

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

In re:

BL RESTAURANTS HOLDING, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 20-10156 (CTG)

(Jointly Administered)

Hearing Date: December 6, 2021 at 10:00 a.m. (ET)

Objection Deadline: November 2, 2021 at 4:00 p.m. (ET)

**SECOND OMNIBUS (SUBSTANTIVE) OBJECTION  
OF THE BL RESTAURANTS GUC TRUST TO CERTAIN  
(A) NO LIABILITY CLAIMS; (B) OVERSTATED CLAIMS;  
(C) MISCLASSIFIED CLAIMS; AND (D) UNLIQUIDATED CLAIMS**

**\*\*\*CLAIMANTS RECEIVING THIS OBJECTION SHOULD LOCATE  
THEIR NAMES AND CLAIMS IN THE EXHIBITS TO THE OBJECTION\*\*\***

UMB Bank, N.A., solely in its capacity as trustee (the “Trustee”) of the BL Restaurants GUC Trust (the “Trust”), by and through its undersigned counsel, hereby submits this omnibus objection (the “Second Omnibus Objection”) seeking entry of an order (the “Proposed Order”) pursuant to sections 105(a) and 502 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 3007-1 of the Local Rules of Bankruptcy Practice and Procedures of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”): (A) disallowing and expunging in full the no liability claims listed on Exhibit A, (B) reducing the overstated claims listed on Exhibit B to the amounts set forth therein, (C) reclassifying the claim listed on Exhibit C to a general unsecured claim, and (D) fixing and allowing the unliquidated claims listed on Exhibit D to the amounts and priorities set forth therein.

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<sup>1</sup> The Debtors in these cases are as follows: BL Restaurants Holding, LLC; BL Restaurant Operations, LLC; BL Restaurant Franchises, LLC; and BL Hunt Valley, LLC.

In support of this Second Omnibus Objection, the Trust relies on the *Declaration of Tina Vitale in Support of Second Omnibus (Substantive) Objection of the BL Restaurants GUC Trust to Certain (A) No Liability Claims; (B) Overstated Claims; (C) Misclassified Claims; and (D) Unliquidated Claims* (the “Declaration”), attached hereto as Exhibit 1. In further support of this Second Omnibus Objection, the Trust respectfully represents as follows:

### **JURISDICTION**

1. The Court has jurisdiction to consider and determine this matter pursuant to 28 U.S.C. §§ 157 and 1334, the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012, and Article XI of the *Amended Joint Chapter 11 Plan of Liquidation of BL Restaurants Holding, LLC and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* filed March 4, 2021 (as confirmed, the “Plan”).<sup>2</sup> This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(A), (B) and (O). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a) and 502(b) of the Bankruptcy Code, Rules 3007 and 9014 of the Bankruptcy Rules, and Local Rule 3007-1.

3. Pursuant to Local Rule 9013-1(f), the Trust consents to the entry of a final judgment or order with respect to the Second Omnibus Objection if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

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<sup>2</sup> Docket No. 788. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

## **BACKGROUND**

### **A. The Chapter 11 Cases**

4. On January 27, 2020 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. From and after the Petition Date, each Debtor operated its business and managed its properties as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code until the closing of the sale of their operations on May 27, 2020.<sup>3</sup>

5. On April 21, 2021, the Court entered an order (the “Confirmation Order”) confirming the Plan.<sup>4</sup> The Plan became effective on May 7, 2021 (the “Effective Date”).<sup>5</sup>

6. The Plan and Confirmation Order provide for the establishment of the Trust on the Effective Date according to the terms and conditions of the BL Restaurants GUC Trust Agreement (the “Trust Agreement”), at which time the Trustee was appointed to administer the Trust. Pursuant to section 6.3(b) of the Plan and section 3.2.14 of the Trust Agreement, the Trustee is authorized, among other things, to cause the Trust to investigate, review, object to and resolve all General Unsecured Claims filed against the Debtors’ estates.<sup>6</sup>

### **B. The Bar Dates**

7. On February 24, 2020, each Debtor filed its respective schedules of assets and liabilities (the “Schedules”).<sup>7</sup>

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<sup>3</sup> Docket No. 452.

<sup>4</sup> Docket No. 827.

<sup>5</sup> Docket No. 844.

<sup>6</sup> *See also* 11 U.S.C. § 502(b).

<sup>7</sup> Docket Nos. 165, 167, 169, 171.

8. On February 28, 2020, the Court entered the *Order (A) Establishing Bar Dates for Filing Proofs of Claim, including Claims under 11 U.S.C. § 503(b)(9) and Administrative Expense Requests; (B) Approving the Form and Manner for Filing Proofs of Claim and Administrative Expense Requests; and (C) Approving Notice Thereof* (the “Bar Date Order”). The Bar Date Order established, among other deadlines, (i) April 3, 2020 as the deadline for each person or entity other than governmental units to file (a) proofs of prepetition claims, including administrative expense claims arising pursuant to section 503(b)(9) of the Bankruptcy Code (the “General Bar Date”), and (b) proofs of administrative expense claims arising on or after the Petition Date through February 29, 2020 (the “Administrative Bar Date”); and (ii) July 27, 2020 as the last date for governmental units to file proofs of claim that arose before the Petition Date (the “Governmental Bar Date”).<sup>8</sup>

9. On February 28, 2020, the Debtors filed their notice of the General Bar Date, Administrative Bar Date and Governmental Bar Date.<sup>9</sup>

**C. The Claims Resolution Process**

10. In the ordinary course of business, the Debtors maintained books and records that reflect, *inter alia*, the Debtors’ liabilities and the amounts owed to their creditors. Section 6.6 of the Plan provides the Trust shall be provided with originals or copies of or access to all documents and business records of the Debtors necessary for the disposition of GUC Trust Assets and objections to General Unsecured Claims.

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<sup>8</sup> Docket No. 228.

<sup>9</sup> Docket No. 229.

11. The register of claims prepared by Epiq Corporate Restructuring, LLC reflects that, as of the date of this Second Omnibus Objection, more than 960 proofs of claim have been filed in the Debtors' chapter 11 cases, exclusive of claims listed on the Debtors' Schedules.

12. The Trust and its professionals have been reviewing and analyzing claims since the Effective Date of the Plan. This process includes identifying categories of claims that may be targeted for disallowance and expungement, reduction and/or reclassification. To reduce the number of claims, and to avoid possible double or otherwise improper recovery by claimants, the Trust anticipates filing additional omnibus objections to claims.

13. Certain of the claims set forth in this Second Omnibus Objection are asserted as secured, administrative and/or priority unsecured claims ("SAP Claims"). The Trust desires to wind up the claims reconciliation process and other residual issues in the instant chapter 11 cases as expeditiously as possible for the benefit of all creditors of the Debtors' estates. To streamline the claims reconciliation process, the Trust has obtained the consent of the Plan Administrator to object to outstanding SAP Claims that were not addressed by the Debtors prior to the Effective Date.

#### **RELIEF REQUESTED**

14. By this Second Omnibus Objection and for the reasons described more fully below, the Trust requests entry of the Proposed Order substantially in the form attached hereto as Exhibit 2, disallowing, reducing, reclassifying or fixing the claims set forth on Exhibit A through Exhibit D attached thereto, pursuant to sections 105(a) and 502(b) of the Bankruptcy Code, Bankruptcy Rule 3007 and Local Bankruptcy Rule 3007-1.

### **OBJECTION**

15. Section 502(a) of the Bankruptcy Code provides, in pertinent part, that “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest ... objects.”<sup>10</sup> Once an objection to a claim is filed, the Court, after notice and hearing, shall determine the allowed amount of the claim.<sup>11</sup>

16. Section 502(b)(1) of the Bankruptcy Code provides, in part, that a claim may not be allowed to the extent that it “is unenforceable against the debtor and property of the debtor, under any agreement or applicable law.”<sup>12</sup> While a properly filed proof of claim is *prima facie* evidence of the claim’s allowed amount, when 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.<sup>13</sup> The burden of persuasion with respect to the claim is always on the claimant.<sup>14</sup> The failure to allege facts and to provide sufficient support for a claim deprives the claim of *prima facie* validity.<sup>15</sup>

17. For the reasons set forth below, there is ample evidence to rebut the *prima facie* validity of each claim.

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<sup>10</sup> 11 U.S.C. § 502(a).

<sup>11</sup> See 11 U.S.C. § 502(b).

<sup>12</sup> 11 U.S.C. § 502(b)(1).

<sup>13</sup> See *In re Allegheny Int’l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992).

<sup>14</sup> See *id.* at 174.

<sup>15</sup> See, e.g., *In re Jorczak*, 314 B.R. 474, 481-82 (Bankr. D. Conn. 2004) (discussing the evidentiary requirements and burden of proof with respect to the allowance of claims).

**A. No Liability Claims**

18. Section 502(b)(1) of the Bankruptcy Code provides that a claim asserted in a proof of claim shall be allowed, except to the extent “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law.”<sup>16</sup>

19. The Trust has identified certain claims listed on Exhibit A (the “No Liability Claims”) that it is unable to reconcile with the Debtors’ books and records. The Trust believes that the No Liability Claims are not valid claims because, for the reasons more fully set forth on Exhibit A: (i) the claimant is a member of the class action styled *Alverson, et al. v. BL Restaurant Operations LLC*, Civil Action No. 5:16-cv-00849, which liability is reflected in scheduled claim #157012730; (ii) the Debtors’ books and records do not reflect the existence of the asserted claim or of the claimant asserting such claim; or (iii) the claim is associated with a liability incurred following the closing of the sale of substantially all of the Debtors’ assets to BLH Acquisition Co., LLC under the Asset Purchase Agreement, dated January 26, 2020.<sup>17</sup>

20. Based on the Trust’s review and analysis of the Debtors’ books and records, the claims register, and the proofs of claim and supporting documentation, the No Liability Claims are not enforceable under any applicable law or agreement within the meaning of section 502(b)(1), and therefore, the Debtors’ estates are not liable for such claims. Accordingly, the Trust (a) objects to the No Liability Claims, and (b) requests entry of an order disallowing each of the No Liability Claims listed on Exhibit A.

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<sup>16</sup> 11 U.S.C. § 502(b)(1).

<sup>17</sup> See Docket No. 402, Ex. A.

**B. Overstated Claims**

21. After reconciling each of the claims and supporting materials against the Debtors' books and records, the Trust has identified the claims listed on Exhibit B to the Proposed Order (the "Overstated Claims") that were each filed in an incorrect amount.

22. The claimants asserting an Overstated Claim assert amounts that are higher than the liability reflected on the books and records and such claimants have not provided evidence that any additional amounts are due and owing. Accordingly, the Overstated Claims should be modified by reducing the amount to the respective dollar value listed under the column titled "Modified Claim Amount" on Exhibit B. Failure to modify the Overstated Claims will result in the claimant receiving an excessive recovery against the Debtors' estates to the detriment of other creditors. Accordingly, the Trust (a) objects to the Overstated Claims, and (b) seeks entry of an order reducing the amount of each of the Overstated Claims.

**C. Misclassified Claim**

23. The Trust has identified the claim listed on Exhibit C (the "Misclassified Claim") as erroneously asserting the right to treatment as an administrative claim. Specifically, the claim is not entitled to administrative expense treatment because it does not meet any of the criteria specified in section 503(b) of the Bankruptcy Code.

24. In evaluating the Misclassified Claim, the Trust has reviewed the books and records and the proof of claim, as well as the supporting documentation provided by claimant, and has determined that the Misclassified Claim is improperly and incorrectly classified for the reason set forth on Exhibit C. The Trust therefore (a) objects to the Misclassified Claim and (b) seeks entry of an order modifying the Misclassified Claim by



requesting reclassification to the priority listed in the “Modified Claim Priority” column of Exhibit C.

**D. Unliquidated Claims**

25. The Trust has identified certain claims listed on Exhibit D (the “Unliquidated Claims”) that are unliquidated, in whole or in part. The Trust seeks to fix and allow the Unliquidated Claims in the amounts listed on Exhibit D. Once allowed pursuant to an order on this Second Omnibus Objection, the Unliquidated Claims as set forth on Exhibit D will reflect the final aggregate amount and classification of all claims held by each such claimant against the Debtors, whether known or un-known, past or present, fixed or contingent, liquidated or unliquidated. Any other claims against the Debtors held by affected claimants will be disallowed.

**RESPONSES TO OMNIBUS OBJECTIONS**

26. To contest an objection, a claimant must file and serve a written response to this Second Omnibus Objection (a “Response”) so that it is received no later than **November 2, 2021 at 4:00 p.m. (Prevailing Eastern Time)** (the “Response Deadline”). Every Response must be filed with the Office of the Clerk of the United States Bankruptcy Court for the District of Delaware: 824 North Market Street, Wilmington, Delaware 19801, and served the following entities, so that the Response is received no later than the Response Deadline, at the following addresses:

Womble Bond Dickinson (US) LLP  
1313 North Market Street, Suite 1200  
Wilmington, Delaware 19801  
Attn: Matthew P. Ward  
Morgan L. Patterson

- and -

Kelley Drye & Warren LLP  
3 World Trade Center  
175 Greenwich Street  
New York, New York 10007  
Attn: Jason R. Adams  
Lauren S. Schluskel  
Connie Choe

27. Every Response to this Second Omnibus Objection must contain, at a minimum, the following information:

- i. a caption setting forth the name of the Court, the name of the Debtors, the case number, and the title of objection to which the Response is directed;
- ii. the name of the claimant, his/her/its claim number, and a description of the basis for the amount of the claim;
- iii. the specific factual basis and supporting legal argument upon which the party will rely in opposing this Second Omnibus Objection;
- iv. any supporting documentation, to the extent it was not included with the proof of claim previously filed with the clerk or claims agent, upon which the party will rely to support the basis for and amounts asserted in the proof of claim; and
- v. the name, address, telephone number, email address and fax number of the person(s) (which may be the claimant or the claimant's legal representative) with whom counsel for the Trust should communicate with respect to the claim or the Second Omnibus Objection and who possesses authority to reconcile, settle, or otherwise resolve the objection to the disputed claim on behalf of the claimant.

28. If a claimant fails to file and serve a timely Response by the Response Deadline, the Trust will present to the Court an appropriate order disallowing, reducing, reclassifying or fixing such claimant's claim, as set forth in Exhibit A through Exhibit D to the Proposed Order, without further notice to the claimant.

**REPLIES TO RESPONSES**

29. Consistent with Local Rule 9006-1(d), the Trust may, at its option, file and serve a reply to a Response no later than 4:00 p.m. (Prevailing Eastern Time) one (1) day prior to the deadline for filing the agenda for any hearing to consider the Second Omnibus Objection.

**SEPARATE CONTESTED MATTERS**

30. To the extent a Response is filed regarding any claim listed in this Second Omnibus Objection and the Trust is unable to resolve the Response, the objection by the Trust to each such claim asserted herein shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. Any order entered by the Court regarding an objection asserted in the Second Omnibus Objection shall be deemed a separate order with respect to each claim.

**RESERVATION OF RIGHTS**

31. The Trust hereby reserves the right to object in the future to any of the claims that are the subject of this Second Omnibus Objection on any ground, and to amend, modify, and/or supplement this Second Omnibus Objection, including, without limitation, to object to amended or newly-filed claims. Notwithstanding anything contained in this Second Omnibus Objection or the attached exhibits, nothing herein shall be construed as a waiver of any rights that the Trust may have to exercise rights of setoff against the holders of such claims.

**NOTICE**

32. Notice of this Motion shall be provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) each of the claimants whose claim is subject to this Second Omnibus Objection; and (iii) all entities requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Trust submits that no further notice is required.

**COMPLIANCE WITH LOCAL RULE 3007-1**

33. The undersigned representatives of Womble Bond Dickinson (US) LLP certify that they have reviewed the requirements of Local Rule 3007-1 and that the Second Omnibus Objection substantially complies with that Local Rule. To the extent that the Second Omnibus Objection does not comply in all respects with the requirements of Local Rule 3007-1, Womble Bond Dickinson (US) LLP believes such deviations are not material and respectfully requests that any such requirement be waived.

WHEREFORE, the Trust respectfully requests the entry of the Proposed Order, substantially in the form attached hereto as Exhibit 2, granting the relief requested and granting such other and further relief as the Court deems just and proper.

Dated: Wilmington, Delaware  
October 19, 2021

**WOMBLE BOND DICKINSON (US) LLP**

/s/ Morgan L. Patterson

Matthew P. Ward (DE No. 4471)  
Morgan L. Patterson (DE No. 5388)  
1313 North Market Street, Suite 1200  
Wilmington, Delaware 19801  
Tel: (302) 252-4320  
Fax: (302) 252-4330

- and -

**KELLEY DRYE & WARREN LLP**

Eric R. Wilson (admitted *pro hac vice*)  
Jason R. Adams (admitted *pro hac vice*)  
Lauren S. Schluskel (admitted *pro hac vice*)  
3 World Trade Center  
175 Greenwich Street  
New York, New York 10007  
Tel: (212) 808-7800  
Fax: (212) 808-7897

*Counsel to the BL Restaurants GUC Trust*