

# 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 Rules*” or “*BLR*”), 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**

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

##### **1. Ex Parte Contact**

Pursuant to FED. R. BANKR. P. 9003, ex parte contact with Judge Rodriguez is strictly prohibited. Judge Rodriguez does not accept any communication concerning a case, or questions regarding court procedures. The Court will not conduct “chamber conferences” under any circumstances.

##### **2. Law Clerks**

All contact with Judge Rodriguez’s judicial law clerks is prohibited. Calls from counsel to the law clerks will be re-directed to Judge Rodriguez’s Case Manager, Jeannie Chavez.

##### **3. 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 and Courtroom Deputy Ana Castro. Do not request action on any case 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.

##### **4. Copies**

Courtesy copies and other communications by mail should be directed to the Case Manager Jeannie Chavez and Courtroom Deputy Ana Castro.

##### **5. CM/ECF**

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Neither the Case Manager nor the Courtroom Deputy can answer CM/ECF filing questions. Please contact the Bankruptcy ECF Help Desk at [bankruptcy\\_ecf\\_helpdesk@txs.uscourts.gov](mailto:bankruptcy_ecf_helpdesk@txs.uscourts.gov) for assistance.

### **6. Transcripts**

Transcripts may be requested from the Electronic Recording Office at (713) 250-5404 or ordered through CM/ECF. Further information is available at <http://www.txs.uscourts.gov/page/OrderingTranscripts>.

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

Judge Rodriguez will not accept any gift or item from any person who appears in his court, or any employee of the federal government that is costlier than a simple greeting card. All persons 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**

### **a. No Food in Courtroom**

No food is permitted in the courtroom. Exceptions are made for medical necessity and court personnel.

### **b. 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.

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

### **a. 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.

#### **1. Self-Calendaring**

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Motions for relief from stay may be set by self-calendaring through CM/ECF. When a motion is filed through CM/ECF, 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 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 business days and a certificate of service must be filed.

### **2. 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.

### **b. Continuances**

#### **1. In General**

A continuance may only be requested by motion. The motion must:

- A. be filed at least three business days prior to the hearing date (or state the nature of the emergency making it impossible to have filed it by that date);
- B. state good cause for the continuance;
- C. 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;
- D. 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; and
- E. be served on interested parties, including those parties known or expected to participate in the hearing. The parties must be served electronically,

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by facsimile, or by some other method reasonably calculated to provide immediate notice, along with a certificate of service. 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:

F. a proposed form of order granting the continuance must be uploaded when the motion is filed;

G. the movant must email Case Manager Jeannie Chavez at [Norma\\_J\\_Chavez@txs.uscourts.gov](mailto:Norma_J_Chavez@txs.uscourts.gov), and Courtroom Deputy Ana Castro at [Ana\\_Castro@txs.uscourts.gov](mailto:Ana_Castro@txs.uscourts.gov) when the motion is filed;

### **2. Motions to Reset § 341 Meetings**

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

#### **c. 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.

#### **d. 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**

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### **a. 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.

### **b. Telephonic/Video Participation**

#### **1. In General**

Pursuant to Bankruptcy Local Rule 9017-1, all hearings and trials will permit attendance by video and telephone by persons listed in Rule 9017-1(a). Any exceptions will be made by a case-specific Court order. Rule 9017-1(c) governs the presentation of witnesses by video and telephone.

Counsel is permitted to participate in hearings by telephone and/or video unless otherwise ordered by the Court. In order to examine witnesses or offer evidence via video participation, Counsel must appear both via telephone and video via gotomeeting. You will need two separate electronic devices in order to do so. Counsel may, however, appear via telephone only for limited participation in the matter being heard.

Parties participating by phone must assure that no background noise is transmitted. Speakerphones should not be used when addressing the court, and should be muted when not addressing the court. Each time a party speaks, they must identify themselves. Persons choosing to attend hearings by telephone and/or video do so at their own risk of a technological failure.

#### **2. Dial-in Instructions**

The dial-in number is (832) 917-1510. You will be asked to key in the conference room number. Judge Rodriguez's conference room number is 999276. You will be responsible for your own long-distance charges. This dial-in number is utilized whether Judge Rodriguez is sitting in McAllen, Houston, or Brownsville.

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.

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Additionally, to participate by video conference, please visit: <https://www.txs.uscourts.gov/content/united-states-bankruptcy-judge-eduardo-v-rodriguez>. Click the link under “Telephonic and Video Participation” to join the hearing via GoToMeeting. All participants utilizing video conferencing must also join by telephone. No sound is transmitted via the video conference.

### **c. Courtroom Technology**

Public Internet Access for Attorneys is available in Houston Courtroom #402:

Username: “ERodriguez\_Crt\_AW”

Password: “erodriguez\_crt”

Public Internet Access for Attorneys is available in Brownsville Courtroom #5:

Username: “Bankruptcy\_Crt\_AW”

Password: “bkruptcy\_crt”

Public Internet Access for Attorneys is available in McAllen 10th Floor Courtroom:

Username: Rodriguez\_Crt\_AW

Password: erodriguez\_crt

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

### **a. Pending Motions**

If the Court has not ruled on a pending motion within 45 days, parties should contact the Case Manager and Courtroom Deputy to inquire about the status of the motion.

### **b. Emergency Motions**

Emergency Motions should be filed using the CM/ECF event code for an “emergency motion.” You must identify the date by which emergency relief is needed just below the language required by BLR 9013(b). Please contact the Case Manager and Courtroom Deputy if you file a motion requesting emergency consideration.

### **c. Expedited Motions**

Motions that are not an emergency, but which require consideration prior to the standard 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

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below the language required by BLR 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.

### d. Amended Documents

BLR 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—a single red underline denoting the amended portion—on not only petitions and their supporting documents, but as to all amended pleadings, proposed orders, documents, and briefs. Failure to adhere to this procedure may be cause for the Court to strike the amended document(s).

### e. Briefs and Memoranda of Law

#### 1. Length Limitations

Briefs and memoranda shall be in 12 point, Times New Roman Font, with one-inch margins. Footnote citations shall be in 10 point, Times New Roman Font. Briefs and memoranda shall not exceed 20 pages, exclusive of a signature page and certificate of service, 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.

#### 2. Unreported Opinions & Preferred Case Law

Citation of unpublished decisions in briefs and oral arguments in this Court is disfavored and should be avoided if a comparable published opinion exists. Whenever possible and appropriate, citations to published decisions from the Fifth Circuit Court of Appeals are preferred.

### f. Proposed Orders

Proposed forms of orders must be submitted along with all motions and with all oppositions to motions. **THE PROPOSED ORDER MUST INCLUDE A BLANK SPACE FOR THE COURT’S SIGNATURE. DO NOT INCLUDE A SIGNATURE BLOCK OR SIGNATURE TEXT BLOCK.** 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

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with the proposed amended order. **Submission of an Agreed Order utilizing a form from the court's website may not be altered without first obtaining leave of court.**

### **g. Settlements**

Settlements are always encouraged. If a case is settled, the parties must, if applicable, file a motion pursuant to FED. R. BANKR. P. 9019. Any relief required during the period of the filing of a motion pursuant to FED. R. BANKR. P. 9019 and a hearing on such motion must be brought in the form of a motion filed with the Clerk of court.

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.

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.

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.

## **VII. Discovery and Exhibits**

### **a. Discovery**

#### **1. 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, and shall freely exchange discoverable information and documents 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. 7026-37 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.



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### **2. 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 and Courtroom Deputy during the deposition and request a telephonic hearing with the Court. Such motions shall be accompanied by 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.

### **b. Exhibits**

#### **1. General**

Unless specifically ordered, all hearings are evidentiary. Bankruptcy Local Rule 9013-2 and the procedures below will be strictly enforced.

#### **2. Preparation of Electronic Exhibits**

A. All exhibits, whether hard copy or electronic, must comply with the United States Bankruptcy Court of the Southern District of Texas General Order 2021-5, paragraph 4, which states:

If a party-in-interest intends to introduce documents into evidence at a remote or at an in-person hearing, the documents must be filed on CM/ECF. A witness and exhibit list should be filed as a document, with each exhibit being filed as a separate attachment to the witness and exhibit list. For example, if there are three exhibits,

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and the next CM/ECF document sequence is 101, the witness and exhibit list will be ECF document 101, exhibit 1 will be ECF document 101-1, exhibit 2 will be ECF document 101-2, and exhibit 3 will be ECF document 101-3.

### **c. 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**

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

BLR 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, as they are subject to change.

The contents required of a motion for relief from stay are set forth in BLR 4001-1. 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.

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

Judge Rodriguez requires that Forms M-MTIS (Motion to Impose the Automatic Stay) and M-MFCS (Motion for Continuation of the Automatic Stay) found on the Court's website be used in the McAllen, Houston, and Brownsville Divisions.

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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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 Court Procedure VII § (b) shall be served upon (1) 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 (2) 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.

### IX. Substantive Bankruptcy Matters

#### a. **Reaffirmation Agreements**

The Bankruptcy 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.

#### b. **Means Test**

All Means Test documents must be filed as a separate CM/ECF event in each case where a Means Test is required.

#### c. **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.

A numbered 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

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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		\$
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		\$

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.

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.

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

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### d. 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.

A numbered 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

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Date of confirmation hearing	mm/dd/yy
Indicate whether plan has been confirmed	Y/N [ECF No. _____]

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.

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.

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.

### e. 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' liens (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; and  
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.

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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.<sup>1</sup> Any application to employ a real estate professional should reflect the agreement of the professional that they will not represent the buyer, and the proposed form of order should likewise reflect the prohibition against dual agency.

**f. Objections to Proofs of Claim**

In addition to the requirements of BLR 3007-1, when an objection to a Proof of Claim is filed, a copy of the Proof of Claim must be attached to the objection.

**X. Chapter 11 Matters**

**a. 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.

A numbered 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 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		\$

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<sup>1</sup> See 11 U.S.C. § 327(a) (stating that trustee may employ “professional persons, that do not hold or represent an interest adverse to the estate . . .”).

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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. ]

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.

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.

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

### **b. Initial Status Conference**

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 and 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



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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) the 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; and (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:

- (1) attendance at the meeting of creditors pursuant to § 341(a);
- (2) use of cash collateral;<sup>2</sup>
- (3) timely file all schedules and statements of financial affairs;
- (4) transactions outside the ordinary course of business;<sup>3</sup>
- (5) post-petition taxes;<sup>4</sup>
- (6) monthly operating reports;<sup>5</sup>
- (7) quarterly United States Trustee fees;<sup>6</sup> and
- (8) funds of the bankruptcy estate.<sup>7</sup>

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

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<sup>2</sup> 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.

<sup>3</sup> Section 363(b)(1) requires notice and a hearing prior to engaging in any such transactions.

<sup>4</sup> The Court expects all post-petition taxes to be timely paid, and all required tax returns timely filed.

<sup>5</sup> BLR 2015-3 requires monthly operating reports and tax reports to be filed on the 21st day of each month.

<sup>6</sup> 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.

<sup>7</sup> 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.

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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, Judge Rodriguez 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.

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 Judge Rodriguez 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.

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, and the claim amount and the total dollar amount accepting.

### **d. Omnibus Motions**

When filing omnibus objections, please remember to comply with Bankruptcy Rules 3007(d), (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.

### **e. Cash Collateral**

#### **1. 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.

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### **2. 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.<sup>8</sup>

### **3. Notice of Hearings**

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.

### **4. 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.

### **5. 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.<sup>9</sup>

### **6. 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,

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<sup>8</sup> FED. R. BANKR. P. 4001(b)(1)(C).

<sup>9</sup> FED. R. BANKR. P. 4001(b)(2).

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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.

**f. Obtaining Credit in Chapter 11 Cases**

All financing motions and stipulations or agreed orders related to financing motions filed shall comply with Court Procedure X § (g).

**X. Removal**

Upon filing a Notice of Removal, pursuant to FED. R. BANKR. P. 9027 and BLR 9027-1, 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. The Notice of Removal must be labeled as Exhibit No. 1 to the complaint. The Index must be filed as a separate document and should be labeled as Exhibit No. 2 to the Notice of Removal. Thereafter the first exhibit attached to the Index must be the state court docket which must be labeled Exhibit No. 3. Exhibit No. 4 should be the first document, so forth and so on. Additionally, the state court documents must be in chronological and ascending order and track the state court docket numbers. The Index should be in a format similar to the one illustrated below:

**Index of State Court Documents**

<b>Exhibit No.</b>	<b>Description</b>	<b>Bates Number</b>

**XI. Sanctions**

Failure to comply with any of the Bankruptcy 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

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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 Bankruptcy 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.<sup>10</sup> Such sanctions may include, without limitation, one or more of the following:

- (1) all or part of a pleading or other paper being stricken or a defense being disallowed;
- (2) stay of further proceedings;
- (3) all or part of an order being vacated;
- (4) dismissal of a case or adversary proceeding;
- (5) the imposition of costs and expenses, including attorney's fees;
- (6) denial of confirmation of a chapter 11, 12 or 13 plan;
- (7) reduction or denial of attorney's fees; and
- (8) the requirement for the completion of continuing legal education.

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

- (1) Sign and date pleadings.
- (2) Attach proposed forms of order to all motions.
- (3) Presume a hearing will go forward, until a continuance is granted or if an order is granted prior to the hearing.
- (4) Show up for hearings, on time and prepared.
- (5) 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.
- (6) 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).
- (7) 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.
- (8) For Courtroom Etiquette please refer to Appendix A to the Bankruptcy Local Rules.
- (9) All amended documents must be redlined.
- (10) E-file Schedule C-1 following Schedule C.
- (11) All petitions and schedules must be electronically bookmarked when e-filed.
- (12) The B 122 Form, as applicable, need to be e-filed as a separate CM/ECF event.
- (13) Chapter 13 Plans must have month and year for each payment, e.g. (Jan. 2016).
- (14) E-Filed documents must be submitted without security settings/protection preventing editing.

### **XIII. Mediation Procedures**

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<sup>10</sup> See FED. R. BANKR. P. 9011.

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The Court will only order mediation upon the agreement of all of the parties. The parties must file a motion for agreed entry with an accompanying agreed order. The order must designate a mediator and set forth any specific conditions the parties have agreed to and want included in the order. Additionally, the Court is providing the following guidance to assist parties interested in scheduling mediation with Judge Rodriguez acting as a mediator.

- 1) Email Judge Rodriguez's case manager Jeannie Chavez at Norma\_J\_Chavez@txs.uscourts.gov regarding your interest in scheduling a mediation. In your initial email, please include the following:
  - a. The bankruptcy and/or adversary case number.
  - b. The matter (CM/ECF Number) to be mediated.
  - c. A range of dates the parties would like to have their case mediated.
  - d. Whether a half or a full day will be required.
  - e. A list of all counsel and parties that will participate along with their respective email addresses.
- 2) The Court will contact the parties and provide eligible dates for mediation. Parties should designate one person to respond to the Court with an agreed date, time, and if applicable, the location of where the mediation will take place. Zoom.gov mediations are also available.
- 3) Once an agreed date is reached, the date will be reserved on the Court's calendar and you will be required to file a motion in the bankruptcy court presiding over the matter and obtain an order that has, at a minimum, the following language:

The Honorable Eduardo V. Rodriguez is appointed as mediator in this case. At all times in the performance of his mediation duties, Judge Rodriguez will be acting in his official capacity as a United States Bankruptcy Judge, with all of the privileges and immunities of a United States Bankruptcy Judge.
- 4) Once you have that order, please email I to Judge Rodriguez's case manager Jeannie Chavez at Norma\_J\_Chavez@txs.uscourts.gov. The Court will then email a letter to all counsel with further instructions.

#### **XIV. Subchapter V Cases**

##### **A. INTRODUCTION**

1. These procedures apply to the administration of cases under the Small Business Reorganization Act of 2019 ("*Subchapter V Procedures*"). A Subchapter V Case includes a "debtor" as defined in 11 U.S.C. § 1182.
2. These Subchapter V Procedures do not alter the requirements of the Bankruptcy Code ("*Bankruptcy Code*"), the Federal Rules of Bankruptcy Procedure ("*Bankruptcy Rules*"), or the Southern District Bankruptcy Local Rules ("*Local Rules*"). If there is a conflict between

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the Subchapter V Procedures herein and the Bankruptcy Code, Bankruptcy Rules, or Local Rules that is unable to be reconciled, then the Code, Bankruptcy Rules, or Local Rules shall govern unless otherwise ordered by the Court.

3. The Small Business Reorganization Act Interim Rules as adopted by the U.S. Bankruptcy Court for the Southern District of Texas can be found in General Order No. 2020-3 located on the Court's webpage.
4. Unless a different date is ordered by the Court, the bar date for the filing of proofs of claim and proofs of interest is: (i) one hundred eight (180) days after the petition date for governmental units; and (ii) for all other entities, seventy (70) days after the petition date or entry of an order for relief.

### **B. FILING REQUIREMENTS**

5. Documents required for a subchapter V petition are the same as the requirements for a small business chapter 11.
6. When commencing a voluntary Subchapter V Case, the box(es) designating the case as a Subchapter V Case should be checked on the voluntary petition Official Form 101 or 201 and also on the CM/ECF PACER filing system in the Southern District of Texas Bankruptcy Courts.
7. A Debtor that did not elect in the original petition to have Subchapter V of chapter 11 apply, may make the election by filing an amended petition within fourteen (14) days of the date the original petition was filed. After the initial fourteen (14) day period, the Debtor must file a motion seeking permission to have Subchapter V of chapter 11 apply. Any request for an extension of the Subchapter V deadlines must be part of the motion and the motion must be served on the parties designated in Bankruptcy Rule 1020(c).
8. All Subchapter V deadlines run from the date of the order for relief and the deadlines set forth in Bankruptcy Rule 1020 apply.
9. Simultaneously with the filing of the Subchapter V Petition by any entity, Proposed Counsel for the Debtor shall file with the Court the written Resolution adopted and executed by the Debtor under its governing instruments authorizing the filing of the Petition.
10. Proposed Counsel for the Debtor (or the Debtor in an individual Subchapter V case) should carefully review the voluntary Subchapter V Petition to ensure that all of the materials required by 11 U.S.C. §1187 are included.

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11. A Debtor in a Subchapter V Case must comply with Bankruptcy Rule 2015.3. Note that this procedure requires reporting with Official Bankruptcy Form 426 to be first filed no later than seven (7) days before the first date set for the meeting of creditors under section 11 U.S.C. § 341, and subsequent reports to be filed monthly with the monthly operating reports.
12. Upon electing to be a debtor under subchapter V, the debtor is required to file with the court a copy of the Federal income tax return required under applicable law (or at the debtor's election, a transcript of such return) for the most recent tax year ending immediately before the commencement of the case and for which a Federal tax return was filed and also the debtor's most recent balance sheet, statement of operations, and cash-flow statement (or an affidavit that one or more of these documents have not been prepared).<sup>11</sup>

### **C. POST-FILING REQUIREMENTS**

13. In each Subchapter V Case, the Court will enter an interim order directing the debtor to deposit the sum of \$1,000 a month with the Subchapter V Trustee for his/her future fees to be paid upon entry of an order approving such fees.
14. The 341 date, the deadline to oppose discharge, and to file both governmental and non-governmental proofs of claim will be set in the 341 notice filed with the Clerk of Court. The debtor must attend the meeting of creditors.<sup>12</sup> This is true even if no creditors attend. Neither the trustee nor the United States Trustee may waive the requirement for the appearance of the debtor at the meeting.<sup>13</sup> When spouses have filed jointly, the Bankruptcy Code requires both debtors to attend the meeting.<sup>14</sup> The United States Trustee will be the presiding officer at the meeting of creditors and examine the debtor or debtor's principal under oath.
15. Debtor and debtor's counsel must attend an initial debtor interview ("*IDI*") with the United States Trustee normally within 10 days after the case is filed. At the IDI, the United States Trustee will discuss the facts of the case and explain the administrative requirements of the case to the debtor and debtor's attorney, including required financial information, taxes, insurance, debtor in possession bank accounts, and monthly reports.
16. The Debtor (if the Debtor is an individual) or an authorized Debtor representative (if the Debtor is an entity), Debtor's Counsel, and the Subchapter V Trustee must be present for the Subchapter V Case Status Conference Hearing. The Debtor, Debtor representative, Debtor's Counsel, and the Subchapter V Trustee are required to provide the Court an update on the status of the Subchapter V Case and answer questions regarding the Debtor's assets, liabilities, budget, operations, finances, insurance, communications with creditors, activity

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<sup>11</sup> 11 U.S.C. § 1187, incorporating § 1116(1).

<sup>12</sup> 11 U.S.C. § 343.

<sup>13</sup> See 11 U.S.C. §§ 341, 343.

<sup>14</sup> 11 U.S.C. § 343, Fed. R. Bankr. P. 2003(b), Fed. R. Bankr. P. 4002.



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in the bankruptcy case, the Debtor's efforts to formulate a consensual plan of reorganization, and status of a proposed plan.

17. Within thirty days of the case being filed, the Court will issue an order setting a hearing in which the debtor and the debtor's primary bankruptcy counsel and the Subchapter V Trustee must appear at a status conference.<sup>15</sup> Not later than fourteen (14) days prior to the status conference set by the Order, Debtor must file a Chapter 11 Status Conference Statement<sup>16</sup> with the Clerk of Court that addresses the following:
- a. the efforts the debtor has undertaken and will undertake to attain a consensual reorganization plan;
  - b. any complications the debtor anticipates in promptly proposing and confirming a plan, including any need for discovery, valuation, motion practice, claim adjudication, or adversary proceeding litigation;
  - c. an outline of the proposed plan;
  - d. a description of the nature of the debtor's business or occupation, the primary place of business, the number of locations from which it operates, and the number of employees or independent contractors it utilizes in its normal business operations and the goals of the reorganization plan;
  - e. any motions that the debtor contemplates filing or expects to file before confirmation;
  - f. any objections to any claims or interests the debtor expects to file before confirmation and any potential need to estimate claims for voting purposes;
  - g. the business, financial, and other problems that prompted the filing of this case;
  - h. attendance at a meeting of creditors pursuant to 11 U.S.C. § 341(a);
  - i. the estate's need for professionals (e.g., attorneys, accountants, brokers, etc.);
  - j. whether the debtor is current on the filing of all required tax returns;
  - k. unique issues concerning secured debt, employees, cash collateral, executory contracts, and existing management;
  - l. postpetition operations and revenue;
  - m. status of any litigation pending in or outside this Court;
  - n. compliance with requests for information from the United States Trustee including, but not limited to, requests made in the initial debtor interview;
  - o. type and adequacy of insurance coverage;
  - p. Debtor-In-Possession Bank Account;
  - q. any other matters that might materially affect the administration of this case.
18. The United States Trustee or Subchapter V trustee may file a response to the pre-status conference report by using either the Response or Reply events on CM/ECF.

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<sup>15</sup> 11 U.S.C. § 1188(a).

<sup>16</sup> 11 U.S.C. § 1188(c).

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19. Unless a different date is ordered by the Court, a secured creditor must make its § 1111(b) election within twenty (20) days after the filing of the Debtor's first proposed Plan.

### **D. MASTER SERVICE LIST**

20. The Debtor should maintain a ("*Master Service List*") identifying the parties that must be served whenever a motion or other pleading requires notice. Unless otherwise required by the Bankruptcy Code or Rules, notices of motions, applications and other matters will be limited to the parties on the Master Service List.
21. The Master Service List should initially include: (a) the Office of the United States Trustee for the Southern District of Texas; (b) the debtor; (c) the attorneys for the debtor; (d) the Subchapter V Trustee, (e) the debtor's secured lenders; (f) the debtor's twenty (20) largest unsecured creditors; (g) those persons who have formally appeared in the chapter 11 case and requested service pursuant to Federal Bankruptcy Rule 2002; (h) all applicable government agencies to the extent required by the Bankruptcy Rules and the Local Rules; and (i) any known counsel for (d) – (h). Any party in interest that files a Notice of Appearance must be added to the Master Service List.
22. Parties on the Master Service List who appear through counsel or submit a request for service by CM/ECF must be served with pleadings and orders through the CM/ECF notification system. No other form of notice will be required.
23. All other parties on the Master Service List must be served, at the server's option, by e-mail or regular mail. Each certificate/affidavit of service must include the actual e-mail or regular mail address for each party that is served under this section unless otherwise ordered.
24. The initial Master Service List must be filed within ten (10) days after the Petition Date unless otherwise ordered by the Court. A revised Master Service List must be filed twenty-one (21) days after the initial Master Service List is filed. The Debtor must update and file a copy of the updated Master Service List at least every thirty (30) days thereafter. However, an updated Master Service List need not be filed if there are no changes.

### **E. FIRST DAY MOTIONS, CASH COLLATERAL AND HEARINGS**

25. Proposed Counsel for the Debtor in a Subchapter V Case (or the Debtor in an individual Subchapter V case) may contact Judge Rodriguez's Case Manager by email as early as possible after the filing of a Subchapter V Case (the "*Petition Date*") to obtain a date and time for necessary emergency relief, request a specific setting for first day hearings, or advise that first day hearings are not necessary. The Case Manager will advise of the Court's available hearing date and time.

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26. At the First Day hearings, a final order, rather than an interim order subject to final order at a subsequent hearing, may be sought for the following types of relief:
- a. Motions to pay employee wages and benefits that do not include relief of the nature specified in 11 U.S.C. § 503(c) or that do not otherwise contain a request for payments outside the ordinary course of the debtors' business. If relief is also sought for payments outside of the ordinary course of business or that implicates § 503(c), a separate motion seeking that additional relief should be filed.
  - b. Motions to pay pre-petition and post-petition taxes that are: (i) secured by property of the estate; (ii) held in trust by the debtors pursuant to state or federal law; or (iii) entitled to priority pursuant to 11 U.S.C. § 507(a)(8).
  - c. Motions to pay: (i) oil and gas royalties; (ii) mineral liens, or mechanic and material liens that meet the criteria of 11 U.S.C. § 546(b); (iii) joint interest billing disbursements to joint interest parties; claims arising under 11 U.S.C. § 503(b)(9); or (iv) claims arising under the Perishable Agricultural Commodities Act of 1930, the Packers and Stockyards Act of 1921, or any state statutes of similar effect.
  - d. Motions to limit or modify the notice requirements of Bankruptcy Rule 2002.
  - e. Motions to approve adequate assurance procedures under 11 U.S.C. § 366 that: (i) do not prejudice the right of a utility to propose alternative procedures; and (ii) provide for a hearing not later than thirty (30) days after the petition date upon any timely filed objection to the adequate assurance procedures.
  - f. Motions to pay insurance premiums.
  - g. Motions to approve bar dates and bar date notices.
  - h. Motions that are procedural in nature and do not affect the substantive rights of creditors and other parties-in-interest.
27. On motion by the Debtor, a hearing will be conducted as a First Day hearing to consider either interim cash collateral use and/or interim debtor-in-possession financing. The Debtor's motion must contain a summary of all parties that hold a pre-petition lien or security interest in the Debtor's accounts or proceeds (including any liens of the Internal Revenue Service or other taxing authorities). The Debtor must introduce a detailed, line-item budget/cash flow projection showing sources of cash and uses of cash necessary for ongoing operations on a weekly basis for not less than the first four (4) weeks (thirty (30) days) of the Subchapter V case including adequate protection payments (if any), insurance, taxes, professional fees, and Subchapter V Trustee deposits. Financing motions shall also include in the body of the

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motion and in an attached summary all terms and provisions including: amount, rate, payment, adequate protection, cross-collateralization, default provisions, carve-outs, roll-ups, releases, limits on the Debtor's rights, priming liens, and any other term or provision that impacts the rights, duties, or obligations of the Debtor, the Bankruptcy Estate, the Subchapter V Trustee, the U.S. Trustee, the Court, any secured creditor, and/or any other parties.

28. At least five (5) days prior to the final hearing on cash collateral and/or financing, the Debtor must file a detailed, line-item budget/cash flow projection showing sources of cash and uses of cash necessary for ongoing operations on a monthly basis for not less than one hundred twenty (120) days of the Subchapter V case including adequate protection payments (if any), insurance, taxes, professional fees, and Subchapter V Trustee deposits and file a proposed form of final order along with a redline showing edits compared to the interim order.
29. Simultaneously with the filing of any motion to use cash collateral and/or motion for debtor-in-possession financing, the Debtor must file with the Court a UCC Lien Search from the applicable state filing office conducted within ten (10) days prior to the Petition date.

### **F. PROFESSIONALS**

30. Under § 327, the debtor and, in appropriate circumstances, the trustee may employ professionals, including attorneys, accountants, appraisers or auctioneers to assist the debtor or the trustee in performing trustee duties under title 11. Those professionals may be awarded compensation for actual and necessary services and reimbursement for actual and necessary expenses, pursuant to § 330. The employment of professionals must be approved by the court, and court approval should be requested prior to the commencement of work.<sup>17</sup>
31. Pursuant to § 330, after notice and a hearing, and subject to § 328, the court may award a professional person employed pursuant to § 327 reasonable compensation for actual, necessary services.<sup>18</sup> Unless otherwise permitted by the court, a professional may apply for interim compensation and reimbursement of expenses not more than once every 120 days.<sup>19</sup> Professionals also are required to file final applications for compensation. Pursuant to Bankruptcy Rule 2016(a), each application for interim or final fees and expenses must include the following: (i) a detailed statement of services rendered, time expended, and expenses incurred; (ii) a statement of the amount of fees and expenses requested; (iii) a statement of payments received or promised for services rendered or to be rendered in any capacity in connection with the case; (iv) a statement of the source of compensation paid or promised; and (v) a statement of whether an agreement or understanding exists for the sharing of compensation received or to be received.

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<sup>17</sup> 11 U.S.C. § 327(a).

<sup>18</sup> See 11 U.S.C. § 330.

<sup>19</sup> See 11 U.S.C. § 331.

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32. Subchapter V trustees are compensated through § 330(a)(1)(A) which allows for “reasonable compensation for actual, necessary services rendered by the trustee ... and by any paraprofessional person employed by any such person.” Case-by-case trustees must apply to the court for an award of compensation similar to the application process that is used by professionals.

### **G. The Subchapter V Plan**

33. The deadline for filing the Subchapter V plan is set upon the filing of the case at 90 days from the filing date. The Court will issue an order setting forth the Plan filing deadline at the initial status conference.

34. After the debtor has filed a Plan, the Court will issue a scheduling order setting forth the follow dates and deadlines:

- a. date by which the debtor must transmit copies of the plan, order and ballot to the required parties;
- b. date by which objections to the plan must be filed;
- c. date by which a modified plan may be filed;
- d. date by which holders of claims and interests must accept or reject the plan;
- e. date by which creditors must make an election under 11 U.S.C. § 1111(b);
- f. date by which the debtor must file a proposed form of order confirming the plan;
- g. date by which a confirmation hearing will be held.

35. Absent a court order, a separate disclosure statement is not required in subchapter V cases.<sup>20</sup> However, the plan itself must include certain information normally found in disclosure statements, including: “(i) a brief history of the business operations of the debtor; (ii) a liquidation analysis; and (ii) projections with respect to the ability of the debtor to make payments under the proposed plan of reorganization . . . .”<sup>21</sup> The subchapter V plan should be filed using the “Bankruptcy / Plan / Chapter 11 Small Business Subchapter V Plan” event in CM/ECF.

36. Balloting is required to confirm a plan under either Section 1191(a) or 1191(b) utilizing Form No. B314 found on the Court’s website.

37. Debtors must file Monthly Operating Reports for small businesses under Chapter 11 and attach to its monthly operating reports: (i) the monthly bank statements for all Controlled Non-Debtor Entities as defined in Official Bankruptcy Form 426; and (ii) the periodic report required by Federal Rule of Bankruptcy Procedure 2015.3 in Official Bankruptcy Form B426.

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<sup>20</sup> 11 U.S.C. § 1181(b).

<sup>21</sup> 11 U.S.C. § 1190(1).

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### H. Confirmation

#### Confirmation under 11 U.S.C. § 1191(a)

38. Section 1191(a) provides that the court may confirm a plan only if all requirements of section 1129(a) other than 1129(a)(15) are met. This is consensual confirmation. In a case filed under Chapter 11 in which the debtor elects treatment under subchapter V and in which consensual confirmation of the Chapter 11 plan was accomplished under § 1191(a), the Court will issue a Post – Confirmation Order requiring:
- a. all professionals, including the Subchapter V Trustee, to file all final fee applications, pursuant to Fed. R. Bankr. P. 2016;
  - b. that pursuant to 11 U.S.C. § 1183(c)(2), not later than fourteen (14) days after the plan of the debtor is substantially consummated, Debtor must file with the court and serve the Subchapter V Trustee, the United States Trustee, and all parties in interest notice of such substantial consummation.
  - c. the Subchapter V Trustee, on or before 90 days within entry of the Post-Confirmation Order, to file with the Clerk of Court a Report of No Distribution (“*NDR*”) or Final Report (“*TFR*”);
  - d. the Debtor to file a motion for final decree, pursuant to Fed. R. Bankr. P. 3022 and 11 U.S.C. § 1106(a)(7);
  - e. that Debtor request a hearing date on all final motions including the motion for final decree;

#### Confirmation under 11 U.S.C. § 1191(b)

39. Section 1191(b) permits the court, on request of the debtor, to confirm a plan that does not meet the requirements of subsections 1129(a)(8), (10), or (15). In a case filed under Chapter 11 in which the debtor elects treatment under Subchapter V and in which a non-consensual confirmation of the Chapter 11 plan was accomplished under § 1191(b), the Court will issue a Post – Confirmation Order requiring that:
- a. not later than fourteen (14) days from the effective date of the confirmed plan, all professionals including the Subchapter V trustee must file fee applications, pursuant to Fed. R. Bankr. P. 2016 for all services provided through the date of the confirmation order;

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- b. the Debtor must file a Notice of Substantial Consummation promptly upon the occurrence of such event and serve such notice upon the master mailing list (matrix) as constituted by the Court on the date of service;
- c. the Subchapter V Trustee, or other designated disbursing agent, must file, for the duration of the period in which the debtor must tender projected disposable income or equivalent values of property under the confirmed plan as required under 11 U.S.C. § 1191(c)(2) (the “*Non-Consensual Commitment Period*”), a status report on each anniversary date of the entry of the confirmation order which outlines the status of payments made by the Debtor and distributed by the Subchapter V Trustee or other designated disbursing agent, in the past year and any other post-confirmation action taken toward consummation of the plan and serve that report upon the master mailing list (matrix) as constituted by the Court on the date of service;
- d. upon completion of plan payments, the Subchapter V Trustee or other disbursing agent as set forth in the confirmed plan or confirmation order shall file a notice of completion of plan payments which documents that all payments of projected disposable income or equivalent values of property by the debtor under the confirmed plan as required under 11 U.S.C. § 1191(c)(2) have been completed and that all other prerequisites for the entry of an order of discharge pursuant to 11 U.S.C. § 1192 have been fulfilled;
- e. within thirty (30) days of the filing of the notice of plan completion, the Debtor must file a motion for entry of discharge and a motion for final decree and request a hearing date on all final motions including a motion for final decree;
- f. the Subchapter V Trustee must on or before ninety (90) days from the entry of the discharge order file with the Clerk of Court an application for professional fees and expenses incurred during the chapter 11 administration, and either a Report of No Distribution (NDR) or Final Report (TFR);
- g. after the filing of the Subchapter V Trustee’s final report and resolution of any objection thereto, the debtor will be granted a discharge and the Subchapter V Trustee will also be discharged of his/her duties to the estate, the Subchapter V Trustee’s bond will be cancelled, and the case closed.