

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	§	Chapter 11
	§	
UTEX INDUSTRIES, INC., et al.,	§	CASE NO. 20-34932
	§	
DEBTORS.	§	

AMENDED OBJECTION TO DISCLOSURE STATEMENT AND TO CONFIRMATION

COMES NOW, Randal Newman, a creditor and indirect equity interest holder, files this objection to the adequacy of disclosure in the Debtors' Disclosure Statement, and to confirmation of the Debtors' Plan, and would respectfully show as follows:

1. The Debtors negotiated a prepetition RSA with a select group of secured lenders. The terms of the RSA are incorporated into the Debtors' proposed plan, providing *in general* - a cancellation of all equity and secured prepetition debt, secured DIP and exit funding, with issuance of equity to the participating secured lenders and a handful of key executives.
2. Mr. Newman believes that the proposed plan that incorporates the transaction contemplated by the RSA fails to satisfy the good faith requirement of the Bankruptcy Code, as well as violating other significant Bankruptcy Code protections.
3. The Disclosure Statement likewise is inadequate to dispel those failures.
4. The Disclosure Statement fails to provide adequate information as follows:
 - a. The Disclosure Statement indicates that the Debtors were represented during the entirety of the negotiations of the RSA by a committee of independent board members – Ms. Jill Frizzley, and Mr. Steven Panagos. DS, ¶III.B.
 - b. The Disclosure Statement fails to disclose, or even identify the prior connections of Ms. Frizzley or Mr. Panagos to any of the Debtors, or their prior connections to Debtors' counsel, Weil Gotshal. It is believed that by affirmatively describing these individuals as "independent directors", while

at the same time failing to disclose and identify past connections and relationships to the Debtors and/or Debtors counsel is improper.

- c. The Plan provides for the issuance of new equity to a handful of “key executives”, while only in passing discloses that some of these same executives indirectly own equity in the Debtors.
 - d. The Disclosure Statement indicates that the “Debtors are wholly-owned direct and indirect subsidiaries of the Consenting Investor, which is a Delaware limited partnership managed by its general partner Riverstone Gamma Holdings GP, LLC. Certain employees, including the senior executive team, indirectly hold an interest in the Debtors as limited partners of the Consenting Investor.” *Id.*, at II.C.(3).
 - e. One of the “Senior Executive Team”, Mr. Balas – CEO, signed off on the RSA on behalf of the Consenting Investor. He is also one of the “Senior Executive Team” receiving up to 10% of the newly issued equity (undiluted).
 - f. No disclosure is made regarding current indirect ownership, other financial stakes, or the potential recovery of Mr. Balas or the rest of the unidentified “Senior Executive Team”
 - g. Handing out of the “new equity” will be done by a Compensation Committee, with no additional detail.
 - h. The RSA indicates that the terms and conditions of the agreement are “part of a proposed settlement of a dispute among certain of the Parties”. RSA ¶6.09.
 - i. No details of that “certain dispute” are provided in the Disclosure Statement.
5. The Debtors’ Plan should not be confirmed as having not been filed in good faith, and by failing to comply with other provisions of the Bankruptcy Code, including the following deficiencies:
- a. As drafted, the Plan’s broad third-party releases are not appropriate, including the fact that they cannot be consensual as drafted. See *Plan Definition* of “Released Parties” (“Releasing Parties” includes the Released Parties (even if such Released Party purports to opt out of the releases set forth herein))

- b. The opt-out procedures utilized by the Debtors do not satisfy the requirements that such releases be voluntary.
 - c. The opt-out procedures provide for inappropriate conditions, making them not voluntary.
 - d. The broad exculpations, releases and discharge are not utilized in a good faith manner, especially in light of the Disclosure Statement Deficiencies.
 - e. Claims against the Debtors are not allowed to be filed, and are deemed withdrawn if they are filed. *Plan* ¶7.1; See 11 U.S.C. § 501.
 - f. Claims resolution is a core proceeding.
 - g. The Plan provides for its discharge, releases and exculpations as of the Effective Date, however the appropriate timing should be at confirmation. See 11 U.S.C. § 1141(d).
 - h. The issuance of the new equity is not done in good faith, and is an inequitable treatment of current equity ownership.
 - i. The debtor-in-possession has a duty to maximize the value of the estate. See *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352 (1985).
 - j. The prepetition RSA, and the proposed plan incorporating the RSA, improperly restricts the debtor-in-possession's duty to maximize value by requiring strict compliance with the terms of the RSA post-petition. By agreeing to such, the Debtors undermine the system of administration in bankruptcy, undermine the duties of a debtor-in-possession, and thereby fail to propose their plan in good faith.
6. Mr. Newman, without qualification or conditions, objects to and opts out of any and all third-party exculpations, releases and discharges contained in the Debtors' proposed plan, or as they may be modified in any amendment or supplement filed prior to confirmation.

WHEREFORE, Mr. Newman requests the Court to deny final approval of the Disclosure Statement, deny confirmation, and grant him such other and further relief, at law or in equity, to which he may be justly entitled.

Dated: October 20, 2020

Respectfully submitted,

By: /s/ Johnie Patterson

Johnie Patterson
attorney-in-charge
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CERTIFICATE OF SERVICE

I, Johnie Patterson, hereby certify that all creditors and parties in interest receiving notice pursuant to the Courts CM/ECF notice system, including Debtors' counsel and the U.S. Trustee, were served by electronic service on October 20, 2020.

/s/ Johnie Patterson
Johnie Patterson