

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re : Chapter 11
ALSET OWNERS, LLC, *et al.*,¹ : Case No. 09-11960 (BLS)
: (Jointly Administered)
Debtors. :

Hearing Date: September 29, 2009 @ 10:00 a.m. (ET)
Objections Due: September 25, 2009 @ 4:00 p.m. (ET)

**MOTION OF DEBTORS FOR ORDER (A) FIXING THE PROCEDURES
AND DEADLINES TO FILE PROOFS OF CLAIM PURSUANT TO
FED. R. BANKR. P. 2002 AND 3003 AND DEL. BANKR. L.R. 2002-1(E) AND
TO MAKE REQUESTS FOR PAYMENT OF ADMINISTRATIVE EXPENSE CLAIMS
AND (B) APPROVING THE FORM AND MANNER OF NOTICE OF BAR DATE**

Alset Owners, LLC and its debtor affiliates, the above-captioned debtors and debtors in possession (collectively, the “Debtors”), hereby file this motion (the “Motion”) requesting entry of an order (i) establishing the deadline for filing certain Proofs of Claim (defined below) against the Debtors pursuant to Rule 3003-1 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (ii) establishing the deadline for filing certain Administrative Expense Claims (defined below) against the Debtors, and (iii) approving the form and manner of notice thereof pursuant to Bankruptcy Rule 2002(a)(7) and Del. Bankr. L.R. 2002-1(e). In support of the Motion, the Debtors respectfully state as follows:

¹ The Debtors and the last four digits of their respective tax identification numbers are: Alset Owners, LLC, a Delaware limited liability company (7520); Altes, LLC, a Delaware limited liability company (6927); Setla, LLC, a Delaware limited liability company (6752); and Checkers Michigan, LLC, a Delaware limited liability company (8016). The Debtors’ service address is Altes, LLC/Setla, LLC, 1200 North Federal Highway, Boca Raton, FL 33432.

Jurisdiction

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This proceeding is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2)(A) and (O).
2. Venue of these proceedings and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief sought herein are sections 501, 502(b)(9) and 503 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 2002(a)(7) and 3003, and Del. Bankr. L.R. 2002-1(e).

Background

4. On June 5, 2009 (the “Petition Date”), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors’ chapter 11 cases are being jointly administered. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.
5. On June 24, 2009, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed the Official Committee of Unsecured Creditors (the “Committee”). No request has been made for the appointment of a trustee or examiner.
6. A thorough description of the Debtors and the events leading up to the Petition Date are set forth in the Amended Declaration of Leonard Levitsky in Support of Chapter 11 Petitions and First Day Relief (the “Levitsky Declaration”)², filed on June 18, 2009 [Dkt. No. 34].

² Capitalized terms not otherwise defined herein, shall have the meaning ascribed to them in the Levitsky Declaration.

7. The Debtors were the largest franchisee of Checkers Drive-In Restaurants, Inc., the national franchisor of the Rally's and Checkers' restaurant chains. Specifically, Debtors Altes, LLC ("Altes") and Setla, LLC ("Setla") operate Rally's restaurants in Arkansas, Missouri, Illinois, and Ohio. Checkers Michigan, LLC operated Checkers restaurants in Michigan but ceased operations there as of the Petition Date.

8. At their peak, in 2007, the Debtors collectively operated approximately 120 restaurants with the Rally's or Checkers brand in six states, and had over 2,500 employees. The competitive atmosphere, as well as the rise in food and labor costs, among other things, led the Debtors to restructure their operations starting in late 2007. As of the Petition Date, the Debtors operated 77 restaurants, down from their peak of about 120 restaurants in 2007.

9. On July 31, 2009, the Debtors each filed their schedules of assets and liabilities with the Court (the "Schedules"). The statutory meeting of creditors under section 341 of the Bankruptcy Code was concluded on August 26, 2009.

Request for Relief

10. The Debtors request that the Court, in accordance with Rule 3003(c) of the Bankruptcy Rules and Del. Bankr. L.R. 2002-1(e), establish a bar date relating to (i) prepetition unsecured claims, including any claims against the Debtors' estates based on the Debtors' primary, secondary, direct, indirect, fixed, secured, unsecured, contingent, guaranteed, disputed, undisputed, liquidated, unliquidated, matured, unmatured, legal or equitable liability, or claims arising from or relating to the rejection of an executory contract or unexpired non-residential real estate lease (the "Prepetition Claims"), (ii) administrative expense requests either (a) arising

under section 503(b)(9) of the Bankruptcy Code or (b) incurred after the Petition Date but on or prior to December 15, 2009 (the “Administrative Expense Claims”), (iii) claims arising from or relating to a recovered transfer of a voidable transfer (the “Recovered Transfer Claims”), (iv) claims of any governmental unit asserting a prepetition claim (the “Governmental Claims”), and (v) claims arising from or relating to an amendment to the Debtors’ Schedules (the “Amended Schedule Claims”).

11. Rule 3003(c)(3) of the Bankruptcy Rules provides: “[t]he court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed.” See Fed. R. Bankr. P. 3003(c)(3).

12. Pursuant to Del. Bankr. L.R. 2002-1(e), the request for a bar date may be granted without notice and hearing if the request: (a) gives ten (10) days notice to the United States Trustee and the Committee, (b) is filed after the schedules and statements of financial affairs have been filed, (c) is filed after the section 341(a) meeting of creditors has been held, (d) provides that the bar date shall not be less than sixty days from the date that notice of the bar date is served, and (e) provides that the bar date for governmental units shall not be less than one hundred eighty days from the order for relief. This Motion requests relief that is consistent with Del. Bankr. L.R. 2002-1(e).

Procedures and Deadlines for Filing a Proof of Claim

13. By this Motion, the Debtors request that the Court establish a bar date of December 15, 2009 (the “Bar Date”), a date that is at least sixty days from the date the Debtors

will provide notice of the deadline for filing of proofs of claim (each, a “Proof of Claim”) against the Debtors, except as otherwise provided for below.

14. The Debtors request that the Court enter an order requiring that any Person (defined below) asserting a claim against the Debtors’ estates file an original, written Proof of Claim with the Debtors’ claims agent, BMC Group Inc. (“BMC” or the “Claims Agent”) such that the Proof of Claim is received on or before the Bar Date.

15. The Debtors request that the Court establish the following deadlines for asserting a “claim” (as defined in section 101(5) of the Bankruptcy Code) against the Debtors:

a. **Prepetition Claims.** Each person or entity, including, without limitation, each individual, partnership, joint venture, corporation, limited liability company, estate, and trust (each, a “Person”) that asserts a claim against the Debtors that arose prior to the Petition Date must file a Proof of Claim on or before the Bar Date, provided, however, that any Person asserting a Prepetition Claim by reason of the rejection of an executory contract or unexpired lease, pursuant to section 502(g) of the Bankruptcy Code and Bankruptcy Rule 3002(c)(4), must file a Proof of Claim on or before the later of (i) thirty days after the date of the rejection of such contract or lease or (ii) the Bar Date, unless a different date is, or has previously been, otherwise ordered by the Court.

b. **Administrative Expense Claims.** Any Person asserting a request for payment of administrative expenses arising between the Petition Date and December 15, 2009 (but excluding claims for fees and expenses of professionals retained in these proceedings

and members of the Committee in these cases) or under section 503(b)(9) of the Bankruptcy Code, must file a motion for allowance of such claim on or before the Bar Date.

c. **Recovered Transfer Claims.** Any Person asserting a claim by reason of the recovery of a voidable transfer, pursuant to section 502(h) of the Bankruptcy Code and Bankruptcy Rule 3002(c)(3), must file a Proof of Claim on or before the later of (i) the Bar Date or (ii) thirty days after the consensual resolution of or entry of final judgment avoiding such transfer and payment of such recovered transfer to the respective Debtors' estate, unless a different date is otherwise ordered by the Court.

d. **Governmental Claims.** Any governmental unit (which shall include all entities defined as such in section 101(27) of the Bankruptcy Code, including any such entities that hold a Claim arising from prepetition tax years or periods or prepetition transactions to which a Debtor was a party) that is asserting a claim against the Debtors must file a Proof of Claim on or before the Bar Date, which is in excess of the statutory one-hundred-eighty day deadline in accordance with section 502(b)(9) of the Bankruptcy Code.

e. **Amended Schedules Claims.** Following the notice of any amendment to the Schedules pursuant to Bankruptcy Rule 1009(a), which amendment (i) reduces the liquidated amount or changes the priority of a scheduled Prepetition Claim, or (ii) reclassifies a scheduled, undisputed, noncontingent Prepetition Claim to be disputed, unliquidated, undetermined, and/or contingent, or (iii) adds a Prepetition Claim that was not listed on the original Schedules, any person or entity affected by such amendment shall be permitted to file a Proof of Claim only on or before the later of (a) the Bar Date or (b) the first business day that is

at least thirty calendar days after the mailing of notice of such amendment. No extension of time shall be warranted if a Debtor's amendment to the Schedules increases the Prepetition Claim deemed filed under section 1111(a) of the Bankruptcy Code.

16. Following the Bar Date or such other applicable deadline as is described above, a Person or entity shall not be allowed to amend a claim deemed filed on its behalf under section 1111(a) of the Bankruptcy Code by virtue of the listing of such claim by the Debtors in the Schedules.

Excluded Claims

17. The Debtors further request that the Court direct that notice of the Bar Date provide that the following persons or entities not be required to file a Proof of Claim (the "Excluded Claims"):

a. no Proof of Claim need be filed by any person, entity, or governmental unit that has already properly filed a Proof of Claim with the Claims Agent, or with the Clerk of the Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, DE 19801;

b. no Proof of Claim need be filed by any Person or governmental unit if that Person or governmental unit's Prepetition Claim is listed in the Schedules (or any amendment thereto) and is not scheduled as being contingent, unliquidated, or disputed, unless the Person or governmental unit believes that it is owed a different amount or its Prepetition Claim is entitled to a different priority than that reflected in the Schedules;

c. no Proof of Claim need be filed by any Person or governmental unit if that Person or governmental unit's Prepetition Claim previously has been allowed by order of the Court; and

d. no Proof of Claim need be filed with respect to administrative expense claims for fees and expenses of professionals retained in these proceedings and members of the Committee in these cases.

18. The Debtors further request a determination by this Court that any Person or governmental unit that is required to file a Proof of Claim but does not do so in compliance with the Bar Date and procedures established pursuant to the Motion shall not, with respect to any such claim, be treated as a creditor of the Debtors for the purposes of voting and distribution.

The Bar Date Notice Procedures

19. The Debtors will provide actual, written notice of the Bar Date (the "Notice"), substantially in the form attached hereto as **Exhibit A**, on or before October 9, 2009 to (i) the Office of the United States Trustee, (ii) counsel for the Committee, (iii) all Persons and governmental units on the Debtors' creditor matrix, (iv) all known holders of claims listed on the Debtors' Schedules and, as applicable, any amended Schedules, at the addresses stated therein, (v) all relevant taxing authorities, (vi) the District Director of Internal Revenue for the District of Delaware, and (vii) all parties that have requested notice in these cases pursuant to Bankruptcy Rule 2002. Such Notice shall be sent by first class mail.

20. Parties in interest will therefore be afforded not less than sixty days notice prior to the Bar Date. Simply because a Person or governmental unit receives notice of the Bar

Date by the procedures set forth above does not mean that the Debtors believe such Person or governmental unit has a claim against the Debtors or their estates. Accordingly, the Debtors reserve the right to object to any claim filed in these cases, whether filed or Scheduled, on any grounds.

21. With the Notice, the Debtors propose to send a Proof of Claim form, substantially in the form of Official Form No. 10. The Debtors request that the Court approve the form of Notice attached hereto as Exhibit A.

22. In order to provide notice to potential creditors, the Debtors, depending on the costs involved, may publish notice of the Bar Date in a national newspaper. The form of the publication notice, if published, would provide additional notice of the Bar Date and information regarding how to file a claim.

23. The Debtors respectfully submit that the procedures proposed herein are appropriate because they are reasonably calculated to provide Persons and governmental units asserting claims against the Debtors with notice of the Bar Date, which is consistent with Del. Bankr. L.R. 2002-1(e), and to provide ample time to file Proofs of Claim.

24. The Debtors hereby reserve the right, at their option, to file a Proof of Claim in accordance with Rule 3004 of the Bankruptcy Rules, or at such later date established by the Court upon the request of the Debtors, for any creditor that fails to do so on its own behalf for any reason whatsoever.

25. Additionally, the Debtors expressly reserve the right (i) to request that the Court establish a subsequent bar date for the Excluded Claims and (ii) to object to any Proof of Claim or Scheduled claim filed in these cases on any basis.

Basis for Relief

26. Bankruptcy Rule 3003(c)(3) provides that the Court “shall fix . . . the time within which proofs of claim or interest may be filed.” Del. Bankr. L.R. 2002-1(e) provides that a request for such bar date may be granted by the Court, without notice or a hearing, on 10 days’ notice to the United States Trustee and the Committee, provided that the Schedules have been filed and the § 341 meeting has been held, both of which have occurred, and provided that the bar date notice is served at least 60 days prior to the bar date and not less than 180 days from the Petition Date for governmental units, all of which are contemplated by this Motion.

27. Furthermore, Bankruptcy Rule 3002(a) provides that an unsecured creditor or an equity security holder must file a proof of claim or interest, except as provided in Bankruptcy Rule 3003. Bankruptcy Rule 3003(b), which applies in chapter 11 cases, provides that the Schedules filed by a debtor shall constitute *prima facie* evidence of the validity and the amount of the claims of creditors, unless they are scheduled as disputed, contingent, unliquidated or unknown. In other words, no filing of a claim is necessary by a creditor for a claim that appears on the Schedules and which is not scheduled as disputed, contingent, unliquidated or unknown by the debtor and to which the debtor is in agreement.

28. Bankruptcy Rule 3003(c)(2), in turn, provides that any creditor or equity security holder whose claim or interest is not listed in the Schedules, or is listed as disputed,

contingent, unliquidated or unknown, shall file a proof of claim within the time prescribed by subsection (c)(3) of that Bankruptcy Rule, and any such creditor who fails to file such a proof of claim shall not be treated as a creditor with respect to such claim or interest for the purposes of receiving any distribution from the estates. *See* Fed. R. Bank. P. 3003(c)(2).

29. In conjunction with the setting of the Bar Date, the Debtors must ensure that interested parties receive appropriate notice of such date. To determine the adequacy of notice given to a creditor, bankruptcy law distinguishes between “known” and “unknown” creditors. *See In re Chemetron Corp.*, 72 F.3d 341, 345 (3d Cir. 1995). As the Third Circuit in Chemetron explained, “[k]nown creditors must be provided with actual written notice of a debtor’s bankruptcy filing and bar claims date. For unknown claimants, notification by publication will generally suffice.” *Id.* at 346 (citations omitted). A “known” creditor is “one whose identity is either known or is ‘reasonably ascertainable by the debtor.’” *Id.* (citing Tulsa Professional Collection Serv., Inc. v. Pope, 485 U.S. 478, 490 (1988)). An “unknown” creditor is “one whose ‘interests are either conjectural or future or, although they could be discovered upon investigation, do not in due course of business come to knowledge [of the debtor].’” Chemetron, 72 F.3d at 346 (citing Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 317 (1950)).

30. In defining the efforts required to identify “known” creditors, the Third Circuit stated:

Precedent demonstrates that what is required is not a vast, open-ended investigation . . . The requisite search instead focuses on the debtor’s own books and records. Efforts beyond a careful examination of these documents are generally not required. Only

those claimants who are identifiable through a diligent search are “reasonably ascertainable” and hence “known” creditors.

Chemetron, 72 F.3d at 346-47 (citations omitted). As for the particular efforts a debtor must exert to identify known creditors, “[w]hether a creditor received adequate notice of a bar date ‘depends upon the facts and circumstances of a given case.’” In re The Grand Union Co., 204 B.R. 864, 871 (Bankr. D.Del. 1997) (citing In re Robintech, Inc., 863 F.2d 393, 396 (5th Cir.), cert. denied, 493 U.S. 811 (1989)).

31. The Debtors submit that the proposed notice program respecting the Bar Date more than satisfies the Chemetron standard. The Debtors have identified those entities known to hold claims against the Debtors or especially likely to be potential holders of Prepetition Claims. Those entities were identified following a careful review of the Debtors’ books and records and those of the Debtors’ professionals, where applicable. Upon information and belief, the list of creditors that is contained in the Debtors’ Schedules (or as listed in any supplements or amendments thereto) and the original matrix of creditors filed at the inception of these cases includes the names and addresses of all known creditors and potential creditors of the Debtors.

32. Prior to the date hereof, creditors and interested parties may have filed proofs of claim with the Clerk of the Court or the Claims Agent in these cases. In order to avoid the result that creditors file duplicative claims in response to the Bar Date Notice to be served by the Debtors (or their Claims Agent), the Debtors hereby propose that creditors who have already

filed proofs of claim with the Court or Claims Agent not be required to file a proof of claim a second time.

33. The Debtors intend to serve a copy of the Bar Date Notice on or before **October 9, 2009**, by U.S. Postal Service first class mail, postage prepaid, on the following parties: (i) the Office of the United States Trustee, (ii) counsel for the Committee, (iii) all Persons and governmental units on the Debtors' creditor matrix, (iv) all known holders of claims listed on the Debtors' Schedules and, as applicable, any amended Schedules, at the addresses stated therein, (v) all relevant taxing authorities, (vi) the District Director of Internal Revenue for the District of Delaware, and (vii) all parties that have requested notice in these cases pursuant to Bankruptcy Rule 2002. The Debtors also intend, depending on the costs involved, to publicize notice of the Bar Date for any potential creditor who may not have been previously identified on the existing creditor matrix or Schedules.

34. The circumstances of these cases justify fixing the Bar Date as requested herein. It is essential to ascertain, as soon as possible, the full nature, extent and scope of the claims asserted against the Debtors and their estates. The Debtors must determine the amount of claims that may share existing cash on hand and other non-core assets, if any.

Notice

35. Notice of this Motion has been given to the following parties or, in lieu thereof, to its counsel, if known: (i) the Office of the United States Trustee and (ii) counsel to the Official Committee of Unsecured Creditors. The Debtors submit that, in light of the nature of the relief requested and Del. Bankr. L.R. 2002-1(e), no other or further notice need be given.

No Prior Request

36. No prior application for the relief sought herein has been duly made by the Debtors to this or any other Court.

WHEREFORE, the Debtors respectfully request that this Court enter an order establishing the Bar Date as set forth herein, (ii) approving the procedures requested in the Motion, (iii) establishing the effect of failure to comply with the deadlines and procedures so established, (iv) approving the form, manner and scope of notice substantially in the form attached hereto as Exhibit A, and (v) granting such other and further relief as is just and proper.

Dated: September 15, 2009

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