

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA**

**AMENDED PUBLIC NOTICE**

**INVITATION FOR COMMENT ON:**

**NEW LOCAL BANKRUPTCY RULE 1075-2 AND NEW EXHIBIT 16 THERETO,  
AND**

**AMENDMENTS TO EXHIBIT 15 AND TO LOCAL BANKRUPTCY RULES 1007-  
1(H)(1), 5005-1(B), AND 9019-1(J)**

NOTE: Exhibit 15, at Part VI.F.4.b, is excised permanently and Part VI.F.4.a. is re-designated Part VI.F.4. No comments are required as to this former provision. All else, as set forth, below, remains unchanged.

Comments are invited to new Rule 1075-2 and Exhibit 16 thereto, and to amendments to Exhibit 15 and Rules 1007-1(H)(1), 5005-1(B), and 9019-1(J) of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia (“LBRs”). This revision to the LBRs conforms to the Court’s [Standing Order 21-21](#), entered on November 30, 2021, which establishes a randomized judge assignment protocol for mega chapter 11 cases.

The Court has formed a Chapter 11 Mega Case Local Rules Advisory Committee (“Advisory Committee”) comprised of members of the Bar to consider and draft a proposed revision to the LBRs, which will “promulgate procedures that implement the judge assignment protocol established by . . . [the aforesaid] . . . Standing Order and to otherwise facilitate continued service to the public.”

The Advisory Committee has presented a proposed revision to the LBRs, including the above-referenced exhibits. The LBRs revision is due to take effect on February 15, 2022.

Comments may be submitted, by mail, to:

Local Rules Changes  
c/o William C. Redden  
U.S. Bankruptcy Court  
701 East Broad Street Suite 4000  
Richmond, VA 23219-1888

or, by email, at  
[localrules@vaeb.uscourts.gov](mailto:localrules@vaeb.uscourts.gov)

Comments will be received by mail or at the Court’s website until 5:00 P.M., local time, February 7, 2022.

William C. Redden  
Clerk of Court

Date: January 31, 2022

Attachment

**UNITED STATES BANKRUPTCY COURT  
FOR THE  
EASTERN DISTRICT OF VIRGINIA**

**NEW LOCAL BANKRUPTCY RULE 1075-2—PROCEDURES FOR ASSIGNMENT  
AND ADMINISTRATION OF “MEGA CASES” IN THE EASTERN DISTRICT OF  
VIRGINIA TOGETHER WITH**

**NEW EXHIBIT 16 THERETO—PROCEDURES FOR ASSIGNMENT AND  
ADMINISTRATION OF “MEGA CASES” IN THE EASTERN DISTRICT OF  
VIRGINIA, AND**

**AMENDED EXHIBIT 15—PROCEDURES FOR COMPLEX CHAPTER 11 CASES IN  
THE EASTERN DISTRICT OF VIRGINIA, AND, IN ADDITION TO**

**AMENDED LOCAL BANKRUPTCY RULE 1007-1(H)(1),**

**AMENDED LOCAL BANKRUPTCY RULE 5005-1(B), AND**

**AMENDED LOCAL BANKRUPTCY RULE 9019-1(J)**



**Effective: February 15, 2022 (DRAFT Ver. 01/31/2022)**

## **RULE 1007-1 LISTS, SCHEDULES AND STATEMENTS**

### **(H)(1) *List of Creditors, Statement of Social Security Number, and Payment Advices or Other Evidence of Payment***

**(1) *Filing:*** The debtor shall file with the petition a list containing the name and address of each creditor which shall serve as a mailing matrix; provided, however, nothing shall prevent the debtor from seeking court authority to file such list under seal to protect individuals against potential identity theft, or for other cause. If not filed via the Electronic Case Files System, the mailing matrix shall be submitted on a flash drive in the format specified by the Clerk. The mailing matrix shall suffice for the list of creditors referred to in FRBP 1007(a). As required under FRBP 1007(f), the debtor shall submit a verified statement that sets out the debtor's social security number (statement of social security number), or states that the debtor does not have a social security number. If not filed via the Electronic Case Files System, the debtor shall submit the statement with the petition.

#### **Comments**

1007-1(H)(1) This change provides that if the mailing matrix is to be filed rather than maintained by a Claims Agent, it may be filed under seal to protect against identity theft. [Change effective 2/15/22.]

## **RULE 1075-2 PROCEDURES FOR ASSIGNMENT AND ADMINISTRATION OF “MEGA CASES” IN THE EASTERN DISTRICT OF VIRGINIA (New)**

The “Procedures for Assignment and Administration of ‘Mega Cases’ in the Eastern District of Virginia” (Exhibit 16) as may be amended from time to time, shall apply to Mega Cases, as such term is defined therein.

#### **Comments**

1075-2 This rule is new and promulgates “Procedures for Assignment and administration of ‘Mega Cases’ in the Eastern District of Virginia.” This document is incorporated into a new Exhibit 16 to these Local Bankruptcy Rules. [New Rule effective 2/15/22.]

## **RULE 5005-1 FILING OF PETITIONS, PLEADINGS AND OTHER PAPERS**

### **(B) *Judge Assignments (Provisional)***

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(3) The assignment procedures set forth hereinabove are superseded by Exhibit 16, Procedures for Assignment and Administration of “Mega Cases” in the Eastern District of Virginia, which is promulgated by Local Bankruptcy Rule 1075-2.

#### **Comments**

5005-1(B)(3) This rule provision is new and references Exhibit 16, Procedures for Assignment and Administration of “Mega Cases” in the Eastern District of Virginia. That exhibit is promulgated by new Local Bankruptcy Rule 1075-2.

[New Subparagraph (B)(3) effective 2/15/22.]

## **RULE 9019-1 SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION**

**(J) *Disclosure of Mediation Communications and Writings:*** The substance of communications and writings in the mediation process shall not be disclosed to any person other than participants in the mediation process; provided, however, that nothing herein shall modify the application of Federal Rule of Evidence 408 nor shall use in the mediation process of an otherwise admissible document, object, or statement preclude its use at trial. Furthermore, unless otherwise agreed to by the party, communications and writings between a party and the mediator shall be considered privileged and confidential and shall not be subject to discovery. No party shall be deemed to have waived the attorney-client or work-product privileges by communicating privileged information to the mediator. New Paragraph (J) effective 2/15/22.]

### **Comments**

9019-1(J) Paragraph (J) is new and ensures that communications between the mediator and parties remain confidential and privileged. [New paragraph (J) effective 2/15/22.]

**PROCEDURES FOR COMPLEX CHAPTER 11 CASES**  
**IN THE EASTERN DISTRICT OF VIRGINIA AS REVISED ON JANUARY 31, 2022**  
**(Effective ~~April 26~~ February 15, 2021 ~~2022~~)**

Pursuant to section 105(d)(2) of Title 11 of the United States Code (the “Bankruptcy Code”), unless otherwise ordered by the Court, these procedures (the “Chapter 11 Procedures”) shall apply to the administration of chapter 11 cases, other than cases involving single asset real estate, in which the total debt owed by the debtors<sup>1</sup> exceeds \$7.5 million (“Chapter 11 Cases”). These Chapter 11 Procedures shall also apply to Chapter 11 Cases that meet the foregoing criteria and are initiated by the filing of an involuntary petition under section 303 of the Bankruptcy Code.

The Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia (the “Local Bankruptcy Rules”) shall govern all matters in Chapter 11 Cases, except ~~as~~ to the extent the Local Bankruptcy Rules conflict with or are inconsistent with the procedures set forth herein.

**I. FIRST DAY HEARINGS AND CASE DESIGNATION**

A. The following persons (for each division and for Mega Cases, the “**Designated Contact**”) are designated as the initial point of contact for all pre-filing matters for anticipated Chapter 11 Cases. Proposed counsel for the debtor in a Chapter 11 Case should contact the Designated Contact for the division in which the Chapter 11 Case will be filed as early as possible prior to filing a Chapter 11 Case to obtain a date and time for first day hearings.

1. ***For Cases to Be Filed in the Alexandria Division.*** Please contact either Tawanna Lawson, Courtroom Deputy for the Honorable Brian F. Kenney, or Regina Williams, Courtroom Deputy for the Honorable Klinette H. Kindred. Ms. Lawson may be contacted at (703) 258-1219 or by electronic mail to [Tawanna\\_Lawson@vaeb.uscourts.gov](mailto:Tawanna_Lawson@vaeb.uscourts.gov). Ms. Williams may be contacted at (703) 258-1262 or by electronic mail to [Regina\\_Williams@vaeb.uscourts.gov](mailto:Regina_Williams@vaeb.uscourts.gov).

2. ***For Cases to Be Filed in the Norfolk / Newport News Divisions.*** Please contact either ~~LaTanya Gibbs~~ [Jennifer Hinkle](mailto:Jennifer_Hinkle@vaeb.uscourts.gov), Courtroom Deputy for the Honorable Frank J. Santoro, Chief Judge; Diana Morehead, Courtroom Deputy for the Honorable Stephen C. St. John; or ~~Jennifer Hinkle~~ [Tai Brown](mailto:Tai_Brown@vaeb.uscourts.gov), Courtroom Deputy. ~~Ms. Gibbs may be contacted at (757) 222-7513 or by electronic mail to LaTanya\_Gibbs@vaeb.uscourts.gov. Ms. Morehead may be contacted at (757) 222-7573 or by electronic mail to Diana\_Morehead@vaeb.uscourts.gov.~~ Ms. Hinkle may be contacted at (757) 222-7515 or by electronic mail to [Jennifer\\_Hinkle@vaeb.uscourts.gov](mailto:Jennifer_Hinkle@vaeb.uscourts.gov). Ms. Morehead may be contacted at (757) 222-7573 or by electronic mail to [Diana\\_Morehead@vaeb.uscourts.gov](mailto:Diana_Morehead@vaeb.uscourts.gov). Ms. Brown may be contacted at (757) 222-7514 or by electronic mail to [Tai\\_Brown@vaeb.uscourts.gov](mailto:Tai_Brown@vaeb.uscourts.gov)

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<sup>1</sup> The term “debtors” is used herein for convenience and includes a single debtor as well as a group of affiliated debtors whose cases are jointly administered or substantively consolidated.

3. ***For Cases to Be Filed in the Richmond Division.*** Please contact either Lisa Gary, Courtroom Deputy for the Honorable Kevin R. Huennekens, or Peggy Rintye, Courtroom Deputy for the Honorable Keith L. Phillips. Ms. Gary may be contacted at (804) 916-2441 or by electronic mail to [lisa\\_gary@vaeb.uscourts.gov](mailto:lisa_gary@vaeb.uscourts.gov). Ms. Rintye may be contacted at (804) 916-2442 or by electronic mail to [peggy\\_rintye@vaeb.uscourts.gov](mailto:peggy_rintye@vaeb.uscourts.gov).

4. **[For Mega Cases<sup>2</sup> to Be Filed in Any Division. Please contact the Chief Judge's chambers.](#)**

B. Drafts of First Day Motions (as defined herein) should not be delivered to the Clerk's office or chambers. First Day Motions are to be delivered in final form upon request only after the motions have been filed.

C. **[As soon as reasonably practicable prior to filing a Chapter 11 Case, counsel to the proposed debtors are encouraged to make a good faith effort to provide advance notice of the intended filing and drafts of First Day Motions to the Assistant United States Trustee for the Eastern District of Virginia \(the "U.S. Trustee"\) for the division in which the Chapter 11 Case is to be filed.](#)**

D. ~~C.~~ Nothing herein shall be construed to modify applicable law concerning impermissible *ex parte* communications.

E. **[Unless otherwise ordered by the Court, all first day hearings shall be conducted by remote video conference.](#)**

F. **[First day hearings shall be conducted on no less than twenty-four \(24\) hours' notice and, unless otherwise requested by the debtors, held within two \(2\) business days of the filing of the Chapter 11 case.](#)**

G. ~~D.~~ These Chapter 11 Procedures shall apply to any case that is filed which meets the definition of a "Chapter 11 Case" as defined herein. However, nothing herein shall prohibit the debtor from (i) requesting a determination that any or all of these Chapter 11 Procedures not apply to the Chapter 11 Case; (ii) requesting alternative or additional procedures apply; or (iii) seeking such other or further relief as may be just and proper under the circumstances.

## **SERVICE**

A. ***Procedures Established for Notices.*** All (a) notices, motions, applications, and other requests for relief, (b) brief, memoranda, affidavits, declarations, replies, and other documents filed in support of such papers seeking relief (collectively, "Requests for Relief"), and (c) all objections and responses to such Requests for Relief (collectively, the "Objections," and, together with the Requests for Relief and all other filed documents, the "Rule 2002 Court Filings") shall be filed and served in accordance with the notice procedures set forth herein (the "Notice Procedures").

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<sup>2</sup> **[See Exhibit 16 for additional local rules applicable to and the definition of Mega Cases.](#)**

B. **Definitions of Entities Entitled to Service.** All Rule 2002 Court Filings shall be served on the Core Group, the 2002 List, and Affected Entities (each as defined herein and collectively, the “Service List”) according to the Notice Procedures. A Rule 2002 Court Filing is deemed not to have been properly served until served, at a minimum, on all of the parties in the Core Group.

1. **Core Group.** The following entities shall comprise the core group of entities in a Chapter 11 Case (collectively, the “Core Group”): (a) the ~~Assistant United States Trustee for the Eastern District of Virginia (the “U.S. Trustee”)~~ for the division in which the Chapter 11 Case is filed; (b) the debtors; (c) counsel for the debtors; (d) counsel for any committee appointed pursuant to section ~~1102~~ 1102 of the Bankruptcy Code<sup>3, 2</sup>; (e) counsel to the debtors’ prepetition lenders; (f) counsel to the debtor’s postpetition lenders, if any; (g) all applicable government agencies to the extent required by the Bankruptcy Rules and the Local Bankruptcy Rules; (h) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (i) any other party and/or counsel designated by the debtors. Updated Core Group lists shall be provided on the Case Website (as defined herein) from time to time.

2. **2002 List.** This group shall be comprised of all entities that have filed a request for service of filings pursuant to Bankruptcy Rule 2002. The debtors or the claims or noticing agent (the “Claims Agent”) shall be responsible for maintaining an updated list of those that have submitted a proper 2002 Notice Request (the “2002 List”). It is the responsibility of each entity submitting a 2002 Notice Request to file with the Court an updated 2002 Notice Request as necessary to reflect changes to any information, including email address and contact person, and serve a copy of such request upon the debtors.

a. **Filing Requests for Documents Requires Email Address.** A request for service of papers pursuant to Bankruptcy Rules 2002 (each, a “2002 Notice Request”) filed with the Court shall be deemed proper if and only if it includes the following information with respect to the party filing such request: (A) name; (B) street address; (C) name of client(s), if applicable; (D) telephone number; (E) facsimile number, if applicable; and (F) either (i) electronic mail (or email) address or (ii) a certification in compliance with **Part II.B.2.b** *infra*.

b. **Certification Opting Out of Email Service.** Any individual or entity filing a 2002 Notice Request who does not maintain (and cannot practicably obtain) an email address and thereafter cannot receive service by email must include in the 2002 Notice Request a certification to that effect (the “Certification”). The Certification shall include a statement certifying that the individual or entity does

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<sup>3</sup> Before the appointment of an official committee of unsecured creditors and its counsel, pursuant to Bankruptcy Rule 1007(d), service shall be made upon either (i) the holders of the debtors’ twenty (20) largest unsecured claims or (ii) in a jointly administered Chapter 11 Case, the consolidated list of the debtors’ [at least] thirty (30) largest creditors.

<sup>2</sup> ~~Before the appointment of an official committee of unsecured creditors and its counsel, pursuant to Bankruptcy Rule 1007(d), service shall be made upon either (i) the holders of the debtors’ twenty (20) largest unsecured claims or (ii) in a jointly administered Chapter 11 Case, the consolidated list of the debtors’ [at least] thirty (30) largest creditors.~~

not maintain an email address and (B) cannot practicably obtain an email address at which the individual or entity could receive service by email.

c. ***Failure to Include Email Address or Certification.*** If a 2002 Notice Request fails to include an email address or a Certification, within five (5) business days after the filing of the Notice Request, the Debtors shall forward a copy of these Chapter 11 Procedures to such party specifically requesting an email address. If no email address or no Certification is provided in response to such request, such party shall not be added to the 2002 List and shall not be served with copies of pleadings and documents filed in the Chapter 11 Case unless such pleadings and/or documents directly affect such party.

3. ***Affected Entities.*** This group shall be comprised of all entities with a particularized interest in the subject matter of the particular court filing (each, an “Affected Entity”).

C. ***Maintaining the 2002 List.*** ~~The~~Unless the Claims Agent has been authorized by the Court to maintain the 2002 List in lieu of the debtors, the 2002 List must be filed by the debtors within three (3) days after the petition date. A revised list must be filed seven (7) days after the initial 2002 List if any revisions are necessary. At least every 15 days during the first 60 days of the Chapter 11 Case, and thereafter at least every 30 days, until confirmation of a proposed chapter 11 plan or conversion of the Chapter 11 Case to another chapter, the debtors or the Claims Agent shall maintain and update the 2002 List by: (a) making any additions and deletions as necessary; (b) filing an updated 2002 List with the Court; (c) serving the updated 2002 List on the parties listed thereon; (d) filing a proof of service; and (e) simultaneously with the filing of the 2002 List, posting an updated version of the 2002 List on the Case Website (as defined herein).

D. ***Service of Motions.*** With respect to filings for which particular notices are required to be served on all creditors and parties in interest, including Bankruptcy Rules 2002(a)(2)-(6), 4001, 6004, 6007, or 9019, parties shall serve all such filings only on the appropriate Service List by email, or by paper copy if an exemption is granted, and in accordance with the following procedures, unless otherwise ordered by the Court:

- = ~~—~~in the case of the use, sale, or lease of property pursuant to section 363 of the Bankruptcy Code, on all creditors, parties in interest and, where applicable, equity security holders;
- = in the case of abandonment of property, on each entity asserting an interest in that property;
- = in the case of a motion for relief or modification of the automatic stay, on each entity asserting a lien or encumbrance on the affected property;
- = in the case of a motion relating to the use of cash collateral or obtaining credit, on each party asserting an interest in the cash collateral or a lien or other interest in property upon which a lien or encumbrance is proposed to be granted;



- = in the case of a motion under Bankruptcy Rule 9019, on all parties that are parties to the relevant compromise and settlement or that may be directly affected by such compromise or settlement;
- = in the case of assumption, assignment, or rejection of an executory contract or an unexpired lease, on each party to the executory contract or the unexpired lease;
- = any objection, opposition, response, reply, or further document filed directly in response to a document shall be served on the entity that filed such document; and
- = all matters for which the Bankruptcy Rules specifically require notice to all parties in interest shall be served on all parties in interest unless otherwise directed by the Court.

~~**E. Service of Adversary Proceedings. All pleadings and other Court filings in any adversary proceeding commenced in the chapter 11 cases shall be served upon the Core Group, each Affected Entity, and any other entities required to be served under any applicable Bankruptcy Rule or Local Bankruptcy Rule**~~

E. ~~**F. Proceedings Not Governed by the Notice Procedures.**~~ Except as set forth herein or otherwise provided by order of the Court, the Notice Procedures shall not apply to notices of the matters or proceedings described in the following Bankruptcy Rules:

- = ~~—~~Bankruptcy Rule 2002(a)(1) (meeting of creditors pursuant to section 341 of the Bankruptcy Code);
- = Bankruptcy Rule 2002(a)(7) (time fixed for filing a proof of claim pursuant to Bankruptcy Rule 3003(c));
- = Bankruptcy Rule 2002(b)(1) (time fixed for filing objections and any hearing to consider approval of a disclosure statement);
- = Bankruptcy Rule 2002(b)(2) (time fixed for filing objections and any hearing to consider confirmation of a chapter 11 plan);
- = Bankruptcy Rule 2002(d) (certain matters for which notice is to be provided to equity security holders);
- = Bankruptcy Rule 2002(f)(1) (entry of an order for relief);
- = Bankruptcy Rule 2002(f)(2) (dismissal or conversion of a case to another chapter of the Bankruptcy Code);
- = Bankruptcy Rule 2002(f)(3) (time allowed for filing claims pursuant to Bankruptcy Rule 3002);

- = Bankruptcy Rule 2002(f)(6) (waiver, denial, or revocation of a discharge as provided in Bankruptcy Rule 4006);
- = Bankruptcy Rule 2002(f)(7) (entry of an order confirming a chapter 11 plan); and
- = Bankruptcy Rule 2002(f)(8) (summary of the trustee's final report and account should a case be converted to chapter 7 of the Bankruptcy Code).

F. ~~G.~~ ***Certificates of Service.*** Notwithstanding Local Bankruptcy Rule 5005-1(C)(8), certificates of service of all Rule 2002 Court Filings, including a Service List, shall be filed by the party seeking relief with the Court within seven (7) days of the completion of noticing any particular matter; provided, however, that parties shall not be required to include the Service List when serving the certificate of service to such recipients.

G. ~~H.~~ ***Service by Electronic Mail.*** All Rule 2002 Court Filings, other than a summons and complaint in an adversary proceeding or documents filed under seal, shall be electronically served on the Court's electronic filing system, which shall be deemed to constitute proper service for all parties who are sent such email service. Subject to the limited exclusions set forth herein, each party that has filed a notice of appearance and a request for service of papers shall be deemed to have consented to electronic service of papers, in accordance with CM/ECF Policy 9 - Service of Documents of the *Case Management/Electronic Case Files Policy* (the "CM/ECF Policy") available on the Court's website [here](#).

H. ~~I.~~ ***Waiver of Rule 6(d) of the Federal Rules of Civil Procedure.*** The filing deadlines do not require three (3) additional days' notice as set forth in Rule 6(d) of the Federal Rules of Civil Procedure and Bankruptcy Rule 9006(f) when a document is served by electronic or overnight mail, including service, via the Court's electronic filing system.

### III. HEARING DATES

A. Unless otherwise directed by the Court, omnibus hearing dates and non-omnibus hearing dates may be obtained by contacting the assigned judge's courtroom deputy.

B. ***Omnibus Hearing Dates.*** Periodic omnibus hearings will occur as may be scheduled by the Court (the "Omnibus Hearings"). Throughout the Chapter 11 Case, the debtors shall periodically request that Omnibus Hearings be scheduled as necessary. The debtors, in consultation with the U.S. Trustee, and any statutorily-appointed committee in the Chapter 11 Case (as may be reasonably practicable), shall send notices of the Omnibus Hearings to the Core Group and 2002 List when the Omnibus Hearings are scheduled, post the schedule of Omnibus Hearings on the Case Website (as defined herein), and file notices of additional Omnibus Hearing dates on a periodic basis with the Court.

C. ***Procedures Regarding the Omnibus Hearings.*** The following procedures will apply unless the Court orders otherwise:

1. Any notice of an Omnibus Hearing shall conspicuously contain the date and time that the hearing will be held in the event that an Objection is filed in accordance with the applicable rules.

2. Except as specifically set forth herein, all notice periods for Requests for Relief shall be computed in accordance with the Bankruptcy Rules and Local Bankruptcy Rules and nothing in these Chapter 11 Procedures shall be deemed to change such requirements.

3. Deadlines for responding to a Request for Relief shall be governed by these Chapter 11 Procedures and the Local Bankruptcy Rules, except to the extent the Local Bankruptcy Rules conflict with these Chapter 11 Procedures, in which case the Chapter 11 Procedures shall govern.

4. Nothing contained herein shall prejudice the rights of any party in interest to move the Court to further limit or expand notice of matters and proceedings upon a showing of good cause, including, but not limited to, the right to file a Request for Relief upon shortened notice or to seek an enlargement or reduction of time pursuant to Bankruptcy Rule 9006.

5. If a party intends to present an order at the Omnibus Hearing that differs from the proposed order attached to the motion, the debtors' counsel, to the extent known, shall state on the hearing agenda above that a different order will be presented for entry or file such proposed order with Court in advance of the Omnibus Hearing.

6. Notwithstanding Local Bankruptcy Rule 9013-1(J), the debtors' counsel may, without leave of the Court and, unless upon the objection of another non-debtor party, the Court orders otherwise, adjourn any matter to a subsequent fixed Omnibus Hearing. If a matter is adjourned, the debtors' counsel shall update the hearing agenda accordingly.

7. For the avoidance of doubt, the debtors' counsel may propose to schedule matters filed by another party on a date other than the next Omnibus Hearing date if the debtors in good faith believe, in consultation with the other party, that the hearing on the particular matter could exceed one (1) hour.

8. With the consent of the Court, the debtors may delay the start time of any previously scheduled Omnibus Hearing to accommodate potential resolution of any matters scheduled for such Omnibus Hearing.

D. ***Proposed Agenda for Omnibus Hearings.*** The Debtors shall prepare Omnibus Hearing agendas in accordance with the following:

1. Debtors' counsel shall file a proposed agenda with regard to matters scheduled to be heard at an Omnibus Hearing (the "Proposed Hearing Agenda") no later than the date that is two (2) calendar days prior to each such Omnibus Hearing using the CM/ECF "Agenda" code. The Proposed Hearing Agenda is for the convenience of the Court and counsel and is not determinative of the matters to be heard on that day or whether there will be a settlement or a continuance.

2. The Proposed Hearing Agenda will include, to the extent known by the debtors' counsel: (i) the docket number and title of each matter to be scheduled for hearing on such Omnibus Hearing, including the initial filing and any responses, replies, or documents related thereto; (ii) whether the matters are contested or uncontested; (iii) whether the matters have settled or are proposed to be continued; (iv) other comments that will assist the Court; and (v) a suggestion for the order in which the matters should be addressed.

E. ***Scheduling Requests for Relief and Objections thereto for Hearing.*** All Requests for Relief, Objections, and all other matters requiring a hearing in the Chapter 11 Case shall be set forth and be heard at an Omnibus Hearing, unless otherwise ordered by the Court for good cause shown, in accordance with the following:

1. In the event that a party files a Request for Relief at least twenty-one (21) calendar days prior to the next scheduled Omnibus Hearing, the matter shall be set for hearing on such scheduled Omnibus Hearing, and the deadline to file an Objection to such Request for Relief shall be seven (7) calendar days prior to the Omnibus Hearing; *provided, however*, the debtors' counsel may propose to schedule matters filed by another party on a date other than the next Omnibus Hearing date if the Debtors in good faith believe that the hearing on the particular matter could exceed one (1) hour.

2. In the event that a party files a Request for Relief less than twenty-one (21) calendar days but at least fourteen (14) calendar days prior to the next scheduled Omnibus Hearing, the matter shall be set for hearing on such scheduled Omnibus Hearing, and the deadline to file an Objection to such Request for Relief shall be three (3) calendar days prior to the Omnibus Hearing; *provided, however*, the Debtors' counsel may propose to schedule matters filed by another party on a date other than the next Omnibus Hearing date if the debtors in good faith believe that the hearing on the particular matter could exceed one (1) hour.

3. In the event that a party files a Request for Relief less than fourteen (14) calendar days prior to the next scheduled Omnibus Hearing, unless the Court orders otherwise, the matter shall be set for a date other than the next Omnibus Hearing date in accordance with paragraphs (a) and (b) herein.

4. Notwithstanding any procedure herein, nothing herein shall restrict any entity from requesting an emergency hearing pursuant to the Local Bankruptcy Rules. The Court will determine as an initial matter at the scheduled emergency hearing on the underlying motion whether to allow emergency consideration.

F. ***Evidentiary Hearings.***

1. Pursuant to Bankruptcy Rule 9014 and in compliance with Local Bankruptcy Rule 9014-1, in the event that a timely Objection is made to a Request for Relief (each, a "Contested Matter"), the hearing on such Contested Matter shall be an evidentiary hearing at which witnesses may testify, unless the parties otherwise agree that any such hearing shall not be an evidentiary hearing, in which case, to the extent known by

the debtors' counsel, the Proposed Hearing Agenda shall state as such; provided, however, that the debtors' counsel may propose to schedule matters filed by another party on a date other than the next Omnibus Hearing date if the debtors in good faith believe that the hearing on the particular matter could exceed one (1) hour.

2. With respect to a timely filed Objection to a Request for Relief and unless otherwise agreed to by the parties, such opposing party must contemporaneously notify the adverse party that it intends to introduce evidence or witnesses at the hearing on the Request for Relief that is the subject of the Objection. In addition to specifying whether such party intends to introduce evidence or witnesses at the hearing on the Objection, the party must also submit to the adverse party, contemporaneously with the filing of the Objection, proposed deadlines for the parties to identify, with reasonable particularity, and serve on the adverse party, proposed evidentiary exhibits and witnesses in a written disclosure (each, a "Disclosure"), which Disclosures shall be served only on the adverse party. Such notices must be received by the adverse party, in writing, immediately upon the filing of such Objection and in any event, no later than three (3) calendar days prior to the scheduled hearing (unless such matter is scheduled on an expedited basis, in which case the parties shall cooperate to exchange the appropriate information as quickly as is feasible). Failure to provide timely notices as set forth in this paragraph, in the discretion of the debtors, may result in the exclusion of such evidence. In the event the parties cannot reach an agreement regarding deadlines for disclosure, either party may seek appropriate relief from the Court.

3. Upon reasonable request, the parties subject to a Contested Matter shall provide copies of all proposed evidentiary exhibits and make all witnesses available for deposition at the expense of the requesting party and within a time period to reasonably facilitate conducting the evidentiary hearing as scheduled.

4. Parties shall comply with the Court's *Instructions for Preparing Exhibit List and Pre-Marking Exhibits*, which are available on the Court's website here.

5. Any party subject to a Contested Matter that fails to identify its evidentiary exhibits or witnesses as provided herein may be precluded, at the Court's discretion, from presenting such evidentiary exhibits or witnesses at the hearing on the matter or, alternatively, the hearing shall be adjourned.

6. Unless the Court orders otherwise, nothing contained herein shall preclude any party from presenting proffers in connection with uncontested matters or agreeing with an opposing party to present proffers in any Contested Matter or otherwise stipulating certain facts or documents into evidence.

#### **IV. PROCEDURES FOR REMOTE HEARING PARTICIPATION**

A. The Court may allow counsel to participate in any hearing by telephone- or remote video conference.

B. No motion is required to authorize telephonic participation. Unless otherwise provided in the notice of hearing, for hearings that will not be conducted by video conference,

parties may participate telephonically using CourtSolutions. Instructions for telephonic appearances are available [here](#). **Note**, while a party may appear telephonically for argument at an evidentiary hearing, parties appearing telephonically are not permitted to examine witnesses or submit evidence.

C. ~~B.~~ In the Court's discretion, hearings may be conducted by remote video conference. While no motion is required to authorize participation via remote video conference, participants must pre-register. More information for appearances by remote video conference are available [here](#).

D. ~~C.~~ Under no circumstances may any participant or listener record or broadcast the proceedings.

## V. MOTIONS PRACTICE

A. ***Waiver of Memorandum of Points and Authorities.*** Notwithstanding Local Bankruptcy Rule 9013-1(G), motions filed without a separate memorandum of points and authorities shall be deemed to include a request for a waiver of a separate memorandum or deemed a single memorandum and motion as allowed by Local Bankruptcy Rule 9013-1(G).

B. ***Notice of Motion/Notice Hearing.*** Parties should consult Local Bankruptcy Rule 9013-1(M) regarding the form and content of notices.<sup>34</sup>

C. ***Identification of Attorney.*** As set forth in Local Bankruptcy Rule 5005-1(C)(5), on the first page of every Rule 2002 Court Filing, the attorney filing the same shall be identified by name, state bar number, complete mailing address, telephone number, and the name of the party whom the attorney represents.

D. ***Objections and Replies.*** Unless otherwise ordered by the Court, Objections to Requests for Relief scheduled to be heard at an Omnibus Hearing shall be filed no later than seven (7) calendar days before the applicable hearing date if the Request for Relief is filed at least twenty-one (21) calendar days prior to the applicable hearing date, or three (3) calendar days before the applicable hearing date if the filing is filed less than twenty-one (21) calendar days but at least fourteen (14) calendar days prior to the applicable hearing date. A reply to any Objection must be filed no later than 12:00 p.m. (prevailing Eastern Time) on the date that is one (1) business day before the applicable hearing date.

E. ***Granting the Request for Relief Without a Hearing Where No Objection(s) Filed.*** Provided that the notice filed with the Request for Relief includes a statement that the Request for Relief may be granted and an order entered without a hearing unless a timely Objection is made, after the Objection deadline has passed, and no Objection has been filed or served in accordance with the procedures set forth herein, counsel to the entity that has filed the Request for Relief may file a certification indicating that no Objection has been filed or served on the entity who has filed the Request for Relief and submit an order granting the relief requested (a "CNO"). Any CNO 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

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<sup>34</sup> Parties are referred to the Court's website [here](#) for sample forms.



copy of the form of order. Once the order is entered, the hearing scheduled on the motion is cancelled.

F. ***Granting the Request for Relief Without a Hearing Where Objection(s) Filed.*** Provided that the notice filed with the Request for Relief includes a statement that the Request for Relief may be granted and an order entered without a hearing unless a timely Objection is made, after the Objection deadline has passed, timely filed and served Objection(s) to a Request for Relief may be resolved by filing an agreed form of order filed with a Certificate of Counsel (“COC”). 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. Any 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. Once the order is entered, the hearing scheduled on the motion is cancelled.

G. ***Settlement.*** For matters to which the procedures set forth in **Part V.F** *supra* do not apply or otherwise in the debtors’ discretion, if a matter is properly noticed for hearing and the parties reach agreement on a settlement of the dispute prior to the final hearing, the parties may announce 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 of the terms of the settlement.

H. ***Service of Entered Order.*** Notwithstanding Local Bankruptcy Rule 9022-1(B), a proponent of a Request for Relief shall serve an order granting such relief on the Core Group and 2002 List no later than five (5) business days after such order was entered and no service list need be submitted with the proposed order.

## VI. **FIRST DAY MOTIONS**

A. ***Motions Decided on Law and Evidence. The fact that a motion is listed in this Part VI does not mean that the Court will grant such a motion, or the relief requested in such a motion, in any particular case. Motions will be decided by the Court based on applicable law and the evidence, including the particular facts and circumstances of the Chapter 11 Case.***

B. ***A-First Day Orders.*** “First Day Orders” are orders which the debtors seek to have entered by the Court, either on an interim or final basis, on or shortly after the filing of the petition. The request for a First Day Order should be made by motion (a “First Day Motion”), and a copy of the proposed First Day Order should be filed with and attached as an exhibit to the First Day Motion.

C. ***B-Request for Related Relief Need Not Be Filed in Separate Motions.*** Motions for related relief under First Day Orders referred to above need not be filed as separate motions. For example, in a given case it may be appropriate to combine cash collateral and financing motions, or address all employee-related matters in a single motion.

D. ~~C.~~ ***Typical First Day Motions and Orders.*** First Day Orders typically heard by the Court on or within one (1) day of the later of the petition date or the date of filing of the First Day Motions include (but are not limited to) the following:

1. *Motion for an Expedited Hearing on “First Day Motions.”*

a. No motion to expedite a hearing on any First Day Motion is necessary if the hearing on such motion is conducted on at least twenty-four (24) hours’ notice and within two business days of the filing; otherwise, debtors should comply with Local Rule 9013-1(N) to expedite the hearing.

2. *Motion for Entry of an Order Directing Joint Administration of Chapter 11 Cases*, if more than one case is commenced.

a. The motion should seek joint administration for procedural purposes only, and should request that the Court maintain one file and one docket for all the jointly administered cases (the “Lead Case”).

b. The motion should also request that a notation be entered on the docket in each of the jointly administered cases, other than the Lead Case, substantially similar to the below to reflect the joint administration:

“An Order has been entered in this case directing the procedural consolidation and joint administration of the chapter 11 cases of [INSERT EACH DEBTOR NAME]. The docket in [INSERT LEAD DEBTOR], Case No. \_\_\_\_\_ ( ) should be consulted for all matters affecting the case.”

c. The motion also may seek authority with respect to the manner in which monthly operating reports required by the U.S. Trustee can be filed.

3. To the extent that the debtors seek to deviate from the procedures contained herein, a *Motion for Entry of an Order Establishing Alternative Notice, Case Management, and Administrative Procedures*.

4. *Application for Entry of an Order Authorizing the Retention and Appointment of a Claims and Noticing ~~for Claims, Noticing, and Balloting~~ Agent.*

a. If a Claims Agent is retained in a Chapter 11 Case, the Claims Agent shall maintain a case-specific website (the “Case Website”), where, among other things, electronic copies of all pleadings filed in the Chapter 11 Case shall be posted as soon as practicable, but not later than three business days after filing, and may be viewed free of charge.<sup>45</sup>

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<sup>45</sup> Electronic copies of all pleadings and documents are available for a fee via PACER on the Court’s website ~~at~~ <http://www.vacb.uscourts.gov/>. Paper copies of all pleadings in filed in the Chapter 11 Case may be available from the Court.



b. The order approving the Claims Agent's retention may provide that the Claims Agent shall maintain a service list of all Core Group and 2002 List Parties, which shall be updated as necessary and shall include names, addresses, facsimile numbers and email addresses for the Core Group and 2002 List. At least once every 30 days, an updated Service List, if there is one, shall be posted on the Case Website. All Rule 2002 Court Filings shall be deemed served on all Core Parties and 2002 List Parties if it is served on the parties on the most recent Service List that has been posted on the Case Website as of the day prior to the date of service.

c. The order approving the Claims Agent's retention may authorize the debtors to compensate the Claims Agent upon the receipt of reasonably detailed invoices without the need for the Claims Agent to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses; *provided, however*, the order should also provide that (i) the Claims Agent will serve monthly invoices on the debtors, the U.S. Trustee, counsel for any official committee appointed in the case, and any party-in-interest who specifically requests the service of the monthly invoices, and (ii) if any dispute arises relating to the monthly invoices, the parties will first meet and confer in an attempt to resolve the dispute, and may seek a resolution of the matter from the Court if resolution is not achieved.

d. Nothing herein shall prevent debtors from seeking authority to have a Claims Agent perform balloting and solicitation services, or any party in interest's right to object to the same.

5. *Motion for Entry of an Order Dispensing with the Requirement of Filing Any or All Schedules and Statement of Financial Affairs* (in the event the debtors are not seeking to bar and subsequently discharge all or certain categories of debt) or a *Motion for Entry of an Order Extending the Time to File the Schedules and Statement of Financial Affairs* (to a specified date).

a. This motion may be combined with a request to (a) file a consolidated list of creditors in lieu of a separate mailing matrix for each ~~debtor~~of the debtors; (b) file a consolidated list of the debtors' at least thirty (30) largest creditors; (c) authorize the debtors to redact certain personally identifiable information; and (d) waive the requirement to file a list of equity security holders and/or provide notice of commencement to equity security holders.

b. The motion may seek a waiver of filing the mailing matrix where a Claims Agent is being retained to handle noticing.<sup>6</sup>

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<sup>6</sup> [NTD –The Court should consider revising Local Rule 1007-1(H)(1) as follows to provide that, if the mailing matrix is to be filed rather than maintained by a Claims Agent, it may be filed under seal to protect individuals against identity theft:

c. The motion should demonstrate or explain why the relief requested therein is necessary.

6. *Motion for Entry of Interim and Final Orders Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, (D) Perform Intercompany Transactions, and (E) Waive/Extend Time to Comply with the Requirements of 11 U.S.C. § 345.*

a. ~~Any~~The motion should describe the proposed cash management system and, in cases where money will be transferred between debtors or from a debtor to a non-debtor affiliate, represent why such transfers are desirable from the ~~debtor's(s')~~debtors' perspective, state that the ~~debtor(s)~~debtors will maintain records of all postpetition intercompany transfers of funds, and describe what repayment terms exist. For a request to waive section 345, the motion should disclose the amount of funds which the debtors propose to invest outside the statute's enumerated permitted investments and the proposed types of investments to be made. If the debtors propose to invest or deposit money in or with an entity that has not satisfied the requirement of section 345(b) (a "Non-Qualified Entity"), the motion should demonstrate and explain why such an investment or deposit is necessary and, to the extent known, why the Non-Qualified Entity cannot satisfy or has not satisfied the requirements of section 345(b).

7. *Motion for Entry of [Interim and Final] Order[s] Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs.*

a. Any request to pay prepetition claims should be in an amount not to exceed specified per employee and aggregate amounts, which amounts shall be set forth in the motion. If the motion requests authority to pay amounts in excess of the amount set forth in section 507(a)(4) and (5) of the Bankruptcy Code per employee, then a list of the names and position/job titles of all employees as to whom those payments will be made shall be attached.<sup>57</sup> The propriety of those requests shall be

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The debtor shall file with the petition a list containing the name and address of each creditor which shall serve as a mailing matrix; provided, however, nothing shall prevent the debtor from seeking court authority to file such list under seal to protect individuals against potential identity theft, or for other cause. If not filed via the Electronic Case Files System, the mailing matrix shall be submitted on a flash drive in the format specified by the Clerk. The mailing matrix shall suffice for the list of creditors referred to in FRBP 1007(a). As required under FRBP 1007(f), the debtor shall submit a verified statement that sets out the debtor's social security number (statement of social security number), or states that the debtor does not have a social security number. If not filed via the Electronic Case Files System, the debtor shall submit the statement with the petition.]

<sup>57</sup> Nothing herein shall prevent the movant from seeking court authority to file such list under seal with unredacted copies to be furnished to the U.S. Trustee and any committee appointed or to be appointed in the chapter 11 cases.

considered on a case by case basis. The motion also shall state whether, and the extent to which, the claims proposed to be paid constitute priority claims under section 507 of the Bankruptcy Code (“Priority Claims”) and, if such claims are not Priority Claims, the motion should explain why those claims should be afforded the treatment requested in the motion. The motion may also ask the Court to direct banks to honor prepetition checks for such amounts and authorize the debtors to replace prepetition checks that have been dishonored.

b. The motion should generally describe the applicable compensation and benefit programs and explain why the relief requested is necessary.

8. *Motion for Entry of Interim and Final Orders Authorizing the Debtors to Maintain and Administer their Existing Customer Programs and Honor Certain Prepetition Obligations Related Thereto.*

a. For payment of any prepetition obligations, such relief shall not exceed specified aggregate ~~and per claimant~~ amounts, which amounts shall be set forth in the motion. The motion also shall state whether, and the extent to which, the claims proposed to be paid constitute Priority Claims and, if such claims are not Priority Claims, the motion should explain why those claims should be afforded the treatment requested in the motion.

b. The motion should generally describe the applicable customer programs and explain why the relief requested is necessary.

9. *Motion for Entry of [Interim and Final] Order[s] (I) Approving the Debtors’ Proposed Adequate Assurance of Payment for Future Utility Services; (II) Prohibiting Utility Companies from Altering, Refusing or Discontinuing Services; and (III) Approving the Debtors’ Proposed Procedures for Resolving Additional Assurance Requests.*

a. The motion should describe the proposed adequate assurance.

b. The motion should also identify each of the debtors’ utility providers.

c. In addition to other service obligations relating to First Day Motions, both the motion and any interim and final orders should be served on each of the debtors’ utility providers.

10. *Motion for Entry of Interim and Final Orders Authorizing the Debtors to Pay Prepetition Claims of (A) Critical Vendors, (B) 503(b)(9) Claimants, and (C) Lien Claimants.*

a. For payment of any prepetition obligations, such relief shall not exceed specified aggregate amounts, which amounts shall be set forth in the motion. The motion also shall state whether, and the extent to which, the

claims proposed to be paid constitute Priority Claims and, if such claims are not Priority Claims, the motion should explain why those claims should be afforded the treatment requested in the motion.

b. The motion should generally describe the applicable vendors and/or claimants and explain why relief requested is necessary.

11. *Motion for Entry of Interim and Final Orders Authorizing the Debtors to Maintain, Renew, or Supplement Their Insurance Policies and Surety Bond Program[s] and Honor All Obligations in Respect Thereof.*

a. The motion should generally describe the insurance policies and surety bond programs, along with the amount of any unpaid prepetition obligations related to such policies and surety bond programs.

b. The motion may seek to (i) continue insurance policies and surety bond programs and (ii) honor insurance policies and surety bond programs in the ordinary course during the administration of the Chapter 11 Case, including paying related prepetition obligations.

c. The motion may also seek to modify the automatic stay solely for the limited purpose of permitting employees with workers' compensation claims to pursue such claims under applicable workers' compensation policies, whether they arose before or after the petition date, in the appropriate judicial or administrative forum to proceed against the proceeds of such policies only.

12. *Motion for Entry of Interim and Final Orders Authorizing the Payment of Certain Prepetition and Postpetition Taxes and Fees.*

a. The motion should generally describe the applicable taxes and fees the debtors have incurred or expect to incur.

b. For payment of any prepetition taxes and fees, the motion should identify the approximate amount of such taxes and fees the debtors seek to pay and explain why the relief is necessary, such as for the avoidance of penalties the debtors would incur absent timely payment of taxes the debtors intend to pay.

13. *Motion for Entry of Interim and Final Orders Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock.*

a. The motion may seek to establish notification procedures and approval of restrictions on transfers of the debtors' equity to protect the debtors' estate against the possible loss of valuable tax benefits.

b. The motion should generally describe the amount of the debtors' consolidated net operating losses for U.S. federal income tax purposes

and the potential for loss of those tax benefits absent protection through the relief requested in the motion.

14. *Motion for Entry of Interim and Final Orders (I) Authorizing Use of Cash Collateral; (II) Granting Adequate Protection; (III) Modifying the Automatic Stay; ~~and~~ (IV) Scheduling a Final Hearing and/or the Motion for Entry of Interim and Final Orders; ~~(V)~~ Authorizing the Debtors to Obtain Postpetition Financing Pursuant to 11 U.S.C. § 364; ~~(HVI)~~ Granting Liens and Providing Superpriority Administrative Expense Claims; ~~(HVII)~~ Granting Adequate Protection; ~~(HVIII)~~ Modifying the Automatic Stay; and ~~(VIX)~~ Scheduling a Final Hearing.*

a. *Interim Relief.* On motion by the debtors, a hearing (the “Interim Financing Hearing”) will routinely be conducted within three (3) business days to consider either cash collateral use and/or debtor in possession financing. At the Interim Financing Hearing, the debtors must introduce a cash-flow projection showing its sources and uses of cash necessary for ongoing operations on a weekly basis for not less than the first three (3) weeks of the case (an “Interim Budget”). The Interim Budget must be filed with the Court and be served no later than noon on the first (1) business day after the filing, or on the date of the filing if the Interim Financing Hearing is to occur before the second (2) business day after the petition date. The debtors must provide a copy of the Interim Budget in native file format upon request.

b. *Final Financing Hearing.* The Court will set a hearing to consider financing through use of cash collateral and/or debtor in possession financing on a final basis in accordance with sections 363 and 364 of the Bankruptcy Code and Bankruptcy Rule 4001 (a “Final Financing Hearing”). At the Final Financing Hearing, the debtors must introduce a cash-flow projection for sources and uses of cash for the period of cash collateral use or debtor in possession financing that is proposed (a “Final Financing Budget”). The Court will consider at the Final Financing Hearing whether it is appropriate to order either long-term use of cash collateral or long-term ~~debtor-in-possession~~debtor-in-possession financing pursuant to the Final Financing Budget in accordance with sections 363 and 364 of the Bankruptcy Code and Bankruptcy Rule 4001. The Final Financing Budget must be filed at least two (2) calendar days prior to the Final Financing Hearing. The debtors must provide a copy of the Final Financing Budget in native file format upon request.

c. Debtors’ counsel should highlight in a chart any provisions ~~of~~in the proposed interim and final orders sought to be issued under section 363 or 364 of the Bankruptcy Code that contain the following:

= ~~Sale or~~ plan confirmation and other milestones, whether contained in proposed financing documents or in restructuring support agreements;

= Cross-collateralization or cross-default provisions;

- = Roll ups (including (i) provisions deeming prepetition debt to be postpetition debt; and (ii) provisions requiring the proceeds of postpetition loans to be used to repay prepetition debt);
- = ~~Liens~~ The collateral package, including any proposed liens on avoidance actions or proceeds of avoidance actions;
- = Default provisions and remedies (including (i) provisions terminating the automatic stay without further order, (ii) provisions waiving rights to challenge lenders' ability to exercise post-default remedies; and (iii) provisions limiting required proof or altering the burden of proof at post-default hearings);
- = Releases of claim against lender or others;
- = Limitations on the use of cash collateral other than general "carve-outs" to pay approved fees and expenses of advisors to official committees or future trustees;
- = Priming liens; ~~and~~
- = Any provision that limits the ability of estate fiduciaries to fulfill their duties under the Bankruptcy Code and applicable law.;
- = Carve-outs for payment of U.S. Trustee fees, fees incurred by a trustee under section 726(b) of the Bankruptcy Code, and professional fees;
- = Waiver of the right to charge against or recover proceeds of collateral pursuant to section 506(c) of the Bankruptcy Code and/or the "equities of the case" exception contained in section 552(b) of the Bankruptcy Code;
- = Fees or other compensation payable to any agent for performing administrative responsibilities or any lenders as compensation for arranging, backstopping or undertaking similar responsibilities in connection with the financing (provided that nothing herein shall prevent the debtors or any other party in interest from filing a motion seeking to seal or redact any such fees, as provided below);
- = Required make-whole payments or prepayment penalties;
- = Stipulations by the debtors in respect of any existing agreements, liens and security interests;

- = Provisions providing for the amendment, waiver, consent or other modification of any provisions of the financing documents without further approval of the Court;
- = Obligations to indemnify lenders, agents or other parties, for costs and expenses, including the payment of their reasonable and documented professional fees and expenses without the requirement that such professionals file retention motions or fee applications; and
- = Provisions providing for credit bid rights in any sale of collateral as provided in section 363(k) of the Bankruptcy Code without the need for further court order.

d. If a motion to approve financing under sections 363 or 364 of the Bankruptcy Code seeks to include any of the terms listed in subparagraph c above, the motion should list all such provisions in a separate section or chart and provide specific reasons why each such provision should be approved.

e. Cash collateral and financing orders that contain a release of claims against lenders and other third parties by the debtors should provide that an official committee of unsecured creditors has at least sixty (60) days from the date of the committee's formation to investigate claims against the lenders and challenge the extent and validity of any liens or the appropriateness of such release. The challenge period may be extended consensually without court approval. Nothing herein shall prohibit a party from seeking an order providing for a nonconsensual extension of the challenge period.

f. To the extent the debtor or any other party in interest files a motion to seal or redact a fee letter related to the financing, such motion should explain the basis for sealing such fee letter under section 107(b) of the Bankruptcy Code. Any such motion should indicate whether the party impacted by disclosure of the fee letter has agreed to make available the fee letter, on a confidential basis, to the Court, the U.S. Trustee, counsel for any official committee appointed in the case, and any other party as may be ordered by the Court in each case under appropriate confidentiality agreements that preserve the confidentiality of the fee letter.

E. **~~D.~~ Final Orders at First Day Hearings.** Final orders, rather than interim orders, may be sought for the following types of relief:

- = ~~—~~ Motions to pay employee wages and benefits that do not include relief of the nature specified in section 503(c) of the Bankruptcy Code or that do not otherwise contain a request outside the ordinary course of the debtors' business;



- = Motions to pay prepetition and postpetition 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) are Priority Claims pursuant to section 507(a)(8) of the Bankruptcy Code;
- = Motions to pay mechanic and material liens that meet the criteria of section 546(b) of the Bankruptcy Code;
- = Applications to retain a Claims Agent;
- = Motions to limit or modify the notice requirements of Bankruptcy Rule 2002;
- = Motions to approve adequate assurance procedures under section 366 of the Bankruptcy Code that (i) do not prejudice the right of a utility to propose alternative procedures after notice and hearing; and (ii) provide for a hearing not later than thirty (30) days after the petition date on any timely filed objection to the adequate assurance.
- = In addition to the motions specifically listed herein, any other motions that are procedural in nature and do not affect the substantive rights of creditors and other parties-in-interest.

F. ~~E.~~ ***Guidelines for Typical Non-First Day Motions.*** The following matters are typically not entertained by the Court as First Day Motions; **provided, however,** nothing herein should be construed to prevent a party from seeking such relief as a First Day Motion under appropriate circumstances.

1. **Motions for Relief from the Automatic Stay.** The initial hearing on any motion for relief from the automatic stay shall be a preliminary hearing unless otherwise agreed to by the debtors. Notwithstanding section 362(e) of the Bankruptcy Code, by setting a hearing on a motion for relief from the automatic stay on an Omnibus Hearing, a party shall be deemed to have consented to the automatic stay remaining in full force and effect until the conclusion of the preliminary hearing. The Court may continue the effectiveness of the automatic stay until a final hearing on the matter. Nothing in this section shall prevent a party from seeking expedited consideration of a motion for relief from the automatic stay. ~~automatic stay.~~

2. **Bid Procedures Motion.** Bid procedures motions should provide for input from or consultation with any official committees and secured lenders with liens on the property being sold. Notwithstanding the foregoing, secured lenders or committee members who are potential bidders may not participate in the adoption or implementation of bidding procedures and may not receive information that may affect the sale that is not generally available to all potential bidders.

3. **Conditional Approval of Disclosure Statements.**

a. A plan proponent may propose to combine the disclosure statement and plan into a single document.



b. Contemporaneously with the filing of a disclosure statement and proposed plan, a plan proponent may file a motion requesting (1) conditional approval of the disclosure statement; (2) approval of solicitation procedures; (3) the scheduling of a hearing on shortened notice to consider conditional approval of the proposed disclosure statement; and (4) the scheduling of a joint hearing to consider final approval of the adequacy of the disclosure statement and confirmation of the proposed plan. All such motions must: (i) identify the proposed balloting agent, if any; (ii) identify any voting procedures in addition to those required in these procedures; and (iii) identify the proposed hearing date for final approval of the disclosure statement and confirmation of the proposed plan (the “Combined Hearing”). Unless the plan proponent requests additional or alternate relief, if the motion is granted at the Combined Hearing, the Court will enter its form order, *Order Conditionally Approving Disclosure Statement, Fixing Time for Filing Acceptances or Rejections of Plan, and Fixing the Time for Filing Objections to the Disclosure Statement and to the Confirmation of the Plan, Combined with Notice Thereof and of the Hearing on Final Approval of the Disclosure Statement and the Hearing on Confirmation of the Plan*.

c. As part of seeking conditional approval of disclosure statements, a plan proponent also may request for cause, pursuant to section 341(e) of the Bankruptcy Code, that the U.S. trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of the case.

4. **Employment of Professionals.**

With the exception of an application to employ a Claims Agent, no retention applications will be considered on the first day. Employment applications should be filed no later than thirty (30) days after the later of (i) the date the order for relief is entered or (ii) the commencement of work by the professional. Any such timely application, if approved, shall be effective as of the later of the petition date or the commencement of work by the professional.

5. **Interim Compensation. The order establishing procedures for interim compensation for services rendered and reimbursement of expenses incurred by Retained Professionals may include the following provisions:**

a. **Monthly Fee Statements.**

i. On or after the 21st day of each calendar month following the month for which compensation is sought, or as soon as is practicable thereafter, each retained professional seeking interim allowance of its fees and expenses shall file with the Court and serve a monthly fee statement (a “Monthly Fee Statement”), by hand, overnight delivery, or email, on the following parties (collectively, the “Fee Notice Parties”): (i) the debtors, (ii) counsel to the debtors, (iii)

the U.S. Trustee, (iv) counsel for any postpetition lender, and (v) counsel for any official committee appointed in the case.

ii. Any Retained Professional that fails to file and serve a Monthly Fee Statement for a particular month or months may subsequently file and serve a consolidated Monthly Fee Statement that includes a request for compensation earned or expenses incurred during previous months.

iii. The deadline for any Fee Notice Party to object to any Monthly Fee Statement shall be the 14th day (or the next business day if such day is not a business day) following the date the Monthly Fee Statement is served (the “Objection Deadline”); provided, however, nothing herein should be construed to prevent the Office of the U.S. Trustee from seeking, by consent or order, an extension of the Objection Deadline to up to 21 days following service of a Monthly Fee Statement.

iv. To object to a Retained Professional’s Monthly Fee Statement, the objecting Fee Notice Party must file with the Court a written objection (an “Objection”) setting forth, with specificity, the nature of the objection and the amount of fees or expenses at issue on or before the Objection Deadline and serve the Objection upon the affected Retained Professional and each of the Fee Notice Parties such that each Fee Notice Party actually receives the Objection on or before the Objection Deadline.

v. Upon the expiration of the Objection Deadline, the debtors will promptly pay the Retained Professional 80% of the fees and 100% of the expenses requested in the applicable Monthly Fee Statement not subject to an Objection.

vi. If a portion of the fees and expenses requested in a Monthly Fee Statement is subject to an Objection and the parties are able to resolve the objection, the objecting Fee Notice Party shall file with the Court and serve upon each other Fee Notice Party a statement indicating that the Objection is withdrawn. Thereafter, the debtors shall promptly pay the portion of the Monthly Fee Statement no longer subject to an Objection.

vii. If a portion of the fees and expenses requested in a Monthly Fee Statement is subject to an Objection and the parties are unable to reach a consensual resolution, the Retained Professional may either (i) file with the Court a response to the Objection, together with a request for payment of any portion of the amounts subject to the Objection, or (ii) forgo payment of such amounts until the next hearing

to consider interim or final fee applications, at which time the Court will adjudicate any unresolved Objections.

viii. The filing of an Objection to a Monthly Fee Statement shall not prejudice the objecting Fee Notice Party's right to object to any Interim Fee Application (as defined below) on any ground whether raised in the Objection or not. Furthermore, failure by a Fee Notice Party to object to a Monthly Fee Statement shall not constitute a waiver of any kind nor prejudice that Fee Notice Party's right to object to any Interim Fee Application subsequently filed by a Retained Professional.

b. Interim Fee Applications

i. Commencing with applications covering the period from the petition date through the last day of the month that is two months following the end of the month in which the petitions were filed, and at three-month intervals thereafter, Retained Professionals shall file with the Court an application (an "Interim Fee Application") for interim approval and allowance of compensation and reimbursement of expenses sought by such Retained Professional in its Monthly Fee Statements, including any amounts requested in Monthly Fee Statements but yet unpaid, filed during the preceding interim period (each such period, an "Interim Fee Period").

ii. Retained Professionals shall file their applicable Interim Fee Applications on or before the 45th day, or the next business day if such day is not a business day, following the end of each Interim Fee Period.

iii. The Interim Fee Application shall include a brief description identifying the following:

- the Monthly Fee Statements that are the subject of the request;
- the amount of fees and expenses requested;
- the amount of fees and expenses paid to date or subject to an Objection;
- the deadline for parties to file Objections to the Interim Fee Application; and
- any other information requested by the Court or required by the Bankruptcy Code, the Bankruptcy Rules, or the Local Rules.

iv. Objections to any Interim Fee Application shall be filed with the Court and served upon the affected Retained Professional and each of the Fee Notice Parties so as to be actually received on the 21st day (or the next business day if such day is not a business day), following service of the applicable Interim Fee Application.

v. The debtors may request that the Court schedule a hearing on Interim Fee Applications at least once every three months or at such other intervals as the Court deems appropriate. If no Objections are pending and timely filed, the Court may approve and allow an Interim Fee Application without a hearing. Upon allowance by the Court of a Retained Professional's Interim Fee Application, the debtors shall be authorized to promptly pay such Retained Professional all requested fees (including any holdback from prior Monthly Statements not subject to a pending Objection) and expenses not previously paid.

vi. Each Retained Professional that is an attorney shall make a reasonable effort to comply with the U.S. Trustee's requests for information and additional disclosures as set forth in the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases, effective as of November 1, 2013*, in connection with each fee application.

vii. Any Retained Professional unable to file its own Interim Fee Application with the Court shall deliver a fully executed copy to the debtors' Virginia counsel for filing on the Retained Professional's behalf.

viii. Any Retained Professional that fails to file an Interim Fee Application when due shall be ineligible to receive further monthly or interim payments of fees or expenses with respect to any subsequent period until such time as an Interim Fee Application covering the prior period is filed by the Retained Professional. There shall be no other penalties for failing to file an Interim Fee Application in a timely manner.

ix. A pending Objection to compensation or reimbursement of a Retained Professional does not disqualify the Retained Professional from future compensation or reimbursement.

x. Neither (i) the payment of, or the failure to pay, in whole or in part, any interim compensation and reimbursement to a Retained Professional nor (ii) the service of an Objection or the filing of, or failure to file, an Objection will bind any party in interest or the Court with respect to the final allowance of any compensation of fees for

services rendered or reimbursement of expenses incurred by a Retained Professional. All fees and expenses paid to Retained Professionals under these Compensation Procedures are subject to disgorgement until final allowance by the Court.

xi. Any member of a statutorily-appointed committee in the Chapter 11 Case may submit statements of expenses (excluding the fees and expenses of an individual committee member's third-party counsel) and supporting vouchers for reimbursement by the debtors in accordance with the Compensation Procedures; provided that, payment of such expenses is not authorized if such authorization does not exist under the Bankruptcy Code, applicable law, the Bankruptcy Rules, the Local Rules, or other applicable law.

xii. No Retained Professional may serve a Monthly Fee Statement or file an Interim Fee Application until the Court enters an order approving the retention of such Professional.

6. Ordinary Course Professionals.

a. A motion to approve retention of professionals utilized in the ordinary course of business should provide a non-exhaustive list of the debtors' ordinary course professionals.

b. The proposed order establishing procedures for the retention and employment of ordinary course professionals may include the following provisions:

i. Each ordinary course professional (the "Ordinary Course Professional") shall provide the following to the debtors' counsel: a declaration (the "OCP Declaration") that at a minimum (1) describes the services provided by the Ordinary Course Professional, and (2) certifies that the Ordinary Course Professional does not represent or hold any interest adverse to the debtors or their estate with respect to the matters on which such professional is to be employed.

ii. Upon receipt of the OCP Declaration, the debtors will file the same with the Court and serve the following parties (collectively, the "Reviewing Parties"): (i) the debtors, (ii) counsel to the debtors, (iii) the U.S. Trustee, and (iv) counsel for any official committee appointed in the case.

iii. If no objections are filed and properly served within 14 days following the date of service of the OCP Declaration (the "Objection Deadline"), the retention and employment of such Ordinary Course Professional shall be deemed approved without further order from the Court.

iv. If an objection is timely filed and not withdrawn or resolved, the debtors may either resolve the objection without further notice or Court approval or may seek a determination of the dispute by the Court by filing a notice for a hearing for the Court to consider the objection.

v. No Ordinary Course Professional may be paid any amount for invoiced fees and expenses until such Ordinary Course Professional has been retained in accordance with these Procedures.

vi. Once the debtors retain an Ordinary Course Professional in accordance with these Procedures, the debtors may pay such Ordinary Course Professional 100% of the fees and 100% of the disbursements incurred, upon the submission to, and approval by, the debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered and expenses actually incurred (without prejudice to the debtors' right to dispute any such invoices); provided, however, that the debtors shall specify in the motion and proposed order a cap on the amount of the total compensation and reimbursement that any Ordinary Course Professional listed on the OCP List may receive per month (the "Monthly Fee Limit"), and/or (ii) a cap on the aggregate amount any Ordinary Course Professional may receive during the course of these chapter 11 cases (the "Case Fee Limit"). The Monthly Fee Limit for any Ordinary Course Professional may be increased by mutual agreement between the debtors and the Reviewing Parties.

vii. If an Ordinary Course Professional's fees and expenses exceed the Monthly Fee Limit, such Ordinary Course Professional will file a monthly fee application (a "Monthly Fee Application") for all fees and expenses of the applicable month in which the Monthly Fee Limit was exceeded and apply for compensation and reimbursement of such amount in compliance with sections 330 and 331 of the Bankruptcy Code and applicable provisions of the Bankruptcy Rules, the Local Bankruptcy Rules, and any other procedures and orders of the Court, provided that the debtors may make an interim payment to the Ordinary Course Professional prior to the hearing on the Monthly Fee Application up to 80% of the fees sought and 100% of the expenses incurred. Any such Ordinary Course Professional that is an attorney will make a reasonable effort to comply with the U.S. Trustee's requests for information and additional disclosures as set forth in the *Guidelines for Reviewing Applications for Compensation filed under 11 U.S.C. § 330* in connection with such Monthly Fee Application.

viii. If an Ordinary Course Professional's fees and expenses exceed the Case Fee Limit, the debtors shall submit a professional

retention application seeking to retain such Ordinary Course Professional under section 327 of the Bankruptcy Code.

ix. Each Monthly Fee Application shall be served upon the Reviewing Parties. The Reviewing Parties shall then have 14 days to object to the Monthly Fee Application. If, after 14 days, no objection is filed and served on the debtors and the Reviewing Parties, the fees and expenses requested in the Monthly Fee Application shall be deemed approved, and the Ordinary Course Professional may be paid 100% of such fees and expenses without the need for further action by such Ordinary Course Professional.

x. At three month intervals during the pendency of these chapter 11 cases (each, a "Quarter"), beginning with the Quarter ending a three months after the month in which the petitions are filed, the debtors will file with the Court and serve on the Reviewing Parties, no later than 30 days after such Quarter, a statement that will include the following information for each Ordinary Course Professional: (a) the name of the Ordinary Course Professional; (b) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by that Ordinary Course Professional during the reported Quarter; (c) all postpetition payments made to that Ordinary Course Professional to date; and (d) a general description of the services rendered by that Ordinary Course Professional.

xi. The debtors reserve the right to retain additional Ordinary Course Professionals from time to time during these chapter 11 cases by having such Ordinary Course Professional comply with these procedures.

7. Appointment of Committees for Employees, Retirees, or Others. Pursuant to section 1102(a) of the Bankruptcy Code, the United States Trustee may appoint additional committees of creditors or equity holders if appropriate in a particular case. Pursuant to section 1102(b), the Court, upon request of a party in interest, also has the power to order the appointment of additional committees of creditors if necessary to assure their adequate representation. Such committees might include, for example, a committee of employees. In addition, pursuant to section 1114(d) of the Bankruptcy Code, the Court has the power, upon a motion of a party in interest, to order the appointment of a committee of retired employees in the circumstances specified, to serve as the authorized representative to enforce retiree benefits or agree to modification of such benefits with the debtors. The United States Trustee appoints any committee ordered to be appointed by the Court.

G. ~~F.~~ **Disfavored Provisions in Motions and Proposed Orders.** These provisions are disfavored:

1. Except for relief sought under section 362(d) of the Bankruptcy Code, the inclusion of a provision in any order that (i) provides for the termination of the automatic stay without notice and hearing; or (ii) alters the evidentiary burden with respect to the termination of the automatic stay.

2. Unless the Court finds based on a properly supported motion filed in accordance with Local Rule 9013-1(N) that exigent circumstances so require, providing less than twenty-four (24) hours' notice of any hearing to consider First Day Motions.

H. ~~G.~~ *Automatic Bridge Order for Extension of Time.* Unless otherwise provided in the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, or Court order, if a motion to extend time to take any action is filed 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.

## **VII. PROOFS OF CLAIM AND OMNIBUS CLAIM OBJECTION PROCEDURES**

A. Unless a different date is ~~subsequently~~ ordered by the Court, the bar date for the filing of proofs of claim and proofs of interest is (i) 180 days after the petition date for governmental units; and (ii) 90 days after the first date set for the meeting of creditors under section 341(a) of the Bankruptcy Code for all other entities. The debtors must provide notice of the bar date to all creditors on or before the first date set for the meeting of creditors.

B. 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. may include, but are not limited to, the following provisions:

### 1. Claim Objection Procedures

a. Notwithstanding anything to the contrary in Bankruptcy Rule 3007, the movant is authorized to file omnibus claims objections ("Omnibus Claim Objections") to Claims seeking reduction, reclassification, or disallowance of Claims on one or more of the following grounds (the "Additional Permitted Grounds" and together with those grounds set forth in Bankruptcy Rule 3007(d), the "Permitted Grounds"):

i. the amount claimed contradicts the debtors' books and records;

ii. the Claim fails to specify the amount or asserts the amount as "unliquidated";

iii. the Claim seeks recovery of amounts for which the debtors are not liable;

iv. the Claim is filed against the wrong debtor, or against multiple debtors without stating the legal basis;



v. the Claim is not entitled to the asserted status or priority or is incorrectly or improperly classified;

vi. the Claim fails to specify a sufficient legal basis;

vii. the Claim does not include sufficient documentation to ascertain the validity of such Claim;

viii. the Claim was or will be satisfied in the normal course of business;

ix. the Claim is obligated to be satisfied by one or more of the debtors' insurers;

x. the Claim has been waived, withdrawn, or disallowed pursuant to an agreement with the debtors or order of this Court;

xi. the Claim is objectionable under section 502(e)(1) of the Bankruptcy Code; and

xii. the Claim is subject to disallowance pursuant to any of the subsections of section 502(b).

b. The movant is authorized to file Omnibus Claims Objections to no more than five hundred (500) Claims at a time on the Permitted Grounds.

c. Except as expressly provided herein, the movant shall comply with the requirements for Omnibus Claims Objections set forth in Bankruptcy Rule 3007(e).

d. Any order sustaining an Omnibus Claims Objection shall be treated as an order for each Claim referenced in the Omnibus Claims Objection as if an individual objection had been filed and an individual order had been entered for such Claim.

e. The movant is authorized to serve a Claim Objection Notice, rather than the entire Omnibus Claim Objection, on each claimant whose Claim is the subject of the applicable omnibus claim objection and, if known, its counsel. The Claim Objection Notice shall include an explanation of the claim objection process, a description of the basis of the omnibus claim objection, information regarding the response deadline and hearing date, information on the Claim Hearing Procedures (as described herein), identification of the Claim that is the subject of the omnibus claim objection (with reference to an attached exhibit or otherwise), and information on how the claimant might obtain a complete copy of the omnibus objection. The estate representative retains the right to serve Omnibus Claim Objections in their entirety in appropriate circumstances as determined in the estate representative's sole discretion.

f. The movant shall file all omnibus and individual objections with this Court to be made publicly available for free on the website of the debtors' approved claims and noticing agent.

g. Responses to the individual and omnibus claim objections shall be due twenty-one (21) calendar days after mailing of the objection; *provided, however,* that the movant may reserve the right to request that the Court impose an alternative response date or grant expedited consideration with respect to certain objections, if the circumstances so require, which may result in shortened notice of both the hearing date and the response deadline.

## 2. Claim Hearing Procedures

a. The movant shall schedule the return date for claims objections, omnibus or otherwise, for hearing at periodic omnibus hearings (the "Omnibus Hearings").

b. Any information submitted in connection with a Proof of Claim shall be part of the record with respect to the relevant Claim, and any such information already submitted need not be resubmitted in connection with the Claim Hearing Procedures.

c. A written response (a "Response") to an Omnibus Claims Objection must be received on or before 21 days after service of the Omnibus Claims Objection (the "Response Deadline"). If the claimant fails to file and serve a Response on or before 21 days after service of the Omnibus Claims Objection in compliance with the procedures set forth herein, the movant will present to the Court an appropriate order granting the relief requested in the Omnibus Claims Objection without further notice to the claimant or hearing.

d. The hearing to consider an objection to Claims as to which a Response is properly filed and served (each, a "Contested Claim") shall be set for a contested hearing (each, a "Claim Hearing") to be scheduled by the movant, in its sole discretion.

e. The movant may file and serve a reply (a "Reply") to a Response no later than 12:00 p.m. prevailing Eastern Time on the day that is at least one (1) day prior to the date of the applicable hearing.

f. There shall be no sur-reply unless the Court orders otherwise upon the filing a motion demonstrating good cause.

g. The movant, in its sole discretion, is authorized to further adjourn a hearing scheduled in accordance herewith at any time by providing notice to the Court and the Claimant.

## VIII. FOREIGN ATTORNEYS.

A. All attorneys shall carefully review the Local Bankruptcy Rules and, in particular, Local Bankruptcy Rule 2090-1 regarding the procedure for appearing and practicing before the Court, which is available on the Court's website [here](#).

B. Pursuant to Local Bankruptcy Rule 2090-1(E)(3), attorneys from other states and the District of Columbia (each, a "Foreign Attorney") may appear and practice in the Chapter 11 Case upon the motion of a member of the bar of the Court, which authorization shall extend to any adversary proceedings filed in connection with the Chapter 11 Case; provided that in all appearances, a Foreign Attorney must be accompanied by a member of the bar of the Court. Further, the Eastern District of Virginia does not allow Foreign Attorneys to electronically file pleadings on CM/ECF, but does allow Foreign Attorneys to register to become limited participants on its system by following the procedures set forth in the CM/ECF Policy. Any government attorney shall appear and practice in the Chapter 11 Case pursuant to Local Bankruptcy Rule 2090-1(E)(4).

## IX. MEDIATION

A. Mediation of disputes is encouraged in Chapter 11 Cases. Unless ordered otherwise, Local Bankruptcy Rule 9019-1 shall govern mediation of any dispute arising in an adversary proceeding, contested matter or otherwise; **provided, however,** notwithstanding Local Bankruptcy Rule 9019-1(B)(1), parties may agree to mediate any dispute using a non-judicial mediator or neutral without Court approval.<sup>8</sup> Mediation by virtual meetings (e.g., Zoom) is acceptable, but in-person mediation is encouraged.

## X. REVISIONS

A. These Chapter 11 Procedures may be revised periodically.

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<sup>8</sup> [NTD – The Court should consider amending Local Rule 9019-1(J) as follows to ensure communications between the mediator and parties remain confidential and privileged:

The substance of communications and writings in the mediation process shall not be disclosed to any person other than participants in the mediation process; provided, however, that nothing herein shall modify the application of Federal Rule of Evidence 408 nor shall use in the mediation process of an otherwise admissible document, object, or statement preclude its use at trial. Furthermore, unless otherwise agreed to by the party, communications and writings between a party and the mediator shall be considered privileged and confidential and shall not be subject to discovery. No party shall be deemed to have waived the attorney-client or work-product privileges by communicating privileged information to the mediator.]

**PROCEDURES FOR ASSIGNMENT AND ADMINISTRATION OF  
“MEGA CASES” IN THE EASTERN DISTRICT OF VIRGINIA  
(Effective February 15, 2022)**

On November 30, 2021, the Chief Judge entered a Standing Order relating to “mega cases” in order to utilize more evenly the judicial and administrative resources of the District. Pursuant to section 105(d)(2) of Title 11 of the United States Code (the “Bankruptcy Code”) these procedures (the “Mega Case Procedures”)<sup>1</sup> shall apply to the administration of chapter 11 mega cases (“Mega Cases”). These Mega Case Procedures also shall apply to chapter 11 cases where the definitional criteria below are met and initiated by the filing of an involuntary petition under section 303 of the Bankruptcy Code. The Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia (the “Local Bankruptcy Rules”) shall govern all matters in Mega Cases, except to the extent that the Local Bankruptcy Rules conflict with and/or are inconsistent with the Mega Case Procedures.

These Mega Case Procedures are promulgated to address the unique exigencies of Mega Cases under chapter 11 and to provide for the efficient, expedient, orderly, consistent, and uniform treatment and administration of chapter 11 reorganizations and/or liquidations across all divisions within the District, and to provide transparency for the bankruptcy process. In addition, these Mega Case Procedures seek to balance the interests of debtors, their creditors, and other constituencies, and parties-in-interest that are implicated by Mega Cases in order to facilitate participation by all stakeholders through the use of uniform and consistent procedures, systems, and technologies. Furthermore, while these Mega Case Procedures do not apply in every case, the policies behind these procedures are intended to apply in every bankruptcy case in order to provide transparency and equal access to justice for debtors, creditors and other stakeholders, regardless of the size of the debtor or the chapter which the debtor utilizes under the Bankruptcy Code.

**I. DEFINITION OF MEGA CASES**

- A. A Mega Case is a case or group of affiliated cases filed under chapter 11 of the Bankruptcy Code in which the total liquidated, noncontingent, undisputed, and non-insider liabilities of the collective debtors exceed \$100 million dollars.

The filing attorney, who is a member of the Bar of this Court in good standing pursuant to Local Bankruptcy Rule 2090-1, including but not limited to, subsections (E)(3), (F) & (I), who is accountable to the Court for the case, shall file a certification stating whether such case is, or is not, a Mega Case and the basis for Divisional venue at the time of filing.

**II. JUDICIAL ASSIGNMENT OF MEGA CASES**

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<sup>1</sup> [NEED TO ADD A LOCAL BANKRUPTCY RULE 1075-2 TO INCORPORATE EXHIBIT 16 INTO BASE RULES]

- A. Mega Cases shall be assigned randomly by the Chief Judge to any Bankruptcy Judge in the District (excluding the Chief Judge) irrespective of the Division in which the Mega Case is filed.<sup>2</sup>
- B. If the basis for Divisional venue of the Mega Case is “principal place of business” or “principal assets;”<sup>3</sup> under 28 U.S.C. § 1408 or if the Division where the Mega Case was filed is the headquarters of the Debtors or the location of their principal executive offices, the assigned Bankruptcy Judge, if located in a different Division, may determine, in their discretion consistent with the efficient administration of justice and public access, to transfer such Mega Case to the filing Division notwithstanding III.B. below and shall travel to the Division where the Mega Case was filed to conduct hearings and/or conduct hearings virtually and/or by other remote participation.
- C. If the Bankruptcy Judge to whom a Mega Case is assigned is unable to administer such Mega Case, the Chief Judge randomly will re-assign such Mega Case.

### **III. ADMINISTRATION OF MEGA CASES**

- A. Notwithstanding the random assignment of Mega Cases, and consistent with Local Bankruptcy Rule 5005-1 (B)(1), to the extent necessary for the expedient administration of such Mega Case, any Bankruptcy Judge in the District may conduct and preside over any First Day Hearings requested if the assigned and presiding Bankruptcy Judge is otherwise unavailable. Unless otherwise ordered, First Day Hearings in Mega Cases will be conducted virtually or by remote participation with no in-person attendance required.
- B. In order to minimize the cost of administration of a randomly assigned Mega Case, if the presiding Bankruptcy Judge is located in a Division different from where the Mega Case was filed, the presiding Bankruptcy Judge will conduct hearings in the Division where the Mega Case was filed and/or conduct hearings virtually or by remote participation consistent with the needs of the Mega Case, due process, public access, and the administration of justice; provided, however, such Mega Case will be assigned to the Division in which the presiding Bankruptcy Judge is located and all filings shall occur in that Division.
- C. The Procedures for Complex Chapter 11 Cases set forth in Exhibit 15 (as amended) shall apply to Mega Cases.

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<sup>2</sup> [NEED TO ADD A CROSS REFERENCE TO LOCAL BANKRUPTCY RULE 5005-1(B) TO REFERENCE ASSIGNMENT PROCEDURES IN MEGA CASES SET FORTH IN EXHIBIT 16]

<sup>3</sup> For purposes of this definition the term “principal assets” means the principal assets of the debtors collectively and not of a single debtor in a Mega Case involving multiple debtors.