

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

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

-----X	
	:
<i>In re</i>	:
	:
UBI Liquidating Corp.,	:
	:
Debtor.	:
	:
-----X	

Chapter 11
Case No. 10-13005 (KJC)
Hearing Date: July 25, 2013 at 4:00 p.m. (EDT)
Response Deadline: June 11, 2013 at 4:00 p.m. (EDT)

**TENTH OMNIBUS OBJECTION OF THE LIQUIDATING TRUSTEE
TO CERTAIN OVERSTATED CLAIMS, NO LIABILITY CLAIMS, AND
IMPROPERLY CLASSIFIED CLAIMS (SUBSTANTIVE)**

Stephen Feldman, in his capacity as trustee (the "Liquidating Trustee") of the UBI Liquidating Trust (the "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 respectively, hereby file this tenth omnibus objection (the "Objection") to those claims (individually, a "Claim", and collectively, the "Claims") listed on **Exhibits A, B, and C** to the proposed form of order (the "Proposed Order") attached hereto as **Exhibit 1**. In support of this Objection, the Liquidating 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

Liquidating Trustee requests the entry of the Proposed Order disallowing, reducing and/or reclassifying 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 1409.¹

BACKGROUND

3. On September 21, 2010 the Debtors each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. On October 19, 2011, the Court entered an order approving the *Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code* (the "Plan") [D.I. 1384]. On December 1, 2011, the Plan became effective (the "Effective Date") [D.I. 1493].

4. 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.

5. 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").

6. On November 22, 2010, 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

¹ Pursuant to Local Rule 9013-1(f), the Liquidating Trustee and the Committee hereby confirm their consent to the entry of a final order by this Court in connection with this Motion if it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

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").

7. 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 Date (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.

8. On November 30, 2012, the Court entered an order extending the Liquidating Trustee's and Committee's time to object to Proofs of Claim through June 1, 2013. This deadline may be extended by further order of the Court.

CLAIMS RESOLUTION PROCESS

9. 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.

10. 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 Liquidating 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 (the "Schedules"), 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.

11. This reconciliation process includes identifying particular categories of claims that may be targeted for disallowance, reduction and/or reclassification. To reduce the number of claims, and to avoid possible double recovery or otherwise improper recovery by claimants, the Liquidating Trustee has filed several omnibus objections to such categories of claims. This Objection is the tenth such omnibus objections.

RELIEF REQUESTED

12. For the reasons set forth more fully herein, the Liquidating Trustee and Committee request the entry of the Proposed Order disallowing, reducing and/or reclassifying each of the Claims as reflected in the Exhibits attached thereto.

A. Overstated Claims

13. The Liquidating Trustee has reviewed the Books and Records and the Proofs of Claim and has identified the Claims set forth on **Exhibit A** to the Proposed Order (the "Overstated Claims") as filed in the incorrect amount and has determined that the Overstated Claims should be reduced in accordance with **Exhibit A** to the Proposed Order for the reasons set forth therein under the heading labeled "Reason for Proposed Modification."

B. No Liability Claims

14. With respect to the No Liability Claims identified on **Exhibit B**, the Liquidating Trustee has reviewed the Books and Records and the underlying Proofs of Claim, including the supporting documentation provided by the claimant, if any. In reviewing the foregoing and evaluating the No Liability Claims, the Liquidating Trustee has determined, for the reasons set forth on **Exhibit B** under the heading labeled "Reason for Proposed Modification," that there are no bases for these Claims and that there are no amounts due and owing to the claimants with

respect to such No Liability Claims. Accordingly, the No Liability Claims should be disallowed in full.

C. Improperly Classified Claims

15. The Liquidating Trustee has reviewed the Books and Records and the Proofs of Claim and has also identified the Claims set forth on **Exhibit C** to the Proposed Order (the "Improperly Classified Claims") as filed with the incorrect classification (or incorrect classification and amount) and has determined that the Improperly Classified Claims should be reclassified (or reclassified and reduced) in accordance with **Exhibit C** to the Proposed Order.

LEGAL BASES FOR OBJECTION

16. Section 502(b)(1) of the Bankruptcy Code provides that a claim asserted in a proof of claim shall be allowed except to the extent "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law." 11 U.S.C. § 502(b)(1).

17. When asserting a proof of 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. 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 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. A party wishing to dispute such a claim must produce evidence in sufficient force to negate the claim's *prima facie* validity. Id.

18. 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.

19. For the reasons discussed above and set forth in the Exhibits to the Proposed Order, the Claims addressed in this Objection do not meet the standards for *prima facie* validity and should be disallowed, reduced and/or reclassified as requested herein.

20. In support of the foregoing, the Liquidating 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

21. 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; and (iii) those parties who are required to receive notice pursuant to the Plan (collectively, the "Notice Parties"). The Liquidating Trustee respectfully submits that no further notice of this Objection is required. Pursuant to Bankruptcy Rule 3007, the Liquidating 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

22. 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

23. The undersigned 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, the undersigned believes such deviations are not material and respectfully requests that any such requirement be waived.

SEPARATE CONTESTED MATTERS

24. To the extent that a response is filed regarding any Claim listed in this Objection and the Liquidating Trustee is unable to resolve the response, each such Claim, and the objection by the Liquidating 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

25. The Liquidating Trustee hereby reserves the right 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 Liquidating Trustee respectfully requests entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: May 28, 2013
Wilmington, Delaware

/s/ Andrew C. Irgens
Mark D. Collins (No. 2981)
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