

LOCAL RULES OF PRACTICE  
OF THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH

Frank E. Moss United States Courthouse  
350 South Main Street  
Room 348  
Salt Lake City, Utah 84101

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## **RULE 1001-1**

### **LOCAL RULES - GENERAL**

(a) **Scope and Citation.** Title 11 (“the Code”) and portions of titles 18 and 28 of the United States Code, the Federal Rules of Bankruptcy Procedure (“Fed. R. Bankr. P.”), the Rules of Practice of the United States District Court for the District of Utah (“DUCivR”), these Local Rules of Practice of the United States Bankruptcy Court for the District of Utah (“Local Rules”), and all standing orders of the court issued under Local Rule 1001-2(a), govern cases, proceedings, and practice before the United States Bankruptcy Court for the District of Utah (“court”). These Local Rules should be cited as “Bankr. D. Ut. LBR \_\_\_\_” or “Local Rule\_\_\_\_\_.”

(b) **Availability.** Copies of these Local Rules, with appendices, are available from the court’s website, [www.utb.uscourts.gov](http://www.utb.uscourts.gov), and from the clerk's office for a reasonable charge to be determined by the clerk. Upon admission to the bar of the United States District Court for the District of Utah, each attorney will be provided a copy of these Local Rules, with appendices, in force at the time of admission. Attorneys admitted pursuant to Local Rule 2090-1(b) and individuals appearing without an attorney will be provided a copy of these Local Rules upon request and payment to the clerk of the appropriate fee.

(c) **Amendments to the Local Rules.** The court may amend these Local Rules subject to DUCivR 83-7.4. The court will provide notice of proposed amendments and, after a comment period to be determined by the court, notice of the effective date of the approved amendments.

(d) **Definition of Words of Authority.** As used in these Local Rules, the following words of authority have the meaning indicated:

must	=	is required to
must not	=	is required not to
may	=	has discretion to
		is permitted to
		has a right to
is entitled to	=	has a right to
will	=	(expresses a future contingency)
should	=	(denotes a directory provision)
section or §	=	particular section contained in title 11, United States Code

## RULE 1001-2

### LOCAL RULES - STANDING ORDERS AND ELECTRONIC PROTOCOLS

(a) **Issuance and Availability of Standing Orders.** The court may issue standing orders to govern practice and procedure before this court that supplement these Local Rules with the approval of the Chief Judge of the District Court. All individuals entering an appearance before this court should be familiar with the standing orders. Copies of all current standing orders should be maintained by the clerk, and made available to the public for inspection and copying from the court's website, [www.utb.uscourts.gov](http://www.utb.uscourts.gov), and from the clerk's office.

(b) **Publication of Standing Orders.** When a new standing order is issued, the clerk should post the standing order on the court's website, [www.utb.uscourts.gov](http://www.utb.uscourts.gov), and outside the clerk's office for at least 3 months. The clerk should also submit the standing order to the Utah Bar Journal for publication immediately after the standing order or amendment is issued.

(c) **Electronic Filing Protocols.** The court may from time to time post usage protocols related to electronic filing to assist Filing Users. The court's posted usage protocols do not have the effect of standing orders. All Filing Users should be familiar with the electronic filing protocols. Copies of all current electronic filing protocols should be maintained by the clerk, and made available to the public for inspection and copying from the court's website, [www.utb.uscourts.gov](http://www.utb.uscourts.gov), and from the clerk's office.

## **RULE 1007-1**

### **LISTS, SCHEDULES, STATEMENTS, AND CERTIFICATIONS**

**(a) Petitions, Schedules, Statements, and Plans.**

(1) Procedures for Dismissal of Chapter 7, 11, or 12 Cases for Failure to Timely File Certain Papers. If a debtor does not timely file certain papers identified in subsections A, B, and C below, the case will be dismissed using the following procedure unless otherwise recommended by the United States trustee or case trustee or unless otherwise ordered by the court. The United States trustee or case trustee must file a Section 341 Meeting Report (Report) indicating the failure to comply and serve it on the debtor and debtor's attorney. If the Report contains a recommendation that the case not be dismissed, the case shall not be dismissed and administration of the case shall continue without prejudice to any motion to dismiss filed by a party in interest. If the Report does not contain a recommendation that the case not be dismissed and if an objection to dismissal is not filed within 21 days after the Report is mailed, the clerk must enter an order dismissing the case. If an objection is timely filed, the dismissal is stayed. The objecting party must set a hearing and give notice to parties in interest as provided in Fed. R. Bankr. P. 2002(a). Unless the court orders otherwise, the clerk must enter an order dismissing the case if a hearing on the objection is not held within 40 days after the objection is filed.

(A) Voluntary Case in Which the Debtor is Not an Individual. The court may dismiss a voluntary case in which the debtor is not an individual, except a case that has been converted from a chapter 11 case to a chapter 7 case, if the debtor fails

to file a list of creditors' names and addresses under Local Rule 1007-1, a list of equity security holders, or documents required by § 521(a)(1) or § 1116(1), within the time provided by Fed. R. Bankr. P. 1007 or any extension granted under § 1116(3).

(B) Voluntary Chapter 11 or 12 Case in Which the Debtor is an Individual. The court may dismiss a voluntary case if the debtor fails to file a list of creditors' names and addresses under Local Rule 1007-1, or documents required by § 521(a)(1) or § 1116(1), within the time provided by Fed. R. Bankr. P. 1007 or within any extension granted under § 1116(3).

(C) Voluntary Chapter 7 Case in Which the Debtor is an Individual. The court may dismiss a voluntary case, except a case that has been converted from a chapter 11 case to a chapter 7 case, if the debtor fails to file a list of creditors' names and addresses under Local Rule 1007-1, within the time provided by Fed. R. Bankr. P. 1007.

(2) Procedure for Dismissal of a Case under Chapter 13 for Failure to Timely File Certain Papers. The court may dismiss a case, except a case that has been converted from a chapter 7 case to a chapter 13 case, if the debtor fails to file a list of creditors' names and addresses under Local Rule 1007-1, or documents required by §521(a)(1) and Fed. R. Bankr. P. 1007(b)(1) within the time required by Fed. R. Bankr. P. 1007(c), or a chapter 13 plan within the time provided by Fed. R. Bankr. P. 1007 and 3015. The procedures for dismissal on these grounds are set forth in Local Rule 2083-1(f). However, nothing in this rule or in

Local Rule 2083-1(f) shall alter the provisions for automatic dismissal of the case under § 521(i).

(b) **List of Creditors and Equity Security Holders.** The debtor may file with the petition, but must file no later than 2 days thereafter, the list required under Fed. R Bankr. P. 1007(a)(1) in a form designated by the clerk and, if applicable, an additional list of creditors holding claims under § 507(a)(1)(A) and (B), and a list of equity security holders, in the manner prescribed by the clerk's office. If the debtor files a list of creditors holding claims under § 507(a)(1)(A) and (B), the clerk may provide the notice specified in § 704(c)(1)(A) and (B) at least 20 days prior to the meeting of creditors under § 341. The clerk may mail the notice provided by the trustee as specified in § 704(c)(1)(C) within 21 days after the debtor is granted a discharge under § 727.

(c) **Filing of Documents Following Conversion.** Lists, schedules, statements, and other documents filed prior to conversion of a case to another chapter shall be deemed filed in the converted case; however, within 21 days after the entry of an order converting the case, the debtor shall file either: (i) a declaration under penalty of perjury that there have been no material changes to the lists, schedules, statements, and other documents filed prior to conversion, or (ii) amended lists, schedules, statements, and other documents reflecting such changes.

(d) **Section 109(h) Compliance.**

(1) **Section 109 (h) Certification.** If the debtor fails to certify compliance with § 109(h)(1) on the petition, or request a waiver under § 109(h)(3)(A) on the petition and file a separate application for exemption and proposed order with the petition, or fails to file a request for determination by the court under § 109(h)(4) with the petition, the clerk must enter an order dismissing the case.

(2) Certification of Eligibility for Exemption. A debtor who requests a waiver under § 109(h)(3)(A) on the petition must also file with the petition a separate application for exemption and proposed order granting the application for exemption. The court may grant the application for exemption, set the application for exemption for hearing, or may deny the application for exemption without hearing. If the application for exemption is granted, the debtor must timely file a certification indicating compliance with the requirements of § 109(h)(1) or the clerk must enter an order of dismissal. If the application for exemption is denied, the clerk must enter an order of dismissal.

(3) Section 109(h)(4) Hearing. A debtor who timely files a request for determination by the court under § 109(h)(4) must set the matter for a hearing to be held within 40 days of filing the petition with notice pursuant to Local Rule 2002-1. If the court does not determine that § 109(h)(4) is applicable within 40 days of the filing of the petition, or within such additional time as the court, for cause, determines, the clerk must enter an order of dismissal.

(e) **Filing Form of Payment Advice Certification.** The debtor shall file, no later than seven days before the date on which the meeting of creditors is first scheduled to be held, the Form Payment Advices Certification attached hereto as Appendix F, provided, however, that the time limits of § 521(a) and (i) and the consequences related thereto are not intended to be modified by this Local Rule.

## **RULE 1014-1**

### **CHANGE OF VENUE**

(a) **Within the District.** In the interest of justice or for the convenience of the parties, the court may change venue of a case or proceeding from one division of the court to another. A motion for intra-district transfer is governed by Fed. R. Bankr. P. 9014 and Local Rule 9013-1.

(b) **To Another District.** For procedures to change venue of a case or proceeding to another district, see DUCivR 83-7.1(a) and (c) and Fed. R. Bankr. P. 1014.

## **RULE 1015-1**

### **JOINT ADMINISTRATION/CONSOLIDATION**

A motion for consolidation or joint administration of cases may be brought before the judge assigned to the case with the lowest case number to which the motion for consolidation or joint administration applies. If the motion is granted, the cases will be consolidated into or jointly administered under the case having the lowest case number, unless otherwise ordered. The judge assigned to the case with the lowest number will retain the assignment for the consolidated or jointly administered case.

## **RULE 1073-1**

### **ASSIGNMENT OF CASES**

The assignment of cases to the judges of the court is the responsibility of the Chief Judge of the court and will, unless otherwise modified, proceed as follows:

(a) **Random Selection Case Assignment System**. Case assignments are made on a nonpublic rotating calendar established and monitored by the clerk, with the following exceptions:

(1) cases filed in certain geographic areas may be assigned to the judge(s) assigned to that area, and  
(2) a blind draw will occur in all chapter 11 cases, involuntary cases, and in chapter 7 cases with 100 creditors or more.

(b) **Judicial Recusal or Disqualification**. If a judicial recusal or disqualification occurs, another judge will be assigned to the case by random selection. If all judges recuse themselves or are disqualified, the Chief Judge will request the Chief Judge of the United States Court of Appeals for the Tenth Circuit to assign a bankruptcy judge from another district to the case.

(c) **Unavailability of Assigned Judge**. A party may request relief from any judge of the court if the assigned judge is unavailable.

## **RULE 2002-1**

### **NOTICE TO CREDITORS AND OTHER INTERESTED PARTIES**

(a) **Scope of Rule.** This rule governs notice of proposed actions, motions, applications, and other requests for relief in bankruptcy cases which are addressed by Fed. R. Bankr. P. 2002.

(b) **Form of Notice.** A notice required by this rule to parties in interest may include a statement that the relief requested may be granted without a hearing unless an objection is timely filed. A notice not accompanied by a motion must state the relief requested and explain the basis for the relief.

(c) **Time for Notice.** Time for notice of hearings, response and reply deadlines, and for taking certain other actions under these Local Rules are set forth in Local Rule 9006-1.

(d) **Service of Notice.** The movant must serve the notice of hearing on all parties as required by the Federal Rules of Bankruptcy Procedure.

(e) **Returned Notices.** If any notices mailed using the addresses appearing on the matrix are returned, the debtor should update the mailing matrix as necessary to reflect the current addresses of parties in interest.

(f) **Notice of Compensation in Chapter 7 Case.** Before filing a final report in a chapter 7 case, the trustee must notify any entity who, to the knowledge of the trustee, may be entitled to compensation or reimbursement under § 330 of the Code. The entity may, within 14 days of service of the notice, file an application for compensation and reimbursement of expenses.

(g) **Notice of Entry of Confirmation Order.** The plan proponent must provide notice of the entry of an order confirming a chapter 9, 11 or 12 plan under Fed. R. Bankr. P. 2002(f)(7).

(h) **Notice to Certain Governmental Entities.** In addition to all other notice requirements found in the Federal Rules of Bankruptcy Procedure, when notices are required to be sent to the Internal Revenue Service, the Utah State Tax Commission, the Utah Department of Workforce Services, or the Office of Recovery Services, notices should be mailed or delivered to addresses listed on the court's website, [www.utb.uscourts.gov](http://www.utb.uscourts.gov).

## **RULE 2003-1**

### **MEETING OF CREDITORS AND EQUITY SECURITY HOLDERS**

(a) **Attendance.** The court may dismiss a voluntary case, except a case that has been converted from a chapter 11 case to a chapter 7 case or from a chapter 7 case to a chapter 13 case, or a case in which the court has determined under § 341(e) of the Code that no meeting of creditors is required, if the debtor or the debtor's attorney fails to appear at the scheduled or continued meeting of creditors required under § 341 of the Code. In a case other than a chapter 13 case, if the debtor or the debtor's attorney fails to appear, the trustee must file a Section 341 Meeting Report (Report) indicating the failure to appear and serve it on the debtor and the debtor's attorney. If the Report contains a recommendation that the case not be dismissed, the case shall not be dismissed and administration of the case shall continue without prejudice to any motion to dismiss filed by a party in interest. If the Report does not contain a recommendation that the case not be dismissed and if an objection to the trustee's notice is not filed within 21 days after service of the notice, the clerk must enter an order dismissing the case. In a joint case where only 1 spouse appears, the case will be bifurcated and the appropriate dismissal entered. In a chapter 7 case, the objection must also move for an extension of the time fixed under Fed. R. Bankr. P. 4007(c) and 4004(a) for filing a complaint under §§ 523(c) and 727 of the Code. In a chapter 13 case, the procedures for dismissal for failure to appear at the first meeting of creditors are set forth in Local Rule 2083-1(e). In a joint case where only one spouse appears, the case will be bifurcated and the appropriate dismissal entered.

(b) **Duties of the Debtor in Connection with the Meeting of Creditors.** The debtor is required to provide documentation prior to and at the meeting of creditors as requested by the trustee or the United States trustee and as required in § 521, Fed. R. Bankr. P. 4002(b), and Local Rule 4002-1(b). In addition, a chapter 13 debtor is required to provide the documents listed in Local Rule 2083-1(d) prior to or at the meeting of creditors.

(c) **Telephonic Appearance at Meeting of Creditors.** Under extenuating circumstances which prevent a debtor from appearing in person, a debtor may file a motion seeking permission to appear by telephone at a creditors' meeting required under § 341 of the Code. Extenuating circumstances may include military service, incapacitating condition, or incarceration. The motion must be filed and served on the trustee and the United States trustee no later than 5 days prior to the scheduled meeting, and may be ruled upon without a hearing. The motion must describe in writing any efforts to give notice to and confer with the trustee prior to the filing of the motion. If the motion is granted, the debtor must also serve a copy of the order allowing a telephonic appearance on the trustee and the United States trustee. The debtor must contact the trustee to determine the time, date and location for the telephonic appearance. The debtor is responsible for any costs associated with conducting a telephonic appearance.

(d) **Costs of Meeting Facilities.** If the circumstances of a particular case require that the meeting of creditors be held somewhere other than the usual facilities, the estate of the debtor will be responsible for the rent and other appropriate costs associated with conducting the meeting in an alternate facility.

(e) **Notice of Rescheduled Meetings of Creditors.** If the initial meeting of creditors is rescheduled, the clerk must give notice of the new date and time of the meeting unless otherwise directed by the court.

## **RULE 2004-1**

### **EXAMINATIONS UNDER RULE 2004**

In either of the following circumstances the clerk may enter an order granting a motion under Fed. R. Bankr. P. 2004 without prior notice or hearing:

- (1) if the movant represents that the party to be examined will receive not less than 14 days written notice of the examination; or
- (2) if the movant and the party to be examined have stipulated in writing to the examination.

## **RULE 2081-1**

### **CHAPTER 11 - GENERAL**

(a) **Initial Financial Reports and Other Documents.** Not later than 21 days after filing a chapter 11 petition, non-small business debtors must provide the United States trustee with an initial financial report in the form approved by the United States trustee, and not later than 7 days after filing a chapter 11 petition, all chapter 11 debtors shall provide evidence of any permits, licenses of operations, and any policies of insurance maintained by the debtor, unless the court orders otherwise.

(b) **Monthly Financial Reports.** Not later than 14 days after the end of each month the debtor in possession or trustee must file with the court a monthly financial report in the form approved by the United States trustee and serve a copy upon the United States trustee. A sample of the form approved as of the effective date of these rules is attached hereto as Appendix C. The duty to file these reports terminates upon confirmation of a plan, or upon conversion or dismissal of the case.

(c) **Post-Confirmation Summary Report.** Unless the court orders otherwise, a reorganized debtor or other entity responsible for consummation of a plan must file a one-time summary report within 90 days after entry of a confirmation order which must include the following:

- (1) the dollar amounts of administrative expenses for fees for the attorney for the debtor, attorney for the trustee, the trustee, other professionals, and out-of-pocket expenses;
- (2) the dollar amounts of priority, secured, and unsecured claims;
- (3) the dollar amounts of plan payments to priority, secured, and unsecured creditors;

(4) the percentage dividend being paid to unsecured creditors without priority;

and

(5) the estimated date that a final decree will be entered.

Failure to comply with this subsection constitutes grounds for dismissal of the case.

## **RULE 2082-1**

### **CHAPTER 12 - GENERAL**

(a) **Monthly Financial Reports.** Not later than 21 days after the end of each month, the debtor must file with the court a monthly financial report in the form approved by the United States trustee and serve a copy upon the chapter 12 trustee. The debtor's duty to file these reports terminates upon confirmation of a plan, or upon conversion or dismissal of the case.

(b) **Filing of Chapter 12 Plan.** The court may dismiss a chapter 12 case if the debtor fails to file a plan within the time provided in § 1221 of the Code. If the debtor does not file a plan timely, the chapter 12 trustee should file a notice of failure to comply and serve it on the debtor and debtor's attorney. If an objection to the trustee's notice is not filed within 21 days after notice is mailed, the clerk should enter an order dismissing the case. The objecting party must set a hearing and give notice to parties in interest as provided in Fed. R. Bankr. P. 2002(a). If a hearing on the objection is not held within 40 days after the objection is filed, the clerk must enter the order of dismissal, unless the court orders otherwise.

(c) **Payments.** Payments under a confirmed plan must be paid by certified funds or money orders made payable as directed by the chapter 12 trustee. The debtor may make and the trustee may accept payments in furtherance of a plan prior to confirmation. Such payments must be disbursed under a confirmed plan or further order of the court, and may be subject to a charge for the trustee's expenses upon conversion or dismissal of the case, or confirmation of a plan.

(d) **Attorney's Fees.** All chapter 12 plans must contain a statement of attorney's fees paid and to be paid.

(e) **Monthly Payments.** Beginning at the first meeting of creditors and continuing each month thereafter until confirmation of a plan, the debtor may be required to pay to the chapter 12 trustee the actual and necessary expenses of the administration of the case as allowed by the court, or a minimum court-approved dollar amount to be fixed by the trustee, whichever is greater.

**RULE 2083-1**

**CHAPTER 13 - GENERAL**

(a) **Chapter 13 Plan.** Unless otherwise ordered by the court, all chapter 13 plans filed in cases commencing on or after the effective date of these local rules shall substantially conform to the Model Plan in Appendix G.

(b) **Chapter 13 Plan Payments.** Unless otherwise ordered by the court, payments under § 1326 of the Code must commence on or before the first date fixed by the court for the meeting of creditors, and must be made by certified funds, money order, or a trustee-approved means of electronic funds transfer, made payable as directed by the trustee.

(c) **Preconfirmation Payments Pursuant to § 1326(a)(1).** The chapter 13 plan shall list the creditor name, address, account number, payment due date, and payment amount for each creditor entitled to preconfirmation adequate protection, or lease payments to be paid by the trustee.

(1) **Adequate Protection.** Unless otherwise ordered by the court, all preconfirmation adequate protection payments to holders of secured claims required under § 1326(a)(1) shall not be made by the debtor directly to the secured claimant, but shall be paid to and disbursed by the trustee. The debtor's preconfirmation plan payments to the trustee shall include the amount required under § 1326(a)(1) and the amount necessary to pay the trustee's statutory fee.

(2) **Lease Payments.** If the chapter 13 plan provides for lease payments over the term of the plan to be paid by the trustee, preconfirmation lease payments to such lessors shall be paid by the trustee and the above provisions regarding preconfirmation adequate

protection payments shall apply. If the chapter 13 plan provides for lease payments to be paid by the debtor and not by the trustee over the term of the plan, then preconfirmation lease payments to such lessors required under § 1326(a)(1) shall be made directly by the debtor and not by the trustee.

**(d) Documents Provided to the Trustee at or before the Meeting of Creditors.**

(1) In addition to those documents required by § 521, a debtor must provide to the trustee copies of the following documents at least 7 days before the date first set for the first meeting of creditors:

(A) Proof of all charitable contributions made within 60 days before the date of the filing of the petition;

(B) A copy of the most recent county property tax assessment for all real property listed on Schedule A;

(C) A profit and loss statement if a debtor had self-employment income for the 60 days prior to filing, including income reported on an IRS Form 1099;

(D) A business questionnaire for each business operated by the debtor 60 days prior to filing on a form supplied by the trustee; and

(E) Copies of tax returns required under Local Rule 6070-1(c)(2).

(2) A debtor must provide to the trustee copies of the following documents at or before the first date set for the meeting of creditors:

(A) Evidence of current postpetition income such as the most recent payment advice; and

(B) Statements for each of the debtors' checking, savings, brokerage, and money market accounts and mutual funds for the time period that includes the date of the filing of the petition.

(e) **Dismissal for Failure to Attend a Meeting of Creditors or Make Payments.**

If the debtor or the debtor's attorney fails to appear at the scheduled or continued meeting of creditors required under § 341 of the Code or if a debtor fails to make the first payment required by subsection (a) of this rule, the trustee must file a motion to dismiss or notice of failure to comply and serve it on the debtor and debtor's attorney. If an objection is not filed within 21 days after the motion or notice is mailed, the clerk must enter an order dismissing the case. A hearing on an objection filed in response to the trustee's notice of failure to comply will be held at the time scheduled as the confirmation hearing on Official Form 9I, unless the court orders otherwise. No notice in addition to the notice of hearing contained on Official Form 9I is required.

(f) **Dismissal for Failure to File or Provide Documents or Comply with Other Requirements.** In addition to cause for dismissal under § 1307(c), the trustee, or with respect to subpart (5), the applicable taxing authority, may file a motion to dismiss or notice of failure to comply for the following grounds:

- (1) Failure to file documents required under Local Rule 1007-1(a)(2);
- (2) Failure to provide identification and social security documentation under Fed. R. Bankr. P. 4002(b)(1) or (b)(2);
- (3) Failure to provide documents under subsection (c) of this rule;
- (4) Failure to provide information in response to a written request by a trustee or United States trustee under Local Rule 4002-1(b); or

(5) Failure to provide proof of tax trust accounts under Local Rule 6070-1(a)(3) or failure to comply with requirements with respect to tax returns under Local Rule 6070-1(c).

The motion to dismiss or notice of failure to comply must be served on the debtor and the debtor's attorney. If an objection is not filed within 21 days after the motion or notice is mailed, the clerk must enter an order dismissing the case. A hearing on an objection filed in response to the trustee's notice of failure to comply will be held at the time scheduled as the confirmation hearing on Official Form 9I, unless the court orders otherwise. No notice in addition to the notice of hearing contained on Official Form 9I is required.

**(g) Postpetition Child Support, Alimony, Maintenance Payments Deemed Voluntary.** Unless a chapter 13 debtor on the petition date, or such later time as the court allows, files with the court, the trustee, and the requisite state office of recovery services a notice setting forth the debtor's intent to terminate postpetition child support, alimony, maintenance payments or income withholding, the debtor will be deemed as of the date of the petition to have stipulated as follows: (1) that any child support, alimony, or maintenance obligation that matures postpetition, whether continuing or delinquent and whether paid directly by the debtor or collected by means of income withholding under state law, is voluntarily made by the debtor under the debtor's budget of postpetition expenses; and (2) that any collection of such obligations will not constitute grounds for compensatory, injunctive or punitive relief against the collecting party for any violation of the provisions of § 362 of the Code. This rule does not apply to any child support, alimony, or maintenance obligation that matures and becomes delinquent postpetition and that the debtor and a state office of recovery services have agreed in writing will be treated as a prepetition obligation included in the debtor's plan.

(h) **Eligibility Hearing.** A party must file and serve a motion to dismiss a chapter 13 case under § 109(e) of the Code not later than 7 days before the date set on Official Form 9I for the plan confirmation hearing. Such motion will be heard at the plan confirmation hearing, unless the court orders otherwise.

(i) **Distribution in Preconfirmed Cases.**

(1) **Preconfirmation Disbursements by the Chapter 13 Trustee.**

Preconfirmation disbursements under § 1326(a)(1) are hereby authorized without further order, but such disbursements shall not be made unless such creditor has filed a proof of claim with the court. Preconfirmation disbursements under § 1326(a)(1) shall be made to creditors within 30 days of the filing of the proof of claim, unless, within 7 business days prior to the end of such 30 day period, the trustee has not received sufficient, cleared funds to make such payment. The trustee is authorized to deduct from an allowed claim all § 1326(a)(1) preconfirmation disbursements.

(2) **Distribution in Discontinued Preconfirmation Cases.** If a case is converted or dismissed prior to confirmation, the trustee is authorized to apply the debtor's plan payments to pay: (1) an allowed expense fee to the standing chapter 13 trustee; (2) adequate protection payments stipulated to by the parties or ordered by the court; (3) any allowed administrative expenses; and (4) the balance of such funds will be paid by check made payable to and sent to the debtor(s).

(j) **Confirmation.** Any objection to confirmation must be filed and served not later than 7 days before the date set on Official Form 9I for the plan confirmation hearing. Such objection will be heard at the plan confirmation hearing, unless the court orders otherwise. If there are no timely

filed objections to confirmation pending or if all objections to confirmation are resolved by a court order or a stipulation signed by the debtor, the trustee, and the objecting party, a plan may be confirmed without objection. If the plan is eligible to be confirmed without objection, the confirmation hearing may be stricken and an order confirming the plan entered. Debtors and the debtors' attorney are excused from the confirmation hearing if the plan will be confirmed without objection.

**(k) Request for Discharge.** As soon as practicable after the completion of all payments under the plan, the trustee shall file with the court and serve upon the debtor and debtor's counsel a Notice of Completion of Plan Payments. If debtor's counsel asserts unpaid fees or costs in a case, counsel must within 30 days of the filing of the Notice of Completion of Plan Payments take the following actions: (1) file an objection to the Notice of Completion of Plan Payments, (2) file an appropriate application for such fees and costs, and (3) serve a notice of hearing on such application. Failure to timely comply with any of these requirements will result in a waiver of all such fees. Within 60 days thereafter, the debtor shall file and serve on all parties in interest a Verification and Request for Discharge in the form attached to these Local Rules as Appendix E. If no written objection to the Verification and Request for Discharge is filed within 21 days after service thereof, the court may enter a discharge pursuant to § 1328(a) without further notice or hearing.

## **RULE 2090-1**

### **ATTORNEYS - ADMISSION TO PRACTICE**

(a) **Bar of the Court.** The bar of this court consists of attorneys admitted to practice in the United States District Court for the District of Utah under DUCivR 83-1.1(b) and (c).

(b) **Other Permitted Appearances.** Attorneys who are not active members of the Utah State Bar but who are members in good standing of the bar of another state or of the bar of any federal court, may appear for the purpose of attending and participating in a meeting of creditors without leave of the court. In all other matters, such attorneys may be admitted in a case by order of the court. Applicants must file a written motion for admission made by an active member in good standing of the bar of this court. For nonresident applicants, unless otherwise ordered by the court, the motion may be granted only if the applicant associates an active local member of the bar of this court with whom opposing attorneys and the court may communicate regarding the case or proceeding and upon whom papers must be served. All applicants must also comply with DUCivR 83-1.1(d)(1).

(c) **Participation of a Nonresident Attorney Admitted to the Local Bar.** If an attorney admitted to the bar of this court is a nonresident, he or she is not required to associate a local attorney, but is required, on documents filed with the court, to provide an address for the attorney in this state as designated pursuant to Utah State Bar Rule 14.705(a)(11), in addition to any applicable out of state address. The nonresident attorney will have all the responsibilities of a resident attorney including, without limitation, the responsibility to be present in court, or to have

local counsel present, at all scheduled proceedings in which the attorney intends to participate, including the first meeting of creditors, hearings, pretrial conferences, and trial.

(d) **Attorneys for the United States.** Attorneys representing the United States government or any agency thereof and who reside within this district are required to be admitted to this court's bar as set forth in DUCivR. 83-1.1(f).

(e) **Parties Appearing Without an Attorney.** Any party proceeding on its own behalf without an attorney will be expected to be familiar with and to proceed in accordance with the rules of practice and procedure of this court and with the appropriate federal rules and statutes that govern the action in which such party is involved.

(f) **Standards of Professional Conduct.** All attorneys practicing before this court, whether admitted as members of the court's bar, admitted pursuant to subsection (b) of this rule, or otherwise permitted by the court, are governed by and must comply with these Local Rules (including the requirement under Local Rule 5072-1(a) to act in a civil and professional manner) and, unless otherwise provided, with the Utah Rules of Professional Conduct, as revised and amended, and the decisions of this court interpreting those rules and standards.

(g) **Student Practice.** Any eligible law student who desires to enter an appearance in any case or proceeding must file the applicable forms similar to Appendix VIII, IX and X of the District Court Rules of Practice with this court, must be familiar with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and these Local Rules, and must comply with DUCivR 83-1.6 (b), (c), (d) and (e).

**RULE 2090-2**

**ATTORNEYS - REGISTRATION**

All members of the bar of this court are required to comply with DUCivR 83-1.2, and to certify they are familiar with these Local Rules.

## **RULE 2090-3**

### **ATTORNEYS - DISCIPLINE AND DISBARMENT**

Upon motion of a party or on its own initiative, the court may impose sanctions on an attorney for violation of these Local Rules. Sanctions may include, but are not limited to, the assessment of costs, attorney's fees, fines, striking pleadings, revocation of Filing User privileges, or any combination thereof, against an attorney or a party. A person may also file a complaint under DUCivR 83-1.5(h). The court or a trustee may refer under 18 U.S.C. § 3057 any appropriate matter regarding an attorney's conduct to the United States Attorney's office for action.

**RULE 2091-1**

**ATTORNEYS - SCOPE OF REPRESENTATION,  
WITHDRAWAL AND SUBSTITUTION**

(a) **Scope of Representation.** A debtor's attorney must represent the debtor in all aspects of the case, including the meeting of creditors, adversary proceedings, motions filed against the debtor, and post-confirmation matters. This requirement cannot be modified by agreement. The court may deny fees or otherwise discipline an attorney for violation of this rule.

(b) **Withdrawal and Substitution.** An attorney must file a written application seeking an order to withdraw or be substituted as attorney in any case or proceeding. The application must set forth the reasons therefor, together with the name, address, and telephone number of the client, as follows:

(1) **With Client's Consent.** If the attorney has obtained the written consent of the client, the consent must be filed with the application and the application must be accompanied by a separate proposed written order. The papers may be presented to the court ex parte. The withdrawing attorney must give prompt notice of the entry of the order to the client and to all other parties or their attorneys. An attorney representing a governmental unit is not required to obtain a client's signature to withdraw under this provision.

(2) **Without Client's Consent.** If the attorney has not obtained the written consent of the client, the application must be served upon the client and all other parties or their attorneys. The application must be accompanied by a statement of the moving attorney certifying that:

(A) the client has been notified in writing of the status of the case or proceeding, including the dates and times of any scheduled court proceedings, pending compliance with any existing court orders, and the possibility of sanctions; or

(B) the client cannot be located or for whatever other reason cannot be notified of the pendency of the application and the status of the case or proceeding.

(c) **Withdrawal and Substitution After Hearing Before the Court or Trial Date is Scheduled.** An attorney may not withdraw after a hearing before the court has been scheduled or trial date has been set in a case or proceeding, unless:

(1) the application includes an endorsement that is signed

(A) by a substituting attorney indicating that such attorney has been advised of the hearing or trial date and will be prepared to proceed with the hearing or trial; and

(B) by the client indicating that the client is advised of the time and date and will be prepared for the hearing or trial; or

(2) the court is otherwise satisfied, for good cause shown, that the attorney should be permitted to withdraw.

(d) **Notification of Substituted Attorney.** An application to substitute attorney must state the address, telephone number, and, where applicable, Utah State Bar identification number of the substituting attorney.

(e) **Responsibilities of Party Upon Removal.** Whenever an attorney withdraws, dies, is removed or suspended, or for any other reason ceases to act as attorney of record, the party

represented by such attorney must file a notice of the appointment of another attorney or of his or her decision to appear without an attorney within 21 days or before any further court proceedings are conducted. If substituting another attorney, the party also must file the current telephone number, address, and, where applicable, Utah State Bar identification number of the substituting attorney. If the party is proceeding without an attorney, the party must file his or her address and telephone number.

**RULE 3003-1**

**BAR DATE FOR FILING PROOF OF CLAIM OR  
INTEREST IN CHAPTER 11 CASES**

(a) **Bar Date in Chapter 11 Cases.** Unless otherwise ordered by the court, in a chapter 11 case, a proof of claim or interest is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors under § 341 of the Code, or, if filed by a governmental unit, not later than 180 days after the date of the order for relief.

(b) **Notification of Bar Date in Chapter 11 Cases.** Unless otherwise ordered by the court, the clerk's office should state the bar dates for filing proofs of claim or interest on the notice entitled "Notice of Commencement of Case under the Bankruptcy Code, Meeting of Creditors, and Fixing of Dates" issued in chapter 11 cases.

## **RULE 3007-1**

### **OBJECTIONS TO CLAIMS**

(a) **Notice of Objection to Claim.** A party objecting to a claim must provide notice of the objection and of the hearing on the objection to the claimant in accordance with Local Rule 9013-1(d), Fed. R. Bankr. P. 3007, and Official Form 20B. A notice required by this rule may include a statement that the objection may be granted without a hearing unless a response is timely filed.

(b) **Response to Objection to Claim.** A response to an objection to a claim must be filed and served within the time period fixed by Local Rule 9006-1(b)(3). The objecting party may file a reply to the response within the time period fixed by Local Rule 9006-1(c). The court will conduct an evidentiary hearing if a response is timely filed. If a response is not timely filed, the court may sustain the objection without a hearing pursuant to Local Rule 9013-1(e). It is the responsibility of the objecting party to request a hearing and serve notice thereof on the holder of the claim, on any party responding to the objection, and on the attorneys for these parties.

## **RULE 3011-1**

### **PROCEDURE FOR PAYMENT OF UNCLAIMED FUNDS**

(a) **Requirements for Payment of Unclaimed Funds.** The Court may not disburse unclaimed funds without an application for payment of unclaimed funds, notice of the application and a court order authorizing payment of unclaimed funds.

(b) **Application for Payment of Unclaimed Funds.** The following documentation is required in order to obtain a court order authorizing payment of unclaimed funds:

(1) **Requirements for individuals.** An application for payment of unclaimed funds should substantially conform to Local Form 3011 which is attached as Appendix H. Claimant must submit a photocopy of a valid photo identification issued by a government entity, such as a driver's license or passport. The application shall include the last four (4) digits of the claimants social security number.

(2) **Requirements for Assignee of Claimant or Representative of Estate of a Deceased Claimant.** An application for payment of unclaimed funds submitted by an Assignee of Claimant or Representative of Estate of a Deceased Claimant should substantially conform to Local Form 3011. If the claimant is an assignee, claimant must provide documents establishing the chain of succession and assignment from the original claimant as proof of entitlement to the funds. If the claimant is a representative of the estate of a deceased claimant, certified copies of all probate documents to substantiate the representative's right to act on behalf of the decedent's estate must be provided as proof of entitlement. The assignee or the representative must comply with paragraph (1) above.

(3) Requirements for corporations. An application for payment of unclaimed funds submitted by a corporation should substantially conform to Local Form 3011. In addition, if the claimant is a successor corporation, claimant must provide documents establishing the chain of succession of the original corporate claimant as proof of entitlement to the funds. The application shall also include the tax identification number of the corporate claimant.

(4) Requirements for funds locators. An application for payment of unclaimed funds submitted by a funds locator should substantially conform to Local Form 3011. In addition, the funds locator shall provide documentation establishing their authorization to act on behalf of claimant. The application shall also include the tax identification number or the last four digits of the claimant's social security number.

(c) **Service of the Application.** An application for payment of unclaimed funds and a notice that any objection to the application must be filed within 21 days from the date of mailing of the application shall be filed with the Bankruptcy Court Clerk's office and mailed to the debtor, debtor's attorney, the trustee, the United States trustee, the United States Attorney for the District of Utah and, if Claimant is not the original creditor or payee, the application and the notice must be served on the individual or entity for whom the funds were deposited.

(d) **Order Authorizing Disbursement of Unclaimed Funds.** If no objection is timely filed, the Court shall issue an order authorizing the disbursement requested in the application. If an objection to the application is timely received, the matter shall be referred to the Court for determination.

## **RULE 3022-1**

### **FINAL REPORT/DECREE (CHAPTER 11)**

(a) **Non-Individual.** A chapter 11 plan filed by a non-individual should set a date, not later than 1 year after the entry of the order confirming the plan, prior to which a final decree closing the case will be entered under § 350 of the Code and Fed. R. Bankr. P. 3022. Not later than 28 days before such date, the reorganized debtor should file, serve upon all interested parties and set for hearing, a motion for a final decree. The motion must set forth evidence of full administration for the purpose of entering the final decree. A party may object to entry of the final decree prior to the date set forth in the plan or prior to the expiration of 1 year from the entry of the order confirming the plan, whichever is earlier. The objection must be served on the reorganized debtor and debtor's attorney and must be set for a hearing. If the plan of reorganization does not provide a date certain for entry of a final decree or if the reorganized debtor fails to timely file a motion for a final decree, the final decree may be entered by the court, on or after 1 year from entry of the order confirming the plan. The decree must specify that the case is closed upon entry of the final decree. The court may extend the time for entry of the final decree upon motion and notice to all parties.

(b) **Individual.** A final decree must be sought by an individual within 28 days after completion of all payments under the plan. The final decree shall serve as a notice of the order of discharge of the individual debtor once all payments under the plan are complete.

## **RULE 4001-1**

### **RELIEF FROM AUTOMATIC STAY**

(a) **Motions for Relief from Stay.** A motion for relief from the automatic stay must be filed and served, with a notice of hearing, on the debtor, the debtor's attorney, the trustee, those parties designated in Fed. R. Bankr. P. 4001(a)(1), if applicable, and any codebtor and codebtor's attorney. The notice must substantially conform to Official Form 20A and identify the date by which objections must be filed and served. A notice required by this rule may include a statement that the relief requested may be granted without a hearing unless an objection is timely filed.

(b) **Objections to Motions for Relief from Stay.** An objection to a motion for relief from stay must be filed and served within the response period set forth in Local Rule 9006-1(b)(2). The objection must admit or deny each factual allegation of the motion. A factual allegation is admitted for the purpose of the hearing on the motion unless the objecting party denies the factual allegation, or sets forth the reason why the party cannot admit or deny the factual allegation. The movant may file a reply to the response within the time period fixed by Local Rule 9006-1(c).

(c) **Hearings on Motions for Relief from Stay.** Hearings on motions for relief from stay may be set as evidentiary hearings or a time for hearing objections to a motion for relief from stay may be reserved on the courts law and motion calendar.

(1) **Set Hearing.** If the movant obtains from the court a set date for the hearing on its motion for relief from stay in accordance with Local Rule 9013-1, the hearing will be conducted as an evidentiary hearing. Unless otherwise ordered by the Court, the parties should be prepared to present evidence and live testimony at the hearing. The notice of

hearing required under subsection (a) should state that the hearing will be an evidentiary hearing. If an objection is not timely filed the moving party may request, and the court may grant, the relief requested without a hearing pursuant to Local Rule 9013-1(f).

(2) Opportunity for hearing. If the movant reserves a time for hearing on its motion for relief from stay on the court's law and motion calendar in accordance with Local Rule 9013-2, and if an objection is timely filed, the initial hearing will be conducted as a preliminary hearing. At the preliminary hearing detailed offers of proof should be made but no live testimony will be taken. The detailed offer of proof should describe the evidence to be presented, what the evidence tends to show and identify the grounds for admitting the evidence. If following the preliminary hearing there appears to be no genuine issues of material fact, the court may rule on the motion. If genuine issues of material fact are demonstrated at the preliminary hearing, the court may set the matter for a final hearing, which may be an evidentiary hearing. If an objection is not timely filed the moving party may request, and the court may grant, the relief requested without a hearing pursuant to Local Rule 9013-2(f).

(d) Waiver of Stay of Order Under Fed. R. Bankr. P. 4001(a)(3). Requests for waiver or reduction of the automatic 14-day stay of an order granting a motion for relief from stay shall set forth concisely but with specificity the basis for the proposed waiver or reduction of the 14-day stay.

## **RULE 4001-2**

### **FINANCING MOTIONS AND ORDERS**

(a) **Motions.** Except as provided herein and elsewhere in these Local Rules, all financing motions, including cash collateral and financing requests under §§ 363 and 364 of the Code (“Financing Motions”), must be heard by motion filed under Fed. R. Bankr. P. 2002, 4001 and 9014.

(1) **Local Rule 4001-2 Disclosure.** All Financing Motions must recite whether the proposed order and/or underlying cash collateral stipulation or loan agreement contains any extraordinary relief, including that listed in subsections (a)(1)(A) through (a)(1)(G) below, identify the location of any such provision in the proposed order, cash collateral stipulation and/or loan agreement, and state the justification for the inclusion of such provision:

(A) Provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the prepetition secured creditors (i.e., clauses that secure prepetition debt by postpetition assets in which the secured creditor would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law);

(B) Provisions or findings of fact that bind the estate or all parties in interest with respect to the validity, perfection or amount of a secured creditor’s prepetition lien or debt or the waiver of claims against the secured creditor without giving parties in interest at least 75 days from the entry of the order and the creditors’

committee, if formed, at least 60 days from the date of its formation to investigate such matters;

(C) Provisions that seek to waive, without notice, whatever rights the estate may have under § 552(b) of the Code;

(D) Provisions that grant immediately to the prepetition secured creditor liens on claims and causes of action arising under §§ 544, 545, 547, 548, and 549 of the Code;

(E) Provisions that deem prepetition secured debt to be postpetition debt or that use postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt, other than as provided in § 552(b) of the Code;

(F) Provisions that provide disparate treatment for professionals retained by a creditors' committee from that provided for professionals retained by the debtor; and

(G) Provisions that prime any secured lien, without the consent of that lienor.

(2) Summary. All Financing Motions must also provide a summary of the essential terms of the proposed use of cash collateral and/or financing (e.g., the maximum borrowing available on a final basis, the interim borrowing limit, borrowing conditions, interest rate, maturity, events of default, use of funds limitations, and protections afforded under §§ 363 and 364 of the Code).

(b) **Interim relief.** When Financing Motions are filed with the court on or shortly after the date of the entry of the order for relief, the court may grant interim relief pending review by interested parties of the proposed financing arrangements to avoid immediate and irreparable harm to the estate. In the absence of extraordinary circumstances, the court will not approve interim financing orders that include any of the provisions in subsection (a)(1)(A) through (a)(1)(G) of this rule.

(c) **Final Orders.** A final order on a motion under subsection (a) of this Local Rule will be entered only after notice and a hearing under Fed.R.Bankr.P. 4001 and Local Rule 2002-1. Ordinarily, the final hearing should be held at least 14 days following the organizational meeting of the creditors' committee contemplated by § 1102 of the Code.

## **RULE 4002-1**

### **DUTIES OF DEBTOR**

(a) **Filing of Changes of the Debtor's Address.** The debtor must file and serve on the United States trustee, and the trustee, if any, every change of the debtor's address until the case is closed or dismissed.

(b) **Information Requested by the Trustee or by the United States Trustee.** In addition to financial information the debtor is required to provide as set forth in Fed. R. Bankr. P. 4002(b), the debtor must produce the following materials no later than 14 days after a written request by the trustee or United States trustee:

- (1) bank statements, canceled checks, and checkbooks; and
- (2) any other documents, recorded information, or other information reasonably necessary for the effective administration of the estate.

(c) **Documents Required to be Provided to the United States Trustee.** Individual chapter 7 debtors whose debts are primarily consumer debts and who are above the applicable State Median Family Income as established by the Census Bureau shall provide to the United States trustee within 14 days after the petition date a copy of the most recent Federal income tax return and copies of all payments advices for the 6-month period ending on the last day of the calendar month immediately preceding the date of the commencement of the case.

(d) **Individual Debtor's Failure to Provide Documentation at or Before Meeting of Creditors.**

(1) In a case other than chapter 13, the court may dismiss a voluntary case, except a case that has been converted from a chapter 11 case to a chapter 7 case or from a chapter 7 case to a chapter 13 case or a case in which the court has determined under § 341(e) of the Code that no meeting of creditors is required, if the debtor fails to provide any of the documents prescribed by and within the times set forth in Fed. R. Bankr. P. 4002(b) or in subsections (b) or (c) of this Local Rule. If the debtor fails to provide any of the prescribed documents before or at the meeting of creditors, the trustee may file a notice of failure to comply and serve it on the debtor and the debtor's attorney. If the debtor fails to comply with subsection (c) the United States trustee may file a notice of failure to comply and serve it on the debtor and the debtor's attorney. If an objection to the trustee's notice is not filed within 21 days the notice is mailed, the clerk must enter an order dismissing the case. In a joint case where only 1 spouse meets the requirements of Fed. R. Bankr. P. 4002(b), the case will be bifurcated and the appropriate order of dismissal will be entered. In a chapter 7 case, the objection must also move for an extension of the time fixed under Fed. R. Bankr. P. 4007(c) and 4004(a) for filing a complaint under §§ 523(c) and 727 of the Code, and the time fixed under Fed. R. Bankr. P. 4003(b)(1) for filing objections to exemptions under § 522(l) of the Code. The objecting party must set a hearing and give notice to parties in interest as provided in Fed. R. Bankr. P. 2002(a). If a hearing on the objection is not held within 40 days after the objection is filed, the clerk must enter the order of dismissal, unless the court orders otherwise.

(2) In a chapter 13 case, the procedures for dismissal are set forth in Local Rule 2083-1(f).

## **RULE 5001-1**

### **CLERK - OFFICE LOCATION/HOURS**

(a) **Office of Record**. The court's office of record is in the Frank E. Moss United States Courthouse at 350 South Main Street, Salt Lake City, Utah 84101. The court also maintains an unstaffed clerk's office and a chambers/courtroom facility in the Federal Building, 324 25th Street, Ogden, Utah.

(b) **Hours of Business**. Unless the court orders otherwise, the clerk's office is open to the public between the hours of 8:00 a.m. and 4:30 p.m. on all days except Saturdays, Sundays, and legal holidays as set forth below:

- New Year's Day, January 1
- Birthday of Martin Luther King, Jr. (Third Monday in January)
- Presidents' Day (Third Monday in February)
- Memorial Day (Last Monday in May)
- Independence Day, July 4
- Pioneer Day, July 24
- Labor Day (First Monday in September)
- Columbus Day (Second Monday in October)
- Veterans' Day, November 11
- Thanksgiving Day (Fourth Thursday in November)
- Christmas Day, December 25

## RULE 5003-1

### THE CLERK'S AUTHORITY

(a) **Orders, Judgments and Other Documents.** The clerk may sign his or her name, unless directed by the court to sign or imprint the court's facsimile signature and enter the following without further directive from the court:

(1) an order entering default for failure to plead or otherwise defend under Fed. R. Bankr. P. 7055;

(2) a subpoena for a party not represented by an attorney;

(3) an order of discharge;

(4) an order of dismissal, as directed by Local Rules 2003-1(a), 2082-1(b), 2083-1(e) and 7041-1, or similar dismissal orders arising from the failure of the debtor to respond to a motion to dismiss; and

(5) any other order or document that does not require approval or order by the court under Fed. R. Civ. P. 77(c).

(b) **Review of Clerk's Actions.** The court may review, suspend, alter or rescind the clerk's actions under this Local Rule.

## RULE 5003-2

### ACCESS TO COURT PAPERS

(a) **Access.** The public records of the court are available for examination in the clerk's office during the hours of business specified in Local Rule 5001-1. Public records may not be removed from the clerk's office by members of the bar or the public except by order of the court, but the clerk will make and furnish copies of official public court records upon request and upon payment as required by the Bankruptcy Court Miscellaneous Fee Schedule or the Electronic Public Access Fee Schedule issued by the Judicial Conference in accordance with 28 U.S.C. § 1930(b). Access to public records is also available through the court's website, [www.utb.uscourts.gov](http://www.utb.uscourts.gov), and is available to the public free of charge utilizing access provided in the clerk's office.

(b) **Electronic Filing System.** A person may access case information at the court's website, [www.utb.uscourts.gov](http://www.utb.uscourts.gov), by obtaining a PACER log-in and password. A person who has PACER access may retrieve docket sheets and documents. All attorneys admitted to practice before the court must be Filing Users, unless the court orders otherwise.

(c) **Sealed or Impounded Papers.** Papers ordered sealed or impounded by the court, or subject to a court order under Fed. R. Bankr. P. 9037(d), are not public records within the meaning of these Local Rules. Papers ordered sealed must be filed in paper format, and not electronically, unless specifically authorized by the court. A motion to file documents under seal may be filed electronically unless prohibited by law. The order of the court authorizing the filing of papers under seal may be filed electronically unless prohibited by law. A copy of the order must be attached to the papers under seal and be delivered to the clerk.

## **RULE 5005-1**

### **FILING REQUIREMENTS**

(a) **Filing of Papers.** Unless ordered otherwise, all Filing Users (as defined in Local Rule 5005-2(b)) must file all papers required to be filed with the court electronically. Filers who are permitted by these Local Rules to file in paper format should file all pleadings, motions, proposed orders, and other papers with the clerk at the office of record in Salt Lake City, defined in Local Rule 5001-1(a), during the hours of business set forth in Local Rule 5001-1(b); provided, however, that when court is in session elsewhere in the district, such papers may be filed with the clerk or with the court at the place where court is being held. In extraordinary circumstances, the court may permit the filing of such papers with a judge or other court officer.

(b) **Date-Stamped Copies.** A non-Filing User may, at the time of filing, present to the clerk a copy of the paper filed and request the clerk to imprint the clerk's date stamp on the copy. The date-stamped copy is prima facie evidence that the original was filed with the clerk on the date indicated by the clerk's stamp. An electronic receipt produced by CM/ECF is prima facie evidence of electronically filed documents.

(c) **Facsimile Filing.** Papers transmitted to the court via facsimile are not acceptable for filing and will not be docketed, but papers with facsimile signatures may be submitted for filing in accordance with these Local Rules in connection with declarations, affidavits, and verifications. The paper bearing the original signature must be retained by the filer in accordance with these Local Rules.

## RULE 5005-2

### FILING PAPERS- ELECTRONIC FILING

(a) **When Electronic Filing is Required.** Except as expressly provided or in exceptional circumstances, a Filing User must file all papers required to be filed with the court electronically. Notwithstanding the foregoing, filers who are not required by these Local Rules to be Filing Users are not required to electronically file papers in a case or proceeding assigned to the Electronic Filing System.

(b) **Eligibility and Registration of Filing Users and Applicable Rules.** Attorneys admitted to the bar of this court (including those admitted under Local Rule 2090-1(b)), United States trustees and their assistants, bankruptcy administrators and their assistants, private trustees, and individuals as the court deems appropriate, must register as Filing Users of the court's Electronic Filing System. No entities, such as law firms or corporations, may be Filing Users. Registration is in a form prescribed by the clerk. A registration form is located on the court's website, [www.utb.uscourts.gov](http://www.utb.uscourts.gov), and should be downloaded for use in the registration process. The form requires the Filing User's name, address, telephone number, Internet e-mail address, and, in the case of an attorney, a declaration that the attorney is admitted to the bar of this court, or in the case of an attorney admitted under Local Rule 2090-1(b), a copy of the order granting the admission, and an agreement of the Filing User to comply with the court's usage protocols posted on the court's website, [www.utb.uscourts.gov](http://www.utb.uscourts.gov).

(1) **Unrepresented Parties.** An individual in a pending case or proceeding who is not represented by an attorney may register as a Filing User in the Electronic Filing System solely for the purposes of the case or proceeding. Registration is in a form

prescribed by the clerk and requires identification of the case or proceeding as well as the name, address, telephone number and Internet e-mail address of the individual. If, during the course of the case or proceeding, the individual retains an attorney who appears on the party's behalf, the attorney must advise the clerk to terminate the individual's registration as a Filing User upon the attorney's appearance.

(2) Waiver and Consent. Registration as a Filing User constitutes: (A) waiver of the right to receive notice by first class mail and consent to receive notice electronically; (B) waiver of the right to service by personal service or first class mail and consent to electronic service, except with regard to service of a summons and complaint under Fed. R. Bankr. P. 7004; and (C) consent to abide by the court's posted usage protocols. Waiver of service and notice by first class mail applies to notice of the entry of an order or judgment under Fed. R. Bankr. P. 9022.

(3) Log-in and Password. Once registered under subsection (c) of this rule and training is complete, the Filing User will receive notification of a user log-in and password. No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User.

(4) Suspension and Termination. The court may temporarily suspend a Filing User's use of the Electronic Filing System for cause without notice and a hearing. After notice and a hearing, the court may terminate a Filing User's use of the Electronic Filing System for cause, including abuse of the Electronic Filing System or failure to comply with these Local Rules or the court's posted usage protocols, and impose such sanctions as are appropriate.

(5) Withdrawal. Once registered, a Filing User may only withdraw from participation in the Electronic Filing System if such rights are suspended or terminated by the court.

(c) **Consequences of Electronic Filing**. A Filing User whose password is used to file a petition, pleading, motion, claim or other document thereby certifies that the Filing User, whether an attorney or a party appearing without an attorney, has authorized the filing.

(1) Filing, Entry on the Docket, and Official Record. Electronic transmission of a document to the Electronic Filing System consistent with these Local Rules, together with the transmission of a Notice of Electronic Filing from the court, constitutes filing of the document for all purposes of the Federal Rules of Bankruptcy Procedure and the Local Rules, and constitutes entry of the document on the docket kept by the clerk under Fed. R. Bankr. P. 5003. When a document has been filed electronically, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed, unless the court orders otherwise. A document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing from the court.

(2) Deadlines. Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight local time where the court is located in order to be considered timely filed that day.

(d) **Attachments and Exhibits**. Filing Users must submit in electronic form all documents referenced as exhibits or attachments, unless the court permits conventional filing. A Filing User must submit as exhibits or attachments only those excerpts of the referenced documents that are germane to the matter under consideration by the court. Excerpted material must be clearly and prominently identified as such. Filing Users who file excerpts of documents as exhibits or

attachments under this rule do so without prejudice to their right to timely file additional excerpts or to file the complete document electronically. Responding parties may timely file additional excerpts electronically or complete documents conventionally that they believe are germane.

(e) **Retention Requirements.** Documents that are electronically filed and require original signatures other than that of the Filing User must be maintained in paper form by the Filing User until 5 years after all time periods for appeals expire. On request of the court, the Filing User must provide original documents for review.

(f) **Signatures.** The user log-in and password required to present documents on the Electronic Filing System are the Filing User's signature for all purposes, including 18 U.S.C. § 151 *et seq.*, 28 U.S.C. § 1746, all sections of the Bankruptcy Code, Fed. R. Bankr. P. 9011 and all other provisions of the Federal Rules of Bankruptcy Procedure, and the Local Rules. Each document filed electronically must include a caption in compliance with Local Rule 9004-1(a). The name of the Filing User under whose log-in and password the document is submitted must be preceded by an "/s/" and typed in the space where the signature would otherwise appear in the signature block, or by a graphical signature.

(1) **Unauthorized Use.** No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User.

(2) **Multi-Signature Documents.** Documents requiring signatures of more than 1 party must be electronically filed either by: (A) submitting a scanned document containing all necessary signatures; (B) representing the consent of the other parties on the document; (C) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by those parties no later than 3 business days after

filing the document; or (D) in any other manner approved by the court on a case by case basis.

(g) **Technical Failures**. A Filing User or other party whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.

## **RULE 5005-3**

### **FILING PAPERS - SIZE AND FORM OF PAPERS**

(a) **Size.** The original of all pleadings, motions, and other papers electronically filed must be on 8-1/2 x 11 inch white paper, with a top margin of not less than 1-1/2 inch, a left-hand margin of not less than 1 inch, and plainly typewritten or printed in not less than 12 point type on only one side of each page. All orders presented for filing must have a top margin of not less than 2-1/2 inches on the first page.

(b) **Form.** Originals and copies of all papers must be double-spaced except for quoted material, footnotes, and form documents approved by the court. Each page must be numbered consecutively at the bottom of the page. This format may vary to comply with any applicable forms adopted by this court or prescribed by the Judicial Conference of the United States. Service copies may not be reduced by more than 2 reduced pages per printed side.

**RULE 5007-1**

**RECORD OF PROCEEDINGS AND TRANSCRIPTS**

A certified sound recording or a transcript of a proceeding, including a §341 meeting, that is to be filed with or otherwise presented to the court for any purpose must be certified by a court reporter certified by the National Court Reporters Association.

## **RULE 5072-1**

### **DECORUM**

(a) **Civility.** Attorneys and parties should conduct themselves in bankruptcy proceedings, including meetings of creditors and discovery proceedings, in a civil and professional manner.

(b) **Courtroom Conduct of Attorneys.**

(1) Unless the court permits otherwise, only 1 attorney for each party may examine or cross-examine a witness and not more than 2 attorneys for each party may argue the merits of the action.

(2) To maintain decorum in the courtroom when court is in session, attorneys must abide strictly by the following rules, unless the court permits otherwise:

(A) Attorneys must stand when addressing the court and when examining and cross-examining witnesses.

(B) Attorneys must not address questions or remarks to an opposing attorney without first obtaining permission from the court. Appropriate and quiet informal consultations among attorneys off the record are not precluded if this does not delay or disrupt the progress of the proceedings.

(C) The examination and cross-examination of witnesses must be limited to questions addressed to witnesses. Attorneys must not make statements, comments, or remarks prior to asking a question or after a question has been answered.

(D) In making an objection, an attorney must state plainly and briefly the specific ground for an objection and must not engage in argument unless requested or permitted by the court.

(E) Only 1 attorney for each party may object to the testimony of a witness being questioned by an opposing party. The objection must be made by the attorney who has conducted or is to conduct the examination of the witness.

(F) Attorneys must examine a witness from the attorney's table or the lectern, unless necessary to approach the witness or the clerk's desk to present or examine an exhibit.

(c) **Courtroom Argument.** The court may determine the length of time and the sequence of final arguments of the parties. The party having the primary burden of proof must open and close the final arguments unless the court directs otherwise.

## **RULE 5080-1**

### **FEES - GENERAL**

(a) **Payment of Fees.** As authorized by § 1930 of title 28 of the United States Code, the clerk must collect filing and other fees as prescribed by the Judicial Conference of the United States. All papers filed with the court must be accompanied by the appropriate fee. Fees may be paid in cash, money order, cashier's check, credit card, electronic funds transfers approved by the clerk, or a check drawn on the account of the filing attorney made payable to "Clerk, U.S. Bankruptcy Court." Checks from debtors will not be accepted.

(b) **Dishonored Payments.** If a payor's check is dishonored, or if a credit card payment or electronic funds transfer that was initially accepted is rejected, the payor's name will be placed on the court's dishonored payment register for a period of 3 years. A payor whose name appears on the register will have check, credit card, or electronic funds transfer privileges revoked and must pay all fees in cash, money order, or cashier's check. The payor will also be required to pay the dishonored check fee or any other related fee authorized by the Judicial Conference of the United States. A payor's name may be removed from the register upon presentation to the clerk of a letter from the drawee bank or credit card provider indicating that the check was dishonored or credit card payment or electronic funds transfer rejected due to bank or provider error. Alternatively, a payor's check, credit card, or electronic funds transfer privileges will be reinstated upon posting an appropriate bond with the court. The payor's name will be removed from the court's dishonored payment register after 1 year of posting bond if the payor has not tendered any checks during that time that have been dishonored and if all credit card payments and electronic funds transfers have cleared.

(c) **Application for Waiver of Chapter 7 Filing Fee.** A chapter 7 debtor seeking a fee waiver under 28 U.S.C. § 1930(f) must file a fee waiver using Official Form 3B. The court may grant, deny, or set the fee waiver application for hearing. If the court denies the fee waiver application, notice will be given to the debtor giving the debtor 14 days after the notice is sent to pay the filing fee in full, submit an application to pay in installments, or to request a hearing. The clerk will enter an order dismissing the case if the debtor fails to act within the 14 days. If a hearing is requested and granted, the court will schedule a hearing with 14 days' notice to the United States trustee, panel trustee, and the debtor. The clerk will enter an order dismissing the case if the debtor fails to appear at the scheduled hearing. If a hearing is requested and denied, the debtor has 10 days to pay the filing fee in full, submit an application to pay in installments, or appeal, or the clerk will enter an order dismissing the case. If an order denying a fee waiver application is appealed and affirmed, the debtor has 14 days to pay the filing fee or submit an application to pay in installments, or the clerk will enter an order dismissing the case.

## **RULE 5090-1**

### **VISITING JUDGES**

In all matters assigned to a visiting judge, parties must keep the assigned scheduling clerk informed of developments affecting settlements, postponements, or lengths of time needed before the court. A party must report any developments no later than 7 days before the date the matter is scheduled before the court.

## RULE 6005-1

### STANDING AUCTIONEERS

(a) **General.** This court may appoint any number of standing auctioneers by application of the auctioneer after review by the United States trustee and order of the court. The United States trustee must maintain a list of all current appointed standing auctioneers.

(b) **Appointment.** To be appointed as a standing auctioneer, an auctioneering company, whether a sole proprietorship, partnership, or corporation must show, by declaration submitted to the United States trustee, that at least 1 person employed by such company has met the following qualifications:

(1) The candidate has 3 or more years of experience as an active auctioneer during the 4 year period prior to making the application. “Active auctioneer” experience is defined as devoting the majority of such person's work time to the auctioneering business, including the preparation for, promoting of, and conducting of auctions;

(2) The candidate is duly licensed by a state, municipality, or some other governmental entity;

(3) The candidate is at least 21 years of age;

(4) The candidate has not been convicted of any felony or misdemeanor involving forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, or other like offenses;

(5) The auctioneering company maintains property damage and theft coverage of no less than \$100,000, or in a higher amount if requested by the United States trustee. The policy must cover only estate property;

(6) The auctioneering company maintains an on-site liability insurance policy with limits for bodily injury of at least \$100,000 per person and \$300,000 per occurrence; and

(7) The auctioneering company has posted or will post with the United States trustee a \$100,000 bond in favor of the United States and conditioned on the faithful performance of its official duties.

(c) **Letters of Reference.** In addition to the declaration required under subsection (b) of this rule, the candidate must submit letters of reference from at least 2 individuals, other than relatives, who have personal knowledge of the candidate's honesty, truthfulness, and good repute as an auctioneer. If the applicant meets the requirements of this rule, the United States trustee may certify the applicant to the list of current standing auctioneers.

(d) **Effect of Appointment.** Trustees may, subject to the limits of § 327(a) of the Code, use any of the standing auctioneers to liquidate personal property of the estate, without further permission of the court. The fact that an auctioneer has been certified to the list of standing auctioneers should not be construed as an order directing the trustees to employ the auctioneer. Trustees retain the privilege of selecting, subject to the requirements of § 327 of the Code, auctioneers and others to serve the estate.

(e) **Procedure for Sales by Appointed Standing Auctioneers.** The following procedures apply to all sales held by a standing auctioneer:

- (1) The auctioneer must comply with any order regarding the sale;
- (2) The auctioneer must give appropriate public notice of the sale and give the trustee evidence of the notice with the final accounting;

(3) The auctioneer must not, without the trustee's consent, incur expenses for transporting property. Unless otherwise agreed or ordered, the debtor must transport property to the auctioneer;

(4) All sales must be for cash, unless the trustee directs otherwise; and

(5) Immediately after the sale, the auctioneer must forward the proceeds, less a commission, to the trustee with a full accounting.

(f) **Commissions.** The commission of any standing auctioneer must not exceed 15% of the gross proceeds of the sale, with the exact rate to be negotiated by the trustee and the standing auctioneer on a case-by-case basis.

(g) **Expenses.** Notwithstanding the limitation on compensation set forth in subsection (f), if a standing auctioneer, at the express direction of the trustee, incurs expenses related to the sale of property, he or she is entitled to reimbursement for actual expenses out of the estate.

(h) **Removal and Resignation.**

(1) **General.** A standing auctioneer must notify the court and the United States trustee immediately if he or she no longer qualifies for certification to the list of standing auctioneers. A standing auctioneer may tender his or her resignation at any time by submitting it in a writing to the United States trustee. In that event, the United States trustee must remove the name from the list and notify panel trustees.

(2) **Removal for Cause.** The court may remove any standing auctioneer for cause.

(i) **Hearings on Sales Conducted by a Standing Auctioneer.** A hearing scheduled on a sale to be conducted by a standing auctioneer may be stricken if no objection to the sale is timely filed.

## **RULE 6007-1**

### **ABANDONMENT**

The trustee or debtor in possession is relieved of the notice requirement imposed by Fed. R. Bankr. P. 6007(a) where the property to be abandoned does not exceed \$2,500 in total value. A general notice of abandonment given orally by the trustee at a first meeting of creditors in a chapter 7 case, is, absent an objection made within 14 days, sufficient notice of any abandonment determined by the trustee to be appropriate thereafter.

## RULE 6070-1

### TAX RETURNS AND TAX REFUNDS

(a) **Tax Requirements in Chapter 11, 12 and 13 Cases.** Debtors in possession, chapter 11 trustees, and chapter 12 and 13 debtors, are subject to the requirements and regulations of the Internal Revenue Service and any applicable state or local taxing authority. Debtors who are not required to collect federal taxes as described in subsection (1) below and are not required to collect state and local taxes as described in subsection (2) below are required to comply only with subsection (6) below.

(1) **Federal Taxes.** The debtor, debtor in possession or the trustee must comply with the Internal Revenue Code and regulations regarding withholding of taxes from the wages of employees, the payment of the employer's FICA and FUTA tax liabilities, the making of deposits of such taxes, and the filing of employment tax returns as well as any excise or income tax returns for which the estate is liable.

(2) **State Taxes.** The debtor, debtor in possession or the trustee must comply with the laws and regulations of any applicable state or local taxing authority regarding withholding of taxes from the wages of employees; the collection and remittance of other types of tax which the estate is required to collect, deposit with, or remit to any applicable state or local taxing authority; the payment of unemployment insurance contributions to the appropriate state or local taxing authority; and the timely filing of returns accounting for the same.

(3) **Trust Accounts.** Within 21 days after the petition date, the debtor in possession or trustee must open separate bank trust accounts for the Internal Revenue

Service and for each applicable state and local taxing authority for all tax deposits. Only the tax deposits due each entity are to be made into these trust accounts as they accrue each pay period. A chapter 12 or 13 debtor must provide the applicable trustee proof of such trust accounts at the § 341 meeting.

(4) Notification. The debtor in possession or trustee should notify the Internal Revenue Service and each state or local taxing authority of the location and account numbers of the respective trust accounts opened under subsection (a)(3) of this rule. The notices should be sent within 7 days after the date the account is opened. Notices to the Internal Revenue Service, the Utah State Tax Commission, and the Utah Department of Workforce Services must be mailed or delivered to addresses cited in Local Rule 2002-1(h).

(5) State Deposit Verification. The debtor, debtor in possession or trustee must, if applicable, file the Utah State Tax Commission's Verification of Taxpayer Deposit at the address shown in Local Rule 2002-1(h) within 7 days after making the required deposit.

(6) Filing and Payment. The debtor, debtor in possession or trustee must: (A) timely file any required tax returns with the Internal Revenue Service; (B) timely file any required tax returns with any applicable state or local taxing authority; (C) timely file unemployment insurance contribution reports with applicable state or local authorities; and (D) pay taxes on a current basis. Returns and reports filed with and payments made to the Internal Revenue Service, the Utah State Tax Commission and the Utah Department of Workforce Services should be delivered to the addresses stated in Local Rule 2002-1(h), not to the regular addresses for filing the returns and reports.

(b) Tax Returns in Chapter 12 Cases. The chapter 12 debtor must, at least 30 days before the first day required by law for the filing of the debtor's federal tax return(s), forward to the

trustee a full and complete copy of the federal tax return(s) for each preceding year or portion thereof while the case is pending.

(c) **Tax Returns in Chapter 13 Cases.**

(1) A chapter 13 debtor must, no later than the day before the date on which the meeting of creditors is first scheduled to be held, file with the appropriate tax authorities, any and all tax returns required under applicable nonbankruptcy law for all taxable periods ending during the four year period before the filing of the petition.

(2) A chapter 13 debtor must provide, not later than 7 days before the date first set for the first meeting of creditors, to the trustee a copy of the Federal and state income tax returns required under applicable law (or at the election of the debtor, a transcript of such return) for the most recent tax year ending immediately before the commencement of the case and for which a Federal or state income tax return was filed.

(3) No later than the day before the date on which the meeting of creditors is first scheduled to be held, the debtor must file and serve on the trustee a declaration regarding tax returns in the form attached hereto as Appendix D.

(4) The debtor may request from the court an order extending the time period set forth in this subsection on notice to the trustee and applicable taxing authority. If the debtor fails to comply with paragraphs (1), (2) or (3) of this subsection in the time period therein or as extended by the court, the case may be dismissed under the procedures set forth in Local Rule 2083-1(f).

(d) **Modification of the Automatic Stay for Certain Assessments and Refunds of Taxing Entities.** Unless a party in interest objects and the court orders otherwise, the stay of § 362 of the Code is modified to provide for the following assessments and refunds in any case filed in this

district. The Internal Revenue Service, Utah Tax Commission, and the Utah Department of Workforce Services are authorized to:

- (1) assess tax liabilities reflected on voluntary filed tax returns and tax returns prepared under authority of applicable statutory provisions; and
- (2) make refunds in the ordinary course of business to debtors who have filed cases under chapter 9, 12 or 13, to trustees appointed in chapter 7 and 11 cases, or, if a trustee has not been appointed in a chapter 11 case, to the debtor in possession.

## **RULE 7003-1**

### **COVER SHEETS IN ADVERSARY PROCEEDINGS**

A properly completed adversary proceeding cover sheet must be filed with the clerk at the commencement of each adversary proceeding unless the complaint is filed electronically. Unless documents are filed electronically, a properly completed civil cover sheet must be filed with the clerk with each notice of appeal and motion to withdraw the reference. Copies of the appropriate cover sheets may be obtained from the clerk.

## **RULE 7005-1**

### **FILING OF DISCOVERY MATERIALS**

In accordance with Fed. R. Civ. P. 5(d) and Fed. R. Bankr. P. 7005, disclosures under Fed. R. Civ. P. 26(a)(1) or (2) and Fed. R. Bankr. P. 7026, deposition transcripts and the following discovery requests and responses must not be filed until they are used in a case or proceeding or the court orders filing: (1) interrogatories, (2) requests for documents or to permit entry upon land, and (3) requests for admission. A party must file a notice of service of the foregoing materials on opposing parties. Filing the notice of taking deposition required by Fed. R. Bankr. P. 7030 satisfies the requirement of filing a notice of service with respect to depositions. This rule does not preclude the use of discovery materials at a hearing or at trial or as exhibits to motions. Local Rule 9070-1 governs the custody and disposition of discovery materials introduced as trial exhibits. The originals of all discovery items covered by this rule and not filed with the court must be held by the party propounding them as custodian for the court.

## **RULE 7016-1**

### **PRETRIAL PROCEDURES**

(a) **Initial Pretrial Conference.** After the initial appearance of a defendant, the clerk must notify the parties of the date, time, and place of the initial pretrial conference under Fed. R. Bankr. P. 7016.

(b) **Parties' Planning Conference.** Under Fed. R. Civ. P. 26(f) and Fed. R. Bankr. P. 7026, the parties must confer as soon as practicable and in any event at least 21 days prior to the initial pretrial conference, and must prepare a Report of Parties' Planning Meeting which conforms substantially with Form 35, a copy of which is attached as Appendix A to these Local Rules. No later than 14 days after the parties' planning conference, the parties are jointly responsible for filing Form 35 with the court.

(c) **Scheduling Order.** At the conclusion of the initial pretrial conference, the court will enter a scheduling order in accordance with Fed. R. Bankr. P. 7016. Included in the scheduling order will be modifications of discovery requirements as the court deems appropriate. Unless otherwise ordered by the court, the requirements of the scheduling order, including deadlines, continue in force until disposition of the proceeding.

(d) **Expedited Adversary Proceeding.** At the initial pretrial conference, if the amount of the controversy is \$15,000 or less, or by consent of the parties, the court may order that the trial be scheduled on an expedited basis. The scheduling order will govern the procedure to be followed before and during an expedited trial.

(e) **Supplemental Pretrial Conferences.** At the request of a party or on the court's own motion, the court may schedule a supplemental pretrial conference to expedite disposition of the adversary proceeding particularly if it involves complex facts or unusual delay.

(f) **Attorneys' Conference.** At a time to be fixed during the initial pretrial conference, or, if no time is fixed, at least 14 days prior to the final pretrial conference, the attorneys for the parties must hold an attorneys' conference to discuss settlement, a proposed pretrial order, stipulated facts, exhibit list, witness list, and other matters that will aid in an expeditious and productive final pretrial conference and the preparation of an accurate, complete, and definitive pretrial order.

(g) **Final Pretrial Conference.** The court may schedule a final pretrial conference. The trial attorney must attend the final pretrial conference. Preparation for the final pretrial conference should be in accordance with Fed. R. Bankr. P. 7016.

(h) **Pretrial Order.** At the time ordered by the court, the plaintiff must submit to the court for execution a proposed pretrial order approved by all attorneys. The form of the pretrial order should generally conform to the approved form attached as Appendix B to these Local Rules. If the attorneys are unable to agree on a proposed pretrial order, each attorney must state his or her contentions as to the portion of the pretrial order upon which no agreement has been reached. The court will then determine a final form for the pretrial order and advise the parties. Thereafter, the order will control the course of the trial and may not be amended except by consent of the parties and the court or by order of the court to prevent manifest injustice. The pleadings will be deemed merged into the order. The court may dismiss an adversary proceeding if the pretrial order is not filed within the time fixed by the scheduling order. The pretrial order shall not excuse any party or that party's attorney from any of the requirements set forth in any scheduling order.

## **RULE 7026-1**

### **DISCOVERY - GENERAL**

(a) **Attorney Managed Discovery.** To curtail undue delay in the administration of justice, the court may refuse to hear any and all motions related to discovery under Fed. R. Bankr. P. 7026 through 7037 relevant to the claim or defense of any party, unless the moving attorney first advises the court in writing that, having conducted personal consultation and having attempted in good faith to resolve differences, the parties are unable to reach an accord on matters to be heard. The statement must also recite the date, time, and place of the consultation, and the names of all participating parties or attorneys.

(b) **Court Managed Discovery.** Upon motion of any party and for good cause, the court may order discovery relevant to the subject matter of the case or proceeding.

(c) **Form of Certain Discovery Documents.** Parties responding to interrogatories pursuant to Fed. R. Civ. P. 33 and Fed. R. Bankr. P. 7033; requests for production of documents or things pursuant to Fed. R. Civ. P. 34 and Fed. R. Bankr. P. 7034; or requests for admission pursuant to Fed. R. Civ. P. 36 and Fed. R. Bankr. P. 7036 shall repeat in full each such interrogatory or request to which the response is made. The parties also shall number sequentially each interrogatory or request to which response is made.

## **RULE 7041-1**

### **DISMISSAL - VOLUNTARY AND FOR LACK OF PROSECUTION**

(a) **Voluntary Dismissal.** Notices of dismissal and stipulations to dismiss submitted under Fed. R. Civ. P. 41, as made applicable under Fed. R. Bankr. P. 7041, should be accompanied by a written order of dismissal.

(b) **Dismissal for Lack of Prosecution.** At any time, the court may issue an order to show cause why an adversary proceeding should not be dismissed for lack of prosecution. If good cause is not shown within the time prescribed by the order to show cause, the court may enter an order of dismissal with or without prejudice, as the court deems proper.

## **RULE 7052-1**

### **FINDINGS AND CONCLUSIONS**

Except as otherwise directed by the court, in all non-jury proceedings, the attorney for each party must prepare and lodge with the court, at least 2 days before trial, proposed findings of fact and conclusions of law consistent with the theory of the submitting party and the facts expected to be proved. Proposed findings must be concise and direct, recite ultimate rather than mere intermediary evidentiary facts, and be suitable in form and substance for adoption by the court. The court, in its discretion, may require each party within the same time frame to submit proposed findings of fact and conclusions of law electronically by delivery of a CD or similar electronic storage medium.

## **RULE 7054-1**

### **COSTS - TAXATION/PAYMENT**

(a) **Bill of Costs.** Within 21 days after the entry of final judgment, a party entitled to recover costs must file a bill of costs, on a form available from the clerk, and a verification of bill of costs under § 1924 of title 28 of the United States Code, and serve such documents on the attorneys of record of all adverse parties. The bill of costs must clearly and concisely itemize and describe the costs, checks, money orders, or other forms of payment, and must include copies of applicable invoices, receipts, and disbursement instruments. Failure to itemize and verify costs may result in their disallowance.

(b) **Objections to Bill of Costs.** A party objecting to a bill of costs must file an objection, supported by declarations and documentation, and serve the attorney of record for all adverse parties within 14 days after service of the bill of costs. Upon timely objection, a hearing may be scheduled to review the bill of costs and the objection.

(c) **Taxation of Costs.** If no objection is timely filed, the clerk must tax the costs and allow such items as are taxable under law. Costs taxed by the clerk will be included in the judgment or decree.

(d) **Judicial Review.** Taxation of costs by the clerk is subject to review by the court if, under Fed. R. Bankr. P. 7054(b), a motion for review is filed within 7 days after entry of the clerk's action.

## **RULE 7055-1**

### **DEFAULT - FAILURE TO PROSECUTE**

(a) **Judgment by Default Entered by Clerk.** A proposed judgment by default filed in accordance with Fed. R. Bankr. P. 7055 for signature and entry by the clerk in accordance with that rule and Local Rule 5003-1(a)(1) must be accompanied by a declaration that the person against whom judgment is sought is neither an infant or an incompetent person, nor in the armed forces within the meaning of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. § 520(1).

(b) **Judgment by Default Entered by Court.** In all other cases, the party entitled to a judgment by default must apply to the court in accordance with Fed. R. Bankr. P. 7055. Upon application of any party, the clerk may make and file a certificate of default as to any party in default, for the convenience of the court or of the party applying for the default judgment. When the application is made to the court, unless the court orders otherwise, the scheduling clerk, upon request of the movant, must schedule an evidentiary hearing. If the party against whom judgment by default is sought has appeared in the proceeding, the party seeking the default shall give notice of the hearing to the attorney for the party as required by Fed. R. Bankr. P. 7055. With leave of the court, proof may be submitted by declaration, but the court may order further hearing at its discretion.

(c) **Clerk's Action Reviewable.** The actions of the clerk under this rule may be reviewed, suspended, altered or rescinded by the court.

## **RULE 7056-1**

### **SUMMARY JUDGMENT**

(a) **Fact Statement.** A memorandum in support of a motion for summary judgment must begin with a section that contains a concise statement of material facts as to which movant contends no genuine issue exists. The movant must number the factual statements and refer with particularity to the portions of the record supporting the motion.

(b) **Contested Facts.** A memorandum in opposition to a motion for summary judgment must begin with a concise statement of material facts to which the party contends there is a genuine issue. The responding party must number each disputed fact, refer with particularity to the portions of the record upon which the party relies, and, if applicable, state the paragraph number of movant's disputed fact. Material facts of record that are set forth with particularity in movant's statement of facts or affidavits and that meet the requirements of Fed. R. Bankr. P. 7056 are admitted for the purpose of summary judgment unless specifically controverted by the statement or the affidavit of the opposing party.

(c) **Filing Deadlines, Length of Memoranda and Reply Memoranda.** A memorandum opposing a motion for summary judgment must be filed and served within 21 days after service of the motion. Memoranda supporting or opposing a motion for summary judgment must not exceed 25 pages in length, exclusive of face sheet, table of contents, statements of issues and facts, and exhibits. At movant's discretion, a reply memorandum of no more than 5 pages may be filed and served within 7 days after service of the opposing memorandum. A reply memorandum must be limited to rebuttal of matters raised in the opposing memorandum. No additional memoranda will

be considered without leave of court. The time limitations set forth in this rule may be modified by the court.

**RULE 7067-1**  
**REGISTRY FUND**

(a) **Court Orders Relating to Deposits.** A party making a deposit under Fed. R. Bankr. P. 7067 in an adversary proceeding or a deposit in a case, may apply to the court for an order to invest the funds in accordance with this rule.

(b) **Registry Funds Invested in Interest-Bearing Accounts.** Upon motion and in accordance with Fed. R. Bankr. P. 7067 or other authority, the court may order the clerk to invest certain registry funds in an interest-bearing account or instrument. When guaranteed government securities are purchased, regardless of the amount invested, the funds require no posting of collateral. All other investments must be collateralized in accordance with the Department of Treasury's regulations. The order must also specify the following:

- (1) the amount to be invested;
- (2) the length of time the funds should be invested and, where applicable, whether they should be reinvested in the same account or instrument upon maturity;
- (3) the name(s) and address(es) and social security number(s) or tax identification number(s) of the designated beneficiary(ies); and
- (4) other information that is appropriate under the circumstances.

(c) **Service Upon the Clerk.** A copy of the order must be served personally upon the clerk or chief deputy clerk, with an additional copy provided to the court's financial department.

(d) **Deposit of Funds.** The clerk must take all reasonable steps to deposit funds into the specified accounts or instruments within, but not more than, 14 business days after service of a copy of the order.

(e) **Disbursements of Registry Funds.** A party seeking a disbursement of funds must prepare an order for the court's review and signature and must serve the signed order upon the clerk or chief deputy clerk. If applicable, the order should indicate whether, when released by the court, the instruments of investment should be redeemed subject to possible early withdrawal penalties or held until the maturity date. The clerk or chief deputy clerk must prepare the withdrawal documents under the order.

(f) **Management and Handling Fees.** Unless otherwise negotiated by the parties, funds invested under subsection (b) of this rule will be subject to routine management fees imposed by the financial institution and deducted at the time the accounts are closed or the instruments redeemed. In addition, under the miscellaneous fee schedule approved by the Judicial Conference of the United States as set forth in § 1930 of title 28 of the United States Code, the clerk must assess a “Registry Fund Fee.” The fee is to be determined and promulgated by the Director of the Administrative Office of the United States as authorized by the Judicial Conference of the United States.

(g) **Verification of Investment.** A party that obtains an order directing the investment of funds by the clerk should verify that the funds have been invested as ordered.

(h) **Liability of the Clerk.** Failure of a party to personally serve the clerk or chief deputy clerk with a copy of the order, or failure to verify investment of the funds within 7 days after the expiration of the time period set forth in subsection (d) of this rule, will release the clerk from any liability for the loss of earned interest on such funds.

(i) **Cash Bonds.** If a person other than a party posts a cash bond with the clerk, the party for whom the bond is posted must execute and file an agreement with such person setting forth the intended disposition of the cash deposit by the clerk upon release of the cash bond. No deposit of funds will be allowed unless an order allowing or requiring it has been entered.

## **RULE 7069-1**

### **EXECUTION OF JUDGMENT**

(a) **Domestication of Judgment.** A judgment creditor should domesticate a judgment in the appropriate state court and execute upon the judgment utilizing state law remedies whenever possible.

(b) **Motion to Appear.** A judgment creditor who holds a judgment that cannot be domesticated under state law may move to compel the judgment debtor, or other person in possession of or having information relating to property or other assets that may be subject to execution or restraint, to appear in court and answer questions concerning the property or assets. The movant, on proper declaration, may request that the judgment debtor or other person be ordered to refrain from alienation or disposition of the property or assets in any way detrimental to the movant's interest.

(c) **Hearing Before Bankruptcy Court.** A motion under subsection (b) of this rule may be presented to the court ex parte, and, if granted, the matter calendared for hearing, at which the judgment debtor or other person must appear to be examined. In any case in which the movant seeks a restraint of the judgment debtor, the court must make findings and a report for the district court with a proposed order for restraint which the district court may issue.

(d) **Failure to Appear.** Should the judgment debtor or other person fail to appear as directed, the court may issue such process as is necessary and appropriate, including arrest, to bring the person before the court. If the conduct of the non-responding person is contemptuous, a proper reference must be made by the court to the district court.

(e) **Fees and Expenses.** The movant must tender a witness fee and mileage or equivalent to any person, with the exception of the judgment debtor, who, under this rule is required to appear in court.

**RULE 9004-1**

**CAPTION - PAPERS, GENERAL**

(a) **General.** The caption of papers filed or served after the commencement of a case or proceeding must substantially conform to Official Forms 16A and 16B, as follows:

Attorney Submitting (Utah State Bar No.)  
Attorney for  
Address  
Telephone No.  
Facsimile No.  
E-Mail Address

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH  
\_\_\_\_\_ DIVISION

Name of Debtor	Bankruptcy Case No. _____
Address [see 11 U.S.C. § 342(c)]	Chapter ____
SSN/Tax ID #	Filed Electronically [if applicable]
Name of Adversary	Adversary Proceeding No. ____ [if applicable]
Proceeding [if applicable]	Title of Document (Option 1)

Title of Document (Option 2)

(b) **Title.** The title of each paper must designate the nature of the paper and include a reference to who filed it.

**RULE 9005.1-1**  
**CLAIM OF UNCONSTITUTIONALITY**

If a party files a pleading, written motion, or other paper drawing into question the constitutionality of a federal or state statute pursuant to Fed. R. Bankr. P. 9005.1, the court must, under 28 U.S.C. § 2403, certify to the appropriate attorney general that a statute has been questioned.

(1) If a federal statute is questioned, upon receipt of the notice, the clerk, on behalf of the court, must file a certificate in substantially the following form:

**The United States Bankruptcy Court for the District of Utah hereby certifies to the Attorney General of the United States that the constitutionality of an Act of Congress, title \_\_\_, § \_\_\_, United States Code (or other description), is drawn in question in the case of \_\_\_\_\_ vs. \_\_\_\_\_, Case No. \_\_\_\_\_, Adversary Proceeding No. \_\_\_\_\_, to which neither the United States, nor any of its agencies, officers, or employees, is a party. Under title 28, § 2403(a) of the United States Code, the United States is permitted to intervene in the case for the presentation of evidence, if admissible, and for argument on the question of constitutionality.**

The clerk must send a copy of the certificate to the United States Attorney for the District of Utah and provide a copy to the judge to whom the case or proceeding is assigned, or to the Chief Judge of the court, if no assignment has been made.

(2) If a state statute is questioned, upon receipt of the notice, the clerk on behalf of the court, must file a certificate in substantially the following form:

**The United States Bankruptcy Court for the District of Utah hereby certifies to the Attorney General of the State of \_\_\_\_\_, that the constitutionality of an Act of the legislature of the State of \_\_\_\_\_, title \_\_\_\_, Chapter \_\_\_\_, § \_\_\_\_, (or other description), is drawn in question in the case of \_\_\_\_\_ vs. \_\_\_\_\_, Case No. \_\_\_\_\_, Adversary Proceeding No. \_\_\_\_\_, to which neither the State of \_\_\_\_\_, nor any of its agencies, officers, or employees, is a party. Under title 28, § 2403(b) of the United States Code, the State of \_\_\_\_\_ is permitted to intervene in the case for the presentation of evidence, if admissible, and for argument on the question of constitutionality.**

The clerk must send a copy of the certificate to the Attorney General of the state and provide a copy to the judge to whom the case or proceeding is assigned, or to the Chief Judge of the court, if no assignment has been made.

## **RULE 9006-1**

### **TIME PERIODS**

(a) **Time for Filing Motions and Objections to Claims.** A motion and notice of hearing or an objection to claim and notice of hearing in a case or proceeding filed pursuant to the applicable provisions of the Federal Rules of Bankruptcy Procedure and Local Rule 9013-1, which is not to be heard ex parte, must be filed and served by a date which permits timely completion of the time periods for filing responses and replies set forth in subsections (b) and (c) of this Local Rule, unless a different period is fixed by order of the court, by the Federal Rules of Bankruptcy Procedure, or by these Local Rules. A motion for an order fixing a different period may, for cause shown, be made to the court on an ex parte basis.

(b) **Time for Filing Responses.** Responses to motions and claim objections must be filed within the following time periods.

(1) **Responses Governed by Rule 2002.** In matters governed by Fed. R. Bankr. P. 2002, responses must be filed and served within the time periods set forth therein and in no case less than 4 days before the date set for the hearing. The movant must schedule a hearing sufficiently in advance to assure that all responses are filed and served not less than 4 days before the date set for hearing.

(2) **Objections to Motions for Relief from Stay.** Unless otherwise ordered by the court, the movant shall provide at least 14 days' written notice of the deadline to file an objection to a motion for relief from stay. A party filing an objection to a motion for relief from the stay pursuant to Local Rule 4001-1(b) must file and serve the objection by the identified deadline which in no case should be less than 4 days before the date set for the

hearing. The movant must schedule a hearing sufficiently in advance to assure that all responses are filed and served not less than 4 days before the date set for hearing.

(3) Responses to Claim Objections. Unless otherwise ordered by the court, the party objecting to a claim shall provide at least 30 days' notice of the deadline to file a response to the objection to claim. A party filing a response to an objection to claim pursuant to Local Rule 3007-1(a) and (b) must file and serve the response by the identified deadline, which in no case should be less than 4 days before the date set for the hearing. The movant must schedule a hearing sufficiently in advance to assure that all responses are filed and served not less than 4 days before the date set for hearing.

(4) Responses in Other Matters. In matters not governed by Fed. R. Bankr. P. 2002, 3007, 4001, or by other Federal Rules of Bankruptcy Procedure that require a different response period, and unless the court orders otherwise, the moving party shall provide at least 14 days' written notice of the deadline to file an objection or response to the motion. A party filing an objection or a response must file and serve the objection or response by the identified deadline which in no case should be less than 4 days before the date set for the hearing. The movant must schedule a hearing sufficiently in advance to assure that all responses are filed and served not less than 4 days before the date set for hearing.

(c) Time for Filing Replies. Replies to responses and objections may be filed in the movant's discretion and must be filed no later than 7 days after the response or objection and in no case less than 4 days before the date set for hearing. The movant must schedule a hearing sufficiently in advance to assure that replies are filed and served not less than 4 days before the date set for hearing.

(d) **Additional Time After Service by Mail, Facsimile or Electronic Means.** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail or under Fed. R. Civ. P. 5(b)(2)(D) (leaving with the court clerk if the person has no known address), (E) (serving it by electronic means), or (F) (delivery by any other means), 3 days must be added to the prescribed period.

## **RULE 9010-1**

### **ATTORNEYS - NOTICE OF APPEARANCE**

(a) **Attorney of Record.** An attorney, or a party not represented by an attorney for the debtor, for a creditor or for another party, who signs and files a petition, pleading or paper, is deemed to have made an appearance in the matter. If an attorney's appearance has not been established previously by the filing of papers in the case or proceeding, the attorney must file a notice of appearance promptly upon undertaking the representation of any party or witness. An attorney of record is responsible in all matters respecting the case or proceeding before and after a judgment, until the closing of the case, until the time for appeal from a judgment or order has expired or a judgment or order has become final after appeal, or until there has been an order permitting withdrawal by or substitution of the attorney in the case or proceeding.

(b) **Notification of Change in Address or Telephone Number.** In all cases and proceedings, attorneys and parties appearing without an attorney must notify the clerk's office of any change in address or telephone number.

(c) **Appearance by Attorney.** A party who has appeared by an attorney, may not appear or act thereafter in the party's own behalf in the action or take any steps therein, unless an order of withdrawal or substitution is entered by the court after notice to the party's attorney and to parties in interest. However, notwithstanding that a party has appeared or is represented by an attorney, at its discretion, the court may hear a party in open court. An attorney who has appeared of record for any party must:

- (1) represent the party in the action;

- (2) be recognized by the court and by all parties to the action as having control of the client's case; and
- (3) sign all papers that are to be signed on behalf of the client.

**RULE 9011-1**

**PAPERS SIGNED BY AN ATTORNEY**

Any paper required to be signed by an attorney that is not signed by an attorney admitted to practice before this court under Local Rule 2090-1 may be stricken.

## **RULE 9011-2**

### **PARTIES APPEARING WITHOUT AN ATTORNEY**

(a) **Attorney Appearance Required.** A corporation, partnership, limited liability company, trust, unincorporated association, or other party which is not an individual may not file a petition or otherwise appear without an attorney in any case or proceeding. Failure to comply with this rule is grounds for dismissal of a case or proceeding, conversion of a case, appointment of a trustee or examiner, judgment by default, or other appropriate sanctions.

(b) **Rules Applicable to Individuals Appearing Without an Attorney.** An individual appearing without an attorney must comply with these Local Rules and, unless otherwise provided, with the Utah Rules of Professional Conduct, as revised and amended, and the decisions of this court interpreting those rules and standards. Any obligation imposed on an attorney by any applicable rule applies to parties appearing without an attorney. An individual appearing without an attorney is not required to become a Filing User. Failure to comply with this rule may be grounds for dismissal of a case or proceeding, conversion of a case, appointment of a trustee or examiner, judgment by default, or other appropriate sanctions.

## **RULE 9013-1**

### **MOTION PRACTICE - SET HEARING**

(a) **Scope of Rule.** This rule applies to motions in bankruptcy cases and adversary proceedings. The term “motion” means application, request, objection to claim, or other proceeding in the nature of a motion or contested matter in which a party in interest seeks an order from or determination by the court. The term “motion” does not refer to a summons, complaint, appeal, or an ex parte motion.

(b) **Applicability.** In bankruptcy cases and adversary proceedings, whenever the movant seeks an order from or determination by the court and the movant believes the motion will be opposed, the procedures set forth in this rule should be used.

(c) **Motions.** The movant must file the motion with the clerk within any applicable time limitation, including the time limitations of these Local Rules, unless the court orders otherwise. A motion must set forth succinctly, without argument, the specific relief sought.

(d) **Notice of Motion and Hearing.** The movant shall obtain and set an appropriate hearing date with the court scheduling clerk. A Notice of Motion and Notice of Hearing shall be filed in original form only together with a certificate of service evidencing compliance with the applicable service requirements. A Notice of Motion and Notice of Hearing shall:

- (1) be in substantial conformity with Appendix I, Local Bankruptcy Form 9013-1, Notice of Motion and Notice of Hearing with alterations as may be appropriate to comply with these Local Rules;

(2) contain a specific statement of the relief requested or action intended in sufficient detail to meaningfully inform the parties of the intended action or relief requested or, if the motion is served with the notice, refer to the motion to describe the relief requested;

(3) set the last date on which an interested party may file an objection to the motion. The identified date must be based on the time period fixed by the Federal Rules of Bankruptcy Procedure or by Local Rule 9006-1(b), as appropriate;

(4) include a statement that the hearing may be stricken and relief requested may be granted without a hearing unless an objection is timely filed.

(5) include a statement that the objecting party must attend the hearing and that failure to attend the hearing will be deemed a waiver or the objection.

(6) be given by the movant to all parties in interest at their addresses of record, and to such other parties as the Federal Rules of Bankruptcy Procedure may specify or the court may direct.

(e) **Response to Motions.** A party responding to a motion must file a response by the date identified in the notice.

(f) **Granting Relief Without a Hearing.** The court may, but is not required to, strike the hearing and grant the relief requested in a motion without a hearing if the movant has filed a declaration of non-opposition stating that:

(1) there has been no opposition to the motion filed or served on the movant; and

(2) the notice of hearing served by the movant included a statement as set forth in subsection (c) that the hearing may be stricken and the relief may be granted without a hearing.

(g) **Time for Striking Hearings.** A request to strike a hearing should be made at least two business days prior to the hearing.

(h) **Memorandum of Authorities**. A motion or a response to a motion may be supported by a memorandum of legal authorities subject to the following requirements.

(1) **Concise Memorandum**. A memorandum must concisely state each basis supporting the motion or response with citations to applicable and controlling legal authority.

(2) **Length of Memorandum**. A memorandum, other than for summary judgment, must not exceed 15 pages, exclusive of face sheet, table of contents, statements of issues and facts, and exhibits. The procedure for filing an overlength memorandum is set forth in subsection (f) of this rule.

(3) **Citations of Unpublished Decisions**. A memorandum may cite an unpublished decision from this district, but only if the decision is furnished to the court and parties when the memorandum is filed. Unpublished opinions from other districts may not be cited as authority. Unpublished decisions of this court should be cited as follows: *Smith v. Jones (In re Smith)*, Ch. 7 Case No. 93B-02404, Adv. No. 94PC-2302, slip op. at 10 (Bankr. D. Ut. March 1, 1995). The clerk maintains an index and copies of selected, unpublished opinions from this district.

(4) **Citations of Supplemental Authority**. When pertinent and significant authorities come to the attention of a party after a memorandum has been filed, or after oral argument but before the court renders a decision, a party may advise the court by letter, with a copy to all parties, setting forth the citations. The letter must, without argument, state the reason for the supplemental citations and include a reference either to the page of the memorandum or to a point argued orally to which the citations pertain. Any response must be promptly made and similarly limited.

(5) Reply Memorandum. A reply memorandum is limited to rebuttal of matters raised in the response.

(6) Limitation on Memoranda Considered. Unless otherwise ordered, the court will consider only memoranda filed with motions, responsive memoranda filed by parties in interest, and reply memoranda filed by the movant(s).

(i) Overlength Memoranda. An order of the court must be obtained to file a memorandum that exceeds the page limitations set forth in subsection (d) of this rule. Such a motion may be made to the court ex parte, and must include a statement of why additional pages are needed and the number of pages. The court will approve the request only for good cause shown. Authorized, overlength memoranda must contain the following:

(1) a table of contents, with page references, setting forth the titles or headings of each section and subsection;

(2) a statement of the issues related to the precise relief sought;

(3) a concise statement of facts, with appropriate references to the record, relevant to the issues concerning the precise relief sought;

(4) argument, preceded by a summary, containing the contentions of the party with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on; and

(5) a short conclusion stating the precise relief sought.

(j) Certificate of Service. Unless otherwise ordered, a party must file a certificate of service of a motion or other paper required to be served on other parties. The certificate must be filed with the motion or paper, endorsed upon the motion or paper, or filed separately as soon as possible and in any event before any action based upon the service is requested or taken by the court. The

certificate must show the date, place and manner of service, and the names and addresses of the parties receiving the service.

(k) **Service of Documents by Electronic Means.** A Filing User who electronically files a pleading or other document must transmit a “Notice of Electronic Filing” to parties entitled to service or notice under the Federal Rules of Bankruptcy Procedure and these Local Rules. The “Notice of Electronic Filing” must be transmitted by e-mail, hand, facsimile, contract carrier, or by first class mail postage prepaid. Electronic transmission of the “Notice of Electronic Filing” constitutes service or notice of the filed document. A Filing User may use the court’s Electronic Filing System to effectuate service on those parties who have consented to electronic service. Parties who are not Filing Users are entitled to receive a paper copy of any electronically filed pleading or other document. Service or notice must be made according to the Federal Rules of Bankruptcy Procedure and these Local Rules.

## RULE 9013 -2

### MOTION PRACTICE - OPPORTUNITY FOR HEARING

(a) **Scope of Rule.** This rule applies to motions in bankruptcy cases. The term “motion” means application, request, objection to claim, or other proceeding in the nature of a motion in which a party in interest seeks an order from or determination by the court. The term “motion” does not refer to a summons, complaint, appeal, or an ex parte motion.

(b) **Applicability.** Except as set forth herein, whenever the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure provide that an order may be entered or an action may be taken after "notice and a hearing," or a similar phrase, if the movant believes there will be no objections to the motion, the following procedure should be used. This rule does not apply:

- (1) whenever the court directs otherwise;
- (2) to any pleadings, motions, or notices in adversary proceedings under Part VII of the Federal Rules of Bankruptcy Procedure;
- (3) to hearings set under 11 U.S.C. § 1125;
- (4) to hearings on confirmation of a plan pursuant to chapter 9, 11 or 12;
- (5) applications for compensation that exceed \$5,000.00;
- (6) as otherwise provided by these Local Rules or the Federal Rules of Bankruptcy Procedure.

(c) **Motions.** The movant must file the motion with the clerk within any applicable time limitation, including the time limitations of these Local Rules, unless the court orders otherwise. A motion must set forth succinctly, without argument, the specific relief sought.

(d) **Notice of Motion and Notice of Opportunity for Hearing.** The movant may reserve a time for, but not set, a hearing on the court's calendar. A Notice of Motion and and Notice of Opportunity for Hearing shall be filed in original form only together with a certificate of service evidencing compliance with the applicable service requirements. A Notice of Motion and Notice of Opportunity for Hearing shall:

(1) be in substantial conformity with Appendix I, Local Bankruptcy Form 9013 - 2, Notice of Motion and Opportunity for Hearing;

(2) contain a specific statement of the relief requested or action intended in sufficient detail to meaningfully inform the parties of the relief requested or intended action or, if the motion is served with the notice, refer to the motion to describe the relief requested;

(3) set the last date on which an interested party may file an objection to the motion. The identified date must be based on the time period fixed by the Federal Rules of Bankruptcy Procedure or by Local Rule 9006-1(b), as appropriate;

(4) include a statement that the relief requested may be granted without a hearing unless an objection is timely filed;

(5) include a statement that the objecting party must attend the hearing and that failure to attend the hearing will be deemed a waiver or the objection;

(6) be given by the movant to all parties in interest at their addresses of record, and to such other parties as the Federal Rules of Bankruptcy Procedure may specify or the court may direct;

(e) **Objection.** Any party opposing the motion must file an Objection before the deadline stated in the Notice of Motion and Notice of Opportunity for Hearing. The Objection shall be filed with the court in original form only, and a copy thereof shall be served upon counsel for the movant

on or before the date set forth in the notice. Service may be by mail and shall be complete upon mailing. Objections for hearing shall clearly specify the grounds upon which they are based. General objections will not be considered. Failure of a party to timely file written opposition will be deemed a waiver of any opposition to granting of the motion.

**(f) Court Action on Motions.**

(1) Contested Matters. Motions for which an opposition has been filed shall be set for hearing at the time, date and place set forth in the Notice of Motion and Opportunity for Hearing. No further notice of the date, time and place of hearing is required to be given.

(2) Non-Contested Matters. Motions with no opposition shall be submitted to the Judge for further action. The party submitting an order in a non-contested matter must submit an application or declaration with the order stating that there has been no objection to the motion filed or served on the movant. The Court may, but is not required to, grant the relief requested in the motion without a hearing.

(3) Defective or Deficient Motions. The Court may deny, sua sponte, any defective or deficient motion, or a motion, the notice of which is subject to the provisions of this Rule and which notice does not comply with this Rule. Any such denial shall be without prejudice.

(4) Non-Prosecuted Motions. At the time the bankruptcy case is closed pursuant to 350, 707, 930, 1112, 1208, or 1307 of title 11, all pending motions which have not been presented to the Court for disposition shall be deemed abandoned for want of prosecution and the Clerk shall enter an order denying said motions. Any such denial shall be without prejudice.

**(g) Applicable provisions of Local Rule 9013-1.** Paragraphs (h) through (k) of Local Rule 9013-1 are also applicable to this rule.

## **RULE 9014-1**

### **DISCOVERY IN CONTESTED MATTERS**

At the request of any party in interest, or on the court's own motion, the court may order that Fed. R. Bankr. P. 7026 applies to a contested matter.

## **RULE 9015-1**

### **JURY TRIAL**

(a) **Demand.** Where a jury trial is demanded in or by endorsement upon a pleading as permitted by the Federal Rules of Civil Procedure, the words “JURY DEMANDED” should be typed in capital letters on the first page immediately below the title of the pleading.

(b) **Applicable Rules.** Fed. R. Civ. P. 38-39, 47-51 and 81(c), insofar as they pertain to jury trials, and DUCivR 83-7.5 apply in cases and proceedings, except that a jury demand made under Fed. R. Civ. P. 38(b) must be filed in accordance with Fed. R. Bankr. P. 5005.

(c) **Consent to Have Trial Conducted by Bankruptcy Judge.** If the right to a jury trial applies, a timely demand has been filed under Fed. R. Civ. P. 38(b), and the bankruptcy judge has been specially designated to conduct the jury trial, the parties may consent to have a jury trial conducted by a bankruptcy judge under § 157(e) of title 28 of the United States Code by jointly or separately filing a statement of consent no later than: (1) the time for filing the Report of Parties’ Planning Meeting under Fed. R. Bankr. P. 7026 and Local Rule 7016-1(b); or (2) if a motion for withdrawal of reference is filed after the demand, within 7 days after service of the motion for withdrawal of reference. Failure to file a consent constitutes an objection by opposing party to a jury trial in the bankruptcy court.

## **RULE 9019-1**

### **SETTLEMENTS OF ADVERSARY PROCEEDINGS**

(a) **General.** The parties should file a written settlement agreement not less than 3 business days before a related hearing. Unless good cause is shown, if the parties settle a matter less than 3 business days before a related hearing, the court may assess costs equally to the parties including, court costs, reporter costs, and the judge's travel costs and per diem, if any. The clerk must bill the parties for the assessed costs and monitor the collection of the costs for the court.

(b) **Settlement of Adversary Proceeding with Trial Date.** In an adversary proceeding for which a trial date has been scheduled, the parties must immediately notify the court of any settlement agreement that resolves all or part of the proceeding. Parties who fail to give adequate notice of the cancellation of a trial date may be assessed costs. Whenever a civil action scheduled for jury trial is settled or otherwise disposed of by agreement in advance of the trial date, jury costs paid or incurred may be assessed against the parties and their attorneys as directed by the court. Jury costs may include attendance fees, per diem, mileage and parking. Jury costs will not be assessed if notice of settlement or disposition of the case is given to the Jury Administrator of the District Court Clerk's Office at least 1 full business day prior to the scheduled trial date.

## **RULE 9019-2**

### **ALTERNATIVE DISPUTE RESOLUTION**

Upon agreement and motion of all parties, the court may refer an adversary proceeding to the Alternative Dispute Resolution Program (“ADR Program”) for mediation under DUCivR 16-2. The motion may be made at the initial pretrial conference or at any other time. An adversary proceeding referred to the ADR Program will remain under the jurisdiction of the court for all purposes, including the entry of any order granting a motion to approve a stipulation resolving the adversary proceeding, dismissing the adversary proceeding or withdrawing the referral to the ADR Program.

## RULE 9021-1

### PREPARATION AND SUBMISSION OF JUDGMENT OR ORDER

(a) **Separate Document Requirement.** Proposed orders must be prepared and submitted as separate documents, not attached to or included in motions or other papers filed with the court.

(b) **Review and Approval Procedures.**

(1) **Preparation, Service and Approval.** Unless otherwise provided herein or directed by the court, each proposed order and judgment should be prepared in writing by the attorney for the prevailing party, and must be served upon each opposing attorney for review and approval as to form prior to being submitted to the court for review and signature. Approval shall be deemed granted if no objection to the proposed order or judgment is filed within 7 days.

(2) **Service and Approval Exception.** Unless otherwise directed by the court, the service and approval requirements set forth in subsection (1) do not apply to

(A) any proposed order or judgment on a matter that does not require a hearing and is uncontested, or

(B) any proposed order or judgment submitted in open court at the time of the hearing on the matter to which the proposed order or judgment applies.

(3) **Post Hearing Submission in Adversary Proceeding.** If not submitted in open court at the time of a hearing, an order or judgment arising from a ruling made in open court in an adversary proceeding must be prepared by the attorney for the prevailing party and served as required by subsection (1) upon each attorney appearing in the adversary proceeding, regardless of whether such attorney filed a response to the matter or appeared at the hearing.

(4) Post Hearing Submission in Contested Matter. If not submitted in open court at the time of a hearing, an order or judgment arising from a ruling made in open court in a contested matter must be prepared by the attorney for the prevailing party, but need only be served, as required by subsection (1), upon each attorney who either filed a written response to the matter or appeared at the hearing. If the contested matter is in a chapter 12 or 13 case, a copy of the proposed order must be served upon the trustee.

(c) Entry of Court Orders. A Filing User submitting a document electronically that requires a judge's signature must promptly deliver the document in such form as the court requires. All orders, decrees, judgments, and proceedings of the court, including orders submitted in open court, will be filed in accordance with these Local Rules, which will constitute entry on the docket kept by the clerk under Fed. R. Bankr. P. 5003 and 9021. All signed orders will be filed electronically by the court or court personnel. Any order that has been electronically signed by a judge has the same force and effect as if the judge had affixed the judge's signature to a paper copy of the order and it had been entered on the docket in a conventional manner.

(d) Judgment Based Upon a Written Instrument. Unless otherwise ordered by the court, a judgment based upon a written instrument must be accompanied by the original instrument or a certified copy which must be filed as an exhibit in the case or proceeding at the time judgment is entered. The instrument must be marked as having been merged into the judgment and show the docket number of the case or proceeding. The instrument may be returned to the party filing it upon order of court only as in the case of other exhibits.

(e) Papers to Accompany Proposed Judgments, Orders or Notices of Appeal.

A party filing a proposed judgment, order, or notice of appeal should also file a certificate of mailing prepared for use by the clerk.

## **RULE 9022-1**

### **NOTICE OF JUDGMENT OR ORDER**

The clerk must mail or deliver by electronic means to the contesting parties, a copy of a judgment or order showing the date the judgment or order was entered in accordance with Fed. R. Bankr. P. 9022. Immediately upon the entry of an order or judgment, the clerk will transmit to Filing Users in the case or proceeding, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed. R. Bankr. P. 9022. The clerk must give notice in paper form to persons who are not Filing Users.

## **RULE 9070-1**

### **EXHIBITS**

**(a) Prior to Trial.**

(1) Marking Exhibits. Prior to trial, each party should mark all exhibits to be introduced during trial using exhibit labels (stickers) obtained from the clerk. Plaintiffs use consecutive numbers; defendants use consecutive letters.

(2) Preparation for Trial. After completion of discovery and prior to the final pretrial conference, the attorneys for each party must: (A) prepare and serve on opposing attorneys a list that identifies and briefly describes all exhibits to be offered at trial; and (B) afford opposing attorneys opportunity to examine the exhibits. The parties must list the exhibits in the final pretrial order.

**(b) During Trial.**

(1) Custody of the Clerk. Unless the court orders otherwise, all exhibits that are admitted into evidence during trial, that are suitable for filing and transmission to the appellate court as a part of the record on appeal, must be placed in the custody of the clerk.

(2) Custody of the Parties. Unless the court orders otherwise, any other exhibit admitted into evidence during trial must be retained in the custody of the party offering it. With approval of the court, photocopies may be substituted for the exhibits once they have been introduced into evidence.

**(c) After Trial.**

(1) Exhibits in the Custody of the Clerk. If the clerk takes custody of exhibits under subsection (b)(1) of this rule, the exhibits may not be taken from the custody of the clerk

until final disposition of the matter, except upon order of the court and execution of a receipt that identifies the material taken. The receipt must be filed in the case or proceeding.

(2) Retrieval from Evidence. With the permission of the clerk, parties should retrieve all exhibits from the custody of the clerk within 30 days after the expiration of the appeal period or after the mandate of the final reviewing court is filed. A party failing to comply with this rule will be notified by the clerk to retrieve its exhibits and sign a receipt for them. If the exhibits are not timely retrieved, the clerk may destroy or otherwise dispose of them as the clerk may see fit.

(3) Exhibits in the Custody of the Parties. Unless the court orders otherwise, the party offering any exhibit of the kind described in subsection (b)(2) of this rule must retain custody of it and be responsible to the court for preserving it in its condition as of the time admitted, until the time for appeal has expired or after the mandate of the final reviewing court is filed.

(4) Access to Exhibits by Parties. In case of an appeal, any party, upon written request of any other party or by order of the court, must make available any or all original exhibits in its possession, or true copies thereof, to enable another party to prepare the record on appeal.

(5) Exhibits in Appeals. When a notice of appeal is filed, each party must prepare and submit to the clerk a list that designates which exhibits are necessary for the determination of the appeal and in whose custody they remain. Parties who have custody of exhibits so listed must safekeep and transport the exhibits to the appellate court. All other exhibits that are not necessary for the determination of the appeal and that are not in the custody of the clerk must

remain in the custody of the respective party, until the mandate of the final reviewing court is filed.

(d) **Contested Matters.** Prior to hearing, each party should mark all exhibits to be introduced during the hearing using exhibit labels (stickers) obtained from the clerk. Movants use consecutive numbers; respondents use consecutive letters.

## **RULE 9071-1**

### **PROCEDURAL STIPULATIONS**

(a) **Procedural Requirement.** An agreement affecting the course or conduct of a trial or hearing must be in writing, signed by the parties, or made a part of the record by oral stipulation.

(b) **Court Approval - General.** A stipulation between the parties relating to proceedings before the court or modifying a prior order of the court will not be effective until approved by the court.

(c) **Stipulations to Continue Proceedings.** A stipulation between the parties to continue a hearing or trial before the court will not be effective unless approved by the court. A motion for continuance of a trial must be filed with the court not less than 3 business days before the trial. Unless good cause is shown, where a trial continuance is granted less than 3 business days before the trial date, the court may assess costs equally to the parties including, but not limited to, court costs, reporter costs, and the judge's travel costs and per diem, if any. The clerk must bill the parties for the assessed costs and monitor the collection of the costs for the court.

(d) **Continuance of Trial or Hearing Date.** The court may continue a trial or hearing for any reason and notice of such continuance shall be given to the parties by the clerk of court, or as otherwise directed by the court. The court may continue a trial or hearing on the date it is to be heard without further notice to parties other than those who appeared at the scheduled trial or hearing. Notice announced on the record at the time of the previously set trial or hearing will suffice.

## **RULE 9073-1**

### **HEARINGS**

(a) **Scope of Rule.** This rule applies to matters requiring a hearing in either a case or an adversary proceeding.

(b) **Setting Hearings.** The movant or a party objecting to a claim must obtain a hearing date and time on the court's calendar from the scheduling clerk for the judge assigned to the case. Unless modified by court order, hearings must be scheduled with sufficient time to serve notice and to give parties in interest time to file responsive memoranda as allowed in these Local Rules. The movant or objecting party must file the motion or objection within 3 business days after the hearing has been set. The court may strike the hearing if the motion or objection is not filed timely without further notice, and may sanction any party that sets a matter for hearing but fails to timely file the applicable motion or objection. After the hearing has been scheduled, the movant or objecting party may not add or substitute other motions or objections without the express permission of the scheduling clerk. The court may strike any motion or objection that was added or substituted without permission.

(c) **Order of Hearings.** The court will direct the order in which hearings will be held to promote efficiency and justice.

(d) **Movant Responsible to Give Notice.** The movant or the objecting party is responsible for properly serving the motion or objection and notice to all parties entitled to notice.

(e) **Cancellation of Hearings.** If the movant or other party wishes to cancel a noticed hearing for any reason, the movant or other party must immediately give notice of the cancellation to the scheduling clerk and parties receiving notice. The court may assess costs against the movant or parties who fail to give adequate notice of the cancellation of a hearing.

(f) **Withdrawal of Motion.** A movant or party who does not intend to pursue a motion or objection must immediately file a withdrawal of the motion and notify the scheduling clerk and parties in interest who received the motion. Even if the motion is withdrawn, the movant or party must attend the hearing unless excused by the court. A movant or party who fails to provide notice under this rule or to attend a hearing that has been scheduled may be assessed costs.

(g) **Withdrawal of Response to Motion.** A responding party who does not intend to argue its position at the hearing, must immediately file a withdrawal of the response, notify the movant of the withdrawal, and notify the scheduling clerk. The court may assess costs against a party for failure to comply with this rule.

(h) **Failure to Appear at a Hearing.** Unless excused by the court, failure to appear at a hearing may be deemed either a waiver of the motion by the movant or a consent to the motion by the responding party.

**APPENDIX A**

**Form 35. Report of Parties' Planning Meeting Pursuant to Fed. R. Civ. P. 26(f)**

[Insert Caption Stated in Local Rule 9004-1(a)]

1. Pursuant to Fed. R. Civ. P. 26(f), a meeting was held on \_\_\_\_\_ (date) at \_\_\_\_\_ (place) and was attended by:

\_\_\_\_\_ (name) for plaintiff(s) \_\_\_\_\_ (party name)

\_\_\_\_\_ (name) for plaintiff(s) \_\_\_\_\_ (party name)

\_\_\_\_\_ (name) for plaintiff(s) \_\_\_\_\_ (party name)

2. **Pre-Discover Disclosures.** The parties [have exchanged] [will exchange by \_\_\_\_\_ (date)] the information required by Fed. R. Civ. P. 26(a)(1) and Local Rule 7016-1.

3. **Discovery Plan.** The parties jointly propose to the court the following discovery plan: [Use separate paragraphs or subparagraphs as necessary if parties disagree.]

- a. Discovery will be needed on the following subjects: \_\_\_\_\_ (brief description of subjects on which discovery will be needed).
- b. Disclosure or discovery of electronically stored information should be handled as follows: \_\_\_\_\_ (brief description of parties' proposals).
- c. The parties have agreed to an order regarding claims of privilege or of protection as trial-preparation material asserted after production, as follows: \_\_\_\_\_ (brief description of provisions of proposed order).
- d. All discovery commenced in time to be completed by \_\_\_\_\_ (date). [Discovery on \_\_\_\_\_ (issue for early discovery) to be completed by \_\_\_\_\_ (date).]

- e. Maximum of \_\_\_\_\_ interrogatories by each party to any other party. [Responses due \_\_\_\_\_ days after service.]
  - f. Maximum of \_\_\_\_\_ requests for admission by each party to any other party. [Response due \_\_\_\_\_ days after service.]
  - g. Maximum of \_\_\_\_\_ depositions by plaintiff(s) and \_\_\_\_\_ by defendant(s).
  - h. Each deposition [other than of \_\_\_\_\_] limited to maximum of \_\_\_\_\_ hours unless extended by agreement of parties.
  - i. Reports from retained experts under Rule 26(a)(2) due:  
 from plaintiff(s) by \_\_\_\_\_ (date) \_\_\_\_\_  
 from defendant(s) by \_\_\_\_\_ (date) \_\_\_\_\_  
 Supplementations under Rule 26(c) due \_\_\_\_\_ (time(s) or interval(s)) \_\_\_\_\_.
4. **Other Items.** [Use separate paragraphs or subparagraphs as necessary if parties disagree.]
- a. The parties [request] [do not request] a conference with the court before entry of the scheduling order.
  - b. The parties request a pretrial conference in \_\_\_\_\_ (month and year) \_\_\_\_\_.
  - c. Plaintiff(s) should be allowed until \_\_\_\_\_ (date) \_\_\_\_\_ to join additional parties and until \_\_\_\_\_ (date) \_\_\_\_\_ to amend the pleadings.
  - d. Defendant(s) should be allowed until \_\_\_\_\_ (date) \_\_\_\_\_ to join additional parties and until \_\_\_\_\_ (date) \_\_\_\_\_ to amend the pleadings.
  - e. All potentially dispositive motions should be filed by \_\_\_\_\_ (date) \_\_\_\_\_.
  - f. Settlement [is likely] [is unlikely] [cannot be evaluated prior to \_\_\_\_\_ (date) \_\_\_\_\_]  
 [may be enhanced by use of the following alternative dispute resolution procedure: [\_\_\_\_\_]].

- g. Final lists of witnesses and exhibits under Rule 26(a)(3) should be due  
from plaintiff(s) by     (date)      
From defendant(s) by     (date)
- h. Parties should have      days after service of final lists of witnesses and  
exhibits to list objections under Rule 26(a)(3).
- i. The case should be ready for trial by     (date)     [and at this time is  
expected to take approximately     [length of time]    .

5. **[Other matters.]**

Date: \_\_\_\_\_

**APPENDIX B**

**FORM FOR PRETRIAL ORDER REQUIRED BY LOCAL RULE 7016-1(h)**

[INSERT CAPTION STATED IN LOCAL RULE 9004-1(a)]

This matter having come before the court on [*insert date*] at a pretrial conference held before [*insert name*] pursuant to Fed. R. Bankr. P. 7016; and [*insert name*] having appeared as counsel for plaintiff and [*insert name*] having appeared as counsel for defendant and [*insert name*] having appeared as counsel for [*insert name*]; the following action was taken: [*State*].

[*Delete foregoing if no final pretrial conference is held.*]

1.     **JURISDICTION**. The jurisdiction of the court is properly invoked under 28 U.S.C. § 1334. This is a [*core/noncore*] matter within the meaning of 28 U.S.C. § 157(b)(2). If noncore, the parties [*consent/do not consent*] to entry of a final judgment or order by the bankruptcy judge. The jurisdiction of the court is not disputed and is hereby determined to be present.

2.     **VENUE**. Venue is laid in the [*insert either Central or Northern*] Division of the District of Utah.

3.     **GENERAL NATURE OF THE CLAIMS OF THE PARTIES**.

- (a)     Plaintiff's claims. [*State brief summary.*]
- (b)     Defendant's claims. [*State brief summary.*]
- (c)     Other parties' claims. [*State brief summary for each party.*]

4.     **UNCONTROVERTED FACTS**. The following facts are established by admissions in the pleadings or by stipulation of counsel. [*Set out uncontroverted facts, including admitted jurisdictional facts and all other material facts concerning which there is no genuine issue.*]

5. **CONTESTED ISSUES OF FACT.** The contested issues of fact remaining for decision are: [State]

6. **CONTESTED ISSUES OF LAW.** The contested issues of law in addition to those implicit in the foregoing issues of fact are: [State]

7. **EXHIBITS.** The following, constituting all of the exhibits to be introduced at trial, have been exchanged between the parties:

(a) Plaintiff's exhibits: [List]

(b) Defendant's exhibits: [List]

(c) Exhibits of other parties (if involved): [List]

(d) Exhibits shall be presented to and marked for identification by the clerk prior to the day of trial in accordance with Local Rule 9070-1(a) or (d). The handling of exhibits both during and after trial is governed by Local Rule 9070-1(b) and (c).

8. **WITNESSES.**

(a) In the absence of reasonable notice to opposing counsel to the contrary, plaintiff will call as witnesses: [List]; plaintiff may call: [List]; and plaintiff will use the following depositions: [List].

(b) In the absence of reasonable notice to opposing counsel to the contrary, defendant will call as witnesses: [List]; defendant may call: [List]; and defendant will use the following depositions: [List].

(c) In the absence of reasonable notice to opposing counsel to the contrary [*identify additional party*] will call as witnesses: [List]; [*identify additional party*] may call: [List]; and [*identify additional party*] will use the following depositions: [List].

(d) In the event that other witnesses are to be called at the trial, a statement of their names and addresses and the general subject matter of their testimony will be served upon opposing counsel and filed with the court at least [*insert*] days prior to trial. This restriction shall not apply to rebuttal witnesses, the necessity of whose testimony reasonably cannot be anticipated before the time of trial.

9. **AMENDMENTS TO PLEADINGS.** There are no requests to amend pleadings. [*or*]  
The following order was made regarding amendments to the pleadings: [*State*].

10. **DISCOVERY.** Discovery has been completed. [*or*] Discovery is to be completed by [*insert date*]. [*or*] Further discovery is limited to [*State*]. [*or*] The following provisions were made for discovery: [*State*].

11. **TRIAL SETTING.** The adversary proceeding is set for trial on [*insert date*] at [*insert time*]. Estimated length of trial is [*insert number*] days.

12. **SETTLEMENT.** Counsel have conferred respecting settlement of this matter and consider the possibility of settlement [*insert good/fair/poor*]. Trial will not be postponed to allow further settlement negotiations except upon a showing of good cause.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
United States Bankruptcy Judge

The foregoing proposed pretrial order (prior to execution by the court) is hereby adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[INSERT SIGNATURE LINES, INCLUDING ADDRESS AND TELEPHONE NUMBERS FOR ALL PARTIES]

**APPENDIX C**

DEBTOR: \_\_\_\_\_

**MONTHLY OPERATING REPORT  
CHAPTER 11**

CASE NUMBER: \_\_\_\_\_

**Form 2-A  
COVER SHEET**

For Period Ending \_\_\_\_\_

Accounting Method:     Accrual Basis     Cash Basis

---

**THIS REPORT IS DUE 14 DAYS AFTER THE END OF THE MONTH**

Mark One Box for Each  
Required Document:

Debtor must attach each of the following reports/documents unless the U. S. Trustee has waived the requirement in writing. File the original with the Clerk of Court. Submit a duplicate, with original signature, to the U. S. Trustee.

Report/Document Attached	Previously Waived	REQUIRED REPORTS/DOCUMENTS
<input type="checkbox"/>	<input type="checkbox"/>	1. Cash Receipts and Disbursements Statement (Form 2-B)
<input type="checkbox"/>	<input type="checkbox"/>	2. Balance Sheet (Form 2-C)
<input type="checkbox"/>	<input type="checkbox"/>	3. Profit and Loss Statement (Form 2-D)
<input type="checkbox"/>	<input type="checkbox"/>	4. Supporting Schedules (Form 2-E)
<input type="checkbox"/>	<input type="checkbox"/>	5. Quarterly Fee Summary (Form 2-F)
<input type="checkbox"/>	<input type="checkbox"/>	6. Narrative (Form 2-G)
<input type="checkbox"/>	<input type="checkbox"/>	7. Bank Statements for All Bank Accounts IMPORTANT: Redact account numbers and remove check images
<input type="checkbox"/>	<input type="checkbox"/>	8. Bank Statement Reconciliations for all Bank Accounts

---

***I declare under penalty of perjury that the following Monthly Operating Report, and any attachments thereto are true, accurate and correct to the best of my knowledge and belief.***

Executed on: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

DEBTOR: \_\_\_\_\_

CASE NO: \_\_\_\_\_

**Form 2-B  
CASH RECEIPTS AND DISBURSEMENTS STATEMENT**

For Period: \_\_\_\_\_ to \_\_\_\_\_

**CASH FLOW SUMMARY**

	Current Month	<u>Accumulated</u>
<b>1. Beginning Cash Balance</b>	\$ _____ (1)	\$ _____ (1)
2. Cash Receipts		
Operations		
Sale of Assets		
Loans/advances		
Other		
Total Cash Receipts	\$ _____	\$ _____
3. Cash Disbursements		
Operations		
Debt Service/Secured loan payment		
Professional fees/U.S. Trustee fees		
Other		
Total Cash Disbursements	\$ _____	\$ _____
4. Net Cash Flow (Total Cash Receipts less Total Cash Disbursements)	_____	_____
<b>5 Ending Cash Balance (to Form 2-C)</b>	\$ _____ (2)	\$ _____ (2)

**CASH BALANCE SUMMARY**

	<u>Financial Institution</u>	<u>Book Balance</u>
Petty Cash	_____	\$ _____
DIP Operating Account	_____	
DIP State Tax Account	_____	
DIP Payroll Account	_____	
Other Operating Account	_____	
Other Interest-bearing Account	_____	
TOTAL (must agree with Ending Cash Balance above)		\$ _____ (2)

**(1) Accumulated beginning cash balance is the cash available at the commencement of the case.  
Current month beginning cash balance should equal the previous month's ending balance.**

**(2) All cash balances should be the same.**

DEBTOR: \_\_\_\_\_

CASE NO: \_\_\_\_\_

**Form 2-B  
CASH RECEIPTS AND DISBURSEMENTS STATEMENT**

For Period: \_\_\_\_\_ to \_\_\_\_\_

**CASH RECEIPTS DETAIL**  
*(attach additional sheets as necessary)*

**Account No:**

Date	Payer	Description	Amount
------	-------	-------------	--------

\$

**Total Cash Receipts** \$                      (1)

(1) Total for all accounts should agree with total cash receipts listed on Form 2-B, page 1

DEBTOR: \_\_\_\_\_

CASE NO: \_\_\_\_\_

**Form 2-B**  
**CASH RECEIPTS AND DISBURSEMENTS STATEMENT**  
For Period: \_\_\_\_\_ to \_\_\_\_\_

**CASH DISBURSEMENTS DETAIL**  
*(attach additional sheets as necessary)*

Account No: \_\_\_\_\_

Date	Check No.	Payee	Description (Purpose)	Amount
------	-----------	-------	-----------------------	--------

\$

**Total Cash Disbursements**      \$ \_\_\_\_\_ (1)

*(1) Total for all accounts should agree with total cash disbursements listed on Form 2-B, page 1*

DEBTOR: \_\_\_\_\_

CASE NO: \_\_\_\_\_

Form 2-C  
**COMPARATIVE BALANCE SHEET**  
For Period Ended: \_\_\_\_\_

	Current Month	Petition Date (1)
<b>ASSETS</b>		
Current Assets:		
Cash (from Form 2-B, line 5)	\$	\$
Accounts Receivable (from Form 2-E)		
Receivable from Officers, Employees, Affiliates		
Inventory		
Other Current Assets :(List) _____		
Total Current Assets	\$ _____	\$ _____
Fixed Assets:		
Land	\$	\$
Building		
Equipment, Furniture and Fixtures		
Total Fixed Assets	_____	_____
Less: Accumulated Depreciation	( _____ )	( _____ )
Net Fixed Assets	\$ _____	\$ _____
Other Assets (List): _____		
<b>TOTAL ASSETS</b>	\$ _____	\$ _____
<b>LIABILITIES</b>		
Post-petition Accounts Payable (from Form 2-E)	\$	\$
Post-petition Accrued Professional Fees (from Form 2-E)		
Post-petition Taxes Payable (from Form 2-E)		
Post-petition Notes Payable		
Other Post-petition Payable(List): _____		
Total Post Petition Liabilities	\$ _____	\$ _____
Pre Petition Liabilities:		
Secured Debt		
Priority Debt		
Unsecured Debt		
Total Pre Petition Liabilities	\$ _____	\$ _____
<b>TOTAL LIABILITIES</b>	\$ _____	\$ _____
<b>OWNERS' EQUITY</b>		
Owner's/Stockholder's Equity	\$	\$
Retained Earnings - Prepetition		
Retained Earnings - Post-petition		
<b>TOTAL OWNERS' EQUITY</b>	\$ _____	\$ _____
<b>TOTAL LIABILITIES AND OWNERS' EQUITY</b>	\$ _____	\$ _____

(1) Petition date values are taken from the Debtor's balance sheet as of the petition date or are the values listed on the Debtor's schedules.

DEBTOR: \_\_\_\_\_

CASE NO: \_\_\_\_\_

**Form 2-D**  
**PROFIT AND LOSS STATEMENT**  
For Period \_\_\_\_\_ to \_\_\_\_\_

	Current Month	Accumulated Total (1)
Gross Operating Revenue	\$ _____	\$ _____
Less: Discounts, Returns and Allowances	( _____ )	( _____ )
<b>Net Operating Revenue</b>	<b>\$ _____</b>	<b>\$ _____</b>
Cost of Goods Sold	_____	_____
<b>Gross Profit</b>	<b>\$ _____</b>	<b>\$ _____</b>
Operating Expenses		
Officer Compensation	\$ _____	\$ _____
Selling, General and Administrative		
Rents and Leases		
Depreciation, Depletion and Amortization		
Other (list): _____		
_____		
<b>Total Operating Expenses</b>	<b>\$ _____</b>	<b>\$ _____</b>
<b>Operating Income (Loss)</b>	<b>\$ _____</b>	<b>\$ _____</b>
Non-Operating Income and Expenses		
Other Non-Operating Expenses	\$ _____	\$ _____
Gains (Losses) on Sale of Assets		
Interest Income		
Interest Expense		
Other Non-Operating Income		
<b>Net Non-Operating Income or (Expenses)</b>	<b>\$ _____</b>	<b>\$ _____</b>
Reorganization Expenses		
Legal and Professional Fees	\$ _____	\$ _____
Other Reorganization Expense		
<b>Total Reorganization Expenses</b>	<b>\$ _____</b>	<b>\$ _____</b>
<b>Net Income (Loss) Before Income Taxes</b>	<b>\$ _____</b>	<b>\$ _____</b>
Federal and State Income Tax Expense (Benefit)		
<b>NET INCOME (LOSS)</b>	<b>\$ _____</b>	<b>\$ _____</b>

(1) Accumulated Totals include all revenue and expenses since the petition date.

DEBTOR: \_\_\_\_\_

CASE NO: \_\_\_\_\_

**Form 2-E**  
**SUPPORTING SCHEDULES**  
For Period: \_\_\_\_\_ to \_\_\_\_\_

**POST PETITION TAXES PAYABLE SCHEDULE**

	<u>Beginning Balance (1)</u>	<u>Amount Accrued</u>	<u>Amount Paid</u>	<u>Date Paid</u>	<u>Check Number</u>	<u>Ending Balance</u>
Income Tax Withheld:						
Federal	\$	\$	\$			\$
State						
FICA Tax Withheld						
Employer's FICA Tax						
Unemployment Tax						
Federal						
State						
Sales, Use & Excise Taxes						
Property Taxes						
Accrued Income Tax:						
Federal						
State						
Other: _____						
<b>TOTALS</b>	\$ _____	\$ _____	\$ _____			\$ _____

(1) For first report, Beginning Balance will be \$0; thereafter, Beginning Balance will be Ending Balance from prior report.

**INSURANCE SCHEDULE**

	<u>Carrier</u>	<u>Amount of Coverage</u>	<u>Expiration Date</u>	<u>Premium Paid Through</u>
Workers' Compensation		\$		\$
General Liability		\$		\$
Property (Fire, Theft)		\$		\$
Vehicle		\$		\$
Other (list):		\$		\$
		\$		\$

DEBTOR: \_\_\_\_\_

CASE NO: \_\_\_\_\_

Form 2-E  
SUPPORTING SCHEDULES

For Period: \_\_\_\_\_ to \_\_\_\_\_

**ACCOUNTS RECEIVABLE AND POST PETITION PAYABLE AGING**

<u>Due</u>	<u>Accounts Receivable</u>	<u>Post Petition Accounts Payable</u>
Under 30 days	\$ _____	\$ _____
30 to 60 days		
61 to 90 days		
91 to 120 days		
Over 120 days		
<b>Total Post Petition</b>	_____	_____
<b>Pre Petition Amounts</b>		
Total Accounts Receivable	\$ _____	
Less: Bad Debt Reserve	_____	
<b>Net Accounts Receivable (to Form 2-C)</b>	<u>\$ _____</u>	
	<b>Total Post Petition Accounts Payable</b>	<u>\$ _____</u>

\* Attach a detail listing of accounts receivable and post-petition accounts payable

**SCHEDULE OF PAYMENTS TO ATTORNEYS AND OTHER PROFESSIONALS**

	<u>Month-end Retainer Balance</u>	<u>Current Month's Accrual</u>	<u>Paid in Current Month</u>	<u>Date of Court Approval</u>	<u>Month-end Balance Due *</u>
Debtor's Counsel	\$ _____	\$ _____	\$ _____		\$ _____
Counsel for Unsecured Creditors' Committee					
Trustee's Counsel					
Accountant					
Other:					
Total	\$ _____	\$ _____	\$ _____		\$ _____

\*Balance due to include fees and expenses incurred but not yet paid.

**SCHEDULE OF PAYMENTS AND TRANSFERS TO PRINCIPALS/EXECUTIVES\*\***

<u>Payee Name</u>	<u>Position</u>	<u>Nature of Payment</u>	<u>Amount</u>
_____	_____	_____	\$ _____
_____	_____	_____	_____
_____	_____	_____	_____

\*\*List payments and transfers of any kind and in any form made to or for the benefit of any proprietor, owner, partner, shareholder, officer or director.

DEBTOR: \_\_\_\_\_

CASE NO: \_\_\_\_\_

**Form 2-F  
QUARTERLY FEE SUMMARY \*  
For the Month Ended: \_\_\_\_\_**

<u>Month</u>	<u>Year</u>	<u>Cash Disbursements **</u>	<u>Quarterly Fee Due</u>	<u>Check No.</u>	<u>Date Paid</u>
January	_____ \$				
February	_____				
March	_____				
TOTAL 1st Quarter	\$ _____	_____ \$	_____	_____	_____
April	_____ \$				
May	_____				
June	_____				
TOTAL 2nd Quarter	\$ _____	_____ \$	_____	_____	_____
July	_____ \$				
August	_____				
September	_____				
TOTAL 3rd Quarter	\$ _____	_____ \$	_____	_____	_____
October	_____ \$				
November	_____				
December	_____				
TOTAL 4th Quarter	\$ _____	_____ \$	_____	_____	_____

**FEE SCHEDULE (as of JANUARY 1, 2008)**

*Subject to changes that may occur to 28 U.S.C. §1930(a)(6)*

<u>Quarterly Disbursements</u>	<u>Fee</u>	<u>Quarterly Disbursements</u>	<u>Fee</u>
\$0 to \$14,999.....	\$325	\$1,000,000 to \$1,999,999.....	\$6,500
\$15,000 to \$74,999.....	\$650	\$2,000,000 to \$2,999,999.....	\$9,750
\$75,000 to \$149,999.....	\$975	\$3,000,000 to \$4,999,999.....	\$10,400
\$150,000 to \$224,999.....	\$1,625	\$5,000,000 to \$14,999,999 .....	\$13,000
\$225,000 to \$299,999.....	\$1,950	\$15,000,000 to \$29,999,999....	\$20,000
\$300,000 to \$999,999.....	\$4,875	\$30,000,000 or more	\$30,000

\* This summary is to reflect the current calendar year's information cumulative to the end of the reporting period

\*\* Should agree with line 3, Form 2-B. Disbursements are net of transfers to other debtor in possession bank accounts

*Failure to pay the quarterly fee is cause for conversion or dismissal of the chapter 11 case. [11 U.S.C. Sec. 1112(b)(10)]*

*In addition, unpaid fees are considered a debt owed to the United States and will be assessed interest under 31 U.S.C. §3717*

DEBTOR: \_\_\_\_\_

CASE NO: \_\_\_\_\_

**Form 2-G  
NARRATIVE**

**For Period Ending** \_\_\_\_\_

Please provide a brief description of any significant business and legal actions taken by the debtor, its creditors, or the court during the reporting period, any unusual or non-recurring accounting transactions that are reported in the financial statements, and any significant changes in the financial condition of the debtor which have occurred subsequent to the report date.

**APPENDIX D**

**FORM FOR DECLARATION REGARDING TAX RETURNS**

[INSERT CAPTION STATED IN LOCAL RULE 9004-1(a)]

1. I/we, the undersigned debtor(s), declare under penalty of perjury that either: (MARK ONE)

\_\_\_\_\_ a. All federal and state tax returns for taxable periods ending during the four year period before the filing of the petition have been filed.

OR

\_\_\_\_\_ b. The following tax returns for taxable periods ending during the four year period before the filing of the petition have not been filed.

Taxing Agency	Type of Tax Return	Tax Years

2. Complete for any tax return filed after the filing of the bankruptcy petition.

On or before the \_\_\_\_\_ day of \_\_\_\_\_, 200\_, the above-named debtor(s) delivered the following copies of tax returns to the Insolvency Unit of the Internal Revenue Service and/or the Bankruptcy Unit of the Utah State Tax Commission and that such returns disclosed the following liabilities and/or refunds:

Federal or State	Tax Year	Type of Tax/Form No.	Tax Liability	Tax Refund

3. I/we acknowledge that the court will not confirm any Chapter 13 Plan and the case may be dismissed at or before the confirmation hearing unless all tax returns have been filed.

4. I/we further acknowledge that I/we will file and serve on the trustee an amended declaration if further required tax returns are filed with the taxing authorities after the date indicated in paragraph 1 above.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Debtor

\_\_\_\_\_  
Debtor

\_\_\_\_\_  
[insert typewritten name of Attorney for Debtor(s)]  
[insert typewritten address and telephone number of Attorney for Debtor(s)]

**APPENDIX E**

**FORM FOR VERIFICATION AND REQUEST FOR DISCHARGE**

[INSERT CAPTION STATED IN LOCAL RULE 9004-1(a)]

The Debtor(s), in the above-captioned case, being duly sworn, state as follows:

1. The Chapter 13 Trustee has issued a Notice of Completion of Plan Payments and the Debtors hereby request the court to enter a discharge in this case.
2. The Debtors have filed Official Form 23.
3. A. I/We have not been required by a judicial or administrative order, or by statute to pay any domestic support obligation as defined in 11 U.S.C. §101(14A) either before this bankruptcy was filed or at any time after the filing of this bankruptcy.

OR

[Note: If "B" is applicable, all information required in questions B.1 through 4 must be provided]

B.1. I/We certify that prior to the date of this affidavit I/We have paid all amounts due under any domestic support obligation [as defined in 11 U.S.C. §101(14A)] required by a judicial or administrative order, or by statute including amounts due before this bankruptcy was filed, to the extent provided for by the plan. The name and address of each holder of a domestic support obligation are as follows:

\_\_\_\_\_  
(NAME)  
\_\_\_\_\_  
(ADDRESS)  
\_\_\_\_\_  
\_\_\_\_\_

B.2. My/Our most recent address is as follows:

\_\_\_\_\_  
(ADDRESS)  
\_\_\_\_\_  
\_\_\_\_\_

B.3. The name and address of my/our most recent employer(s) is as follows:

\_\_\_\_\_  
(NAME)  
\_\_\_\_\_  
(ADDRESS)  
\_\_\_\_\_  
\_\_\_\_\_

B.4. The following creditors hold a claim that is not discharged under 11 U.S.C. § 523 (a)(2) or (a)(4) or a claim that was reaffirmed under 11 U.S.C. § 524(c):

\_\_\_\_\_  
(NAME)  
\_\_\_\_\_  
(NAME)  
\_\_\_\_\_

4. I/We have not received a discharge in a Chapter 7, 11 or 12 bankruptcy case filed within 4 years prior to filing this Chapter 13 bankruptcy.

5. I/We have not received a discharge in another Chapter 13 bankruptcy case filed within 2 years prior to filing this Chapter 13 bankruptcy.

6. A. I/We did not have either at the time of filing this bankruptcy or at the present time, equity in excess of \$125,000.00 in the type of property described in 11 U.S.C. § 522(p)(1)[generally the debtor's homestead]

OR

B. There is not currently pending any proceeding in which I [in an individual case] or either of us [in a joint case] may be found guilty of a felony of the kind described in 11 U.S.C. § 522 (q)(1)(A) or liable for a debt of the kind described in 11 U.S.C. § 522 (q)(1)(B).

/s/ \_\_\_\_\_  
Debtor

/s/ \_\_\_\_\_  
Debtor

NOTICE

Any objection to this verification must be filed within 21 days after service of this verification. If no objection is filed, the court may enter a discharge pursuant to 11 U.S.C. § 1328(a) without further notice or hearing.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on \_\_\_\_\_ (date) \_\_\_\_\_, 20\_\_\_\_, a true and correct copy of the Affidavit Requesting Issuance of Discharge was served on all creditors and parties in interest listed on the attached matrix by either first-class, U.S. mail or via the CM/ECF system of the United States Bankruptcy Court.

/s/ \_\_\_\_\_  
(Signature of person completing service)

**APPENDIX F**

**FORM FOR PAYMENT ADVICES CERTIFICATION**

[INSERT CAPTION STATED IN LOCAL RULE 9004-1(a)]

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**PAYMENT ADVICES<sup>1</sup> CERTIFICATION**

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Under 11 U.S.C. § 521(a)(1)(B)(iv), I,<sup>2</sup> \_\_\_\_\_ hereby state as follows  
(select one option below):

- 1. I have attached hereto, or previously filed with the Court, copies of **all** payment advices or other evidence of payment received from any employer within 60 days before the date of the filing of my bankruptcy petition.
- 2. I did not receive any payment advices or other evidence of payment at any point during the 60 days before the date of the filing of my bankruptcy petition.
- 3. I received payment advices from an employer during the 60 days before the date for the filing of my bankruptcy petition but have been unable to locate all of the documents or replacements. I understand that if I do not submit all payment advices or other evidence of payment **within 45 days** from the filing of my bankruptcy petition, my case will be **automatically dismissed** without further notice or hearing.

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my knowledge, information, and belief.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
(Signature)  
Debtor

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<sup>1</sup> A "Payment Advice" includes, but is not limited to, pay stubs attached to your paycheck, employer's statements of hours and earnings, deposit notifications, etc.

<sup>2</sup> A separate form must be submitted by each debtor in a joint case.

**APPENDIX G**

**CHAPTER 13 MODEL PLAN**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF UTAH, \_\_\_\_\_ DIVISION**

In re \_\_\_\_\_  
SSN: xxx-xx-1234

CASE NO. 09-00000  
CHAPTER 13

**CHAPTER 13 PLAN  
MOTION TO VALUE COLLATERAL AND AVOID LIENS UNDER 11 U.S.C. § 506  
MOTION TO AVOID LIENS UNDER 11 U.S.C. § 522(f)**

*[Delete reference to motion(s) if you are not valuing collateral or avoiding liens]*

Original Plan    Amended Plan Dated: \_\_\_\_\_ 2009

**CREDITORS, YOUR RIGHTS WILL BE AFFECTED. You should review this Plan and any motion herein and discuss it with your attorney. If you disagree with the terms herein, you must file with the bankruptcy court a written objection before the deadline stated in the *Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors and Deadlines*. In the absence of a timely written objection, the court may grant the requested relief and confirm the Plan without further notice or hearing.**

**1. PLAN PAYMENTS.**

- (a) Monthly Payments: Debtors shall pay \$ \_\_\_\_\_ per month to the Chapter 13 Trustee for \_\_\_\_\_ months and then in the amount of \$ \_\_\_\_\_ per month until completion of the Plan *[add additional step payments if applicable]*. Such payments are due on the 25<sup>th</sup> day of each month.
- (b) Contribution of Tax Refunds: For the next three tax years of \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, the Debtors shall pay into the Plan yearly state and federal tax refunds that, when combined, exceed \$1,000 (see paragraph 10).
- (c) *[Delete if not applicable]* Other Payments:

**2. PLAN LENGTH.** Under Part II of Form 22C, the applicable commitment period for this case is  3 years or  5 years *[check one box]*. Plan payments shall be made for the following period *[select only one option and delete the others]*:

\_\_\_\_ Not less than 36 months but extended as necessary for no more than 60 months to complete the required Trustee distributions under the Plan;

\_\_\_\_ 60 months;

\_\_\_\_ Other \_\_\_\_\_.

**3. RETURN TO ALLOWED NONPRIORITY UNSECURED CLAIMS** *[select one option and delete the others].*

Pot Plan: Not less than \$\_\_\_\_\_ to be distributed pro rata among allowed nonpriority unsecured claims.

Percentage Plan: Not less than \_\_\_ percent of the amount of allowed nonpriority unsecured claims.

Base Plan: The Debtors shall make monthly Plan payments for not less than \_\_\_ months. After payment in full of all other disbursements provided for herein, the balance, if any, will be distributed pro rata among allowed nonpriority unsecured creditors.

The following nonpriority unsecured claims are separately classified and will receive the following treatment: *[Delete if not applicable]*

Creditor	Claim Amount	Proposed Treatment	Reason for Separate Classification
	\$		

**4. TRUSTEE’S PERCENTAGE FEE.** The Trustee shall collect the statutory fee of 28 U.S.C. § 586(e) for any disbursements actually or constructively made by the Trustee under the Plan or pursuant to the Bankruptcy Code, the Local Rules, or a court order.

**5. ATTORNEY FEES.** Counsel for Debtors requests an award of attorney fees and costs in the amount of \$2,750, of which \$\_\_\_\_\_ remains unpaid. Counsel may request additional fees by complying with the notice and hearing requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. The unpaid balance of attorney’s fees shall be paid as follows *[select only one option]*:

Class 1: fixed monthly payments of \$\_\_\_\_\_, commencing with the first payment under the Plan until paid in full (see paragraph 9(b)).

Class 2: monthly pro rata distributions from available plan payments until paid in full (see paragraph 9(b)).

**6. TREATMENT OF SECURED CLAIMS.**

**(a) Motion To Value Collateral And To Void Liens Under 11 U.S.C. § 506: The Debtors move the court to value the collateral at the amount stated in the Debtors’ proffered value below. Unless a timely objection is filed to this motion to value, the court will fix the value of the collateral consistent with the Debtors’ proffer without further notice or hearing, and the lien of the creditor will be voided to the extent it is unsecured under 11 U.S.C. § 506(d). The filing of a proof of claim asserting a value different than the Debtors’ proffered value does not**

**constitute an objection. The allowed secured claim of such creditor shall be paid the lesser of (1) the value as fixed by the court, (2) the value asserted in the proof of claim, or (3) the secured amount asserted in the proof of claim. The portion of any such allowed claim that exceeds the amount of the allowed secured claim shall be treated as a nonpriority unsecured claim pursuant to paragraph 3.**

Creditor	Description of Collateral	Debt Amount Listed on Schedule D	Debtors' Proffer of Collateral Value	Interest Rate	Interest Accrual Date (see ¶6(h)(3))	Adequate Protection Payment	No. of Monthly Adequate Protection Payments	Equal Monthly Payment thereafter
		\$	\$	%		\$		\$

(b) **Secured Claims Not Subject To 11 U.S.C. § 506:** Pursuant to § 1325(a)(9), the following claims are not subject to “cramdown” under § 506. The allowed secured claim of such creditor shall be the secured amount listed in the allowed proof of claim, unless modified by an amended claim or court order.

Creditor	Description of Collateral	Estimated Secured Claim (proof of claim controls)	Interest Rate	Interest Accrual Date (see ¶6(h)(3))	Adequate Protection Payment	No. of Monthly Adequate Protection Payments	Equal Monthly Payment thereafter
		\$	%		\$		\$

(c) **Secured Tax Claims:** The following secured claims of governmental entities will be paid at the interest rate stated in the proof of claim, or, if no interest rate is stated in the proof of claim, at the estimated statutory rate set forth below. The allowed secured claim of such governmental entities shall be the secured amount listed in the allowed proof of claim, unless modified by an amended claim or court order.

Governmental Unit	Estimated Secured Claim (proof of claim controls)	Estimated Statutory Interest Rate	Interest Accrual Date (see ¶ 6(h)(3))	Adequate Protection Payment	No. of Adequate Protection Payments	Equal Monthly Payment thereafter
	\$	%		\$		\$

(d) **Curing Defaults And Postpetition Payments:** The Trustee shall disburse on allowed arrearage claims, and the Debtors shall make regular postpetition payments directly to these creditors pursuant to the terms of the original contract beginning with the next payment due after the petition date. Postpetition payments made directly by the Debtors to such creditors may change due to an adjustable rate note, escrow requirements, etc., and notices of such payment changes shall be provided to the Debtors. The arrearage claim will be in the amount in the allowed proof of claim, unless modified by an amended claim or court order.

Creditor	Description of Collateral	Estimated Arrearage (proof of claim controls)	Interest Rate (enter “0%” if no interest is to be paid)	Equal Monthly Payment (if no equal monthly payment, leave)	Equal Monthly Payment Start Date

				<i>blank</i>	
		\$		%	\$

(e) **Surrender Of Collateral:** The Debtors surrender the following collateral to the secured creditor. Upon entry of the confirmation order, the automatic stay of § 362 and the co-debtor stay of § 1301 are terminated as to such collateral, and the Debtors will immediately make the collateral available for repossession by the creditor. If the surrender is in full satisfaction of the claim, no unsecured deficiency claim will be allowed, and the Trustee shall not disburse on such claim. If the surrender is in partial satisfaction, the creditor will have 180 days from the confirmation hearing date to file an amended claim for an unsecured deficiency or such creditor’s claim will be deemed paid in full. If neither full nor partial satisfaction is designated, surrender is deemed in partial satisfaction of the claim.

Creditor	Collateral to be Surrendered [ <i>indicate if § 506 does not apply to this claim pursuant to § 1325(a)(9)</i> ]	Effect of Surrender [ <i>Designate “Full Satisfaction” or “Partial Satisfaction”</i> ]

(f) **Secured Claims & Leases Paid Directly By Debtors:** The Debtors will directly make payments to the creditors listed below pursuant to the following conditions: (1) the Debtors will pay the claim without any modifications to the terms of the contract; (2) the Debtors stipulate to the immediate termination of the automatic stay of § 362 and the co-debtor stay of § 1301 as to the collateral or leased property; (3) the claim will not be discharged; and (4) neither the court nor the Trustee will monitor the Debtors’ performance on direct payments to such creditor.

Creditor	Collateral

**(g) Motion To Void Liens Under § 522(f):** The Debtors move to avoid the following liens because they impair the Debtors’ exemption asserted on Schedule C in that there is no non-exempt equity to which any part of the lien may attach. Unless a timely objection is filed as to this motion, such liens shall be avoided upon entry of the confirmation order. The filing of a proof of claim asserting a secured claim with respect to such lien does not constitute an objection.

Creditor	Identification of Collateral	Estimated Claim Amount
		\$

(h) **Administrative Provisions Regarding Trustee Disbursements on Secured Claims:**

**(1) Disbursements On Secured Claims.** The Trustee shall disburse on secured claims only if all of the following conditions are met: (a) the Plan specifically provides that the Trustee shall disburse on the secured claim; (b) the secured claim is allowed under 11 U.S.C. §§ 502(a) and 506(a), meaning a secured proof of claim has been timely filed, or the claim has been allowed by court order; and (c) there is no pending objection or motion with respect to such proof of claim under Bankruptcy Rules 3007 (objection to claim) or 3012 (motion to value collateral). All disbursements are subject to the Trustee having received payments under the Plan.

(2) Adequate Protection Payments. The Adequate Protection columns in paragraphs 6(a), 6(b) and 6(c) fix the amount of monthly adequate protection and such payments shall accrue commencing with the first scheduled meeting of creditors under § 341 and continuing on the first day of each month thereafter for the number of months specified in such column. After this time, secured creditors will receive the Equal Monthly Payments set forth in such paragraphs. Pursuant to LBR 2083-1(c), the Trustee may make preconfirmation disbursements of Adequate Protection payments; however, such payments will only be made if a secured proof of claim is filed in compliance with the applicable provisions of Bankruptcy Rules 3001, 3002 and 3004 before the earlier of the entry of an order dismissing or converting the case or the applicable claims bar date. Adequate Protection payments made during the period before interest begins to accrue on such claims shall be applied to reduce the principal balance of such claim, and adequate protection payments made or attributable to the period after interest begins to accrue shall be applied to unpaid principal and interest.

(3) Interest Accrual Date. In the Interest Accrual Date Column above, the designation “C” or “Conf.” shall mean interest shall accrue and be paid from the effective date of the confirmation order and the designation “P” or “Pet.” shall mean interest shall accrue and be paid from the petition date. If the Interest Accrual Date Column is left blank, interest shall accrue from the effective date of the confirmation order.

(4) Default Interest Rate. If the interest rate column is left blank in paragraphs 6(a), 6(b) or 6(c), interest shall accrue and be paid at the rate set forth in the proof of claim. If the proof of claim does not specify an interest rate, then interest shall accrue and be paid at 8% per annum. If the interest rate column is left blank in paragraph 6(d), no interest shall be paid on the arrearage claim.

**7. EXECUTORY CONTRACTS AND UNEXPIRED LEASES:** All executory contracts and unexpired leases are rejected unless specifically listed below as assumed, in which case such claims shall be directly paid by the Debtors pursuant to section 6(f) above.

Creditor	Description of Contract or Leased Property

**8. PRIORITY CLAIMS.** Claims entitled to priority under 11 U.S.C. § 507(a), including domestic support obligations and unsecured taxes, will be paid in full. The allowed amount of any priority claim will be the amount in the proof of claim, unless modified by an amended claim or court order. If the Plan provides for interest on nonpriority unsecured claims, such interest shall also be paid on priority claims. The Debtors shall remain current on all postpetition domestic support obligations during the Plan term.

**9. PLAN DISTRIBUTIONS.**

(a) Allowance Of Claims. Except as otherwise specified in paragraph 6(a) of the Plan, the amount of all allowed claims to be paid through the Plan shall be determined using the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules. A proof of claim must be timely filed or specifically allowed by an order of the court to receive any disbursements from the Trustee under the Plan.

(b) Order Of Distribution. The Trustee shall collect the percentage fee under paragraph 4 and then pay allowed claims in the following order:

- Class 1: Monthly attorney fee payments provided under paragraph 5, if any, and Adequate Protection Payments and Equal Monthly Payments under paragraph 6 pursuant to the amounts and timing provided in such paragraphs until paid in full;
- Class 2: Pro rata attorney's fees provided under paragraph 5, if any, until paid in full;
- Class 3: Priority Domestic Support Obligations under § 507(a)(1) until paid in full;
- Class 4: Secured Claims paid by the Trustee that are not entitled to Adequate Protection Payments or Equal Monthly Payments;
- Class 5: Other priority claims until paid in full; then
- Class 6: Nonpriority unsecured claims until paid the return provided in the Plan.

(c) Administrative Provisions Regarding Adequate Protection And Equal Monthly Payments

(i) If monthly Adequate Protection Payments or Equal Monthly Payments are specified on a claim, such monthly payments must be current in that all monthly payments due through the date of distribution shall be paid, but such claim need not be paid in full before distributions can be made to lower-level Classes. After the full payment of allowed attorney's fees, the Trustee may, but is not required to, disburse to creditors with designated Adequate Protection or Equal Monthly Payments amounts greater than such designated payments to facilitate the prompt administration of the case. To the extent there are insufficient funds to make the required Adequate Protection or Equal Monthly Payments to all creditors in a particular class, the Trustee shall make a pro-rata distribution to such class. Unpaid portions of Adequate Protection or Equal Monthly Payments from a prior month will first be brought current before disbursements are made to lower classes, and Adequate Protection Payments will be brought current before disbursements are made on Equal Monthly Payments.

(ii) If no monthly payments are specified on a claim, payments will be paid pro rata within the designated class, and a higher-level Class will be paid in full pursuant to the Plan before distributions will be made to a lower-level Class.

**10. CONTRIBUTION OF TAX REFUNDS.** If paragraph 1 of the Plan so requires, the Debtors shall pay into the Plan the net total amount of yearly state and federal tax refunds that exceed \$1,000 for each of the tax years identified in paragraph 1 of the Plan. On or before April 30 of each applicable tax year, the Debtors shall provide the Trustee with a copy of the first two pages of filed state and federal tax returns. The Debtors shall pay required tax refunds to the Trustee no later than June 30 of each such year. However, the Debtors are not obligated to pay tax overpayments that have been properly offset by a taxing authority. Tax refunds paid into the Plan may reduce the overall Plan term if it is greater than thirty-six months, but in no event shall the amount paid into the Plan be less than thirty-six Plan payments plus all annual tax refunds in excess of \$1,000.

**11. PLAN MODIFICATION.** With the affirmative consent of the Trustee, and unless a party-in interest-objects, the Debtors may modify the Plan under § 1329 without further notice to creditors to conform the Plan to the class, status, amount, value or interest rate set forth in a proof of claim (or

otherwise asserted by a creditor) so long as such modification does not have a negative impact on any creditor not receiving notice, other than the delay in receiving the first distribution.

**12. OTHER PLAN PROVISIONS:**

(a) Any order confirming this Plan shall constitute a binding determination that the Debtors have timely filed all of the information required by 11 U.S.C. § 521(a)(1).

(b)

**13. CERTIFICATION.** By signing this plan, the debtor and counsel representing the debtor certify that this plan does not alter the provisions of the Model Plan Form set forth as Appendix G referenced in Local Bankruptcy Rule 2083-1(a), except as set forth in paragraph 12 above. Any revisions to the Model Plan Form not set forth in paragraph 12 shall not be effective.

**END OF PLAN**

Signed: \_\_\_\_\_ Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

Signed: \_\_\_\_\_ Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

Attorney: \_\_\_\_\_ Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_



of the original claimant and appropriate documentation substantiating Applicant's authority [e.g., certified copies of all probate documents including a copy of the death certificate and appointment of executor] is attached.

3. Applicant has made sufficient inquiry and has no knowledge that this claim has been previously paid, that any other application for this claim is currently pending before this Court, or that any party other than the Applicant is entitled to submit an application for the payment of this claim.

4. Applicant has provided notice to the United States Attorney for the District of Utah of this Application pursuant to 28 U.S.C. § 2042 and a certificate of mailing is attached to this Application.

5. A photocopy of government issued photo identification of Applicant showing Applicant's signature [e.g. driver's license or passport] is attached. If name of the Applicant is different from the name of the original claimant due to marriage, divorce, etc, appropriate documentation [e.g. certified copy of divorce decree, marriage license] is attached.

6. I understand that, pursuant to 18 U.S.C. §§ 152 and 3571, I will be fined not more than \$500,000, or imprisoned not more than five years, or both, if I have knowingly and fraudulently made any false statements in this document.



**CERTIFICATE OF MAILING**

I hereby certify that on \_\_\_\_\_(date), I mailed a

copy of this foregoing Application and all attachments to the following:

Office of the United States Attorney  
District of Utah  
185 South State Street, Suite 300  
Salt Lake City, UT 84111

Debtor  
(Name and address)

United States Trustee  
Ken Garff Building  
405 South Main Street, Suite 300  
Salt Lake City, UT 84111

Debtors' Attorney  
(Name and address)

Original Claimant  
(Name and address)

Chapter \_\_ Trustee  
(Name and address)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed name of Individual

\_\_\_\_\_  
Signature of Individual



(1) on or before [objection deadline] you or your lawyer must file with the Bankruptcy Court a written objection to the [Motion/Application/ Objection] explaining your position, at:

United States Bankruptcy Court  
350 South Main Street, Room 301  
Salt Lake City, UT 84101

If you mail your objection to the Bankruptcy Court for filing you must mail it early enough so that the Court will **receive** it on or before [objection deadline]. You must also mail a copy to the undersigned counsel at [name and address of movants attorney].

(2) attend the hearing on the [ Motion/Application/ Objection] which is set for [(date) at (time) in Courtroom \_\_\_\_, United States Bankruptcy Court, (address).] Failure to attend the hearing will be deemed a waiver of your objection.

If you or your attorney do not take these steps, the Bankruptcy Court may decide that you do not oppose the relief sought in the [Motion/Application/ Objection] and may enter an order granting that relief. In the absence of a timely filed objection, the undersigned counsel may and will ask the Court to strike the hearing enter an order approving the [Motion/Application/ Objection] without hearing.

Dated this \_\_\_\_ Day of \_\_\_\_\_, 20\_\_.

/s/  
\_\_\_\_\_  
Signature of Individual

\_\_\_\_\_  
Printed Name of Individual

**CERTIFICATE OF MAILING**

I hereby certify that on \_\_\_\_\_ (date), I mailed a copy of this  
foregoing Application and all attachments to the following:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Individual

\_\_\_\_\_  
Printed name of Individual

Local Form 9013-2

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH

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In re:  Debtor(s).	Bankruptcy Number:  Chapter
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**NOTICE OF [MOTION TO ] [APPLICATION FOR] [OBJECTION TO CLAIM]  
AND NOTICE OF OPPORTUNITY FOR HEARING**

**(Objection Deadline: \_\_\_\_\_)**

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**PLEASE TAKE NOTICE** that [movant's name] has filed with the United States Bankruptcy Court for the District of Utah, [title of pleading] (the Motion/Application/Objection).

**YOUR RIGHTS MAY BE AFFECTED. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.**

[Insert a specific statement of the relief requested, action intended or claim, including the amount of fees to be paid pursuant to Fed.R.B.P. 2002(c)(2), if applicable; amount of debt to be incurred; amount of payment to be made; the basic terms and provisions of a settlement or compromise; or, with respect to a proposed sale of property, a description of the property, the time and place of any public sale, and the terms and conditions of any private sale, all sufficient to meaningfully inform the parties of the intended action or claim.]

NO HEARING WILL BE CONDUCTED ON THIS [MOTION/APPLICATION/OBJECTION] UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE COURT ON OR BEFORE THE OBJECTION DEADLINE SET FORTH BELOW.

If you do not want the Court to grant the relief requested in the [Motion/Application/ Objection] then you or your attorney must:

(1) on or before [objection deadline] file with the Bankruptcy Court a written Objection, explaining your position, at:

United States Bankruptcy Court  
350 South Main Street, Room 301  
Salt Lake City, UT 84101

If you mail your objection to the Bankruptcy Court for filing you must mail it early enough so that the Court will **receive** it on or before [objection deadline]. You must also mail a copy to the undersigned counsel at [name and address of movants attorney].

(2) attend a hearing on [(date) at (time) in Courtroom \_\_\_\_\_, United States Bankruptcy Court, (address).] **There will be no further notice of the hearing** and failure to attend the hearing will be deemed a waiver if your objection.

If you or your attorney do not take these steps, the Bankruptcy Court may decide that you do not oppose the relief sought in the [Motion/Application/ Objection] and may enter an order granting that relief. In the absence of a timely filed objection, the undersigned counsel may and will ask the Court to enter an order approving the [Motion/Application/ Objection] without hearing.

Dated this \_\_\_\_ Day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Individual

\_\_\_\_\_  
Printed name of Individual

**CERTIFICATE OF MAILING**

I hereby certify that on \_\_\_\_\_(date), I mailed a copy of this  
foregoing Application and all attachments to the following:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Individual

\_\_\_\_\_  
Printed name of Individual