UNITED STATES BANKRUPTCY COURT FOR
THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

In re: O CORP CORPORATION, *et al.*,[1] Debtors.	Chapter 11 Case No. 13-4006 Judge Lundin (Jointly Administered) **RESPONSE DEADLINE: 2/24/15** **HEARING SCHEDULED: 3/3/15** **APPLICATION FOR RESPONSE: TBS' MOTION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM**

THE LIQUIDATING TRUSTEE'S OBJECTION TO TURNER BROADCASTING SALES, INC.'S ADMINISTRATIVE EXPENSE CLAIM AND RESPONSE TO THE MOTION OF TURNER BROADCASTING SALES, INC. FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM

Gavin/Solmonese, LLC, in its capacity as liquidating trustee (the "**Liquidating Trustee**") for the liquidating trust (the "**Liquidating Trust**") established in the chapter 11 cases of the above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**"), hereby submits this objection and response ("**Objection**") to the motion (the "**Motion**") of Turner Broadcasting Sales, Inc. ("**TBS**") for allowance of an administrative expense claim against Debtor O Corp Corporation f/k/a Oreck Corporation ("**Oreck**") in the amount of $35,152.60 (the "**Redundant Claim**") [Docket No. 1723]. In support of this Objection, the Liquidating Trustee respectfully states as follows:

PRELIMINARY STATEMENT

Prior to commencing these chapter 11 cases, Oreck hired Karlen Williams Graybill Advertising, Inc. ("**KWG**") to purchase advertising space/time on Oreck's behalf. TBS's Redundant Claim is for allegedly unpaid advertising charges that are already accounted for in KWG's administrative claim asserted against Oreck. Accordingly, the Liquidating Trustee

[1] The Debtors are as follows: O Corp Corporation f/k/a Oreck Corporation, ASP O Inc. f/k/a ASP Oreck, Inc., O Direct, LLC f/k/a Oreck Direct, LLC, O Merchandising, LLC f/k/a Oreck Merchandising, LLC, O Homecare, LLC f/k/a Oreck HomeCare, LLC, O Call Center, LLC f/k/a Vecteur, LLC, O Holdings, LLC f/k/a Oreck Holdings, LLC, O Manufacturing Company f/k/a Oreck Manufacturing Company, and O Sales, LLC f/k/a Oreck Sales, LLC.

objects to and seeks an Order disallowing the Redundant Claim to prevent duplicative recoveries in these chapter 11 cases to the detriment of the Debtors' estates and other creditors. In addition, the Redundant Claim is not based on any transaction between TBS and Oreck, *let alone, post-petition, with Oreck's bankruptcy estate*, which is required for it to be afforded administrative priority. Thus, in the event any portion of the Redundant Claim is allowed, such portion must be reclassified as a general unsecured claim.

JURISDICTION

1. The Court has subject matter jurisdiction to consider and determine this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 502 and 503 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and the applicable Local Rules of Court for the United States Bankruptcy Court for the Middle District of Tennessee (the "**Local Rules**").

BACKGROUND

A. General Background.

3. On May 6, 2013 (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

4. From the Petition Date through the effective date of the Plan (defined below), the Debtors operated their businesses and managed their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtors' bankruptcy cases.

5. On September 24, 2014, the Debtors filed the *Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code Proposed by the Debtors and the Official Committee of Unsecured Creditors* [Docket No. 1545] (the "**Plan**"). The Plan provided for the creation of the Liquidating Trust and appointment of the Liquidating Trustee to, among

other things, reconcile and resolve any disputed claims against the Debtors, implement the terms of the Plan and make distributions to creditors in accordance with the terms thereof.

6. On November 4, 2014, the Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming Amended Joint Plan of Liquidation* [Docket No. 1639] , thereby confirming the Plan and appointing the Liquidating Trustee. The Plan became effective on November 10, 2014 [Docket No. 1660].

7. The Plan authorizes the Liquidating Trustee to object to any claims asserted against the Debtors' estates. Pursuant to Article II.A.3. of the Plan, the deadline for the Liquidating Trustee to object to requests for payment of administrative expense claims is January 9, 2015 (30 days after the Administrative Claims Bar Date).

B. The Advertising Claims.

8. On August 20, 2013, KWG filed Claim No. 06-00190 against Oreck (the "**KWG Claim**" and, together with the Redundant Claim, the "**Claims**") in the amount of $663,597.45 for allegedly unpaid post-petition advertising charges.

9. On December 10, 2014, TBS filed its Motion seeking allowance of the Redundant Claim.

10. Upon review of the Redundant Claim and the KWG Claim, the Liquidating Trustee has determined that the advertising charges comprising the Redundant Claim have already been accounted for in the KWG Claim. Attached hereto as **Exhibit A** are invoices from KWG that include the charges for which TBS seeks payment in its Redundant Claim. In addition, the Redundant Claim is not based on any transaction between TBS and Oreck's bankruptcy estate, which is required for it to be afforded administrative priority.

RELIEF REQUESTED

11. By this Objection, the Liquidating Trustee objects to the Motion and seeks an Order disallowing the Redundant Claim. In the alternative, in the event any portion of the Redundant Claim is allowed, the Liquidating Trustee requests that such portion be reclassified as a general unsecured claim.

BASIS FOR RELIEF

12. Pursuant to section 502(a) of the Bankruptcy Code, a filed proof of claim is deemed allowed unless a party in interest objects thereto. *See* 11 U.S.C. § 502(a).

13. Section 503 of the Bankruptcy Code provides that a claim for "the actual, necessary costs and expenses of preserving the estate" is entitled to administrative priority. 11 U.S.C § 503(b)(1)(A). The purpose of administrative priority is "to facilitate the rehabilitation of insolvent businesses by encouraging third parties to provide those businesses with necessary goods and services." *National Union Fire Ins. Co. v. VP Bldgs., Inc.*, 606 F.3d 835, 838 (6th Cir. 2010). Accordingly, "[c]laims for administrative expenses under § 503(b) are strictly construed because priority claims reduce the funds available for creditors and other claimants." *Id.* (quoting *In re Federated Dept. Stores, Inc.*, 270 F.3d 994, 1000 (6th Cir.2001)).

14. A creditor's claim will qualify for administrative priority as an actual, necessary cost and expense of preserving the estate "*only if* (1) it arose from a transaction with the bankruptcy estate and (2) directly and substantially benefitted the estate." *National Union Fire Ins. Co.*, 606 F.3d at 838 (emphasis added); *see also In re Phoenix Restaurant Group, Inc.*, 317 B.R. 491, 497 (Bankr. M.D. Tenn. 2004) ("Creditors who continue to supply the debtor-in-possession with goods and services post petition are provided special priority for payment from the bankruptcy estate.") The party seeking administrative priority has the burden of proving its entitlement thereto. *National Union Fire Ins. Co.*, 606 F.3d at 838.

15. Creditors are not entitled to multiple recoveries for a single liability against a single debtor. Unless the Redundant Claim is disallowed, Oreck's liability, if any, for the advertising charges comprising the Redundant Claim may be satisfied twice, to the detriment of Oreck's other creditors. Accordingly, the Liquidating Trustee respectfully requests that the Court disallow the Redundant Claim.

16. Courts have determined in analogous situations that where there are multiple parties competing for the same claim against a debtor, the party in privity with the

debtor (*i.e.*, the party the debtor is primarily liable to) holds the claim. *See, e.g., In re CM Holdings, Inc.*, 264 B.R. 141, (Bankr. D. Del. 2000) ("It would be inappropriate to allow [debtor] to circumvent the prescribed method of payment as it pertains to [debtor's] postpetition obligations to [advertising agency]. The parties agreed from the outset of their relationship that [debtor] would pay [advertising agency] according to invoices received from [advertising agency] and that [advertising agency] would remit payment to the media vendors according to invoices it received from those vendors."); *see also In re Sentinel Management Group, Inc.*, 417 B.R. 542 (Bankr. N.D. Ill. 2009) (holding that hedge fund had no claim against debtor when it was not in privity with debtor and was not intended third party beneficiary of contract between creditor and debtor).

17. The Liquidating Trustee's chief concern in filing this Objection is that Oreck's liability, if any, for the advertising charges comprising the Redundant Claim should not be satisfied twice. However, the Liquidating Trustee submits that any dispute between TBS and KWG over who holds the claim for the allegedly unpaid advertising charges should be resolved in favor of KWG because KWG is the party that Oreck is primarily liable to and in privity with.

18. In addition, the Redundant Claim is not based on any transaction between TBS and Oreck, let alone Oreck's bankruptcy estate, which is required for it to be afforded administrative priority. *See National Union Fire Ins. Co., supra*, 606 F.3d at 838. Even in circumstances where a prepetition contract for advertising services exists, courts have held that the debtor, as debtor-in-possession, must induce the creditor to perform services post-petition in order for the creditor's claim to be entitled to administrative priority. *See, e.g., In re Jartran, Inc.*, 732 F.2d 584, 587-88 (7th Cir.1984); *In re Superior Toy & Mfg. Co., Inc.*, 183 B.R. 826 (Bankr. N.D. Ill. 1995) (applying *Jartran* to analysis of advertiser's claim for administrative expenses); *In re Party Masters, Inc.*, Case No. 92-A-00010, 1992 WL 106259 (Bankr. N.D. Ill. Apr. 23, 1992) (applying *Jartran* to creditor's motion to allow administrative claim in connection with creditor's promotion of Star Trek convention). *See also In re White Motor Corp.*, 831 F.2d 106 (6th Cir. 1987) (creditor was not entitled to an administrative expense

claim for expenses incurred post-petition in connection with the creditor's management of properties the creditor purchased pre-petition pursuant to an employee relocation agreement with the debtor).

19. Accordingly, in the event any portion of the Redundant Claim is allowed, the Liquidating Trustee requests that such potion be reclassified as a general unsecured claim.

RESERVATION OF RIGHTS

20. In the event that any portion of the Redundant Claim is not disallowed or reclassified on the grounds asserted herein, the Liquidating Trustee hereby reserves its right to object to such claim on any other grounds the Liquidating Trustee may identify at a later date. Additionally, the Liquidating Trustee expressly reserves the right to amend, modify, or supplement this Objection.

WHEREFORE, the Liquidating Trustee, on behalf of the Liquidating Trust, respectfully requests that this Court (a) deny the Motion; (b) enter an Order disallowing the Redundant Claim; and (c) grant to the Liquidating Trustee such other and further relief as the Court deems just and proper.

Dated: January 6, 2015
Nashville, TN

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VERIFICATION

I have read the above and foregoing Objection. As required by Local Rule 3007-1, I hereby declare under penalty of perjury that the statements made therein with regard to the grounds for the Objection are true and correct to the best of my information, knowledge and belief.

Dated this the 6th day of January, 2015.

/s/ Stanley Mastil
Agent for Liquidating Trustee

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to those parties specifically requesting electronic service on this the 6th day of January, 2015.

The parties may access this filing through the Court's electronic filing system.

/s/ Daniel H. Puryear
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