

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

www.flsb.uscourts.gov

In re:

1 GC COLLECTIONS, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-19121-RAM

(Jointly Administered)

**LIQUIDATING TRUSTEE'S OBJECTION TO CLAIM NO. 2382 FILED BY  
A P CONSTRUCTION SERVICES LLC, CLAIM NO. 2383 FILED BY JOSE  
ALONSO, AND CLAIM NO. 2384 FILED BY JESSICA ALONSO**

**IMPORTANT NOTICE TO CREDITOR:  
THIS IS AN OBJECTION TO YOUR CLAIM**

**This objection seeks either to disallow or reduce the amount or change the priority status of the claim filed by you or on your behalf. Please read this objection carefully to identify which claim is objected to and what disposition of your claim is recommended.**

**If you disagree with the objection or the recommended treatment, you must file a written response WITHIN 30 DAYS from the date of service of this objection, explaining why your claim should be allowed as presently filed, and you must serve a copy to Paul Keenan and John Dodd, Baker & McKenzie LLP, 1111 Brickell Avenue, Suite 1700 Miami, FL 33131, OR YOUR CLAIM MAY BE DISPOSED OF IN ACCORDANCE WITH THE RECOMMENDATION IN THIS OBJECTION.**

**The written response must contain the case name, case number, and must be filed with the Clerk of the United States Bankruptcy Court.**

James S. Cassel, as liquidating trustee (the “**Liquidating Trustee**”) of the 1 GC Collections Creditors’ Liquidating Trust (including any successor or assign, the “**Trust**”), objects (this “**Objection**”) to Claim No. 2382 (the “**AP Construction Claim**”) filed by A P

<sup>1</sup> The Debtors in the Chapter 11 Cases, along with the business addresses and the last four (4) digits of each Debtor’s federal tax identification number, if applicable, are: 1 GC Collections, c/o Development Specialists, Inc.,

Construction Services LLC (“**AP Construction**”) and Claim Nos. 2383 and 2384 (collectively, the “**Guarantor Claims**,” and together with the AP Construction Claim, the “**Disputed Claims**”) filed by Jose Alonso and Jessica Alonso (together, the “**Guarantors**”), pursuant to sections 105(a) and 502 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 3007-1 of the Local Rules of the United States Bankruptcy Court for the Southern District of Florida (the “**Local Rules**”), and requests entry of an order, substantially in the form attached hereto as **Exhibit A**, disallowing and expunging the Disputed Claims. In support of this Objection, the Liquidating Trustee states:

### **JURISDICTION AND VENUE**

1. The Bankruptcy Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue is proper before this Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory and legal predicates for the relief requested herein are sections 105(a) and 502 of the Bankruptcy Code, Bankruptcy Rule 3007, Local Rule 3007-1, and section 8.02 of the Plan.

### **BACKGROUND**

#### **A. Status of Chapter 11 Cases.**

4. On July 27, 2018 (the “**Petition Date**”), the above-captioned debtors (collectively, the “**Debtors**”) commenced the above-captioned chapter 11 cases (the “**Chapter**

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500 West Cypress Creek Road, Suite 400, Fort Lauderdale, Florida 33309 (9517); and 1 West Collections, c/o Development Specialists, Inc., 500 West Cypress Creek Road, Suite 400, Fort Lauderdale, Florida 33309 (1711).

**11 Cases**”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida (the “**Court**”).

5. On September 20, 2019, the Court entered the *Order Confirming First Amended Joint Plan of Liquidation of 1 Global Capital LLC and 1 West Capital LLC Under Chapter 11 of the Bankruptcy Code Proposed by the Debtors and the Official Committee of Unsecured Creditors* [ECF No. 1197] (the “**Confirmation Order**”), confirming the First Amended Joint Chapter 11 Plan of Liquidation [Ex. A., ECF No. 1197] (the “**Plan**”),<sup>2</sup> directing the execution of the 1 GC Collections Creditors’ Liquidating Trust Agreement (the “**Liquidating Trust Agreement**”), and approving the appointment of the Liquidating Trustee as the liquidating trustee of the Trust.

6. On November 21, 2019 (the “**Effective Date**”), the Effective Date of the Plan occurred. *See Notice of (A) Effective Date of Chapter 11 Plan and (B) Administrative Claims Bar Date* [ECF No. 1586]. On the Effective Date, the Trust was created, and the Liquidating Trustee appointed. Among other things, the Liquidating Trustee may object to Disputed Claims and prosecute, settle, compromise, withdraw or resolve in any manner approved by the Bankruptcy Court such objections.

#### **B. The Sale of the MCA Portfolio.**

7. Before the Petition Date, a principal component of the Debtors’ business operations involved the sourcing, funding and collection of merchant cash advances (“**MCAs**”), typically in an amount of up to \$500,000 to merchants operating small businesses (the “**Merchants**”).

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<sup>2</sup> All capitalized terms used in the Objection but not defined herein shall have the meanings set forth for such terms in the Plan.

8. After a review of a number of factors, including the rate of collections, the costs involved with continuing to operate the collections business, the status of the suite of MCA litigations, and after consultation with the Securities and Exchange Commission and the Liquidating Trust Oversight Committee, the Liquidating Trustee decided to wind down and liquidate the Trust's remaining portfolio of MCAs and related lawsuits, judgments and settlements.

9. On October 16, 2020, the Liquidating Trustee filed the *Motion for Approval of (I) Procedures for Sale of Portfolio, Including Stalking Horse Bid Protections; and (II) Sale of Portfolio Other Than in the Ordinary Course of Business Free and Clear of Claims and Interests* [ECF No. 2388] (the "**Sale Motion**"), seeking, among other things, (i) authorization to enter into that certain *Asset Sale and Purchase Agreement* (the "**APA**") between the Trust and Rapid Financial Services, LLC (the "**Purchaser**"), and (ii) approval of the sale (the "**Sale**") of the Purchased Assets (as defined in the APA) other than in the ordinary course of business free and clear of claims and interests pursuant to the terms and conditions of the APA.

10. The Purchased Assets that the Purchaser agreed to acquire under the APA include the Trust's right, title and interest to each MCA, merchant agreement, judgment, or litigation set forth in Schedule 1.1 of the APA. Pursuant to Section 7.4 of the APA, the Purchaser agreed and acknowledged that "the transfer and assignment of the Merchant Agreements is subject to the terms and conditions therein, and [the Purchaser] assumes all liabilities relating to the Merchant Agreements." APA § 7.4.

11. On November 13, 2020, the Liquidating Trustee filed the *Notice of Bidding Procedures, Auction Date and Sale Hearing* [ECF No. 2408] ("**Sale Notice**"), providing to all

interested parties notice of the Sale and the deadline to object to the Sale. On November 13, 2020, the Sale Notice was served on AP Construction and the Guarantors. *See* ECF No. 2409.

12. On December 17, 2020, the Bankruptcy Court conducted a hearing regarding the Sale and entered the *Order Approving (A) Sale of Assets Other Than in the Ordinary Course of Business Free and Clear of Liens and (B) Granting Related Relief* [ECF No. 2437] (the “**Sale Order**”), approving the APA and the Sale.

13. The Sale Order constitutes a full and complete general assignment, conveyance and transfer of the Purchased Assets and/or a deed or a bill of sale transferring good and marketable title in the Purchased Assets to the Purchaser free and clear of all claims except as set forth in the APA. Sale Order ¶ 11. The Sale Order provides that the transfer of the Purchased Assets is an absolute sale of the rights and obligations of the Trust under the MCAs, and the Purchaser is subject to any liabilities relating to the purchased MCAs. Sale Order ¶ 3.

### **C. The Merchant Agreement.**

14. On December 5, 2017, 1 GC Collections f/k/a 1 Global Capital LLC (“**1GC**”) entered into a merchant agreement with AP Construction (the “**AP Merchant Agreement**”). Under the AP Merchant Agreement, 1GC advanced to AP Construction \$130,000 in exchange for which AP Construction agreed to deliver to 1GC a specified percentage of daily receivables until such time as 1GC received a total of \$184,600. Jose Alonso and Jessica Alonso personally guaranteed AP Construction’s performance under the AP Merchant Agreement.

15. Pursuant to Section 4.2 of the AP Merchant Agreement, the rights and obligations of 1GC under the AP Merchant Agreement “may be transferred or assigned either in whole or in part at any time by 1GC without the consent of [AP Construction], provided that such transferee

or assignee takes such transfer or assignment subject to the terms and conditions of the [AP Merchant Agreement].” AP Merchant Agreement, § 4.2.

16. The Trust’s rights and any liabilities relating to the AP Merchant Agreement were transferred and assigned to the Purchaser upon approval of the Sale. *See* Sale Order. Pursuant to the APA, the Purchaser took such transfer and assignment subject to the terms and conditions of the AP Merchant Agreement. APA § 7.4.

**D. The Disputed Proofs of Claim.**

17. On November 30, 2018, AP Construction filed the unsecured AP Construction Claim against the Debtors in the total amount of \$68,897.18. Contemporaneously therewith, the Guarantors filed the unsecured Guarantor Claims, each in the amount of \$68,897.18. AP Construction asserted statutory damages, breach of contract, and fraud relating to the AP Merchant Agreement as the bases for the AP Construction Claim. Similarly, the Guarantors asserted damages, breach of contract, and fraud relating to the AP Merchant Agreement as the bases for each of the Guarantor Claims.

18. Upon a review of the Disputed Claims, the Liquidating Trustee has concluded that the Disputed Claims should be disallowed because the Disputed Claims arise under the AP Merchant Agreement and, therefore, constitute liabilities that were transferred and assigned to the Purchaser pursuant to the APA and the Sale Order.

**RELIEF REQUESTED**

19. The Liquidating Trustee seeks entry of an order, substantially in the form attached hereto as **Exhibit A**, sustaining the Objection and disallowing and expunging the Disputed Claims. The Liquidating Trustee has reviewed the Disputed Claims and believes that the Disputed Claims do not represent a liability of the Debtors’ estates because any purported

liability arising under the AP Merchant Agreement were transferred and assigned to the Purchaser. Accordingly, the Liquidating Trustee objects to the Disputed Claims on the basis that the Debtors' estates have no obligation or liability on account of the Disputed Claims.

### **BASIS FOR RELIEF REQUESTED**

20. Section 101 of the Bankruptcy Code provides that a creditor holds a claim against a debtor only to the extent that it has a "right to payment" for an asserted liability. *See* 11 U.S.C. § 101(5), (10). By contrast, there is no right to payment, and therefore, no claim, to the extent that a liability is not due and owing by a debtor. *See id.* Further, section 502(b) of the Bankruptcy Code provides that a claim shall be allowed only if "[e]nforceable against the debtor and property of the debtor, under any agreement or applicable law." *Id.* § 502(b)(1). Section 502 of the Bankruptcy Code also provides, in pertinent part, as follows: "A claim or interest, proof of which is filed under section 501 of [the Bankruptcy Code], is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502. Once an objecting party presents evidence to rebut a claim's *prima facie* validity, the claimant bears the burden of proving the claim's validity by a preponderance of evidence. *In re SFD @ Hollywood, LLC*, 411 B.R. 788, 792 (Bankr. S.D. Fla. 2009).

21. Upon a review of the Disputed Claims, the Liquidating Trustee asserts that the Disputed Claims do not represent current liabilities of the Debtors' estates. The Disputed Claims arise from alleged liabilities relating to the AP Merchant Agreement. Any and all liabilities relating to the AP Merchant Agreement were duly transferred and assigned to the Purchaser pursuant to the APA and the Sale Order. Because the alleged liabilities relating to the Disputed Claims were transferred and assigned to the Purchaser, the Disputed Claims constitute liabilities

for which the Trust is no longer legally responsible. Accordingly, the Liquidating Trustee seeks to disallow and expunge the Disputed Claims and thereby prevent AP Construction and the Guarantors from obtaining a recovery on account of the Disputed Claims which do not represent obligations properly owed by any of the Debtors' estates.

22. This relief is necessary to prevent the allowance of the Disputed Claims to the detriment of the Trust, the beneficial holders of the Trust and other parties in interest. If the Disputed Claims are not formally disallowed and expunged from the claims register, the potential exists for AP Construction and the Guarantors to receive a recovery on account of improper claims, to the ultimate detriment of the beneficial holders of the Trust and other parties in interest.

#### **RESERVATION OF RIGHTS**

23. This Objection is limited to the grounds stated herein. Accordingly, it is without prejudice to the rights of the Liquidating Trustee or any other party in interest to object to the Disputed Claims on any grounds whatsoever and the Liquidating Trustee expressly reserves all further substantive or procedural objections he may have.

#### **CONCLUSION**

**WHEREFORE**, the Liquidating Trustee respectfully requests that the Court enter an order substantially in the form attached hereto as **Exhibit A**, (i) sustaining the Objection, (ii) disallowing and expunging the Disputed Claims; and (iii) granting such other and further relief as may be just and proper.

Dated: May 25, 2021

**BAKER & MCKENZIE, LLP**

/s/ Reginald Sainvil

Paul Keenan (Fla. Bar. No. 594687)

John R. Dodd (Fla. Bar. No. 38091)

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**EXHIBIT A**

Proposed Order

(Attached)

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

1 GC COLLECTIONS, *et al.*,<sup>1</sup>  
Debtors.

Chapter 11

Case No. 18-19121-RAM

(Jointly Administered)

**ORDER SUSTAINING LIQUIDATING TRUSTEE'S OBJECTION TO  
CLAIM NO. 2382 FILED BY A P CONSTRUCTION SERVICES LLC, CLAIM NO. 2383  
FILED BY JOSE ALONSO, AND CLAIM NO. 2384 FILED BY JESSICA ALONSO**

THIS MATTER came before the Court upon the *Liquidating Trustee's Objection to  
Claim No. 2382 Filed by A P Construction Services LLC, Claim No. 2383 Filed by Jose Alonso,*

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<sup>1</sup> The Debtors in the Chapter 11 Cases, along with the business addresses and the last four (4) digits of each Debtor's federal tax identification number, if applicable, are: 1 GC Collections, c/o Development Specialists, Inc., 500 West Cypress Creek Road, Suite 400, Fort Lauderdale, Florida 33309 (9517); and 1 West Collections, c/o Development Specialists, Inc., 500 West Cypress Creek Road, Suite 400, Fort Lauderdale, Florida 33309 (1711).

*and Claim No. 2384 Filed by Jessica Alonso* [ECF No. [\_\_\_\_]] (the “**Objection**”)<sup>2</sup> filed by the Liquidating Trustee. By way of the Objection, the Liquidating Trustee seeks entry of an order, pursuant to sections 105(a) and 502 of the Bankruptcy Code, Bankruptcy Rule 3007, and Local Rule 3007-1, disallowing and expunging the Disputed Claims.

The Court, having reviewed the Objection, finds that (i) it has jurisdiction over the matters raised in the Objection pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and this Court may enter a final order consistent with Article III of the Constitution; (iii) venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; (iv) the relief requested in the Objection is in the best interests of the Trust, the beneficial holders of the Trust and other parties in interest; (v) notice of the Objection was appropriate under the circumstances and no other notice need be provided; (vi) the Liquidating Trustee represented that the Objection was served upon all the parties required, that the 30-day response time provided by Local Rule 3007-1(D) has expired, that no one has filed or served a response to the Objection; and (vii) upon review of the record before the Court, including the legal and factual bases set forth in the Objection, good and sufficient cause exists to grant the relief requested. Accordingly, it is

**ORDERED** as follows:

1. The Objection is **SUSTAINED**.
2. Claim No. 2382 filed by A P Construction Services LLC is disallowed.
3. Claim No. 2383 filed by Jose Alonso is disallowed.
4. Claim No. 2384 filed by Jessica Alonso is disallowed.

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Objection.

5. The Liquidating Trustee is authorized to expunge the Disputed Claims from the claims register.

6. Entry of this Order is without prejudice to any right that AP Construction or the Guarantors may have to assert or pursue any claims or defenses arising under the AP Merchant Agreement against appropriate persons or entities other than the Debtors or the Trust.

7. The Liquidating Trustee is hereby authorized and empowered to take all actions necessary to implement the relief granted in this Order.

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

# # #

Submitted by:

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*Co-Counsel for the Liquidating Trustee*

*(Epiq is directed to serve copies of this Order upon all interested parties and to file a Certificate of Service with the Court.)*