

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re: ) Chapter 11  
)  
GULF PACKAGING, INC., ) Case No. 15-15249 (PSH)  
)  
Debtor. ) Honorable Pamela S. Hollis  
)  
) **Hearing Date: December 10, 2015**  
) **Hearing Time: 10:00 a.m.**  
) **Court Room: 644**

**NOTICE OF GULF PACKAGING, INC.’S FIRST OMNIBUS OBJECTION TO  
PRIORITY CLAIMS PURSUANT TO FED. R. BANKR. P. 3007(D)(8)**

**PLEASE TAKE NOTICE** that on **December 10, 2015 at 10:00 a.m.** (prevailing Central Time), or as soon thereafter as counsel may be heard, we shall appear before the Honorable Pamela S. Hollis of the United States Bankruptcy Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois, Courtroom No. 644, or whomever may be sitting in her place and stead, and then and there present the attached **GULF PACKAGING, INC.’S FIRST OMNIBUS OBJECTION TO PRIORITY CLAIMS PURSUANT TO FED. R. BANKR. P. 3007(D)(8)**, a copy of which is attached hereto and hereby served upon you.

**YOU ARE RECEIVING THIS NOTICE BECAUSE GULF PACKAGING, INC. (the “DEBTOR”) IS OBJECTING TO YOUR CLAIM(S) BY THE ATTACHED OBJECTION (the “OBJECTION”). YOU SHOULD LOCATE YOUR NAME AND CHECK YOUR CLAIM(S) ON EXHIBIT A AND B ATTACHED THERETO. PLEASE TAKE NOTICE THAT, AS A RESULT OF THE OBJECTION, YOUR CLAIM(S) MAY BE DISALLOWED, RECLASSIFIED, REDUCED OR OTHERWISE AFFECTED. THEREFORE, PLEASE READ THIS NOTICE AND THE ACCOMPANYING OBJECTION VERY CAREFULLY.**

**PLEASE TAKE FURTHER NOTICE** that if you disagree with the Objection to your claim, you must file a response (the “Response”) containing the following information:

- a. A caption stating the name of the Court, the name of the Debtor, the case number and the Objection to which the Response is directed;
- b. A concise statement setting forth the reasons why the Court should not grant the Objection to the claim including the factual and legal bases upon which the claimant will rely in opposing the objection;
- c. A copy of any other documentation or other evidence of the claim, to the extent not already included in the proof of claim, upon which the claimant will rely in opposing the objection; provided however that the claimant need not disclose confidential, proprietary or otherwise protected information in the Response; and
- d. The name, address telephone number and e-mail address of the responding claimant or the name, address, telephone number and e-mail address of the claimant's attorney or designated representative to whom the attorneys for the Debtors should serve a reply to the response.

**PLEASE TAKE FURTHER NOTICE** that any response to the Objection must be filed with the U.S. Bankruptcy Court, 219 S. Dearborn St., Chicago, Illinois 60604 by December 3, 2015, at 4:00 p.m. (prevailing Central Time) and served so as to be actually received at such time by: (1) counsel to the Debtor, Gray Reed & McGraw, P.C., 1601 Elm Street, Suite 4600, Dallas, Texas 75201, Attn: Jason S. Brookner ([jbrookner@grayreed.com](mailto:jbrookner@grayreed.com)) and FrankGecker LLP, 325 N. LaSalle Street, Suite 625, Chicago, Illinois 60654, Attn: Jeremy Kleinman ([jkleinman@fgllp.com](mailto:jkleinman@fgllp.com)), (ii) counsel to the Committee, Freeborn & Peters LLP, 311 S. Wacker Drive, Suite 3000, Chicago, Illinois 60606, Attn: Shelly DeRousse ([sderousse@freeborn.com](mailto:sderousse@freeborn.com)) and Richard S. Lauter ([rlauter@freeborn.com](mailto:rlauter@freeborn.com)), and (iii) the Office of the United States Trustee, 219 S. Dearborn Street, Room 873, Chicago, Illinois 60604, Attn: Kathryn M. Gleason ([kathryn.m.gleason@usdoj.gov](mailto:kathryn.m.gleason@usdoj.gov)).

**PLEASE TAKE FURTHER NOTICE** that copies of all documents filed in this Chapter 11 case are available free of charge by the visiting the website maintained by BMC Group, Inc. at [www.bmcgroup.com/gpi](http://www.bmcgroup.com/gpi). You may also view copies of any pleadings by visiting the Court's website at [www.ilnb.uscourts.gov](http://www.ilnb.uscourts.gov) in accordance with the fees and procedures set forth therein.

GULF PACKAGING, INC.

By:  /s/ Joseph D. Frank  
One of its attorneys

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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

	)	
In re:	)	Chapter 11
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GULF PACKAGING, INC., <sup>1</sup>	)	Case No. 15-15249 (PSH)
	)	
Debtor.	)	
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**GULF PACKAGING, INC.’S FIRST OMNIBUS OBJECTION TO PRIORITY CLAIMS  
PURSUANT TO FED. R. BANKR. P. 3007(D)(8)**

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Gulf Packaging, Inc., the above-captioned debtor and debtor in possession (the “Debtor”), for its First Omnibus Objection to Priority Claims Pursuant to Fed. R. Bankr. P. 3007(d)(8) (the “Omnibus Objection”), respectfully states as follows:

**JURISDICTION**

1. The Bankruptcy Court has jurisdiction over this Omnibus Objection pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the relief requested are sections 105 and 502 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), and Rules 3007(a) and 3007(d)(8) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

**BACKGROUND**

2. On April 29, 2015 (the “Petition Date”), the Debtor filed with this Court its petition for relief under chapter 11 of title 11 of the Bankruptcy Code. The Debtor continues to operate its business and manage its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

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<sup>1</sup> The last four digits of the Debtor’s tax identification number are 5030.

3. On May 11, 2015, the Office of the United States Trustee appointed an official committee of unsecured creditors (the "Committee"). No request has been made for the appointment of a trustee or examiner.

4. For the majority of GPI's business leading up to the Petition Date, either ADP Total Source ("ADP") or GPI's affiliates (the "Affiliates")<sup>2</sup> employed the salespersons who generate sales to customers. Customers issued purchase orders to GPI through one of the Affiliates, and GPI would then issue a purchase order to its own trade vendors, thereby creating an account payable for GPI. GPI had the obligation to pay for the purchase and delivery of the goods in question, which were delivered to the customers. GPI creates an account receivable with the customer in the name of GPI with remittance by the customer to be made for the benefit of GPI to a Key Bank lock box account owned and controlled by FCC. On occasion, a customer may pay an Affiliate other than GPI. In those instances, the funds are sent to the Affiliate to the lock box account at Key Bank.

5. As of the Petition Date, the Debtor employed two (2) employees directly ("Direct Employees"). Additionally, as of the Petition Date, the Affiliates employed approximately fifty (50) to sixty-five (65) employees ("Affiliate Employees"). Generally, the Direct Employees and Affiliate Employees were either paid a salary (on a draw and commissions basis), or on an hourly basis. Additionally, one of the Affiliates, GSI, leased all of its personnel from ADP Total Source ("ADP"). Such persons are employees of ADP, but performed services for GSI (the "ADP Employees").

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<sup>2</sup> As used herein, "Affiliate" means a company that has a relationship – formal or informal – to the Debtor, and sells packaging products under a variation of the Gulf name. Unless otherwise set forth, use of the term "Affiliate" is not intended to have the same meaning as the "affiliate" term of art defined in section 101(2) of the Bankruptcy Code. All rights with respect to this issue are reserved.

6. On May 15, 2015, the Debtor filed its Motion for Entry of an Order Establishing Deadlines for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof [Docket No. 93], which motion was granted with the entry of this Court's order on May 28, 2015 [Docket No. 130] (the "Bar Date Order").

**OMNIBUS OBJECTION TO INCORRECT OR OVERSTATED PRIORITY CLAIMS**

7. The undersigned counsel for the Debtor has examined the claims filed in the Case, and determined that the claims identified on the schedule attached hereto as **Exhibit A** consist of priority claims of Direct Employees that seek payment in excess of the statutory priority cap for those claims set forth in section 507(a)(4) of the Bankruptcy Code (the "Overstated Priority Claims").

8. Section 507(a)(4) provides for priority of payment for

[A]llowed unsecured claims, but only to the extent of \$12,475 for each individual or corporation, as the case may be, earned within 180 days before the dated of the filing of the petition or the date of the cessation of the debtor's business, whichever comes first, for—

- (A) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or
- (B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.

11 U.S.C. § 507(a)(4).

9. Bankruptcy Rule 3007(d)(8) provides that "objections to more than one claim may be joined in an omnibus objection if . . . [the claims] assert priority in an amount that exceeds the maximum amount under § 507 of the Code." Fed.R.Bankr.P. 3007(d)(8).

10. By this Omnibus Objection, the Debtor seeks to reclassify, in part, the Overstated Priority Claims, reclassifying all claim amounts over the \$12,475 limit imposed by section 507(a)(4) of the Bankruptcy Code (the “507(a)(4) Limit”) as general unsecured claims.<sup>3</sup>

11. The Debtor has also determined that the claims identified on the schedule attached hereto as **Exhibit B** consist of priority claims of individuals who are either Affiliate Employees or ADP Employees. These claimants are not employees of the Debtor and do not have any direct right to payment of salary, wages or commission from the Debtor.

12. In addition, although certain of these claims are for sales commissions, as set forth above, because these individuals are employed by the Affiliates (each of which has more than one employee) and all sales were made by those Affiliates, these Affiliate Employees and ADP Employees were not acting as independent contractors on behalf of the Debtor. Accordingly, their claims do not qualify under section 507(a)(4)(B) as sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor’s business. Accordingly, these claims are not entitled to priority in any amount under section 507(a)(4) of the Bankruptcy Code. As a result, the Debtor requests that the claims set forth in Exhibit B be reclassified as general unsecured claims in their entirety.

13. The Debtor does not oppose allowing the claims set forth in Exhibit B *for voting purposes only* as general unsecured claims in the amounts set forth therein. The Debtor, however, reserves all rights to object to the merits and substance of such claims and nothing herein should be deemed a waiver of any such rights.

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<sup>3</sup> The Debtor reserves the right to assert additional substantive objections to each of these Claims by separate objection, to the extent necessary, and are not consenting to their allowance at this time for any purpose other than voting.

WHEREFORE, Gulf Packaging, Inc. respectfully requests that the Court enter an order:

- A. Reclassifying those portions of Claims set forth on Exhibit A in excess of the limits of 11 U.S.C. § 507(a)(4) as general unsecured claims;
- B. Reclassifying the Claims set forth on Exhibit B in their entirety as general unsecured claims; and
- C. granting such further relief as this Court deems fair and just.

Respectfully submitted this 3<sup>rd</sup> day of November, 2015.

**FRANKGECKER LLP**

/s/ Joseph D. Frank

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-and-

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**COUNSEL TO THE DEBTOR**