



U.S. Department of Justice

*Office of the United States Trustee
District of South Carolina*

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OPERATING GUIDELINES AND REPORTING REQUIREMENTS OF THE UNITED STATES TRUSTEE

(Revised 5/31/06)

FOR CHAPTER 11 DEBTORS-IN-POSSESSION

United States Trustee's Authority to Supervise the Debtor-In-Possession

The United States Trustee (the UST) is a component of the United States Department of Justice and is charged with many supervisory and administrative responsibilities in cases filed under the Bankruptcy Code. Pursuant to 28 U.S.C. § 586 and 11 U.S.C. § 704(a)(8)¹, the UST has established these **Operating Guidelines and Reporting Requirements** (the guidelines) for chapter 11 debtors-in-possession (the "debtor" or "debtors"). Under these guidelines, debtors must establish and follow certain operating procedures and file certain financial reports with the Bankruptcy Court, and provide copies to the UST², any creditors committee appointed in the case by the UST, and any other party as required by the Court. Counsel should carefully review these requirements with the debtor upon receipt.

Compliance, Amendments or Modifications

Timely compliance with each of the requirements contained herein is mandatory. Failure to comply with any requirement may result in the dismissal of the case or conversion of the case to chapter 7 pursuant to the provisions of 11 U.S.C. § 1112(b) and the procedures described in Local Rule of Bankruptcy Procedure 2081-1, a copy of which is attached to these requirements. The UST may choose to file a motion to dismiss the case or convert the case to chapter 7, appoint a chapter 11 trustee or examiner, or take other action in lieu of proceeding under Local Rule 2081-1.

Any request to amend or modify these requirements for a particular chapter 11 case must be made in writing and approval by the UST is effective only if in writing.

¹ 11 U.S.C. § 704(a)(8) is made applicable to a chapter 11 debtor by 11 U.S.C. §§ 1106(a)(1) and 1107(a).

² All documents filed with the Court are provided to the UST electronically. With a few exceptions, debtors are not required to serve documents on the UST.

Duties of Debtor

With the filing of a chapter 11 petition, a debtor has new duties and is often called a debtor-in-possession. The debtor has fiduciary and statutory responsibilities to preserve and maintain the estate and to operate its business as efficiently as possible in order to maximize ultimate payments on pre-petition debts while keeping post-petition obligations current. *See* 11 U.S.C. §§ 1106 and 1107. The debtor is required to comply in all respects with the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, and Local Rules.

Bankruptcy law allows you to operate your business in its ordinary course. Some business actions, however, require specific Court authorization, including the following:

- Using "cash collateral" (cash, receivables, proceeds subject to liens) (*See* Bankruptcy Code § 363; Federal Rule of Bankruptcy Procedure 4001).
- Employing or compensating an attorney, accountant, or other professional. (*See* Bankruptcy Code § 327 and § 330 and Federal Rule of Bankruptcy Procedure 2014).
- Paying pre-petition unsecured debts.
- Borrowing money.
- Selling assets outside the ordinary course of business

It is the debtor's responsibility to notify the UST and Bankruptcy Court in writing of any change of address or telephone number within ten (10) days after the change.

Within 15 days after the petition is filed, the debtor must provide to the UST the debtor's Initial Debtor-In-Possession Report, a copy of which is attached to these guidelines. This report is required only once.

The debtor's schedules, statements and other documents must be filed within 15 days after the filing of a voluntary petition for relief. (Federal Rule of Bankruptcy Procedure 1007(c)). Local Rule 1007-2 provides that a case will be dismissed for failure to file these documents timely.

The list of 20 largest unsecured creditors must provide the telephone numbers of those creditors along with the information required by Federal Rules of Bankruptcy Procedure 1007(d).

Initial debtor interview

The UST will schedule an Initial Debtor Interview (“IDI”) with the debtor and counsel shortly after the case is filed. (*See* 11 U.S.C. § 1116(2) for specific requirements in small business cases.) The IDI will generally be conducted at the office of the UST, but in some cases the interview will take place at the debtor’s place of business. At the IDI, an attorney or other representative from the office of the UST will seek to become familiar with the debtor’s case as well as with the debtor’s business plan and operations, assets, liabilities, and accounting methods. Accordingly, the debtor’s representative(s) at the IDI must have personal knowledge and information regarding the debtor’s pre-petition and post-petition operations, accounting records, tax returns and financial statements. Additionally, the debtor’s representative must provide to the UST at the IDI projections of income and expenses for the first 180 days of the case. The UST’s representative will also discuss the role of the UST, explain the guidelines, and discuss scheduling matters. The IDI will be held within 30 days after the petition is filed and prior to the meeting of creditors. Failure by the debtor to attend meetings reasonably requested by the UST is cause for conversion or dismissal of the bankruptcy case. *See* 11 U.S.C. § 1112(b)(4)(H).

Meeting of Creditors

A meeting of creditors will generally be held 25 to 60 days after the petition is filed. The debtor or one of the debtor’s officers, directors, senior management personnel, or general partners must attend and respond, under oath, to questions from the UST and creditors regarding the debtor’s business and financial affairs, the cause of the bankruptcy, and the status of the debtor’s reorganization efforts. *See* 11 U.S.C. §§ 341 and 343. Failure by the debtor to attend the meeting of creditors without good cause shown is cause for conversion or dismissal of the case. *See* 11 U.S.C. § 1112(b)(4)(G) and Local Rule 2003-1.

Debtor’s Books and Records

Upon filing of the case the debtor must immediately close the debtor's existing financial books and records and open new books and records. The debtor must keep proper records of the debtor's earnings, expenses, receipts, disbursements, and all obligations incurred and transactions made in the operation of the business and in the management, preservation and protection of the debtor's property.

Bank Accounts/Money of the Estate

Upon filing of the case, the debtor must immediately close pre-petition bank accounts and open new “Debtor-in-Possession” bank accounts. All receipts must flow through the debtor-in-possession account(s). All disbursements should be by check.

The account name on the bank’s records must include the words “Debtor-in-Possession.” Checks for the new accounts must be pre-numbered by the printer, and must be imprinted with

the words “Debtor-in-Possession”. Handwritten, typewritten, or hand-stamped versions are not acceptable.

All money of the estate must be deposited or invested in accordance with 11 U.S.C. § 345. Examples of deposits and investments that comply with § 345(b) include, but may not be limited to, the following:

1. Deposits that are fully insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.
2. Investments in United States Treasury securities.
3. Deposits and investments with an entity that has posted a surety bond in favor of the United States, or pledged securities of the kind specified in 31 U.S.C. § 9303, to secure the funds invested or on deposit.

If the debtor has employees, the debtor must establish three new bank accounts for the debtor-in-possession: (1) a general expense account; (2) a payroll account; and (3) a taxes/special escrow account. Checks are to be pre-numbered by the bank and should include the type of account on the face of each check (i.e. general, payroll, or tax).

The attached Bank Account Report must be provided to the UST for each account before the original date set for the meeting of creditors. Failure to provide this form to the UST in a timely manner may result in dismissal of the case or conversion of the case to chapter 7. *See* Local Rule 2081-1.

Authorized Depositories

The UST maintains a list of financial institutions which are unable or unwilling to comply with the UST's requirements and § 345 of the Bankruptcy Code concerning collateralization of bankruptcy estate funds. A listing of all “Non-Complying Institutions” is provided at our website at www.usdoj.gov/ust/r04/columbia.htm. The debtor-in-possession is prohibited from maintaining accounts or opening new accounts with these institutions.

The UST also maintains a list of financial institutions which have entered into an agreement with the UST pledging compliance with the above-referenced requirements. This listing of “Complying Institutions” is also provided at www.usdoj.gov/ust/r04/columbia.htm. The debtor-in-possession is encouraged to establish accounts with these institutions, if feasible.

If the debtor-in-possession prefers to use a financial institution which is not included in the complying or non-complying lists, the UST will attempt to establish an agreement with that institution. Should the institution decline, the debtor-in-possession would be required to remove all funds and deposit them with another financial institution.

Insurance

The debtor must maintain without interruption all insurance customarily carried in the debtor's line of business or required by law or regulation. In most cases, the debtor will be required to carry liability, workers' compensation, and property insurance, i.e., fire and extended coverage. The property insurance coverage must be for no less than the fair market value or replacement cost of the insured assets. The debtor must immediately notify the UST of any lapse, cancellation, modification, or renewal of insurance coverage. Failure by the debtor to maintain appropriate insurance that poses a risk to the estate or to the public is cause for conversion or dismissal of the case. *See* 11 U.S.C. § 1112(b)(4)(C).

Before the original date set for the meeting of creditors, the debtor must submit to the UST an insurance report for each policy owned by the debtor. All reports must be submitted using the form attached. If the debtor has no insurance coverage, the debtor must submit a statement to the UST so stating. Failure to provide this form to the UST in a timely manner may result in dismissal of the case or conversion of the case to chapter 7. *See* Local Rule 2081-1.

Insurance coverage must be kept current throughout the Chapter 11 case. Additional reports of insurance coverage are required each time a renewal, change, or lapse of coverage occurs.

Quarterly Fees Paid to the UST

Title 11 U.S.C. § 1930(a)(6) requires that in addition to the filing fee which is paid to the Court, a quarterly fee must be paid to the UST for each quarter (including any fraction of a quarter the debtor is under Chapter 11 protection) until the case is closed, dismissed, or converted to another chapter. The quarterly fee is based on the amount of disbursements made by the debtor during the quarter with a minimum fee of \$250.00 and a maximum fee of \$10,000.00 per quarter. The complete current quarterly fee schedule is attached to the guidelines.

Quarterly fee bills are mailed to the debtor by the UST at the end of each quarter with instructions on how to determine the fee and make proper payment of the fee. The fee is due on the last day of the calendar month following the calendar quarter for which the fee is incurred. Any debtor not receiving a statement for the fee or having questions about the fee should contact the UST's office. Failure to timely pay quarterly fees may result in dismissal of the case or conversion of the case to chapter 7. *See* 11 U.S.C. § 1112(b)(4)(K) and Local Rule 2081-1.

Notice to Debtors Making Payment by Check

If you send us a check, it will be converted into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours, and will be shown on your regular account statement.

You will not receive your original check back. We will destroy your original check, but we will keep the copy of it. If the EFT cannot be processed for technical reasons, you authorize us to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, we may try to make the transfer up to 2 times.

FEE SCHEDULE

<u>Total Quarterly Disbursements</u>		<u>Quarterly Fee</u>
\$ 0 to	\$ 14,999	\$ 250
15,000 to	74,999	500
75,000 to	149,999	750
150,000 to	224,999	1,250
225,000 to	299,999	1,500
300,000 to	999,999	3,750
1,000,000 to	1,999,999	5,000
2,000,000 to	2,999,999	7,500
3,000,000 to	4,999,999	8,000
5,000,000 to	or more	10,000

NOTICE

**DISCLOSURE OF INTENT TO USE TAXPAYER IDENTIFYING NUMBER
FOR THE PURPOSE OF COLLECTING AND REPORTING DELINQUENT
QUARTERLY FEES OWED TO THE UNITED STATES TRUSTEE
PURSUANT TO 28 U.S.C. § 1930(a)(6)**

Please be advised that, pursuant to the Debt Collection Improvements Act of 1996, Public Law 104-134, Title III, § 31001(i)(3)(A), 110 Stat. 1321-365, codified at 31 U.S.C. § 3701, the UST intends to use the debtor's Taxpayer Identifying Number ("TIN") as reported by the debtor or debtor's counsel in connection with the chapter 11 bankruptcy proceedings for the purpose of collecting and reporting on any delinquent debt, including chapter 11 quarterly fees, that are owed to the UST.

The UST will provide the debtor's TIN to the Department of Treasury for its use in attempting to collect overdue debts. Treasury may take the following steps: (1) submit the debt to the Internal Revenue Service Offset Program so that the amount owed may be deducted from any payment made by the federal government to the debtor, including but not limited to tax refunds; (2) report the delinquency to credit reporting agencies; (3) send collection notices to the debtor; (4) engage private collection agencies to collect the debt; and (5) engage the United States Attorney's office to sue for collection. Collection costs will be added to the total amount of the debt.

Taxes

The debtor must remain current on the payment of all post-petition federal, state, and local taxes and file all tax returns on a timely basis. If the debtor has payroll tax obligations, the debtor may be required to open a special tax account and report payroll tax deposits to the appropriate taxing authority. Failure by the debtor to timely pay post-petition taxes or to file post-petition tax returns is cause for conversion or dismissal of the case. *See* 11 U.S.C. § 1112(b)(4)(I).

Monthly Operating Reports

All debtors must file with the Court not later than the 20th day of each month a written financial report for the entire preceding calendar month. This report, the "Monthly Operating Report," must conform to the form attached to these guidelines and must be filed in electronic format. Debtors should provide their reports to their attorneys early enough to allow for filing in electronic format by the 20th day of the month. Failure to file these reports with the Court in a timely manner may result in dismissal of the case or conversion of the case to chapter 7. *See* 11 U.S.C. § 1112(b)(4)(F, H) and Local Rule 2081-1.

If the debtor files a bankruptcy petition more than ten days prior to the end of any calendar month, a monthly report must be filed for that portion of the calendar month no later than the 20th day of the following month. A debtor who files ten days or less prior to the end of a calendar month must include these days in the report for the following month. A debtor should not file a monthly report which covers a period exceeding 41 days.

Unsecured Creditors Committee

The Bankruptcy Code requires the UST to appoint a creditors committee composed of unsecured creditors willing to serve. *See* 11 U.S.C. § 1102. The committee is appointed from the list of the 20 largest unsecured creditors submitted with the petition.

Shortly after the filing of the petition, the UST invites between ten and twenty of the debtor's largest unsecured creditors to serve on the unsecured creditors committee. Potential committee members receive information explaining the duties and responsibilities of the creditors committee. If at least three creditors respond affirmatively, the UST appoints an unsecured creditors committee. The report of selection of the creditors' committee is filed with the Court with copies sent to the debtor, counsel for the debtor, and the members chosen to serve on the committee. If less than three

unsecured creditors are willing to serve on a committee, no committee is appointed. In that instance, a report of non-appointment is filed with the Court. Section 1103(d) requires the debtor to meet with the creditors' committee as soon as practicable after the appointment of the committee to transact such business as may be necessary and proper.

Section 1102 authorizes the UST to appoint a committee of other creditors of a common type or class if such appointment is necessary to assure their adequate representation. For example, under certain circumstances, the UST may appoint a committee of timeshare holders, limited partners, or bondholders.

If a committee is appointed in a small business case, the debtor is no longer considered a small business debtor unless the Court determines that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor.

Disclosure Statement and Plan of Reorganization/Liquidation

The disclosure and plan process is the heart of the reorganization under chapter 11. The debtor is required to file a disclosure statement and plan of reorganization/liquidation within 180 days after the case is filed. Failure to do so may result in dismissal of the case or conversion of the case to chapter 7. *See* 11 U.S.C. § 1112(b)(4)(E, H) and Local Rule 2081-1.

A disclosure statement should contain adequate information to allow creditors to make an informed decision as to whether the confirmation of the plan is in their best interests. The disclosure statement should be meaningful and easily understood. While circumstances will vary widely from one chapter 11 case to the next, and, therefore, the parameters of "adequate information" may also vary, the following information is considered to be critical to an evaluation of the adequacy of a disclosure statement.

1. The necessary financial information, data and projections relevant to the creditors' decision to accept or reject the Chapter 11 plan.
2. The assets and liabilities of the business. Provide current balance sheet information and the source of appraisal values.
3. The events leading to the filing of the petition and the financial difficulties of the debtor.
4. The operating condition and success of the debtor while in Chapter 11.
5. An estimate of the return to creditors under a Chapter 7 liquidation (brief liquidation analysis).
6. A list of all claims against the debtor, if practicable, showing the claims to which objections are anticipated and the reasons for the objections. A list of

claims to be recognized under the plan.

7. A statement regarding the debtor's compliance with all responsibilities to file tax returns and pay taxes due both pre and post-petition.
8. An analysis of the potential tax consequences to the debtor and other parties-in-interest resulting from the plan.
9. The parties responsible for the future management of the debtor (controlling persons), and the rate or amount of compensation to be paid for their services.
10. A detailed estimate of the administrative expenses contemplated under the plan, including, but not limited to, attorneys' fees, accountants' fees and other professional fees and expenses. This includes quarterly fees to the UST.
11. The estimated collectability of the debtor's accounts receivable.
12. The risks posed to creditors under the plan.
13. An analysis of potential preferential or otherwise voidable transfers and the debtor's plan, if any, to pursue such recoveries.
14. Anticipated future litigation (bankruptcy and non-bankruptcy contexts) and the estimated cost and source of revenue to fund this litigation.
15. A statement that the plan represents a legally binding arrangement and should be read in its entirety, as opposed to relying on the summary in the disclosure statement.
16. The impaired classes under the plan. Include a layman's definition of impairment.
17. A statement that approval of the disclosure statement by the Bankruptcy Court does not constitute approval of the plan.
18. Whether any creditors' committee exists and, if so, whether it participated in negotiating the terms of the plan.
19. An explanation of the voting requirements for acceptance of the plan.

Failure by the debtor to file a disclosure statement and plan of reorganization/liquidation within 180 days after the entry of the order for relief may result in dismissal of the case or conversion of the case to chapter 7. *See* 11 U.S.C. § 1112(b)(4)(E) and Local Rule 2081-1.

Upon denial of a disclosure statement, the attorney for the proponent should advise the Court and UST of a date by which a new or amended disclosure statement could be filed, and a deadline will be set forth in the order denying approval of the disclosure statement.

Additional Requirements and Considerations for Small Business Debtors

A “small business case” is a case in which the debtor is a “small business debtor.” *See* 11 U.S.C. § 101 (51C) and (51D). 11 U.S.C. § 1116 sets out a number of specific requirements in small business cases:

1. The debtor must append to the voluntary petition its most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return, or a statement made under penalty of perjury that the financial statements have not been prepared or the tax return has not been filed.
2. The debtor must attend, through its senior management personnel and counsel, meetings scheduled by the UST, including an initial debtor interview and the meeting of creditors, unless the Court waives the requirement upon a finding of extraordinary and compelling circumstances.
3. The debtor must timely file all schedules and statements unless the Court grants an extension of time, which shall not extend beyond 30 days after the order for relief absent extraordinary and compelling circumstances.
4. The debtor must file all post-petition financial and other reports required by the Federal Rules of Bankruptcy Procedure or Local Bankruptcy Rules.
5. The debtor must maintain insurance customary and appropriate to the industry, subject to 11 U.S.C. §363(c)(2) concerning use of cash collateral.
6. The debtor must timely file tax returns and other required governmental filings and timely pay all taxes entitled to administrative expense priority, except those being appropriately and diligently contested, and subject to 11 U.S.C. § 363(c)(2) concerning use of cash collateral.
7. The debtor must allow the United States Trustee or a designated representative to inspect the debtor’s business premises, books, and records at reasonable times, and after reasonable prior written notice, unless the debtor waives notice.

In a small business case, the Court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary. *See* 11 U.S.C. §1125(f)(1), Presumably, such a determination will be made by the Court upon the request of the debtor.

Provisions Specific to Debtors Who are Individuals

Title 11 includes a number of provisions that apply specifically to Chapter 11 cases in which the debtor is an individual³, including the following:

1. Property of the bankruptcy estate includes property acquired post-petition. *See* 11 U.S.C. § 1115(a)(1).
2. Property of the bankruptcy estate includes post-petition earnings from personal services. *See* 11 U.S.C. § 1115(a)(2).
3. The plan must provide for the debtor to pay creditors all or such portion of earnings from personal services or other future income of the debtor as is necessary for the execution of the plan. *See* 11 U.S.C. § 1123(a)(8).
4. If a holder of an allowed unsecured claim objects to confirmation of the plan, the plan must either provide for payment of the full value of the claim as of the effective date, or for payment of the projected disposable income of the debtor for five years or for the term of the plan, whichever is longer. Disposable income is defined in 11 U.S.C. §1325(b)(2). *See* 11 U.S.C. § 1129(a)(15).
5. At the request of the debtor, the trustee, the UST, or the holder of an allowed unsecured claim, the plan may be modified at any time after confirmation but before completion of payments to a) increase or reduce the amount of payments to a particular class; b) extend or reduce the time period for payments; or c) change the amount to be paid to a creditor to the extent necessary to take account of any payments made other than under the plan. *See* 11 U.S.C. § 1127(e).
6. At the request of the Court, the UST, or any party in interest, the debtor must file with the Court a copy of any post-petition federal income tax returns at the same time they are filed with the taxing authorities, and certain pre-petition federal income tax returns that had not been filed with the taxing authorities on the petition date. *See* 11 U.S.C. § 521(f).
7. An individual debtor does not receive a discharge until completion of all payments under the plan. The Court may grant a discharge to an individual debtor who has not completed all plan payments if the Court finds that the value of the property actually distributed to unsecured creditors as of the effective date is not less than the amount that would have been paid in a chapter 7 case if the estate had been liquidated on the effective date, and if the Court also finds that modification of the plan under 11 U.S.C. § 1127 is not practicable. *See* 11 U.S.C. § 1141(d)(5).

³ Note that individual debtors may also be small business debtors.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:)
)
) Chapter 11
) Case No.
)
)

Debtor.)

BANK ACCOUNT REPORT

A report must be filed for each account or deposit maintained by the debtor or trustee.

NAME OF ACCOUNT:

ACCOUNT NO:

NAME, ADDRESS, AND TELEPHONE OF DEPOSITORY:

SIGNATORIES:

TYPE OF ACCOUNT: (general, payroll, tax, other--if other, please specify)

The deposit is fully insured or guaranteed by the United States or a department, agency, or instrumentality of the United States, or backed by the full faith and credit of the United States. The debtor or trustee will notify the United States Trustee immediately if the aggregate deposits at any one financial institution exceed \$100,000.

The debtor hereby authorizes the depository to release to the United States Trustee any information that may be requested pursuant to the United States Trustee's duties under 28 U.S.C. § 586(a)(3), including bank statements and copies of any documents pertaining to the above Debtor-in-Possession accounts.

(Signature of debtor or debtor's principal)

Name:

Address:

Telephone Number:

Date: _____

UNITED STATES BANKRUPTCY Court
DISTRICT OF SOUTH CAROLINA

IN RE: _____)
 _____)
 _____) Chapter 11
 _____) Case No.
 _____)
 _____)
 _____)
 _____)

Debtor. _____)

INSURANCE COVERAGE REPORT

A report must be filed for each insurance policy maintained by the debtor or trustee.

PROPERTY INSURED:

TYPE OF COVERAGE:

POLICY NUMBER:

AMOUNT (LIMITS) OF COVERAGE:

POLICY TERM (specific month, day, and year):

NAME, ADDRESS AND TELEPHONE OF LOCAL AGENT:

A copy of the policy declaration page is attached as Exhibit "A." The debtor or trustee agrees to maintain this coverage at all times. Proof of any change, renewal or lapse of coverage shall be immediately reported to the United States Trustee using this form.

(Signature of debtor or trustee)

Name:

Address:

Telephone Number:

Date: _____

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In Re:) Chapter 11
))
) Case Number _____
))

) Debtor(s))

INITIAL DEBTOR-IN-POSSESSION REPORT

The debtor-in-possession (DIP or debtor) captioned above acknowledges receipt of the Chapter 11 Debtor Instructions and Requirements and submits the following report.

A. Books and Records

The books and records of the debtor have been closed out as of the date of filing of the petition herein. A new set of books and records has been opened for the debtor-in-possession.

B. Bank Accounts

All pre-petition bank accounts have been closed and new accounts have been opened for the debtor-in-possession Yes_____ No_____

C. Insurance Coverage

The debtor has in force or has ordered the following types of insurance which comprise all of the types of insurance normally required for a business of this nature:

Auto and truck _____ Liability _____ Fire _____ Workers Comp. _____

D. Employee Information

Current number of employees _____

Gross monthly payroll:

Officers, directors and principals _____

Other employees _____

All post-petition payroll obligations including payroll taxes are current. Exceptions:

Date: _____ Signed: _____ Title: _____

ALL QUESTIONS ON THE DEBTOR-IN-POSSESSION REPORT MUST BE ANSWERED

U.S. Trustee Basic Monthly Operating Report

Case Name: _____ Date Filed: _____

Case Number: _____ SIC Code: _____

Month (or portion) covered by this report: _____

IN ACCORDANCE WITH TITLE 28, SECTION 1746, OF THE UNITED STATES CODE, I DECLARE UNDER PENALTY OF PERJURY THAT I HAVE EXAMINED THIS U.S. TRUSTEE BASIC MONTHLY OPERATING REPORT AND THE ACCOMPANYING ATTACHMENTS ON BEHALF OF THE CHAPTER 11 DEBTOR AND, TO THE BEST OF MY KNOWLEDGE, THIS REPORT AND RELATED DOCUMENTS ARE TRUE, CORRECT AND COMPLETE.

ORIGINAL SIGNATURE OF RESPONSIBLE PARTY

DATE REPORT SIGNED

PRINTED NAME OF RESPONSIBLE PARTY AND POSITION WITH DEBTOR

The debtor is required to provide financial reports prepared by or for the debtor in addition to the information required by this form. The U.S. Trustee may permit the debtor to eliminate duplicative information. No such permission is valid unless in writing.

QUESTIONNAIRE:

	YES	NO
1. IS THE BUSINESS STILL OPERATING?	<input type="checkbox"/>	<input type="checkbox"/>
2. DID YOU SELL ANY ASSETS OTHER THAN INVENTORY THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
3. HAVE YOU PAID ANY BILLS YOU OWED BEFORE YOU FILED BANKRUPTCY?	<input type="checkbox"/>	<input type="checkbox"/>
4. DID YOU PAY ANYTHING TO YOUR ATTORNEY OR OTHER PROFESSIONALS THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
5. DID YOU PAY ALL YOUR BILLS ON TIME THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
6. DID YOU PAY YOUR EMPLOYEES ON TIME?	<input type="checkbox"/>	<input type="checkbox"/>
7. HAVE YOU FILED ALL OF YOUR RETURNS AND PAID ALL OF YOUR TAXES THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
8. DID YOU PAY ALL OF YOUR INSURANCE PREMIUMS THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
9. DID ANY INSURANCE COMPANY CANCEL YOUR POLICY THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
10. HAVE YOU BORROWED MONEY FROM ANYONE THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
11. DO YOU HAVE ANY BANK ACCOUNTS OPEN OTHER THAN THE DIP ACCOUNT?	<input type="checkbox"/>	<input type="checkbox"/>
12. DID YOU HAVE ANY UNUSUAL OR SIGNIFICANT UNANTICIPATED EXPENSES THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>

- | | Yes | No |
|--|--------------------------|--------------------------|
| 13. DID YOU DEPOSIT ALL MONEY FOR YOUR BUSINESS INTO THE DIP ACCOUNT THIS MONTH? | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. DID THE BUSINESS SELL ANY GOODS OR PROVIDE SERVICES TO ANY BUSINESS RELATED TO THE DIP IN ANY WAY? | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. DO YOU PLAN TO CONTINUE TO OPERATE THE BUSINESS NEXT MONTH? | <input type="checkbox"/> | <input type="checkbox"/> |
| 16. ARE YOU CURRENT ON YOUR QUARTERLY FEE PAYMENT TO THE UST? | <input type="checkbox"/> | <input type="checkbox"/> |

TAXES

DO YOU HAVE ANY PAST DUE TAX RETURNS OR PAST DUE POST-PETITION TAX OBLIGATIONS?

IF YES, PLEASE PROVIDE A WRITTEN EXPLANATION INCLUDING WHEN SUCH RETURNS WILL BE FILED, OR WHEN SUCH PAYMENTS WILL BE MADE AND THE SOURCE OF THE FUNDS FOR THE PAYMENT.

(Exhibit A)

INCOME

PLEASE SEPARATELY LIST ALL OF THE INCOME YOU RECEIVED FOR THE MONTH. THE LIST SHOULD INCLUDE ALL INCOME FROM CASH AND CREDIT TRANSACTIONS. [If you use an automated accounting system, please attach a copy of the Income Statement and Balance Sheet.]

TOTAL INCOME _____

(Exhibit B)

EXPENSES

PLEASE SEPARATELY LIST ALL EXPENSES PAID BY CASH OR BY CHECK FROM YOUR BANK ACCOUNTS PAID THIS MONTH. INCLUDE THE DATE PAID, WHO WAS PAID THE MONEY, THE PURPOSE AND THE AMOUNT. [If you use an automated accounting system, please attach a copy of the Disbursements Journal, otherwise attach a copy of the check register.]

TOTAL EXPENSES _____

(Exhibit C)

CASH PROFIT

INCOME FOR THE MONTH (TOTAL FROM EXHIBIT B) _____

EXPENSES FOR THE MONTH (TOTAL FROM EXHIBIT C) _____

(Subtract The Total from Exhibit C from the Total of Exhibit B)

CASH PROFIT FOR THE MONTH _____

UNPAID BILLS

PLEASE ATTACH A LIST OF ALL DEBTS (INCLUDING TAXES) WHICH YOU HAVE INCURRED SINCE THE DATE YOU FILED BANKRUPTCY BUT HAVE NOT PAID. THE LIST MUST INCLUDE THE DATE THE DEBT WAS INCURRED, WHO IS OWED THE MONEY, THE PURPOSE OF THE DEBT AND WHEN THE DEBT IS DUE.

TOTAL PAYABLES _____

(Exhibit D)

MONEY OWED TO YOU

PLEASE ATTACH A LIST OF ALL AMOUNTS OWED TO YOU BY YOUR CUSTOMERS FOR WORK YOU HAVE DONE OR THE MERCHANDISE YOU HAVE SOLD. YOU SHOULD INCLUDE WHO OWES YOU MONEY, HOW MUCH IS OWED AND WHEN IS PAYMENT DUE.

TOTAL RECEIVABLES _____

(EXHIBIT E)

BANKING INFORMATION

PLEASE ATTACH A COPY OF YOUR LATEST BANK STATEMENT FOR EVERY ACCOUNT YOU HAVE AS OF THE DATE OF THIS FINANCIAL REPORT.

EMPLOYEES

NUMBER OF EMPLOYEES WHEN THE CASE WAS FILED? _____

NUMBER OF EMPLOYEES AS OF THE DATE OF THIS MONTHLY REPORT? _____

PROFESSIONAL FEES

TOTAL PROFESSIONAL FEES APPROVED BY THE COURT DURING THIS REPORTING PERIOD? _____

TOTAL PROFESSIONAL FEES APPROVED BY THE COURT SINCE THE FILING OF THE CASE? _____

TOTAL PROFESSIONAL FEES INCURRED BY OR ON BEHALF OF THE DEBTOR DURING THIS REPORTING PERIOD? _____

TOTAL PROFESSIONAL FEES INCURRED BY OR ON BEHALF OF THE DEBTOR SINCE THE FILING OF THE CASE? _____

PROFESSIONAL FEES INCURRED BY OR ON BEHALF OF THE DEBTOR **RELATED TO BANKRUPTCY** DURING THIS REPORTING PERIOD? _____

PROFESSIONAL FEES INCURRED BY OR ON BEHALF OF THE DEBTOR **RELATED TO BANKRUPTCY** SINCE THE FILING OF THE CASE? _____

PROJECTIONS

COMPARE YOUR ACTUAL INCOME, EXPENSES AND THE CASH PROFIT TO THE PROJECTIONS FOR THE FIRST 180-DAYS OF YOUR CASE PROVIDED AT THE INITIAL DEBTOR INTERVIEW.

PROJECTED INCOME FOR THE MONTH: _____

ACTUAL INCOME FOR THE MONTH (EXHIBIT B): _____

DIFFERENCE BETWEEN PROJECTED AND ACTUAL INCOME: _____

PROJECTED EXPENSES FOR THE MONTH: _____

TOTAL ACTUAL EXPENSES FOR THE MONTH (EXHIBIT C): _____

DIFFERENCE BETWEEN PROJECTED AND ACTUAL EXPENSES: _____

PROJECTED CASH PROFIT FOR THE MONTH: _____

ACTUAL CASH PROFIT FOR THE MONTH
(TOTAL FROM EXHIBIT B MINUS TOTAL FROM EXHIBIT C) _____

DIFFERENCE BETWEEN PROJECTED AND ACTUAL CASH PROFIT: _____

[If actual cash profit was 90% or less of projected cash profit, please attach a detailed written explanation.]

LOCAL RULE 2081-1: CHAPTER 11 PROCEDURAL AND ADMINISTRATIVE REQUIREMENTS

(a) Requirements of Debtor and Plan Proponents and Effect of Failure to Comply:

- (1) Disclosure statement and plan.** Unless otherwise ordered by the Court, a disclosure statement and plan of reorganization shall be filed by the debtor or trustee not later than one hundred eighty (180) days after the entry of the order for relief. The debtor, trustee, or other plan proponent shall prosecute its disclosure statement and plan in a timely manner.

The Court may consider for approval written amendments made prior to the hearing on the disclosure statement or plan at that hearing.

If any plan of reorganization or disclosure statement filed by the debtor, trustee, or other plan proponent is not confirmed or approved by the Court, any amendment, modification, or supplement necessary to correct the deficiency must be filed within ten (10) days or whatever time period the Court may require. Failure to timely comply may be deemed a failure to prosecute the case and may constitute grounds for dismissal or conversion without further notice or hearing or other sanction.

- (2) Bank accounts and insurance.** The debtor must provide to the United States Trustee before the first date set for the meeting of creditors such information as the United States Trustee reasonably requests regarding bank accounts and insurance policies maintained by the debtor. This information must be kept current by the debtor at all times.
- (3) Post confirmation reports.** Following the entry of an order confirming a plan of reorganization, the debtor or trustee, pursuant to Fed. R. Bankr. P. 2015(a) and SC LBR 2015-1, shall continue to file monthly operating reports until such time as the case is closed by the Court. These reports shall be filed with the Court in a form satisfactory to the United States Trustee. Within ninety (90) days after the date the order confirming plan of reorganization is entered, or whatever time period the Court may require, the debtor, trustee, or other plan proponent shall file a report of substantial consummation, a final report and an application for a final decree which indicates that, upon the approval of the application for final decree, the case will have been fully administered. Failure to timely comply may be deemed a failure to prosecute the case and may constitute grounds for dismissal or conversion without further notice or hearing or other sanction.

(b) United States Trustee Procedures:

- (1) Deficiencies.** In addition to the procedures set forth in subsection (a), if the debtor fails to timely file a document or to furnish information required by subsection (a) of this rule or SC LBR 2015-1, or fails to timely pay United States Trustee

quarterly fees as required pursuant to 28 U.S.C. § 1930(a)(6), the United States Trustee may provide written notice to the debtor and the attorney for the debtor of the default. The notice must be filed with the Court and shall provide ten (10) days from the date of the notice to cure the deficiency. If the deficiency is not cured within the ten (10) day period, the United States Trustee may apply to the Court for dismissal or conversion without further notice or hearing.

- (2) **Subsequent deficiencies.** In the event of a subsequent deficiency in the case, the United States Trustee may apply for dismissal or conversion by filing and serving on the debtor and the attorney for the debtor a certification of default which states that there has been a failure to comply with the terms of this rule, and which recommends either dismissal or conversion and states the grounds for that recommendation. The certification shall state specifically the provisions of this rule which have been violated and that the United States Trustee has complied with the terms of this rule.

Upon receipt of the certification, the Court may enter an order dismissing the case or converting the case to one under chapter 7 without further notice or hearing.

Nothing in this rule prohibits the United States Trustee from seeking sanctions or other relief for a failure to comply with the terms of this rule or on other grounds.

(c) Other Provisions:

- (1) **Delegation of noticing responsibilities.** Pursuant to Fed. R. Bankr. P. 2002(m), and IBR 3019, notice of the following may be delegated by the Court to an appropriate party:
- (A) Order/notice setting disclosure statement hearing;
 - (B) Order approving disclosure statement/setting confirmation hearing;
 - (C) Hearing notice on motion to extend time to file plan or disclosure statement; and
 - (D) Hearing notice on motion to prohibit use of cash collateral.
 - (E) Time fixed for filing objections and, if an objection is filed, the hearing to consider a proposed modification to plan pursuant to 11 U.S.C. § 1127(e).
- (2) **Retainers held by professional persons and fee applications.** In a chapter 11 case, a trustee, examiner, attorney for the debtor or any professional person employed under 11 U.S.C. §§ 327 or 1103 may apply for allowance of compensation and reimbursement of expenses on or after thirty (30) days after the date of the order for relief. A second application may be made on or after sixty (60) days after the first application, and a third application may be made on or after ninety (90) days after the second application. After one hundred eighty (180) days following the date of the order for relief, applications may not be made more than once every one hundred twenty (120) days, unless the Court orders

otherwise. In a chapter 11 case, a retainer held by a professional as described above shall be maintained in a trust account and not be drawn against post-petition unless the Court orders otherwise.