

**COURT PROCEDURES**

**Eduardo V. Rodriguez  
UNITED STATES BANKRUPTCY JUDGE**

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### **I. Applicable Rules**

Practice in this Court will be governed by the Federal Rules of Bankruptcy Procedure, the Local Rules of the United States Bankruptcy Court for the Southern District of Texas (“*Local Rule(s)*”), and these Court Procedures. All parties appearing before the Court are charged with responsibility for compliance with applicable rules.

### **II. Interaction with Judge and Courtroom Staff**

#### **1. Contact with Court and Court Personnel**

##### **(a) Ex Parte Contact**

Pursuant to Fed. R. Bankr. P. 9003, *ex parte* contact with Judge Rodriguez is strictly prohibited. Judge Rodriguez does not accept communication concerning a case or court procedure by mail, e-mail, telephone or fax. The Court will not conduct “chamber conferences” under any circumstances.

##### **(b) Law Clerks**

Absent exceptional circumstances, calls from counsel to the Law Clerks will be re-directed to Judge Rodriguez’s Case Manager Jeannie Chavez. At Judge Rodriguez’s discretion, his Law Clerks may contact counsel as the need arises. If such contact is made, please refrain from engaging in discussions regarding legal matters which are not the subject of the call.

##### **(c) Communications with the Court**

Communications with the Court should be in the form of pleadings filed with the Clerk of the Court. Attorneys and parties who are not represented by counsel may contact the Court’s case manager: Jeannie Chavez. If Jeannie Chavez is not available you may contact the courtroom deputy. Do not request action on any case matter or attempt to inform the court of case issues by letter. Any information or requests for relief regarding cases must be set forth in a pleading filed and served as required in the Federal Rules of Bankruptcy Procedure, Federal Rules of Civil Procedure, Local Rules, and Administrative Procedures for Electronic Filing. When Judge Rodriguez’s staff receives a communication regarding a case by letter addressed to Judge Rodriguez, the communication is returned to the sender, with a letter advising the sender that a pleading must be filed as set forth above.

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### **(d) Copies**

Courtesy copies and other communications by mail should be directed to the case manager, Jeannie Chavez.

### **(e) CM/ECF**

The case manager is not able to answer CM/ECF filing questions. Please contact the Helpdesk at 866.358.6201 for assistance.

### **(f) Transcripts**

Transcripts may be requested from the Electronic Recording Office at 713.250.5404 or ordered through CM/ECF. Further information is available on the Southern District of Texas' website at <http://www.txs.uscourts.gov/page/OrderingTranscripts>.

## **2. Prohibition of Gifts to Judge Rodriguez and Staff**

Judge Rodriguez will not accept any gift or any item more costly than a simple greeting card from any professional who appears in his court or any employee of the federal government. Professionals who appear in Judge Rodriguez's court also may not give gifts to Judge Rodriguez's chambers or chambers' staff. All affected persons should therefore refrain from making any gift contrary to this policy.

## **III. Courtroom Rules**

### **1. No Food or Drink in Courtroom**

No food or drink (including bottled water) is permitted in the courtroom (except for court personnel).

### **2. Courtroom Attire**

Courtroom attire should be restrained and appropriate to the dignity of the United States Bankruptcy Court. For all lawyers, experts, and witnesses appearing in the capacity of an officer or other business representative, this means professional attire. Professional attire for men is a suit or blazer/jacket and tie. Professional attire for women is a suit, blazer/jacket, conservative dress or comparable professional attire.

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### **3. Electronic Devices**

Cellular Phones are not permitted in Judge Rodriguez's court room. Laptops and electronic tablets are allowed with the advance permission of Judge Rodriguez. If you require the use of a laptop or electronic tablet, please contact case manager Jeannie Chavez at least 3 days prior to your scheduled hearing.

## **IV. Court Calendar and Scheduling**

### **1. Obtaining Settings for Hearings**

Hearings will be set either by self-calendaring or at the direction of the Court. Unless otherwise specifically ordered, all hearings are evidentiary.

#### **(a) Self-Calendaring**

Hearings may be set by self-calendaring in the electronic filing system (CM/ECF). When a motion is filed in the Court's electronic filing system, the system will prompt the selection of a date for a hearing. Only a date that is listed as an available date on the Court's website should be selected. You must select a date that is at least twenty five (25) days from the date that you file a motion. If you do not need a hearing, this step may be skipped. Routinely, only opposed motions need to be set for a hearing. All motions for relief from stay (§362), however, must be set for a hearing. Notice of the date of a hearing must be provided by the movant and a certificate of service must be filed. If a motion is self-calendared, notice of the hearing date must be provided when the motion is served and a certificate of service must be included with the motion. If the date is set by the Court, notice must be given within two (2) business days and a certificate of service must be filed.

#### **(b) Settings by the Court**

If a pleading is filed for which self-calendaring is not available or if an eligible motion is not self-calendared, the Court will review the pleading and either rule on the motion or direct the clerk to set a hearing. Objections should indicate whether a hearing is requested.

The Court will typically set a Scheduling Conference in all new Adversary Proceedings on or around 90 days from the filing of the Adversary Proceeding.

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### **2. Continuances**

#### **(a) In General**

A continuance may only be requested by motion. Additionally the motion must (i) be filed at least three (3) business days prior to the hearing date or state the nature of the emergency making it impossible to have filed it by that date; (ii) state good cause for the continuance; (iii) contain a certificate of conference reflecting efforts to confer with affected parties regarding the relief requested or the reasons why conferring was not possible or practical; (iv) state with as much detail as possible the length of the continuance requested or the date or range of dates requested for the continued hearing; (v) be served on interested parties including those parties known or expected to participate in the hearing, who must be served electronically, by facsimile or by some other method reasonably calculated to provide immediate notice and the certificate of service demonstrating notice shall be filed with the motion; and (vi) an agreement of the parties by itself is not good cause for a continuance. The Court may deny a continuance even if all parties have agreed to a continuance. Until a motion for continuance is granted, all parties should assume that no continuance will occur.

In addition, to obtain a continuance of a hearing before Judge Rodriguez:

(i) a proposed form of order granting the continuance must be uploaded when the motion is filed; (ii) the movant must email the Courtroom Deputy when the motion is filed to notify her of the filing; (iii) when notified by the Courtroom Deputy that the motion is granted, the movant must immediately provide notice of the continuance to all interested parties; and (iv) within seven (7) days, file a certificate of service reflecting that notice.

#### **(b) Motions to Reset Section 341 Meetings**

All requests to continue a Section 341 meeting should be submitted to the Trustee's office prior to seeking a continuation of the meeting.

### **3. Extensions of Deadlines**

If the parties wish to modify deadlines that do not impact the Court's calendar, such as extensions of discovery deadlines or the date for filing an answer in an adversary proceeding prior to an initial scheduling conference, the parties may agree among themselves to such extensions without the necessity of a court order so long as the agreement is embodied in a writing (such as a stipulation) filed with the court. All other extensions, such as a party's deadline to respond to a pending motion, or a request to change a hearing date, require a written motion and order from the Court.

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## **4. Matters Initiated by the Court**

The Court routinely enters orders to show cause when it appears that documents ordered to be filed have not been filed, counsel has failed to appear for hearings, parties have failed to prosecute contested matters or adversary proceedings, or Trustees have failed to file final reports. In addition, the Court may raise issues in a case *sua sponte* by order to show cause.

## **V. Courtroom Appearances**

### **1. Attendance at Hearings**

Unless otherwise set forth in the Local Rules, these procedures, or an order of this Court, a person with authority to bind the client must attend each hearing. For parties represented by an attorney, this will generally be an attorney with full authority to act on the matter before the Court. An attorney appearing at a hearing shall be familiar with the case and be in charge of the case for that appearance.

### **2. Telephonic Participation**

i) With the exception of chapter 13 panels, counsel are permitted to participate in hearings by telephone without prior permission of the Court. Counsel who anticipate appearing by telephone should contact the Court's case manager at least twenty-four (24) hours prior to the scheduled hearing to inform the Court that a telephonic appearance is anticipated.

(ii) Telephone appearances are only for limited participation in the matter being heard. Witnesses may not be examined nor evidence offered by telephone, except in emergency situations in which the Court determines cause exists to waive the prohibition.

(iii) Parties participating by phone must assure that no background noise is transmitted. The court does not permit the use of pay phones or cellular phones when participating in any court proceeding telephonically. Speakerphones should not be used when addressing the court and speakerphones should be muted when not addressing the court. Each time a party speaks, she or she must identify himself or herself. Persons choosing to attend hearings by dial-in do so at their own risk of a technological failure.

(iv) The following dial-in instructions should be used:

The dial-in number is 712-432-3100. You will be responsible for your own long-distance charges. This dial-in number is utilized whether Judge Rodriguez is sitting in McAllen,

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Brownsville, or Laredo. You will be asked to key in the conference room number. Judge Rodriguez's conference room number is 999276.

Once entered, you will be connected live to the courtroom. Once you are connected, you will be able to hear persons speaking in the courtroom and other persons on the call addressing the Court. You will be able to address the Court directly. The Court will hear all sound on your line. Please mute your line when you are not speaking so that any background noise does not distract from the proceedings.

If there are multiple parties on the call, the Court may activate the "hand raise" feature. The Court will announce that this feature has been activated. If the hand raise feature has been activated, you will not be able to address the Court until the Court addresses you or your request to speak and the Court grants the request. If you wish to address the Court, you must press 5\*. Within five (5) seconds, the Court will receive a signal that you wish to speak. When the Court calls on you, you will hear a recorded message that you have been recognized. When you are done, the Court will again mute your call.

### **3. Docket Announcements**

Seven (7) calendar days prior to any scheduled hearing on miscellaneous docket hearing days, parties are instructed to email the Court's case manager Jeannie Chavez and announce how much of the court's time will be required to hear the scheduled matter.

### **4. Courtroom Technology (*Reserved*)**

## **VI. Filings, Motions, and CM-ECF**

### **1. Pending Motions**

If the Court has not ruled on a pending motion within forty-five (45) days, parties should contact the case manager to inquire about the status of the motion.

### **2. Emergency Motions**

Emergency Motions should be filed using the CM/ECF event code for an "emergency motion." Additionally, please identify the date by which emergency relief is needed just below the language required by Local Bankruptcy Rule 9013(b). Finally, please contact the case manager if you file a motion requesting emergency consideration.

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### **3. Expedited Motions**

Motions that are not emergency but which require consideration prior to the standard twenty three (23) day review may be styled as “Expedited Motion for \_\_\_\_.” Expedited motions should be filed using the CM/ECF event code for the requested relief. When filing an expedited motion, please identify the date by which the expedited relief is needed just below the language required by Local Bankruptcy Rule 9013(b) and include an explanation in the body of the motion setting forth why expedited consideration is required and the harm that will be suffered if expedited relief is not obtained.

### **4. Amended Documents**

The Southern District of Texas Bankruptcy Local Rule 1009-1 requires amended petitions and their supporting documents to contain “marks” denoting the content that has changed. Judge Rodriguez requires that this “mark” be in the form of redline on not only petitions and their supporting documents, but as to all amended documents. Failure to adhere to this procedure may be cause for the Court to strike the amended document(s).

### **5. Briefs and Memoranda of Law**

#### **(a) Length Limitations**

Briefs and memoranda shall not exceed twenty (20) pages, except upon leave of court for good cause shown. When such leave is granted, a table of contents containing a summary of all points raised shall be included with the brief or memorandum. Exhibits, including discovery documents, shall be limited to those to which reference is made in the brief or memorandum.

#### **(b) Unreported Opinions**

Citation of unpublished decisions in briefs and oral arguments in this court is disfavored, except for the purpose of establishing res judicata, estoppel, or the law of the case. If counsel believes that an unpublished decision has precedential value in relation to a material issue and if there is no published decision that would serve as well, such unpublished decision may be cited if counsel serves a copy on all other parties and the court. Such submission shall be an exception to the twenty (20) page limitation in (a) above. Failure to follow this rule may be grounds for striking the filing.

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### 6. Proposed Orders

Proposed forms of orders must be submitted along with all motions and with all oppositions to motions. Please consult the revised Local Rules in the Southern District of Texas regarding treatment of proposed agreed orders. Parties may only request that a signed order be amended through filing a motion to amend. Merely submitting a proposed amended order is insufficient. The motion to amend should be filed with the proposed amended order. These will then be submitted to chambers following the twenty-five (25) day submission period. **Submission of an Agreed Order utilizing a form from the court's website may not be altered without first obtaining leave of court.**

### 7. Settlements

(i) Settlements are always encouraged. If a case is settled, the parties should promptly contact the Court's case manager. The proposed settlement should be presented in the form of a written order at the scheduled hearing. If the proposed settlement has been approved in writing by all parties, then only one counsel is required to attend the hearing, though all interested parties are invited to attend. However if one or more of the parties are acting *pro se*, then all parties must attend the scheduled hearing/trial even if a written settlement has been filed.

(ii) If the Court does not approve of the proposed settlement, the hearing will be reset for a subsequent date. However, if a settlement is submitted and signed by the Court prior to the hearing, the hearing most likely will be canceled. Only when an order is signed and docketed should it be assumed that the hearing will be canceled.

(iii) If a settlement is in an adversary proceeding and requires approval pursuant to Fed. R. Bankr. P. 9019, the 9019 motion should be filed in the main case only. A proposed form of order in the main case and a proposed form of judgment or order in the adversary proceeding should be attached to the 9019 motion.

## VII. Discovery and Exhibits

### 1. Discovery

#### (a) Cooperation and Consultation

Discovery proceedings shall be promptly commenced. All counsel and any party appearing *pro se* are required to cooperate and consult with each other in a courteous manner in all matters related to discovery, shall freely exchange discoverable information, and documents

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upon informal written request, whether or not a pretrial conference has been scheduled or held in a proceeding. No objections, motions, applications or requests related to discovery disputes shall be filed pursuant to the provisions of Fed. R. Bankr. P. 7026 through 7037 unless extrajudicial means for the resolution of the discovery dispute have been exhausted. Without other compelling factors, discovery should not be delayed as a result of a dispute involving the payment or allocation of the costs of discovery.

### **(b) Discovery Disputes**

To the extent that extrajudicial means have not resolved a discovery dispute, a party seeking discovery or a protective order may proceed with the filing of a motion to compel discovery or a motion for a protective order. However, if a dispute arises during an oral deposition, a party may contact the Court's case manager during the deposition and request a telephonic hearing with the Court. Nevertheless, such a motion shall be accompanied by a supporting memorandum and an affidavit of counsel setting forth what extrajudicial means have been attempted to resolve the discovery dispute, including a statement that the movant has met in person or by telephone with opposing counsel, or has offered in writing to meet in person or by telephone with opposing counsel on one or more specific dates and the offer has been refused, or that the movant has not received a written response to the offer. Only those specific portions of the discovery requests, or materials reasonably necessary to a resolution of the motion, shall be included with the motion. Opposition to any motion filed pursuant to this rule shall be filed within seven (7) days of the filing of the motion for protective order or motion to compel discovery. Any reply memorandum shall be filed within seven (7) days of the filing of any memorandum in opposition. The court may enter an appropriate award of expenses or impose appropriate sanctions in connection with the determination of such motions on the motion of a party or on its own motion. The Court intends to enforce Fed. R. Civ. P. 37, as made applicable to proceedings in this Court by Fed. R. Bankr. P. 7037.

## **2. Exhibits**

All hard copy exhibits must include a copy of the party's exhibit and witness list, be clearly labeled, tabbed, Bates stamped, and bound in a method, such as a 3-ring binder, that allows the exhibit book to be opened and lay flat on an even surface. Parties are to upload the Exhibit Cover Page through the Court's CM/ECF system in accordance with Table 1, as found and as amended in BLR 9013-2. In addition to copies for opposing parties, counsel should bring three (3) hard copies of the exhibits to the scheduled hearing or trial—two for the Court and one witness copy. All exhibits must also be presented to the courtroom Deputy in PDF format on a compact disk (CD) at the time of the scheduled hearing. Electronic Exhibits must be electronically bookmarked, labeled, Bates stamped, and in order by Exhibit number. PDF files

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must be configured so that the Navigation Tab for the Initial View is set to “Bookmarks Panel and Page.” As far as is practicable, the parties should make their PDF documents text searchable. In addition to the individual electronic exhibits, parties must also consolidate all of the individual exhibits into a separate single PDF file, retaining their respective Bates stamps and electronic bookmarks to each exhibit, and include the consolidated file on the C.D. Additionally, the Court intends to strictly enforce Bankruptcy Local Rule 9013-2. Unless specifically ordered, all hearings are evidentiary.

### **3. Courtesy Copies**

The Court does not need to receive copies of documents that have been electronically filed with the Clerk of the Court via CM/ECF.

## **VIII. The Automatic Stay**

### **1. Motions for Relief from Stay**

Local Rule 4001-1 requires that a movant confer with opposing counsel or parties, and obtain a hearing date from Judge Rodriguez’s web page, before filing a motion from relief from stay. Please check the dates daily. They are subject to change.

The contents required of a motion for relief from stay are set forth in Local Rule 4001. Relief from stay must be sought, with respect to exempt residences or exempt vehicles, on a standard form of motion promulgated by the court. A proposed form of agreed or default order on a motion for relief must use the form promulgated by the court, unless otherwise provided in the Local Rules. Parties are not authorized to alter the promulgated form of order without first obtaining leave of court.

### **2. Motion for Continuation or Imposition of Automatic Stay**

(i) A Motion for continuation of the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B), or request for the imposition of the automatic stay pursuant to 11 U.S.C. § 362(c)(4)(B), shall be a contested matter commenced by the filing and service of a motion in accordance with Fed. R. Bankr. P. 9014. The motion shall contain allegations of specific fact supporting the requested relief, verified by an affidavit or declaration under oath upon the declarant’s personal knowledge. Any relief sought by the movant or requesting party other than the continuation or imposition of the automatic stay shall not be included in the motion but may be sought in a separate request for relief filed in accordance with Fed. R. Bankr. P. 9014 and/or Fed. R. Bankr. P. 7001 as applicable.

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(ii) In addition to any requirements under applicable law, the Federal Rules of Bankruptcy Procedure and the Local Rules with respect to a party against which the continuation or imposition of the automatic stay is sought, notice and copies of a motion made in accordance with subparagraph (i) of this Procedure shall be served upon (a) any attorney that represented such party in any bankruptcy case pending in connection with the debtor within one year before the filing of the petition commencing the case, and (b) any attorney that represented such party in any foreclosure, repossession, or other action to enforce a claim against property of the debtor within one year before the filing of the petition commencing the case.

(iii) Judge Rodriguez prefers that all such motions be simultaneously filed with the petition so as to provide ample notice to all creditors and parties in interest.

### IX. Substantive Bankruptcy Matters

#### 1. Reaffirmation Agreements

The Local Rules require the filing of a reaffirmation agreement. Ordinarily, if a reaffirmation agreement is accompanied by an affidavit sufficient to satisfy § 524(c)(3) and § 524(k) of the Bankruptcy Code, no hearing will be set. If the presumption of undue hardship under § 524(m) of the Bankruptcy Code applies, or if the court has questions regarding a reaffirmation agreement, the reaffirmation agreement will be set for hearing

#### 2. Fee Applications in Chapter 7 Cases

Applications for compensation and reimbursement in cases under chapter 7 must contain the following information. If additional information is required, the Court will request a supplement:

(i) A table containing the following information, which shall begin on the first page of the application:

|   |                     |                         |
|---|---------------------|-------------------------|
| Name of applicant:  |                     |                         |
| Applicant's professional role in case:                    |                     |                         |
| Indicate whether this is an interim or final application: |                     |                         |
| Date Order of Appointment Signed                          |                     | mm/dd/yy [ECF No. ____] |
|   | Beginning of Period | Ending of Period        |
| Total period covered in application                       | mm/dd/yy            | mm/dd/yy                |
| Time periods covered by any prior applications            | mm/dd/yy            | mm/dd/yy                |

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|  |    |
|--|----|
| Total amounts awarded in all prior applications  | \$ |
| Amount of retainer received in the case  | \$ |
| Total fees applied for in this application and in all prior applications (including any retainer amounts applied or to be applied) | \$ |
| Total fees applied for in this application (including any retainer amounts to be applied)  | \$ |
| Total professional fees requested in this application  | \$ |
| Total professional hours covered by this application   |    |
| Average hourly rate for professionals  | \$ |
| Total paraprofessional hours covered by this application   |    |
| Average hourly rate for paraprofessionals  | \$ |
| Reimbursable expenses sought in this application   | \$ |
| Application Cost   | \$ |
| Total of other payments paid to Secured Claimants  | \$ |
| Total of other payments paid to Administrative Claimants   | \$ |
| Estimated Total for distribution to Priority Unsecured Creditors   | \$ |
| Expected % dividend to be paid to Priority Unsecured Creditors   | %  |
| Estimated total for distribution to General Unsecured Creditors  | \$ |
| Expected % dividend to be paid to General Unsecured Creditors  | %  |
| Expected amount to be paid to all pre-petition creditors   | \$ |
| Receipts to date   | \$ |
| Disbursements to date  | \$ |
| Current balance in the Trustee's accounts  | \$ |

(ii) Attached copies of all fee statements which shall be sufficiently detailed to allow the Court to determine whether all the time, or any portion thereof, is actual, reasonable and necessary.

(iii) If total fees and expenses for applicant from this and all prior applications exceed \$2,000, a narrative description of the services performed and the benefits of those services.

(iv) A proposed form of order which specifically recites the amounts requested in fees and in expenses.

### 3. Fee Applications in Chapter 13 Cases

Other than Fixed Fee Applications or a Motion for Supplemental Fees under an approved Fixed Fee Agreement, applications for compensation and reimbursement in cases under chapter 13 must contain the following information. If additional information is required, the Court will request a supplement:

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(i) A table containing the following information, which shall begin on the first page of the application:

|  |                     |                     |
|--|---------------------|---------------------|
| Name of applicant:   |                     |                     |
| Applicant's professional role in case:   |                     |                     |
| Indicate whether this is an application for pre or post confirmation services  |                     |                     |
|  | Beginning of Period | Ending of Period    |
| Total period covered in application:   | mm/dd/yy            | mm/dd/yy            |
| Time periods covered by any prior applications   | mm/dd/yy            | mm/dd/yy            |
| Total amounts awarded in all prior applications  |                     | \$                  |
| Amount of retainer received in the case  |                     | \$                  |
| Total fees applied for in this application and in all prior applications (including any retainer amounts applied or to be applied) |                     | \$                  |
| Total fees applied for in this application (including any retainer amounts to be applied)  |                     | \$                  |
| Total professional fees requested in this application  |                     | \$                  |
| Total actual professional hours covered by this application  |                     |                     |
| Average hourly rate for professionals  |                     | \$                  |
| Total paraprofessional fees covered by this application  |                     | \$                  |
| Total actual paraprofessional hours covered by this application  |                     |                     |
| Average hourly rate for paraprofessionals  |                     | \$                  |
| Reimbursable expenses sought in this application   |                     | \$                  |
| Amount of attorney's fees provided for in plan   |                     | \$                  |
| Total amount of unsecured creditors  |                     | \$                  |
| Total to be paid to unsecured creditors under the plan   |                     | \$                  |
| Anticipated % dividend to General Unsecured Creditors  |                     | %                   |
| Total to be paid to all pre-petition creditors under the plan  |                     | \$                  |
| Date of any scheduled dismissal hearing  |                     | mm/dd/yy            |
| Date of confirmation hearing   |                     | mm/dd/yy            |
| Indicate whether plan has been confirmed   |                     | Y/N [ECF No. _____] |

(ii) Attached copies of all fee statements which shall be sufficiently detailed to allow the Court to determine whether all the time, or any portion thereof, is actual, reasonable and necessary.

(iii) If total fees and expenses for applicant from this and all prior applications exceed \$2,000, a narrative description of the services performed and the benefits of those services.

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(iv) A proposed form of order that contains the following decretal paragraph:

It is ordered that [name of applicant], is awarded fees and costs as an administrative expense for the period mm/dd/yy through mm/dd/yy as follows:

|           |          |
|-----------|----------|
| Fees:     | \$ _____ |
| Expenses: | \$ _____ |
| Total:    | \$ _____ |

[Name of applicant] is authorized to apply its retainer in the amount of \$\_\_\_\_\_ against the awarded compensation.

### 4. Obtaining Credit in Chapter 13 Cases

The debtor may incur up to five thousand dollars (\$5,000) in non-emergency consumer debt by submitting a written application to the Chapter 13 Trustee and obtaining her written approval. For all other financing requests a motion should be filed with the Court. Any motion filed shall contain the following:

- a statement in support of the feasibility of the request;
- a description of the item to be purchased or the collateral affected by the credit to be obtained;
- a description of the interest held by any other entity in any collateral affected by the credit;
- the reasons the debtor needs the credit;
- the terms of any financing involved, including the interest rate;
- if a down payment is required of the debtor, an explanation of where the funds are coming from;
- a description of any method or proposal by which an interest held by any other entity in the collateral affected by the credit may be protected; and

copies of all documents by which the interest of all entities in the collateral affected by the credit was created or perfected, or, if any of those documents are unavailable, the reason for the

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unavailability. The debtor shall make its best effort to obtain and file any documents which are unavailable as soon as practicable after the motion is filed.

### **5. Employment of Estate Professionals**

Judge Rodriguez generally does not approve the following items frequently found in retainer/employment agreements unless the professional has convincingly justified them in the application itself:

- Attorneys' or other liens for unpaid bills.
- Late charges/interest.
- Exculpation or limitation/waiver of liability.
- Mandatory arbitration of fee disputes or malpractice claims.
- Provisions that state payment is due upon invoicing.
- Provisions that allow counsel to withdraw as counsel for debtors-in-possession without court approval.

Employment orders should reflect that fees and expenses are subject to court approval and any request for allowance and payment of such fees is subject to the court's Guidelines for Compensation and Expense Reimbursement of Professionals and Trustees.

Judge Rodriguez will normally not allow auctioneers to recover labor costs or to charge a buyers' premium. Any application to employ an auctioneer should reflect the auctioneer's agreement not to charge such costs and premiums, and the order should specify that no such premium is permitted.

Judge Rodriguez will normally not allow real estate professionals representing the estate (as seller) to represent buyers. See 11 U.S.C. § 327(a) (trustee may employ "professional persons, that do not hold or represent an interest adverse to the estate"). Any application to employ a real estate professional should reflect the agreement of the professional that he or she will not represent the buyer and the proposed form of order should likewise reflect the prohibition against dual agency.

## **X. Chapter 11 Matters**

### **1. Fee Applications in Chapter 11 and Chapter 12 Cases**

Applications for compensation and reimbursement in cases under chapter 11 or 12 must contain the following information. If additional information is required, the Court will request a supplement:

- (i) A table containing the following information, which shall begin on the first page of the application:

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|  |                     |                         |
|--|---------------------|-------------------------|
| Name of applicant:   |                     |                         |
| Applicant's professional role in case:   |                     |                         |
| Indicate whether this is an interim or final application:  |                     |                         |
| Date Order of Employment Signed:   |                     | mm/dd/yy [ECF No. ____] |
|  | Beginning of Period | Ending of Period        |
| Total period covered in application:   | mm/dd/yy            | mm/dd/yy                |
| Time periods covered by any prior applications   | mm/dd/yy            | mm/dd/yy                |
| Total amounts awarded in all prior applications  |                     | \$                      |
| Amount of retainer received in the case  |                     | \$                      |
| Total fees applied for in this application and in all prior applications (including any retainer amounts applied or to be applied) |                     | \$                      |
| Total fees applied for in this application (including any retainer amounts to be applied)  |                     | \$                      |
| Total professional fees requested in this application  |                     | \$                      |
| Total professional hours covered by this application   |                     |                         |
| Average hourly rate for professionals  |                     | \$                      |
| Total paraprofessional hours covered by this application   |                     |                         |
| Average hourly rate for paraprofessionals  |                     | \$                      |
| Reimbursable expenses sought in this application   |                     | \$                      |
| Total to be paid to Priority Unsecured Creditors   |                     | \$                      |
| Anticipated % Dividend to Priority Unsecured Creditors   |                     | %                       |
| Total to be paid to General Unsecured Creditors  |                     | \$                      |
| Anticipated % Dividend to General Unsecured Creditors  |                     | %                       |
| Date of confirmation hearing   |                     | mm/dd/yy                |
| Indicate whether the plan has been confirmed   |                     | mm/dd/yy [ECF No. ]     |

(ii) Attached copies of all fee statements which shall be sufficiently detailed to allow the Court to determine whether all the time, or any portion thereof, is actual, reasonable and necessary.

(iii) If total fees and expenses for applicant from this and all prior applications exceed \$2,000, a narrative description of the services performed and the benefits of those services.

(iv) A proposed form of order which specifically recites the amounts requested in fees and in expenses.

### 2. Initial Status Conference

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Status Conferences in Chapter 11 cases will occur shortly after the commencement of any case filed under Chapter 11 of the Code. The Court will issue an order (“Chapter 11 Status Conference Order”) scheduling an initial status conference requiring the debtor-in-possession to prepare and file a Status Conference Statement no fewer than 7 days prior to the status conference.

The purposes of the Chapter 11 status conference are to: (1) review the financial, business or other problems that prompted the filing of a petition for relief; (2) understand the debtor’s assets and liabilities; and (3) understand the debtor’s strategy for exiting Chapter 11. Counsel should expect that the Court will generally set deadlines at the Chapter 11 status conference, including deadlines for filing and confirming a plan. A status report should include, but not be limited to the following: (i) the business, financial and other problems that prompted the filing of the case; (ii) attendance at a meeting of creditors pursuant to 11 U.S.C. § 341; (iii) Estate’s need for professionals (e.g. attorneys, accountants, brokers, etc; (iv); Unique issues concerning secured debt, employees, cash collateral, executory contracts, and existing management; (v) post-petition operations and revenue; (vi) status of any litigation pending in or outside this Court; (vii) compliance with requests for information from the United States Trustee including, but not limited to, requests made in the Initial Debtor Interview;(viii) types and adequacy of insurance coverage; (ix) an outline of the proposed plan; (x) a proposed schedule for filing and confirming the proposed plan; (xi) whether the Debtor is a “single asset real estate case”; a “small business debtor” or a “health care business” as those terms are defined in the United States Bankruptcy Code; (xii) any other matters that might materially affect the administration of this case.

At least 7 days prior to any subsequent status conference, the debtor-in-possession or any Chapter 11 trustee appointed in the case shall file an updated Status Conference Statement. Judge Rodriguez expects strict compliance with the Code and Rules. In particular, failure to comply with any of the following requirements could lead to the conversion of the case:

- Attendance at the meeting of creditors pursuant to Code section 341(a);
- Use of Cash Collateral. Code section 363(c)(2) prohibits the use of cash collateral unless the debtor has either the prior consent of each creditor having an interest in the cash collateral or an order from the Court;
- Timely file all schedules and statements of financial affairs;
- Transactions outside the ordinary course of business. Code section 363(b)(1) requires notice and a hearing prior to engaging in any such transactions;
- Post-petition taxes. The Court expects all post-petition taxes to be timely paid and all required tax returns timely filed;

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- Monthly Operating Reports. Local Rule 2015-3 requires monthly operating reports and tax reports to be filed on the 21st day of each month;
- Quarterly United States Trustee fees. 28 U.S.C. § 1930(a)(6) requires a quarterly fee to be paid to the United States Trustee. The amount of the fee will depend upon the amount of disbursements made by the debtor during each quarter;
- Funds of the bankruptcy estate. Judge Rodriguez requires that all funds of the bankruptcy estate be deposited and maintained in a United States Trustee approved debtor-in-possession bank account.

### **3. Complex Chapter 11 Cases**

In complex Chapter 11 cases that have been pending for at least a year, Judge Rodriguez would like debtor's counsel to provide regular updates on certain aspects of the progress of the case. Regular (monthly or quarterly) reports should be made on matters of case administration, including: the anticipated time frame for the pursuit and resolution of pending and anticipated adversary proceedings, contested matters, and other forms of recovery of assets of the estate; the status of each party or issue to which omnibus motions are addressed, including concluded and anticipated settlements as well as upcoming hearings. In general, in this and in other areas, Judge Rodriguez would like counsel to focus on usefully summarized data, so that the court and the parties in interest can assess status easily.

### **4. Proposed & Revised Chapter 11 Confirmation Orders, Ballot Summary, & Proffer of Testimony**

(i) Confirmation Order. While the Local Rules do not require proposed confirmation orders to be filed, draft orders are often circulated to and negotiated among select parties. To provide notice of this process, Judge Rodriguez expects that proposed confirmation orders should be filed, and as revisions are made, that such revisions be circulated to the Court, counsel for any official committees, the Office of the United States Trustee, and any parties having objected to the plan or in active negotiations regarding provisions of the plan. Prior to a hearing, he would like the most recent draft to be filed on the docket, with a "redline" demonstrating whatever changes have been made since the original proposed order was filed.

(ii) Proffers of Testimony. Depending on the complexity of the case, Judge Rodriguez believes that a written proffer of the testimony in support of the elements of § 1129(a), and where needed, § 1129(b), can be helpful in expediting the hearing. In some cases, Judge Rodriguez may request such a proffer of the plan proponent. If he does so, or if you decide on your own to submit a proffer, please file the proffer with the court, preferably the day before the confirmation hearing.

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(iii) Ballot Summary. The debtor shall also provide the Court with a summary of the ballots summarized by category such as claim holder, class, whether the creditor accepted or rejected the plan, the total number of votes accepting, the number in each class, the number of votes rejecting, the claim amount and the total dollar amount accepting.

### **5. Omnibus Motions**

When filing omnibus objections, please remember to comply with Bankruptcy Rule 3007(d) and (e). Please also consider whether the information required by the rules could be helpfully summarized in an exhibit. Periodically, please file an exhibit that shows the disposition of the claims which would include such categories such as: Claimant, Debtor Case Number, Claim Number, and Status.

### **6. Post Confirmation Reporting**

In Chapter 11 cases with many pending adversary proceedings, please file periodic litigation status reports that detail the status of the adversary proceedings filed in the case. The status report should include the following categories: Adversary Style Number, Style of Case, and Status.

### **7. Cash Collateral**

#### **(a) Cash Collateral Motion**

As required by Fed. R. Bankr. P. 4001(b)(1)(A), cash collateral motions (including emergency motions), should be accompanied by a proposed form of order, which ordinarily should be attached as an exhibit to the motion. The motion and/or order should include, as an attachment, a summary of projected revenue and a line item expense budget during the proposed cash collateral period. The budget ordinarily should be weekly for emergency motions and monthly for other motions.

#### **(b) Service of the Motion**

The Debtor should serve the motion on any party holding or claiming an interest in cash collateral; the United States Trustee; the official committee of unsecured creditors or, if no such committee has been appointed, to the creditors included on the list prepared under Fed. R. Bankr. P. 1007(d); and to counsel who have entered an appearance in the case. Fed. R. Bankr. P. 4001(b)(1)(C).

#### **(c) Notice of Hearings**

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Unless the Court directs otherwise, the Debtor should give notice of any hearing to the parties required to receive service of the motion as set forth above. Counsel for the Debtor should also call the local office of the United States Trustee and any known bankruptcy counsel for a cash collateral creditor to alert them that the motion has been filed, and of the date and time of any hearing.

### **(d) Preliminary (“Emergency”) Hearing on the Motion**

Pursuant to Fed. R. Bankr. P. 4001(b)(2), the Court will hold an emergency hearing on use of cash collateral, if needed, to consider authorizing use of cash collateral necessary to avoid immediate and irreparable harm to the estate pending a final hearing. Debtor’s counsel is encouraged to plan a chapter 11 case, if possible, such that an emergency hearing is not needed the same day the case is commenced, or the next day. Counsel is also encouraged to call Chambers staff to obtain a hearing on use of cash collateral before or shortly after the cash collateral motion is filed. The Court will take testimony at an emergency hearing on use of cash collateral, if testimony is proffered. If granting authority to use cash collateral requires consideration of evidence, the Debtor should present evidence.

### **(e) Final Hearing on the Motion**

If a notice of the motion is given that specifies an objection period, the notice should include notice of the hearing. All cash collateral hearings, except emergency hearings, ordinarily will be final hearings. The final hearing cannot be sooner than 14 days after the motion is filed and served. Fed. R. Bankr. P. 4001(b)(2).

### **(f) Contents of Cash Collateral Orders**

The Court will review certain provisions in a cash collateral order with heightened scrutiny, such as provisions validating pre-petition claims or the extent, validity and priority of pre-petition liens (unless parties in interest are given at least 75 days from the date of entry of the order, and the creditors committee if formed is given at least 60 days from the date of its formation, to investigate such matters); provisions granting liens against avoidance actions or avoidance action recoveries; cross-collateralization of debt not cross-collateralized pre-petition, unless necessary to provide adequate protection; waiver of surcharge rights under 11 U.S.C. § 506(c); and provisions converting pre-petition debt to post-petition debt. If a motion seeks entry of an order containing any of the above provisions, the notice of the motion should specifically disclose that the motion seeks such relief. The Court will not approve the above provisions in an emergency cash collateral order absent extraordinary and compelling circumstances.

## **8. Obtaining Credit in Chapter 11 Cases**

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All financing motions and stipulations or agreed orders related to financing motions filed shall comply with Judge Rodriguez's Court Procedures Section X, Number 7.

### **XI. Removal**

Upon filing a notice of removal, pursuant to Fed. R. Bankr. P. 9027, and BLR 9027-1 and 9027-2, the Court requires that an index of attached documents be included in a particular format in order to appropriately organize and allow the Court and other parties to easily access state court documents. The index must clearly identify each exhibit and title of each of the state court documents must be included either: (i) in the notice of removal or (ii) as a separate document filed as Exhibit 1 to the notice of removal. If the index is filed as a separate document, the Index must start with Exhibit 2. Alternatively, another method is to incorporate all of the state court documents into one consolidated PDF file, with each exhibit attached to the notice of removal bookmarked for quick access. However, due to uploading limitations on PACER, this method may not be available for removed actions with large state court dockets.

Regardless of the method ultimately selected, each state court document must clearly identify its exhibit number and title. Additionally, the state court documents must be in chronological order and track the state court docket numbers.

### **XII. Sanctions**

Failure to comply with any of the Local Rules and/or Judge Rodriguez's Court Procedures may result in the imposition of sanctions against any party or party's attorney appearing before the court, any person appearing without an attorney, any person acting in a fiduciary capacity or any other professional person appointed by the court, and the debtor. Upon notice and hearing, sanctions may be imposed when it is determined that noncompliance with the Local Rules and/or Judge Rodriguez's Court Procedures, has, without just cause, obstructed the effective conduct of the business of the court or of the bankruptcy system. *See* Fed. R. Bankr. P. 9011. Such sanctions may include, without limitation, one or more of the following:

- all or part of a pleading or other paper being stricken or a defense being disallowed;
- stay of further proceedings;
- all or part of an order being vacated;
- dismissal of a case or adversary proceeding;

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- the imposition of costs and expenses, including attorney's fees;
- denial of confirmation of a chapter 11, 12 or 13 plan;
- reduction or denial of attorney's fees;
- the requirement for the completion of continuing legal education

### **XIII. Miscellaneous Procedures and Practice Tips**

- Sign and date pleadings.
- Attach proposed forms of order to all motions.
- Presume a hearing will go forward, until a continuance is granted or if an order is granted prior to the hearing.
- Show up for hearings, on time and prepared.
- If a motion is denied without prejudice, file a new motion or a motion for reconsideration. The motion denied without prejudice is no longer pending.
- Do not submit a proposed form of order without a motion.  
(Exception: Chapter 13 wage orders may be submitted without a motion, but must bear the signature of the Debtor).
- Forms of order (e.g. motions to modify, motions to reinstate, motions to sell) should not allow attorney fees as to which there has been no fee application.
- For Courtroom Etiquette please refer to Appendix A to the Local Rules
- All amended documents must be redlined
- E-file Schedule C-1 following Schedule C
- All petitions and schedules must be electronically bookmarked when e-filed.
- The B 122 Form, as applicable, need to be e-filed as a separate CM/ECF event
- Chapter 13 Plans must have month and year for each payment, i.e. 1 (Jan 2016) – 6 (Jun 2016).
- E-Filed documents must be submitted without security settings/protection preventing editing.