

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

EXTENDED STAY, INC., *et al.*,

Debtors.

Chapter 11 Case No. 09-13764 (JMP)

Chapter 11

(Jointly Administered)

**STIPULATION AND ORDER RECONCILING AND FIXING THE ALLOWED
CLAIMS OF THE ALLOWED CLASS 4B MEZZANINE FACILITIES CLAIMS**

WHEREAS, on June 15, 2009, Extended Stay, Inc. and certain of its affiliates (“Extended Stay”) filed voluntary petitions for relief under Chapter 11 of Title 11, United States Code; and

WHEREAS, the holders of the Allowed Class 4B Mezzanine Facilities Claims, identified on the annexed Exhibit A (the “Claimants”), in their capacity as holders of Extended Stay Mezzanine Debt (the “Mezzanine Debt”), filed various proofs of claim against the Extended Stay estate to recover money owed pursuant to the Mezzanine Loan Agreements;¹ and

WHEREAS, Extended Stay and the Claimants agreed that the Extended Stay plan of reorganization (the “Plan”) would provide the Claimants with Allowed Claims in the aggregate amount of at least \$3.3 billion and beneficial interests in the Extended Stay Litigation Trust (the “Litigation Trust”) in an identical amount; and

WHEREAS, the Plan, in Section 4.5, entitled “Class 4B Mezzanine Facilities Claims,” provided for the Allowed Claims in the aggregate of at least \$3.3 billion and beneficial interests in the Litigation Trust in an identical amount pursuant to Section 6.3 of the Plan; and

WHEREAS, on or about July 20, 2010, the Court entered the Confirmation Order, confirming the Plan; and

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the Plan.

WHEREAS, on August 23, 2011, the trustee of the Litigation Trust (the “Litigation Trustee”) filed the Litigation Trustee’s Second Motion Pursuant to (A) Bankruptcy Rule 9006(b), (B) Section 105(a) of the Bankruptcy Code, (C) the Confirmation Order and (D) the First and Second Extension Orders for Entry of an Order Further Extending the Deadline for the Litigation Trustee to File Certain Claims Objections (the “Extension Motion”); and

WHEREAS, on October 18, 2011, the Court held a hearing on the Extension Motion at which the Litigation Trustee asserted that the Claimants filed \$9.8 billion in claims and he needed additional time to, among other things, reconcile the Claimant’s claims with the \$3.3 billion allowed in Section 4.5 of the Plan; and

WHEREAS, the Claimants, at the October 18, 2011 hearing, advised the Court that they would identify the holders of the Allowed Class 4B Mezzanine Facilities Claims and the amounts of their respective Allowed Claims; and

WHEREAS, the Claimants have reconciled the Allowed Class 4B Mezzanine Facilities Claims for the benefit of the Litigation Trustee; and

WHEREAS, the Claimants prepared the annexed Exhibit A, which identifies the Claimants as the holders of the Allowed Class 4B Mezzanine Facilities Claims and the amount of each Claimant’s holdings in each tranche of the Mezzanine Debt; and

WHEREAS, the aggregate amount of each Claimant’s holdings as reflected in Exhibit A constitutes the principal amount of its Allowed Claim in the Allowed Class 4B Mezzanine Facilities Claims class of the Plan; and

WHEREAS, the Claimants prepared the annexed Exhibit B, which provides the notification and contact information for each of the Claimants listed in Exhibit A; and

WHEREAS, the Claimants desire to conserve the resources of the Litigation Trust by reconciling the Allowed Class 4B Mezzanine Facilities Claims in accordance with, and subject to, the Plan and the terms of this Stipulation and Order.

NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND AGREED, by and between the Claimants, as follows:

1. As provided for in the Plan and Confirmation Order, the Allowed Class 4B Mezzanine Facilities Claims are Allowed Claims in an aggregate amount of at least \$3.3 billion.
2. The Claimants, as set forth in Exhibit A, are the holders of the Allowed Class 4B Mezzanine Facilities Claims, in the principal amounts listed in Exhibit A, plus any additional fees, costs and interest due to each of the Claimants in accordance with the terms of their applicable loan agreements, related credit documents or as otherwise allowed by law.
3. For each Claimant, Exhibit A sets forth the principal amount of its Allowed Class 4B Mezzanine Facilities Claim and its respective beneficial interest in the Litigation Trust, solely in such Claimant's capacity as a claim holder of the Allowed Class 4B Mezzanine Facilities Claims.
4. Exhibit B provides the notification and contact information for each of the Claimants.
5. Each Claimant's filed proofs of claim with respect to its holdings of Allowed Class 4B Mezzanine Facilities Claims that contradict Exhibit A shall be and hereby are withdrawn.

6. No further pleadings need to be filed by the Claimants or the Litigation Trustee to reflect the reduction and allowance in the Allowed Class 4B Mezzanine Facilities Claims as set forth herein.
7. This Stipulation and Order shall have no effect on, and is without prejudice to, (i) any proof of claim filed by any Claimant that does not relate to the Allowed Class 4B Mezzanine Facilities Claims, and (ii) any claim, asserted or unasserted, with respect to any guaranty by a non-debtor relating to the Mezzanine Debt, including without limitation, the Guaranty Agreements, executed as of June 11, 2007 by David Lichtenstein and Lightstone Holdings, LLC, which claims are expressly preserved herein.

[SIGNATURE PAGE FOLLOWS]

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SO ORDERED:
Date:

UNITED STATES BANKRUPTCY JUDGE

Exhibit A

Holders of \$3.3 Billion Allowed Mezzanine Facilities Claims

	<u>\$ Original</u>	<u>Holder</u>	<u>\$ Amount</u>	<u>\$ Total Per Tranche</u>
Mezzanine 1 (A)	300.00	Bank of America	24,990,000.00	
		Maiden Lane	77,010,000.00	
		Key Bank	75,000,000.00	
		Debt II, ESH, L.P.	113,775,000.00	
		Debt-U, L.P.	9,225,000.00	
				300,000,000.00
Mezzanine 2 (B)	400.00	Bank of America	133,320,000.00	
		Maiden Lane	102,680,000.00	
		Wachovia Bank NA	164,000,000.00	
				400,000,000.00
Mezzanine 3 (C)	400.00	Bank of America	133,320,000.00	
		Maiden Lane	102,680,000.00	
		Wachovia Bank NA	164,000,000.00	
				400,000,000.00
Mezzanine 4 (D)	400.00	Bank of America	133,320,000.00	
		Maiden Lane	102,680,000.00	
		Wachovia Bank NA	164,000,000.00	
				400,000,000.00
Mezzanine 5 (E)	400.00	Bank of America	133,320,000.00	
		Maiden Lane	102,680,000.00	
		Wachovia Bank NA	164,000,000.00	
				400,000,000.00
Mezzanine 6 (F)	400.00	Bank of America	66,660,000.00	
		Maiden Lane	102,680,000.00	
		Ashford Hospitality Finance LP	164,000,000.00	
		Atlas Ventures I, LLC	20,000,000.00	
		Hospitality F	46,660,000.00	
				400,000,000.00
Mezzanine 7 (G)	400.00	Bank of America	66,660,000.00	
		Maiden Lane	102,680,000.00	
		FOA ESH LLC	8,000,000.00	
		SFF ESH LLC	8,660,000.00	
		Deuce Prop Ltd	214,000,000.00	
				400,000,000.00
Mezzanine 8 (H)	200.00	Bank of America	16,665,000.00	
		Maiden Lane	25,670,000.00	
		SW ESH LLC	8,332,500.00	
		GF ESH LLC	6,666,000.00	
		BK ESH LLC	1,666,500.00	
		Goldman Sachs Mortgage Co.	141,000,000.00	
				200,000,000.00
Mezzanine 9 (I)	200.00	Bank of America	16,665,000.00	
		Maiden Lane	25,670,000.00	
		Legacy ESH LLC	8,332,500.00	
		Barton Equities	8,332,500.00	
		CL Ventures, LLC	20,500,000.00	
		JP Morgan	25,000,000.00	
		ESH Funding LLC	25,000,000.00	
		ESH Owner, LLC	20,500,000.00	
		WRP ESH LLC	50,000,000.00	
				200,000,000.00
Mezzanine 10 (J)	200.00	Bank of America	66,660,000.00	
		JP Morgan	133,340,000.00	
				200,000,000.00
Mezzanine 1-10	3,300.00			3,300,000,000.00

Exhibit B

**Allowed Class 4B Mezzanine
Facilities Claim Holder**

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U.S. Bank National Association,
solely in its capacity as trustee
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