

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

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

**RESPONSE TO DEBTORS' EMERGENCY MOTION *IN LIMINE***

COMES NOW, Randal Newman ("Newman"), a creditor and indirect equity interest holder, and files this *Response To Debtors' Emergency Motion In Limine*, and would respectfully show as follows:

**INTRODUCTION**

1. Mr. Balas and Mr. Sanchez, the senior executives of the Debtors have, in effect, concocted a transaction whereby they personally go from indirectly owning about 8% of a debt-laden company to *potentially* receiving up to 10% direct ownership of the reorganized debtors - entities with 1/10 of the debt. Mr. Balas agreed to this transaction on behalf of the Debtors, and on behalf of the "Consenting Investor" that, prepetition, owned 100% of the equity of the Debtors.
2. This insider transfer of wealth, while agreed to by the secured lenders, was negotiated by individuals with direct ties to Debtors' counsel, and should at least be disclosed fully to the Court and to all of the creditors. Mr. Newman is entitled to elicit this information before the Court, as well as have his objections addressed.
3. The Disclosure Statement Objections address these issues.

**FACTS**

4. Newman sold his business to the Debtors' prepetition, receiving, among other things, *earn-out payments*. Thereafter, the Debtors intentionally manipulated the accounting subject to the earn-out, denying and depriving Newman of his payments. This tactic was commonly used by the Debtors with businesses and business owners prepetition.

5. Having earn-out payments denied by the intentional actions of the Debtors, Newman is clearly an individual with a claim, as that term is defined in the Bankruptcy Code.
6. What the Debtors want to focus on, is Newman's additional indirect equity ownership in the Debtors. Those facts are not in dispute.
7. Newman is a creditor, and the holder of indirect ownership in the Debtors.
8. The Debtors have filed at least one prior bankruptcy. See *In re Utex Industries, Inc.*, Case 04-34427.
9. Debtors have been in bankruptcy for less than two (2) weeks. They have filed no schedules, no statement of affairs, no operating reports, there are no committees, and they have requested and obtained expedited consideration of their Disclosure Statement and Plan.
10. Now, they don't want to be questioned about what they are doing.
11. In these large expedited cases, the one thing the Court can do is to protect the process. Protect the process with information, access, and transparency. That is what Mr. Newman is seeking.
12. If there are no issues to be concerned with, the Debtors should be more than willing to appear and answer every question any creditor has of them.
13. Mr. Newman is statutorily entitled to appear and be heard, despite the protestations of the Debtors. See 11 U.S.C. §§ 1109 (b) and 1128(b).
14. First, the Debtors' Disclosure Statement AND Plan are set for hearing. The Debtors' claim that as an unsecured creditor, Mr. Newman is not entitled to any disclosure, and he should sit back and let them do what they want. The Debtors also assert that the Mr. Newman's claim is unimpaired.
15. Mr. Newman's claim is not unimpaired. And even if it is, his rights remain negatively impacted by the terms of the Plan. The Debtors' plan itself alters Mr. Newman's legal, and equitable rights:
  - a. "[A] creditor's claim outside of bankruptcy is not the relevant barometer for impairment; we must examine whether the plan itself is a source of limitation on a creditor's legal, equitable, or contractual rights." *Ultra Petroleum Corporation v. Ad Hoc Committee of Unsecured Creditors (In re Ultra Petroleum Corporation)*, 913 F.3d 533, 540 (5<sup>th</sup> Cir. 2019) (citations omitted)

- b. The Plan imposes third party releases in favor of individuals who neither provided value to the Debtors nor in any way operated or negotiated the plan terms;
  - c. Mr. Newman is not allowed his statutory right to file a claim with this Court for consideration, and if he does, it is deemed withdrawn. *Plan* ¶7.1; See 11 U.S.C. § 501;
  - d. Mr. Newman is not allowed his right to object to other claims in this proceeding. *Plan* ¶7.2
  - e. The discharge of the Debtors is broader than provided in the Bankruptcy Code, also affecting Mr. Newman's rights. 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);
  - f. Each and every issue identified above, together with the issues in his objection affect Mr. Newman's rights and his claim, and coupled with his statutory right, has standing to be heard in this matter.
16. Debtors argue that the testimony (before even hearing it) to be provided by Mr. Newman and the other witnesses will be unfairly prejudicial, confusing, misleading, an undue waste of time or cumulative.
17. My experience with the Court is that it is more than capable of managing whatever testimony/evidence is provided in due course.
18. Likewise, the Debtors argue, without even hearing the evidence to be presented, that the to-be presented evidence is irrelevant, cumulative and a waste of resources. Again, a finding not capable of being made before even knowing what will be presented.

### CONCLUSION

19. The bankruptcy process is as important as the technical details the Debtors so strongly pursue and argue. Bankruptcy is a process, not a tool to be utilized by the rich or the powerful. If the Debtors would like to utilize the process to achieve their end-result, they should also be required to play by the rules. Mr. Newman's rights are modified and impaired by the proposed plan, and he should be allowed to exercise his statutory right to appear and be heard "on any issue" in this case. 11 U.S.C. § 1109(b).

**WHEREFORE**, Mr. Newman requests the Court to deny the Debtors' Motion, and grant him such other and further relief, at law or in equity, to which he may be justly entitled.

Dated: October 22, 2020

Respectfully submitted,

By: /s/ Johnie Patterson

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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 22, 2020.

/s/ Johnie Patterson  
Johnie Patterson