

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
UBI Liquidating Corp., <u>et al.</u> , ¹)	Case No. 10-13005 (KJC)
Debtors.)	Jointly Administered
)	Hearing Date: 10/19/11 at 1:00 p.m. (EDT)
)	Objection Deadline: 9/14/11 at 4:00 p.m. (EDT)

**DEBTORS' SECOND OMNIBUS (SUBSTANTIVE) OBJECTION TO CERTAIN
CLAIMS PURSUANT TO 11 U.S.C. § 502, FED. R. BANKR. P. 3007 AND
DEL. L.R. 3007-1 (RECLASSIFY CLAIMS)**

TO THE CLAIMANTS LISTED ON EXHIBIT A ATTACHED TO THIS OBJECTION:

- **YOUR RIGHTS MAY BE AFFECTED BY THIS OBJECTION AND BY ANY FURTHER OBJECTION(S) THAT MAY BE FILED BY THE DEBTORS.**
- **THE RELIEF SOUGHT HEREIN IS WITHOUT PREJUDICE TO THE RIGHTS OF THE DEBTORS TO PURSUE FURTHER SUBSTANTIVE OR NON-SUBSTANTIVE OBJECTIONS AGAINST THE CLAIMS LISTED IN EXHIBIT A ATTACHED TO THIS OBJECTION.**

¹ The debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are UBI Liquidating Corp. (3678), 100% Girls Ltd. (4150), 100% Girls of Georgia, Inc. (4159), 100% Girls of New York, Inc. (2149), 100 Percent Girls of New Jersey, Inc. (4167), A.S. Interactive, Inc. (3472), ASL Liquidating Corp. (4541), Ashley Stewart Apparel Corporation (4049), Ashley Stewart Clothing Company, Inc. (4051), ASMCI Liquidating Corp. (4053), ASWL Liquidating Corp. (4152), ASIL 6, Inc. (3996), ASNJ 10, Inc. (4004), Carraizo Alto Apparel Corporation (4651), Church Street Retail, Inc. (5954), Kid Spot Ltd. (2585), Kidspot of Delaware, Inc. (2596), Kidspot of Illinois, Inc. (2606), Kidspot of Michigan, Inc. (2603), Kidspot of New Jersey, Inc. (2601), Kidspot of Ohio, Inc. (4705), Kidspot of Pennsylvania, Inc. (2599), Kidspot of Texas, Inc. (3809), Large Apparel of Alabama, Inc. (0624), Large Apparel of California, Inc. (2129), Large Apparel of Connecticut, Inc. (5161), Large Apparel of District of Columbia, Inc. (8613), Large Apparel of Florida, Inc. (2209), Large Apparel of Georgia, Inc. (3894), Large Apparel of Illinois, Inc. (4650), Large Apparel of Indiana, Inc. (4055), Large Apparel of Louisiana, Inc. (3790), Large Apparel of Maryland, Inc. (5158), Large Apparel of Michigan, Inc. (9420), Large Apparel of Mississippi, Inc. (5913), Large Apparel of Missouri, Inc. (2135), Large Apparel of New Jersey, Inc. (5157), Large Apparel of New York, Inc. (5956), Large Apparel of North Carolina, Inc. (8611), Large Apparel of Ohio, Inc. (3815), Large Apparel of Pennsylvania, Inc. (4057), Large Apparel of South Carolina, Inc. (2029), Large Apparel of Tennessee, Inc. (3895), Large Apparel of Texas, Inc. (3787), Large Apparel of Virginia, Inc. (2809), Large Apparel of Wisconsin, Inc. (3898), Marianne Ltd. (3940), Marianne USPR, Inc. (2193), Marianne VI, Inc. (2206), Metro Apparel of Kentucky, Inc. (7533), Metro Apparel of Massachusetts, Inc. (1367), The Essence of Body & Soul, Ltd. (4165), UACONJI Liquidating Corp. (2976), UACONYI Liquidating Corp. (4103), and UBTHC Liquidating Corp. (5909). The Debtors' corporate offices are located at 100 Metro Way, Secaucus, New Jersey 07094.

- **CLAIMANTS RECEIVING THIS OBJECTION SHOULD LOCATE THEIR NAMES AND CLAIMS IN EXHIBIT A.**

UBI Liquidating Corp. and its affiliated debtors and debtors-in-possession (collectively, the “Debtors”) by and through their undersigned counsel, hereby file this omnibus objection (the “Objection”), pursuant to section 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 Local Rule 3007-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) to those certain claims listed on Exhibit A attached hereto and incorporated by reference. In support of this Objection, the Debtors submit the *Declaration of Michael Abate in Support of the Debtors’ Second Omnibus (Substantive) Objection to Certain Claims Pursuant to 11 U.S.C. § 502, Fed. R. Bankr. P. 3007 and Del. L.R. 3007-1 (Reclassify Claims)*, attached hereto as Exhibit B and incorporated herein by reference, and respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over these matters pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 502 and 503 of the Bankruptcy Code, Bankruptcy Rule 3007, and Local Rule 3007-1.

BACKGROUND

A. The Chapter 11 Cases and the Debtors’ Businesses

3. On September 21, 2010 (the “Petition Date”), the Debtors commenced the above-captioned chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under

chapter 11 of the Bankruptcy Code. UBI Liquidating Corp., formerly known as Urban Brands, Inc., is the direct or indirect parent company of each of the Debtors.

4. The Debtors were a leading specialty retailer of fashion-forward and inspirational apparel for plus sized urban women under the brand name of Ashley Stewart. Until 2009, the Debtors also operated stores under the brand name of Marianne.

5. From the Petition Date, the Debtors continued to operate their businesses as debtors in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, until the sale of substantially all of the Debtors' assets was fully consummated. No trustee has been appointed in these Chapter 11 Cases. On October 1, 2010, the Official Committee of Unsecured Creditors (the "Committee") was appointed by the Office of the United States Trustee for the District of Delaware.

B. The Sale of the Debtors' Assets

6. On October 27, 2010, the Court entered an Order (the "Sale Order") [Docket No. 434] approving the sale of substantially all of the Debtors' assets to New Ashley Stewart LLC. New Ashley Stewart, Inc. ("New Ashley Stewart") and AS IP Holdings, Inc. were designated as "Buyer Designees", as such term is defined in the Amended and Restated Asset Purchase Agreement, dated as of October 27, 2010 (the "APA").

7. Pursuant to the terms of the Sale Order, which incorporates the terms of the APA, New Ashley Stewart LLC and/or one or more of its Buyer Designees agreed to assume and pay, perform and discharge, among other things, valid claims for the value of goods received by the Debtors within twenty (20) days of the Petition Date (i.e. September 1, 2010) and entitled to administrative status under section 503(b)(9) of the Bankruptcy Code, subject to an aggregate

cap of \$2,800,000.00 (the “Assumed 503(b)(9) Claims”). See Sale Order, Exhibit A (APA), Section 2.3(c).

C. The Bar Date, Schedules, and Notice

8. On October 21, 2010, the Debtors filed with the Court their schedules of assets and liabilities and their statements of financial affairs (collectively, the “Schedules”).

9. By Order dated November 22, 2010 [Docket No. 531] (the “Bar Date Order”), the Court established January 24, 2011 (the “General Bar Date”) as the deadline for filing proofs of claims against the Debtors in these Chapter 11 Cases, including, without limitation, claims for which creditors assert priority under section 503(b)(9) of the Bankruptcy Code related to goods delivered during the twenty (20) days prior to the Petition Date. Pursuant to the Bar Date Order, each creditor, subject to certain limited exceptions, was required to file a proof of claim on or before the General Bar Date.

10. In accordance with the Bar Date Order, BMC Group, Inc. (the “Claims Agent”), the Debtors’ court-appointed claims and noticing agent, mailed notices of the General Bar Date and proof of claim forms to, among others, all of the Debtors’ creditors and other known holders of claims as of the Petition Date. Notice of the General Bar Date also was published once on October 9, 2010 in *The New York Times*.

D. The Claims Reconciliation Process

11. In the ordinary course of business, the Debtors maintain books and records (the “Books and Records”) that reflect, among other things, the Debtors’ liabilities and the amounts thereof owed to their creditors.

12. The Debtors' register of claims, prepared and maintained by the Claims Agent, reflects that more than 800 proofs of claims (collectively, the "Proofs of Claim") have been filed in these Chapter 11 Cases.

13. The Debtors are in the process of reviewing and reconciling the Proofs of Claim. Prior to the date hereof, the Court approved the relief requested by the Debtors in one prior omnibus objection to claims, disallowing seventy-six (76) duplicate and/or amended claims.

14. Pursuant to that certain Settlement Agreement dated as of August 4, 2011, by and among the Debtors, the Committee and Ashley Stewart Holdings, Inc., New Ashley Stewart, and AS IP Holdings, Inc., if, at any time, New Ashley Stewart determines that the Debtors have grounds to object to any Open 503(b)(9) Claim (as defined in the Settlement Agreement and set forth on Exhibit 10(a)(ii) thereto), then the parties to the Settlement Agreement must collaborate in good faith to promptly object to such claim and duly prosecute such objection.

15. New Ashley Stewart has determined that, for the reasons set forth below, grounds exist to object to the Open 503(b)(9) Claims listed on Exhibit A attached hereto. Accordingly, and pursuant to the terms of the Settlement Agreement, the Debtors have brought this Objection.

RELIEF REQUESTED

16. For the reasons set forth below, the Debtors object to each of the claims (the "Claims") identified on the attached Exhibit A. By this Objection, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit C, reclassifying each of the Claims.

BASIS FOR RELIEF

17. Pursuant to section 101 of the Bankruptcy Code, a creditor holds a claim against a bankruptcy estate only to the extent that (a) it has a “right to payment” for the asserted liabilities and (b) the claim is otherwise allowable. 11 U.S.C. §§ 101(5), 101(10).

18. When asserting a claim against a bankrupt estate, a claimant must allege facts that, if true, would support a finding that the debtor is legally liable to the claimant. See In re Allegheny Int’l, Inc., 954 F.2d 167, 173 (3d Cir. 1992); In re Int’l Match Corp., 69 F.2d 73, 76 (2d Cir. 1934) (finding that a proof of claim should at least allege facts from which legal liability can be seen to exist). Where the claimant alleges sufficient facts to support its claim, its claim is afforded *prima facie* validity. In re Allegheny Int’l, Inc., 954 F.2d at 173.

19. A party wishing to dispute such a claim must produce evidence in sufficient force to negate the claim’s *prima facie* validity. Id. In practice, the objecting party must produce evidence that would refute at least one of the allegations essential to the claim’s legal sufficiency. Id. at 173-74. Once the objecting party produces such evidence, the burden shifts back to the claimant to prove the validity of his or her claim by a preponderance of the evidence. Id. at 174. The burden of persuasion is always on the claimant. Id.

20. With respect to each of the Claims identified on Exhibit A, the Debtors and New Ashley Stewart, and/or their advisors, have carefully reviewed the Books and Records, the Schedules, and the underlying proof of claim, including supporting documentation provided by the claimant, if any. In reviewing the foregoing and evaluating the Claims, the Debtors and New Ashley Stewart have determined that the Claims are incorrectly or improperly classified.

21. Every claim on Exhibit A has been filed as being entitled, in full or in part, to priority pursuant to section 503(b)(9) of the Bankruptcy Code. Section 503(b)(9) of the

Bankruptcy Code provides administrative expense priority to claims for the value of any goods received by a debtor within twenty (20) days before the commencement of a chapter 11 case to the extent that such goods have been sold to the debtor in the debtor's ordinary course of business. 11 U.S.C. § 503(b)(9).

22. Each of the claims in Exhibit A asserting administrative expense status under section 503(b)(9) fails to establish, in whole or in part, and the Books and Records do not support, the claimant's right to payment for the value of goods sold to the Debtors in the Debtors' ordinary course of business that were received by the Debtors within twenty (20) days before the Petition Date. In some instances, the goods sold to the Debtors that are the subject of the underlying claim were received outside the twenty (20) day period. In others, services – rather than goods – were provided to the Debtors by the claimants. Finally, certain claims asserted are for monies owed pursuant to real property lease agreements.

23. For these reasons, the Debtors seek to reclassify each Claim to the status that is reflected in the Debtors' Books and Records. Reclassifying the Claims as set forth herein is necessary to ensure that the claimants ultimately entitled to receive distributions receive the appropriate treatment and distribution. Therefore, for all the foregoing reasons, each of the Claims identified on Exhibit A should be reclassified as requested.

RESPONSES TO OBJECTION

24. To contest an objection, a claimant must file and serve a written response to this Objection (a "Response") so that it is received no later than **4:00 p.m. (prevailing Eastern Time) on September 14, 2011** (the "Response Deadline"). Every Response must be filed with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington,

Delaware 19801, and served upon the undersigned counsel for the Debtors so that the Response is received no later than the Response Deadline.

25. If a claimant fails to file and serve a timely Response by the Response Deadline, the Debtors may present to the Court an appropriate order reclassifying the claim, without further notice to the claimant or a hearing.

REPLIES TO RESPONSES

26. The Debtors may, at their option, file and serve a reply to any response so that it is received by the claimant (or the claimant's counsel, if represented) no later than 4:00 p.m. three (3) business days prior to the Hearing.

SEPARATE CONTESTED MATTERS

27. To the extent that a Response is filed regarding any Claim identified in Exhibit A and the Debtors are unable to resolve the Response, such Claim, and the objection to such Claim asserted by the Debtors herein, shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. Any order entered by the Court regarding an objection asserted in this Objection shall be deemed a separate order with respect to each Claim.

ADJOURNMENT OF HEARING

28. The Debtors reserve the right to seek an adjournment of the Hearing on this Objection and any Responses to this Objection. In the event that the Debtors seek such an adjournment, it will be noted on the notice of agenda for the Hearing, and such agenda will be served on the affected claimant by serving the person designated in the Response.

RESERVATION OF RIGHTS

29. The Debtors expressly reserve the right to amend, modify or supplement this Objection. Should one or more of the grounds of objection stated in this Objection be dismissed

or overruled, the Debtors reserve the right to object to each of the Claims on any other grounds that the Debtors discover or elect to pursue. This Objection sets out substantive objections to the claims identified in Exhibit A. The Debtors reserve their right to assert non-substantive and/or one or more other substantive objections to claims identified in Exhibit A at a later time.

30. Notwithstanding anything contained in this Objection or the Exhibit attached thereto, nothing herein shall be construed as a waiver of any rights that the Debtors may have to (a) commence avoidance actions under the applicable section of the Bankruptcy Code, including, but not limited to, section 547 and 548 of the Bankruptcy Code, against the claimants subject to this Objection, (b) enforce rights of setoff against the claimants relating to such avoidance actions, or (c) seek disallowance pursuant to section 502(d) of the Bankruptcy Code of claims of the claimants that are subject to such avoidance actions.

NO PRIOR REQUEST

31. No prior request for the relief sought herein has been made to this or any other court.

STATEMENT OF COMPLIANCE WITH LOCAL RULE 3007-1

32. The undersigned representatives of the Debtors certify that he/she has reviewed the requirements of Local Rule 3007-1 and that this Objection substantially complies with that Local Rule. To the extent that this Objection does not comply in all respects with the requirements of Local Rule 3007-1, the Debtors believe such deviations are not material and respectfully request that any such requirement be waived.

WHEREFORE, the Debtors respectfully request the entry of an order, substantially in the form attached hereto as Exhibit C, (a) reclassifying each of the Claims identified on Exhibit A, and (b) granting the Debtors such other and further relief as this Court deems just and proper.

Dated: August 29, 2011
Wilmington, Delaware



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