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Trust and Curtis R. Smith in his capacity
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

BGI, INC., f/k/a Borders Group, Inc.,

Debtor.

Chapter 11

Case No. 11-10614 (MG)

Substantively Consolidated

**OBJECTION OF THE BGI CREDITORS' LIQUIDATING TRUST AND
LIQUIDATING TRUSTEE TO THE MOTION TO ALLOW AND DEEM TIMELY
FILED GIFT CARD CLAIMS**

The BGI Creditors' Liquidating Trust (the "Trust"), as successor to the debtors and debtors-in-possession (collectively, the "Debtors" or "Borders"), and Curtis R. Smith, the Liquidating Trustee (the "Trustee"), submit this objection (the "Late Claim Objection") to the *Motion to Allow and Deem Timely Filed Gift Card Claims* (the "Late Claim Motion") [Docket No. 2415] together with the Declaration of James Toner (the "Toner Decl.") and the Declaration of Kate Matson (the "Matson Decl.") submitted in support of the Late Claim Objection, and respectfully state as follows:

PRELIMINARY STATEMENT

1. The Trust and Trustee recognize the importance of administering and reconciling claims and ultimately providing distributions to unsecured creditors who timely filed valid proofs of claims in the Debtors' bankruptcy cases. However, given the limited funds available for distribution and the proper publication notice of the General Bar Date (defined below), it is of vital importance that any proof of claim not timely filed in accordance with the Court's Bar Date Order (defined below) should not be allowed absent the creditor demonstrating that its failure to timely file such proof of claim was the result of excusable neglect as required by applicable law.

2. The Gift Card Holders (defined below) have not demonstrated that their failure to timely file proofs of claim is the result of excusable neglect. Despite the Debtors' compliance with the Bar Date Order, the two Gift Card Holders would have the Court believe that it is the Debtors' fault that the Gift Card Holders waited until February 4, 2012, a full *eight* months after the General Bar Date and approximately one (1) month after they filed the Late Claim Motion, to file their proofs of claim. Moreover, months after the expiration of the properly noticed General Bar Date and after confirmation of the Plan (defined below), the Gift Card Holders now seek to have the Court establish the priority of not only the individual claims of the two Gift Card Holders, but also, without having filed a class proof of claim, the purported claims of an entire proposed class of gift card holders (the "Proposed Class").

3. The Gift Card Holders were "unknown creditors" to the Debtors. Therefore, the Gift Card Holders were properly notified of the General Bar Date through publication notice that was approved and deemed sufficient by the Court. The Gift Card Holders have failed to demonstrate any valid reason for their eight-month delay in filing proofs of claim. In fact,

though the Gift Card Holders contacted counsel no later than December 5, 2011,¹ they waited a month to file the Late Claim Motion and, for no apparent reason, waited yet another month to file their individual proofs of claim on February 4, 2012. Further, the Gift Card Holders have not submitted any certification or affidavit to convince this Court to ignore the properly noticed General Bar Date or provide any factual support to demonstrate excusable neglect. Allowing the untimely proofs of claim of the Gift Card Holders would be extremely detrimental to the estate and prejudicial to the bona fide creditors especially given the potential outstanding claims of the alleged Proposed Class and the funds available to distribute to general unsecured creditors who timely filed proofs of claim.

4. The Gift Card Holders had ample time and numerous opportunities to redeem their gift cards, yet did nothing. The Gift Card Holders could have recovered on their gift cards first by timely filing proofs of claim by the properly noticed General Bar Date. Alternatively, the Gift Card Holders had a second opportunity to redeem their gift cards simply by using the gift cards for approximately four months *after* the General Bar Date until the end of the Debtors' well-publicized chain-wide store liquidation and termination of the Borders.com website (the "Borders Website") in September 2011. Indeed, the Debtors' sales records indicate that a large number of gift cards were in fact redeemed after the Debtors announced their full-chain liquidation. *See* Matson Decl., ¶¶ 16-22. None of the Debtors' other unsecured creditors had such a unique opportunity to recover on their claims. Now, however, the Gift Card Holders seek an astonishing "third bite at the apple" by requesting that the Court allow their late filed claims. Under the circumstances, the relief requested would be inequitable to the Debtors' other creditors who are bound by the General Bar Date, who timely filed proofs of claim, and who now expect

¹ Further, no objection to confirmation of the Plan was raised by the Gift Card Holders. The confirmation hearing was on December 21, 2011.

to receive distributions in accordance with the Plan they voted on without any knowledge of these claims. Accordingly, the Late Claim Motion must be denied.

BACKGROUND

5. On February 16, 2011 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) with the United States Bankruptcy Court for the Southern District of New York (the “Court”). The Debtors were authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors’ cases were jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

6. On the Petition Date, the Debtors filed their *Motion Pursuant to 11 U.S.C. 105(a) and 503(b)(1) for Authorization to Honor Certain Prepetition Customer Programs* (the “Customer Programs Motion”) [Docket No. 18], by which the Debtors sought authority from the Court to continue their gift card program (the “Gift Card Program”), among others, in the ordinary course of business. *See* Customer Programs Motion, ¶ 14. The Customer Programs Motion was approved by order of the Court entered on the Petition Date. [Docket No. 63].

7. Also on the Petition Date, the Debtors issued a press release announcing that they had filed for bankruptcy protection and that store closing sales would be conducted at 200 of Borders’ retail stores. The press release informed the public that additional information about the Debtors’ bankruptcy could be found at the www.bordersreorganization.com website (the “Borders Reorganization Website”), which Garden City Group (defined below), the Debtors’

claims and noticing agent, began hosting on the Petition Date.² In addition, the Borders Website informed visitors that the Debtors were in bankruptcy and permitted persons to directly access the Borders Reorganization Website. *See* Matson Decl., ¶ 13. Additionally, on or about March 30, 2011, the Official Committee of Unsecured Creditors of Borders Group, Inc., *et al.*, (the “Committee”) launched its own website (the “Committee Website”) accessible at www.borderscommittee.com, posting relevant information in connection with the chapter 11 cases, including notices, deadlines, pleadings and other documents such as the bar date notice and a proof of claim form. *See* Matson Decl., ¶ 14.

8. The Debtors’ chapter 11 bankruptcy filing was widely publicized by numerous news outlets recommending that consumers use their Borders’ gift cards to avoid the possibility that gift cards would not be honored in the future. *See* Matson Decl., ¶15.

THE GENERAL BAR DATE

9. On March 25, 2011, the Debtors filed their *Notice of Presentment of Application for Order Establishing the Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* (the “Bar Date Application”) [Docket No. 475]. On April 6, 2011, the Debtors filed their *Notice of Revised Proposed Order Establishing Deadline for Filing Proofs of Claim and Approving the Form and Manner Thereof*. [Docket No. 550].

10. No objections to the Bar Date Application were filed, and on April 8, 2011, the Court entered the *Order Establishing Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* (the “Bar Date Order”) [Docket No. 580].

11. The Bar Date Order established June 1, 2011, at 5:00 p.m. (prevailing Eastern Time) as the deadline (the “General Bar Date”) for each person or entity (including, without

² The Debtors also issued a press release on June 30, 2011 informing the public that they could find additional information about the Debtors’ bankruptcy at the Borders Reorganization Website. A copy of this press release is annexed to the Late Claim Motion as Exhibit F.

limitation, individuals, partnerships, corporations, joint ventures, and trusts) to file proofs of claim based on claims (as the term “claim” is defined in Bankruptcy Code section 101(5)) that arose on or prior to the Petition Date, including claims pursuant to section 503(b)(9) of the Bankruptcy Code (other than by governmental units as defined in Bankruptcy Code section 101(27), which were required to file proofs of claim by August 15, 2011). *See Bar Date Order*, p. 2.

12. The Bar Date Order provided that proofs of claim would be deemed timely filed only if actually received by the Debtors’ claims agent, The Garden City Group, Inc. (“GCG”), or by the Clerk of the Court on or before the General Bar Date. *Id.* Although the Bar Date Order provided that certain persons or entities need not file a proof of claim on or prior to the General Bar Date, holders of gift cards were not included in the group of excepted persons or entities. *Id.* at pp. 4-5. Thus, the General Bar Date applied to holders of the Debtors’ prepetition gift cards, including the Gift Card Holders.

13. On April 20, 2011, GCG, acting on behalf of the Debtors pursuant to the Court’s *Order Authorizing the Appointment of The Garden City Group, Inc., as Notice and Claims Agent Under 28 U.S.C. § 156(c) and Granting Related Relief* [Docket No. 88], filed an Affidavit of Service (the “Affidavit”) [Docket No. 671], certified that the *Notice of Deadlines Requiring Filing of Proofs of Claim on or Before June 1, 2011 and August 15, 2011* (the “Bar Date Notice”) had been served on April 18, 2011 by first class mail on the parties on the service list that was annexed as an exhibit to the Affidavit.

14. The Bar Date Order also approved the Bar Date Notice and deemed the Bar Date Notice adequate and sufficient if served by first class mail at least 35 days prior to the General Bar Date on, among others, “all *known* creditors and other known holders of claims as of the date

of [the Bar Date Order], including all persons or entities listed in the Schedules as holding claims for which the Debtors have addresses...”. Bar Date Order, p. 6. (emphasis added).

15. The Bar Date Order further directed that the Debtors publish notice of the General Bar Date (the “Publication Notice”) once, in the national edition of *The New York Times*, at least 28 days before the General Bar Date, which publication the Bar Date Order deemed good, adequate and sufficient publication of notice of the General Bar Date. Bar Date Order, p. 7.

16. On April 26, 2011, the Debtors filed an *Affidavit of Publication of the Notice of Deadlines for Filing Proofs of Claim in The New York Times* [Docket No. 715], certifying that the Bar Date Notice had been published in *The New York Times* on April 25, 2011. Thus, the Debtors properly accomplished Publication Notice of the General Bar Date as required by the Bar Date Order.

17. On April 22, 2011, GCG created a link on the Borders Reorganization Website entitled “Notice of Deadlines to File Claims and Proof of Claim Form”, which led visitors to a webpage (the “Bar Date Notice Webpage”)³ that provided a link to the court-approved bar date notice, information about filing proofs of claim and the associated deadlines. *See* Matson Decl., 17 and “Exhibit F” annexed thereto.

STORE CLOSING SALES

18. On or about June 30, 2011, the Debtors filed their *Motion for an Order Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (I) Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances and Interests and the Assumption and Assignment of Executory Contracts and Unexpired Leases Related Thereto, (II) Approving the Sale Procedures and Break-Up Fee, and (III) Granting Related Relief* (the “Sale

³ *See* <http://bordersreorganization.com/claim.php> as of May 23, 2012.

Motion”) [Docket No. 1130], seeking authority to, among other things, sell substantially all of the Debtors’ assets. At the time the Debtors filed the Sale Motion, the Debtors were seeking approval of an agreement with an affiliate of the Najafi Companies and Direct Brands, Inc., which would have designated such company a stalking horse bidder in connection with a possible purchase of the Debtors’ assets and business as a going concern. However, by July 13, 2011, the Debtors announced that they would be unable to continue to seek approval of such an agreement.

19. Ultimately, the Debtors received no offer to purchase the Debtors’ assets and business as a going concern, causing the Debtors to seek approval of a full-chain liquidation in connection with the Sale Motion. Accordingly, on or about July 21, 2011, the Court entered the *Order Approving Agency Agreement, Store Closing Sales and Related Relief* [Docket No. 1377], which, among other things, authorized the Debtors to conduct store closing sales for the Debtors’ remaining retail store inventory and their related assets. The store closing sales were concluded by September 20, 2011, thus ending the Debtors’ retail store operations. *See* Disclosure Statement (defined below), V.E.2., p. 18.

20. On July 18, 2011, the Debtors issued a press release announcing that Borders would not be sold as a going concern and that store closing sales for all of Borders’ remaining retail stores would commence by July 22, 2011 (the “Liquidation Press Release”). *See* Matson Decl., ¶19, and “Exhibit H” annexed thereto. A multitude of national and regional news outlets and Internet blogs publicized the impending store closures from the date of the Liquidation Press Release on July 18, 2011 through September 2011, the date of the last retail store closure. *Id.*, at ¶ 20 and “Exhibit J” annexed thereto. Numerous of these articles advised the public that Borders was no longer operating normally but was instead liquidating, and cautioned Borders’ consumers

that Gift Cards would not be redeemable in perpetuity. *Id.* These articles explicitly referenced the need for consumers to redeem their Gift Cards as soon as possible, or otherwise quoted customers who had rushed to a Borders retail store upon Borders' announcement of the full-chain liquidation in order to use their Gift Cards. *Id.*

21. On August 10, 2011, the Court entered an order authorizing an auction of the Debtors' intellectual property assets to be held on September 14, 2011. *See* Docket No. 1513. After many hours of competitive bidding at the auction, Barnes and Noble ("B&N") emerged as the winning bidder for the bulk of the Debtors' intellectual property assets, which included the www.borders.com website (the "Borders Website"). [Docket No. 1792]. On September 27, 2011, the Court entered an order authorizing the sale of the Debtors' intellectual property assets to B&N. *See* Docket No. 1876. As of September 27, 2011, all e-commerce transactions on the Borders Website ceased, including the processing and honoring of gift cards. *See* Toner Decl., ¶ 16. Thereafter, the Debtors consummated the sale of their intellectual property assets with B&N, and B&N closed the Borders Website on or about October 14, 2011 when B&N began redirecting visitors to the Borders Website to B&N's website. *Id.*

ADMINISTRATIVE BAR DATE

22. On September 26, 2011, the Debtors filed their *Notice of Presentment of Debtors' Application for Order Pursuant to Bankruptcy Code Sections 503 and 105 and Bankruptcy Rules 2002 and 9007 (I) Setting Bar Date for Filing Proofs of Claim Asserting Administrative Expenses and (II) Approving Form and Manner of Notice Thereof* (the "Administrative Bar Date Application") [Docket No. 1875].

23. The Administrative Bar Date Application provided:

[T]he holders of prepetition unsecured priority claims for gift cards and gift certificates issued by the Debtors pre-Commencement Dat are barred and estopped from asserting

claims against the Debtors' estates unless they have previously filed a proof of claim prior to the deadline of June 1, 2011 established pursuant to the General Bar Date Order. On February 16, 2011, the Debtors obtained an order authorizing, but not directing, them to honor gift cards and gift certificates during these chapter 11 cases and the Debtors did in fact honor gift cards and gift certificates redeemed during these cases. Further, the Debtors' Liquidating Agent honored the Debtors' gift cards and gift certificates at the closing store locations through the end of the liquidation process and such gift cards and gift certificates can be used at the Debtors' website, www.borders.com, through the closing of the sale of the Debtors' IP Assets, expected to occur on September 27, 2011.

Administrative Bar Date Application, ¶ 18. (citations and definitions omitted).

24. No objections were filed to the Administrative Bar Date Application, and on October 12, 2011, the Court entered the *Order Pursuant to Bankruptcy Code Sections 503 and 105 and Bankruptcy Rules 2002 and 9007(I) Setting Bar Date for Filing Proofs of Claim Asserting Administrative Expenses and (II) And Approving Form and Manner of Notice Thereof* (the "Administrative Bar Date Order") [Docket No. 1927], which established November 21, 2011 as the administrative expense bar date (the "Administrative Bar Date").

25. The Administrative Bar Date Order expressly stated:

[A]ny holder of a claim for gift cards or gift certificates issued by the Debtors pre-Commencement Date ("Prepetition Gift Card Claims"), which claim was required to be asserted by June 1, 2011 pursuant to the General Bar Date Order, is **not** now permitted to assert such a claim. As set forth in the General Bar Date Order, any unsecured claim against the Debtors arising prior to the Commencement Date has already been deemed disallowed and any claimant holding such a claim is forever barred and estopped from asserting such a claim, unless the holder of a Prepetition Gift Card timely filed a proof of claim....

Administrative Bar Date Order, p. 3. (emphasis in original).

26. The Administrative Bar Date Order also directed the Debtors to publish notice of the Administrative Bar Date in *USA Today*. *Id.* at p. 5. On October 20, 2011, the Debtors filed the *Affidavit of Publication of the Notice of Deadline for Filing Proof of Claim Forms Asserting Administrative Expenses in USA Today* [Docket No. 1980], certifying that they published the *Notice of Deadline for Filing Proof of Claim Forms Asserting Administrative Expenses* (see

Annex II to the Administrative Bar Date Order) in *USA Today* on October 18, 2011. The Debtors properly completed publication notice of the Administrative Bar Date as required by the Administrative Bar Date Order.

PLAN CONFIRMATION

27. Pursuant to the *Order Approving the Disclosure Statement; Approving the Solicitation and Voting Procedures; Scheduling the Plan Confirmation Process; and Granting Related Relief*, dated November 14, 2011 (the “Disclosure Statement Order”) [Docket No. 2122], the Debtors were required to publish notice of the Disclosure Statement Order, which also included notice of the confirmation hearing, in *The New York Times*. See Disclosure Statement Order, p. 11 and “Exhibit D” thereto. On November 17, 2011, the Debtors filed the *Affidavit of Publication of the Notice of Order Approving the Disclosure Statement and the Solicitation and Voting Procedures; Scheduling the Plan Confirmation Hearing; and Granting Related Relief* [Docket No. 2162], certifying that they published the Disclosure Statement Order in *The New York Times* on November 16, 2011.

28. On December 21, 2011, the Court entered an order (the “Confirmation Order”) [Docket No. 2384], confirming the *First Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code Proposed by the Debtors and the Official Committee of Unsecured Creditors*, dated as of November 10, 2011 (the “Plan”) [Docket No. 2110, Exhibit A]. In the Debtors’ disclosure statement (the “Disclosure Statement”) filed with the Plan, the Debtors estimated recoveries to general unsecured creditors would fall within the range of 4%-10%. See Disclosure Statement, p. 19.

29. The Plan went effective on January 12, 2012 (the “Effective Date”) [Docket No. 2465]. On the Effective Date, as contemplated by the Plan and Confirmation Order and pursuant

to the BGI Creditors' Liquidating Trust Agreement, the Trust was established, Curtis R. Smith was named as the sole Trustee, and all of the Debtors' property that was supposed to be transferred to the Trust was transferred to the Trust. Also on the Effective Date, pursuant to the Plan and Confirmation Order, the Debtors' bankruptcy cases were substantively consolidated. *See* Plan, Art. IV; Confirmation Order ¶¶ 3-6. Shortly after the Effective Date, the Trust began making distributions to holders of allowed administrative and priority claims pursuant to the Plan. *See* Toner Decl., ¶ 21. To date, the Trust has made distributions to holders of allowed administrative and priority claims totaling at least \$17 million (which includes the Trust's administrative costs). *See* Toner Decl., ¶ 21.

THE GIFT CARD HOLDERS

30. On January 4, 2012, Eric Beeman and Jane Freij (collectively the "Gift Card Holders") filed the Late Claim Motion seeking entry of an order authorizing the Gift Card Holders to file untimely proofs of claim against Borders, Inc. and Borders Properties, Inc., respectively. In the Late Claim Motion, the Gift Card Holders allege that Mr. Beeman holds a gift card in the amount of \$100.00 and Ms. Freij holds a gift card in the amount of \$25.00; both of which gift cards they received as gifts prior to the Petition Date. *See* Late Claim Motion, ¶¶ 15-16 and Exhibit A thereto entitled, "Proofs of Claim". The Trust has verified that the amounts remaining on the gift cards of Mr. Beeman and Ms. Freij are \$100.00 and \$25.00, respectively. *See* Toner Decl., ¶ 17.

31. The Gift Card Holders filed their individual proofs of claim as of February 4, 2012.⁴ This was approximately *eight* months after the General Bar Date had passed and nearly a month after the Gift Card Holders filed the Late Claim Motion.

⁴ *See* Exhibit A for copies of the Gift Card Holders' filed proofs of claim. Notably, Ms. Freij did not even sign her own proof of claim; rather, counsel for the Gift Card Holders signed for her.

**THE DEBTORS' LACK OF KNOWLEDGE
OF THE IDENTITY OF HOLDERS OF GIFT CARDS**

32. In or about 1998, the Debtors instituted an electronic gift card program (the “Gift Card Program”) under which they sold Borders gift cards (“Gift Cards”) at Borders retail locations, which at one point included over 1000 stores in all 50 of the United States, the District of Columbia, and the Commonwealth of Puerto Rico;⁵ third-party retail locations such as Walgreens and Safeway; and, commencing in May 2008, at the Debtors’ e-commerce website, www.borders.com (the “Borders Website”).⁶ Customers could purchase Gift Cards with cash, personal check or credit/debit card at Borders stores and from third-party retailers, or by credit/debit card at the Borders Website. Borders also issued Gift Cards as store credit in certain situations, such as when customers returned merchandise without a receipt. Gift Cards issued to customers as credit historically accounted for 4%-5% of the Debtors’ total outstanding Gift Card liabilities.⁷ See Toner Decl., ¶ 5.

33. It was Borders’ custom and practice not to attach any personally identifiable information to the Gift Cards. Borders does not maintain and never maintained a list of Gift Card purchasers containing the Gift Card purchasers’ contact information. Borders does not maintain and never maintained a list of Gift Card holders containing the Gift Card holders’

⁵ Gift cards purchased in foreign jurisdictions from a licensee of the Borders tradename and trademarks such as Borders Singapore or Borders Australia were not redeemable and could not be used at domestic Borders locations or the Borders Website. The foreign Borders entities were solely licensees of the tradename “Borders” in defined geographic locations.

⁶ From 2000 to May 2008, the Borders Website was operated by Amazon, Inc., which fulfilled all orders and served as the merchant of record for all transactions. Though a customer could purchase a Gift Card from the Borders Website during this time, holders of Gift Cards could not use their Gift Cards on the Borders Website until May 2008. When Borders ended its relationship with Amazon in May 2008 and Borders assumed operational control over the Borders Website, Amazon did not transfer to Borders any customer contact information regarding e-commerce transactions that occurred while Amazon operated the Borders Website.

⁷ The term ‘Gift Card’ covers both Gift Cards issued to customers for credit and Gift Cards that Borders sold to customers.

contact information. By definition and design, Gift Cards were typically purchased by one person and then “gifted” to another person, unknown to Borders. Borders marketed Gift Cards as products for sale, expected the Gift Cards to be freely transferred once purchased and, accordingly, does not maintain and never did maintain a list of Gift Card purchasers, let alone Gift Card *holders*, by name, street address, or email address. *Id.* at ¶ 6.

34. Borders engaged First Data Corporation (“First Data”), a third-party database management firm that offers gift card program solutions for merchants worldwide, to monitor and maintain the stored value and redemption history of all Borders Gift Cards in a database on Borders’ behalf (the “First Data Database”). The Debtors relied on the First Data Database and considered it the authoritative source of information regarding the activation, balance, and redemption history of Gift Cards dating back to October 1998. *Id.* at ¶ 8.

35. The First Data Database does not contain any personally identifiable information regarding the purchaser of a Gift Card or the ultimate holder of a Gift Card used in any given transaction, such as name, street address, email address, telephone number, or credit/debit card information. Rather, the First Data Database contains information solely about Gift Card accounts such as the 16-digit account number associated with each Gift Card, activation date of the Gift Card, individual transaction amounts, location of individual transactions, dates and times of individual transactions, and remaining Gift Card account balance. *Id.* at ¶ 9.

36. Borders also maintained point-of-sale data for all retail transactions (the “POS Database”) at the cash registers in all their retail store locations until the last store closed on September 20, 2011. It was Borders’ custom and practice not to include any personally identifiable information within the POS Database, such as a purchaser’s name, street address, email address, or telephone number. The POS Database detail for recorded transactions included

the items purchased and method of payment for the transaction (e.g., cash, check, debit/credit or Gift Card), as well as the date, time and location of the transaction. For a credit/debit card transaction, the POS Database stored the type of credit/debit card the purchaser used to make the purchase, but Borders did not store all 16 digits of a purchaser's credit/debit card number and did not keep a record of the credit/debit card issuer in the POS Database. If a customer purchased or used a Gift Card as part of the transaction, the 16-digit Gift Card number would also be stored in the POS Database. Finally, if a purchaser elected to identify themselves as members of Borders' "Borders Rewards" ("BR") customer loyalty program, the purchaser's 10-digit BR member number would be included in the POS Database as part of the record for that transaction. *Id.* at ¶ 10.

37. As part of the enrollment in the BR program, customers provided Borders with a name, email address and a seven-digit phone number (without area code). Very few BR members provided a street address, as this was optional. Borders did not verify the accuracy of the identification information customers provided to enroll in the BR program, and updated email addresses and other BR-member personally identifiable information only if BR members supplied such updated information to Borders. *Id.* at ¶ 11.

38. Borders engaged two third-party database management firms, neither of which was First Data, to maintain the BR member information in one or more of their databases on Borders' behalf (collectively, the "BR Database"). Along with a BR member's name, email address and seven-digit phone number (without area code), the BR Database contained a BR member's purchase history (by title and SKU), BR "points" balance, and street address if it was provided by the BR member. This is the only information that the Debtors or their third-party

database management firms maintained with regard to BR members in the BR Database. *Id.* at ¶ 12.

39. In the ordinary course of its business operations, Borders had no business method of aligning or cross-referencing the First Data Database, POS Database and BR Database, and never attempted such an extensive project. While it might be possible to compare or cross-reference these three databases to yield those Gift Card account balances that are also associated with names, email addresses and/or street addresses for BR members who at one time purchased or used Gift Cards, the process would be very expensive and time-consuming. The Trust has been advised that a cross-referencing project to align all the data in the First Data Database, POS Database and BR Database would require thousands of hours of computer programming time, at a cost of hundreds of thousands of dollars. *Id.* at ¶ 13.

40. Customers who made online purchases at the Borders Website were required to pay for their purchases using a credit card, debit card, or Gift Card. From May 2008 (when Borders resumed control over sales on the Borders Website) until the close of the Borders Website in September 2011, Borders maintained transactional data for online purchases at the Borders Website in a data warehouse (the “Data Warehouse”).⁸ Online purchases comprised 1.3%, 2.7% and 3.8% of Borders’ total net sales in 2008, 2009 and 2010, respectively. *Id.* at ¶ 14.

41. Borders stored in the Data Warehouse the customer name, phone number, billing and shipping addresses, and email addresses that were provided by customers on the Borders

⁸ From 2000 to May 2008, the Borders Website was operated by Amazon, Inc., which fulfilled all orders and served as the merchant of record for all transactions. Though a customer could purchase a Gift Card from the Borders Website during this time, holders of Gift Cards could not use their Gift Cards on the Borders Website until May 2008. When Borders ended its relationship with Amazon in May 2008 and Borders assumed operational control over the Borders Website, Amazon did not transfer to Borders any customer contact information regarding e-commerce transactions that occurred while Amazon operated the Borders Website.

Website at the time of purchase. For transactions at the Borders Website involving the use of a Gift Card as the method of payment, Borders retained the first six and the last four digits of the 16-digit Gift Card number in the Data Warehouse, but did not store the 16-digit Gift Card account number if a Gift Card was purchased online. *Id.* at ¶ 15.

OBJECTION

42. By the Late Claim Motion, the Gift Card Holders seek entry of an order pursuant to Bankruptcy Rule 9006(b)(1) granting them leave to file untimely proofs of claim. For the reasons set forth below, the Late Claim Motion should be denied because the Gift Card Holders, as unknown creditors, received adequate notice of the General Bar Date and have failed to establish excusable neglect to justify the late filing of their proofs of claim. Further, the Gift Card Holders failed to submit a certification or affidavit proffering any evidentiary support to excuse their late filing and, therefore, have not demonstrated any factual basis for excusable neglect. Finally, the Late Claim Motion should be denied because the relief requested by the Gift Card Holders constitutes an impermissible modification of the Plan.

A. Notice of the General Bar Date Was Adequate and Complied with Due Process.

43. According to the Bankruptcy Rules and well-established case law, a bankruptcy court may order notice by publication “if it finds that notice by mail is impracticable or that it is desirable to supplement the notice.” Fed. R. Bankr. P. 2002(l); *see also*, Fed R. Bankr. P. 9008. Notice by mail is impracticable when a debtor cannot ascertain the identity of potential claimants. *See, e.g., Chemetron Corp. v. Jones*, 72 F.3d 341, 346 (3d Cir. 1995) (holding that constructive notice is adequate as to a debtor’s unknown creditors); *In re XO Commc’ns., Inc.*, 301 B.R. 782, 792 (Bankr. S.D.N.Y. 2003) (same), *aff’d*, *In re XO Commc’ns., Inc.*, 2004 WL 2414815 (S.D.N.Y.); *cf. Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (stating that notice must be “reasonably calculated, under all the circumstances, to apprise

interested parties of the pendency of the action and afford them an opportunity to present their objections”).

44. Whether notice is reasonable or adequate in the bankruptcy bar date context depends on whether a creditor is known or unknown to the debtor. A known creditor includes any claimant whose identity is actually known by the debtor and any claimant whose identity is “reasonably ascertainable.” See *In re XO Commc’ns.*, 301 B.R. at 793 (citing *Chemetron*, 72 F.3d at 346 (noting that claimants must be “reasonably ascertainable”, and not merely “reasonably foreseeable”)). If a debtor, through “reasonably diligent efforts” is able to discover a creditor, that creditor is “reasonably ascertainable” and therefore considered a “known” creditor. *In re XO Commc’ns.*, 301 B.R. at 793 (citing *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 798 n. 4 (1983)).

45. In contrast, an unknown creditor is one whose claim is not “readily ascertainable” or is merely “conceivable, conjectural or speculative.” *In re XO Commc’ns.*, 301 B.R. at 793 (citing *In re Thomson McKinnon Sec., Inc.*, 130 B .R. 717, 720 (Bankr. S.D.N.Y. 1991)); see also *Mullane*, 339 U.S. at 317 (noting that it was reasonable to dispense with more certain notice to claimants “whose interests are either conjectural or future or, although they could be discovered upon investigation, do not in due course of business come to [the] knowledge [of the debtor].”).

46. In the context of determining whether a creditor is readily ascertainable for notice purposes of a bar date and due process, reasonably diligent efforts to discover creditors do not require impracticable and extended searches in the name of due process. *In re XO Commc’ns.*, 301 B.R. at 793 (citing *Mullane*, 339 U.S. at 317). A debtor does not have a “duty to search out each conceivable or possible creditor and urge that person or entity to make a claim against it.”

Id. (citing *In re Brooks Fashion Stores, Inc.*, 124 B.R. 436, 445 (Bankr. S.D.N.Y. 1991)). Instead, the requisite search focuses on the debtor's own books and records, and efforts beyond a careful examination of these documents are generally not required. See *In re Drexel Burnham*, 151 B.R. 674, 681 (Bankr. S.D.N.Y. 1993); see also *Chemetron*, 72 F.3d. at 347 (“[W]hat is required is not a vast, open-ended investigation The requisite search ... focuses on the debtor’s own books and records. Efforts beyond a careful examination of these documents are generally not required.”) (emphasis added); see also *In re Enron Corp.*, 2006 WL 898031 at *5 (Bankr. S.D.N.Y. 2006) (holding that the State of Montana was an unknown creditor because nothing in the record showed that an investigation by the debtors of their business records would have demonstrated that the State of Montana held a claim at the time the debtors sent the bar date notice); *Drexel Burnham*, 151 B.R. at 681 (“due process requires a reasonable search for contingent or unmatured claims so that ascertainable creditors can receive adequate notice of the bar date. What is reasonable depends on the particular facts of each case. A debtor need not be omnipotent or clairvoyant. A debtor is obligated, however, to undertake more than a cursory review of its records and files to ascertain its known creditors. Known creditors are defined as creditors that a debtor knew of, or should have known of, when serving notice of the bar date.”).

47. In administering the Gift Card Program, it was the Debtors’ custom and practice *not* to attach any personally identifiable information to the Gift Cards. See Toner Decl., ¶ 6. The Debtors do not maintain and never maintained a list of Gift Card purchasers or Gift Card holders containing the Gift Card purchasers’ or Gift Card Holders’ contact information. *Id.* The Debtors did not maintain in their records street addresses or email addresses of gift card purchasers, let alone the holders who received Borders gift cards as presents. Though it might have been theoretically possible for the Debtors to cross-reference the First Data Database with the POS

Database and again with the BR Database to yield certain Gift Card account balances that are also associated with the names, and possibly email addresses and/or street addresses for BR members who at one time purchased or used Gift Cards, this cross-referencing project would have cost the estate hundreds of thousands of dollars and would have been extremely time-consuming. *Id.*, ¶ 13 Moreover, an extensive search of this nature is impracticable and clearly beyond a reasonably diligent search of the Debtors' books and records to ascertain their creditors as required by law. Furthermore, though transactional data in the Debtors' Data Warehouse may have contained personally identifiable information for customers who used or purchased a Gift Card at the Borders Website, the Debtors would have had to cross-reference this information with the First Data Database, which it could not do because Borders did not retain the full 16-digit Gift Card number, to discover whether those Gift Cards had a balance that would entitle the customers who used or purchased those Gift Cards to a claim against the Debtors. This cross-referencing project is also clearly beyond the scope of the Debtors' application of reasonably diligent efforts to ascertain their creditors and is not required by law. The Gift Card Holders and the Proposed Class of gift card holders were all unknown creditors of the Debtors on the Petition Date and on the date the Debtors served the Bar Date Notice. Finally, no cross-referencing would ultimately yield anything close to the universe of Gift Card Holders in any event.

48. If the creditor is "unknown" to the debtor, constructive notice of any applicable bar date is sufficient. *See Chemetron*, 72 F.3d at 346; *see also In re Motors Liquidation Co.*, 447 B.R. 150, 168 (Bankr. S.D.N.Y. 2011) (holding that even though publication notice of the bar date was "not ideal" to reach unknown members of a putative class living in South Africa, publication notice was not deficient). Constructive notice can be satisfied through publication notice because "in the case of persons missing or unknown, employment of an indirect and even

a probably futile means of notification is all that the situation permits and creates no constitutional bar to a final decree foreclosing their rights.” *Mullane*, 339 U.S. at 317; *see Tulsa Prof'l Collection Servs., Inc. v. Pope*, 485 U.S. 478, 490 (1982) (“For creditors who are not ‘reasonably ascertainable,’ publication notice can suffice.”); *City of New York v. New York N.H. & H.R. Co.*, 344 U.S. 293, 296 (1953) (in providing notice to unknown creditors, constructive notice of the bar claims date by publication satisfies the requirements of due process). *See also Brown v. Seaman Furniture Co.*, 171 B.R. 26, 27 (E.D. Pa. 1994) (holding one-time publication in local and national editions of *The New York Times* was sufficient notice to a claimant in Pennsylvania); *In re Chicago, Milwaukee, St. Paul & Pacific R.R. Co.*, 112 B.R. 920, 924 (N.D. Ill. 1990) (holding that publication notice once in *The Wall Street Journal* regarding applicable bar dates was adequate under bankruptcy law and sufficient under the Due Process Clause of the United States Constitution for unknown creditors even though claimants alleged that due to their poor education they had never even heard of *The Wall Street Journal*); *Wright v. Placid Oil Co.*, 107 B.R. 104, 106 (N.D. Tex. 1989) (holding that publication of notice of the order setting the bar date once in *The Wall Street Journal* was sufficient notice to a creditor injured in Louisiana because appellant was an unknown creditor at the time of the filing of the bankruptcy petition and at the time the order setting the bar date was entered); *In re Best Products Co., Inc.*, 140 B.R. 353, 358 (Bankr. S.D.N.Y. 1992) (“It is impracticable ... to expect a debtor to publish notice in every newspaper a possible unknown creditor may read.”).

49. Thus, it is clear that the Gift Card Holders’ argument has no merit. Holders of prepetition gift cards were unknown creditors. Given that the Debtors had no reasonable ability to identify holders of all prepetition gift cards, including the Gift Card Holders, actual notice by mail was impossible. Therefore, under the Bankruptcy Rules and applicable case law,

publication of the Bar Date Notice in *The New York Times* was adequate notice to all of the Debtors' unknown creditors, including the Gift Card Holders, and complied with due process.⁹ Moreover, the Debtors, through their claims and noticing agent, GCG, provided additional constructive notice of the General Bar Date online by making the Bar Date Notice available on the Bar Date Notice Webpage on the Borders Reorganization Website as of April 22, 2011. *See* Matson Decl., 17. Additionally, in April, 2011, the Committee posted information in connection with the deadlines for filing proofs of claim on the Committee Website, including a copy of the Bar Date Notice and a proof of claim form. *See* Matson Decl., ¶ 18. Accordingly, the Gift Card Holders' only recourse is to show that their failure to timely file their proofs of claim was due to excusable neglect. *See In re XO Commc'ns.*, 301 B.R. at 795.

B. The Gift Card Holders Have Failed to Demonstrate Excusable Neglect.

50. Pursuant to Bankruptcy Rule 9006(b)(1), a court may allow the filing of a late proof of claim only if the movant's failure to comply with an established deadline was the result of "excusable neglect." Fed. R. Bankr. P. 9006(b)(1); *Pioneer Inv. Services Co. v. Brunswick Assocs. Ltd.*, 507 U.S. 380, 389 (1993) ("*Pioneer*"). The party seeking to file a late proof of claim bears the burden of proving excusable neglect. *See Midland Cogeneration Venture Limited Partnership v. Enron Corp. (In re Enron Corp.)*, 419 F.3d 115, 121 (2d Cir. 2005).

51. The requirement that a party's neglect of a bar date be "excusable" is designed to "deter creditors or other parties from freely ignoring court-ordered deadlines in the hopes of

⁹ Indeed, several large retailers who sold gift cards and who recently filed for chapter 11 did not except gift card holders from filing proofs of claim by their respective bar dates and holders of gift cards were only provided notice of the bar date by publication. *See Filene's Basement*, Case No. 09-11525(MFW) (DEL); *Movie Gallery US*, Case No. 10-30696 (DOT) (EDVA); *Filene's Basement*, Case No. 11-13511(KJC) (DEL). In these cases, publication of the bar date was substantially similar to the publication notice that was given in the Debtors' bankruptcy cases and no issues were ever raised regarding gift card holders. A copy of the bar date orders in those cases is annexed hereto as Exhibit B.

winning a permissive reprieve under Rule 9006(b)(1).” *Pioneer*, 507 U.S. at 395. As this Court has recognized in similar circumstances, bar dates are “critically important to the administration of a successful chapter 11 case.” *In re Musicland Holding Corp.*, 356 B.R. 603, 607 (Bankr. S.D.N.Y. 2006). “They [bar dates] are not designed merely as a ‘procedural gauntlet’ but rather serve ‘as an integral part of the reorganization process and the efficient administration of bankruptcy cases.’” *In re Lehman Bros. Holdings, Inc.*, 433 B.R. 113, 119 (Bankr. S.D.N.Y. 2010) (quoting *In re Hooker Invest., Inc.*, 937 F.2d 833, 840 (2d Cir. 1991)).

52. In *Pioneer*, the United States Supreme Court held that the determination of what constitutes excusable neglect is an “equitable one”, taking into account all relevant circumstances surrounding the movant’s failure to timely file a proof of claim. *Pioneer*, 507 U.S. at 395. To guide lower courts, the *Pioneer* Court set forth four factors that should be considered in this analysis: (1) the danger of prejudice to the debtor; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) the movant’s good faith. *Id.*

53. Courts in the Second Circuit strictly observe bar dates in accordance with the adoption of a “hard line” approach in applying the *Pioneer* test. *See Silivanch v. Celebrity Cruises*, 333 F.3d 355, 368 (2d Cir. 2003) (“In our cases addressing when neglect is excusable, we have therefore taken a hard line.”) (quotations omitted). This “hard line” approach focuses primarily on the reason for the delay, and specifically whether the delay was in the reasonable control of the movant. *See In re Enron Corp.*, 419 F.3d at 122; *Silivanch*, 333 F.3d at 366. The reason for the movant’s delay is weighed most heavily in the excusable neglect analysis because, in the typical case, the other three factors will usually favor the party seeking the

extension of time. *See In re Enron Corp.*, 419 F.3d at 122; *In re Musicland Holding Corp.*, 356 B.R. at 607.

54. Given the stringent requirements for a finding of excusable neglect under the *Pioneer* test as applied in the Second Circuit, the Gift Card Holders have failed to meet their burden of demonstrating excusable neglect. The Gift Card Holders' explanations for their failure to timely file their proofs of claim are woefully inadequate and demonstrate only a lack of diligence and respect for this Court's orders. Failure to abide by a known Court order, such as the Bar Date Order in these cases, will ordinarily prove fatal under the *Pioneer* test. *See, e.g., In re Enron*, 419 F.3d at 123 ("[T]he equities will rarely if ever favor a party who fails to follow the clear dictates of a court rule, and ... where the rule is entirely clear ... a party claiming excusable neglect will, in the ordinary course, lose under the *Pioneer* test.") (citations and internal quotations omitted). Further, the Late Claim Motion is not supported by an affidavit or certification of the alleged "facts" to support the Gift Card Holders' claim of excusable neglect. This failure is also fatal to the Late Claim Motion.

(a) Reason for the Delay.

55. The Gift Card Holders' failure to timely file their proofs of claim was within their reasonable control, and the explanations offered for their delay are clearly inadequate. The Gift Card Holders argue that because they were not provided with actual notice of the General Bar Date, it was beyond their control to file timely proofs of claim. *See* Late Claim Motion, ¶ 36. However, because the Gift Card Holders were "unknown" creditors and the Debtors provided publication notice of the General Bar Date to such creditors, the Gift Card Holders' argument that "actual" notice of the General Bar Date was required has no merit.

56. Furthermore, the Bar Date Order clearly establishes the General Bar Date and does not except holders of prepetition gift cards from filing proofs of claim by the General Bar Date. The Customer Programs Motion did not state otherwise and could not have been a cause for confusion. The Administrative Bar Date Order, which was approved by the Court after Borders terminated its business and completed its chain-wide liquidation, explicitly reiterated that holders of prepetition gift card claims were required to file their proofs of claim by the General Bar Date and were not allowed to file such claims after the General Bar Date. The Administrative Bar Date Order is a final order of this Court that the Gift Card Holders cannot ignore simply because the Administrative Bar Date Order poses an inconvenience. Indeed, the Gift Card Holders have made no showing that the Administrative Bar Date Order or the Bar Date Order should be set aside and are not final and the law of the case. *See Taylor v. Freeland & Kronz*, 503 U.S. 638, 644 (1992) (“[d]eadlines may lead to unwelcome results, but they prompt parties to act and they produce finality.”); *Christianson v. Colt Indus. Operating Corp.*, 485 U.S. 800, 815-16 (1988) (“when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.”). Instead, by the Late Claim Motion, the Gift Card Holders are attempting to collaterally challenge the Bar Date Order and the Administrative Bar Date Order as final orders of the Court. However, those orders are final and non-appealable. Further, the Administrative Bar Date Order, which expressly determined that the General Bar Date applies to creditors with gift cards purchased prepetition, is the law of the case.

57. Finally, the Gift Card Holders offer no factual or legal support whatsoever for their illogical and erroneous belief that their gift cards would be honored in perpetuity despite the liquidation of the Debtors’ businesses, and that “there was no action that needed to be taken

on their part.” *See* Late Claim Motion, ¶¶ 11-12. To the contrary, the Debtors’ bankruptcy cases, store closings, and ultimate liquidation were widely publicized in national and local newspapers and online media. *See* Matson Decl., ¶¶ 15, 17-20. Many of these media reports expressly urged gift card holders to redeem their gift cards before the Debtors closed their doors forever. *Id.* Indeed, the Debtors’ sales records show that a large number of gift cards were in fact redeemed after the announcement of the full-chain liquidation. *Id.*, ¶¶ 21-24. It is unclear how the Gift Card Holders could allegedly be aware of the bankruptcy cases, the Customer Programs Motion, and the Debtors’ press releases that they cited in the Late Claim Motion (*see* Exhibits D, E, and F annexed to the Late Claim Motion) without also being aware of (i) the General Bar Date; (ii) that the Debtors were subsequently liquidating their stores and going out of business forever a few months later; (iii) all of the media coverage encouraging consumers to timely “use or lose” their Gift Cards; and (iv) with regard to BR Members, the Edwards email stating that Borders would be “closing its doors.” *See* Matson Decl., ¶ 19. Indeed, the Debtors made the Bar Date Notice available online at the Borders Reorganization Website on April 22, 2011, and the Committee made the bar date notice available online at the Committee Website. *See* Matson Decl., ¶ 18. The Gift Card Holders had multiple opportunities to act and mitigate any loss by either redeeming their gift cards or timely filing proofs of claim. Instead, they squandered these opportunities and did nothing.

58. Based on the foregoing, it is clear that the most critical factor in the *Pioneer* analysis - the reason for the delay, and whether it was within the reasonable control of the movant - mandates against a finding of excusable neglect. Thus, the Late Claim Motion must be denied.

(b) Other Pioneer Factors.

i. *Length of the Delay.*

59. The Gift Card Holders not only disregarded the Bar Date Order, but their proofs of claim were not received by GCG until February 4, 2012 – a full *eight* months after the General Bar Date and three weeks after the Effective Date of the Debtors’ confirmed Plan. In addition, the Gift Card Holders were on constructive notice that the Plan confirmation process was well underway as evidenced by the Debtors’ publication notice of the Disclosure Statement Order in *The New York Times* on November 16, 2011. The Gift Card Holders waited until after the Debtors and the Official Committee of Unsecured Creditors solicited votes for the Plan, confirmation of the Plan, and the Effective Date of the Plan before filing their proofs of claim on February 4, 2012.

60. Although there is no bright-line rule regarding the length of the delay in filing a proof of claim, the Gift Card Holders’ failure to file their proofs of claim for eight months after the General Bar Date is significant under the circumstances because the Gift Card Holders had, at the very least, constructive knowledge of the General Bar Date and failed to diligently act to protect their rights. *See In re Lehman Bros. Holdings, Inc.*, 433 B.R. at 121. Thus, this factor also weighs against a finding of excusable neglect. *See, e.g., In re Enron Corp.*, 419 F.3d at 129 (noting that “where an explanation is nonexistent, or not credible, *both* the ‘reason for the delay’ and the ‘length of the delay’ factors might weigh in favor of the debtor, even if the delay is, in absolute terms, quite short.”) (emphasis in original); *In re XO Commc’ns.*, 301 B.R. at 797-98 (“the Court emphasizes that the Bar Date Order was meant to function as a statute of limitations and effectively exclude such late claims in order to provide the Debtor and its creditors with finality to the claims process and permit the Debtor to make swift distributions

under the Plan. To find otherwise, that is, outside of the context of excusable neglect, would vitiate the very purpose of the Bar Date Order and would clearly impact the Debtor's reorganization process. The Court, therefore, finds that the length of delay factor weighs in favor of the Debtor.").

ii. *Good Faith.*

61. While the Trust is presently unaware of any bad faith on the part of the Gift Card Holders, given the Gift Card Holders' apparent actual knowledge of the Debtors' bankruptcy case, constructive notice of the General Bar Date, constructive notice of the Plan confirmation process, and failure to act diligently to timely file their proofs of claim, the Gift Card Holders have not met their burden to establish that they acted in good faith. Accordingly, this factor does not support a finding of excusable neglect. *See In re Lehman Bros. Holdings, Inc.*, 433 at 121 (although there was no evidence of movants' having acted in bad faith, movants' good faith was insufficient to overcome their inability to demonstrate excusable neglect).

iii. *Prejudice to the Debtors.*

62. The prejudice factor calls for consideration of the overall negative effect on a debtor and its estate resulting from allowing a late claim. *See In re Enron Corp.* 419 F.3d at 130. In determining prejudice to the debtor, a court will also consider "the adverse impact that a late claim may have on the judicial administration of the case." *In re Keene Corp.*, 188 B.R. 903, 910 (Bankr. S.D.N.Y. 1995). According to the court in *Keene*, determining prejudice to the debtor involves weighing a number of considerations, including (1) "the size of the late claim in relation to the estate," (2) "whether a disclosure statement or plan has been filed or confirmed with knowledge of the existence of the claim," and (3) "the disruptive effect that the late filing would have on a plan close to completion or upon the economic model upon which

the plan was formulated and negotiated.” *Id*; see also *In re R.H. Macy & Co., Inc.*, 166 B.R. 799, 802 (S.D.N.Y. 1994) (“Prejudice to the debtor ... depends on a broader consideration of circumstances ... [including] the size of the late claim in relation to the estate and, closely related to the first, the disruptive effect the late filing would have upon a plan close to completion.”); *In re Alexander’s Inc.*, 176 B.R. 715, 722 (Bankr. S.D.N.Y. 1995) (expectation of claim by a debtor is one factor to consider as well as whether the claim was filed after confirmation of a debtor’s plan of reorganization).

63. The Gift Card Holders assert that neither the Debtors nor the Debtors’ general unsecured creditors will be prejudiced by allowing their concededly late proofs of claim. See Late Claim Motion, ¶¶ 38-39. The Gift Card Holders are wrong because their late claims are a prelude to their request that the Court certify a class of all holders of Borders’ gift cards so that potentially tens or hundreds of thousands of gift card claims could be filed on the backs of these few late claims well after the expiration of the General Bar Date. Thus, while the Gift Card Holders’ two individual claims are small (only \$125.00 in total), this is all being orchestrated by counsel to seek certification of a class proof of claim (even though no class proof of claim has ever been filed by a purported class of gift card holders).

64. Allowing the Gift Card Holders to file their untimely proofs of claim could result in severe prejudice to the estate due to the dilution of the limited funds that may otherwise be available to satisfy claims of unsecured creditors that timely filed proofs of claim. If the obvious game plan of the Gift Card Holders and their counsel was allowed to materialize, the disruptive effect and prejudice to the Plan model approved by creditors is manifest. In the Disclosure Statement, the Debtors estimated that general unsecured creditors would recover 4%-10% on their claims.

65. The Trust currently has approximately \$110 million in cash and, after paying all administrative and priority claims (not including gift card claimants) and pursuing other avenues to collect assets, does not expect to have more than \$90 million to pay unsecured creditors (including timely filed gift card claims). *See* Toner Decl., ¶ 20. Allowing the late filed claims of the Gift Card Holders and the certification of the Proposed Class would result in massive prejudice to the estate because the Trust neither has nor expects to have enough cash to satisfy that amount of gift card claims in full (assuming they are entitled to priority under section 507(a)(7) of the Bankruptcy Code as alleged), and any distribution to general unsecured creditors who timely filed proofs of claim. There was no knowledge of the Gift Card Holders and the Proposed Class until *after* confirmation of the Plan, even though the Gift Card Holders retained counsel prior to the December 21, 2011 confirmation hearing and filed no objection to confirmation. Finally, if the untimely proofs of claim of the Gift Card Holders were allowed and the Court ordered the noticing of a new bar date together with procedures for administering the claims of some amorphous class of gift card holders, then the Trust would have to bear those costs and there would be a significant delay in the distribution, if any, to general unsecured creditors who timely filed proofs of claim. Indeed, the average amount due on an unused gift card is less than \$12.00. *See* Toner Decl., ¶ 7; Matson Decl., ¶12. Assuming, *arguendo*, that gift card claims are entitled to priority status under section 507(a)(7) of the Bankruptcy Code (which the Trust disputes), a 100% distribution on gift card claims would be less than \$12.00 on average. Assuming gift card claims are simply general unsecured claims, a 4%-10% distribution (the distribution range provided for in the Disclosure Statement) on gift card claims would be at most \$1.20. In either case, the administrative cost to make the distribution is more than the amount of the distribution. Therefore, the Trust and the Debtors'

bona fide general unsecured creditors would be severely prejudiced if the untimely proofs of claim of the Gift Card Holders were allowed as part of the overall plan to saddle this estate at the eleventh hour with an as yet unfiled class proof of claim. Therefore, the prejudice element of the *Pioneer* test weighs heavily in the Trust's favor.

C. The Late Claim Motion Impermissibly Seeks to Modify the Plan.

66. A confirmed plan binds the debtor and its creditors. *See* 11 U.S.C. § 1141(a). A confirmed chapter 11 plan cannot be modified after it has been substantially consummated. *See* 11 U.S.C. § 1127(b); *see also In re Boylan Int'l, Ltd.*, 452 B.R. 43, 48 (Bankr. S.D.N.Y. 2011). Section 1127(b) of the Bankruptcy Code reinforces the principle of the finality of confirmation of a plan “by preserving the rights bought and paid for under the plan.” *In re Rickel & Assocs., Inc.*, 260 B.R. 673, 677 (Bankr. S.D.N.Y. 2001); *see also In re Joint Eastern and Southern District Asbestos Litigation*, 982 F.2d 721, 747-48 (2d Cir. 1992) (holding that a judgment approving the settlement of a mandatory non-opt-out class action, which sought equitable distribution of the property of a trust established pursuant to a confirmed Chapter 11 plan filed by the asbestos manufacturer, was an impermissible modification of a confirmed and substantially consummated plan of reorganization); *In re Fansal Shoe Corp.*, 119 B.R. 28, 30-31 (Bankr. S.D.N.Y. 1990) (holding that the debtor was precluded from modifying the terms of a confirmed plan to add omitted unsecured creditors when the plan was substantially consummated because the debtor had commenced distribution under the plan and had fully paid the class of administration claims as well as priority tax claims).

67. A plan has been substantially consummated when “(A) a transfer of all or substantially all of the property proposed by the plan to be transferred has occurred; (B) an assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan has occurred ;

and (C) commencement of distribution under the plan takes place.” U.S.C. § 1101(2). In *Boylan*, this Court adopted the “majority view”, which interprets section 1101(2) as requiring that distributions to creditors have commenced under the plan, not that *all* payments have been made under the plan in those instances in which a plan calls for the distribution of payments to creditors over time. *Boylan*, 452 B.R. at 49.

68. Here, the Plan has been confirmed pursuant to the Court’s Confirmation Order. The Plan has been substantially consummated because (i) the Plan transferred all of the property proposed to be transferred by the Plan from the Debtors to the Trust on the Effective Date; (ii) the Trust, as successor to the Debtors under the Plan, is managing the assets and liabilities, and administering claims dealt with by the Plan as of the Effective Date; and (iii) the Trust has begun making distributions to holders of allowed administrative and priority claims pursuant to the Plan and, to date, has made distributions to holders of allowed administrative and priority claims totaling at least \$17 million (including the Trust’s administrative costs). *See* Toner Decl., ¶ 21. Therefore, pursuant to section 1127(b) of the Bankruptcy Code, the Debtors’ Plan has been substantially consummated and cannot now be modified. Therefore, the Gift Card Holders attempt to modify the Plan through the Late Claim Motion is not permissible.

69. Under the Debtors’ Plan, “[T]he Disbursing Agent shall have no duty to make a Distribution on account of any Allowed Claim... [if] the amount of the final Distribution to such Holder is less than \$50.00, in which case such Distribution shall revert to the Liquidating Trust for distribution on account of other Allowed Claims.” Plan, Art. VI. G., p. 25. The average gift card claim is under \$12.00. *See* Toner Decl., ¶ 7; Matson Decl., ¶12. Therefore, assuming *arguendo* (which the Trust disputes), that the late claims of the Gift Card Holders

were allowed as priority claims under section 507(a)(7) of the Bankruptcy Code, because the amount of Ms. Freij's claim is less than \$50.00, the Disbursing Agent has no obligation to make a distribution on such a claim even if it were timely filed, in which case the distribution would revert to the Trust pursuant to the Plan. By asking the Court to allow the late filed claims of the Gift Card Holders, and, therefore, achieve a distribution on such claims, the Late Claim Motion seeks to impermissibly modify a material provision of the Plan that governs distribution on claims that are less than \$50.00. The Court cannot grant the Late Claim Motion and, therefore, allow the Gift Card Holders to receive a distribution on their claims because the Court "cannot exercise its equitable powers outside of the confines of the Bankruptcy Code...it cannot modify a plan under section 105(a), and produce a result at odds with the specific provisions of section 1127(b)." *See In re Rickel & Assocs., Inc.*, 260 B.R. at 678; *In re Worldcom, Inc.*, 352 B.R. 369, 379 (Bankr. S.D.N.Y. 2006) (holding that the provisions of the plan prohibited an award of interest on an allowed claim and affirming that the court could not modify provisions of the plan by its equitable powers). Thus, for this reason alone, the Late Claim Motion must be denied.

D. Distinguishing Sharper Image.

70. The Gift Card Holders' argument relies almost exclusively on an unpublished order (the "Gift Card Procedures Order")¹⁰ [TSIC, Docket No. 2243] entered in *In re TSIC, Inc. f/k/a Sharper Image Corporation* ("TSIC" or the "Sharper Image case"), Case No. 08-10322(KG) (Bankr. D. Del. 2008), a bankruptcy case that required widespread publication notice of a claims bar date to gift card holders. Conveniently, the Gift Card Holders failed to

¹⁰ A copy of the orders referenced in this section is annexed hereto as Exhibit C.

provide the context in which the court in TSIC issued the Gift Card Procedures Order.¹¹ Viewed in context, the TSIC bankruptcy is fundamentally distinguishable both procedurally and factually from Borders' chapter 11 cases.

71. The Gift Card Holders argue that the procedures used in the Sharper Image case should have been used here. The Court should note that in the first instance all of the gift card issues in TSIC were raised before a bar date was ever established by court order. Further, the Gift Card Holders have failed to demonstrate that the holders of gift card claims against Borders were known creditors and thus notice by publication was inadequate, that the Debtors' notice of the General Bar Date was defective, or that the Gift Card Holders have demonstrated excusable neglect for permission to file late claims. The "could have, should have" argument cannot be applied retroactively when the Debtors fully complied with the Bar Date Order and the Gift Card Holders did not.

72. In TSIC, on the February 19, 2008 chapter 11 filing date, the debtor filed a customer programs motion seeking authority to honor its massage chair certificates and credit card certificates, but not its gift certificates.¹² [TSIC, Docket No. 9.] The court entered an order approving the customer programs motion. [TSIC, Docket No. 47.] Several weeks later, the court granted the debtor's supplemental motion with respect to the customer programs motion seeking authorization to honor gift certificates only for those customers who purchased merchandise worth at least 200% of the face amount of the gift certificate or merchandise certificate. [TSIC, Docket No. 189.] Almost three months after the court entered the

¹¹ The Court determined early in the Debtors' bankruptcy cases that a copy of any unpublished order cited in a brief should be provided to the Court along with "an indication about the context". See Transcript of March 15, 2011 hearing, pp. 23-24. [Docket No. 409]. No such indication of context was included in the Late Claim Motion.

¹² The TSIC debtor also indicated in the motion that it was not seeking authority to honor its merchandise certificates. For the purposes of the Late Claim Objection, both gift and merchandise certificates will be referred to as "gift certificates".

supplemental customer programs order, but before the debtor discontinued its retail business, and commenced liquidating its assets and stopped honoring gift cards [TSIC, Docket No. 2218, ¶ 5], a gift card holder, *on behalf of himself and a putative class of gift card holders*, filed a motion to lift the automatic stay to permit the putative class to begin an adversary proceeding for the purpose of making a determination of the rights of gift card holders under section 507(a)(7) of the Bankruptcy Code. [TSIC, Docket No. 758.] One week later, the debtor filed a motion to establish a bar date for filing all prepetition claims and for approval of a specialized claim form that would be used by holders of outstanding gift certificates. [TSIC, Docket No. 799.] In response, the United States Trustee filed a cross-motion, objecting to the debtor's bar date motion as it pertained to gift certificate claimants, among others, and moved to establish procedures that would be used in connection with the gift certificate claims. [TSIC, Docket No. 926.] One week later, the gift card holder filed a motion pursuant to which the gift card holder sought class certification of a proposed class of claimants holding gift certificates, for the purpose of adjudicating the issue of priority in a single adversary proceeding. [TSIC, Docket No. 964.] The debtor responded by filing objections to the class certification motion [Docket No. 991], the motion to lift the automatic stay [TSIC, Docket No. 989], and the United States Trustee's cross-motion. [TSIC, Docket No. 997.] The day before the hearing on the bar date motion, the debtor filed a motion to withdraw its bar date motion [TSIC, Docket No. 1059], which was granted by the court. [TSIC, Docket No. 1062.]

73. On September 9, 2008, the court entered an order authorizing the gift card claimants to proceed as a class over the objection of the debtor and the official committee of unsecured creditors. [TSIC, Docket No. 1264.] On October 11, 2010, over two years later, the class of gift card holders filed a motion for summary judgment to determine whether the gift

card holders' claims were entitled to priority status under section 507(a)(7) of the Bankruptcy Code. [TSIC, Docket No. 2111.] A hearing was never held on the motion for summary judgment and the court never issued a ruling on the motion. Instead, the debtor filed a motion seeking to establish procedures for determining which gift card holders were entitled to priority treatment and for satisfying allowed gift card claims. [TSIC, Docket No. 2218.] The class of gift card holders filed an objection [TSIC, Docket No. 2225] and the debtor filed a reply. [TSIC, Docket No. 2231.] On June 7, 2011, both the class of gift card holders and the debtor filed competing proposed orders, which were alike in all material respects in terms of the procedures for settling the claims of gift card holders. [TSIC, Docket No. 2241.] On June 9, 2011, the court entered the Gift Card Procedures Order, which authorized the debtor to implement an online media campaign and a print publication, both of which were designed to notify gift card class members that they may be entitled to compensation for the outstanding balance of their gift cards; and provided a gift card claim proof of claim form whereby gift card holders could submit proofs of claim. [TSIC, Docket No. 2243.]

74. The fundamental differences between TSIC and the Debtors' bankruptcy are that the gift card holders in TSIC filed a putative class action adversary proceeding prior to the bar date, moved for class certification in the context of the adversary proceeding, and filed proofs of claim before the debtor ever filed its bar date motion and a court-ordered bar date was established. None of that was accomplished by the Gift Card Holders here who failed *at the outset of the case* to seek appropriate relief from the Court and preserve their rights. The Gift Card Holders here filed the Late Claim Motion and Class Certification Motion over ten (10) months *after* the Debtors filed the Bar Date Application, and did not file their individual proofs of claim until a full eight (8) months *after* the General Bar Date had passed and over four (4)

months after the last Borders store closed. No class proof of claim or class action adversary proceeding has ever been filed. Moreover, not one single objection was raised to Borders' Bar Date Application. Finally, unlike TSIC, the Debtors determined to treat all gift card holders equitably by honoring gift cards in the full amount of any unredeemed balance pursuant to the Customer Programs Motion at both at retail locations and online at the Borders Website, until the retail stores closed and e-commerce at the Borders Website ceased. Notwithstanding the Gift Card Holders' assertions to the contrary, it appears that the only thing the gift card holders in TSIC and the Gift Card Holders in the Borders' bankruptcy have in common is that both are represented by the same class-action attorney.

75. It should also be noted that the court in TSIC did not issue an opinion in conjunction with the Gift Card Procedures Order. Instead, the debtor and the gift card holders arrived at a consensual settlement agreement that the court then approved. Absent an opinion from the court, the Gift Card Procedures Order in TSIC means nothing and does not bind anyone, let alone this Court. TSIC has no precedential value and does not provide a template for anything in this case.

E. The Claims of the Gift Card Holders are Not Entitled to Priority Status.

76. The Gift Card Holders represent that they are entitled to a priority unsecured claim under section 507(a)(7) of the Bankruptcy Code on account of their gift card claims. *See* Late Claim Motion, ¶¶ 18, 26, 28. The Trust submits that the Gift Card Holders' request for a determination on the priority status of their late filed claims in the context of the Late Claim Motion is inappropriate. The Court need not consider the priority status of the Gift Card Holders' claims unless, based on adequate notice of the general bar date, the Gift Card Holders demonstrate that their failure to timely file their proofs of claim is the result of excusable neglect, which they cannot do. However, if the Court were to somehow find that the Gift Card

Holders' had demonstrated excusable neglect and reached the priority issue, the Trust contends that the claims of the Gift Card Holders would not be entitled to priority status because the Gift Card Holders have not met the requirements of section 507(a)(7) of the Bankruptcy Code. To avoid unnecessary duplication, the Trust incorporates herein the entirety of the facts and law regarding priority treatment of gift card claims as fully described by the Trust in the Certification Objection.

77. To briefly reiterate the Trust's main point, section 507(a)(7) prioritizes only the claims of "individuals . . . arising from the deposit of money . . . for the personal, family or household use of such individuals." The modifying phrase "for the personal, family or household use of such individuals" evidences intent by Congress to limit the priority to instances where the individual asserting the claim is the same individual who actually made the deposit. Accordingly, claims of individuals held on account of deposits made by other individuals are disqualified from priority treatment. The Late Claim Motion states that both Gift Card Holders received their gift cards as gifts prior to the Debtors' bankruptcy filing. *See* Late Claim Motion, ¶¶ 15-16. Thus, because the Gift Card Holders are not the same persons as the individuals who purchased their gift cards, their claims cannot be entitled to priority status under section 507(a)(7) of the Bankruptcy Code.¹³

CONCLUSION

78. For all the foregoing reasons, the Trust submits that the Gift Card Holders have failed to meet their burden of establishing excusable neglect for leave to file a late claim. Accordingly, the Late Claim Motion must be denied.

¹³ See the Trust's full objection to priority status in the Certification Objection.

WHEREFORE, the Trust respectfully requests that the Court deny the Late Claim Motion and grant the Trust such other and further relief as the Court deems just and proper.

Dated: May 25, 2012

LOWENSTEIN SANDLER PC

By: /s/ Bruce Buechler

Bruce Buechler, Esq.

Bruce S. Nathan, Esq.

Timothy R. Wheeler, Esq.

Beth L. Williams, Esq.

LOWENSTEIN SANDLER PC

1251 Avenue of the Americas

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-- and --

65 Livingston Avenue


Roseland, NJ 07068

Tel: (973) 597-2500

Fax: (973) 597-2400

*Counsel to the BGI Creditors' Liquidating
Trust and Curtis R. Smith in his capacity
as the Liquidating Trustee*

EXHIBIT A

7389958		PROOF OF CLAIM	
UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK Name of Debtor (Please select the appropriate Debtor from the list of Debtors set forth in the Definitions section on the reverse side of this form and insert that Debtor's name here - choose only one): <u>Borders Properties, Inc. 11-10618</u>			
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case, but may be used for purposes of asserting a claim under 11 U.S.C. § 503(b)(9) (see Item # 6). All other requests for payment of an administrative expense must be filed pursuant to 11 U.S.C. § 503.		Your Claim is Scheduled As Follows: 	
Name of Creditor (the person or other entity to whom the debtor owes money or property) JANE FREIJ	<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____	If an amount is identified above, you have a claim scheduled by one of the Debtors as shown (this scheduled amount of your claim may be an amendment to a previously scheduled amount). If you agree with the amount and priority of your claim as scheduled by the Debtor and you have no other claim against the Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is listed as any of DISPUTED, UNLIQUIDATED, or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.	
Name and address where notices should be sent JANE FREIJ 4312 OPAL AVE. CYPRESS, CA 90630 FILED - 04667 SDNY BORDERS GROUP, INC., ET AL 11-10614(MC)	<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.		
Telephone number: Email Address:	Name and address where payment should be sent (if different from above) Home: (714) 527-1998 Office: (562) 908-6263 Telephone number: MOBILE: (714) 887-8229		
IMPORTANT: Please list the store number and address of any lease related to your claim (if applicable) Store Number: _____ Store Address: _____			
1. Amount of Claim as of Date Case Filed: \$ _____ If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim:	
2. Basis for Claim: <u>Debt Certificate</u> (See instruction #2 on reverse side)		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B) <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4) <input checked="" type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5) <input checked="" type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8) <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)()	
3. Last four digits of any number by which creditor identifies debtor: _____ 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side)		Amount entitled to priority: <u>\$ 25.00</u> *Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.	
4. Secured Claim (See instruction #4 on reverse side). Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Equipment <input type="checkbox"/> Other Describe: _____ Value of Property: \$ _____ Annual Interest Rate: _____ % Amount of mortgage and other charges as of time case filed included in secured claim, If any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____			
6. Claim Pursuant to 11 U.S.C. § 503(b)(9): Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before February 16, 2011, the date of commencement of the above cases, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim. \$ _____			
7. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 8. Documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction #8 and definition of "redacted" on reverse side). DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain in an attachment.			
Date: <u>1/3/12</u>	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. <u>JANE FREIJ By Clinton A. Krislov Counsel</u> <u>30 N. Wacker Dr.</u> <u>Chicago IL 60606</u> <u>312-606-0500</u>		

7389956		PROOF OF CLAIM	
UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK			
Name of Debtor: (Please select the appropriate Debtor from the list of Debtors set forth in the Definitions section on the reverse side of this form and insert that Debtor's name here - choose only one) <u>Borders, Inc. 11-10615</u>			
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case, but may be used for purposes of asserting a claim under 11 U.S.C. § 503(b)(9) (see Item 4). All other requests for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 501.			
Name of Creditor (the person or other entity to whom the debtor owes money or property) ERIC BEEMAN		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.	
Name and address where notices should be sent. ERIC BEEMAN 11209 HERKELRATH ROAD BEAR LAKE, MI 49614		Court Claim Number: _____ (If known) Filed on: _____	
Telephone number: 11-10614(MG)		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case	
Name and address where payment should be sent (if different from above): MOBILE: (231) 383-1926		If an amount is identified above, you have a claim scheduled by one of the Debtors as shown (This scheduled amount of your claim may be an amendment to a previously scheduled amount.) If you agree with the amount and priority of your claim as scheduled by the Debtor and you have no other claims against the Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS. If the amount shown is listed as any of DISPUTED, UNLIQUIDATED, or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.	
IMPORTANT: Please list the store number and address of any lease related to your claim (if applicable). Store Number: _____ Store Address: _____			
1. Amount of Claim as of Date Case Filed: \$ _____ If all or part of your claim is secured, complete item 4 below, however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5.		5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.	
<input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		Specify the priority of the claim	
2. Basis for Claim: <u>DEBT CERTIFICATE</u> (See instruction #2 on reverse side.)		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B)	
3. Last four digits of any number by which creditor identifies debtor: _____ 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4)	
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Equipment <input type="checkbox"/> Other Describe: _____ Value of Property: \$ _____ Annual Interest Rate: _____ % Amount of arrearage and other charges as of time case filed included in secured claim: If any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). <input checked="" type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).	
6. Claim Pursuant to 11 U.S.C. § 503(b)(9): Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before February 16, 2011, the date of commencement of the above cases, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim. \$ _____		<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(n)(8) <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)()	
7. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 8. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction #8 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING If the documents are not available, please explain in an attachment		Amount entitled to priority: <u>\$ 100.00</u> *Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.	
Date: <u>1/3/12</u>		Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. <u>Eric Beeman</u>	

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both 18 U.S.C. §§ 152 and 357; Modified B10 (GCG)

1093477365

EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
)	
FB Liquidating Estate, ¹	)	Case No. 09-11525 (MFW)
	)	Jointly Administered
Debtors.)	
	)	Related to Docket No. 418

**ORDER (A) FIXING THE PROCEDURES AND DEADLINES
TO FILE PROOFS OF CLAIM, (B) APPROVING THE FORM AND MANNER
OF NOTICE OF BAR DATES, AND (C) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the “Debtors”), seeking the entry of an order, pursuant to sections 501, 502(b)(9) and 503 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002 (a)(7) and 3003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and the corresponding Local Rules (A) establishing the deadline for filing Claims pursuant to Rule 3003-1 of Bankruptcy Rules, (B) approving the form and manner of the proposed notice thereof, as set forth in Exhibits I and Exhibit II to the Motion, pursuant to Bankruptcy Rule 2002(a)(7) and Del. Bankr. L.R. 2002-1(e), and (C) granting related relief; and it appearing that the relief sought in the Motion is appropriate and necessary in order for the Debtors to determine the nature, scope

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Filene’s Basement, Inc. (8237); FB Services LLC (7224); and FB Leasing Services LLC (7228). The address for all Debtors is 25 Corporate Drive, Suite 400, Burlington, MA 01803.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

and classification of all claims, and that such relief is in the best interests of the Debtors and their estates; and sufficient cause appearing therefore, and upon due deliberation given, it is hereby:

ORDERED that the Motion is GRANTED; and it is further

ORDERED that:

- a. The date falling sixty (60) days after service of the Bar Date Notice shall be the Prepetition Claims Bar Date, the Administrative Claims Bar Date, and the WARN Act Claims Bar Date;
- b. November 2, 2009 shall be the Governmental Unit Bar Date; and
- c. The later of (i) thirty (30) days after the date of entry of an order authorizing the rejection of such contract or lease or (ii) the date falling sixty (60) days after service of the Bar Date Notice shall be the Rejection Claims Bar Date.

ORDERED that Claims must be received no later than 4:00 p.m. prevailing

Eastern time on the relevant Bar Date at the relevant address listed below:

If by First-Class Mail:

Filene's Basement, Inc. Claims Processing Center
c/o Epiq Bankruptcy Solutions, LLC
FDR Station, P.O. Box 5012
New York, NY 10150-5012

If by Hand Delivery or Overnight Mail:

Filene's Basement, Inc. Claims Processing Center
c/o Epiq Bankruptcy Solutions, LLC
757 Third Avenue, 3rd Floor
New York, NY 10017

ORDERED that any proof of Claim required to be filed pursuant to the provisions of this Order that is not filed on or before the relevant Bar Date shall be barred from assertion against the Debtors, the Debtors' estates and any successor to the Debtors under a confirmed plan of reorganization and/or liquidation or structured dismissal or otherwise (the "Plan"), and the holder of such Claim shall be barred and prohibited from voting on any Plan filed in these

chapter 11 cases or participating in any distribution in these cases including, but not limited to, any distribution under a confirmed Plan; and it is further

ORDERED that in accordance with Bankruptcy Rule 2002, the Debtors are to cause notice of the Bar Dates, in a form substantially of that annexed to the Motion as Exhibit I to be given by first class mail, postage prepaid, by no later than five (5) business days after the entry of this Order, upon (i) all known creditors; (ii) all parties on the service list described in Local Rule 2002-1(c), (iii) all equity security holders, (iv) indenture trustees, (v) the United States Trustee and (vi) all taxing authorities for the jurisdictions in which the debtor does business; and it is further

ORDERED that the notice in substantially the form attached to the Motion as Exhibit II shall be published in a weekday edition of U.S.A. Today within one week after the entry of this Order; and it is further


ORDERED that each proof of claim must substantially comply with Official Bankruptcy Form B10, attached to the Notice as Exhibit A. In addition, each proof of claim filed must: (i) be written in the English language; (ii) be denominated in lawful currency of the United States as of the Petition Date; and (iii) attach copies of any writings upon which the claim is based in accordance with Bankruptcy Rules 3001(c) and 3001(d); and it is further

ORDERED that all proofs of claim must be originally executed. Proofs of claim sent by facsimile, telecopy, or e-mail will not be accepted, and it is further

ORDERED that the Excepted Claims and are not required to be filed on or before the Bar Dates set out above unless otherwise ordered by this Court; and it is further

ORDERED that this Court shall retain jurisdiction to interpret, implement and enforce the terms and provisions of this Order.

Dated: July 19, 2009



The Honorable Mary F. Walrath
United States Bankruptcy Judge

John A. Bicks (NY 2032498)
 SONNENSCHN NATH & ROSENTHAL LLP
 1221 Avenue of the Americas
 New York, NY 10020-1089
 Telephone: (212) 768-6700

and

Monika J. Machen (IL 6273699)
 SONNENSCHN NATH & ROSENTHAL LLP
 233 South Wacker Drive, Suite 7800
 Chicago, Illinois 60606-6404
 Telephone: (312) 876-8000

Michael A. Condyles (VA 27807)
 Peter J. Barrett (VA 46179)
 Jeremy S. Williams (VA 77469)
 KUTAK ROCK LLP
 Bank of America Center
 1111 East Main Street, Suite 800
 Richmond, Virginia 23219-3500
 Telephone: (804) 644-1700

Attorneys for Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 RICHMOND DIVISION**

In re:	)	Chapter 11
)	
MOVIE GALLERY, INC., et al.,¹	)	Case No. 10-30696-DOT
)	
Debtor.)	
)	

**ORDER ESTABLISHING BAR DATES AND APPROVING FORM AND MANNER OF
 NOTICE OF BAR DATES FOR CREDITORS TO FILE PROOF OF CLAIM**

Upon the motion (the “Motion”)² of the above-captioned debtors (collectively, the “Debtors”) for entry of an order (the “Order”) (a) establishing bar dates for Creditors to file Proof of Claim Forms in these chapter 11 cases and (b) approving the form and manner of notice of bar dates for Creditors to file Proof of Claim Forms; it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors and other parties in interest; the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Motion and the relief requested therein being a core proceeding

¹ The Debtors in the cases are Movie Gallery, Inc., Hollywood Entertainment Corporation, Movie Gallery US, LLC, MG Real Estate, LLC, and HEC Real Estate, LLC.

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

pursuant to 28 U.S.C. § 157(b); venue being proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409; notice of the Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefore, it is hereby ORDERED

1. The Motion is granted in its entirety.

2. Except as otherwise set forth herein, all entities (as defined in section 101(15) of the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), each, an “Entity”) holding or wishing to assert a claim (as defined in section 101(5) of the Bankruptcy Code) that arose prior to February 2, 2010 (the “Commencement Date”) against any of the Debtors (collectively, the “Claims”³ and the holders of such Claims, collectively, the “Creditors”) are required to file a proof of such Claim, the form of which is attached hereto as Attachment 2 (the “Proof of Claim Form”), on or before:

- a. June 14, 2010 (the “General Bar Date”);
 - b. The later of the General Bar Date and 30 days after a claimant is served with notice that the Debtors have amended their schedules of assets and liabilities (the “Schedules”), reducing, deleting or changing the status of a Claim in the Schedules is the bar date for filing a Proof of Claim Form with respect to such Claim (the “Amended Schedule Bar Date”); or
 - c. Except as otherwise set forth in any order authorizing the rejection of an executory contract or unexpired lease, the latest of: (a) the General Bar Date; (b) 30 days after the date of the entry of any order authorizing the rejection of an executory contract or unexpired lease; and (c) 30 days after the effective date of the rejection of such executory contract or unexpired lease is the bar date by which a Proof of Claim Form relating to the Debtors’ rejection of such contract or lease must be filed (the “Rejection Bar Date”).
3. The bar date for all governmental units (as defined in section 101(27) of the Bankruptcy Code) to file a Proof of Claim Form in these chapter 11 cases is 180 days after the

³ All claims filed in In re Movie Gallery, Inc., et al., Case No. 07-33849, whether allowed or disallowed, will not be considered “Claims” for the purposes of the above-captioned case.

Commencement Date (the “Governmental Unit Bar Date,” and with the General Bar Date, the Amended Schedule Bar Date and the Rejection Bar Date, the “Bar Dates”).

4. The Bar Dates apply to all Claims held or to be asserted against the Debtors (whether secured or unsecured, priority or nonpriority, contingent or noncontingent, liquidated or unliquidated or disputed or undisputed), including the following:

- a. any Claim that is listed in the Schedules as “contingent,” “unliquidated,” “disputed” or any combination thereof if the holder of such Claim desires to participate in any of these chapter 11 cases or share in any distribution in these chapter 11 cases on account of such Claim;
- b. any Claim that is improperly classified in the Schedules or is listed in an incorrect amount if the holder of such Claim desires to have such Claim allowed in a classification or amount other than as set forth in the Schedules;
- c. any Claim against a Debtor that is not listed in the applicable Schedules; and

5. Proof of Claim Forms need not be filed by any Entity holding or wishing to assert Claims against the Debtors of the types set forth in clauses (a) through (f) below:

- a. Claims listed in the Debtors’ Schedules or any amendments thereto, which are not therein listed as “contingent,” “unliquidated,” “disputed” or any combination thereof and which are not disputed by the Creditor holding such Claim as to nature, amount or classification;
- b. Claims for which a Proof of Claim Form has already been filed with the Court;
- c. Claims previously allowed by, or paid pursuant to, an order of the Court;
- d. Claims allowable under sections 503(b) and 507(a)(1) of the Bankruptcy Code as administrative expenses of the Debtors’ chapter 11 cases, with the exception of Claims allowable under section 503(b)(9) of the Bankruptcy Code.
- e. Claims made by any of the Debtors or any direct or indirect subsidiary of any of the Debtors that hold Claims against one or more of the other Debtors; and
- f. Claims made by any holder of equity securities of the Debtors solely with respect to such holder’s ownership interest in or possession of such equity securities; provided, however, that any such holders who wish to assert a Claim against any of the Debtors based on transactions in the Debtors’ securities, including, but not limited to, Claims for damages or rescission based on the purchase or sale of such

securities, must file a Proof of Claim Form on or prior to the General Bar Date; provided that the Debtors reserve all rights with respect to any such Claims including, *inter alia*, to assert that such Claims are subject to subordination pursuant to section 510(b) of the Bankruptcy Code.

6. The Debtors retain the right to: (a) dispute and assert offsets or defenses against any filed Claim or any Claim listed or reflected in the Schedules as to the nature, amount, liability, classification or otherwise of such Claim; and (b) subsequently designate any Claim as contingent, unliquidated or disputed.

7. Any Creditor that is required to file a Proof of Claim Form in these chapter 11 cases but that fails to do so in a timely manner is forever barred, estopped and enjoined from: (a) asserting any Claim against the Debtors that (i) is in an amount that exceeds the amount, if any, that is set forth in the Schedules as noncontingent, liquidated or undisputed or (ii) is of a different nature or in a different classification (any such Claim referred to as an “Unscheduled Claim”) and (b) voting upon, or receiving distributions under, any chapter 11 plan or plans in these chapter 11 cases in respect of an Unscheduled Claim; and the Debtors and their property are forever discharged from any and all indebtedness or liability with respect to such Unscheduled Claim.

8. For any Proof of Claim Form to be validly and properly filed, a signed original of the completed Proof of Claim Form, together with accompanying documentation, must be delivered to Kurtzman Carson Consultants LLC (the “Notice, Claims and Balloting Agent”) at the address set forth on the notice of the Bar Dates (the “Bar Date Notice”) so as to be received no later than 9:00 p.m. (prevailing Eastern Time) on the respective Bar Date.

9. Creditors are permitted to submit Proof of Claim Forms in person, by courier service, overnight delivery or first class U.S. mail only; facsimile and electronic mail submissions are not acceptable. Proof of Claim Forms are deemed filed when actually received by the Notice, Claims and Balloting Agent (not the date of the postmark). If a Creditor wishes to receive

acknowledgment of receipt of such Creditor's Proof of Claim Form, such Creditor must submit a copy of the Proof of Claim Form and a self-addressed, stamped envelope to the Notice, Claims and Balloting Agent along with the original Proof of Claim Form.

10. Any Creditor asserting Claims against more than one Debtor must file a separate Proof of Claim Form with respect to each such Debtor. If more than one Debtor is listed on a Proof of Claim Form, the Debtors will treat such Claim as filed against the first listed Debtor. All Creditors must identify on their Proof of Claim Forms the holder or holders of the Claim and the particular Debtor against which their Claim is asserted and the applicable bankruptcy case number for such Debtor. Any Claims filed in the lead joint administration case are deemed filed only against Movie Gallery, Inc.

11. The form of the Bar Date Notice attached hereto as Attachment 1 is approved. The Bar Date Notice shall be mailed by the Notice, Claims and Balloting Agent by first class U.S. mail, postage prepaid, as soon as practicable, but in no event later than 45 days before the earliest Bar Date, to all known Creditors holding potential Claims.

12. The form of the Proof of Claim Form attached hereto as Attachment 2 is approved.

13. The Debtors are directed to give notice of the Bar Dates by publishing the Bar Date Notice once each in the national editions of *The Wall Street Journal*, *The New York Times* and the *Washington Post*. Additionally, the Debtors are hereby authorized, but not required, to publish the Bar Date Notice at such times and in such trade or other local publications of general circulation as the Debtors shall determine. Such notices, if published, shall be published on or before 45 days before the earliest Bar Date.

14. The Debtors are authorized to enter into such transactions to cause such publication to be made and to make reasonable payments required for publications.

15. Provision of notice of the Bar Dates as set forth in this Order, in the manner set forth herein, constitutes adequate and sufficient notice of each of the Bar Dates and is deemed to satisfy the requirements of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Rules for the United States Bankruptcy Court for the Eastern District of Virginia.

16. The Proof of Claim Form which is to be served by the Notice, Claims and Balloting Agent will provide parties with notice that their claim is unliquidated or contingent and such notice satisfies Local Bankruptcy Rule 3003-1(B).

17. All Creditors that rely on the Schedules with respect to filing a Proof of Claim Form in these chapter 11 cases are responsible for determining that their Claims are accurately listed therein.

18. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

19. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

20. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: April __, 2010
Richmond, Virginia

United States Bankruptcy Judge

We ask for this:

/s/ Jeremy S. Williams

KUTAK ROCK LLP

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Peter J. Barrett (VA 46179)

Jeremy S. Williams (VA 77469)
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Attorneys for Debtors and Debtors in Possession

LOCAL RULE 9022-1(C)(2) CERTIFICATION

The undersigned hereby certifies that the foregoing proposed Order has been served upon all necessary parties, which necessary parties consist of the creditors and parties in interest constituting the Core Group, the 2002 List and the Affected Entities, as such terms are defined in that certain Order Establishing Certain Notice, Case Management and Administrative procedures [Docket No. 118] entered by the Court on February 8, 2010. On April 26, 2010, service of the proposed Order was effected on the aforementioned parties by electronic mail, overnight mail and/or first class mail, postage prepaid (only if electronic mail or overnight mail was unavailable).

/s/ Jeremy S. Williams

ATTACHMENT 1

John A. Bicks (NY 2032498)
 SONNENSCHN NATH & ROSENTHAL LLP
 1221 Avenue of the Americas
 New York, NY 10020-1089
 Telephone: (212) 768-6700

and

Monika J. Machen (IL 6273699)
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Attorneys for Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 RICHMOND DIVISION**

In re:	)	Chapter 11
)	
MOVIE GALLERY, INC., et al.,⁴	)	Case No. 10-30696-DOT
)	
Debtor.)	
)	

NOTICE OF BAR DATES FOR FILING PROOFS OF CLAIM⁵

**TO: ALL ENTITIES WHO MAY HAVE CLAIMS AGAINST ANY OF THE
 FOLLOWING DEBTORS:**

Debtor	Address	Case No.	EID#
Movie Gallery, Inc.	9275 SW Peyton Lane Wilsonville, OR 97070	10-30696-DOT	63-1120122
Hollywood Entertainment Corporation	9275 SW Peyton Lane Wilsonville, OR 97070	10-30695-DOT	93-0981138
Movie Gallery US, LLC	9275 SW Peyton Lane Wilsonville, OR 97070	10-30697-DOT	41-1461110
MG Real Estate, LLC	9275 SW Peyton Lane Wilsonville, OR 97070	10-30698-DOT	47-0890138
HEC Real Estate, LLC	9275 SW Peyton Lane Wilsonville, OR 97070	10-30700-DOT	22-3916769

⁴ The Debtors in the cases are Movie Gallery, Inc., Hollywood Entertainment Corporation, Movie Gallery US, LLC, MG Real Estate, LLC, and HEC Real Estate, LLC.

⁵ All claims filed in In re Movie Gallery, Inc., et al., Case No. 07-33849, whether allowed or disallowed, will not be considered "Claims" for the purposes of the above captioned case.

PLEASE TAKE NOTICE THAT on [April __, 2010], the Bankruptcy Court entered an order [Docket No. []] in Movie Gallery, Inc., et al. (the “Bar Date Order”) establishing **June 14, 2010** as the general claims bar date (the “General Bar Date”), and **August 1, 2010** as the governmental unit claims bar date (the “Governmental Unit Bar Date,” and along with the General Bar Date, the Amended Schedule Bar Date (as defined herein) and the Rejection Bar Date (as defined herein), the “Bar Dates”).

Pursuant to the Bar Date Order, all entities (as defined in section 101(15) of the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”)) (each, an “Entity”) holding or wishing to assert a claim (as defined in section 101(5) of the Bankruptcy Code) that arose prior to **February 2, 2010** (the “Commencement Date”) against any of the Debtors (collectively, the “Claims” and the holders of such Claims, collectively, the “Creditors”) are required to file proof of such Claim (the “Proof of Claim Form”) in these chapter 11 cases by the applicable Bar Dates, unless otherwise provided herein.

1. WHO MUST FILE A PROOF OF CLAIM FORM

Creditors holding or wishing to assert Claims against the Debtors (whether secured or unsecured, priority or nonpriority, contingent or noncontingent, liquidated or unliquidated or disputed or undisputed) must file a Proof of Claim Form on or before the applicable Bar Dates with respect to the following Claims, unless otherwise provided herein: (a) any Claim that is listed in the Debtors’ schedules of assets and liabilities (the “Schedules”) as “contingent,” “unliquidated,” “disputed” or any combination thereof if the holder of such Claim; (b) any Claim that is improperly classified in the Schedules or is listed in an incorrect amount if the holder of such Claim to have such Claim allowed in a classification or amount other than as set forth in the Schedules; or (c) any Claim that is not listed in the Schedules.

Any Creditor whose Claims have been reduced, deleted or the status of which has been changed in connection with the Debtors amending the Schedules must file a Proof of Claim Form with respect to such Claim on or before the later of: (a) the applicable Bar Dates; or (b) 30 days after such Creditor is served with notice that the Debtors have amended their Schedules (the “Amended Schedule Bar Date”).

Any Creditor asserting Claims against more than one Debtor must file a separate Proof of Claim Form with respect to each such Debtor. If more than one Debtor is listed on a Proof of Claim Form, the Debtors will treat such Claim as filed against the first listed Debtor. All Creditors must identify on their Proof of Claim Forms the holder or holders of the Claim and the particular Debtor against which their Claim is asserted and the applicable bankruptcy case number for such Debtor. Any Claims filed in the lead joint administration case (In re: Movie Gallery, Inc., et al.) shall be deemed filed only against Movie Gallery, Inc.

2. WHO NEED NOT FILE A PROOF OF CLAIM FORM

Proof of Claim Forms need not be filed on or before the applicable Bar Dates for Claims asserted against the Debtors of the types set forth below:

- a. Claims listed in the Debtors' Schedules or any amendments thereto, which are not therein listed as "contingent," "unliquidated," "disputed" or any combination thereof and which are not disputed by the Creditor holding such Claim as to nature, amount or classification;
- b. Claims for which a Proof of Claim Form has already been filed with the Court;
- c. Claims previously allowed by, or paid pursuant to, an order of the Court;
- d. Claims allowable under sections 503(b) and 507(a)(1) of the Bankruptcy Code as administrative expenses of the Debtors' chapter 11 cases, with the exception of Claims allowable under section 503(b)(9) of the Bankruptcy Code.
- e. Claims made by any of the Debtors or any direct or indirect subsidiary of any of the Debtors that hold Claims against one or more of the other Debtors; and
- f. Claims made by any holder of equity securities of the Debtors solely with respect to such holder's ownership interest in or possession of such equity securities; provided, however, that any such holders who wish to assert a Claim against any of the Debtors based on transactions in the Debtors' securities, including, but not limited to, Claims for damages or rescission based on the purchase or sale of such securities, must file a Proof of Claim Form on or prior to the General Bar Date; provided that the Debtors reserve all rights with respect to any such Claims including, *inter alia*, to assert that such Claims are subject to subordination pursuant to section 510(b) of the Bankruptcy Code.

3. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

For a Claim that arises out of the rejection of an executory contract or an unexpired lease, the Creditor holding such Claim must file a Proof of Claim Form on or before the latest of: (a) the applicable Bar Dates; (b) 30 days after the date of entry of any order authorizing the rejection of an executory contract or unexpired lease; and (c) 30 days after the effective date of the rejection of such executory contract or unexpired lease (the "Rejection Bar Date").

4. WHEN AND WHERE TO FILE

Except as provided herein, the Bar Date Order requires that any Claims against any of the Debtors be filed with the claims agent appointed by the Bankruptcy Court, Kurtzman Carson Consultants LLC (the "Notice, Claims and Balloting Agent"), by submitting a Proof of Claim Form, so that such Proof of Claim Form is ACTUALLY RECEIVED on or before 9:00 p.m. (prevailing Eastern Time) on the applicable Bar Date at the following address(es):

Movie Gallery Claim Processing
c/o Kurtzman Carson Consultants LLC
2335 Alaska Avenue
El Segundo, California 90245

Proof of Claim Forms are deemed filed only when they are actually received by the Notice, Claims and Balloting Agent (not the date of the postmark). Facsimile and electronic mail submissions will not be accepted.

5. CONSEQUENCES OF FAILURE TO FILE A PROOF OF CLAIM BY THE BAR DATES

Any Creditor that is required to file a Proof of Claim Form in these chapter 11 cases but that fails to do so in a timely manner is forever barred, estopped and enjoined from: (a) asserting any Claim against the Debtors that such Creditor has that (i) is in an amount that exceeds the amount, if any, that is set forth in the Schedules or (ii) is of a different nature or in a different classification (any such Claim referred to as an “Unscheduled Claim”); and (b) voting upon, or receiving distributions under, any chapter 11 plan or plans in these chapter 11 cases in respect of an Unscheduled Claim; and the Debtors and their property are forever discharged from any and all indebtedness or liability with respect to such Unscheduled Claim.

6. ACCESS TO PROOF OF CLAIM FORMS

Proof of Claim Forms and a copy of the Bar Date Order may be obtained by contacting the Notice, Claims and Balloting Agent at Kurtzman Carson Consultants LLC, 2335 Alaska Avenue, El Segundo, California 90245, Telephone: 888-647-1730. Neither the Debtors, their attorneys nor the Notice, Claims and Balloting Agent can advise you whether you should file a Proof of Claim Form. Notwithstanding anything set forth in this notice of Bar Dates (the “Bar Date Notice”), the Debtors retain the right to: (a) dispute and assert offsets or defenses against any filed Claim or any Claim listed or reflected in the Schedules as to the nature, amount, liability, classification or otherwise of such Claim; and (b) subsequently designate any Claim as contingent, unliquidated, disputed or any combination thereof.

Neither the Debtors’ counsel nor the Bankruptcy Court Clerk’s Office can give you legal advice. You may wish to consult an attorney to protect your rights.

Dated: April __, 2010
Richmond, Virginia

Respectfully submitted,

KUTAK ROCK LLP

By: _____

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Fax: (312) 876-7934

Attorneys for Debtors and Debtors in Possession

ATTACHMENT 2

UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF VIRGINIA		PROOF OF CLAIM
Name of Debtor :		Case Number:
NOTE: Other than claims under 11 U.S.C. § 503(b)(9), this form should not be used to make a claim for administrative expenses arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503(a).		
Name of Creditor (The person or other entity to whom the debtor owes money or property):		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.
Name and address where notices should be sent:		
Telephone Number:		
Last four digits of account or other number by which creditor identifies debtor:		THIS SPACE IS FOR COURT USE ONLY
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Other _____		<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of your SS#: _____ Unpaid compensation for services performed from _____ to _____ (date)
2. Date debt was incurred:		3. If court judgment, date obtained:
4. Classification of Claim. Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time case filed. See reverse side for important explanations.		
Unsecured Nonpriority Claim \$ _____ <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or c) none or only part of your claim is entitled to priority.		Secured Claim <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____
Unsecured Priority Claim. <input type="checkbox"/> Check this box if you have an unsecured claim, all or part of which is entitled to priority. Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,000), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Up to \$2,225 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).		<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507(a) (____).
Section 503(b)(9) Claim \$ _____ <input type="checkbox"/> Check this box if your claim is for the value of any goods received by the debtor within 20 days before the date of commencement of the case in which the goods have been sold to the debtor in the ordinary course of the debtor's business - 11 U.S.C. § 503(b)(9). Include the amount of such claim in the space for "Amount entitled to priority."		
5. Total Amount of Claim at Time Case Filed: <div style="display: flex; justify-content: space-between; align-items: flex-end;"> \$ _____ (unsecured) + _____ (secured) + _____ (priority) = _____ (Total) </div> <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
6. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. 7. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
8. Date-Stamped Copy: To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		
Date:	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):	THIS SPACE FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

The instructions and definitions below are general explanations of the law. In particular types of cases or circumstances, such as bankruptcy cases that are not filed voluntarily by a debtor, there may be exceptions to these general rules.

— DEFINITIONS —

Debtor

The person, corporation, or other entity that has filed a bankruptcy case is called the debtor.

Creditor

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

Proof of Claim

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the clerk of the bankruptcy court where the bankruptcy case was filed.

Secured Claim

A claim is a secured claim to the extent that the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property.

Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before the bankruptcy case began; in some states a court judgment is a lien. In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim. (See also *Unsecured Claim*.)

Unsecured Claim

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

Unsecured Priority Claim

Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority Claims*.

Items to be completed in Proof of Claim form (if not already filled in)

Court, Name of Debtor, and Case Number:

Fill in the name of the federal judicial district where the bankruptcy case was filed (for example, Southern District of New York), the name of the debtor in the bankruptcy case, and the bankruptcy case number. If you received a notice of the case from the court, all of this information is near the top of the notice.

Information about Creditor:

Complete the section giving the name, address, and telephone number of the creditor to whom the debtor owes money or property, and the debtor's account number, if any. If anyone else has already filed a proof of claim relating to this debt, if you never received notices from the bankruptcy court about this case, if your address differs from that to which the court sent notice, or if this proof of claim replaces or changes a proof of claim that was already filed, check the appropriate box on the form.

1. Basis for Claim:

Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in your social security number and the dates of work for which you were not paid.

2. Date Debt Incurred:

Fill in the date when the debt first was owned by the debtor.

3. Court Judgments:

If you have a court judgment for this debt, state the date the court entered the judgment.

4. Classification of Claim

Secured Claim

Check the appropriate place if the claim is a secured claim. You must state the type and value of property that is collateral for the claim, attach copies of the documentation of your lien, and state the amount past due on the claim as of the date the bankruptcy case was filed. A claim may be partly secured and partly unsecured. (See DEFINITIONS, above).

Unsecured Priority Claim

Check the appropriate place if you have an unsecured priority claim, and state the amount entitled to priority. (See DEFINITIONS, above). A claim may be partly priority and partly nonpriority if, for example, the claim is for more than the amount given priority by the law. Check the appropriate place to specify the type of priority claim. Claims entitled to administrative priority under 11 U.S.C. § 503(b)(9) should be asserted by filling in the appropriate information on this Proof of Claim form. All other administrative claims must be asserted by an appropriate "request" under 11 U.S.C. § 503(a) and should not be asserted on this Proof of Claim form.

Unsecured Nonpriority Claim

Check the appropriate place if you have an unsecured nonpriority claim, sometimes referred to as a "general unsecured claim". (See DEFINITIONS, above). If your claim is partly secured and partly unsecured, state here the amount that is unsecured. If part of your claim is entitled to priority, state here the amount **not** entitled to priority.

5. Total Amount of Claim at Time of Case Filed:

Fill in the total amount of the entire claim. If interest or other charges in addition to the principal amount of the claim are included, check the appropriate place on the form and attach an itemization of the interest and charges.

6. Credits:

By signing this proof of claim, you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor.

7. Supporting Documents:

You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, you must attach an explanation of why they are not available.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

----- x
In re: : Chapter 11
FILENE'S BASEMENT, LLC, et al., : Case No. 11-13511 (KJC)
Debtors.¹ : Jointly Administered
----- x Related Docket No. 564, ~~566~~ 567

ORDER UNDER 11 U.S.C. §§ 105, 502 AND 503 AND FED. R. BANKR. P. 2002, 3003(c)(3) AND 9007 (I) SETTING GENERAL BAR DATE AND INITIAL ADMINISTRATIVE CLAIMS BAR DATE (INCLUDING WITH RESPECT TO CLAIMS ASSERTED PURSUANT TO 11 U.S.C. § 503(B)(9)), (II) ESTABLISHING PROCEDURES FOR FILING PROOFS OF CLAIM AND ADMINISTRATIVE CLAIM REQUESTS (INCLUDING WITH RESPECT TO CLAIMS ASSERTED PURSUANT TO 11 U.S.C. § 503(B)(9)), (III) ESTABLISHING PROCEDURES FOR RECONCILING, AND AUTHORIZING PAYMENT OF, ADMINISTRATIVE CLAIM REQUESTS (INCLUDING WITH RESPECT TO CLAIMS ASSERTED PURSUANT TO 11 U.S.C. § 503(B)(9)), AND (IV) APPROVING FORM AND MANNER OF NOTICE THEREOF

Upon the motion (the "Motion")² of the Debtors for entry of an order under Bankruptcy Code sections 105, 502 and 503 and Bankruptcy Rules 2002, 3003(c)(3) and 9007 (i) setting a general bar date and an initial administrative claims bar date (including with respect to claims asserted pursuant to 11 U.S.C. § 503(b)(9)), (ii) establishing procedures for filing proofs of claim and administrative claim requests (including with respect to claims asserted pursuant to 11 U.S.C. § 503(b)(9)), (iii) establishing procedures for reconciling, and authorizing payment of, administrative claim requests (including with respect to claims asserted pursuant to 11 U.S.C. § 503(b)(9), and (iv) approving the form and manner of notice thereof; and the Court having

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.

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

determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED.
2. **General Bar Date:** Pursuant to Bankruptcy Rule 3003(c)(3), all "entities" and "persons" (as defined respectively in Bankruptcy Code sections 101(15) and (41)), except any Governmental Unit, that are creditors holding or wishing to assert Claims arising before the Petition Date against any of the Debtors are required to file **on or before 5:00 p.m. (Eastern) on March 1, 2012 (the "General Bar Date")** a separate, completed and executed proof of claim form (conforming substantially to Official Bankruptcy Form No. 10) on account of any such claims in accordance with the procedures set forth below.
3. Pursuant to Bankruptcy Rule 3003(c) and Bankruptcy Code section 502(b)(9), any Governmental Units that are creditors holding or wishing to assert Claims arising before the Petition Date against any of the Debtors are required to file **on or before 5:00 p.m. (Eastern) on May 4, 2012 (the "Governmental Bar Date")** a separate, completed and executed Proof of Claim Form (conforming substantially to Official Bankruptcy Form No. 10) on account of any such claims in accordance with the procedures set forth below.
4. Notwithstanding the preceding paragraphs, creditors holding or wishing to assert the following types of claims (collectively, the "Excluded General Claims") against the Debtors need not file a proof of claim:

- (i) Claims listed in the Schedules and Statements or any amendments thereto that are not therein listed as "contingent," "unliquidated" or "disputed" and that are not disputed by the holders thereof as to (a) amount, (b) classification or (c) the identity of the Debtor against whom such Claims are scheduled;
- (ii) Claims on account of which a proof of claim has already been properly filed with the Court against the correct Debtor;
- (iii) Claims previously allowed or paid pursuant to an order of the Court;
- (iv) Claims allowable under Bankruptcy Code sections 503(b) and 507(a)(2) as expenses of administration;³ and
- (v) Claims of the Debtors against other Debtors.

5. Any holder of an interest in any of the Debtors (each an "Interest Holder"), whose interest is based exclusively upon the ownership of common or preferred stock of any of the Debtors (an "Interest"), is not required to file a proof of Interest based solely on account of such Interest Holder's ownership interest in such stock; provided, however, that any Interest Holder who wishes to assert a Claim against any of the Debtors, including, without limitation, any Claim based on any transaction in the Debtors' securities and/or a Claim for damages or rescission based on the purchase or sale of the Interests, must file a proof of claim on or prior to the General Bar Date; provided further, however, that any Interest Holder that is a Governmental Unit, who wishes to assert a Claim against any of the Debtors, including, without limitation, based on a transaction in the Debtors' securities and/or a Claim for damages or rescission based on the purchase or sale of the Interest, must file a proof of claim on or prior to the Governmental Bar Date.⁴

³ Any creditors holding or wishing to assert Claims allowable under Bankruptcy Code sections 503(b) and 507(a)(2) (including with respect to claims asserted pursuant to 11 U.S.C. § 503(b)(9)) are required to file Administrative Claim Requests as provided for herein.

⁴ The Debtors reserve the right to seek relief at a later date requiring Interest Holders to file proofs of Interest.

6. Proofs of claim for any rejection damages claims arising from the rejection of any unexpired lease or executory contract of a Debtor (an "Agreement") during these Bankruptcy Cases must be filed by the later of (a) thirty (30) days after the effective date of rejection of such executory contract or unexpired lease as provided by an order of this Court or pursuant to a notice under procedures approved by this Court, (b) any date set by another Order of the Court or (c) the General Bar Date (the "Rejection Bar Date"); provided, however, that in the case of claims subject to a separate Order entered prior to the entry of this Order and fixing a different bar date (a "Pre-Existing Bar Date"), such claims shall continue to be subject to the Pre-Existing Bar Date and the Pre-Existing Bar Date shall not be modified or extended by this Order or the General Bar Date Notice. Proofs of claim for any other claims that arose prior to the Petition Date with respect to a lease or contract must be filed by the General Bar Date.

7. The Debtors shall serve a notice (the "General Bar Date Notice") substantially in the form of the notice attached as Exhibit A to the Motion and a Proof of Claim Form conforming substantially to Official Bankruptcy Form No. 10 attached as Exhibit C to the Motion by first class mail no later than five (5) business days after the filing of the notice setting the General Bar Date to all known and reasonably ascertainable creditors and all known holders of the Debtors' equity securities as reflected in the Debtors' books and records.

8. The Debtors shall publish a notice in a form substantially similar to the General Bar Date Notice in the national edition of USA Today, the Boston Globe, and Women's Wear Daily, as set forth in the Declaration of Christopher R. Schepper with Respect to Debtors' Proposed Publication of Bar Dates (Docket No. 645), no later than seven (7) business days after the filing of the notice setting the General Bar Date. Such publication shall constitute

adequate and appropriate notice sufficient to comply with the Debtors' due process obligations as to all creditors that are not known or reasonably ascertainable to the Debtors.

9. Subject to Paragraphs 24-27 of this Order, a creditor served with a Proof of Claim Form may rely on the information therein, if any, regarding the description of such creditor's claim in the Schedules and Statements.

10. To be considered properly filed, each Proof of Claim Form must (a) be denominated in lawful United States currency, (b) specify the full name of Debtor against which the claimant asserts the Claim, (c) set forth with specificity the legal and factual basis for the Claim, and (d) have attached to it supporting documentation upon which the claimant will rely to support the Claim.

11. Claims against multiple Debtors may not be aggregated on a single Proof of Claim Form. Any creditor or claimant holding or wishing to assert a Claim against more than one Debtor must file a separate Proof of Claim Form in the case of each Debtor against which the creditor or holder of such Claim believes it holds a Claim.

12. **Initial Administrative Claims Bar Date:** Pursuant to Bankruptcy Code sections 105 and 503, all Administrative Claim Requests for payment of Administrative Claims (as defined in Bankruptcy Code sections 101(5) and 503(b), including but not limited to claims asserted pursuant to 11 U.S.C. § 503(b)(9)), first arising on or before December 31, 2011, must be filed **on or before 5:00 p.m. (Eastern) on March 1, 2012** (the "Initial Administrative Claims Bar Date") by holders of Administrative Claims, including, without limitation, individuals, partnerships, corporations, estates, trusts, indenture trustees, unions, and all non-Debtor parties to Agreements with any of the Debtors who allege that any amounts arising under any of the Agreements from and after the Petition Date are due, owing and unpaid as of **December 31**,

2011. Administrative Claims include, but are not limited to (i) rent claims relating to nonresidential real property under Bankruptcy Code sections 365(d)(3) and 503(b) (the "Landlord Administrative Claims"), and (ii) any claims asserted pursuant to Bankruptcy Code section 503(b)(9) (the "503(b)(9) Claims").

13. Notwithstanding the preceding paragraphs, claimants holding or wishing to assert the following types of claims (collectively, the "Excluded Administrative Claims") against the Debtors need not file an Administrative Claim Request:

- (i) Parties that have already properly filed Administrative Claim Requests with the Court or Kurtzman Carson Consultants LLC (the "Claims Agent" or "KCC") that clearly sets forth that such parties are asserting Administrative Claims;
- (ii) Parties whose Administrative Claims have been previously allowed by order of the Court;
- (iii) A Debtor or Debtors holding Administrative Claims against one or more other Debtors;
- (iv) Professional advisors (i.e., attorneys, financial advisors, accountants, claims agents) retained by the Debtors or any official committee appointed in these cases, under Bankruptcy Code sections 327, 328, 363 or 1103 and whose Administrative Claims are for services rendered and reimbursement of expenses in these chapter 11 cases; and
- (v) Members of any official committee appointed in these cases whose Administrative Claims are for expenses for acting in their official capacity as members of an official committee in these chapter 11 cases.

14. To be considered properly asserted and filed, each Administrative Claim Request must (a) conform substantially to the form attached as Exhibit D to the Motion, (b) be denominated in lawful United States Currency, (c) specify the full name of the Debtor against which the claimant asserts the Administrative Claim, (d) set forth with specificity the legal and

factual basis for the Administrative Claim, and (e) have attached to it supporting documentation upon which the claimant will rely to support the Administrative Claim Request.

15. Administrative Claims against multiple Debtors may not be aggregated in a single Administrative Claim Request. Any creditor or holder of an Administrative Claim holding or wishing to assert Administrative Claims against more than one Debtor must file a separate Administrative Claim Request in the case of each Debtor against which the creditor or holder of such Administrative Claim request believes it holds an Administrative Claim.

16. Any claimant asserting a 503(b)(9) Claim against a Debtor must include the following: (i) the value of the goods the claimant contends a Debtor received within twenty days prior to the Petition Date; (ii) documentation, including invoices, receipts, bills of lading and the like, identifying the particular goods for which the claim is being asserted; and (iii) documentation regarding which Debtor the goods were shipped to, the date the goods were received by the Debtors, and the alleged value of such goods. For the avoidance of doubt, the procedures described in Paragraphs 14 and 15 above apply to 503(b)(9) Claims, such that a claimant asserting a 503(b)(9) Claim must not aggregate claims against more than one Debtor into a single 503(b)(9) Claim and, instead, must specifically set forth the full name of the particular Debtor against whom the 503(b)(9) Claim is asserted and filed. Each such 503(b)(9) Claim must be supported by the documentation described in this Paragraph 16 and Paragraph 14 of this Order, identifying which Debtor the goods were shipped to, the date the goods were received by the Debtor and the alleged value of such goods received by such Debtor.

17. The Debtors shall serve a notice (the "Initial Administrative Claims Bar Date Notice") substantially in the form of the notice attached as Exhibit B to the Motion and a form of Administrative Claim Request substantially in the form attached as Exhibit D to the

Motion by first class mail no later than five (5) business days after the filing of the notice setting the Initial Administrative Claims Bar Date to all known and reasonably ascertainable holders of Administrative Claims.

18. The Debtors shall publish a notice in a form substantially similar to the Initial Administrative Claims Bar Date Notice in the national edition of USA Today, the Boston Globe, and Women's Wear Daily, as set forth in the Declaration of Christopher R. Schepper with Respect to Debtors' Proposed Publication of Bar Dates (Docket No. 645), no later than seven (7) business days after the filing of the notice setting the Initial Administrative Claims Bar Date. Such publication shall constitute adequate and appropriate notice sufficient to comply with the Debtors' due process obligations as to all creditors that are not known or reasonably ascertainable to the Debtors.

19. **Procedures for Filing Proofs of Claims and Administrative Claim Requests:** All proofs of claim and Administrative Claim Requests shall be filed by mail, hand, or overnight courier and shall be addressed to:

Filene's Claims Processing Center
c/o Kurtzman Carson Consultants LLC
2335 Alaska Avenue
El Segundo, CA 90245

20. Proofs of claim and Administrative Claim Requests are deemed filed only when the proof of claim or Administrative Claim Requests, together with supporting documentation, is actually received by KCC at the above address. Proofs of claim and Administrative Claim Requests submitted by facsimile or other electronic means shall be rejected by KCC and will not be deemed filed.

21. **Additional Procedures for Filing Administrative Claim Requests with Respect to Section 503(b)(9) Claims and Landlord Administrative Claims.** The Procedures

set forth in this Paragraph 21, with respect to 503(b)(9) Claims and Landlord Administrative Claims, are hereby approved and shall be the sole and exclusive method for the assertion, resolution, allowance, and satisfaction of 503(b)(9) Claims and Landlord Administrative Claims, and all Vendors and Landlords are prohibited from invoking any other means therefor, including, without limitation, the filing of a motion for allowance, or to compel payment, of any 503(b)(9) Claims or Landlord Administrative Claims.

(a) All Section 503(b)(9) Claims and Landlord Administrative Claims must be filed by the Initial Administrative Claims Bar Date;

(b) Any claimant asserting a 503(b)(9) Claim against the Debtors also must include the following: (i) the value of the goods the claimant contends the Debtors received within twenty days prior to the Petition Date; (ii) documentation, including invoices, receipts, bills of lading and the like, identifying the particular goods for which the claim is being asserted; and (iii) documentation regarding which Debtor the goods were shipped to, the date the goods were received by the Debtors, and the alleged value of such goods;

(c) The Debtors and the Committees shall have sixty (60) days after the Initial Administrative Claims Bar Date to file with the Court and serve upon claimants any objections to timely filed 503(b)(9) Claims or Landlord Administrative Claims (the "Objection Deadline");

(d) Claimants shall have thirty (30) days from the Objection Deadline to file with the Court and serve upon the Debtors, the Committees and their attorneys any replies to such objections;

(e) All timely filed 503(b)(9) Claims or Landlord Administrative Claims shall be deemed allowed unless objected to by the Debtors or the Committees on or before the Objection Deadline;

(f) To the extent the Debtors determine that a 503(b)(9) Claim or Landlord Administrative Claim should be allowed and satisfied, the Debtors shall be authorized to satisfy the 503(b)(9) Claim or Landlord Administrative Claim no earlier than fifteen (15) days after providing notice of such determination (a "Satisfaction Notice") to the Committees; provided, however, that if an objection to satisfaction is raised by the Committees within fifteen (15) days after receipt of the Satisfaction Notice, the 503(b)(9) Claim or Landlord Administrative Claim at issue shall be paid only pursuant to an order of the Court, after notice and a hearing;

(g) The Debtors shall use their best efforts to reconcile and satisfy the 503(b)(9) Claims and Landlord Administrative Claims as soon as practicable; provided,

however, that the Debtors, in consultation with the Committees, shall have discretion to defer satisfaction of allowed 503(b)(9) Claims and Landlord Administrative Claims until such time as set forth in such plan of liquidation or reorganization; provided further, however, that any Claimant asserting a 503(b)(9) Claim or Landlord Administrative Claim so deferred shall be authorized to seek an order of the Court requiring earlier payment after notice and a hearing; and

22. Notwithstanding and without limiting the foregoing, the Debtors are authorized, but not required, to negotiate, in their sole discretion, with any Claimant and to seek an agreement resolving any objection to such Claimant's 503(b)(9) Claim or Landlord Administrative Claim. The approval of such an agreement shall be subject to notice and a hearing unless otherwise consented to by the Committees, in which event, the requirement for a notice and a hearing shall be deemed waived.

23. Any creditor or holder of a Claim or an Administrative Claim that is required to file but fails to file a proof of claim or Administrative Claim Request for its claim in accordance with this Order on or before the General Bar Date, the Governmental Bar Date, the Rejection Bar Date, the Initial Administrative Claims Bar Date, or such other date established by prior or future order of the Court or established hereby (as applicable) shall be barred from asserting such claim against the Debtors and their property and their estates, and such holder or creditor shall not be permitted to vote on any plan or participate in any distribution in the Debtors' chapter 11 cases on account of such claim.

24. In the event that the Debtors amend the Schedules and Statements after having given notice of the General Bar Date and the Initial Administrative Claims Bar Date as provided herein, the Debtors shall give notice of any amendment to the holders of claims affected thereby, and if the subject amendment reduces the unliquidated, noncontingent, and liquidated amount or changes the nature or classification of a claim against a Debtor or the Debtor liable on the claim as reflected therein, such holders shall be given until the later of (a)

the General Bar Date or the Initial Administrative Claims Bar Date (as applicable) or (b) thirty (30) days from the date such notice is given (or such other time period as may be fixed by the Court) to file proofs of claim or Administrative Claim Requests with respect to such affected claim, if necessary, or be barred from doing so in accordance with Paragraph 23 above.

25. In the event that the Debtors amend the Schedules and Statements after having given notice of the Governmental Bar Date as provided herein, the Debtors shall give notice of any amendment to the holders of claims that are Governmental Units and that are affected thereby, and if the subject amendment reduces the unliquidated, noncontingent and liquidated amount or changes the nature or classification of a claim against a Debtor or the Debtor liable on the claim as reflected therein, such holders shall be given until the later of (a) the Governmental Bar Date or (b) thirty (30) days from the date such notice is given (or such other time period as may be fixed by the Court) to file proofs of claim or Administrative Claim Requests with respect to such affected claim, if necessary, or be barred from doing so in accordance with Paragraph 23 above.

26. Nothing in this Order shall, or shall be deemed to, prejudice the Debtors' or any other party in interest's right to object to any Claim, whether filed or scheduled (e.g., as contingent, unliquidated or disputed), on any ground, or to dispute, or to assert offsets against or defenses to, any claim reflected on the Schedules and Statements, or any amendments thereto, as to amount, liability, classification, or otherwise, and to subsequently designate any claim as disputed, contingent or unliquidated, and nothing in this Order or the Schedules and Statements shall be considered an admission as to the amount, liability, classification or other characteristic of a Claim, including, without limitation, whether such Claim is asserted or scheduled against the proper Debtor.

27. Nothing contained herein shall limit, abridge, or otherwise affect the Debtors' right to request that the Court fix a date by which the holder of a Claim or Interest that is specifically excluded from the requirements to file such a Claim by this Order must file a proof of claim or interest or the holder of an Administrative Claim that is specifically excluded from the requirements to file an Administrative Claim Request by this Order must file an Administrative Claim Request.

28. Notwithstanding any other provision of this Order or any other order entered by the Court to the contrary: (i) Quest 28 Millbury LLC, 4 USS LLC, and New Woodbridge II, L.L.C. shall have until the General Bar Date to file their respective rejection damage and prepetition proofs of claim; (ii) the claims addressed or reserved by the Motion and the Landlord Supplement of Connecticut/DeSales LLC (Docket Nos. 397 & 636) are to be treated as "Excluded Administrative Claims" and shall not be governed by this Order; and (iii) the Initial Administrative Claims Bar Date shall not apply to governmental units with respect to claims described in Bankruptcy Code section 503(b)(1)(B) and (C) in accordance with Bankruptcy Code section 503(b)(1)(D).

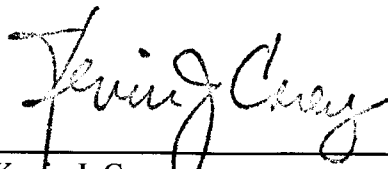
29. The provisions of this Order apply to all Claims of whatever character against the Debtors or their property, whether such Claims are secured or unsecured, entitled or not entitled to priority, liquidated or unliquidated, or fixed or contingent.

30. The Debtors are authorized to take such steps and do such things as they deem to be reasonably necessary to fulfill the notice requirements established by this Order, including the expenditure of all sums reasonably necessary to implement the provisions of this Order.

31. This Order shall be enforceable and effective immediately upon its entry.

32. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: Wilmington, Delaware
Jan. 18, 2012



Honorable Kevin J. Carey
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

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

<hr/>		X
	:	
In re:	:	Chapter 11
	:	
SHARPER IMAGE CORPORATION,	:	Case No. 08-10322 (KG)
	:	
Debtor.	:	
	:	Re: Docket No. 9
<hr/>		X

**ORDER PURSUANT TO SECTIONS 105(a), 363(b), AND 503(b)(1)
OF THE BANKRUPTCY CODE AUTHORIZING
DEBTOR TO HONOR CERTAIN PREPETITION CUSTOMER PROGRAMS**

Upon the motion, dated February 19, 2008 (the "Motion"), of Sharper Image Corporation, as debtor and debtor in possession (the "Debtor"), pursuant to sections 105(a), 363(b), and 503(b)(1) of title 11 of the United States Code (the "Bankruptcy Code"), for an order authorizing the Debtor to (i) continue certain prepetition customer programs including, without limitation, Gift Certificates, Message Chair Certificates, Credit Card Certificates, Merchandise Certificates, the Refund and Exchange Program, the RSG Program, Promotions, and Wholesale Programs (each as discussed or defined in the Motion) (collectively, the "Customer Programs") and (ii) honor its undisputed prepetition obligations thereunder, all as more fully set forth in the Motion; and upon consideration of the Declaration of Rebecca L. Roedell in Support of the Debtor's Chapter 11 Petition and Request for First Day Relief, sworn to on February 19, 2008; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to (i) the United States

Trustee for the District of Delaware; (ii) the creditors holding the twenty largest unsecured claims against the Debtor's estate; and (iii) the attorneys for Wells Fargo Retail Finance, LLC, as prepetition and proposed postpetition secured lender to the Debtor, and it appearing that no other or further notice need be provided; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted; and it is further

ORDERED that, pursuant to sections 105(a), 363(b), and 503(b)(1) of the Bankruptcy Code, the Debtor is authorized, but not obligated, to continue its Customer Programs in the ordinary course of its business in the same manner and on the same basis as the Debtor implemented and maintained prior to the commencement of this chapter 11 case *provided, however*, the Debtor shall not honor Gift Certificates or Merchandise Certificates pending a final hearing on the Motion; and it is further

ORDERED that the Debtor is authorized, but not directed, to honor all prepetition obligations relating to the Customer Programs other than the Gift Certificates and Merchandise Certificates, including the granting of credit, in the ordinary course of its business, in the same manner and on the same basis as the Debtor honored such obligations prior to commencement of this chapter 11 case up to the aggregate amount of \$2,000,000; *provided, however*, that the relief granted herein shall not constitute an approval or assumption of any Customer Program or related agreement or policy pursuant to section 365 of the Bankruptcy Code; and it is further

ORDERED that the Debtor's bank listed on Exhibit A annexed hereto is directed and authorized to process, honor, and pay, to the extent of funds on deposit, any and all prepetition checks or wire transfer requests issued by the Debtor in respect of any prepetition obligations relating to the Customer Programs prior to, or after, the commencement of this chapter 11 case; and it is further

ORDERED that the Debtor is authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in respect of prepetition obligations relating to the Customer Programs that were dishonored or rejected as of the commencement of this chapter 11 case, and it is further

ORDERED that nothing in this Order or the Motion shall be construed as prejudicing any rights the Debtor may have to contest the amount or basis of any prepetition or postpetition obligations relating to the Customer Program; and it is further

ORDERED that Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") has been satisfied; and it is further

ORDERED that notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order; and it is further

ORDERED that the requirements of Bankruptcy Rule 6004(a) are waived.

Dated: Wilmington, Delaware
February 20, 2008


UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Bank Account

<u>Bank Name/Address</u>	<u>Account Type</u>	<u>Account No.</u>
Wells Fargo Bank 420 Montgomery Street 9th Floor San Francisco, CA 94104 Contact: Corey Trepanier Phone # (415) 396-8815 Fax # (415) 421-1352	Refund Account	96-000-80195

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

In re:	-X	
	:	
SHARPER IMAGE CORPORATION,	:	Chapter 11
	:	
Debtor.	:	Case No. 08-10322 (KG)
	:	
	:	Re: Docket Nos 9, 47 and 122
	-	

**SUPPLEMENTAL ORDER PURSUANT TO SECTIONS 105(a), 363(b), AND 503(b)(1)
OF THE BANKRUPTCY CODE AUTHORIZING
DEBTOR TO HONOR CERTAIN PREPETITION CUSTOMER PROGRAMS**

Upon the motion, dated February 19, 2008 (the "First Day Motion"), and the supplement thereto, dated March 3, 2008 (the "Supplement" and, together with the First Day Motion, the "Motion"), of Sharper Image Corporation, as debtor and debtor in possession (the "Debtor" or "Sharper Image"), pursuant to sections 105(a), 363(b), and 503(b)(1) of title 11 of the United States Code (the "Bankruptcy Code"), for an order authorizing the Debtor to (i) honor Gift Certificates¹ and Merchandise Certificates in the manner described in the Motion and (ii) honor its undisputed prepetition obligations under the Modified Certificate Program, all as more fully set forth in the Motion; and upon consideration of the Declaration of Rebecca L. Roedell in Support of the Debtor's Chapter 11 Petition and Request for First Day Relief, sworn to on February 19, 2008; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having

¹ Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Motion.

entered an Order dated February 20, 2008 granting the relief requested in the First Day Motion (the "Initial Customer Programs Order"), and an Order dated March 4, 2008, shortening the notice required for consideration of the relief requested in the Supplement; and due and proper notice of the Motion having been provided under the circumstances to (i) the United States Trustee for the District of Delaware; (ii) the attorneys for the Statutory Creditors' Committee; (iii) the attorneys for Wells Fargo Retail Finance, LLC, as prepetition and postpetition secured lender to the Debtor; and (iv) each person or entity that has filed a notice of appearance and request for service of documents, and it appearing that no other or further notice need be provided; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted as modified herein; and it is further

ORDERED that, pursuant to sections 105(a), 363(b), and 503(b)(1) of the Bankruptcy Code, the Debtor is authorized to continue to honor Gift Certificates and Merchandise Certificates, consistent with the Modified Certificate Program, in the ordinary course of its business, and to perform and honor all of its undisputed prepetition obligations thereunder, as it deems appropriate in its business judgment *provided, however*, that (i) the relief granted herein shall not constitute an approval or assumption of any Customer Program or related agreement or policy pursuant to section 365 of the Bankruptcy Code, and (ii) in the event that the Debtor seeks to modify the Modified Certificate Program, the Debtor will seek such relief by motion on notice to parties in interest; and it is further

ORDERED that this Supplemental Order does not limit the authority granted to the Debtor in the Initial Customer Programs Order; and it is further

ORDERED that nothing in this Order or the Motion shall be construed as prejudicing any rights the Debtor may have to contest the amount or basis of any prepetition or postpetition obligations relating to the Customer Programs; and it is further

ORDERED that nothing in this Order or the Motion shall be construed as impairing or otherwise affecting the rights of Gift Certificate and Merchandise Certificate holders to assert claims based upon the Certificates against the Debtor and/or its estate in the event that such holders do not redeem the Certificates in connection with the Modified Certificate Program; and it is further

ORDERED that Sharper Image shall post notice of the Modified Certificate Program in the form annexed hereto as Exhibit "A", which form is approved by the Court, on its website www.sharperimage.com and on the website of its Court-appointed claims agent www.kccllc.net/sharperimage and shall be distributed in the stores to customers seeking to redeem gift cards; and it is further

ORDERED that Sharper Image is authorized to take all actions necessary to implement the terms of this Order; and it is further

ORDERED that Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") has been satisfied; and it is further

ORDERED that notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order; and it is further

ORDERED that the requirements of Bankruptcy Rule 6004(a) are waived.

Dated: Wilmington, Delaware
March 7, 2008



HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT "A"

SHARPER IMAGE CORPORATION CUSTOMER & MERCHANDISE GIFT CARD POLICY

1. This policy is purely voluntary.
2. If you choose to redeem your card, you must purchase merchandise equal to twice the current value of the gift card to redeem the card.
3. If you choose to redeem your card, you may not redeem the gift card partially. Cards must be redeemed in full.
4. How does it work? If you have a \$25 card, you must purchase at least \$50 to be able to use the card. If you have partially used your card before March 7, 2008, you must spend twice the remaining balance.
5. A Customer who does not wish to redeem his or her card as part of this program may have a priority claim in Sharper Image's bankruptcy case. In a bankruptcy case, priority unsecured claims get paid prior to general unsecured claims, although there is no assurance of payment. Information about filing a claim and claim forms can be obtained on the following website:

<http://www.kccllc.net/sharperimage>

or by calling the following number: []

6. Sharper Image is working diligently to be able to honor the cards without condition in the future. A Customer who does not use his or her card as part of this program may be able to use the card without condition in the future, although Sharper Image cannot guaranty this result. This policy is subject to further order of the United States Bankruptcy Court for the District of Delaware.
7. Cards may not be accepted at stores that are closing, unless notified at the particular store to the contrary. For those Customers who do not live near a store remaining open, the cards can be redeemed on the internet at www.sharperimage.com or through the catalogue.

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

In re:	)	CHAPTER 11
)	
TSIC, Inc. f/k/a Sharper Image)	
Corporation,	)	Case No. 08-10322 (KG)
)	
Debtor.	)	Re Doc. No. 964 <u>and 1260</u>

**ORDER GRANTING THE MOTION OF
FREDERIC B. PROHOV FOR CLASS CERTIFICATION**

Upon consideration of the Motion of Plaintiff Frederic B. Prohov for Class Certification (the "Motion"); and upon concluding that this Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 1334 and 157; and upon finding that notice of the Motion was proper and sufficient; and having considered the relief requested in the Motion and the objections thereto of Sharper Image Corporation ("Debtor") and the Official Committee of Unsecured Creditors (the "Committee"); and the Debtor, the Committee and Mr. Prohov (the "Claimant" or "Movant") having agreed to the form of this Order; and the Court having found that a class should be certified in accordance with the terms of this Order; and having found that the Claimant as moving party has satisfied the requirements of Fed. R. Civ. P. 23 for the certification of a class action as provided herein; it is therefore hereby ORDERED that:

1. The Motion is GRANTED subject to the terms and conditions of this Order.
2. Pursuant to, inter alia, Fed. R. Bankr. P. 7001 and 7023, the gift card claimants

may proceed as a Class defined as:

A "Gift Card Claim", for purposes of this Order, shall mean a claim, not to exceed \$2,245, held by an individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase of property or the purchase of services from The Sharper Image Corporation, for the personal, family, or household use of such individual, that were not delivered or provided, and includes any individuals who received and now hold a Sharper Image gift card, but excludes however, any claims (i) based on merchandise certificates and

merchandise credits or (ii) based on gift card received as a result of corporate or other promotions activities, i.e., "Reward Cards". The definition of "Gift Card Claim" set forth herein is without prejudice to the respective rights of parties in interest to object to any such purported claim on any basis deemed appropriate by the objector.

3. In certifying this class, the Court makes the following findings:

(a) Facts as to Claimant:

(i) Claimant received his card as a gift from his father. On March 11, 2008, Claimant, by Krislov & Associates, Ltd., filed a proof of claim regarding his \$50 gift card.

(b) Rule 23(a) Prerequisites:

(i) **Numerosity.** Pursuant to Fed. R. Civ. P. 23(a)(1), the class is so numerous that joinder is impracticable. There are potentially thousands of Gift Card Claims.

(ii) **Commonality.** Under Rule 23(a)(2) there are questions of law or fact that are common to the class. The legal question applicable to all class members is a determination of priority treatment for Gift Card Claims, and that is a question that should be answered uniformly for all members of the defined class.

(iii) **The Named Claimant's Claims are Typical of the Class.** The "claims or defenses of the representative parties are typical of the claims or defenses of the class" pursuant to Fed.R.Civ.P. 23(a)(3). In this case, typicality is met because the relief Movant seeks arises from the same event or practice or course of conduct that gives rise to the claims of other class members.

(iv) **Adequacy of Representation.** Under Rule 23(a)(4)'s adequacy is satisfied. (a) The interests of the Claimant as representative party in determining the treatment of gift card claimants under the Bankruptcy Code do not conflict with the interests of any of the class members; and counsel chosen by the representative party is qualified, experienced, and able

to vigorously conduct the proposed litigation. (b) Claimant's proposed class counsel Clinton A. Krislov (Lead Class Counsel) and Kenneth T. Goldstein KRISLOV & ASSOCIATES, LTD, and Christopher D. Loizides, LOIZIDES, P.A., and are qualified to adequately represent the class as experienced class action attorneys, litigation attorneys and bankruptcy attorneys.

(c) Rule 23(b)(2) categories:

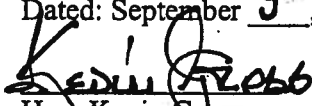
(1) The Class is certified under Rule 23(b)(2), as Claimants demand for declaratory relief as to the treatment of Gift Card Claims under the Bankruptcy Code is a question that should be answered uniformly.

(2) The Class is also certified under Rule 23(b)(3). Questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy because determination of the treatment of Gift Card Claims under the Bankruptcy Code is a question that should be answered uniformly for all members of the class. The Gift Card Claims can be adjudicated far more efficiently and at a much lower cost to all parties if they are addressed in a single proceeding. Class certification is an efficient and superior method to manage the priority issue claimed by the Gift Card Claims and the treatment of Gift Card Claims under the Bankruptcy Code.

(3) To the extent of any adversary proceeding initiated by the Class, it shall constitute a class action case.

4. By this Order, Claimant's previously submitted proof of claim is on behalf of the Gift Card Claim Class.

Dated: September 9, 2008


Hon. Kevin Gross
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

<hr/>		X
In re:	:	Chapter 11
TSIC, Inc. f/k/a Sharper Image Corporation, ¹	:	Case No. 08-10322 (KG)
Debtor.	:	D. I. 2218
<hr/>		X

**ORDER PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE
ESTABLISHING PROCEDURES FOR SETTLING CLAIMS OF GIFT CARD HOLDERS**

Upon the motion, dated April 11, 2011 (the "Motion"),² of TSIC, Inc. f/k/a Sharper Image Corporation ("TSIC"), as debtor and debtor in possession, for an order pursuant to section 105(a) of title 11 of the United States Code (the "Bankruptcy Code") establishing a process by which Gift Card holders will receive a distribution on account of their respective Gift Card claims in accordance with section 507(a)(7) of the Bankruptcy Code, as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the relief requested in the Motion being in the best interests of TSIC and its estate and creditors; and the Court having reviewed the Motion and the Gift Card Holder Class Objection to the Motion, and having heard arguments thereon at a hearing on May 20, 2011

¹ The address of the Debtor's principal executive offices is 1255 Treat Blvd, Ste. 300, Walnut Creek, California 94597. The Debtor's EIN is 94-2493558.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted, as modified herein; and it is further

ORDERED that TSIC is authorized to implement the following procedures:

(i) TSIC, through the assistance of its claims agent KCC, will engage in both an on-line media campaign and a print publication as follows:

(a) Online media campaign

(1) KCC will engage 24/7 Network, a digital marketing company that has access to over 900 websites, who will place banner--like "teasers" which will contain statements similar to the following: "If you have or had one or more "The Sharper Image" gift cards, you could be entitled to a payment on account of the gift cards" ("Teasers") on websites specifically targeted to reach technology enthusiasts. The 24/7 Network Teasers are expected to create at least 11 million impressions and will run for 30 days.

(2) KCC will also place Teasers on Facebook.com to create 8 million impressions and will run for 30 days.

(b) The Teasers placed on the websites targeted to reach technology enthusiasts and on Facebook.com will facilitate putative Gift Card Class members to click access online to a website which will display a notice (the "Notice"), in substantially the form annexed hereto as Exhibit A, containing additional information about the Gift Card Procedures described herein, and a claim form which class members may download or fill in, print out and mail in.

(c) In addition to the on-line media campaign described in (a) and (b) above, TSIC will place a one-third page advertisement in People magazine and in Sports Illustrated magazine which will provide information to putative Gift Card class members about how to access the Notice, submit a Gift Card Form, and be eligible for a distribution on account of Gift Card balances. The form of advertisement will be substantially similar to the proposed Notice attached as Exhibit A, tailored to conform to print and publication requirements.

- (d) The media campaign (both on-line and print publication) will commence at least 60 days before the date (the "Gift Card Form Submission Deadline") by which putative Gift Card Class members must submit their Gift Card Forms (defined below).
 - (e) The total on-line plus print media campaign will not exceed \$200,000 (approximately \$81,000 online and approximately \$100,000 print media), exclusive of claims processing fees, subject to further Order of the Court.
- (ii) The Notice will provide that putative Gift Card Class members must complete the form (the "Gift Card Form"), in substantially the form annexed hereto as Exhibit B, which will be made available on TSIC's claims agent's website. The Gift Card Form will state that the putative claimant must either (a) provide a copy of the front and back of the Gift Card or (b) affirm, under penalty of perjury, that the Gift Card claim fits within the parameters of section 507(a)(7) of the Bankruptcy Code, as explained in detail on the Gift Card Form. For affirmation claims (i.e., claims submitted without a copy of the claimant's Gift Card), claims will be limited to \$100 notwithstanding the fact that the balance of the Gift Card may exceed \$100. If a proof of claim has been previously filed on account of an outstanding Gift Card balance, the individual will not be required to complete a Gift Card Form.
- (iii) The Gift Card Form must be sent to TSIC's claims agent who will maintain a Gift Card Form claims register. TSIC will review the Gift Card Forms and, within 45 days of the Gift Card Form Submission Deadline (the "Gift Card Form Review Deadline"), TSIC will make the determination whether the information provided on each Gift Card Form is sufficient to prove that the putative claimant holds a legitimate Gift Card claim subject to priority under section 507(a)(7) of the Bankruptcy Code. TSIC will collaborate with the attorneys for the Class Representative on its determination with respect to the Gift Card Forms and will make the Gift Card Forms and claims register available to the attorneys for the Class Representative for review, identifying specifically the claims TSIC intends to approve, and those it intends to reject, with reasons therefore. Class Counsel shall have a reasonable period to review and challenge such determinations.
- (iv) As soon as practicable following the Gift Card Form Review Deadline, TSIC will, after reasonably conferring with Class Counsel as described above, file with the Court a summary of the Gift Card Forms received and proposed distribution amounts (the "Distribution Proposal"). TSIC will provide notice of the hearing to consider the Distribution Proposal to claimants who filed a Gift Card Form as well as claimants who filed a proof of claim on account of their Gift Cards. The Distribution Proposal will state the reason for the proposed disallowance of the claim and

claimants will be afforded an opportunity, after the Distribution Proposal is served and prior to the hearing by this Court on approval of the Distribution Proposal, to confer with Class Counsel and the Debtor to determine whether the defects in the proposed disallowed claims can be cured. If Class Counsel and the Debtor agree the defects can be cured, the Debtor will submit a revised Distribution Proposal prior to the approval hearing. Available funds for distribution shall be determined as the aggregate available funds for distribution, after all allowed claims senior in priority to the Gift Card claims have been satisfied and after reduction for the described costs of notice, claims processing costs, and attorneys' fees for Class Counsel.

- (v) The Distribution Proposal shall be structured to make a distribution first to those claimants who filed an allowable Gift Card Form *with a copy of the Gift Card* (the "Gift Card Claimants") in the amount of the remaining unredeemed amount of the Gift Card, not to exceed \$2,245 per Gift Card. To the extent these claims exceed the net distributable proceeds held by TSIC, the claims will be prorated. If available funds are sufficient to satisfy the claims of the Gift Card Claimants, the remaining available funds shall be applied to the claims of those claimants who filed an allowable Gift Card Form *with only an affirmation and no copy of the Gift Card* (the "Affirmation Claimants") to the extent there are sufficient funds in the estate to do so. *To be clear, the Affirmation Claimants (those who do not submit a copy of their Gift Card) will receive a distribution on account of their allowable Gift Card Form only after the claims of the Gift Card Claimants (those who submit a copy of their Gift Card) have been satisfied.* To the extent claims for either group exceed the net distributable proceeds for that group, the claims will be prorated.
- (vi) Due to the costs of processing, payments of less than \$10.00 (ten dollars) will not be paid to claimants individually. Amounts not distributed as a result of the distributable amount totaling less than \$10 will be paid to appropriate *cy pres* recipient organizations proposed by Class Counsel, for approval by this Court.
- (vii) Attorneys for the Class Representative shall petition and may be awarded fees and reimbursement of expenses in connection with its representation of the Gift Card Class as well as an incentive award for the Class Representative upon application to this Court in accordance with the Rule 7023(h) of the Federal Rules of Bankruptcy Procedure. Such fees and expenses, to the extent allowable, will be deducted from the total funds available for distribution to the Gift Card Claimants entitled to distribution pursuant to the Distribution Proposal approved by this Court;

and it is further

ORDERED that this Court shall retain jurisdiction to interpret and enforce the
terms of this Order.

Dated: Wilmington, Delaware

June 8, 2011

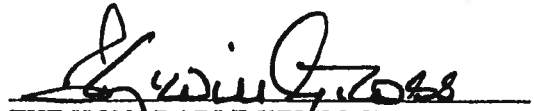

THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

Notice

**If You Have a "Sharper Image Corporation" Gift Card
You May be Entitled to Compensation for the Outstanding Balance of the Card**

What this Case is About

On February 19, 2008, TSIC, f/k/a Sharper Image Corporation ("TSIC") filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), Case No. 08-10322 (KG). On September 9, 2008, the Bankruptcy Court issued an order certifying a class of Gift Card holders (the "Gift Card Class"). TSIC, together with the attorneys for the Gift Card Class, proposes a process by which holders of Gift Cards with outstanding balances may, upon submission of an allowable Claim Form, receive a distribution from TSIC's bankruptcy estate. Distributions will only be made following approval by the Bankruptcy Court of the Distribution Proposal and after all allowed claims senior in priority to the Gift Card claims have been satisfied.

Submitting a Gift Card Claim Form

If you hold a "Sharper Image Corporation" Gift Card with an outstanding balance, you must submit a Claim Form in order to obtain payment for the outstanding balance of the card. You may obtain a gift card claim form at the following web address: [\[\]](#), or by calling TSIC's claims agent, Kurtzman Carson Consultants LLC at (888) 647-1743. When signing the claim form, you will be required to affirm that the outstanding balance of your Gift Card does not exceed \$2,245.00; that an individual purchased the Gift Card; that the Gift Card Claim arises from the deposit, before February 19, 2008, of money in connection with the purchase of property or services from TSIC (f/k/a Sharper Image Corporation), for the personal, family, or household use of an individual, that were not delivered or provided (this includes any individual who received and now holds a "Sharper Image Corporation" Gift Card; that the Gift Card claim is not based on a merchandise certificate or merchandise credit; and that the Gift Card was not received as a result of corporate or other promotions activities (including but not limited to Reward Cards purchased using air miles or credit card rewards).

You should submit a copy of the front and back of your Gift Card with the claim form. If you do not have a copy of your Gift Card, you are still eligible to file a Claim Form. Claim Forms submitted without a copy of the Gift Card will be segregated and holders of these claims may receive a distribution only after distributions are made to holders of Gift Card claims who presented copies of their Gift Cards with their Claim Form. If you submit a Claim Form without a copy of your Gift Card, you will only be entitled to a maximum claim of \$100 notwithstanding the fact that the balance of your Gift Card may exceed \$100. Distributions that total less than \$10 will not be made.

If you have already filed a proof of claim on account of your Gift Card in TSIC's bankruptcy case, you do not have to file a Claim Form as provided herein.

Deadline to Submit Claim Form and Where to Submit the Form

You must either:

- (i) submit an original copy of your Claim Form to the following address: TSIC Claims Processing Center c/o Kurtzman Carson Consultants LLC, 2335 Alaska Ave., El Segundo, CA 90245;
- (ii) upload a copy of your Claim Form to the following address: [\[\]](#); or
- (iii) pdf an image of your Claim Form to the following address: [\[\]](#).

Any claimant who fails to deliver a Claim Form by [\[\]](#) (the "Claim Form Submission Deadline") will not be eligible to participate in the Gift Card Class or receive a distribution on account of a Gift Card claim.

Processing of Claim Forms

TSIC will process the Claim Forms within forty-five days following the Claim Form Submission Deadline. A report will be filed with the Bankruptcy Court summarizing TSIC's proposed distribution plan. Those claimants who

submitted Claim Forms and who filed Gift Card proof of claims will receive notice of the hearing during which time the Bankruptcy Court will consider the proposed distribution plan.

Further Information

For further information regarding the Gift Card claims process, you may contact: Kurtzman Carson Consultants LLC, 2335 Alaska Ave., El Segundo, CA 90245, Telephone: (888) 647-1743, email: [].

DO NOT TELEPHONE THE BANKRUPTCY COURT REGARDING THIS NOTICE.

Exhibit B

Gift Card Claim Form

**TSIC, Inc. f/k/a Sharper Image Corporation
Chapter 11 Case No. 08-10322 (KG)
"Sharper Image" Gift Card Claim Form**

Name: _____

Address: _____

City/State/Zip Code: _____

Telephone: _____

Email: _____

I have included a copy of the front and back of my Gift Card Yes ☐ No ☐

If yes, the outstanding balance on my Gift Card is _____

If no, the outstanding balance on my Gift Card was _____

I am ☐, or I am not ☐ submitting other documentation in support of my claim without a gift card

Have you previously filed a proof of claim form in this bankruptcy case? To confirm your prior claim number please visit www.kccllc.net/sharperimage and click on Claims Registry Yes ☐ No ☐
My Claim Number is _____.

Affirmation:

I affirm that the outstanding balance of my Gift Card does not exceed \$2,245.00; that an individual purchased the Gift Card; that the Gift Card Claim arises from the deposit, before February 19, 2008, of money in connection with the purchase of property or services from TSIC (f/k/a Sharper Image Corporation), for the personal, family, or household use of an individual, that were not delivered or provided (this includes any individual who received and now holds a "Sharper Image Corporation" Gift Card; that my claim is not based on a merchandise certificate or merchandise credit; and that my Gift Card was not received as a result of corporate or other promotions activities (including but not limited to Reward Cards purchased using air miles or credit card rewards).

Under penalty of perjury, I certify that the above facts are true to the best of my knowledge and belief.

Signature _____

Date _____

You should mail your Claim Form to the following address so as to be received on or before []:

TSIC Claims Processing Center
c/o Kurtzman Carson Consultants LLC
2335 Alaska Ave.
El Segundo, CA 90245
Telephone: (888) 647-1743

You may upload your claim form to the following address on or before []:

[]

You may send a pdf of your claim form to the following address on or before []:

[]