

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

In re:

ALAMO DRAFTHOUSE CINEMAS
HOLDINGS, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 21-10474 (MFW)
(Jointly Administered)

Hearing Date: October 14, 2021 at 10:30 a.m. (ET)
Objection Deadline: September 8, 2021 at 4:00 p.m. (ET)

**MOTION OF MELISSA QUATTRONE TO
ENLARGE TIME TO FILE A PROOF OF CLAIM**

COMES NOW Claimant Melissa Quattrone (“Claimant”), by and through her undersigned counsel, and hereby files this Motion to Enlarge Time to File a Proof of Claim (the “Motion”), and in support thereof states as follows:

I. JURISDICTION AND VENUE

1. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (B). This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334.
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Alamo Drafthouse Cinemas Holdings, LLC (2205); Alamo Drafthouse Cinemas, LLC (5717); Alamo Vineland, LLC(1626); Alamo League Investments GP, LLC (1811); Alamo League Investments, Ltd. (7227); Alamo South Lamar GP, LLC (3632); Alamo South Lamar, LP (4563); Alamo Drafthouse Raleigh, LLC (5979); Alamo DH Anderson Lane, LLC (3642); Alamo Yonkers, LLC (4971); Alamo Mission, LLC (2284); Alamo Ritz, LLC (9465); Alamo Mueller, LLC (1221); Mondo Tees, LLC (6900); Alamo City Foundry, LLC (6092); Alamo Mainstreet, LLC (2052); Alamo City Point, LLC (3691); Alamo Liberty, LLC (5755); Alamo Satown, LLC (6197); Alamo Marketplace, LLC (7041); Alamo Stone Oak, LLC (8398); Alamo Westlakes, LLC (4931); Alamo Park North, LLC (1252); Alamo North SA, LLC (6623); Alamo Avenue B, LLC (8950); Alamo Slaughter Lane GP, LLC (6968); Alamo Slaughter Lane, Ltd. (5341); Alamo Cinema Group I GP, LLC (9537); Alamo Cinema Group I, LP (9656); Alamo Westminster, LLC (8906); Alamo Staten Island, LLC (7781); Alamo Aspen Grove, LLC (7786); Alamo Lakeline, LLC (5294); Alamo Sloans, LLC (9343). The location of the Debtors’ service address is: 3908 Avenue B, Austin, Texas 78751.

II. PROCEDURAL AND FACTUAL BACKGROUND

3. On March 3, 2021 (the “Petition Date”), the above captioned Debtors commenced these bankruptcy cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

4. The Debtors are authorized to operate their businesses as debtors-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

5. On April 29, 2021, this Court entered its Order establishing June 8, 2021 (the “Bar Date”) as the general deadline by which proofs of claim must be filed (D.I. 414).

6. On or about July 27, 2018, Claimant filed a complaint in the Superior Court for the State of California for the County of San Francisco, Case No. CGC-18-568435 styled *Melissa Quattrone, as an individual and on behalf of others similarly situated, Plaintiff, vs. Alamo Mission LLC, a California limited liability company; and Does 1-50, inclusive, Defendants* (the “Complaint”). Defendant Alamo Mission LLC is one of the above captioned Debtors (“Defendant Debtor”).

7. Claimant was employed by Defendant Debtor from approximately November 2015 through February 2018 as a server.

8. Claimant maintains a claim against the Debtors due to the Debtor’s policies, practices and customs that deprived her of the rights guaranteed to her by California Labor Code, California, California Business and Professions Code Section 17200, et seq; (“Unfair Practices Act”) and the applicable wage orders issued by the Industrial Welfare Commission including IWC Wage Order No. 5.

9. The estimated value of the claim is \$25,000.00.

III. RELIEF REQUESTED

10. The Federal Rules of Bankruptcy Procedure give the bankruptcy courts discretion to enlarge the period during which a proof of claim must be filed due to excusable neglect. Bankruptcy Rule 3003(c)(3) provides that “[t]he court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed.” Fed. R. Bankr. P. 3003(c)(3). Bankruptcy Rule 9006(b)(1) provides that “the court for cause shown may at any time in its discretion . . . on motion, made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.” Fed. R. Bankr. P. 9006(b)(1); *Chemetron Corp. vs. Jones*, 72 F.3d 341, 349 (3d Cir. 1995) (citing *Pioneer Investment Servs. Co. v. Brunswick Assocs. LTD, P’ship*, 507 U.S. 380, 382 (1993)).

11. As noted by the Supreme Court in *Pioneer*, “reading Rule 9006(b)(1) inflexibly to exclude every instance of an inadvertent or negligent omission would ignore the most natural meaning of the word ‘neglect’ and would be at odds with the accepted meaning of that word in analogous contexts.” *Pioneer*, 507 U.S. at 394-95. In addition, The Supreme Court “found that neglect had a broad interpretation that allowed courts, where appropriate, to accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party’s control.” *Chemetron*, 72 F.3d 349 (citing *Pioneer*, 507 U.S. at 388-89). Ultimately, a court’s determination of whether excusable neglect exists “is an equitable one, taking account of all relevant circumstances surrounding the party’s omission.” *Pioneer*, 507 U.S. at 395.

12. The *Pioneer* Court identified four factors that a court should consider when reviewing a request by a party to enlarge time based on excusable neglect: “(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) whether the movant acted in good faith.” *In re New Century TRS Holdings, Inc.*, 465 B.R. 38, 50-51 (Bankr. D. Del. 2012) (citing *Pioneer*, 507 U.S. at 395).

A. No Danger of Prejudice

13. Courts have held that in determining the danger of prejudice by enlarging the time to file a proof of claim, courts

must consider several factors These include “whether the debtor was surprised or caught unaware by the assertion of a claim that it had not anticipated; whether the payment of the claim would force the return of amounts already paid out under the confirmed plan or affect the distribution to creditors; whether payment of the claim would jeopardize the success of the debtor’s reorganization; whether allowance of the claim would adversely impact the debtor actually or legally; and whether allowance of the claim would open the floodgates to other future claims.”

Garden Ridge, 348 B.R. at 646. In addition, it is important to note that prejudice “does not refer to an imagined or hypothetical harm; a finding of prejudice should be a conclusion based on the facts in evidence. *New Century*, 465 B.R. at 51 (citing *Manus Corp. v. NRG Energy, Inc. (In re O’Brien Env’tl Energy, Inc.)*, 188 F.3d 116, 127 (3d Cir. 1999)).

14. In this case, there is no danger of prejudice to the Debtors or the Debtors’ estate. There is no pending plan or disclosure statement that would be affected by allowing Claimant to be permitted to file the proof of claim at this time and be considered a timely proof of claim. The Debtors should not be surprised by the Claimant’s assertion of the claim since the Debtors are well aware of the Complaint. No payments have been made to any parties since no plan has been confirmed, and similarly distribution to creditors would not be affected since no distribution has been made. Payment of the Claimant’s claim would not affect the success of the Debtors’ reorganization since the claim is relatively small and, again, no plan has yet been proposed.

Along the same lines, allowance of the Claimant's claim would not adversely impact the Debtors. Finally, the allowance of the Claimant's claim would not open the floodgates for other claims since the Claimant's claim is a very specified claim, namely obligations of the Debtors under California labor laws.

15. As such, the first factor considering prejudice to the Debtors should weigh in favor of Claimant.

B. Minimal Length of Delay

16. With regard to length of delay, courts have noted that "the significance of a delay should not be considered in absolute terms, but will depend on the facts of the case." *O'Brien*, 188 F.3d at 130. A delay in terms of an actual number of months will vary in its significance depending on the stage of the relevant case. *New Century*, 465 B.R. at 52. In this case, only two (2) months have passed since the deadline to file proofs of claim. No plan has been confirmed or even proposed in these bankruptcy cases, and there have been no proceedings to resolve claims filed.

17. As such, the second factor considering the length of delay weighs in favor of Claimant.

C. Reasonable Delay/Delay Beyond Movant's Reasonable Control

18. With regard to the third factor, Claimant's delay is reasonable. Claimant's attorneys never received notice of the deadline for filing proof of claims, although the claims agent's web site shows that notice was addressed to same. More importantly, Claimant never received notice, personally. Once she became aware of the deficiency, she took the necessary steps to prepare and ultimately seek to file a proof of claim in these bankruptcy cases.

19. Further, the governmental bar date has not yet passed and is set for August 31, 2021. As such, the third factor weighs in favor of Claimant.

D. Claimant's Good Faith

20. The Claimant has acted in good faith by hiring counsel and filing this Motion.

21. Therefore, this final factor weighs in favor of Claimant.

WHEREFORE, Claimants respectfully request that this Court enter an Order substantially in the form attached hereto, enlarging the time for Claimant to file the proof of claim, which proof of claim is attached hereto as Exhibit A, and granting such other and further relief as the Court may deem proper and just.

Dated: August 25, 2021

GELLERT SCALI BUSENKELL & BROWN, LLC

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