

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

EBHI HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 09-12099 (MFW)

Jointly Administered

Hearing Date: March 3, 2010 at 10:30 a.m. (ET)

Objection Deadline: February 24, 2010 at 4:00 p.m. (ET)

**DEBTORS' FIFTH OMNIBUS (SUBSTANTIVE) OBJECTION
TO CLAIMS PURSUANT TO § 502(b) OF THE BANKRUPTCY CODE,
BANKRUPTCY RULES 3003 AND 3007, AND LOCAL RULE 3007-1**

The debtors and debtors in possession in the above-captioned cases (the “**Debtors**”) hereby file this omnibus objection (the “**Objection**”) to certain claims (the “**Disputed Claims**”) filed against the Debtors attached as Exhibits A and B to the proposed form of order (the “**Proposed Order**”) attached hereto as Exhibit II, pursuant to § 502(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), Rules 3003 and 3007 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and 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**”), and respectfully request entry of an order in substantially the same form as the Proposed Order filed concurrently herewith. The Disputed Claims set forth on the attached exhibits consist of claims to be modified and allowed, and no

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: EBHI Holdings, Inc., a Delaware corporation (2352); Amargosa, Inc., a Delaware corporation (9737); Gobi Fulfillment Services, Inc., a Delaware corporation (0882); Arabian Diversified Sales, LLC, a Delaware limited liability company (1567); Gibson Services, LLC, an Ohio limited liability company (disregarded); Karalcum International Development, LLC, a Delaware limited liability company (1571); Simpson Information Technology, LLC, a Delaware limited liability company (disregarded); Sandy Financial Services Acceptance Corporation, a Delaware corporation (7532); and Sonoran Acceptance Corporation, a Delaware corporation (7253). The mailing address for EBHI Holdings, Inc. is 10401 N.E. 8th Street, Suite 500, Bellevue, WA 98004. On or about the Petition Date, Tenere of Canada, Inc. and Yuma Customer Services, Inc., affiliates of the Debtors, commenced a proceeding before the Superior Court of Justice, Commercial List, for the Judicial District of Ontario, for a plan of compromise or arrangement under the Companies’ Creditors Arrangement Act.



liability claims. In support of this Objection, the Debtors rely on the *Declaration of Kelly E. Green in Support of the Debtors' Fifth Omnibus (Substantive) Objection to Claims Pursuant to § 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007, and Local Rule 3007-1*, attached hereto as Exhibit I. In further support of this Objection, the Debtors, by and through their undersigned counsel, respectfully represent:

JURISDICTION

1. The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. The statutory and legal predicates for the relief sought herein are § 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007 and Local Rule 3007-1.

BACKGROUND

3. On the June 17, 2009 (the "**Petition Date**"), Eddie Bauer Holdings, Inc. and each of its Debtor Affiliates filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (collectively, the "**Chapter 11 Cases**"). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

4. On June 25, 2009, the Office of the United States Trustee appointed an official committee of unsecured creditors (the "**Committee**") in the Debtors' Chapter 11 Cases.

5. Simultaneously with the commencement of these Chapter 11 Cases, the Debtors' two Canadian affiliates – Eddie Bauer of Canada, Inc. and Eddie Bauer Customer Services, Inc. (the "**Canadian Debtor Affiliates**") – sought recognition of the Debtors' Chapter 11 Cases in a Canadian Court as "foreign proceedings" pursuant to Section 18.6 of the

Companies' Creditors Arrangement Act, R.S.C. 1985 c. C-36, as amended (the "CCAA"). In addition to staying proceedings against the Canadian Debtor Affiliates in Canada, such recognition by the Canadian Court will allow certain orders of this Court to be in full force and effect in the same manner and in all respects as if they had been made by the Canadian Court. Due to the integrated management of the Canadian Debtor Affiliates with the Debtors' U.S. operations, as well as the role that the Canadian Debtor Affiliates play in the Debtors' overall prepetition debt structure, these Chapter 11 Cases will function as the main proceedings with respect to the Canadian Debtor Affiliates.

6. The Debtors and the Canadian Debtor Affiliates were general merchandise and specialty retailers that offer men's and women's outerwear, apparel, accessories and gear for an active outdoor lifestyle through catalogs, e-commerce sites and over 370 retail and outlet stores. On the Petition Date, the Debtors had 556 full-time, part-time, and temporary employees in their corporate headquarters, and 7,144 full-time, part-time, and temporary retail and distribution employees. The Canadian Affiliates had over 950 full-time, part-time, and temporary employees working in management retail and customer service.

7. By order entered on June 30, 2009 (the "Sale Procedures Order") this Court approved the sale procedures for a sale of all or a portion of the Debtors' assets. [Docket No. 222]. In accordance with the Sale Procedures Order, a hearing to approve the Debtors' proposed sale of their assets was held on July 22, 2009. At the conclusion of that hearing, the Court entered an order approving the sale of substantially all of the Debtors' assets (the "Sale Order") to Everest Holdings LLC (the "Buyer") [Docket No. 508], and the sale closed on August 3, 2009.

BAR DATES AND PROOFS OF CLAIM

8. On July 20, 2009, this Court entered an order appointing Kurtzman Carson Consultants LLC (“KCC”) as claims, noticing and balloting agent in these chapter 11 cases [D.I. 470]. KCC is authorized to maintain (i) all proofs of claim filed against the Debtors and (ii) an official claims register by docketing all proofs of claim in a claims database containing, *inter alia*, information regarding the name and address of each claimant, the date the proof of claim was received by KCC, the claim number assigned to the proof of claim, and the asserted amount and classification of the claim.

9. On July 20, 2009, this Court entered an order (the “General Bar Date Order”) establishing September 21, 2009 at 4:00 p.m. (ET) (the “General Bar Date”) as the final date and time for filing proofs of claim against the Debtors’ estates arising prior to the Petition Date (the “Claims”), and approving the form and manner of notice of the General Bar Date [D.I. 470]. Pursuant to the General Bar Date Order, governmental entities were required to file proofs of claim on or before December 14, 2009 at 4:00 p.m. (ET).

10. Pursuant to the Bar Date Orders, actual notice of the Bar Dates was sent to all parties entitled to notice under Local Rule 2002, all known creditors and all known holders of the Debtors’ equity securities as reflected in the Debtors’ books and records, as well as United States state escheat or unclaimed property offices. In addition, notice of the Bar Dates was published in the national edition of the *USA Today*. An affidavit of publication confirming such actual and publication notice of the Bar Dates have been filed with this Court [D.I. 565].

11. To date, approximately 1300 proofs of claim have been filed in these chapter 11 cases.

RELIEF REQUESTED

A. Modified Amount and Allowed Claims

12. The Debtors have reconciled the claims identified in Exhibit A to the Proposed Order (the “**Modified and Allowed Claims**”) against their books and records. The claimants asserting the Modified and Allowed Claims asserted an amount that was higher than the amount of liability reflected in the Debtors’ books and records. Consequently, the Debtors believe the amount of the Modified and Allowed Claims identified, or otherwise substantiated by the claimants’ supporting documentation, in Exhibit A should be modified by reducing or fixing the amount to the dollar values listed under the column titled “Modified Claim Amount” in Exhibit A. The Debtors believe Exhibit A contains the appropriate amounts of liability for the Modified Amount Claims. Failure to modify the Modified Amount Claims as set forth herein will result in the applicable claimant receiving an unwarranted recovery against the Debtors’ estates to the detriment of other creditors in these cases. Accordingly, the Debtors hereby object to the Modified Amount Claims and request entry of an order allowing the reduced value of the Modified and Allowed Claims as set forth in Exhibit A.

B. No Liability Claims

13. After reviewing each of the Disputed Claims and supporting materials as well as the Debtors’ books and records, which the Debtors believe to be accurate, the Debtors have determined that they are not liable with respect to the claims identified in Exhibit B to the Proposed Order (the “**No Liability Claims**”). Moreover, the Debtors cannot justify these claims as valid. Consequently, the Debtors believe the No Liability Claims identified in Exhibit B should be disallowed. Failure to disallow the No Liability Claims will result in the applicable claimants receiving an unwarranted recovery against the Debtors’ estates, to the detriment of

creditors in these cases. Accordingly, the Debtors hereby object to the No Liability Claims and request entry of an order disallowing each of the No Liability Claims identified in Exhibit B.

APPLICABLE AUTHORITY

14. Section 502(b) of the Bankruptcy Code provides in pertinent part that:

the court, after notice and a hearing, shall determine the amount of [a] claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that . . . such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured.

11 U.S. C. § 502(b)(1).

15. The Disputed Claims noted above are unenforceable against the Debtors because they are either listed at a higher amount than is reflected in the Debtors' books and records or not valid based on the Debtors' books and records. Therefore, pursuant to §§ 502(b)(1) and 502(b)(9) of the Bankruptcy Code, Bankruptcy Rule 3007 and Local Rule 3007-1, the Court should reduce and allow and disallow the Disputed Claims as specified on Exhibits A and B.

RESPONSES TO THE OBJECTION

16. Filing and Service of Responses: To contest the Objection, a claimant must file and serve a written response to the Objection (a "**Response**") so that it is actually received by the Clerk of the Bankruptcy Court no later than 4:00 p.m. (ET) on February 24, 2010. Claimants should locate their names and claims in this Objection, and read the Proposed Order and the exhibits attached to this Objection carefully. A Response must address each ground upon which the Debtors object to a particular claim. A hearing to consider the Debtors' Objection shall be held on March 3, 2010 at 10:30 a.m. (ET), before the Honorable Mary F. Walrath, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District

of Delaware, 824 North Market Street, 5th Floor, Courtroom No. 4, Wilmington, Delaware 19801 (the "Hearing").

17. Every Response shall be filed and served upon the following entities at the following addresses: (i) Office of the Clerk of the United States Bankruptcy Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 and (ii) Young Conaway Stargatt & Taylor, LLP, Attn: Kara Hammond Coyle, Esq., The Brandywine Building, 1000 West Street, 17th Floor, P.O. Box 391, Wilmington, Delaware 19899.

18. Content of Responses: Every Response to the Objection must contain, at a minimum, the following:

- (a) a caption setting forth the name of the Bankruptcy Court, the above-referenced case number and the title of the Objection to which the Response is directed; the name of the claimant and description of the basis for the amount of the claim;
- (b) a concise statement setting forth the reasons why a particular claim should not be reclassified or disallowed for the reasons set forth in the Objection, including, but not limited to, the specific factual and legal bases upon which the claimant will rely in opposing the Objection at the Hearing;
- (c) all documentation or other evidence of the claim in question, to the extent not already included with the claimant's proof of claim, upon which the claimant will rely in opposing the Objection at the Hearing;
- (d) the name, address, telephone number, and fax number of the person(s) (which may be the claimant or a legal representative thereof) possessing ultimate authority to reconcile, settle, or otherwise resolve the claim on behalf of the claimant; and
- (e) the name, address, telephone number, and fax number of the person(s) (which may be the claimant or a legal representative thereof) to whom the Debtors should serve any reply to the Response.

19. Service Address: If a Response contains an address for the claimant different from that stated on the claim, the address in the Response shall constitute the service

address for future service of papers upon the claimant with respect to the Objection unless or until counsel for the Debtors receive written notice from the claimant or the claimant's counsel of a changed service address.

20. Timely Response Required; Hearing; Replies: If a Response is properly and timely filed and served in accordance with the above procedures, the Debtors will endeavor to reach a consensual resolution with the claimant. If no consensual resolution is reached, the Court will conduct a hearing with respect to the Objection and the Response on March 3, 2010 at 10:30 a.m. (ET), or such other date and time as parties filing responses may be notified. Only those Responses made in writing and timely filed and received will be considered by the Court at any such hearing. The Debtors reserve the right to adjourn the hearing with respect to a specific objection set forth herein and any Response thereto.

21. If a claimant whose claim is subject to the Objection, and who is served with the Objection, fails to file and serve a timely Response in compliance with the foregoing procedures, the Debtors will present to the Court an appropriate order disallowing and expunging the Disputed Claim without further notice to the claimant.

22. The Debtors may, at their option, file and serve a reply to a claimant's Response no later than three days prior to any hearing on the Objection. This Objection shall constitute a request to the Court for leave to file such reply.

RESERVATION OF RIGHTS

23. The Debtors expressly reserve the right to amend, modify or supplement this Objection and to file additional objections to any proofs of claim filed in these chapter 11 cases. Should one or more of the grounds for this Objection be dismissed or overruled, the

Debtors reserve the right to object to any Disputed Claims listed on Exhibits A and B on any other ground.

STATEMENT OF COMPLIANCE WITH LOCAL BANKRUPTCY RULE 3007-1

24. The undersigned representative of Young Conaway Stargatt & Taylor, LLP certifies that she 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, Young Conaway Stargatt & Taylor, LLP believes such deviations are not material and respectfully requests that any such requirement be waived.

NOTICE

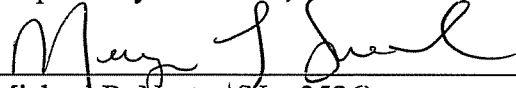
25. The Debtors have provided notice of this Objection to (i) the United States Trustee for the District of Delaware; (ii) counsel to the Committee; (iii) Counsel to the Debtors' postpetition Lenders; (iv) all parties entitled to receive notice under Del. Bankr. LR 2002-1(b); and (v) each of the claimants identified on Exhibits A and B to the Proposed Order.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order substantially in the form attached hereto: (a) granting the relief requested herein; and (b) granting to the Debtors such other and further relief as the Court may deem just and proper.

Dated: January 29, 2010
Wilmington, Delaware

Respectfully submitted,



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Kara Hammond Coyle (No. 4410)
Morgan L. Seward (No. 5388)
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COUNSEL FOR DEBTORS AND DEBTORS-IN-
POSSESSION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

EBHI HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 09-12099 (MFW)

Jointly Administered

Hearing Date: March 3, 2010 at 10:30 a.m. (ET)

Objection Deadline: February 24, 2010 at 4:00 p.m. (ET)

NOTICE OF MOTION

TO: (I) THE UNITED STATES TRUSTEE FOR THE DISTRICT OF DELAWARE;
(II) COUNSEL TO THE COMMITTEE; (III) COUNSEL TO THE DEBTORS'
POSTPETITION LENDERS; (IV) ALL PARTIES ENTITLED TO RECEIVE NOTICE
UNDER DEL. BANKR. LR 2002-1(b); AND (V) EACH OF THE CLAIMANTS TO THE
PROPOSED ORDER

PLEASE TAKE NOTICE THAT the debtors and debtors in possession in the above-captioned case (the "**Debtors**") have filed the attached **Debtors' Fifth Omnibus (Substantive) Objection to Claims Pursuant to § 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007, and Local Rule 3007-1** (the "**Objection**").

PLEASE TAKE FURTHER NOTICE THAT responses to the Objection, if any, must be filed on or before **February 24, 2010 at 4:00 p.m. (ET)** (the "**Objection Deadline**") with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801; and served upon the undersigned counsel to the Debtors so that the response is received on or before the Objection Deadline.

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: EBHI Holdings, Inc., a Delaware corporation (2352); Amargosa, Inc., a Delaware corporation (9737); Gobi Fulfillment Services, Inc., a Delaware corporation (0882); Arabian Diversified Sales, LLC, a Delaware limited liability company (1567); Gibson Services, LLC, an Ohio limited liability company (disregarded); Karalcum International Development, LLC, a Delaware limited liability company (1571); Simpson Information Technology, LLC, a Delaware limited liability company (disregarded); Sandy Financial Services Acceptance Corporation, a Delaware corporation (7532); and Sonoran Acceptance Corporation, a Delaware corporation (7253). The mailing address for EBHI Holdings, Inc. is 10401 N.E. 8th Street, Suite 500, Bellevue, WA 98004. On or about the Petition Date, Tenere of Canada, Inc. and Yuma Customer Services, Inc., affiliates of the Debtors, commenced a proceeding before the Superior Court of Justice, Commercial List, for the Judicial District of Ontario, for a plan of compromise or arrangement under the Companies' Creditors Arrangement Act.

PLEASE TAKE FURTHER NOTICE that responses to the Objection MUST, at a minimum, contain the following:

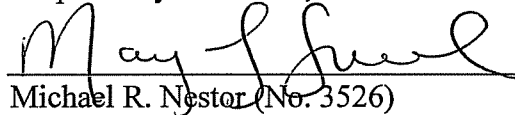
- a. a caption setting forth the name of the Bankruptcy Court, the above-referenced case number and the title of the Objection to which the Response is directed; the name of the claimant and description of the basis for the amount of the claim;
- b. a concise statement setting forth the reasons why a particular claim should not be reclassified or disallowed for the reasons set forth in the Objection, including, but not limited to, the specific factual and legal bases upon which the claimant will rely in opposing the Objection at the Hearing;
- c. all documentation or other evidence of the claim in question, to the extent not already included with the claimant's proof of claim, upon which the claimant will rely in opposing the Objection at the Hearing;
- d. the name, address, telephone number, and fax number of the person(s) (which may be the claimant or a legal representative thereof) possessing ultimate authority to reconcile, settle, or otherwise resolve the claim on behalf of the claimant; and
- e. the name, address, telephone number, and fax number of the person(s) (which may be the claimant or a legal representative thereof) to whom the Debtors should serve any reply to the Response.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE OBJECTION WILL BE HELD ON **MARCH 3, 2010 AT 10:30 A.M. (ET)** BEFORE THE HONORABLE MARY F. WALRATH IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5th FLOOR, COURTROOM NO. 4, WILMINGTON, DE 19801.

PLEASE TAKE FURTHER NOTICE THAT, IF YOU ARE A CLAIMANT AND FAIL TO TIMELY FILE AND SERVE A RESPONSE IN ACCORDANCE WITH THE ABOVE REQUIREMENTS, YOU WILL BE DEEMED TO HAVE CONCURRED WITH AND CONSENTED TO THE OBJECTION AND THE RELIEF REQUESTED THEREIN, AND THE DEBTORS WILL PRESENT TO THE COURT WITHOUT FURTHER NOTICE TO YOU, AN APPROPRIATE ORDER SUSTAINING THE OBJECTION.

Dated: January 29, 2010
Wilmington, Delaware

Respectfully submitted,



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COUNSEL FOR DEBTORS AND DEBTORS-IN-
POSSESSION

EXHIBIT I

Declaration of Kelly E. Green

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

EBHI HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 09-12099 (MFW)

Jointly Administered

Hearing Date: March 3, 2010 at 10:30 a.m. (ET)

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**DECLARATION OF KELLY E. GREEN IN SUPPORT OF
DEBTOR'S FIFTH OMNIBUS (SUBSTANTIVE) OBJECTION TO
CLAIMS PURSUANT TO § 502(b) OF THE BANKRUPTCY CODE,
BANKRUPTCY RULES 3003 AND 3007, AND LOCAL RULE 3007-1**

I, Kelly E. Green, pursuant to 28 U.S.C. § 1746, declare:

1. I am a senior director for Alvarez and Marsal Taxand, LLC, the court-approved restructuring advisors for the above-captioned debtors and debtors in possession (collectively, the "**Debtors**"). In this capacity, I am one of the persons responsible for overseeing the claims reconciliation and objection process in the Debtors' chapter 11 cases. I have read the Debtors' Fifth (Substantive) Objection to Claims Pursuant to Section 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007, and Local Rule 3007-1 (the "**Objection**"), and am directly, or by and through my personnel or agents, familiar with the information contained therein, the proposed form of order (the "**Proposed Order**") and the exhibits attached thereto.

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: EBHI Holdings, Inc., a Delaware corporation (2352); Amargosa, Inc., a Delaware corporation (9737); Gobi Fulfillment Services, Inc., a Delaware corporation (0882); Arabian Diversified Sales, LLC, a Delaware limited liability company (1567); Gibson Services, LLC, an Ohio limited liability company (disregarded); Karalcum International Development, LLC, a Delaware limited liability company (1571); Simpson Information Technology, LLC, a Delaware limited liability company (disregarded); Sandy Financial Services Acceptance Corporation, a Delaware corporation (7532); and Sonoran Acceptance Corporation, a Delaware corporation (7253). The mailing address for EBHI Holdings, Inc. is 10401 N.E. 8th Street, Suite 500, Bellevue, WA 98004. On or about the Petition Date, Tenere of Canada, Inc. and Yuma Customer Services, Inc., affiliates of the Debtors, commenced a proceeding before the Superior Court of Justice, Commercial List, for the Judicial District of Ontario, for a plan of compromise or arrangement under the Companies' Creditors Arrangement Act.

2. Considerable resources and time have been expended in reviewing and reconciling the proofs of claim filed or pending against the Debtors in these cases. The claims were carefully reviewed and analyzed in good faith utilizing due diligence by the appropriate personnel, including the Debtors' claims agent Kurtzman Carson Consultants LLC ("KCC"). These efforts resulted in the identification of the "Modified and Allowed Claims" and "No Liability Claims," as defined in the Objection and identified respectively in Exhibits A and B to the Proposed Order. Set forth below are general descriptions of the objections asserted by the Debtor in the Objection, as well as specific explanations of the Debtors' basis for objecting to each claim.

A. Claims to be Modified and Allowed

3. The Debtors have reviewed the proofs of claim filed in these Chapter 11 Cases, together with any supporting documentation attached thereto, and have determined that the Disputed Claims listed on Exhibit A to the Proposed Order represent higher amounts than the amount of liability reflected in the Debtors' books and records. Accordingly, the Debtor objects to the following:

- a) Louisiana Department of Revenue - The claim of the Louisiana Department of Revenue – claim number 187, listed on Exhibit A – in the amount of \$20,945.61 (Priority Unsecured) and \$2,463.35 (General Unsecured) should be reduced to \$850.00 (Priority Unsecured) because a) the entire Priority Unsecured claim, in the amount of \$4,328.61, related to Corporate Tax due and interest to date for the tax period 12/31/2008, should be reduced to \$0.00 because the underlying tax due amount for that period has been satisfied post-petition and no interest should be allowed to accrue as a result (Louisiana Form CIFT-620, *Corporate Income and Franchise Tax Return*, for the calendar year ending 12/31/2008, was filed by Eddie Bauer, Inc., reflecting a total tax liability in the amount of \$311.00, previous payments in the amount of \$11,694.00, and a total overpayment in the amount of \$11,383.00); b) the entire General Unsecured claim, in the amount of \$2,463.35, related to Corporate Tax penalty to date for the tax period 12/31/2008, should be reduced to \$0.00 because the underlying tax due amount for that month has been satisfied

post-petition and no penalty should be assessed as a result; c) the entire Priority Unsecured claim, in the amount of \$850.00, related to Withholding Tax for the tax period 6/30/2009, should be allowed; and d) the entire Priority Unsecured claim, in the amount of \$15,767.00, related to Sales Tax for the tax period 6/30/2009, should be reduced to \$0.00 because the underlying tax due amount for that month has been satisfied post-petition (Louisiana Form R-1029, *Sales Tax Return*, for the monthly period ending 6/30/2009, was filed by Eddie Bauer, Inc., reflecting a total tax liability in the amount of \$18,361.00; EFT payment in the amount of \$18,361.00 was made to Louisiana on July 20, 2009).

- b) Ohio Department of Taxation - The claim of the Ohio Department of Taxation – claim number 1102, listed on Exhibit A – in the amount of \$40,573.99 (Priority Unsecured) should be reduced to \$635.44 (Priority Unsecured) because a) the entire Priority Unsecured claim, in the amount of \$19,402.14, related to Use Tax for the period 9/1/2008 through 9/30/2008, should be reduced to \$0.00 because the underlying tax due amount for that period has been satisfied pre-petition and no interest should be allowed to accrue as a result (the monthly September, 2008 Ohio Form UUT 1 Long, *Universal Use Tax Return*, was erroneously filed using account number 97-13329 and under the name of Eddie Bauer, Inc., reflecting a balance due in the amount of \$19,074.70; payment in the amount of \$19,074.70 was made by check on October 21, 2008; and a copy of the amended monthly September, 2008 Ohio Form UUT 1 Long, *Universal Use Tax Return*, correctly filed using account number 97-134189 and under the name of Eddie Bauer Fulfillment Services, Inc., reflecting a balance due in the amount of \$19,074.70, was sent via facsimile to the Ohio Department of Taxation on November 20, 2008); b) the entire Priority Unsecured claim, in the amount of \$20,536.41, related to Use Tax for the period 6/1/2008 through 6/30/2008, should be reduced to \$0.00 because the underlying tax due amount for that period has been satisfied pre-petition and no interest should be allowed to accrue as a result (the monthly June, 2008 Ohio Form UUT 1 Long, *Universal Use Tax Return*, was erroneously filed using account number 97-13329 and under the name of Eddie Bauer, Inc., reflecting a balance due in the amount of \$20,165.41; payment in the amount of \$20,165.41 was made by check on July 23, 2008; and a facsimile was sent to the Ohio Department of Taxation on September 25, 2008 explaining the error); and c) the entire Priority Unsecured claim, in the amount of \$635.44, related to School Withholding Tax for the period 3/1/2006 through 3/31/2006, should be allowed.
- c) Ohio Department of Taxation - The claim of the Ohio Department of Taxation – claim number 1103, listed on Exhibit A – in the amount of \$70,324.21 (Priority Unsecured) and \$3,679.23 (General Unsecured) should be reduced to \$24,694.57 (Priority Unsecured) because a) the entire Priority Unsecured claim, in the amount of \$823.35, related to Use Tax for

the period 7/1/2009 through 9/30/2009, should be reduced to \$0.00 because the claim has been satisfied post-petition (the debtor filed its final Ohio Form UUT 1 Short, *Universal Ohio Use Tax Return*, for account number 97-133293, on August 20, 2009, reflecting a net amount due in the amount of \$823.35; EFT payment in the amount of \$19,642.60 for that period was made to Ohio on August 20, 2009, which included payment of \$823.35 in satisfaction of the debtor's Use Tax amount due for the period 7/1/2009 through 9/30/2009); b) \$41,584.21 of the \$66,278.78 Priority Unsecured claim related to Use Tax for the period 7/1/2005 through 6/30/2008 has been satisfied pre-petition (according to a letter received from Ohio Department of Taxation auditor Debebe Kebede, dated November 19, 2009, referencing refund claim number 201000257, in the amount of \$41,584.21, and reflecting a net balance due of \$24,694.57); c) the entire General Unsecured claim, in the amount of \$3,679.23, related to Franchise Tax for the period 1/1/2002 through 12/31/2002, should be reduced to \$0.00 because these amounts relate to a time period for which payment is barred under the protection of Chapter 11 of the Bankruptcy Code (Eddie Bauer, Inc., as a subsidiary of Spiegel, Inc., filed for bankruptcy protection pursuant to Chapter 11 of the Bankruptcy Code on March 17, 2003 [the "Petition Date"] [Case No. 03-11540] [the "Docket"]]. Upon emergence from that bankruptcy process in 2005, all claims against Eddie Bauer from any entity, including taxing entities, for periods prior to the Petition Date, were discharged and forever barred pursuant to Eddie Bauer's Plan of Reorganization and the Bankruptcy Court's Order approving the same [Docket No. 3840]); and d) the entire Priority Unsecured claim, in the amount of \$3,222.08, related to Sales Tax for the period 1/1/2009 through 3/31/2009, should be reduced to \$0.00 because the claim was satisfied pre-petition (the monthly January, 2009 Ohio Form UST 1 Long, *Universal Ohio State, County and Transit Sales Tax Return*, for vendor's license number 89-032777, was filed by Eddie Bauer, Inc., reflecting a balance due in the amount of \$10,622.04; EFT payment in the amount of \$10,622.04 for that period was made to Ohio on February 23, 2009; the monthly February, 2009 Ohio Form UST 1 Long, *Universal Ohio State, County and Transit Sales Tax Return*, for vendor's license number 89-032777, was filed by Eddie Bauer, Inc., reflecting a credit balance in the amount of \$(1,757.32); the monthly March, 2009 Ohio Form UST 1 Long, *Universal Ohio State, County and Transit Sales Tax Return*, for vendor's license number 89-032777, was filed by Eddie Bauer, Inc., reflecting a balance due in the amount of \$157,673.80; EFT payment in the amount of \$157,673.80 for that period was made to Ohio on April 23, 2009).

- d) Georgia Department of Revenue - The claim of the Georgia Department of Revenue – claim number 1337, listed on Exhibit A – in the amount of \$36,520.44 (Priority Unsecured) and \$1,370.79 (General Unsecured) should be reduced to \$1,520.44 (Priority Unsecured) and \$1,213.09 (General Unsecured), for a total allowed amount of \$2,733.53, because a)

a portion of the General Unsecured claim in the amount of \$157.70, related to Corporate Estimated Tax penalty for the period 1/1/2002 through 12/31/2002, should be disallowed as the Debtor's books and records reflect no amount due because these amounts relate to a time period for which payment is barred under the protection of Chapter 11 of the Bankruptcy Code (Eddie Bauer, Inc., as a subsidiary of Spiegel, Inc., filed for bankruptcy protection pursuant to Chapter 11 of the Bankruptcy Code on March 17, 2003 [the "Petition Date"] [Case No. 03-11540] [the "Docket"]. Upon emergence from that bankruptcy process in 2005, all claims against Eddie Bauer from any entity, including taxing entities, for periods prior to the Petition Date, were discharged and forever barred pursuant to Eddie Bauer's Plan of Reorganization and the Bankruptcy Court's Order approving the same [Docket No. 3840]; b) a portion of the Priority Unsecured claim in the amount of \$35,000.00, related to Corporate Income Tax for the period 1/1/2008 through 12/31/2008, should be reduced to \$0.00 because the underlying tax due amount for that period has been satisfied post-petition (Georgia Form 600, *Corporation Tax Return*, for the calendar year ending 12/31/2008, was filed by Eddie Bauer, Inc., reflecting a total tax liability in the amount of \$10.00, previous payments in the amount of \$4,250.00, and a total overpayment in the amount of \$4,240.00); c) a portion of the Priority Unsecured claim in the amount of \$300.63 (\$286.33 tax; \$14.30 interest), related Sales and Use Tax for the period 6/1/2009 through 6/30/2009, should be allowed; d) a portion of the General Unsecured claim in the amount of \$71.60, related Sales and Use Tax penalty for the period 6/1/2009 through 6/30/2009, should be allowed; e) a portion of the Priority Unsecured claim in the amount of \$22.23 (\$14.25 tax; \$7.98 interest), related Withholding Tax for the period 10/1/2004 through 10/31/2004, should be allowed; f) a portion of the General Unsecured claim in the amount of \$28.56, related Withholding Tax penalty for the period 10/1/2004 through 10/31/2004, should be allowed; g) a portion of the Priority Unsecured claim in the amount of \$124.12, related Withholding Tax interest for the period 10/1/2005 through 10/31/2005, should be allowed; h) a portion of the General Unsecured claim in the amount of \$645.62, related Withholding Tax penalty for the period 10/1/2005 through 10/31/2005, should be allowed; i) a portion of the General Unsecured claim in the amount of \$25.00, related Withholding Tax penalty for the period 10/1/2005 through 12/31/2005, should be allowed; j) a portion of the Priority Unsecured claim in the amount of \$73.46, related Withholding Tax interest for the period 1/1/2006 through 1/31/2006, should be allowed; k) a portion of the General Unsecured claim in the amount of \$392.31, related Withholding Tax penalty for the period 1/1/2006 through 1/31/2006, should be allowed; l) a portion of the General Unsecured claim in the amount of \$25.00, related Withholding Tax penalty for the period 7/1/2006 through 9/30/2006, should be allowed; m) a portion of the Priority Unsecured claim in the amount of \$1,000.00, related Withholding Tax tax for the

period 10/1/2006 through 12/31/2006, should be allowed; n) a portion of the General Unsecured claim in the amount of \$25.00, related Withholding Tax penalty for the period 1/1/2008 through 3/31/2008, should be allowed.

B. No Liability Claims

4. The Debtors have reviewed the proofs of claim in these Chapter 11 Cases and have determined that the Disputed Claims listed on Exhibit B are not valid claims.

Accordingly, the Debtors seek to disallow in full the No Liability Claims. Accordingly, the Debtors object to the following:

- a) North Carolina Department of Revenue - The claim of the North Carolina Department of Revenue – claim number 379, listed on Exhibit B – in the amount of \$176,670.91 (Priority Unsecured) and \$17,115.35 (General Unsecured) should be disallowed. The Debtor's books and records reflect no amount due because a) the entire Priority Unsecured claim, in the amount of \$62,859.83, related to Sales and Use Tax for the period April, 2007, should be reduced to \$0.00 because the underlying tax due amount for that month has been satisfied pre-petition and no interest should be allowed to accrue as a result (the monthly April, 2007, North Carolina Form E-500, *Sales and Use Tax Return*, for account ID 10137041, was filed by Eddie Bauer, Inc., reflecting total tax in the amount of \$93,628.82; EFT payment in the amount of \$57,620.00 was made to North Carolina on April 25, 2007, in addition to the \$36,008.83 payment for April, 2007, reflected on claim number 379, for total April, 2007, payments of \$93,628.83); b) the entire General Unsecured claim, in the amount of \$5,762.00, related to Sales and Use Tax for the period April, 2007, should be reduced to \$0.00 because the underlying tax due amount for that month was satisfied pre-petition and no penalties should be assessed as a result; c) the entire Priority Unsecured claim, in the amount of \$71,401.91, related to Sales and Use Tax for the period December, 2008, should be reduced to \$0.00 because the underlying tax due amount for that month has been satisfied pre-petition and no interest should be allowed to accrue as a result (the monthly December, 2008, North Carolina Form E-500, *Sales and Use Tax Return*, for account ID 10137041, was filed by Eddie Bauer, Inc., reflecting total tax in the amount of \$271,245.92; EFT payment in the amount of \$71,245.92 was made to North Carolina on January 20, 2009, in addition to the \$200,000.00 payment for December, 2008, reflected on claim number 379, for total December, 2008, payments of \$271,245.92); d) the entire General Unsecured claim, in the amount of \$7,124.59, related to Sales and Use Tax for the period December, 2008, should be reduced to \$0.00 because the underlying tax due amount for that month was satisfied pre-petition and no penalties should be assessed as a result; e) the entire Priority Unsecured

claim, in the amount of \$42,409.17, related to Sales and Use Tax for the period March, 2009, should be reduced to \$0.00 because the underlying tax due amount for that month has been satisfied pre-petition and no interest should be allowed to accrue as a result (the monthly March, 2009, North Carolina Form E-500, *Sales and Use Tax Return*, for account ID 10137041, was filed by Eddie Bauer, Inc., reflecting total tax in the amount of \$98,287.60; EFT prepayment in the amount of \$75,000.00 was made to North Carolina on February 10, 2009, which was applied against Eddie Bauer's March, 2009, North Carolina Sales & Use Tax liability, in addition to the \$56,000.00 payment for March, 2009, reflected on claim number 379, for total March, 2009, payments of \$131,000.00); f) the entire General Unsecured claim, in the amount of \$4,228.76, related to Sales and Use Tax for the period March, 2009, should be reduced to \$0.00 because the underlying tax due amount for that month was satisfied pre-petition and no penalties should be assessed as a result.

- b) Orange County Treasurer – Tax Collector - The claim of the Orange County Treasurer-Tax Collector – claim number 398, listed on Exhibit B – in the amount of \$30,920.55 (General Unsecured) and \$1,503.95 (Priority Unsecured) should be disallowed. The Debtor's books and records reflect no amount due because a) the entire portion of the Priority Unsecured claim, in the amount of \$1,503.95, related to Personal Property Tax for tax year 2009, has been satisfied post petition (the Orange County 2009-10 Unsecured Property Tax Bill was received by Eddie Bauer, Inc. [Tax Collector Reference No. 0112165], reflecting \$731.51 originally due and \$879.66 due if paid after August 31, 2009; the Orange County 2009-10 Unsecured Property Tax Bill was received by Eddie Bauer, Inc. [Tax Collector Reference No. 0112170], reflecting \$772.44 originally due and \$924.68 due if paid after August 31, 2009; payment was made by check, dated September 21, 2009, in the amount of \$425.72, representing the portion of the tax liability paid by Eddie Bauer, Inc.; payment was made by two checks, each dated September 15, 2009, respectively in the amounts of \$670.55 and \$708.07, representing the portion of the tax liability paid by Eddie Bauer LLC, for a total amount paid of \$1,804.34; and b) the entire General Unsecured claim, in the amount of \$30,920.55, related to Personal Property Tax for tax years 2001 through 2003, relates to a time period for which payment is barred under the protection of Chapter 11 of the Bankruptcy Code (Eddie Bauer, Inc., as a subsidiary of Spiegel, Inc., filed for bankruptcy protection pursuant to Chapter 11 of the Bankruptcy Code on March 17, 2003 [the "Petition Date"] [Case No. 03-11540] [the "Docket"]. Upon emergence from that bankruptcy process in 2005, all claims against Eddie Bauer from any entity, including taxing entities, for periods prior to the Petition Date, were discharged and forever barred pursuant to Eddie Bauer's Plan of Reorganization and the Bankruptcy Court's Order approving the same [Docket No. 3840]).

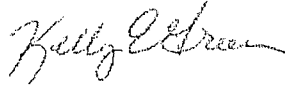
- c) Alamance County Tax Collector - The claim of the Alamance County Tax Collector – claim number 436, listed on Exhibit B – in the amount of \$497.59 (Priority Unsecured) and \$97,642 (Secured) should be disallowed. The Debtor's books and records reflect no amount due because a) the entire Priority Unsecured claim, in the amount of \$497.59, related to Personal Property Tax for the 2009 tax year, has been satisfied post petition. The 2009 Alamance County Property Tax Bill received by Eddie Bauer, Inc. from the Tax Collector reflected \$497.59 originally due and \$507.74 due if paid after August 31, 2009. Payment was made by check, dated September 21, 2009, in the amount of \$51.62 (\$41.47 tax plus \$10.15 penalty), representing the portion of the tax liability paid by Eddie Bauer, Inc. Further payment was made by check, dated September 15, 2009, in the amount of \$456.12, representing the portion of the tax liability paid by Eddie Bauer LLC, for a total amount paid of \$507.74. Additionally, b) the Tax Collector has erroneously completed the claim form to indicate a Secured Claim for the entire assessed value of the Debtor's personal property located within the Collector's jurisdiction.
- d) Ohio Department of Taxation - The claim of the Ohio Department of Taxation – claim number 1284, listed on Exhibit B – in the amount of \$34,155.72 (Priority Unsecured) should be disallowed. The Debtor's books and records reflect no amount due because the entire Priority Unsecured claim, in the amount of \$34,155.72, related to Use Tax for the period March 1, 2009 through June 16, 2009 was satisfied pre-petition (the monthly March, 2009 Ohio Form UUT 1 Short, *Universal Ohio Use Tax Return*, for account number 97-134819, was filed by Eddie Bauer, Inc., reflecting a zero net amount due; the monthly April, 2009 Ohio Form UUT 1 Short, *Universal Ohio Use Tax Return*, for account number 97-134819, was filed by Eddie Bauer, Inc., reflecting a zero net amount due; the monthly May, 2009 Ohio Form UUT 1 Short, *Universal Ohio Use Tax Return*, for account number 97-134819, was filed by Eddie Bauer, Inc., reflecting a zero net amount due; the monthly June, 2009 Ohio Form UUT 1 Short, *Universal Ohio Use Tax Return*, for account number 97-134819, was filed by Eddie Bauer, Inc., reflecting a zero net amount due).
- e) Indiana Department of Revenue - The claim of the Indiana Department of Revenue – claim number 1292, listed on Exhibit B – in the amount of \$333,921.90 (Administrative Priority) should be disallowed. The Debtor's books and records reflect no amount due because the entire administrative priority claim, in the amount of \$333,921.90, relates to Retail Sales Tax for periods subsequent to the final period for which Eddie Bauer was required to collect and remit Indiana Retail Sales Tax due to the sale of all its business assets, which was effective 8/1/2009. The debtor filed its final Indiana Retail Sales Tax return for the tax period of July, 2009, and EFT payment in the amount of \$65,793.33 for that period was made to Indiana on August 20, 2009.

- f) Tennessee Department of Revenue - The claim of the Tennessee Department of Revenue – claim number 1332, listed on Exhibit B – in the amount of \$83,837.21 (Administrative Priority) should be disallowed. The Debtor's books and records reflect no amount due because the entire administrative priority claim, in the amount of \$83,837.21, relates to Sales and Use Tax for periods subsequent to the final period for which Eddie Bauer was required to collect and remit Indiana Retail Sales Tax due to the sale of all its business assets, which was effective 8/1/2009. The debtor filed its final Tennessee Sales and Use Tax Return for the tax period of July, 2009, and EFT payment in the amount of \$81,326.00 for that period was made to Tennessee on August 20, 2009.

5. I declare under penalty of perjury that the foregoing information is true

and correct to the best of my knowledge, information and belief.

Dated: January 29, 2010



Kelly E. Green, Senior Director
Alvarez and Marsal Taxand, LLC

EXHIBIT II

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

EBHI HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 09-12099 (MFW)

Jointly Administered

Ref. Docket No. _____

**ORDER SUSTAINING DEBTORS' FIFTH OMNIBUS (SUBSTANTIVE) OBJECTION
TO CLAIMS PURSUANT TO § 502(b) OF THE BANKRUPTCY
CODE, BANKRUPTCY RULES 3003 AND 3007, AND LOCAL RULE 3007-1**

Upon the Debtors' Fifth Omnibus (Substantive) Objection to Claims Pursuant to § 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007, and Local Rule 3007-1 (the "**Objection**"),² and it appearing that notice of the Objection was good and sufficient upon the particular circumstances and that no other or further notice need be given; and the Court having considered the Objection, the claims listed on Exhibits A and B attached hereto, and any responses thereto; and upon the record herein; and after due deliberation thereon and good and sufficient cause appearing therefore; it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Objection is GRANTED.

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: EBHI Holdings, Inc., a Delaware corporation (2352); Amargosa, Inc., a Delaware corporation (9737); Gobi Fulfillment Services, Inc., a Delaware corporation (0882); Arabian Diversified Sales, LLC, a Delaware limited liability company (1567); Gibson Services, LLC, an Ohio limited liability company (disregarded); Karalcum International Development, LLC, a Delaware limited liability company (1571); Simpson Information Technology, LLC, a Delaware limited liability company (disregarded); Sandy Financial Services Acceptance Corporation, a Delaware corporation (7532); and Sonoran Acceptance Corporation, a Delaware corporation (7253). The mailing address for EBHI Holdings, Inc. is 10401 N.E. 8th Street, Suite 500, Bellevue, WA 98004. On or about the Petition Date, Tenere of Canada, Inc. and Yuma Customer Services, Inc., affiliates of the Debtors, commenced a proceeding before the Superior Court of Justice, Commercial List, for the Judicial District of Ontario, for a plan of compromise or arrangement under the Companies' Creditors Arrangement Act.

² Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Objection.

2. The Disputed Claims listed on Exhibit A in the column labeled “Modified and Allowed Claims” are disallow in part and reduced in part to the amounts listed on Exhibit A.

3. The Disputed Claims listed on Exhibit B are disallowed.

4. This Court shall retain jurisdiction over the Debtors and the claimants whose Disputed Claims are subject to the Objection with respect to any matters related to or arising from the Objection or the implementation of this Order.

5. The Debtors reserve the right to amend, modify, or supplement the Objection, and to file additional objections to claims filed in these Chapter 11 Cases.

6. This Court shall retain jurisdiction over all affected parties with respect to any matters, claims or rights arising from or related to the implementation and interpretation of this Order.

Dated: Wilmington, Delaware
March __, 2010

Mary F. Walrath
United States Bankruptcy Judge

EXHIBIT A

Exhibit A
Reduce and Allow

Name of Claimant	Claim Number	Original Claim Amount	Modified Claim Amount	Debtor	Reason for Disallowance
Louisiana Department of Revenue	187	\$23,408.96	\$850.00	Eddie Bauer, Inc.	Reduce and allow.
Ohio Department of Taxation	1102	\$40,573.99	\$635.44	Eddie Bauer Fulfillment Services, Inc.	Reduce and allow.
Ohio Department of Taxation	1103	\$74,003.44	\$24,694.57	Eddie Bauer, Inc.	Reduce and allow.
Georgia Department of Revenue	1337	\$37,891.23	\$2,733.53	Eddie Bauer, Inc.	Reduce and allow.

EXHIBIT B

Exhibit B
No Amount Due Per Debtor's Books and Records

Name of Claimant	Claim Number	Claim Amount	Debtor	Reason for Disallowance
North Carolina Department of Revenue	379	\$193,786.26	Eddie Bauer, Inc.	No amount due per Debtor's books and records.
Orange County Treasurer-Tax Collector	398	\$32,424.50	Eddie Bauer, Inc.	No amount due per Debtor's books and records.
Alamance County Tax Collector	436	\$98,139.59	Eddie Bauer, Inc.	No amount due per Debtor's books and records.
Ohio Department of Taxation	1284	\$34,155.72	Eddie Bauer Fulfillment Services, Inc.	No amount due per Debtor's books and records.
Indiana Department of Revenue	1292	\$333,921.90	Eddie Bauer, Inc.	No amount due per Debtor's books and records.
Tennessee Department of Revenue	1332	\$83,837.21	Eddie Bauer, Inc.	No amount due per Debtor's books and records.