category and expenses by expense category. Exhibit D–1 (fees) and Exhibit D–2 (expenses) are model forms that may be useful in providing this information.

c. All applications should summarize professionals (preferably in alphabetical order) included in the fee application by the professional's name, title, primary practice group, date of first admission, fees, hours, rates, and number of rate increases. Exhibit B is a model form that may be useful in providing this and other information.

D. Applications For Employment

1. *Statement from the applicant.* The applicant should answer the questions below in all applications for employment filed under sections 327 or 1103 of the Code. Most questions require only a yes or no answer. The applicant, however, is free to provide additional information if it chooses to explain or clarify its answers.

a. Did you agree to any variations from, or alternatives to, your standard or customary billing arrangements for this engagement?

[4] See *www.LEDES.org* for information regarding open electronic data formats commonly used in legal e-billing.

b. Do any of the professionals included in this engagement vary their rate based on the geographic location of the bankruptcy case?

c. If you represented the client in the 12 months prepetition, disclose your billing rates and material financial terms for the prepetition engagement, including any adjustments during the 12 months prepetition. If your billing rates and material financial terms have changed postpetition, explain the difference and the reasons for the difference.

d. Has your client approved your prospective budget and staffing plan, and, if so, for what budget period?

2. *Verified statement from the client:*[5] The client should provide a verified statement with all applications for employment filed under sections 327 and 1103 of the Code that addresses the following:

a. The identity and position of the person making the verification. The person ordinarily should be the general counsel of the debtor or another officer responsible for supervising outside counsel and monitoring and controlling legal costs.

b. The steps taken by the client to ensure that the applicant's billing rates and material terms for the engagement are comparable to the applicant's billing rates and terms for other non-bankruptcy engagements and to the billing rates and terms of other comparably skilled professionals.

c. The number of firms the client interviewed.

d. If the billing rates are not comparable to the applicant's billing rates for other non-bankruptcy engagements and to the billing rates of other comparably skilled professionals, the circumstances warranting the retention of that firm.

e. The procedures the client has established to supervise the applicant's fees and expenses and to manage costs. If the procedures for the budgeting, review and approval of fees and expenses differ from those the client regularly employs in non-bankruptcy cases to supervise outside counsel, explain how and why. In addition, describe any efforts to negotiate rates, including rates for routine matters, or in the alternative to delegate such matters to less expensive counsel.

f. The client verification should be appropriately detailed and should not be a routine form prepared by the client's bankruptcy counsel.

[5] A verified statement is either a declaration executed in accordance with 28 U.S.C. 1746 or an affidavit conforming to the laws of the jurisdiction where executed.

E. Budgets and Staffing Plans, In General

1. In a larger chapter 11 case that meets the threshold, the United States Trustee ordinarily will seek the use of fee and expense budgets and staffing plans, either with the consent of the parties or by court order as soon as feasible after the commencement of the case. As set forth in ¶ B.2.m above, the United States Trustee will consider fee applications in the context of budgets and staffing plans used in the case, and the professionals are urged to consult with the United States Trustee whether they anticipate delays in formulating budgets. The United States Trustee will also consider whether the client has approved the applicant's budget and staffing plan when reviewing applications for employment. *See* ¶ D.1.d. Exhibit C contains a model budget (Exhibit C–1) and staffing plan (Exhibit C–2).

2. Budgets and staffing plans should be agreed to between the professional and its client.

3. Budgets can and should be amended as necessary to reflect changed circumstances or unanticipated developments.

4. The appropriate budget period should be decided between the professional and its client. For example, the budget could be provided for the next month, the next 120-day interim application period, or for any other time period as agreed.

5. The staffing plan should use the same planning period as the budget.

6. In the staffing plan, the number of professionals expected to work on the matter during the budget period may be disclosed either by category of timekeeper (*e.g.,* 25 associates) or by years of experience (*e.g.,* 15 lawyers with 8–14 years of experience).

7. Except as provided in ¶ E.8. below, any disclosure of the budget and staffing plan to the United States Trustee and other parties will be retrospective only in conjunction with the fee application. *See* ¶ C.6. above.

8. Absent the parties' consent, the United States Trustee may seek a court order expressly authorizing the exchange of budgets by counsel for the debtor-in-possession and the official committees once they are approved by their respective clients or whenever amended. These budgets may be provided subject to an appropriate confidentiality agreement and redacted to protect privileged or confidential information. Such redactions may be compensable if the disclosure of the privileged or confidential information cannot otherwise be avoided through careful drafting. But the time spent for redactions should be reasonably proportional to the overall fees sought. The confidential and prospective exchange of budgets between these fiduciaries concerns the administration of the case and potentially avoids duplication, consistent with the requirements of section 1103 of the Code.

F. Retention and Compensation of Co-Counsel

1. *Scope of retention:*

a. Where a debtor retains multiple section 327(a) bankruptcy counsel, the retention applications should clearly specify which firm is acting as lead counsel and should clearly delineate the areas of secondary counsel's responsibility. In general, it should be presumed that all bankruptcy matters in the case will be handled by the lead counsel unless the retention application specifically assigns them to secondary counsel.

b. The retention application should not contain an indeterminate or open-ended description of secondary counsel's duties. In particular, retention orders should not contain language permitting secondary counsel to perform additional, unspecified services at the discretion of the debtor or the lead counsel.

c. When a new matter within the authorized scope of secondary counsel's engagement is assigned by the lead counsel to secondary counsel, secondary counsel need not file a supplemental retention application and obtain an amended order. Rather, secondary counsel should file a supplemental declaration in accordance with Bankruptcy Rule 2014, and provide notice of the filing sufficient to afford parties in interest an opportunity to object. Nevertheless, if the matter does not fall within the authorized scope of the engagement, secondary counsel should file a supplemental retention application and obtain an amended order to expand the scope of the engagement to include that matter.

d. Except to the extent that such work is directly relevant to its assigned duties, secondary counsel should not perform or be compensated for general case administration duties, such as preparing agenda letters, monitoring dockets, reviewing pleadings, or attending hearings at which it does not directly participate.

e. The retention application should clearly identify to whom the proposed secondary counsel will report. In most cases, secondary counsel should report directly to the management of the debtor.

2. *Necessity for retention:*

a. Applications to retain secondary counsel should contain sufficient facts to support any contention that employment of an additional law firm will benefit the estate. Secondary counsel may be either ''efficiency counsel'' or ''conflicts counsel.'' Efficiency counsel is secondary counsel employed to handle more routine and ''commoditized'' work, such as claims objections and avoidance actions, at lower cost to the estate than lead bankruptcy counsel. Conflicts counsel is secondary counsel employed when lead bankruptcy counsel is subject to a limited, not pervasive, conflict of interest that prevents it from performing some small part of its duties.

b. In the case of efficiency counsel, the retention application should include, at a minimum, a comparison of the billing rates of the lead counsel and secondary counsel and a projection of the total cost savings to the estate that would result from employing secondary counsel. The retention application should also identify any other factors that would weigh for or against retaining secondary counsel, including any significant differences in associated travel costs.

c. In the case of conflicts counsel, the retention application should set forth with specificity the nature of the lead counsel's conflict, including the identity of any relevant party whom the lead counsel has represented, a description of the nature of that representation, and the terms of any waivers or covenants that affect the lead counsel's ability to take action adverse to that party. The application should also set forth any procedures that the debtor proposes to adopt in response to that conflict, including any ethical walls to which the lead counsel will be subject.

3. *Lead counsel's conflicts:*

a. In most cases, applications for the retention of conflicts counsel are filed because either the debtor is aware at the outset that its proposed lead counsel is subject to a conflict of interest that prevents it from performing some part of its duties, or in response to an objection to retention filed by the United States Trustee or other party. The United States Trustee should carefully review the proposed conflicts counsel's retention to assure that the lead counsel's conflicts are not so pervasive as to give rise to an objection to the lead counsel's retention rather than the appointment of secondary counsel.

b. As in any case, the United States Trustee should review the lead counsel's conflicts based on the particular facts and circumstances of the case, including the specific terms of the proposed conflicts counsel's retention. The following are circumstances that may indicate that the retention of conflicts counsel is inappropriate and should weigh in favor of an objection to the retention application of the lead counsel:

i. The responsibilities of conflicts counsel are not confined to discrete legal matters.

ii. The conflicts counsel will be used to handle matters that are inseparable from the major reorganization activities of the case (e.g., negotiation of major plan provisions).

iii. The conflicts counsel will act under the direct supervision of, and at the direction of, the lead counsel.

iv. The conflicts counsel's role will include filing or advocating pleadings that have been drafted by lead counsel.

v. The conflicts counsel has been retained to litigate matters in which the lead counsel has represented the debtor in settlement negotiations.

vi. The debtor will not (or cannot) create an ethical wall to screen the lead counsel from the work of the conflicts counsel.

c. One recent trend has been for law firms to obtain limited conflicts waivers that permit them to engage in settlement negotiations against certain entities, but which require them to assign the matter to conflicts counsel in the event that the dispute is litigated in court. Such arrangements are generally objectionable, and the United States Trustee retains discretion whether to object in a particular situation. Negotiation without the ability to litigate against a party usually will render a lawyer disqualified from the matter, and such disqualification cannot be cured by retention of conflicts counsel to handle the litigation.

4. *Billing and fee matters:* The United States Trustee should encourage both lead and secondary counsel to submit their billing records in a format that will enable the United States Trustee and other interested parties to easily identify any duplication or overlap in their work. Matters for which secondary counsel is primarily responsible should be assigned a separate billing code, and fee statements should clearly reflect both the amount of time that lead counsel or other professionals have spent on the matter assigned to secondary counsel, as well as the amount of time that secondary counsel has spent on matters outside its primary responsibility.

5. *Non-compensable services:* The United States Trustee should monitor the fees of both lead counsel and secondary counsel for services that are unnecessary, duplicative, or that do not benefit the estate, and should advise counsel in advance that the United States Trustee will object to any such fees. Among other examples, the United States Trustee should object to fees for the following:

a. Excessive time bringing secondary counsel ''up to speed'' on the case, including time spent reviewing background materials that are not germane to secondary counsel's areas of responsibility;

b. ''Shadowing'' of secondary counsel by lead counsel (or vice versa);

c. Unnecessary attendance of attorneys from both lead and secondary counsel at court hearings and conferences, and other meetings;

d. Reviewing, editing, or revising the work product of the other counsel; or

e. Unnecessary duplication of case administration tasks, such as monitoring the docket, reviewing pleadings, or preparing hearing agenda letters.

G. Special Fee Review Entities

1. *Generally:* In a larger chapter 11 case where a significant number of professionals will be retained and the normal fee application and review process would be especially burdensome, the United States Trustee ordinarily will seek the court's appointment of a special fee review entity, such as a fee review committee or an independent fee examiner. Such an entity can assist the court and parties in reviewing fee applications and can bring consistency, predictability, and transparency to the process. Although whether a fee review entity is appointed is ultimately the court's decision, the United States Trustee will follow these Guidelines in connection with fee review entities, subject to the court's directions and orders.

2. *Timing:* The United States Trustee ordinarily will seek the appointment of a fee review entity as soon as practicable after the order for relief.

3. *Purpose:* A fee review entity's primary purpose is to ensure that professional fees and expenses paid by the estate are reasonable, actual, and necessary, as required by section 330 of the Code. Thus, a fee review entity should monitor, review, and where appropriate, object to interim and final applications for fees and expenses filed by professionals who seek compensation from the estate. If a case has a monthly compensation order permitting the payment of fees and expenses before approval of interim or final applications, the fee review entity should also monitor, review, and where appropriate, object to monthly invoices submitted for payment. The fee review entity can also establish other measures

to assist the court and the professionals in complying with the Code, the Federal Rules of Bankruptcy Procedure, local rules or general orders, the Guidelines, and other controlling law within the jurisdiction. In the absence of local rules or general orders and other controlling law within the jurisdiction, a fee review entity should monitor, review, and where appropriate, object to interim and final fee applications under section 330 in accordance with these Guidelines.

4. *Models:* A fee review entity can take one of several forms. The determination of the appropriate form for a particular case will be the product of consultation among the United States Trustee, the debtor, and any official committee, but it is ultimately the court's decision. There are several possible models, including a fee review committee, a fee review committee with an independent member, and an independent fee examiner.

a. *Fee review committee:* The court could appoint a Fee Review Committee, which should ordinarily consist of representatives of the debtor-in-possession, the unsecured creditors committee, any other official committee, and the United States Trustee. The representatives of the debtor-in-possession and the official committee(s) should not be retained professionals whose fees and expenses will be subject to review by the Fee Review Committee. One member of the Fee Review Committee should be designated as chairman, but that person's function should be administrative. The chairman should serve as a point of contact for any professionals retained by the Fee Review Committee. Each member should have one vote, and decisions should be reached by majority vote. The order appointing the Fee Review Committee or any protocol developed by the members may address other administrative issues, including the resolution of any tie vote.

b. *Fee review committee with independent member:* The court could appoint a Fee Review Committee, as described above, and add an ''Independent Member'' as chairman. The Independent Member should be an experienced person not otherwise involved in the case as a party in interest or as a representative of a party in interest. The Independent Member will perform administrative functions and serve as the primary contact for any professionals retained by the Fee Review Committee. In addition, the Independent Member will be an active participant in the substantive discussions of the Fee Review Committee and will, in consultation with the committee, meet and otherwise communicate with professionals whose compensation is subject to the committee's review. Each member, including the Independent Member, should have a vote, and decisions should be reached by majority vote. In the event of a tie vote, the Independent Member's vote should be determinative. The United States Trustee will, at the court's request, solicit suggestions from parties in interest for appointment as the Independent Member and submit several names to the court for consideration.

c. *Independent fee examiner:* The court may appoint a single person to serve as an Independent Fee Examiner for the case. The Fee Examiner should be an experienced person not otherwise involved in the case as a party in interest or a representative of a party in interest. The order appointing the Fee Examiner should fully describe the Fee Examiner's duties and reporting obligations.

5. *Retention of professionals:* A fee review entity should be authorized, subject to court approval, to retain professionals, including but not limited to attorneys and fee auditors, to assist in discharging its duties. The United States Trustee, however, may not participate in or vote on the hiring of professionals for the fee review entity, although the United States Trustee may suggest persons who should serve as Independent Members or Independent Fee Examiners.

6. *Compensation:* The Fee Review Committee's professionals, the Independent Member, and the Independent Fee Examiner should be compensated in accordance with the fee procedures established in the case and should file interim and final fee applications for consideration under the reasonableness standards set forth in 11 U.S.C. § 330(a). Compensation under a flat fee arrangement may be appropriate in certain cases but only if subject to reasonableness review under section 330.

7. *Rights of a party in interest:* A fee review entity should have the rights of a party in interest in connection with fee issues, and should be authorized to negotiate fee disputes with retained professionals, to object to fee applications both interim and final, to object to monthly invoices if a case is governed by a monthly compensation order, and to undertake discovery in connection with contested fee matters.

8. *Budgets:* If the court directs that budgets be adopted by retained professionals, a fee review entity should establish guidelines and requirements for the preparation and submission of fee and expense budgets by the retained professionals. A fee review entity should also consider whether case-specific project billing codes should be developed to facilitate preparation and review of fee applications.

9. *Dispute resolution:* A fee review entity should establish procedures to resolve fee disputes with retained professionals, while retaining the right to file and prosecute objections if disputes cannot be resolved.

10. *Exculpation and indemnification:* The order appointing a fee review entity should contain appropriate provisions exculpating and indemnifying Fee Review Committee members, the Independent Member, or the Fee Examiner from any liability arising out of their service.

Clifford J. White III,

Director, Executive Office for United States Trustees.

EXHIBIT A—CUSTOMARY AND COMPARABLE COMPENSATION DISCLOSURES WITH FEE APPLICATIONS

[*See* Guidelines ¶C.3. for definitions of terms used in this Exhibit]

Category of timekeeper (using categories already maintained by the firm)	Blended hourly rate	
	Billed or collected firm or offices for preceding year, excluding bankruptcy	Billed in this fee application
Sr./Equity Partner/Shareholder		
Jr./Non-equity/Income Partner		
Counsel		

EXHIBIT A—CUSTOMARY AND COMPARABLE COMPENSATION DISCLOSURES WITH FEE APPLICATIONS—Continued

[*See* Guidelines ¶ C.3. for definitions of terms used in this Exhibit]

Category of timekeeper (using categories already maintained by the firm)	Blended hourly rate	
	Billed or collected firm or offices for preceding year, excluding bankruptcy	Billed in this fee application
Sr. Associate (7 or more years since first admission)		
Associate (4–6 years since first admission)		
Jr. Associate (1–3 years since first admission)		
Staff Attorney		
Contract Attorney		
Paralegal		
Other (please define)		
All timekeepers aggregated		

Case Name and Number: _____
Applicant's Name: _____
Date of Application: _____
Interim or Final: _____

Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases

EXHIBIT B—SUMMARY OF TIMEKEEPERS INCLUDED IN THIS FEE APPLICATION

Name	TITLE OR POSITION	Department, group, or section	Date of first admission[1]	Fees billed in this application	Hours billed in this application	Hourly rate billed		Number of rate increases since case inception
						In this application	In first interim application	

[1] If applicable.

Case Name and Number: _____
Applicant's Name: _____
Date of Application: _____
Interim or Final: _____

Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases

If the parties consent or the court so directs, a budget approved by the client in advance should generally be attached to each interim and final fee application filed by the applicant. If the fees sought in the fee application vary by more than 10% from the budget, the fee application should explain the variance. *See* Guidelines ¶ C.8. for project category information.

EXHIBIT C–1—BUDGET

Project category	Estimated hours	Estimated fees
Asset Analysis and Recovery		
Asset Disposition		

EXHIBIT C–1—BUDGET—Continued

Project category	Estimated hours	Estimated fees
Assumption and Rejection of Leases and Contracts		
Avoidance Action Analysis		
Budgeting (Case)		
Business Operations		
Case Administration		
Claims Administration and Objections		
Corporate Governance and Board Matters		
Employee Benefits and Pensions		
Employment and Fee Applications		
Employment and Fee Application Objections		
Financing and Cash Collateral		
Litigation: Contested Matters and Adversary Proceedings (not otherwise within a specific project category)—identify each separately by caption and adversary number, or title of motion or application and docket number		
Meetings and Communications with Creditors		
Non-Working Travel		
Plan and Disclosure Statement		
Real Estate		
Relief from Stay and Adequate Protection		
Reporting		
Tax		
Valuation		
Total		

Case Name and Number: _____
Applicant's Name: _____
Date of Application: _____
Interim or Final: _____

Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases

If the parties consent or the court so directs, a staffing plan approved by the client in advance should generally be attached to each interim and final fee application filed by the applicant. If the fees are sought in the fee application for a greater number of professionals than identified in the staffing plan, the fee application should explain the variance.

EXHIBIT C–2—STAFFING PLAN

Category of timekeeper [1] (using categories maintained by the firm)	Number of timekeepers expected to work on the matter during the budget period	Average hourly rate
Sr./Equity Partner/Shareholder		
Jr./Non-equity/Income Partner		
Counsel		
Sr. Associate (7 or more years since first admission)		
Associate (4–6 years since first admission)		
Jr. Associate (1–3 years since first admission)		

EXHIBIT C–2—STAFFING PLAN—Continued

Category of timekeeper [1] (using categories maintained by the firm)	Number of timekeepers expected to work on the matter during the budget period	Average hourly rate
Staff Attorney		
Contract Attorney		
Paralegal		
Other (please define)		

[1] As an alternative, firms can identify attorney timekeepers by years of experience rather than category of attorney timekeeper: 0–3, 4–7, 8–14, and 15+. Non-attorney timekeepers, such as paralegals, should still be identified by category.

Case Name and Number: _____
Applicant's Name: _____
Date of Application: _____
Interim or Final: _____

Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases

EXHIBIT D–1—SUMMARY OF COMPENSATION REQUESTED BY PROJECT CATEGORY

[*See* Guidelines ¶C.8. for project category information.]

Project category	Hours budgeted [1]	Fees budgeted [1]	Hours billed	Fees sought
Asset Analysis and Recovery				
Asset Disposition				
Assumption and Rejection of Leases and Contracts				
Avoidance Action Analysis				
Budgeting (Case)				
Business Operations				
Case Administration				
Claims Administration and Objections				
Corporate Governance and Board Matters				
Employee Benefits and Pensions				
Employment and Fee Applications				
Employment and Fee Application Objections				
Financing and Cash Collateral				
Litigation: Contested Matters and Adversary Proceedings (not otherwise within a specific project category)—identify each separately by caption and adversary number, or title of motion or application and docket number				
Meetings and Communications with Creditors				
Non-Working Travel				
Plan and Disclosure Statement				
Real Estate				
Relief from Stay and Adequate Protection				
Reporting				
Tax				
Valuation				

EXHIBIT D–1—SUMMARY OF COMPENSATION REQUESTED BY PROJECT CATEGORY—Continued

[*See* Guidelines ¶C.8. for project category information.]

Project category	Hours budgeted [1]	Fees budgeted [1]	Hours billed	Fees sought
TOTAL				

[1] If applicable.

Case Name and Number: _____
Applicant's Name: _____
Date of Application: _____
Interim or Final: _____

Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases

EXHIBIT D–2—SUMMARY OF EXPENSE REIMBURSEMENT REQUESTED BY CATEGORY

[*See* Guidelines ¶C.12. for expense category information]

Category	Amount
Copies	
Outside Printing	
Telephone	
Facsimile	
Online Research	
Delivery Services/ Couriers	
Postage	

EXHIBIT D–2—SUMMARY OF EXPENSE REIMBURSEMENT REQUESTED BY CATEGORY—Continued

[*See* Guidelines ¶C.12. for expense category information]

Category	Amount
Local Travel	
Out-of-Town Travel: (a) Transportation	
(b) Hotel	
(c) Meals	
(d) Ground Transportation	
(e) Other (please specify)	
Meals (local)	
Court Fees	
Subpoena Fees	
Witness Fees	
Deposition Transcripts	

EXHIBIT D–2—SUMMARY OF EXPENSE REIMBURSEMENT REQUESTED BY CATEGORY—Continued

[*See* Guidelines ¶C.12. for expense category information]

Category	Amount
Trial Transcripts	
Trial Exhibits	
Litigation Support Vendors	
Experts	
Investigators	
Arbitrators/Mediators	
Other (please specify)	

Case Name and Number: _____
Applicant's Name: _____
Date of Application: _____
Interim or Final: _____

Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases

EXHIBIT E—SUMMARY COVER SHEET OF FEE APPLICATION

Name of applicant	
Name of client	
Time period covered by this application	
Total compensation sought this period	
Total expenses sought this period	
Petition date	
Retention date	
Date of order approving employment	
Total compensation approved by interim order to date	
Total expenses approved by interim order to date	
Total allowed compensation paid to date	
Total allowed expenses paid to date	
Blended rate in this application for all attorneys	

EXHIBIT E—SUMMARY COVER SHEET OF FEE APPLICATION—Continued

Blended rate in this application for all timekeepers	
Compensation sought in this application already paid pursuant to a monthly compensation order but not yet allowed	
Expenses sought in this application already paid pursuant to a monthly compensation order but not yet allowed	
Number of professionals included in this application	
If applicable, number of professionals in this application not included in staffing plan approved by client	
If applicable, difference between fees budgeted and compensation sought for this period	
Number of professionals billing fewer than 15 hours to the case during this period	
Are any rates higher than those approved or disclosed at retention? If yes, calculate and disclose the total compensation sought in this application using the rates originally disclosed in the retention application	

Case Name and Number: _____
Applicant's Name: _____
Date of Application: _____
Interim or Final: _____

Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases

Exhibit F

ANALYSIS OF COMMENTS RECEIVED AND SUMMARY OF SIGNIFICANT CHANGES IN RESPONSE TO COMMENTS

A. *INTRODUCTION*

On November 4, 2011, the United States Trustee Program (''USTP'') posted for public comment an initial draft of the Appendix B—Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases (''Appendix B guidelines'' or ''Guidelines''). The Appendix B guidelines reflect eight core principles:

1. Ensuring that fee review is subject to client-driven market forces, accountability, and scrutiny.
2. Ensuring adherence to the requirements of section 330 of the Bankruptcy Code so that all professional compensation is reasonable and necessary, particularly as compared to the market measured both by the professional's own billing practices for bankruptcy and non-bankruptcy engagements and by those of its peers.
3. Enhancing meaningful disclosure by professionals and transparency in billing practices.
4. Increasing client and constituent accountability for overseeing the fees and billing practices of their own professionals.
5. Encouraging the development of budgets and staffing plans to bring discipline, predictability, and client involvement and accountability to the compensation process.
6. Decreasing the administrative burden of review.
7. Maintaining the burden of proof on the fee applicant, and not the objecting party.
8. Increasing public confidence in the integrity and soundness of the bankruptcy compensation process.

The USTP received more than two dozen comment letters on the initial draft of the Appendix B guidelines posted on November 4, 2011. The USTP thereafter convened a public meeting regarding the Appendix B guidelines on June 4, 2012. Seven commenters appeared at the public meeting, and this discussion is reflected in the transcript of the public meeting.

The USTP reviewed the written and oral comments to the initial draft of the Appendix B guidelines, and on November 2, 2012, posted its analysis of those comments and a summary of the significant revisions incorporated in the second draft of the Appendix B guidelines. *See* ¶ B.2. below.[1] At the same time, the USTP also posted the second draft of the Appendix B guidelines for an additional and final comment period ending November 23, 2012.

The USTP received six comment letters on the second draft. After reviewing the comments to the second draft, the USTP finalized and issued the Appendix B guidelines. The USTP's analysis of the comments on the second draft and a summary of the significant revisions incorporated in the final Appendix B guidelines as issued follow the USTP's comment analysis on the initial draft. *See* ¶ C. below.[2]

All comments to the initial and second drafts of the Appendix B guidelines, as well as the transcript of the June 4, 2012, public meeting, are available for review on the USTP's website, at *http://www.justice.gov/ust/eo/rules_regulations/guidelines/public_comments.htm.* An analysis of the primary comments received on both drafts and a summary of the significant changes made in response to the comments follow.

B. SUMMARY OF SIGNIFICANT CHANGES AND ANALYSIS OF COMMENTS RECEIVED AFTER *POSTING INITIAL DRAFT GUIDELINES FOR COMMENT ON NOVEMBER 4, 2011*

1. Summary of Significant Changes Following Posting of Initial Draft Appendix B *Guidelines for Comment on November 4, 2011*

a. **THRESHOLD FOR APPLICATION:** The threshold for application has been revised to $50 million or more in assets ***and*** $50 million or more in liabilities, aggregated for jointly administered cases and excluding single asset real estate cases. Guidelines ¶ A.2.[3] The initial threshold was $50 million in assets and liabilities combined.

b. DISCLOSURES FOR CUSTOMARY AND COMPARABLE COMPENSATION AND CLIENT VERIFICATIONS: The disclosures that the USTP will request regarding customary and comparable compensation have been amended. Guidelines ¶ C.3. Instead of disclosing high, low and average rates, the revised Guidelines provide that applicants disclose blended billing rates in the aggregate and by category of professional. Guidelines ¶ C.3.a-b. Applicants have the flexibility to report

[1] Summary of Significant Changes and Analysis of Comments Received After Posting Initial Draft Guidelines for Comment on November 4, 2011.

[2] Summary of Significant Changes and Analysis of Comments Received After Posting Revised Draft Guidelines for Final Comment on November 2, 2012.

[3] All references are to the final Appendix B guidelines as issued.

their blended rate information for non-bankruptcy engagements based on either time billed or revenue collected either for the firm (domestic offices only) or offices in which timekeepers billed at least 10% of the hours to the bankruptcy case during the application period. Guidelines ¶ C.3.a.i. The revised Guidelines clarify that pro bono and materially discounted charitable or firm-employee engagements may be excluded from the non-bankruptcy blended rate computation. Guidelines ¶ C.3.a.iv.(c). Disclosure in accordance with ¶ C.3.a.-b. of the Guidelines will provide a limited ''safe harbor'' from additional requests from the United States Trustee for information about customary and comparable compensation under section 330(a)(3)(F) of the Bankruptcy Code, without prejudice to the United States Trustee's ability to seek additional information based upon the particular facts and circumstances of the case, to file an objection, or to offer evidence on comparable compensation from other sources. Guidelines ¶ C.4.

c. BUDGETS AND STAFFING PLANS: A budget and staffing plan will be used only with the consent of the professionals or if the United States Trustee obtains a court order. Guidelines ¶ E.1. The United States Trustee will ask that the counsel for the debtor-in-possession and official committees exchange their budgets once client-approved, Guidelines ¶ E.8., and that professionals provide budgets and staffing plans to the United States Trustee retrospectively with the fee application. Guidelines ¶¶ C.6.a., E.7.-8. Budgets may be redacted to protect privileged or confidential information. Guidelines ¶¶ C.6.b., E.8. The Guidelines clarify that the attorney and the client should decide the appropriate budget period, and that budgets may be amended as necessary to reflect changed circumstances or unanticipated developments. Guidelines ¶¶ E.3.-4.

d. TASK CODES AND SUB-CATEGORY ACTIVITY CODES: The 20 sub-category activity codes have been deleted. Instead, the USTP slightly modified the project categories in the existing Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses filed under 11 U.S.C. § 330, 28 C.F.R. Part 58, Appendix A (''Appendix A guidelines''). Guidelines ¶ C.8.b.; Exhibits C-1, D-1. First, the USTP added a ''Budgeting'' category to reflect the intention to seek the use of budgets for the applicant in most cases that satisfy the threshold. Second, to provide better transparency and accountability, the USTP extracted and separately categorized certain tasks that are included in the broader Appendix A guidelines' project categories, all but one of which is included in the long-established Uniform Task Based Management System (''UTBMS'') bankruptcy code set.[4] These tasks are: Assumption and Rejection of Leases and Contracts; Avoidance Action Analysis; Corporate Governance and Board Matters; Litigation; Non-Working Travel; Real Estate; and Reporting.

e. CO-COUNSEL RETENTIONS AND STAFFING EFFICIENCIES: Debtors and official committees are encouraged to use co-counsel arrangements to achieve better staffing and fee efficiencies. Guidelines ¶¶ B.2.c., F. These arrangements include using less expensive co-counsel for certain routine, commoditized, or discrete matters to avoid duplication, overlap, and inefficiencies.

f. DEBTORS' ESTIMATE OF FEES INCURRED IN ORDINARY COURSE AND NOT BECAUSE OF BANKRUPTCY: This requested disclosure has been deleted.

g. REDACTIONS: The USTP will not object to compensation for limited redactions to protect privileged or confidential information in the budget or the fee application, the disclosure of which could not be avoided through drafting. Guidelines ¶¶ B.2.f., C.6.b., E.8.

h. CLIENT AGREEMENT TO RATE INCREASES: The applicant's statement for the fee application adds an additional question: ''Did your client agree when retaining the law firm to accept all future rate increases? If not, did you inform your client that they need not agree to modified rates or terms in order to have you continue the representation, consistent with ABA Formal Ethics Opinion 11-458?'' Guidelines ¶ C.5.f. The client's verification at the time of the fee application has been deleted.

2. Discussion of Initial Public Comments after Posting Initial Draft for Comment on *November 4, 2011 and the Public Meeting Held June 4, 2012*

As of October 19, 2012, the USTP had received 31 comments on the Appendix B guidelines. In addition, seven commenters appeared at the public meeting held on June 4, 2012, and this discussion is reflected in the transcript of the public meeting. Many of the comments contained several sub-comments. The USTP appreciates the comments and has considered each comment carefully. The USTP's response to the most significant comments are discussed below, starting with the ''General Comments'' section and continuing with comments categorized by specific subject matter.

a. GENERAL COMMENTS

1) ***Comment:*** **Official committees, the U.S. Trustee, and the court already review fee applications. The Appendix A guidelines should not be updated because the current system works well and changes would not improve the administration of bankruptcy cases.**

Response: The existing Appendix A guidelines were adopted 16 years ago, and law firm billing practices and billing technology have evolved considerably since then. Better data and better technology permit comparisons that would have been difficult, if not impossible, two decades ago. In addition, while clients have substantially improved the way they manage and pay their counsel outside of bankruptcy, estate-paid bankruptcy engagements may not have been subject to comparable discipline. In its comment, the Managed Funds Association (''MFA''), an industry group that represents regular consumers of sophisticated legal services in both bankruptcy and non-bankruptcy engagements, asserted that ''bankruptcy compensation has moved from the economy of administration standard to a premium standard by which bankruptcy professionals are effectively compensated at rates higher than those realized in comparable non-bankruptcy engagements. . . . In bankruptcy cases, we do not perceive the same cost control-driven constraints [that we see in non-bankruptcy engagements or bankruptcy engagements not subject to section 330] . . . .'' MFA letter dated September 21, 2012, p. 2 (''MFA Letter''). Similarly, one academic took the view that the bankruptcy compensation process generally requires improvement, including better disclosures. *See generally* Professor Nancy B. Rapoport, Letters dated December 14, 2011, and May 1, 2012, and Public Meeting Tr., pp. 11-36. The Appendix B guidelines seek to remain current with contemporary law firm practice and improve the fee application process for all stakeholders.

2) Comment: **The Appendix B guidelines would benefit from a robust**

[4] The UTMBS was developed in the mid-1990s by the Association of Corporate Counsel and the American Bar Association and is now under the jurisdiction of the non-profit LEDES Oversight Committee. *See www.LEDES.org.* Task-based billing, coded and aggregated by type of work performed, allows corporate clients to have ''consistent enforcement'' of their ''outside counsel billing guidelines and alleviat[ed] some of the burden on bill reviewers. Time entry coding assists with reporting and facilitates comparison . . . .'' *See www.utbms.com.*

and open rule-making process. Similarly, the USTP should ''convene a series of meetings with practitioners, judges, and debtors and creditors' committees . . . to discuss the USTP's concerns with the current fee process and hear and solicit views on the relevant issues from the participants.'' 119 law firms' letter dated January 30, 2012, p. 14 (''119 Law Firms' Initial Letter'').

Response: The Appendix B guidelines are internal procedural guidelines that are not subject to the notice-and-comment process of the Administrative Procedure Act (''APA''). Nevertheless, recognizing the importance of the proposed Guidelines to the bankruptcy system, the USTP has solicited a great deal of public comment within a framework that exceeds APA requirements.

The USTP engaged in pre-drafting outreach to various bankruptcy judges and practitioners. In November 2011, the USTP posted on its website the initial draft Appendix B guidelines for public comment through the end of January 2012. The USTP posted the comments on its website as they were received and re-opened the comment period at the request of various commenters. The USTP convened a public meeting on June 4, 2012, and invited the public—and all commenters—to attend and to make presentations. The USTP made available on its website a transcript of the public meeting and advised interested parties that it would revise the Guidelines as necessary after consideration of the comments and post a second draft for an additional (third) comment period. The USTP also considered written submissions after the public meeting.

The USTP concludes that no changes are necessary to the process that the USTP employed to solicit public comment or to the Guidelines based on these comments.

b. SCOPE OF THE APPENDIX B GUIDELINES

3) ***Comment:*** **The threshold of $50 million in combined assets and liabilities is too low. In addition, certain types of cases, such as single asset real estate cases, should be excluded from the Appendix B guidelines.**

Response: The USTP reviewed available data before setting the initial threshold. A combined assets and liabilities standard was adopted based on the metric used in the American Bankruptcy Institute's chapter 11 fee study, *see* Stephen J. Lubben, *Corporate Reorganization and Professional Fees,* 82 Am. Bankr. L.J. 77, 105 (2008),[5] and it is the formula used by some courts, including one in the District of Delaware, when determining whether to appoint fee examiners. *See General Order Re: Fee Examiners in Chapter 11 Cases With Combined Assets and/or Liabilities in Excess of $100,000,000* (Bankr. D. Del. Dec. 16, 2009) (Sontchi, J.). The $50 million threshold appeared to apply to approximately 40% of all chapter 11 cases filed in the District of Delaware and 10% of all cases filed in the Southern District of New York. Virtually every other judicial district would have had approximately one or two cases a year at this level.

Although a few commenters offered suggestions on revising the threshold, there was no clear basis for those suggestions. For example, the NBC suggested raising the threshold from $50 million to $100 million but did not have a particular basis for its suggestion and acknowledged that, ''[t]here is no precise answer here . . . .'' Public Meeting Tr., p. 59.

The group of 118 law firms (previously 119) suggested a complex formula resulting in an even higher threshold. 118 law firms' supplemental letter dated April 16, 2012, p. 2 (''118 Law Firms' Supplemental Letter''). The suggested threshold would require all of the following:

- More than $250 million in assets.
- More than $50 million of unencumbered assets.
- More than $250 million of unsecured debt.
- At least 250 unsecured creditors (excluding present and former employees).
- More than $50 million of syndicated debt for borrowed money.

The petition does not collect asset, debt, and creditor information in the manner necessary to determine whether a particular case meets the threshold suggested by the commenters. Therefore, it is impossible to confirm without further information whether any chapter 11 cases that are currently pending in any judicial district or that have been filed since 2009, would meet that proposed threshold. Under the 118 law firms' proposal, debtors would need to provide in their first day filings the information necessary to answer these five questions or risk uncertainty and delay.

The USTP revised the threshold after evaluating additional data in light of the comments. Guidelines ¶ A.2. First, the threshold was increased to a combination of at least $50 million in assets ***and*** $50 million in liabilities, based on the values shown on the petition. Second, the USTP agreed that single asset real estate cases should be excluded because they do not routinely entail the complexities of other large cases and revised the Guidelines to exclude them. Without controlling for single asset real estate cases, the USTP estimates that approximately one-half of the chapter 11 cases subject to the revised Guidelines would be filed outside of the District of Delaware and the Southern District of New York, in approximately two-thirds of the USTP's judicial districts.

4) ***Comment:*** **The Appendix B guidelines should apply to all estate compensated professionals.**

Response: The USTP is revisiting the fee guidelines in phases. Other considerations are relevant in evaluating the fee applications of financial advisors and other professionals, as well as attorneys in chapter 11 cases below the threshold in the Appendix B guidelines. Until the USTP promulgates new guidelines, the Appendix A guidelines remain in effect for the USTP's review of fee applications of other types of professionals in chapter 11 cases that meet the threshold, of professionals in all chapter 11 cases below the threshold, and of all professionals in cases not under chapter 11.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

c. COMPARABLE COMPENSATION DISCLOSURES

5) ***Comment:*** **The comparable billing disclosures proposed by the USTP are overly burdensome.**

Response: The necessity for comparable billing data arises from the Bankruptcy Code, which requires that courts determine ''reasonable compensation'' based on, among other factors, ''customary compensation charged by comparably skilled practitioners in cases other than cases under title 11.'' 11 U.S.C. § 330. The USTP concurs that the disclosure of data for the necessary comparison to customary compensation outside of bankruptcy must strike the right balance between the parties' and the court's need for evidence and the professional's burden of providing it.

The National Bankruptcy Conference (''NBC'') suggested modifications to the Appendix B guidelines intended to preserve the ability of reviewers to meaningfully evaluate fee applications while arguably lessening the burden on the applicants. In substance, the NBC proposed that applicants should be

[5] Professor Lubben used the sum of assets and liabilities as a measure of debtor size to select large cases for his analysis.

provided with a ''menu'' of three possible, alternative methods for demonstrating comparable compensation. These options are: (1) a certification that would compare the billing rates of certain of the attorneys assigned to the case with their billing rates in other engagements; (2) a certification comparing the blended rates of the firm or office as a whole to its overall billing rate in the past year; or (3) a client verification detailing the steps it took to ensure that it was being charged reasonable market rates. NBC's supplemental letter dated February 27, 2012, pp. 3-5. The NBC further proposed that firms satisfying any of the three alternatives should receive a limited ''safe harbor'' from a USTP objection on whether the firm has met its burden to disclose customary and comparable compensation information. *Id.,* pp. 2-3.

The USTP agrees that many of the NBC's suggestions have merit, subject to further modification. The NBC's menu of options could too easily be circumvented by uncorroborated and boilerplate certifications and therefore would not represent a substantial improvement on current practices. In addition, the MFA suggested that the comparability disclosure should be ''more plainly and overtly referenced than capturing it in a blended rate as the NBC proposed.'' MFA Letter, p. 4.

Based on these comments, the USTP has revised the Appendix B guidelines regarding customary and comparable compensation, ¶ C.3., as follows:

a) The USTP adopted the NBC's ''blended hourly rate'' disclosures, with some modifications. *See* Guidelines ¶ C.3.

• Professionals should disclose blended rate information by category of timekeeper. The USTP modified the NBC's suggestion of a single, aggregate blended rate in order to ensure that staffing patterns, which may vary for different types of cases, do not mask differences in blended rates among professionals within the firm that have the same level of experience. If higher blended rates are charged by bankruptcy professionals as compared to similarly experienced professionals in other practice areas, then the applicant should explain why the bankruptcy rate is higher and how the rate satisfies the statutory standard. Disclosing the blended rate by category of professional also obviates the need for the NBC's suggested disclosure of staffing percentages for bankruptcy and other engagements, which the USTP understood would have been difficult for certain firms to calculate.

• To provide flexibility, blended hourly rate information may be disclosed on either an as-billed or as-collected basis. Blended hourly rates should be calculated as total dollar value of hours billed (or collected) divided by the number of hours.[6]

• To provide further flexibility, the USTP also adopted the NBC's suggestion that firms choose one of two alternative groups of timekeepers for the blended rate disclosures. Firms may calculate the blended rate based on all domestic timekeepers throughout the firm or, alternatively, on all timekeepers in only those domestic offices in which professionals collectively billed at least 10% of the hours to the matter during the relevant application period.

b) The USTP partially adopted the NBC's suggestion of a limited ''safe harbor.'' An applicant that provides the disclosures in the Appendix B guidelines at ¶ C.3. will receive a limited ''safe harbor'' from additional requests from the United States Trustee for information about customary and comparable compensation under section 330(a)(3)(F) of the Bankruptcy Code. The United States Trustee, however, is not precluded by the ''safe harbor'' from seeking additional information based on the particular facts and circumstances of the case, filing an objection, or offering evidence on comparable compensation from other sources. Guidelines ¶ C.4.

c) The USTP also adopted the NBC's proposal that other meaningful and detailed evidence may satisfy the professional's disclosure obligations on comparable and customary compensation, which is consistent with the MFA's suggestion of an alternative flexible standard to avoid the Guidelines' obsolescence as billing practices evolve. Disclosures other than in compliance with the Guidelines at ¶ C.3. fall outside the scope of the ''safe harbor,'' and the United States Trustee might object to the adequacy of those disclosures. Guidelines ¶ C.3.c.

6) ***Comment:*** **Given the prevalence of alternative fee arrangements and other variable terms of engagements outside of bankruptcy, including volume or repeat business discounts and other individually negotiated billing arrangements, the disclosures seek incomplete or inaccurate information and will not establish comparability. Similarly, *pro bono* or other types of engagements should be excluded**.

Response: Several commenters expressed the view that the requested data on hourly rates actually billed would not establish comparable data because it would not account for such things as volume discounts or other alternative fee arrangements. This conclusion ignores that applicants may choose to explain why a particular alternative fee arrangement would be an inaccurate point of comparison for bankruptcy engagements. Moreover, excluding these arrangements would circumvent comparability with the firm's bankruptcy fees as required by the Bankruptcy Code, because ''[d]iscount arrangements . . . are regularly sought and given in non-bankruptcy engagements; therefore, we think that any safe harbor should measure the market by the effective discount provided in non-bankruptcy engagements.'' MFA Letter, p. 3.

The USTP concludes that no changes are necessary to the Guidelines based on these comments, except for one clarification: The USTP agrees that for all comparable billing rate disclosures, firms may exclude pro bono, charitable, or firm-employee engagements that were never contemplated to be billed at or near standard or full rates. Guidelines ¶ C.3.a.iv.(c).

7) ***Comment:*** **The increased disclosures of actual comparable billing data will force sophisticated practitioners and firms to withdraw from a bankruptcy practice because they would choose to leave bankruptcy practice before disclosing this data. This would result in decreased competition for estate-paid bankruptcy work.**

Response: These comments suggest that estate-paid professionals may ignore the requirement in section 330 that an applicant establish that its compensation is comparable to compensation outside of bankruptcy. The USTP concludes that no changes are necessary to the Guidelines based on these comments.

8) ***Comment:*** **Some commenters stated that requiring disclosure of the lowest hourly rates billed seeks to re-impose the economy of administration standard rejected by Congress in the 1978 Bankruptcy Code. In contrast, other commenters stated that requiring the disclosure of high, average, and low hourly rates might ''normalize'' the market at the high range and therefore drive up estate costs.**

Response: These comments are irreconcilable. The USTP does not seek to re-impose the economy of administration standard rejected by the 1978 Code any more than it seeks to foster premium compensation for bankruptcy. By emphasizing actual market forces, the revised Appendix B guidelines reinforce the legislative

[6] The USTP adopted NBC's calculation of ''blended hourly rate,'' which was the same as the USTP's original formula for ''average rate billed.''

purpose of the 1978 Code as embodied in section 330—that comparable services are the standard by which to measure bankruptcy fees. ''Comparable'' does not mean ''economy'' or ''premium'' as the standard against which bankruptcy fees should be measured.

Nevertheless, the USTP agrees with the NBC's suggestion that the average (or blended) hourly billed rate is the most meaningful of the originally requested disclosures. Accordingly, the USTP revised the Appendix B guidelines to delete the request for any disclosure of low and high rates billed. The USTP retains the right to seek further information based on the facts and circumstances in a particular case or if an applicant does not choose to disclose billing information in compliance with the limited ''safe harbor'' option at ¶ C.4.

9) ***Comment:*** **Some commenters stated that the additional disclosures of actual comparable billing data will increase the cost of preparing fee applications and, therefore, chapter 11 bankruptcy cases. Other commenters stated that it is logistically impossible for even the most sophisticated law firms to generate low, high, and average billed rates by attorney or other comparable billing data sought in the Appendix B guidelines.**

Response: Sophisticated law firms maintain and study copious amounts of data and metrics for various purposes, including managing their own profitability, determining partner compensation, and meeting client expectations. As the co-chairman of the NBC stated at the public meeting, ''firm billing systems are just huge databases. . . . [W]hen a firm wants to do a bill, it extracts data from the database, and when it wants to do financial reporting statistics, it extracts data from the database.'' Public Meeting Tr., pp. 71–73. A law firm that maintains that it is impossible to provide this information may explain in the fee application and attest in its statement why it is unable to do so.

The evidence is overwhelming that law firms routinely obtain and review billing data in setting their rates outside of bankruptcy. For example, many firms provide internal billing and other financial data that is made available to participating firms in a variety of surveys, including the Citi Private Bank Law Watch Annual Survey of Law Firm Financial Performance, PriceWaterhouseCoopers BRASS Survey (billing rate and associate salary survey), the Thomson Reuters Peer Monitor data, Hildebrandt International surveys, and various Altman Weil Surveys. In addition, firms (including many that commented on the Guidelines) routinely disclose aggregate billing rate information to periodicals for publication, including the National Law Journal (''NLJ'') 250 Annual Billing Rate survey, which provides low, high, and average rates by timekeeper class for a number of firms and includes far more detailed information than the information requested in the Appendix B guidelines.

Although there will be some additional work for the professionals in preparing fee applications with these disclosures, the financial data to be disclosed will come from the professionals' accounting and finance staff. Moreover, as explained above, the USTP revised the Guidelines to no longer require disclosure of low and high rates. The USTP concludes that no further changes are necessary to the Guidelines based on these comments.

10) ***Comment:*** **A firm's actual billing data is attorney-client privileged, confidential, and proprietary. Alternatively, the USTP should seek comparable billing data from outside proprietary sources, such as CitiBank, Hildebrand, and Hoffman Alvery.**

Response: The proposed disclosure of blended billing rates in the Appendix B guidelines does not require the disclosure of attorney-client privileged information. The disclosure is not a **COMMUNICATION** with a client and does not identify particular clients.

Moreover, the broad dissemination of a firm's billing information to third parties, as discussed in the prior response, is inconsistent with the contentions that the information is legally privileged and that clients consistently maintain such information as proprietary. For example, the CT Tymetrix and Corporate Executive Board Real Rate Report 2012 analyzes actual invoice data provided by clients. The 2012 report reviewed $7.6 billion in law firm billings generated from 2007 through 2011 by more than 4,000 law firms and roughly 120,000 timekeepers. Although the Real Rate Report does not disclose rates of particular firms or attorneys, it is generated from the billing data firms send to their clients.

To the extent that commenters suggest that the USTP obtain comparable billing data from outside survey sources, these are generally unavailable to the USTP (and the court as the arbiter). For example, CitiBank and PWC BRASS surveys are only available to those who participate and for a fee. In addition, comparability under section 330 requires consideration of fees charged by comparably skilled practitioners within the firm for other types of engagements as well as fees charged by other firms providing similar services. These surveys address comparability with other firms, not within the firm.

Some commenters state that their billing rates are proprietary business information and that their business will be harmed if they disclose them, presumably because disclosure would allow law firms to bid for work against each other more effectively. Other commenters appear concerned that if their rate structures are transparent to their clients, those clients may be better positioned to negotiate fees. The commenters, however, do not explain why their pecuniary interest in preventing transparency in billing practices should outweigh the need to produce evidence that satisfies the Bankruptcy Code's comparable services requirement.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

11) ***Comment:*** **The Appendix B guidelines should only obtain comparability data from domestic practitioners because international billing practices vary widely.**

Response: The USTP agrees and has revised the Guidelines to clarify that comparability data should be reported for U.S. professionals only. Guidelines ¶ C.3.a.i.

d. BUDGETS AND STAFFING PLANS

12) ***Comment:*** **Budgets and staffing guidelines are unduly burdensome.**

Response: The requested budgets are a summary with little detail. Presumably attorneys in complex chapter 11 cases—at least once the critical early days of a case have passed—make some effort to plan next steps, to strategize on ultimate outcome, and to assign tasks accordingly, taking into account their experience in other complex cases.

Moreover, requesting budgets and staffing plans in bankruptcy cases is consistent with practices employed by clients outside of bankruptcy to manage legal costs. The USTP budget and staffing templates are modeled after the Association of Corporate Counsel's (''ACC'') Sample Case Budget Template.[7] The ACC is a global bar association for in-house counsel with 29,000 members employed by over 10,000 organizations. The extensive resources provided by ACC to its members on legal project management, including budgeting and staffing,

[7] *See http://www.acc.com/legalresources/resource.cfm?show=743131; see also http://www.acc.com/ValueChallenge/resources/avcresources.cfm?rs_vc=365.*

strongly suggest that budgeting and staffing plans are mainstream and common features of legal engagements across a wide spectrum of businesses.

The USTP slightly modified the ACC template. *See* Exhibit C. First, the USTP separated the budget template from the staffing template. Second, the USTP budget template at Exhibit C uses the modified project categories in ¶ C.8.b. of the Guidelines, as described more fully in the response to Comment 18 below. Third, in the revised Appendix B guidelines, the USTP further simplified the staffing plan to reduce the perceived burden. Rather than asking for identification of each professional proposed to work on the engagement, the revised USTP template requests the number of professionals by category of timekeeper (*e.g.,* 10 partners, 30 associates, *etc.*) or experience level, as well as their average hourly rates (billed or collected). Unlike the ACC template, however, the USTP revised staffing plan does not ask for this information for each project category.

13) ***Comment:*** **Public disclosure of budgets with interim fee applications will reveal confidential strategy information and give adversaries advantages.**

Response: The USTP addressed this concern in the initial draft of the Appendix B guidelines in two ways. First, the budgets and staffing plans are to be publicly disclosed retrospectively with the fee application and for the same time period covered by the fee application. Guidelines ¶¶ C.6., E.7.-8. Second, the budget template is a summary chart of aggregate hours and fees by project code, without the detail of the budget that the professional provided to its client prospectively at the beginning of the fee application period. Exhibit C-1. While the budget submitted with the fee application will retrospectively summarize the fees estimated to be required during that period, the fee application itself and invoices contain the detailed information about what was actually done during the period.

Nevertheless, to further address this concern, the USTP revised the Guidelines to provide that budgets and invoices may be redacted as necessary, and such redactions may be compensable if necessary to protect privileged or confidential information that must be disclosed. Guidelines ¶¶ C.6.b., E.8. But the time spent for redactions should be reasonably proportional to the overall fees sought. Redactions, particularly to address issues of litigation strategy, may be unnecessary if the applicant uses the model budget in Exhibit C, which budgets total hours and fees by project category without descriptive entries.

The USTP also revised the Guidelines to provide for one prospective disclosure of the budget on a confidential basis: between counsel for the debtor-in-possession and official committees once the budgets have been approved by their respective clients or whenever they are amended. Guidelines ¶ E.8. As the NBC commented, there are at least two ''set[s] of professionals compensated out of the estate . . . looking out for the estate's interests.'' NBC letter dated January 30, 2012, p. 2. Official committees routinely receive confidential or other sensitive information during the case that they are precluded from sharing. In addition to providing the budgets under appropriate confidentiality agreements, the debtor and committees may redact the budgets to address privilege or confidentiality concerns. Guidelines ¶¶ C.6.b., E.8. The confidential and prospective exchange of budgets between these fiduciaries facilitates communication, avoids duplication of effort, and promotes efficiency in the administration of the bankruptcy case, consistent with the requirements of section 1103 of the Bankruptcy Code.

14) ***Comment:*** **Budgets are ineffective and provide little, if any, benefit to the estate because bankruptcy is just too unpredictable to budget.**

Response: Budgets are a planning tool for disciplined and deliberative case management that business clients routinely expect of their professionals outside of bankruptcy. The pervasiveness of this practice supports the conclusion that budgets are effective to focus the scope of the engagement and the efficiency in staffing.

Moreover, the concern about the alleged unpredictability of bankruptcy engagements in particular is overstated. All budgets—whether for a bankruptcy case, a litigation matter, a chapter 13 debtor, a law firm, a business, or the government—are an informed estimate of expectations, identifying that which is predictable based on historical experience and that which is truly volatile and beyond the budgeter's control.

Indeed, budgets for professional fees are already a regular feature of chapter 11 cases. Secured lenders typically require debtors and their counsel to prepare budgets as a condition to the estate's use of cash collateral. Similarly, parties in the case, including the debtor and official committees, often insist that examiners prepare and file budgets and work plans.

The USTP concludes that no changes are necessary to the budget and staffing guidelines based on these comments.

15) ***Comment:*** **Budgets should not be mandatory.**

Response: Only the courts can award compensation and determine what requirements professionals must satisfy consistent with section 330 to be paid from the estate. The Appendix B guidelines are internal procedural guidelines that the USTP will follow ''in the absence of controlling law or rules in the jurisdiction'' in reviewing applications for compensation and determining whether to comment or object. Guidelines ¶ A.4. In some instances, the Guidelines reflect disclosures, standards, or procedures that the United States Trustee may consider presumptively reasonable or presumptively unreasonable when deciding whether to object to fee applications.

After considering these comments, the USTP revised the Guidelines to clarify that, although budgets are not mandatory, the parties may agree to the budgets or the court may require them. Guidelines ¶¶ C.6., E.1. If the parties do not consent, the United States Trustee generally will move the court to require budgets of estate-paid attorneys in larger chapter 11 cases consistent with the Guidelines.

16) ***Comment:*** **Budgets should be non-binding and should be able to be amended.**

Response: The USTP agrees. The revised Appendix B guidelines provide that ''[b]udgets can and should be amended as necessary to reflect changed circumstances or unanticipated developments.'' Guidelines ¶ E.3. Similarly, the Guidelines request an explanation if the fees sought in the application exceed the budget during the application period by at least 10%, and whether the applicant has discussed the variance with the client. Guidelines ¶¶ C.2.l., C.5.b.; Exhibit C.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

17) ***Comment:*** **Time spent preparing budgets and staffing plans should be compensable.**

Response: The USTP agrees. For this reason, the Appendix B guidelines, both as originally proposed and as revised, include a suggested project category for ''budgeting.'' Guidelines ¶ C.8.b.; Exhibits C-1, D-1.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

e. PROJECT CODES AND CATEGORIES

18) ***Comment:*** **The project categories and sub-categories create 480 possible coding combinations, which is unworkable and unduly complicated without a corresponding benefit.**

Response: The Appendix A guidelines contain suggested project codes that professionals have used for years to categorize their time in fee applications. To further assist the court and parties in reviewing fee applications, the USTP had proposed additional disclosures in the initial draft of the Appendix B guidelines in the form of sub-categories for the project codes, substantially comparable to the UTBMS activity codes used with task codes in legal billing.

Based on these comments to streamline project coding, the USTP revised the Appendix B guidelines to eliminate the proposed sub-categories. The Appendix B guidelines will continue to use the project categories from the Appendix A guidelines with slight modifications. First, the USTP added a ''Budgeting'' category to reflect the intention to seek the use of budgets for the applicant in most cases that satisfy the threshold. Second, to provide better transparency and accountability, the USTP extracted and separately categorized certain tasks that are included in the broader Appendix A project categories.[8] *See* Guidelines ¶ C.8.b. All but one of these tasks (''Reporting'') is included in the long-established UTBMS bankruptcy code set.

Based on these revisions to the project categories, the USTP conformed other requested disclosures that incorporate the modified project categories, such as the budgets and the reconciliation of fee applications to budgets. *See* Exhibits C-1, D-1.

The USTP retains discretion not to seek coding or to seek case-specific coding if the standard template does not meet the needs of a particular case.

f. CO-COUNSEL AND STAFFING EFFICIENCIES

19) ***Comment:*** **The USTP should encourage the use of co-counsel for more routine or ''commoditized'' work, such as preference actions and claims objections, to bring efficiencies to the bankruptcy estate.**

Response: This suggestion was raised by several commenters, including the NBC, Professor Lubben, and Togut, Segal & Segal. It is also similar to the local counsel requirement in the District of Delaware. The USTP agrees that applicants should consider how to assign and staff more routine and ''commoditized'' work, and whether lower cost co-counsel should be retained for discrete types of work, provided that the use of multiple section 327(a) bankruptcy counsel must not mask disqualifying conflicts and connections, and co-counsel must avoid duplication of services.

The USTP revised the Appendix B guidelines to provide that retention applications should clearly specify lead counsel and clearly delineate secondary counsel's responsibility. *See* Guidelines ¶ F. In general, all bankruptcy matters should presumptively be handled by lead counsel unless the retention application specifically assigns them to secondary counsel. The retention application should not contain indeterminate or open-ended duties for secondary counsel, and retention of secondary counsel must benefit the estate.

The USTP will carefully review the proposed co-counsel retention to ensure that the lead counsel does not have a pervasive conflict requiring disqualification that the retention of secondary counsel is designed to conceal or ignore. The USTP will also monitor the fees of both lead and secondary counsel for services that are unnecessary, duplicative, or not beneficial to the estate.

At the public meeting, one commenter suggested that the USTP should also include a proposed form of order for the retention of co-counsel. Public Meeting Tr., pp. 99-100. In developing a proposed form of order, the USTP will benefit from experience with these Guidelines and declines to address a specific form of order at this time.

g. ELECTRONIC DATA

20) ***Comment:*** **Submitting electronic billing records creates confidentiality concerns.**

Response: Fee applications with detailed invoices are routinely filed and served on parties in a particular case through the courts' Case Management/Electronic Case Filing (CM/ECF) system. In addition, once filed this information is available to the general public through the courts' Public Access to Court Electronic Records (PACER) system. There should be no confidentiality concern in providing the same data in a format that can be queried and sorted.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

21) ***Comment:*** **Submitting electronic data may require firms to revamp their billing software.**

Response: The USTP suggested using LEDES standards because this is the universal standard adopted by law firms, clients, and e-billing vendors and because no particular software is required. *See www.LEDES.org.* Because it is an open standard, a firm can provide electronic data in the same format in which it maintains the data and does not need to modify its existing billing software.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

h. APPLICATIONS FOR EMPLOYMENT AND RELATED VERIFICATIONS

22) ***Comment:*** **The USTP has no statutory authority to address compensation issues at the retention stage.**

Response: The USTP is statutorily required to adopt uniform guidelines for the review of professional compensation applications. 28 U.S.C. § 586(a)(3)(A). The review of fee applications under section 330 of the Bankruptcy Code is inextricably intertwined with the terms and conditions of the applicant's retention under section 327 or 1103. The NBC, among others, supports the view that a closer consideration of the terms of compensation at the outset of the case can lead to less controversy later and benefit both the professionals and the estate. *See* Public Meeting Tr., p. 74. The USTP's adoption of uniform guidelines governing the review of applications for retention under sections 327 and 1103 of the Bankruptcy Code on issues that are relevant to fee applications benefits professionals, the court, and parties in interest by providing predictability in enforcement and is consistent with the USTP's statutory mandate.

The NBC proposed adding a client verification at the retention stage. The USTP agrees and has modified the Appendix B guidelines to provide that clients supply a verified statement on retention. Guidelines ¶ D.2. This is in lieu of the previously requested client verification with the fee application. The proposed verification may explain the steps the client took to ensure compensation was comparable to the non-bankruptcy market, to control legal fees as it would outside of chapter 11, and to negotiate rates.

[8] ''Reporting'' was extracted from the existing ''Case Administration'' category. ''Assumption and Rejection of Leases and Contracts'' was extracted from ''Asset Disposition.'' ''Avoidance Action Analysis'' was extracted from ''Litigation.'' ''Corporate Governance and Board Matters,'' ''Real Estate'' and ''Non-working Travel'' span across a number of the existing Appendix A project categories.

The USTP concludes that no other changes are necessary to the Guidelines based on these comments.

i. FEE APPLICATIONS

23) ***Comment:*** **The USTP exceeds its statutory authority when it reviews and comments on interim fee applications filed under section 331. The USTP may only comment on final fee applications under section 330.**

Response: Consistent with its statutory duties, the USTP has commented on and objected to thousands of interim fee applications, and is unaware that any party has challenged the USTP's right to appear and be heard in that litigation. In addition to 28 U.S.C. § 586(a)(3), section 307 of the Bankruptcy Code gives the United States Trustee broad authority to raise, to be heard, and to appear on any issue in any case. Moreover, deferring all objections to the final fee application would seem unfair and unduly prejudicial to the professionals, in addition to being unduly burdensome to the USTP, the court, and other parties in interest.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

24) ***Comment:*** **The Appendix B guidelines fail to consider that for many debtors a significant portion of estate-paid work is for non-bankruptcy matters. Other practitioners stated that the Guidelines require debtors' attorneys to speculate about what legal fees the debtor would have incurred outside of bankruptcy, which will be costly and of no value.**

Response: The USTP originally included a disclosure to address the complaint that the public misunderstands professional fees in bankruptcy because some of the fees that the court must approve may not result from the bankruptcy filing. Thus, the fee application may include fees for matters for which the debtor routinely engaged counsel before the bankruptcy filing. The USTP did not anticipate that providing this data would be time-consuming or arduous because applicants could provide historical data. Nevertheless, the group of 119 law firms, representing a broad segment of the bankruptcy legal community and including many of the firms that are routinely involved in the larger cases meeting the threshold, stated that this disclosure ''serves no useful purpose.'' 119 Law Firms' Initial Letter, p. 7. Based on this comment, the USTP eliminated the disclosure.

j. COMPENSATION FOR PARTICULAR MATTERS

25) ***Comment:*** **Redaction of bills or invoices for privileged or confidential information should be compensable.**

Response: The USTP has re-evaluated its position in light of these comments. It is important that clients receive informative invoices that may contain privileged or confidential information. But professionals whose compensation will be paid by the bankruptcy estate know at the inception that their billing records must be publicly filed and should draft time entries and prepare invoices both to minimize redactions and to avoid vague descriptions. Therefore, the time for redacting invoices that are submitted under a monthly compensation order or filed with the fee application should be kept to a minimum and bear some reasonable relationship to the overall fees sought. Guidelines ¶ B.2.f.

26) ***Comment:*** **The Appendix B guidelines prohibit the use of transitory professionals and the attendance of multiple attorneys at meetings or hearings.**

Response: This comment is inaccurate. In these two instances, the Guidelines instruct the United States Trustee to seek an explanation of practices that could be evidence of billing abuses. Guidelines ¶¶ B.2.c., e. An adequate explanation will avert an objection on this guideline.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

27) ***Comment:*** **Precluding compensation for preparing monthly invoices is inappropriate.**

Response: The ability to bill monthly is an accommodation to professionals to enable them to avoid the delay incumbent in the interim fee application process. The professional's decision to avail itself of this opportunity should not cost the estate additional money. The United States Trustee may object if a professional seeks compensation for the preparation of monthly invoices that is duplicative of fees that the professional later seeks for the preparation of the fee application related to those invoices. Based on these comments, the USTP has revised the Appendix B guidelines to clarify its position. *See* Guidelines ¶ B.2.f.

28) ***Comment:*** **Attorneys should be entitled to compensation for litigating and negotiating objections to fee applications.**

Response: The Appendix B guidelines provide that *''[r]easonable* charges for preparing interim and final fee applications . . . are compensable,'' (¶ B.2.f.) (emphasis in original), because the preparation of a fee application is not required for lawyers practicing in areas other than bankruptcy as a condition to getting paid. But time spent beyond the initial preparation of the applications, including without limitation time spent explaining the fees, negotiating objections, and litigating contested fee matters, is properly characterized as work that is for the benefit of the professional, and not the estate. Such services are therefore not compensable under 11 U.S.C. § 330(a)(4)(ii) because they are neither reasonably likely to benefit the debtor's estate nor necessary to the administration of the bankruptcy case. This result is consistent with non-bankruptcy practice because law firms typically do not charge clients for time spent explaining or defending a bill. Thus, the USTP's position is that awarding compensation for fee application matters beyond the initial preparation of the application is inappropriate, unless those activities fall within an applicable and judicially recognized exception (such as litigating an objection to the application where the applicant substantially prevails).

The USTP has clarified its position in the Guidelines based on these comments. *See* Guidelines ¶ B.2.f.

29) ***Comment:*** **Attorneys should always be able to charge their highest rate, and are not bound by their lower ''home forum'' rate when the bankruptcy case is pending in a higher-priced market, for example, New York.**

Response: The Appendix B guidelines provide that the USTP will not object to attorneys charging their ''home forum'' rate regardless of where a case is pending. Guidelines ¶ B.2.l. This recognizes that a substantial component of a professional's billing rate is overhead attributable to the professional's home office, and does not penalize professionals (or their clients in their choice of professionals) solely because of the forum in which the case is pending.

By contrast, the group of 118 law firms (formerly 119) proposed that, if a lawyer from St. Louis, for example, traveled to New York for a bankruptcy case, the St. Louis lawyer should charge New York rates. 118 Law Firms' Supplemental Letter, p. 2. But the 118 law firms would not have the New York lawyer traveling to St. Louis charge St. Louis rates. This result is illogical because it is not based on the professional's overhead (or even the forum in which the case is pending). Additionally, travel costs are typically reimbursed by the estate, and allowing professionals to receive both a rate

higher than their home forum rate and reimbursement for travel costs is unreasonable.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

30) ***Comment:*** **Routine expenses, such as copies and long distance calls, should not require explanation. Similarly, referring to telephone charges as ''overhead'' might result in objection to long distance and conference charges currently allowed.**

Response: Clients outside of bankruptcy increasingly refuse to reimburse expenses, even routine ones, that clients consider part of a firm's overhead. Thus, the Appendix B guidelines provide that the United States Trustee will ordinarily object to expenses not customarily charged by the applicant to its non-bankruptcy clients and by the applicant's peers in the market, as well as overhead expenses incident to the operation of the applicant's office. Guidelines ¶¶ B.3.c., e.

31) ***Comment:*** **Routine objection to summer associate time and non-working travel at full rate are not market-based.**

Response: These commenters did not provide any support for the contention that sophisticated clients routinely pay for summer associate time or full rates for non-working travel. Indeed, the USTP understands that it has long been customary for firms to write off the time of their summer associates, which is more properly attributed to recruitment and training. And clients increasingly refuse to pay for first or second year associates working on their matters.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

32) ***Comment:*** **Fee enhancements should be based on agreements between counsel and clients, subject to court approval.**

Response: A central principle of the Appendix B guidelines is that bankruptcy fees should be reasonable, fully disclosed, and consistent with market norms. For this reason, it is problematic when bankruptcy professionals seek to compel the estate, through their clients, to pay them a fee enhancement or a bonus that is not based on their contractual agreement and disclosed and approved at retention. An applicant's request for fees above the amounts it initially represented in its retention application remains subject to section 330 of the Bankruptcy Code, including the comparability requirements of section 330(a)(3)(F), and other applicable law. Therefore, fee enhancements should be available only in extraordinary circumstances and solely to the extent that a professional outside of bankruptcy would be entitled to demand fees from the client in excess of a contractually agreed upon amount.

Upon further consideration, the USTP concludes that the issue of fee enhancements should, at this time, be addressed on a case-by-case basis and thus deleted the considerations pertaining to fee enhancements from the Guidelines.

k. FEE REVIEW ENTITIES

33) ***Comment:*** **Fee examiners and fee committees are appropriate only if the court believes they will be helpful. Similarly, special fee review procedures should not be included in the Appendix B guidelines.**

Response: The appointment of a fee examiner or a fee committee is a decision reserved to the judgment of the bankruptcy court. To enhance the transparency and integrity of the fee review process, the Guidelines simply offer several alternative models that the USTP may suggest in a particular case. Guidelines ¶ G.

The success of the fee examiner in the case of *In re General Motors Corp.,* No. 09–50026 (Bankr. S.D.N.Y. filed June 1, 2009), and of the fee committee in the case of *In re Lehman Brothers Holdings, Inc.,* No. 08–13555 (Bankr. S.D.N.Y. filed Sept. 15, 2008), has demonstrated that alternative fee review arrangements can have salutary effects. The fee examiner and fee committee have identified both discrete issues with the applications of certain professionals and global issues affecting compensation sought by many professionals. When possible, they have negotiated an acceptable resolution of those issues. When agreement could not be reached, they have presented the issues to the court in an organized manner that eased the burden of fee review on the court and others.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

34) ***Comment:*** **The costs of fee examiners should be borne by the federal government.**

Response: Presumably the commenter intended that the USTP bear these costs. The Bankruptcy Code is premised on bankruptcy estates paying the costs of administration, including professional fees. *See, e.g.,* 11 U.S.C. §§ 330, 503(b), 507(a)(2); 28 U.S.C. § 1930. Fee examiners and fee committees are typically sought in cases that are administratively solvent and very complex to ease the burden of fee review on the court and parties in interest. It is reasonable that the costs of administration of the estate include the cost of a fee examiner or a fee committee.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

l. MISCELLANEOUS COMMENTS

35) ***Comment:*** **One commenter stated that firms should not have to disclose all rate increases under all circumstances. Rather, the commenter proposed that firms should only disclose annual rate increases exceeding 10% and should not have to disclose any ''standard seniority step ups'' regardless of amount or any annual increases of 10% or less.**

Response: The cumulative cost to the estate of regular rate increases of, for instance, 10% per year over the life of a lengthy chapter 11 case is significant. This additional cost would be compounded by annual step increases as attorneys advance in seniority. At a minimum, law firms should disclose the additional cost being borne by the estate and its creditors as a result of increased rates so the parties, the court, and the United States Trustee can evaluate whether the requested compensation is reasonable, comparable, and customary.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

36) ***Comment:*** **The guideline on billing a disproportionate amount of time in .5 and 1.0 hour increments is not realistic.**

Response: This is not a change from the existing Appendix A guidelines. Moreover, routinely billing in those increments can be suggestive of billing abuses and failure to carefully track an attorney's time.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

37) ***Comment:*** **The Appendix B guidelines lack consequences that would give professionals incentives to comply with them.**

Response: The Guidelines are internal procedural guidelines that the USTP will follow in reviewing and commenting on fee applications in the absence of controlling law or rules in a jurisdiction. The Guidelines do not supersede local rules, court orders, or other controlling authority. Only the court has the authority to award compensation and reimbursement under section 330 of the Bankruptcy Code and to provide incentives for complying with the Guidelines. Guidelines ¶¶ A.1.-5.

The USTP concludes that no changes are necessary to the Guidelines based on this comment.

38) ***Comment:*** **Greater transparency in fee applications would reduce concerns and address allegations that professionals are overly compensated for unnecessary work and diverting value.**

Response: One of the USTP's stated goals has been to bring greater transparency to the compensation process in chapter 11 cases and to foster public confidence in the integrity of that process.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

C. SUMMARY OF SIGNIFICANT CHANGES AND ANALYSIS OF COMMENTS RECEIVED AFTER POSTING REVISED DRAFT GUIDELINES FOR FINAL COMMENT ON NOVEMBER 2, 2012

1. Summary of Significant Changes Following Posting of Revised Draft Appendix B ***Guidelines for Final Comment on November 2, 2012***

a. DISCLOSURES OF CUSTOMARY AND COMPARABLE COMPENSATION: Applicants should include a concise description of the methodology used to calculate hourly blended rates if the calculation includes any fee arrangements not billed by the hour. Guidelines ¶ C.3.a.iv.(d).

b. BUDGETS: Absent the parties' consent, the United States Trustee may seek a court order encouraging the prospective sharing of budgets by counsel for the debtors-in-possession and the official committees. Guidelines ¶ E.8.

c. CO-COUNSEL RETENTION: Guidance regarding the use of secondary counsel, either efficiency or conflicts co-counsel, has been clarified as follows:

1) When a new matter within the authorized scope of engagement for efficiency or conflicts co-counsel is assigned by lead counsel to that co-counsel, co-counsel need not file a supplemental retention application and obtain an amended order. Rather, co-counsel should file a supplemental declaration in accordance with Bankruptcy Rule 2014 and provide notice of the filing sufficient to afford parties in interest an opportunity to object. Nevertheless, if the matter does not fall within the authorized scope of engagement, co-counsel should file a supplemental retention application and obtain an amended order to expand the scope of the engagement to include that matter. Guidelines ¶ F.1.c.

2) The use of conflicts counsel to litigate a specific matter as to which lead counsel's involvement is limited to negotiation is generally objectionable, and the United States Trustee retains discretion whether to object in a particular situation. Negotiation without the ability to litigate against a party usually will render a lawyer disqualified from the matter, and such disqualification cannot be cured by retention of conflicts counsel to handle the litigation. Guidelines ¶ F.3.c.

d. ORDINARY COURSE PROFESSIONALS: The Guidelines will not apply to counsel retained and paid as an ordinary course professional pursuant to appropriate court order or local rule (''ordinary course professional''), unless the professional is required to file a fee application under such court order or local rule. Guidelines ¶ A.3.

e. ELECTRONIC BILLING RECORDS: The applicant should provide electronic billing data to the court, the debtor-in-possession (or trustee), official committees, the United States Trustee, and the fee review committee, examiner or auditor. Other parties in interest should receive the electronic billing data upon request. Guidelines ¶ C.10.

f. APPLICATIONS FOR EMPLOYMENT AND RELATED VERIFICATIONS: Applicants who represented the client in the 12 months prepetition should disclose in the application for employment specific and material information regarding their prepetition billing rates and financial terms to explain the reasons for any difference between prepetition and postpetition billing rates and terms. Guidelines ¶ D.1.c. In the verification provided by an applicant who also represented the client prepetition, the disclosure of the applicant's ''effective rate'' has been deleted, and instead, the applicant should disclose and explain any postpetition change in ''billing rates and material financial terms.'' *Id.* The client verification has been revised to delete the undefined term ''market rate'' and instead to use terms expressly contained in the statute. Thus, the client should disclose the steps taken to ensure that the applicant's billing rates and terms are comparable to the applicant's billing rates and terms for other engagements and to those of other comparably skilled professionals. Guidelines ¶ D.2.b.-c.

g. MONTHLY INVOICES: The United States Trustee will not object to the extent that monthly invoices under a monthly compensation order effectively serve as the interim fee applications and the applicant seeks no additional compensation for preparing the interim fee application because the time was expended on the related monthly invoices (or vice versa). Guidelines ¶ B.2.f.(iv).

h. ''FEES ON FEES'': The USTP's position on fees for contesting or litigating objections to applications for compensation has been amended. ''Fees on fees'' are generally inappropriate unless they fall within a judicial exception applicable within the district allowing such fees. The word ''binding'' has been deleted from the exception. Guidelines ¶ B.2.g.

i. STEP INCREASES: The disclosure of rate increases and calculations of their effect may exclude annual ''step increases'' historically awarded in the ordinary course to attorneys throughout the firm due to advancing seniority and promotion, if the firm distinguishes between ''step increases'' and other types of rates increases. Nevertheless, applicants should not attempt to characterize actual rate increases that are unrelated to an attorney's advancing seniority and promotion as ''step increases'' in effort to thwart meaningful disclosure or billing discipline. If a firm does not distinguish between ''step increases'' and other types of rate increases, it should disclose and explain all rate increases. Guidelines ¶ B.2.d.

j. OVERHEAD: Actual charges for multi-party conference calls related to the case will be considered a reimbursable expense, not overhead. Guidelines ¶ B.3.e.

k. EFFECTIVE DATE: The effective date of the Guidelines has been changed from July 1, 2013 to November 1, 2013, to afford sufficient time for the courts to incorporate the Guidelines into local rules and practice and for the bankruptcy bar to become familiar with the new disclosure provisions.

l. EXHIBITS: The Guidelines have been revised to incorporate certain information that was previously included in exhibits and to renumber the remaining exhibits. The project categories and expense categories formerly at Exhibit E have been incorporated into the Guidelines at ¶ C.8. (project categories for billing records) and ¶ C.12. (expense categories). The ''United States Trustee Considerations on the Retention and Compensation of Co-Counsel'' formerly at Exhibit B have been incorporated into the Guidelines at ¶ F.

2. Discussion of Public Comments after Posting Revised Draft for Final Comment on *November 2, 2012*

The USTP received six comment letters in response to the USTP's posting of the revised draft of the Appendix B guidelines. Many of the comments contained several sub-parts. The USTP appreciates the comments and has considered each carefully. Those

comments that simply repeated earlier arguments against any reform or improvement of the fee review process were addressed in the preceding analysis of the initial draft, *see* ¶ B.2. above, and will not be revisited here. The USTP's responses to the most significant comments are discussed below, and the comments are categorized by the same subject matters used above in ¶ B to categorize comments on the initial draft.[9]

a. GENERAL COMMENTS

N/A

b. SCOPE OF THE APPENDIX B GUIDELINES

1) ***Comment:*** **Use of the Appendix B guidelines by the United States Trustee should be discretionary, rather than mandatory, in cases that meet the revised threshold.**

Response: Consistent with 28 U.S.C. § 586(a)(3)(A), the Appendix B guidelines are internal procedures that the United States Trustees will apply in reviewing applications for compensation filed by attorneys employed under section 327 or 1103 in chapter 11 cases that meet the threshold. The Guidelines provide transparency in the USTP's review of fee applications by providing notice of the USTP's policy positions in the absence of controlling law or rules in the jurisdiction. They also create greater efficiency in the review of the applications by the court, parties in interest, as well as the USTP, and provide uniformity and predictability in enforcement nationally. In administering any particular case, the United States Trustee may exercise discretion in applying the Guidelines based on the facts of that case. The exercise of such discretion in a specific case will not be routine or obviate the Guidelines in any particular district.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

c. COMPARABLE COMPENSATION DISCLOSURES

2) ***Comment:*** **The disclosure of blended rates for comparable services should exclude rates from dissimilar areas of practice, such as insurance defense.**

Response: This comment misconstrues the statutory standard specified in section 330(a)(3)(F). That section expressly requires that reasonableness should be determined ''based on the customary compensation . . . in cases other than cases under this title [11].'' 11 U.S.C. § 330(a)(3)(F). Thus, a disclosure of blended rates that takes into account the rates charged in non-bankruptcy matters simply reflects Congress's stated intent that bankruptcy practitioners be compensated on terms comparable to other areas of practice, and no worse and no better. *See* Guidelines ¶ C.3. The applicant retains the right, and is encouraged, to supplement its disclosure with additional information explaining the different rate structures of the various practice groups in the firm and their impact on the firm's blended rate.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

3) ***Comment:*** **The Appendix B guidelines permit bankruptcy boutiques to exclude estate-billed engagements from the blended rate computation for comparable services, but do not permit full-service law firms to do so. This exclusion should apply to all law firms.**

Response: This comment may misunderstand the Appendix B guidelines as they apply to full-service firms. Consistent with section 330(a)(3)(F), the blended rate computation for comparable services rendered by full-service firms is based on non-bankruptcy matters billed by the firm, but not matters arising in bankruptcy cases (whether estate-paid or not). Guidelines ¶ C.3.a.iv.(a). Because bankruptcy boutiques often do not conduct a significant volume of work in non-bankruptcy matters, they are subject to a slightly different computation, which includes non-estate paid bankruptcy work (as the closest approximation to what those firms would likely bill outside of bankruptcy) while continuing to exclude estate-paid work. Guidelines ¶ C.3.a.iv.(b). There is no need to extend this specific exclusion to full-service firms because all bankruptcy-related work is already excluded from the blended rate computation for full-service firms.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

4) ***Comment:*** **The limited safe harbor on the disclosure of comparable billing data should be an absolute safe harbor from a United States Trustee objection or further disclosure.**

Response: The United States Trustee has a statutory duty to review and comment on applications for compensation as ''appropriate.'' 28 U.S.C. § 586(a)(3)(A). Accordingly, the USTP cannot prospectively limit the United States Trustee's prosecutorial discretion or authority to remedy billing abuses or insufficient disclosures. The limited safe harbor, however, is an effort to provide professionals with some comfort that making these types of disclosures will normally be sufficient to avoid the United States Trustee seeking further comparable billing information from the applicant. Guidelines ¶ C.4. Among other things, an absolute safe harbor would lead to the anomalous result where a party that fully disclosed that its bankruptcy rates are higher than its non-bankruptcy rates would be immune from an objection while admitting that it has violated the statutory standard for reasonable compensation.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

5) ***Comment:*** **The comparable billing data is proprietary, should be sought only from external sources, should be provided confidentially to the United States Trustee, and should only be obtained through discovery by the United States Trustee, not through proactive disclosure.**

Response: The suggestion that specific disclosures of customary and comparable compensation should be provided only upon request instead of proactively by the applicant improperly shifts the evidentiary burden under section 330 away from the applicant and onto the court, the United States Trustee, and other parties in interest. An applicant seeking to be paid by the bankruptcy estate under section 330 has an affirmative burden to prove that the compensation sought is reasonable, including by offering evidence sufficient to satisfy section 330(a)(3)(F). The court and other parties in interest, in addition to the United States Trustee, are entitled to information necessary to evaluate the reasonableness of an application for compensation. The statute and public interest requires transparency of the bankruptcy compensation process for the multiple stakeholders in the case. Finally, it is inefficient and uneconomical for the court and parties to have the United States Trustee propound identical discovery requests in every larger chapter 11 case when the United States Trustee will presumptively seek this information.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

6) ***Comment:*** **If an applicant includes a discounted or alternative arrangement in the blended hourly rate disclosures, the applicant should also explain its calculation methodology. Applicants should be required to disclose the specifics of any discount or**

[9] Summary of Significant Changes and Analysis of Comments Received After Posting Initial Draft Guidelines for Comment on November 4, 2011.

other alternative billing arrangement in non-bankruptcy matters.

Response: The USTP agrees that a concise statement of methodology on how the applicant calculated the blended hourly rates would be helpful and would enable those reviewing the information to determine whether the disclosed data fully and accurately reflects the information necessary for the comparison contemplated by section 330. The Appendix B guidelines have been so amended. *See* Guidelines ¶ C.3.a.iv.(d). Because the effect of discounts and alternative billing arrangements should generally be reflected in the blended hourly rate, a requirement that applicants disclose the specifics of every discount would be unlikely to produce a benefit that would outweigh the burden of making such disclosures. If the blended hourly rate does not capture the effect of discounts and alternative billing, the explanation of how the rate was calculated should explain this and may lead to further inquiry by the United States Trustee. The USTP adopted a middle ground by seeking blended rates and explanations rather than other potentially useful and informative disclosures that are more burdensome.

7) ***Comment:*** **In its response to the comments to the Appendix B guidelines as initially posted November 4, 2011, the USTP stated that ''[a] law firm that maintains that it is impossible to provide'' information relevant to the blended rate disclosures ''may explain in the fee application and attest in its statement why it is unable to do so.''** *See* **Response to Comment 9 in ¶ B.2.c. above. A commentator replied that the standard should be changed from ''impossible'' to ''impracticable,'' and some applicants may not easily produce the requested disclosures because it is cost prohibitive to produce.**

Response: The USTP agrees that an impracticability standard is more appropriate. Nevertheless, as the USTP explained in its response to the prior comments, most law firms that are retained in the larger cases that meet the threshold should have the technology and resources necessary to provide this information. *See, e.g.,* Response to Comment 9 in ¶ B.2.c. above; Response to Comment 21 in ¶ B.2.g. above. Therefore, with rare exception, cost should not be a basis for asserting impracticability in providing the blended rate disclosures.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

d. BUDGETS AND STAFFING PLANS

8) ***Comment:*** **The sharing of budgets and staffing plans between debtors-in-possession and official committees should be voluntary.**

Response: The USTP encourages counsel for the debtors-in-possession and official committees to prospectively share their respective budgets once agreed to by their clients or amended, subject to an appropriate confidentiality agreement and redaction to protect privileged or confidential information. As the USTP previously explained in response to the comments to the Appendix B guidelines as originally posted November 4, 2011, the confidential and prospective exchange of budgets between these fiduciaries facilitates communication, potentially avoids duplication, and promotes efficiency in the administration of the bankruptcy case, consistent with the requirements of section 1103 of the Bankruptcy Code. *See* Response to Comment 13 in ¶ B.2.d. above. The USTP has clarified the Appendix B guidelines to provide that, in the absence of the parties' agreement, the United States Trustee may seek a court order expressly authorizing the prospective sharing of budgets by counsel for the debtors-in-possession and the official committees. Guidelines ¶ E.8.

9) ***Comment:*** **Budgets should not be required; they should only be encouraged. Moreover, even if not required, detailed budgets should not be sought in every case because they are unnecessary, costly, and burdensome and constrain the professionals' flexibility in handling the case. Other commenters said that the USTP-sought budgets would be redundant of cash collateral and debtor-in-possession (''DIP'') loan budgets already used in every case.**

Response: In its response to the comments to the Guidelines as originally posted November 4, 2011, the USTP highlighted that it had revised the Appendix B guidelines to provide that the United States Trustee will seek budgets and staffing plans only with the consent of the parties or by court order. *See* Response to Comment 15 in ¶ B.2.d. above. The USTP also fully addressed the concerns about the effectiveness and burden to applicants of providing budgets and staffing plans. *See* Response to Comments 12 and 14 in ¶ B.2.d. above. It is undisputed that clients frequently require budgets inside and outside of bankruptcy, and that secured lenders in bankruptcy cases typically require debtors and their counsel to prepare budgets as a condition to the estate's use of cash collateral. The USTP believes that such sound practices ought to be followed as part of the fee review process. Moreover, the budgeting guidelines are not redundant of cash collateral and DIP loan budgets, which typically include a single line-item for professional fees, insofar as the guidelines include a reasonable amount of additional and relevant detail, such as a description of major areas of activity.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

10) ***Comment:*** **Budgets should not use the bankruptcy project or task codes.**

Response: As the USTP explained in its response to the comments to the Guidelines as originally posted November 4, 2011, budgets serve at least two important purposes: they help ensure that professional fees will be incurred in a more disciplined manner, and are a helpful tool to evaluate applications for compensation. *See* Response to Comments 12 and 14 in ¶ B.2.d. above. By using a common set of project and task codes, the Appendix B guidelines serve both of these purposes by ensuring that the budgeted and actual fees can be directly and transparently compared. *See* Exhibit D–1.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

11) ***Comment:*** **Budgets should not be sought during the first sixty days of a case.**

Response: The Appendix B guidelines do not impose an inflexible timetable for adopting a budget. Consistent with practices for submitting cash collateral and DIP loan budgets, the USTP's position is that budgets should be adopted earlier, rather than later.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

e. PROJECT CODES AND CATEGORIES

N/A

f. CO-COUNSEL AND STAFFING EFFICIENCIES

12) ***Comment:*** **No supplemental application for employment and corresponding order should be necessary when lead counsel transfers a matter to conflicts co-counsel.**

Response: The USTP has clarified the Appendix B guidelines to provide that when a new matter within the authorized scope of engagement for either efficiency or conflicts co-counsel is assigned by lead counsel to that co-counsel, co-counsel need not file a

supplemental retention application and obtain an amended order. Rather, co-counsel should file a supplemental declaration in accordance with Bankruptcy Rule 2014, and provide notice of the filing sufficient to afford parties in interest an opportunity to object. Nevertheless, if the matter does not fall within the authorized scope of engagement, co-counsel should file a supplemental retention application and obtain an amended order to expand the scope of the engagement to include that matter. Guidelines ¶ F.1.c.

13) ***Comment:*** **The Appendix B guidelines should not provide that the USTP will object to the use of conflicts counsel in situations in which lead counsel may negotiate, but not litigate, a particular matter.**

Response: The USTP has revised the Appendix B guidelines to clarify that the use of conflicts counsel to litigate a specific matter as to which lead counsel's involvement is limited to negotiation is generally objectionable, and the United States Trustee retains discretion whether to object in a particular situation. Negotiation without the ability to litigate against a party usually will render a lawyer disqualified from the matter, and such disqualification cannot be cured by retention of conflicts counsel to handle the litigation. Guidelines ¶ F.3.c.

14) ***Comment:*** **The Appendix B guidelines should clarify that they do not limit the use of ordinary course professionals, local counsel, or special counsel.**

Response: The USTP agrees and has amended the Appendix B guidelines accordingly. *See* Guidelines ¶ B.2.c.

15) ***Comment:*** **The Appendix B guidelines should not apply to ordinary course professionals or special counsel.**

Response: The Appendix B guidelines have been clarified to provide that they do not preclude the use of counsel retained and paid as an ordinary course professional pursuant to appropriate court order or local rule. Guidelines ¶ B.2.c. The USTP acknowledges that ordinary course professionals are distinguishable from other counsel retained by the estate, including special counsel, because the court's order authorizing the retention or local rule governs whether and when they are required to file a fee application. Thus, the Appendix B guidelines have been further clarified to provide that generally they will not apply to an ordinary course professional, unless the professional is required to file a fee application under the court's order authorizing retention or local rule. Guidelines ¶ A.3.

g. ELECTRONIC DATA

16) ***Comment:*** **Electronic records should be provided only to the debtor, official committees, and the United States Trustee.**

Response: Section 330 provides for an open and public bankruptcy compensation process whereby all parties in interest and the court have access to relevant information necessary to evaluate whether the applicant has sustained its burden that the compensation sought to be paid from the estate is reasonable. Nevertheless, the USTP agrees that it is likely more efficient that, in the ordinary course, an applicant provide the billing data in an electronic format to the court, the United States Trustee and those parties in interest most likely to use the information electronically, provided that other parties in interest may obtain it upon request. Accordingly, the USTP has revised the Appendix B guidelines to provide that an applicant should provide electronic billing data to the court, the debtor in possession (or trustee), official committees, the United States Trustee, and the fee review committee, examiner, or auditor. Other parties in interest should receive the electronic billing data upon requesting it from the applicant. Guidelines ¶ C.10.

h. APPLICATIONS FOR EMPLOYMENT AND RELATED VERIFICATIONS

17) ***Comment:*** **If an applicant has represented the client at any time during the 12 months prepetition, then it should disclose in the retention application the specifics of its billing arrangement, including discounted rates, write-down policies, or other material terms affecting the billing and compensation arrangement. Similarly, if the applicant has changed the terms of its billing arrangements with the client during the postpetition period, the applicant should explain why.**

Response: The USTP agrees that these specific disclosures and explanations would be helpful and meaningful. The USTP has amended the Appendix B guidelines to provide that applicants who represented the client in the 12 months prepetition should disclose specific and material information regarding their prepetition billing rates and financial terms to explain the reasons for any difference between prepetition and postpetition billing rates and terms. Guidelines ¶ D.1.c.

18) ***Comment:*** **The applicant's disclosure with the application for employment currently asks whether the applicant is billing its client at the same ''effective rate'' as was in effect prepetition. This may cause confusion because alternative arrangements may not readily translate into hourly rates and elsewhere the Appendix B guidelines use the term blended hourly rate.**

Response: The USTP agrees and has amended the Appendix B guidelines to delete references to ''effective rate.'' Instead, the applicant should disclose and explain any postpetition change in ''billing rates and material financial terms.'' Guidelines ¶ D.1.c.

19) ***Comment:*** **The client verification with the application for employment should not verify that the engagement is at ''market rate.'' Rather, the client should only verify that the rate and terms are proper under the circumstances because clients should be free to select the best counsel for the engagement.**

Response: The Bankruptcy Code requires that the compensation for an estate-paid engagement be reasonable as compared to customary compensation for similarly skilled practitioners in cases other than under Title 11. That means a market rate. Nevertheless, the USTP has clarified the Appendix B guidelines to conform to the language of section 330. Guidelines ¶¶ D.2.b., d.

i. FEE APPLICATIONS

N/A

j. COMPENSATION FOR PARTICULAR MATTERS

20) ***Comment:*** **Compensation for preparing monthly invoices when a case has a monthly compensation order should be allowed if it is not duplicative of preparing interim fee applications. Conversely, compensation for preparing interim fee applications should be allowed if it is not duplicative of preparing monthly invoices.**

Response: The USTP agrees and has revised the Appendix B guidelines to provide that the United States Trustee will not object to the extent that monthly invoices under a monthly compensation order effectively serve as the interim fee application and the applicant seeks no additional compensation for preparing the interim fee application because the time was expended on the related monthly invoices (or vice versa). Guidelines ¶ B.2.f.(iv).

21) ***Comment:*** **Applicants should be compensated for responding to inquiries and negotiating issues related to applications for compensation.**

Response: The USTP disagrees. Applicants should and do have the incentive to prepare an unobjectionable

application for compensation in the first instance. Reasonable and proportionate time for fee application preparation is compensable. Applicants should not be rewarded with additional compensation for responding to inquiries and objections that should have been avoided, particularly when the statutory standards are well-developed and the USTP guidelines are clear.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

22) ***Comment:*** **The Appendix B guidelines make an exception for objecting to ''fees on fees'' for activities that fall within a ''judicially-recognized and binding exception (such as litigating an objection to the application where the applicant substantially prevails).'' The use of the word ''binding'' suggests only authority by the applicable court of appeals on an issue would be considered binding, whereas the prevailing law in the lower courts would not.**

Response: The USTP has clarified its position to provide that fees for contesting or litigating objections to applications for compensation are generally inappropriate unless they fall within a judicial exception applicable within the district allowing such fees. The term ''binding'' has been deleted from the exception. Guidelines ¶ B.2.g.

The USTP concludes that no other changes are necessary to the Guidelines based on these comments.

23) ***Comment:*** **The USTP standard that it will object to fees for responding to objections to fees unless the applicant substantially prevails on the objection should be the court's decision and is inconsistent with the Bankruptcy Code.**

Response: This standard represents the litigating position of the USTP that applicants who pursue unmeritorious positions in defending their fees, and thereby waste the resources of the court and parties, should not be entitled to payment of fees. The USTP's position follows the bankruptcy court's decision in *In re Motors Liquidation Co.,* No. 09–50026, Bench Decision on Pending Fee Issues, at 2 (Bankr. S.D.N.Y. Nov. 23, 2010) (ECF No. 7896), which appropriately takes into account inherent litigation risks and the reasonableness of the applicant's arguments.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

24) ***Comment:*** **The Appendix B guidelines should not treat phone charges related to multi-party, case-specific conference calls as overhead and should instead consider them a reimbursable expense.**

Response: The USTP agrees and has revised the Appendix B guidelines to provide that actual charges for multi-party conference calls related to the case will be considered a reimbursable expense, not overhead. Guidelines ¶ B.3.e.

k. FEE REVIEW ENTITIES

25) ***Comment:*** **If the court appoints a fee committee, fee examiner, or other reviewer, the United States Trustee should defer all compensation and expense inquiries and objections to such reviewed to avoid subjecting the applicant to multiple and competing demands for information.**

Response: The United States Trustee has an independent statutory duty to review and comment on applications for compensation. 28 U.S.C. § 586(a)(3)(A). That duty cannot be delegated. Nevertheless, the United States Trustee will not lightly deviate from positions taken by the fee committee, examiner or other reviewer.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

26) ***Comment:*** **The United States Trustee should use discretion and only seek a fee committee or examiner when circumstances dictate. Similarly, the appointment should be sought at the earliest stages of the case.**

Response: The Appendix B guidelines already address these issues and provide that the United States Trustee will ''ordinarily'' seek appointment of a fee review entity. Guidelines ¶ G.1. The Guidelines acknowledge that the appointment is ultimately the court's decision. Similarly, the United States Trustee will ordinarily seek a fee committee, examiner or other review entity ''as soon as practicable after the order for relief.'' Guidelines ¶ G.2.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

27) ***Comment:*** **The scope of fee review entities should be expanded to include active consultation with and oversight of the clients regarding the retention of professionals and the terms of those retentions, which should reflect market-driven considerations.**

Response: The USTP strongly concurs that section 330(a)(3)(F) expresses Congress' intention that professional compensation in bankruptcy be market driven. Oversight of professionals retained on behalf of the estate must be limited to ensuring that they satisfy the requirements set by Congress in the Bankruptcy Code, including sections 327 and 330, without overreaching. Moreover, while the United States Trustee ordinarily will seek the appointment of a fee review entity as soon as practicable after the order for relief, it typically will not be in place when most applications for employment are filed early in the case. Consequently, the Appendix B guidelines are not being changed to give the fee review entities any additional express responsibilities.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

l. MISCELLANEOUS COMMENTS

28) ***Comment:*** **One commenter suggested that the Appendix B guidelines ''provide a useful template for any court that wishes to systematize a law firm's explanation of its fees and expenses'' in larger chapter 11 cases, and that if the courts adopted these as local rules that ''would create a single set of expectations for what belongs in fee applications in such cases.'' Prof. Rapoport Letter, dated November 6, 2012.**

Response: The USTP agrees and will urge courts to incorporate the Appendix B guidelines into their local rules or general orders, as many have with the existing Appendix A guidelines. Uniformity and consistency in the USTP's review of fee applications will benefit the courts, the applicants, and the public, in addition to the USTP. Moreover, before the Guidelines go effective, the USTP will engage in a systematic training and outreach effort related to the Appendix B guidelines, including coordination and training with relevant professional associations.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

29) ***Comment:*** **The requested disclosures for rate increases should not include annual ''step increases'' related to the advancement of an attorney but should be limited only to increases of the overall rate structure.**

Response: The USTP agrees. The USTP has revised the Appendix B guidelines to provide that the disclosure of rate increases and calculations of their effect may exclude annual ''step increases'' historically awarded in the ordinary course to attorneys throughout the firm due to advancing seniority and promotion, if the firm distinguishes between ''step increases'' and other types of rates increases. Guidelines ¶ B.2.d., n.2. Nevertheless, applicants should not attempt to characterize actual rate increases that are unrelated to an attorney's advancing seniority and promotion as ''step increases'' in effort

to thwart meaningful disclosure or billing discipline. If a firm does not distinguish between ''step increases'' and other types of rate increases, it should disclose and explain all rate increases.

June 12, 2013

Submitting on Behalf of the U.S. Trustees Office,
Jerri Murray,
Department Clearance Officer for PRA, U.S. Department of Justice

[FR Doc. 2013–14323 Filed 6–14–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Regulations Containing Procedures for Handling of Retaliation Complaints

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) revision titled, ''Regulations Containing Procedures for Handling of Retaliation Complaints,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before July 17, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201305-1218-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: The OSHA administers and enforces a number of provisions in various Federal laws and regulations prohibiting retaliatory action by an employer against an employee who is believed to have reported a possible violation of those laws or regulations, or who otherwise engages in an activity protected specified by an anti-retaliation provision. Any person may file a complaint alleging the employer violated these protection provisions with the OSHA for investigation. This ICR has been classified as a revision, because the OSHA is making Web-based and paper options available for filing complaints. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 17, 2013 (78 FR 3918).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0236. The DOL notes that existing information collection requirements remain in effect while they undergo review. New information collection requirements would only take upon OMB approval.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0236. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Regulations Containing Procedures for Handling of Retaliation Complaints.

OMB Control Number: 1218–0236.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 2,872.

Total Estimated Number of Responses: 2,872.

Total Estimated Annual Burden Hours: 2,872.

Total Estimated Annual Other Costs Burden: $0.

Dated: June 11, 2013.

Michel Smyth,
Departmental Clearance Officer.

[FR Doc. 2013–14248 Filed 6–14–13; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 13–065]

NASA Advisory Council; Science Committee; Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–462, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Astrophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Tuesday, July 16, 2013, 9:00 a.m. to 5:00 p.m., and Wednesday, July 17, 2013, 9:00 a.m. to 4:00 p.m., Local Time.

ADDRESSES: NASA Goddard Space Flight Center, Building 1, Rooms E100D

LOCAL RULES OF PRACTICE
OF THE
UNITED STATES BANKRUPTCY COURT
FOR THE
DISTRICT OF UTAH

Frank E. Moss United States Courthouse
350 South Main Street
Salt Lake City, Utah 84101
(anticipated effective date of December 1, 2017)

UNITED STATES BANKRUPTCY COURT
District of Utah
Honorable R. Kimball Mosier, Chief Judge • David A. Sime, Clerk of Court

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RULE 1001-1
LOCAL RULES – GENERAL

(a) Scope and Citation. Title 11 ("the Code") and portions of titles 18 and 28 of the United States Code, the Federal Rules of Bankruptcy Procedure ("Fed. R. Bankr. P."), the Rules of Practice of the United States District Court for the District of Utah ("DUCivR"), these Local Rules of Practice of the United States Bankruptcy Court for the District of Utah ("Local Rules"), and all standing orders of the court issued under Local Rule 1001-2(a), govern cases, proceedings, and practice before the United States Bankruptcy Court for the District of Utah ("~~e~~Court"). These Local Rules should be cited as "Bankr. D. Ut. LBR ____" or "Local Rule_____."

(b) Availability. Copies of these Local Rules, with appendices, are available from the court's website, www.utb.uscourts.gov, and from the clerk's office for a reasonable charge to be determined by the clerk. Upon admission to the bar of the United States District Court for the District of Utah, each attorney will be provided a copy of these Local Rules, with appendices, in force at the time of admission. Attorneys admitted pursuant to Local Rule 2090-1(b) and individuals appearing without an attorney will be provided a copy of these Local Rules upon request and payment to the clerk of the appropriate fee.

(c) Amendments to the Local Rules. The court may amend these Local Rules subject to DUCivR 83-7.~~4.~~ 6. The court will provide notice of proposed amendments and, after a comment period to be determined by the court, notice of the effective date of the approved amendments.

(d) Definition~~s of Words of Authority~~. As used in these Local Rules, the following words ~~of authority~~ have the meaning indicated:

Word	Meaning
"ECF Filer"	A person who is required to or has qualified to file papers using the courts Electronic Case Filing system ("ECF") (see Local Rule 5005-2).
"file"	Means to submit a paper or document with the Utah Bankruptcy Court in accordance with the procedures outlined in these Local Rules.
"paper or document"	Means pleadings, complaints, memoranda, exhibits, schedules, statements, affidavits, proofs of claim, or any other written or printed document required by or

	filed with the bankruptcy court or provided to a case trustee or the United States Trustee.
"should"	Synonymous with "shall" and denotes a mandatory provision.
"will"	Expresses a future event.
"section or §"	Denotes a reference to Title 11, U.S. Bankruptcy Code, unless otherwise indicated.
§ 341 Meeting	Means the meeting of creditors required by 11 U.S.C. § 341.

RULE 1001-2
LOCAL RULES - STANDING ORDERS AND ELECTRONIC PROTOCOLS

(a) Issuance and Availability of Standing Orders. The court may issue standing orders to govern practice and procedure before this court that supplement these Local Rules with the approval of the Chief Judge of the District Court. All individuals entering an appearance before this court should be familiar with the standing orders. Copies of all current standing orders should be maintained by the clerk, and made available to the public for inspection and copying from the court's website, www.utb.uscourts.gov, and from the clerk's office.

(b) Publication of Standing Orders. When a new standing order is issued, the clerk should post the standing order on the court's website, www.utb.uscourts.gov, email a copy to all ECF Filers, and post a copy outside the clerk's office for at least 3 months. ~~The clerk should also submit the standing order to the Utah Bar Journal for publication immediately after the standing order or amendment is issued.~~

(c) Electronic Filing Protocols. The court may from time to time post usage protocols related to electronic filing to assist ~~Filing Users.~~ ECF Filers. The court's posted usage protocols do not have the effect of standing orders. All ECF Filers should be familiar with the electronic filing protocols. Copies of all current electronic filing protocols should be maintained by the clerk, and made available to the public for inspection and copying from the court's website, www.utb.uscourts.gov, and from the clerk's office. When appropriate, changes to Electronic Filing Protocols will be emailed to all ECF Filers.

RULE 1007-1
LISTS, SCHEDULES, STATEMENTS, AND CERTIFICATIONS

(a) Petitions, Schedules, Statements, and Plans.

(1) Procedures for Dismissal of Chapter 7, 11, or 12 Cases for Failure to Timely File Certain Papers. If a debtor does not timely file certain papers identified in subsections A, B, and C below, the case will be dismissed using the following procedure unless otherwise recommended by the United States Trustee or case trustee or unless otherwise ordered by the court. The United States Trustee or case trustee must file a § 341 Meeting Report (Report) indicating the failure to comply and serve it on the debtor and debtor's attorney. If the Report contains a recommendation that the case not be dismissed, the case shall not be dismissed and administration of the case shall continue without prejudice to any motion to dismiss filed by a party in interest. If the Report does not contain a recommendation that the case not be dismissed and if an objection to dismissal is not filed within 21 days after the Report is ~~mailed~~served, the clerk must enter an order dismissing the case. If an objection is timely filed, the dismissal is stayed. The objecting party must set a hearing and give notice to parties in interest as provided in Fed. R. Bankr. P. 2002(a). Unless the court orders otherwise, the clerk must enter an order dismissing the case if a hearing on the objection is not held within ~~40~~ 42 days after the objection is filed.

(A) Voluntary Case in Which the Debtor is Not an Individual. The court may dismiss a voluntary case in which the debtor is not an individual, except a case that has been converted from a chapter 11 case to a chapter 7 case, if the debtor fails to file a list of creditors' names and addresses under Local Rule 1007-1, a list of equity security holders, the reports required by Fed. R. Bankr. P. 2015.3, or documents required by § 521(a)(1) or § 1116(1), within the time provided by Fed. R. Bankr. P. 1007 or any extension granted under § 1116(3).

(B) Voluntary Chapter 11 or 12 Case in Which the Debtor is an Individual. The court may dismiss a voluntary case if the debtor fails to file a list of creditors' names and addresses under Local Rule 1007-1, the reports required by Fed. R. Bankr. P. 2015.3, or documents required by § 521(a)(1) or § 1116(1), within

the time provided by Fed. R. Bankr. P. 1007 or within any extension granted under § 1116(3).

(C) Voluntary Chapter 7 Case in Which the Debtor is an Individual. The court may dismiss a voluntary case, except a case that has been converted from a chapter 11 case to a chapter 7 case, if the debtor fails to file a list of creditors' names and addresses under Local Rule 1007-1, or documents required by § 521(a)(1) and Fed. R. Bank. P. 1007(b)(1) within the time provided by Fed. R. Bankr. P. 1007. However, nothing in this Rule shall alter the provisions for automatic dismissal of this case under § 521(i).

(2) Procedure for Dismissal of a Case under Chapter 13 for Failure to Timely File Certain Papers. The court may dismiss a case, except a case that has been converted from a chapter 7 case to a chapter 13 case, if the debtor fails to file a list of creditors' names and addresses under Local Rule 1007-1, or documents required by § 521(a)(1) and Fed. R. Bankr. P. 1007(b)(1) within the time required by Fed. R. Bankr. P. 1007(c), or a chapter 13 plan within the time provided by Fed. R. Bankr. P. 1007 and 3015. The procedures for dismissal on these grounds are set forth in Local Rule 2083-1(~~f).~~ g). However, nothing in this rule or in Local Rule 2083-1(~~f~~g) shall alter the provisions for automatic dismissal of the case under § 521(i).

(b) List of Creditors and Equity Security Holders. The debtor may file with the petition, but must file no later than 2 days thereafter, the list required under Fed. R Bankr. P. 1007(a)(1) in a form designated by the clerk and, if applicable, an additional list of creditors holding claims under § 507(a)(1)(A) and (B), and a list of equity security holders, in the manner prescribed by the clerk's office. If the debtor files a list of creditors holding claims under § 507(a)(1)(A) and (B), the clerk may provide the notice specified in § 704(c)(1)(A) and (B) at least 20 days prior to the ~~meeting of creditors under~~ § 341 Meeting. The clerk may mail the notice provided by the trustee as specified in § 704(c)(1)(C) within 21 days after the debtor is granted a discharge under § 727.

(c) Filing of Documents Following Conversion. All lists, schedules, statements, and other documents filed prior to conversion of a case to another chapter shall be deemed filed in the converted case unless the court directs otherwise; however, ~~within 21 days~~if the trustee or the

United States Trustee makes a written request after the entry of an order converting the case, the debtor shall file within 21 days after the date of such written request either: (i) a declaration under penalty of perjury that there have been no material changes to the lists, schedules, statements, and other documents filed prior to conversion, or (ii) amended lists, schedules, statements, and other documents reflecting such changes.

(d) ~~Section~~Compliance with § 109(h) ~~Compliance~~(Credit Counseling).

(1) Section 109~~(h)~~(h)(1): The Credit Counseling Certification. ~~If the debtor fails to certify compliance with § 109(h)(1) on the petition, or request a waiver under § 109(h)(3)(A) on the petition and file a separate application for exemption and proposed order with the petition, or fails to file a request for determination by the court under § 109(h)(4) with the petition, the~~ The clerk must enter an order dismissing the case~~.~~ unless an individual debtor:

~~(2) Certification~~(A) certifies on Part 5 of ~~Eligibility for Exemption. A~~the petition compliance with § 109(h)(1) and attaches to the petition the certificate of credit counseling required by § 521(b);

(B) certifies on Part 5 of the petition compliance with § 109(h)(1) but does not attach to the petition the credit counseling certificate, but then files the certificate within 14 days after the petition date;

(C) as set forth below, timely submits to the Court a satisfactory certification of exigent circumstances required by § 109(h)(3)(A); or

(D) obtains a court order that the debtor ~~who requests a waiver~~ is not required to take the credit counseling briefing under ~~§~~ § 109(h)(4).

(2) Section 109(h)(3)(A~~)~~): Extension of Time to Take Credit Counseling Course. If the debtor certifies on Part 5 of the petition that § 109(h)(3) applies, the debtor must ~~also~~ file ~~with~~ at the same time as the petition a separate ~~application for exemption and proposed order granting the application for exemption.~~ ~~The~~ certification under § 109(h)(3)(A) that is sufficient to the Court and that merits an extension of no more than 30 days from the petition date to comply with § 109(h)(1). The statement shall: (i) explain what efforts the debtor made to obtain the credit counseling briefing during the 7 days prior to the petition date; (ii) explain why the debtor was unable to obtain the credit counseling

briefing before filing the petition; and (iii) describe the exigent circumstances that merit a waiver of the requirement to take the credit counseling briefing before filing the bankruptcy petition.

The court may grant the ~~application for exemption, set the application for exemption for~~ motion, set it for a hearing, or ~~may~~ deny the ~~application for exemption~~motion without a hearing. If the ~~application for exemption~~motion is denied, the clerk must enter an order dismissing the case. If the motion is granted, the debtor must timely file ~~a certification indicating compliance with~~ the ~~requirements of § 109(h)(1~~credit counseling certificate required by § 521(b) or the clerk ~~must~~will enter an order ~~of dismissal. If the application for exemption is denied, the clerk must enter an order of dismissal~~dismissing the case unless the court, for cause, orders under § 109(h)(3)(B) an additional 15 days to comply.

(3) Section 109(h)(4) ~~Hearing. A debtor who timely files a request for determination by the court~~: Debtor Not Able to Take Credit Counseling Briefing. If the debtor asserts on Part 5 of the petition that the credit counseling briefing cannot be taken due to incapacity, disability, or active military duty, the debtor must timely take the following actions or the clerk may enter an order dismissing the case:

(i) At the same time as the petition, file a motion and proposed order under § 109(h)(4~~) must set the matter for a~~). The motion should be supported by admissible but appropriately redacted documents establishing the debtor's incapacity, disability, or active military duty;

(ii) A hearing ~~to be held within~~ on the motion shall be set for a date not later than ~~40~~ 42 days ~~of filing~~after the petition ~~with notice~~date; and

(iii) Notice of the motion shall be served pursuant to Local Rule 2002-1. ~~If the court does not determine that § 109(h)(4) is applicable within 40 days of the filing of the petition, or within~~

RULE 1009-1
AMENDMENTS OF PETITIONS, BANKRUPTCY SCHEDULES, AND STATEMENT OF FINANCIAL AFFAIRS

Any amendment to a voluntary petition, bankruptcy schedule, or statement of financial affairs under Fed. R. Bankr. P. 1009 shall include all information that was on the original paper but: (1) shall conspicuously indicate the addition of information, such as by circling, underlining, highlighting or by using different-colored text; and (2) shall conspicuously indicate the removal of information by striking through the text such that the original text is still legible, unless such text is otherwise required to be redacted.

RULE 1014-1
CHANGE OF VENUE

(a) **Within the District**. In the interest of justice or for the convenience of the parties, the court may change venue of a case or proceeding from one division of the court to another. A motion for intra-district transfer is governed by Fed. R. Bankr. P. 9014 and Local Rule 9013-1.

(b) **To Another District**. For procedures to change venue of a case or proceeding to another district, see DUCivR 83-7.~~1~~4(a) and (c) and Fed. R. Bankr. P. 1014.

RULE 1015-1
JOINT ADMINISTRATION/CONSOLIDATION OF BANKRUPTCY CASES

A motion for consolidation or joint administration of cases ~~may~~shall be ~~brought~~filed in all bankruptcy cases to be consolidated or jointly administered. The party filing the motion must set the matter for hearing before the judge assigned to the case with the lowest case number to which the motion for consolidation or joint administration applies~~. If the motion is granted~~ and shall send notice of the motion and hearing to all parties in interest as listed in the court's most recent creditor's matrices for all affected cases. Any party in interest in any of the affected cases may object to the motion by filing an objection in the case with the lowest case number to which the motion for consolidation or joint administration applies. If the court grants the motion, the cases will be consolidated into or jointly administered under the case having the lowest case number, ~~unless otherwise ordered.~~ and the judge assigned ~~to~~ the case ~~with the lowest number~~ will retain the assignment for the consolidated or jointly administered case, unless otherwise ordered by the court. Upon entry of the order granting the motion, the clerk will enter a docket entry in all cases stating the bankruptcy case number of the consolidated or jointly administered case.

RULE 1073-1
ASSIGNMENT OF CASES

The assignment of cases to the judges of the court is the responsibility of the Chief Judge of the court and will, unless otherwise modified, proceed as follows:

(a) **Random Selection Case Assignment System**. Case assignments are made on a nonpublic rotating calendar established and monitored by the clerk, with the following exceptions: (1) cases filed in certain geographic areas may be assigned to the judge(s) assigned to that area, and (2) a blind draw will occur in all chapter 11 cases, involuntary cases, and in chapter 7 cases with 100 creditors or more.

(b) **Judicial Recusal or Disqualification**. If a judicial recusal or disqualification occurs, another judge will be assigned to the case by random selection. If all judges recuse themselves or are disqualified, the Chief Judge will request the Chief Judge of the United States Court of Appeals for the Tenth Circuit to assign a bankruptcy judge from another district to the case.

(c) **Unavailability of Assigned Judge**. A party may request relief from any judge of the court if the assigned judge is unavailable.

RULE 2002-1
NOTICE TO CREDITORS AND OTHER INTERESTED PARTIES

(a) **Scope of Rule**. This rule governs notice of proposed actions, motions, applications, and other requests for relief in bankruptcy cases which are addressed by Fed. R. Bankr. P. 2002.

(b) **Form of Notice**. A notice required by this rule to parties in interest may include a statement that the relief requested may be granted without a hearing unless an objection is timely filed. A notice not accompanied by a motion must ~~state~~include a brief statement or summary of the relief requested and explain the basis for the relief.

(c) **Time for Notice**. Time for notice of hearings, response and reply deadlines, and for taking certain other actions under these Local Rules are set forth in Local Rule 9006-1.

(d) **Service of Notice**. The movant must serve the notice of hearing on all parties as required by the Federal Rules of Bankruptcy Procedure.

(e) **Returned Notices**. If any notices mailed using the addresses appearing on the matrix are returned, the debtor should update the mailing matrix as necessary to reflect the current addresses of parties in interest.

(f) **Notice of Compensation in Chapter 7 Case**. Before filing a final report in a chapter 7 case, the trustee must notify any entity who, to the knowledge of the trustee, may be entitled to compensation or reimbursement under § 330~~ of the Code.~~ . The entity may, within 14 days of service of the notice, file an application for compensation and reimbursement of expenses. The court may deny as untimely an application for compensation filed after this date.

(g) **Notice of Entry of Confirmation Order**. The plan proponent must provide notice of the entry of an order confirming a chapter 9, 11 or 12 plan under Fed. R. Bankr. P. 2002(f)(7).

(h) **Notice to Certain Governmental Entities**. In addition to all other notice requirements found in the Federal Rules of Bankruptcy Procedure, when notices are required to be sent to the Internal Revenue Service, the Securities and Exchange Commission, the Utah State Tax Commission, the Utah Department of Workforce Services, or the Office of Recovery Services, notices should be mailed or delivered to addresses listed on the court's website, www.utb.uscourts.gov.

RULE 2003-1
MEETING OF CREDITORS AND EQUITY SECURITY HOLDERS

(a) Attendance.

(1) The court may dismiss a voluntary case, except a case that has been converted from a chapter 11 case to a chapter 7 case or from a chapter 7 case to a chapter 13 case, or a case in which the court has determined under § 341(e) ~~of the Code~~ that no meeting of creditors is required, if the debtor or the debtor's attorney fails to appear at the scheduled or continued ~~meeting of creditors required under~~ § 341 ~~of the Code~~Meeting.

(2) The procedures for dismissal of a chapter 13 case for failure of the debtor or debtor's attorney to appear at the meeting of creditors are set forth in Local Rule 2083-1(~~e~~f).

(3) In a case other than ~~a~~one under chapter 13 ~~case~~, if the debtor or the debtor's attorney fails to appear at the scheduled or continued ~~meeting of creditors required under § 341 of the Code~~§ 341 Meeting, the case trustee or U.S. Trustee must file a § 341 Meeting Report (the "Report") indicating the failure to appear and serve it on the debtor and the debtor's attorney. If the Report contains a recommendation that the case not be dismissed, the case shall not be dismissed and administration of the case must continue without prejudice to any motion to dismiss filed by a party in interest. ~~If~~ Otherwise, within 21 days after service of the Report ~~does not contain a recommendation that the case not be dismissed and if~~, the debtor or other party in interest must file an objection to the Report and set the objection for a hearing. The objecting party must give notice of the hearing to the case trustee~~'s Report~~ and to any party appearing at the § 341 Meeting. If an objection is not timely filed ~~within 21 days after the Report~~or a hearing is ~~mailed~~not timely set and noticed, the clerk must enter an order dismissing the case. In a chapter 7 case, the objection must also move for an extension of the time fixed under Fed. R. Bankr. P. 4007(c) and 4004(a) for filing a complaint under §§ 523(c) and 727 ~~of the Code~~ and the time fixed under Fed. R. Bankr. P. 4003(b)(1) for filing objections to exemptions under § 522(l) ~~of the Code. The objecting party must set a hearing and give notice to the case trustee and any party appearing at the meeting of creditors pursuant to Fed. R. Bankr. P. 9006(d)~~. Unless

the court orders otherwise, the clerk must enter an order dismissing the case if a hearing on the objection to the Report is not held within ~~40~~ 42 days after the objection is filed.

(4) In a joint case where only ~~1 spouse~~one debtor appears, the non-appearing ~~spouse will~~debtor may be dismissed from the case.

(b) Debtor's Duties ~~of the Debtor~~ in Connection with the § 341 Meeting ~~of Creditors~~. The debtor is required to provide documentation prior to and at the ~~meeting of creditors~~ § 341 Meeting as requested by the trustee or the United States Trustee and as required in ~~§~~§§ 521, Fed. R. Bankr. P. 4002(b), and Local Rule 4002-1(b). In addition, a chapter 13 debtor is required to provide the documents listed in Local Rule 2083-1(~~d~~e) prior to or at the ~~meeting of creditors~~§ 341 Meeting.

(c) Motions to Reschedule. A debtor should file a motion to reschedule a § 341 Meeting not later than 7 days prior to the scheduled § 341 Meeting. The debtor shall send notice of the motion to all parties in interest listed on the court's most recent creditors' matrix for the case. The court may grant the motion, set it for a hearing, or deny the motion without a hearing. If the court grants the motion, the clerk must give notice of the new date and time of the meeting unless otherwise directed by the court.

(d) Telephonic Appearance at § 341 Meeting of Creditors. Under extenuating circumstances which prevent a debtor from appearing in person, a debtor may file a motion seeking permission to appear by telephone at ~~a creditors' meeting required under § 341 of the Code.~~ the § 341 Meeting. Extenuating circumstances may include military service, incapacitating condition, or incarceration. The motion must be filed and served on the trustee and the United States Trustee no later than 7 days prior to the scheduled § 341 Meeting, and may be ruled upon without a hearing. The motion must describe in writing any efforts to give notice to and confer with the trustee prior to the filing of the motion. If the motion is granted, the debtor must also serve a copy of the order allowing a telephonic appearance on the trustee and the United States Trustee. The debtor must contact the trustee to determine the time, date and location for the telephonic appearance. The debtor is responsible for any costs associated with conducting a telephonic appearance and for making arrangements for an independent third party authorized to administer oaths to be present at the debtor's location to administer the oath and to verify the debtor's identity and social security number.

~~(d~~(e) **Costs of Meeting Facilities.** If the circumstances of a particular case require that the ~~meeting of creditors~~§ 341 Meeting be held somewhere other than the usual facilities, the estate of the debtor will be responsible for the rent and other appropriate costs associated with conducting the meeting in an alternate facility.

(e~~f~~) **Notice of Rescheduled § 341 Meetings ~~of Creditors~~**. If the initial ~~meeting of creditors~~§ 341 Meeting is rescheduled, the clerk must give notice of the new date and time of the meeting unless otherwise directed by the court.

RULE 2004-1
EXAMINATION UNDER RULE 2004

The court may enter an order granting a motion under Fed. R. Bankr. P. 2004(a) without prior notice or hearing if the motion:

(1) Identifies the entity to be examined;

(2) Sets forth in what manner or way the examination of the entity relates to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge; and

(3) (A) Represents that the entity to be examined will receive not less than 14 days' written notice of the examination, and that compulsory attendance of ~~an~~the entity ~~for examination~~ and, if applicable, the production of documents will ~~comply~~be by subpoena consistent with Fed. R. Bankr. P. 2004(c)~~;~~ and 9016; or

(B) Represents that the movant and the entity to be examined have stipulated in writing to the time and place of the examination and, if applicable, to the production of documents.

COMMENT (~~2013)~~ 2017)

This rule permits parties~~, on an ex parte basis,~~ to obtain without a hearing a court order authorizing an examination pursuant to Bankruptcy Rule 2004. In order to obtain such an order, the movant must identify the entity to be examined, the entity's relationship to the debtor or the case and must represent that the entity has either consented to the examination or will receive at least 14 days' notice of the examination and that entity's attendance will be compelled by subpoena. A Rule 2004 order, obtained ~~ex parte~~without a hearing, may not compel the entity to be examined to attend the examination or to produce documents.

RULE 2081-1
CHAPTER 11 - GENERAL

(a) Initial Financial Reports and Other Documents. Not later than 7 days after filing a chapter 11 petition, all chapter 11 debtors shall provide to the United States Trustee evidence of any policies of insurance maintained by the debtor. Not later than 21 days after filing a chapter 11 petition, non-small business debtors must provide to the United States Trustee ~~with~~ an initial financial report in the form approved by the United States Trustee~~, and not later than 7 days after filing~~. Upon a request of the United States Trustee, a chapter 11 ~~petition, all chapter 11 debtors~~debtor shall within 7 days of such request provide ~~evidence~~to the United States Trustee proof of any required permits~~,~~ or licenses ~~of~~ relating to the debtor's business operations~~, and any policies of insurance maintained by the debtor, unless the court orders otherwise~~.

(b) Monthly Financial Reports. Not later than 14 days after the end of each month the debtor in possession or trustee must file with the court a monthly financial report in the form approved by the United States Trustee ~~and serve a copy upon the United States trustee~~. The duty to file these reports terminates upon confirmation of a plan, or upon conversion or dismissal of the case.

(c) Post-Confirmation Summary Report. ~~Unless~~If the court orders ~~otherwise~~, a reorganized debtor or other entity responsible for consummation of a plan ~~must~~shall file a one-time summary report within 90 days after entry of a confirmation order which must include the following:

(1) the dollar amounts of administrative expenses for fees for the attorney for the debtor, attorney for the trustee, the trustee, other professionals, and out-of-pocket expenses;

(2) the dollar amounts of priority, secured, and unsecured claims;

(3) the dollar amounts of plan payments to priority, secured, and unsecured creditors;

(4) the percentage dividend being paid to unsecured creditors without priority; and

(5) the estimated date that a final decree will be entered. Failure to comply with this subsection constitutes grounds for dismissal of the case.

RULE 2082-1
CHAPTER 12 – GENERAL

(a) Monthly Financial Reports. Not later than 21 days after the end of each month, the debtor must file with the court a monthly financial report in the form approved by the United States Trustee and serve a copy upon the chapter 12 trustee. The debtor's duty to file these reports terminates upon confirmation of a plan, or upon conversion or dismissal of the case.

(b) Filing of Chapter 12 Plan. The court may dismiss a chapter 12 case if the debtor fails to file a plan within the time provided in § 1221 ~~of the Code~~. If the debtor does not file a plan timely, the chapter 12 trustee should file a notice of failure to comply and serve it on the debtor and debtor's attorney. If an objection to the trustee's notice is not filed within 21 days after notice is ~~mailed~~served, the clerk should enter an order dismissing the case. The objecting party must set a hearing and give notice to parties in interest as provided in Fed. R. Bankr. P. 9006(d). If a hearing on the objection is not held within ~~40~~ 42 days after the objection is filed, the clerk must enter the order of dismissal, unless the court orders otherwise.

(c) Payments. Payments under a confirmed plan must be paid by certified funds or money orders made payable as directed by the chapter 12 trustee. The debtor may make and the trustee may accept payments in furtherance of a plan prior to confirmation. Such payments must be disbursed under a confirmed plan or further order of the court, and may be subject to a charge for the trustee's expenses upon conversion or dismissal of the case, or confirmation of a plan.

(d) Attorney's Fees. All chapter 12 plans must contain a statement of attorney's fees paid and to be paid.

(e) Monthly Payments. Beginning at the first ~~meeting of creditors~~scheduled § 341 Meeting and continuing each month thereafter until confirmation of a plan, the debtor may be required to pay to the chapter 12 trustee the actual and necessary expenses of the administration of the case as allowed by the court, or a minimum court-approved dollar amount to be fixed by the trustee, whichever is greater.

RULE 2083-1

CHAPTER 13 – GENERAL

(a) Chapter 13 Plan. Unless otherwise ordered by the court, all chapter 13 plans shall ~~substantially~~ conform to the ~~applicable Model Plan~~Official Form 113 Chapter 13 Plan posted on the bankruptcy court's website (www.utb.uscourts.gov) (see Local Rule 2083-2).

(b) Preconfirmation Plan Amendments or Modifications. Preconfirmation plan amendments shall substantially conform to the plan. The debtor must file a separate Notice of Amended Plan that provides a summary of changes between the prior plan and the plan as amended. The Notice of Amended Plan shall be in substantial conformity with Local Form 2083-1-A. Preconfirmation plan modifications may be accomplished using Local Form 2083-1-B. Parties in interest, including the court or the trustee, may request that the debtor file an Amended Plan incorporating all prior plan amendments, modifications and stipulations. Unless otherwise ordered by the court, the debtor shall file an Amended Plan no later than 14 days following such request.

(c) Chapter 13 Plan Payments~~.~~. Unless otherwise ordered by the court, payments under § 1326 ~~of the Code~~ must commence not later than ~~30 days after~~ the first date ~~of the filing of the petition or after the date of the entry of the order converting the case to one under Chapter 13.~~ set for the § 341 Meeting. All such payments must be made by certified funds, money order, or a trustee~~-~~approved means of electronic funds transfer, made payable as directed by the trustee.

(~~e~~d) Preconfirmation Payments Pursuant to § 1326(a).

(1)~~ The chapter 13 plan shall list the creditor name, address, account number, payment due date, and payment)~~ Distribution in Preconfirmation Cases. Preconfirmation disbursements by the trustee under § 1326(a)(1) are hereby authorized without further order. The amount ~~for each creditor entitled to preconfirmation adequate protection or lease payments to be paid by the trustee~~and timing of Adequate Protection Payments, unless otherwise ordered by the court, shall be governed by subparagraphs (2) through (8) below. Preconfirmation disbursements under § 1326(a)(1) shall be made to creditors within 30 days of the filing of the proof of claim, unless the trustee has not received sufficient cleared funds to make such payment. The trustee is authorized to deduct from the allowed amount of a claim all § 1326(a)(1) preconfirmation disbursements.

(~~1~~2) Adequate Protection Payments. Unless otherwise ordered by the court, all preconfirmation Adequate Protection Payments to holders of secured claims required under § 1326(a)(1)(C) shall not be made by the debtor directly to the secured claimant, but shall be paid to and disbursed by the trustee. The debtor's preconfirmation plan payments to the trustee shall include the amount required under § 1326(a)(1~~) and~~), which shall include the amount necessary to pay the trustee's statutory fee.

~~(2) Lease~~(3) Amount and Period of Adequate Protection Payments. ~~If the chapter 13 plan provides~~Unless the debtor files a separate Notice for ~~lease payments over~~Adequate Protection Payments (Local Form 2083-1-C) or includes the ~~term of the plan~~ Notice for Adequate Protection Payments as an attachment to ~~be paid by the trustee, preconfirmation lease payments to such lessors~~the Plan, the Equal Monthly Plan Payment amount listed for each creditor in Part 3.2 or 3.3 of the Plan shall ~~be paid by the trustee and the above provisions regarding preconfirmation~~constitute such creditor's Adequate Protection Payment amount. The Notice for Adequate Protection Payments shall ~~apply. If the~~ fix the amount and period of the Adequate Protection Payments.

(4) Adequate Protection Payments as a Nonstandard Plan Provision. A plan proposing to pay Adequate Protection Payments in an amount less than the Equal Monthly Plan Payment shall be deemed to contain a nonstandard provision and must indicate the inclusion of a nonstandard provision in the check box in Part 1.3 of the Plan. Part 8 of the plan must identify the creditor(s) who will receive Adequate Protection Payments and the corresponding part of the plan in which such creditor(s) is listed. Part 8 of the plan must also refer creditors to the Notice for Adequate Protection Payments for detail concerning the amount and duration of Adequate Protection Payments.

(5) Adequate Protection Payments Accrual. Adequate Protection Payments shall accrue commencing with the first plan payment due no later than the first date set for the § 341 Meeting and shall continue to accrue on the first day of each month thereafter for the number of months specified in the Notice of Adequate Protection Payments. Upon expiration of the number of months specified in the Notice for Adequate Protection Payments, each secured creditor will be paid the Equal Monthly Plan Payment set forth in the plan.

(6) Trustee's Payment of Adequate Protection Payments. The trustee will make Adequate Protection Payments only if a secured proof of claim is filed in compliance with the applicable provisions of Fed. R. Bankr. P. 3001, 3002 and 3004 before the earlier of the entry of an order dismissing or converting a case or the applicable claims bar date. If no secured proof of claim is filed, the trustee may reserve funds to pay Adequate Protection Payments to a creditor identified as a recipient of Adequate Protection Payments in anticipation of a claim being filed.

(7) Principal Reduction Prior to Interest Accrual. Adequate Protection Payments made or attributable to the period before interest begins to accrue on such claims shall be applied to reduce the principal balance of such claim. Adequate Protection Payments made or attributable to the period after interest begins to accrue shall be applied to unpaid interest and then to principal.

(8) Amended Notice for Adequate Protection Payments. If an amended Notice for Adequate Protection Payments is filed that decreases the amount of Adequate Protection Payment, the change in amount will be effective with the next accrual date. If an amended Notice for Adequate Protection Payments is filed that increases the amount of Adequate Protection Payment, the change will be retroactive to the date of the first payment accrual and the difference will be disbursed to the secured creditor by the trustee as sufficient funds are available to make such payment.

(9) Distribution in Discontinued Preconfirmation Cases.

(A) If a chapter 13 case is dismissed prior to confirmation, the trustee is authorized to apply the debtor's plan payments to pay: (i) the trustee's statutory percentage fee; (ii) Adequate Protection Payments pursuant to the terms set forth in subsections (2) – (8) above; (iii) any allowed administrative expenses; and (iv) the balance of such funds will be returned to the debtor by check made payable to and mailed to the debtor at the debtor's address of record listed on the court's docket.

(B) If prior to confirmation a chapter 13 ~~plan provides for lease payments to be paid~~case is converted to a case under chapter 7, unless otherwise ordered by the ~~debtor and not by the trustee over the term of the plan, then~~

~~preconfirmation lease payments to such lessors required under § 1326(a)(1) shall be made directly~~court, the trustee must return any undisbursed funds constituting debtor's wages held by the trustee to the debtor by check made payable to and mailed to the debtor ~~and not by~~at the ~~trustee~~debtor's address of record listed on the court's docket.

(~~d~~e) Documents Provided to the Trustee at or before the ~~Meeting of Creditors.~~ § 341 Meeting.

(1) In addition to those documents required by § 521, a debtor must provide to the trustee copies of the following documents at least 7 days before the ~~date~~ first date set for the ~~first meeting of creditors:~~ § 341 Meeting:

(A) Proof of all charitable contributions made within 60 days before the date of the filing of the petition;

(B) A copy of the most recent county property tax assessment for all real property listed on Schedule A;

(C) A profit and loss statement if a debtor had self-~~-~~employment income for the 60 days prior to filing, including income reported on an IRS Form 1099;

(D) A business questionnaire for each business operated by the debtor for the 60 days prior to the filing, on a form supplied by the trustee; and

(E) Copies of tax returns required under Local Rule 6070-1(c)(2).

(2) A debtor must provide to the trustee copies of the following documents at or before the first date set for the ~~meeting of creditors~~§ 341 Meeting:

(A) Evidence of current postpetition income such as the most recent payment advice; and

(B) Statements for each of the debtor's checking, savings, brokerage, and money market accounts and mutual funds for the ~~time~~one-month period that includes the ~~date of the filing of the~~ petition date.

(f) Dismissal for Failure to Attend a § 341 Meeting or Make Payment. If the debtor or the debtor's attorney fails to appear at the scheduled or continued ~~meeting of creditors required under § 341 of the Code~~§ 341 Meeting or if a debtor fails to make the first payment required by subsection (~~a~~c) of this rule, the trustee must file a motion to dismiss or notice of failure to comply

and serve it on the debtor and debtor's attorney. If an objection is not filed within 21 days after the motion or notice is ~~mailed~~served, the clerk must enter an order dismissing the case. ~~A hearing~~ If a motion to dismiss for failure to attend a § 341 Meeting is filed, any objection thereto must include a request to reschedule both the § 341 Meeting and the confirmation hearing. In the absence of good cause alleged in the objection and established at the hearing, the debtor must also agree to an extension of all deadlines calculated from the first date set for the § 341 Meeting, including deadlines for objecting to claimed exemptions under Fed. R. Bankr. P. 4003(b), and for filing complaints objecting to discharge or dischargeability under Fed. R. Bankr. P. 4004(a) and 4007(c). If a hearing is required on an objection filed ~~in response to the trustee's notice of failure to comply~~under this subsection, it will be held at the same time scheduled ~~as~~for the confirmation hearing stated on Official Form ~~9I, unless the court orders otherwise.~~ 309I. No notice of the objection in addition to the notice of hearing contained on Official Form ~~9I~~309I is required.

(~~f~~ g) Preconfirmation Motions to Dismiss for Failure to File or Provide Documents or Comply with Other Requirements~~.~~. In addition to cause for dismissal under ~~§~~§ 1307(c), the trustee, ~~or~~ with respect to ~~subpart (5),~~ all subparts of § 1307(c), or the applicable taxing authority, with respect to subpart (5), may file a motion to dismiss or notice of failure to comply for the following grounds:

(1) Failure to file documents required under Local Rule 1007-1(a)(2);

(2) Failure to provide identification and social security documentation under Fed. R. Bankr. P. 4002(b)(1) or financial documents under Fed. R. Bankr. P. 4002(b)(2);

(3) Failure to provide documents under subsection (~~ee~~) of this rule;

(4) Failure to provide information in response to a written request by a trustee or United States trustee under Local Rule 4002-1(b); or

(5) Failure to provide proof of establishment of tax trust accounts under Local Rule 6070-1(a)(1), or failure to comply with requirements with respect to tax returns under Local Rule 6070-1(c).

The motion to dismiss or notice of failure to comply must be served on the debtor and the debtor's attorney. If the debtor intends to oppose dismissal, a written objection must be filed. If an objection is not filed within 21 days after the motion or notice is ~~mailed~~served, the clerk must enter an order dismissing the case. If an objection contains a request to reschedule the § 341 Meeting,

the time limitation set forth in Local Rule 2003-1(c) shall not apply. Such request, however, must seek an extension of the deadlines set forth in subparagraph (f) above. If the trustee files a motion to dismiss for failure to comply with (1) or (3) of this subparagraph (g), the trustee will call and preside at the § 341 Meeting to permit creditors to question the debtor, but the trustee will not question the debtor and the § 341 Meeting shall be adjourned until after the hearing on the motion to dismiss has been held, unless prior to the § 341 Meeting the debtor resolves the deficiencies resulting in the motion to dismiss and the court enters an order authorizing the trustee to conduct the scheduled § 341 Meeting.

A hearing on an objection filed in response to the trustee's notice of failure to provide documents or comply will be held at the same time scheduled ~~as~~for the confirmation hearing stated on Official Form ~~9I~~309I, unless the court orders otherwise. No notice of the objection in addition to the notice of hearing contained on Official Form ~~9I~~309I is required.

~~(~~**~~g~~**~~(~~**h**~~)~~ **Postpetition Child Support, Alimony, Maintenance Payments Deemed Voluntary**. Unless a chapter 13 debtor on the petition date, or such later time as the court allows, files with the court, the trustee, and the requisite state office of recovery services a notice setting forth the debtor's intent to terminate postpetition child support, alimony, maintenance payments or income withholding, the debtor will be deemed as of the date of the petition to have stipulated as follows:

(1) That any child support, alimony, or maintenance obligation that matures postpetition, whether continuing or delinquent and whether paid directly by the debtor or collected by means of income withholding under state law, is voluntarily made by the debtor under the debtor's budget of postpetition expenses; and

(2) That any collection of such obligations will not constitute grounds for compensatory, injunctive or punitive relief against the collecting party for any violation of the provisions of § 362 of the Code. This rule does not apply to any child support, alimony, or maintenance obligation that matures and becomes delinquent postpetition and that the debtor and a state office of recovery services have agreed in writing will be treated as a prepetition obligation included in the debtor's plan.

(~~h~~i) Eligibility Hearing~~.~~ . A party must file and serve a motion to dismiss a chapter 13 case under § 109(e) ~~of the Code~~ not later than 7 days before the date set on Official Form ~~9I~~309I

for the plan confirmation hearing. Such motion will be heard at the plan confirmation hearing, unless the court orders otherwise.

~~(i) Distribution in Preconfirmation Cases.~~

~~(1) Preconfirmation Disbursements by the Chapter 13 Trustee. Preconfirmation disbursements under § 1326(a)(1) are hereby authorized without further order. The amount and timing of adequate protection payments will be as stated in the plan or as ordered by the court; however, the trustee shall not disburse such payments until the creditor entitled to adequate protection has filed an allowed proof of claim. Claims filed after a case is dismissed will not receive adequate protection payments. Preconfirmation disbursements under § 1326(a)(1) shall be made to creditors within 30 days of the filing of the proof of claim, unless, within 7 business days prior to the end of such 30 day period, the trustee has not received sufficient, cleared funds to make such payment. The trustee is authorized to deduct from an allowed claim all § 1326(a)(1) preconfirmation disbursements.~~

~~(2) Distribution in Discontinued Preconfirmation Cases. If a case is converted or dismissed prior to confirmation, the trustee is authorized to apply the debtor's plan payments to pay: (1) an allowed expense fee to the standing chapter 13 trustee; (2) adequate protection payments pursuant to the terms in the preceding paragraph; (3) any allowed administrative expenses; and (4) the balance of such funds will be paid by check made payable to and sent to the debtor(s).~~

(j) Confirmation.

(1) Objections to Confirmation. Any objection to the original plan must be filed and served not later than 7 days before the date set on Official Form ~~9I~~309I for the plan confirmation hearing. If an amended or modified plan is filed, objections must be filed and served not later than 21 days after service of the plan or notice of such plan. All objections

to the plan will be heard at the confirmation hearing, unless the court orders otherwise. If the objecting party does not appear at the confirmation hearing, the court may deem the objection to be withdrawn.

(2) Confirmation of the Plan. The debtor bears the burden of proof in establishing compliance with the requirements for confirmation ~~under Title 11, Chapter 13~~of the debtor's plan, and specifically ~~11 U.S.C.~~ § 1325. Any bankruptcy papers or amendments relating to confirmation of the plan must be filed with the court not later than four (4) business days before the confirmation hearing. If bankruptcy papers need to be filed after this deadline, counsel should seek a continuance of the confirmation hearing to give all parties an opportunity to review the papers. If the court confirms the plan, the debtor will be deemed to be in compliance with § 521(a)(1)(A).

(3) Confirmation Without a Hearing. If all timely filed objections to confirmation are resolved, the trustee may recommend to the court that the plan be confirmed without a hearing. If the court agrees, the confirmation hearing may be stricken, an order confirming the plan may be entered, and debtors and debtors' counsel need not appear at the confirmation hearing.

(4) Evidentiary Hearings on Confirmation. If parties intend to put on evidence relating to confirmation of a plan, they should inform the court, the trustee, and any objecting party of such intent and request from the court a separate, evidentiary confirmation hearing.

(k) ~~Trustee~~ Postconfirmation Motions.

(1) Trustee's Motion to Dismiss. The trustee's postconfirmation motion to dismiss or notice of failure to comply must be served on the debtor and the debtor's attorney. Within 21 days after the motion or notice is ~~mailed~~served, the debtor must take all of the following actions or the clerk shall enter an order dismissing the case: (1) file an objection to the motion or notice; (2) set the objection for a hearing; and (3) give notice of the hearing to the trustee.

~~**(l) Trustee's Report**~~(2) Debtor's Motion to Reduce Equal Monthly Plan Payment to Adequate Protection Payment Amount.

(A) If the debtor moves to modify a plan under § 1329 to seek a reduction

of a secured creditor's Equal Monthly Plan Payment while paying administrative expenses allowed under § 330, a Notice of Postconfirmation Reduction of Equal Monthly Plan Payment (Local Form 2083-1-D) must be filed and served on the affected creditor(s).

(B) The Notice of Postconfirmation Reduction of Equal Monthly Plan Payment shall fix the amount and number of payments during the period of payment of allowed administrative expenses under § 330. The reduced Equal Monthly Plan Payment amount shall accrue on the first day of the month following entry of the order approving the reduction in Equal Monthly Plan Payment.

(C) The deadline to object to a Notice of Postconfirmation Reduction of Equal Monthly Plan Payment shall be governed by the Fed. R. Bankr. P. 3015(h) and Local Rule 2083-1(j)(1).

(l) ~~After~~ Claims Review and Trustee's Report of Claims. Not later than 60 days following expiration of the governmental claims bar date, debtor shall file and ~~after~~serve a declaration that all claims have been reviewed ~~by debtors' counsel and/~~and that any appropriate objections have been filed and served. Not later than 60 days following the filing of debtor's claims review declaration or 30 days following entry of an order confirming the plan, whichever is later, the trustee~~, the trustee may file a Trustee's~~ shall file and serve on all parties in interest a Trustee's Report of Claims ("TROC") that lists all claims and how they are treated under the plan. ~~The TROC will be served on the current mailing matrix.~~ Any objection to the TROC must be filed within 21 days~~.~~ after service of the TROC. If there are no timely objections, the TROC will be deemed incorporated into the confirmation order and will be binding on parties. If a timely objection is filed, the objecting party shall forthwith set and notice the matter for a hearing.

(m) Request for Discharge~~.~~. As soon as practicable after the completion of all payments under the plan, the trustee shall file with the court and serve upon the debtor and debtor's counsel a Notice of Completion of Plan Payments. If debtor's counsel asserts unpaid fees or costs in a case, counsel must within ~~30~~21 days of ~~the filing~~after service of the Notice of Completion of Plan Payments take the following actions: (1) file an objection to the Notice of Completion of Plan Payments, (2) file an appropriate application for allowance of such fees and costs, and (3) serve a notice of hearing on such application. Failure to timely comply with any of these requirements will

result in a waiver of all such fees. Within 60 days ~~thereafter~~after service of the Notice of Completion of Plan Payments, the debtor shall file and serve on all parties in interest a Verification and Request for Discharge in the form attached ~~to these Local Rules~~ as Local ~~Bankruptcy~~ Form 2083-1. If no written objection to the Verification and Request for Discharge is filed within 21 days after service thereof, the court may enter a discharge pursuant to § 1328(a) without further notice or hearing.

RULE 2083-2
PROVISIONS REGARDING USE OF OFFICIAL CHAPTER 13 PLAN FORM (THE "PLAN")

(a) Allowance of Claims. Except as otherwise specified in Part 3.2 of the Plan, the amount of all allowed claims to be paid through the Plan shall be determined using the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules. A proof of claim must be timely filed or specifically allowed by an order of the court to receive any disbursements from the trustee under the Plan.

(b) Trustee's Percentage Fees. The trustee shall collect the statutory fee of 28 U.S.C. § 586(e) for any receipts received or disbursements actually or constructively made by the trustee under the Plan or pursuant to the Bankruptcy Code, the Local Rules, or a court order. The calculation required by Part 4.2 of the Plan should be based on a trustee's statutory fee of 10%, unless otherwise approved by the court.

(c) Disbursements on Secured Claims.

(1) The trustee shall make disbursements on a secured claim only if all the following conditions are met:

(A) The Plan specifically provides that the trustee shall disburse on the secured claim;

(B) The secured claim is allowed under §§ 502(a) and 506(a), meaning a secured proof of claim has been timely filed, or the claim has been allowed by court order; and

(C) There is no pending objection or motion with respect to such proof of claim under Fed. R. Bankr. P. 3007 (objection to claim) or 3012 (motion to value collateral).

(2) All disbursements are subject to the trustee having received from the debtor sufficient payments under the Plan to enable the trustee to make such disbursements.

(3) If a secured creditor obtains relief from the automatic stay and that secured creditor's claim is being paid by the trustee in the Plan, the order granting relief from the automatic stay should include language that the trustee shall make no further distribution on behalf of the secured claim. The order should also state that the creditor shall have 180

days from entry of the order granting relief from the automatic stay to file an unsecured deficiency claim or such creditor's claim will be deemed to be paid in full for purposes of the Plan, unless otherwise ordered by the court.

(d) Interest Accrual and Interest Rate on Secured Claims. Interest shall begin to accrue from the entry of the order confirming the Plan; however, interest may begin to accrue on an oversecured claim as of the petition date, if so designated in Part 8.1 of the Plan.

(1) If no interest rate is designated for a claim listed in Part 3.2 or Part 3.3 of the Plan, interest shall accrue at the rate set forth on line 9 of the filed proof of claim. If the proof of claim does not specify an interest rate, then interest shall accrue at 6% per annum on claims listed in Part 3.2 and Part 3.3.

(2) If no interest rate is stated for a claim listed in Part 3.1 of the Plan, then no interest shall be paid by the trustee on such claim.

(3) Any modification of interest rates stated in the Plan shall apply only to claims on which the trustee makes disbursement. The contractual interest rate and the current installment payment portion of any claim listed in Part 3.1 of the Plan which the debtor pays directly shall remain unaltered.

(e) Order of Distribution.

(1) The trustee shall first collect the trustee's statutory percentage fee pursuant to 28 U.S.C. § 586(e) upon receipt of any payment made by the debtor or on the debtor's behalf. The trustee shall pay allowed clams in the following order:

Class 1: Adequate Protection Payments pursuant to Local Rule 2083-1(d), Equal Monthly Plan Payments to secured creditors as stated in Part 3 of the Plan, or accrued interest, if greater than the Adequate Protection Payment or Equal Monthly Plan Payment.

Class 2: Attorney's fees as provided for in Part 4.3 of the Plan until paid in full.

Class 3: Priority Domestic Support Obligations under § 507(a)(1) until paid in full.

Class 4: Other administrative expenses allowed under § 507(a)(2) until paid in full.

Class 5: Other secured claims paid to be paid by the trustee for which the Plan does not provide Adequate Protection Payments or Equal Monthly Plan Payments.

Class 6: Other priority claims until paid in full.

Class 7: Nonpriority unsecured claims as provided in Part 5 of the Plan.

(2) If the Plan specifies Adequate Protection Payments or Equal Monthly Plan Payments (Class 1) to be paid to the holder of a secured claim, all accrued Class 1 monthly payments must be current through the date of distribution before the trustee may disburse to a junior class. However, Class 1 claims need not be paid in full prior to a junior class receiving distributions.

(3) After payment of allowed attorney's fees (Class 2), the trustee may, but is not required to, disburse to holders of Class 1 claims amounts greater than the stated monthly payment amount to facilitate the prompt administration of the case.

(4) If the trustee has not received sufficient funds to pay the full monthly amount of the stated Adequate Protection Payments or Equal Monthly Plan Payments in Class 1, the trustee may make a pro rata distribution to each holder of a claim in Class 1. Adequate Protection Payments will be brought current before disbursements are made on Equal Monthly Plan Payments, and unpaid portions of Adequate Protection Payments or Equal Monthly Plan Payments from prior months will first be brought current before disbursements are made to a junior Class.

(5) If the Plan does not provide for an Equal Monthly Plan Payment on a claim, the trustee shall distribute pro rata payments to the holder of such claim within the designated Class.

(f) Part 1.3 – Required Nonstandard Plan Provisions.

(1) Adequate Protection Payments. If the debtor seeks to pay Adequate Protection Payments to holders of secured claims, the requirements of Local Rule 2083-1(d) apply.

(2) Applicable Commitment Period. The applicable commitment period for the Plan shall be stated in Part 8.1 of the Plan as a nonstandard provision. The debtor must include a statement indicating if the applicable commitment period of the Plan is 36 or 60

months, as determined by § 1325(b). The number of months listed in Part 2.1 for which the debtor will make regular payments is an estimate only; the applicable commitment period stated in Part 8.1 dictates the term of the Plan. Any below median case may be extended as necessary not to exceed 60 months to complete the Plan payments.

(3) Direct Payment of Claims. If the debtor elects to pay a claim directly and that claim is not one which the Plan allows to be paid directly, the direct payment designation must be made in Part 8.1 of the Plan as a nonstandard provision. For all claims the debtor elects to pay directly, Local Rule 2083-2(i)(4) applies.

(4) Third-Party Payment of Claims. If the Plan provides that a nondebtor shall pay a claim directly, the third-party payment designation must be made in Part 8.1 of the Plan as a nonstandard provision. For all claims the Plan provides will be paid by a third-party, Local Rule 2083-2(k)(1) may apply. Upon request, the debtor must furnish the name and contact information for the third-party payor.

(5) Lien Avoidance Under § 522(f). If the debtor moves to avoid a lien under § 522(f), Local Rule 2083-2(j) applies.

(6) Interest on Oversecured Claims. If the debtor proposes to pay an oversecured claim a nonstandard rate of interest or interest accuring prior to confirmation of the Plan, such nonstandard treatment must be specifically stated in Part 8.1 of the Plan, including the identity of the secured creditor and the proposed interest rate accrual.

(7) Local Rules are Incorporated. Each Plan shall include the following required nonstandard provision: "The Local Rules of Practice of the United States Bankruptcy Court for the District of Utah are incorporated by reference in the Plan."

(g) Part 3.1: Maintenance of post-petition payments and cure of default, if any.

(1) The trustee shall make disbursements on allowed arrearage claims listed in Part 3.1 of the Plan. The trustee will pay the amount of the arrearage stated in the proof of claim, unless modified by an amended claim or court order.

(2) Unless otherwise ordered by the court, the debtor shall maintain current contractual installment payments directly to the creditors listed in Part 3.1 of the Plan in accordance with the terms of the contract, beginning with the first payment due after the petition date.

(3) The debtor may not modify the contractual rate of interest or monthly payment amount listed in Part 3.1 of the Plan. Any interest rate stated in Part 3.1 of the Plan applies only to the pre-petition arrearages being paid by the trustee.

(4) Current contractual installment payments due from the debtor may change due to an adjustable rate note, escrow requirements, etc. Notices of such payment changes shall be filed and served on the debtor in compliance with Fed. R. Bankr. P. 3002.1(b).

(h) Part 3.2: Request for valuation of security, payment of fully secured claims and modification of undersecured claims.

(1) The Plan must designate with the check box in Part 1.1 that Part 3.2 is being utilized.

(2) Each creditor listed in Part 3.2 must be served with the Plan in compliance with Fed. R. Bankr. P. 3012(b) and such service must be evidenced by a separately filed certificate of service. Any Plan amendment or modification negatively affecting a creditor listed in Part 3.2 must similarly be served on such creditor in compliance with Fed. R. Bankr. P. 3012(b) and such service must be evidenced by a separately filed certificate of service.

(3) If the debtor is seeking to value an allegedly wholly unsecured consensual lien against the debtor's real property, and unless otherwise permitted by the court, a separate motion or adversary proceeding must be filed prior to the first date fixed for a hearing on confirmation of the Plan. The debtor must comply with all applicable notice, service and evidentiary requirements to obtain such relief. A separate order must be filed by the debtor if the relief is granted.

(4) Unless an objection is filed to confirmation of the Plan, the court will fix the value of the collateral consistent with the debtor's proffer of value in the Plan without further notice or hearing. A nongovernmental entity's filing a proof of claim asserting a collateral value higher than the debtor's proffered value does not constitute an objection to confirmation. The allowed secured claim of such creditor shall be paid the lesser of (a) the value as fixed by an order of the court, (b) the amount of debtor's proffer of value or (c) the secured amount asserted in the allowed proof of claim, including any subsequent amendments or modifications approved by court order.

(5) Allowed secured claims filed by a governmental unit shall be paid the secured amount set forth on the proof of claim rather than the debtor's proffer of value in the Plan. The debtor must comply with Fed. R. Bankr. P. 3012(c) to establish a lesser secured amount of a governmental unit's claim.

(i) Part 3.3: Secured claims excluded from 11 U.S.C. § 506.

(1) The secured claim of each creditor in Part 3.3 of the Plan shall be the secured amount listed in the allowed proof of claim, unless modified by an amended claim or court order.

(2) The debtor may modify the interest rate and monthly payment amount for any secured claim listed in Part 3.3 of the Plan on which the trustee disburses payments.

(3) If the debtor elects to directly pay a claim listed in Part 3.3 of the Plan, the contractual interest rate and monthly payment amount cannot be modified.

(4) If the debtor elects to pay directly a claim listed in Part 3.3 of the Plan, the following conditions apply: (A) the debtor will pay the claim without any modifications to the terms of the contract; (B) upon entry of the Order Confirming the Plan, the automatic stay of § 362 and the co-debtor stay of § 1301 are terminated as to such collateral and the co-debtor's obligation; (C) the claim will not be discharged; and (D) neither the court nor the trustee will monitor the debtor's performance on direct payments to the creditor.

(j) Part 3.4: Lien avoidance under 11 U.S.C. § 522(f).

(1) The Plan must designate in the check box in Part 1.2 that Part 3.4 is being utilized. The Plan must also designate in the check box in Part 1.3 that the Plan contains a nonstandard provision in Part 8.1, which nonstandard provision shall state that the affected creditor will retain its lien until one of the conditions set forth in subparagraph (3) below is satisfied.

(2) Each creditor listed in Part 3.4 of the Plan must be served with the Plan in compliance with Fed. R. Bankr. P. 4003(d) and such service must be evidenced by a separately filed certificate of service. Any Plan amendment adding a creditor in Part 3.4 must similarly be served in compliance with Fed. R. Bankr. P. 4003(d) and such service shall be evidenced by a separately filed certificate of service.

(3) Any creditor listed in Part 3.4 of the Plan shall retain its lien securing such claim until the earlier of (A) payment of the underlying debt determined under nonbankruptcy law, (B) discharge of the underlying debt under § 1328 or completion of the plan, at which time the lien will terminate and be released by the creditor, or (C) entry of an order granting a separate motion filed by the debtor seeking release of the lien for cause under § 349(b).

(4) For each creditor listed in Part 3.4 of the Plan, the debtor must complete and attach to the Plan Local Form 2083-2 (Form for Lien Avoidance Worksheet), specifically identifying the holders and amounts of liens senior to the lien(s) intended to be avoided.

(5) For any claim listed in Part 3.4 of the Plan, subparagraphs (4) and (5) of Local Rule 2083-2(h) apply.

(6) Nothing in this Rule prevents the debtor from seeking to avoid a lien under § 522(f) by separate motion.

(k) Part 3.5: Surrender of collateral.

(1) Upon entry of the order confirming the Plan, the automatic stay under § 362 and the codebtor stay under § 1301 are terminated as to both the collateral and the co-debtor obligation. The debtor shall immediately make the collateral being surrendered available to the secured creditor.

(2) Creditors listed in Part 3.5 of the Plan shall have 180 days from entry of the confirmation order to file an amended claim for an unsecured deficiency or such creditor's claim will be deemed paid in full.

(l) Part 4: Treatment of Fees and Priority Claims.

(1) Unless otherwise ordered by the court, if the Plan provides for interest on nonpriority unsecured claims, such interest shall also be paid on priority claims, other than an award of fees under § 507(a)(2).

(2) The calculation required by Part 4.2 of the Plan shall be based on a trustee's statutory fee of 10%, unless otherwise ordered by the court.

(3) The "balance of fees owed to the attorney for the debtor" referred to in Part 4.3 of the Plan shall be determined by subtracting any retainer received by debtor's attorney

from the allowed chapter 13 presumptive fee established by the court's "Policies and Procedures" or other orders of the court. The total award of attorney's fees may not exceed the applicable presumptive fee absent compliance with notice and hearing requirements of the Bankruptcy Code, Bankruptcy Rules and Local Rules. The presumptive fee shall provide compensation for legal services through (A) Plan confirmation; (B) the claims review process that does not require an actual contested hearing; (C) certification of the debtor's completion of the postpetition instructional course concerning personal financial management; and (D) the final certification of readiness for discharge.

(4) Unless otherwise ordered by the court, if the debtor utilizes Part 4.5 of the Plan to pay a domestic support obligation owed to governmental unit in an amount less than the full amount, the creditor must affirmatively accept or endorse the treatment under the Plan. The Plan shall be served on such governmental unit in compliance with Fed. R. Bankr. P. 3012(b) and such service shall be evidenced by a separately filed certificate of service.

(5) The allowed amount of any priority claim will be the amount stated in the filed proof of claim, unless modified by an amended claim, as determined under Fed. R. Bankr. P. 3012 or by other court order.

(m) Part 5: Treatment of Nonpriority Unsecured Claims.

(1) Unless the Plan proposes 100% payment to all claims, the return to unsecured creditors shall be the greater of the amount specified in Part 5.1 or the pro rata distribution, if any, resulting from the Plan payment in Part 2.1 multiplied by the applicable commitment period, plus tax refunds and other payments designated as lump sum plan contributions.

(2) If the debtor asserts a substantial change in circumstances warranting deviation from the return to unsecured creditors required by § 1325(b)(1)(B), then prior to the confirmation hearing the debtor must file a separate pleading describing such change in circumstances. Such pleading

be accompanied by evidence of the change in circumstances including, but not limited to, the debtor's affidavit, pay advices or other evidence of income, or a hypothetical Form B

122C-2 indicating what the return, if any, to unsecured creditors would be with the current income.

(3) The trustee or any other party in interest may file a pleading asserting a substantial change in the debtor's circumstances warranting deviation from the return to unsecured creditors required by § 1325(b)(1)(B) if it appears the debtor's ongoing income supports an ability to pay an increased amount to unsecured creditors. Such pleading may be accompanied by evidence of the change in circumstances including, but not limited to, the debtor's pay advices or other evidence of income, the debtor's schedules, or debtor's tax returns.

(4) If the Plan designates unsecured claims to be treated in Part 5.2 (Maintenance of payments and cure of any default on nonpriority unsecured claims) or Part 5.3 (Other separately classified nonpriority unsecured claims), the debtor must establish the basis for such designation under § 1322(b)(1) in a separately filed pleading. Any separate classification of an unsecured debt must comply with all provisions of the Bankruptcy Code and applicable case law.

(n) Part 6: Executory Contracts and Unexpired Leases.

(1) If an unexpired lease or executory contract is not assumed in the confirmed Plan, such lease or contract is deemed rejected as of entry of the order confirming the Plan. If the lease or contract is rejected, the automatic stay of § 362 and codebtor stay of § 1301 are terminated as to the property which is the subject of the lease or contract and as to any co-debtor.

(2) If an unexpired lease or executory contract is assumed, the debtor shall directly make postpetition lease or contract payments to the other party to the lease or contract subject to the following conditions: (A) the debtor will make such payments without any modifications to the terms of the contract or lease; (B) upon entry of the order confirming the Plan, the automatic stay of § 362 and the co-debtor stay of § 1301 are terminated as to the indebtedness and as to any co-debtors; (C) claims arising under the contract or lease will not be discharged; and (D) neither the court nor the trustee will monitor the debtor's performance on direct payments to such creditors.

(3) If the debtor owes arrearages on an unexpired lease or executory contract and provides for payment of such arrearages by the trustee in the Plan, then the debtor must establish that payment of the arrearages is reasonable and necessary for the maintenance and support of the debtor or the debtor's dependents. The Plan must provide for such arrearages in Part 5.3 and designate the treatment of the lease or contract in Part 6.1. The arrearages claim will be the amount in the allowed proof of claim, unless modified by an amended claim or order of the court.

RULE 2090-1
ATTORNEYS - ADMISSION TO PRACTICE

(a) Bar of the Utah Bankruptcy Court. The bar of this court consists of all attorneys admitted to practice in the United States District Court for the District of Utah under DUCivR 83-1.1~~(b) and (c)~~. An attorney who is a member of the Utah State Bar, but not a member of the bar of this court, may not appear before this court.

(b) Participation of an Attorney Admitted to the Local Bar. An attorney admitted to the bar of this court under DUCivR 83-1.1~~(b) and (c) and~~ must comply with all of the obligations imposed by these Local Rules and other applicable rules and standards, including, without limitation:

(1) The responsibility to be present at all scheduled proceedings in which the attorney intends to participate, including the ~~first meeting of creditors~~§ 341 Meeting, hearings, pretrial conferences, and trial; and

(2) The responsibility to comply with all applicable rules of this court, including, without limitation, Local Rule 5005-1 (Filing Requirements), 5005-2 (Electronic Filing), and 9073-1~~Local Rule 5005-1, 5005-2, and 9073-1.~~ (Hearings).

(c) ~~Other Permitted Appearances.~~

~~(1)~~ **~~Permitted appearances by non-admitted attorneys.~~ Admission Pro Hac Vice**. Attorneys who are not active members of the Utah State Bar and the Bar of the United States District Court for the District of Utah but who are active members in good standing of the bar of ~~another state or of the bar of any federal~~the highest court~~, may appear for the purpose of attending and participating in a meeting of creditors without leave of the court, but must obtain an order of the court pursuant to L.R. 2090-1(c)(2) for other matters.~~

~~(2)~~ **~~Admission Pro Hac Vice~~**. ~~Attorneys who are not active members of the Utah State Bar but who are active members in good standing of the bar~~ of another U.S. jurisdiction or of the bar of any federal court may be admitted in the case by order of the court pursuant to the following procedures:

~~(A) Applicant must file a written motion for admission pro hac vice made by an active member in good standing of the bar of this court;~~

~~(B)~~(1) Motion for Admission. Applicants must present a written motion for admission pro hac vice made by an active member in good standing of the bar of this court. Local counsel must file a written motion for the applicant's admission pro hac vice that substantially complies with Local Form 2090-1. For nonresident applicants, unless otherwise ordered by a judge of this court, such motion must be granted only if the applicant associates an active local member of the bar of this court with whom opposing counsel and the court may communicate regarding the case and upon whom papers will be served. Applicants who are new residents, unless otherwise ordered by the court, must state either that (i) they have taken the Utah State Bar examination and are awaiting the results, (ii) that they are scheduled to take the next bar examination; or (iii) they have applied for admission by reciprocity.

(2) Application and Fee. Applicants must complete and attach an application for admission pro hac vice to the Motion for Admission that substantially complies with Local Form 2090-1-A. The ~~motion~~Application must include the case ~~name~~caption and number, if any, of all pending cases in this court in which the applicant is an attorney of record~~;~~

~~(C) Unless otherwise ordered by the court, the motion must include the following information: the name, physical~~. Applicant must state under penalty of perjury that he/she is a member in good standing of the bar of the highest court of another U.S. jurisdiction or of the bar of any federal court. For nonresident applicants, the name, address, Utah State Bar identification number, telephone number, and written consent of an active ~~member of the bar of this court.~~ local member of this court's bar to serve as associate counsel must be filed with the application. The application also must be accompanied by payment of the prescribed admission fee.

(~~D)~~ 3) Attorneys admitted under this rule must comply with all applicable rules of this court, including, without limitation, Local Rule 5005-1 (Filing Requirements), 5005-2 (Electronic Filing) and 9073-1~~Local Rule 5005-1, 5005-2 and 9073-1;~~ (Hearings); and

(~~E)~~ 4) All applicants must also comply with DUCivR 83-1.1(d)(1).

(d) Attorneys for the United States. DUCivR. 83-1.1(e) applies to attorneys representing the United States Government or any agency or instrumentality thereof.

(e) Standards of Professional Conduct. All attorneys practicing before this court~~, whether admitted as members of the court's bar, admitted pursuant to subsection (b) of this rule, or otherwise permitted by the court,~~ are governed by and must comply with these Local Rules (including the requirement under Local Rule 5072-1(a) to act in a civil and professional manner) and, unless otherwise provided, with the Utah Rules of Professional Conduct, as revised and amended, and the decisions of this court interpreting those rules and standards.

(f) Student Practice. Any eligible law student, as defined by DUCivR 83-1.6(b), who desires to enter an appearance in any case or proceeding must ~~file~~follow the ~~applicable forms similar to Appendix XI, XII and XII of the District Court Rules of Practice with this court,~~procedures set forth in DUCivR 83-1.6(a)-(e). The law student must be familiar with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and these Local Rules~~, and must comply with DUCivR 83-1.6 (b), (c), (d) and (e)~~.

RULE 2090-2
ATTORNEYS - REGISTRATION

All members of the bar of this court are required to comply with DUCivR 83-1.2, and to certify they are familiar with these Local Rules.

RULE 2090-3
ATTORNEYS - DISCIPLINE AND DISBARMENT

Upon motion of a party or on its own initiative, and after a notice and hearing, the court may impose sanctions on an attorney for violation of these Local Rules, the Federal Rules of Bankruptcy Procedure, the Federal Rules of Civil Procedure, or other applicable rules. Sanctions may include, but are not limited to, the assessment of costs, attorney's fees, fines, striking pleadings, revocation of ~~Filing User~~ECF Filer privileges, or any combination thereof, against an attorney or a party. A person may also file a complaint under DUCivR 83-1.5(h). The court or a trustee may refer under 18 U.S.C. § 3057 any appropriate matter regarding an attorney's conduct to the United States Attorney's office for action.

RULE 2091-1
DEBTOR'S ATTORNEYS - SCOPE OF REPRESENTATION

(a) Scope of Representation. A debtor's attorney must represent and advise the debtor in all aspects of the case, including the ~~meeting of creditors~~§ 341 Meeting, motions filed against the debtor, reaffirmation agreements, agreed orders, and other stipulations with creditors or third parties, and post-confirmation matters. The debtor's attorney must also represent the debtor in adversary proceedings filed against the debtor unless, pursuant to this rule, the Court has excused the attorney from this requirement. The scope of representation cannot be modified by agreement. The court may deny fees or otherwise discipline an attorney for violation of this rule.

(b) Relief from the Duty to Represent Debtors in Adversary Proceedings. If an adversary proceeding is filed against the debtor, the debtor's attorney may move the Court for an order relieving the attorney of the duty to represent the debtor in the adversary proceeding following the procedures set forth in Local Rule 2091-2. The motion shall be filed in the adversary proceeding and not in the main bankruptcy case.

~~(1) With Client's Consent. If the attorney obtains written consent of the client, the written consent must clearly advise the client of the last date to answer the complaint, and advise the client that default judgment may be entered if the client fails to answer the complaint. If the attorney has obtained the written consent of the client, the motion may be presented to the court ex parte.~~

~~(2) Without Client's Consent. If the attorney has not obtained the written consent of the client, the motion must be served upon the client. The motion must be accompanied by a statement of the moving attorney certifying that:~~

~~(A) the attorney has sent the client written notification advising the client that the attorney will not be representing the client in the adversary proceeding, advising the client of the last date to answer the complaint, and advising the client that a default judgment may be entered if the client fails to answer the~~

complaint (a copy of the written notification must also be attached to the motion); or

(B) the client cannot be located or for whatever other reason cannot be notified of the pendency of the motion.

COMMENT (2014)

This rule has been amended to provide a procedure for debtor's counsel to be relieved of their duty to represent the debtor in an adversary proceeding. Because the scope of representation under this rule includes adversary proceedings, debtor's counsel will be the counsel of record in adversary proceedings. The option afforded by this rule is not mandatory. The rule is intended to ensure that the debtor is informed that the attorney will not be representing the debtor in the adversary proceeding, informed of the deadline to answer the complaint and informed that a default judgment may be entered if an answer to the complaint is not filed.

RULE 2091-2
ATTORNEYS - SUBSTITUTION OR WITHDRAWAL OF ATTORNEY

(a) **Substitution**. Whenever an attorney of record in a pending case will be replaced by another attorney who is an active member of this court, a notice of substitution of counsel must be filed. The notice must (i) be signed by both attorneys; (ii) include the attorneys' bar numbers; (iii) identify the parties represented; (iv) be served on all parties; and (v) verify that the attorney entering the case is aware of and will comply with all pending deadlines in the matter. Upon the filing of the notice, the withdrawing attorney will be terminated from the case, and the new attorney will be added as counsel of record. When an attorney of record leaves a law firm, the law firm is responsible for filing a notice of substitution of counsel in accordance with this section and identifying the individual attorney with primary responsibility for the case.

(b) **Withdrawal Leaving a Party Without Representation**.

(1) No attorney will be permitted to withdraw as attorney of record in any pending bankruptcy case or adversary proceeding, thereby leaving a party without representation, except upon submission of:

(A) A motion to withdraw as counsel in the form prescribed by Local Form 2091-2 that includes (i) the last known contact information of the moving attorney's client(s), (ii) the reasons for withdrawal, (iii) notice that if the motion is granted and no notice of substitution of counsel is filed, the client must file a notice of appearance within 21 days after entry of the order, unless otherwise ordered by the court, (iv) notice that pursuant to Local Rule 9011-2(a), no corporation, association, partnership, limited liability company or other artificial entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court, and (v) certification by the moving attorney that the motion was sent to the moving attorney's client and all parties; and

(B) A proposed order granting motion to withdraw as counsel in the form prescribed by Local Form 2091-2-A stating that (i) unless a notice of substitution of counsel is filed, within 21 days after entry of the order, or within the time otherwise required by the court, the unrepresented party shall file a notice of appearance, (ii) that no corporation, association, partnership, limited liability

company or other artificial entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court, and (iii) that a party who fails to file such a notice of substitution of counsel or notice of appearance may be subject to sanction pursuant to ~~Federal Rule of Civil Procedure~~Fed. R. Civ. P. 16(f)(1), including but not limited to dismissal or default judgment.

(2) No attorney of record will be permitted to withdraw after an action has been set for hearing or trial unless (i) the motion to withdraw as counsel includes a certification signed by a substituting attorney indicating that such attorney has been advised of the hearing or trial date and will be prepared to proceed with the hearing or trial; (ii) the motion to withdraw as counsel includes a certification signed by the moving attorney's client indicating that the party is prepared for hearing or trial as scheduled and is eligible pursuant to Local Rule 9011-2(b) to appear pro se at the hearing or trial; or (iii) good cause for withdrawal is shown, including without limitation, with respect to any scheduling order then in effect.

(3) Withdrawal may not be used to unduly prejudice the non-moving party by improperly delaying the litigation.

(c) Withdrawal With and Without the Client's Consent.

(1) With Client's Consent.

(A) In the Bankruptcy Case. Where the withdrawing attorney has obtained the written consent of the client, such consent must be submitted with the motion.

(B) In an Adversary Proceeding. If withdrawing from representation in an adversary proceeding, the written consent must clearly advise the client of the last date to answer the complaint, and advise the client that default judgment may be entered if the client fails to answer the complaint. If the attorney has obtained the written consent of the client, the motion may be presented to the court without notice and a hearing.

(2) Without Client's Consent.

(A) In the Bankruptcy Case. Where the moving attorney has not obtained the written consent of the client, the motion must contain (i) a certification

that the client has been served with a copy of the motion to withdraw as counsel; (ii) a description of the status of the case including the dates and times of any scheduled court proceedings, requirements under any existing court orders, and any possibility of sanctions; and, if appropriate; (iii) certification by the moving attorney that the client cannot be located or, for any other reason, cannot be notified regarding the motion to withdraw as counsel.

(B) In an Adversary Proceeding. If withdrawing from an adversary proceeding, the motion must be accompanied by a statement of the moving attorney certifying that: (i) the attorney has sent the client written notification advising the client that the attorney will not be representing the client in the adversary proceeding, (ii) advising the client of the last date to answer the complaint, and (iii) advising the client that a default judgment may be entered if the client fails to answer the complaint (a copy of the written notification must also be attached to the motion); or the client cannot be located or for whatever reason cannot be notified of the pendency of the motion.

(d) Procedure After Withdrawal.

(1) Upon entry of an order granting a motion to withdraw, the action shall be stayed until 21 days after entry of the order, unless otherwise ordered by the court. The court may in its discretion shorten the 21-day stay period.

(2) The court will enter the order and serve it on all parties and the withdrawing attorney's client at the address provided in the motion to withdraw as counsel, which order will specifically advise the parties of the terms of this rule.

(3) Within 21 days after entry of the order, or within the time otherwise required by the court,

(A) any individual whose attorney has withdrawn shall file a notice of pro se appearance or new counsel shall file an appearance on that party's behalf.

(B) new counsel shall file an appearance on behalf of any corporation, association, partnership or other artificial entity whose attorney has withdrawn. Pursuant to Local Rule 9011-2(a), no such entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court.

(4) After expiration of the stay period, either party may request a scheduling conference or submit a proposed amended scheduling order.

(5) An unrepresented party who fails to appear within 21 days after entry of the order, or within the time otherwise required by the court, may be subject to sanction pursuant to ~~Federal Rule of Civil Procedure~~Fed. R. Civ. P. 16(f)(1), including but not limited to dismissal or default judgment.

COMMENT (2014)

This rule was adopted in conjunction with amendments to Local Rule 2091-1. The rule sets forth the procedures for attorneys who are seeking to withdraw as counsel of record as opposed to debtor's counsel seeking to be relieved of their obligation to represent the debtor in adversary proceedings under Local Rule 2091-1. The rule is intended to ensure that the attorney's client is informed of the status of the case, the need to obtain new counsel or proceed *pro se,* and that they may be subject to sanction under Federal Rule of Civil Procedure 16(f)(1).

RULE 3003-1
CHAPTER 11 BAR DATE FOR FILING PROOF OF CLAIM OR INTEREST

(a) **Bar Date in Chapter 11 Cases**. Unless otherwise ordered by the court, in a chapter 11 case, a proof of claim or interest is timely filed if it is filed not later than 90 days after the first date set for the ~~meeting of creditors under § 341 of the Code~~341 Meeting, or, if filed by a governmental unit, not later than 180 days after the date of the order for relief.

(b) **Notification of Bar Date in Chapter 11 Cases**. Unless otherwise ordered by the court, the clerk's office should state the bar dates for filing proofs of claim or interest on the notice entitled "*Notice of Commencement of Case under the Bankruptcy Code, Meeting of Creditors, and Fixing of Dates*" issued in chapter 11 cases.

RULE 3007-1
OBJECTIONS TO CLAIMS

(a) Form of the Objection. Any objection to a proof of claim should state with specificity the factual and legal basis for the disallowance, bifurcation, or reclassification of the claim. Failure to state sufficient grounds to overcome the presumption of allowance of § 502(a) may result in a denial of the objection even in the absence of a response by the claimant.

(b) Service of the Objection. Service of the objection shall be made on the claimant in the manner proscribed by Fed. R. Bankr. P. 3007.

(c) Notice of Hearing on Objection to Claim. A party objecting to a claim must provide notice of the objection ~~and~~ , the deadline to respond to the objection, and the time and place of the hearing on the objection ~~to the claimant~~ in accordance with Local Rule 9013-1(d), Fed. R. Bankr. P. 3007, and Official Form 20B (Notice of Objection to Claim). The hearing must be set out with sufficient time for a response and a reply to be timely filed as provided below. A notice required by this rule may include a statement that the objection may be granted without a hearing unless a response is timely filed.

(~~b~~d) Response to Objection to Claim. A response to an objection to a claim must be filed and served within ~~the time period fixed by Local Rule 9006-1(b)(3).~~ 30 days after notice of the claim objection is served. The objecting party may file a reply to the response within the ~~time period fixed by Local Rule 9006-1(c). The court will conduct an evidentiary hearing if a response is timely filed.~~ appropriate deadline, which in no case should be less than 4 days before the date set for the hearing. If a response is not timely filed, the court may sustain the objection without a hearing pursuant to Local Rule 9013-1(f)~~Local Rule 9013-1(e). It is the responsibility of the objecting party to request a hearing and serve notice thereof on the holder of the claim, on any party responding to the objection, and on the attorneys for these parties~~

RULE 3011-1
PROCEDURE FOR PAYMENT OF UNCLAIMED FUNDS

(a) **Requirements for Payment of Unclaimed Funds**. The Court may not disburse unclaimed funds without an application for payment of unclaimed funds, notice of the application and a court order authorizing payment of unclaimed funds.

(b) **Application for Payment of Unclaimed Funds**. The following documentation is required in order to obtain a court order authorizing payment of unclaimed funds:

(1) Requirements for Individuals. An application for payment of unclaimed funds should substantially conform to Local Form 3011-1. Claimant must submit a photocopy of a valid photo identification issued by a government entity, such as a driver's license or passport. The application shall include the last four (4) digits of the claimant's social security number.

(2) Requirements for Assignee of Claimant or Representative of Estate of a Deceased Claimant. An application for payment of unclaimed funds submitted by an Assignee of Claimant or Representative of Estate of a Deceased Claimant should substantially conform to Local Form 3011-1. If the claimant is an assignee, claimant must provide documents establishing the chain of succession and assignment from the original claimant as proof of entitlement to the funds. If the claimant is a representative of the estate of a deceased claimant, certified copies of all probate documents to substantiate the representative's right to act on behalf of the decedent's estate must be provided as proof of entitlement. The assignee or the representative must comply with paragraph (1) above.

(3) Requirements for Corporations. An application for payment of unclaimed funds submitted by a corporation should substantially conform to Local ~~Bankruptcy~~ Form 3011-1. In addition, if the claimant is a successor corporation, claimant must provide documents establishing the chain of succession of the original corporate claimant as proof of entitlement to the funds. The application shall also include the tax identification number of the corporate claimant.

(4) Requirements for Funds Locators. An application for payment of unclaimed funds submitted by a funds locator should substantially conform to Local ~~Bankruptcy~~ Form 3011-1. In addition, the funds locator shall provide documentation establishing their

authorization to act on behalf of claimant. The application shall also include the tax identification number or the last four digits of the claimant's social security number.

(c) **Service of the Application**. An application for payment of unclaimed funds and a notice that any objection to the application must be filed within 21 days from the date of mailing of the application shall be filed with the Bankruptcy Court Clerk's office and mailed to the debtor, debtor's attorney, the trustee, the United States Trustee, the United States Attorney for the District of Utah and, if Claimant is not the original creditor or payee, the application and the notice must be served on the individual or entity for whom the funds were deposited.

(d) **Order Authorizing Disbursement of Unclaimed Funds**. If no objection is timely filed, the Court shall issue an order authorizing the disbursement requested in the application. If an objection to the application is timely received, the matter shall be referred to the Court for determination.

RULE 3022-1
FINAL REPORT/DECREE (CHAPTER 11)

(a) Non-Individual. A chapter 11 plan filed by a non-individual should set a date, not later than ~~1~~ one year after the entry of the order confirming the plan, prior to which a final decree closing the case will be entered under § 350 ~~of the Code~~ and Fed. R. Bankr. P. 3022. Not later than 28 days before such date, the reorganized debtor should file, serve upon all interested parties and set for hearing, a motion for a final decree. The motion must set forth evidence of full administration for the purpose of entering the final decree. A party may object to entry of the final decree prior to the date set forth in the plan or prior to the expiration of ~~1~~ one year from the entry of the order confirming the plan, whichever is earlier. The objection must be served on the reorganized debtor and debtor's attorney and must be set for a hearing. If the plan of reorganization does not provide a date certain for entry of a final decree or if the reorganized debtor fails to timely file a motion for a final decree, the final decree may be entered by the court, on or after ~~1~~ one year from entry of the order confirming the plan. The decree must specify that the case is closed upon entry of the final decree. The court may extend the time for entry of the final decree upon motion and notice to all parties.

(b) Individual. A final decree must be sought by an individual within 28 days after completion of all payments under the plan. The motion shall include a request for entry of discharge, if applicable, be served on all interested parties and be set for hearing. The motion shall set forth evidence of the completion of all payments under the plan, evidence that the debtor has met the requirements for a discharge under § 1141(d)(5)(C) and, if applicable, shall include any statement required under Fed. R. Bankr. P. 4004(c)(4) and 1007(b)(7). The final decree shall serve as a notice of the order of discharge of the individual debtor once all payments under the plan are complete.

RULE 4001-1
RELIEF FROM AUTOMATIC STAY

(a) **Motions for Relief from Stay**. A motion for relief from the automatic stay must be filed and served, with a notice of hearing, on the debtor, the debtor's attorney, the trustee, those parties designated in Fed. R. Bankr. P. 4001(a)(1), if applicable, and any ~~codebtor~~co-debtor and ~~codebtor's~~co-debtor's attorney. The notice must substantially conform to Official Form ~~20A~~420A and identify the date by which objections must be filed and served. A notice required by this rule may include a statement that the relief requested may be granted without a hearing unless an objection is timely filed. All motions requesting relief from the automatic stay must comply with Local Rule 9013-1 (*Motion Practice - Set Hearing*) and Local Rule 9004-1 (*Caption - Papers, General*) and shall:

(1) A motion for relief from stay shall plead with specificity the facts supporting the elements of § 362(d), including;

(A) Citation to the specific Bankruptcy Code section(s) under which relief is being sought;

(B) A description of the collateral for which relief is requested;

(C) Proof of a legally enforceable debt;

(D) If such proof is attached to a previously filed claim, the motion can incorporate by reference the attachment to the proof of claim.

(E) If the movant is the assignee of the debt, a statement identifying the original creditor;

(F) Proof of a perfected security interest, or reference to such proof attached to a filed proof of claim;

(G) The value of the collateral;

(H) The total amount owed to the moving creditor;

(I) The number and amount of delinquent pre-petition payments; and

(J) The dates and amounts of delinquent post-petition payments.

(2) State with specificity any alleged lack of adequate protection under § 362(d)(1), such as whether the collateral is insurance, the amount of unpaid taxes, whether the asset

is rapidly depreciating and the nature of such depreciation, and the property's value in relationship to the allegation of lack of adequate protection.

(3) As to relief under § 362(d)(2), describe the basis for the allegation that there is not any equity for the debtor by providing the value and its relationship to the amount owed, and describe how the collateral is not necessary for an effective reorganization. Also, provide information regarding the status of other liens and encumbrances, if known..

(4) As to other "cause" under § 362(d)(1), describe any pertinent information or reasons why relief should be granted.

(b) Objections to Motions for Relief from Stay. An objection to a motion for relief from stay must be filed and served within the response period set forth in Local Rule 9006-1(b)(2). The objection must admit or deny each factual allegation of the motion. A factual allegation is admitted for the purpose of the hearing on the motion unless the objecting party denies the factual allegation, or sets forth the reason why the party cannot admit or deny the factual allegation. The movant may file a reply to the response within the time period fixed by Local Rule 9006-1(c).

(c) Hearings on Motions for Relief from Stay. Hearings on motions for relief from stay may be set as evidentiary hearings or a time for hearing objections to a motion for relief from stay may be reserved on the courts law and motion calendar.

(1) Set Hearing. If the movant obtains from the court a set date for the hearing on its motion for relief from stay in accordance with Local Rule 9013-1, the hearing will be conducted as an evidentiary hearing. Unless otherwise ordered by the Court, the parties should be prepared to present evidence and live testimony at the hearing. The notice of hearing required under subsection (a) should state that the hearing will be an evidentiary hearing. If an objection is not timely filed the moving party may request, and the court may grant, the relief requested without a hearing pursuant to Local Rule 9013-1(f).

(2) Opportunity for Hearing. If the movant reserves a time for hearing on its motion for relief from stay on the court's law and motion calendar in accordance with Local Rule 9013-2, and if an objection is timely filed, the initial hearing will be conducted as a preliminary hearing. At the preliminary hearing detailed offers of proof should be made but no live testimony will be taken. The detailed offer of proof should describe the evidence to be presented, what the evidence tends to show and identify the grounds for admitting the

evidence. If following the preliminary hearing there appears to be no genuine issues of material fact, the court may rule on the motion. If genuine issues of material fact are demonstrated at the preliminary hearing, the court may set the matter for a final hearing, which may be an evidentiary hearing. If an objection is not timely filed the moving party may request, and the court may grant, the relief requested without a hearing pursuant to Local Rule 9013-2(f).

(d) Waiver of Stay of Order Under Fed. R. Bankr. P. 4001(a)(3). Requests for waiver or reduction of the automatic 14-day stay of an order granting a motion for relief from stay shall set forth concisely but with specificity the basis for the proposed waiver or reduction of the 14-day stay. Failure to state an adequate basis for the waiver of the 14-day stay may result in a denial of such relief even if the motion is otherwise uncontested.

RULE 4001-2
FINANCING MOTIONS AND ORDERS

(a) **Motions**. Except as provided herein and elsewhere in these Local Rules, all financing motions, including cash collateral and financing requests under §§ 363 and 364 ~~of the Code~~ ("Financing Motions"), must be heard by motion filed under Fed. R. Bankr. P. 2002, 4001 and 9014.

(1) Local Rule 4001-2 Disclosure. All Financing Motions must recite whether the proposed order and/or underlying cash collateral stipulation or loan agreement contains any extraordinary relief, including that listed in subsections (a)(1)(A) through (a)(1)(G) below, identify the location of any such provision in the proposed order, cash collateral stipulation and/or loan agreement, and state the justification for the inclusion of such provision:

(A) Provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the prepetition secured creditors (i.e., clauses that secure prepetition debt by postpetition assets in which the secured creditor would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law);

(B) Provisions or findings of fact that bind the estate or all parties in interest with respect to the validity, perfection or amount of a secured creditor's prepetition lien or debt or the waiver of claims against the secured creditor without giving parties in interest at least 75 days from the entry of the order and the creditors' committee, if formed, at least 60 days from the date of its formation to investigate such matters;

(C) Provisions that seek to waive, without notice, whatever rights the estate may have under § 552(b) ~~of the Code~~;

(D) Provisions that grant immediately to the prepetition secured creditor liens on claims and causes of action arising under §§ 544, 545, 547, 548, and 549 ~~of the Code~~;

(E) Provisions that deem prepetition secured debt to be postpetition debt or that use postpetition loans from a prepetition secured creditor to pay part or all

of that secured creditor's prepetition debt, other than as provided in § 552(b) ~~of the Code~~;

(F) Provisions that provide disparate treatment for professionals retained by a creditors' committee from that provided for professionals retained by the debtor; and

(G) Provisions that prime any secured lien, without the consent of that lienor.

(2) Summary. All Financing Motions must also provide a summary of the essential terms of the proposed use of cash collateral and/or financing (e.g., the maximum borrowing available on a final basis, the interim borrowing limit, borrowing conditions, interest rate, maturity, events of default, use of funds limitations, and protections afforded under §§ 363 and 364 ~~of the Code)~~.

(b) Interim relief. When Financing Motions are filed with the court on or shortly after the date of the entry of the order for relief, the court may grant interim relief pending review by interested parties of the proposed financing arrangements to avoid immediate and irreparable harm to the estate. In the absence of extraordinary circumstances, the court will not approve interim financing orders that include any of the provisions in subsection (a)(1)(A) through (a)(1)(G) of this rule.

(c) Final Orders. A final order on a motion under subsection (a) of this Local Rule will be entered only after notice and a hearing under Fed. R. Bankr. P. 4001 and Local Rule 2002-1. Ordinarily, the final hearing should be held at least 14 days following the organizational meeting of the creditors' committee contemplated by § 1102 ~~of the Code~~.

RULE 4002-1
DUTIES OF DEBTOR

(a) Filing of Changes of the Debtor's Address. The debtor must file and serve on the United States Trustee, and the trustee, if any, every change of the debtor's address until the case is closed or dismissed.

(b) Information Requested by the Trustee or by the United States Trustee. In addition to financial information the debtor is required to provide as set forth in Fed. R. Bankr. P. 4002(b), the debtor must produce the following materials no later than 14 days after a written request by the trustee or United States Trustee:

(1) bank statements, canceled checks, and checkbooks; and

(2) any other documents, recorded information, or other information reasonably necessary for the effective administration of the estate.

(c) Documents Required to be Provided to the United States Trustee. Individual chapter 7 debtors whose debts are primarily consumer debts and who are above the applicable State Median Family Income as established by the Census Bureau shall provide to the United States Trustee within 14 days after the petition date a copy of the most recent Federal income tax return and copies of all payments advices for the 6-month period ending on the last day of the calendar month immediately preceding the date of the commencement of the case.

(d) Individual Debtor's Failure to Provide Documentation at or Before the § 341 Meeting ~~of Creditors~~.

(1) In a chapter 13 case, the court may dismiss a voluntary case, except a case that has been converted from a Chapter 7 case to a Chapter 13 case, pursuant to the procedures set forth in Local Rule 2083-1(~~f~~g) if the debtor fails to timely file or provide documents in accordance with Local Rules ~~2083~~1007-1(~~d~~a)(2), 2083-1(e) and 2083-1(~~f~~g).

(2) In a case other than chapter 13, the court may dismiss a voluntary case, except a case that has been converted from a chapter 11 case to a chapter 7 case, if the debtor fails to timely provide any of the following documents:

(A) Documents prescribed by and within the time frames set forth in § 521(e)(2)(A);

(B) Documents prescribed by and within the times set forth in Fed. R. Bankr. P. 4002(b); or

(C) Documents prescribed by and within time frames set forth in subsections (b) or (c) of this Local Rule.

If the debtor fails to timely provide any of the prescribed documents, the trustee may file a notice of failure to comply and serve it on the debtor and the debtor's attorney. If the debtor fails to comply with subsection (c) the United States Trustee may file a notice of failure to comply and serve it on the debtor and the debtor's attorney. If an objection to the trustee's notice is not filed within 21 days the notice is ~~mailed~~served, the clerk must enter an order dismissing the case. The objecting party must set a hearing and give notice to parties in interest as provided in Fed. R. Bankr. P. 2002(a)(4). If a hearing on the objection is not held within ~~40~~ 42 days after the objection is filed, the clerk must enter the order of dismissal, unless the court orders otherwise. In a chapter 7 case, the objection must also move for an extension of the time fixed under Fed. R. Bankr. P. 4007(c) and 4004(a) for filing a complaint under §§ 523(c) and 727~~ of the Code~~, and the time fixed under Fed. R. Bankr. P. 4003(b)(1) for filing objections to exemptions under § 522(l)~~ of the Code~~.

(3) In a joint case where only ~~1 spouse~~one debtor meets the requirements of Fed. R. Bankr. P. 4002(b), the non-compliant ~~spouse will~~debtor may be dismissed from the case.

RULE 5001-1
CLERK'S OFFICE – LOCATION & HOURS

(a) **Office of Record**. The court's office of record is in the Frank E. Moss United States Courthouse at 350 South Main Street, Salt Lake City, Utah 84101.

(b) **Hours of Business**. Unless the court orders otherwise, the clerk's office is open to the public between the hours of 8:00 a.m. and 4:30 p.m. on all days except Saturdays, Sundays, and legal holidays as set forth below:

-New Year's Day, January 1

-Birthday of Martin Luther King, Jr. (Third Monday in January)

-Presidents' Day (Third Monday in February)

-Memorial Day (Last Monday in May)

-Independence Day, July 4

-Pioneer Day, July 24

-Labor Day (First Monday in September)

-Columbus Day (Second Monday in October)

-Veterans' Day, November 11

-Thanksgiving Day (Fourth Thursday in November)

-Christmas Day, December 25

RULE 5003-1
THE CLERK'S AUTHORITY

(a) Orders, Judgments and Other Documents. The clerk may sign his or her name, unless directed by the court to sign or imprint the court's facsimile signature and enter the following without further directive from the court:

(1) an order entering default for failure to plead or otherwise defend under Fed. R. Bankr. P. 7055;

(2) a subpoena for a party not represented by an attorney;

(3) an order of discharge;

(4) an order of dismissal, as directed by Local Rules 2003-1(a), 2082-1(b), 2083-1(~~e~~f) and 7041-1, or similar dismissal orders arising from the failure of the debtor to respond to a motion to dismiss; and

(5) any other order or document that does not require approval or order by the court under Fed. R. Civ. P. 77(c).

(b) Review of Clerk's Actions. The court may review, suspend, alter or rescind the clerk's actions under this Local Rule.

RULE 5003-2
ACCESS TO COURT PAPERS

(a) Access. The public records of the court are available for examination in the clerk's office during the hours of business specified in Local Rule 5001-1. Public records may not be removed from the clerk's office by members of the bar or the public except by order of the court, but the clerk will make and furnish copies of official public court records upon request and upon payment as required by the Bankruptcy Court Miscellaneous Fee Schedule or the Electronic Public Access Fee Schedule issued by the Judicial Conference in accordance with 28 U.S.C. § 1930(b). Access to public records is also available through the court's website, www.utb.uscourts.gov, and is available to the public free of charge utilizing access provided in the clerk's office.

(b) Electronic Filing System. A person may access case information at the court's website, www.utb.uscourts.gov, by obtaining a PACER log-in and password. A person who has PACER access may retrieve docket sheets and documents. All attorneys admitted to practice before the court must be ~~Filing Users~~ECF Filers, unless the court orders otherwise.

(c) Sealed or Impounded Papers. Papers ordered sealed or impounded by the court, or subject to a court order under Fed. R. Bankr. P. 9037(d), are not public records within the meaning of these Local Rules. Papers ordered sealed must be filed in paper format, and not electronically, unless specifically authorized by the court. A motion to file documents under seal may be filed electronically unless prohibited by law. The order of the court authorizing the filing of papers under seal may be filed electronically unless prohibited by law. A copy of the order must be attached to the papers under seal and be delivered to the clerk.

RULE 5005-1
FILING REQUIREMENTS

(a) Filing of Papers. Unless ordered otherwise, all ~~Filing Users~~ECF Filers (as defined in Local Rule 5005-2(b)) must file all papers required to be filed with the court electronically. Filers who are permitted by these Local Rules to file in paper format should file all pleadings, motions, proposed orders, and other papers with the clerk at the office of record in Salt Lake City, defined in Local Rule 5001-1(a), during the hours of business set forth in Local Rule 5001-1(b); provided, however, that when court is in session elsewhere in the district, such papers may be filed with the clerk or with the court at the place where court is being held. In extraordinary circumstances, the court may permit the filing of such papers with a judge or other court officer.

~~(b)~~**(b) Redaction of Private Information.** The filing party is responsible for redacting any confidential information as required by Fed. R. Bankr. Pro. 9037, including all but the last four digits of a debtor's social security number and financial account numbers.

(c) Date-Stamped Copies. A Non-~~Filing User~~ECF Filer may, at the time of filing, present to the clerk a copy of the paper filed and request the clerk to imprint the clerk's date stamp on the copy. The date-stamped copy is prima facie evidence that the original was filed with the clerk on the date indicated by the clerk's stamp. An electronic receipt produced by CM/ECF is prima facie evidence of electronically filed documents.

(~~e~~d) Facsimile Filing. Papers transmitted to the court via facsimile are not acceptable for filing and will not be docketed, but papers with facsimile signatures may be submitted for filing in accordance with these Local Rules in connection with declarations, affidavits, and verifications. The paper bearing the original signature must be retained by the filer in accordance with these Local Rules.

RULE 5005-2
FILING PAPERS - ELECTRONIC FILING

(a) When Electronic Filing is Required. Except as ~~expressly~~ provided ~~or in exceptional circumstances, a Filing User~~for herein, all attorneys must file all papers ~~required to be filed~~ with the Court ~~electronically. Notwithstanding the foregoing, filers who are not required by these Local Rules to be Filing Users are not required to electronically file papers in a case or proceeding assigned to~~using the Electronic Case Filing system~~.~~ ("ECF").

(b) Eligibility and Registration of ~~Filing Users~~ECF Filers and Applicable Rules. Attorneys admitted to the bar of this court (including those admitted under Local Rule 2090-1(b)), United States Trustees and their assistants, bankruptcy administrators and their assistants, private trustees, and individuals as the court deems appropriate, must register as ~~Filing Users of the court's Electronic Filing System. No~~ECF Filers. Entities, such as law firms or corporations, may not be ~~Filing Users.~~ ECF Filers. Registration ~~is in a~~ as an ECF Filer shall be made using the form ~~prescribed by the clerk. A registration form is~~ located on the court's website at www.utb.uscourts.gov~~, and should be downloaded for use in the registration process~~. The form requires the ~~Filing User's~~ECF Filer's name, address, telephone number, ~~Internet e-mail~~electronic address, and, in the case of an attorney, a declaration that the attorney is admitted to the bar of this court, or in the case of an attorney admitted under Local Rule 2090-1(b), a copy of the order granting the admission, and ~~an~~the ECF Filer's agreement ~~of the Filing User~~ to comply with the court's usage protocols posted on the court's website: www.utb.uscourts.gov.

(1) Waiver and Consent. Registration as a ~~Filing User~~ECF Filer constitutes: (A) waiver of the right to receive notice by first class mail and consent to receive notice electronically; (B) waiver of the right to service by personal service or first class mail and consent to electronic service, except with regard to service of a summons and complaint under Fed. R. Bankr. P. 7004; and (C) consent to abide by the court's posted usage protocols. Waiver of service and notice by first class mail applies to notice of the entry of an order or judgment under Fed. R. Bankr. P. 9022.

(2) Log-in and Password. Once registered ~~under subsection (c) of this rule~~ and training is complete, the ~~Filing User~~ECF Filer will receive notification of a user log-in and password. No ~~Filing User~~ECF Filer or other person may knowingly permit or cause to

permit a ~~Filing User's~~ECF Filer's password to be used by anyone other than an authorized agent of the ~~Filing User~~ECF Filer.

(3) Suspension and Termination. For cause, and without notice and a hearing, the court may temporarily suspend ~~a Filing User's use of~~an ECF Filer from using the Electronic Filing System ~~for cause without notice and a hearing.~~ . After notice and a hearing, the court may terminate ~~a Filing User's~~an ECF Filer's use of the Electronic Filing System for cause, including abuse of the Electronic Filing System or failure to comply with these Local Rules or the Court's posted usage protocols, and impose such sanctions as are appropriate.

~~(4) Withdrawal. Once registered, a Filing User may only withdraw from participation in the Electronic Filing System if such rights are suspended or terminated by the court.~~

(c) Consequences of Electronic Filing. ~~A Filing User whose password is used to file~~ The filing of any paper by an ECF Filer, including a petition, pleading, motion, claim or other document ~~thereby certifies that the Filing User, whether an attorney or a party appearing without an attorney, has authorized the filing~~, is deemed to be made with the knowledge, consent and authorization of the ECF Filer whose login is used to file such paper.

(1) Filing, Entry on the Docket, and Official Record. Electronic transmission of a document to the Electronic Filing System consistent with these Local Rules, together with the transmission of a Notice of Electronic Filing from the court, constitutes filing of the document for all purposes of the Federal Rules of Bankruptcy Procedure and the Local Rules, and constitutes entry of the document on the docket kept by the clerk under Fed. R. Bankr. P. 5003. When a document has been filed electronically, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed, unless the court orders otherwise. A document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing from the court.

(2) Deadlines. Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight local time where the court is located in order to be considered timely filed that day.

(d) Attachments and Exhibits. ~~Filing Users~~ECF Filers must submit in electronic form all documents referenced as exhibits or attachments, unless the court permits conventional filing. ~~A Filing User~~An ECF Filer must submit as exhibits or attachments only those excerpts of the referenced documents that are germane to the matter under consideration by the court. Excerpted material must be clearly and prominently identified as such. ~~Filing Users~~ECF Filers who file excerpts of documents as exhibits or attachments under this rule do so without prejudice to their right to timely file additional excerpts or to file the complete document electronically. Responding parties may timely file additional excerpts electronically or complete documents conventionally that they believe are germane.

(e) Retention Requirements. Documents that are electronically filed and require original signatures other than that of the ~~Filing User~~ECF Filer must be maintained in paper form by the ~~Filing User~~ECF Filer until ~~5 years~~one year after ~~all time periods for appeals expire.~~ the case is closed. On request of the court, the ~~Filing User~~ECF Filer must provide original documents for review.

(f) Signatures. The user log-in and password required to present documents on the Electronic Filing System are the ~~Filing User's~~ECF Filer's signature for all purposes, including 18 U.S.C. § 151 *et seq*., 28 U.S.C. § 1746, all sections of the Bankruptcy Code, Fed. R. Bankr. P. 9011 and all other provisions of the Federal Rules of Bankruptcy Procedure, and the Local Rules. Each document filed electronically must include a caption in compliance with Local Rule 9004-1(a). The name of the ~~Filing User~~ECF Filer under whose log-in and password the document is submitted must be preceded by an "/s/" and typed in the space where the signature would otherwise appear in the signature block, or by a graphical signature.

(1) Unauthorized Use. No ~~Filing User~~ECF Filer or other person may knowingly permit or cause to permit a ~~Filing User's~~ECF Filer's password to be used by anyone other than an authorized agent of the ~~Filing User~~ECF Filer.

(2) Multi-Signature Documents. Documents requiring signatures of more than ~~1~~one party must be electronically filed either by: (A) submitting a scanned document containing all necessary signatures; (B) representing the consent of the other parties on the document; (C) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by those parties no later than 3 business days

after filing the document; or (D) in any other manner approved by the court on a case by case basis.

(g) Technical Failures. ~~A Filing User~~An ECF Filer or other party whose filing is made untimely as the result of a technical failure by the court may seek appropriate relief from the court.

RULE 5005-3
FILING PAPERS - SIZE AND FORM OF PAPERS

(a) Size and Margins. ~~The original of~~ All pleadings, motions, and other papers electronically filed must ~~be on~~have the appearance of 8-1/2 x 11 inch white paper, with a top margin of not less than 1-1/2 inch, a left-hand margin of not less than ~~1~~ one inch, and plainly typewritten or printed in not less than 12 point type on only one side of each page. All orders presented for filing must have a top margin of not less than 2-1/2 inches on the first page to accommodate the court's signature stamp.

(b) Form. Originals and copies of all papers must be double-spaced except for quoted material, footnotes, and form documents approved by the court. Each page must be numbered consecutively at the bottom of the page. This format may vary to comply with any applicable forms adopted by this court or prescribed by the Judicial Conference of the United States. Service copies may not be reduced by more than 2 reduced pages per printed side.

(c) Encouraged and Impermissible Hyperlinks in Papers. As a convenience to the court, practitioners are encouraged to utilize hyperlinks in a manner consistent with this rule. A hyperlink is a reference within an electronically-filed document that permits a user to click on the link so as to be directed to other content. In a PDF document, these can consist of actual links within the document or "Bookmarks" that exist in a side-panel that link to various portions and exhibits in a document. Standard legal citations must still be used so that those who desire to retrieve referenced material may do so without the use of an electronic service.

(1) Encouraged Hyperlinks.

(A) Hyperlinks or Bookmarks to other portions of the same document, such as references to exhibits or testimony, are encouraged.

(B) Hyperlinks to a government site or to legal authority from a recognized electronic research services, such as Westlaw, Lexis/Nexis, Google Scholar, Casemaker, Fastcase or Findlaw are encouraged.

(2) Impermissible Hyperlinks. A hyperlink to any other internet resource is not permitted but may be included as a plain text address that can be cut and pasted into an internet browser for viewing. Parties are responsible for any malicious or inappropriate

content contained in such links. At times, the better practice may be to attach the referenced information as an exhibit.

RULE 5007-1
RECORD OF PROCEEDINGS AND TRANSCRIPTS

A certified sound recording or a transcript of a proceeding, including a § 341 Meeting, that is to be filed with or otherwise presented to the court for any purpose must be certified by a court reporter certified by the National Court Reporters Association.

RULE 5072-1
DECORUM

(a) **Civility**. Attorneys and parties should conduct themselves in bankruptcy proceedings, including ~~meetings of creditors~~§ 341 Meetings and discovery proceedings, in a civil and professional manner.

(b) **Courtroom Conduct of Attorneys**.

(1) Unless the court permits otherwise, only ~~1~~ one attorney for each party may examine or cross-examine a witness and not more than ~~2~~ two attorneys for each party may argue the merits of the action.

(2) To maintain decorum in the courtroom when court is in session, attorneys must abide strictly by the following rules, unless the court permits otherwise:

(A) Attorneys must stand when examining and cross-examining witnesses.

(B) Attorneys must not address questions or remarks to an opposing attorney without first obtaining permission from the court. Appropriate and quiet informal consultations among attorneys off the record are not precluded if this does not delay or disrupt the progress of the proceedings.

(C) The examination and cross-examination of witnesses must be limited to questions addressed to witnesses. Attorneys must not make statements, comments, or remarks prior to asking a question or after a question has been answered.

(D) In making an objection, an attorney must state plainly and briefly the specific ground for an objection and must not engage in argument unless requested or permitted by the court.

(E) Only 1 attorney for each party may object to the testimony of a witness being questioned by an opposing party. The objection must be made by the attorney who has conducted or is to conduct the examination of the witness.

(F) Attorneys must examine a witness from the lectern, unless necessary to approach the witness or the clerk's desk to present or examine an exhibit.

(c) **Courtroom Argument**. The court may determine the length of time and the sequence of final arguments of the parties. The party having the primary burden of proof must open and close the final arguments unless the court directs otherwise.

RULE 5080-1
BANKRUPTCY COURT FEES – GENERAL

(a) Payment of Fees. As authorized by 28 U.S.C. § 1930 ~~of title 28 of the United States Code~~, the clerk must collect filing and other fees as prescribed by the Judicial Conference of the United States. All papers filed with the court must be accompanied by the appropriate fee. Fees may be paid in cash, money order, cashier's check, credit card, electronic funds transfers approved by the clerk, or a check drawn on the account of the filing attorney made payable to "Clerk, U.S. Bankruptcy Court." Checks from debtors will not be accepted.

(b) Dishonored Payments. If a payor's check is dishonored, or if a credit card payment or electronic funds transfer that was initially accepted is rejected, the payor's name will be placed on the court's dishonored payment register for a period of 3 years. A payor whose name appears on the register will have check, credit card, or electronic funds transfer privileges revoked and must pay all fees in cash, money order, or cashier's check. The payor will also be required to pay the dishonored check fee or any other related fee authorized by the Judicial Conference of the United States. A payor's name may be removed from the register upon presentation to the clerk of a letter from the drawee bank or credit card provider indicating that the check was dishonored or credit card payment or electronic funds transfer rejected due to bank or provider error. Alternatively, a payor's check, credit card, or electronic funds transfer privileges will be reinstated upon posting an appropriate bond with the court. The payor's name will be removed from the court's dishonored payment register after ~~1~~one year of posting bond if the payor has not tendered any checks during that time that have been dishonored and if all credit card payments and electronic funds transfers have cleared.

(c) Application for Waiver of Chapter 7 Filing Fee. A chapter 7 debtor seeking a fee waiver under 28 U.S.C. § 1930(f) must file a fee waiver using Official Form ~~3B.~~ 103B. The court may grant, deny, or set the fee waiver application for hearing. If the court denies the fee waiver application, notice will be given to the debtor giving the debtor 14 days after the notice is sent to pay the filing fee in full, submit an application to pay in installments, or to request a hearing. The clerk will enter an order dismissing the case if the debtor fails to act within the 14 days. If a hearing is requested and granted, the court will schedule a hearing with 14 days' notice to the United States Trustee, panel trustee, and the debtor. The clerk will enter an order dismissing the

case if the debtor fails to appear at the scheduled hearing. If a hearing is requested and denied, the debtor has 14 days to pay the filing fee in full, submit an application to pay in installments, or appeal, or the clerk will enter an order dismissing the case. If an order denying a fee waiver application is appealed and affirmed, the debtor has 14 days to pay the filing fee or submit an application to pay in installments, or the clerk will enter an order dismissing the case.

RULE 5090-1
VISITING JUDGES

In all matters assigned to a visiting judge, parties must keep the assigned scheduling clerk informed of developments affecting settlements, postponements, or lengths of time needed before the court. A party must report any developments no later than 7 days before the date the matter is scheduled before the court.

RULE 6005-1
STANDING AUCTIONEERS

(a) General. This court may appoint any number of standing auctioneers ~~by application~~pursuant to the procedures set forth below for a term of ~~the auctioneer after review by~~[three or five] years. All pleadings or documents pertaining to standing auctioneers, including without limitation, applications, objections, requests for notice or orders of appointment shall be filed in the ~~United States trustee and order of~~ miscellaneous proceeding of *In re Standing Auctioneers*. The court~~. The United States trustee must~~ shall maintain a list of all current appointed standing auctioneers and of any person requesting special notice of standing auctioneer proceedings at https://www.utb.uscourts.gov/standing-auctioneers~~.~~.

(b) Appointment. To be appointed as a standing auctioneer, an auctioneering company, whether a sole proprietorship, partnership, or corporation, must ~~show, by declaration submitted to~~submit an Application for Appointment as a Standing Auctioneer with the court and serve a copy of the application on the United States Trustee, ~~that~~all Chapter 7 Trustees, the Chapter 13 Trustee and any party requesting special notice as reflected at https://www.utb.uscourts.gov/standing-auctioneers~~least 1 person employed by such company has met the following qualifications:~~.

~~(1~~(1) The Application shall include a declaration signed by an individual, that at least one person employed by such company has met the following qualifications:

(A) The candidate has 3 or more years of experience as an active auctioneer during the 4-year period prior to making the application. "Active auctioneer" experience is defined as devoting the majority of such person's work time to the auctioneering business, including the preparation for, promoting of, and conducting of auctions;

(~~2~~B) The candidate is duly licensed by a state, municipality, or some other governmental entity;

(~~3~~C) The candidate is at least 21 years of age;

(~~4~~D) The candidate has not been convicted of any felony or misdemeanor involving forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, or other like offenses;

(~~5~~E) The auctioneering company maintains property damage and theft coverage of no less than $100,000, or in a higher amount if requested by the United States Trustee. The policy must cover only estate property;

(~~6~~F) The auctioneering company maintains an on-site liability insurance policy with limits for bodily injury of at least $100,000 per person and $300,000 per occurrence; and

(~~7~~G) The auctioneering company has posted or will post with the United States Trustee a $100,000 bond in favor of the United States and conditioned on the faithful performance of its official duties. If at any time the aggregate value of goods in the auctioneer's custody exceeds the amount of the bond, then the auctioneer shall obtain a separate bond or bonds so that the full amount of all goods of various bankruptcy estates in the auctioneer's custody is covered.

~~**(c) Letters of Reference**. In addition to the declaration required under subsection (b) of this rule, the candidate must submit~~(2) The Application shall include letters of reference from at least 2 individuals, other than relatives, who have personal knowledge of the candidate's honesty, truthfulness, and good repute as an auctioneer. ~~If the applicant meets the requirements of this rule, the United States trustee may certify the applicant to the list of current standing auctioneers.~~

~~**(d) Effect of Appointment**. Trustees may, subject to the limits of § 327(a) of the Code,~~(3) The Application shall include a declaration that the application and all accompanying documents have been served on on the United States Trustee, all Chapter 7 Trustees, the Chapter 13 Trustee and any party requesting special notice.

(4) Within 21 days after service of the Application, any party may file an objection to the Application and set the objection for a hearing. The objecting party must give notice of the hearing to the Applicant, the United States Trustee, the Panel Trustees, the Standing Trustee and any party requesting special notice.

(5) If no objection is filed the Court may set the Application for hearing, deny the application or enter an order appointing the applicant as a standing auctioneer for a period of [three or five] years.

(c) Effect of Appointment. In a Chapter 7 case where the gross sale proceeds of an

auction are reasonably anticipated by the trustee to be less than $50,000, Trustees may use any of the standing auctioneers to liquidate personal property of the estate, without further permission of the court. The use of a standing auctioneer is subject to the limits of § 327(a) that the auctioneer not hold any interest adverse to the estate and that the auctioneer is disinterested. The fact that an auctioneer has been ~~certified to the list of~~appointed as a standing ~~auctioneers~~auctioneer should not be construed as an order directing the trustees to employ the auctioneer. Trustees retain the privilege of selecting, subject to the requirements of § 327~~ of the Code~~, auctioneers and others to serve the estate.

(~~e~~d) Procedure for Sales by Appointed Standing Auctioneers. The following procedures apply to all sales held by a standing auctioneer:

~~(1~~(1) Any motion to approve a sale to be conducted by a standing auctioneer should include a declaration that the auctioneer is disinterested and does not hold any interest adverse to the estate.

(2) The auctioneer must comply with any order regarding the sale;

(~~2~~3) The auctioneer must give appropriate public notice of the sale and give the trustee evidence of the notice with the final accounting;

(~~3~~4) The auctioneer must not, without the trustee's consent, incur expenses for transporting property. Unless otherwise agreed or ordered, the debtor must transport property to the auctioneer;

(~~4~~5) All sales must be for cash, unless the trustee directs otherwise; and

(~~5~~6) Immediately after the sale, the auctioneer must forward the proceeds, less a commission, to the trustee with a full accounting.

(~~f~~e) Commissions. The commission of any standing auctioneer must not exceed 15% of the gross proceeds of the sale, with the exact rate to be negotiated by the trustee and the standing auctioneer on a case-by-case basis.

(~~g~~f) Expenses. Notwithstanding the limitation on compensation set forth in subsection (~~f~~e), if a standing auctioneer, at the express direction of the trustee, incurs expenses related to the sale of property, he or she is entitled to reimbursement for actual expenses out of the estate.

(~~h~~g) Termination, Removal and Resignation.

~~(1) General.~~ (1) An appointment as a standing auctioneer shall be for a period

of [three or five] years and shall terminate five years after the date of appointment, without prejudice to the rights of a standing auctioneer to reapply for appointment as a standing auctioneer at any time after 90 days before the end of the term.

(2) A standing auctioneer must notify the court and the United States Trustee immediately if he or she no longer qualifies for ~~certification to the list of standing auctioneers.~~ appointment as a standing auctioneer, in which event the court shall terminate the appointment without further notice or hearing.

(3) A standing auctioneer may tender his or her resignation at any time by submitting it in a writing to the ~~United States trustee. In that event, the~~ court and the United States Trustee ~~must remove the name from~~, in which event, the court shall terminate the ~~list and notify panel trustees~~appointment without further notice or hearing.

~~(2) Removal for Cause. The court may remove any standing auctioneer for cause.~~

(~~i~~4) After such notice and opportunity for a hearing as the court deems appropriate, the court may terminate the appointment as a standing auctioneer before the end of the [three or five] year period for cause and on such terms as the court deems appropriate. Such termination of such appointment may be raised sua sponte or on motion the United States Trustee, a Panel Trustee, a Standing Trustee or any other party in interest.

(h) Hearings on Sales Conducted by a Standing Auctioneer. A hearing scheduled on a sale to be conducted by a standing auctioneer may be stricken if no objection to the sale is timely filed.

RULE 6007-1
ABANDONMENT

A Request for Abandonment and Proposed Abandonment may be filed by any party in interest in the form attached to these Local Rules as Local Bankruptcy Form 6007-1. After review, the chapter 7 trustee may electronically endorse the Proposed Abandonment. If the trustee endorses the Proposed Abandonment, the requesting party may file and serve a Notice of Proposed Abandonment upon all interested parties in the form attached to these Local Rules as Local Bankruptcy Form 6007-1-A. If the trustee fails to endorses the Proposed Abandonment, the requesting party may not file or serve a Notice of Proposed Abandonment. If no objections to the Proposed Abandonment are filed by the objection deadline set out in the Notice of Proposed Abandonment, the requesting party may file a Notice of Abandonment in the form attached to these Local Rules as Local Bankruptcy Form 6007-1-B. If the trustee endorses the Notice of Abandonment, the property identified in the Notice of Abandonment will thereby be abandoned and no longer be property of the bankruptcy estate. Should the trustee fail to endorse the Proposed Abandonment or the Notice of Abandonment as requested, the property shall remain property of the Estate.

COMMENT(2013)

Amendment to this rule is necessitated by the Tenth Circuit Court of Appeals decision *In re Cook (Cook v. Wells Fargo Bank, N.A.)* 2013 WL 1297590 (10th Cir. 2013). The rule provides a streamlined process for a party in interest to obtain an abandonment of property of the bankruptcy estate. The rule permits a party in interest to prepare and file appropriate pleadings, and with the trustee's consent, provide notice of the trustee's intent to abandon to parties in interest. After proper notice to parties in interest, and in the absence of objection, the trustee may abandon the property.

RULE 6070-1
TAX RETURNS AND TAX REFUNDS

(a) Tax Requirements in Chapter 11, 12 and 13 Cases. Debtors in possession, chapter 11 trustees, and chapter 12 and 13 debtors, are subject to the requirements and regulations of the Internal Revenue Service and any applicable state or local taxing authority. Debtors who are not required to collect federal taxes as described in subsection (1) below and are not required to collect state and local taxes as described in subsection (2) below are required to comply only with subsection (~~6~~3) below.

(1) Federal Taxes. The debtor, debtor in possession or the trustee must comply with the Internal Revenue Code and regulations regarding withholding of taxes from the wages of employees, the payment of the employer's FICA and FUTA tax liabilities, the making of deposits of such taxes, and the filing of employment tax returns as well as any excise or income tax returns for which the estate is liable.

(2) State Taxes. The debtor, debtor in possession or the trustee must comply with the laws and regulations of any applicable state or local taxing authority regarding withholding of taxes from the wages of employees; the collection and remittance of other types of tax which the estate is required to collect, deposit with, or remit to any applicable state or local taxing authority; the payment of unemployment insurance contributions to the appropriate state or local taxing authority; and the timely filing of returns accounting for the same.

~~(3) Trust Accounts. Within 21 days after the petition date, the debtor in possession or trustee must open separate bank trust accounts for the Internal Revenue Service and for each applicable state and local taxing authority for all tax deposits. Only the tax deposits due each entity are to be made into these trust accounts as they accrue each pay period. A chapter 12 or 13 debtor must provide the applicable trustee proof of such trust accounts at the § 341 meeting.~~

~~(4) Notification. The debtor in possession or trustee should notify the Internal Revenue Service and each state or local taxing authority of the location and account~~

~~numbers of the respective trust accounts opened under subsection (a)(3) of this rule. The notices should be sent within 7 days after the date the account is opened. Notices to the Internal Revenue Service, the Utah State Tax Commission, and the Utah Department of Workforce Services must be mailed or delivered to addresses cited in Local Rule 2002-1(h).~~

~~(5) State Deposit Verification. The debtor, debtor in possession or trustee must, if applicable, file the Utah State Tax Commission's Verification of Taxpayer Deposit at the address shown in Local Rule 2002-1(h) within 7 days after making the required deposit.~~

~~(6) Filing and Payment.~~ (3) Filing and Payment. The debtor, debtor in possession or trustee must: (A) timely file any required tax returns with the Internal Revenue Service; (B) timely file any required tax returns with any applicable state or local taxing authority; (C) timely file unemployment insurance contribution reports with applicable state or local authorities; and (D) pay taxes on a current basis. Returns and reports filed with and payments made to the Internal Revenue Service, the Utah State Tax Commission and the Utah Department of Workforce Services should be delivered to the addresses stated in Local Rule 2002-1(h), not to the regular addresses for filing the returns and reports.

(**b**) **Tax Returns in Chapter 12 Cases.** The chapter 12 debtor must, at least 30 days before the first day required by law for the filing of the debtor's federal tax return(s), forward to the trustee a full and complete copy of the federal tax return(s) for each preceding year or portion thereof while the case is pending.

(c) Tax Returns in Chapter 13 Cases.

(1) A chapter 13 debtor must, no later than the day before the date ~~on which~~of the ~~meeting of creditors is~~ first-scheduled ~~to be held~~§ 341 Meeting, file with the appropriate tax authorities, any and all tax returns required under applicable nonbankruptcy law for all taxable periods ending during the four-year period before the filing of the petition.

(2) A chapter 13 debtor must provide to the trustee, not later than 7 days before the date of the first ~~set for the first meeting of creditors, to the trustee~~ scheduled § 341 Meeting, a copy of the Federal and state income tax returns required under applicable law (or at the election of the debtor, a transcript of such return) for the most recent tax year ending immediately before the commencement of the case and for which a Federal or state income tax return was filed.

(3) No later than the day before the date ~~on which~~of the ~~meeting of creditors is~~ first-scheduled ~~to be held~~§ 341 Meeting, the debtor must file and serve on the trustee a declaration regarding tax returns in the form attached hereto as Local Form 6070-1.

(4) The debtor may request from the court an order extending the time period set forth in this subsection on notice to the trustee and applicable taxing authority. If the debtor fails to comply with paragraphs (1), (2) or (3) of this subsection in the time period therein or as extended by the court, the case may be dismissed under the procedures set forth in Local Rule 2083-1(~~f~~g).

(d) Modification of the Automatic Stay for Certain Assessments and Refunds of Taxing Entities. Unless a party in interest objects and the court orders otherwise, the stay of § 362 ~~of the Code~~ is modified to provide for the following assessments and refunds in any case filed in this district. The Internal Revenue Service, Utah Tax Commission, and the Utah Department of Workforce Services are authorized to:

(1) assess tax liabilities reflected on voluntary filed tax returns and tax returns prepared under authority of applicable statutory provisions; and

(2) make refunds in the ordinary course of business to debtors who have filed cases under chapter 9, 12 or 13, to trustees appointed in chapter 7 and 11 cases, or, if a trustee has not been appointed in a chapter 11 case, to the debtor in possession.

RULE 7003-1
COVER SHEETS IN ADVERSARY PROCEEDINGS

A properly completed adversary proceeding cover sheet must be filed with the clerk at the commencement of each adversary proceeding unless the complaint is filed electronically. Unless documents are filed electronically, a properly completed civil cover sheet must be filed with the clerk with each notice of appeal and motion to withdraw the reference. Copies of the appropriate cover sheets may be obtained from the clerk.

RULE 7005-1
FILING OF DISCOVERY MATERIALS

In accordance with Fed. R. Civ. P. 5(d) and Fed. R. Bankr. P. 7005, disclosures under Fed. R. Civ. P. 26(a)(1) or (2) and Fed. R. Bankr. P. 7026, deposition transcripts and the following discovery requests and responses must not be filed until they are used in a case or proceeding or the court orders filing: (1) interrogatories, (2) requests for documents or to permit entry upon land, and (3) requests for admission. A party must file a notice of service of the foregoing materials on opposing parties. Filing the notice of taking deposition required by Fed. R. Bankr. P. 7030 satisfies the requirement of filing a notice of service with respect to depositions. This rule does not preclude the use of discovery materials at a hearing or at trial or as exhibits to motions. Local Rule 9070-1 governs the custody and disposition of discovery materials introduced as trial exhibits. The originals of all discovery items covered by this rule and not filed with the court must be held by the party propounding them as custodian for the court.

RULE 7016-1
PRETRIAL PROCEDURES

(a) **Initial Pretrial Conference**. After the initial appearance of a defendant, the clerk must notify the parties of the date, time, and place of the initial pretrial conference under Fed. R. Bankr. P. 7016.

(b) **Parties' Planning Conference**. Under Fed. R. Civ. P. 26(f) and Fed. R. Bankr. P. 7026, the parties must confer as soon as practicable and ~~in any event at least 21 days prior to the initial pretrial conference, and must~~ prepare a Report of Parties' Planning Meeting which conforms substantially with Local Form ~~35, a copy of which is~~7016-1 attached ~~as Local Bankruptcy Form 7016-1~~ to these Local Rules. No later than 14 days after the parties' planning conference, the parties are jointly responsible for filing Local Form ~~35~~7016-1 with the court.

(c) **Scheduling Order**. At the conclusion of the initial pretrial conference, the court will enter a scheduling order in accordance with Fed. R. Bankr. P. 7016. Included in the scheduling order will be modifications of discovery requirements as the court deems appropriate. Unless otherwise ordered by the court, the requirements of the scheduling order, including deadlines, continue in force until disposition of the proceeding.

(d) **Expedited Adversary Proceeding**. At the initial pretrial conference, if the amount of the controversy is $15,000 or less, or by consent of the parties, the court may order that the trial be scheduled on an expedited basis. The scheduling order will govern the procedure to be followed before and during an expedited trial.

(e) **Supplemental Pretrial Conferences**. At the request of a party or on the court's own motion, the court may schedule a supplemental pretrial conference to expedite disposition of the adversary proceeding particularly if it involves complex facts or unusual delay.

(f) **Attorneys' Conference**. At a time to be fixed during the initial pretrial conference, or, if no time is fixed, at least 14 days prior to the final pretrial conference, the attorneys for the parties must hold an attorneys' conference to discuss settlement, a proposed pretrial order, stipulated facts, exhibit list, witness list, and other matters that will aid in an expeditious and productive final pretrial conference and the preparation of an accurate, complete, and definitive pretrial order.

(g) **Final Pretrial Conference**. The court may schedule a final pretrial conference. The

trial attorney must attend the final pretrial conference. Preparation for the final pretrial conference should be in accordance with Fed. R. Bankr. P. 7016.

(h) **Pretrial Order**. At the time ordered by the court, the plaintiff must submit to the court for execution a proposed pretrial order approved by all attorneys. The form of the pretrial order should generally conform to the approved form attached as Local ~~Bankruptcy~~ Form 7016-1-A ~~to these Local Rules~~. If the attorneys are unable to agree on a proposed pretrial order, each attorney must state his or her contentions as to the portion of the pretrial order upon which no agreement has been reached. The court will then determine a final form for the pretrial order and advise the parties. Thereafter, the order will control the course of the trial and may not be amended except by consent of the parties and the court or by order of the court to prevent manifest injustice. The pleadings will be deemed merged into the order. The court may dismiss an adversary proceeding if the pretrial order is not filed within the time fixed by the scheduling order. The pretrial order shall not excuse any party or that party's attorney from any of the requirements set forth in any scheduling order.

RULE 7026-1
DISCOVERY - GENERAL

(a) **Attorney Managed Discovery**. The court will not entertain any motions related to discovery under Fed. R. Bankr. P. 7026 through 7037 unless the moving attorney has in good faith conferred, or attempted to confer, with the opposing attorney and the parties are unable to reach an agreement on the matters set forth in the motion. The moving attorney must certify in writing, at the time of filing the motion, that he has complied with this requirement and must state the date, time, and place of the conference or attempts to confer, and the names of all participating parties or attorneys. The court may deny the motion if it determines that the moving attorney has not in good faith conferred, or attempted to confer, with the opposing attorney.

(b) **Court Managed Discovery**. Motions to limit discovery under Fed. R. Bankr. P. 7026 or to compel discovery under Fed. R. Bankr. P. 7037 must be accompanied by a copy of the discovery request, any response to the request to which objection is made, and a succinct statement summarizing separately for each request and objection, why discovery should be limited or why the response received was inadequate.

(c) **Form of Certain Discovery Documents.** Parties responding to interrogatories pursuant to Fed. R. Civ. P. 33 and Fed. R. Bankr. P. 7033; requests for production of documents or things pursuant to Fed. R. Civ. P. 34 and Fed. R. Bankr. P. 7034; or requests for admission pursuant to Fed. R. Civ. P. 36 and Fed. R. Bankr. P. 7036 shall repeat in full each such interrogatory or request to which the response is made. The parties also shall number sequentially each interrogatory or request to which response is made.

COMMENT (2014)

This rule has been amended to clarify that counsel must in good faith attempt to resolve discovery disputes before filing a motion under Fed. R. Bankr. P. 7026 or 7037. In addition, the moving attorney must certify in writing that he or she has in good faith attempted to resolve discovery disputes. If the moving attorney fails to certify in writing that he or she has in good faith attempted to resolve discovery disputes, or if the Court determines that the moving party has not attempted in good faith to resolve the discovery disputes, the Court may deny the motion. The motion to limit or compel discovery must be accompanied by a copy of the discovery request, any response to the request to which objection is made, and a succinct statement summarizing separately for each request and objection, why discovery should be limited or why the response received was inadequate.

RULE 7041-1
DISMISSAL - VOLUNTARY AND FOR LACK OF PROSECUTION

(a) **Voluntary Dismissal**. Notices of dismissal and stipulations to dismiss submitted under Fed. R. Civ. P. 41, as made applicable under Fed. R. Bankr. P. 7041, should be accompanied by a written order of dismissal.

(b) **Dismissal for Lack of Prosecution**. At any time, the court may issue an order to show cause why an adversary proceeding should not be dismissed for lack of prosecution. If good cause is not shown within the time prescribed by the order to show cause, the court may enter an order of dismissal with or without prejudice, as the court deems proper.

RULE 7052-1
FINDINGS AND CONCLUSIONS

Except as otherwise directed by the court, in all non-jury proceedings, the attorney for each party must prepare and lodge with the court, at least 2 days before trial, proposed findings of fact and conclusions of law consistent with the theory of the submitting party and the facts expected to be proved. Proposed findings must be concise and direct, recite ultimate rather than mere intermediary evidentiary facts, and be suitable in form and substance for adoption by the court. The court, in its discretion, may require each party within the same time frame to submit proposed findings of fact and conclusions of law electronically by delivery of a CD or similar electronic storage medium.

RULE 7054-1
COSTS - TAXATION/PAYMENT

(a) Bill of Costs. Within 21 days after the entry of final judgment, a party entitled to recover costs must file a bill of costs, on a form available from the clerk, and a verification of bill of costs under 28 U.S.C. § 1924 ~~of title 28 of the United States Code~~, and serve such documents on the attorneys of record of all adverse parties. The bill of costs must clearly and concisely itemize and describe the costs, checks, money orders, or other forms of payment, and must include copies of applicable invoices, receipts, and disbursement instruments. Failure to itemize and verify costs may result in their disallowance.

(b) Objections to Bill of Costs. A party objecting to a bill of costs must file an objection, supported by declarations and documentation, and serve the attorney of record for all adverse parties within 14 days after service of the bill of costs. Upon timely objection, a hearing may be scheduled to review the bill of costs and the objection.

(c) Taxation of Costs. If no objection is timely filed, the clerk must tax the costs and allow such items as are taxable under law. Costs taxed by the clerk will be included in the judgment or decree.

(d) Judicial Review. Taxation of costs by the clerk is subject to review by the court if, under Fed. R. Bankr. P. 7054(b), a motion for review is filed within 7 days after entry of the clerk's action.

RULE 7055-1
DEFAULT JUDGMENT

(a) **Default Certificate**. A party applying for default judgment under Fed. R. Bankr. P. 7055 must, at or prior to the time of filing the application, file a certificate of default as to the party in default. If the proposed certificate of default is accompanied by an affidavit showing that the party against whom judgment is sought has failed to plead or otherwise defend and if service of the summons and complaint appears to be proper, the clerk shall enter the party's default.

(b) **Judgment by Default Entered by Clerk**. A proposed judgment by default filed in accordance with Fed. R. Bankr. P. 7055 for signature and entry by the clerk in accordance with that rule and Local Rule 5003-1(a)(1) must be accompanied by a declaration that the person against whom judgment is sought is neither an infant or an incompetent person, nor in the armed forces within the meaning of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. § 520(1).

(c) **Judgment by Default Entered by Court**. In all other cases, the party entitled to judgment must apply to the court in accordance with Fed. R. Bankr. P. 7055. If the party against whom judgment is sought has appeared in the proceeding, the party seeking default judgment shall give notice of the application for default judgment to the attorney for the party as required by Fed. R. Bankr. P. 7055. If the party entitled to judgment is seeking relief under § 523 or § 727~~ of the Code~~, the applicant must schedule a hearing on the application and shall give notice of the hearing to the debtor and the debtor's attorney.

(d) **Clerk's Action Reviewable**. The actions of the clerk under this rule may be reviewed, suspended, altered or rescinded by the court.

COMMENT (2014)

This rule has been amended to clarify procedures for entry of default and default judgments. If the complaint seeks relief under § 523 or § 727, plaintiff must schedule a hearing on the application for default judgment. Otherwise, no hearing on the application is required but if the party against whom judgment is sought has appeared in the proceeding, the party seeking default judgment shall give notice of the application to the attorney for that party.

RULE 7056-1
SUMMARY JUDGMENT

(a) Summary Judgment Motions and Memoranda. This rule applies to motions for summary judgment in contested matters under Fed. R. Bankr. P. 9014 and adversary proceedings. A motion for summary judgment and the supporting memorandum must be clearly identified in the case caption and introduction.

(b) Motion: Form, Elements and Undisputed Material Facts; and Background Facts Statement. The movant must file the motion for summary judgment in compliance with Local Rule 5005-2 within any applicable time limitation, unless the court orders otherwise. The motion and any supporting memorandum must be contained in one document. A motion for summary judgment must include the following sections:

(1) an introduction summarizing why summary judgment should be granted;

(2) a section entitled "Statement of Elements and Undisputed Material Facts" that contains the following:

(A) each legal element required to prevail on the motion;

(B) citation to legal authority supporting each stated element (without argument);

(C) under each element, a concise statement of the material facts necessary to meet that element as to which the moving party contends no genuine issue exists. Only those facts that entitle the moving party to judgment as a matter of law should be included in this section. Each asserted fact must be presented in an individually numbered paragraph that cites with particularity the evidence in the record supporting each factual assertion (e.g., deposition transcript, affidavit, declaration, and other documents).

(3) An argument section explaining why, under the applicable legal principles the asserted undisputed facts entitle the party to summary judgment.

The motion may, but need not, include a separate background section that contains a concise statement of facts, whether disputed or not, for the limited purpose of providing background and context for the case, dispute, and motion. This section may follow the introduction and may, but need not, cite to evidentiary support. The memorandum may also provide a concise conclusion.

(c) Notice of the Motion and Hearing. The movant shall obtain and set an appropriate hearing date with the court scheduling clerk. A Notice of Summary Judgment Motion and Notice of Hearing shall be filed in compliance with Local Rule 5005-2. A Notice of Summary Judgment Motion and Notice of Hearing shall;

(1) be in substantial conformity with Local ~~Bankruptcy~~ Form 9013-1, with alterations as may be appropriate to comply with these Local Rules;

(2) state a specific objection deadline that is at least 21 days after service of the Notice of Summary Judgment Motion and Notice of Hearing.

(d) Memorandum in Opposition; Response to Elements and Facts; and Background Facts. A party filing a memorandum in opposition to a motion for summary judgment must file its opposition in compliance with Local Rule 5005-2 by the date stated in the Notice of Summary Judgment and Notice of Hearing. A memorandum in opposition to a motion for summary judgment must include the following sections:

(1) an introduction summarizing why summary judgment should be denied;

(2) a section entitled "Response to Statement of Elements and Undisputed Material Facts" that contains the following:

(A) a concise response to each legal element stated by the moving party. If the non-moving party agrees with a stated element, state "agreed" for that element. If the party disagrees with a stated element, state what the party believes is the correct element and provide citation to legal authority supporting the party's contention (without argument). If the non-moving party agrees that any stated element has been met, so state;

(B) a response to each stated material fact. Under each element that a party disputes as having been met, restate each numbered paragraph from the statement of material facts provided in support of that element in the motion. If a fact is undisputed, so state. If a fact is disputed, so state and concisely describe and cite with particularity the evidence on which the non-moving party relies to dispute that fact (without legal argument);

(C) a statement of any additional material facts, if applicable. If additional material facts are relevant to show that an element has not been met or

that there is a genuine issue for trial, state each such fact separately in an individually numbered paragraph that cites with particularity the evidence in the record supporting each factual assertion (e.g., deposition transcript, affidavit, declaration, and other documents);

(D) a statement of additional elements and material facts, if applicable. If there are additional legal elements not stated by the moving party that the non-moving party contends preclude summary judgment, state each such element along with citation to legal authority that supports the element (without argument) and any additional material facts that create a genuine issue for trial on these elements. Each additional asserted fact must be presented in an individually numbered paragraph that cites with particularity the evidence in the record supporting each factual assertion (e.g., deposition transcript, affidavit, declaration, and other documents); and

(3) An argument section explaining why under the applicable legal principles, summary judgment should be denied.

The memorandum in opposition may, but need not, include a separate background section that contains a concise statement of facts, whether disputed or not, for the limited purpose of providing background and context for the case, dispute, and motion. This section may follow the introduction and may, but need not, cite to evidentiary support. The memorandum may also provide a concise conclusion.

(e) Reply Memorandum. The moving party may file a reply memorandum no later than 7 days after the objection is served and in no case less ~~that~~than 4 days before the date set for hearing. In the reply, a moving party may only cite additional evidence not previously cited in the opening memorandum to rebut a claim that a material fact is in dispute. Otherwise, no additional evidence may be cited in the reply memorandum, and if cited, the court will disregard it.

(f) A Motion May Not Be Made in a Response or Reply Memorandum. No motion may be included in a memorandum in opposition or reply memorandum. Such a motion must be made in a separate document.

(g) Length of Motion, Memorandum in Opposition, and Reply Memorandum. A motion for summary judgment or a memorandum opposing a motion for summary judgment must

not exceed 25 pages in length, exclusive of face sheet, table of contents, statements of issues and facts, and exhibits. A reply memorandum must not exceed 10 pages, exclusive of face sheet, table of contents, statements of issues and facts, and exhibits.

(h) Overlength Memoranda. An order of the court must be obtained to file a motion or memorandum that exceeds the page limitations set forth in subsection (g) of this rule. Such a motion may be made to the court ex parte, and must include a statement of why additional pages are needed and the number of pages. The court will approve the request only for good cause shown. If authorized, an overlength memorandum must contain, in addition to the elements and sections otherwise required by this rule, a table of contents, with page references, setting forth the titles or headings of each section and subsection~~;~~.

(i) Citation of Unpublished Decisions. Unpublished opinions may be cited in a memorandum ~~may cite an unpublished decision from this district~~as authority, but only if ~~the decision~~they are readily accessible through a recognized publisher of legal opinions such as Westlaw or Lexis. If a case is ~~furnished~~ not reported in the West Bankruptcy Reporter, reference to the opinion should include the applicable reporting-service citation so the opinion can be quickly accessed by the court and other parties ~~when the~~ . Opinions that cannot otherwise be cited should be attached as an exhibit to the memorandum ~~is filed. Unpublished opinions from other districts may not be cited as authority. Unpublished decisions of this court should be cited as follows: *Smith v. Jones* (In re Smith), Ch. 7 Case No. 93B-22404, Adv. No. 94PC-2302, slip op. at 10 (Bankr. D. Ut. March 1, 1995). The clerk maintains an index and copies of selected, unpublished opinions from this district~~.

(j) Citations of Supplemental Authority. When pertinent and significant authorities come to the attention of a party after a memorandum has been filed, or after oral argument but before the court renders a decision, a party may advise the court by letter, with a copy to all parties, setting forth the citations. The letter must, without argument, state the reason for the supplemental citations and include a reference either to the page of the memorandum or to a point argued orally to which the citations pertain. Any response must be promptly made and similarly limited.

(k) Supporting Exhibits to Memoranda. All evidence offered in support of or opposition to motions for summary judgment must be submitted in a separately filed appendix with a cover page index. The index must list each exhibit by number, include a description or title

and, if the exhibit is a document, provide the source of the document. A responding party may object as provided in Fed. R. Civ. P. 56(c)(2). Upon failure of any responding party to object the court may assume for purposes of summary judgment only that the evidence proffered would be admissible at trial.

(l) **Certificate of Service**. Unless otherwise ordered, a party must file a certificate of service of the Summary Judgment Motion, the Notice of Summary Judgment Motion and Notice of Hearing and all subsequent pleadings. The certificate must be filed with the motion and notice, endorsed upon the motion, notice and subsequent pleading, or filed separately as soon as possible and in any event before any action based upon the service is requested or taken by the court. The certificate must be in substantial conformity with Local ~~Bankruptcy~~ Form 9013-3.

(m) **Failure to Respond**. Failure to respond timely to a motion for summary judgment may result in the court's granting the motion without further notice.

(n) **Granting Relief Without a Hearing**. The court may, but is not required to, strike the hearing and grant the relief requested in a motion for summary judgment without a hearing if there has been no memorandum in opposition to the motion filed or served on the movant. The court may, but is not required to, strike the hearing and enter an order disposing of the summary judgment motion if the court determines that oral argument is not necessary or helpful.

(o) **Time for Striking Hearings**. A request to strike a hearing should be made at least two business days prior to the hearing.

COMMENT (2013)

This rule sets forth procedures specific to motions for summary judgment in contested matters and adversary proceedings. The rule adopts the procedures of the U.S. District Court of Utah but clarifies that notice of a summary judgment motion and an objection deadline must be served on adverse parties. The purpose of the Statement of Elements and Undisputed Material Facts and the corresponding section in the memorandum in opposition to a motion for summary judgment is to distill the relevant legal issues and material facts for the court while reserving arguments for the respective argument sections of the motion and opposition memorandum.

RULE 7067-1
REGISTRY FUND

(a) Court Orders Relating to Deposits. A party making a deposit under Fed. R. Bankr. P. 7067 in an adversary proceeding or a deposit in a case, may apply to the court for an order to invest the funds in accordance with this rule.

(b) Registry Funds Invested in Interest-Bearing Accounts. Upon motion and in accordance with Fed. R. Bankr. P. 7067 or other authority, the court may order the clerk to invest certain registry funds in an interest-bearing account or instrument. When guaranteed government securities are purchased, regardless of the amount invested, the funds require no posting of collateral. All other investments must be collateralized in accordance with the Department of Treasury's regulations. The order must also specify the following:

(1) the amount to be invested;

(2) the length of time the funds should be invested and, where applicable, whether they should be reinvested in the same account or instrument upon maturity;

(3) the name(s) and address(es) and social security number(s) or tax identification number(s) of the designated beneficiary(ies); and

(4) other information that is appropriate under the circumstances.

(c) Service Upon the Clerk. A copy of the order must be served personally upon the clerk or chief deputy clerk, with an additional copy provided to the court's financial department.

(d) Deposit of Funds. The clerk must take all reasonable steps to deposit funds into the specified accounts or instruments within, but not more than, 14 business days after service of a copy of the order.

(e) Disbursements of Registry Funds. A party seeking a disbursement of funds must prepare an order for the court's review and signature and must serve the signed order upon the clerk or chief deputy clerk. If applicable, the order should indicate whether, when released by the court, the instruments of investment should be redeemed subject to possible early withdrawal penalties or held until the maturity date. The clerk or chief deputy clerk must prepare the withdrawal documents under the order.

(f) Management and Handling Fees. Unless otherwise negotiated by the parties, funds invested under subsection (b) of this rule will be subject to routine management fees imposed

by the financial institution and deducted at the time the accounts are closed or the instruments redeemed. In addition, under the miscellaneous fee schedule approved by the Judicial Conference of the United States as set forth in 28 U.S.C. § 1930 ~~of title 28 of the United States Code~~, the clerk must assess a "Registry Fund Fee." The fee is to be determined and promulgated by the Director of the Administrative Office of the United States as authorized by the Judicial Conference of the United States.

(g) Verification of Investment. A party that obtains an order directing the investment of funds by the clerk should verify that the funds have been invested as ordered.

(h) Liability of the Clerk. Failure of a party to personally serve the clerk or chief deputy clerk with a copy of the order, or failure to verify investment of the funds within 7 days after the expiration of the time period set forth in subsection (d) of this rule, will release the clerk from any liability for the loss of earned interest on such funds.

(i) Cash Bonds. If a person other than a party posts a cash bond with the clerk, the party for whom the bond is posted must execute and file an agreement with such person setting forth the intended disposition of the cash deposit by the clerk upon release of the cash bond. No deposit of funds will be allowed unless an order allowing or requiring it has been entered.

RULE 7069-1
EXECUTION OF JUDGMENT

(a) **Domestication of Judgment**. A judgment creditor should domesticate a judgment in the appropriate state court and execute upon the judgment utilizing state law remedies whenever possible.

(b) **Motion to Appear.** A judgment creditor who holds a judgment that cannot be domesticated under state law may move to compel the judgment debtor, or other person in possession of or having information relating to property or other assets that may be subject to execution or restraint, to appear in court and answer questions concerning the property or assets. The movant, on proper declaration, may request that the judgment debtor or other person be ordered to refrain from alienation or disposition of the property or assets in any way detrimental to the movant's interest.

(c) **Hearing Before Bankruptcy Court** . A motion under subsection (b) of this rule may be presented to the court ex parte, and, if granted, the matter calendared for hearing, at which the judgment debtor or other person must appear to be examined. In any case in which the movant seeks a restraint of the judgment debtor, the court must make findings and a report for the district court with a proposed order for restraint which the district court may issue.

(d) **Failure to Appear**. Should the judgment debtor or other person fail to appear as directed, the court may issue such process as is necessary and appropriate, including arrest, to bring the person before the court. If the conduct of the non-responding person is contemptuous, a proper reference must be made by the court to the district court.

(e) **Fees and Expenses**. The movant must tender a witness fee and mileage or equivalent to any person, with the exception of the judgment debtor, who, under this rule is required to appear in court.

RULE 9004-1
CAPTION - PAPERS, GENERAL

(a) **General**. The caption of papers filed or served after the commencement of a case or proceeding must substantially conform to Official Forms ~~16A,16B~~416A, 416B and ~~16D~~416D, as follows:

(1) Caption (Short Title) - Form ~~16B.~~ 416B. (*May be used if 11 U.S.C. § 342(c) is not applicable*).

~~Attorney~~ Submitting Attorney (Utah State Bar No.)
Address
Telephone No.
Facsimile No. (Optional)
E-Mail Address (Recommended)
Attorney for

UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH

In re: Debtor(s).	Bankr. No. Chapter Hon. (Judge's Name
TITLE	

(2) Caption (Full) - Form 416A (*Must be used if 11 U.S.C. § 342(c) is applicable*).

Submitting Attorney (Utah State Bar No.)
Address
Telephone No.
Facsimile No. (Optional)
E-Mail Address (Recommended)
Attorney for

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re: [Set for all names including married, maiden, and trade names used by debtor within last 8 years.] Address_____ Last four digits of Social Security No. or Individual Tax-Payer Identification No. _____ Employer's Tax Identification No. (if any) _____ Debtor(s).	Bankruptcy No. Chapter Hon. (Judge's Name)

TITLE

(3) Caption for Use in Adversary Proceeding - Form ~~16D~~416D.

~~Attorney~~ Submitting Attorney (Utah State Bar No.)
Address
Telephone No.
Facsimile No. (Optional)
E-Mail Address (Recommended)
Attorney for

UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH

In re: Debtor(s).	Bankruptcy No. Chapter Adversary Proceeding No. Hon. (Judge's Name)
Plaintiff(s), v. Defendant(s).	
TITLE	

(b) Title. The title of each paper must designate its purpose and include a reference to the party filing it.

RULE 9005.1-1
CLAIM OF UNCONSTITUTIONALITY

If a party files a pleading, written motion, or other paper drawing into question the constitutionality of a federal or state statute pursuant to Fed. R. Bankr. P. 9005.1, the court must, under 28 U.S.C. § 2403, certify to the appropriate attorney general that a statute has been questioned.

(1) If a federal statute is questioned, upon receipt of the notice, the clerk, on behalf of the court, must file a certificate in substantially the following form:

The United States Bankruptcy Court for the District of Utah hereby certifies to the Attorney General of the United States that the constitutionality of an Act of Congress, title ___, § ___, United States Code (or other description), is drawn in question in the case of _____ vs. _____, Case No. _____, Adversary Proceeding No. _____, to which neither the United States, nor any of its agencies, officers, or employees, is a party. Under 28 U.S.C. § ~~title 28, §~~ 2403(a) ~~of the United States Code~~, the United States is permitted to intervene in the case for the presentation of evidence, if admissible, and for argument on the question of constitutionality.

The clerk must send a copy of the certificate to the United States Attorney for the District of Utah and provide a copy to the judge to whom the case or proceeding is assigned, or to the Chief Judge of the court, if no assignment has been made.

(2) If a state statute is questioned, upon receipt of the notice, the clerk on behalf of the court, must file a certificate in substantially the following form:

The United States Bankruptcy Court for the District of Utah hereby certifies to the Attorney General of the State of _____, that the constitutionality of an Act of the legislature of the State of _____, title ___, Chapter ___, § ___, (or other description), is drawn in question in the case of _____ vs. _____, Case No. _____, Adversary Proceeding No. _____, to which neither the State of _____, nor any of its agencies, officers, or employees, is a party. Under 28 U.S.C. § ~~title 28, §~~ 2403(b) ~~of the United States Code~~, the State of _____ is permitted to intervene in the case

for the presentation of evidence, if admissible, and for argument on the question of constitutionality.

The clerk must send a copy of the certificate to the Attorney General of the state and provide a copy to the judge to whom the case or proceeding is assigned, or to the Chief Judge of the court, if no assignment has been made.

RULE 9006-1
TIME PERIODS

(a) Time for Filing Motions and Objections to Claims. A motion ~~and notice of hearing or an objection to claim~~ and notice of hearing in a case or proceeding filed pursuant to the applicable provisions of the Federal Rules of Bankruptcy Procedure and Local Rule 9013-1, which is not to be heard *ex parte*, must be filed and served by a date which permits timely completion of the time periods for filing responses and replies set forth in subsections (b) and (c) of this Local Rule, unless a different period is fixed by order of the court, by the Federal Rules of Bankruptcy Procedure, or by these Local Rules. A motion for an order fixing a different period may, for cause shown, be made to the court on an ex parte basis.

(b) Time for Filing Responses. Responses to motions and claim objections must be filed within the following time periods.

(1) Responses Governed by Rule 2002. In matters governed by Fed. R. Bankr. P. 2002, responses must be filed and served within the time periods set forth therein and in no case less than 4 days before the date set for the hearing. The movant must schedule a hearing sufficiently in advance to assure that all responses are filed and served not less than 4 days before the date set for hearing.

(2) Objections to Motions for Relief from Stay. Unless otherwise ordered by the court, objections to motions for relief from stay must be filed and served within 14 days after notice of the motion for relief from stay is served. A party filing an objection to a motion for relief from the stay pursuant to Local Rule 4001-1(b) must file and serve the objection by the identified deadline which in no case should be less than 4 days before the date set for the hearing. The movant must schedule a hearing sufficiently in advance to assure that all responses are filed and served not less than 4 days before the date set for hearing.

~~(3) Responses to Claim Objections. Unless otherwise ordered by the court, responses to claim objections must be filed and served within 21 days after notice of the claim objection is served. A party filing a response to an objection to claim pursuant to Local Rule 3007-1(a) and (b) must file and serve the response by the identified deadline,~~

~~which in no case should be less than 4 days before the date set for the hearing.~~ ~~The movant must schedule a hearing sufficiently in advance to assure that all responses are filed and served not less than 4 days before the date set for hearing.~~

~~(4) Responses in Other Matters.~~ ~~In matters not governed by Fed. R. Bankr. P.~~ (3) Responses in Matters. In matters not governed by Fed. R. Bankr. P. 2002, 3007, 4001, or by other Federal Rules of Bankruptcy Procedure that require a different response period, and unless the court orders otherwise, responses must be filed and served within 14 days after notice is served. A party filing an objection or a response must file and serve the objection or response by the identified deadline which in no case should be less than 4 days before the date set for the hearing. The movant must schedule a hearing sufficiently in advance to assure that all responses are filed and served not less than 4 days before the date set for hearing.

(c) Time for Filing Replies. Replies to responses and objections may be filed in the movant's discretion and must be filed no later than 7 days after the response or objection is served and in no case less than 4 days before the date set for hearing. The movant must schedule a hearing sufficiently in advance to assure that replies are filed and served not less than 4 days before the date set for hearing.

(d) Additional Time After Certain Forms of Service ~~by Mail, Facsimile or Electronic Means~~. Whenever a party ~~has the right or is required to do some~~may or must act ~~or take some proceedings within~~ within a ~~prescribed period~~specified time after ~~the~~ being served, and service ~~of a notice or other paper upon the party and the notice or paper is served upon the party by mail or~~is made under Fed. R. Civ. P. 5(b)(2)(C) (first-class mail), (D) (leaving with the court clerk if the person has no known address), ~~(E) (serving it by electronic means),~~ or (F) (delivery by any other means consented to), 3 days are added after the ~~prescribed~~ period would otherwise expire under Fed. R. Bank. P. 9006(a).

RULE 9010-1
ATTORNEYS - NOTICE OF APPEARANCE

(a) **Attorney of Record**. An attorney, or a party not represented by an attorney for the debtor, for a creditor or for another party, who signs and files a petition, pleading or paper, is deemed to have made an appearance in the matter. If an attorney's appearance has not been established previously by the filing of papers in the case or proceeding, the attorney must file a notice of appearance promptly upon undertaking the representation of any party or witness. An attorney of record is responsible in all matters respecting the case or proceeding before and after a judgment, until the closing of the case, until the time for appeal from a judgment or order has expired or a judgment or order has become final after appeal, or until there has been an order permitting withdrawal by or substitution of the attorney in the case or proceeding.

(b) **Notification of Change in Address or Telephone Number**. In all cases and proceedings, attorneys and parties appearing without an attorney must notify the clerk's office of any change in address or telephone number.

(c) **Appearance by Attorney**. A party who has appeared by an attorney, may not appear or act thereafter in the party's own behalf in the action or take any steps therein, unless an order of withdrawal or substitution is entered by the court after notice to the party's attorney and to parties in interest. However, notwithstanding that a party has appeared or is represented by an attorney, at its discretion, the court may hear a party in open court. An attorney who has appeared of record for any party must:

(1) represent the party in the action;

(2) be recognized by the court and by all parties to the action as having control of the client's case; and

(3) sign all papers that are to be signed on behalf of the client.

RULE 9011-1
PAPERS SIGNED BY AN ATTORNEY

The Court may, *sua sponte* or upon the motion of a party in interest, strike any paper required to be signed by an attorney that is not signed by an attorney admitted to practice before this court under Local Rule 2090-1.

RULE 9011-2
PARTIES APPEARING WITHOUT AN ATTORNEY

(a) Attorney Appearance Required. A corporation, partnership, limited liability company, trust, unincorporated association, or other party which is not an individual may not file a petition or otherwise appear without an attorney in any case or proceeding. ~~Failure to comply with this rule is grounds for dismissal~~On its own initiative, or upon the motion of a party, the court may dismiss a case or proceeding~~, conversion of~~ convert a case, ~~appointment of~~appoint a trustee or examiner, grant judgment by default, ~~striking~~strike any pleading or other appropriate sanctions for failure to comply with this rule.

(b) Rules and Standards Applicable to Individuals Appearing Without an Attorney. An individual appearing without an attorney will be expected to be familiar with and must comply with (A) these Local Rules; (B) unless otherwise provided, the Utah Rules of Professional Conduct as revised and amended; (C) appropriate federal rules and statutes that govern the action in which such individual is involved; and (D) the decisions of this court interpreting those rules and standards. Failure to comply with this rule may be grounds for dismissal of a case or proceeding, conversion of a case, appointment of a trustee or examiner, judgment by default, or other appropriate sanctions.

RULE 9013-1
MOTION PRACTICE – MATTERS SET FOR A HEARING

(a) **Scope of Rule**. This rule applies to motions in bankruptcy cases and adversary proceedings. The term "motion" means application, request, objection to claim, or other proceeding in the nature of a motion or contested matter in which a party in interest seeks an order from or determination by the court. Motions for summary judgment are not governed by this rule, but are governed by Local Rule 7056-1. For purposes of this rule, the term "motion" does not refer to a summons, complaint, appeal, motion for summary judgment, or an ex parte motion.

(b) **Applicability**. In bankruptcy cases and adversary proceedings, whenever the movant seeks an order from or determination by the court and the movant believes the motion will be opposed, the procedures set forth in this rule should be used.

(c) **Motions**. The movant must file the motion in compliance with Local Rule 5005-2 within any applicable time limitation, including the time limitations of these rules, unless the court orders otherwise.

(1) No Separate Supporting Memorandum for a Written Motion. The motion and any supporting memorandum must be contained in one document, except as otherwise allowed by this rule. The document must include the following:

(A) an initial separate section stating succinctly the precise relief sought and the specific grounds for the motion; and

(B) one or more additional sections including a recitation of relevant facts, supporting authority, and argument, and a concise statement of each basis supporting the motion with citations to applicable and controlling legal authority.

(2) The moving party shall serve the motion on those entities specified in Fed. R. Bankr. P. 9013.

(3) Failure to Comply with Requirements for Motions. Failure to comply with the requirements of subsection (c)(1) may result in sanctions, including:

(A) returning the motion to counsel for resubmission in accordance with this rule;

(B) denial of the motion; or

(C) any other sanction deemed appropriate by the court.

(d) Notice of Motion and Hearing. The movant shall obtain and set an appropriate hearing date with the court scheduling clerk. A Notice of Motion and Notice of Hearing shall be filed in original form only together with a certificate of service evidencing compliance with the applicable service requirements. A Notice of Motion and Notice of Hearing shall:

(1) be in substantial conformity with Local Bankruptcy Form 9013-1, Notice of Motion and Notice of Hearing with alterations as may be appropriate to comply with these Local Rules;

(2) contain a specific statement of the relief requested or action intended in sufficient detail to meaningfully inform the parties of the intended action or relief requested or, if the motion is served with the notice, refer to the motion to describe the relief requested;

(3) set the last date on which an interested party may file an objection to the motion. The identified date must be based on the time period fixed by the Federal Rules of Bankruptcy Procedure or by Local Rule 9006-1(b), as appropriate;

(4) include a statement that the hearing may be stricken and relief requested may be granted without a hearing unless an objection is timely filed;

(5) include a statement that the objecting party must attend the hearing and that failure to attend the hearing will be deemed a waiver or the objection; and

(6) be served by the movant on the case trustee, debtor, debtor-in-possession, those entities specified in these rules or the Federal Rules of Bankruptcy Procedure, and other parties the court may direct.

(e) Responses to Motions and Reply Memoranda. A party responding to a motion must file its response in compliance with Local Rule 5005-2 by the date identified in the notice.

(1) No Separate Supporting Memorandum for a Response. The response and any supporting memorandum must be contained in one document, except as otherwise allowed by this rule. The document must include one or more sections including a recitation of relevant facts, a concise statement of each basis opposing the motion with citations to applicable and controlling legal authority, and an argument.

(2) Reply Memorandum. A reply memorandum is limited to rebuttal of matters raised in the response.

(3) Limitation on Memoranda Considered. Unless otherwise ordered, the court will consider only motions, responses filed by parties in interest, and reply memoranda filed by the movant(s).

(4) A Motion May Not Be Made in a Response or Reply Memorandum. No motion may be included in a response or reply memorandum. Such a motion must be made in a separate document.

(f) Granting Relief Without a Hearing. The court may, but is not required to, strike the hearing and grant the relief requested in a motion without a hearing if there has been no opposition to the motion filed or served on the movant.

(g) Time for Striking Hearings. A request to strike a hearing should be made at least two business days prior to the hearing.

(h) Length of Motion and Response. A motion other than for summary judgment or a response to a motion other than for summary judgment must not exceed 15 pages, exclusive of face sheet, table of contents, statements of issues and facts, and exhibits. The procedure for filing an overlength memorandum is set forth in subsection (k) of this rule.

(i) Citation of Unpublished Decisions. Unpublished opinions may be cited in a memorandum ~~may cite an unpublished decision from this district~~as authority, but only if ~~the decision~~they are readily accessible through a recognized publisher of legal opinions such as Westlaw or Lexis. If a case is ~~furnished~~not reported in the West Bankruptcy Reporter, reference to the opinion should include the applicable reporting-service citation so the opinion can be quickly accessed by the court and other parties ~~when~~. Opinions that cannot otherwise be cited should be attached as an exhibit to the memorandum ~~is filed. Unpublished opinions from other districts may not be cited as authority. Unpublished decisions of this court should be cited as follows: *Smith v. Jones* (In re Smith), Ch. 7 Case No. 93B-02404, Adv. No. 94PC-2302, slip op. at 10 (Bankr. D. Ut. March 1, 1995). The clerk maintains an index and copies of selected, unpublished opinions from this district~~.

(j) Citations of Supplemental Authority. When pertinent and significant authorities come to the attention of a party after a memorandum has been filed, or after oral argument but before the court renders a decision, a party may advise the court by letter, with a copy to all parties, setting forth the citations. The letter must, without argument, state the reason for the supplemental

citations and include a reference either to the page of the memorandum or to a point argued orally to which the citations pertain. Any response must be promptly made and similarly limited.

(k) Overlength Memoranda. An order of the court must be obtained to file a memorandum that exceeds the page limitations set forth in subsection (h) of this rule. Such a motion may be made to the court ex parte, and must include a statement of why additional pages are needed and the number of pages. The court will approve the request only for good cause shown. Authorized, overlength memoranda must contain the following:

(1) a table of contents, with page references, setting forth the titles or headings of each section and subsection;

(2) a statement of the issues related to the precise relief sought;

(3) a concise statement of facts, with appropriate references to the record, relevant to the issues concerning the precise relief sought;

(4) argument, proceeded by a summary, containing the contentions of the party with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on; and

(5) a short conclusion stating the precise relief sought.

(l) Certificate of Service. Unless otherwise ordered, a party must file a certificate of service of a motion or other paper required to be served on other parties. The certificate must be filed with the motion or paper, endorsed upon the motion or paper, or filed separately as soon as possible and in any event before any action based upon the service is requested or taken by the court. The certificate must be in substantial conformity with Local ~~Bankruptcy~~ Form 9013-3.

(m) Motion to Shorten Time for Expedited Hearing. A party may file a motion to shorten time for expedited hearing, which may be granted ex parte for cause. A party seeking a Motion to Shorten Time for Expedited Hearing must telephone the court scheduling clerk to obtain a date and time to schedule a hearing on the underlying motion. The notice period may not be less than ten days from the date of the request without permission of the court for a shorter period. Once a date has been set by the scheduling clerk, the party must file the following documents on the case docket:

(1) A Motion to Shorten Time for Expedited Hearing that states cause as to why the underlying motion should be heard on an expedited basis, and states the proposed time

frame for presentment of the motion, the hearing date and time, the objection deadline and the date of service; and,

(2) A proposed order on the Motion to Shorten Time for Expedited Hearing that includes the hearing date and time, the objection deadline, and the date of service;

(3) A copy of the proposed underlying motion, for which the moving party requests an expedited hearing; and,

(4) A Notice of Hearing (Local Form 9013-1) with an objection deadline that expires not less than one business day before the scheduled hearing.

If the Motion to Shorten Time for Expedited Hearing is denied, the party must serve notice of the underlying motion in accordance with Local Rule 9013-1(d).

RULE 9013-2
MOTION PRACTICE – MATTERS SET WITH AN OPPORTUNITY FOR A HEARING

(a) **Scope of Rule**. This rule applies to motions in bankruptcy cases. The term "motion" means application, request, objection to claim, or other proceeding in the nature of a motion in which a party in interest seeks an order from or determination by the court. Motions for summary judgment are not governed by this rule, but are governed by Local Rule 7056-1. For purposes of this rule, the term "motion" does not refer to a summons, complaint, appeal, motion for summary judgment, or an ex parte motion.

(b) **Applicability**. Except as set forth herein, whenever the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure provide that an order may be entered or an action may be taken after "notice and a hearing," or a similar phrase, if the movant believes there will be no objections to the motion, the following procedure should be used. This rule does not apply:

(1) whenever the court directs otherwise;

(2) to any pleadings, motions, or notices in adversary proceedings under Part VII of the Federal Rules of Bankruptcy Procedure;

(3) to hearings set under 11 U.S.C. § 1125;

(4) to hearings on confirmation of a plan pursuant to chapter 9, 11 or 12;

(5) applications for compensation that exceed $10,000.00;

(6) as otherwise provided by these Local Rules or the Federal Rules of Bankruptcy Procedure.

(c) **Motions**. The movant must file the motion in compliance with Local Rule 5005-2 within any applicable time limitation, including the time limitations of these rules, unless the court orders otherwise.

(1) No Separate Supporting Memorandum for a Written Motion. The motion and any supporting memorandum must be contained in one document, except as otherwise allowed by this rule. The document must include the following:

(A) an initial separate section stating succinctly the precise relief sought and the specific grounds for the motion; and

(B) one or more additional sections including a recitation of relevant facts, supporting authority, and argument, and a concise statement of each basis

supporting the motion with citations to applicable and controlling legal authority.

(2) The moving party shall serve the motion on those entities specified in Fed. R. Bankr. P. 9013.

(3) Failure to Comply with Requirements for Motions. Failure to comply with the requirements of subsection (c)(1) may result in sanctions, including (a) returning the motion to counsel for resubmission in accordance with this rule, (b) denial of the motion, or (c) any other sanction deemed appropriate by the court.

(d) Notice of Motion and Notice of Opportunity for Hearing. The movant may reserve a time for, but not set, a hearing on the court's calendar. A Notice of Motion and Notice of Opportunity for Hearing shall be filed in original form only together with a certificate of service evidencing compliance with the applicable service requirements. A Notice of Motion and Notice of Opportunity for Hearing shall:

(1) be in substantial conformity Local ~~Bankruptcy~~ Form 9013-2 Notice of Motion and Opportunity for Hearing;

(2) contain a specific statement of the relief requested or action intended in sufficient detail to meaningfully inform the parties of the relief requested or intended action or, if the motion is served with the notice, refer to the motion to describe the relief requested;

(3) set the last date on which an interested party may file an objection to the motion. The identified date must be based on the time period fixed by the Federal Rules of Bankruptcy Procedure or by Local Rule 9006-1(b), as appropriate;

(4) include a statement that the relief requested may be granted without a hearing unless an objection is timely filed;

(5) include a statement that the objecting party must attend the hearing and that failure to attend the hearing will be deemed a waiver or the objection;

(6) be served by the movant on the case trustee, debtor, debtor-in-possession, those entities specified in these rules or Federal Rules of Bankruptcy Procedure, and other parties as the court may direct;

(e) Objection. Any party opposing the motion must file an Objection before the deadline stated in the Notice of Motion and Notice of Opportunity for Hearing. The Objection

shall be filed with the court in original form only, and a copy thereof shall be served upon counsel for the movant on or before the date set forth in the notice. Service may be by mail and shall be complete upon mailing. Objections for hearing shall clearly specify the grounds upon which they are based. General objections will not be considered. Failure of a party to timely file written opposition will be deemed a waiver of any opposition to granting of the motion.

(f) Court Action on Motions.

(1) Contested Matters. Motions for which an opposition has been filed shall be set for hearing on the date and the time and place set forth in the Notice of Motion and Notice of Opportunity for Hearing. No further notice of the date, time, and place of hearing is required to be given.

(2) Non-Contested Matters. The court may, but is not required to grant the relief requested in a motion without a hearing if there has been no opposition to the motion filed or served on the movant.

(3) Defective of Deficient Motions. The court may deny, sua sponte, any defective or deficient motion, or a motion, the notice of which is subject to the provisions of this rule and which notice does not comply with this rule. Any such denial shall be without prejudice.

(4) Court Set Hearing. The court may set for hearing, sua sponte, any motion.

(5) Non-Prosecuted Motions.

(A) If more than 28 days have passed since the expiration of the objection deadline of a motion, as specified in Local Rule 9013-2(d)(3), and if no action has been taken on the motion, the Court may require the motion to be re-noticed before the movant may take any further action on the motion.

(B) At the time the bankruptcy case is closed pursuant to 11 U.S.C. §§ 350, 707, 930, 1112, 1208 or 1307 ~~of title 11~~, all pending motions which have not been presented to the Court for disposition shall be deemed abandoned for want of prosecution. Any such denial shall be without prejudice.

(g) Applicable provisions of Local Rule 9013-1. Paragraphs (h) through (l) of Local Rule 9013-1 are also applicable to this rule.

RULE 9014-1
DISCOVERY IN CONTESTED MATTERS

At the request of any party in interest, or on the court's own motion, the court may order that Fed. R. Bankr. P. 7026 applies to a contested matter.

RULE 9015-1
JURY TRIAL

(a) **Demand**. Where a jury trial is demanded in or by endorsement upon a pleading as permitted by the Federal Rules of Civil Procedure, the words "JURY DEMANDED" should be typed in capital letters on the first page immediately below the title of the pleading.

(b) **Applicable Rules**. Fed. R. Civ. P. 38-39, 47-51 and 81(c), insofar as they pertain to jury trials, and DUCivR 83-7.5 apply in cases and proceedings, except that a jury demand made under Fed. R. Civ. P. 38(b) must be filed in accordance with Fed. R. Bankr. P. 5005.

(c) **Consent to Have Trial Conducted by Bankruptcy Judge**. If the right to a jury trial applies, a timely demand has been filed under Fed. R. Civ. P. 38(b), and the bankruptcy judge has been specially designated to conduct the jury trial, the parties may consent to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) ~~of title 28 of the United States Code~~ by jointly or separately filing a statement of consent no later than: (1) the time for filing the Report of Parties' Planning Meeting under Fed. R. Bankr. P. 7026 and Local Rule 7016-1(b); or (2) if a motion for withdrawal of reference is filed after the demand, within 7 days after service of the motion for withdrawal of reference. Failure to file a consent constitutes an objection by opposing party to a jury trial in the bankruptcy court.

RULE 9019-1
SETTLEMENTS OF ADVERSARY PROCEEDINGS

(a) General. The parties should file a written settlement agreement not less than 3 business days before a related hearing. Unless good cause is shown, if the parties settle a matter less than 3 business days before a related hearing, the court may assess costs equally to the parties including, court costs, reporter costs, and the judge's travel costs and per diem, if any. The clerk must bill the parties for the assessed costs and monitor the collection of the costs for the court.

(b) Settlement of Adversary Proceeding with Trial Date. In an adversary proceeding for which a trial date has been scheduled, the parties must immediately notify the court of any settlement agreement that resolves all or part of the proceeding. Parties who fail to give adequate notice of the cancellation of a trial date may be assessed costs. Whenever a civil action scheduled for jury trial is settled or otherwise disposed of by agreement in advance of the trial date, jury costs paid or incurred may be assessed against the parties and their attorneys as directed by the court. Jury costs may include attendance fees, per diem, mileage and parking. Jury costs will not be assessed if notice of settlement or disposition of the case is given to the Jury Administrator of the District Court Clerk's Office at least ~~1~~ one full business day prior to the scheduled trial date.

(c) Settlement of § 727 Adversary Proceeding. If a plaintiff seeks to settle an adversary proceeding that includes a claim for relief under one or more of the provisions of § 727(a), the motion to approve the settlement must be served on all parties in interest. Even in the absence of objections, the Court may require a hearing on the motion to determine that it is in the best interest of all creditors.

RULE 9019-2
ALTERNATIVE DISPUTE RESOLUTION

Upon agreement and motion of all parties, the court may refer an adversary proceeding to the Alternative Dispute Resolution Program ("ADR Program") for mediation under DUCivR 16-2. The motion may be made at the initial pretrial conference or at any other time. An adversary proceeding referred to the ADR Program will remain under the jurisdiction of the court for all purposes, including the entry of any order granting a motion to approve a stipulation resolving the adversary proceeding, dismissing the adversary proceeding or withdrawing the referral to the ADR Program.

RULE 9021-1
PREPARATION AND SUBMISSION OF JUDGMENT OR ORDER

(a) Separate Document Requirement. Proposed orders must be ~~prepared and submitted~~filed as a separate ~~documents,~~document and ECF event and not attached to or included in motions or other papers filed with the court.

(b) Form of Orders. Unless directed by the court, orders should not contain specific findings and conclusions but should simply state that the court's findings or conclusions were made on the record. Orders should contain a detailed statement of the specific relief being granted by the order. Bald statements such as "the motion is granted," without subsequent detail, should not be used.

(c) Orders Approving Settlements. An order approving a settlement, agreement, contract, or compromise should attach a copy of the same as an exhibit to the order. In the alternative, the order should reference by docket number the specific settlement, agreement, contract, or compromise being approved.

(d) Margins. Proposed orders should comply with Local Rule 5005-3 (Filing Papers – Size and Form of Papers), but must instead have a top margin of 2.5 inches to accommodate the court's electronic signature stamp. Failure to comply with this requirement will likely result in the rejection of the proposed order.

(~~b~~e) Review and Approval Procedures.

(1) Preparation, Service and Approval. Unless otherwise provided herein or directed by the court, each proposed order and judgment should be prepared ~~in writing~~ and filed ~~with the court~~ by the attorney for the prevailing party. Objections to the proposed order or judgment must be filed within 7 days from the date the proposed order or judgment is filed.

(2) Uncontested Matters and Orders Submitted in Open Court. Unless otherwise directed by the court, the requirements set forth in subsection (1) do not apply to

(A) any proposed order or judgment on a matter that ~~has been properly noticed and~~ is uncontested, or

(B) any proposed order or judgment submitted in open court at the time of the hearing on the matter to which the proposed order or judgment applies.

(~~e~~f) Entry of Court Orders. ~~A Filing User~~An ECF Filer submitting a document electronically that requires a judge's signature must promptly deliver the document in such form as the court requires. All orders, decrees, judgments, and proceedings of the court, including orders submitted in open court, will be filed in accordance with these Local Rules, which will constitute entry on the docket kept by the clerk under Fed. R. Bankr. P. 5003 and 9021. All signed orders will be filed electronically by the court or court personnel. Any order that has been electronically signed by a judge has the same force and effect as if the judge had affixed the judge's signature to a paper copy of the order and it had been entered on the docket in a conventional manner.

(~~d~~g) Judgment Based Upon a Written Instrument. Unless otherwise ordered by the court, a judgment based upon a written instrument must be accompanied by the original instrument or a certified copy which must be filed as an exhibit in the case or proceeding at the time judgment is entered. The instrument must be marked as having been merged into the judgment and show the docket number of the case or proceeding. The instrument may be returned to the party filing it upon order of court only as in the case of other exhibits.

(e~~h~~) ~~Papers to Accompany Proposed Judgments, Orders or Notices of Appeal~~ Designation of Parties to Receive Notice of Order. A party filing a proposed judgment or order shall also attach to the order a designation of parties to receive notice pursuant to Fed. R. Bankr. P. 9022(a) for use by the clerk. The designation must be in substantial conformity with, Local ~~Bankruptcy~~ Form 9021-1.

RULE 9022-1
NOTICE OF JUDGMENT OR ORDER

The clerk must mail or deliver by electronic means to the contesting parties, a copy of a judgment or order showing the date the judgment or order was entered in accordance with Fed. R. Bankr. P. 9022. Immediately upon the entry of an order or judgment, the clerk will transmit to ~~Filing Users~~ECF Filers in the case or proceeding, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed. R. Bankr. P. 9022. The clerk must give notice in paper form to persons who are not ~~Filing Users~~ECF Filers.

RULE 9070-1
EXHIBITS

(a) Prior to Trial.

(1) Marking Exhibits. Prior to trial, each party should mark all exhibits to be introduced during trial using exhibit labels (stickers) obtained from the clerk. Plaintiffs or movants use consecutive numbers; defendants or responding parties use consecutive letters.

(2) Preparation for Trial. After completion of discovery and prior to the final pretrial conference, the attorneys for each party must: (A) prepare and serve on opposing attorneys a list that identifies and briefly describes all exhibits to be offered at trial; and (B) afford opposing attorneys opportunity to examine the exhibits. The parties must list the exhibits in the final pretrial order.

(3) Electronic Exhibits. The court may request that parties provide exhibits in an electronic format. At the final pretrial conference, parties may request court approval to use electronic exhibits at trial. Electronic exhibits must comply with the following standards: (A) electronic exhibits must be in the .PDF format; (B) electronic exhibits must be exact copies of any paper exhibit provided for trial; (C) all electronic exhibits, other than hand-written papers, must be text searchable; (D) all of a party's electronic exhibits must be bundled in single .PDF file with bookmarks identifying the exhibit letter or number and providing a short description of the exhibit (e.g., contract, note, trust deed, etc.). Further, the bookmark should link to the first page of the actual exhibit.

(b) During Trial.

(1) Custody of the Clerk. Unless the court orders otherwise, all exhibits that are admitted into evidence during trial, that are suitable for filing and transmission to the appellate court as a part of the record on appeal, must be placed in the custody of the clerk.

(2) Custody of the Parties. Unless the court orders otherwise, any other exhibit admitted into evidence during trial must be retained in the custody of the party offering it. With approval of the court, photocopies may be substituted for the exhibits once they have been introduced into evidence.

(c) After Trial.

(1) Exhibits in the Custody of the Clerk. If the clerk takes custody of exhibits under subsection (b)(1) of this rule, the exhibits may not be taken from the custody of the clerk until final disposition of the matter, except upon order of the court and execution of a receipt that identifies the material taken. The receipt must be filed in the case or proceeding.

(2) Retrieval from Evidence. With the permission of the clerk, parties should retrieve all exhibits from the custody of the clerk within 30 days after the expiration of the appeal period or after the mandate of the final reviewing court is filed. A party failing to comply with this rule will be notified by the clerk to retrieve its exhibits and sign a receipt for them. If the exhibits are not timely retrieved, the clerk may destroy or otherwise dispose of them as the clerk may see fit.

(3) Exhibits in the Custody of the Parties. Unless the court orders otherwise, the party offering any exhibit of the kind described in subsection (b)(2) of this rule must retain custody of it and be responsible to the court for preserving it in its condition as of the time admitted, until the time for appeal has expired or after the mandate of the final reviewing court is filed.

(4) Access to Exhibits by Parties. In case of an appeal, any party, upon written request of any other party or by order of the court, must make available any or all original exhibits in its possession, or true copies thereof, to enable another party to prepare the record on appeal.

(5) Exhibits in Appeals. When a notice of appeal is filed, each party must prepare and submit to the clerk a list that designates which exhibits are necessary for the determination of the appeal and in whose custody they remain. Parties who have custody of exhibits so listed must safekeep and transport the exhibits to the appellate court. All other exhibits that are not necessary for the determination of the appeal and that are not in the custody of the clerk must remain in the custody of the respective party, until the mandate of the final reviewing court is filed.

(d) Contested Matters. Prior to hearing, each party should mark all exhibits to be introduced during the hearing using exhibit labels (stickers) obtained from the clerk. Movants use consecutive numbers; respondents use consecutive letters. If a motion refers to exhibits, legible

copies of the exhibits must be attached to the motion.

RULE 9071-1
PROCEDURAL STIPULATIONS

(a) **Procedural Requirement**. An agreement affecting the course or conduct of a trial or hearing must be in writing, signed by the parties, or made a part of the record by oral stipulation.

(b) **Court Approval - General**. A stipulation between the parties relating to proceedings before the court or modifying a prior order of the court will not be effective until approved by the court.

(c) **Stipulations to Continue Proceedings**. A stipulation between the parties to continue a hearing or trial before the court will not be effective unless approved by the court. A motion for continuance of a trial must be filed with the court not less than 3 business days before the trial. Unless good cause is shown, where a trial continuance is granted less than 3 business days before the trial date, the court may assess costs equally to the parties including, but not limited to, court costs, reporter costs, and the judge's travel costs and per diem, if any. The clerk must bill the parties for the assessed costs and monitor the collection of the costs for the court.

(d) **Continuance of Trial or Hearing Date**. The court may continue a trial or hearing for any reason and notice of such continuance shall be given to the parties by the clerk of court, or as otherwise directed by the court. The court may continue a trial or hearing on the date it is to be heard without further notice to parties other than those who appeared at the scheduled trial or hearing. Notice announced on the record at the time of the previously set trial or hearing will suffice.

RULE 9073-1
HEARINGS

(a) **Scope of Rule**. This rule applies to matters requiring a hearing in either a case or an adversary proceeding.

(b) **Setting Hearings**. The movant or a party objecting to a claim must obtain a hearing date and time on the court's calendar from the scheduling clerk for the judge assigned to the case. Unless modified by court order, hearings must be scheduled with sufficient time to serve notice and to give parties in interest time to file responsive memoranda as allowed in these Local Rules. The movant or objecting party must file the motion or objection within 3 business days after the hearing has been set. The court may strike the hearing if the motion or objection is not filed timely without further notice, and may sanction any party that sets a matter for hearing but fails to timely file the applicable motion or objection. After the hearing has been scheduled, the movant or objecting party may not add or substitute other motions or objections without the express permission of the scheduling clerk. The court may strike any motion or objection that was added or substituted without permission.

(c) **Order of Hearings**. The court will direct the order in which hearings will be held to promote efficiency and justice.

(d) **Movant Responsible to Give Notice**. The movant or the objecting party is responsible for properly serving the motion or objection and notice to all parties entitled to notice.

(e) **Rescheduling Hearings.** If an objection or response to a motion or objection has been filed, the hearing may not be rescheduled without the consent of all parties and the Court. The request to reschedule the hearing must also be made within the time frame outlined in Local Rule 9013-1(g).

(f) **Cancellation of Hearings**. If the movant or other party wishes to cancel a noticed hearing for any reason, the movant or other party must immediately give notice of the cancellation to the scheduling clerk and parties receiving notice. The court may assess costs against the movant or parties who fail to give adequate notice of the cancellation of a hearing.

(g) **Withdrawal of Motion**. A movant or party who does not intend to pursue a motion or objection must immediately file a withdrawal of the motion and notify the scheduling clerk and parties in interest who received the motion. Even if the motion is withdrawn, the movant or party

must attend the hearing unless excused by the court. A movant or party who fails to provide notice under this rule may be assessed costs.

(h) Withdrawal of Response to Motion. A responding party who does not intend to argue its position at the hearing, must immediately file a withdrawal of the response, notify the movant of the withdrawal, and notify the scheduling clerk. The court may assess costs against a party for failure to comply with this rule.

(i) Attendance at Hearing. Unless a hearing is stricken pursuant to Local Rule 9013-1(f), or rescheduled pursuant to subsection (e) of this Local Rule, the movant and any responding or objecting party must appear at the hearing.

(j) Failure to Appear at a Hearing. Unless excused by the court, failure to appear at a hearing may be deemed either a waiver of the motion by the movant or a consent to the motion by the responding party. A movant or responding party who fails to attend a hearing when required may be assessed costs incurred by the opposing party.

APPENDIX

Local Bankruptcy Forms

Local Bankruptcy Form 2083-1. Verification and Request for Chapter 13 Discharge - Local Rule 2083-1 (m)

Local Bankruptcy Form 2083-1-A. Notice of Preconfirmation Amended Chapter 13 Plan and Opportunity to Object (*Notice Required*) – Local Rule 2083-1(b).

Local Bankruptcy Form 2083-1-B. Notice of Preconfirmation Modification to Chapter 13 Plan (*No Additional Notice Required*) – Local Rule 2083-1(b).

Local Bankruptcy Form 2083-1-C. Notice of Adequate Protection Payments Under § 1326(a)(1) – Local Rule 2083-1(d).

Local Bankruptcy Form 2083-1-D. Postconfirmation Motion to Reduce Equal Monthly Plan Payment(s) to Secured Creditor(s) – Local Rule 2083-1(k).

Local Bankruptcy Form 2083-2. Lien Avoidance Worksheet – Local Rule 2083-2(j)(4).

Local Bankruptcy Form 2090-1. Motion for Admission Pro Hac Vice and Consent Of Designated Associate Local Counsel– Local Rule 2090-1(c)(1).

Local Bankruptcy Form 2090-1-A. Application for Admission Pro Hac Vice – Local Rule 2090-1(c)(2).

Local Bankruptcy Form 2091-2. Motion for Withdrawal as Counsel - Local Rule 2091-2(b)(1)(A).

Local Bankruptcy Form 2091-2-A. Order Granting Motion for Withdrawal of Counsel - Local Rule 2091-2(b)(1)(B).

Local Bankruptcy Form 3011-1. Payment of Unclaimed Funds - Local Rule 3011-1.

Local Bankruptcy Form 6007-1. Request for Abandonment and Proposed Abandonment – Local Rule 6007-1.

Local Bankruptcy Form 6007-1-A. Notice of Proposed Abandonment – Local Rule 6007-1.

Local Bankruptcy Form 6007-1-B. Notice of Abandonment – Local Rule 6007-1.

Local Bankruptcy Form 6070-1. Declaration Regarding Tax Returns - Local Rule 2083-1(e)(1)(E) and Local Rule 6070-1(c)(2).

Local Bankruptcy Form 7016-1. Report of Parties' Planning Meeting –Local Rule 7016-1(b).

Local Bankruptcy Form 7016-1-A. Pretrial Order - Local Rule 7016-1(h).

Local Bankruptcy Form 9013-1. Notice of Hearing - Local Rule 9013-1(d)(1).

Local Bankruptcy Form 9013-2. Notice of Opportunity for Hearing - Local Rule 9013-2(d)(1).

Local Bankruptcy Form 9013-3. Certificate of Service - Local Rule 9013-1(l) and 9013-2(g).

Local Bankruptcy Form 9021-1. Designation of Parties to Receive Notice of Court Order - Local Rule 9021-1(e).

LOCAL FORM 2083-1

Verification and Request for Chapter 13 Discharge - Local Rule 2083-1(m)

Submitting Attorney (Utah State Bar No.)
Address
Telephone No.
Facsimile No. (Optional)
E-Mail Address (Recommended)
Attorney for

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re: Debtor(s).	Bankruptcy No. Chapter Hon. (Judge's Name)

VERIFICATION AND REQUEST FOR CHAPTER 13 DISCHARGE

The Debtor(s), in the above-captioned case, being duly sworn, state as follows:

1. The Chapter 13 Trustee has issued a Notice of Completion of Plan Payments and the Debtors hereby request the court to enter a discharge in this case.

2. The Debtors have filed with the Bankruptcy Court Official Form 23 (Debtor's Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management).

3. A. I/We have not been required by a judicial or administrative order, or by statute to pay any domestic support obligation as defined in 11 U.S.C. §101(14A) either before this bankruptcy was filed or at any time after the filing of this bankruptcy.

OR

3. B. I/We certify that prior to the date of this affidavit I/We have paid all amounts due under any domestic support obligation (as defined in 11 U.S.C. §101(14A)) required by a judicial or administrative order, or by statute including amounts due before this bankruptcy was

filed, to the extent provided for by the plan. The name and address of each holder of a domestic support obligation are as follows:

_____ Name _____

_____ Address _____

_____ Address _____

[Note: If "3.B" is applicable, all information required in questions B.1 through 3 below must also be provided]

B.1. My/Our most recent address is as follows:

_____ Address _____

_____ Address _____

B.2. The name and address of my/our most recent employer(s) is as follows:

_____ Name _____

_____ Address _____

_____ Address _____

B.3. The following creditors hold a claim that is not discharged under 11 U.S.C. § 523(a)(2) or (a)(4), or a claim that was reaffirmed under 11 U.S.C. § 524(c):

_____ Name _____

_____ Name _____

4. I/We have not received a discharge in a Chapter 7, 11 or 12 bankruptcy case filed within 4 years prior to filing this Chapter 13 bankruptcy.

5. I/We have not received a discharge in another Chapter 13 bankruptcy case filed within 2 years prior to filing this Chapter 13 bankruptcy case.

6. A. I/We did not have either at the time of filing this bankruptcy or at the present time, equity in excess of $125,000.00 in the type of property described in 11 U.S.C. § 522(p)(1) [generally the debtor's homestead]

OR

B. There is not currently pending any proceeding in which I [in an individual case] or either of us [in a joint case] may be found guilty of a felony of the kind described in 11 U.S.C. § 522(q)(1)(A) or liable for a debt of the kind described in 11 U.S.C. § 522 (q)(1)(B).

_____/s/_____
Debtor
_____/s/_____
Debtor

NOTICE OF DEADLINE TO OBJECT

Any objection to this verification and the entry of a discharge for the above–named debtor(s) must be filed within 21 days after the service date set forth below. If no objection is filed, the court may enter a discharge pursuant to 28 U.S.C. § 1328(a) without further notice or hearing.

CERTIFICATE OF SERVICE
(Use Local Form 9013–3)

COMMITTEE NOTE (2013)

Section 1328 sets the requirements for a Chapter 13 debtor to receive a discharge. Bankruptcy Rules 1007(b)(7) and (8) also require the debtor to make certain verifications before the entry of a discharge. This form contains the information and verifications required to establish the debtor's qualification to receive a discharge.

The form must be filed within 60 days after the Chapter 13 trustee files the Notice of Completion of Plan Payments, and it must be served on all parties in interest using the most current mailing matrix from the Court. *See 11 U.S.C. § 1328; Fed. R. Bankr. P. 1007(b)(7) and (8) and (c); Local Rule 2083-1(m).*

If no objection is filed within 21 days after service, the court may enter a discharge pursuant to § 1328(a) without further notice or hearing (see Local Rule 2083-1(m)). **If this form is not timely filed, the court may close the case without the entry of a discharge.**

LOCAL FORM 2083-1-A (NEW FORM)

Notice of Preconfirmation Amended Chapter 13 Plan and Opportunity to Object (*Notice Required along with Filed Plan*) – Local Rule 2083-1(b)

Submitting Attorney (Utah State Bar No.)
Address
Telephone No.
Facsimile No. (Optional)
E-Mail Address (Recommended)
Attorney for

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re: Debtor(s).	Bankruptcy No. Chapter Hon. (Judge's Name)

NOTICE OF PRECONFIRMATION AMENDED CHAPTER 13 PLAN AND OPPORTUNITY TO OBJECT

(OBJECTION DEADLINE: _____)
(HEARING DATE: _____)

PLEASE TAKE NOTICE that the Debtor(s) have filed with the United States Bankruptcy Court for the District of Utah an Amended Chapter 13 Plan under 11 U.S.C. § 1323.

YOUR RIGHTS MAY BE AFFECTED. You should review these papers carefully and discuss them with your attorney, if you have one. If you disagree with the terms of the Amended Plan stated herein, you or your attorney must file with the Bankruptcy Court a written objection before the deadline stated above. In the absence of a timely written objection, the Court may grant the requested relief and confirm the Amended Plan without further notice or hearing.

The most recently filed plan is hereby modified as follows:

Plan Part No.	Previously filed plan provision	Plan as modified

The above is a summary of the amended changes. Parties are advised to review the filed plan to determine if any further changes apply to them.

If you do not want the Court to grant confirmation of the Amended Plan, then you **must** timely take both of the following actions:

(1) On or before [*objection deadline*], you or your lawyer must file with the bankruptcy court at the following address a written objection explaining your opposition to the Amended Plan:

United States Bankruptcy Court
350 South Main Street, Room 301
Salt Lake City UT 84101

If you mail your objection, it must be mailed early enough so that the court will **receive** it on or before [*objection deadline*].

(2) And you must attend the hearing on confirmation, which is set for [*hearing date and time*]. Failure to attend the hearing may be deemed a waiver of your objection.

If you or your attorney do not take these steps, the Bankruptcy Court may decide that you do not oppose confirmation of the Amended Plan and may enter an order granting confirmation without a hearing. In the absence of a timely filed objection, the Bankruptcy Court may strike the hearing and enter an order confirming the Amended Plan.

Dated: _____

_____
Signature

CERTIFICATE OF SERVICE
(Use Local Form 9013–3)

LOCAL FORM 2083-1-B (NEW FORM)

Notice of Preconfirmation Modified Plan (*No Additional Notice Required*) – Local Rule 2083-1(b)

Submitting Attorney (Utah State Bar No.)
Address
Telephone No.
Facsimile No. (Optional)
E-Mail Address (Recommended)
Attorney for

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re: Debtor(s).	Bankruptcy No. Chapter Hon. (Judge's Name)

NOTICE OF PRECONFIRMATION MODIFIED CHAPTER 13 PLAN

PLEASE TAKE NOTICE that the Debtor(s) has filed with the United States Bankruptcy Court for the District of Utah a request to modify the previously filed Chapter 13 Plan under 11 U.S.C. § 1323. The Debtor(s) moves the Court for confirmation of the Plan as modified without further notice and hearing. In support thereof, the Debtor(s) represents as follows:

The most recently filed plan is hereby modified as follows:

Plan Part No.	Previously Filed Plan Provision	Plan as Modified

The modification does not negatively impact secured, priority or nonpriority unsecured creditors because [explain].

Under § 1323(c), any holder of a secured claim that has accepted or rejected, as the case may be, the prior plan is deemed to have accepted or rejected the plan as modified, unless the modification provides for a change in the rights of such holder from what such rights were under the plan before modification, and changes such holder's previous acceptance or rejection.

THEREFORE, because the modification does not require notice to creditors, the Debtor(s) requests the Bankruptcy Court to confirm the plan as modified without further notice or hearing.

Dated: _____

_____
Signature

CERTIFICATE OF SERVICE
(Use Local Form 9013–3)

LOCAL FORM 2083-1-C (NEW FORM)

Adequate Protection Payments Under § 1326(a)(1) – Local Rule 2083-1(d)

Submitting Attorney (Utah State Bar No.)
Address
Telephone No.
Facsimile No. (Optional)
E-Mail Address (Recommended)
Attorney for

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re: Debtor(s).	Bankruptcy No. Chapter Hon. (Judge's Name)

NOTICE OF ADEQUATE PROTECTION PAYMENTS UNDER 11 U.S.C. § 1326(a) AND OPPORTUNITY TO OBJECT

The Debtor states as follows:

1. On [*enter date*], the Debtor(s) filed a voluntary petition under Title 11 commencing a chapter 13 bankruptcy case.
2. The Debtor proposes to make Adequate Protection Payments, pursuant to § 1326(a)(1)(C) accruing with the initial plan payment which is due no later than the originally scheduled meeting of creditors under § 341 and continuing to accrue on the first day of each month thereafter, to the holders of the allowed secured claims in the amounts specified below:

Secured Creditor	Description of Collateral	Amount of Adequate Protection Payment	Number of Months in Adequate Protection Period

3. The monthly plan payments proposed by the Debtor(s) shall include the amount necessary to pay all Adequate Protection Payments and the amount necessary to pay the Trustee's statutory fee.
4. Upon completion of the Adequate Protection Payment period designated herein for each listed secured creditor, the Equal Monthly Plan Payment identified in each Part of the Plan shall be the monthly payment and shall accrue on the first day of each month.
5. This Notice shall govern Adequate Protection Payments to each listed secured creditor unless subsequent Notice is filed by Debtor or otherwise ordered by the Court.
6. Objections, if any, to the proposed Adequate Protection Payments shall be filed as objections to confirmation of the Plan. Objections must be filed and served no later than 7 days before the date set for the hearing on confirmation of the Plan.

Dated: _____

_____
Debtor(s)' Counsel

[*Unless the debtor includes the Notice of Adequate Protection Payments as an attachment to the Plan, a certificate of service is required establishing compliance with all applicable noticing requirements*.]

CERTIFICATE OF SERVICE
(Use Local Form 9013–3)

LOCAL FORM 2083-1-D (NEW FORM)

Postconfirmation Motion to Reduce Equal Monthly Plan Payemement(s) to Secured Creditor(s) – Local Rule 2083-1(k)

Submitting Attorney (Utah State Bar No.)
Address
Telephone No.
Facsimile No. (Optional)
E-Mail Address (Recommended)
Attorney for

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re: Debtor(s).	Bankruptcy No. Chapter Hon. (Judge's Name)

POSTCONFIRMATION MOTION TO REDUCE EQUAL MONTHLY PLAN PAYMENT(S) TO SECURED CREDITOR(S)

1. The Debtor(s) request a reduction to the monthly payment to secured creditor(s) during the period of payment of attorney's fees awarded under 11 U.S.C. § 330.
2. The Debtor proposes to make a reduced Equal Monthly Plan Payment (aka "Adequate Protection Payment") to the holder(s) of allowed secured claims in the amounts and for the period specified below, accruing with the first day of the month after entry of the order awarding attorney's fees under 11 U.S.C. § 330 and Court approval of the reduced payment:

Secured Creditor	Collateral Description	Amount of Monthly Adequate Protection Payment	Number of Months to Pay Adequate Protection

3. Upon completion of the adequate protection period designated above for each affected secured creditor, the payment to the creditor shall revert to the Equal Monthly Plan Payment specified in the applicable Part of the Plan.

Dated: _____

_____
Debtor(s)' Counsel

[Notice of a Motion to Reduce Equal Monthly Plan Payment(s) to Secured Creditor(s) Postconfirmation must be in compliance with Fed. R. Bankr. P. 2002(a)(5) and Local Rule 9013-2.]

CERTIFICATE OF SERVICE
(Use Local Form 9013–3)

LOCAL FORM 2083-2 (NEW FORM)

Lien Avoidance Worksheet –Local Rule 2083-2(j)(4)

Information regarding judicial lien or security interest	**Lien Avoidance Calculation**		**Treatment of remaining secured claim**
Name of creditor: _____ _____ _____ _____ _____ Description of Collateral: _____ _____ _____ _____ _____ Lien identification Information (e.g., judgment date; date entered in registry; date of lien recording, including entry number, book and/or page number, etc.) _____ _____ _____ _____ _____ [Insert additional claims as needed]	a. Amount of lien subject to avoidance	$	Amount of secured claim after avoidance (line f not to exceed line a) $_____ Interest rate (if applicable) _____% Monthly payment on secured claim $_____ Estimated total payments on secured claim $_____
	b. Value of property securing lien subject to avoidance	$	
	c. Amount of liens senior to the lien subject to avoidance (identify each lien and amount)	$	
	d. Value of claimed exemption(s) in property	$	
	e. Total of lines c and d	$	
	f. Value of debtor(s)' equity interest in property (subtract line e from line b)	$	
	g. Amount of lien to be avoided (amount of line a which exceeds line f)	$	
	Extent of exemption impairment (Check applicable box): ☐ **Line f is zero or less:** The entire lien is avoided. (Do not complete the next column.) ☐ **Line f is more than zero:** A portion of the lien is avoided. (Complete next column.)		

LOCAL FORM 2090-1 (NEW FORM)

Motion for Admission Pro Hac Vice and Consent Of Designated Associate Local Counsel – Local Rule 2090-1(c)(1)

Submitting Attorney (Utah State Bar No.)
Address
Telephone No.
Facsimile No. (Optional)
E-Mail Address (Recommended)
Attorney for

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re: Debtor(s).	Bankruptcy No. Chapter Hon. (Judge's Name)

MOTION FOR ADMISSION PRO HAC VICE AND CONSENT
OF DESIGNATED ASSOCIATE LOCAL COUNSEL

I, _____, hereby move the pro hac vice admission of applicant to practice in this Court. I hereby agree to serve as designated local counsel for the subject case; to readily communicate with opposing counsel and the Court regarding the conduct of this case; and to accept papers when served and recognize my responsibility and full authority to act for and on behalf of the client in all case-related proceedings, including hearings, pretrial conferences, and trials, should applicant fail to respond to any Court order.

Dated:

_____
(Signature of Local Counsel)
(Utah Bar Number)

CERTIFICATE OF SERVICE
(Use Local Form 9013–3)

LOCAL FORM 2090-1-A (NEW FORM)

Application for Admission Pro Hac Vice –Local Rule 2090-1(c)(2)
(attach to Motion for Admission Pro Hac Vice)

APPLICATION FOR ADMISSION PRO HAC VICE

Applicant, _____, hereby requests permission to appear pro hac vice in the subject case. Applicant states under penalty of perjury that he/she is a member in good standing of the bar of the highest court of a state or the District of Columbia; is (i) ___ a non-resident of the state of Utah or, (ii) ___ a new resident who has applied for admission to the Utah State Bar and will take the bar examination at the next scheduled date; and, under DUCivR83-1.1(d) and Local Rule 2090-1, has associated local counsel in this case. Applicant's address, office telephone, fax number, e-mail address and the courts to which admitted, and the respective dates of admission are provided as required.

Applicant designates _____ as [*check one*]: ___ lead counsel; ___ associate local counsel.

Dated:

_____
(Signature of Applicant)

APPLICATION FOR ADMISSION PRO HAC VICE, CONTINUED

Name of Applicant: _____

Business Address: _____

_____

_____

Main Office Telephone Number: (____)_____

Fax Number: (____)_____

E-mail Address: _____

BAR ADMISSION HISTORY

COURTS TO WHICH ADMITTED	LOCATION	DATE OF ADMISSION

(If additional space is needed, attach separate sheet.)

PRIOR PRO HAC VICE ADMISSIONS IN THIS DISTRICT

CASE TITLE	CASE NUMBER	DATE OF ADMISSION

(If additional space is needed, attach separate sheet.)

LOCAL FORM 2091-2

Motion to Withdraw as Counsel – Local Rule 2091-2(b)

Submitting Attorney (Utah State Bar No.)
Address
Telephone No.
Facsimile No. (Optional)
E-Mail Address (Recommended)
Attorney for

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re: Debtor(s).	Bankruptcy No. Chapter Hon. (Judge's Name)

MOTION TO WITHDRAW AS COUNSEL

1. Pursuant to Local Rule 2091-2, [*Insert Movant's Name*] ("Counsel"), hereby moves to withdraw as counsel for:

Client Name: (the "Client")
Address:
City, State, Zip:
Telephone Number(s):
E-Mail Address:

2. The reasons for withdrawal are as follows: [*Insert specific statement of reasons for withdrawal*]

3. In the event this motion is granted, Client or new counsel for Client (including new counsel in the withdrawing attorney's law firm), must file a notice of appearance within 21

days after entry of the order, unless otherwise ordered by the court. Pursuant to Local Rule 9011-2(a), no corporation, association, partnership, limited liability company or other artificial entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court.

4. This motion is made: [*State the alternative that applies*]

_____ with the client's consent, which is attached to this motion; or

_____ without client's consent and is accompanied by:

_____certification that Client has been served with (i) a copy of this motion, (ii) the attached written description of the status of the case, including the dates and times of any scheduled court proceedings, pending compliance with any existing court orders, and the possibility of sanctions; or

_____certification that the Client cannot be located or, for any other reason, cannot be notified of the pendency of the motion and status of the case.

5. The undersigned certifies: [*State the alternative that applies*]

_____ there are no pending motions or trials; or

_____a hearing on [*State the matter set for hearing*].

_____a certification signed by Counsel is attached indicating that Client is prepared for trial as scheduled and is eligible pursuant to Local Rule 9011-2(b) to appear *pro se* at trial; or

_____the following specific facts justify withdrawal of counsel

without the present appearance of substitute counsel or the appearance by the individual party *pro se*: [*Set forth specific facts*]

CERTIFICATION

Counsel hereby certifies that a copy of this Motion for Withdrawal of Counsel has been sent to the Client at the address indicated above.

Dated this ___ Day of _____, 20__.

_____
Moving Attorney

CERTIFICATE OF SERVICE
(Use Local Form 9013–3)

LOCAL FORM 2091-2-A

Order Granting Motion to Withdraw as Counsel - Local Rule 2091-2

Submitting Attorney (Utah State Bar No.)
Address
Telephone No.
Facsimile No. (Optional)
E-Mail Address (Recommended)
Attorney for

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re: Debtor(s).	Bankruptcy No. Chapter Hon. (Judge's Name)

ORDER APPROVING WITHDRAWAL OF COUNSEL

Pursuant to the motion to withdraw as counsel under Local Rule 2091-2(b)(1)(A), and for good cause appearing, the Court hereby **ORDERS** as follows:

1. [*enter attorney's name*] may withdraw as counsel of record for [*enter client's name*] (the "Client") in the above–captioned case.

2. With regard to Client's continued representation, the Court Orders as follows:

(a) Client or new counsel for Client must file a Notice of Appearance within 21 days after the entry of this order. Pursuant to Local Rule 9011-2(a), no corporation, association, partnership, limited liability company or other artificial entity may appear *pro se*, but must be represented by an attorney who is admitted to practice before this Court.

(b) If the Client fails to file a Notice of Substitution of Counsel or Notice of Appearance as set forth above, the Court will deem such party to be proceeding *pro*

se, and such party may be subject to sanctions under Federal Rule of Civil Procedure 16(f)(1), including but not limited to dismissal or entry of a default judgment.

(c) With regard to scheduling, the Court orders as follows: [*State the alternative that applies*]

_____ All litigation dates pursuant to the current scheduling order remain in effect; or

_____ A scheduling conference is set before the Court on _____; or

_____ The action shall be stayed until 21 days after entry of this order.

DESIGNATION OF PARTIES TO RECEIVE NOTICE OF COURT ORDER

Service of the foregoing Order [*enter exact title of order*] shall be served on the parties in the manner designated below:

By Electronic Service: I certify that the parties of record in this case as identified below, are registered CM/ECF users.

[*List the name and email address for each party receiving electronic notice. The names and email addresses for each party may be obtained and copied into the certificate of service by accessing the Court's mailing report through CM/ECF–Utilities–Miscellaneous–Mailings–Mailing Info for a Case.*]

By U.S. Mail - In addition to the parties of record receiving notice through the CM/ECF system, the following parties should be served notice pursuant to Fed R. Civ. P. 5(b).

- [*State "**None**" if there are no additional parties.*
- *If there are additional parties list the names and addresses of the additional parties.*
- *If all parties in interest should receive notice, state "All parties on the Court's official case matrix."*]

_____
(Signature by Filer)

LOCAL FORM 3011-1

Application for Payment of Unclaimed Funds – Local Rule 3011-1

Submitting Attorney (Utah State Bar No.)
Address
Telephone No.
Facsimile No. (Optional)
E-Mail Address (Recommended)
Attorney for

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re: Debtor(s).	Bankruptcy No. Chapter Hon. (Judge's Name)

APPLICATION FOR PAYMENT OF UNCLAIMED
FUNDS AND NOTICE OF OBJECTION DEADLINE

The undersigned, under penalty of perjury under the laws of the United States of America, declare that the following statements and information are true and correct:

1. _____(Claimant) applies to this Court, pursuant to 28 U.S.C. § 2042 for entry of an order directing the Clerk of this Court to remit to Claimant the sum of $_____ due to Claimant.

2. (check applicable paragraph)

☐ Claimant is the original claimant named in the trustee's unclaimed funds report filed in this case; or

☐ Claimant is the holder of a valid assignment of a claim listed in the trustee's unclaimed funds report and appropriate documentation substantiating the assignment of the original claim [e.g. a notarized acknowledgment of assignment] is attached hereto; or

☐ The original claimant listed in the trustee's unclaimed funds report filed in this case is deceased, and Claimant is a person authorized to act on behalf of the estate of the original claimant and appropriate documentation substantiating Claimant's authority [e.g., certified copies of all probate documents including a copy of the death certificate and appointment of executor] is attached.

3. Claimant has made sufficient inquiry and has no knowledge that this claim has been previously paid, that any other application for this claim is currently pending before this Court, or that any party other than the Claimant is entitled to submit an application for the payment of this claim.

4. Claimant has provided notice to the United States Attorney for the District of Utah of this Application pursuant to 28 U.S.C. § 2042 and a certificate of mailing is attached to this Application.

5. A photocopy of government issued photo identification of Claimant showing Claimant's signature [e.g. driver's license or passport] is attached. If name of the Applicant is different from the name of the original claimant due to marriage, divorce, etc., appropriate documentation [e.g. certified copy of divorce decree, marriage license] is attached.

6. I understand that, pursuant to 18 U.S.C. §§ 152 and 3571, I will be fined not more than $500,000, or imprisoned not more than five years, or both, if I have knowingly and

fraudulently made any false statements in this document.

Privacy Policy

Applicant shall redact only the following personal data identifiers from the Application and any supporting documentation attached to the Application before filing such documents: (i) all but the last four digits of a social security number or a tax ID number; (ii) all names of minor children (use minors' initials); (iii) all but the last four digits of any bank, savings or similar account numbers; and (iv) all birth date information except the year.

The responsibility for redacting personal data identifiers rests solely with the filing party.

NOTICE OF OBJECTION DEADLINE

Any party in interest who objects to the relief sought in this Application must, within twenty-one (21) days of the mailing of this Application, serve and file an objection or other appropriate response to this Application with the Bankruptcy Court Clerk's Office 350 South Main Street, 3rd Floor, Salt Lake City, UT 84101.

_____
Date

_____
Printed name of Claimant(s)

_____
Signature of Claimant(s)

_____
Street Address

_____
City and State

_____
Last Four Digits of SSN or full Tax ID Number if Claimant is a business

_____
Telephone and Email Address

STATE OF_____)
: ss.
COUNTY OF_____)

The foregoing instrument was subscribed and sworn to and acknowledged before me

This _____Day of _____, 20_____.

My Commission Expires:

_____
(Notary Public)

CERTIFICATE OF MAILING

I hereby certify that on _____(date), I mailed a copy of this foregoing Application and all attachments to the following:

Office of the United States Attorney
District of Utah
185 South State Street, Suite 300
Salt Lake City, UT 84111

United States Trustee
Ken Garff Building
405 South Main Street, Suite 300
Salt Lake City, UT 84111

Chapter ___ Trustee
(Name and address of case trustee)
_____
_____
_____

Debtor
(Name and address of Debtor)
_____
_____
_____

Debtors' Attorney
(Name and address of Debtor's Attorney)
_____
_____
_____

Original Claimant
(Name and address of original claimant)
_____
_____
_____

Dated: _____

_____
(Claimant's Signature)

Local Form 6007-1

Form for Request for Abandonment and Proposed Abandonment - Local Rule 6007-1

Attorney Submitting (Utah State Bar No.)
Address
Telephone No.
Facsimile No. (Optional)
E-Mail Address (Recommended)
Attorney for

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re:	Bankruptcy No.
Debtor(s).	Chapter
	Hon. (Judge's Name)

REQUEST FOR ABANDONMENT AND TRUSTEE'S PROPOSED ABANDONMENT OF PROPERTY OF THE ESTATE

REQUEST FOR ABANDONMENT

Chapter 7 Trustee: _____

Description of Secured Property:_____

Value of Property: $_____

Basis of Valuation: _____

Amount of Liens, if any, on the Property: Approximately $_____
to:_____

The above information is true to the best of my knowledge and belief. Attached to this request are documents that reflect a properly perfected security interest in the property listed above. It is requested

that the trustee endorse this Proposed Abandonment so that it may be noticed to all parties in interest pursuant to Local Rules 6007-1. Should the chapter 7 trustee fail or refuse to endorse this Proposed Abandonment, it will not be noticed to parties in interest and shall not be effective.

_____

Name: Attorney name
Attorney for: _____

PROPOSED ABANDONMENT

Pursuant to 11 U.S.C. §554, I found the above listed property burdensome to the estate or of inconsequential value to the estate. I propose to abandon such property subject to the notice provisions of Bankruptcy Rule 6007, and Local Rule 6007-1.

Date:_____.

By Electronic Endorsement
Chapter 7 Trustee

ABANDONMENT OF THE PROPERTY IDENTIFIED HEREIN IS SUBJECT TO NOTICE TO ALL INTERESTED PARTIES PURSUANT TO BANKRUPTCY RULE 6007 AND LOCAL RULE 6007-1.

Local Form 6007-1-A

Form for Notice of Proposed Abandonment- Local Rule 6007-1

Attorney Submitting (Utah State Bar No.)
Address
Telephone No.
Facsimile No. (Optional)
E-Mail Address (Recommended)
Attorney for

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

In re: Debtor(s).	Bankruptcy No. Chapter Hon. (Judge's Name)

NOTICE OF PROPOSED ABANDONMENT PURSUANT TO BANKRUPTCY RULE 6007 AND BANKRUPTCY LOCAL RULES 6007-1

OBJECTION DEADLINE:_____

TO ALL PARTIES IN INTEREST:

YOUR RIGHTS MAY BE AFFECTED. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

PLEASE TAKE NOTICE that pursuant a request for abandonment filed by [secured creditor, interested party, debtor] _____ the chapter 7 trustee proposes to abandon the following described property of the estate:

[Insert description of property as set forth in the request for abandonment]

NO HEARING WILL BE CONDUCTED ON THE PROPOSED ABANDONMENT UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE COURT ON OR BEFORE THE OBJECTION DEADLINE SET FORTH BELOW.

If you do not want the property abandoned, or if you want the Court to consider your views on the Proposed Abandonment, then, on or before _____ (date must be at least14 days from the date of mailing this notice plus 3 days for mailing), you or your attorney must:

1. File with the Court a written response explaining your position at:

United States Bankruptcy Court
350 South Main Street, Room 301
Salt Lake City, UT 84101

If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it on or before the date stated above.

2. Serve a copy of your response upon the following via ECF or U.S. mail:

Name
Address
(Chapter 7 Trustee)

Name
Address
(Attorney for Requesting Party)

DATED: _____. By _____

CERTIFICATE OF SERVICE
(**SEE LOCAL FORM 9013-3)**

Local Rule 6007-1-B

Form Notice of Abandonment - Local Rule 6007-1

Attorney Submitting (Utah State Bar No.)
Address
Telephone No.
Facsimile No. (Optional)
E-Mail Address (Recommended)
Attorney for

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re:	Bankruptcy No.
Debtor(s).	Chapter
	Hon. (Judge's Name)

NOTICE OF ABANDONMENT PURSUANT TO LOCAL RULE 6007-1

Notice of Proposed Abandonment having been served on all parties in interest and no objection having been filed, the Trustee hereby abandons the following described property of the estate.

Description of Property:_____.

Date:_____

_____
Chapter 7 Trustee
By Electronic Endorsement

FOR THIS NOTICE TO BE AN EFFECTIVE ABANDONMENT OF PROPERTY, IT MUST BE ELECTRONICALLY ENDORSED BY THE TRUSTEE.

LOCAL FORM 6070-1

Declaration Regarding Tax Returns -
Local Rule 2083-1(e)(1)(E) and Local Rule 6007-1(c)(3)

Submitting Attorney (Utah State Bar No.)
Address
Telephone No.
Facsimile No. (Optional)
E-Mail Address (Recommended)
Attorney for

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re: Debtor(s).	Bankruptcy No. Chapter Hon. (Judge's Name)

DECLARATION REGARDING TAX RETURNS

1. I/we, the undersigned debtor(s), declare under penalty of perjury that either: (*check one*)

   _____ a. All federal and state tax returns for taxable periods ending during the four-year period before the filing of the petition have been filed.

   OR

   _____ b. The following tax returns for taxable periods ending during the four-year period before the filing of the petition have not been filed.

Taxing Agency	Type of Tax Return	Tax Years

2. Complete for any tax return filed after the filing of the bankruptcy petition.

On or before [*enter date*], the above-named debtor(s) delivered the following copies of tax returns to the Insolvency Unit of the Internal Revenue Service and/or the Bankruptcy Unit of the Utah State Tax Commission and that such returns disclosed the following liabilities and/or refunds:

Federal or State	Tax Year	Type of Tax/Form No.	Tax Liability	Tax Refund

3. I/we acknowledge that the court will not confirm any Chapter 13 Plan and the case may be dismissed at or before the confirmation hearing unless all tax returns have been filed.

4. I/we further acknowledge that I/we will file and serve on the trustee an amended declaration if further required tax returns are filed with the taxing authorities after the date indicated in paragraph 1 above.

DATED this _____ day of _____, 20___.

_____
Debtor

_____
Debtor

_____
Debtor(s)' Counsel

_____

LOCAL FORM 7016-1

Report of Parties' Planning Meeting - Local Rule 7016-1(b)

Submitting Attorney (Utah State Bar No.)
Address
Telephone No.
Facsimile No. (Optional)
E-Mail Address (Recommended)
Attorney for

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re: Debtor(s).	Bankruptcy No. Chapter
Plaintiff(s), v. Defendant(s).	Adversary Proceeding No. Hon. (Judge's Name)
REPORT OF PARTIES' PLANNING MEETING	

1. Pursuant to Fed. R. Civ. P. 26(f), a meeting was held on (date) at (place) and was attended by:

(name) for plaintiff(s) (party name)

(name) for plaintiff(s) (party name)

(name) for plaintiff(s) (party name)

2. **Pre-Discovery Disclosures**. The parties [have exchanged] [will exchange by (*date*)] the information required by Fed. R. Civ. P. 26(a)(1) and Local Rule 7016-1.

3. **Discovery Plan.** The parties jointly propose to the court the following discovery plan: [*Use separate paragraphs or subparagraphs as necessary if parties disagree*.]

a. Discovery will be needed on the following subjects: [*brief description of discovery subjects*].

b. Disclosure or discovery of electronically stored information should be handled as follows: [*brief description of parties' proposals*].

c. The parties have agreed to an order regarding claims of privilege or of protection as trial preparation material asserted after production, as follows: [*brief description of provisions of proposed order*].

d. All discovery commenced in time to be completed by [*enter date*]. Discovery on [*describe issue for early discovery*] to be completed by [*enter date*].

e. Maximum of _____ interrogatories by each party to any other party. [Responses due ____ days after service.]

f. Maximum of ____requests for admission by each party to any other party. [Response due ____ days after service.]

g. Maximum of ____depositions by plaintiff(s) and ____by defendant(s).

h. Each deposition [other than of _____] limited to maximum of ____hours unless extended by agreement of parties.

i. Reports from retained experts under Rule 26(a)(2) due:

from plaintiff(s) by [*enter date*].

from defendant(s) by [*enter date*].

Supplementations under Rule 26(c) due ____(time(s) or interval(s)).

4. **Other Items.** [*Use separate paragraphs or subparagraphs as necessary if parties disagree.*]

    a. The parties [request] [do not request] a conference with the court before entry of the scheduling order.

    b. The parties request a pretrial conference in [*enter month and year*].

    c. Plaintiff(s) should be allowed until [*enter date*] to join additional parties and until [*enter date*] to amend the pleadings.

    d. Defendant(s) should be allowed until [*enter date*] to join additional parties and until [*enter date*] to amend the pleadings.

    e. All potentially dispositive motions should be filed by [*enter date*].

    f. Settlement [is likely] [is unlikely] [cannot be evaluated prior to [*enter date*] [may be enhanced by use of the following alternative dispute resolution procedure: [*enter procedure*].

    g. Final lists of witnesses and exhibits under Rule 26(a)(3) should be due

    from plaintiff(s) by [*enter date*]

    from defendant(s) by [*enter date*]

    h. Parties should have ____days after service of final lists of witnesses and exhibits to list objections under Rule 26(a)(3).

    i. The case should be ready for trial by [*enter date*] [and at this time is expected to take approximately [*enter length of time*].

5. [**Other matters.**]

Date: _____

LOCAL FROM 7016-1-A

Pretrial Order - Local Rule 7016-1(h)

Submitting Attorney (Utah State Bar No.)
Address
Telephone No.
Facsimile No. (Optional)
E-Mail Address (Recommended)
Attorney for

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re: Debtor(s).	Bankruptcy No. Chapter
Plaintiff(s), v. Defendant(s).	Adversary Proceeding No. Hon. (Judge's Name)
PRETRIAL ORDER	

This matter having come before the court on [*insert date*] at a pretrial conference held before [*insert name*] pursuant to Fed. R. Bankr. P. 7016; and [*insert name*] having appeared as counsel for plaintiff and [*insert name*] having appeared as counsel for defendant and [*insert name*] having appeared as counsel for [*insert name*]; the following action was taken: [*State*]. [*Delete foregoing if no final pretrial conference is held.*]

1. **JURISDICTION**. The jurisdiction of the court is properly invoked under 28 U.S.C. § 1334. The parties [*consent/do not consent*] to entry of a final judgment or order by the bankruptcy judge. The jurisdiction of the court is not disputed and is hereby determined to be present.

2. **VENUE**. Venue is laid in the [*insert either Central or Northern*] Division of the District of Utah.

3. **GENERAL NATURE OF THE CLAIMS OF THE PARTIES**.

(a) Plaintiff's claims. [*State brief summary*.]

(b) Defendant's claims. [*State brief summary*.]

(c) Other parties' claims. [*State brief summary for each party*.]

4. **UNCONTROVERTED FACTS**. The following facts are established by admissions in the pleadings or by stipulation of counsel. [*Set out uncontroverted facts, including admitted jurisdictional facts and all other material facts concerning which there is no genuine issue*.]

5. **CONTESTED ISSUES OF FACT**. The contested issues of fact remaining for decision are: [*List*]

6. **CONTESTED ISSUES OF LAW**. The contested issues of law in addition to those implicit in the foregoing issues of fact are: [*List*]

7. **EXHIBITS**. The following, constituting all of the exhibits to be introduced at trial, have been exchanged between the parties:

(a) Plaintiff's exhibits: [*List*]

(b) Defendant's exhibits: [*List*]

(c) Exhibits of other parties (if involved): [*List*]

(d) Exhibits shall be presented to and marked for identification by the clerk prior to the day of trial in accordance with Local Rule 9070-1(a) or (d). The handling of exhibits both during and after trial is governed by Local Rule 9070-1(b) and (c).

8. **WITNESSES**.

(a) In the absence of reasonable notice to opposing counsel to the contrary, plaintiff will call as witnesses: [*List*]; plaintiff may call: [*List*]; and plaintiff will use the following depositions: [*List*]

(b) In the absence of reasonable notice to opposing counsel to the contrary, defendant will call as witnesses: [*List*]; defendant may call: [*List*]; and defendant will use the following depositions: [*List*]

(c) In the absence of reasonable notice to opposing counsel to the contrary [*identify additional party*] will call as witnesses: [*List*]; [*identify additional party*] may call: [*List*]; and [*identify additional party*] will use the following depositions: [*List*].

(d) In the event that other witnesses are to be called at the trial, a statement of their names and addresses and the general subject matter of their testimony will be served upon opposing counsel and filed with the court at least [*insert*] days prior to trial. This restriction shall not apply to rebuttal witnesses, the necessity of whose testimony reasonably cannot be anticipated before the time of trial.

9. **AMENDMENTS TO PLEADINGS**. There are no requests to amend pleadings. [*or*] The following order was made regarding amendments to the pleadings: [*State*].

10. **DISCOVERY**. [*Check or state one*]

___ Discovery has been completed.

___ Discovery is to be completed by [*insert date*].

___ Further discovery is limited to [*state terms*].

___ The following provisions were made for discovery: [*state provisions*].

11. **TRIAL SETTING**. The adversary proceeding is set for trial on [*insert date*] at [*insert time*]. Estimated length of trial is [*insert number*] days.

12. **SETTLEMENT**. Counsel have conferred respecting settlement of this matter and consider the possibility of settlement [*insert good/fair/poor*]. Trial will not be postponed for purposes of further settlement negotiations except upon a showing of good cause.

The foregoing proposed pretrial order (prior to execution by the court) is hereby adopted this_____ day of _____, 20___.

[*Insert signature lines, including address and telephone numbers for all parties*]

LOCAL FORM 9013-1

Notice of Hearing - Local Rule 9013-1
(Hearing will be held unless stricken.)

Submitting Attorney (Utah State Bar No.)
Address
Telephone No.
Facsimile No. (Optional)
E-Mail Address (Recommended)
Attorney for

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re: Debtor(s).	Bankruptcy No. Chapter Hon. (Judge's Name)

NOTICE OF [MOTION TO] [APPLICATION FOR] [OBJECTION TO CLAIM]
AND NOTICE OF HEARING

(Objection Deadline:_____)

(Hearing Date:_____)

PLEASE TAKE NOTICE that [movant's name] has filed with the United States Bankruptcy Court for the District of Utah, [*title of pleading*] (the Motion/Application/Objection).

YOUR RIGHTS MAY BE AFFECTED. **You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.**

[*Insert a specific statement of the relief requested, action intended or claim, including the amount of fees to be paid pursuant to Fed. R. Bankr. P. 2002(c)(2), if applicable; amount of debt*

to be incurred; amount of payment to be made; the basic terms and provisions of a settlement or compromise; or, with respect to a proposed sale of property, a description of the property, the time and place of any public sale, and the terms and conditions of any private sale, all sufficient to meaningfully inform the parties of the intended action or claim.]

If you do not want the Court to grant the relief requested in the [*Motion/Application/ Objection*], then you or your attorney must take the following two steps:

(1) On or before [*enter objection deadline*], file with the Bankruptcy Court a written Objection explaining your position. Your written objection must be filed electronically, by mail, or by hand–delivery at:

United States Bankruptcy Court
350 South Main Street, Room 301
Salt Lake City, UT 84101

If you mail your objection to the Bankruptcy Court for filing, it must be deposited in the U.S. Mail in sufficient time for it to be **received** by the Court on or before [*objection deadline*]. You must also mail a copy to the undersigned counsel at [*name and address of movant's attorney*].

(2) You must attend the hearing on the [*Motion/Application/ Objection*] which is set for [*enter date and time*] in Courtroom ___, United States Bankruptcy Court, Frank E. Moss Courthouse, 350 South Main Street, Salt Lake City, UT 84101. Failure to attend the hearing will be deemed a waiver of your objection.

If you or your attorney do not take these two steps, the Bankruptcy Court may decide that you do not oppose the relief sought in the [*Motion/Application/ Objection*] and may enter an order granting that relief. In the absence of a timely filed objection, the undersigned counsel may and will ask the Court to strike the hearing enter an order approving the [*Motion/Application/*

Objection] without hearing.

Dated this ___ Day of _____, 20__.

_____
Signature

CERTIFICATE OF SERVICE
(Use Local Form 9013–3)

LOCAL FORM 9013-2

Notice of Opportunity for Hearing - Local Rule 9013-2
(Hearing will only be activated upon the filing of a response to the motion or at the request of the court.)

Submitting Attorney (Utah State Bar No.)
Address
Telephone No.
Facsimile No. (Optional)
E-Mail Address (Recommended)
Attorney for

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re: Debtor(s).	Bankruptcy No. Chapter Hon. (Judge's Name)

NOTICE OF [*MOTION TO*] [*APPLICATION FOR*] [*OBJECTION TO CLAIM*]
AND NOTICE OF OPPORTUNITY FOR HEARING

(Objection Deadline:_____)

PLEASE TAKE NOTICE that [movant's name] has filed with the United States Bankruptcy Court for the District of Utah, [title of pleading] (the Motion/Application/Objection).

YOUR RIGHTS MAY BE AFFECTED. **You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.**

[*Insert a specific statement of the relief requested, action intended or claim, including the amount of fees to be paid pursuant to Bankruptcy Rule 2002(c)(2), if applicable; amount of debt*

to be incurred; amount of payment to be made; the basic terms and provisions of a settlement or compromise; or, with respect to a proposed sale of property, a description of the property, the time and place of any public sale, and the terms and conditions of any private sale, all sufficient to meaningfully inform the parties of the intended action or claim.]

NO HEARING WILL BE CONDUCTED ON THIS [*MOTION/APPLICATION/OBJECTION*] UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE COURT ON OR BEFORE THE OBJECTION DEADLINE SET FORTH BELOW.

If you do not want the Court to grant the relief requested in the [*Motion/Application/Objection*] then you or your attorney must take the following two steps:

(1) On or before [*enter objection deadline*], file with the Bankruptcy Court a written Objection explaining your position. Your written objection must be filed electronically, by mail, or by hand–delivery at:

United States Bankruptcy Court
350 South Main Street, Room 301
Salt Lake City, UT 84101

If you mail your objection to the Bankruptcy Court for filing, it must be deposited in the U.S. Mail in sufficient time for it to be **received** by the Court on or before [*objection deadline*]. You must also mail a copy to the undersigned counsel at [*name and address of movant's attorney*].

(2) Attend a hearing on [*enter date and time*] in Courtroom ____, United States Bankruptcy Court, Frank E. Moss Courthouse, 350 South Main Street, Salt Lake City, UT 84101. **There will be no further notice of the hearing**, and failure to attend the hearing will be deemed a waiver of your objection.

If you or your attorney do not take these steps, the Bankruptcy Court may decide that you

do not oppose the relief sought in the [*Motion/Application/ Objection*] and may enter an order granting the requested relief. In the absence of a timely filed objection, the undersigned counsel may and will ask the Court to enter an order approving the [*Motion/Application/ Objection*] without hearing.

Dated this ___ Day of _____, 20__.

_____
Signature

CERTIFICATE OF SERVICE
(Use Local Form 9013–3)

LOCAL FORM 9013-3

Certificate of Service - Local Rule 9013-1(l) and 9013-2(g).

CERTIFICATE OF SERVICE BY ELECTRONIC NOTICE (CM/ECF)

I hereby certify that on [*enter date*], I electronically filed the foregoing [*state title of document*] with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF users.

[*List the name and email address for each party receiving electronic notice. The names and email addresses of parties receiving electronic notice in a particular case may be obtained and copied into this certificate of service by going to CM/ECF and using Utilities–Miscellaneous–Mailings–Mailing Info for a Case.*]

CERTIFICATE OF SERVICE BY MAIL OR OTHER MEANS

I hereby certify that on [*enter date*], I caused to be served a true and correct copy of the foregoing [*enter name of document*] as follows: [*Select only the methods of service that apply*]

Mail Service: First–class U.S. mail, postage pre-paid, addressed to:

[*If service is not to all parties in interest, list names and complete addresses of all parties who will receive notice by mail*].

Mail Service to All Parties in Interest: First–class U.S. mail, postage pre-paid, addressed to all parties who did not receive electronic service as set forth herein listed on the Official Court Mailing Matrix dated _____attached hereto.

[*If notice is required to be served on all parties in interest (i.e. Rule 2002 notices),* ***you must attach*** *a copy of the court's official case mailing matrix bearing the same date as the certificate of service. You can obtain a PDF copy of the most current mailing matrix by going to CM/ECF and using Utilities–Miscellaneous–Mailings–Mailing Matrix by Case. Note that parties receiving electronic notice do not need to receive additional notice by mail.*]

Certified Mail Service – By certified United States mail, postage pre-paid, addressed to:

Hand Delivery – By delivery to the following parties at:

Other – [identify parties served and manner of service]:

_____
(Signature)

COMMITTEE NOTE (2013)

The purpose and intent the Certificate of Service is to establish that the serving party has complied with all applicable notice requirements. The Certificate of Service should only state the applicable method(s) of service used. Any modification of the form should include the same information required by this form.

Service on all parties in interest will only be deemed effective if a copy of the court's official mailing matrix, bearing essentially the same date as the time of mailing, is attached to the Certificate of Service.

LOCAL FORM 9021-1

Designation of Parties to Receive Notice of Court Order - Local Rule 9021-1(e)

DESIGNATION OF PARTIES TO RECEIVE NOTICE OF COURT ORDER

Service of the foregoing Order [*enter exact title of order*] shall be served on the parties in the manner designated below:

By Electronic Service: I certify that the parties of record in this case, as identified below, are registered CM/ECF users.

> [*List the name and email address for each party receiving electronic notice. The names and email addresses for each party may be obtained and copied into the certificate of service by accessing the Court's mailing report through CM/ECF–Utilities–Miscellaneous–Mailings–Mailing Info for a Case.*]

By U.S. Mail: In addition to the parties receiving notice through the CM/ECF system, the following parties should be served notice pursuant to Fed R. Civ. P. 5(b).

- [*State "None" if there are no additional parties.*
- *If there are additional parties, list their names and addresses.*
- *If all parties in interest should receive notice, state: "All parties on the Court's official case matrix."*]

_____
(Signature by Filer)

COMMITTEE NOTE (2017)

This form identifies parties entitled to receive notice of the entry of an order pursuant to Fed. R. Bankr. P. 9022(a). Because of the significant mailing costs incurred by the Court, notice by mail should be limited to contesting parties and entities required to receive notice pursuant to the Bankruptcy Code, the Bankruptcy Rules, or these Local Rules.

U.S. Bankruptcy Court for the District of Colorado

Local Bankruptcy Rules, ~~effective December 1, 2015~~with Proposed Revisions, as of October 2, 2017

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L.B.R. 1001-1. Scope of Rules

(a) ~~General Applicability~~Purpose. These ~~rules~~Rules and forms supplement the Federal Rules of Bankruptcy Procedure ("Fed. R. Bankr. P.") and the Official Bankruptcy ~~Official~~ Forms ("Official Forms~~") and govern practice and procedure~~ ").

~~(a)~~(b) General Applicability. Unless otherwise ordered by the Court, these Rules apply in all cases and proceedings in the United States Bankruptcy Court for the District of Colorado.

~~(b)~~(c) Applicability of Rules to ~~Persons Appearing without Counsel.~~Unrepresented Parties. Individuals who ~~appear before the court who~~ are not represented by an attorney are bound by ~~the L.B.R.~~these Rules and any reference to "attorney" applies to individuals who are not represented by an ~~"~~attorney~~"~~ unless otherwise noted.

~~(c)~~(d) Citation to the Rules. ~~The rules~~These Rules are to be cited as the Local Bankruptcy Rules ("L.B.R.~~"), the~~.") and these forms as the Local Bankruptcy Forms ("L.B.~~ Forms"), and the appendix as the Local Bankruptcy Rules Appendix ("L.B.R. _____ App~~F.").

~~(d) Uniform Numbering System. The numbering system in these L.B.R. and L.B. Forms is based on the Uniform Numbering System for Local Bankruptcy Court Rules developed by the Judicial Conference Advisory Committee on Bankruptcy Rules. Any gaps in the numbering system are intentional.~~

(e) ~~-~~Reference to Debtor. Any reference to ~~"~~"debtor~~" in the L.B.R. and L.B. Forms~~" includes both "debtors" in a joint case.

(f) ~~Prior Rules; Actions Pending on~~ Effective Date. ~~These Local Bankruptcy~~The effective date of these Rules is December 1, 2017. These Rules supersede all previous ~~Local Bankruptcy~~local rules and orders adopting or amending local rules. Further, these Rules ~~and General Procedure Orders promulgated by the court prior to the Effective Date of December 1, 2015, except as otherwise ordered. They shall~~ govern all cases or proceedings pending on or filed after the ~~Effective Date~~December 1, 2017, unless ~~the court finds they would not be feasible or would work an injustice~~otherwise ordered.

~~**Commentary**~~

~~[Source: COB LBR 101 and C.D. Cal]~~

(g) Failure to comply with these Rules may result in an adverse ruling or the imposition of appropriate sanctions.

L.B.R. ~~1002~~1006-1. ~~Minimum Initial~~ Installment Payments and Filing ~~Requirements on Petition Date~~Fee Waivers

~~(a) Initial~~ Request to Pay Filing ~~Requirements: The~~Fee in Installments. An individual debtor ~~must also complete and file the following:~~

~~(1) Voluntary Petition for Individuals Filing for Bankruptcy, Official Form 101, or Voluntary Petition for Non-Individuals Filing for Bankruptcy, Official Form 201~~

~~(2) Cover Sheet: In paper filed cases only, a cover sheet in substantial conformity with L.B. Form 1002-1.1.~~

~~(3) Certificate of Credit Counseling: In~~seeking to pay the ~~event the debtor is an individual,~~

~~(A) the debtor's Certificate of Credit Counseling evidencing that the debtor has complied with the credit counseling requirements set forth in 11 U.S.C. § 109(h)(1), or~~

~~(B) a written explanation as to why a temporary exemption or exception should apply under 11 U.S.C. § 109(h)(3) or (4) shall be provided on the Official Form 101, Individual Debtor's Statement of Compliance with Credit Counseling Requirement.~~

(a) ~~Filing Fees: Pay the applicable~~petition filing fee in ~~full. If the debtor is an individual, the debtor may~~ installments must file an application ~~to pay the filing fee in installment payments or an application for~~using the official form.

~~(a)~~(b) Request to Waive Filing Fee. An individual debtor seeking a waiver of the filing fee~~. See 28 U.S.C. § 1930, FED. R. BANKR. P. 1006 and applicable Official Forms for further information on filing fees.~~ in a chapter 7 case must file an application using the official form and include the following:

~~(4) Statement of Social Security Number: In the event the debtor is an individual, Official Form 121 - Statement About Your Social Security Numbers. See L.B.R. 1007-5 for further information on Social Security numbers and privacy.~~

~~(5) Creditor Address Mailing Matrix: A proper Creditor Address Mailing Matrix. See 11 U.S.C. § 521(a)(1), FED. R. BANKR. P. 1007(a)(1), L.B.R. 1007-2 and L.B.R. 1007-2App. for further information on filing a proper Creditor Address Mailing Matrix.~~

~~(6) List of 20 Largest Unsecured Creditors: For a petition under chapter 9 or a voluntary chapter 11, the list containing the name, address and estimated claim of the creditors that hold the 20 largest unsecured claims as required by FED. R. BANKR. P. 1007(d).~~

~~(b) Notice of Non-Filing and Return of Deficient Petition: The Clerk may decline to accept for filing any bankruptcy petition tendered in paper for filing that does not contain the minimum requirements as stated in L.B.R. 1002-1(a).~~

~~**Commentary**~~

~~[Source: L.B.R. 102, Transitional Local Bankruptcy Form 1002-1, Transitional Local Bankruptcy Form 1007-1, and GPO 2002-2]~~

~~See L.B.R. 1017-3 for information on dismissal for failure to file documents and the United States Trustee's Standing Motion to Dismiss.~~

~~Change in numbering to clarify required documents. January, 1, 2014.~~

(1) ~~L.B.R. 1007-1. Lists,~~ Copies of all pay advices, other evidence of income in the 60 days prior to filing for bankruptcy, or L.B.F. 1007-6.1;

Completed Schedules~~, Statements & Other Documents~~

~~FED. R. BANKR. P. 1002 through 1008 govern the documents required to be filed at or near the commencement of a case. L.B.R. 1007-1App. contains a list, in proper sequence, of the documents required to be filed to constitute a complete bankruptcy filing. L.B.R. 1007-1App. also includes references to applicable Official Forms, Director's Procedural Forms and L.B. Forms.~~

~~**Commentary**~~

~~[Source: T.L.B.R. 1007-1]~~

~~L.B.R. 1007-1. Lists, Schedules, Statements & Other Documents~~

~~Fed. R. Bankr. P. 1002 through 1008 govern the documents required to be filed at or near the commencement of a case. L.B.R. 1007-1App. contains a list, in proper sequence, of the documents required to be filed to constitute a complete bankruptcy filing. L.B.R. 1007-1App. also includes references to applicable Official Forms, Director's Procedural Forms and L.B. Forms.~~

~~Commentary~~

~~[Source: T.L.B.R. 1007-1]~~

~~L.B.R. 1007-2. Creditor Address Mailing Matrix~~

~~(a) Content: The debtor must file a verified list of creditors, referred to as the Creditor Address Mailing Matrix, pursuant to 11 U.S.C. § 521(a)(1)(A) in the form and manner described in L.B.R. 1007-2App. The debtor must file a Verification of Creditor Address Mailing Matrix in substantial conformity with L.B. Form 1007-2.1.Assignment: In addition to the requirements of FED. R. BANKR. P. 1007(a),~~ I and J, even if ~~an assignment of the account or debt is known to the person verifying such information, the full names and addresses of both the original creditor and assignee must be listed. If the debt is in the hands of an attorney or other agent for collection, the full names and addresses of both the creditor and attorney or~~not all other ~~agent should be listed, if known.~~

~~(b) Amendments: See L.B.R. 1007-2App. and L.B.R. 1009-1 for information on amendments to the~~ statements and schedules ~~and Creditor Address Mailing Matrix.~~

~~Commentary~~

~~[Source: L.B.R. 107(c)]~~

~~L.B.R. 1007-4. Financial Disclosure by Corporate Debtor~~

~~(1)~~(2) ~~The following financial disclosures~~ are ~~required of corporate debtors:~~filed at the time the request is made.

~~(1) Corporate Ownership Statement pursuant to FED. R. BANKR. P. 1007(a)(1) in substantial conformity with L.B. Form 1007-4.1.~~

~~(2) List of Equity Interest Holders pursuant to FED. R. BANKR. P. 1007(a)(3) in substantial conformity with L.B. Form 1007-4.2.~~

~~Commentary~~

~~[Source: New. Modified by GPO 2013-1] January, 1, 2014.~~

~~See FED. R. BANKR. P. 7007.1 and L.B.R. 7007.1-1 for additional information on filing a Corporate Ownership Statement in adversary proceedings.~~

~~L.B.R. 1007-5. Social Security Number (Privacy)~~

~~(a) Petition: When filing the petition electronically, the electronic filer must enter the debtor's full Social Security number when opening a case, but must include only the last four digits on the Voluntary Petition for Individuals Filing for Bankruptcy, Official Form 101.~~

~~(b) Statement of Social Security Number:~~

(3) ~~Official Form 121: All voluntary petitions in~~ A request for fee waiver from a non-individual debtor or from a debtor seeking relief under a chapter other than chapter 7 will be denied. *See* 28. U.S.C. § 1930(f)(1) and Fed. R. Bankr. P. 1007(c).

(c) Any order granting a request for fee waiver is conditional and subject to further investigation by the United States Trustee, trustee, or other parties.

~~(b)~~(d) These requirements apply to any individual debtor ~~cases must be accompanied by~~seeking a waiver of the filing ~~of~~fee in an appeal.

~~(A) Official Form 121, Statement About Your Social Security Numbers, in conventional paper format; or~~

~~(B) For petitions that are filed electronically, Official Form 121, using the proper secured event to prevent public access to the form.~~

~~(2) Receipt: A receipt of the Statement About Your Social Security Numbers will be entered on the docket, but will not be available for public inspection at the court or over the internet.~~

~~Amended~~

L.B.R. 1007-5. Amending a Statement of Social Security Number~~:~~

~~(c)~~(a) Correction~~: An~~. A debtor must correct an incorrect ~~Social Security~~social security number ~~must be corrected by the debtor~~ by submitting an ~~Amended Statement About Your Social Security Numbers. The Amended Statement~~amended statement of social security number using the official form and labeling it "Amended." The amended statement must include the originally submitted and ~~the~~ correct ~~Social Security~~social security numbers and must be filed within seven ~~(7)~~ days of the debtor discovering or being informed of the error.

~~(d) Service: Filed with the Amended Statement or not later than three (3) court days of filing the Amended Statement About Your of Social Security Numbers as prescribed above, the~~Service. A debtor must file a certificate of service ~~evidencing~~with the amended statement of social security number showing service of the ~~Amended Statement About Your Social Security Numbers on the United States Trustee, the trustee, and all creditors.~~

~~(1) Failure to File the Statement About Your Social Security Numbers: Failure to file or serve the Statement About Your Social Security Numbers, or any amendment thereto, in accordance with this L.B.R. may result in dismissal of the case.~~

~~(e) Proof of Claim Form: Creditors claiming wages owed from the debtor should disclose only the last four digits of their Social Security number on Official Form 410, Proof of Claim.~~

~~(f)~~(b) ~~Redaction of Personal Identifiers: It is the responsibility of any party filing documents with the court, not the Clerk, to redact Social Security numbers and other personal identifiers such as dates of birth, financial account numbers, and names of minor children. This includes copies of employee payment advices, tax returns, or other financial documents that may be filed or attached as an exhibit to documents filed with the court. In the event a petition or other document is tendered for filing that bears the entire Social Security~~amended statement of social security number ~~of the debtor, the Clerk will file said petition or document as tendered without taking any action to redact the first five digits of the Social Security numb~~on the United States Trustee, trustee, all creditors, and credit reporting agencies Experian, TransUnion LLC, and Equifax.

~~Commentary~~

~~[Source: L.B.R. 107(c) and GPO 2003-4]~~

~~See L.B.R. 4002-1 for privacy of tax return information and L.B.R. 9004-2 for information on captions.~~

~~See also FED. R. BANKR. P. 1009 and FED. R. BANKR. P. 9037.~~

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L.B.R. 1007-6. Employee Payment Advices

Filing Requirement~~:~~. The debtor must file the required payment advices or other evidence of payment pursuant to 11 U.S.C. § 521(a)(1)(B)(iv) or a statement ~~as to why the debtor has not complied. The statement must be~~ concerning payment advices in substantial conformity with L.B.~~Form~~F. 1007-6.1.

~~(a) Failure to File Any Payment Advices: If no payment advices are filed with the petition and the debtor has not filed a statement in substantial conformity with L.B. Form 1007-6.1, the court may issue a notice of deficiency. The failure to cure the deficiency may result in the dismissal of the case pursuant to 11 U.S.C. § 521(i) and L.B.R. 1017-3.~~

~~(b) Motions or Objections Regarding Filed Payment Advices: All parties in the case have until the latter of forty-five (45) days after the petition is filed, or thirty (30) days after the payment advices are filed, to file a motion to modify a docket entry that states a payment advice was filed or to challenge the court's acceptance of documents in satisfaction of the payment advice filing requirement. The failure to timely file such a motion or challenge will result in the documents being deemed accepted and sufficient in satisfaction of the filing requirement in 11 U.S.C. § 521(a)(1)(B)(iv), unless otherwise ordered by the court.~~

~~Commentary~~

~~[Source: Paragraphs (a) and (b) are new. Paragraph (c) is from GPO 2006-2]~~

L.B.R. 1007-7. Chapter 11 Receivers

Filing Requirement: A ~~Chapter~~chapter 11 debtor ~~shall~~must file~~,~~ with the petition, a statement regarding whether a receiver is in possession of all or any part of the ~~debtor's~~debtor's property, in substantial conformity with L.B.~~Form~~F. 1007-7.1

~~Commentary~~

~~[Source: New GPO 2013-1] January, 1, 2014.~~

~~Failure to comply with this Rule may be grounds for conversion or dismissal under 11 U.S.C. § 1112(b)(4)(F) or other cause.~~

L.B.R. 1009-1. Amendments to Voluntary Petitions, Lists ~~&~~, Schedules, and Statements

~~Amendments involve several separate steps set forth below in the following subparagraphs categorized generally as follows: (a) properly filing the amendment with the court; (b) providing the appropriate notice of the amendment to interested parties; and (c) filing a proper Certificate of Service with the court. The failure to complete each step below fully may result in the amendment being meaningless.~~

~~(a) Amendments to Add Creditors or Other Information: An amendment to Schedules D, E, F, G and H pursuant to Fed. R. Bankr. P. 1009 must be:~~
~~(1) shown on a schedule separate from the schedule originally filed; or~~
~~(2) highlighted, i.e., marked by an asterisk, underscored, etc., if such amendment has been incorporated in a revised edition of the schedule originally filed; and~~
~~(3) shown on an amended Creditors Address Mailing Matrix in the form and manner described in L.B.R. 1007-2 and L.B.R. 1007-2App that is separate and apart from any other Creditor Address Mailing Matrix previously filed in the case; and~~
~~(4) must be accompanied by payment of any fee prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1930(b).~~

(a) ~~Notice of Amendment: o~~ Unless the Court orders otherwise, if a debtor amends a petition, list, schedule or statement, the amendment must be designated as such. The amended petition, list, schedule, or statement will supersede the prior filing and may not merely state the new or changed items.

(b) Notice of Amendment. The debtor must file a notice of amendment that substantially conforms with L.B.F. 1009-1.1, which specifies the amended or new information.

~~(b)~~(c) In addition to the requirements of 11 U.S.C. § 342(c)(1) and Fed. R. Bankr. P. 1009(a), upon the filing of an amendment adding creditors or parties in interest, the debtor must ~~mail~~ serve the following to the ~~newly added~~new creditors or parties ~~a copy of the following documents~~:

(1) the amended schedule,
(2) the Notice of Amendment to Schedule, L.B. ~~Form~~F. 1009-1.1,
(3) the Notice of Meeting of Creditors, and
(4) any notice of possible dividend or notice of a bar date for filing proofs of claim, along with a proof of claim form.

~~(c)~~(d) Certificate of Service~~:~~. The debtor must file a certificate of service showing compliance with this ~~L.B.R.~~Rule with the amendment ~~or not later than three (3) court days of filing the amendment.~~ The ~~Notice of Amendment to Schedule, L.B.Form 1009-1.1~~certificate of service must be attached to the ~~Certificate of Service filed with the court~~Notice of Amendment.

~~(d)~~(e) Creditor Requests to Modify Creditor Address Mailing Matrix~~:~~. If a creditor wishes to modify the address listed in the schedules or on the Creditor Address Mailing Matrix the creditor may file or modify a proof of claim or file a notice of change of address and ~~mail~~serve a copy to the debtor and ~~debtor's counsel~~debtor's attorney.

~~Commentary~~

~~[Source: D. Colo. 109 and GPO 2005-1]~~
~~Preamble added for clarity so that all steps required for amendments are met. January, 1, 2014.~~

~~Nothing in this rule excuses the mandate set forth in Fed.R.Barkr.P. 1008, requiring that "[a]ll petitions, lists, schedules, statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746."~~

L.B.R. 1015-1. Joint Administration

~~(a) Motions. On motion of any party in interest, on notice to the United States trustee, any case trustee,~~Motion and ~~such further notice as the court may direct, separate cases enumerated in FED. R. BANKR. P. 1015(b) may, upon order of the court, be jointly administered.~~

~~(b) Any motion for joint administration pursuant to FED. R. BANKR. P. 1015(b) involving two or more petitions pending in the same court by or against (i) a partnership and one or more of its general partners, (ii) two or more general partners, or (iii) a debtor and an affiliate must include a short and concise statement setting forth the reasons that granting the motion for joint administration will aid in expediting the administration of the cases and rendering the process less costly.~~

~~(c)~~(a) Order~~:~~. Parties seeking joint administration ~~must~~under Fed. R. Bankr. P. 1015(b) must file a motion and submit a proposed order in substantial conformity with L.B. ~~Form~~F. 1015-1.1.

~~(d)~~(b) Notice~~:~~. When the Court enters an order granting joint administration ~~is entered~~, the Clerk, or such other person as the ~~court~~Court may direct, must provide notice to all creditors and parties in interest that the administrative procedures listed ~~below~~herein apply. The ~~court~~Court may, in its discretion, order that the debtor~~(s)~~ maintain a comprehensive service list of creditors ~~from~~for all jointly administered estates.

(1) Unless otherwise ordered, jointly administered cases will be reassigned to the judge to whom the ~~lower~~lowest-numbered (first) case was assigned. The ~~lower~~lowest-numbered case will be known as the "lead case."
(2) Unless otherwise ordered, all motions, pleadings, and other documents filed in the jointly administered case ~~shall~~must bear a combined caption which includes the full name and number of

each specific case as in Official Bankruptcy Form 16A, and must be filed, docketed and processed in the lead case, except for the following:

(A) a motion which applies to less than all jointly administered debtors must clearly indicate in the caption and title to which debtor~~(s)~~ the motion applies, but must still be filed in the lead case;

(B) all proofs of claim must be filed in the specific case to which they apply;

(C) monthly financial reports must be filed in the specific case to which they apply; and

(D) amendments to schedules, statements, lists and other required documents in ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 1002 and 1007 must be filed in the specific case to which the amendments apply.

~~(c)~~(c) ~~This L.B.R.~~ Any order directing joint administration does not affect the substantive issues of the jointly ~~-~~administered estates, either individually or collectively, nor does it affect the requirements of ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 2009.

~~Commentary~~

~~[Source: L.B.R. 115; GPO 2013-1] January, 1, 2014.~~

~~This L.B.R. is intended to deal with joint administration, as opposed to substantive consolidation.~~ The Court will not approve joint administration if the Court anticipates that joint administration will have an adverse impact on the substantive rights of the claimants, other interested parties, and the respective debtor estates.

~~By way~~ This includes failure of ~~example, issues that may impact substantive rights in joint administration include:~~

~~Confusion in cash management, including obtaining credit pursuant~~a debtor's attorney to ~~11 U.S.C. § 364 and use of cash collateral under FED. R. BANKR. P. 4001. Counsel for jointly administered debtors must ensure that cash management between and amongst debtors respects corporate distinctions.~~

~~(f)~~(d) ~~Failure by counsel for the debtor(s) to properly~~ allocate fees and costs properly to the applicable debtor. Fee applications filed in jointly administered cases must designate the entity to which ~~the~~ fees and costs are attributable.

~~Notification to claimants and other interested parties of claims filing and management amongst affiliated debtors. Counsel for jointly administered debtors must, consistent with L.B.R. 1015-1(d)(2)(B), take appropriate steps to notify creditors and other interested parties of the entity to which their claim may be applicable.~~

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~~L.B.R. 1017-1. Debtor's Request for and Notice of Conversion~~

~~(a) Conversion From Chapter 7 to Chapter 11, 12 or 13:~~

~~(1) No Prior Conversion: To convert a case from chapter 7 to chapter 11, 12 or 13 pursuant to 11 U.S.C. § 706(a), where eligible, the debtor must file a Motion for Voluntary Conversion in accordance with Fed. R. Bankr. P. 1017(f)(2), whereupon the Clerk will, if the case has not been previously converted under 11 U.S.C. §§ 1112, 1208 or 1307, enter a virtual text order effecting the conversion.~~

(b) Prior Conversion: In the event that the case has been previously converted, the debtor must comply with 11 U.S.C. § 706(e) and file a motion for conversion with notice to creditors pursuant to L.B.R. 9013-1.Conversion From Chapter 11 to Chapter 7:

(1) Generally: The debtor, where eligible, must file a Motion for Voluntary Conversion. Upon receipt of the application fee, the Clerk may then enter a virtual order converting the case.

(2) Limitations: Where the provisions of 11 U.S.C. § 1112(a) apply, the debtor must file a Motion for Voluntary Conversion with notice pursuant to L.B.R. 9013-1.

(c) Fees: The court will not act upon motion to convert until all required fees pursuant to 28 U.S.C. § 1930 have been paid.

(d) Reconsideration: Any party in interest may file a motion to reconsider the conversion of the case within the time specified by FED. R. BANKR. P. 9023 and 9024.

Commentary

[Source: L.B.R. 117 and GPO 2003-6]

A schedule of the current fees can be found at the bankruptcy court's website at www.cob.uscourts.gov.

This L.B.R. is intended to address issues raised by *Marrama v. Citizens Bank of Massachusetts* (*In re Marrama*), 127 S.Ct. 1105 (2007).

Where debtor is seeking conversion for a second time, see *In re Murth*, 378 B.R. 302 (Bankr. D. Colo 2007); but see *In re Johnson*, 376 B.R. 763 (Bankr. D. N.M. 2007).

L.B.R. 1017-2. Dismissal or Suspension – Case or Proceeding (Failure to Provide Tax Returns)

(a) Motion to Dismiss Pursuant to 11 U.S.C. § 521(e)(2): If the debtor fails to provide the trustee or timely requesting creditor with the federal income tax return or transcript under 11 U.S.C. § 521(e)(2)(A), the trustee or requesting creditor may file a combined motion to dismiss and notice in substantial conformity with L.B. Form 1017-2.1.

(b) Service and Notice: The motion and notice must be served on the debtor, debtor's counsel, the case trustee and the United States Trustee. Pursuant to FED. R. BANKR. P. 9006(e), the time to object to the Motion is fourteen (14) days. The notice must include a specific objection deadline.

(c) Objection: The debtor's objection must explain why the failure to provide tax returns was not within the debtor's control as required by 11 U.S.C. § 521(e)(2).

(d) Order and Hearing: If no objection is filed, the court may enter an order granting the Motion upon the filing of a Certificate of Noncontested Matter, L.B. Form 9013-1.3 and the case will be dismissed. If an objection is filed, the court may set the matter for a hearing upon the filing of a Certificate of Contested Matter, L.B. Form 9013-1.4.

Commentary

[Source: L.B.R. 117 and T.L.B.R. 1017]

See FED. R. BANKR. P. 4002 and 9037 and L.B.R. 1007-5 and 4002-1 for privacy of tax return information.

L.B.R. 1017-3. Dismissal or Suspension – Case or Proceeding (Failure to File Documents and the United States Trustee's Standing Motion to Dismiss)

(a) Deficient Filings:

(1) "Deficiency" Defined: A filing to commence a bankruptcy case is deemed to be "deficient" if the lists, schedules, statements and other required documents to commence a case are not filed in compliance with, and in the time specified in, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and these L.B.R. and L.B. Forms, including applicable appendices attached hereto.
(2) Cause for Dismissal: In the event a case is deficient, such deficient filing may constitute cause for dismissal.
(3) Standing Motion to Dismiss by United States Trustee: The United States Trustee has filed with the court a document entitled United States Trustee's Standing Motion to Dismiss Deficient Case (the "Standing Motion to Dismiss," L.B.R. 1017-3App.). The Standing Motion to Dismiss applies to a deficient case filed with the Clerk.
(4) Notice: In the event a deficient voluntary case is filed, the Clerk may provide notice of the deficiency and Standing Motion to Dismiss. Notice to the debtor and the debtor's attorney will be served to the addresses shown on the petition.
(5) Objections: Any party desiring to object to the dismissal of the case may do so by filing an objection and request for hearing in accordance with L.B.R. 9013-1 within the time set to file missing documents by applicable Federal Rules of Bankruptcy Procedure to file the documents or within any extended time fixed for the curing of deficiency, or such other time as may be fixed by the court.
(6) Dismissal Order: A deficient voluntary case may be dismissed unless the deficiency is timely cured or an objection is filed. Notice to the creditors and other interested parties of the dismissal will be served by the Clerk to the addresses of the creditors and other interested parties, if any, as shown on the Creditor Address Mailing Matrix.

Commentary

[Source: L.B.R. 505, GPO 2002-2 and GPO 2002-4.]

See L.B.R. 1002-1 and 1007-1 for initial filing requirements.
See L.B.R. 3015-1(b)(2) requiring timely submission of Chapter 13 plan or the case is deficient and subject to the United States Trustee's Standing Motion to Dismiss.
See L.B.R. 2081-3 for motions to dismiss chapter 11 cases.
See L.B. Forms 1017-3.1 and 1017-3.2 for dismissal of chapter 13 cases.
Note the difference between the Clerk rejecting a filing for failing to meet the minimum documentation requirements of L.B.R. 1002-1(b) versus accepting the filing but issuing a notice of deficiency pursuant to L.B.R. 1017-3.
Clarification regarding source of deadlines to object to dismissal and adding reference to L.B.R. 3015-1(b)(2) to Commentary. January, 1, 2014.

L.B.R. 1019-1. Procedure Following Conversion to Chapter 7

(a) Schedule of Unpaid Post Petition Debts: The party filing the schedule of unpaid debts required by FED. R. BANKR. P. 1019(5), must give written notice by mailing a copy of the schedule to:
(1) the United States Trustee;
(2) the trustee assigned to the case;
(3) each entity named therein;
(4) the United States; and
(5) any state or any subdivision thereof wherein the debtor transacted business.
(b) Notice: The notice must include a statement advising that creditors scheduled therein may file a proof of claim in accordance with FED. R. BANKR. P. 3001(a) through (d) and 3002.

~~(c) Certificate of Service: The party filing the schedule of unpaid debts must file a certificate of service showing compliance with this L.B.R. with the schedule or not later than three (3) court days of filing the schedule.~~

~~Commentary~~

~~[Source: L.B.R. 119]~~

(e) Parties seeking substantive consolidation must do so by separate motion.

L.B.R. 1073-1. Assignment of Cases

(a) Assignment of Cases~~:~~. Cases are assigned to judges by random selection to the extent possible. The Chief Judge may direct the Clerk to reassign cases as necessary.

(b) Related Cases~~:~~. A case related to another pending case may be assigned or reassigned to the judge with the earliest filed case. A case is "related" to another case if one of the debtors in one case is an "affiliate" or an "insider" of a debtor in another case, as those terms are defined in 11 U.S.C. § 101.

(c) ~~Sequential~~Repeat Cases~~:~~. If the debtor has filed a bankruptcy case in the previous eight years, the Clerk may reassign the case to the judge to whom the previous bankruptcy case was assigned.

~~Commentary~~

~~[Source: GPO 1996-1, 3rd Amended]~~

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L.B.R. 2002-1. Notice to Creditors ~~&~~and Other Interested Parties

~~(a)~~ Who Must Give Notice~~:~~. Unless otherwise ordered by the Court, the movant or applicant must ~~give the notices~~provide notice as required by ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 2002~~.~~

~~(b) Content of Notice: Notices must:~~

~~(c)~~(a) ~~be in substantial conformity with~~ and L.B.~~ Form~~R. 9013-1~~.1;~~

(1)

~~(2) contain a specific statement describing the requested relief or intended action to be taken, in sufficient detail to meaningfully inform the parties receiving the notice;~~

~~(3) contain the specific date of the deadline to object and request a hearing, not just the number of days, which must be a date on which the court is scheduled to be open for business; and~~

~~(4) comply with FED. R. BANKR. P. 2002(c).~~

~~(d)~~(b) Creditor Address Mailing Matrix~~:~~. For notice to all creditors and parties in interest, the movant must use, at a minimum, all of the addresses contained on the most current version of the Creditor Address Mailing Matrix.

~~(e)~~(c) Designation of Preferred Creditor Addresses~~:~~. The ~~court~~Court designates any entity approved by the Administrative Office of the United States Courts as a notice provider to support the preferred address requirements under U.S.C. § 342(f) and ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 2002(g)(4).

~~Commentary~~

~~[Source: L.B.R. 202 and T.L.B.R. 2002-1]~~

~~See L.B.R. 1007-2App for Instructions Regarding Creditor Address Mailing Matrix.~~

~~In addition to the FED. R. BANKR. P., the mechanism for bringing motions before the court, providing notice and effecting service is set out in L.B.R. 9013-1.~~

~~Parties are advised to be mindful of the distinction between notice (as required for parties covered by FED. R. BANKR. P. 2002) and service (as required for parties against whom relief is sought and as described in L.B.R. 9013-1 and other FED. R. BANKR. P., including Rules 9014 and 7004).~~

~~Parties seeking expedited hearings on motions brought immediately after the filing of a chapter 11 petition should refer to L.B.R. 2081-1.~~

L.B.R. 2003-1. Continuance of Meeting of Creditors ~~&~~and Equity Security Holders

(a) ~~Debtor's~~Debtor's Request for Continuance of 11 U.S.C. § 341 Meeting of Creditors Prior to Scheduled Meeting~~:~~. A debtor's request ~~for a continuance of~~to continue the meeting of creditors must be in writing and served on the ~~appropriate~~appointed trustee ~~no less than~~ in debtor's case. The trustee must receive the request no later than seven ~~(7)~~ days prior to the ~~date and time of the~~ scheduled meeting. ~~A request for a continuance is not filed~~It is the trustee, and not the Court, that must approve the request. Therefore, the debtor should not file the request with the ~~court~~Court. If ~~a~~the trustee consents to the continuance, then the debtor must immediately file a notice of continued meeting with the ~~court~~Court, serve a copy of the notice on the trustee ~~and~~, all creditors, and parties in interest, and file a certificate of service with the ~~court~~Court evidencing same.

(b) Continuance of 11 U.S.C. § 341 Meeting of Creditors At the Scheduled Meeting~~:~~. In the event ~~an 11 U.S.C. § 341~~a meeting of creditors is continued at the scheduled meeting, ~~no later than three (3) court days following the date first set for the meeting of creditors or any subsequent continued meeting date,~~ the chapter 7 trustee or chapter 13 trustee, as applicable, must file ~~an electronic docket entry~~a notice of continued meeting with the Court indicating ~~that the meeting is continued and~~ the date and time of the continued meeting~~.~~ within seven days.

(c) Continuance of ~~§§ 522,~~11 U.S.C. §§ 523 and 727 Deadlines~~:~~. A continuance of the meeting of creditors does not automatically continue the deadline to object to the ~~debtor's claim of exemptions, the~~ discharge of a debtor in a Chapter 7 or the dischargeability of a particular debt owed by the debtor in either Chapter 7 or Chapter 13. ~~Extensions~~Parties must request extensions of these deadlines ~~must be requested~~as required by ~~timely motion and require the entry of an order~~Fed. R. Bankr. P. 9006.

~~Commentary~~

~~[Source: L.B.R. 203 and GPO 2006-3]~~

~~The purpose of L.B.R. 2003-1 is to assist in the appropriate administration of chapter 7 and chapter 13 cases. It is imperative for the court's docket sheet to clearly reflect all continued meetings of creditors and the date to which the meeting is continued.~~

L.B.R. 2004-1. Examinations

(a) *Ex Parte* Application: An order for examination pursuant to ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 2004 may be issued by the court on the *ex parte* application of a party in interest. The moving party must file an appropriate motion together with a proposed order. Such proposed order may not contain provisions

in substitution of a subpoena or subpoena *duces tecum* available pursuant to ~~FED~~Fed. R. ~~CIV~~Civ. P. 45.

(b) Time: Unless otherwise ordered by the court for good cause shown, the date for the examination or production of documents sought under ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 2004(a) must be not less than fourteen (14) days after service, by the movant, of the examination order on the party to whom it is directed.

~~Commentary~~

~~[Source: L.B.R. 204; GPO 2013-1] January, 1, 2014.~~

~~Large document production requests on a fourteen (14) day notice of examination are not favored. It is good practice for the parties to discuss the dates, times and locations of the requested exam prior to submitting a request to the court, and to indicate any agreement or lack of agreement in the motion.~~

L.B.R. 2012-1. Notice of Substitution of Trustee and Notice of Successor Trustee's Accounting

Chapter 11 Trustee~~:~~. Promptly after a trustee or successor trustee is appointed in a chapter 11 case, the trustee must file and serve notice of such appointment on all creditors and parties in interest, and to such other parties as the ~~court~~Court may direct, in each pending action, proceeding or matter.

~~(a) Accounting: When a successor trustee files with the court an accounting of a prior administration of the estate pursuant to FED. R. BANKR. P. 2012(b), such accounting must reflect the collection or disbursement of receipts by the prior trustee. The successor trustee must send notice of the filing of the accounting to all creditors and parties in interest in the case, including the prior trustee, unless the court otherwise orders for good cause shown.~~

~~Commentary~~

~~[Source: L.B.R. 212]~~

L.B.R. 2014-1. ~~Appointment~~Employment of Professional Persons

~~(a) Ex Parte Application: Subject to the limitations of FED. R. BANKR. P. 6003, applications for appointment of professional persons pursuant to FED. R. BANKR. P. 2014 and 11 U.S.C. § 327 may be granted nunc pro tunc to a date prior to the date of the order authorizing the engagement.~~

~~(b)~~(a) Applications Requiring Notice~~: The court may require the applicant to mail notice of the~~. Notice of an application ~~pursuant to L.B.R. 9013-1, or as otherwise directed by the court, particularly when~~to employ a professional person under 11 U.S.C. § 327 must be given if any of the following ~~events~~circumstances or conditions are present:

~~(1) The professional receives or proposes to receive payment of a retainer in connection with a bankruptcy case and approval of the retainer is sought in the same application seeking appointment of the professional. In such cases, the application and notice must state:~~
~~(A) the amount of any retainer received or proposed;~~
~~(B) the source of the payment or retainer; and~~
~~(C) whether the professional's fees are paid by a principal, insider, or affiliate of the debtor.~~

~~(2)~~(1) The professional files an application for retention which identifies a potential conflict may exist. In such cases, the application and notice must state sufficient facts for third parties to determine whether a conflict of interest exists, including whether the professional represented the debtor ~~pre-petition.~~prepetition;

~~(3) The professional's retainer or other fees have been, or will be, paid by a third party payor.~~

(2) The professional's retainer or other fees have been, or will be, paid by a third party payor. In such cases, the application must include a verified statement of the debtor disclosing all transfers by the debtor to the entity providing the retainer and any other circumstances that may create a conflict of interest between the debtor and the payor. The payor must retain independent counsel or provide a written acknowledgement that the debtor's counsel's duty of loyalty is owed solely to the debtor, and not to the payor;

~~(4)~~(3) The professional represents multiple debtors in related or jointly ~~-~~administered cases~~.~~;

(4) A trustee seeks to employ his or her own firm;

(5) The professional proposes to be paid under non-traditional compensation arrangements (*e.g.*~~.~~, flat fee agreement or contingency fee agreement~~).~~);

(6) The professional asserts a lien on the ~~debtor's~~debtor's property~~.~~;

~~(c) Verified Statement: A verified statement pursuant to FED. R. BANKR. P. 2014 is required. When notice of the application is required, a copy of the verified statement filed pursuant to FED. R. BANKR. P. 2014 must be attached to the notice.~~

~~Commentary~~

~~[Source: L.B.R. 214]~~

~~L.B.R. 2015-1. Reports~~

~~Any report of operations that the court or the United States Trustee may require the trustee or the debtor-in-possession to file in a case under any chapter of the Bankruptcy Code must be filed with the court within the time frames established by FED. R. BANKR. P. 2015 or the United States Trustee. Copies of such reports must be provided to the trustee, United States Trustee, and any committee pursuant to L.B.R. 2081-2(b).~~

~~Commentary~~

~~[Source: L.B.R. 215(a)]~~

~~See 11 U.S.C. §§ 704(a)(8) or 1106(a)(7).~~

~~See also the United States Trustee's Operating Guidelines and Reporting Requirements for that office's filing requirements at www.usdoj.gov. This L.B.R. does not relieve the trustee or debtor-in-possession from the obligation to act in accordance with those guidelines.~~

(7) ~~See also L.B.R. 3022-1 for more information on the filing of a final report and motion for final decree in chapter 11 cases.~~The debtor owes the professional payment for services rendered pre-petition. The notice must state the amount of fees owed and whether the professional has received any preferential payments under 11 U.S.C. § 547(b); or

(8) The Court orders notice for any other reason.

(b) Applications When Notice is Not Required. If notice of an application to employ a professional person is not required, the Court may enter an Order approving the employment on an *ex parte* basis. If the professional requests entry of an Order approving the application prior to the time specified in Fed. R. Bankr. P. 6003, then the application must set forth a sufficient factual basis to establish immediate and irreparable harm will occur if not granted earlier approval.

(c) No Retroactive Approval of Applications. Unless otherwise stated, an Order granting an application to employ a professional will be effective as of the date of filing of the application. Requests for *nunc pro tunc* or retroactive approval to a date prior to the filing date of the application will not be granted absent a showing of extraordinary circumstances.

(d) Retainers. Professionals who receive or propose to receive a retainer in connection with a bankruptcy case must seek approval of the retainer by separate motion and notice. The motion and notice must include:

(1) the amount of any retainer received or proposed;

(2) the source of the payment or retainer; and

(3) whether the professional's fees are paid by a principal, insider, or affiliate of the debtor.

L.B.R. 2016-1. Compensation of Professionals

(a) Form of Fee Application~~:~~. Except for those applying for fees pursuant to L.B.R. 2016-3, every ~~fee application filed~~request for professional compensation to be paid by the estate pursuant to 11 U.S.C. §§ 330 or 331 must include~~ a~~:

(1) A completed cover sheet in substantial conformity with L.B.~~ Form~~F. 2016-1.1~~ and contain~~;

~~(1)~~(2) A fee application that contains the following information:

(A) Introduction~~:~~. The introductory statement must ~~contain a general statement of the status~~set forth a brief history of the case~~ and include the information required on L.B. Form 2016-1.1~~, pending matters, and future matters anticipated before closure of the case.

(B) Narrative by Category~~:~~. The professional fee application must contain a narrative that describes the work performed divided ~~into~~in categories of major/significant services. Within each category, the narrative must describe:

(i) the nature of the services~~,~~;

(ii) the ~~result~~results obtained, if any;

(iii) the ~~benefit~~benefits to the estate~~,~~;

(iv) a general description of what additional work remains to be done with respect to the matter~~,~~;

(v) a statement of the number of hours spent on the particular matter and by whom~~,~~; and

(vi) the portion of the total fee applicable to the particular category.

(C) Time ~~Entries:~~Records.

(i) ~~(i)~~ The fee application must attach as a separate exhibit a copy of detailed time entries from records kept contemporaneously by the applicant, including the date of the work performed, the individual performing the services, an allocation of time spent on each task (expressed in tenths of an hour), the total fee for each task, and a detailed description of the work performed~~.~~

(ii) ~~(ii)~~ No Lumping. Daily entries by each professional must contain separate time allocations for each separate task.

(iii) ~~(iii)~~ The applicant must establish separate billing categories for daily time entries so that the time entries of all professionals working on a particular matter will be billed separately to that matter.

(D) Expense Records. The applicant should retain cost/expense invoices or documentation for items over $50 in the event that the Court or an objecting party questions the expense.

~~(2)~~(3) ~~(3)~~ No Retroactive Fees. The application must not seek to obtain compensation for services rendered prior to the effective date of the Order approving the employment of the applicant~~.~~

~~(A) Generally: The narrative description must refer to a separate exhibit containing copies of detailed time entries from records contemporaneously kept by the applicant which support the fee sought with respect to each particular matter or category, including the date the work was performed, the individual performing the work, the time spent on each task (expressed in tenths of hours), the total fee for each task, and a detailed description of the work performed.~~

~~(B)~~ Jointly ~~-~~Administered Cases~~:~~. In jointly ~~-~~administered cases, the ~~narrative must also provide a description of the overall work done in each~~ applicant must file its fee application only in the case~~, as applicable, and provide the court with an approximate percentage of the time spent on each~~ bearing the jointly administered case~~.~~

~~(3)~~(4) ~~Record~~ number. Regardless of ~~Expenses: The~~whether the applicant ~~should retain cost/expense invoices or documentation~~has performed services for the estate of more than one debtor, all services must be included in a single fee application. If the applicant has performed services for ~~amounts over $25 for possible review by the court~~more than one estate, then the fee application must include a proposed allocation of the fees to be billed to each separate estate.

~~Commentary~~

~~[Source: L.B.R. 216]~~

L.B.R. 2016-2. Interim Compensation Procedures in Chapter 11 Cases

(a) ~~b)Motions for~~ Interim Compensation ~~Procedures: A motion seeking~~ Requests. Pursuant to 11 U.S.C. §§ 330 and 331 and this Rule, the Court may authorize the debtor to pay professionals interim fees and expenses subject to final approval ~~of~~. Formal applications for interim compensation must comply with Fed. R. Bankr. P. 2016(a) and L.B.R. 2016-1. If the amount of fees and expenses requested exceeds $1,000, notice of the application must be given in accordance with Fed. R. Bankr. P. 2002(a)(6), L.B.R. 9013-1, and any order entered by the Court in the case.

~~(a)~~(b) Authorization for Payment In Advance of Formal Fee Application. The Court may authorize procedures ~~in a chapter 11 case~~permitting the debtor to pay professionals interim fees and expenses in advance of a formal fee application ("Interim Advance Payments"). The motion and proposed order authorizing procedures for Interim Advance Payments must include the following:

(1) ~~a statement~~Necessity and Feasibility of Interim Advance Payments. A motion seeking authorization for Interim Advance Payments must include the following:

(A) Statement of the cause necessitating ~~interim compensation~~Interim Advance Payment procedures;

(B) ~~verification~~Verification by the debtor that the ~~debtor's~~debtor's cash flow allows it to pay its professionals and other potential administrative priority claimants on a monthly or other specified interim advance basis;

(C) ~~a projection~~Projection of monthly fees and expenses by the professional(s) seeking interim ~~compensation; and~~advance payment procedures;

~~(2) any~~Any additional information necessary and appropriate to support the allowance of interim ~~compensation.~~

~~(A)~~(D) ~~Interim Compensation Procedures: The court may approve interim compensation procedures in appropriate cases and utilize the established guidelines for professionals seeking approval of interim compensation or other~~ advance payment procedures ~~directed by the court. The guidelines are located at L.B.R. 2016-2App.~~; and

~~Commentary~~

(E) ~~[Source: New]~~Notice of the motion must be given in accordance with Fed. R. Bankr. P. 2002(a)(6), L.B.R. 9013-1, and any order entered by the Court in the case.

(2) Authorization of Payment. The estate's representative must be authorized to pay, and the professional may seek or accept, Interim Advance Payments *when and only to the extent* that (a) funds are available to pay all professionals and other known administrative priority claimants, and (b) the professional has fully complied with the order authorizing the Interim Advance Payment procedures, including notice and objection provisions set forth herein.

(3) Holdback Amount. Provided the professional complies with the provisions set forth herein, the professional may receive 80% of the fees (with the remaining 20% referred to as the "holdback") and 100% of the expenses not subject to an unresolved objection, as provided in L.B.R. 2016-2(b)(8)(D). The professional may seek authorization for payment of the holdback amount as part of a subsequent formal interim fee application. To the extent any fees or expenses are not approved by the Court, they must be offset against the 20% holdback or be disgorged from the professional as appropriate.

(4) Monthly Billing Statements.

(A) Deadline. Within 14 days from the end of the monthly billing cycle for which Interim Advance Payments are sought, the professional must prepare a detailed monthly statement ("Monthly Statement"). If the professional fails to seek Interim Advanced Payments within 14 days, then the professional must await the next monthly billing cycle to obtain payment or await the formal fee application process to obtain payment.

(B) Notice. Notice must be provided to the Noticed Parties described in L.B.R. 2016-2(b)(7).

(C) Content. The Monthly Statement must comply with L.B.R. 2016-1(a)(2)(B)).

(5) Reimbursement of Expenses. Monthly Statements seeking the reimbursement of expenses must include a summary of expenses by category. Whenever a person pays expenses for others, the other person must be identified. It is not necessary to attach supporting documentation for expenses incurred to the Monthly Statement, unless and until the expense is challenged or questioned.

(6) Redaction of Confidential Information. The description of any service that is confidential in nature may be redacted from the Monthly Statements, but professionals must endeavor to use descriptions that allow adequate review of their services without compromising sensitive commercial information, attorney work product, or other privileges. If a redacted entry is questioned, these entries are to be treated as an Informal Objection, as set forth in L.B.R. 2016-2(b)(8)(A). For allowance of the fees for the redacted entries, the professional must move to submit unredacted Monthly Statements to the Court under seal as part of their subsequent formal fee application.

(7) Notice of Interim Advance Payment. To receive an Interim Advance Payment, the professional must give timely notice and attach a copy of the applicable Monthly Statement to the following, collectively referred to as the "Noticed Parties":

(A) Debtor,

(B) Attorney for the Debtor,

(C) United States Trustee, and, if applicable, to the chapter 11 trustee,

(D) Attorney for the Creditors' Committee (or if there is no committee attorney, to all members of the committee), and

(E) Any party in interest who has specifically requested copies of the Monthly Statements.

(8) Objections to Monthly Statements.

(A) Deadline. Objections to Monthly Statements, referred to as "Informal Objections," must be submitted no later than 14 days after receiving notice of the Monthly Statement.

(B) Notice. Informal Objections must be submitted to the professional and Noticed Parties, and should not be filed with the Court. (The only objections that must be filed with the Court are objections to formal fee applications filed with the Court.)

(C) Content. Informal Objections must specify the nature of the objection and the associated specific amount(s) within the Monthly Statement considered objectionable.

(D) Effect. If a professional receives an Informal Objection, then the professional may not seek or accept an Interim Advance Payment of any amount to which an Informal Objection has been lodged (and remains unresolved between the professional and objecting party). Instead the professional must wait to obtain payment through the formal interim or final fee application process or seek further order of the Court. As provided herein, the professional may then receive 80% of the fees and 100% of the expenses not subject to an unresolved objection.

(E) Non-Waiver. Failure to lodge an Informal Objection does not, by itself, constitute waiver of the right to object to a formal interim or final fee application. All Interim Advance Payments are subject to the interim and final fee applications filed with the Court pursuant to 11 U.S.C. §§ 330 and 331, and therefore subject to disgorgement.

(9) Timely Formal Fee Applications Required. Parties seeking Interim Advance Payments must:

(A) Comply with 11 U.S.C. §§ 330 and 331, L.B.R. 2016-1 and L.B.F. 2016-1.1 for interim and final compensation approval;

(B) File formal interim fee applications not more than every 120-days and at least every 180-days, unless otherwise ordered by the Court;

(C) Seek final approval of all interim compensation fee applications by filing a final fee application; and

(D) When applicable, suspend seeking or accepting an Interim Advance Payment as provided in L.B.R. 2016-2(c).

(c) Suspension of Interim Advance Payments. A professional's authorization to seek or accept any Interim Advance Payments will be for 120 day intervals only, beginning with the date the professional first began providing services after an order approving Interim Advance Payment procedures. After each 120 day interval, the professional's authorization to seek or accept Interim Advance Payments will be suspended until the professional has filed a formal application for interim or final compensation for all prior unapproved professional fees pursuant to 11 U.S.C. §§ 330 or 331. Upon the filing of a formal interim fee application, the professional may seek and accept Interim Advance Payments, as provided herein, without further order of the Court.

(d) Form of Order. Any motion requesting authority to implement Interim Advance Payment procedures must include a proposed order in substantial conformity with L.B.F. 2016-2.1.

L.B.R. 2016-3. Compensation of Chapter 13 Debtor's ~~Counsel~~Attorney

(a) ~~Short Form~~ Presumptively Reasonable Fee Application~~:~~.

(1) Eligibility~~: In order to~~. To be eligible to use the ~~Short Form~~Presumptively Reasonable Fee Application (the ~~"SFFA"~~"PRFA") procedure, the applicant must request a fee that is at or below the presumptively reasonable fee (the ~~"~~"PRF~~")~~") amount provided in the General Procedure Order published by the Clerk, In the Matter of Procedures for Fee Applications in Chapter 13 Cases, as amended from time to time. The applicant must provide all reasonably necessary and appropriate services during the pendency of the entire case.

(2) Presumptively Reasonable Fee. To the extent provided for in the chapter 13 plan, the PRF, or lesser amount if requested by the plan, is to be paid by the trustee upon confirmation of the plan, to the extent funds are available after payment of the applicable trustee fee. The chapter 13 trustee may recommend or the Court may determine, in appropriate cases, that a lower fee be allowed.

(3) Form of Application. Applications for allowance of fees and reimbursement of expenses pursuant to the PRFA procedure must be made using the checkbox on the chapter 13 plan, L.B.F. 3015-1.1. Applicant need not supplement L.B.F. 3015-1.1, except upon formal objection, written request of the debtor, or order by the Court.

(4) Extraordinary Fees and Costs. If a case has fees and costs in excess of the amount provided for in the General Procedure Order published by the Clerk, In the Matter of Procedures for Fee Applications in Chapter 13 Cases, as amended from time to time, an attorney may file a Supplemental Fee Application using L.B.F. 2016-3.5 and appropriate supplementary documentation.

(5) Post-Confirmation Fees. Election of the PRF or any lesser fee does not preclude an attorney from filing a Supplemental Fee Application for post-confirmation work. Electing the PRF does not preclude an attorney from providing for a greater amount in the plan.

(6) Order. The chapter 13 confirmation order, L.B.F. 3015-1.7, will serve as the order approving the payment of the PRF, or lesser amount requested.

(b) Long Form Fee Application.

(1) Eligibility. If the applicant requests allowance of a fee in excess of the PRF amount, the attorney may not use the PRFA procedure and must use the Long Form Fee Application (the "LFFA") procedure. The applicant must provide all reasonably necessary and appropriate services during the pendency of the entire case.

~~(2) Presumptively Reasonable Fee: The chapter 13 trustee may recommend or the court may determine, in appropriate cases, that a lower fee be allowed. In converted cases, the chapter 13 trustee and the court will take into consideration the compensation already received.~~

~~(3) Form of Application: Applications for allowance of fees and reimbursement of expenses pursuant to the SFFA procedure must be made using L.B. Form 2016-3.1. Applicant need not supplement L.B. Form 2016-3.1, except upon formal objection, written request of the chapter 13 trustee, or order by the court.~~

~~(4) Service, Notice and Objections: Debtor's counsel must serve a copy of the SFFA, L.B. Form 2016-3.1, along with a notice in substantial conformity with L.B. Form 2016-3.3, on the chapter 13 trustee, debtor and those parties requesting notice. Parties will have twenty one (21) days from the mailing of the notice within which to file an objection.~~

~~(5) Timing: Fee applications under the SFFA must be filed no sooner than the date of entry of the order confirming the chapter 13 plan and no later than twenty eight (28) days after the date of entry of the order confirming the chapter 13 plan.~~

~~(6) Order: The attorney must submit a form of order in substantial conformity with L.B. Form 2016-3.4, listing the specific amount of fees and expenses requested, the amount received outside of the plan or previously paid, and the amount payable from plan payments.~~

~~(b) Long Form Fee Application:~~

~~(1) Eligibility: If the applicant requests allowance of a fee in excess of the PRF amount (not including expenses), the attorney may not use the SFFA procedure and must use the Long Form Fee Application (the "LFFA") procedure. The applicant must provide all reasonably necessary and appropriate services during the pendency of the entire case.~~

(2) ~~Form of Applications:~~Form of Applications. Applications for allowance of fees and reimbursement of expenses pursuant to the LFFA procedure must be made using L.B.~~Form~~F. 2016-3.~~2~~1, and must be supplemented by the attachments outlined in L.B.~~Form~~F. 2016-3.~~2~~1.

(3) Service, Notice and Objections~~: Debtor's counsel~~. Debtor's attorney must serve a copy of the LFFA, L.B.~~Form~~F. 2016-3.~~2~~1, along with a notice in substantial conformity with L.B.~~Form~~F. 2016-3.~~3~~2, on the chapter 13 trustee, the debtor, and ~~those~~any parties requesting notice. ~~The~~ Prior to the deadline to file a proof of claim, the notice, without the LFFA form, must be served on all other creditors, claimants, and parties in interest. If the claims deadline has passed, the notice, without the LFFA form, must be served on claimants. Parties will have ~~twenty one (~~21~~)~~ days from ~~the mailing~~service of the notice within which to file an objection.

(4) Timing~~:~~. Fee applications under the LFFA must be filed no sooner than the date of entry of the order confirming the chapter 13 plan and no later than ~~twenty eight (~~28~~)~~ days after the date of entry of the order confirming the chapter 13 plan.

(5) Order~~:~~. The attorney must submit a form of order in substantial conformity with L.B.~~Form~~F. 2016-3.~~4~~3, listing the specific amount of fees and expenses requested, the amount received outside of the plan or previously paid, and the amount payable from plan payments.

(c) Supplemental Form Fee Application~~:~~.

(1) Eligibility~~:~~. If the applicant provides services post-confirmation and requests allowance of a supplemental fee for post-confirmation services, the applicant must use the Supplemental Form Fee Application (the "SUPFFA") procedure.

(2) Form of Applications~~:~~. Applications for allowance of fees and reimbursement of expenses pursuant to the SUPFFA procedure must be made using L.B.~~Form~~F. 2016-3.~~5~~4, and must be supplemented by the attachments outlined in L.B.~~Form~~F. 2016-3.~~5~~4.

(3) Service, Notice and Objections~~: Debtor's counsel~~. Debtor's attorney must serve a copy of the SUPFFA, L.B.~~Form~~F. 2016-3.~~5~~4, along with a notice in substantial conformity with L.B.~~Form~~F. 2016-3.~~3~~2, on the chapter 13 trustee, the debtor and those parties requesting notice. ~~The~~Prior to the deadline to file a proof of claim, the notice, without the SUPFFA form, must be served on all other creditors, claimants and parties in interest. If the claims deadline has passed, the notice, without the SUPFFA form, must be served on claimants. Parties will have ~~twenty one (~~21~~)~~ days from ~~the mailing~~service of the notice ~~within which~~ to file an objection.

(4) Timing~~:~~. Fee applications under SUPFFA may not be filed until after entry of an order approving an application under either the ~~SFFA~~PRFA procedure or the LFFA procedure, and no later than the date the ~~Chapter~~chapter 13 ~~Trustee~~trustee files a final report.

(5) Order~~:~~. The attorney must submit a form of order in substantial conformity with L.B.~~Form~~F. 2016-3.~~6~~5, listing the specific amount of post-confirmation fees and expenses requested, the amount previously approved by the ~~court~~Court, the amount received outside of the plan or previously paid, and the amount payable from plan payments.

(d) Hearing~~:~~. If the applicant elects the PRFA procedure through a chapter 13 plan, any objection will be considered through the confirmation process. For all other types of fee applications, if no objection is filed, the ~~court~~Court may allow the requested fee in full or in part, upon the filing of a Certificate of ~~Noncontested~~Non-contested Matter in substantial conformity with L.B.~~Form~~F. 9013-1.3, or may order further supplementation or set the application for hearing. Any order or notice setting a hearing

on an unopposed application may identify the ~~court's~~Court's concerns or questions regarding inadequacies or deficiencies in the application that may result in reduction or disallowance of the requested fees or expenses. If an objection is filed, the applicant is responsible for filing a Certificate of Contested Matter and Request for Hearing in substantial conformity with L.B. ~~Form~~F. 9013-1.4. Upon the filing of the Certificate of Contested Matter, the ~~court~~Court may set the matter for hearing.

Commentary

~~[Source – GPO 2007-2, as amended and, as may be amended from time to time]~~

The ~~SFFA~~PRFA and LFFA procedures establish the time frame and process within which an applicant must apply initially for approval of ~~Chapter~~chapter 13 fees and reimbursement of expenses. However, regardless of whether the applicant utilizes the ~~SFFA~~PRFA or LFFA procedures, the prohibitions against and restrictions on limited representation contained in L.B.R. 9010-1 require that the engagement does not terminate at plan confirmation. Rather, representation must last through the earlier of entry of discharge, or the conversion or dismissal of the case unless ~~counsel~~the attorney is permitted to withdraw in accordance with L.B.R. 9010-4.

The ~~SFFA~~PRFA procedure is for requesting fees and is not intended to limit the scope of chapter 13 engagements. When requesting fees using the ~~SFFA~~PRFA procedure, attorneys are not required to submit their engagement letter or other fee agreement, detailed time slips, or a narrative unless requested by the trustee or otherwise ordered by the ~~court~~Court. However, attorneys are advised that if their fees are questioned, it may be quite difficult to prevail without the assistance of some or all of those items. Although the ~~SFFA~~PRFA process does not limit the ability of debtor's attorney to seek additional fees post-confirmation, certain routine post-confirmation services are expected to be rendered by applicant as part of the PRF. For example, in most cases, such routine post-confirmation services will include reviewing claims after the expiration of the claims date; advising on the requirement that the debtor complete a financial management course; communicating with the debtor, creditors and other parties ~~-~~in ~~-~~ interest concerning the case; defending a motion for relief from stay or motion to dismiss; and, completing the debtor's certification for discharge. However, generally, prosecuting or defending against a motion for a plan modification would not be considered a routine post-confirmation service.

The LFFA procedure is intended to be a fee-for-service arrangement where it is anticipated that total attorney fees for the case will exceed the PRF amount. The SUPFFA procedure completes payment for post-confirmation services reasonably necessary and appropriate for the engagement. The ~~court~~Court will entertain supplemental fee applications that comply with the SUPFFA procedure, supported by time records, for post-confirmation services. Like the LFFA, applications under the SUPFFA must be supplemented by the same attachments.

L.B.R. 2016-4. Compensation of Petition Preparers

(a) Disclosure of Compensation of Petition Preparer~~:~~. Every person or entity who prepares a petition and/or related papers for filing a case for the debtor, but does not represent the debtor as an attorney of record, must file with the petition and concurrently transmit to the United States Trustee and trustee assigned to the case, a disclosure of compensation in substantial conformity with the Disclosure of Compensation of Bankruptcy Petition Preparer, ~~Director's~~Director's Procedural Form 280.

~~Commentary~~

~~[Source: L.B.R. 216]~~

~~L.B.R. 2018-1. Intervention~~Presumptively Reasonable Fee. The presumptively reasonable fee chargeable by ~~United States or~~ a ~~State on Constitutional Question~~

(b) ~~Acts of Congress: If,~~bankruptcy petition preparer in any case ~~or proceeding in which neither the United States nor any agency, officer, or employee thereof (other than the United States Trustee) is a party, a party raises a question concerning the constitutionality of any act of Congress affecting the public interest, such party must notify the judge by filing a motion with the court, with a copy to the United States Trustee and the United States Attorney, of the existence of the question, identifying the statute in question, the grounds upon which it is claimed to be unconstitutional, and the title of the case and/or proceeding~~is $125.

~~(a) State Statutes: If, in any proceeding in which neither a state nor any agency, officer, or employee thereof is a party, a party raises a question concerning the constitutionality of a statute of such state affecting the public interest, such party must notify the judge by filing a motion with the court, with a copy to the United States Trustee and the state Attorney General, of the existence of the question, identifying the statute in question, the grounds upon which it is claimed to be unconstitutional, and the title of the case and/or proceeding.~~

~~(b) Applicability: This rule applies to all matters brought before the court, including those governed by FED. R. BANKR. P. 7001 et seq. and 9014. In an adversary proceeding, the question of constitutionality must be raised by motion and notice given to appropriate parties no later than the deadline for completion of discovery.~~

~~Commentary~~

(1) ~~[Source: ~~Motion Required for Additional Fees. Only a bankruptcy petition preparer may file a motion seeking fees in an amount greater than the $125 presumptively reasonable fee. The motion must be filed with an affidavit stating the facts that support the increase in fees. The affidavit must also include a statement that the debtor has reviewed the motion and affidavit. The motion and affidavit must be filed within 14 days after the date of the filing of a petition, and served on the debtor, trustee, and the U.S. Trustee.

(2) Sanctions. Any bankruptcy petition preparer who charges a fee in excess of the value of services rendered is subject to sanctions under 11 U.S.C. § 110, including, but not limited to, the disallowance and turnover of any fee found to be in excess of the reasonable fee.

L.B.R. ~~218]~~

~~See 28 U.S.C. § 2403(a) and (b).~~

~~This rule applies to both the main bankruptcy case and adversary proceedings.~~

~~L.B.R.~~ 2081-1. Chapter 11 – Initial Motions

(a) Initial Motions~~:~~. During the first ~~twenty-one (~~21~~)~~ days following entry of the Order for Relief, the debtor may obtain expedited consideration for entry of orders by filing a Motion Seeking Expedited Entry of Order(s) and Notice of Impending Hearing Thereon (the ~~"~~"Motion~~")~~") as follows:

(1) Motion~~:~~. The Motion must contain sufficient factual recitations regarding the nature of the debtor's business and the need for the types of relief sought. The Motion need not be accompanied by briefs or authorities. The movant must certify that the relief sought by the Motion is needed by the debtor on an expedited basis. If the Motion requests more than one ~~(1)~~ order, the motion must separately identify and discuss each requested relief or intended action.

(2) Cover sheet~~:~~. The Motion must be accompanied by a cover sheet in substantial conformity with L.B. ~~Form~~F. 2081-1.1.

(3) Affidavits~~:~~. The Motion must be accompanied by one or more factual affidavits by a representative of the movant or executed by an individual having personal knowledge of the facts therein supporting the requested relief.

(4) Notice~~:~~. The Motion must be accompanied by a notice in substantial conformity with L.B. ~~Form~~F. 2081-1.2 and a copy of a response form in substantial conformity with L.B. ~~Form~~F. 2081-1.3.

(5) Proposed Order~~:~~. The Movant must file a proposed order for each type of requested relief. The proposed order must clearly state the relief requested, but should not contain proposed findings of fact or conclusions of law.

(b) Service of the Motion~~:~~.

(1) Service on the United States Trustee~~:~~. A copy of the Motion, cover sheet, affidavits, notice, and proposed orders must be hand ~~-~~delivered or ~~e-mailed~~emailed to the United States Trustee, either before or within four (4) hours after the Motion is filed.

(2) Service on other parties~~:~~. A copy of the Motion, cover sheet, affidavits, notice, and proposed orders must be served by hand ~~-~~delivery, ~~over-night~~overnight mail, facsimile or ~~e-mail~~email initiated on the day the Motion is filed, to:

(A) any appointed chapter 11 trustee or examiner,

(B) any ~~creditors'~~creditors' or equity security ~~holders'~~holders' committee pursuant to L.B.R. 2081-2,

(C) if there is no committee, the 20 largest unsecured creditors,

(D) any indenture trustee,

(E) the IRS and other relevant government entities,

(F) all parties who have requested notice, and

(G) any party whose interest in property of the estate will be directly affected by any order requested; and

(H) the United States Trustee.

(c) Hearing~~:~~.

(1) Scheduling the Hearing~~:~~. The chambers of the judge assigned to the case will provide movant's ~~counsel~~attorney with a hearing date to be held that is, if possible, not more than three ~~(3) court~~ days after the date of the filing of the Motion. For purposes of this hearing only, if the judge's calendar cannot be arranged to accommodate a hearing within three ~~court~~ days, the judge's staff will notify the Clerk ~~of the court~~, who may refer the matter to any other available judge.

(2) Service of Notice of Hearing~~:~~. As soon as the movant is notified of the hearing date, the movant must serve notice of the date and time of the hearing in substantial conformity with L.B. ~~Form~~F. 2081-1.4 to:

(A) parties who were served with copies of the Motion; and

(B) those parties who have requested notice in the case or those who have responded to the Motion on L.B. ~~Form~~F. 2081-1.3. The movant must notify each of the above of the date, time, and place of the hearing by ~~e-mail~~email or facsimile, as requested in such party's response, within the later of: (i) four (4) hours after movant receives responder's request for

notice, or (ii) four (4) hours of being notified by the ~~court~~Court of the date and time of the hearing.

(3) Proof of Service~~:~~. The debtor must file an affidavit of compliance with the service requirements of this ~~L.B.R.~~Rule prior to the commencement of any hearing pursuant to this ~~L.B.R~~Rule.

(4) Objections~~:~~. Parties may file an objection in writing prior to the hearing and/or may appear at the hearing to state or supplement their objection orally.

(5) Procedure at Hearing~~:~~. At any hearing set pursuant to this ~~L.B.R.,~~Rule, the parties will proceed in accordance with the Federal Rules of Bankruptcy Procedure and the Federal Rules of Evidence. The movant must be prepared to present evidence in support of its Motion. Any unopposed request may be granted in the ~~court's~~Court's discretion on the basis of affidavits, arguments, or representations of the parties or ~~counsel~~attorneys, as appropriate.

(d) Orders~~:~~. At the conclusion of any hearing held pursuant to this ~~L.B.R.,~~Rule, the ~~court~~Court will make such findings of fact only as are supported by the record and will:

(1) enter or deny any or all of the orders requested,

(2) enter any or all of the orders requested on an interim basis pending such additional notice as the ~~FED~~Fed. R. ~~BANKR~~Bankr. P. or the ~~court~~Court may direct, and/or

(3) continue the hearing with respect to any or all of the orders requested. Only interim orders will be entered pursuant to this ~~L.B.R.~~Rule respecting cash collateral or post-petition financing.

(e) Other Expedited Relief~~:~~. The availability of expedited consideration of motions under this ~~L.B.R.~~Rule will not preclude *ex parte* relief or other emergency relief where appropriate upon specific request.

~~Commentary~~

~~[Source: GPO 2002-6; GPO 2013-1] January 1, 2014.~~

~~See L.B. Forms 2081-1.1 through 2081-1.4.~~

~~January 1, 2014.~~

L.B.R. 2081-2. Chapter 11 – Certain ~~Notes~~Notices

(a) Notice to Twenty Largest Unsecured Creditors~~:~~. If notice to the ~~twenty (~~20~~)~~ largest unsecured creditors is required, and there are less than 20 unsecured creditors of the estate, the certificate of service must indicate that all unsecured creditors were noticed.

(b) Notice on Committees~~:~~. If notice to a ~~creditors'~~creditors' or equity security ~~holders'~~holders' committee is required, notice must be made on the committee's ~~counsel~~attorney. If the committee has no ~~counsel~~attorney of record, notice must be made upon all members of the committee.

(c) Limited Notice List~~:~~. A chapter 11 debtor may file a motion to establish a limited notice list for matters where notice is not otherwise governed by the Bankruptcy Code, Federal Rules of Bankruptcy Procedure or these Local Rules.

(1) Motion~~:~~. A motion seeking a limited notice list must include the following:

(A) a statement of the cause necessitating a limited notice list;

(B) the types of pleadings the limited notice list will apply to (i.e. limited notice on one pleading or throughout the remainder of the case); and

(C) the names of the creditors and parties the debtor seeks to place on the limited notice list.

(d) Minimum Requirement~~:~~. Unless otherwise ordered, a limited notice list must include the following:

(1) the United States Trustee,

(2) any appointed chapter 11 trustee or examiner,

(3) any appointed creditors' or equity security holders' committee,
(4) if there is no committee, the 20 largest unsecured creditors,
(5) all secured creditors (Schedule D),
(6) all priority creditors (Schedule E),
(7) those parties who have filed an entry of appearance and request for all notices,
(8) parties against whom relief is sought by the particular intended action,
(9) the debtor's attorneys, and
(10) any additional parties as directed by the ~~court~~Court.

Commentary

~~[Source: New; GPO 2013-1.] January, 1, 2014.~~

This rule does not eliminate the need for notice pursuant to the code and the rules. Use of the Limited Notice List is not effective until the Court enters an order ~~is entered by the court.~~. See L.B.R. 1015-1 regarding comprehensive service lists and motions in jointly ~~-~~administered cases.

Motions applying to ~~less~~fewer than all of the jointly ~~-~~administered cases ~~are~~must to be filed in the lead case.

L.B.R. 2081-3. Chapter 11 – Motions to Dismiss or Convert

(a) Applicability~~:~~. This rule applies to motions to dismiss or convert a chapter 11 case pursuant to 11 U.S.C. § 1112.
(b) Selecting a Hearing Date~~:~~. Each division of the ~~court~~Court maintains a chapter 11 dismissal motion calendar. ~~Information as to the time and dates of each division's calendar may be obtained from the court's~~The Court provides hearing date information on its website ~~at www.cob.uscourts.gov or the assigned judge's staff~~. All dismissal motions must be set for hearing on the calendar of the division to which the case is assigned.
  (1) Notice Period~~:~~. Pursuant to ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 9006(c), the ~~court~~Court finds cause exists to shorten the time to object to ~~fourteen (~~14~~)~~ days.
  (2) Hearing Date~~:~~. A party filing a dismissal motion in a pending chapter 11 case must select from the calendar of available hearing dates a proposed hearing date, which must be the latest hearing date available on the assigned judge's calendar which is not more than ~~thirty (~~30~~)~~ days from the date the dismissal motion is filed with the ~~court~~Court. In the event the movant sets a hearing date beyond ~~thirty (~~30~~)~~ days, the movant is deemed to have waived its right under 11 U.S.C. § 1112(b)(3) to a hearing within ~~thirty (~~30~~)~~ days and a decision within ~~fifteen (~~15~~)~~ days of the commencement of the hearing.
  (3) Notice of Hearing~~:~~. Subject to the time limitations set forth in ~~subsections~~ L.B.R. 2081-3(1) and (2~~) above,~~), the movant must comply with the provisions of L.B.R. 9013-1. The notice of hearing must specify the following:
    (A) the hearing date, time and location;
    (B) that an objection and request for hearing must be filed by a date certain that is at least ~~fourteen (~~14~~)~~ days after notice of the motion; and
    (C) that, if no objection is timely filed, the requested relief in the motion may enter without a hearing, upon the filing of a certificate of non-contested matter.
    (D) Notice~~:~~. The movant must serve the notice and motion ~~must be served~~ on the debtor, the debtor's ~~counsel~~attorney, the United States Trustee, ~~any case~~ trustee, and ~~those~~parties

requesting notice. The ~~notice~~movant must also ~~be mailed to~~serve the notice on all creditors and parties in interest.

(c) Procedures for Preliminary Hearings~~:~~. The following procedures apply at preliminary hearings on motions to dismiss:

(1) No testimony will be taken. ~~Evidence~~The Court will only ~~be accepted~~accept evidence by way of an oral offer of proof and exhibits. Such offers must provide sufficient detail to enable the ~~court~~Court to make specific findings based thereon and must include the identity of the witnesses available to testify at an evidentiary hearing and an explanation of their expected testimony. Written summaries of witnesses' testimony are not required but may be submitted.

(2) Parties must exchange all exhibits they intend to use, or may reasonably anticipate using, 24 hours prior to the preliminary hearing. The exhibits must be tendered to the ~~court~~Court at the hearing, together with a statement identifying the witness or witnesses who would be called to identify and lay the foundation for the introduction of such exhibits.

(3) Objections to tendered evidence should be made at the conclusion of each party's declaration. Any objection must identify the evidence objected to and specify the grounds for the objection.

(4) The ~~court~~Court will treat the hearing as a preliminary hearing and, based on the proffers of evidence, if the movant establishes sufficient cause, may set the matter over for a final hearing. In the alternative, the ~~court~~Court may consider the offers of proof and, absent the need for an evidentiary hearing, grant or deny the request for dismissal.

(5) Expert Witnesses~~:~~. Any party anticipating the use of an expert witness for a final hearing will, at the preliminary hearing, comply with ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 7026(a)(2).

(d) Telephonic Hearings~~:~~. Parties, through ~~counsel~~their attorneys, are required to attend the hearing in person except on prior request and approval of a telephonic appearance by the judge to whom the case is assigned. ~~Telephonic appearances~~Parties must ~~be requested~~ request telephonic appearance by filing a motion. If the Court permits a telephonic appearance ~~is permitted~~, the parties must exchange witness lists and exhibits and file them with the ~~court~~Court no later than 24 hours prior to the hearing.

(e) Waiver of 30 Day Hearing~~:~~. In the event that the movant does not select a hearing date pursuant to ~~sub-section~~ L.B.R. 2081-3(b), movant must follow the motion practice procedures set forth in L.B.R. 9013-1, and comply with the notice period as directed by ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 2002(a)(4). Using the L.B.R. 9013-1 procedures constitutes a waiver by the movant of the hearing and ruling time requirements of 11 U.S.C. § 1112(b)(3).

Commentary

~~[Source: GPO 2007-1]~~

~~See L.B.R. 1017-1, 2, and 3 for other local rules on conversion and dismissal.~~

~~See also L.B.R. 9070-1 for information on witnesses and exhibits.~~

The L.B.~~Form~~F. 9013-1.3 Certificate of Non-~~Contested~~contested Matter and Request for Entry of Order should be used when no objection is timely filed as referenced in ~~subparagraph~~ L.B.R. 2081-3(b)(3)(C~~)~~ ~~above.~~).

Selecting a hearing date is intended to make it possible for the parties and the ~~court~~Court to comply with the notice requirements of ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 2002(a)(4) and the hearing requirements of 11 U.S.C. § 1112(b)(3). In order to best comply with the Bankruptcy Code, the ~~court~~Court has found cause to shorten the notice period for self-calendared motions pursuant to ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 9006(c).

L.B.R. 2082-1. Chapter 12 – General

(a) Motion to Confirm and Order Confirming Chapter 12 Plan~~:~~.

(1) Motion to Confirm~~:~~. The debtor must file with the plan a motion to confirm in substantial conformity with L.B.~~Form~~F. 2082-1.1. This debtor must verify the motion ~~must be verified by the debtor~~ and ~~served~~serve it on the chapter 12 trustee~~ and~~, all creditors, and parties in interest. The motion must contain facts sufficient to enable the ~~court~~Court to make appropriate findings in accordance with the requirements of chapter 12.

(2) Order of Confirmation~~:~~. The debtor must file with the plan a proposed order of confirmation ~~must be~~ in substantial conformity with L.B.~~Form~~F. 2082-1.2~~, and must be prepared by the debtor and filed with the plan. Notice of entry thereof shall be mailed promptly by the clerk~~. The Clerk, or ~~some~~ other entity as the ~~court~~Court may direct, must send notice thereof to the debtor, chapter 12 trustee, all creditors, equity security holders, and other parties in interest.

(b) Notice and Hearing on Motion to Confirm Chapter 12 Plan~~:~~.

(1) Contested Matter~~:~~. Hearings on motions to confirm Chapter 12 plans are contested matters subject to ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 9014 and the service requirements of ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 7004.

(2) Notice~~:~~.

(A) Form and Service~~:~~. The debtor must prepare a notice in substantial conformity with L.B. ~~Form~~F. 2082-1.3, and must serve a copy of the notice, the motion to confirm, and the plan on the chapter 12 trustee and all creditors and parties in interest.

(B) Contents~~:~~. The notice must contain the date for the confirmation hearing and the date for filing objections to the plan. At the time the plan is filed the debtor must obtain from the ~~court~~Court the date for the hearing on confirmation of the plan. Unless the ~~court~~Court fixes a shorter period, notice of the hearing must be given not less than ~~twenty-one (~~21~~)~~ days prior to the hearing.

(C) Certificate of Service~~:~~. The debtor must file a copy of the notice with the ~~court~~Court within three ~~(3) court~~ days after service thereof, and must file with it a certificate of service showing compliance with this ~~L.B.R~~Rule.

(3) Objections~~:~~. Objections to confirmation of the plan must be filed with the ~~court~~Court and served on the debtor, the chapter 12 trustee, and on any other entity designated by the ~~court~~Court, at least three ~~(3) court~~ days prior to the hearing or within such other time as may be fixed by the ~~court~~Court. Objections must clearly specify the grounds upon which they are based, including the citation of supporting legal authority, if any. ~~General~~The Court will not consider general objections ~~will not be considered~~.

(4) Hearing~~:~~.

(A) If no objection to confirmation is timely filed, the ~~court~~Court, at the hearing on confirmation, may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on those issues. The ~~court~~Court may enter an order confirming the plan, if it otherwise meets the requirements of 11 U.S.C. §§ 1222 and 1225, based on such evidence and/or representations as are sufficient to the ~~court~~Court.

(B) If objections to confirmation are filed, the ~~court~~Court will use the hearing on confirmation as a preliminary hearing and status conference for the purposes of

(i) framing the issues to be heard at the final hearing on confirmation,

(ii) the entry of orders pertaining to discovery,

(iii) the setting of the final hearing on the confirmation of the plan, and
(iv) the entry of such other orders pertaining to the debtor's motion to confirm as are appropriate.

(C) No evidence will be taken and no witnesses need appear at the first hearing on confirmation.

(D) In accordance with 11 U.S.C. § 1224, except for cause, the hearing must be concluded not later than ~~forty-five (~~45~~)~~ days after the filing of the plan.

(c) Amending a Chapter 12 Plan Prior to Confirmation~~:~~. In the event the debtor amends the original chapter 12 plan prior to confirmation, the amended plan, and such notice as the ~~court~~Court may order, must be served upon the chapter 12 trustee and all creditors and parties in interest, or as otherwise ordered by the ~~court~~Court. If the plan is amended after the filing of a motion to confirm, a new motion to confirm, verified by the debtor and conforming to the amended plan, must be filed. A motion to confirm an amended plan acts as a notice of withdrawal of, or a motion to withdraw, any previously filed motion to confirm and must be subject to ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 7041.

(d) Modification of Chapter 12 Plan After Confirmation~~:~~. In the event the debtor, the trustee, or the holder of an allowed unsecured claim desires to modify a confirmed chapter 12 plan, the movant must file the proposed modified plan together with a motion requesting modification which must state with particularity the date the plan was originally confirmed, the reason for the modification and the effect upon distribution to each creditor class should the modification be approved. If the modification is proposed after the expiration of the period for the filing of claims, service may be limited to the trustee, any party expressly affected by the modification and upon those creditors who have filed proofs of ~~claims~~claim.

~~Commentary~~

~~[Source: L.B.R. 320, L.B.R. 319]~~

L.B.R. 2083-1. Chapter 13 – General

(a) ~~Preconfirmation~~Pre-confirmation Payments Pursuant to 11 U.S.C. § 1326(a)(1~~):~~). Unless otherwise ordered by the ~~court~~Court, all ~~preconfirmation~~pre-confirmation adequate protection payments made by the debtor pursuant to 11 U.S.C. § 1326(a)(1) must be paid to the chapter 13 trustee, not the secured claimant. The ~~preconfirmation~~pre-confirmation plan payments to the trustee must include the amount required under 11 U.S.C. § 1326(a)(1), plus the necessary ~~trustee's~~trustee's fee.

(b) Calculation of Adequate Protection~~:~~. For the purpose of this ~~rule~~Rule, calculation of adequate protection is calculated as ~~one percent (~~1~~%)~~% of the outstanding principal balance due as of the date of the filing of the petition, unless otherwise ordered by the ~~court~~Court.

(c) ~~Creditor's~~Creditor's Rights~~:~~. Payment of ~~preconfirmation~~pre-confirmation adequate protection is without prejudice to the secured creditor's right to object to confirmation of the debtor's plan or to seek determination as to the value of the claim or the amount needed to provide adequate protection.

(d) ~~Preconfirmation~~Pre-confirmation Disbursements~~: Preconfirmation~~. Pre-confirmation disbursements by the chapter 13 trustee under 11 U.S.C. § 1326(a)(1) are hereby authorized without further order, but such disbursements must not be made unless such creditor has filed a proof of claim with the ~~court. Preconfirmation~~Court. Pre-confirmation disbursements under 11 U.S.C. § 1326(a)(1) must commence within 30 days of filing the proof of claim, unless the trustee has not received sufficient or good funds to make such payment. The trustee is authorized to deduct all 11 U.S.C. § 1326(a)(1) ~~preconfirmation~~pre-confirmation disbursements from an allowed claim and to retain the amount

necessary to pay the trustee's statutory fee based upon the ~~preconfirmation~~pre-confirmation payments distributed by the trustee.

~~Commentary~~

~~[Source: T.L.B.R. 2083-1.]~~

~~See L.B.R. 3015-1 and L.B. Form 3015-1 for information on filing a chapter 13 plan.~~

~~L.B.R. 3001-1. Claims and Equity Security Interests – General~~

~~See FED. R. BANKR. P. 3001(e)(2) and Director's Procedural Forms 210A and 210B regarding the transfer of a claim other than for security after the proof of claim has been filed.~~

~~Commentary~~

~~[Source: New.]~~

L.B.R. 3003-1. Filing Proof of Claim in Chapter 11 Case

Subject to 11 U.S.C. § 726(a)(1), ~~upon motion for~~a party seeking entry of an order establishing procedures and a bar date for the filing of proofs of claim in chapter 11 cases or ~~for~~ a bar date for filing motions for allowance of chapter 11 administrative expense claims~~, the court may issue an~~ must file a motion with proposed order and ~~require~~ notice in substantial conformity with L.B.~~ Forms~~F. 3003-1.1 through 3003-1.4, respectively.

~~Commentary~~

~~[Source: New.]~~

L.B.R. 3004-1. Filing Proof of Claim by Debtor or Trustee

A debtor or trustee filing a proof of claim on behalf of a creditor pursuant to 11 U.S.C. § 501(c) and ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 3004 must contemporaneously file and serve a notice ~~of the filing upon the creditor on whose behalf the claim is filed. The notice must be~~ in substantial conformity with L.B. ~~Form~~F. 3004-.1, ~~and be sent to the creditor, its counsel of record, if any, the debtor and case trustee. The party filing~~referencing the proof of claim ~~must attach a copy of the proof of claim with the notice~~.

~~Commentary~~

~~[Source: L.B.R. 304]~~

L.B.R. 3005-1. Filing of Proof of Claim by Guarantor, Surety, Indorser, or Other Co-~~Debtor~~debtor

~~When an~~An entity ~~or its attorney files~~filing a proof of claim on behalf of a creditor pursuant to 11 U.S.C. § 501(b) and ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 3005~~, the person filing the claim~~ must ~~comply with the procedure set forth in L.B.R~~contemporaneously file and serve a notice in substantial conformity with L.B.F. 3004-1.~~ In addition to the parties required to be served in L.B. R. 3004-~~1~~, the notice must also be provided to any other obligors~~ referencing the proof of claim.

~~Commentary~~

~~[Source: L.B.R. 305]~~

L.B.R. 3007-1. Objections to Claims

(a) Procedure for Objections~~:~~. Any party objecting to the allowance of any ~~claim~~caim must file an objection stating with particularity the allegations of fact and grounds for the objection. The objection must comply with and be prosecuted in the manner prescribed in ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 3007 and L.B.R. 9013-1.

(b) ~~Trustee's~~Trustee's Objections to Claims in Chapter 13 Cases~~:~~.

(1) As soon as practicable after the expiration of the last day for filing of claims in each case, the chapter 13 trustee must submit a report of claims to the debtor and ~~debtor's~~debtors attorney. The chapter 13 trustee must file a certificate of compliance with this ~~L.B.R~~Rule.

(2) Within ~~fourteen (~~14~~)~~ days from the date of the chapter 13 ~~trustee's~~trustee's report of claims is submitted, the debtor must file with the chapter 13 trustee a written response to the report, setting forth any grounds for objections to claims. The ~~debtor's~~debtor's failure to make and file the response constitutes a waiver of all objections thereto, provided, however, that for good cause shown, the ~~court~~Court may relieve the debtor from the effects of this ~~L.B.R.~~Rule to prevent manifest injustice.

(3) If the ~~debtor's~~debtor's response to the chapter 13 ~~trustee's~~trustee's report of claims includes objections to the allowance, amount, or classification of any of the claims filed, the chapter 13 trustee or the debtor may file an objection to such claims and give notice thereof as specified in ~~subsection (a), above;~~L.B.R. 3007-1(a);

~~(4)~~ In addition to the foregoing procedures, it is the chapter 13 ~~trustee's~~trustee's and ~~debtor's attorney's~~debtor's attorney's duty to examine all proofs of ~~claims~~claim and, if appropriate, to file objections in the manner specified in ~~subsection (a), above.~~

~~Commentary~~

(4) ~~[Source: ~~L.B.R. ~~307]~~3007-1(a).

L.B.R. 3012-1. Valuation of Collateral and Determination of Secured Status ~~Pursuant to ~~,11 U.S.C. § 506

(a) Real Property~~:~~.

(1) How Raised~~:~~. A ~~debtor's~~debtor's request for the valuation of real property and determination of secured status under 11 U.S.C. § 506 must be made by separate motion and referenced within the proposed plan. A separate adversary proceeding is not required.

(2) Required Information~~:~~. The motion must include the name of the creditor, a description of the collateral, amount of debt owed to the creditor, and the debtor's contention of value of the collateral. The motion must also include the amounts owed to other senior lienholders. The description of collateral must include a legal description of the affected real property and any identifying information with respect to the affected mortgage lien, including the date of the deed of trust, recording date, county, book and page or reception number of the recording. Additionally, the motion must state that ~~"~~"in the event a creditor desires to participate in any plan distribution, the creditor must have a timely filed, allowed proof of claim, including such claims filed within 30 days of the entry of an order determining secured status~~"~~" as set forth in ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 3002(c)(1) and (3).

(3) Service~~:~~. The debtor must serve creditors affected by the ~~debtor's~~debtor's valuation of collateral in the manner specified in ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 9014 and 7004.

(4) Notice~~:~~. Notice of the motion is governed by L.B.R. 9013-1.

(5) Objections~~:~~. Objections to the motion must recite the basis of the objection, including the amount and basis of the alternative value proposed by the objector. In the absence of a written objection, the valuation asserted by the debtor will be accepted by the ~~court~~Court and ~~shall~~will be used in the ~~court's~~Court's determination of the amounts to be distributed under the plan. Objections to the plan proposing treatment under 11 U.S.C. § 506 must be filed separately within the applicable deadlines.

(6) No Objections~~:~~. If no objections are filed, the movant must file a Certificate of ~~Noncontested~~Non-contested Matter in substantial conformity with L.B.~~Form~~F. 9013-1.3.

(7) Hearing~~:~~. Objections to the valuation of collateral under 11 U.S.C. § 506 will be considered in conjunction with the hearing on plan confirmation. If the objection requires an evidentiary hearing, the ~~court~~Court will use the hearing on confirmation as a status and scheduling conference to set an evidentiary hearing date and related deadlines.

(8) Order on Motion~~:~~. The attorney must submit a proposed order in substantial conformity with L.B.~~Form~~F. 3012-1.1.

(9) Order Extinguishing Lien~~:~~. Upon successful completion of the debtor's plan, the debtor may request an order that the lien is extinguished. See L.B.~~Forms~~F. 3015-1.~~11 and 3015-1.12~~6 (Chapter 13 ~~Debtor's~~Debtor's Certification to Obtain Discharge) and L.B.~~Form~~F. 3022-1.2 (Chapter 11 Individual ~~Debtor~~Debtor's Final Report and Motion for Final Decree).

(b) Personal Property~~:~~.

(1) How Raised~~:~~. A ~~debtor's~~debtors request for the valuation of personal property and determination of secured status under 11 U.S.C. § 506 may be made in the proposed plan. A separate motion or adversary proceeding is not required.

(2) Required Information~~:~~.

(A) Motor Vehicles~~:~~. Requests for valuation of a motor vehicle must include a description of the affected vehicle, including the year, make, model, and vehicle identification number (VIN).

(B) Other Personal Property~~:~~. Requests for valuation of other personal property must include a description of the affected property and any identifying information with respect to the underlying contract or transaction.

(3) Service, Objections, Hearing, and Order~~:~~. Requirements regarding service, objections, hearing, and order are governed by the confirmation requirements of the applicable chapter under which the case is pending.

Commentary

~~[Source: New]~~

~~See 11 U.S.C. § 506 and FED. R. BANKR. P. 3012.~~

Although the "lien-avoiding effect of the confirmed plan" is established at confirmation, actual lien avoidance is contingent upon the debtor's completion of the plan. If the case is converted to Chapter 7 or dismissed, or plan payments are not otherwise completed, liens avoided under § 506(d) in combination with § 1322(b)(2) or § 1123(b)(5) are reinstated. 11 U.S.C. §§ 348(f)(1)(B) and (C), and 349(b)(1)(C).

L.B.R. 3015-1. Filing ~~of~~the Chapter 13 Plan

~~(a) Chapter 13 Confirmation Process – Forms:~~

(a) ~~The court has developed~~Definitions. For purposes of this rule, the following ~~Local Bankruptcy Forms in connection with this~~ terms are defined as follows:

(1) "Confirmation Hearing" means the date scheduled for an initial hearing on a chapter 13 debtor's plan of reorganization.

~~(1)~~(2) "Confirmation Status Report" means a completed L.B.~~R. 3015-1.~~F. Form 3015-1.4, in which the debtor, among other things, summarizes the outstanding plan objections and whether the debtor will amend the plan, seek judicial determination, or both.

~~(2) L.B. Form 3015-1.1 – Chapter 13 Plan: The Chapter 13 Plan form must be used when filing the original plan, as well as with any amendment to the plan.~~

(3) ~~L.B. Form 3015-1.2 –~~ "Meeting Date" means the date originally scheduled for the meeting of creditors pursuant to 11 U.S.C. § 341.

~~(3)~~(4) "Notice" means a completed Notice of Filing of Chapter 13 Plan, Deadline for Filing Objections Thereto, and Hearing on Confirmation~~: This notice may be used when the plan is filed after the petition date. In a case that is converted to chapter 13, this notice may be used when the plan is filed after the conversion date. This notice may also be used if creditors are added to the schedules after the petition date~~, substantially in the form of L.B.F. 3015-1.2.

~~(4) L.B. Form 3015-1.3 – Notice of Continued Dates for Meeting of Creditors and Hearing on Confirmation of Plan: This notice may be used if the Meeting of Creditors is continued to~~"Verification" means a ~~date after the Hearing on Confirmation.~~

(5) ~~L.B. Form 3015-1.4 –~~ completed Verification of Confirmable Plan~~: The Verification is to be filed when (a) there are no pending objections to the plan or amended plan, as applicable, (b) the debtor has complied with the verification requirements and (c) the debtor requests confirmation of the plan~~ substantially in the form of L.B.F. Form 3015-1.3.

(b) ~~L.B. Form 3015-1.5 – Certificate~~ Filing and ~~Motion to Determine~~ Notice~~: The Certificate and Motion to Determine Notice addresses objections, amendments, and notice~~ of the Chapter 13 Plan.

(1) The debtor must file a chapter 13 plan ~~and is to be filed by the debtor when objections or amendments to~~in substantial conformity with L.B.F. 3015-1.1.

~~(6)~~ The debtor's failure to file the plan ~~are filed.~~

~~(7) L.B. Form 3015-1.6 – Notice of Filing Amended Chapter 13 Plan Prior to Hearing on Confirmation and Deadline for Filing Objections Thereto: To be used to provide notice of an amended chapter 13 plan that is filed and served prior to the original hearing on confirmation date.~~

~~(8) L.B. Form 3015-1.7 – Notice of Filing Amended Chapter 13 Plan and Deadline for Filing Objections Thereto: To be used when directed by the court to utilize notice procedures under FED. R. BANKR. P. 2002 and L.B.R. 2002-1 and 9013-1.~~

~~(9) L.B. Form 3015-1.8 – Notice of Filing Amended Chapter 13 Plan, Deadline for Filing Objections Thereto, and Hearing on Confirmation: To be used when directed by the court to utilize notice procedures under FED. R. BANKR. P. 2002 and L.B.R. 2002-1 and 9013-1 and the court provides the debtor with a new hearing on confirmation date.~~

~~(10) L.B. Form 3015-1.9 – Chapter 13 Confirmation Order: The court may use this form order or a virtual order to confirm the plan.~~

~~(11) L.B. Form 3015-1.10 – Order Modifying Confirmed Chapter 13 Plan: The court may use this form order to modify a confirmed plan.~~

~~(12) L.B. Form 3015-1.11 – Chapter 13 Debtor's Certification to Obtain Discharge: To be used after all of the plan payments are completed and the debtor seeks a chapter 13 discharge.~~

~~(13) L.B. Form 3015-1.12 – Order on Chapter 13 Debtor's Certification to Obtain Discharge: The court may use this form order in response to L.B. Form 3015-1.11.~~

~~(b) Filing of the Chapter 13 Plan:~~

~~(1) The chapter 13 plan must be filed in accordance with FED. R. BANK. P. 3015. The form of the plan must conform to L.B. Form 3015-1.1.~~

(2) ~~The failure to timely file the plan will~~ within 14 days from the petition date or date of conversion to chapter 13 may result in the dismissal of the case pursuant to ~~L.B.R. 1007-1 and 1017-3 and the United States Trustee's Standing Motion to Dismiss Deficient Case, without further notice, certification or hearing.~~11 U.S.C. § 1307(c)(3) and Fed. R. Bankr. P. 3015(b).

~~(3)~~ The ~~chapter 13 confirmation process is a contested matter subject to FED. R. BANKR. P. 7004 and 9014. If the debtor is proposing to modify the rights of secured creditors, the~~ debtor must ~~specifically serve such creditors in the manner specified by the FED. R. BANKR. P.~~

~~(c) Notice~~give notice of the ~~Chapter 13 Plan and Hearing on Confirmation:~~

~~(1) When the~~ plan ~~is filed with the petition, or at the time of conversion~~and transmit it to the chapter 13 ~~, the court may mail a copy of the plan along with the Notice of Meeting of Creditors containing the date and time of the hearing on confirmation and the deadline to file objections to the plan. The court may mail the plan by means of first class mail to the Chapter 13~~ trustee, ~~the~~ United States Trustee, and ~~to the addresses for~~all parties ~~as~~ listed on the Creditor Address Mailing Matrix ~~filed in the case at the time of the mailing, subject to the redirection of mail by the Bankruptcy Noticing Center under 11 U.S.C. § 342. The above mailing by the court may not satisfy the service requirements of FED. R. BANKR. P. 9014 and 7004; if not, the debtor is responsible for satisfying any applicable service requirements under those rules.~~ If the debtor files the plan on the petition date, the Court will transmit the plan and the Notice of Meeting of Creditors to these parties. If the ~~court~~debtor does not ~~mail~~file the plan~~, the debtor must provide service as set forth in subparagraph (2) immediately below.~~

~~(2)~~(3) ~~In addition to the requirements of FED. R. BANKR. P. 3015, when the plan is filed after~~ on the petition date, ~~or after the date of conversion to chapter 13, the debtor must forthwith serve a copy of the plan along with a legally sufficient notice setting forth the date, time and location of the confirmation hearing and the deadline to file objections to the plan on all parties listed in paragraph (c)(1) above. The debtor may mail a copy of the Notice of Meeting of Creditors with the plan to comply with this notice requirement, or use L.B. Form 3015-1.2~~then the debtor will be responsible for transmitting to these parties both the plan and a Notice.

(4) If the chapter 13 plan will directly impact the legal rights of particular creditors, such as modifying or terminating lien or contract rights, then the debtor must also serve those particular creditors in the manner prescribed in Fed. R. Bankr. P. 7004.

(5) No later than three ~~(3) court~~ days following the ~~debtor's mailing~~ debtor's notice or notice and service of the plan or any amended plan, the debtor must file a completed certificate of service

~~setting forth the name of the document(s) mailed and all parties to whom notice was provided. The certificate of service should be filed with the plan or any amended plan, but not~~ .

(c) Filing Objections to the Chapter 13 Plan.

~~(3)~~(1) Objections to the plan must be filed no later than ~~three (3) court~~seven days ~~following mailing of~~after the ~~plan or any amended plan.~~Meeting Date.

~~(4) The debtor is responsible for providing legally sufficient service and notice of the plan, the deadline to file objections thereto, and the hearing on confirmation to any additional creditors added at any time during the case.~~

~~(d) Continued Meeting of Creditors:~~

~~(1) Consistent with L.B.R. 2003-1, a debtor's request for a continuance of the 11 U.S.C. § 341(a) meeting of creditors must be in writing and served on the chapter 13 trustee no less than seven (7) days prior to the date and time of the scheduled meeting. A request for a continuance of the meeting of creditors is not filed with the court.~~

~~(2) In the event that the meeting of creditors is continued to a date prior to the original hearing on confirmation date, the hearing on confirmation will remain as scheduled.~~

~~(3) In the event that the meeting of creditors is continued to a date after the original hearing on confirmation date, the debtor must file a motion to continue the hearing on confirmation or appear at the originally scheduled date for the hearing on confirmation and request new deadlines be set by the court.~~

~~(4) Within three (3) court days of the entry of an order granting a motion to continue the hearing on confirmation, the requesting party shall file and serve a Notice of Continued Dates for Meeting of Creditors and Hearing on Confirmation of Plan in substantial compliance with L.B.Form 3015-1.3 on all parties in interest, and file proof of such service with the court.~~

~~(e) Filing Objections to Confirmation of Chapter 13 Plan:~~

~~(1) No later than three (3) court days prior to the date first set for the meeting of creditors, objections to the plan must be filed with the court and served on the chapter 13 trustee, the debtor and debtor's counsel.~~

~~(2) Parties in interest may seek leave to file a late objection. A motion to file a late objection must include the proposed objection as an exhibit.~~

(2) Objections must be served on the chapter 13 trustee, the debtor, and debtor's attorney.

(3) Objections must clearly specify the grounds upon which they are based, including the citation of supporting legal authority, if any. ~~General objections will not be considered by the court and the failure to plead with specificity may result in the court striking the objection.~~The Court will not consider general objections and may strike any noncompliant objections.

(4) ~~A creditor's objection as to the claim amount owed as provided in the plan~~Any attempt to file a late objection must be accompanied by ~~an attached~~a motion requesting leave to file out-of-time. The Court may strike any noncompliant objection, without further notice or hearing. Any party filing a motion for leave must include the proposed objection as an exhibit.

~~(4)~~(5) Any creditor filing an objection based on its assertion that the plan has incorrectly listed the amount of its claim or arrearages owed must provide a detailed and clear payment history ~~and categorical calculation (e.g., fees, costs, ~~ , with a breakdown showing the components of its claim, such as principal, ~~and~~ interest~~) of the amount the creditor asserts is owed.~~, fees, and costs.

~~(5)~~(6) ~~Objections to the debtor's~~Any party filing an objection based on the debtor's expenses or Current Monthly Income calculations must specify each expense item or calculation to which ~~an~~the objection is raised and the basis for the objection.

~~(6)~~(7) ~~Objections to the debtor's~~Any party filing an objection based on the debtor's request for valuation of collateral and determination of secured status under 11 U.S.C. § 506 must comply

with L.B.R. 3012-1~~, including~~ and provide the amount and basis of the alternative value proposed ~~by the objector.~~.

~~(7)~~(8) Unless otherwise ordered, ~~previously filed~~ objections to ~~confirmation~~a prior plan are deemed ~~moot~~withdrawn and new objections must be timely filed ~~addressing~~as to any ~~amended plan if, after court approval, the amended~~subsequent plan ~~is sent on notice with an opportunity to object. Objections~~. However, objections to a ~~debtor's~~debtor's motion for valuation of real property under 11 U.S.C. § 506 and L.B.R. 3012-1 will be deemed continued until the objection is withdrawn, resolved, granted, or denied.

~~(f)~~(d) If No Plan Objections Are Filed~~:~~.

(1) No Amendment to the Plan.

(A) If no objections are filed, no amendments are necessary, and the debtor ~~has complied with the verification requirements,~~is able to verify all of the statements required in a Verification, then the debtor must file a Verification ~~of Confirmable Plan no earlier than seven (7) days following the debtor's first attendance at the meeting of creditors but no later than four (4) court days prior to the original hearing on~~ in order to obtain a confirmation~~.~~ order.

(B) The Verification ~~of Confirmable Plan~~ must be ~~in substantial conformity with, and contain all of the information in, L.B. Form 3015-1.4.~~filed no earlier than ten days after the Meeting Date and no later than seven days prior to the Confirmation Hearing.

(C) A copy of the Verification ~~of Confirmable Plan~~ must be served on the chapter 13 trustee and any parties requesting notice.

(D) Upon ~~the~~ filing of the Verification ~~of Confirmable Plan~~, the ~~court~~Court may confirm the plan without requiring any parties to appear at the ~~hearing on confirmation.~~Confirmation Hearing.

(2) Amendments to the Plan Prior to ~~Originally Scheduled Hearing on~~the Confirmation Hearing When No Plan Objections Are Filed.

(A) If no objections are filed~~, and~~ but an amendment to the plan is necessary, the debtor must file the amended plan, along with a ~~Certificate and Motion to Determine Notice~~completed Confirmation Status Report, no earlier than ~~the day following the debtor's first attendance at the meeting of creditors~~ten days after the Meeting Date and no later than ~~four (4) court~~seven days prior to the ~~hearing on confirmation.~~Confirmation Hearing.

~~(B) The Certificate and Motion to Determine Notice must be in substantial conformity with, and contain all of the applicable information in, L.B. Form 3015-1.5.~~

~~(C)~~(B) The debtor must serve a copy of the amended plan and ~~Certificate and Motion to Determine Notice to~~Confirmation Status Report on the chapter 13 trustee and ~~those~~any parties requesting notice.

~~(D)~~(C) After ~~the~~ filing of a ~~Certificate and Motion to Determine Notice, the court~~Confirmation Status Report, the Court will order what further notice, if any, is required ~~and provide instructions regarding the setting of any further hearing~~ either at the ~~hearing on confirmation~~Confirmation Hearing or by separate written order.

~~(E) If there are at least twenty-eight (28) days between the date of service and the scheduled hearing on confirmation, the debtor may file and serve an amended plan. Such plan is to be filed and served no earlier than the debtor's first attendance at the meeting of creditors and it will be considered at the originally scheduled hearing on confirmation. If the debtor so elects, the following shall apply:~~

~~(i) Debtor shall serve all creditors and parties in interest with the amended plan so filed and a notice which substantially conforms with L.B.Form 3015-1.6 and which sets an objection date that is twenty-one (21) days from the date of service of the amended plan and notice.~~

~~(ii) If the debtor complies with subsection (E)(i), the requirement of subsection L.B.R. 3015-1(f)(2) for filing a Certificate and Motion to Determine Notice as to the prior plan is waived.~~

~~(iii) If no objections are filed to the amended plan so served, the debtor shall file a Verification of Confirmable Plan no later than four (4) court days prior to the hearing. Upon the filing of the Verification of Confirmable Plan, the court may vacate the hearing on confirmation.~~

~~(iv) If objections are filed to an amended plan filed in accordance with this procedure, the debtor shall make reasonable efforts to complete the obligation to meet and confer and file a Certificate and Motion to Determine Notice to advise the court and objecting parties of the debtor's response to the objection(s) no later than four (4) court days prior to the hearing on confirmation. The originally scheduled hearing will proceed as set.~~

~~(v) If the debtor complies with the provisions of this subsection in prosecuting an amended plan, the time period for filing objections to the amended plan of Fed.R.Bankr.P. 2002(b), is shortened by this Local Bankruptcy Rule to twenty-one (21) days from mailing.~~

~~(g)~~(e) If Plan Objections Are Filed~~:~~.

~~(A)~~ Obligation to Meet and Confer. In an effort to resolve or narrow the issues in dispute, ~~no later than seven (7) days prior to the hearing on confirmation,~~ the debtor and ~~any~~each objecting party must Meet and Confer, as ~~that term is~~ defined in L.B.R. 9001~~.~~

~~(2)~~(1) ~~The~~ ~~-~~1, no later than ten days prior to the Confirmation Hearing, The parties' failure to ~~comply with the obligation to~~ Meet and Confer may result in the ~~court~~Court striking the objection, denying confirmation, and/or taking ~~further action as~~ other appropriate~~.~~ actions.

~~(3) No Amendment to the Plan.~~

~~(A) If there are objections to the plan and the debtor is not filing an amended plan to resolve the objections, the debtor must file a Certificate and Motion to Determine Notice, no earlier than the day following the debtor's first attendance at the meeting of creditors and no later than four (4) court days prior to the hearing on confirmation.~~

~~(B) The Certificate and Motion to Determine Notice must be in substantial conformity with, and contain all of the applicable information in L.B. Form 3015-1.5.~~

~~(C) The debtor must serve a copy of the Certificate and Motion to Determine Notice to the chapter 13 trustee, any parties who objected to the most recently noticed plan, and those requesting notice.~~

~~(D) After the filing of a Certificate and Motion to Determine Notice, the court may order what notice, if any, is required and provide instructions regarding the setting of any further hearing either at the hearing on confirmation or by separate written order.~~

~~(4) Amendments to the Plan Prior to Originally Scheduled Hearing on Confirmation When Plan Objections Are Filed.~~

~~(A) If there are objections to the plan and the debtor is filing an amended plan to resolve some or all of the objections, the debtor must file the amended plan, along with a Certificate and Motion to Determine Notice, no earlier than the day following the debtor's first attendance at the meeting of creditors and compliance with the obligation to meet and confer, but no later than four (4) court days prior to the hearing on confirmation.~~

~~(B) The Certificate and Motion to Determine Notice must be in substantial conformity with, and contain all of the applicable information in L.B. Form 3015-1.5.~~

~~(C) The debtor must serve a copy of the amended plan and Certificate and Motion to Determine Notice to the chapter 13 trustee, any parties who objected to the most recently noticed plan, and those requesting notice.~~

~~(D) After the filing of a Certificate and Motion to Determine Notice, the court may order what notice, if any, is required and provide instructions regarding the setting of any further hearing either at the hearing on confirmation or by separate written order.~~

~~(E) If there are at least twenty-eight (28) days between the date of service and the scheduled hearing on confirmation, the debtor may file and serve an amended plan. Provided the debtor otherwise complies with the provisions of L.B.R. 3015-1(f)(2)(E) above, such plan is to be filed and served no earlier than the debtor's first attendance at the meeting of creditors and compliance with the obligation to meet and confer, so it will be considered at the originally scheduled hearing on confirmation. The provisions of L.B.R. 3015-1(e)(4) apply to this subsection (E).~~

~~(5)~~(2) Plan Objections Resolved.

(A) If ~~there are no pending~~the objections ~~or objections~~to the plan have been formally withdrawn ~~to the plan or amended plan, as applicable, the debtor has complied with the certification requirements, and~~, the plan is otherwise ready for confirmation, and the debtor is able to verify all of the statements required in a Verification, then the debtor must file ~~the~~a Verification ~~of Confirmable Plan~~ in order to obtain ~~an~~a confirmation order ~~confirming the plan~~.

(B) The debtor must serve the Verification ~~of Confirmable~~on the chapter 13 trustee, any parties who objected to the most recently noticed plan, and any parties requesting notice.

(3) Amendments to the Plan ~~must be in substantial conformity with, and contain~~Prior to Confirmation Hearing to Address Plan Objections.

~~(B)~~(A) If there are objections to the plan and the debtor is filing, or intends to file, an amended plan to resolve some or all of the ~~information in, L.B. Form 3015-1.4.~~objections, the debtor must file a Confirmation Status Report so indicating no later than seven days prior to the Confirmation Hearing. The Debtor must also file the amended plan either seven days prior to the Confirmation Hearing or on the date indicated in the Confirmation Status Report.

(B) ~~A~~The debtor must serve a copy of the amended plan and Confirmation Status Report on the chapter 13 trustee, any parties who objected to the most recently noticed plan, and any parties requesting notice.

(C) After the filing of a Confirmation Status Report, the Court will order what further notice, if any, is required either at the Confirmation Hearing or by separate written order. It may also vacate the scheduled Confirmation Hearing.

(D) If the objecting parties represent to the Court at the Confirmation Hearing or by written withdrawal of their objections that they do not object to the amended plan, then the debtor must file a Verification ~~of Confirmable~~ in order to obtain a confirmation order.

(4) Plan ~~must be served~~Objections Remain Outstanding and Require Court Resolution.

(A) If there are remaining objections to the plan and the debtor is not filing an amended plan to resolve them, then the debtor must file a Confirmation Status Report no later than seven days prior to the Confirmation Hearing.

~~(C)~~(B) The debtor must serve a copy of the Confirmation Status Report on the chapter 13 trustee, any parties who objected to the most recently noticed plan, and ~~those~~any parties requesting notice.

~~(D)~~(C) ~~Upon~~After the filing of a Confirmation Status Report, the ~~Verification of Confirmable Plan the court~~Court may ~~confirm the plan~~order what further notice, if any, is required either at the ~~hearing on confirmation,~~Confirmation Hearing or by separate ~~court order without requiring any parties to appear at the hearing on confirmation.~~written order.

~~(h)~~(f) Hearings~~:~~. The debtor and objecting parties must appear or be represented at ~~any scheduled hearing on confirmation~~all Confirmation Hearings, unless otherwise ordered by the ~~court.~~Court. Reaching an informal stipulation to resolve objections with opposing counsel does not relieve a party or counsel from the duty to appear. Unless otherwise ordered by the Court, objecting parties may appear by telephone. If all of the documents that debtor is required to file are timely filed, then debtor or debtor's counsel may appear by telephone. If one or more of the required documents are not timely filed by the debtor, then the debtor or debtor's counsel must appear in person.

~~(i)~~(g) Service of Amended Plan After the ~~Scheduled Hearing on~~ Confirmation~~:~~ Hearing. The ~~court~~Court will direct what procedures apply ~~for~~to plan amendments ~~to a plan~~ at or after the ~~scheduled hearing on confirmation~~Confirmation Hearing, including utilizing the procedures set forth in L.B.R. 2002-1 and 9013-1. ~~The court may require the debtor to use L.B. Form 3015-1.8 to provide notice of an amended plan, the deadline for filing objections thereto, and the setting of a new hearing on confirmation. In the alternative, the court may require the debtor to use L.B. Form 3015-1.7 to provide notice of an amended plan and the deadline for filing objections thereto, without the further setting of a new hearing on confirmation.~~If directed by the Court, the debtor must file and transmit the amended plan and a Notice to the chapter 13 trustee, any adversely affected creditors, any parties who objected to the most recently noticed plan, and any parties requesting notice.

~~(j)~~(h) Modification of a Confirmed Chapter 13 Plan ~~After Confirmation:~~.

(1) Proposed Modified Plan~~: In the event the~~. The debtor, the chapter 13 trustee, or ~~the~~a holder of an allowed unsecured claim ~~desires to modify a~~ may request modification of a confirmed chapter 13 plan~~, the movant must file the proposed modified plan together with a~~ by motion ~~requesting modification which~~in accordance with 11 U.S.C. § 1329. The motion must state ~~with particularity~~ the date of confirmation of the existing plan ~~was originally confirmed~~, the reason for the modification, and the specific modifications proposed, including the effect upon distribution to each creditor class should the modification be approved. ~~If the modification is proposed after the expiration of the period for the filing of claims, service may be limited to the trustee, any party whose interest is affected by the modification and upon those creditors who have filed proofs of claim.~~If the debtor is the party seeking modification, the debtor must also file a proposed modified plan.

(2) Notice~~:~~. Notice of the proposed modified plan is governed by ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 3015(g) and L.B.R. 2002-1 and 9013-1. If modification is proposed after the expiration of the period for the filing of claims, notice may be limited to the chapter 13 trustee, any party whose interest is affected by the modification, and those creditors who have filed proofs of claim.

~~Commentary~~

~~[Source: T.L.B.R. 3015-1 and L.B.R. 315, 319, and 320]~~

~~Parties may check the judge's webpage for options to appear by telephone and the process for doing so.~~

~~The definition of Meet and Confer is contained in L.B.R. 9001-1. The court believes that the obligation to Meet and Confer is an important process for the exchange of information and facilitates the prompt resolution of disputes. The initial burden to timely commence the Meet and Confer is on the debtor, however the chapter 13 trustee or objector may do so as well. Parties are encouraged to initiate the Meet and Confer as close to the time the objection is filed, but in no case later than seven (7) days prior to the hearing on confirmation.~~

~~Debtors or their counsel must follow the current procedures for mailing Chapter 13 plans as contained in General Procedure Orders or the CM/ECF filing guidelines. See GPO 2012-6. If there is no Bankruptcy~~

~~Noticing Center Certificate of Service for the filed plan, then, the Court did not mail the plan. January, 1, 2014.~~

~~L.B.R. 3017-1. Disclosure Statement – Notice and Objections~~

~~(a) Notice: The plan proponent must mail the order and notice of hearing on disclosure statement and notice of objection deadlines pursuant to FED. R. BANKR. P. 2002(b) and 3017, or as otherwise directed by the court.~~

~~(b) Objections: Objections to the adequacy of a proposed disclosure statement must be served upon those parties in interest specified in the FED. R. BANKR. P. 3017(a) within the time fixed by the court. Objections must specify clearly the grounds upon which they are based, including the citation of supporting legal authority, if any, and reference to the particular portions of the disclosure statement to which the objection is made. General objections will not be considered by the court.~~

~~Commentary~~

~~[Source: L.B.R. 317]~~

~~See Official Form 313, Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof.~~

(i) ~~Guidelines for the adequacy and contents of disclosure statements may be found on~~Continued Meeting of Creditors.

(1) Consistent with L.B.R. 2003-1, a debtor's request for a continuance of the Meeting Date must be in writing and served on the chapter 13 trustee no later than seven days prior to the Meeting Date. A request for a continuance of the Meeting Date is not filed with the Court.

(2) In the event that the Meeting Date is continued to a date prior to the original Confirmation Hearing, the Confirmation Hearing will remain as scheduled.

(3) In the event that the Meeting Date is continued to a date after the original Confirmation Hearing, then the debtor must file a motion to continue the Confirmation Hearing or appear at the originally scheduled Confirmation Hearing to request new deadlines from the Court.

(4) Within three days of the entry of an order granting a motion to continue the Confirmation Hearing, the requesting party must file and serve a Notice of Continued Dates for Meeting of Creditors and Hearing on Confirmation of Plan in substantial conformity with L.B.F. 3015-1.5 on all parties in interest with a certificate of service.

(j) Obtaining a Chapter 13 Discharge.

(1) In order to obtain a discharge, the debtor must file L.B.F. 3015-1.6, Chapter 13 Debtor's Certification to Obtain Discharge as soon as practicable after the debtor has completed all of the debtor's obligations under the plan. In a joint case, each debtor must file a separate Certification.

(2) The debtor must transmit a copy of the Certification to the chapter 13 trustee, the United States Trustee ~~website at www.usdoj.gov/ust/.~~, and all parties listed on the Creditor Address Mailing Matrix.

L.B.R. 3017-1.1. Conditional Approval of Disclosure Statement in Small Business Cases

(a) Motion for Conditional Approval of Disclosure Statement~~:~~. A small business debtor who seeks conditional approval of a disclosure statement, must file the disclosure statement and a motion for conditional approval of the disclosure statement pursuant to 11 U.S.C. § 1125(f)(3)(A) ~~("~~("Motion for Conditional Approval~~").~~"). The debtor must attach the proposed plan as an exhibit to the Motion, but not file it as a separate document until the ~~court~~Court has ruled on the Motion.

(1) Filing Requirement~~:~~. In order to assist the small business debtor and the ~~court~~Court in meeting the time requirements of 11 U.S.C. §§ 1121(e)(3) and 1129(e), in the Motion for Conditional Approval, the debtor must set forth the following proposed deadlines and dates:

(A) Date by which the debtor will need the ~~court's~~Court's conditional approval in order to meet all other deadlines.

(B) Date by which the debtor must file its chapter 11 plan,

(C) Date by which the debtor must ~~mail~~serve its plan, disclosure statement, and ballot to all creditors and other parties in interest pursuant to ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 2002(b) and 3017.

(D) Deadline for all parties to file written objections to the disclosure statement.

(E) Deadline for all parties to file written acceptances or rejections of the plan.

(F) Deadline for all parties to file written objections to the plan.

(G) Date by which the debtor will need a hearing on final approval of the disclosure statement (if any objection is timely filed) and on confirmation of the plan in order to stay within the deadlines in 11 U.S.C. §§ 1121(e) and 1129(e). The proposed adequacy of disclosure statement and plan objection deadlines and the proposed deadline for acceptance or rejection of the plan may be the same date.

(2) Notice~~:~~. The debtor must serve the Motion for Conditional Approval on the United States Trustee, ~~any case~~ trustee, and parties requesting notice.

(3) Orders~~:~~. The ~~court~~Court may, in its discretion, enter an order without a hearing on notice as the ~~court~~Court may direct.

(b) Order~~:~~. If the ~~court~~Court conditionally approves the disclosure statement, the ~~court~~Court will issue an order in substantial conformity with L.B. ~~Form~~F. 3017.1-1.1.

(1) Notice~~:~~. The debtor must serve the order, plan, disclosure statement, and ballot on all creditors and other parties in interest pursuant to ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 2002(b) and 3017.

(2) Certificate of Service~~:~~. The debtor must file a certificate of service as to the order, plan, disclosure statement and ballot within three ~~(3) court~~ days of service.

(c) Objections~~:~~. Objections to the adequacy of the disclosure statement must comply with L.B.R. 3017-1(b).

~~Commentary~~

~~[Source: New]~~

~~See Official Bankruptcy Form B25A (Plan of Reorganization in Small Business Case under Chapter 11) and B25B (Disclosure Statement in Small Business Case under Chapter 11). See also Director's Procedural Form 13S and 15S.~~

~~Although a hearing is not required, should the debtor request an expedited hearing on conditional approval of the disclosure statement, the court will attempt to accommodate the debtor's proposed deadlines and dates to the extent it is able. Notwithstanding the debtor's requested or proposed dates, the debtor must comply with the applicable time frames and requirements to obtain an extension pursuant to 11 U.S.C. §§ 1121(e) and 1129(e).~~

L.B.R. 3017-2. Combined Chapter 11 Plan and Disclosures in Small Business Cases

(a) Motion to File a Chapter 11 Plan Without a Separate Disclosure Statement~~:~~. A small business debtor who seeks to file a plan without a separate disclosure statement pursuant to 11 U.S.C. § 1125(f)(1), must first file a motion for determination that the plan itself provides adequate information and that a separate disclosure statement is not necessary (the ~~"~~"Motion~~").~~"~~).~~

(1) Filing Requirement~~:~~. In order to assist the small business debtor and the ~~court~~Court in meeting the requirements of 11 U.S.C. §§ 1121(e) and 1129(e), the Motion must set forth the following proposed deadlines and dates:

(A) Date by which the debtor will need the ~~court's~~Court's initial determination regarding adequate information in order to meet all other deadlines.

(B) Date by which the debtor must file its chapter 11 plan.

(C) Date by which the debtor must ~~mail~~serve its plan and ballot to all creditors and other parties in interest pursuant to ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 2002(b) and 3017.

(D) Deadline for all parties to file written acceptances or rejections of the plan.

(E) Deadline for all parties to file written objections to the plan and final determination under 11 U.S.C. § 1125(f)(1).

(F) Date by which the debtor will need a hearing on confirmation of the plan in order to stay within the deadlines in 11 U.S.C. §§ 1121(e) and 1129(e). The proposed plan and disclosures objection deadline and proposed acceptance or rejection deadline may be the same date.

(2) Notice~~:~~. The debtor must serve the Motion on the United States Trustee, ~~any case~~ trustee, and parties requesting notice.

(3) Orders~~:~~. The ~~court~~Court may, in its discretion, enter an order without a hearing on notice as the ~~court~~Court may direct.

(b) Order~~:~~. If the ~~court~~Court initially determines that the plan itself provides adequate information and that a separate disclosure statement is not necessary, the ~~court~~Court will issue an order in substantial conformity with L.B.~~Form~~F. 3017-2.1.

(1) Notice~~:~~. The debtor must serve the order, plan and ballot on all creditors and other parties in interest pursuant to ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 2002(b).

(2) Certificate of Service~~:~~. The debtor must file a certificate of service as to the order, plan, and ballot within three ~~(3) court~~ days of service.

(c) Objections~~:~~. Objections to the information and disclosures contained in the plan must comply with L.B.R. 3017-1(b).

~~Commentary~~

~~[Source: New]~~

~~The court will attempt to accommodate the debtor's proposed deadlines and dates to the extent it is able. Notwithstanding the debtor's requested or proposed dates, the debtor must comply with the applicable timeframes and requirements to obtain an extension pursuant to 11 U.S.C. §§ 1121(e) and 1129(e).~~

L.B.R. 3022-1. Chapter 11 – Final Report/Decree

(a) Chapter 11 Final Report and Motion for Final Decree~~:~~. Immediately after the estate is fully administered, the debtor-in-possession must file a final report and motion for final decree in substantial conformity with L.B.~~Form~~F. 3022-1.1 (business debtor) or L.B.~~Form~~F. 3022-1.2 (individual debtor) and serve it on the ~~U.S.~~United States Trustee and parties requesting notice.

(b) Objection~~:~~. If no objection has been filed within 30 days of the filing of the final report and motion for final decree, the ~~court~~Court will presume that the estate has been fully and properly administered and a final decree will enter.

(c) Final Decree~~:~~. The final report and motion for final decree must be accompanied by a proposed order in substantial conformity with L.B.~~Form~~F. 3022-1.3 (business debtor) or L.B.~~Form~~F. 3022-1.4 (individual debtor).

~~Commentary~~

~~[Source – L.B.R. 215(b)]~~

~~See the Amended Memorandum of Understanding Between the Executive Office for United States Trustees and the Administrative Office of the United States Courts Regarding Case Closings and Post Confirmation Chapter 11 Monitoring, dated April 1, 1999.~~

~~See also L.B.R. 2015-1 for other reporting requirements.~~

L.B.R. 4001-1. Relief from Automatic Stay

(a) Motions for Relief From Automatic Stay Under 11 U.S.C. § 362(d) Against Debtor~~:~~.

(1) Selection of Hearing Date~~:~~. Each division maintains a separate motion for relief from stay calendar. ~~Information as to the time and dates of each division's calendar may be obtained from the assigned judge's staff or the court's~~The Court provides hearing date information on its website ~~at www.cob.uscourts.gov~~. All motions for relief from stay must be set for hearing on the calendar of the division to which the case is assigned. A party desiring to file a motion for relief from stay in a bankruptcy case will select from the calendar of available hearing dates a proposed hearing date, which must be the latest hearing date available on the assigned judge's calendar which is not more than ~~thirty (~~30~~)~~ days from the date the motion for relief from stay is filed with the ~~court~~Court.

(2) Waiver of Rights under 11 U.S.C. § 362(e~~):~~). In the event the movant sets a hearing date beyond ~~thirty (~~30~~) days~~ days, or seeks a continuance of the hearing, the movant is deemed to have waived its right under 11 U.S.C. § 362(e) to automatic relief after ~~thirty (~~30~~)~~ days.

(3) Notice of Hearing and Time to Object~~:~~. Subject to the provisions of this ~~L.B.R.,~~Rule, the movant must comply with the provisions of L.B.R. 9013-1. In addition to the parties specified in ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 4001, the movant must serve the notice and motion ~~must be served~~ on the debtor and debtor's ~~counsel~~attorney, the United States Trustee, ~~the case~~ trustee, and any party with an interest, such as a party claiming lien rights in property against which the movant seeks relief. The notice of hearing must provide that any objection and request for hearing must be filed by a specific date that is at least seven ~~(7)~~ days prior to the hearing date and that, if no objection to the requested relief is timely filed, the relief requested in the motion may enter without a hearing. (Movants are not required to serve paper copies of motions under this ~~rule~~Rule or notices of hearing upon the United States Trustee.)

(4) Mandatory Motion Requirements~~:~~. In addition to complying with L.B.R. 9013-1, the movant must:

(A) plead with specificity facts supporting the requirements of 11 U.S.C. § 362(d);

(B) if, as a basis for relief, a default is alleged as to payment on a business or consumer debt, attach a detailed, understandable payment history regarding the debt and arrearages and a summary;

(C) if, as a basis for relief, a default is alleged as to payment on a promissory note, include a statement whether the movant has possession of the original promissory note.

~~(C)~~(D) file and serve a notice in substantial conformity with L.B.~~Form~~F. 4001-1.1;

~~(D)~~(E) if the debtor or co-debtor is an individual, file a Servicemembers Civil Relief Act ~~("~~("SCRA~~")~~") Affidavit pursuant to L.B.R. 4002-~~2~~3(c);

~~(E)~~(F) file and serve a proposed order in substantial conformity with L.B.~~Form~~F. 4001-1.3; and

~~(F)~~(G) pay the ~~prescribed~~required filing fee.

(5) ~~The motion must include the type of information, as applicable, outlined in the Guidelines for Motions for Relief from Stay L.B. Rule 4001-1App. The~~Failure to Comply. A movant's failure to ~~provide such detail~~comply with this Rule may result in the denial of the motion without prejudice and without further notice or hearing.

(6) No ~~objections:~~Objections. If no objections are filed and the Movant wants an order granting the requested relief, the Movant may file a certificate of non-contested matter, L.B.~~Form~~F. 4001-1.2, no sooner than the day of the scheduled hearing.

(b) Motions for Relief from Stay Under 11 U.S.C. §§ 1201 or 1301 Against Co-~~Debtor:~~debtor. The procedures for seeking relief from the co-debtor stay are the same as that specified in L.B.R. 4001-1(a)~~ above~~ except:

~~(1) the party~~The movant must select a hearing date that is not more than ~~twenty (~~20~~)~~ days from the date of the motion~~, and~~

~~(2) the notice of hearing must provide that any objection and request for hearing must be filed by a specific date that is at least seven (7) days prior to the hearing date and that, if no objection to the requested relief is timely filed, the relief requested in the motion may enter without a hearing.~~

~~(3)~~(1) . In the event that the movant sets a hearing date beyond ~~twenty (~~20~~)~~ days, the movant is deemed to have waived its right to relief within ~~twenty~~20 days under 11 U.S.C. § 1201(d) and 1301(d). If the movant files a combined motion under 11 U.S.C. § 362(d) and § 1201 or 1301, the movant will be deemed to have waived their rights under § 1201(d) or § 1301(d) to automatic relief after ~~twenty (~~20~~)~~ days~~.~~; and

(2) The notice of hearing must provide that any objection and request for hearing must be filed by a specific date that is at least seven days prior to the hearing date and that, if no objection to the requested relief is timely filed, the relief requested in the motion may enter without a hearing.

(c) Procedures for Preliminary Hearings~~:~~. The following procedures apply at preliminary hearings on motions for relief from stay:

(1) No testimony will be taken. Evidence will only be accepted by way of an oral offer of proof and exhibits. Such offers must provide sufficient detail to enable the ~~court~~Court to make specific findings based thereon and must include the identity of the witnesses available to testify at an evidentiary hearing and an explanation of their expected testimony. Written summaries of witnesses' testimony are not required but may be submitted.

(2) Parties must exchange all exhibits they intend to use, or may reasonably anticipate using, no later than 24 hours prior to the preliminary hearing. The exhibits must be tendered to the ~~court~~Court at the hearing, together with a statement identifying the witness or witnesses who would be called to identify and lay the foundation for the introduction of such exhibits.

(3) Objections to tendered evidence should be made at the conclusion of each party's declaration. Any objection must identify the evidence objected to and specify the grounds for the objection.

(4) The ~~court~~Court will treat the hearing as a preliminary hearing and, based on the proffers of evidence, if there is a reasonable likelihood that the party opposing relief will prevail at a final hearing, may set the matter over for a final hearing. In the alternative, the ~~court~~Court may

consider the offers of proof and, absent the need for an evidentiary hearing, grant or deny the request for relief from stay.

(5) Expert Witnesses~~:~~. Any party anticipating the use of an expert witness for a final hearing will, at the initial hearing, comply with ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 7026(a)(2).

(d) Telephonic Hearings~~: Telephonic~~. The presiding judge may permit telephonic appearances ~~may be permitted in accordance with the information on~~ . Each division provides relevant chambers' procedures ~~for the presiding judge located~~ on the ~~court's~~Court's website ~~at www.cob.uscourts.gov~~. Any party appearing telephonically must exchange witness lists and exhibits with the other parties and file them with the ~~court~~Court no later than 24 hours prior to the hearing.

~~Commentary~~

~~[Source:~~ L.B.R. ~~401 and GPO 2005-2]~~

~~See FED. R. BANKR. P.~~ 4001 ~~and 9014.~~

~~Parties are advised to use the proper forms applicable to this L.B.R. 4001-1 (relief from stay) and not those applicable to L.B.R. 4001-2 (termination/absence of stay).~~

~~See Servicemembers Civil Relief Act of 2003 ("SCRA"), 50 App. U.S.C. § 501 et seq. and L.B.R. 4002-2 for further information on SCRA.~~

~~Incorporates GPO 2010-2 waiving service in paper of motions and notices of hearing upon the United States Trustee. January, 1, 2014.~~

~~L.B.R. 4001-2. Termination, Absence, or Extension of Automatic Stay~~

~~(a) Procedures. Motions filed pursuant to this Rule are subject to the procedures in L.B.R. 4001-1(a)(1) Selection of Hearing Date, (a)(3) Notice of Hearing and Time to Object, (c) Procedures for Preliminary Hearing and (d) Telephonic Hearings.~~

~~(1) Automatic Stay Comfort Orders. A party seeking an order confirming the absence of the automatic stay (a "comfort order") must file a motion demonstrating its entitlement under the applicable Bankruptcy Code provision and comply with all additional requirements herein.~~

~~(2) *Ex Parte* Relief. The Court may act on a request for a comfort order on an *ex parte* basis, without awaiting the presumptive 14-day notice period set forth in L.B.R. 9013-1(2)(4).~~

~~(b) Forms. Parties must file and serve a notice and proposed order in substantial conformity with L.B.F. 4001-2.1 and 4001-2.2, respectively.~~

~~(c) Requests Pursuant to 11 U.S.C. § 362(b)(22) (confirming absence of stay as to eviction proceedings). In addition to pleading facts sufficient to satisfy the applicable statutory requirements, movant must attach a copy of the judgment for possession and the debtor's Initial Statement About an Eviction Judgment Against You (Official Form 101(A), if any.~~

~~(d) Requests Pursuant to 11 U.S.C. § 362(c)(3)(A) (confirming termination of stay due to one prior bankruptcy filing). A motion under this statute must include:~~

~~(1) Case number of the previous bankruptcy case in which the Debtor was a debtor that was pending in the previous one year period prior to the present case, including the jurisdiction of the Court if the previous filing was outside of Colorado;~~

~~(2) Date of dismissal of the prior case;~~

~~(3) Reasons for dismissal; and~~

~~(4) Copy of the order of dismissal.~~

~~(e) Requests Pursuant to 11 U.S.C. § 362(c)(4)(A)(ii) (confirming absence of stay due to serial bankruptcy filings). A motion under this statute must include:~~

~~(1) Case numbers of all previous bankruptcy cases in which the Debtor was a debtors that were pending in the one year period prior to the present case (the "Prior Cases"), including the jurisdiction of the Court if any of the previous filings were outside of Colorado;~~

~~(2) Dates of dismissal of the Prior Cases;~~

~~(3) Reasons for dismissal;~~

~~(4) Verification that no party in interest has timely requested the imposition of the automatic stay under 11 U.S.C. § 362(c)(4)(B) or that the Court has denied any such request; and~~

~~(5) Copy of the order of dismissal entered in each of the Prior Cases.~~

~~(f) Requests Pursuant to 11 U.S.C. § 362(h)(1) (to terminate the stay for failure to comply with duties under 11 U.S.C. § 521(a)(2) with respect to personal property). In addition to pleading facts sufficient to satisfy the applicable statutory requirements, the motion must:~~

~~(1) Provide a detailed description of the personal property securing the debtor's obligation to the movant; and~~

~~(2) Include an attached affidavit of movant or movant's representative as to whether the debtor failed to timely file, or to perform, a statement of intention filed under 11 U.S.C. § 521(a)(2) with respect to the subject property.~~

~~L.B.R. 4001-3.~~2. Cash Collateral and Post-~~petition~~Petition Financing

(a) Motions~~:~~. Except as provided herein and elsewhere in these ~~L.B.R., all~~ Rules, parties seeking cash collateral and/or financing requests under 11 U.S.C. §§ 363 and 364 must ~~be made by~~file a motion ~~filed~~ pursuant to ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 2002, 4001, and 9014, and L.B.R. 2081-1 and 9013-1 as applicable ~~("~~("Financing Motions~~").~~").

~~(1) Provisions to be Highlighted. All Financing Motions must:~~

~~(A) recite whether the proposed form of order and/or underlying cash collateral stipulation or loan agreement contains any provision of the type indicated in the appendix at L.B.R. 4001-3(a)App.;~~

~~(B) identify the location of any such provision in the proposed form of order, cash collateral stipulation and/or loan agreement by page, paragraph and/or line number; and~~

~~(C) provide the justification for the inclusion of each such provision.~~

(1) Mandatory Inclusions~~:~~. All Financing Motions must also provide a summary of the essential terms of the proposed use of cash collateral and/or financing including, but not limited to:

(A) ~~the~~ maximum borrowing available on a final basis~~,~~;

(B) ~~the~~ interim borrowing limit~~,~~;

(C) borrowing conditions~~,~~;

(D) interest rate;

(E) fees, costs and charges paid or payable by debtor or any other person or entity~~,~~;

(F) maturity~~,~~;

(G) events of default~~,~~;

(H) remedies in the event of default~~,~~;

(I) use of funds limitations~~,~~;

(J) protections afforded under 11 U.S.C. §§ 363 and 364~~,~~; and

(K) ~~a~~ line ~~-~~item budget for both the interim and final order periods, unless the ~~court~~Court orders otherwise.

(2) Provisions That Will Not Be Approved without Demonstration of Necessity or Cause. All Financing Motions must identify the location of any of the following provisions or findings of fact in the proposed form of order and/or underlying cash collateral stipulation or loan agreement by page, paragraph and/or line number, and provide the justification for the inclusion of each such provision or finding of fact:

(A) Cross-collateralization that secures pre-petition debt by post-petition assets not otherwise subject to the secured party's pre-petition security interest, except as a means of providing adequate protection for use of cash collateral, to the extent of deterioration of a secured creditor's position. See 11 U.S.C. § 552;

(B) Binding the estate or all parties in interest with respect to the validity, perfection or amount of the secured party's lien or debt;

(C) Binding the estate or all parties in interest with respect to the relative priorities of the secured party's lien and liens held by persons who are not party to the stipulation (i.e. an order approving a stipulation providing that the secured party's lien is a "first priority" lien.);

(D) Waivers of 11 U.S.C. § 506(c);

(E) Provisions that operate to divest the debtor-in-possession of any discretion in the formulation of a plan, administration of the estate or limit access to the Court to seek any relief under other applicable provisions of law;

(F) Releases of liability for the creditor's alleged pre-petition torts or breaches of contract;

(G) Waivers of avoidance actions arising under the Bankruptcy Code;

(H) Automatic relief from the automatic stay upon default, conversion to chapter 7, or appointment of a trustee;

(I) Waivers of the procedural requirements for foreclosure mandated under applicable non-bankruptcy law;

(J) Adequate protection provisions that create liens on claims for relief arising under the Bankruptcy Code (*see* 11 U.S.C. §§ 506(c), 544, 545, 547, 548, and 549);

(K) Waivers, effective on default or expiration, of the debtor's right to move for a Court order pursuant to 11 U.S.C. § 363(c)(2)(B) authorizing the use of cash collateral in the absence of the secured party's consent; and

(L) Findings of fact extraneous to the approval process.

(b) Interim Relief~~:~~. When Financing Motions are filed with the ~~court~~Court on or shortly after the date of the entry of the order for relief pursuant to L.B.R. 2081-1, the ~~court~~Court may grant interim relief pending review by the interested parties of the proposed debtor-in-possession financing arrangements. Such interim relief is intended to avoid immediate and irreparable harm to the estate pending a final hearing. ~~In the absence of extraordinary circumstances, the court may not approve interim financing orders that include any of the provisions, as specified in L.B.R. 4001-3(a)App~~The Court may deny absence of a reasonable opportunity to object.

(c) Final Orders~~: A~~. The Court will enter a final order ~~will be entered~~ only after providing parties notice and an opportunity for a hearing pursuant to ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 4001 and L.B.R. 9013-1.

~~Commentary~~

~~[Source: From D. Del.; Appendix 4001-3App. from N.D. Cal. UST; GPO 2013-1] January, 1, 2014.~~

(d) ~~Addition~~provisions set forth in L.B.R. 4001-3(a)(2) in the absence of ~~(2) (E) July 1, 2014.~~extraordinary circumstances or in the

L.B.R. 4001-4. Continuance of Automatic Stay or Imposition of Stay

(a) Motions to continue the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B) must:
  (1) Be filed with the petition or promptly thereafter in order to permit compliance with the statutory requirement that the Court complete the hearing and rule on the motion by the thirtieth day after the filing of the later case;
  (2) State whether the presumption that the later case was filed not in good faith under 11 U.S.C. § 362(c)(3)(C) applies;
  (3) Explain why the later case is filed in good faith as to the creditors to be stayed, and specify whether the request extends to all creditors or only specified creditors;
  (4) Provide clear and convincing admissible evidence (through a verification of the debtor or affidavit(s)) as to the pertinent factual allegations and, if applicable, rebutting the presumption that the later case was filed not in good faith;
  (5) Unless otherwise ordered by the Court, provide at least 14 days' notice of the objection date and hearing date to the applicable trustee, debtor, debtor's attorney, and all affected creditors in accordance with L.B.R. 4001-1(a)(3) and 9013-1;
  (6) Be self-calendared on the assigned judge's relief from stay hearing docket on a date that allows 14 days' notice but is less than thirty days from the date of the order for relief; and
  (7) If seeking to continue the automatic stay with respect to certain property of the estate, be served pursuant to Fed. R. Bankr. P. 7004 and 11 U.S.C. § 342 as to any creditor who holds or asserts an interest in such property of the estate.
(b) Motions to impose a stay pursuant to 11 U.S.C. § 362(c)(4)(B) must:
  (1) Be filed within 30 days after the filing of the later case;
  (2) State whether the presumption that the later case was filed not in good faith under 11 U.S.C. § 362(c)(4)(D) applies;
  (3) Explain why the later case is filed in good faith as to the creditors to be stayed, and specify whether the request extends to all creditors or only specified creditors;
  (4) Provide clear and convincing admissible evidence (through a verification of the debtor or affidavit(s)) as to the pertinent factual allegations and, if applicable, rebutting the presumption that the later case was filed not in good faith;
  (5) Unless otherwise ordered by the Court, provide at least 14 days' notice of the objection date and hearing date to the applicable trustee, debtor, debtor's attorney and all affected creditors in accordance with L.B.R. L.B.R. 4001-1(a)(3) and 9013-1;
  (6) Be self-calendared on the assigned judge's relief from stay hearing docket on a date that allows 14 days' notice; and
  (7) If seeking to impose a stay with respect to certain property of the estate, be served pursuant to Fed. R. Bankr. P. 7004 and 11 U.S.C. § 342 as to any creditor who holds or asserts an interest in such property of the estate.
(c) Procedures. Motions filed pursuant to this Rule are subject to the procedures in L.B.R. 4001-1(a)(1) Selection of Hearing Date, L.B.R. 4001-1(a)(3) Notice of Hearing and Time to Object, L.B.R. 4001-1(c) Procedures for Preliminary Hearing, and L.B.R. 4001-1(d) Telephonic Hearings. Additionally, if no objections are filed, the movant must submit a Certificate of Non-Contested Matter in accordance with L.B.R. 9013-1(c)(1). If a Certificate of Non-Contested Matter is filed, the Court may, in its discretion, vacate the hearing.
(d) Forms. Parties must file and serve a notice and proposed order in substantial conformity with L.B.F. 4001-4.1 and 4001-4.2, respectively.

Commentary

Motions to continue the automatic stay under 11 U.S.C. § 362(c)(3)(B) may be summarily denied if they are not timely filed such that meaningful due process can be afforded and a hearing completed before the end of the 30 day period set forth in 11 U.S.C. § 362(c)(3)(B).

L.B.R. 4001-5. Confirmation of Termination or Absence of Automatic Stay

(a) Automatic Stay Comfort Orders. A party seeking an order confirming the absence of the automatic stay (a "comfort order") must file a motion demonstrating its entitlement under the applicable Bankruptcy Code provision and comply with all additional requirements herein.
(b) Procedures. All motions filed pursuant to this Rule must be served on the debtor, debtor's counsel, the trustee, and the United States Trustee. Parties must file a proposed order in substantial conformity with L.B.F. 4001-4.2.
(c) *Ex Parte* Relief. The court may act on a request for a comfort order on an *ex parte* basis, without awaiting the presumptive 14-day notice period set forth in L.B.R. 9013-1(a)(5).
(d) Motions Pursuant to 11 U.S.C. § 362(b)(22) (confirming absence of automatic stay as to eviction proceedings). In addition to pleading facts sufficient to satisfy the applicable statutory requirements, movant must attach a copy of the judgment for possession and the debtor's Initial Statement About an Eviction Judgment Against You (Official Form 101(A)), if any.
(e) Motions Pursuant to 11 U.S.C. § 362(c)(3)(A) (confirming termination of automatic stay due to one prior bankruptcy filing). A motion under this statute may not be filed earlier than 30 days after the petition date and must include:
    (1) Case number of the previous bankruptcy case in which the Debtor was a debtor that was pending in the previous one-year period prior to the present case, including the jurisdiction of the court if the previous filing was outside of Colorado;
    (2) Date of dismissal of the prior case;
    (3) Reasons for dismissal; and
    (4) Copy of the order of dismissal.
(f) Motions Pursuant to 11 U.S.C. § 362(c)(4)(A)(ii) (confirming absence of stay due to serial bankruptcy filings). A motion under this statute must include:
    (1) Case numbers of all previous bankruptcy cases in which the Debtor was a debtor that were pending in the one-year period prior to the present case (the "Prior Cases"), including the jurisdiction of the Court if any of the previous filings were outside of Colorado;
    (2) Dates of dismissal of the Prior Cases;
    (3) Reasons for dismissal;
    (4) Verification that no party in interest has timely requested the imposition of the automatic stay under 11 U.S.C. § 362(c)(4)(B) or that the Court has denied any such request; and
    (5) Copy of the order of dismissal entered in each of the Prior Cases.
(g) Motions Pursuant to 11 U.S.C. § 362(h)(1) (confirming termination the stay for failure to comply with duties under 11 U.S.C. § 521(a)(2) with respect to personal property). In addition to pleading facts sufficient to satisfy the applicable statutory requirements, the motion must:
    (1) Provide a detailed description of the personal property securing the debtor's obligation to the movant; and
    (2) Attach an affidavit of movant or movant's representative as to whether the debtor failed to timely file, or to perform, a statement of intention filed under 11 U.S.C. § 521(a)(2) with respect to the subject property.

(h) Motions Pursuant to 11 U.S.C. § 362(h)(2) (determining that property is of consequential value or benefit). The motion must:
(1) Explain the basis for movant's belief that the property is of consequential value or benefit to the estate;
(2) Describe what adequate protection is appropriate to protect the creditor's interest and whether or not the debtor has delivered the collateral to the trustee;
(3) Comply with service and notice requirements of Fed. R. Bankr. P. 7004 and 11 U.S.C. § 342 as to any creditor who holds or asserts an interest in such property of the estate; and
(4) Unless otherwise ordered by the Court, be filed within 30 days after the first date set for the meeting of creditors.

L.B.R. 4001-6. Communication Not ~~In~~in Violation of the Automatic Stay

(a) Forms of Communication; Issuance of Monthly Statements is not a Stay Violation~~:~~. The following communication and issuance of monthly statements are declared appropriate and not a violation of the automatic stay:
(1) Permissible Contact with the Debtors~~:~~. Secured creditors may contact the debtors about the status of insurance coverage on property that is collateral for the creditor's claim, may respond to inquiries and requests for information about the account from debtors, and may send the debtor statements, payment coupons, or other correspondence that the creditor sends to its ~~nondebtor~~non-debtor customers, without violating the automatic stay, provided none of these communications includes an attempt to collect the debt. Permissible forms of communication are those which are sent to debtors by creditors in the ordinary course of business, to the address that the debtor last provided to the creditor by agreement between the debtor and the creditor. In order for communication to be protected under this ~~L.B.R.,~~Rule, the communication must indicate it is provided for information purposes and does not constitute a demand for payment.
(2) Manner of Contacting Debtors~~:~~. Permissible communications may be transmitted via ~~electronic mail~~email, facsimile, ~~United States Postal Service~~mail, commercial communications carrier, or such other mode as is mutually acceptable to the parties.

~~Commentary~~

~~[Source: GPO 2008-1]~~

~~This L.B.R. directs that, to the greatest degree possible, the routine flow of information from secured creditors to debtors continue post-petition with respect to secured loans constituting consumer debt (as that term is defined by 11 U.S.C. § 101(8)), in each bankruptcy case where the debtor retains possession of the collateral and continues to make regular installment payments directly to the secured creditor.~~

L.B.R. 4002-1. Duties Regarding Tax Information

(a) Motions Regarding Tax Returns.
(1) Motions to dismiss pursuant to 11 U.S.C. § 521(e)(2) are governed by L.B.R. ~~1017-2 and L.B. Form 1017-2.~~9013-1.

(2) Motions to compel compliance with 11 U.S.C. § 521(f) are governed by L.B.R. 9013-1.

~~(b)~~ Redaction of Personal Information in Tax Returns~~: The redaction~~. Per L.B.R. 9037-1, it is the responsibility of any party filing documents, including tax information, to redact personal information ~~from tax returns or transcripts provided to the trustee or requesting creditor, or filed with the court, is governed by FED. R. BANKR. P. 4002 and 9037.~~

~~(c) Failure to Redact Personal Information: The court~~. The Court will ~~not redact any information if the debtor fails to make the redactions required under FED. R. BANKR. P. 4002 and 9037.~~

~~Commentary~~

~~[Source: T.L.B.R. 1017-1 and T.L.B.R. 4002-1]~~

~~(d)~~(b) ~~All tax~~file all documents as tendered without taking any action to redact personal information ~~filed electronically with the court must be submitted under the "tax information" event which is not publicly available~~.

~~Confidentiality of tax returns is governed by FED. R. BANKR. P. 4002(b)(5) and 9037 and the procedures established by the Director of the Administrative Office of the United States Courts. This includes the Director's Interim Guidance Regarding Tax Information Under 11 U.S.C. § 521 (September 20, 2005), and any amendments thereto or final guidance that may be established. The Director's guidance may be located at the U.S. Court's website at www.uscourts.gov/bankruptcycourts.~~

~~See L.B.R. 1007-5 for information on Social Security numbers and privacy, and L.B.R. 1017-2 for dismissal for failure to provide tax returns under 11 U.S.C. § 521(e)(2).~~

~~L.B.R. 4002-2.~~

L.B.R. 4002-3. Servicemembers Civil Relief Act of 2003 ("SCRA")

(a) ~~Debtor's~~Individual Debtor's Statement of Military Service~~: In order to assist the court in its determination of a debtor's status under~~. Pursuant to the Servicemembers Civil Relief Act of 2003 ~~("~~("SCRA~~"),~~"), 50 App. U.S.C. § 501 et seq., a debtor should inform the ~~court~~Court if he~~/~~ or she is a servicemember subject to the provisions of SCRA at the time of the filing of the bankruptcy petition by filing ~~Director's Procedural Form 202. If, at any time during the pendency of the bankruptcy proceedings a debtor becomes entitled to the protections of SCRA, he or she should inform the court of the change in military status within fourteen (14) days of the change in status by filing an amended Director's Procedural Form 202~~a Statement of Military Service.

(b) ~~Debtor's~~Individual Debtor's Failure to Comply~~: Failure by the debtor~~. The debtor's failure to inform the ~~court~~Court of his~~/~~ or her military status does not constitute a waiver of the ~~debtor's~~debtor's protections under SCRA, and does not alter the responsibility of a party to investigate the ~~debtor's~~debtors servicemember status before filing any ~~of the papers referred~~documents pursuant to ~~in~~Fed. R. Bankr. P. 4001-1 and 7055 and L.B.R. 4001-1 and 7055-1.

(c) Affidavit Required for Motion for Default Judgment and Motions for Relief from the Automatic Stay~~:~~ for Cases Concerning Individual Debtors. At the time of the filing of a motion for relief from stay under Fed. R. Bankr. P. 4001 or a motion for default judgment in an adversary proceeding pursuant to ~~FED. R. BANKR. P. 7055 or a motion for relief from stay under FED.~~Fed. R. ~~BANKR~~Bankr. P. ~~4001, if the party against whom relief is sought is an individual~~7055, the plaintiff/movant must file an affidavit with the ~~court~~Court which states (1) whether or not the defendant/respondent is in the military service, and indicating the necessary facts to support said affidavit; or (2) if the plaintiff/movant is unable to determine whether or not the defendant/respondent is in the military

service, a statement that the plaintiff/movant is unable to so determine. The ~~court~~Court will deny motions for relief from stay and motions for default judgment ~~and motions for relief from stay if the plaintiff/movant does~~ that do not ~~supply~~include the required affidavit. If the ~~court~~Court is unable to ascertain the ~~defendant's/respondent's~~defendant's/respondent's military status from the affidavit, it may require the plaintiff/movant to post a bond before entering ~~a default judgment or~~ an order lifting the stay or a default judgment.

~~Commentary~~

~~[Source: GPO 2005-2]~~

~~Information on how to obtain verification of the military status of an individual is available from the Clerk's office or online at the court's website at www.cob.uscourts.gov.~~

L.B.R. 4003-1. Exemptions

(a) Objections~~:~~. Objections to exemptions must ~~be prosecuted according to the procedures in~~comply with L.B.R. 9013-1.
(b) Notice~~: The objection~~. Objections must be accompanied by ~~a~~ notice in substantial conformity with L.B.~~Form~~F. 9013-1.1 ~~with~~and must provide at least ~~fourteen (~~14~~)~~ days from the date of ~~mailing~~service for the filing of a response.
(c) Hearing~~:~~. Upon the filing of a Certificate of Non-contested Matter, the ~~court~~Court may enter an order without a hearing. Upon the filing of a Certificate of Contested Matter, the ~~court~~Court may set a hearing on the matter.

~~Commentary~~

~~[Source: New.]~~

L.B.R. 4003-2. Lien Avoidance

(a) Motions to ~~Void~~Avoid Judicial Liens Under 11 U.S.C. § 522(f~~):~~). A motion to ~~void~~avoid judicial liens under 11 U.S.C. §522(f) ~~(the "Motion")~~ must include the following:
    (1) Identification of the lien creditor. The caption, title of pleading, or introductory paragraph must clearly identify the affected lien creditor. It is not sufficient to only attach a copy of a transcript of judgment, without also identifying the affected creditor in the body of the pleadings, and
    (2) Specific grounds for relief under 11 U.S.C. § 522(f) (e.g. whether the lien impairs the ~~debtor's~~debtor's exemption, the purported value of the property, the amount of the various liens filed against the property, whether the debtor claimed a homestead exemption on Schedule C), and
    (3) Evidence that a lien was actually recorded against the homestead (e.g. specific recording information and/or a copy of the transcript of judgment).
(b) Notice~~:~~. The ~~Motion~~motion must be accompanied by a notice in substantial conformity with L.B.~~Form~~F. 9013-1.1 ~~with~~ and must provide at least ~~fourteen (~~14~~)~~ days from the date of ~~mailing~~service for the filing of an objection.

(c) Certificate of Service~~:~~. The ~~Motion~~motion must be accompanied by a ~~Certificate~~certificate of ~~Service~~service showing ~~that both the Motion and notice were served~~service on the affected lien creditor ~~in~~ of both the notice and motion. Service must comply with the ~~manner required by FED.~~requirements of Fed. R. ~~BANKR~~Bankr. P. 7004 and 9014.

(d) Proposed Order~~:~~. The ~~Motion~~motion must be accompanied by a proposed order. The proposed order must contain an adequate description of the property and must not purport to do anything more than declare the lien ~~void~~avoided. The proposed order should not place an affirmative duty on the lien creditor to file documents to remove the lien from the chain of title.

~~Commentary~~

~~[Source: New]~~

L.B.R. 4004-1. Discharge

(a) Financial Management Course Certification ~~in~~Required for Individual ~~Debtor~~Debtors in Chapter 7, 13, and ~~13~~11 cases ~~(and Individual Debtor Chapter 11 Cases~~ in which 11 U.S.C. § 1141(d)(3) Applies~~):~~. The ~~court~~Court cannot grant a discharge to individual debtors ~~in Chapter 7 and 13 cases without receipt of a statement regarding completion of a course in personal financial management as required by FED.~~ absent compliance with Fed. R. ~~BANKR~~Bankr. P. 1007(b)(7). ~~Chapter 7 and 13 cases that have been~~The Court will close fully administered~~, other than the granting of a discharge and the filing of the financial management course certification, will be closed by the court without the~~ cases without the entry of a discharge~~. A new filing fee will be required to reopen the case~~ if the debtor fails to file the financial management course certification. The debtor must then file a motion to reopen the case and pay the required reopening fee to ~~permit the entry of the~~secure a discharge.

(b) Individual Debtor Cases in which 11 U.S.C. § 522(q)(1) Applies~~:~~. The ~~court~~Court cannot grant a discharge if there is reasonable cause to believe that 11 U.S.C. § 522(q)(1) may be applicable to the debtor and there is a conviction of a felony as defined in 18 U.S.C. § 3156, or pending any proceeding in which the debtor may be found guilty of a felony of the kind described in 11 U.S.C. § 522(q)(1)(A), or may be liable for a debt of the kind described in 11 U.S.C. § 522(q)(1)(B). Prior to the entry of the discharge, any party, including the debtor, a creditor,~~ case~~ trustee, and United States Trustee, with knowledge that 11 U.S.C. § 522(q)(1) may apply to the debtor, ~~shall~~must file a statement justifying the assertion that there is reasonable cause to believe 11 U.S.C. § 522 (q)(1) applies.

~~Commentary~~

~~[Source: T.L.B.R. 4004-1]~~

~~See L.B. Form 3015-1.10, Chapter 13 Debtor's Certification to Obtain Discharge and L.B. Form 3022-1.2, Chapter 11 Final Report and Motion for Final Decree (for individual chapter 11 debtor).~~

L.B.R. 4008-1. Reaffirmation of Dischargeable Debts

(a) Motion~~:~~. A motion for approval of a reaffirmation agreement pursuant to 11 U.S.C. § 524(d) may be filed in accordance with 11 U.S.C. § 524(d) and ~~FED~~Fed. R. ~~BANKR~~Bank. P. 4008 by either the debtor or a creditor who is a party to the agreement.

~~(b)~~ Form~~:~~

~~(1) Cover Sheet: Use~~. A party seeking approval of ~~L.B. Form 4008-1.1 is mandatory and must be completed in its entirety and filed along with any~~a reaffirmation agreement~~.~~

~~(c)~~(b) ~~Reaffirmation Agreement: Use of Director's Forms 2400 series is mandatory. A reaffirmation agreement without a completed Director's~~ must file Official Form 427 and Director's Form 2400A. The Court will not ~~be considered by the court~~consider noncompliant reaffirmation agreements.

~~(1) Attachment to Reaffirmation Agreement – Creditor Declaration Regarding the Agreement: The creditor must state whether the original loan documents or sale and security agreement between the parties provide for (1) a default upon borrower filing for bankruptcy relief or becoming insolvent and/or (2) the cross-collateralization of other assets of the debtor. The Creditor may use L.B. Form 4008-1.2 to fulfill this requirement or sign the L.B. Form 4008-1.1.~~

~~(d)~~(c) Hearing~~:~~.

(1) Certification by ~~Debtor's~~Debtor's Attorney~~:~~. If the ~~debtor's~~debtor's attorney has certified that the reaffirmation agreement will not impose an undue hardship on the debtor and the ~~court~~Court has no other concerns regarding the agreement, no hearing will be conducted and no order will be entered.

(2) No Certification by ~~Debtor's~~Debtors Attorney~~:~~. If the ~~debtor's~~debtor's attorney has not certified the reaffirmation agreement for any reason, the ~~court~~Court may set the matter for hearing and may require the ~~debtor's~~debtor's attorney to participate in the hearing.

~~Commentary~~

~~[Source:~~ L.B.R. ~~408 and GPO 2008-2]~~5005-1. Duty to Review

~~L.B.R. 5001-2. Clerk – Office Location and Hours~~

~~(a) Office Location: The Clerk for the United States Bankruptcy Court, District of Colorado, is located at 721 19th Street, Denver, CO 80202-2508.~~

~~(b) Internet Address:~~

~~(c) Regular Business Hours: 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, court closures due to inclement weather or other court order.~~

~~(d) Public Access to the Docket:~~

~~(1) Internet Access: Any person or organization may obtain access to the "read only" area of the court's Internet site at www.cob.uscourts.gov by obtaining a password and paying any fees established for such access. Those who have access to the court's electronic filing system but who are not Electronic Filers may retrieve docket sheets and documents, but they may not file documents.~~

~~(2) Access at the Court: Access to all public documents filed with the court is available, without obtaining a password, in the Clerk's office during regular business hours. Conventional and certified copies of electronically filed documents may be purchased at the Clerk's office during regular business hours. The fee for copying and certifying must be in accordance with the~~

~~Schedule of Miscellaneous Fees promulgated by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1930(b) which can be found on the court's website.~~

~~**Commentary**~~

~~[Source: New]~~

~~Check our website at www.cob.uscourts.gov for other restrictions on hours or closing.~~

~~L.B.R. 5003-1. Records Retention~~

~~The Clerk will maintain paper records according to the following schedule:~~

~~(a) Statement of Social Security number – five (5) years from the filing date;~~
~~(b) Proofs of Claim – three (3) years from the filing date; and~~
~~(c) All others – for such time as the Clerk of Court deems to be necessary and reasonable after entry~~

~~**Commentary**~~

~~[Source: Second Amended GPO 2007-3]~~

~~If a party objects to the destruction of records, it may file a motion to extend the time period.~~

When an electronic filer or the Clerk files a document electronically, the official record is the electronic recording of the document as stored by the Court, and the filing party is bound by the document as filed. Except in the case of documents first filed in paper form, a document filed electronically is deemed filed as of the date and time stated on the Notice of Electronic Filing ("NEF") from the Court. Before filing a document with the Court, an electronic filer must verify its legibility. The Court does not retain filed paper documents.

L.B.R. 5005-4. Electronic Filing

~~(a) Application of Rule:~~

~~(1) This L.B.R. applies to attorneys who file, on average, one or more documents per week and others as ordered or authorized by the court. The attorneys subject to this L.B.R. must register to be electronic filers. Any attorney who is an electronic filer and who signs a document intended for filing as an attorney must file the document electronically, as well as submit electronically any corresponding fees related to the document. Attorneys who file, on average, less than one document per week may, at their discretion, file documents in an electronic format. Only attorneys and their supervised staff may become electronic filers.~~

~~(2) As further described in this subparagraph, this L.B.R. applies to creditors and their agents who file, on average, one or more proofs of claim or interests per week and to Approved Providers of Personal Financial Management Courses. These filers, will be considered" limited registrants" for limited electronic filing and are required to file electronically. The limited registrants must complete the Court's registration form, obtain procedural materials when applicable from the Court and be assigned an electronic fling login. The ramifications of limited registrants are the same as they are for attorneys pursuant to L.B.R. 5005-4(d), (i), (k) and (m) and 9011-4.~~

~~(3) As further described in this subparagraph, this L.B.R. applies to parties authorized to submit electronic proofs of claim through our web site to the court, who are not otherwise allowed or required to file documents electronically. The ramifications for any party who submits such claim related documents are the same as they are for attorneys pursuant to L.B.R. 5005-4(d) and 9011-4.~~

~~(b) Mandatory Electronic Filing Requirements: In lieu of filing petitions, pleadings and other papers in hard copy format as prescribed in L.B.R. 9004-1 and other rules, electronic filers must file documents in an electronic format and submit electronically any corresponding fees related to the documents. The court may, in any matter at any time, request that a copy of a document be submitted to the judge in paper format.~~

~~(c) Electronic Records: Except for documents that exceed the court's electronic storage capability found on the court's website, all documents filed with the court, either electronically or in paper format, will be converted to and stored as electronic documents. The electronic files, consisting of the images of documents filed in cases or proceedings and documents filed by electronic means, constitute the official record of the court together with any other records kept by the Clerk.~~

~~(d) Electronic Signature: The use of an attorney's password to file a document electronically constitutes the original signature of that attorney for purposes of FED. R. BANKR. P. 9011.~~

(a) ~~Password Non-Transferable: Each attorney, law firm or other person that obtains a~~ Mandatory Electronic Filing. Unless the Court orders otherwise, all documents filed by an attorney or trustee must be electronically filed via CM/ECF. Registration for CM/ECF constitutes consent to receive service and notice electronically via CM/ECF.

(1) Unless otherwise ordered by the Court, a document will be deemed timely filed if it is electronically filed on or before 11:59 PM, Mountain Time on its due date.

(2) The Clerk's Office may deem CM/ECF subject to a technical failure on a given day if the site is unable to accept electronic filings. In the event of a technical failure, notice thereof will be posted on the Court's website and documents due that day will be due the next business day.

(3) The Court may revoke a CM/ECF login and password.

~~(e)~~ A CM/ECF login and password ~~for electronic filing is responsible for its security and use.~~ is not transferable. No attorney, law firm, or other person may knowingly permit or cause to permit ~~an electronic filer's~~ a CM/ECF password to be utilized by anyone other than an authorized member, employee, or agent of the electronic ~~filer's law firm.~~

~~(1)~~(4) ~~Waiver of Notice and Service by Mail: The request for and receipt of an electronic filing~~filer's law firm. Each attorney, law firm, or other person that obtains a CM/ECF password ~~from the court constitutes a request for, and consent to, electronic service pursuant to FED. R. BANKR. P. 9036 of all notices, orders, decrees and judgments issued by the court and, except as otherwise provided in these L.B.R., a waiver of the right to receive all notice and service by mail from the court.~~ is responsible for its security and use.

~~(f) ECF Procedures: Electronic filers must follow the ECF Procedures as defined in L.B.R. 9001-1(a)(6). Future versions of the procedures as published by the court will be effective the date of the published revision. In case of conflict between these L.B.R. and the ECF Procedures, the ECF Administrative Procedures in L.B.R. 5005-4App. control.~~

~~(g) Registration and Filing Requirements: Information regarding the procedures for registration and instructions on how to file cases electronically are found in L.B.R. 5005-4App. Categorization of documents can be found on the court's website at .~~

~~(h) Electronic Filer Agreement: Electronic filers must enter into an agreement with the court contained on the Electronic Filer Registration Form found in the ECF Administrative Procedures in L.B.R. 5005-4App.~~

~~(i) Docket: The electronic filing of a document in accordance with the ECF Procedures constitutes entry of that document on the docket kept by the Clerk pursuant to FED. R. BANKR. P. 5003. All orders, decrees, judgments and proceedings of the court will, in accordance with the ECF Procedures, be entered on the docket kept pursuant to FED. R. BANKR. P. 5003 and for the purposes of FED. R. BANKR. P. 9021.~~

~~(2)~~(5) ~~Retention of Original Signatures:~~ Electronic filers may file all electronic documents with electronic signatures. Documents that require the signature of the debtor ~~shall~~must be maintained by the electronic filer with the original signature(s) in paper form for two years following the expiration of all time periods for appeals after entry of a final order terminating the case or proceeding. Documents required to be retained by counsel with actual signatures of the debtor include ~~Form 21, voluntary petition~~all petitions, statements, schedules, lists, and amendments thereto.

~~(j) Correction of Errors or Omissions:~~

(b) Exemption from Mandatory Electronic ~~filers notified by the Clerk via~~ Filing. Upon filing a ~~public docket entry of~~ motion demonstrating good cause, an ~~error or omission in~~ attorney may request an exemption from mandatory electronic filing ~~must correct~~. The Clerk or designee may exercise discretion and grant single instance emergency exemptions to attorneys as appropriate.

(1) Method of Filing for Exempt Attorneys or Unrepresented Parties. Unless otherwise ordered by the Court, Attorneys who have received an exemption under subdivision (b)(1) and pro se parties may file documents by any of the ~~error or omission by~~ following methods:

(A) in person with the ~~time stated within~~Clerk's Office;

(B) through the ~~notification. Failure to timely correct~~approved filing tool available on the ~~error~~Court's website;

(C) by mail; or ~~omission, unless~~

(D) by facsimile.

~~(3)~~(2) A document filed through the ~~court orders otherwise~~Court's website filing tool or by facsimile is considered filed on the date that it is received by this Court; however, a document received on a Saturday, Sunday, legal holiday or day that this Court is closed, will ~~result in~~not be entered on the ~~erroneous document not being acted upon by~~docket until the ~~court~~next business day.

~~(1) If electronic filers use the incorrect event for the public docket when filing a document, the Clerk may re-enter the document correctly if it is an objection or a document that is easily identified from the document's caption as an emergency motion or a time sensitive motion. Such steps are taken to safeguard the integrity of the court's docket while timely providing an accurate public record for proper case administration~~

~~(2) Temporary Deactivation or Revocation of Password and Authority to File Electronically: The court reserves the right to temporarily deactivate an electronic filer's password for failure to comply with this rule, the electronic filer Registration Form agreement or the ECF Procedures. In addition, the court reserves the right to revoke an attorney's authority to file electronically after notice and hearing before the judge assigned to the specific case in which the attorney has failed to comply with the ECF Procedures or has engaged in other misuse of the electronic case filing system.~~

~~**Commentary**~~

~~[Source: GPO 2001-8]~~

~~See L.B.R. 9004-1, 9011-1, 9036-1, and L.B.R. 5005-4App. Parties should also check the court's website.~~

~~Documents requiring signatures of more than one party may be filed electronically provided the document contains all necessary signatures whether those signatures are electronic or original.~~

(c) ~~Revised to include limited registrants and non-attorneys who may submit certain documents electronically and to clarify the requirement for e-filing attorneys to submit electronically fees associated with the documents filed. Incorporates GPO 2012-3 and 2009-5, and December 1, 2013 amendment to Fed.R.Bankr.P. 1007(b)(7). 1/1/2014.~~Format. Petitions, complaints, motions, briefs and other pleadings and documents filed electronically or by email must be in text-searchable Portable Document Format ("PDF") format.

L.B.R. 5010-1. Reopening Cases

(a) Motions: Motions to reopen bankruptcy cases must be accompanied by the payment of any prescribed filing fees. ~~Copies of the motion must be served on the United States Trustee, the trustee previously assigned to the case, the twenty (20) largest unsecured creditors in a chapter 11 case, and upon any party against whom relief will be sought upon reopening of the case~~.

(b) Filing Fees~~: Payment of the filing fee~~. A motion to reopen a bankruptcy case~~, when~~ must be accompanied by payment of any required filing fees. When such a motion is filed by a trustee to reopen a case due to the discovery of additional assets in the estate, payment of the required filing fee is payable at the time the motion ~~to reopen~~ is filed~~. The~~; however, the trustee may file a motion to have the payment of the fee ~~delayed~~deferred until there are sufficient assets in the estate to pay such fee.

(c) Filing Complaint to Determine Dischargeability of Debt~~:~~. An adversary proceeding to determine the dischargeability of a debt under ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 4007(b) or for declaratory relief regarding the effect of a discharge under 11 U.S.C. § 524(a) may be commenced, maintained and concluded whether or not the underlying bankruptcy case has been closed under ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 5009 or reopened under ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 5010, unless otherwise ordered by the ~~court~~Court.

~~**Commentary**~~

~~[Source: L.B.R. 510]~~

~~Absent a court order, there is no exception to the requirement to pay the appropriate filing fees for a motion to reopen a case in order for the debtor to file the Debtor's Financial Management Certificate so that a discharge may be entered.~~

L.B.R. 5011-1. Motions for Withdrawal of the Reference

(a) Motion~~:~~. A motion for withdrawal of a case or proceeding must be accompanied by payment of the ~~prescribed~~required filing fee and be filed with the Clerk together with such other portions of the record as may be necessary for consideration of the motion.

~~(b) Service: Copies of the motion must be served on the debtor, the United States Trustee, any case trustee, the twenty (20) largest unsecured creditors in a chapter 11 case, those requesting notice and upon any party against whom relief is sought in the proceeding.~~

~~(c)~~(b) Objection~~:~~. Within ~~fourteen (~~14~~)~~ days after service of a copy of the motion, a party in interest may file with the Clerk, and serve on the movant and the other parties to the proceeding, an objection to the motion and a designation of any additional portions of the record for the ~~district court's~~U.S. District Court's determination of the motion.

~~(d)~~(c) Reply~~:~~. The movant may file a reply within seven ~~(7)~~ days of service of an objection.

~~(e)~~(d) Record~~:~~. The Clerk ~~of the Bankruptcy Court~~ will refer the motion and record to the Clerk of the U.S. District Court for hearing ~~before that court~~ pursuant to ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 5011(a).

~~**Commentary**~~

~~[Source: L.B.R. 511]~~

L.B.R. 5073-1. Photography, Recording Devices, ~~and~~ Broadcasting and Streaming

The use or operation of any ~~camera~~photography, recording, broadcasting, or streaming device~~, photo-capable cellular phone or other mechanical means for the visual reproduction of the likeness of an individual or object, or for the auditory reproduction of a voice or sound,~~ is prohibited inside all courtrooms, office space occupied by ~~the court~~Court employees, and ~~in~~ all rooms used for meetings pursuant to 11 U.S.C. § 341, except as otherwise provided by the Judicial Conference. This ~~rule~~Rule also applies to those participating in a hearing or meeting by telephone, video conference, or other means from outside the courtroom or meeting rooms. ~~The use or operation of any such device is further prohibited in all other premises occupied by the court except as proscribed by the U.S. District Court.~~ This ~~L.B.R. is~~Rule does not ~~applicable~~apply to Court employees ~~of the court or~~, designees of the United States Trustee, or ~~to~~ any certified court reporter acting pursuant to their official duties. ~~The court in its discretion may waive this L.B.R.~~

~~**Commentary**~~

~~[Source: L.B.R. 507(c)]~~

~~L.B.R. 5095-1. Investment of Estate Funds~~

~~Deposits to the Registry: No funds may be deposited to or withdrawn from the court registry except as authorized by court order. Such an order must specify in detail the amounts deposited by or to be paid to any party, and must state the names and addresses of any person or company to whom funds are to be paid. Funds may be deposited into an interest bearing account upon obtaining a specific order so directing. A copy of the order must be personally served on the Clerk by the party who obtained the order.~~

~~**Commentary**~~

~~[Source: L.B.R. 505(c)]~~

~~See also FED. R. BANKR. P. 7067.~~

L.B.R. 6004-1. Sale of Estate Property

(a) ~~Sales Free and Clear of Liens:~~Filing Fees. A motion to sell free and clear of liens under 11 U.S.C. § 363(f) ("§ 363(f)") must ~~identify~~ be accompanied by ~~name~~payment of the ~~lienholders whose~~required filing fee. However, a trustee may move to defer payment of the fee until there are sufficient assets in the estate to pay the fee.

(b) Sales under § 363(b). Except as otherwise provided in these Local Rules, the Code, the Bankruptcy Rules or an Order of the Court, all Sale Motions shall attach or include the following:

(1) A description of the property ~~rights are~~ to be sold. If the property is real estate, then the legal description must be included;

(2) A copy of the proposed purchase agreement, or a form of such agreement substantially similar to the one the debtor reasonably believes it will execute in connection with the proposed sale;

(3) A copy of a proposed form of sale order;

(4) A request, if necessary, for the appointment of a consumer privacy ombudsman under Bankruptcy Code section 332; and

(5) Provisions to be Highlighted. The Sale Motion must highlight material terms, including but not limited to (a) whether the proposed form of sale order and/or the underlying purchase agreement contains any provision of the type set forth below, (b) the location of any such provision in the proposed form of order or purchase agreement, and (c) the justification for the inclusion of such provision:

(A) Sale to Insider. If the proposed sale is to an insider, as defined in Bankruptcy Code section 101(31), the Sale Motion must (a) identify the insider, (b) describe the insider's relationship to the debtor, and (c) set forth any measures taken to ensure the fairness of the sale process and the proposed transaction.

(B) Agreements with Management. If a proposed buyer has discussed or entered into any agreements with management or key employees regarding compensation or future employment, the Sale Motion must disclose (a) the material terms of any such agreements, and (b) what measures have been taken to ensure the fairness of the sale and the proposed transaction in the light of any such agreements.

(C) Releases. The Sale Motion must highlight any provisions pursuant to which an entity is being released or claims against any entity are being waived or otherwise satisfied.

(D) Private Sale/No Competitive Bidding. The Sale Motion must disclose whether an auction is contemplated, and highlight any provision in which the debtor has agreed not to solicit competing offers for the property subject to the Sale Motion or to otherwise limit shopping of the property.

(E) Closing and Other Deadlines. The Sale Motion must highlight any deadlines for the closing of the proposed sale or deadlines that are conditions to closing the proposed transaction.

(F) Good Faith Deposit. The Sale Motion must highlight whether the proposed purchaser has submitted or will be required to submit a good faith deposit and, if so, the conditions under which such deposit may be forfeited.

(G) Interim Arrangements with Proposed Buyer. The Sale Motion must highlight any provision pursuant to which a debtor is entering into any interim agreements or arrangements with the proposed purchaser, such as interim management arrangements (which, if out of the ordinary course, also must be subject to notice and a hearing under section 363(b) of the Bankruptcy Code) and the terms of such agreements.

(H) Use of Proceeds. The Sale Motion must highlight any provision pursuant to which a debtor proposes to release sale proceeds on or after the closing without further Court order, or to provide for a definitive allocation of sale proceeds between or among various sellers or

collateral.

(I) Tax Exemption. The Sale Motion must highlight any provision seeking to have the sale declared exempt from taxes under section 1146(a) of the Bankruptcy Code, the type of tax (e.g., recording tax, stamp tax, use tax, capital gains tax) for which the exemption is sought. It is not sufficient to refer simply to "transfer" taxes and the state or states in which the affected property is located.

(J) Record Retention. If the debtor proposes to sell substantially all of its assets, the Sale Motion must highlight whether the debtor will retain, or have reasonable access to, its books and records to enable it to administer its bankruptcy case.

(K) Sale of Avoidance Actions. The Sale Motion must highlight any provision pursuant to which the debtor seeks to sell or otherwise limit its rights to pursue avoidance claims under chapter 5 of the Bankruptcy Code.

(L) Requested Findings as to Successor Liability. The Sale Motion should highlight any provision limiting the proposed purchaser's successor liability.

(M) Sale Free and Clear of Unexpired Leases. The Sale Motion must highlight any provision by ~~the~~ which the debtor seeks to sell property free and clear of a possessory leasehold interest, license or other right.

(N) Credit Bid. The Sale Motion must highlight any provision by which the debtor seeks to allow, disallow or affect in any manner, credit bidding pursuant to Bankruptcy Code section 363(k).

(O) Relief from Bankruptcy Rule 6004(h). The Sale Motion must highlight any provision whereby the debtor seeks relief from the fourteen-day stay imposed by Bankruptcy Rule 6004(h).

(c) Sales Free and Clear of Liens. In connection with a motion~~. The affected lienholders must be served with a complete set of moving papers pursuant to FED. R. BANKR. P. 7004(b). The motion must allege~~ requesting to sell estate property free and clear of liens under § 363(f), the movant must:

(1) State what subsection(s) of § 363(f) apply and the factual basis ~~demonstrating that the motion comes within one or more subsections of 11 U.S.C. § 363(f)(1)-(5). If the motion does not so identify the lienholders, it will be considered as an~~ for each subsection's application to ~~sell property subject to~~ the particular case;

~~(1)~~(2) Identify the names and amounts owed to each of the holders of a claim secured against the property to be sold. If the movant fails to include this information, the Court may deem the motion to be a request for a sale subject to existing liens~~.~~;

~~(b) Bidding Procedures: A motion to approve procedures for bidding for an asset or assets may be filed separately in advance of filing a sale motion or combined with the sale motion, and in appropriate circumstances, on more limited and shortened notice than the sale motion.~~

~~(c) Form of Order: The proposed form of order granting a motion to sell free and clear of liens must specify each lienholder whose interest is to be affected by the order and whether such liens will attach to the proceeds of the sale.~~

~~**Commentary**~~

~~[Source: L.B.R. 604 and N.D. Cal.]~~

(3) ~~See L.B.R. 2002-1, 2081-1, 9013-1 and FED. R. BANKR. P. 6003 and 9006.~~State whether the liens will attach to the proceeds of sale or be paid at closing; and

(4) Serve each known lienholder with a copy of the motion, its attachments, and a notice in the manner set forth in Fed. R. Bankr. P. Rule 7004.

(d) Motion to Set Sale Procedures. If the movant intends to open the sale to a competitive bidding or auction process, the Court strongly recommends filing a separate motion to approve the bidding procedures. If the movant request a hearing on shortened notice to approve the sale procedures, the

request must include a statement of compelling circumstances. The Sale Procedures Motion should highlight the following provisions in any Sale Procedures Order:

(1) Provisions Governing Qualification of Bidders. Any provision governing an entity becoming a qualified bidder, including but not limited to, an entity's obligation to:

(A) Deliver financial information by a stated deadline to the debtor and other key parties (ordinarily excluding other bidders).

(B) Demonstrate its financial wherewithal to consummate a sale.

(C) Maintain the confidentiality of information obtained from the debtor or other parties or execute a non-disclosure agreement.

(D) Make a non-binding expression of interest or execute a binding agreement.

(2) Provisions Governing Qualified Bids. Any provision governing a bid being a qualified bid, including, but not limited to:

(A) Any deadlines for submitting a bid and the ability of a bidder to modify a bid not deemed a qualified bid.

(B) Any requirements regarding the form of a bid, including whether a qualified bid must be (a) marked against the form of a "stalking horse" agreement or a template of the debtor's preferred sale terms, showing amendments and other modifications (including price and other terms), (b) for all of the same assets or may be for less than all of the assets proposed to be acquired by an initial, or "stalking horse", bidder or (c) remain open for a specified period of time.

(C) Any requirement that a bid include a good faith deposit, the amount of that deposit and under what conditions the good faith deposit is not refundable.

(D) Any other conditions a debtor requires for a bid to be considered a qualified bid or to permit a qualified bidder to bid at an auction.

(3) Provisions Providing Bid Protections to "Stalking Horse" or Initial Bidder. Any provisions providing an initial or "stalking horse" bidder a form of bid protection, including, but not limited to the following:

(A) No-Shop or No-Solicitation Provisions. Any limitations on a debtor's ability or right to solicit higher or otherwise better bids.

(B) Break-Up/Topping Fees and Expense Reimbursement. Any agreement to provide or seek an order authorizing break-up or topping fees and/or expense reimbursement, and the terms and conditions under which any such fees or expense reimbursement would be paid.

(C) Bidding Increments. Any requirement regarding the amount of the initial overbid and any successive bidding increments.

(D) Treatment of Break-Up and Topping Fees and Expense Reimbursement at Auction. Any requirement that the "stalking horse" bidder receive a "credit" equal to the break-up or topping fee and or expense reimbursement when bidding at the auction and in such case whether the "stalking horse" is deemed to have waived any such fee and expense upon submitting a higher or otherwise better bid than its initial bid at the auction.

(4) Modification of Bidding and Auction Procedures. Any provision that would authorize a debtor, without further order of the Court, to modify any procedures regarding bidding or conducting an auction.

(5) Closing with Alternative Backup Bidders. Any provision that would authorize the debtor to accept and close on alternative qualified bids received at an auction in the event that the bidder selected as the "successful bidder" at the conclusion of the auction fails to close the transaction within a specified period.

(A) Provisions Governing the Auction. Unless otherwise ordered by the Court, the Sale Procedures Order must:

(i) Specify the date, time and place at which the auction will be conducted and the

method for providing notice to parties of any changes thereto.
(ii) Provide that each bidder participating at the auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale.
(iii) State that the auction will be conducted openly and all creditors will be permitted to attend.
(iv) Provide that bidding at the auction will be transcribed or videotaped.

L.B.R. 7001-1. Adversary Proceedings – General

(a) ~~Adversary Captions:~~Caption. All ~~pleadings~~documents filed in an adversary ~~action~~proceeding must ~~have~~include a caption in substantial conformity with ~~Director's Procedural Form 16D. The caption must also state~~ Official Form 416D and list the entire case number, including the initials of the ~~judge~~ assigned ~~to the complaint.~~judge (e.g., 17-00000-FML).
(b) Requirements for Paper Filed Adversary Proceedings:
(1) Cover ~~Sheet: A cover~~ sheet in substantial conformity with Director's Procedural Form ~~104 must accompany all adversary proceeding complaints that are not electronically filed~~1040.
~~(b) Proper Sequence for Adversary Proceeding Filings (Paper Filers Only): The following forms are separate documents. Please do not staple them together:~~
~~(1) Adversary Proceeding Cover Sheet (Director's Procedural Form 104) – Original Only~~
(2) Complaint ~~– Original~~;
(3) Summons ~~– Original.~~;
(4) Motions for alias summons or pluries summons, if any;
~~(4)~~(5) Emergency ~~Motions~~motions, if any.

~~Commentary~~

~~[Source: LBR 105(c) and 102(f)]~~

~~Electronic filers should follow current ECF Procedures which can be found on the court's website at www.cob.uscourts.gov and L.B.R. 5005-4App.~~

L.B.R. 7007-1. Adversary Proceedings – Responses to Motions

Response Period~~:~~. Unless otherwise provided for by a statute, rule or ~~court~~ order, any response to a motion must be filed with the ~~court~~Court and served on interested parties within ~~fourteen (~~14~~)~~ days after service of the motion. Replies to responses to motions, if any, may be filed ~~only after obtaining leave of the court. Motions will be set for oral argument only if the court determines oral argument may be of assistance.~~within seven days.

~~Commentary~~

~~[Source: New]~~

~~This rule also applies where the court directs the use of FED. R. BANKR. P. 7000 series of adversary proceeding rules in a specific contested matter.~~

L.B.R. 7007-1.1. Corporate Ownership Statement

The Corporate Ownership Statement required ~~under FED~~by Fed. R. ~~BANKR~~Bankr. P. 7007.1 must be in substantial conformity with L.B. ~~Form~~F 1007-4.1.

~~Commentary~~

~~[Source: New.]~~

~~See L.B.R. 1007-4.~~

~~L.B.R. 7016-1. Pre-trial Procedure for Adversary Proceedings~~

~~Each division will provide parties with instructions once the case is at issue.~~

~~Commentary~~

~~For additional information, see L.B.R. 7026-1 and each division's website.~~

L.B.R. 7026-1. Discovery – General

(a) Discovery and Trial Schedule~~:~~. When an adversary proceeding is at issue, the ~~court~~Court may direct the parties to develop a discovery plan and ~~pre-trial~~pretrial deadlines and file a joint report on the same pursuant to ~~FED~~Fed. R. ~~CIV~~Civ. P. 26(b) or, in its discretion, may set a trial.

(b) Depositions~~:~~. Unless otherwise agreed by the parties and the deponent or ordered by the ~~court~~Court, reasonable notice for the taking of depositions or conducting examinations under ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 7030 (~~FED~~Fed. R. ~~CIV~~Civ. P. 30(b)(1)) is at least ~~fourteen (~~14~~)~~ days.

(c) Discovery Material~~:~~.

(1) The term "Discovery ~~materials - - including~~Materials" includes without limitation deposition transcripts, interrogatories and ~~answers~~responses, requests for production or inspection and responses, requests for ~~admissions and responses to them,~~ admission and ~~all~~responses, and initial and supplemental disclosures~~ are~~.

(2) Discovery Materials should not ~~to~~ be filed with the ~~court~~Court, unless ~~they are~~ the ~~subject of a discovery motion or as otherwise ordered. If interrogatories, requests, answers, responses, or other disclosures are to be used at~~ Court orders their production.

~~(1)~~(3) If a party anticipates using Discovery Materials, or a portion of them, at trial or hearing ~~or trial, the~~, then that party must mark and prepare excerpts of relevant portions to be ~~used shall be marked and prepared for offering as~~ offered into evidence~~(s) at the outset of the hearing or trial insofar as their use can reasonably be anticipated~~.

~~(c) Motions to Compel or for Protective Orders: Motions under FED. R. BANKR. P. 7026 and 7037 seeking the type of relief provided for in FED. R. CIV. P. 26(c) and 37(a), directed to interrogatories or requests under FED. R. BANKR. P. 7033 or 7034, or to responses thereto, must set forth the interrogatory, request and response constituting the subject matter of the motion. The filing of a motion for protective order stays the discovery in question pending further order of the court.~~

(d) Discovery Disputes.

(1) If there is a discovery dispute, parties must meet and confer in a meaningful way to try to resolve any issues prior to requesting a discovery hearing.
(2) If the parties cannot resolve all disputes without the assistance of the Court, then one or more parties may request a Court hearing by sending an email to the courtroom deputy/judicial assistant of the assigned judge at the chambers' email address listed on the Court's website, copied to all parties.
(3) No written discovery motions will be permitted, with the limited exception of motions for protective orders pursuant to Fed. R. Civ. P. 26(c).
(4) The Court will schedule a hearing as promptly as possible.
(5) No later than three days prior to the hearing, each party to the dispute must file a report identifying the discovery issue(s) in dispute without elaboration or argument. The report may not exceed two pages in length. It may contain citations to critical supporting legal authority but, no written motions, briefs, copies of written discovery, or any other attachments may be filed, unless expressly requested by the Court.
(6) Parties and counsel must appear in person at the hearing, unless otherwise authorized by the Court.
(7) If a discovery dispute arises in the course of a deposition, one or more parties may telephone the chambers of the assigned judge at the chambers' telephone number listed on the Court's website, to request an emergency hearing on the matter. If available, the Court may hold an immediate hearing on the dispute, by telephone or in person, as the Court specifies.

(e) Stipulated Protective Orders. A request for an order of the Court approving a stipulated confidentiality or protective order may be filed with the Court at any time.
(f) This rule applies to contested matters as well as adversary proceedings.

Commentary

~~[Source: L.B.R. 726]~~

This ~~rule~~Rule is intended to supplement the Federal Rules of Civil Procedure with respect to discovery and discovery disputes, Fed. R. Bankr. P. 7026 through 7037.

L.B.R. 7026-2. Special Provisions regarding Limited and Simplified Discovery

(a) Applicability~~:~~. Unless modified by order of the ~~court or by written agreement of the parties~~Court, the provisions of ~~this L.B.R.~~these Rules apply in all adversary proceedings and contested matters under ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 7001 and 9014.
(b) Depositions~~:~~. A party may take the deposition of only three ~~(3)~~ persons.
(c) Interrogatories~~:~~. A party may serve only one ~~(1)~~ set of written interrogatories upon each adverse party. The number of interrogatories to any one party ~~must~~may not exceed ~~thirty (~~30~~),~~, each of which ~~shall~~must consist of a single question.
(d) Other Discovery~~:~~. In all other respects, the Federal Rules of Bankruptcy Procedure govern the procedures and manner of taking discovery.
(e) Additional Discovery~~:~~. A request for discovery beyond that which is provided for herein may be made by the parties in their joint ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 7026 written report. Unless the parties otherwise agree, any requests after the filing of the written report must be made by motion.

~~Commentary~~

~~[Source: L.B.R. 726.1]~~

L.B.R. 7041-1. Motion and Notice ~~Requirements~~Required for Dismissal of ~~Proceedings to Deny Discharges~~

~~Motion Required to Dismiss~~ Complaint ~~Denying or Revoking~~ Objecting to Discharge~~: No adversary proceeding~~

A party seeking dismissal of a complaint objecting to a ~~debtors~~debtor's discharge ~~under 11 U.S.C. §§ 727, 1141, 1228 or 1328 will be dismissed except on~~ must file a motion ~~filed~~ in the adversary proceeding~~,~~ in accordance with L.B.R. 9013-1 and notice ~~and an opportunity to object~~in substantial conformity with L.B.F. 7041-1.1, served on the United States Trustee ~~and the case~~, trustee, and other parties as ~~the court may direct~~directed by the Court, with opportunity to object. The motion must disclose all terms of any agreement made between the plaintiff and the debtor in relation to the litigation and its proposed dismissal. Appropriate orders may be requested using L.B.F. 9013-1.3 or 9013-1.4, as applicable.

~~Procedures. Motions under this section must use L.B. Form 7041.1 and the notice and hearing procedures in L.B.R. 9013-1. Appropriate orders may be requested using L.B. Forms 9013-1.3 or 9013-1.4, as applicable.~~

~~Commentary~~

~~[Source: New.]~~

~~See L.B. Form 7041-1 and Official Form 416D for adversary caption.~~

L.B.R. 7055-1. Default – Failure to ~~Prosecute~~Defend

(a) Clerk's Entry of Default~~: To obtain~~. A party seeking Clerk's entry of default pursuant to ~~FED~~Fed. R. ~~CIV~~Civ. P. 55(a~~), the party seeking entry of default~~) must file a motion ~~requesting entry of Clerk's default, together~~in accordance with ~~a supporting~~L.B.R. 9013-1 and verify by affidavit ~~verifying~~or otherwise pursuant to 28 U.S.C. § 1746 the following:

(1) The party against whom default is sought has been properly served with a ~~summons and a~~ complaint and summons, including the date of the issuance of the summons and the date of service of the ~~summons and~~ complaint~~. A copy of the summons and the proof of service must be attached as exhibits~~ and summons ;

(2) The party against whom default is sought has failed to plead or otherwise defend within the allowed time;

(3) The party against whom default is sought has not requested or has not been granted an extension of time to plead or otherwise defend.

(4) A motion for Clerk's entry of default may not be combined with a motion for entry of default judgment.

(b) Default Judgment~~:~~ After Entry of Default. A party seeking ~~the~~ entry of a default judgment pursuant to Fed. R. Civ. P. 55(b) must file a motion ~~for default judgment containing~~in accordance with L.B.R. 9013-1 and contain the following:
  (1) ~~A request~~Request for entry of default judgment;
  (2) ~~An affidavit in support of default judgment~~Affidavit, executed by an individual ~~having~~with personal knowledge ~~of the facts therein, which sets forth with specificity~~, setting forth sufficient factual support for each element of ~~any~~each claim on which judgment is requested. In cases involving individuals, the supporting affidavit must allege that the defendant is not an infant or incompetent person, unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared in the action;
  (3) In cases involving individuals, the SCRA affidavit required by L.B.R. 4002-~~2~~3;
  (4) If appropriate, documentary evidence to support the allegations in the affidavit (attached as exhibits);
  (5) ~~proposed~~Proposed form of order approving the motion; and
  (6) ~~A proposed~~Proposed form of judgment.

(c) Proof Hearing~~:~~. The ~~court~~Court will advise the party seeking entry of default judgment of the time and date of a proof hearing, if required.

~~Commentary~~

~~[Source: New.]~~

~~See also FED. R. BANKR. P. 9023 and 9024 and FED. R. CIV. P. 55.~~

L.B.R. 7056-1. Summary Judgment

(a) Motion and Memorandum in Support~~:~~. Any motion for summary judgment pursuant to ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 7056~~,~~ must include:
  (1) a statement of the burden of proof;
  (2) the elements of the claim(s) that must be proved to prevail on the claim(s);
  (3) a short and concise statement, in numbered paragraphs containing only one fact each, of the material facts as to which the moving party contends there is no genuine issue to be tried;
  (4) a statement or calculation of damages, if any; and
  (5) any and all citations of law or legal argument in support of judgment ~~as a matter of law, explaining the relevance of each citation~~.

(b) Response and Memorandum in Opposition~~: Papers opposing a motion for summary judgment~~. Responses in opposition must include:
  (1) any competing statements concerning the burden of proof, including burden shifting, together with legal authority supporting such statements;
  (2) any defenses to the elements of the claim(s) that must be proved to defeat such claim(s);
  (3) a short and concise statement of agreement or opposition, in numbered paragraphs corresponding to those of the moving party, of the material facts as to which it is contended there is a genuine issue to be tried;
  (4) a short and concise statement, in numbered paragraphs containing only one fact, of any additional facts as to which the opposing party contends are material and disputed,
  (5) a statement or calculation of damages, if any; and

(6) any and all citations of law or legal argument in opposition to judgment as a matter of law~~, with a parenthetical to explain the relevance of each citation~~.

(c) Supporting Evidence~~:~~. Each statement by the movant or opponent pursuant to subdivisions (a) or (b) of this ~~rule~~Rule, including each statement controverting any statement of material fact by a movant or opponent, ~~shall~~must be followed by citation to admissible evidence either by reference to a specific paragraph number of an affidavit under penalty of perjury or fact contained in the record. Affidavits must be made on personal knowledge and by a person competent to testify to the facts stated, which are admissible in evidence. Where facts referred to in an affidavit are contained in another document, such as a deposition, interrogatory answer, or admission, a copy of the relevant excerpt from the document must be attached with the relevant passages marked or highlighted.

(d) Admission of Facts~~:~~. Each numbered paragraph in the statement of material facts served by the moving party ~~shall be~~are deemed admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement served by the opposing party.

(e) Responsive Pleadings~~:~~. Unless otherwise ordered by the ~~court~~Court, a response to a motion for summary judgment must be filed and served no later than ~~fourteen (~~14~~)~~ days from the date of service of the motion. Replies of any kind may only be filed as provided in the pretrial order or upon leave of ~~court~~Court.

(f) Compliance with Federal Rules~~:~~. The statements required by this ~~L.B.R.~~Rule are in addition to the material otherwise required by these ~~rules~~Rules and the applicable Federal Rules of Bankruptcy Procedure.

~~(g) Non-Compliance: Non-compliance with this L.B.R. is grounds for denial of the motion at the court's discretion.~~

~~Commentary~~

~~[Source: Standing Order 2004-1 SBB dated July 28, 2004.]~~

(g) Noncompliance. The Court may deny motions that do not comply with this Rule.

L.B.R. 7069-1. ~~Payment of~~Execution on Judgment

(a) Forms~~: Except as~~. Unless otherwise directed by the ~~judge~~Court, parties must use the applicable ~~forms approved by the~~ State of Colorado ~~for use in Colorado courts~~Judicial Branch forms whenever a provisional remedy is sought or a judgment is enforced in accordance with state law as provided in ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 7064 and 7069~~. The caption must conform to Official Form 416B rather than the form of caption used in the Colorado courts~~.

(b) Discovery in Aid of Enforcement of Judgments~~: A~~. Unless otherwise ordered by the Court, a judgment creditor may not use ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 2004 to collect information for use in enforcing a judgment.

~~Commentary~~

~~[Source: C.D. Cal.]~~

L.B.R. 8001-1. Appeals to District Court or Bankruptcy Appellate Panel

~~(a) Appeals Filed with~~ Part VIII of the ~~Bankruptcy Court: An original Notice of Appeal and Statement of Election in substantial conformity with the appropriate Official Form must be filed with the Clerk within the time allowed by FED.~~Fed. R. ~~BANKR~~Bankr. P. ~~8002.~~

~~(b) U.S. District Court Election: FED. R. BANKR. P. 8005 controls elections to have an appeal heard by the district court instead of the bankruptcy appellate panel.~~

~~(c) Filing Fees: Parties must submit the appropriate filing fee to the bankruptcy court.~~

~~**Commentary**~~

~~[Source: FED. R. BANKR. P. 8001 through 8028]~~

~~Parties are advised to become familiar with~~ and the local rules of the ~~court before which their appeal is filed. Once the appeal is docketed by the appellate court, additional papers must be filed with the appropriate appellate court.~~appellate courts govern the procedure on appeal from a judgment, order, or decree of this Court.

L.B.R. 9001-1. Definitions

(a) ~~In these rules the~~The following definitions apply in addition to ~~the definitions~~those provided in ~~section~~11 U.S.C. § 101 ~~of title 11 of the United States Code,~~ and ~~FED~~ Fed. R. ~~BANKR~~Bankr. P. 9001:

~~(1) "certificate of service" means a statement specifically identifying who was served, at what address(es), when they were served and the method of service.~~

~~(2) "Clerk" means Clerk of the Bankruptcy Court or such appointed deputies.~~

~~(3)~~(1) ~~"~~"CM/ECF~~"~~" means Case Management/Electronic Case Filing.

~~(4)~~(2) ~~"~~"Creditor Address Mailing Matrix~~"~~" means a list of all creditors and parties in interest in the case as provided by the debtor ~~as updated,~~ and maintained ~~and stored~~ by the ~~court and accessible as described in~~Court pursuant to L.B.R. 1007-2 ~~and L.B.R. 1007-2App~~.

~~(5) "days" means "calendar days," unless otherwise specified as "court days." FED. R. BANKR. PRO. 9006(a)'s time computation rules are not superseded by these L.B.R.~~

~~(6) "ECF Procedures" means electronic case filing procedures as provided, and updated, in (a) these L.B.R., (b) the L.B.R. Appendix, including the ECF Administrative Procedures at L.B.R. 5005-4App., and (3) the court's webpage.~~

~~(7) "Electronic Service" or "Electronic Notice" means documents sent via electronic mail with "Notice of Pleadings" in the subject line.~~

~~(8) "e-mail" means electronic mail.~~

~~(9)~~(3) ~~"meet~~ "Meet and confer~~"~~" means a conference between opposing parties initiated by the movant in an effort to resolve ~~the~~a dispute. If a conference has not taken place, the movant or respondent, or their ~~counsel~~attorney, must submit a statement describing the efforts made to accomplish the required meet and confer.

~~(10) "pro se"~~"NEF" means a ~~person who is not represented~~Notice of Electronic Filing transmitted by ~~an attorney.~~

~~(11) "verification"~~the CM/ECF to persons or ~~"verified pleading" means an unsworn declaration as defined in 28 U.S.C. § 1746, including a statement in substantial conformity~~entities registered with the ~~following: "I declare (~~Court for electronic service or ~~certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."~~

~~Commentary~~

[Source: New]

L.B.R. 9004-1. Papers – Requirements notice of Form

(12)(4) Form of Documents Submitted to the Court: All petitions, pleadings, and other filed documents filed or served in hard copy or electronically must be plainly and legibly typewritten on single sided paper, without being materially defaced by erasures, interlineations, or strikeovers. If the pleading must be handwritten, it must be printed legibly in blue or black ink. The use of abbreviations other than those approved by the current edition of The Blue Book Uniform System of Citation is prohibited.

(a) Form of Paper Submissions: For hard copy documents submitted to the court, the paper used must be standard weight, white, and approximately 8 1/2 by 11 inches in size. Unless otherwise specified in these L.B.R., the upper margin of each sheet must be not less than 1/2 inch, the left hand margin must be not less than one inch, the print size must be no smaller than 12 point font, and the pages must be fastened with a paperclip, not stapled, at the top left without backs or covers.
(b) Form of Documents Sent for Notice: In the interest of conserving paper, documents sent for notice may use 10 point font and may be printed using "book style" (two pages of text on one side front and back of one piece of paper) so long as it is legible.
(c) Page Limitations: Page limits are set at the discretion of the court. Documents that are longer than twenty (20) pages must include a table of contents and a table of authorities.
(d) Identifying Information: All petitions, pleadings, and other documents must contain:
(1) Attorneys: the business address, telephone number, facsimile transmission (FAX) number and electronic mail (e-mail) address, if any, and attorney registration number of the attorney filing the document; or
(2) Pro se (Unrepresented) Parties: the home address, the mailing address (if different), telephone number and facsimile transmission (FAX) number, if any.
(3) Attachments: All documents that are exhibits or attachments to a pleading which is being electronically filed at the same time and by the same party must be electronically filed together under one docket number, e.g. the motion, supporting affidavit or other attachments and proposed order.
(e) Copies Generally: The court may, in any matter at any time, request that a copy of a document be submitted to the judge in paper format.

Commentary

[Source: L.B.R. 904]

See L.B.R. 5005-4, L.B.R. 9011-4, L.B.R. 9036-1 and L.B.R. 5005-4App. for additional information on electronic filing, registration and procedures.

Handwritten submissions are strongly discouraged. In the event that a party has no other options, the pleadings must be written in clear and legible print so that the court can easily review and convert the documents to electronic form as necessary.

L.B.R. 9004-2. Caption – Papers, General

(a) Captions: In addition to meeting the requirements of FED. R. BANKR. P. 1005 and Official Form 416A, the official caption of all pleadings, documents, notices and orders must state:
(1) the full and correct first, middle, and last names of the debtor. If the debtor has no middle name or if he or she has only a middle initial, that fact must be indicated parenthetically in the caption. If the debtor's name has changed, it should be listed with the new name followed by "f.k.a." ("formerly known as") and the old name;
(2) the chapter of the Bankruptcy Code under which the case is filed;
(3) the debtor's federal employer identification number or the last four digits of the debtor's Social Security number or tax identification number (except that notices of the meeting of creditors that are mailed to creditors must include the debtor's full Social Security number); and
(4) the case number and judge's initials assigned to the proceeding.
(b) Captions in Matters Concerning Relief from the Automatic Stay: All motions, pleadings, and responses thereto filed pursuant to L.B.R. 4001-1 must bear a caption in substantial conformity with Official Form 416D, except that the parties must be identified as Movant and Respondent rather than Plaintiff and Defendant. Separate case numbers will not be assigned to such motions.
(c) Responses: Any objection, reply or other responsive pleading must contain as part of its caption a verbatim recital of the title of the pleading to which the response is directed.

Commentary

[Source: L.B.R. 105 and 904]

See L.B.R. 1007-5 for information on Social Security numbers and privacy.

L.B.R. 9009-1. Forms

Forms designated by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and these L.B.R. must be in substantial conformity with the applicable Official Form, Director's Procedural Form or Local Bankruptcy Form. Orders issued by the court may vary from the form order depending on the circumstances of each case.

Commentary

[Source: L.B.R. 909]

L.B.R. 9010-1. Attorneys

(a) Standards of Professional Conduct:
(1) The Local Rules of Practice of the United States District Court for the District of Colorado, Section IV – Attorney Rules shall apply in the United States Bankruptcy Court for the District of Colorado, except as provided by order or rule of the Bankruptcy Court.
(2) Noncompliance Sanctions: A party's failure to comply with the provisions of this rule may result in the imposition of appropriate sanctions by the Bankruptcy Court against such party, or counsel for such party, or both.

~~(b)~~(a) Admission~~:~~.

(1) Colorado Attorneys ~~Admitted to the United States District Court for the District of Colorado:~~. An attorney ~~admitted and in good standing to practice in the United States District Court for the District of Colorado~~ is qualified to practice ~~in~~before this Bankruptcy Court~~, subject to~~ if the attorney meets the following~~:~~ requirements:

~~(A) Address of Record. The Address of Record for electronic filing attorneys is defined as the Master Address in L.B.R. App 5005-4; for all other attorneys, the official address of record for an attorney appearing in a bankruptcy case or proceeding is the address appearing below the signature of said attorney on the petition, complaint, motion, pleading, entry of appearance, change of address or other paper most recently filed in the case or proceeding. This address will appear in the respective case or proceeding in the court's automated docket system database notwithstanding other addresses, if any, which may be of record on behalf of the attorney in other cases or proceedings in which the attorney has made an appearance.~~

(A) Colorado License Required. Except as provided in L.B.R. 9010-1 (a)(3), an attorney must be admitted to practice law and hold a license issued by the Colorado Supreme Court in order to practice before this Bankruptcy Court if any of the following conditions apply:

(i) The attorney is domiciled in the State of Colorado;

(ii) The attorney maintains an office in the State of Colorado; or

(iii) The attorney holds himself or herself out to the public as an attorney practicing law in the State of Colorado. An attorney may qualify to practice law in Colorado under currently applicable Colorado rules governing temporary or limited practice of law, including Colo. R. Civ. Pro. 204.1 and 205.1.

(B) Admission to District Court. A Colorado attorney must also be admitted and in good standing to practice before the United States District Court for the District of Colorado.

~~(B)~~(C) Notice of Change of Address in Each Specific Case or Proceeding~~:~~. Attorneys must file and serve a separate notice of change of address in each pending case or proceeding in which the attorney has previously entered an appearance.

~~(2) Out-of-State Attorneys Not Admitted to United States District Court for the District of Colorado:~~

~~(A) Admission to the United States District Court for the District of Colorado pro hac vice is no longer available.~~/Pro Hac Vice Practice. An attorney~~,~~ who is a member in good standing ~~of~~in the bar ~~in~~of any other state ~~or any other court of the United States, must comply with the Local Rules of Practice of the United States District Court for the District of Colorado regarding Attorney Rules in order to appear before this court.~~

~~(3)~~(2) ~~Local Counsel. When an attorney is located outside of Colorado and~~, but who does not have ~~an office in Colorado, the court, in its sole discretion, may impose additional requirements for~~, and who is not required by L.B.R. 9010-1(a)(1)(A) to have, a license to practice ~~before the Bankruptcy Court, including that such out-of-state counsel retain local counsel qualified to practice before this court~~law issued by the Colorado Supreme Court, may move for admission to practice pro hac vice in this Court. An attorney may make an oral motion provided that the attorney files a written motion within three days following the hearing.

(A) Contents of Motion. The pro hac vice motion must list all state and federal courts where the attorney is admitted, with corresponding bar numbers, and affirm that the attorney is in good standing with each Court listed.

(B) Association with Colorado Attorney Required. Unless otherwise ordered by the Bankruptcy Court, the motion will be granted only if the attorney associates with an active member in good standing to practice before the Bankruptcy Court, who maintains an office within the district and who will meaningfully participate in the case.

(C) Extent of Pro Hac Vice Admission. The Bankruptcy Court will admit an attorney pro hac vice only for the case in which the attorney filed the motion, except that in jointly administered chapter 11 cases, admission to the lead case constitutes admission to all other jointly administered cases. In all other cases in which an attorney seeks admission pro hac vice, the attorney must file a separate motion.

(3) Exemption from Admission Requirements for Government Attorneys. The requirements of L.B.R. 9010-1(a)(1) and (a)(2) do not apply to attorneys appearing on behalf of the United States or any State within the United States, or any officer or agency thereof.

~~(c)~~(b) Scope of Representation/Employment; Limited Unbundling~~:~~.

~~(1) Representation: Representation of a person by an attorney before this court constitutes an entry of appearance for all purposes, except:~~

(1) ~~An~~Attorney Representation of a Debtor. Representation of a debtor by an attorney before this Bankruptcy Court constitutes an entry of appearance for all purposes in the debtor's bankruptcy case, except as provided in L.B.R. 9010-1(b)(2). While the attorney remains attorney of record for the debtor in the bankruptcy case, the attorney has a duty to advise the debtor on all bankruptcy matters that arise during the course of the bankruptcy case and to represent the interests of the debtor in connection with the bankruptcy case that may affect the debtor, the debtor's property and, in the case of reorganization proceedings, property of the estate. An attorney may not circumvent this Rule by limiting services in his or her client engagement letter or in the attorney's disclosures filed in accordance with Fed. R. Bankr. P. 2016.

(2) Limited Unbundling.

(A) Adversary Proceedings. A debtor's attorney may expressly exclude adversary proceedings from the scope of the engagement; however, if engaged as ~~counsel for representation~~the attorney in an adversary proceeding, an attorney may not exclude services within that adversary proceeding.

~~(B) The Bankruptcy Court will permit an attorney for a debtor to file a Notice of Advisement (L.B. Form 9010-1.1) in response to a pending motion or other request for relief, if appropriate under L.B.R. 9010-1(c)(2).~~

~~(C) If an attorney seeks to withdraw from the appearance for cause, the attorney must comply with L.B.R. 9010-4. The Local Rules of Practice of the United States District Court for the District of Colorado, Section IV – Attorney Rules, D.C.Colo.LAttyR-5 will not apply to withdrawal from an appearance before the Bankruptcy Court.~~

(B) ~~Notice of Advisement: In the course of representing a debtor, the attorney who has entered an appearance has a duty to advise the debtor on all matters that arise during the course of the case that may affect the debtor, the debtor's property, or in the case of reorganization proceedings, the property of the estate.~~Ethical Limitations. Nothing in this ~~rule, however,~~Rule requires ~~debtor's~~debtor's attorney to file a paper or advance a position contrary to the ~~attorney's~~attorney's obligations under ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 9011. In those circumstances in which ~~debtor's~~debtor's attorney has fulfilled his or her obligations to advise the debtor, but has determined not to file a responsive paper or otherwise advance a position, either in agreement with the debtor or contrary to the ~~debtor's~~debtor's wishes~~,~~ but in compliance with Rule 9011, then ~~debtor's~~debtor's attorney ~~shall~~must file ~~L.B. Form 9010-1.1,~~ a Notice of Advisement ~~(i)~~in substantial conformity with L.B.F. 9010-1.1, as set forth in L.B.R. 9010-1(b)(6).

(C) Nonpayment of Fees. If the debtor fails to pay debtor's attorney for services rendered or to be rendered, the attorney may move to withdraw his or her appearance for the debtor in accordance with L.B.R. 9010-4, except:

(i) An attorney for the debtor may not withdraw prior to completion of the Basic Services, as defined in L.B.R. 9010-1(b)(4), except upon a showing of good cause.

(ii) While a motion to withdraw is pending, the attorney must continue to perform for the debtor all Necessary Services, as defined in L.B.R. 9010-1(b)(4). These services may not be limited to the Basic Services.

(3) Ghostwriting and BPP Services by Attorney Prohibited. An attorney may not assist any party with the preparation of a bankruptcy petition or any document required under Fed. R. Bankr. P. 1007 for filing in a bankruptcy case, without signing the document, except an attorney may provide pro bono services and advice under a nonprofit organization or Court-approved program to an individual anticipating the filing of a voluntary petition without signing any document, entering an appearance or continuing representation of the individual in the bankruptcy case after filing. An attorney may not serve as a bankruptcy petition preparer under § 110 of the Bankruptcy Code.

(4) Necessary Services. Necessary Services refers to all services that are necessary to represent the interests of the debtor in a particular case.

(5) Basic Services. Absent a Court order to the contrary, a debtor's attorney may not move to withdraw as attorney prior to completion of the following services (the "Basic Services"):

(A) meeting with the debtor, advising ~~that~~ the debtor, and analyzing the needs of the case;

(B) preparing a complete filing package as required by Fed. R. Bankruptcy Rule 1007 and any necessary amendments thereto;

(C) attending the debtor's § 341 meeting of creditors and any continued meetings of the same;

(D) advising and assisting the debtor with any trustee requests for turnover and any audit requests from the United States Trustee;

(E) advising the debtor regarding any reaffirmation agreements; and

(F) In a chapter 13 proceeding, a debtor's attorney may not exclude from his or her representation the Basic Services or any Necessary Services, whether such services are required before or after the confirmation of debtor's plan of reorganization, except as set forth in L.B.R. 9010-1(b)(2). However, nothing in this Rule prohibits an attorney from charging the debtor additional fees for services not contemplated by the original fee agreement between the debtor and debtor's attorney.

(6) Notice of Advisement. Filing a Notice of Advisement is only permitted when the attorney cannot advance a position due to ethical constraints or because the debtor has advised the attorney that the debtor does not wish to oppose the requested relief. When required by L.B.R. 9010-1(b)(2)(B), debtor's attorney must file a Notice of Advisement in substantial conformity with L.B.F. 9010-1.1 and serve it on the debtor and opposing counsel on or before three days prior to the objection deadline for the pending motion or request for relief. Such notice must advise the Court and interested parties that:

~~(D)~~(A) after consultation with the client, no further action will be taken by the attorney as to the specific matter; and~~/or (ii) granting opposing counsel permission to communicate directly with the client concerning the matter. The Notice of Advisement must be filed with the Court and served on the debtor and opposing counsel on or before three (3) business days of the objection deadline for the pending motion or request for relief. The Notice of Advisement does not apply to matters concerning reaffirmation agreements.~~

(B) whether opposing counsel may communicate directly with the debtor concerning the matter.

(7) Sanctions for Violations; Standing. After notice and hearing, the Court, acting *sua sponte* or on a motion filed by any interested party, may impose monetary or other sanctions against an attorney for violations of L.B.R. 9010-1(b), including an award of reasonable attorney fees. Repeated

violations may be grounds for prohibiting the attorney from practicing before the Bankruptcy Court in this district.

~~(d)~~(c) Disciplinary Matters~~:~~. The bankruptcy judges of this ~~court~~Court may refer issues relating to professional responsibility or other disciplinary matters to the Disciplinary Panel or Committee on Conduct of the United States District Court for the District of Colorado pursuant to the Local Rules of Practice of the United States District Court for the District of Colorado, ~~Section IV - Attorney Rules,~~ or any other grievance committee of any bar or court of which the attorney in question may be a member.

~~(e)~~(d) Representation of a Corporation, Partnership, Other Unincorporated Organization, or entity~~:~~. No corporation, partnership, other unincorporated organization, or entity may file a petition under Title 11 of the United States Code, or otherwise appear in cases or proceedings before this ~~court~~Court, unless it is represented by an attorney authorized to practice in this ~~court~~Court. Where a corporate debtor is involved, the attorney representing such an entity must sign the petition and pleadings.

~~(f)~~(e) Entry of Appearance~~:~~. Attorneys who enter appearances in a case will be placed on the Creditor Address Mailing Matrix for the case as a party in interest and will receive only copies of notices, orders, and other documents to which parties in interest may be entitled pursuant to ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 2002 or these ~~L.B.R~~Rules.

~~(g)~~(f) Effective Date~~:~~. This ~~rule shall apply~~Rule applies to all cases filed on or after July 1, 2014.

Commentary

~~[Source: L.B.R. 910]~~

~~See Section IV - Attorney Rules, D.C.COLO.LAttyR 1 et seq.~~

~~L.B.R. 9010-1(a) and (c) are intended to align the standards of professional conduct and practice in the Bankruptcy Court with those of the United States District Court for the District of Colorado. Except as provided by separate order or rule of the Bankruptcy Court, the Colorado Rules of Professional Conduct are adopted as standards of professional responsibility in the Bankruptcy Court to the extent adopted by the United States District Court for the District of Colorado. Accordingly, limited engagements or representation are prohibited in the Bankruptcy Court. Further, the filing of a Notice of Advisement under this rule does not absolve attorneys of their professional responsibilities.~~

L.B.R. 9010-1(b)(1), Scope of Representation: This subsection prohibits the debtor's attorney from unbundling legal services except as expressly permitted by subsection (b)(2). The Rule intends to allow debtor's attorney flexibility in setting his or her fee arrangements. For example, an attorney may charge a flat fee for the Basic Services (defined in subsection (b)(4)) and then charge hourly thereafter or an attorney may charge hourly for all services rendered. What this Rule prohibits, however, is charging a set fee for the Basic Services and then refusing to provide additional services as they become necessary in the case unless the debtor agrees to pay in advance for additional services, while still remaining attorney of record. If the debtor fails to pay for additional services, the attorney may move to withdraw, but he or she cannot remain attorney of record and refuse to provide services. Such practices (of remaining attorney of record but refusing to represent the debtor on some matters) have prevented the debtor from being able to speak directly with opposing counsel on a matter on which debtor's attorney is not representing the debtor, such as relief from stay motions on mortgages and car loans. Nor may an attorney agree to perform only pre-confirmation services in a chapter 13 case and then refuse to provide post-confirmation services. As long as the attorney remains attorney of record, the attorney must provide all Necessary Services until he or she has obtained a Court order allowing withdrawal. Nothing in this Rule, however,

is intended to require debtor's attorney to perform legal services for the debtor that are unconnected with the bankruptcy case. For example, this Rule does not require the attorney to advise the debtor in connection with a pending divorce proceeding or a real estate transaction, unless the debtor and the attorney have expressly contracted to expand the scope of the attorney's services to provide such additional services. In summary, while debtor's attorney remains attorney of record, he or she must file either a response or a Notice of Advisement in substantial conformity with L.B.F. 9010-1.1 for every motion or application filed that may impact the debtor, debtor's property, or, in a reorganization case, property of the estate. Debtor's attorney must also perform all Necessary Services.

L.B.R. 9010-1(b)(4), Necessary Services: Whether a service is necessary refers to whether the circumstances of the case give rise to the need for the services. For example, if a creditor files a motion for relief from the automatic stay, then the debtor is required to file a response if the debtor wishes to oppose the relief. In this instance, responding to the motion is a Necessary Service. On the other hand, if no such motion is filed, then the service of defending against a stay relief motion is not a Necessary Service in that particular case. In some cases, the debtor's home may be encumbered by judicial liens. If so, then debtor's attorney must advise the debtor and, if grounds exist, file a motion to avoid such liens. Not every case will require lien avoidance motions, but when such services are applicable to the particular case, then they are deemed Necessary Services. Similarly, if the debtor wishes to reaffirm a particular debt, then debtor's attorney must advise the debtor as to whether reaffirmation is in the debtor's best interest or would impose an undue hardship on the debtor and his or her dependents. Nothing in the definition of Necessary Services, however, should be construed to require an attorney to perform services for the debtor that would cause the attorney to violate his or her ethical obligations. If the attorney has ethical constraints, then the attorney should file a Notice of Advisement in substantial conformity with L.B.F. 9010-1.1 pursuant to subsection (b)(2)(B).

L.B.R. 9010-3. Supervised Law Students

~~(a) Generally:~~

~~(1)~~ With the approval of the ~~bankruptcy judge to whom~~Court, a ~~bankruptcy case or adversary proceeding has been assigned, an eligible~~ law student ~~who is engaged in a law school clinical program~~ may, under the supervision of an attorney admitted to practice in this ~~court~~Court, appear in that matter on behalf of any party who has consented in writing.

~~(2) Unless otherwise limited, such appearance authorizes the student to appear in a matter in court or other related proceedings when accompanied by the supervising attorney and to prepare and sign court papers which are also signed by the supervising attorney.~~

~~(b) Student Eligibility: To be eligible, the student~~ Supervised law students must~~:~~

~~(1) be enrolled in a law school accredited by the American Bar Association or, following graduation, be preparing to take a written bar examination or awaiting admission to the Bar following that examination;~~

~~(2) be enrolled in, or have successfully completed a law school clinical program;~~

~~(3) have completed two full semesters of law school, including a course in evidence;~~

~~(4) be certified by the law school dean (or the dean's designee) as qualified to provide the legal representation permitted by this rule. This certification may be withdrawn by the certifier at any time by mailing notice to the court;~~

~~(5) be introduced to the court by the supervising attorney;~~

~~(6) not receive compensation of any kind from the client. This shall not affect the ability or right of an attorney or law school clinical program to seek attorney fees which may include compensation for student services; and~~

~~(7) certify in writing that he/she is familiar~~ comply with ~~the FED. R. CIV. P., Federal Rules of Evidence, FED. R. BANKR. P. and this court's L.B.R. and website ().~~

~~(c) Supervising Attorney: The attorney supervising a student must:~~

~~(1) be a member in good standing of the bar of this court;~~

~~(2) supervise students in a clinical program of an eligible law school;~~

~~(3) maintain appropriate professional liability insurance for the supervising attorney and eligible students;~~

~~(4) introduce the student to the court;~~

~~(5) assume professional responsibility for the student's work;~~

~~(6) be present whenever the student appears;~~

~~(7) sign all pleadings; and~~

~~(8) file a written agreement to supervise a student in accordance with this L.B.R..~~

~~Admission~~Colorado Rule of Civil Procedure~~.~~ 226.5.

~~(9) The student, dean (or designee), supervising attorney and the client must complete the Law Student Appearance form, L.B. Form 9010-3.1, as found on the court's website which must be filed with the Clerk.~~

~~(10) The student's appearance is not authorized until approved by the bankruptcy judge, which approval may be withheld or withdrawn for any reason without notice or hearing.~~

~~Commentary~~

~~[Source: Section IV - Attorney Rules, D.C.COLO.LAttyR 14.]~~

L.B.R. 9010-4. Attorneys – Withdrawal

(a) Withdrawal of Appearance~~:~~. An attorney who has entered an appearance in a case or proceeding may seek to withdraw on timely motion showing good cause. Withdrawal is only effective upon ~~court~~Court order after proper service of the motion and notice. Motions filed on the eve of a hearing or deadline may not be deemed timely.

(1) Motion Requirements. A motion to withdraw must state the reasons for withdrawal unless the statement would violate the Colorado Rules of Professional Conduct. Good cause for withdrawal may include an assertion that the ~~actual scope of the representation required by the case or proceeding exceeds the anticipated scope originally contemplated by the attorney and his or her~~ client~~.~~ has failed to make timely payments for post-petition services, provided that the attorney has completed the Basic Services, defined in L.B.R. 9010-1(c)(5). In addition, the Motion must include attorney's statements or advice to the client and/or the Court that:

~~(b) Notice Requirements for Withdrawal: Any attorney who has entered an appearance in a case or proceeding requesting to withdraw as counsel for a client must make a reasonable effort to give actual notice to the client and file a motion pursuant to L.B.R. 9013-1 including the following:~~

(A) the attorney wishes to withdraw;

(B) the ~~court~~Court retains jurisdiction;

(C) the ~~client's~~client's last known address and telephone number;

(D) the client has the burden of keeping the ~~court~~Court informed of the mailing address where notices, pleadings or other ~~papers~~documents may be served;

(E) the client has the obligation either to prepare personally for any hearing or trial in a contested matter or adversary proceeding or to hire another attorney to prepare for any future hearing or trial;

(F) the client is responsible for complying with all ~~court~~Court orders and time limitations established by any applicable statute, rule, or L.B.R.

(G) if another attorney is not hired, the client has the obligation to decide whether to respond to any motion that may be filed in the case after the withdrawal of ~~counsel~~the attorney, to file a timely response, and to respond to any ~~court~~Court orders requiring the client to respond;

(H) if the client fails or refuses to meet these burdens, the client may suffer sanctions, including default or dismissal of the pending contested matter, adversary proceeding, or the ~~client's~~client's bankruptcy case in some circumstances;

(I) the dates of any pending matters and filing deadlines, including trials and hearings on contested matters or adversary proceedings, and a warning that such matters will not be delayed or affected by the withdrawal of ~~counsel~~the attorney;

(J) service of process may be made upon the client at the ~~client's~~client's address in the ~~court's~~Court's database; and

(K) where the withdrawing ~~attorney's~~attorney's client is a corporation, partnership, or other legal entity, that such entity cannot appear without ~~counsel~~an attorney admitted to practice before this ~~court~~Court, and absent prompt appearance of the substitute ~~counsel~~attorney, pleadings, motions, and other ~~papers~~documents may be stricken, and default judgment or other sanctions may be imposed against the entity including dismissal or conversion of its case if it is a debtor; and the client or other parties in interest have the right to object to the proposed withdrawal of the attorney by filing with the Court an objection to the attorney's motion to withdraw within seven (7) days after mailing of the notice.

~~(2) the~~ Notice Requirements. Any attorney seeking to withdraw as attorney of record must make a reasonable effort to give actual notice to the client ~~or other~~. In addition, the attorney must give notice in accordance with L.B.R. 9013-1 to the client, United States Trustee, trustee, and to all parties ~~in interest~~who have ~~the right~~entered an appearance in the case or proceeding. The notice must include notice of an opportunity to object ~~to the proposed withdrawal of counsel by filing with the Court~~and provide an objection ~~to the attorney's~~ deadline of no less than seven days from the date of filing of the motion ~~to withdraw within seven (7) days after mailing of the notice.~~

~~(3)~~(2) ~~Service: The~~. Both the motion ~~to withdraw~~ and notice must be filed with the ~~court and served on the client and all counsel of record.~~Court.

~~Commentary~~

~~[Source: (1) L.B.R. 910, (2) U.S. District Court Rule 83.3.D. (3) C.R.C.P. Rule 121, Section 1-1]~~

~~See L.B.R. 9010-1 and Section IV – Attorney Rules.~~

~~Withdrawal from a case or proceeding may be governed by engagement letter for unforeseen, extraordinary circumstances arising post-petition, but the Bankruptcy Court will not consider withdrawal as a means to circumvent the prohibition against limited representation in L.B.R. 9010-1.~~

(b) ~~L.B.R. 9011-4.~~ Substitution of Attorney. Any client who seeks to have a replacement attorney enter an appearance in a case or proceeding in which there is already an attorney of record for the client must make reasonable efforts to obtain a signature of an existing attorney in substantial conformity

with L.B.F. 9010-4.1. If the client is unable to obtain the signature of the existing attorney on L.B.F. 9010-4.1, then the replacement attorney must file a notice of substitution in substantial conformity with L.B.F. 9010-4.2. With either form, the form must be filed with the Court and notice given to the client, United States Trustee, trustee, and all parties who have entered an appearance in the case or proceeding. The substitution will become effective upon filing. The Clerk is authorized to terminate the involvement of the former attorney upon the filing of either form of substitution. Nothing in this Rule will relieve the replacement attorney of the obligation to comply with 11 U.S.C. § § 327, 526, and Fed. R. Bankr. R. 2016, to the extent applicable.

Commentary

L.B.R. 9010-4(b) has been added to address circumstances in which the client is unable to obtain the former attorney's signature for a substitution of attorney in circumstances such as the death or disbarment of the former attorney. Nevertheless, every attorney of record has an obligation to assist the client with substitution of attorney when the client requests substitution. If exigent circumstances require an immediate substitution of attorney, L.B.F. 9010-4.2 may be utilized, but exigent circumstances should not be construed so broadly as to cover new attorney's inattention to the Rule's requirements. Every reasonable effort should be made to obtain former attorney's signature on L.B.F. 9010-4.1.

L.B.R. 9011-4. Signatures and ~~E-filing~~Contact Information

~~Electronic Signature: Any petition, schedule, statement, declaration, claim, order, opinion, judgment, notice, minutes of proceeding or other document filed and authorized or subscribed under any method (digital, electronic, scanned) will be treated for all purposes (both civil and criminal, including penalties for perjury) in the same manner as though manually signed or subscribed.~~

~~Commentary~~

~~[Source: GPO 2001-8, 4th Amended and N.B. Cal. 9011-1]~~

~~See L.B.R. 5005-4, L.B.R. 9004-1, L.B.R. 9036-1, L.B.R. 5005-4App and additional ECF Procedures on the court's webpage at www.cob.uscourts.gov.~~

(a) Signatures. Any electronically filed document must include the electronic signature of the electronic filer.

(b) Retention of Original Signatures. Electronic filers may file all electronic documents with electronic signatures. Documents that require the signature of the debtor must be maintained by the electronic filer with the original signature(s) in paper form for two years following the expiration of all time periods for appeals after entry of a final order terminating the case or proceeding. Documents required to be retained by counsel with actual signatures of the debtor include all petitions, statements, schedules, lists, and amendments thereto.

(c) Contact Information. All attorneys and pro se parties must ensure that all filed documents include their name, address, telephone number, email address, and bar number, if applicable, below their signature line, and must promptly notify the Court of any changes to this information by filing a notice of change of contact information.

L.B.R. 9013-1. Motions Practice

(a) Seeking Relief~~:~~.

(1) Motion, Application or Other Request for Relief~~:~~.

(A) Documents to be Served~~:~~. When a statute, rule, or ~~court~~Court order requires service of a motion or other pleading, service must include copies of the motion, including exhibits, notice and any proposed order.

(B) Service of Documents~~:~~. Service of the documents in (a)(1)(A) must be made on those parties against whom relief is sought pursuant to ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 7004 and 9014, or as otherwise required by statute, rule or ~~court~~Court order.

(C) Proposed Orders~~:~~. All motions, applications, or other requests for relief must be accompanied by a proposed order on a separate ~~sheet of paper~~document.

(2) Notice~~:~~. When a statute, rule, or ~~court~~Court order requires ~~"~~"notice and a hearing~~"~~" or other similar phrase, the following applies:

(A) Form of Notice~~:~~. The movant must use the form of notice in substantial conformity with L.B. ~~Form~~F. 9013-1.1. The notice must contain a specific statement describing the requested relief or intended action to be taken, in sufficient detail to meaningfully inform the parties receiving the notice.

(B) Notice of Deadline to File an Objection and Request for Hearing~~:~~. The notice must state the specific date of the deadline to object and request a hearing, which must be a date on which the ~~court~~Court is scheduled to be open for business, and not just the number of days within which to object. ~~Unless otherwise ordered by the court, the objection deadline date must not be less than is prescribed in the Code, FED. R. BANKR. P. or these L.B.R. If no deadline is so provided, then the notice period must not be less than fourteen (14) days from the mailing of the notice.~~

(C) Notice to All~~:~~. For notice to all creditors and parties in interest ~~see~~, the movant must use, at a minimum, all of the addresses contained on the most current version of the Creditor Address Mailing Matrix.

(3) Service. In addition to providing notice of a motion, the movant must also serve the motion in the manner required by Fed. R. Bankr. P. 7004 whenever the interests of a particular creditor or other party in ~~L.B.R. 1007-2(c)App.~~interest is directly affected by the proposed relief.

(4) Certificate of Service~~:~~. When a statute, rule, or order requires a party to serve a document, the party must file a certificate of service specifically identifying who was served, when they were served, and the method of service. The certificate of service should be filed with the relevant document, but not later than three days after the filing of the document. Movant must use the form of certificate of service in substantial conformity with L.B.~~Form~~F. 9013-1.2.

(5) When Notice is Not Required. Whenever a movant requests relief that does not require a specific notice and deadline for objections:

(A) Presumptive Response Time. A party who wishes to oppose the requested relief must file a response or objection within 14 days from service of the motion.

(B) *Ex Parte* Relief. The Court may enter an order on an *ex parte* basis. Whenever the Court grants relief on an *ex parte* basis, any interested party may move for reconsideration within 14 days from the date of the order. The heightened standard of Fed. R. Bankr. P. Rule 9023 will not apply when the motion seeks reconsideration of an *ex parte* ruling. Service of a motion to reconsider must comply with L.B.R. 9023-1.

(b) Objections and Requests for Hearing~~:~~. Objections and requests for hearing must be filed with the ~~court~~Court and a copy thereof must be served upon ~~counsel~~attorney for the movant (or movant, if

unrepresented) on or before the objection deadline set forth in the notice. Objections and requests for hearing must clearly specify the grounds upon which they are based, including the citation of supporting legal authority, if any. ~~General~~The Court will not consider general objections ~~will not be considered~~. Failure of the responding party to timely file a written opposition may be deemed a waiver of any opposition to granting of the motion, the relief requested, or the action to be taken.

(c) Certificates Requesting Court Action~~:~~.

(1) ~~Movant's~~Movant's Certificate of Non-~~Contested~~contested Matter~~:~~. In the event that no objection is filed or a stipulation has been reached, the movant should, not earlier than ~~three (3) court~~two days following the objection deadline set forth in the notice, file ~~movant's~~a Certificate of Non-~~Contested~~contested Matter and Request for Entry of Order, L.B.~~ Form~~F. 9013-1.3. The Certificate of Non-~~Contested~~contested Matter must be verified by the movant, or ~~movant's counsel~~movant's attorney, and include all information and docket numbers required by L.B. ~~Form~~F. 9013-1.3.

(2) ~~Movant's~~Movant's Certificate of Contested Matter~~:~~. In the event that an objection is filed, the movant should, not earlier than ~~three (3) court~~two days following the date to object specified in the notice, file ~~movant's~~a Certificate of Contested Matter and Request for Hearing, L.B.~~ Form~~F. 9013-1.4. The Certificate of Contested Matter must be verified by movant or ~~movant's counsel~~movant's attorney and include all information and docket numbers required by L.B. ~~Form~~F. 9013-1.4. A copy of the Certificate of Contested Matter must be served on each respondent.

(3) ~~Respondent's~~Respondent's Certificate of Contested Matter~~:~~. Although the movant bears the burden of timely filing a Certificate of Contested Matter, the respondent may, not earlier than seven ~~(7)~~ days following the date to object specified in the notice, file ~~respondent's~~a Certificate of Contested Matter and Request for Hearing, L.B.~~ Form~~F. 9013-1.4. The Certificate of Contested Matter must include all information and docket numbers required by L.B.~~ Form~~F. 9013-1.4. A copy of the Certificate of Contested Matter must be served on the movant and any other respondent.

(d) Hearing~~:~~.

(1) Hearing~~:~~. Upon the filing of the Certificate of Contested Matter, the ~~court will~~Court may issue a notice of the date, time, and place of the hearing. The Clerk will serve the notice ~~will be served by the court to~~on the movant, respondent, and ~~respondents at their addresses or their attorneys' addresses of record (either by U.S. mail or electronically) and to such~~ other parties as the ~~court~~Court may ~~designate~~direct.

(2) Evidentiary or Non-Evidentiary Hearing~~:~~. The notice of hearing will advise the parties whether the hearing will be an evidentiary or non-evidentiary hearing.

(3) Expedited Hearing~~:~~. A motion for expedited hearing may be filed pursuant to ~~FED~~Fed. R. ~~BANKR~~Bankr. P. 9006(c) and L.B.R. 2081-1. Such request must be filed as a separate motion.

(e) Defective or Deficient Motion~~:~~. Failure to comply with the motion, notice and service requirements of the ~~FED~~Fed. R. ~~BANKR~~Bankr. P. or these ~~L.B.R.~~Rules may result in the denial of your motion, application or other request for relief.

(f) Non-Prosecuted Motions~~:~~. Any contested matter unresolved at the time the bankruptcy case is closed is moot and will be deemed denied for lack of prosecution. ~~Any such denial is without prejudice.~~

(g) Discovery disputes in contested matters, including disputes regarding Rule 2004 motions, are subject to the requirements of L.B.R. 7026-1(d).

Commentary

~~[Source: L.B.R. 202 and new]~~

~~This process is strictly a mechanism for providing an opportunity to be heard without requiring the court to unnecessarily calendar all motions and applications for a hearing. Parties must read this L.B.R. in conjunction with other applicable Code sections and FED. R. BANKR. P. to address the questions of (1) whom to serve; (2) with what; (3) in what manner; and (4) the amount of time afforded to file an objection. Parties are advised to be mindful of the distinction between notice (as may be required by FED. R. BANKR. P. 2002 and other notice provisions) and service (as may be required by FED. R. BANKR. P. 9014 incorporating FED. R. BANKR. P. 7004).~~

~~See also L.B.R. 1007-2 and 2002-1 for more information on the Creditor Address Mailing Matrix.~~

~~Unless otherwise provided by these L.B.R. or order of the court, this rule does not apply:~~

~~(1) to any pleadings, motions, or notices in adversary proceedings under Part VII of the FED. R. BANKR. P.;~~

~~(2) to hearings set under 11 U.S.C. § 1125;~~

~~(3) to hearings on confirmation of a plan pursuant to chapter 9, 11, 12, or 13 when no objections have been filed; and~~

~~(4) as otherwise provided by these L.B.R. or the FED. R. BANKR. P.~~

~~The summary of issues in the Certificate of Contested Matter is intended to identify the nature of the pending dispute(s) and aid the court in setting the hearing time.~~

~~Movant should refer to L.B.R. 7007-1 for motions filed in an adversary proceeding.~~

~~L.B.R. 9013-2. Certificate of Service – Motions~~

~~When a statute, rule or order requires a party to serve a pleading, the party must file a certificate of service specifically identifying who was served, when they were served and the method of service. The certificate of service should be filed with the pleading, but not later than three (3) court days of the filing of the pleading and must be in substantial conformity with L.B. Form 9013-1.2.~~

~~Commentary~~

~~[Source: New]~~

~~See L.B.R. 9001-1 for definition of certificate of service.~~

~~See also L.B.R. 2081-2 for information on service and motions to limit notice in chapter 11 cases.~~

~~L.B.R. 9014-1. Contested Matters~~

~~Unless otherwise provided for in the FED. R. BANKR. P., these L.B.R., or court order, the notice required under FED. R. BANKR. P. 9014 must be served with the motion pursuant to L.B.R. 9013-1 and in substantial conformity with L.B. Form 9013-1.1.~~

~~Commentary~~

~~[Source: L.B.R. 914 and New. L.B.R. 9014-1 added on 5/29/08]~~

2017 Addition of 9013-1(a)(3): There is a difference between giving "notice" of a motion and "serving" a party with a motion. Generally speaking, all creditors should receive a general notice so that they have an opportunity to provide input on the proposed action, but parties whose individual rights may be directly impacted by the motion must be "served" with a copy of the motion and notice. For example, if the trustee wants to sell the debtor's business "free and clear of any liens" (meaning the purchaser will acquire the property free of any pre-existing liens against the property), then the entire creditor body should be given notice of this proposed action, but in addition those creditors who hold liens of record against the property must be "served" with the motion. Giving notice may be as simple as sending the notice in the mail addressed to the post office box of the creditor. "Serving" a creditor whose lien rights may be impacted by the motion may require sending the notice, the motion, and all of its attachments to the creditor's registered agent or a named officer of the company. Bankruptcy Rule 7004 governs the manner in which a party must be served. This rule refers to service of a complaint but it also applies to motions impacting individual party rights. The manner of service required under this rule differs depending on the identity of the party. Governmental agencies must be served differently than a private company. An "insured depository institution," which includes many banks, requires a completely different form of service. The purpose behind these technical rules governing service is to ensure that the motion and notice will be placed into the hands of decision makers more quickly than merely mailing it to a post office box.

L.B.R. 9019-2. Alternative Dispute Resolution

~~(a)~~ Assignment of Matters to Mediation~~:~~. The ~~court~~Court may refer a matter to mediation *sua sponte*, upon written stipulation ~~by the parties to the matter, upon motion by a party to the matter~~, or upon motion by a party or the United States Trustee. ~~Participation by the parties in mediation is ordinarily voluntary, however, the court in its discretion may order any party or party in interest to participate.~~

~~(b)~~(a) ~~Matters Subject to Mediation:~~ Unless otherwise ordered by the ~~court, all controversies arising in cases under title 11, U.S.C., adversary proceedings, contested matters and any other disputes in bankruptcy cases are eligible for referral to mediation~~Court, participation in mediation is voluntary.

~~(c)~~(b) Deadlines~~:~~. Unless otherwise ordered by the ~~court~~Court, the referral of a matter to mediation does not operate to stay, postpone, or extend any deadlines ~~for taking any action required or allowed by law, court order or applicable rule~~.

~~(d) Mediation/Administration: Upon entry of a court order referring a matter to mediation, the parties must abide by all guidelines and requirements of the Faculty of Federal Advocates' Bankruptcy Mediation Program (the "Program"), if applicable. No later than fourteen (14) days after entry of the order referring the matter to mediation, the parties designated in the order must contact the Program Administrator to commence the mediation. Unless a party qualifies for pro bono mediation services under the Program, or unless the court orders otherwise, all mediator's fees and incidental costs of the mediation are to be paid by the parties pro rata (exclusive of the parties' respective attorneys' fees and costs), except as otherwise agreed by the parties or ordered by the court.~~

~~(e) Confidentiality; Nondisclosure:~~

~~(1) Protection of Information: Unless otherwise agreed by the parties or ordered by the court, all parties to the mediation and the mediator are prohibited from disclosing or producing in any manner, outside the context of the mediation, any oral or written information related to the mediation. Federal Rule of Evidence 408 governing compromises and offers to compromise, and any other applicable law relating to the privileged and confidential nature of settlement discussions, apply to the mediation. Notwithstanding the confidentiality of the mediation,~~

~~information otherwise discoverable or admissible as evidence does not become exempt from discovery or inadmissible merely because it may be disclosed in and related to the mediation.~~

~~(2) Discovery from Mediator: The mediator shall not be compelled by the court, the parties or any person or entity to disclose or produce any written or oral information received or compiled while serving as a mediator in a matter. The mediator shall not testify or be compelled to testify concerning the mediation in any proceeding of any nature. Any party or entity demanding or seeking to compel the mediator to disclose or testify to matters subject to this L.B.R. are liable to the mediator for the mediator's reasonable costs and attorneys' fees in resisting such demands.~~

~~(f)~~(c) Report of Mediation~~:~~. As soon as practicable after the conclusion of the mediation, the mediator must file with the ~~court~~Court a Report of Mediation, advising only~~:~~.

(1) the date(s) that the parties conducted the mediation;

(2) the parties in attendance at the mediation; and

(3) whether the parties resolved the matter.

~~No other information must be disclosed in the Report of Mediation.~~

~~(g) Termination of Mediation: The mediation will terminate upon the earlier of:~~

~~(1) the filing of the mediator's Report of Mediation; or~~

~~(2) entry of a court order withdrawing the referral of the matter to mediation.~~

~~(h) Noncompliance; Sanctions: A party's failure to comply with the provisions of this L.B.R. may result in the imposition of appropriate sanctions by the court against such party, or counsel for such party, or both.~~

~~Commentary~~

~~[Source: L.B.R. 919 and Faculty of Federal Advocates]~~

~~Litigation in bankruptcy cases frequently imposes economic burdens on parties and may delay the resolution of disputes. Alternative dispute resolution, including mediation, often reduces the costs and associated burdens of litigating disputed issues in bankruptcy cases and facilitates settlements. The purpose of this L.B.R. is to allow parties a means of submitting disputed issues in bankruptcy cases, including contested matters and adversary proceedings, to mediation. Mediation as contemplated by this L.B.R. is not administered by the court, but the parties and mediators remain subject to court supervision and all applicable rules and court orders in the case. Mediation is just one form of alternative dispute resolution and the decision to engage in, or refrain from mediation does not preclude any other form of alternative dispute resolution to which the parties in a case may agree.~~

~~L.B.R. 9023-1. Service of Motion to Alter or Amend Judgment~~

~~Service of a motion to alter or amend a judgment filed pursuant to FED. R. BANKR. P. 9023 must be on all parties to whom the judgment and final order was mailed pursuant to FED. R. BANKR. P. 9022(a). Responses are due within fourteen (14) days of service of the motion.~~

~~Commentary~~

~~[Source: L.B.R. 923]~~

~~L.B.R. 9024-1. Service of Motion for Relief from Judgment or Order~~

~~Service of a motion for relief from judgment or order filed pursuant to FED. R. BANKR. P. 9024 must be on all parties to whom the judgment and final order was mailed pursuant to FED. R. BANKR. P. 9022(a). Responses are due within fourteen (14) days of service of the motion.~~

~~Commentary~~

~~[Source: New]~~

L.B.R. 9025-1. Bonds

(a) A party, the spouse of a party, or an attorney in a case will not be accepted as a personal surety on any bond filed in that case.

(b) ~~Where~~If the surety on a bond is ~~a surety company~~an approved surety by the ~~United States~~U.S. Department of Treasury, a power of attorney showing the authority of the agent signing the bond must be ~~on file~~filed with the ~~Clerk~~Court.

~~Commentary~~

~~[Source: L.B.R. 925]~~

~~See the website for the United States Department of Treasury at www.ustreas.gov for a list of approved companies.~~

~~L.B.R. 9027-1. Service of Notice of Removal~~

~~(a) A notice of removal must be filed with the bankruptcy court.~~

~~(b) A notice of removal served pursuant to FED. R. BANKR. P. 9027(b) must be served on all parties to the removed action and a certificate of service with all of the names and addresses of the parties to the removed action must be attached to the notice of removal filed with the court.~~

~~Commentary~~

~~D.C.COLO.LCivR 84.1 provides for the automatic referral of all proceedings arising under Title 11, United States Code or arising in or related to cases under Title 11.~~

~~L.B.R. 9029-1. Local Bankruptcy Rules and Procedures~~

~~Modification of Rules and Procedures: Any of these L.B.R., Standing Orders or General Procedure Orders may, for good and compelling cause shown, be subject to such modification as may be necessary to meet a bona fide emergency, to avoid irreparable injury or harm, or as may otherwise be necessary to do substantial justice and promote appropriate case administration.~~

~~Commentary~~

~~[Source: L.B.R. 929]~~

L.B.R. 9036-1. Notice by Electronic Transmission

~~(a) Registration Constitutes Waiver of Service/Notice by Traditional Methods From the Court: The request for and receipt of an electronic filing password from the court constitutes a request for electronic service pursuant to FED. R. BANKR. P. 9036 of all notices, orders, decrees and judgments issued by the court, and except as otherwise provided in the ECF Administrative Procedures, a waiver of the right to receive notice and service from the court by mail. Electronic filers will receive electronic notification of notices, orders, decrees and judgments in cases where they enter their appearance. Registration does not constitute waiver of the right to personal service or service by first class mail from other parties in the case. Registration does not constitute consent to electronic service/notice from other parties in the case.~~

~~(b) Case Specific Consent to Electronic Service/Notice From Other Parties: An electronic filer may file a specific waiver of the right to personal service or first class mail and consent to electronic service/notice from other parties in each case pursuant to FED. R. BANK. P. 9036. Whenever service is required to be made on a person who has filed a case specific waiver/consent, service and notice must be accomplished by electronic mail to the e-mail address on file with the court. Any notice sent via e-mail from a party other than the court must contain "Notice of Pleadings" in the subject or "re" line. The certificate of service must contain the email addresses and name(s) of the person(s) to whom electronic service was affected.~~

~~**Commentary**~~

~~[Source: GPO 2001-8, attachment II.C.]~~

~~See L.B.R. 5005-4, L.B.R. 9011-4, L.B.R. 5005-4App and additional ECF Procedures on the court's webpage at www.cob.uscourts.gov.~~

~~Those parties who are registered electronic filers are not entitled to and will not receive hard copies from the court.~~

~~The electronic case filing system automatically generates a "Notice of Electronic Filing" at the time a document is filed with the system. The notice indicates the time of filing, the name of the party and electronic filer filing the document, the type of document, and the text of the docket entry. It also contains an electronic link (hyperlink) to the filed document, allowing anyone receiving the notice by e-mail to retrieve the document automatically. The system automatically sends this notice to all electronic filers participating in the case.~~

~~See FED. R. CIV. P. 5(b)(2)(E) and Fed.R.Bankr.P. 7005 for electronic service in adversary proceedings.~~

(a) Electronic Service. Registration in CM/ECF constitutes consent to electronic service of all documents. When a document is filed in CM/ECF, it is served electronically. The time to respond or reply will be calculated from the date of electronic service, regardless of whether other means of service are used. The Notice of Electronic Filing ("NEF") generated by CM/ECF reflects the parties served.

(b) NEF Does Not Constitute Service. Electronic transmission of a NEF does not constitute service or notice of the following documents that must be served non-electronically:

(1) Service of a sealed document;

(2) Service of a complaint and summons in an adversary proceeding under Fed. R. Bankr. P. 7004;
(3) Service of a subpoena issued under Fed. R. Bankr. P. 9016;
(4) Notice of the meeting of creditors required under Fed. R. Bankr. P. 2002(a)(1);
(5) Where other means of service are otherwise required under any applicable statute, rule, or Court order.

(c) Service on non-CM/ECF Users. A person or entity that is entitled to service of a document, but is not an electronic filer or one who has consented to electronic service, must be served as otherwise provided by the Fed. R. Civ. P., Fed. R. Bankr. P., and these Rules.

L.B.R. 9037-1. Redaction for Privacy

Redaction of Personal Identifiers. It is the responsibility of any party filing documents, including proofs of claim, with the Court, not the Clerk, to redact Social Security numbers and other personal identifiers such as dates of birth, financial account numbers, and names of minor children. This includes copies of employee payment advices, tax returns, or other financial documents that may be filed or attached as an exhibit to documents filed with the Court. In the event a petition or other document is tendered for filing that bears the entire Social Security number of the debtor, the Clerk will file said petition or document as tendered without taking any action to redact the first five digits of the Social Security number.

L.B.R. 9070-1. Witnesses and Exhibits

(a) Witnesses and Exhibits~~:~~. Unless otherwise ordered by the Court or as set forth in ~~a notice~~the Federal Rules of ~~hearing or trial or otherwise ordered by the court~~Bankruptcy Procedure and these Rules, the following requirements regarding witnesses and exhibits apply in all adversary proceeding trials and evidentiary hearings ~~and adversary proceedings~~for contested matters. Any list of witnesses and exhibits must be in substantial conformity with L.B.F. 9070-1.1.
~~(1) Filing Requirement:~~
(b) ~~List~~Default Deadline to File Lists of Witnesses and Exhibits~~:~~. Parties intending to introduce evidence at any contested hearing must file a list of witnesses and exhibits no later than three ~~(3) court~~ days prior to the hearing. ~~Any list of witnesses and exhibits must be in substantial conformity with L.B. Form 9070-1.1.~~
(c) ~~Exhibits:~~Marking of Exhibits. Each exhibit must be individually marked for identification prior to the hearing. Plaintiff/movant/claimant must mark exhibits numerically, and defendant/respondent/objector must mark exhibits alphabetically. Multipage exhibits must be individually paginated/numerated for ease of reference.
~~(c)~~(d) Exchanging Exhibits. Copies of ~~the~~marked exhibits must be exchanged with opposing ~~counsel~~attorney or party, but not filed with the ~~court~~Court, no later than three ~~(3) court~~ days prior to the hearing. Parties may exchange marked exhibits in any manner appropriate under the circumstances of the case, including exchanging copies of marked exhibits in paper or by electronic means.
~~(d)~~(e) Hearing Requirements~~:~~.
~~(A) List of Witnesses and Exhibits: Parties must provide three (3) copies of the witness and exhibit lists to the Law Clerk or Courtroom Deputy and one (1) copy to each opposing counsel or party.~~

~~(2)~~(1) Paper Exhibits and Exhibit Notebooks~~: Parties~~. If paper exhibits are to be used, parties must provide ~~the~~an original plus two ~~(2)~~ copies of the exhibits intended to be offered at the hearing to the Law Clerk or Courtroom Deputy and one ~~(1)~~ copy to each opposing ~~counsel~~attorney or party~~.~~ before the hearing begins. Parties granted permission to appear by telephone must file such documents. Original exhibits are to be used by the witnesses. ~~Each exhibit must be individually marked for identification prior to the trial or hearing. Multi-page exhibits must be individually paginated/numerated for ease of reference.~~ Exhibits should be placed in a binder and indexed substantially in the form of L.B. ~~Form~~F. 9070-1.1.

~~(A) Marking of Exhibits: Exhibits must be marked for identification as follows:~~

~~(i) Plaintiff, Movant or Claimant: numbers (1, 2, 3…)~~

~~(ii) Defendant, Respondent or Objector: letters (A, B, C…Y, Z, AA, BB, … YY, ZZ, AAA, etc.)~~

~~(iii) In the event there are multiple plaintiffs, movants, defendants, or objectors, designate exhibits by party name as well as by numbers or letters.~~

(2) Electronic Exhibits. All courtrooms are equipped for electronic evidence presentation, and any party may elect to utilize the available presentation systems for presenting evidence. Parties intending to use technology in the courtroom must comply with current courtroom technology procedures. If electronic exhibits are to be used, parties must provide two USB drives with electronic copies of all marked exhibits intended to be offered at the hearing to the Court before the scheduled court proceeding begins. Parties granted permission to appear by telephone must file such documents.

(3) Post-Hearing Requirements~~:~~. Upon the conclusion of ~~a~~the trial or hearing, ~~counsel for~~ the attorneys or parties must retain custody of their respective original exhibits and deposition transcripts until ~~such time as~~ all need for the exhibits and deposition transcripts has terminated and the time for appeal has expired, or all appellate proceedings have been terminated, plus 60 days. In the event an appeal is filed, ~~counsel~~the attorneys or parties must provide their exhibits to the appellate court pursuant to the appellate ~~court's~~court's direction.

Commentary

~~[Source: New; GPO 2012-2]~~

See also L.B.R. 2081-3 and 4001-1 providing different procedures for the exchange of witness and exhibit lists in certain circumstances.