

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

COMES NOW, Randal and Kim Newman (“Newman”), creditors, and file this *Response To Reorganized Debtors’ Motion For An Order (i) Applying Bankruptcy Rule 7068 To Contested Matters Arising From Claims Filed By The Newman Claimants And (ii) Granting Related Relief*, and would respectfully show as follows:

1. The Reorganized Debtors suggest that without the applicability of Rule 7068, they would have no ability to settle the action that they have instituted – a claim objection. The request is nothing more than a veiled attempt to try and later argue for an otherwise unavailable<sup>1</sup> fee shifting order from this Court.
2. In reality, the Reorganized Debtors can make an offer whenever they choose, they can offer to mediate or informally negotiate as in any other run-of-the-mill contested matter, however they are requesting this Court to give them potential additional leverage of a fee shifting argument to use against the claimants, as if money and teams of attorneys is not enough. These are the lengths that large corporations go in order to quite individuals that may deign to question the corporate company line. This claim objection is not unlike any other, and should proceed the same, without special rules for special players.

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<sup>1</sup> See *Marek, et al. v. Chesny*, 473 U.S. 1, 9 (1985) (“Costs” as referenced in Rule 68 includes attorney fees only when “properly awardable under the relevant substantive statute or other authority. In other words, all costs properly awardable in an action are to be considered within the scope of Rule 68 ‘costs.’”)

3. Even if found to be applicable in this contested matter, Rule 7068 cannot be utilized by the Reorganized Debtors, as 7068 only provides for “a party defending against a claim” to make an offer under the Rule. FED. R. BANKR. P. 7068(a). The Reorganized Debtors have instituted this proceeding by filing the Objection, they are the movant, or objecting party (the plaintiff)<sup>2</sup>. The Newmans are defending against the claims asserted by the Reorganized Debtors disputing their proof of claim.

### **RESPONSE**

4. Paragraph 1 of the *Reorganized Debtors’ Motion For An Order (i) Applying Bankruptcy Rule 7068 To Contested Matters Arising From Claims Filed By The Newman Claimants And (ii) Granting Related Relief* (the “Motion”) does not contain factual allegations that require a response.
5. Paragraph 2 of the Motion does not contain factual allegations that require a response.
6. Claimants admit this Court has jurisdiction and that venue is proper as alleged in paragraph 3 of the Motion.
7. Claimants admit the factual allegations contained in paragraph 4 of the Motion.
8. Claimants admit the factual allegations contained in paragraph 5 of the Motion.
9. Claimants admit the factual allegations contained in paragraph 6 of the Motion.
10. Claimants admit the factual allegations contained in paragraph 7 of the Motion.
11. Claimants would refer to the identified document regarding the contents thereof, and admits the remaining factual allegations contained in paragraph 8 of the Motion.
12. Claimants admit that the Court ordered the identified claim to be filed with the Bankruptcy Court, that the Court retained jurisdiction to determine any objection to the claim, would refer to the Confirmation Order regarding the contents of that Order, and denies the remaining factual allegations contained in paragraph 9 of the Motion.
13. Claimants would refer to the filed claim regarding the contents of the claim and admit that they filed their Claim timely as alleged in paragraph 10 of the Motion.

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<sup>2</sup> But see, *In re Simmons*, 765 F.2d 547, 552 (5th Cir.1985) (citing *Nortex Trading Corp. v. Newfield*, 311 F.2d 163, 164 (2nd Cir.1962))(stating that the filing of a proof of claim is analogous to the filing of a complaint in a civil action, with the bankrupt's objection the same as the answer.) The analysis in *Nortex*, as referenced in *Simmons* relates back to jurisdiction over a claimant by the Bankruptcy Court, not the procedural posture of the parties within a contested matter.

Claimants further respond that their claim is designated as Claim #9 on the Court's Claim Register.

14. Claimants are unable to admit or deny whether the Reorganized Debtors legitimately dispute the filed claim and deny the remaining factual allegations contained in paragraph 11 of the Motion.
15. Claimants deny the characterization of the claim filed, and are unable to admit or deny what the Reorganized Debtors believe as to the time and expense required to address valid claims, the Reorganized Debtors' resources, or their sincerity regarding any election to propose a legitimate offer to resolve the pending claim, and deny the remaining factual allegations contained in paragraph 12 of the Motion.
16. Claimants deny the factual allegations contained in paragraph 13 of the Motion.
17. Paragraph 14 of the Motion does not contain factual allegations that require a response.
18. Claimants deny the factual allegations contained in paragraph 15 of the Motion.
19. Claimants deny that the Reorganized Debtors may just *assert* or *claim* that no rights are waived or that claims are preserved, especially waiver or estoppel that may operate as a matter of law, as asserted in paragraph 16 of the Motion.
20. Claimants are unable to admit or deny the factual allegations contained in paragraph 17 of the Motion.
21. Claimants are unable to admit or deny the factual allegations contained in paragraph 18 of the Motion.

**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: January 6, 2021

Respectfully submitted,

By: /s/ Johnie Patterson  
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**COUNSEL FOR**  
**RANDAL & KIM NEWMAN**

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**CERTIFICATE OF SERVICE**

I, Johnie Patterson, hereby certify that counsel for the Reorganized Debtors were served by electronic service on January 6, 2021.

/s/ Johnie Patterson  
Johnie Patterson