

**PLEASE CAREFULLY REVIEW THIS OBJECTION AND THE ATTACHMENTS
HERETO TO DETERMINE WHETHER THIS OBJECTION AFFECTS YOUR CLAIM.**

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

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In re : Chapter 11
:
UBI Liquidating Corp., : Case No. 10-13005 (KJC)
:
Debtor. : **Hearing Date: Sept. 27, 2012 at 10:00 a.m. (EDT)**
: **Response Deadline: Aug. 30, 2012 at 4:00 p.m. (EDT)**
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**SEVENTH OMNIBUS OBJECTION OF THE LIQUIDATION TRUSTEE TO CERTAIN
DUPLICATE CLAIMS, AMENDED AND SUPERSEDED CLAIMS, LATE FILED
CLAIMS, AND INSUFFICIENT DOCUMENTATION CLAIMS (NON-SUBSTANTIVE)**

Stephen Feldman, in his capacity as trustee (the "Liquidation Trustee") of the UBI Liquidating Trust, as the successor to UBI Liquidating Corp. and its affiliated debtors (collectively, the "Debtors"), and the Liquidating Trust Committee (the "Committee"), by and through their attorneys, Richards, Layton & Finger, P.A. and Cooley LLP, hereby file this seventh omnibus objection (the "Objection") to those claims (individually, a "Claim", and collectively, the "Claims") listed on **Exhibits A, B, C, and D** to the proposed form of order (the "Proposed Order") attached hereto as **Exhibit 1**. In support of this Objection, the Liquidation Trustee respectfully represents as follows:

PRELIMINARY STATEMENT

1. Pursuant to section 502 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Bankruptcy 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"), the

Liquidation Trustee requests the entry of an order substantially in the form attached hereto as **Exhibit 1** disallowing each of the Claims as reflected in the exhibits attached thereto.

JURISDICTION AND VENUE

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

BACKGROUND

3. On September 21, 2010 the Debtors each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

4. On October 19, 2011, the Court entered an order approving the Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code Plan (the “Plan”) [D.I. 1384]. On December 1, 2011, the Plan became effective (the “Effective Date”) [D.I. 1493].

5. Under Article IV.B of the Plan, the Trust was established on the Effective Date for the purpose of, *inter alia*, administering the estates’ assets, resolving claims disputes, and distributing assets to creditors. The Trust is administered by the Liquidating Trustee, who is appointed by the Committee.

6. Under Article VI of the Plan, the Liquidating Trustee and the Committee have the exclusive right to make, file, prosecute, settle, compromise, withdraw or resolve in any manner approved by the Court objections to proofs of claim filed against the Debtors (each a “Proof of Claim,” and, collectively, the “Proofs of Claim”).

7. On November 22, 2011, the Court entered an order (the “Bar Date Order”) [D.I. 531] establishing, among other things, January 24, 2011 at 5:00 p.m. (Central Time) as the

deadline for non-governmental creditors to file Proofs of Claim against the Debtors and March 21, 2011 as the deadline for governmental creditors to file Proofs of Claim (the “Bar Dates”).

8. Pursuant to the Bar Date Order, the Debtors, with the assistance of their claims and noticing agent, BMC Group, Inc. (“BMC”), mailed notice of the Bar Dates (the “Bar Date Notice”) to parties in interest. In addition to mailing the Bar Date Notice, the Debtors gave notice to potential creditors by publishing a modified form of the Bar Date Notice in the national edition of the New York Times. The mailing and publishing of the Bar Date Notice in a newspaper of general circulation provided potential creditors with adequate and sufficient notice of the Bar Date.

9. On May 18, 2012, the Court entered an order extending the Liquidating Trustee’s and Committee’s time to object to Proofs of Claim through December 1, 2012. This deadline may be extended by further order of the Court.

CLAIMS RESOLUTION PROCESS

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

11. The register of claims prepared and provided by BMC indicates that approximately 900 Proofs of Claim have been filed in these chapter 11 cases. The Liquidation Trustee, the Committee, and their professionals are reviewing and reconciling these Proofs of Claim, in addition to the claims listed on the Debtors’ Schedules of Assets and Liabilities, and comparing the claims asserted in the Proofs of Claim to with the Debtors’ Books and Records to determine the validity of the asserted claims.

12. This reconciliation process includes identifying particular categories of claims that may be targeted for disallowance, reduction and allowance, or reclassification and allowance. To reduce the number of claims, and to avoid possible double recovery or otherwise improper recovery by claimants, the Liquidation Trustee anticipates filing several omnibus objections to such categories of claims. This Objection is the seventh of such omnibus objections.

RELIEF REQUESTED AND REASONS THEREFOR

13. For the reasons set forth more fully herein, the Liquidation Trustee and Committee request the entry of the Proposed Order disallowing each of the Claims as reflected in the Exhibits attached thereto.

A. Duplicate Claims and Amended Claims

14. In some instances, more than one Proof of Claim has been filed by or on behalf of the same Claimant against one or more of the Debtors with respect to the same alleged obligation (the “Duplicate Claims”).¹ The Claims listed on **Exhibit A** to the Proposed Order under the heading “Claim To Be Expunged” are duplicates of the corresponding Claim listed under the heading “Surviving Claim.” If the Duplicate Claims are not disallowed, the potential exists for multiple recoveries. The holders of the Duplicate Claims will retain a surviving claim after the disallowance of the Duplicate Claims, to the extent the surviving claim is not the subject of a successful objection.

15. In addition, certain creditors filed Proofs of Claim that were later amended and therefore superseded by a subsequent Proof of Claim filed by or on behalf of the same Claimant. The Claims listed on **Exhibit B** to the Proposed Order under the heading “Claim to be

¹ Pursuant to Local Rule 3007-1(d)(i), a claim filed against two different debtors is a duplicate claim when the cases have been substantively consolidated by order of the court. Pursuant to Article IX, Section G of the Plan, the Debtors’ estates were substantively consolidated.

Expunged” (collectively, the “Amended Claims”) have been superseded by a subsequently filed Proof of Claim listed under the heading “Surviving Claim.” The Amended Claims should be disallowed in order to avoid multiple recoveries.

16. Accordingly, the Liquidation Trustee objects to the allowance of each of the Duplicate Claims and the Amended Claims described in **Exhibits A** and **B** to the Proposed Order, respectively, and requests that such Claims be disallowed. Because this Objection does not constitute an objection to any of the surviving claims, the Liquidation Trustee and Committee reserve their right to object to such surviving claims on any grounds whatsoever.

B. Late Filed Claims

17. As a result of the Liquidation Trustee’s review of the Proofs of Claim and the Books and Records as part of the reconciliation process, the Liquidation Trustee has identified certain Proofs of Claim that appear to have been filed after the applicable Bar Date (the “Late Filed Claims”). Pursuant to the Bar Date Order, all holders of claims were required to file a proof of claim with supporting documentation on or before the applicable Bar Date. The Late Filed Claims identified on **Exhibit C** to the Proposed Order represent claims that were filed after the applicable Bar Date and that were not specific amendments to timely filed Proofs of Claim.

18. Failure to disallow the Late Filed Claims will result in certain claimants receiving an unwarranted recovery to the detriment of other creditors. Accordingly, the Liquidation Trustee hereby objects to the Late Filed Claims and requests entry of an order disallowing in full each of the Late Filed Claims identified on **Exhibit C** to the Proposed Order.

C. Claims with Insufficient Documentation

19. The Claims included on **Exhibit D** to the Proposed Order are those Proofs of Claim filed against the Debtors that do not constitute valid *prima facie* claims because they do

not have a basis in the Debtors' Books and Records or attach sufficient supporting documentation with respect to claims against the Debtors (collectively, the "Claims with Insufficient Documentation").

20. When asserting a proof of claim against a bankruptcy estate, a claimant must allege facts that, if true, would support a finding that the debtor is legally liable to the claimant. In re Allegheny Int'l, Inc., 954 F.2d 167, 173 (3d Cir. 1992); Matter of 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 a 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. 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. 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. The burden of persuasion is always on the claimant. Id.

21. The Proofs of Claim listed on **Exhibit D** to the Proposed Order fail to provide sufficient documentation to permit an understanding of the basis for the Claims, and therefore do not make out a *prima facie* case against the Debtors.

22. In support of the foregoing, the Liquidation Trustee relies on the Declaration of Stephen Feldman pursuant to 28 U.S.C. § 1746 and Local Rule 3007-1 in support of this Objection (the "Feldman Declaration"), dated as of the date hereof and attached hereto as **Exhibit 2**.

NOTICE

23. A copy of this Objection and all related exhibits will be served on (i) the Office of the United States Trustee for the District of Delaware; (ii) each holder of a Claim; (iii) those parties who are required to receive notice pursuant to the Plan (collectively, the “Notice Parties”). The Liquidation Trustee respectfully submits that no further notice of this Objection is required.

24. Pursuant to Bankruptcy Rule 3007, the Liquidation Trustee has provided all Claimants affected by this Objection with at least thirty (30) days’ notice of the hearing to consider this Objection.

NO PRIOR REQUEST

25. No previous request for the relief sought herein has been made to this or any other Court.

STATEMENT OF COMPLIANCE WITH LOCAL RULE 3007-1

26. The undersigned representative of Richards, Layton & Finger, P.A. certifies that he has reviewed the requirements of Local Rule 3007-1 and that the Objection substantially complies with that Local Rule. To the extent that the Objection does not comply in all respects with the requirements of Local Rule 3007-1, Richards, Layton & Finger, P.A. believes such deviations are not material and respectfully requests that any such requirement be waived.

SEPARATE CONTESTED MATTERS

27. To the extent that a response is filed regarding any Claim listed in this Objection and the Liquidation Trustee is unable to resolve the response, each such Claim, and the objection by the Liquidation Trustee to each such Claim asserted herein, shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. Any order entered by the Court


regarding an objection asserted in the Objection shall be deemed a separate order with respect to each Claim.

RESERVATION OF RIGHTS

28. The Liquidation Trustee hereby reserves the right to object in the future to any of the Proofs of Claim listed in this Objection or the Proposed Order or on the exhibits attached thereto on any ground, and to amend, modify, and/or supplement this Objection, including, without limitation, to object to amended or newly-filed Proofs of Claim. Separate notice and hearing may be scheduled for any such objection.

WHEREFORE the Liquidation Trustee respectfully requests entry of the Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: August 15, 2012
Wilmington, Delaware



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