

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
\_\_\_\_\_ DIVISION**

IN RE: )  
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XXXXX XXXX XXXXXXXX, ) CASE NO. XX-XXXXX  
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Debtor. )  
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**MEMORANDUM TO DEBTOR IN POSSESSION REGARDING GENERAL  
PROCEDURES FOR CHAPTER 11 BUSINESS CASES FILED IN  
THE MIDDLE DISTRICT OF NORTH CAROLINA**

This memorandum contains important information regarding general procedures for chapter 11 business cases filed in the United States Bankruptcy Court for the Middle District of North Carolina. To the extent any information in this memorandum conflicts with the United States Bankruptcy Code (the “Bankruptcy Code”), the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), any interim rules of procedure adopted by the United States Bankruptcy Court for the Middle District of North Carolina (the “Court”), the Local Bankruptcy Rules of the Court (the “Local Rules”), or an order entered by the Court, the Bankruptcy Code, Bankruptcy Rules, interim rules, Local Rules, or order of the Court, as applicable, control.

**A. SUMMARY OF IMPORTANT DEADLINES AND DATES.**

The following is a list of important deadlines and dates mentioned in the remaining sections of this memorandum and related materials. Many deadlines in the case are determined based on the date of the order for relief, which is \_\_\_\_\_, **20**\_\_. This list is not exhaustive, so debtor should be familiar with applicable sections of the Bankruptcy Code, the Bankruptcy Rules, any interim rules of procedure adopted by the Court, and the Local Rules.

- Application to Employ Bankruptcy Counsel- An application to employ counsel for debtor shall be filed substantially contemporaneous with the order for relief, and in no event more than 5 days thereafter.
- Motion for Interim Order re Utilities- A motion requesting interim relief regarding utilities shall be filed substantially contemporaneous with the filing of the petition, and in no event more than 5 days thereafter.
- Designation of Depository- Debtor shall contact the case manager in the Clerk’s Office assigned to the case with the name and address of the financial institution that will be the official depository in the case no later than 5 days after the entry of the order for relief.
- Disclosure of Compensation of Officers, Partners, Directors, and Members- A disclosure of compensation as more fully detailed in section M of this memorandum shall be filed within 14 days of the order for relief.
- Notice to Creditors with Claims Scheduled as Disputed, Contingent, or Unliquidated- Notice shall be timely sent to each creditor listed on debtor’s schedules as disputed, contingent, or unliquidated, as provided under Local Rule 3003-1.

- Quarterly Fee Statements- Quarterly fee statements shall be filed on or before the last day of the month that follows each calendar quarter during which debtor has a duty to pay fees under 28 U.S.C. § 1930(a)(7). A debtor in a case under subchapter V is not required to pay quarterly fees.
- Monthly Reports- Monthly reports shall be filed within 21 days following the end of each calendar month.
- Initial Interim Application for Compensation- Except in a case under subchapter V, initial interim applications for compensation shall not be filed by professionals before the 11 U.S.C. § 341 meeting of creditors or within 120 days after the order for relief.
- Summary of Voting on Plan- Debtor shall file a summary of voting on a plan at least 3 business days prior to a hearing on confirmation of the plan.

## **B. DUTIES OF SMALL BUSINESS DEBTOR.**

The Bankruptcy Code imposes certain requirements on small business debtors as defined in 11 U.S.C. § 101(51D), including attending any meetings scheduled by the Court or the United States Bankruptcy Administrator for the Middle District of North Carolina (the “Bankruptcy Administrator”); timely filing all schedules and statements; filing all financial and other reports required by the Bankruptcy Rules or Local Rules; maintaining appropriate insurance coverage; timely filing all tax returns and paying all taxes entitled to administrative expense priority; and allowing the Bankruptcy Administrator or a representative from the Bankruptcy Administrator’s office to inspect debtor’s business premises, books, and records. A small business debtor should become familiar with applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, any interim rules of procedure adopted by the Court, and the Local Rules to ensure that debtor’s duties thereunder are being performed fully and in a timely manner.

## **C. DISPOSITION OF ASSETS.**

Debtor shall not sell, mortgage, pledge, or otherwise transfer or encumber any property of the estate, other than in the ordinary course of business, without an order of the Court.

## **D. EMPLOYMENT OF COUNSEL FOR DEBTOR IN POSSESSION AND OTHER PROFESSIONALS.**

### 1. Business Entities Must Be Represented.

A debtor that is a partnership, corporation, or other business entity (other than an individual conducting business as a sole proprietorship) must be represented by a licensed attorney admitted to practice before the Court. Please refer to Local Rule 1002-1(b).

### 2. Applications to Employ Bankruptcy Counsel and Other Professionals.

Debtor must file: (i) an application to employ counsel, (ii) an affidavit of proposed counsel, (iii) a disclosure of compensation pursuant to Bankruptcy Rule 2016(b), and (iv) a proposed order authorizing debtor to employ counsel with the Court (See **Exhibit**

1)<sup>1</sup> substantially contemporaneous with the order for relief and in no event more than 5 days thereafter. If debtor wants to employ any other professionals, debtor must file: (i) an application to employ professional, (ii) an affidavit of proposed professional, (iii) a disclosure of compensation pursuant to Bankruptcy Rule 2016(b), if applicable, and (iv) a proposed order authorizing debtor to employ professional before the professional commences work on behalf of debtor. Absent extraordinary circumstances, employment of debtor's counsel and other professionals will not be approved *nunc pro tunc*. Under Bankruptcy Rule 6003, final approval of applications to employ debtor's counsel or other professionals will not occur prior to 21 days after the date of the filing of the petition.

### 3. Compensation.

Professional fees incurred from or after the order for relief shall not be paid, from a retainer or otherwise, without prior application and approval of the Court. All fee applications must conform to the attached Chapter 11 Fee Application Guidelines (See **Exhibit 2**). Except in a case under subchapter V, after conclusion of the 11 U.S.C. § 341 meeting of creditors, and at least 120 days after the order for relief, counsel for debtor may file an initial application with the Court for an interim fee allowance for services rendered to debtor and a request to establish a procedure for interim compensation for future services. The approval of interim compensation procedures for future services will depend upon several factors, including, but not limited to: (i) whether debtor has sufficient income to justify such a request, (ii) the size of debtor's estate, (iii) the amount of time being devoted to the case, and (iv) the anticipated duration of debtor's case under chapter 11.

## **E. DESIGNATION OF DEPOSITORY.**

Debtor must contact the case manager in the Clerk's Office assigned to the case with the name of the financial institution that will be the official depository for debtor in the case ("Designated Depository") no more than 5 days after the order for relief. Following receipt of this information, the Clerk's Office will issue a memorandum to debtor from the Clerk of Court ("Designated Depository Memo"). A copy of the Designated Depository Memo must be provided to the Designated Depository prior to opening the debtor in possession account(s). The Designated Depository Memo contains important instructions for both debtor and the Designated Depository, including the required name for the new debtor in possession account(s) opened at the Designated Depository. *Please ensure prior to contacting the case manager that the financial institution you select is able to comply with the requirements of a depository under § 345 of the Bankruptcy Code.*

As stated in the Designated Depository Memo, debtor must provide the Bankruptcy Administrator and any trustee appointed in the case with information on each new debtor in possession account and the name and phone number of a contact person at the Designated Depository.

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<sup>1</sup> All forms referenced in this memorandum are available in editable format on the Court's website at [www.ncmb.uscourts.gov](http://www.ncmb.uscourts.gov).

In certain limited situations, the Court may, upon motion by debtor, authorize debtor to maintain existing bank accounts. Any motion by debtor requesting authority to maintain existing bank accounts must: (i) be filed no more than 5 days after the order for relief; (ii) include a representation that debtor has notified all financial institution(s) at which said accounts remain open that: (a) an order for relief under chapter 11 of the Bankruptcy Code has been entered, and (b) the financial institution(s) must not honor any payments made prior to the entry of the order for relief; and (iii) include a representation that debtor will not pay, and will direct the financial institution(s) at which said accounts remain open not to pay, any debts incurred prior to the entry of the order for relief other than as specifically authorized by the Court.

#### **F. DEBTOR'S BOOKS AND RECORDS.**

Debtor shall close its books and records which predate the order for relief and open new books and records thereafter. Such actions shall be performed not later than 7 days after the entry of the Chapter 11 Operating Order (the "Operating Order"). Books and records which predate the order for relief shall be reconciled as of the day preceding the entry of the order. Books and records opened after entry of the order for relief shall include a proper record of all transactions, earnings, expenses, receipts, disbursements, and obligations incurred in the operation of debtor's business and in the management, preservation, and protection of property of the estate.

In certain limited situations, the Court may, upon motion by debtor, authorize debtor to continue to use its existing books and records. However, any motion by debtor requesting authority to continue the use of such books and records shall be filed no more than 7 days after the order for relief.

#### **G. TAXES.**

Debtor shall timely pay all taxes due after the order for relief.

##### 1. Withholding Taxes.

Debtor shall segregate and hold separate and apart from all other funds all monies withheld from employees or collected from others for taxes under the laws of the United States, or any state or subdivision thereof. Debtor shall deposit the money so withheld or collected in a separate bank account simultaneously with such collecting or withholding. If necessary and appropriate, debtor shall open a separate payroll account. The Designated Depository Memo provides additional information regarding opening separate accounts for these purposes. Debtor is authorized to pay, and must pay from said separate account(s) to the appropriate authorities, the amounts due at the times and in the manner prescribed by law.

##### 2. Tax Returns.

Debtor shall file in a timely manner all tax returns due after the order for relief. If an extension of time to file a tax return is sought, that information must be disclosed in the monthly report.

## **H. INSURANCE.**

Debtor shall sufficiently insure all property of the estate for loss caused by fire, theft, liability, collision, and casualty, with loss payable clauses in favor of the appropriate secured creditor(s) in the case of pledged or mortgaged property. If required by law, debtor shall maintain workers' compensation coverage. Debtor shall provide the Bankruptcy Administrator and any trustee appointed in the case with proof of appropriate insurance coverage on or before the date first set for the 11 U.S.C. § 341 meeting of creditors.

## **I. GENERAL GUIDANCE FOR FIRST DAY MOTIONS AND EXPEDITED MOTIONS.**

Debtor must provide no less than 48-hour notice of the motion and any expedited hearing thereon to the Bankruptcy Administrator; debtor's twenty largest unsecured creditors; the attorneys for any committee that may be appointed by the Court; any trustee appointed in the case; any creditor asserting a secured claim or other interest in cash collateral against debtor (and such creditors' attorneys, if known); the Internal Revenue Service; the Attorney General for the United States; the United States Attorney for the Middle District of North Carolina; any potentially affected taxing authorities; and any other creditor or party in interest directly affected by the relief sought on an emergency or first day basis, including, without limitation, any affected utility providers. At a minimum, such notice shall be provided: (i) by electronic mail or facsimile, overnight courier when a street address is available, or next day United States mail when a street address is not available, and (ii) in the manner provided under Bankruptcy Rule 7004.

Even if parties have agreed and consented to the relief requested, approval of such relief remains subject to the discretion of the Court.

## **J. UTILITIES.**

If debtor seeks continued use of utility services after the filing of the petition, debtor shall file a motion for the entry of an interim order pursuant to § 366 of the Bankruptcy Code, which: (i) prohibits utility providers from altering, refusing or discontinuing service to debtor, (ii) deems utility providers adequately assured of future performance, and (iii) establishes procedures for determining additional adequate assurance of future payment. Debtor shall file such motion substantially contemporaneous with the filing of the petition, and in no event more than 5 days thereafter. A sample motion for a debtor in a voluntary case is attached hereto as **Exhibit 3**.

Please refer to section I of this memorandum for general information regarding first day motions.

## **K. EMPLOYEES.**

Motions for authority to pay wages that would be entitled to priority under § 507(a)(4) of the Bankruptcy Code shall identify the number of employees debtor intends to pay and the total amount of wages debtor seeks authority to pay. Interim authority to pay said wages may be granted for no more than the amount of wages entitled to priority under § 507(a)(4), and final authority to pay said wages may be granted for no more than the amount of wages entitled to priority under § 507(a)(4), absent extraordinary circumstances. First day motions seeking authority to pay wages

must be filed substantially contemporaneous with the order for relief, and in no event more than 5 days thereafter.

Please refer to section I of this memorandum for general information regarding first day motions.

#### **L. CASH COLLATERAL MOTIONS.**

The Court has developed guidelines for approval of first day and emergency debtor in possession financing requests with the consent of the secured creditor. These guidelines are attached hereto as **Exhibit 4**.

#### **M. OFFICER AND DIRECTOR RETENTION AND COMPENSATION.**

Within 14 days after the order for relief, debtor shall file a disclosure of: (i) compensation regularly paid or due to be paid to each officer, partner, or member of debtor prior to the entry of the order for relief, including all benefits and perquisites, and (ii) compensation debtor expects to regularly pay these or other individuals from and after the entry of the order for relief in such capacities, including all benefits and perquisites. The disclosure must be served on the Bankruptcy Administrator, any trustee appointed in the case, and any official committee in the case.

#### **N. DISPUTED, CONTINGENT, OR UNLIQUIDATED CLAIMS.**

Under Local Rule 3003-1(c), debtor shall notify each creditor whose claim is listed on the schedules as disputed, contingent, or unliquidated of that fact on or before: (i) 14 days after filing the schedules; (ii) 14 days after the addition of such creditor to the schedules; or (iii) 14 days after an amendment to the schedules which designates the affected creditor's claim as disputed, contingent, or unliquidated for the first time. Within 3 business days after service has been made, debtor shall file a certificate of service with the Clerk's Office. Failure to timely notify a creditor that its claim is listed as disputed, contingent, or unliquidated shall result in the creditor's claim being deemed filed in the amount listed as disputed, contingent, or unliquidated, as though a proof of claim had been filed by the creditor. A form notice is attached hereto as **Exhibit 5**.

#### **O. PAYMENTS BY DEBTOR IN POSSESSION.**

There are certain obligations and debts debtor needs to pay and should pay. Subject to obtaining authority or consent to use cash collateral as provided under § 363 of the Bankruptcy Code, and unless ordered otherwise by the Court, debtor should continue to make the following types of payments:

- All taxes and similar charges lawfully incurred in the operation of debtor's business and in preservation and maintenance of property of the estate from and after the order for relief;
- Proper expenses and obligations incurred by debtor from or after the order for relief in the ordinary course of operating the business and preserving and maintaining property of the estate, including the reasonable wages, salaries, and compensation of employees of the business;
- The cost of maintaining the corporate existence of a corporate debtor;

- The expenses of printing/copying and mailing notices to creditors, stockholders, and all other parties as may be directed by the Court or applicable rule; and
- In a case other than under subchapter V, quarterly fees payable during the pendency of the case pursuant to 28 U.S.C. § 1930(a)(7).

#### **P. MONTHLY REPORTS.**

Debtor is required to file monthly reports with the Court on the progress and status of the case. If debtor is a small business debtor as defined in § 101(51D) of the Bankruptcy Code, debtor must use Official Form 425C- Monthly Operating Report for Small Business Under Chapter 11. If debtor is not a small business debtor, monthly reports filed by debtor shall conform to the form attached hereto as **Exhibit 6**. The first monthly report shall include the period from the entry of the order for relief through the last day of the calendar month in which the order for relief was entered. Monthly reports shall be filed within 21 days following the end of each calendar month. All monthly reports must be served on the Bankruptcy Administrator and any trustee appointed in the case. The Bankruptcy Administrator may reasonably adjust, as deemed necessary, the form and required content of the debtor's monthly reports.

#### **Q. STATUS CONFERENCES.**

If a status conference is set in the case, a representative of debtor/debtor is required to appear at the status conference, in addition to counsel for debtor, unless otherwise directed by the Court.

#### **R. QUARTERLY FEES.**

All debtors in chapter 11 cases are assessed quarterly fees, with the exception of those proceeding under subchapter V. The amount of quarterly fees assessed is calculated based on the total sum of disbursements made by debtor during the calendar quarter. Even if debtor makes no disbursements during a calendar quarter, there is still a minimum fee that debtor is required to pay. Debtor must file a Quarterly Fee Statement with the Court on or before the last day of the month that follows each calendar quarter during which debtor has a duty to pay fees under 28 U.S.C. § 1930(a)(7). Additional information on the assessment and payment of quarterly fees, as well as a form Quarterly Fee Statement, are attached hereto as **Exhibit 7**.

#### **S. PLAN AND DISCLOSURE STATEMENT.**

##### 1. Filing Deadlines for Debtor that is Not a Small Business Debtor.

If debtor is not a small business debtor as defined in § 101(51D) of the Bankruptcy Code, only the debtor may file a plan and disclosure statement within 120 days after the date of the order for relief.

Debtor may file a motion to extend the exclusivity period, but such motion must be filed before the expiration of the applicable period under § 1121(c) of the Bankruptcy Code. If debtor files a motion to extend exclusivity, debtor shall file a Status Report on Activities and Financial Condition of Debtor in Possession at the time of the filing of the motion in the form attached hereto as **Exhibit 8**.

## 2. Filing Deadlines for Small Business Case.

In a small business case, debtor must file a plan and disclosure statement (if any) within 300 days after the date of the order for relief. Debtor has the exclusive right to file a plan within 180 days after the date of the order for relief. Official forms for the Disclosure Statement for Small Business Under Chapter 11 and Plan of Reorganization for Small Business Under Chapter 11 are available on the Court's website.

Failure to timely file a plan may subject debtor to a motion to convert or dismiss the case. Debtor may file a motion to extend: (i) the exclusivity period for filing a plan, (ii) the 300-day deadline for filing a plan and disclosure statement (if any), or (iii) the deadline for confirmation of the plan fixed by 11 U.S.C. § 1129(e). **An order must be entered granting any such request prior to expiration of the existing deadline.** The Court will not grant a request to extend any such deadline unless debtor, **after providing notice to parties in interest**, demonstrates by a preponderance of the evidence that it is more likely than not that the Court will confirm a plan within a reasonable period of time. If debtor files a motion to extend the time to file a plan and disclosure statement, debtor shall file a Status Report on Activities and Financial Condition of Debtor in Possession at the time of the filing of the motion in the form attached as **Exhibit 8**.

## 3. Filing Deadlines for Case under Subchapter V.

A debtor under subchapter V has the exclusive right to file a plan. Debtor shall file a plan not later than 90 days after the date of the order for relief.

Failure to timely file a plan may subject debtor to a motion to convert or dismiss the case. Debtor may file a motion to extend the 90-day deadline for filing a plan. The Court may extend the deadline if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable. If debtor files a motion to extend the time to file a plan, debtor shall file a Status Report on Activities and Financial Condition of Debtor in Possession at the time of the filing of the motion in the form attached as **Exhibit 8**. In any motion seeking an extension of time to file a plan, debtor shall include: (i) the reason for the extension, (ii) the basis on which debtor should not be justly held accountable for the delay, and (iii) details on the efforts debtor has undertaken and will undertake to attain a consensual plan of reorganization after the filing of the status report required by 11 U.S.C. § 1188(c).

## 4. Disclosure Statement Requirements.

Section 1125 of the Bankruptcy Code does not apply in cases under subchapter V, unless the Court orders otherwise. In a case in which 11 U.S.C. § 1125 applies, any disclosure statement must include adequate information to enable a hypothetical investor to make an informed judgment about the plan. At a minimum, a disclosure statement shall include: (i) information on the present financial status of debtor, (ii) historical cash flow information, (iii) financial projections, (iv) a schedule of proposed payments to creditors, and (v) a liquidation analysis.

If debtor is a small business debtor in a case other than under subchapter V, debtor shall file a motion for conditional approval of the disclosure statement under 11 U.S.C.



§ 1125(f) with the disclosure statement. The Court will consider the motion without a hearing.

## **T. VOTING ON PLAN.**

### 1. Solicitation of Acceptances.

If a disclosure statement must be filed by debtor, acceptances may not be solicited until after the disclosure statement is approved or conditionally approved. In any case, the date for filing the ballots of acceptance or rejection will be set by the Court. Acceptances must be in writing, identify the plan being accepted, and be signed by the creditor.

### 2. Ballot Form.

A ballot form is to be mailed along with the documents set forth in the order setting the confirmation hearing to the creditors and other parties in this case pursuant to Bankruptcy Rule 3017(d). If debtor's ballot deviates from Official Form 314, the ballot form must be approved by the Court.

### 3. Summary of Voting.

Pursuant to Local Rule 3018-1, debtor shall complete and file a summary of voting on a plan not later than 3 business days before the plan confirmation hearing, unless otherwise directed by the Court. The summary must include (for each class) the class description, the number of ballots accepting the plan, the number of ballots rejecting the plan, the dollar value of the ballots accepting the plan, the dollar value of the ballots rejecting the plan, whether the class has accepted the plan, and whether the class is impaired. If a class is not impaired and voting is not necessary, such class must still be included in the summary of voting. A form summary is attached as **Exhibit 9**.

## **U. POST CONFIRMATION.**

Following confirmation, debtor is required to comply with the Order Regarding Post Confirmation Procedures issued by the Court in this case.

If you have any questions concerning the contents of this memorandum, please do not hesitate to contact the Clerk's Office or the Bankruptcy Administrator.

OFFICE OF THE CLERK

By: \_\_\_\_\_  
Deputy Clerk