

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§
	§ Chapter 11
	§
EPIC COMPANIES, LLC,	§ Case No. 19-34752 (DRJ)
	§
Debtors. ¹	§ (Jointly Administered)
	§

LIQUIDATING TRUSTEE’S SECOND OMNIBUS OBJECTION TO CERTAIN PROOFS OF CLAIM (DUPLICATE CLAIMS AND AMENDED CLAIMS)

THIS IS AN OBJECTION TO YOUR CLAIM. THIS OBJECTION ASKS THE COURT TO DISALLOW THE CLAIM THAT YOU FILED IN THIS BANKRUPTCY CASE. IF YOU DO NOT FILE A RESPONSE WITHIN 30 DAYS AFTER THE OBJECTION WAS SERVED ON YOU, YOUR CLAIM MAY BE DISALLOWED WITHOUT A HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY. THIS OBJECTION SEEKS TO DISALLOW AND EXPUNGE CERTAIN PROOFS OF CLAIM. CLAIMANTS RECEIVING THIS OBJECTION SHOULD LOCATE THEIR NAMES AND CLAIMS ON SCHEDULE 1 OR SCHEDULE 2 TO THE ORDER ATTACHED TO THIS OBJECTION.

Jeffrey T. Varsalone, as the Liquidating Trustee of the Epic Companies, LLC Trust (the “Liquidating Trustee”) respectfully states the following in support of this omnibus claims objection (this “Objection”), and submits the *Declaration of Jeffrey T. Varsalone in Support of the Liquidating Trustee’s Second Omnibus Objection to Certain Proofs of Claim (Duplicate Claims and Amended Claims)* attached hereto as **Exhibit A** (the “Declaration”):

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Epic Companies, LLC (1473), Epic Diving & Marine Services, LLC (2501), Epic Applied Technologies, LLC (5844), Epic Specialty Services, LLC (8547), Epic Alabama Steel, LLC (6835), Epic San Francisco Shipyard, LLC (5763) and Zuma Rock Energy Services, LLC (1022). The mailing address of the Debtors is: P.O. Box 79625, Houston, Texas 77279-9625.

RELIEF REQUESTED

1. By this Objection, the Liquidating Trustee seeks entry of an order (the “Order”), substantially in the form attached hereto, pursuant to section 502(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rules 3007-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”), and the Procedures for Complex Cases in the Southern District of Texas (the “Complex Case Procedures”):

- (i) Disallowing each “Disallowed Claim” identified on **Schedule 1** to the Order (collectively, the “Duplicate Claims”) in its entirety because each claim is duplicative of another claim filed against the Debtors with respect to the same liabilities, identified on **Schedule 1** in the “Surviving Claim” column (the “Surviving Claims”); and
- (ii) Disallowing each “Disallowed Claim” identified on **Schedule 2** to the Order (collectively, the “Amended Claims”) in its entirety because each claim was amended and superseded by a later-filed claim by the same claimant with respect to the same liability, identified on **Schedule 2** in the “Surviving Claim” column (the “Remaining Amended Claims”).

2. In support of this Objection to these certain objected proofs of claim (each, an “Objected Claim” and collectively, the “Objected Claims”), the Liquidating Trustee submits the Declaration.

JURISDICTION AND VENUE

3. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157. Venue is proper pursuant to 28 U.S.C. § 1408.

4. The statutory bases for the relief requested herein are section 502(b) of the Bankruptcy Code, Bankruptcy Rule 3007, Bankruptcy Local Rules 3007-1, and the Complex Case Procedures.

BACKGROUND

5. On August 26, 2019 (the “Petition Date”), the Debtors each commenced a case by filing a petition for relief under Chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”). These Chapter 11 Cases are jointly administered pursuant to Bankruptcy Rule 1015(b).

6. On February 13, 2020, the Debtors and the Committee filed their *Joint Plan of Liquidation of Epic Companies, LLC and its Debtor Subsidiaries Under Chapter 11 of the Bankruptcy Code* [Docket No. 581] (the “Plan”). On April 7, 2020, the Court entered its *Order Approving Plan Proponents’ Disclosure Statement and Confirming Plan Proponents’ Joint Plan of Liquidation of Epic Companies, LLC and its Debtor Subsidiaries Under Chapter 11 of the Bankruptcy Code* [Docket No. 681] (the “Confirmation Order”).

7. The Plan and the Confirmation Order established the Liquidating Trust and approved the Liquidating Trust Agreement, which appointed the Liquidating Trustee to, among other things, be the sole entity responsible for objecting to claims. *See* Plan, Art. V.D. Pursuant to the Plan, the Debtors’ estates are deemed consolidated for purposes of making distributions to claimants. *See* Plan, Art. V.A.

CLAIMS RECONCILIATION PROCESS

8. On October 3, 2019, the Court entered an *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Request for Payment Under Section 503(b)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form and Manner for Filing Proofs of Claim, Including Section 503(b)(9) Request, and (IV) Approving Notice of Bar Dates* [Docket No. 226] (the “Bar Date Order”) pursuant to which the Court, among other things, established November 6, 2019, at 11:59 p.m. (prevailing Central Time), as the

deadline for all non-governmental entities² holding or wishing to assert a “claim” (as defined in section 101(15) of the Bankruptcy Code) (the “Claims Bar Date”).

9. On October 5, 2019, Epiq Corporate Restructuring LLC (“Epiq”) mailed notice of the Bar Date Order (the “Bar Date Notice”) to potential claimants in accordance with the procedures set forth therein. [See Docket No. 236].

10. The Debtors also published the Bar Date Notice in accordance with the Bar Date Order in *USA Today* (national edition), the *Houston Chronicle*, and *The Times-Picayune | The New Orleans Advocate* on October 25, October 27, and October 28, 2019, respectively. [See Docket No. 444].

11. In the ordinary course of business, the Debtors maintained books and records that reflect, among other things, the Debtors’ liabilities and the amounts owed to their creditors. Article V.L. of the Plan provides for the Liquidating Trustee’s access to and/or possession of the books and records. The Debtors’ register of claims, prepared by Epiq, reflects that, as of the date hereof, approximately 605 proofs of claim have been filed in the Debtors’ Chapter 11 Cases.

12. Since the Effective Date, the Liquidating Trustee and his counsel and advisors, have been, among other things, in the process of reviewing and reconciling proofs of claim filed against the Debtors in the Chapter 11 Cases. The Liquidating Trustee and his advisors have been reviewing and analyzing claims with a view toward reconciling all claims for which the Liquidating Trustee is responsible. This process includes identifying categories of claims that may be targeted for disallowance, reduction, and/or reclassification.

² The deadline for all governmental units asserting a “claim” (as defined in section 101(15) of the Bankruptcy Code) against the Debtors that arose on or prior to the Petition Date to file written proof of such claim was February 24, 2020, at 11:59 p.m. (prevailing Central Time).

OBJECTION

13. Section 502 of the Bankruptcy Code provides, in pertinent part, as follows: “[a] claim or interest, proof of which is filed under § 501 of [the Bankruptcy Code], is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502. Moreover, Bankruptcy Rule 3007 provides certain grounds upon which “objections to more than one claim may be joined in an omnibus objection,” which includes when “the objections are based solely on the grounds that the claims should be disallowed, in whole or in part, because they duplicate other claims” or “they were not timely filed.” Fed. R. Bankr. P. 3007(d)(1) and (4). As set forth in detail below, all of the objections to the Objected Claims fall within one of the specifically enumerated categories in Bankruptcy Rule 3007(d).

14. As set forth in Bankruptcy Rule 3001(f), a properly executed and filed proof of claim constitutes prima facie evidence of the validity and the amount of the claim under section 502(a) of the Bankruptcy Code. *See, e.g., In re Tran*, 351 B.R. 440, 444 (Bankr. S.D. Tex. 2006), *aff’d*, 369 B.R. 312 (S.D. Tex. 2007) (holding that a properly filed proof of claim is prima facie evidence of the validity and amount of the claim.). A proof of claim loses the presumption of prima facie validity under Bankruptcy Rule 3001(f) if an objecting party refutes at least one of the allegations that are essential to the claim’s legal sufficiency. *See In re Fidelity Holding Co., Ltd.*, 837 F.2d 696, 698 (5th Cir. 1988) (holding “If, however, evidence rebutting the claim is brought forth, then the claimant must produce additional evidence to “prove the validity of the claim by a preponderance of the evidence.”). Once such an allegation is refuted, the burden reverts to the claimant to prove the validity of its claim by a preponderance of the evidence. *Id.* Despite this shifting burden during the claim objection process, “the ultimate burden of proof always lies with the claimant.” *Id.*

DUPLICATE CLAIMS

15. As set forth in the Declaration, the Liquidating Trustee thoroughly reviewed the Debtors' books and records, and the claims register, and determined that the Duplicate Claims duplicate claims filed by or on behalf of the same claimant with respect to the same liabilities, which are identified on **Schedule 1** to the Order in the column titled "Surviving Claim." Failure to disallow the Duplicate Claims could potentially result in the relevant claimants receiving double recoveries against the Liquidating Trust to the detriment of other, similarly situated creditors. This Objection does not affect the Surviving Claims identified on **Schedule 1** to the Order, and the Liquidating Trustee reserves his right to object to the Surviving Claims on any grounds whatsoever.

16. Accordingly, the Liquidating Trustee respectfully requests that the Court enter the Order disallowing the Duplicate Claims identified on **Schedule 1** to the Order.

AMENDED CLAIMS

17. As set forth in the Declaration, the Liquidating Trustee thoroughly reviewed the Debtors' books and records and the claims register, and determined that the Amended Claims identified on **Schedule 2** to the Order were amended and superseded by the Remaining Amended Claims identified in the "Surviving Claim" column on **Schedule 2** to the Order. To allow both the Amended Claims and the Remaining Amended Claims to remain on the claims register would be duplicative and would lead to multiple recoveries on a single claim.

18. Accordingly, the Liquidating Trustee respectfully requests that the Court enter the Order disallowing the Amended Claims identified on **Schedule 2** to the Order. This Objection does not affect the Remaining Amended Claims, and the Liquidating Trustee reserves his right to object to the Remaining Amended Claims on any grounds whatsoever.

RESERVATION OF RIGHTS

19. This Objection is limited to the grounds stated herein. Accordingly, it is without prejudice to the rights of the Liquidating Trustee to object to any claim on any ground whatsoever. The Liquidating Trustee expressly reserves all further substantive or procedural objections. Nothing contained herein or any actions taken pursuant to such relief is intended or should be construed as: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Liquidating Trustee's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Objection or any order granting the relief requested by this Objection; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Liquidating Trustee's rights under the Bankruptcy Code or any other applicable law.

SEPARATE CONTESTED MATTER

20. To the extent that a response is filed regarding any Objected Claim and the Liquidating Trustee is unable to resolve any such response, each such Objected Claim, and the Objection as it pertains to such Objected Claim, will constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. Further, the Liquidating Trustee requests that any order entered by the Court regarding an objection or other reply asserted in response to this Objection be deemed a separate order with respect to each proof of claim.

NOTICE

21. Notice of this Objection will be given to the parties listed on **Schedule 1** and **Schedule 2** to the Order.

WHEREFORE, the Liquidating Trustee respectfully requests that the Court enter the Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: November 30, 2021
Houston, Texas

/s/ M. Shane Johnson

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