

PROCEDURES FOR COMPLEX CASES IN THE NORTHERN DISTRICT OF TEXAS

Effective February 6, 2023

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Pursuant to General Order 2023-01 and Rule 1001-1(b) of the Northern District of Texas Local Bankruptcy Rules (the “**Local Rules**” or “**L.B.R.**”), these procedures (the “**Complex Case Procedures**”) apply to the administration of complex chapter 11 and 15 cases (a “**Complex Case**”). The Texas Procedures for Complex Chapter 11 cases do not apply unless otherwise ordered.

A Complex Case is a case or group of affiliated cases in which (i) the total liabilities of the debtor entity or entities, along with the total liabilities of the debtor’s or debtors’ non-filing affiliates, exceeds \$25 million; (ii) there are more than 100 parties-in-interest; (iii) any claims against or interests in the debtors are publicly traded; or (iv) any other facts and circumstances which the Court determines to justify treatment under these Complex Case Procedures. A Complex Case includes a case that meets the foregoing criteria and is initiated by the filing of an involuntary petition under 11 U.S.C. § 303.

General Order 2022-02, as amended, modified or superseded, governs the assignment of judges in Complex Cases, including Complex Cases where estimated assets and liabilities exceed \$50 million (“**Mega Cases**”).

A. INITIAL FILING AND FIRST DAY HEARINGS

1. Case Manager. Each presiding judge will appoint a case manager (the “**Case Manager**”) to be the Court’s point of contact for first day filings. Unless otherwise posted on the Court’s website, Rob Colwell, the Clerk of Court, shall be designated as the initial point of contact for all pre-filing matters for anticipated Complex Cases. Mr. Colwell may be contacted at (214) 753-2017 or by electronic mail at ComplexCase@txnb.uscourts.gov. Counsel for proposed debtors in a Complex Case should contact the applicable Case Manager or Mr. Colwell as early as possible prior to filing the case to obtain a setting for first day hearings. The Case Manager will provide first day hearing settings for the judges in each Division, as the case may be, and once the case has been filed and a judge has been assigned, the applicable setting may then be used. Before or contemporaneous with contacting a Case Manager or Mr. Colwell, Counsel for the Proposed Debtors in a Complex Case should contact the Assistant U.S. Trustee Lisa Lambert at Lisa.L.Lambert@usdoj.gov or (202) 834-4233, or her successor.

2. Emergency Scheduling of First Day Hearings. Absent extenuating circumstances, the judges require at least twenty-four (24) hours between the filing of a Complex Case and first day hearings. If less than twenty-four (24) hours’ notice is required, an explanation should be provided to the Case Manager so that he or she may coordinate with the presiding judge, who will make the final decision.

3. Ordinary Coordination of First Day Hearings. The Case Manager will coordinate with the judges to ensure that first day hearings take place no more than two (2) business days after the filing of the petition, unless the Case Manager is apprised by debtors’ counsel that it is acceptable to conduct first day hearings more than two (2) business days from the filing of the first day motions.

4. Default Virtual Hearings. Unless otherwise directed by the Court, all first day hearings in Complex Cases will be conducted as virtual hearings; *provided that*, if first-day hearings are combined with the plan confirmation hearing in a case concerning a prepackaged Funded Debt Plan (as defined herein), in-person attendance may be permitted but not required.

5. Electronic Participation. Parties intending to appear at first day hearings should make electronic appearances as described in Paragraph 50 below. Any participant in a first day hearing who intends to speak, make argument, offer evidence or otherwise participate in the first day hearing should: (a) make a formal appearance for a party; (b) have the participant's video camera turned on; and (c) have the participant's actual name entered and reflected on the video screen. Absent extraordinary circumstances, witnesses who intend to testify at a first day hearing (whether appearing voluntarily or by subpoena) must appear by both audio and video.

6. Witness Presentation. Generally speaking, the Court will rely on the first day declaration, and any declarations accompanying the first day motions, as the debtor's or debtors' direct testimony for first day hearings; *provided that* the declarant(s) must be present on the video hearing and be available for cross examination. The debtor is not precluded from presenting live direct testimony, in its discretion, and the judges reserve the right to require live testimony based on the facts and circumstances of the case.

7. No Automatic Generation or Service of Bar Date Notice. The Clerk of Court will not automatically generate bar date notices in Complex Cases. Counsel for the debtor will be responsible for generating the notice consistent with applicable rules and Paragraph 44 below or seeking an order or orders establishing bar date(s) and approving any specific forms of notice of such bar date(s).

B. ENTRY OF FINAL ORDERS ON FIRST DAY MOTIONS

8. Subject to Rule 6003 of the Federal Rules of Bankruptcy Procedure, the Court is amenable to entering final orders on the first day motions listed below, rather than entering an interim order to be followed by entry of a final order at a subsequent hearing. Similarly, the debtor may request final, rather than interim, relief for any first day motion not listed herein; *provided that* in either case, the motion(s) for which final relief is/are sought should contain information sufficient to show not only that the relevant statutory requirements have been satisfied, but also that the parties affected by the first day motion(s) in question were served so as to provide actual notice to the greatest extent practicable. The judges reserve the discretion to: (x) order interim relief rather than final relief for any first day motion, including those listed below, and (y) order final relief even if no such request has been made, all based on the facts and circumstances of the case. Eligible motions are:

- (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 payment(s) outside the ordinary course of the debtors' business or in excess of the statutory cap(s). 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. Additionally, payments to insiders should be specifically disclosed;

- (b) Motions to pay insurance premiums and maintain insurance programs;
- (c) Motions to maintain existing cash management systems (subject to the UST's guidelines and main operating account(s) being held at Authorized Depository Institutions (subject to agreement with the UST));
- (d) 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);
- (e) Motions to pay critical vendors, although approval of such relief on a final basis will usually not be approved on the first day, absent extraordinary circumstances;
- (f) Motions to limit or modify the notice requirements of Rule 2002 of the Federal Rules of Bankruptcy Procedure;
- (g) 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; (iv) claims arising under 11 U.S.C. § 503(b)(9); or (v) claims arising under the Perishable Agricultural Commodities Act of 1930, the Packers and Stockyards Act of 1921, or any state or federal statutes of similar effect;
- (h) 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;
- (i) Applications seeking to employ a claims, balloting or noticing agent ("**Claims Agent**"). Such applications should use the official form of order, attached hereto as Appendix A. If circumstances require deviation from the official form, the application requesting approval of the engagement should identify the deviations with specificity;
- (j) Motions seeking an order or orders establishing bar date(s) and approving any specific forms of notice of such bar date(s); and
- (k) Other motions that are procedural in nature and do not affect the substantive rights of creditors and other parties-in-interest.

C. SECOND DAY HEARINGS

9. If an interim order is entered on any first day motion, unless otherwise advised by the Court, counsel may file a Certificate of Counsel, consistent with Paragraph 29 and Paragraph 30 of Section I, stating that the requirements for entry of a final order at the second day hearing have been met and that either: (a) no timely objection or response has been filed or

received; or (b) all known objections have been resolved. A form of final order shall be uploaded with the certification. The Court may then enter the proposed form of final order without a further hearing, or summarily address the matter and enter the order at the second day hearing.

D. CASH COLLATERAL AND FINANCING ORDERS

10. Disclosure and Summary of Key Terms. A motion for use of cash collateral and/or debtor-in-possession financing pursuant to 11 U.S.C. §§ 363 and/or 364 (a “**Financing Motion**”) shall provide a summary of the essential terms (which may include the amount of interim debtor-in-possession financing, amount of final debtor-in-possession financing, interest rate, term of the financing, and other terms as determined by the debtor(s) and secured lender(s)) of the proposed use of cash collateral and/or financing, as applicable, and shall identify the location of such terms in the proposed applicable order and any attached financing agreement(s). If a Financing Motion seeks approval of any of the following terms, in lieu of the debtor(s) filing a separate “checklist,” the Financing Motion itself must highlight all such provisions, *in a separate section or chart*, and identify the location of such terms in the proposed applicable order and any attached financing agreement(s):

- (a) Any provision that establishes case milestones, including sale, plan confirmation, and/or consummation deadlines;
- (b) Any provision that seeks cross-collateralization;
- (c) Any provision that has the effect of converting (or “rolling up”) prepetition debt, including: (i) provisions deeming prepetition debt to be postpetition debt; or (ii) provisions requiring the proceeds of postpetition loans to be used to repay prepetition debt;
- (d) Any default and termination provisions, including those that permit self-executing remedies or preclude Court oversight, such as provisions waiving, modifying, or terminating the automatic stay without further order;
- (e) Any provision that stipulates to the amount, validity, priority, extent, and/or perfection of prepetition claims and/or liens;
- (f) Any provision that releases claims; and
- (g) Any provision that grants one or more liens that prime valid, perfected and non-avoidable liens existing immediately prior to the petition date or that are perfected subsequent to the petition date pursuant to 11 U.S.C. § 546(b).

11. Interim Hearing. A hearing on a Financing Motion (an “**Interim Financing Hearing**”) will routinely be conducted as a first-day hearing to consider emergency relief for interim use of cash collateral and/or interim debtor-in-possession financing.

12. Interim Budget. For an Interim Financing Hearing, the debtor(s) must introduce an initial budget showing sources and uses of cash (on a weekly basis or such other time frame as agreed to with applicable secured parties or ordered by the Court) for at least the interim period of

relief (an “**Interim Budget**”), and, unless case circumstances require otherwise, such Interim Budget shall be filed with the Court and served not less than twenty-four (24) hours prior to the commencement of the Interim Financing Hearing. For any subsequent Interim Financing Hearing and any final hearing to consider such relief (a “**Final Financing Hearing**”), the debtor(s) must introduce a budget showing sources and uses of cash (on a weekly basis or such other time frame as agreed to with applicable secured parties or ordered by the Court) for a time period agreed upon with applicable secured parties or ordered by the Court, and, unless case circumstances require otherwise, the debtor(s) should include the latest such budget as an exhibit, consistent with Paragraph 38 below.

13. Interim Consideration of Certain Provisions. A Financing Motion must list all provisions required under Bankruptcy Rule 4001(c)(1)(B) *in a separate section or chart*. Approval of the following provisions on an interim or emergency basis shall require evidentiary support sufficient to enable the Court to approve the requested relief:

- (a) Any provision granting lien(s) on avoidance actions or proceeds of avoidance actions;
- (b) Any provision that seeks to waive, limit, or otherwise affect the debtor’s “surcharge” rights pursuant to 11 U.S.C. § 506(c);
- (c) Any provision that seeks to waive, limit, or otherwise affect the Court’s authority to consider the “equities of the case” exception set forth in 11 U.S.C. § 552(b); and
- (d) Any provision that shields a lender from or otherwise seeks to waive rights under the equitable doctrine of “marshalling” or any similar doctrine.

It is the Court’s preference to reserve consideration of the relief set forth in (a) – (d) of this Paragraph 13 for determination at the Final Financing Hearing, unless justified by the circumstances of the case or as otherwise ordered by the Court.

14. Guidelines for Certain Forms of Relief in Financing Motions.

- (a) Unless otherwise ordered by the Court in cases of extraordinary circumstances, an order approving a Financing Motion shall require at least five (5) days’ notice to the debtor(s), the United States Trustee, any other lienholders, and any official committee appointed under 11 U.S.C. § 1102 (the “**Enforcement Notice**”) before modification or termination of the automatic stay and enforcement by a creditor of its remedies (such five (5)-day period being the “**Enforcement Notice Period**”). Following service of an Enforcement Notice, upon request of a party in interest, the Court shall hold an emergency hearing prior to the expiration of the Enforcement Notice Period (including conducting such hearing before an alternate judge if the presiding judge in the case is unavailable). If, notwithstanding the foregoing, a hearing cannot be scheduled prior to the expiration of the Enforcement Notice Period, the Enforcement Notice Period shall be deemed

automatically extended until such time as the matter can be heard by the Court.

- (b) Unless otherwise ordered by the Court, an order approving a Financing Motion that contains provisions pursuant to which the debtor(s):
 - (i) stipulates, acknowledges, or otherwise admits to the amount, validity, priority, extent, and/or perfection of prepetition claims and/or liens; and/or
 - (ii) releases claims, shall provide parties other than the debtor(s) with:
 - (A) seventy-five (75) days from entry of the first interim order; and (B) as to an official committee appointed under 11 U.S.C. § 1102, sixty (60) days from the date of appointment, if appointed within thirty (30) days of the petition date, and in any event not more than ninety (90) days of the petition date, to investigate, challenge and not be bound by such stipulations or releases by filing a complaint or motion seeking authority to commence litigation as a representative of the estate.
- (c) To the extent an order approving a Financing Motion contains provisions that require the debtor(s) to pay any postpetition professional fees or expenses of an agent or creditor in connection with the proposed use of cash collateral or financing, the order shall require such agent or lender to provide summary invoices to the debtor(s), the United States Trustee, and any official committee appointed under 11 U.S.C. § 1102, with not less than ten (10) days for recipients to object to payment of such invoices. Each summary invoice shall include: (i) a summary of the work performed during the relevant compensation period; (ii) the name of, hourly rate (if applicable) of, and number of hours worked by each professional and paraprofessional who worked on the matter during the relevant compensation period; and (iii) the total fee amount being requested.

E. SALE ORDERS AND BID PROCEDURES

15. Applicability. Except as otherwise provided in these Complex Case Procedures or the Local Rules, this Section E applies to motions to sell property of the estate under 11 U.S.C. § 363(b) (“**Sale Motions**”) and motions seeking approval of sale, bid or auction procedures in anticipation of or in conjunction with a Sale Motion (“**Sale Procedures Motions**”).

16. Sale Motions – General Terms. Except as otherwise provided in the Local Rules, the Code, the Bankruptcy Rules or an Order of the Court, all Sale Motions shall attach or include the following:

- (a) A copy of the proposed purchase agreement, or a form of such agreement substantially similar to the one the debtor reasonably believes it will execute in connection with the proposed sale;
- (b) A copy of a proposed form of sale order;
- (c) A request, if necessary, for the appointment of a consumer privacy ombudsman under 11 U.S.C. § 332; and

- (d) A disclosure of all material terms of the transaction, including those listed in Paragraph 17 below.

17. Sale Motions – Disclosure of Key Terms. Any Sale Motion must highlight material terms, including but not limited to: (i) a reasonably complete description of the length and substance of any proposed marketing process; (ii) a separate section or chart highlighting whether the proposed form of sale order and/or underlying transactional agreement contains any of the following key terms; (iii) identification of the location(s) of such terms in the proposed applicable sale order and any attached transactional document(s); and (iv) the justification for the inclusion of such provision:

- (a) Sale to Insider. If the proposed sale is to an insider, as defined in 11 U.S.C. § 101(31), the Sale Motion must: (i) identify the insider; (ii) describe the insider’s relationship to the debtor; and (iii) set forth any measures taken to ensure the fairness of the sale process and the proposed transaction.
- (b) Agreements with Management. If a proposed buyer has discussed or entered into any agreements with management or key employees regarding compensation or future employment, the Sale Motion must disclose: (i) the material terms of any such agreements; and (ii) what measures have been taken to ensure the fairness of the sale and the proposed transaction in the light of any such agreements.
- (c) Releases, Exculpations and Indemnifications. The Sale Motion must highlight any provisions pursuant to which an entity is being released, exculpated or indemnified, or claims against any entity are being waived or otherwise satisfied.
- (d) Private Sale/No Competitive Bidding. The Sale Motion must disclose whether an auction is contemplated and highlight any provision which limits the solicitation of competing offers for the property subject to the Sale Motion or otherwise limits marketing of the property in any material way.
- (e) Closing and Other Deadlines. The Sale Motion must highlight any deadlines for the closing of the proposed sale or deadlines that are conditions to closing the proposed transaction.
- (f) Good Faith Deposit. The Sale Motion must highlight whether the proposed purchaser has submitted or will be required to submit a good faith deposit and, if so, the conditions under which such deposit may be forfeited.
- (g) Interim Arrangements with Proposed Buyer. The Sale Motion must highlight any provision pursuant to which a debtor is entering into any interim agreements or arrangements with the proposed purchaser, such as interim management arrangements (which, if out of the ordinary course, also must be subject to notice and a hearing under 11 U.S.C. § 363(b)) and the terms of such agreements.

- (h) Use of Proceeds. The Sale Motion must highlight any provision pursuant to which a debtor proposes to release sale proceeds on or after the closing without further Court order, or to provide for a definitive allocation of sale proceeds between or among various sellers or collateral.
- (i) Record Retention. If the debtor proposes to sell substantially all of its assets, the Sale Motion must highlight whether the debtor will retain, or have reasonable access to, its books and records to enable it to administer its bankruptcy case.
- (j) Sale of Avoidance Actions. The Sale Motion must highlight any provision pursuant to which the debtor seeks to sell or otherwise limit its rights to pursue avoidance claims under Chapter 5 of the Bankruptcy Code.
- (k) Requested Findings as to Successor Liability. The Sale Motion should highlight any provision limiting the proposed purchaser's successor liability.
- (l) Sale Free and Clear of Unexpired Leases. The Sale Motion must highlight any provision by which the debtor seeks to sell property free and clear of a possessory leasehold interest, license or other right.
- (m) Credit Bid. The Sale Motion must highlight any provision by which the debtor seeks to allow, disallow or affect in any manner, credit bidding pursuant to 11 U.S.C. § 363(k).
- (n) Relief from Bankruptcy Rule 6004(h). The Sale Motion must highlight any provision whereby the debtor seeks relief from the fourteen-day stay imposed by Bankruptcy Rule 6004(h).

18. Sale Procedures Motions – General Terms. The debtor(s) may file a Sale Procedures Motion seeking approval of an order (a “**Sale Procedures Order**”) approving bidding and auction procedures either as part of the Sale Motion or by a separate motion filed in anticipation of an auction and a proposed sale, not less than twenty-one (21) days prior to a hearing on the Sale Procedures Motion. The Court will only schedule a hearing to consider approval of bidding and sale procedures in accordance with the notice procedures set forth in L.B.R. 2002-1(a)(2), unless the requesting party seeks to shorten the notice pursuant to Paragraph 34 and Paragraph 35 below. Any request to approve a Sale Procedures Order at the first day hearing in the case must be accompanied by evidence of compelling circumstances.

19. Sale Procedures Motions – Disclosure of Key Terms. The Sale Procedures Motion should highlight the following provisions in any Sale Procedures Order:

- (a) Provisions Providing Bid Protections to “Stalking Horse” or Initial Bidder. Any provisions providing an initial or “stalking horse” bidder a form of bid protection, including, but not limited to the following:

- (i) No-Shop or Non-Solicitation Provisions. Any limitations on a debtor's ability or right to solicit higher or otherwise better bids.
 - (ii) Break-Up/Topping Fees and Expense Reimbursement. Any agreement to provide or seek an order authorizing break-up or topping fees and/or expense reimbursement, and the terms and conditions under which any such fees or expense reimbursement would be paid.
 - (iii) Bidding Increments. Any requirement regarding the amount of the initial overbid and any successive bidding increments.
 - (iv) Treatment of Break-Up and Topping Fees and Expense Reimbursement at Auction. Any requirement that the "stalking horse" bidder receive a "credit" equal to the break-up or topping fee and or expense reimbursement when bidding at the auction and in such case whether the "stalking horse" is deemed to have waived any such fee and expense upon submitting a higher or otherwise better bid than its initial bid at the auction.
- (b) Provisions Governing Qualification of Bidders. Any provision governing a person or entity becoming a qualified bidder, including but not limited to, such bidder's obligation to:
- (i) Deliver financial information by a stated deadline to the debtor and other key parties (ordinarily excluding other bidders).
 - (ii) Demonstrate its financial wherewithal to consummate a sale.
 - (iii) Maintain the confidentiality of information obtained from the debtor or other parties or execute a non-disclosure agreement.
 - (iv) Make a non-binding expression of interest or execute a binding agreement.
- (c) Provisions Governing Qualified Bids. Any provision governing a bid being a qualified bid, including, but not limited to:
- (i) Any deadlines for submitting a bid and the ability of a bidder to modify a bid not deemed a qualified bid.
 - (ii) Any requirements regarding the form of a bid, including whether a qualified bid must be: (A) marked against the form of a "stalking horse" agreement or a template of the debtor's preferred sale terms, showing amendments and other modifications (including price and other terms); (B) for all of the same assets or may be for less than all of the assets proposed to be acquired by an initial or "stalking horse" bidder; or (C) remain open for a specified period of time.

- (iii) Any requirement that a bid include a good faith deposit, the amount of that deposit and under what conditions the good faith deposit is not refundable.
- (iv) Any other conditions a debtor requires for a bid to be considered a qualified bid or to permit a qualified bidder to bid at an auction.
- (d) Modification of Bidding and Auction Procedures. Any provision that would authorize a debtor, without further order of the Court, to modify any procedures regarding bidding or conducting an auction.
- (e) Closing with Alternative Backup Bidders. Any provision that would authorize the debtor to accept and close on alternative qualified bids received at an auction in the event that the bidder selected as the “successful bidder” at the conclusion of the auction fails to close the transaction within a specified period.
- (f) Provisions Governing the Auction. Unless otherwise ordered by the Court, the Sale Procedures Order shall:
 - (i) Specify the date, time and place at which the auction will be conducted and the method for providing notice to parties of any changes thereto.
 - (ii) Provide that each bidder participating at the auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale.

F. PROFESSIONAL RETENTION AND COMPENSATION

20. Employment of Professionals. Professionals seeking to be employed under 11 U.S.C. § 327 shall comply with L.B.R. 2014-1. In describing any connections in compliance with Rule 2014 of the Federal Rules of Bankruptcy Procedures, professionals are encouraged, but not required, to utilize the form attached hereto as Appendix B.

21. Employment of Professionals to be Compensated Under 11 U.S.C. § 328(a). In a Complex Case, if a professional to be employed pursuant to 11 U.S.C. § 327 or § 1103 desires to have the terms of its compensation approved pursuant to 11 U.S.C. § 328(a) at the time of such professional’s retention, then the application must highlight all terms of retention, *in a separate section or chart*, and identify the location of such terms in the proposed applicable order and any engagement letter or agreement: (a) the scope of services to be provided; (b) the specific terms of compensation to be approved under 11 U.S.C. § 328(a), including any and all calculations and conditions for payment of fees or other compensation; and (c) any requirements to indemnify the applicant. At a hearing to consider whether a professional’s compensation arrangement should be approved pursuant to 11 U.S.C. § 328(a), such professional should be prepared to produce evidence that the terms of compensation for which approval under 11 U.S.C. § 328(a) is sought are in accordance with practices no less favorable than those customarily employed by the

applicant and generally accepted by the applicant's clients. If the professional is an attorney, the application must clearly describe why preapproval is sought under 11 U.S.C. § 328(a).

22. Compensation of Professionals. Professionals seeking compensation under 11 U.S.C. § 330 or § 331 shall comply with L.B.R. 2016-1, including use of the Fee Application Cover Sheet. Professionals may seek, and the Court may approve, compensation under 11 U.S.C. § 330 or § 331 without holding a hearing consistent with L.B.R. 9007-1 and Paragraph 29 and Paragraph 33 of these Complex Case Procedures.

23. Interim Compensation Procedures. In a Complex Case, the Court may, upon request, consider approval of an interim compensation mechanism for estate professionals that would enable professionals to be compensated during the course of the Complex Case. Any motion seeking approval of such procedures must highlight, *in a separate section or chart*, the proposed terms of compensation, including: (a) the frequency of billing statements allowed under the procedures; (b) the maximum percentages of fees and expenses payable under the procedures, with the presumption being that 80% of fees and 100% of actual out of pocket expenses shall be reasonable; (c) the parties to be notified of interim billing statements, which must include, at a minimum, the United States Trustee, the debtor(s) and any statutory committee; and (d) the procedures for resolving objections to any interim billing statements. The debtor(s) will be authorized to pay the applicable percentage of such billing statements, as set forth in any approved procedures.

24. Ordinary Course Professionals. The Court may, upon request, consider approval of procedures to approve the retention of estate professionals in the ordinary course of business. Such procedures should include an initial list of the proposed ordinary course professionals (“OCPs”), as well as a form of declaration to be signed and filed by each proposed professional, disclosing: (a) any connections or interests adverse to the debtors with respect to the matters the professional is to be retained; (b) any agreements to share compensation; (c) any amounts owed by the debtors to the professional as of the bankruptcy filing; and (d) any agreements by the debtors to indemnify the professional, along with any agreed modifications thereto. The procedures should also specify the aggregate maximum amounts to be paid to OCPs on a monthly basis, and provide for procedures allowing parties in interest, including the United States Trustee, to review and approve the retention and compensation of OCPs. Professionals to be retained under such procedures may include attorneys, accountants and other professionals whose employment would otherwise require an order under 11 U.S.C. §§ 327 and 328, but whose expected compensation during the proceeding may not warrant the expense of filing multiple applications to employ.

25. Employment of Claims Agents. The Court may, upon request, consider approval of a Claims Agent, consistent with the procedures outlined in Paragraph 8(i) above.

G. PREPACKAGED FUNDED DEBT PLANS

26. In Complex Cases, this Section G shall govern all prepackaged Funded Debt Plans in addition to any applicable Bankruptcy Rules or Local Rules, including, but not limited to, Bankruptcy Rule 3018. For purposes of these Complex Case Procedures, “**Funded Debt Plan**” means a plan that only impairs a debtor's Funded Debt, equity securities, and subordinated equity securities claims, and all claims, other than Funded Debt claims, equity security interests, and

subordinated equity securities claims, remain unimpaired under such plan. For purposes of these Complex Cases Procedures, “**Funded Debt**” means interest-bearing debt that either (i) is recognized on the debtor’s balance sheet statement as long-term debt or (ii) otherwise resembles such long-term debt.

- (a) Authorization. Where there has been solicitation of votes on a Funded Debt Plan prior to the commencement of a case on at least twenty-eight (28) days’ notice to the debtor, U.S. Trustee, all creditors, all equity security holders, and all other parties required to receive notice by Bankruptcy Rule 2002, the Court may, after considering any objections to the Funded Debt Plan, hold a hearing and confirm the Funded Debt Plan on an expedited basis. The proponent of the Funded Debt Plan shall contact the Bankruptcy Clerk prior to the case filing to coordinate a future hearing date and objection deadline.
- (b) Notice. In addition to any notice required by Bankruptcy Rule 2002, the Funded Debt Plan shall be mailed with the notice of the hearing to at least the debtor, holders of Funded Debt, secured creditors, the thirty (30) largest general unsecured creditors, equity security holders, and interested governmental entities. The notice of the hearing shall also be published in a national publication and an international publication to the extent the debtor operates internationally. While the Court may, for cause shown, modify the notice required by Bankruptcy Rule 2002, nothing in this Paragraph 26 shall be construed as modifying or contradicting such requirements.
- (c) Pleadings. All first-day pleadings, or drafts thereof, relating to the Funded Debt Plan shall be posted on a public forum, including a claims agent or notice agent’s website, at least seventy-two (72) hours before the hearing to consider confirmation of the Funded Debt Plan, absent exigent circumstances. The website address or other instructions for accessing such public forum shall be included in the notice described in subparagraph (b) above.
- (d) Objections. Written objections to the Funded Debt Plan shall be served on the proponent of the Funded Debt Plan no less than five (5) days before the hearing to confirm the Funded Debt Plan. Upon the commencement of the case, the proponent of the Funded Debt Plan shall cause to be filed with the Court any objections to the Funded Debt Plan that were submitted by parties in interest and received prior to the commencement of the case.
- (e) Voting Report or Ballot Tabulation. The ballot certification described therein shall be filed with the Court at least twenty-four (24) hours before the hearing on confirmation of a Funded Debt Plan.

H. COMBINED APPROVAL OF DISCLOSURE STATEMENTS AND PLANS

27. In Complex Cases, this Section H shall apply where a proponent seeks to combine confirmation of a Chapter 11 plan with approval of the corresponding disclosure statement, in addition to any applicable Bankruptcy Rules or Local Rules, including, but not limited to, Bankruptcy Rule 3017.

- (a) Procedure for Conditional Approval of Disclosure Statements. In appropriate circumstances, a plan proponent may file a motion requesting: (i) conditional approval of a disclosure statement; (ii) approval of solicitation procedures and forms of ballots and notices; and (iii) the scheduling of a joint hearing to consider final approval of the adequacy of the disclosure statement and confirmation of a proposed plan. The motion may be granted without a hearing if the motion provides at least fourteen (14) calendar days' notice to the United States Trustee, any statutory committee, the thirty (30) largest unsecured creditors and all parties who have requested service, and no timely objections have been filed. Any objections to a request for conditional approval must be filed on or before the earlier of: (x) fourteen (14) calendar days after the service of notice of the hearing; and (y) three (3) days before the scheduled hearing date. The failure to object to a request for conditional approval does not constitute a waiver of any objection to the final approval of a disclosure statement or confirmation of a proposed plan.
- (b) Combining Documents. A disclosure statement and plan may be combined into one document so long as the combined document contains information consistent with 11 U.S.C. § 1125.
- (c) Transmission of Notice. Transmission and notice of the plan and/or disclosure statement by a Claims Agent whose employment has been approved by the Court shall be deemed to comply with Fed. R. Bankr. P. 3017(d).

I. SETTLEMENTS, SUBMISSION OF PROPOSED ORDERS, CERTIFICATES OF NO OBJECTION AND CERTIFICATES OF COUNSEL

28. Settlement of Contested Matters. If a contested matter is noticed for hearing and all affected parties reach a settlement of the dispute prior to the hearing on the matter, the parties should promptly notify the Court's Case Manager that the matter is settled. The parties must announce the key terms of the settlement at the scheduled hearing. If the Court determines that the notice of the dispute and the hearing is adequate notice of the effects of the settlement, (*i.e.*, that the terms of the settlement are not materially different from what parties-in-interest could have expected if the dispute were fully litigated) the Court may approve the settlement at the hearing without further notice.

29. Certificates of No Objection. After the expiration of twenty-four (24) hours after a response deadline has passed, and with no response filed or received, counsel for the movant

should file a Certificate of No Objection (“CNO”), stating that no objection or response was filed. By filing the CNO, counsel for the movant represents to the Court that the movant is unaware of any formal or informal objection to the motion or application and that counsel has reviewed the Court’s docket and no objection/response appears thereon. Upon receipt of the CNO, the Court may enter the order without further notice or hearing. Once the order is entered, any hearing scheduled on the motion is cancelled.

30. Certificates of Counsel. Objection(s) to a motion, application, objection to claim or other pleading filed with the Court may be resolved by filing an agreed form of order filed with a Certificate of Counsel (“CoC”) consistent with this paragraph. The CoC must be signed by counsel with a certification that all known objections have been resolved by the agreed form of order. A CoC should not be filed if it resolves less than all filed objections. A revised form of order that does not resolve all filed objections should be filed as a “Notice (Generic)” that does the following: (a) clearly states in the body of the Notice which objections remain outstanding; and (b) attaches a clean and redlined copy of the form of order as separate exhibits to the notice. If there is an applicable objection deadline, the CoC may not be filed until at least twenty-four (24) hours after that deadline. Upon receipt of the CoC, the Court may enter the order attached to the CoC without further notice or hearing.

31. Submission of Proposed Orders. **Every motion, CNO and CoC should include a proposed form of order.** Proposed orders should be filed as a separate attachment. Proposed orders should also attach copies of any referenced exhibits. Any CNO or CoC that includes a proposed form of order that varies from the original proposed order must include (a) a redline of the revised form of order against the order filed with the subject motion and (b) a clean copy of the form of order without a cover page.

J. PROCEDURES FOR OBTAINING HEARINGS IN COMPLEX CASES

32. Omnibus Settings. The debtor may request preset hearing dates (“**Omnibus Settings**”) for hearings in a Complex Case. The Court will accommodate this request if it appears justified. After Omnibus Settings are established, all matters in the Complex Case, whether initiated by a motion of the debtor or by another party in interest, will be set after the applicable notice periods provided by the Bankruptcy Rules, the Local Rules or these Complex Case Procedures on the Omnibus Settings, unless specifically requested by a party and ordered by the Court. As set forth in Section L below, counsel for the debtor(s) shall provide status updates to the Case Manager as the Omnibus Settings draw closer in time. In the event that the Court determines there is not enough time on the docket to accommodate all matters, the Court (through its Case Manager) may *sua sponte* reschedule matters to ensure that all matters can be heard timely.

33. General Notice Required for Hearings. Parties may self-calendar motions for the next Omnibus Setting that is at least twenty-four (24) or thirty-one (31) days following the filing of the motion, which ever date provides sufficient notice under applicable Bankruptcy Rules and Local Rules. Nothing in this Paragraph 33 modifies or abrogates Bankruptcy Rule 9006(f), if applicable. Such hearings shall be deemed scheduled upon the filing and service of a Notice of Hearing that includes a certificate of service. In lieu of any language required by Local Bankruptcy Rule 9007-1(c) or any other Local Rules, all such motions shall include the following language immediately below the case caption:

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at <https://ecf.txnb.uscourts.gov/> no more than [twenty-four (24) / thirty-one (31)] days after the date this motion was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk and filed on the docket no more than [twenty-four (24) / thirty-one (31)] days after the date this motion was filed. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

[IF A HEARING DATE HAS BEEN OBTAINED, INCLUDE THE FOLLOWING PARAGRAPHS:]

A hearing will be conducted on this matter on ●, at ●:● am/pm in Courtroom ●, floor ●, (courthouse address). **[INCLUDE ONE AS APPLICABLE: You may participate in the hearing either in person or by an audio and video connection [OR] Participation at the hearing will only be permitted by an audio and video connection] [OR] You are required to appear in person at the hearing pursuant to the Court’s order.]**

Audio communication will be by use of the Court’s dial-in facility. You may access the facility at [###-###-####]. Video communication will be by use of the Cisco WebEx platform. Connect via the Cisco WebEx application or click the link on Judge ●’s home page. The meeting code is [●]. Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of electronic hearings. To make your appearance, click the “Electronic Appearance” link on Judge ●’s home page. Select the case name, complete the required fields and click “Submit” to complete your appearance.

34. Emergency Motions. All motions seeking relief on shorter notice than required under the applicable rules will be considered “emergency” motions (“**Emergency Motions**”). An Emergency Motion must contain the word “Emergency” in the title of the motion and must be filed using a CM/ECF code for an Emergency Motion. All Emergency Motions must include a certificate of conference, containing the same certification of counsel that is presently required under L.B.R. 9007-1(f).

35. Hearings on Emergency Motions. Movants are not required to file a separate pleading to request hearings on Emergency Motions. Emergency motions may be filed without a designated hearing date. Alternatively, an Emergency Motion may be calendared for hearing on a date obtained prior to the filing from the Court’s Case Manager. The Court’s Case Manager

shall direct the movant when to file and serve any notice of hearing (the “**Emergency Hearing**”) on the Emergency Motion. Unless otherwise directed by the Court, the Court will determine, as an initial matter at the Emergency Hearing, whether to allow emergency consideration. Emergency Motions must state, just below the case caption and in lieu of the language required by any Local Rule, the following:

Emergency relief has been requested. Relief is requested not later than [● a.m/p.m. on ●, 202●].

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

[IF A HEARING DATE HAS BEEN OBTAINED, INCLUDE THE FOLLOWING PARAGRAPHS:]

A hearing will be conducted on this matter on ●, at ●:● am/pm in Courtroom ●, floor ●, (courthouse address).

[INCLUDE ONE AS APPLICABLE AS DIRECTED BY THE CASE MANAGER: You may participate in the hearing either in person or by an audio and video connection [OR] Participation at the hearing will only be permitted by an audio and video connection [OR] You are required to appear in person at the hearing pursuant to the Court’s order.]

Audio communication will be by use of the Court’s dial-in facility. You may access the facility at [###-###-####]. Video communication will be by use of the Cisco WebEx platform. Connect via the Cisco WebEx application or click the link on Judge ●’s home page. The meeting code is [●]. Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of electronic hearings. To make your appearance, click the “Electronic Appearance” link on Judge ●’s home page. Select the case name, complete the required fields and click “Submit” to complete your appearance.

36. Ordinary Motions Set on Shortened Notice. Unless more notice is expressly required by the Bankruptcy Code, the Bankruptcy Rules or Local Rules, parties may self-calendar hearings on motions for the next Omnibus Setting that is at least *fourteen (14) calendar days* after the filing and service of such motion.

- (a) For the avoidance of doubt, motions affecting the items listed below **do not** fall within this category of motions and must be scheduled in accordance with Paragraph 33 above, or as Emergency Motions described in Paragraph 34 and Paragraph 35 above:
- (i) Motion for the use, sale, or lease of property of the estate other than in the ordinary course of business;
 - (ii) Approval of a compromise or settlement of a controversy, other than approval of an agreement pursuant to Rule 4001(d);
 - (iii) Motions to fix the time to accept or reject modifications of a plan;
 - (iv) Requests for compensation or reimbursement of expenses that exceed \$1,000;
 - (v) Motions to fix the time for filing objections and schedule the hearing to consider approval of a disclosure statement or, under 1125(f), to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary;
 - (vi) Motions to fix the time for filing objections and schedule the hearing to consider confirmation of a Chapter 11 plan;
 - (vii) Motions to dismiss or convert the case to a different chapter;
 - (viii) Motions for relief from, or to extend or impose, the automatic stay;
 - (ix) Motions for use of cash collateral or to obtain credit;
 - (x) Motions to assume, or to assume and assign, executory contracts or unexpired leases;
 - (xi) Motions to extend exclusivity or the time to confirm a plan of reorganization;
 - (xii) Motions for substantive consolidation;
 - (xiii) Confirmation of a plan or approval of a disclosure statement in a Chapter 11 case; and
 - (xiv) Motions to approve or continue key employee retention programs (KERPs) or key employee incentive programs (KEIPs).
- (b) If the motions are filed pursuant to this Paragraph 36, the motion shall include the following language immediately below the case caption:

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file

your response electronically at <https://ecf.txnb.uscourts.gov/> at least two (2) business days before the start of the hearing. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk and filed on the docket at least two (2) business days before the start of the hearing. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

[IF A HEARING DATE HAS BEEN OBTAINED, INCLUDE THE FOLLOWING PARAGRAPHS:]

A hearing will be conducted on this matter on ●, at ●:● am/pm in Courtroom ●, floor ●, (courthouse address). **[INCLUDE ONE AS APPLICABLE: You may participate in the hearing either in person or by an audio and video connection [OR] Participation at the hearing will only be permitted by an audio and video connection] [OR] You are required to appear in person at the hearing pursuant to the Court’s order.]**

Audio communication will be by use of the Court’s dial-in facility. You may access the facility at [###-###-####]. Video communication will be by use of the Cisco WebEx platform. Connect via the Cisco WebEx application or click the link on Judge ●’s home page. The meeting code is [●]. Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of electronic hearings. To make your appearance, click the “Electronic Appearance” link on Judge ●’s home page. Select the case name, complete the required fields and click “Submit” to complete your appearance.

37. Hearings on Motions for Relief from Stay in Complex Cases. Notwithstanding L.B.R. 4001-1(b)&(e), preliminary and final hearings on motions for relief from stay in Complex Cases may only be self-calendared on Omnibus Settings previously scheduled for the Complex Case. If no Omnibus Settings have been scheduled in the Complex Case, or if the movant has a conflict with future Omnibus Settings, the movant may obtain a special setting from the Court’s Case Manager, but only after conferring with counsel for the debtor(s) on such hearing dates.

K. WITNESS AND EXHIBITS LISTS IN COMPLEX CASES

38. Notwithstanding L.B.R. 9014-1(c), and unless otherwise directed by the Court, this Paragraph 38 applies in all contested matters and adversary proceedings in Complex Cases in which a response is filed, except for contested matters and trials covered by a separate scheduling order that specifically provides alternative deadlines for the exchange of exhibits, exhibit lists and witness lists:

- (a) The failure to timely comply with all provisions of this Paragraph 38 may be grounds for the denial of the admission of any or all exhibits and the exclusion of witness testimony.
- (b) Counsel for the movant and each party that has filed a response shall exchange exhibits by **12:00 p.m. (noon) prevailing Central Time** on the Day of Exchange in accordance with Table 1 below.
- (c) In addition to exchanging exhibits, counsel for each party must file exhibit lists, witness lists and actual exhibits on CM/ECF in advance of the hearing. Each exhibit must be filed as a separate attachment to an exhibit list. Witness lists must identify whether each witness is to be called as a fact witness or as an expert. If no delineation is made, the witness will only be allowed to testify as a fact witness unless otherwise ordered by the Court, or the witness is an owner of the property at issue opining as to value.
- (d) Expert Reports. If counsel has identified expert witnesses on the witness list, then counsel must ensure that the written reports of the expert witnesses are timely provided to opposing counsel. Expert reports shall be delivered to opposing counsel by noon on the Day of Exchange in accordance with Table 1. Notwithstanding the foregoing, no expert reports shall be required for (i) owners of property opining on the value of the property; and (ii) attorneys providing expert testimony regarding the reasonableness and amount of attorney's fees.
- (e) Emergency Hearings and Hearings on Short Notice. For hearings on Emergency Motions and other motions filed pursuant to Paragraph 36 above, all of the above referenced procedures shall apply except that counsel must: (i) exchange exhibits, exhibit and witness lists; and (ii) file exhibit and witness lists with the Clerk of the Court by **12:00 p.m. (noon) prevailing Central Time** on of the Day of Exchange in accordance with Table 2.
- (f) Electronic Delivery. Counsel may deliver exhibits via electronic mail or internet-based distribution service that does not assess a charge to the party performing the download. The website address along with instructions for downloading the exhibits shall be made available in accordance with Table 1 or Table 2, as applicable. If a party elects to deliver exhibits in accordance with this paragraph, counsel is not required to provide bound exhibits to counsel. All other requirements (including subparagraph (g) below) and all other deadlines will apply.
- (g) Regardless of the manner of exchange between counsel and unless otherwise instructed by the Court, counsel shall bring or otherwise transmit two (2) hard copies of the exhibits to all scheduled hearings or trials—one for the Court, and one for the courtroom deputy. If the hearing or trial is to be conducted in-person, counsel shall bring or otherwise transmit three (3)

hard copies to the scheduled hearing or trial—one for the Court; one for the courtroom deputy; and one for witnesses.

(h) Table 1. Day of Exchange for Most Hearings:

Scheduled Day for Most Hearings/Trials	Day of Exchange
Monday	Previous Thursday
Tuesday	Previous Friday
Wednesday	Previous Monday
Thursday	Previous Tuesday
Friday	Previous Wednesday

If the Day of Exchange is a legal holiday, the Day of Exchange would be the preceding Day of Exchange. For example, if the Scheduled Day for Hearing or Trial was a Wednesday and the Previous Monday was a legal holiday, the Day of Exchange would be the Previous Friday.

(i) Table 2. Day of Exchange for Emergency Hearings:

Scheduled Day for Emergency Hearings/Trials or Short Notice	Day of Exchange
Monday	Previous Friday
Tuesday	Previous Monday
Wednesday	Previous Tuesday
Thursday	Previous Wednesday
Friday	Previous Thursday

If the Day of Exchange is a legal holiday, the Day of Exchange would be the preceding Day of Exchange. For example, if the Scheduled Day for Hearing or Trial was a Tuesday and the Previous Monday was a legal holiday, the Day of Exchange would be the Previous Friday.

L. AGENDAS AND UPDATED TIME ESTIMATES

39. Timing of Filing Agendas. Hearing agendas (“**Agendas**”) should be filed using the CM/ECF “Agenda” code at least twenty-four (24) hours prior to the start of the scheduled hearing.

40. Sequence of Items on Agendas. Uncontested matters should be listed ahead of contested matters. Contested matters should be listed in the order in which they appear on the Court’s docket.

41. Status Information. For each motion filed in the Complex Case, each motion filed in an adversary proceeding concerning the Complex Case, each objection to claim, or application concerning the case, the Agenda shall indicate the moving party, the docket number of the pleadings, the response deadline, and the status of the matter—*i.e.*, whether the motion is settled,

going forward, whether a continuance is requested (and any opposition to the continuance, if known) and any other pertinent information.

42. Status Updates – After Filing Agenda. After filing an Agenda, counsel for the debtor(s) shall notify the Court’s Case Manager of additional related pleadings that have been filed, and changes in the status of any agenda matter. Such communications may be via e-mail, provided that such e-mail is copied to counsel for each party who filed a motion scheduled for hearing or who has objected (formally or informally) to any matter scheduled for hearing.

43. Status Updates – Before Filing Agenda. In addition to filing Agendas required above, counsel for the debtor(s) shall be responsible for conferring with the other parties in advance of the hearing dates and providing updated time estimates to the Court via e-mail to the Court’s Case Manager at least seven (7) calendar days before each Omnibus Setting in a Complex Case. Counsel shall confer with all parties in advance of the hearing and use best efforts to provide good faith time estimates for each matter scheduled for hearing, with a copy to counsel for each party who filed a motion scheduled for hearing or who has objected (formally or informally) to any matter scheduled for hearing.

M. PROOFS OF CLAIM AND OMNIBUS CLAIM OBJECTION PROCEDURES

44. Unless a different date is ordered by the Bankruptcy Court, on a motion to be filed consistent with Paragraph 7 and Paragraph 8(j) above, the bar date for the filing of proofs of claim and proofs of interest is: (a) 180 days after the petition date for governmental units; and (b) for all other entities, ninety (90) days after the first date set for the meeting of creditors under 11 U.S.C. § 341(a). The debtors must promptly provide notice of the bar date to all creditors.

45. Omnibus claim objections must conform with Bankruptcy Rule 3007(d) and (e) and L.B.R. 3007-1 and 3007-2(a) absent further order.

46. Parties may file a motion to approve procedures for handling omnibus claim objections. Such procedures may not shift the burden of proof, discovery rights or burdens, or pleading requirements.

47. Parties may obtain claim objections hearing dates consistent with Section J of these Complex Case Procedures. Adjournments or continuances of claim objections hearings must either: (a) be agreed and reflected in the Agenda that is filed at least twenty-four (24) hours prior to the scheduled hearing; or (b) ordered by the Bankruptcy Court on motion of any party.

N. AUTOMATIC BRIDGE ORDERS

48. Unless otherwise provided in the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, or Court order, if a motion is filed that complies with the Local Bankruptcy Rules to extend the time to take any action before the expiration of the period prescribed by the Bankruptcy Code, the Bankruptcy Rules, or the Local Bankruptcy Rules, the time for taking the action is automatically extended until the Court rules on the motion. An automatic extension under this rule does not require the issuance or entry of an order extending the time.

O. AUDIO RECORDINGS

49. Audio recordings of hearings will normally be made available on CM/ECF following a hearing in a Complex Case. The audio file will be reflected on the docket as an .mp3 file embedded within a .pdf document. The .pdf document will contain basic instructions for accessing the audio file.

P. ELECTRONIC APPEARANCES

50. Hearing appearances may be made electronically in advance of electronic hearings. To make an electronic appearance, click the “Electronic Appearance” link on the Court’s website for the applicable judge and Complex Case. Complete the required fields and click “Submit” to complete your appearance.

Q. MEDIATION

51. Matters Subject to Mediation. The Court may order mediation of any dispute arising in an adversary proceeding, contested matter or otherwise. Parties may agree to mediate any dispute without Court approval. The U.S. Trustee, as a representative of public interests, may not be ordered to mediation. No matter may be mediated by a sitting judge without first obtaining an order from the presiding Judge.

52. Effects of Mediation on Pending Matters. Unless otherwise ordered by the Court, the assignment to mediation does not delay or stay discovery, pretrial hearing dates or trial schedules.

53. Cost of Mediation. Unless otherwise agreed by the parties, the payment of fees and costs of the mediator will be determined on a case-by-case basis by the Court.

54. Time and Place of Mediation. The mediator will schedule a time and place for the mediation and any pre-mediation conferences.

55. Submission Materials. Each party must submit directly to the mediator such materials (the “**Submission**”) in form and content as the mediator directs. Prior to the mediation, the mediator may talk with the participants to determine what materials would be helpful. The Submission must not be filed with the Court.

56. Protection of Information Disclosed at Mediation. The mediator and the participants in mediation are prohibited from divulging, outside of the mediation, any oral or written information disclosed by the parties in the course of the mediation. No person may rely on or introduce as evidence in any arbitral, judicial or other proceeding, evidence pertaining to any aspect of the mediation effort, including but not limited to: (a) views expressed or suggestions made by a party with respect to a possible settlement of the dispute; (b) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator, (c) proposals made or views expressed by the mediator; (d) statements or admissions made by a party in the course of the mediation; and (e) documents prepared for the purpose of, in the course of, or pursuant to the mediation. Without limiting the foregoing, the parties are bound by: (i) Rule 408 of the Federal Rules of Evidence, and (ii) any applicable federal or state statute, rule,

common law or judicial precedent relating to the privileged nature of settlement discussions, mediations or other alternative dispute resolution procedures. Information otherwise discoverable or admissible in evidence does not become exempt from discovery, or inadmissible in evidence, merely by being used by a party in the mediation.

57. Discovery from Mediator. The mediator may not be compelled to disclose to the Court or to any person outside the mediation conference any of the records, reports, summaries, notes, communications or other documents received or made by the mediator while serving in such capacity. The mediator may not testify or be compelled to testify regarding the mediation in connection with any arbitral, judicial or other proceeding. The mediator will not be a necessary party in any proceedings relating to the mediation. Nothing contained in this paragraph prevents the mediator from reporting the status, but not the substance, of the mediation effort to the Court.

58. Protection of Proprietary Information. The parties, the mediator and all mediation participants shall protect proprietary information.

59. Preservation of Privileges. The disclosure by a party of privileged information to the mediator does not waive or otherwise adversely affect the privileged nature of the information.

60. Service of Process. No party may be served with a summons, subpoena, notice or other pleading during the mediation or at the location where the mediation is occurring.

R. REVISIONS

61. These Complex Case Procedures may be revised periodically.

Appendix A

Proposed N.D. Tex. Form Order—Claims Agent Employment

[INSERT CASE HEADER]

**ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF
[●] AS CLAIMS, NOTICING, AND SOLICITATION AGENT**

The Court has considered the Debtors' application (the "Application")¹ to employ [NAME OF AGENT] ("Agent") as its [claims, noticing, and solicitation agent] in these cases. The Court finds that *ex parte* relief is appropriate. The Court orders:

The Debtors are authorized to employ Agent under the terms of the Engagement Letter attached to the Application as modified by this Order.

The Agent is authorized and directed to perform the services as described in the Application, the Engagement Letter, and this Order. If a conflict exists, this Order controls.

The Agent may not sell bankruptcy data obtained through its role as the Agent to third parties.

The Clerk shall provide Agent with Electronic Case Filing ("ECF") credentials that allow Agent to receive ECF notifications, file certificates and/or affidavits of service.

The Agent is a custodian of court records and is designated as the authorized repository for all proofs of claim filed in these cases. Agent shall maintain the official Claims Register(s) in these cases. The Agent must make complete copies of all proofs of claims available to the public electronically without charge. Proofs of Claims and all attachments may be redacted only as ordered by the Court.

The Agent shall provide the Clerk with a certified duplicate of the official Claims Register(s) upon request.

The Agent shall provide (i) an electronic interface for filing proofs of claim in these cases; and (ii) a post office box or street mailing address for the receipt of proofs of claim sent by United States Mail or overnight delivery.

The Agent is authorized to take such other actions as are necessary to comply with all duties and provide the Services set forth in the Application and the Engagement Letter.

The Agent shall provide detailed invoices setting forth the services provided and the rates charged on a monthly basis to the Debtors, their counsel, the Office of the United States Trustee, counsel for any official committee, and any party in interest who specifically requests service of the monthly invoices in writing.

The Agent shall not be required to file fee applications. Upon receipt of Agent's invoices, the Debtors are authorized to compensate and reimburse Agent for all undisputed amounts in the ordinary course in accordance with the terms of the Engagement Letter. All amounts due to the

¹ Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Application.

Agent will be treated as § 503(b) administrative expenses. The Agent may apply its advance in accordance with the Engagement Letter and the terms of this Order.

The Debtors shall indemnify Agent under the terms of the Engagement Letter, as modified and limited by this Order. Notwithstanding the foregoing, the Agent may only be indemnified for claims, noticing and solicitation agent activities and is not indemnified for, and may not receive any contribution or reimbursement with respect to the following:

- a. For matters or services arising before this case is closed, any matter or service not approved by an order of this Court.
- b. Unauthorized marketing activities or data or privacy breaches.
- c. Any matter that is determined by a final order of a Court of competent jurisdiction that arises from (i) the Agent's gross negligence, willful misconduct, fraud, bad faith, self-dealing, or breach of fiduciary duty (ii) a contractual dispute if the court determines that indemnification, contribution, or reimbursement would not be permissible under applicable law; or (iii) any situation in which the Court determines that indemnification, contribution, or reimbursement would not be permissible pursuant to *In re Thermadyne Holdings Corp.*, 283 B.R. 749, 756 (B.A.P. 8th Cir. 2002). No matter governed by this paragraph may be settled without this Court's approval.
- d. This paragraph does not preclude Agent from seeking an order from this Court requiring the advancement of indemnity, contribution or reimbursement obligations in accordance with applicable law.

The Agent shall not cease providing services during these Complex Cases for any reason, including nonpayment, without an order of the Court. In the event Agent is unable to provide the Services set out in this Order and/or the Engagement Letter, Agent will immediately notify the Clerk and the Debtors' attorney and cause all original proofs of claim and data turned over to such persons as directed by the Court.

After entry of an order terminating Agent's services, upon the closing of these cases, or for any other reason, Agent shall be responsible for archiving all proofs of claim with the Federal Archives Record Administration, if applicable, or as otherwise directed and shall be compensated by the Debtors for such archiving services.

The terms and conditions of this Order are immediately effective and enforceable upon its entry.

This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order. The scope of Agent's services may be altered only on separate motion and further order of this Court.

End of Order

Appendix B

Proposed N.D. Tex. Form Order—Professional Disclosure of Connections

[INSERT CASE HEADER]

**DECLARATION OF [REPRESENTATIVE] IN SUPPORT OF THE [PARTY]'S
APPLICATION TO EMPLOY [FIRM] AS [PROFESSIONAL] TO THE [PARTY]**

• declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

• I am a • in the firm of • (the “Firm”).

• • • •

1. To the best of my knowledge, (a) the Firm is a “disinterested person” within the meaning of section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code, and does not hold or represent an interest adverse to the Debtors’ estates and (b) the Firm has no connection to the Debtors, their creditors, or other parties in interest, except as may be disclosed herein.

2. In connection with its proposed retention by the [Applicant] in these chapter 11 cases, the Firm undertook to determine whether it had any conflicts or other relationships that might cause it not to be disinterested or to hold or represent an interest adverse to the Debtors or their estates. Specifically, the Firm obtained from the [Applicant] and their representatives the names of individuals and entities that may be parties in interest in the chapter 11 cases (the “Potential Parties in Interest”) and such parties are listed on **Schedule 1** hereto. In preparing this Declaration, either I or someone under my supervision and direction searched the Firm’s client database to determine whether the Firm had any relationships with the groups of persons and entities listed on **Schedule 1**. To the extent that I have been able to ascertain that the Firm has a relationship with any Potential Parties in Interest in matters unrelated to the case, such facts are disclosed on **Schedule 2** attached hereto.

3. The Firm and certain of its partners and associates may have in the past represented, may currently represent, and likely in the future will represent, individuals or entities that may be

parties in interest in these chapter 11 cases in connection with matters unrelated to the Debtors and these chapter 11 cases, except as may otherwise be disclosed herein. The Firm has searched on its electronic database for its connection to the entities listed on **Schedule 1** attached hereto. The information listed on **Schedule 1** may have changed without our knowledge and may change during the pendency of these chapter 11 cases. Accordingly, the Firm will update this declaration as necessary and when the Firm becomes aware of additional material information.

4. From time to time, the Firm has referred work to other professionals to be retained in these chapter 11 cases. Likewise, certain such professionals have referred work to the Firm.

5. Listed on **Schedule 2** to this Declaration are the results of the Firm's conflicts searches of the above-listed entities. For the avoidance of doubt, the Firm will not commence a cause of action in these chapter 11 cases against the entities listed on **Schedule 2** that are current clients of the Firm unless the Firm has an applicable waiver on file or first receives a waiver from such entity allowing the Firm to commence such an action.

6. Additionally, as specifically set forth in **Schedule 2**, to date the Firm has not represented any of the creditors or other entities that may be parties in interest in ongoing matters related to the Debtors and these chapter 11 cases. To the extent that the Firm discovers errors in **Schedule 2** or new connections come to light, the Firm will amend and update **Schedule 2**. Moreover, pursuant to section 327(c) of the Bankruptcy Code, the Firm is not disqualified from acting as the [Role] merely because it currently represents certain of the creditors or other entities that may be parties in interest in matters unrelated to these chapter 11 cases.

7. Based on the conflicts search conducted to date and described herein, to the best of my knowledge, neither I, the Firm, nor any partner or associate thereof, insofar as I have been able to ascertain, have any connection with the Debtors, their creditors, or any other parties in interest,

their respective attorneys and accountants, the Office of the United States Trustee for the Northern District of Texas, any person employed in the Office of the U.S. Trustee, or any Bankruptcy Judge currently serving on the United States Bankruptcy Court for the Northern District of Texas, except as disclosed or otherwise described herein.

8. The Firm will review its files periodically during the pendency of these chapter 11 cases to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered or arise, the Firm will use reasonable efforts to identify such further developments and will promptly file a supplemental declaration, as required by Bankruptcy Rule 2014(a).

9. ● ● ●

10.

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

Executed this ●th day of ●.

/s/ _____
Declarant

Schedule 1

List of Entities Searched

Debtors/Affiliates:

Office of U.S. Trustee for NDTX:

Current and Former Directors and Officers:

Other Professionals

DIP Lender & Professionals:

NDTX Judges:

Secured Creditors:

Largest Unsecured Creditors:

Landlords, Contract Counterparties and Other Significant Parties in Interest:

Schedule 2

Disclosures of Relationships to Potential Parties in Interest

List of Connections

1. For each connection: describe the connection, including (but not limited to) whether the engagement is past/ongoing, related/ unrelated, greater than 1% of the firm's annual revenue in any of the prior three (3) years, and a brief description of the terms of any waivers obtained from the client.

2.