

**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
)	
)	Objection Deadline: December 16, 2013 at 4:00 p.m. (EST)
)	Hearing Date: January 6, 2014 at 1:00 p.m. (EST)

FOURTH MOTION OF THE LIQUIDATING TRUSTEE AND LIQUIDATING TRUST COMMITTEE FOR ORDER UNDER BANKRUPTCY CODE SECTION 105(a) AND BANKRUPTCY RULE 9006 EXTENDING TIME TO OBJECT TO CLAIMS

Stephen A. Feldman, in his capacity as liquidating trustee (the “Liquidating Trustee”) of the UBI Liquidating Trust (the “Liquidating Trust”), as 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 move (the “Motion”) for entry of an order pursuant to section 105(a) of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the *Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code*, dated July 20, 2011 [D.I. 1384] (the “Plan”), extending the

¹ The Debtor in this case is UBI Liquidating Corp. (3678). On May 18, 2012, the Court entered an order closing the chapter 11 cases of 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 Debtor’s corporate office are located at 100 Metro Way, Secaucus, New Jersey 07094.

deadline to object to unsecured claims to June 2, 2014. In support of this Motion, the Liquidating Trustee and Committee respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Article X of the Plan, which was approved by this Court's *Order Confirming the Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code* [D.I. 1447] (the "Confirmation Order"). 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 1409.²

2. The statutory predicate for the relief requested herein is section 105(a) of the Bankruptcy Code. Such relief is also warranted under Bankruptcy Rule 9006.

BACKGROUND

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

4. 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) (the "Bar Date") as the deadline to file proofs of claim against the Debtors (each a "Proof of Claim," and, collectively, the "Proofs of Claim").

5. Pursuant to the Bar Date Order, the Debtors, with the assistance of BMC Group, Inc. ("BMC"), their claims and noticing agent in these cases, 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

² Pursuant to Local Rule 9013-1(f), the Liquidating Trust 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.

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.

6. On October 19, 2011, the Court entered the Confirmation Order, approving the Plan. On December 1, 2011, the Plan became effective (the “Effective Date”) [D.I. 1493].

7. 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.

8. 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.

9. Under Article VI.C of the Plan, the original deadline for the Liquidating Trustee and the Committee to object to Proofs of Claim (the “Claims Objection Deadline”) was 6 months after the Effective Date (i.e., June 1, 2012). The Plan further provides that the Claims Objection Deadline may be extended by an order of the Court.

10. The Liquidating Trustee has filed three previous motions to extend the Claims Objection Deadline [D.I. 1591, 1659 and 1692] which have been approved by orders of this Court [D.I. 1603, 1669 and 1706]. The Current Claims Objection Deadline is December 2, 2013. The Claims Objection Deadline may be extended by further order of the Court.

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 Liquidating Trustee, the Committee, and their professionals have reviewed and reconciled the vast majority

of these Proofs of Claim, in addition to the claims listed on the Debtors' Schedules of Assets and Liabilities. Collectively, the Debtors and the Liquidating Trustee have filed eight omnibus objections to unsecured claims, and hundreds of Proofs of Claims have been modified, reclassified and/or disallowed as a result. The claims reconciliation process has reduced the number of claims allowed against the Debtors' estates, and prevented possible double recovery or otherwise improper recovery by claimants. As of the filing of this Motion, the Liquidating Trustee estimates that the claims reconciliation is nearly complete. However, a number of general unsecured and priority claims are still being reconciled.

RELIEF REQUESTED

12. By this Motion, the Liquidating Trustee and Committee seek entry of an order, substantially in the form attached hereto as **Exhibit A**, extending the Claims Objection Deadline through and including June 2, 2014.

BASIS FOR RELIEF

13. The Claims Objection Deadline presently expires on December 2, 2013.³ As noted above, almost 900 Proofs of Claim have been filed. In addition, the Debtors and the Liquidating Trustee have, in the aggregate, made eight omnibus objections to Proofs of Claims.

14. Article VI.C of the Plan provides that the Claims Objection Deadline may be extended by order of the Court.

15. Bankruptcy Code section 105(a) provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title," 11 U.S.C. § 105(a), and it is generally recognized that "[s]ection 105(a) authorizes the bankruptcy

³ Pursuant to Rule 9006-2 of the Local Rules for the United States Bankruptcy Court for the District of Delaware, "if a motion to extend the time to take any action is filed before the expiration of the period prescribed by the Code, the Fed. R. Bankr. P., the Local Rules or Court order, the time shall automatically be extended until the Court acts on the motion, without the necessity for the entry of a bridge order." As such, to the extent that the Court does not act on this Motion prior to December 2, 2013, the Claims Objection Deadline will automatically be extended until the Court acts on this Motion.

court . . . to fashion such orders as are required to further the substantive provisions of the [Bankruptcy] Code.” See *In re Morristown & E.R. Co.*, 885 F.2d 98, 100 (3d Cir. 1989).

16. Bankruptcy Rule 9006(b) provides that the Court may extend a time period provided under the Bankruptcy Rules or order of the Court, except for time periods provided under certain Bankruptcy Rules that are not applicable here. See Fed. R. Bankr. P. 9006(b). Any analysis of a motion brought under Rule 9006 is an equitable one, taking into account relevant circumstances, including the danger of prejudice. *Pioneer Inv. Serv. Co. v. Brunswick Assocs. P’ship*, 507 U.S. 380, 395 (1993).

17. Providing the Liquidating Trustee and the Committee with sufficient time to review the claims register and investigate certain claims will ensure that no claimant recovers more than he or she is otherwise entitled to, while also maximizing the recovery for creditors with allowed claims. Accordingly, a fulsome review by the Liquidating Trustee and the Committee benefits all creditors, substantially outweighing any prejudice to creditors arising from the additional delay in making a distribution. There is therefore cause to extend the Claims Objection Deadline.

18. As such, the Liquidating Trustee and Committee respectfully request that the Court extend the Claims Objection Deadline to June 2, 2014.

NOTICE

19. A copy of this Motion will be served on (i) the Office of the United States Trustee for the District of Delaware; and (ii) 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 Motion is required.

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

Dated: December 2, 2013
Wilmington, Delaware

/s/ Andrew C. Irgens

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