

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

In re:	§	
	§	Chapter 11
	§	
UTEX INDUSTRIES, INC., <i>et al.</i> ,	§	Case No. 20-34932 (DRJ)
	§	
Debtors. <sup>1</sup>	§	(Jointly Administered)
	§	

**MOTION OF REORGANIZED DEBTORS FOR AN ORDER (I) APPLYING  
BANKRUPTCY RULE 7068 TO CONTESTED MATTERS ARISING FROM  
CLAIMS FILED BY THE NEWMAN CLAIMANTS AND  
(II) GRANTING RELATED RELIEF**

**IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY-ONE DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.**

UTEX Industries, Inc. and its debtor affiliates in the above-captioned chapter 11 cases, as reorganized debtors (collectively, the “**Reorganized Debtors**”), respectfully represent as follows in support of this motion (the “**Motion**”):

**Relief Requested**

1. By this Motion, pursuant to section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”) and Rules 7068 and 9014(c) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Reorganized Debtors seek

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: UTEX Industries, Inc. (9867), RSH Utex Holdings, LLC (4048), Industrial Sealing Solutions Holdings Inc. (0104), UI Sealing Technologies Intermediate Holdings, Inc. (9553), UTEX Holding, Inc. (8260), Applied Rubber Technology, Inc. (1790), CAM Specialty Intermediate Holdings, Inc. (9099), CAM Specialty Products, Inc. (8342), Duraquest, Inc. (7017), Work Manufacturing, L.L.C. (5341), Energy Products LLC (8160), and Arefco Seals, Inc. (5258). The Debtors’ mailing address is 10810 Katy Freeway, Suite 100, Houston, TX 77043.

entry of an order (i) applying Bankruptcy Rule 7068 to any contested matter arising from claims (the “**Newman Claims**”) filed by Randall S. Newman (“**Mr. Newman**”) and Kim L. Newman (together, the “**Newman Claimants**”) in these chapter 11 cases and (ii) granting related relief.

2. A proposed form of order granting the relief requested herein is annexed hereto as **Exhibit A** (the “**Proposed Order**”).

### **Jurisdiction**

3. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Background**

4. On October 8, 2020 (the “**Petition Date**”), the Reorganized Debtors each commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors was appointed in these chapter 11 cases.

5. On October 9, 2020, this Court ordered joint administration of these chapter 11 cases pursuant to Rule 1015(b) of the Bankruptcy Rules.

6. On October 28, 2020, the Court entered the *Findings of Fact, Conclusions of Law, and Order (I) Approving Disclosure Statement on a Final Basis and (II) Confirming Joint Prepackaged Chapter 11 Plan of UTEX Industries, Inc. and Its Affiliated Debtors* dated October 28, 2020 [Docket No. 172] (the “**Confirmation Order**”),<sup>2</sup> pursuant to which the Court confirmed the *Joint Prepackaged Chapter 11 Plan of UTEX Industries, Inc. and Its Affiliated Debtors*, dated as of October 1, 2020 (the “**Prepackaged Plan**”).

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<sup>2</sup> Capitalized terms not otherwise defined in this Motion shall have the meaning ascribed to them in the Confirmation Order or the Prepackaged Plan.

7. The Prepackaged Plan became effective, and was substantially consummated on December 3, 2020. *See Notice of (I) Entry of Order Approving Disclosure Statement and Confirming Joint Prepackaged Chapter 11 Plan of UTEX Industries, Inc. and its Affiliated Debtors and (II) Occurrence of Effective Date* [Docket No. 187].

**The Prepackaged Plan, Confirmation Order, and the Newman Claimants**

8. The Prepackaged Plan provides that all claims other than First Lien Credit Agreement Claims and Second Lien Credit Agreement Claims are unimpaired. (*See generally* Prepackaged Plan Art. 3.2.)<sup>3</sup> And, with the exception of the Newman Claimants, the Reorganized Debtors will not be required to undertake a claims reconciliation process with respect to any claims. (*Id.* Art. VII.)

9. At Mr. Newman's request, and as set forth more fully in the Confirmation Order, the Reorganized Debtors agreed that Mr. Newman would have the right to file proofs of claim in these chapter 11 cases on account of claims Mr. Newman believes he may hold against the Reorganized Debtors, and each of Mr. Newman and the Reorganized Debtors agreed that the Bankruptcy Court would exercise jurisdiction over such proofs claim. (*See Confirmation Order* ¶ 13.) Mr. Newman had 30 days from the Effective Date (i.e., December 3, 2020) in which to file such claims, subject to, among other things, all claims and defenses the Reorganized Debtors may hold with respect to such claims.

10. On November 17, 2020, the Newman Claimants filed proof of claim no. 9-1 (the "**Newman Claim**") asserting a claim of \$375,000. The Proof of Claim states that the basis of the Newman Claims are "Breach Of Contract, Attorney Fees, Damages" and attaches a copy of

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<sup>3</sup> The Newman Claimants do not hold First Lien Credit Agreement Claims or Second Lien Credit Agreement Claims.

a Purchase and Sale Agreement dated January 4, 2016 among UTEX Industries, Inc., the Newman Claimants and Amerifrac LLC (the “**Amerifrac PSA**”). The Proof of Claim does not contain any other explanation of the basis of the Newman Claims.

11. The Reorganized Debtors dispute any such allegations and, contemporaneously with the filing of this Motion, the Reorganized Debtors filed the *Reorganized Debtors’ Objection to Proof of Claim No. 9-1 Filed by or on Behalf of Randal S. Newman and Kim L. Newman* seeking to have the Newman Claim disallowed in its entirety for, among other things, that the Reorganized Debtors have no liability pursuant to the express terms of the Amerifrac PSA.

12. At the same time, the Reorganized Debtors acknowledge that the time and expense required to address the Newman Claims will consume the Reorganized Debtors’ resources, as well as unduly prolong the administration of one or more of the Reorganized Debtors’ chapter 11 cases. As a result, the Reorganized Debtors may elect to propose a settlement with Mr. Newman that, among other things, reflects the dubious merits of Mr. Newman’s allegations, on the one hand, but that also takes into account the time, expense, and burden the Reorganized Debtors might otherwise (and unnecessarily) incur to address such claims on the other hand.

13. The Reorganized Debtors therefore submit that Bankruptcy Rule 7068 provides an appropriate mechanism to incentivize the consensual resolution of the contested matter that has arisen from the Newman Claim and any other assertions or claims that the Newman Claimants may raise.

#### **Argument**

14. In a contested matter, the Court may direct the application of any rule arising under Part VII of the Bankruptcy Rules that does not automatically apply to such matter, including Bankruptcy Rule 7068. *See* Fed. R. Bankr. P. 9014(c). Bankruptcy Rule 7068

incorporates Rule 68 of the Federal Rules of Civil Procedure, which states that “[a]t least 14 days before the date set for trial, a party defending against a claim may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued.” Rule 68 further provides that “[i]f the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made.” Rule 68’s purpose is “to encourage settlements and avoid protracted litigation.” Fed. R. Civ. P. 68, Notes of Advisory Committee on Rules – 1946 Amendment.

15. Bankruptcy Rule 7068 should apply here. For the Reorganized Debtors, the cost of litigating the Newman Claims to conclusion, both in terms of time and money, is quite real. The Reorganized Debtors will be required to incur substantial professional and administrative costs to defend a claim they believe has no merit; the Reorganized Debtors may also be required to incur substantial incremental costs in the form of any ongoing U.S. Trustee fees if the Reorganized Debtors are required to prolong the administration of one or more chapter 11 cases on account of one putative creditor. Consequently, the Reorganized Debtors believe that application of Bankruptcy 7068 is particularly appropriate to provide incentives for all parties to resolve matters in an efficient matter in a fashion that is consistent with both the spirit and purpose of the Bankruptcy Rules. *See* Fed. R. Bankr. P. 1001 (“These rules shall be construed to secure the just, speedy, and inexpensive termination of every case and proceeding.”). Nor can Newman Claimants claim prejudice in this regard since, after all, Mr. Newman demanded this Court’s exercise of jurisdiction, and the application of the Bankruptcy Rules, to the administration of any claim that Mr. Newman may file.

#### **Reservation of Rights**

16. Nothing contained herein is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Reorganized Debtors, (ii) a waiver or

limitation of the Reorganized Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of the Reorganized Debtors' rights under the Bankruptcy Code or any other applicable nonbankruptcy law, or (iv) a waiver of the Reorganized Debtors' rights to estimate any claim asserted by the Newman Claimants pursuant to section 502(c) of the Bankruptcy Code. .

**Notice**

17. Notice of this Motion will be provided to (i) counsel to the Newman Claimants; and (ii) any other party entitled to notice pursuant to Local Rule 9013-1(d).

**No Previous Request**

18. No previous request for the relief sought herein has been made by the Reorganized Debtors to this or any other court.

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WHEREFORE the Reorganized Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: December 16, 2020  
Houston, Texas

Respectfully submitted,

/s/ Alfredo R. Pérez

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*Attorneys for the Reorganized Debtors*

**Certificate of Service**

I hereby certify that on December 16, 2020, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas, and will be served as set forth in the Affidavit of Service to be filed by the Debtors' claims and noticing agent.

/s/ Alfredo R. Pérez  
Alfredo R. Pérez



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

<b>In re:</b>	§	<b>Chapter 11</b>
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<b>UTEX INDUSTRIES, INC., et al.,</b>	§	<b>Case No. 20-34932 (DRJ)</b>
	§	
<b>Debtors.<sup>1</sup></b>	§	<b>(Jointly Administered)</b>
	§	<b>Re: Docket No. ____</b>

**ORDER (I) APPLYING BANKRUPTCY RULE 7068 TO LITIGATION ARISING FROM  
CLAIMS FILED BY THE NEWMAN CLAIMANTS; AND  
(II) GRANTING RELATED RELIEF**

Upon the motion, dated December 16, 2020 (the “**Motion**”)<sup>2</sup> of UTEX Industries, Inc. and its affiliated reorganized debtors in the above-captioned chapter 11 cases (collectively, the “**Reorganized Debtors**”), for entry of an order (i) applying Bankruptcy Rule 7068 to any contested matter in connection with the Newman Claims and (ii) granting related relief all as more fully set forth in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: UTEX Industries, Inc. (9867), RSH Utex Holdings, LLC (4048), Industrial Sealing Solutions Holdings Inc. (0104), UI Sealing Technologies Intermediate Holdings, Inc. (9553), UTEX Holding, Inc. (8260), Applied Rubber Technology, Inc. (1790), CAM Specialty Intermediate Holdings, Inc. (9099), CAM Specialty Products, Inc. (8342), Duraquest, Inc. (7017), Work Manufacturing, L.L.C. (5341), Energy Products LLC (8160), and Arefco Seals, Inc. (5258). The Debtors’ mailing address is 10810 Katy Freeway, Suite 100, Houston, TX 77043.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Court having reviewed the Motion; and this Court having held a hearing to consider the relief requested in the Motion; and all objections, if any, to the Motion have been withdrawn, resolved, or overruled; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Reorganized Debtors; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT**

1. The Motion is granted as set forth herein.
2. Bankruptcy Rule 7068 shall apply to any contested matter, including any estimation proceeding or claims objection, arising from or related to the Newman Claims.
3. For the purposes of Bankruptcy Rule 7068(d), “costs incurred” by the Reorganized Debtors shall include fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6) for each quarter or part thereof after an offer of settlement is made to the Newman Claimants.
4. The Reorganized Debtors are authorized to take all actions necessary or appropriate to carry out the relief granted in this Order.
5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: \_\_\_\_\_, 2020  
Houston, Texas

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UNITED STATES BANKRUPTCY JUDGE