

## **II. OBJECTIONS TO THE PROPOSED DISCLOSURE STATEMENT**

### **First Objection**

Claimants object to Section VI, Part C.1 of the Disclosure Statement [Docket No. 3365], entitled “Claim Resolution Process”, “Allowance of Claims and Equity Interests,” in that it contradicts Debtors’ Stipulation And Agreement with Claimants. In particular, Section C.1 on page DS-57 states that “an ‘allowed’ claim . . . simply means that the Debtors agree, or if there is a dispute, that the Bankruptcy Court determines, that the claim or interest, and the amount thereof, is in fact a valid obligation of the Debtors.”

In this case, because Claimants’ disputed claims were completely withdrawn to the District Court, it will be a District Court that determines “that the claim or interest, and the amount thereof, is in fact a valid obligation of the Debtors.” The Disclosure Statement is therefore inaccurate and misleading.

### **Second Objection**

Claimants object to Section IV, Part C.4 of the Disclosure Statement, entitled “Claim Resolution Process, “Estimation of Claims” in that it contradicts the August 25, 2009 Order withdrawing the reference of the Adams Case and contradicts Debtors’ Stipulation And Agreement with Claimants. In particular, Section C.4 states that “[t]he Debtors or the Reorganized Debtors may at any time request that the Bankruptcy Court estimate any Contingent Claim, Unliquidated Claim, or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether any of the Debtors or the Reorganized Debtors previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the

Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim . . . .”

In light of the Order that withdrew the reference of the Adams Case that contains Claimants’ “disputed” and “unliquidated” claims, it would be improper for the Bankruptcy Court to, as the Disclosure Statement represents, “estimate” those claims, because those claims are before the District Court. Also, it is not true that, with respect to Claimants, “the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation.” Because Claimants’ disputed claims were completely withdrawn to the District Court, the Disclosure Statement is inaccurate and misleading.

### **Third Objection**

Claimants object to Section VI, Part A, note 8 on page DS-46 of the Disclosure Statement, entitled “Summary and Treatment of Unclassified and Classified Claims and Equity Interests.” In particular, this note states that “[u]nless otherwise stated, all payments under the Plan will be made on (a) the later of (i) the Effective Date and (ii) when the applicable Claim or Equity Interest is Allowed, or (b) as otherwise agreed by the Debtors/Reorganized Debtors and the holder of such Claim or Equity Interests.”

In light of the Order withdrawing reference for Claimants’ disputed and unliquidated claims, it will be a District Court that determines whether Claimants’ claims must be paid, but the Claim Resolution Process purports to permit only this Court to determine which claims are “allowed.” If the District Court orders Debtors to pay a judgment, it would be inconsistent with 28 U.S.C. §157, Article III of the United States Constitution, and the Bankruptcy Court’s jurisdiction for such a federal judgment in the withdrawn Adams Case to be ineffective until the

claim were “allowed” by this Court. The Disclosure Statement therefore misstates the law and is misleading to those who receive it.

#### **Fourth Objection**

Claimants object to Section VI, Part A, page DS-50 of the Disclosure Statement, setting forth the “Estimated Amount of Claims or Equity Interests in Class” in that it lists \$180,000,000 as the estimated amount of claims for classes 7(a) through 7(g) (general unsecured claims) and \$35,000,000 as the estimated amount of claims for classes 1(a) through (g) (priority non-tax claims). Debtors have already set forth, in their attachments to the Disclosure Statement, an estimate of at least \$56,000,000 for the FLSA claims pending against them. Further, the unsecured claims currently on file far exceed \$180,000,000. The Disclosure Statement is inaccurate and misleading in that it presents a lower “estimated amount” for these categories of claims than the claims currently on file with Debtors.

Part 7, on page DS-55 of the Disclosure Statement, repeats this misleading statement and qualifies it by stating that Debtors have reduced the general unsecured claims to approximately \$180 million by “deducting duplicate claims, claims not supported by the Debtors’ books and records, claims that have already been reduced by agreement of the parties of the Bankruptcy Court and claims that are subject to other objections.” It is improper for Debtors to “reduce” estimated claims based upon their subjective assertion of as yet undisclosed “other objections.” The Disclosure Statement does not provide its readers with an understanding, in any manner, as to what these objections are, how likely they are to prevail, what claims they apply to, and how much they reduce the estimated claims.

### **Fifth Objection**

Claimants object to Section VI, Part B.7, page DS-55 of the Disclosure Statement, which states: “each holder of an Allowed General Unsecured Claim will receive, in full satisfaction of such claim, cash equal to . . . the full amount of such Allowed General Unsecured Claim . . . as soon as reasonably practicable after the later of (a) the Effective Date, and (b) the date the General Unsecured Claims become allowed.” Claimants will not be proceeding through the Claim Resolution Process that determines what constitutes an “allowed” claim, because their claims have been withdrawn. Therefore, it is inaccurate to state that Claimants will not be paid unless and until their claim is “allowed” as defined by the Disclosure Statement and proposed Plan.

### **Sixth Objection**

Claimants object to “Discharge of Debtors” provision of the Disclosure Statement, Section VI, Part I.3, page DS-65, which states: “Upon the Effective date and in consideration of the distributions to be made under the Plan, except as otherwise provided in the Plan, each holder . . . of a Claim . . . will be deemed to have forever waived, released and discharged the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, rights, and liabilities that arose prior to the Effective Date.”

The Stipulation And Agreement entered into by Debtors and Claimant on September 15, 2008 expressly provides that Claimants do not waive or release any of their claims pending in the Adams Case or the White Case. Further, the Order withdrawing the reference does not provide this Court with jurisdiction to, through a Plan of Reorganization, release claims currently before the District Courts presiding over these Cases.

### **Seventh Objection**

Further, Part 3 states that “[u]pon the Effective Date, all persons will be forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any discharged Claim against the Debtors, the estates, or any successor thereto.” By improperly stating that Claimants’ claims will be “discharged,” this provision erroneously asserts that Claimants will, upon the Effective Date, be “forever precluded and enjoined” from prosecuting their claims. Neither the Stipulation And Agreement nor the Order withdrawing the reference in the Adams Case contemplates this result.

### **Eighth Objection**

Claimants object to Section VI, Part I.8, page DS-66 of the Disclosure Statement, which states:

8. Releases by Holders of Claims and Equity Interests.

Effective as of the Confirmation Date but subject to the occurrence of the Effective Date, and in consideration of the services provided to the Debtors by (a) the present and former directors, officers, employees, affiliates, agents, financial advisors, investment bankers, attorneys, and representatives of the Debtors, the Chief Restructuring Officer, . . . and (g) the Debtors and the Reorganized Debtors, each holder of a Claim or an Equity Interest that votes to accept the Plan (or is deemed to accept the Plan), and to the fullest extent permissible under applicable law, as such law may be extended or integrated after the Effective Date, each holder of a Claim or Equity Interest that does not vote to accept the Plan, will release unconditionally and forever each of (a) the present and former directors, officers, employees, affiliates, agents, financial advisors, investment bankers, attorneys, and representatives of the Debtors, the Chief Restructuring Officer, . . . and (g) the Debtors and the Reorganized Debtors, from any and all claims or causes of action that exist as of the Effective Date and arise from or relate to, in any manner, in whole or in part, the operation of the business of the Debtors, the subject matter of, or the transaction or event giving rise to, the Claim or Equity Interest of such holder, the business or contractual arrangements between any Debtor and such holder, any restructuring of such Claim or Equity Interest prior to the Chapter 11 Cases, or any act, omission, occurrence, or event in any manner related to such subject matter, transaction or obligation, or arising out of the Chapter 11 Cases, including, but not limited to, the pursuit of confirmation of the Plan, the consummation thereof, the administration thereof, or the property to be distributed thereunder . . . .

Claimants are not receiving anything of value under the Plan. Their claims have been withdrawn. They have not consented to give Debtors or their officers and directors, and have not given Debtors or their officers and directors, any sort of release such as the release described in this Section. Under 11 U.S.C. §524(e), it would be inapposite and improper for Debtor's co-defendant employees, officers and directors in the White Case (who have also asserted in the White Case that the automatic stay does not apply to Claimants' claims against them) to receive a release for no consideration to the Claimants, especially in light of the express provision in the Stipulation And Agreement that Claimants are expressly being permitted to continue to pursue their claims in the White Case. *See Feld v. Zale Corp.*, 62 F.3d 746, 761 (5th Cir. 1995)(holding that nondebtor releases violated Section 524(e)); *In re Wool Growers Central Storage Co.*, 37 B.R. 768, 778 (Bankr. N.D. Tex. 2007)(holding that nonconsensual third-party release prevented court from confirming plan); *In re Steiner Pianos USA, Inc.*, 292 B.R. 109, 116 (Bankr. N.D. Tex. 2002)(holding that plan that released nondebtor could not be confirmed over creditor objections).

Further, part (g) of the laundry list of released parties is "Debtors and the Reorganized Debtors." Claimants have not released, and do not release, Debtors from their claims. This is clear in the Order withdrawing the reference and the Stipulation And Agreement. The release is therefore improper and misleading in the Disclosure Statement.

### **Objections to Proposed Plan**

Claimants object to the proposed Debtors' Joint Plan Of Reorganization Under Chapter 11 Of The Bankruptcy Code (the "Proposed Plan") on the same grounds set forth above regarding the Disclosure Statement's descriptions of the Proposed Plan's provisions. In addition, Claimants object to the Proposed Plan's definitions of "Allowed" and "Final Order" because

they erroneously provide that only this Court may “allow” a claim and enter a “Final Order.” Claimants object to Section 7.3 of the Proposed Plan on the same basis—that only this Court may allow a Disputed Claim. Claimants also object to Sections 10.2, 10.3 and 10.4 of the Proposed Plan on the grounds that they purport to release all of Claimants’ Claims, and enjoin Claimants from pursuing their Claims, upon the Effective Date. Both the Stipulation And Agreement and the Order that withdrew the reference of the Adams Case clearly do not contemplate that Claimants’ unresolved Claims will be released, Debtors discharged, and Claimants forever enjoined on the Effective Date. Finally, Claimants object to Section 10.8 of the Proposed Plan on the grounds that it improperly attempts, in violation of 11 U.S.C. §524(e), to have Claimants release their claims in the White Case against Debtors’ co-defendant officers, directors and employees.