

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

In re:

Morgan Administration, Inc., *et al.* d/b/a
Home Owners Bargain Outlet,

Debtors.¹

Chapter 11

Case No. 18-30039
(Jointly Administered)

Honorable Jacqueline P. Cox

Hearing Date: May 11, 2021 at 1:00 p.m.

**NOTICE OF OBJECTION TO CLAIM NO. 106 FILED BY
WELLS FARGO BANK N.A. AND WELLS FARGO MERCHANT SERVICES L.L.C.**

PLEASE TAKE NOTICE that on May 11, 2021 at 1:30 p.m., the undersigned shall appear before the Honorable Jacqueline P. Cox telephonically, pursuant to the Third Amended General Order No. 20-03, and present the *Creditor Trustee's the Objection to Claim No. 106 filed by Wells Fargo Bank N.A. and Wells Fargo Merchant Services L.L.C.* (the "**Objection**"), a copy of which is attached hereto and thereby served upon you.

The Bankruptcy Court will use Zoom for Government for appearances and the instructions are as follows:

Join ZoomGov meeting:
<https://www.zoomgov.com>
Meeting ID: 1612732896
Passcode: 778135

To join by telephone:
1-669-254-5252 or 1-646-828-7666
Meeting ID: 1612732896
Passcode: 778135

PLEASE TAKE FURTHER NOTICE that a party who objects to this motion and wants it called must file a Notice of Objection no later than two (2) business days before the presentment date. If a Notice of Objection is timely filed, the motion will be called on the presentment date. If no Notice of Objection is timely filed, the Court may grant the motion without a hearing before the date of presentment.

¹ The Debtors, along with the last four digits of each Debtor's federal tax identification number are the following entities: (i) Morgan Administration, Inc. (4200); (ii) Belvidere Associates, LLC (8559); (iii) FP Retail Associates, LLC (0915); (iv) Hillcrest Enterprises, LLC (4581); (v) Jular Media, LLC (0805); (vi) KLS Acquisition Corp. (0925); (vii) Loomis Enterprises, LLC (5451); (viii) North Avenue Associates, LLC (3229), (ix) Oak Creek Distributions, LLC (0634); (x) OL Enterprises, LLC (9401); and (xi) Deforab, LLC (9348).

Dated: April 9, 2021

BECK, CHAET, BAMBERGER & POLSKY, S.C.

By: /s/ Devon J. Eggert

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*Counsel for Sandor Jacobson, As Creditor Trustee of the
Morgan Administration, Inc., et al. Creditor Trust*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
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In re:

Morgan Administration, Inc., *et al.* d/b/a
Home Owners Bargain Outlet,

Debtors.²

Chapter 11

Case No. 18-30039
(Jointly Administered)

Honorable Jacqueline P. Cox

Hearing Date: May 11, 2021 at 1:00 p.m.

CERTIFICATE OF SERVICE

I, Devon J. Eggert, an attorney, hereby certify that on April 9, 2021 I caused a true and correct copy of the attached *Notice of Claim Objection to Claim No. 106 filed by Wells Fargo Bank N.A. and Wells Fargo Merchant Services L.L.C.* and *Objection to Claim No. 106 filed by Wells Fargo Bank N.A. and Wells Fargo Merchant Services L.L.C.* to be filed with the Court and served upon the following parties by the manner listed.

Dated: April 9, 2021

/s/ Devon J. Eggert

VIA MAIL

Wells Fargo Bank N.A.
Attn: Kenneth Juni
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Concord, CA 94520

First Data
Attn: Bram A. Maravent
3975 NW 120th Ave.
Coral Springs, FL 33065

Joseph Pack
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Miami, FL 33137

² The Debtors, along with the last four digits of each Debtor's federal tax identification number are the following entities: (i) Morgan Administration, Inc. (4200); (ii) Belvidere Associates, LLC (8559); (iii) FP Retail Associates, LLC (0915); (iv) Hillcrest Enterprises, LLC (4581); (v) Jular Media, LLC (0805); (vi) KLS Acquisition Corp. (0925); (vii) Loomis Enterprises, LLC (5451); (viii) North Avenue Associates, LLC (3229), (ix) Oak Creek Distributions, LLC (0634); (x) OL Enterprises, LLC (9401); and (xi) Deforab, LLC (9348).

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:) Chapter 11
)
Morgan Administration, Inc., *et al.* d/b/a) Case No. 18-30039
Home Owners Bargain Outlet,¹) (Jointly Administered)
)
Debtors.) Hon. Jacqueline P. Cox
)
) Hearing Date: May 11, 2021 at 1:00 p.m.
)

**OBJECTION TO CLAIM NO. 106 FILED BY
WELLS FARGO BANK N.A. AND WELLS FARGO MERCHANT SERVICES L.L.C.**

Sandor Jacobson, not individually, but solely as the Creditor Trustee for the Morgan Administration, Inc. *et al.* Creditor Trust (the “**Creditor Trustee**”), by and through his undersigned counsel, hereby submits this objection (the “**Objection**”) to Claim No. 106 (the “**Claim**”) filed against Morgan Administration, Inc., and its affiliated debtor entities (the “**Debtors**”) by Wells Fargo Bank N.A. and Wells Fargo Merchant Services L.L.C. (collectively, “**Wells Fargo**” or “**Claimant**”) pursuant to sections 105 and 502 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 3007-1 of the Local Rules of Bankruptcy Procedure for the U.S. Bankruptcy Court of the Northern District of Illinois (the “**Local Rules**”). In support hereof, the Creditor Trustee states as follows:

¹ The debtors in these cases, along with the last four digits of each debtor’s federal tax identification number, are: Morgan Administration, Inc. (4200); Belvidere Associates LLC (8559); FP Retail Associates LLC (0915); Hillcrest Enterprises, LLC (4581); Jular Media LLC (0805); KLS Acquisition Corp. (0925); Loomis Enterprises LLC (5451); North Avenue Associates LLC (3229); Oak Creek Distribution LLC (0634); OL Enterprises LLC (9401); and Deforab LLC (9348) (collectively, the “**Debtors**”).

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 1334 and 157(a).

This is a core proceeding under 28 U.S.C. § 157(b)(2).

2. Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested in this Objection are sections 105 and 502 of the Bankruptcy Code, Bankruptcy Rules 3007, and Local Rule 3007-1.

BACKGROUND

I. Case Background

4. On October 25, 2018 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. A detailed summary of the Debtors’ operations and history is set forth in the Amended Declaration of Michael Goldman in Support of First Day Motions. (ECF No. 41.)

5. The Office of the United States Trustee appointed an Official Committee of Unsecured Creditors (the “**Committee**”) on November 5, 2018. (ECF No. 78).

6. On July 24, 2019, the Committee and the Debtors File a Joint Plan of Liquidation (as amended, the “**Plan**”) and Disclosure Statement.

7. On September 13, 2019, this Court entered an order confirming the Plan (the “**Confirmation Order**”). Pursuant to the Plan and Confirmation Order, Sandor Jacobson was appointed as the Creditor Trustee.

8. On that same date, the Court entered an order substantively consolidating the Debtors’ estates as of the effective date of the Plan, and the case of Morgan Administration, Inc. was deemed the surviving consolidated estate. (ECF No. 283).

9. The effective date of the Plan was October 15, 2019 (the “**Effective Date**”).

II. The Claim

10. On January 28, 2019, Claimant filed the Claim for an unknown and unliquidated amount based upon certain merchant servicing agreements between the Debtors and Wells Fargo whereby Wells Fargo purportedly provided credit card processing services to the Debtors in exchange for fees.

11. A true and correct copy of the Claim is attached here to as **Exhibit 1**.

RELIEF REQUESTED

12. The Creditor Trustee respectfully requests the entry of an Order, pursuant to sections 105 and 502 of the Bankruptcy Codes, Bankruptcy Rule 3007, and Local Rule 3007-1, disallowing the Claim as such claim is unliquidated and contingent.

13. A proof of claim filed by a creditor is “deemed allowed unless a party in interest objects.” 11 U.S.C. § 502(a). If an objection refuting at least one of the claim’s essential allegations is asserted, the claimant has the burden of proof to demonstrate the validity of the claim. *In re DeKroon*, 593 B.R. 778, 784 (Bankr. N.D. Ill. 2018). The ultimate burden of persuasion remains with a claimant to establish entitlement to its claim. *In re Woodruff*, 600 B.R. 616, 629 (Bankr. N.D. Ill. 2019).

14. Furthermore, § 502(b)(1) of the Bankruptcy Code provides that a claim may not be allowed to the extent that “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law.” 11 U.S.C. § 502(b)(1).

15. “[A] claim is contingent if the debtor's legal duty to pay does not come into existence until triggered by the occurrence of a future event.” *Pearl-Phil GMT (Far E.) Ltd. v. Caldor Corp.*, 266 B.R. 575, 580 (S.D.N.Y. 2001) (internal quotation marks and citations omitted). Moreover, “a right to payment becomes so contingent that it cannot fairly be deemed a right to

payment at all.” *In re Conseco, Inc.*, 330 B.R. 673, 685 (Bankr. N.D. Ill. 2005).

16. The Claim provides that the amounts owing to Claimant under the parties’ agreement is subject to change. Accordingly, the Claim was filed as unliquidated, with no specific dollar amount referenced in answer to Question 7 of the Proof of Claim form.

17. The Claim should be disallowed and expunged. The Claim is considered a Disputed Claim under the Plan because it is unliquidated. (*See* Plan § I.A.33). The Claim has not been amended to reflect a liquidated value despite the passage of more than two years since its initial filing. The Creditor Trustee has no ability to determine the amount of the unliquidated Claim, and the Claim must be resolved prior to making a final distribution in these cases

18. Based upon the foregoing, the Creditor Trustee submits that the Claim should be disallowed and expunged.

RESERVATION OF RIGHTS

19. The Creditor Trustee is engaging in an ongoing analysis and reconciliation process with respect to the Claims filed or asserted in these Cases. Accordingly, the Creditor Trustee may file additional claim objections. The Creditor Trustee reserves all rights to assert additional objections against allowance of the Claim, if necessary.

WHEREFORE, the Creditor Trustee requests entry of an order: (i) disallowing and expunging the Claim; and (ii) granting such other and further relief as the Court deems just and proper.

Dated: April 9, 2021

BECK, CHAET, BAMBERGER & POLSKY, S.C.

By: /s/ Devon J. Eggert

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*Counsel for Sandor Jacobson, As Creditor Trustee of
the Morgan Administration, Inc., et al. Creditor Trust*