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UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re

JENNIFER CONVERTIBLES, INC.

Debtors.

Case No. 10-13779 (ALG)

Chapter 11

(Jointly Administered)

**RESPONSE OF THE OHIO DEPARTMENT OF TAXATION TO DEBTORS'
THIRD OMNIBUS OBJECTION TO CERTAIN PROOFS OF CLAIM FILED AS
PRIORITY AND SECURED CLAIMS THAT DO NOT CORRESPOND TO THE
DEBTORS' BOOKS AND RECORDS**

The Ohio Department of Taxation ("Tax"), through Ohio Attorney General Mike DeWine, hereby responds to Debtors' Third Omnibus Objection to Certain Proofs of Claim Filed as Priority and Secured Claims that do not Correspond to the Debtors' Books and Records. Debtors assert that claim number 352 in the amount of \$2,960.354 filed by Tax and claim number 353 in the amount of \$6,409.19 filed by Tax in the amount of \$5,6160.21 should be disallowed that on the basis that their books and records do not reflect that the debt is owed, along with a list of possible reasons with

none specifically asserted. As filed, the proof of claim “creates a prima facie valid claim”. The burden is on the objecting party to “produce sufficient evidence to negate this prima facie validity of the claim”. *In re Mission of Care, Inc.*, 164 B.R. 877 (Bankr.De.1994). Debtors have failed to produce such evidence. Instead, Debtors have simply made a bare assertion that they not owe the debt. Debtors’ bare assertion that the claim is not owed is not sufficient to meet that burden. Because the proofs of claim are presumptively valid, the burden is now on Debtors to produce “substantial evidence” to rebut the prima face case of Tax. *In re Hemingway*, 993 F.2d 915, 925 (1st Cir. 1993), *cert denied* 510 U.S. 914.

WHEREFORE, Tax respectfully requests that this Court overrule Debtors’ motion and allow the claims as filed by the Ohio Department of Taxation.

Dated: 5/10/11

MIKE DEWINE
Attorney General of Ohio

/s/ Victoria D. Garry
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CERTIFICATE OF SERVICE

I hereby certify that the forgoing *Response of the Ohio Department of Taxation to Debtors’ Third Omnibus Objection to Certain Proofs of Claim* was served electronically by this 10th day of May , 2011 upon the service list.

/s/ Victoria D. Garry
VICTORIA D. GARRY