

NOV 30 2010

B 10 (Official Form 10) (04/10 Agent Modified)

UNITED STATES BANKRUPTCY COURT for the District of Delaware MARK D. COLLINS PROOF OF CLAIM

Name of Debtor: Urban Brands, Inc.

Case Number: 10-13005

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (the person or other entity to whom the debtor owes money or property): FS San Ysidro LLC

Check this box to indicate that this claim amends a previously filed claim.

Name and address where notices should be sent: Brad S. Sures, Law Office of Brads S. Sures, 17042 Devonshire, Suite 216, Northridge, CA 91325. Telephone number: (818) 363-9991

RECEIVED DEC 06 2010 BMC GROUP

Court Claim Number: (If known) Filed on:

Name and address where payment should be sent (if different from above): Same as above. Telephone number:

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: \$ 250,000.00. If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim.

2. Basis for Claim: Stipulation (see attached) (See instruction #2 on reverse side.)

Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

3. Last four digits of any number by which creditor identifies debtor: 3a. Debtor may have scheduled account as:

Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4).

4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: Real Estate Motor Vehicle Other Describe: Value of Property: \$ Annual Interest Rate % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ Basis for perfection: Amount of Secured Claim: \$ Amount Unsecured: \$

Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5). Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7). Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

Other - Specify applicable paragraph of 11 U.S.C. §507 (a)().

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:

Amount entitled to priority: \$ *Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

Date: 11/24/2010 Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. Brad S. Sures, Counsel for FS San Ysidro LLC Brad Sures

FOR COURT USE ONLY Urban Brands 00237

1 LAW OFFICE OF BRAD S. SURES
BRAD S. SURES, ESQ., State Bar No. 101430
17042 Devonshire Street, Suite 216
2 Northridge, California 91325
Telephone: (818) 363-9991
3 Facsimile: (818) 363-0220

4 Attorneys for Plaintiff, FS SAN YSIDRO LLC

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 FS SAN YSIDRO LLC,
11 ~~AJB~~

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Plaintiff,

vs.

MARIANNE USPR, INC., a Delaware,
Corporation, URBAN BRANDS, INC., a
Delaware corporation, et al.

Defendants.

CASE NO: 10-CV-0331-MMA-~~AJB~~

STIPULATION FOR ENTRY OF
JUDGMENT

ROOM: 1145
JUDGE: Hon. Anthony J. Battaglia

18 This Stipulation for Entry of Judgment (hereinafter "Stipulation") is entered into on this
19 ____ day of August, 2010, by and between FS SAN YSIDRO LLC (hereinafter referred to as
20 "SAN YSIDRO" or "Plaintiff"), and MARIANNE USPR, INC., a Delaware corporation and
21 URBAN BRANDS, INC., a Delaware corporation (hereinafter collectively referred to as
22 "URBAN BRANDS" or "Defendants").
23

24 WHEREAS, on or about November 15, 2005, Plaintiff's predecessor in interest, as owner
25 and landlord, leased to Defendant, MARIANNE USPR, INC., a Delaware corporation, those certain

1 premises known as 4440 Camino de la Plaza, San Ysidro, California 92173 (hereinafter
2 “Premises”) under a lease in writing (hereinafter “Lease”). Pursuant to its terms, the lease was
3 scheduled to expire by its terms on December 31, 2015;

4 WHEREAS, contemporaneous with entering into the Lease, Defendant URBAN
5 BRANDS, INC., a Delaware corporation, entered into a written guaranty of lease (“Guaranty”),
6 whereby URBAN BRANDS, INC., a Delaware corporation guaranteed the performance of
7 Defendant MARIANNE USPR, INC., a Delaware corporation, as tenant, under the Lease;

8 WHEREAS, subsequent to entering into the Lease, Plaintiff acquired ownership of the
9 shopping center of which the Premises are a part and assumed the Lease, as Landlord, including
10 the transfer of the written guaranty of lease;

11 WHEREAS, Defendants unilaterally elected to vacate the Premises and turn possession of
12 the Premises over to Plaintiff on or about July 31, 2008. In Plaintiff accepting possession of the
13 Premises, Plaintiff did not waive its rights regarding the duties and obligations of Defendants
14 under the Lease;

15 WHEREAS, on or about December 20, 2009, the underlying complaint for which this
16 Stipulation for Entry of Judgment pertains was filed in the Superior Court of California, County of
17 San Diego, Case No: 37-2009-00080231-CU-BC-SC. Subsequently, Defendant had the case
18 removed to the United States Federal District Court for the Southern District of California, Case
19 No: 10-CV-0331-MMA(AJB), (hereinafter “Complaint”). Among other things, the Complaint
20 alleges a breach of lease for non-payment of rents by Defendants for the period November 1, 2008
21 through and including the Lease expiration date of December 31, 2015. After deducting rents
22 having been realized and to be realized pursuant to terms of replacement leases for the Premises,
23 there remains a net amount of rents due and owing by Defendants to Plaintiff in the approximate
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25

1 sum of \$355,000.00;

2 WHEREAS, disputes have arisen between the parties regarding the obligations as between
3 Plaintiff and Defendants under the Lease and Guaranty; and

4 WHEREAS, Plaintiff and Defendants desire to resolve their disputes relating to the
5 Complaint, and all claims, demands, rights, and allegations that were asserted therein or could
6 have been asserted therein arising from, relating to, or concerning the Lease and the Guaranty, and
7 any and all causes of action that Plaintiff or Defendants may have against the other arising from,
8 relating to, or concerning the Complaint, Lease and the Guaranty, provided Defendants comply
9 with the payment obligations contained in paragraph 1 of this Stipulation.

10 IT IS THEREFORE STIPULATED BY AND BETWEEN Plaintiff, FS SAN YSIDRO
11 LLC, and Defendants, and MARIANNE USPR, INC., a Delaware corporation and URBAN
12 BRANDS, INC., a Delaware corporation, in consideration of the mutual promises and
13 covenants set out in this Stipulation, and for other good and valuable consideration, the receipt
14 and sufficiency of which is hereby expressly acknowledged, and upon the terms and subject to
15 the conditions contained herein, the Plaintiff and Defendants expressly agree and covenant as
16 follows:
17

18 1. Defendants shall pay to Plaintiff and Plaintiff shall receive from Defendants, payments in
19 the collective amount of Two Hundred Thousand and 00/100 Dollars (\$200,000.00). All
20 payments shall be made payable to FS SAN YSIDRO LLC. Payments shall be sent to Plaintiff c/o
21 Westwood Financial Corp., Attn: Linda Shaevitz, 11440 San Vicente Boulevard, Suite 200, Los
22 Angeles, California 90049, unless notice to the contrary is transmitted to Defendants' counsel, in
23 writing, or alternatively, payment may be made by wire transfer to the following account: City
24 National Bank, ABA# 122016066, Acct Name: Westwood Financial Corp."ACH Clearing
25 Account", Acct Number: 112 706356. Except for the payments described above in this

1 paragraph 1, and any additional sums that may accrue in strict accordance with this Stipulation,
2 to the extent Defendants default in their obligation to make the payments described above in this
3 paragraph 1, Defendants shall not be required to pay any other amounts under the Lease, the
4 Guaranty, or this Stipulation, whether currently due or hereinafter accruing. The payments shall
5 be made as follows:

6 (a) On or before September 10, 2010, Plaintiff shall *receive* from
7 Defendants payment in the amount of One Hundred Thousand and 00/100 Dollars
8 (\$100,000.00);

9 (b) On or before September 30, 2010, Plaintiff shall *receive* from
10 Defendants payment in the amount of One Hundred Thousand and 00/100 Dollars
11 (\$100,000.00);

12 (c) Except under the circumstances where Defendants default under this
13 Stipulation (as per paragraph 2, below), Defendants shall pay Plaintiff no more than the total
14 sum of \$200,000.00 under this Stipulation.

15
16 2. In the event payments as required under paragraph 1, above, are not received by
17 the date due, at any time thereafter, Plaintiff may be entitled to give five (5) days' written
18 notice to cure the full amount of the then delinquent payment to Defendants by sending, via
19 email, such notice to Defendants' attorney, Ronald M. Gaswirth, Esq., email address
20 Rgaswirth@gardere.com, or to such other person or facsimile number upon a minimum of ten
21 (10) days' advance notice in writing delivered to the Law Office of Brad S. Sures, Esq. The
22 amount to be paid as a result of such delinquent payment shall include a default fee of \$250.00
23 for having to prepare and email the notice of default. In the event such delinquent payment has
24 not been cured within the five (5) days following the date that such notice is emailed, as
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1 Plaintiff's sole remedy, judgment thereafter may, at the election of Plaintiff, be entered against
2 Defendants, jointly and severally, pursuant to the procedure set forth in paragraph 3, below, in
3 the amount of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00), less credit for
4 all amounts previously received and applied to principal by Plaintiff pursuant to the terms of
5 this Stipulation.

6 3. This Stipulation shall be and is a binding obligation on Plaintiff and Defendants,
7 provided, however, it shall not be filed with the Court unless such time as Defendants are in
8 default under the terms of this Stipulation under the terms of paragraph 2 above. In the event
9 of such a default, as more fully described in paragraph 2, above, Plaintiff shall be entitled to
10 submit a declaration setting forth all credits, and default by Defendants, before the Court to
11 allow the Court to allow the judgment to be entered in the amount of no more than Two
12 Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00), less credit for all amounts
13 previously received by Plaintiff pursuant to the terms of this Stipulation, and executed upon in
14 any manner allowable under the laws of the United States of America and the State of
15 California.
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17 4. In this regard, in the event of default by Defendant under this Stipulation, the
18 Court shall retain jurisdiction of this action. In the event the Court requires a dismissal of this
19 action prior to the date the final payment required to be made by Defendants pursuant to this
20 Stipulation is received by Plaintiff, Plaintiff and Defendants hereby stipulate that upon any
21 default by Defendants of this Stipulation, the Court, upon declaration from the parties hereto
22 may set aside the request for dismissal and enter judgment pursuant to the terms of paragraph 3
23 of this Stipulation. Regardless of whether a request for dismissal has been entered prior to a
24 default by Defendants, Plaintiff and Defendants further stipulate and agree that they shall
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1 request the Court to retain jurisdiction over the parties to enforce this Stipulation until full
2 performance of the terms of this Stipulation have been completed.

3 5. The parties further agree that in the event all payments are made as required
4 pursuant to this Stipulation, Plaintiff shall promptly thereafter, but no later than five (5) business
5 days thereafter, dismiss the Complaint against Defendants, in its entirety, with prejudice, by
6 filing a notice of dismissal of the Complaint with the Court, and providing Defendants with a file
7 marked copy of same after such dismissal is filed.

8 6. Upon Defendants full and final payment of amounts required to be paid by
9 Defendants under this Stipulation, each party releases the other and the parties' officers,
10 shareholders, directors, members, managers, attorneys, partners, predecessors, successors,
11 trustees, agents, third party vendors, associates, affiliates, subsidiaries, parent companies, repre-
12 sentatives and employees, both past and present, from any and all claims, demands,
13 controversies, accounts, debts, damages or causes of action, rights, duties, obligations, and
14 actions of whatever kind or nature, whether known or unknown, suspected or unsuspected,
15 asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated,
16 which they now own or hold or have at any time heretofore owned or held against the other, now
17 or in the future, arising under or in any way related to the Lease, the Guaranty or the Complaint,
18 specifically but not exclusively and without limiting the generality of the foregoing:

19 a. Any and all claims, demands, controversies, accounts, debts, damages,
20 omissions, facts, matters, transactions, or occurrences that were or could have been made,
21 directly or indirectly, alleged, asserted and/or described, now or in the future arising under or in
22 any way related to the Lease, the Guaranty and the Complaint; and
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1 b. All parties, and specifically, Plaintiff, hereby expressly waive any and all
2 rights and benefits conferred upon them by the provisions of section 1542 of the California Civil
3 Code. Section 1542 provides:

4 “A general release does not extend to claims which the creditor does not know or suspect
5 to exist in his favor at the time of executing the release which, if known by him, must have
6 materially affected his settlement with the debtor.”

7 The mutual releases contained in this paragraph 6 shall expressly survive the dismissal of the
8 Complaint and shall not be deemed to be merged therein.

9
10 7. Simultaneously upon the Plaintiffs receipt of full and final payments from
11 Defendants as required by paragraph 1 of this Stipulation, and so long as no Defendant files for
12 bankruptcy protection within ninety (90) days following Plaintiff’s receipt of final payment and a
13 preference claim is asserted against Plaintiff for the return of the payments made under this
14 Agreement, the Lease and the Guaranty shall automatically terminate, without further
15 requirement of any other written documentation or agreement, and thereafter, the Lease and the
16 Guaranty shall be of no further force or effect after such date, with neither the Plaintiff, as
17 “Landlord” or the Defendants, as “Tenant” and “Guarantor” under the Lease and Guaranty,
18 respectively, having any further obligations, one to the other. From the date of this Stipulation
19 until the date of the filing of Plaintiff’s notice of dismissal of the Complaint, Plaintiff, as
20 “Landlord” will not exercise any rights under the Lease or the Guaranty, for any default
21 thereunder.
22

23 8. The terms of the Stipulation include the understanding by the parties that both
24 sides are to pay their own attorney’s fees and costs.
25

1 9. Those persons executing the Stipulation on behalf of Plaintiff herein warrants that
2 they are duly authorized to enter into, execute and bind each respective Plaintiff and that,
3 through the date of the execution of this Stipulation, Plaintiff has not assigned their interests
4 herein.

5 10. This Stipulation may be signed in one or more counterparts, each of which shall
6 be deemed an original and all of which together shall constitute one and the same agreement. In
7 addition, signatures to this Stipulation that are transmitted via facsimile or via email shall be
8 deemed an original signature
9

10 IT IS SO STIPULATED:

11 **"Plaintiff"**

12 FS SAN YSIDRO LLC
13 a Delaware limited liability company

14 By: FS San Ysidro Management, Inc.
15 A Delaware Corporation
16 Its: Manager

16 DATED: _____

17 By: _____
18 **STEVEN J. FOGEL**
19 175 : **SECRETARY**

18 **"Defendants"**

19 MARIANNE USPR, INC.,
20 a Delaware corporation

21 DATED: _____

22 BY: _____
23 Name: _____
24 Its: _____

24 DATED: _____

25 BY: _____
Name: _____
Its: _____

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URBAN BRANDS, INC.,
a Delaware corporation

DATED: _____

BY: _____
Name: _____
Its: _____

DATED: _____

BY: _____
Name: _____
Its: _____

APPROVED AS TO FORM AND CONTENT:

LAW OFFICE OF BRAD S. SURES

DATED: 8/9/10

BY: Brad Sures
Brad S. Sures
Attorney for Plaintiff, FS SAN YSDRO
LLC

GARDERE WYNNE SEWELL L.L.P.

Dated: _____

BY: Ronald M. Gaswirth
Ronald M. Gaswirth
Attorney for Defendants, MARIANNE
USPR, INC., a Delaware corporation
and URBAN BRANDS, INC., a
Delaware corporation

SULLIVAN, HILL, LEWIN, REZ &
ENGEL
A Professional Law Corporation

Dated: _____

BY: _____
Donald G. Rez, Esq.
Attorney for Defendants, MARIANNE
USPR, INC., a Delaware corporation
and URBAN BRANDS, INC., a
Delaware corporation

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URBAN BRANDS, INC.,
a Delaware corporation

DATED: _____

BY: _____
Name: _____
Its: _____

DATED: _____

BY: _____
Name: _____
Its: _____

APPROVED AS TO FORM AND CONTENT:

LAW OFFICE OF BRAD S. SURES

DATED: _____

BY: _____
Brad S. Sures
Attorney for Plaintiff, FS SAN YSDRO
LLC

GARDÈRE WYNNE SEWELL L.L.P.

Dated: _____

BY: _____
Ronald M. Gaswirth
Attorney for Defendants, MARIANNE
USPR, INC., a Delaware corporation
and URBAN BRANDS, INC., a
Delaware corporation

SULLIVAN, HILL, LEWIN, REZ &
ENGEL
A Professional Law Corporation

Dated: _____

BY: _____
Donald G. Rez, Esq.
Attorney for Defendants, MARIANNE
USPR, INC., a Delaware corporation
and URBAN BRANDS, INC., a
Delaware corporation

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
17042 Devonshire St., Suite 216, Northridge, CA 91325

A true and correct copy of the foregoing document described as Proof of Claim

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL(indicate method for each person or entity served):

On 11/24/10, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.
David L. Buchbinder, 844 King St., Room 2207, Lockbox #35, Wilmington, DE 19899 (Trustee)
Richards, Layton & Finger P.A. Mark D. Collins, Michael J Merchant, Paul N. Heath, Chun I. Jan, One Rodney Sq., P. O. Box 551, Wilmington, DE 19899
BMC Group, Attn: Urban Brands Claims Processing, P. O. Box 3020, Chanhassen, MN 55317

Service information continued on attached page

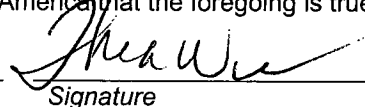
III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served):

Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

11/24/10 THEA WILSON
Date *Type Name*


Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.